

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Madeleine Clayton 11/28/2001
Departmental Forms Clearance Officer
Office of the Chief Information Officer
14th and Constitution Ave. NW.
Room 6086
Washington, DC 20230

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for approval of the reinstatement of an information collection received on 09/28/2001.

TITLE: Coastal Zone Management Program Administration

AGENCY FORM NUMBER(S): None

ACTION : APPROVED
OMB NO.: 0648-0119
EXPIRATION DATE: 11/30/2004

BURDEN	RESPONSES	BURDEN HOURS	BURDEN COSTS
Previous	0	0	0
New	195	6,598	0
Difference	195	6,598	0
Program Change		6,598	0
Adjustment		0	0

TERMS OF CLEARANCE: None

NOTE: The agency is required to display the OMB control number and inform respondents of its legal significance (see 5 CFR 1320.5(b)).

OMB Authorizing Official	Title
Donald R. Arbuckle	Deputy Administrator, Office of Information and Regulatory Affairs

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) (<i>if applicable</i>)	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	10. Abstract
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator or head of MB staff for L.O.s, or of the Director of a Program or Staff Office)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

SUPPORTING STATEMENT

COASTAL ZONE MANAGEMENT PROGRAM ADMINISTRATIVE GRANTS - PERFORMANCE REPORTS, AMENDMENT AND ROUTINE PROGRAM CHANGES, AND SECTION 306A REQUIREMENTS

OMB CONTROL NO. 0648-0119

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

In 1972, in response to intense pressure on coastal resources, and because of the importance of coastal areas of the United States, the Congress passed the Coastal Zone Management Act of 1972 (CZMA). The CZMA authorizes a federal program to encourage coastal states and territories to develop comprehensive coastal management programs. The CZMA has been reauthorized on several occasions, most recently with the enactment of the Coastal Zone Protection Act of 1996. This program is administered by the Secretary of Commerce, who in turn has delegated this responsibility to the National Oceanic and Atmospheric Administration's (NOAA) National Ocean Services (NOS).

Currently, 33 of the 35 coastal states, including those of the Great Lakes and U.S. territories, have coastal management programs (CMPs) that have been approved by the Assistant Administrator of NOS. One state is still developing a program and officials in the last remaining state are still expressing an interest in participating in the program.

The CZMA affirms the national interest in the effective protection and careful development of the coastal zone by providing assistance and encouragement to coastal states to voluntarily develop and implement management programs for their coastal areas. To provide coastal states and territories with the means of achieving these objectives, the CZMA authorizes financial assistance grants under Section 305 for program development and under Section 306 for program implementation.

Section 305 of the CZMA authorizes grants to states to develop a coastal management program. After its management program receives federal approval, the state is then eligible for annual grants under Section 306 to implement the program. Section 306A provides that states may use a portion of their Section 306 awards for low cost construction projects. Section 309 establishes a coastal enhancement grant program. Section 310 establishes a technical assistance and management-oriented research grant program. The Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) establishes a new Coastal Nonpoint Pollution Control Program, in addition to updating the CZMA. The specific sections of the CZMA that authorize grant programs will be discussed in further detail.

This OMB Paperwork Reduction Act (PRA) clearance is for performance reports, section 305 program documents, amendments and routine program changes, coastal nonpoint pollution management program documents and section 306A requirements. The section 309 assessment and strategy requirements are based on a 5 year cycle, and although these requirements are described in the request there will not be any responses to them until early 2006. This clearance does not address those portions of the grant application process and 15 CFR Part 24 requirements to complete the SF-424 Forms.

A. Performance Report Requirements

All thirty-four states and territories who are receiving funds under sections 305, 306, 306A, 309, 310 and/or 6217 must complete a performance report. In order to determine whether the states and territories are achieving their CZMA goals, the states and territories are responsible for reporting program performance to assure that adequate progress is being made toward those goals. The Office of Ocean and Coastal Resource Management (OCRM) provides to the states and territories performance report guidelines (Attachment A).

According to the performance report guidelines, the performance report is broken down into three sections. Section A describes semi-annually the status of each grant task. A listing of all actions taken during that time to meet national needs must also be provided. Section B describes the information required to assess the states' adherence to the basic program implementation plan, and is submitted as part of the semi-annual performance reports. Section C determines broader issues of the overall effectiveness and accomplishments of the state program in addressing national coastal management needs and emerging issues and is submitted annually. However, section C has been waived for the last three years.

Performance reports for section 305, contain section A, the semi-annual status of each grant task. Performance reports for section 306 contains sections A, B, and C. In addition, performance reports for section 306 also include other relevant sections 306A, 309, 310 and/or 6217.

In FY 01, OCRM received six different special appropriations for 14 coastal states. Performance reports for these section 310 appropriations contain section A, the semi-annual status of each grant task.

Listed below are the specific sections of the CZMA that authorize grant programs:

1.a. Section 305 of the CZMA authorizes the Secretary of Commerce to make grants to any coastal state desiring to develop a coastal management program. After the management program receives federal approval, the state is eligible for grants under section 306 to implement the program.

1.b. Section 306 of the CZMA authorizes the Secretary of Commerce to make grants to coastal states to implement federally approved coastal zone management programs.

1.c. Section 306A of the CZMA provides state CMPs with federal funds to obtain on-the-ground results from state coastal management processes and enhance the overall effectiveness of state CMPs.

1.d. Section 309 of the CZMA establishes a voluntary Coastal Zone Enhancement Grants Program which encourages coastal states with federally-approved coastal zone management programs to develop program changes in one or more of nine coastal zone enhancement areas.

1.e. Section 310 of the CZMA establishes a program of technical assistance and management-oriented research necessary to support the development and implementation of state coastal management program amendments under section 309, and appropriate to the furtherance of international cooperative efforts and technical assistance in coastal zone management. In addition, six special appropriations were provided to 14 states and territories. No more than seven states were included in any one appropriation.

1.f. Section 6217 of the 1990 Coastal Zone Act Reauthorization Amendments requires coastal states with approved coastal management programs to prepare and submit a nonpoint pollution control program. For FY 01 implementations funds for state coastal nonpoint pollution control program were made available. Therefore, the states and territories are required to provide semi-annual reports on the status of these tasks.

Listed below are the requirements for specific documents that apply to most of the state and territorial CMP:

B. Section 305 Coastal Management Program Document

Under section 305, the Secretary of Commerce will make grants to any coastal state desiring to develop a coastal management program. After the management program receives federal approval, the state is eligible for grants under section 306 to implement the program.

15 CFR 923.3 sets forth the requirements which must be fulfilled as a condition for state coastal management program approval. The requirements for program approval are that a state develop a management program that:

- ! identifies and evaluates those coastal resources recognized in the CZMA as requiring management or protection by the state;
- ! reexamines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive, and enforceable;
- ! determines specific use and special geographic areas that are subject to the management program, based on the nature of identified coastal concerns;
- ! identifies the inland and seaward areas subject to the management program;

- ! provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements; and,
- ! includes sufficient legal authorities and organizational arrangements to implement the program and to ensure conformance to it.

After completion of the management program, OCRM shall review the document to determine if it adequately meets the approval criteria. Once approved the applicant is eligible for section 306/306A - program implementation funds, section 309 - enhancement funds and section 310 - technical assistance funds. Applicants with approved CMPs are also eligible for section 6217 - coastal nonpoint pollution funds. However, the applicant must complete a nonpoint pollution management plan and receive approval from OCRM.

C. Section 306A Requirements

States with Federally approved CMPs and are making satisfactory progress in meeting the objectives of the CZMA are eligible to apply for grants under this section. The Revised Section 306A Guidance was completed on March 2, 1999 (Attachment B). A section 306A project shall meet one or more of the following objectives:

- ! Preservation of restoration of specific areas that (a) are designated under a state's CMP as required by CZMA section 306(d)(9) 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;
- ! Redevelopment of deteriorating and underutilized urban waterfronts and ports that are designated under section 306(d)(2)(C) in the state's management program as areas of particular concern;
- ! Provision of access to public beaches and other coastal areas and to coastal waters in accordance with the planning process; or,
- ! The development of a coordinated process among state agencies to regulate and issue permits for aquaculture facilities in the coastal zone.

D. Assessment and Strategy

Under section 309, the Secretary of Commerce is authorized to make grants to coastal states requesting to develop and submit for Federal approval program changes that support attainment of the goals in one or more the enhancement areas. Section 309 requires OCRM to identify, after careful consultation with the state, each state's priority needs for improvement; to evaluate state funding proposals; and to establish specific and detailed criteria that participating states must address in developing and implementing their coastal zone enhancement programs.

The purposes of the Assessment are:

- ! to determine whether coastal problems exist within each of the nine section 309 enhancement areas; and where problems exist, to evaluate their nature, the extent to which they are already being addressed, and their relative importance;
- ! to provide the factual basis for OCRM, in consultation with the states, to determine the priority needs for improvement of state coastal management programs; and,
- ! to provide the public with an opportunity to comment on the state's identification and justification of priority needs, as well as possible means that the state is considering to address the identified needs.

The process by which the states and OCRM will identify priority needs with regard to section 309 enhancement areas includes;

- ! revising assessment document (Assessment) which reviews each section 309 enhancement objective as it applies to the state and identifies the relative importance to each objective; and,
- ! developing a multi-year strategy (Strategy) to attain a state's section 309 enhancement goal(s) in selected priority need areas for a multi-year period.

OCRM provided to states and territories, *Final Section 309 Guidance*, July 25, 2000 (Attachment C). As mentioned previously, the next section 309 submissions of assessment and strategies won't be due until early 2006.

E. Amendment and Routine Program Change

The states and territories request approval of amendments or routine program changes to their approved CMPs. This requirement relates to the program approval process. OCRM provided to states and territories, *Final Program Change Guidance*, July 1996 (Attachment D).

F. Section 6217 Coastal Nonpoint Pollution Program

The Coastal Nonpoint Pollution Control Program, Program Development and Approval Guidance, prepared by the U.S. Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA), implements section 6217 (Protecting Coastal Waters) of the Coastal Zone Act Reauthorization Amendment of 1990 (CZARA). Section 6217 requires coastal States and Territories with federally-approved coastal management programs to develop Coastal Nonpoint Source Control Programs. These nonpoint programs are to be used to control sources of nonpoint pollution which impact coastal water quality.

Section 6217 addresses persistent coastal pollution problems by improving coordination of federal and State coastal zone management programs and water quality programs. Section 6217 formalizes coordination of the section 319 of the Clean Water Act (CWA) and section 306 of the Coastal Zone Management Act programs by requiring EPA and NOAA to oversee preparation and review of the State Coastal Nonpoint Programs.

The program guidance describes the contents that each coastal State must include in the Coastal Nonpoint Program documentation and the criteria for program approval. The guidance describes the requirements that must be met, including: the geographic scope of the program; the pollutant sources to be addressed; the types of management measures used; the establishment of critical areas; technical assistance, public participation, and administrative coordination; and the process for program submission and Federal approval. The guidance also contains the criteria by which NOAA and EPA will review the states' s submission. Rather than create an independent program, the section 6217 program guidance encourages States to implement their Coastal Nonpoint Programs through changes to existing section 319 and section 306 programs.

The section 6217 guidance requires each respondent to prepare a one-time document describing their Coastal Nonpoint Program. The respondents must perform the following activities to comply with the guidance.

- ! Review the program guidance document describing the contents required in the Coastal Nonpoint Programs.
- ! Review the technical guidance document prepared under section §6217(g) which describes management measures for controlling nonpoint sources of water quality degradation in coastal areas.
- ! Plan activities (i.e., delegate collection tasks, plan interagency meetings, establish reviewers, and delegate writing activities).
- ! Collect information relevant to the data items listed above (e.g., lists of impaired coastal waters, lists of management measures to be adopted, legal and geographical jurisdiction of agencies implementing management measures). The States should be able to acquire all of the information from existing sources. EPA/NOAA does expect the States to collect new data.
- ! Analyze the information and construct the Coastal Nonpoint Program. Program development includes revising coastal zone boundaries and planning new or modified State and local regulations to implement the Coastal Nonpoint Program.
- ! Write draft Coastal Nonpoint Program.
- ! Write final Coastal Nonpoint Program.

Once completed, the EPA and NOAA will jointly review the State Coastal Nonpoint Programs. The Federal agencies will use the Coastal Nonpoint Programs to evaluate State efforts to achieve the goals of the CWA and the CZMA and to determine possible reductions in federal funds issued under the CWA section 319 and CZMA section 306 grant programs.

2. Explain how, by whom, how frequently, and for what purpose the information will be used.

A. Performance Reports

Pursuant to 15 CFR Part 24.40 states submit performance reports to report progress in relation to projected work schedules and stated objectives. The performance reports are reviewed by agency personnel who determine whether the state is adhering to its approved coastal zone management plan and whether it is making continued progress toward coastal management goals. If it is not, future grants could be reduced or a full scale program review could be triggered; the latter could result in a requirement for expenditure of federal funds to correct the program's deficiency; or, in the state losing Federal approval of its plan.

Section A, the semi-annual performance report, will provide NOAA with an understanding of what has been accomplished under each task. This information is used to evaluate compliance with the purposes of the grant to the state. The information in the listing of actions taken will be used to assess the degree to which these actions are targeted to meet identified national needs; the findings are used in negotiating future financial assistance awards. Sections 305, 306, 306A, 309, 310 and 6217 report on this section.

Section B, reporting period also semi-annual, is used to determine state adherence to its approved program. The states discuss administration of the state coastal zone management core regulatory program and related efforts. The major topics are: 1) permit administration, monitoring, and enforcement; 2) Federal consistency; and, 3) amendment and routine program changes. With the first two topics, states briefly discuss significant accomplishments, problems or controversial activities covering program implementation and Federal consistency requirements. Amendments and routine program changes should identify any changes that may affect the federally approved coastal zone management program. Section 306 reports on this section.

Section C, the annual report has enabled NOAA to: 1) collect comprehensive information for a national database on coastal management issues; 2) collect information on innovative management techniques for exchange between programs; and 3) cite specific accomplishments under the Federal coastal zone management issues. The annual report provides NOAA with more standardized data needed to complete the national database and assess the overall success of the national program and contribute to the statutory Biennial Report to Congress on administration of the CZMA. Sections 306, 306A, 309, 310 and 6217 can be reported in this section. Currently section C is waived.

NOAA needs to collect information from Section A and when available Section C in order to track and update the grantee performance in section 305, 306, 306A, 309, 310 and 6217. Through the information collected, a report was written that documents the success of the section 309 projects. Also, this information is the data source for building the coastal information management system.

2.a. Currently only one state is completing a coastal management program document under section 305. This state must submit section A, semi-annual performance reports. Section A provides the accomplishments and progress under each task.

2.b. There are currently thirty-three states and territories receiving section 306 awards. All thirty-three states and territories must submit section A, section B and section C, except when section C is waived. Section A provides the accomplishments and progress under each task. The data collected from Section B is being used to analysis the use and effectiveness of federal consistency requirements and as an indicator of the level of coordination and cooperation between the coastal states and federal agencies in the implementation of federal consistency. Section C provides NOAA with standardized data to assess the overall success of the national program and to complete the statutory Biennial Report to Congress on the administration of the CZMA.

B. Section 305 Coastal Management Program Document

Section 305 authorizes states to develop a coastal management program. A state must received federal approval to be eligible for annual grants under section 306 to implement the program.

Currently, there is only one coastal state that does not have approved coastal program. It is anticipated that this state will receive federal approval in FY 02.

C. Section 306A

The states and territories completing section 306A projects must submit required section 306A documentation for NOAA approval. The information required, unless notified by NOAA, is a completed and signed section 306A Project Checklist and title information for each proposed section 306A project.

D. Assessment and Strategy

The uses of this submission are described in "1" above.

E. Amendment and Routine Program Change

The states and territories must request approval of legal amendments or routine program changes to their approved CZM programs. This process is directly related to the program approval process.

F. Coastal Nonpoint Pollution Control Program Document

Section 6217 authorizes state and territories to with coastal zone management program that have received Federal approval under section 306 to develop and implement coastal nonpoint pollution control programs. Of the thirty three states and territories with approved section 306 programs, eight states have approved coastal nonpoint programs and twenty-five states continue to make progress towards full approval. Nonpoint pollution control program development for the state receiving section 305 approval in FY 02 will begin in FY 03.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

We encourage the applicants to submit performance reports and work products in electronic format, via disk or electronic mail. The Office of Ocean and Coastal Resource Management (OCRM) has developed the Grant Application and Reporting System (GARS) Information System, a subset of the Internet-based Coastal and Marine Management Program (CAMMP) which is an electronic grant application, and reporting and management system. Due to Federal funding constraints only the electronic grant application section has been completed.

4. Describe efforts to identify duplication.

NOAA is the only agency providing funds for these objectives. We have not identified any duplication. For the performance report requirement, no similar information is available. If the state determines that similar information is available for the completion of the Assessment and Strategy, the information can be modified to address any of the nine enhancement areas.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Small businesses and entities are not involved.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

If the information collection was not conducted or conducted less frequently, the reviewing agency personnel would have a difficult time documenting whether the state is adhering to its approved coastal zone management program and whether the state is making continued progress toward coastal management goals. There is a quarterly reporting requirement; since future awards are based on performance, this information is necessary.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

There are no special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register Notice (copy attached) solicited comments on this renewal request. No comments were received.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payment or gift to respondents are provided.

10. Describe any assurance or confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

Confidentiality is neither promised or given.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No sensitive questions are asked.

12. Provide an estimate in hours of the burden of the collection of information.

All coastal states with 305 and 306 awards are required to submit semi-annual performance reports. Section 306 awards will also include section 306A, 309, 310 and 6217. To ease the burden, states submit one performance report that includes all the appropriate reporting sections. Unless waived, such as in the year when the assessment and strategy is written, states and territories with section 306 awards are required to submit an annual reports.

The annual burden hours for the respondents are **6,598 hours**.

1 respondents x 10 hours/respondent x 2 responses = 20 hrs.
 (305 semi-annual performance report)

1 respondent x 800 hours/respondent/yr. = 266 hrs.
 3 years*
 (305 program management documents -
 completed FY 01)

33 respondents x 27 hours/respondent x 2 responses = 1,782 hrs.
 (306/306A/309/310/6217 - Section A & B
 semi-annual performance reports)

33 respondents x 6 hours/respondent/yr. = 198 hrs.
 (306/306A/309/310/6217 annual report
 FY 02, FY 03 & FY 04)

29 respondents x 8 hours/respondent/yr. = 232 hrs.
 (Amendments and RPCs)

10 respondents x 5 hours/respondent/yr. = 50 hrs.
 (306A documentation)

25 respondents x 150 hours/respondent = 3,750 hrs.
 (6217 Nonpoint pollution control program)

1 respondent x 240 hours/respondent/2 yrs. = 160 hrs.
 3 years*
 (6217 New nonpoint pollution control program
 1 state FY 03/04)

14 respondents x 5 hours/respondent x 2 responses = 140 hrs.
 (310 special appropriations - Section A
 semi-annual performance reports)

0 respondents x 240 hours x 0 responses = 0 hours
 (309 assessment and strategy documents)

6,598 annual burden hours

* to obtain the average number of hours for 1 year.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection.

To copy and mail documents, the recipients cost is estimated to be \$450.00 per year. With use of email and the Internet, these costs are declining.

14. Provide estimates of annualized cost to the Federal government.

The annual Federal cost is estimated at \$83,400. Specifically, the Federal cost estimated at \$27,200 for the 33 (306) and 1 (305) performance report requirements, calculated at 10 hours x \$40/hr; at \$4,800 for the program management document, calculated at 120 hours x \$40/hr; at \$6,600 for the 33 for the annual report review, calculated at 5 hours x \$40/hr; at \$11,600 for the 29 amendments and program change, calculated at 10 hours x \$40/hr; and, at \$1,200 for the 10 section 306A documentation review, calculated at 3 hours x \$40/hr; at \$30,000 for the 25 nonpoint pollution control program review, calculated at 30 hours x \$40/hr; and \$2,000 for the 1 new nonpoint pollution control program review, calculated at 50 hours x \$40/hr. This estimate cost represents the personnel time taken to collect, review, process, and analyze the data.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

The total annual cost burden to the respondents or record-keepers and estimated cost to the Federal Government has increased. No cost burden to the respondent was included in the previous PRA. The annualized cost to the Federal government increased by \$2,600 with inclusion of the 26 (25 existing and 1 new) nonpoint pollution control program review. Also the 33 annual report review has now been included, even though these reports have been waived for the last 3 years. Although the burden hours for some specific requirements have altered, the overall burden hours remain the same.

16. For collections whose results will be published, outline the plans for tabulation and publication.

After the coastal state completes a comprehensive coastal management program, Draft Environmental Impact Statement and the Environmental Assessment documents are published according to the National Environmental Policy Act (NEPA). In addition, the results of this collection are compiled and published. However, there are no complex analytical techniques used in these publications.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not applicable.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

None

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.

OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT 2001-2002 PERFORMANCE REPORT GUIDELINES

MAY 2001

The goal of the Office of Ocean and Coastal Resource Management's (OCRM) Coastal Programs Division (CPD) and NOAA's Grants Management Division (GMD) is to reduce the amount of paperwork required and staff time necessary to prepare and process performance reports. Under the Federal Chief Financial Officer's Act of 1990 (CFOA), the files of all Federal agencies, including those of NOAA, have become subject to annual CFOA audit. These audits include a determination as to whether Federal grant files contain up-to-date financial reports and performance reports from recipients.

If grant recipients have not submitted timely performance and/or financial reports as required by the Terms and Conditions of the award:

- √ NOAA cannot issue a new grant award;
- √ NOAA cannot approve grant amendments; and
- √ NOAA's financial office must deny access to funds under all financial assistance awards to that recipient.

CPD has made some changes to the performance report guidance to ensure that this does not happen. The following guidelines describe these changes:

General Reporting Requirements:

The requirements for performance reports are divided into three sections: Section A, B, and C. Section A and B of the performance reports are to be submitted to CPD semi-annually during the financial assistance award period. Section C is not required this year.

Unless required by CPD, states should not be submitting quarterly performance reports. Some states continue to require quarterly performance reports from their subawardees. This is a decision that CPD leaves up to the applicant. However, **DO NOT** send these quarterly reports under separate cover to CPD. Instead, summarize the subawardees' quarterly reports in your semiannual report.

All reports must be submitted no more than 30 days after the end of the reporting period in order to ensure compliance with NOAA Standard Terms and Conditions, and to ensure compliance with the CFOA.

Full explanations are not provided in this document. For specific guidance and detailed examples of Section A and B refer to the “1992 - 1993 Performance Report Guidelines.”

Format:

All performance reports received in CPD are logged in. To ensure that the performance reports are correctly logged in, include the following information in the title of the report:

“Performance Report for Cooperative Agreement No: NA17OZ1XXX ”

“for the Period from _____ to _____

When reporting on more than one cooperative agreement in a reporting period, the applicant must submit separate performance reports for each award and place the award number in the title of the report and/or at the top of each page. This information is necessary to ensure that the reports are correctly logged in and correctly filed.

Some states are submitting Section A reports separately from Section B reports. This can cause problems logging in the reports. Whenever possible, submit both sections together. In any event, clearly identify the section and award number the report covers.

Copies:

Please provide CPD with electronic copies of all performance reports completed under the cooperative agreement. The report should be submitted in WordPerfect format or a compatible word processing program, via disk or through e-mail. If the report is submitted in hard copy, the applicant must include an original and TWO copies of the report as well as the cover letter . Therefore, CPD should receive THREE copies of reports if submitted in hard copy.

If publications or reports are submitted in hard copy, recipients are required to submit THREE copies of all publications or reports printed/funded with coastal zone management funds. Also, such reports must contain the appropriate NOAA notations.

Final Report:

Performance reports, are to be submitted within 90 days of the expiration date of the award. For Coastal Management awards a final report is **NOT** required (See attached memorandum dated 12/28/98). Instead CPD requires that recipients continue to report on all tasks and activities until they are completed, and that the performance report clearly indicate that the task or activity is completed. GMD has concurred with this decision.

CAMMP Performance Reporting:

The CAMMP Grant Application and Reporting System (GARS) was scheduled to have the performance report section completed by December 1999. However, due to lack of funding this section is behind schedule.

Section A: Status of Award Tasks and Section 312 Evaluation Finding “Necessary Actions”

This section should describe the status of each section 306/306A, 309, 310 and 6217 award task and relevant special award conditions. The report must be detailed enough to provide CPD with a clear understanding of what was accomplished under each task during the performance period. The section should be organized in the same format as the original award application and include the following information:

1. Status of task, organized by task number and title (e.g., meeting held, work products completed, contracts completed, difficulties/problems that may impede timely completion?).
2. Status of benchmarks due during the performance period.
3. Status of special award conditions due during the performance period.

States should also report on progress in meeting “necessary actions” identified in section 312 evaluations.

Section B: Status of State Permits, Federal Consistency, and Program Changes:

Information under this section will focus on administration of the state CZM core regulatory programs and related efforts. Three major topic will be reported on: (1) permit administration; (2) Federal consistency; and, (3) program changes. In the case of the first two topics, states must submit quantitative information in chart or tabular form and narrative section which briefly discuss significant accomplishments, problems, or controversial activities regarding program implementation and Federal consistency requirements. The charts for Federal consistency are contained in the “1992 - 1993 Performance Report Guidelines.”

While there is flexibility in providing quantitative information on state permits, the Federal consistency charts should be filled out as specified. However, the information as requested in the charts may be submitted in some other form, as long as the information is provided. The narrative for program changes should identify any changes to state authorities or organizational structure that occurred during the reporting period and which may affect the federally approved CZM program. This report is not a substitute for the formal submission of such program changes pursuant to 15 CFR 923.80-84.

Section C: Habitat Protection Efforts:

Section C is not required during FY 1999.

OMB Control #0648-0119, expires 08/31/2001. OCRM requires this information to report progress in relation to projected work schedules and stated objectives. The data will be used to assure compliance. Public reporting burden for this collection of information is estimated to average for section 305, 10 hours per response; for section 306/306A/309/310/6217/Section A & B, 27 hours per response; and for section 310 under special appropriations, 5 hours per response, including 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 collection of information, including suggestions for reducing this burden to John King, Acting Chief, Coastal Programs Division, OCRM, 1305 East-West Hwy., 11th Floor, Silver Spring, Maryland 20910. This report is required under and is authorized under 15 CFR 24.40. Information submitted will be treated as public records. 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 information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB Control Number.

Coastal Zone Management Act Section 306A Guidance

Coastal Programs Division

Office of Ocean and Coastal Resource Management
National Ocean Service
National Oceanic and Atmospheric Administration

February 1999



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I. Introduction

This guidance is issued by the Coastal Programs Division (CPD), of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA). This guidance implements the Coastal Zone Management Act (CZMA) section 306A. States, Commonwealths and Territories (hereafter referred to as **Astates@**) with federally approved coastal management programs (CMPs) shall use this guidance when developing section 306A projects; negotiating section 306A projects with other state agencies, local governments, American Indian tribes and others; and when applying for federal approval of section 306A projects. The guidance describes CZMA section 306A eligibility requirements, allowable uses of section 306A funds, section 306A application requirements, and information that the state CMP shall retain in its files. This guidance supersedes all previous OCRM guidance regarding section 306A.

This guidance delegates to the state CMPs much of the section 306A documentation and record keeping responsibilities. In addition, the NOAA Grants Management Division (NOAA GMD) has delegated to CPD federal approval authority for section 306A projects. The new Section 306A Project Checklist (Appendix I) should provide sufficient information for CPD approval. These changes should reduce federal, state CMP and local government administrative time and paperwork; expedite federal approval and state pass-through to local governments and others; and allow the projects to begin earlier in the grant cycle.

The delegation of section 306A responsibilities requires that state CMPs ensure that section 306A projects meet the eligibility and use requirements contained in this guidance and that the section 306A records are adequately maintained. State documentation and records will be subject to review by OCRM during periodic CZMA section 312 evaluations and will be necessary for state and federal audits. Failure by a state CMP to adhere to section 306A requirements or maintain state CMP section 306A files may result in one or more of the following actions: removal of CPD's delegation of section 306A requirements to the particular state CMP; deobligation of improperly used section 306A funds; a finding that the state may not fund section 306A projects; or other financial sanctions as authorized by the CZMA.

This guidance is derived from CZMA section 306A; H.R. Rep. No. 1012, 96th Cong., 2d Sess., pp. 18-19, 44-46 (1980); Cong. Rec. H 10113-H 10114 (Sep. 30, 1980); 15 C.F.R. part 24 (Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments); OMB Circular A-87 (cost principles); GAO/OGC 92-13 (Principles of Federal Appropriations Law), chapter 10 (grants and cooperative agreements); and OCRM's former section 306A guidance (May 1990).

State CMPs should contact their CPD Coastal Management Specialist for any assistance needed to apply for section 306A funding.

II. Objectives and Allowable Uses of Section 306A Funds

A section 306A project shall meet one or more of the following objectives:

1. Preservation or restoration of specific areas that (a) are designated under a state's CMP as required by CZMA section 306(d)(9) 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 [sic] material on publicly owned reef tracts. CZMA ' 306A(b)(1);
2. Redevelopment of deteriorating and underutilized urban waterfronts and ports that are designated under section 306(d)(2)(C) in the state's management program as areas of particular concern. CZMA ' 306A(b)(2);
3. Provision of access to public beaches and other coastal areas and to coastal waters in accordance with the planning process required under section 306(d)(2)(G). CZMA ' 306A(b)(3); or
4. The development of a coordinated process among state agencies to regulate and issue permits for aquaculture facilities in the coastal zone. CZMA ' 306A(b)(4) (added in 1996 for aquaculture planning and regulation processes. The section does not authorize the use of section 306A funds for the construction of aquaculture projects).

The use of section 306A funds is limited to:

1. The acquisition of fee simple or other interest in land,

e.g., purchasing an easement for a public right-of-way to the beach or to purchase an ecologically important area to preserve as an area of particular concern. CZMA ' 306A(c)(2)(A);

2. Low-cost construction projects consistent with the purposes of CZMA ' 306A, including but not limited to paths, walkways, fences, parks, and the rehabilitation of historic buildings and structures. CZMA ' 306A(c)(2)(B);
3. The revitalization of deteriorating or underutilized urban waterfronts or ports for:
 - a. the rehabilitation or acquisition of piers for public use, including compatible commercial activity,
 - b. the establishment of shoreline stabilization measures including the installation or rehabilitation of bulkheads for the purpose of public safety or increased public access and use of urban waterfront areas; and
 - c. the removal or replacement of pilings where such action will provide increased recreational use of urban waterfront areas. CZMA ' 306A(c)(2)(C);
4. Engineering designs, specifications, and other appropriate reports related to the above (including aquaculture processes). CZMA ' 306A(c)(2)(D); and
5. Educational, interpretive, and other management costs (including aquaculture processes). CZMA ' 306A(c)(2)(E).

III. Section 306A Project Eligibility

General Guidance

Section 306A provides state CMPs with federal funds to obtain on-the-ground results from state coastal management processes and enhance the overall effectiveness of state CMPs. Section 306A projects must be directly linked to a state CMP. A single state agency shall administer both CZMA sections 306 and 306A in order to plan activities and projects that complement each other and result in the overall improvement of a state's CMP.

Generally, states are eligible for section 306A funds if the state has a federally approved CMP and the state CMP is making satisfactory progress in activities designed to result in significant improvement in achieving the coastal management objectives specified in sections 303(2)(A) through (K). If CPD

determines that a state CMP is not making satisfactory progress, CPD will use its discretion to terminate section 306A eligibility until the problems are remedied. A section 306A project shall also meet one of the section 306A objectives, and the funds will be used for one of the section 306A allowable uses. These are all described in more detail in this guidance.

The amount of funds spent on any single section 306A project, and the amount spent on all section 306A projects from a particular CZMA section 306/306A grant, is negotiated with CPD. CPD approval depends on the requirements of this guidance and other state CMP program needs, e.g., state CMP section 306 implementation needs, CZMA section 312 evaluation necessary actions and recommendations, and CZMA section 309 and Coastal Nonpoint Pollution Control Program needs. Project costs for a single section 306A project in excess of \$100,000 may require additional justification and additional National Environmental Policy Act (NEPA) documentation. See section IV of this guidance for further discussion on NEPA. A state CMP shall not use more than 50 percent of its section 306/306A grant for section 306A low-cost construction projects. CZMA ' 306A(c)(2)(B).

Congress declared that section 306A projects shall not be capital intensive, but instead be minor in scope, and that section 306A funds shall not be used to finance large-scale erosion-prevention structures. Consistent with this directive, it is OCRM's policy that section 306A funds shall not be used for beach renourishment or hard structure erosion control projects. Small scale shoreline stabilization structures are allowed for the redevelopment of deteriorating or underutilized urban waterfronts or ports to provide for increased public use and access. (An urban waterfront is an area that is densely populated and has historically been developed.) OCRM may approve vegetative erosion control activities or planning activities for a beach renourishment project or non-structural erosion control projects if the project is on public land and the state CMP can show a substantial public benefit (e.g., the structure protects public investment that cannot be feasibly or technically relocated, protection of a historic structure or other important coastal resources), these benefits substantially outweigh the costs, there is a reasonable expectation that the project will last for a reasonable amount of time, the project is minor in scope and not capital intensive, and meets other section 306A requirements.

Public Benefit

Public benefit requirements for section 306A projects are:

1. Section 306A funds shall only be used for projects on publicly owned or leased land, or land for which an easement is obtained.
2. Leases and easements should be in perpetuity. However, a lease or easement shall, at a minimum, be for the expected life of the project (a minimum of 20 years). The life of a project includes expected repairs to a facility. If a deed, lease or easement conveying property to a public entity for section 306A purposes contains a reversionary clause, CPD must approve the reversionary clause. If the property reverts and is no longer used for its original purpose, then the state CMP shall reimburse NOAA for the federal funds received for the project.
3. Section 306A funds are for public benefit and may not be used to improve private property or for other private enterprises (including non-profit property or enterprises).
4. Indirect benefits to commercial, private or non-profit activities derived from section 306A projects are allowed so long as the indirect commercial, private or non-profit activities do not interfere with the purpose of the project, the requirements of this guidance, and public use and benefits are not diminished.
5. If the land ceases to be available (or the project ceases to be used) for the intended use at any time during the life of the project, the state CMP shall reimburse the full amount of the federal cost of the project to NOAA.
6. A section 306A public access facility must be open to the general public. Facilities that restrict use to specific persons or residents of a community are not eligible for section 306A funding. Access may be limited or controlled in an equitable manner at certain times for safety or resource protection reasons or for other good and reasonable cause such as: to accommodate special events, educational outings (e.g., a school group), or for scientific research (e.g., archaeological excavation).

7. In general, user fees should not be charged to access section 306A projects. If user fees are desired the fee must be described and justified in the Section 306A Project Checklist submitted to CPD. All user fees, income or other revenues derived from a section 306A project shall revert to the maintenance or management of either the federally funded section 306A project or, if the section 306A project is part of a larger public project, the larger public project. If a state or local government proposes to charge a higher fee for non-state, non-county, or non-city residents, the Section 306A Project Checklist submitted to CPD shall clearly demonstrate that the differential non-resident fee is based on the amount of project subsidization from the resident tax base. Moreover, non-resident fees shall be reasonable. OCRM may require additional information on the necessity or reasonableness of a fee and may deny the use of a user fee.

8. Section 306A funds shall not be allocated to a non-profit organization. A state CMP may allocate section 306A funds to local governments, area-wide agencies, regional agencies and interstate agencies, so long as the funds so allocated further the state's CMP. CZMA ' 306A(e). Section 306A funds shall not be used to purchase property for a non-profit organization or to otherwise directly or primarily benefit the organization. The term ~~A~~non-profit organization@ includes land trusts, development corporations/quasi-governmental units and other non-public not-for-profit entities. A state CMP, or other public entity, may, if permissible under state or local contracting authorities, contract with a non-profit organization to perform some or all of the tasks for a particular section 306A project, providing that: the non-profit organization is identified in the Section 306A Project Checklist (section 7.g.) and the project meets all section 306A requirements including the other public benefit requirements discussed above. A non-profit organization cannot be identified in the grant as a sub-awardee.

A state CMP, or other public entity, may enter into a partnership with a non-profit organization to purchase property, for preservation purposes only, so long as the federal section 306A funds are allocated to the public entity and the public entity retains ownership (title) and control of the property. If a land trust is involved, the land trust may retain an interest in the property consistent

with the purpose of preserving coastal uses or resources, e.g., a conservation easement, but not fee simple ownership.

IV. Other Federal Requirements

National Flood Insurance Program Requirements

Any coastal community listed by the Federal Insurance Administration (FIA) in its most current National Flood Insurance Program Community Status Book as being a community which is not participating in the Flood Insurance Program will not be eligible for any section 306A projects which include the acquisition or construction of buildings in special flood hazard areas shown on an FIA map. State CMPs should so notify such non-participating communities. This does not preclude the community from proposing section 306A projects both in the flood plain or outside of it, that are not acquisition for construction or actual construction projects, e.g., acquisition of wetlands.

Coastal Barriers Resource Act Requirements

Projects proposed for funding under section 306A must conform to the requirements of the Coastal Barrier Resources Act (CBRA). CBRA requires that federal funds shall only be used for projects on undeveloped coastal barriers designated in the CBRA system if they are consistent with the three purposes of the Act--to minimize: 1) the loss of human life, 2) wasteful federal expenditures, and 3) damage to fish, wildlife and other natural resources. If a project is to be located in a designated undeveloped coastal barrier, OCRM is required to consult with the relevant regional office of the U.S. Fish and Wildlife Service (USFWS). The USFWS consultation process requires that OCRM provide the USFWS with up to 30 days to render an opinion that the project is consistent with CBRA. Thus, some delays in awarding the grant may be expected or some projects may be conditioned pending the results of the consultation process. Therefore, early coordination by the applicant with the USFWS is advisable. While OCRM has the authority to make the final determination if a project is consistent with the purposes of the CZMA and CBRA, the USFWS opinion will be given deference.

Endangered Species Act Requirements

A state CMP shall indicate whether it believes that a proposed section 306A project may adversely affect threatened or endangered species or critical habitat as defined by the

Endangered Species Act (ESA). If a proposed section 306A project may have minor and temporary effects CPD will request that the state CMP informally consult with the relevant federal agency(ies) (either the USFWS or the National Marine Fisheries Service (NMFS)). If a proposed section 306A project may significantly affect threatened or endangered species or critical habitat, CPD will request that the state CMP withdraw the proposed project. If the state CMP still wants to proceed CPD will enter into ESA section 7 consultation with the USFWS or NMFS. However, CPD will not approve a proposed section 306A project that the USFWS or NMFS has determined will adversely and significantly affect threatened or endangered species or critical habitat.

National Environmental Policy Act Requirements

Section 306A projects are, generally, categorical exclusions under NEPA. See OCRM, *Generic Environmental Assessment of the CZMA Section 306A Land Acquisition and Construction Projects* (Nov. 1989). This determination was based on the small scale nature of section 306A projects and that the environmental impacts from section 306A projects are minimal when performed separately or cumulatively. Small scale projects are defined as costing less than \$100,000. States are required to complete a categorical exclusion checklist for each section 306A project. The categorical exclusion checklist has been subsumed into the attached Section 306A Project Checklist (Appendix I).

Some section 306A projects may not be eligible for a categorical exclusion. Section 306A projects costing more than \$100,000 (in federal and matching funds) or that may significantly affect the environment (regardless of cost) must be reviewed to determine if an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required. CPD may, on a case-by-case basis, require a state CMP to submit additional information to determine if an EA or EIS is required.

In order to reduce the environmental impacts of section 306A projects, a state CMP shall ensure that best management practices that conform with its approved Coastal Nonpoint Pollution Control Program be used at section 306A project sites.

Americans with Disabilities Act -- Handicapped Accessibility Requirements

Handicapped access requirements for section 306A projects are

based on the requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. " 12101 et. seq. (Pub. L. No. 101-336), and the U.S. Architectural and Transportation Barriers Compliance Board (Board). As a general rule, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. ADA ' 202. However, the ADA does not address handicapped accessibility issues for outdoor recreation projects and public access projects that are needed to reduce harm to natural resources. The following guidance is based on OCRM's previous section 306A handicapped accessibility requirements. These requirements may change if the Board publishes a rule on handicapped accessibility to outdoor areas.

Section 306A public access projects shall be handicapped accessible unless the construction of a handicapped accessible structure would damage coastal resources or resource damage would occur in the absence of the section 306A project. In these instances the section 306A project shall be handicapped accessible to the extent that conditions allow. A state may not use increased cost as a reason to not construct a handicapped accessible section 306A project. A project is not eligible for section 306A funds unless it meets this criteria.

The section 306A handicapped accessible requirement applies to federally funded construction projects and any state funded construction projects used to match the section 306/306A awards.

Also, any federally funded construction improvements to an existing public access project shall be handicapped accessible regardless of the source of funds used to construct the original project.

Department of Commerce Environmental Justice Strategy

Consistent with the President's Executive Order on Environmental Justice (Feb. 11, 1994) and the Department of Commerce's Environmental Justice Strategy, state CMPs shall ensure that their section 306A projects will not have disproportionately high and adverse human health or environmental effects on minority or low income populations.

V. Application Procedures

Application Method

A state CMP shall submit one application for a combined section 306/306A grant. The section 306/306A grant application should include all required section 306A information (i.e., a completed and signed Section 306A Project Checklist, title opinions and other required information). If this is not possible, the section 306/306A grant application shall identify the portion of the grant that will be used for section 306A projects. In the latter case, the state CMP shall submit the required section 306A information within the first 120 days of the grant period. Submission at one time of section 306A project information for all section 306A projects results in an expedited and more efficient approval process. Submission of all section 306A project information with the section 306/306A grant application further speeds the section 306A project approval process.

Section 306A projects should be completed within the grant period. If a project will take longer to complete, it should be submitted in phases. Approval of a project for one grant does not guarantee that federal funds will be available for future phases or projects. Thus, each proposed section 306A project shall be a functional, stand alone project.

Section 306A Project Approval Steps

This guidance and the attached Section 306A Project Checklist are intended to expedite NOAA's approval of section 306A projects. The section 306A Project Approval Steps are:

1. State CMP submits section 306/306A application.
 - a. State includes, if possible, completed section 306A checklists, title opinions and any other information that may be required.
 - b. If projects are not finalized by the time of the final grant application, state CMPs identify in the section 306/306A grant application an amount of federal funds to be used for section 306A projects and, if possible, the name and type of section 306A projects proposed.
2. Where the state CMP submits all section 306A information with the final section 306/306A grant application, CPD, the Department

of Commerce's Office of General Counsel (OGC) and the NOAA GMD review the section 306/306A grant application. If the section 306A information is complete and approved, the state may begin the approved section 306A projects on the grant start date.

3. If the section 306A information was not complete in the approved section 306/306A application or award, the state CMP shall submit, within 120 days of the award date, the Section 306A Project Checklists, title opinions and any other required information for CPD approval.

4. When CPD receives the section 306A project information CPD will send the title opinion to OGC to review and approve. This is an OGC review and not a NOAA GMD Agrant action.® If OGC determines that the title opinion is adequate, CPD will continue to process the checklist. If OGC determines that the title opinion is inadequate, CPD will stay its review of the project until the state CMP remedies the inadequate title. Once the title opinion is cleared by OGC, CPD will either approve or deny the project or request additional information. If CPD approves, CPD will send the checklist to the state and NOAA GMD with CPD's approval signature (see first page of checklist). Once the state CMP receives a Section 306A Project Checklist with CPD's approval, the applicable special award condition is satisfied, federal funds are released, the section 306A funds may be allocated to the project proponent and work may commence.

5. OCRM monitors the delegation of section 306A documentation to the states and the section 306A projects through CPD oversight and CZMA section 312 reviews.

6. Any reprogramming of funds between sections 306 and 306A will require NOAA GMD approval. Section 306A Project Checklists for section 306A projects using funds reprogrammed from section 306 will be processed by NOAA GMD as a grant action.

Budget Information and State Match Requirements

The section 306A construction and acquisition project totals shall be entered under Aconstruction® in Section B of the section 306/306A grant application's Standard Form 424A.

A state CMP may use any eligible state or local funds and/or in-kind services to match both the sections 306 and 306A portions of its grant. A state CMP is required to match its section 306/306A grant on a 1 to 1 basis (except for newly approved states, see

below). A state CMP is not required to match federal section 306A funds with matching funds or services from section 306A projects. All that is required is that the entire section 306/306A grant is matched on a 1 to 1 basis and the match is from eligible sources. Requirements for eligible matching funds or services are contained in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. See 15 C.F.R. part 24.

Additional Match Requirements for State CMPs Approved After 1990

[NOTE: This section is subject to change if a statutory change is made to section 306A to address the match discrepancy]

CZMA section **306** funds awarded to states whose programs were approved after 1990 are to be matched in a federal to state ratio of 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 year thereafter. CZMA ' 306(a)(2). Section **306A** funds, however, must be matched 1 to 1, since there is not currently a Aphase-in@ for section 306A match. See CZMA ' 306A(d)(1).

Thus, state CMPs approved after 1990 must show the appropriate match for section 306 funds (4 to 1, 2.3 to 1, 1.5 to 1, or 1 to 1) and a 1 to 1 match for section 306A funds (but the match can still come from eligible non-section 306A sources).

An example of how a recently approved state CMP's first section 306/306A award would be matched is (section 306 match of 4 to 1 and section 306A match of 1 to 1):

Total Federal Award (306/306A combined): \$1,000,000

<u>306</u> (4 to 1 ratio)	<u>306A</u> (1 to 1 ratio)
\$800,000 federal	\$200,000 federal
\$200,000 state/local match	\$200,000 state/local match
from 306 or 306A sources	from 306 or 306A sources

Total match: \$400,000 (2.5 to 1 ratio)

For state CMPs approved after 1990 the grant application shall show separate matching funds for section 306 and section 306A. The state's internal record keeping should also show separate matching funds for each section. After CPD reviews the state's final section 306/306A grant application, CPD will verify the final combined section 306/306A matching ratio. (In the example

above, the final combined ratio is 2.5 to 1.) The final ratio will depend on the amount of federal funds a state chooses to expend on section 306A projects. NOAA must agree to the final combined match ratio to eliminate the need for a state CMP to submit separate Financial Status Reports on section 306 and section 306A funds. Any reprogramming of funds between section 306 and section 306A would require a state CMP to recalculate the combined section 306/306A match ratio and submit it to NOAA for approval. A Special Award Condition will be added to these grants explaining this requirement.

VI. Information Required in Application to NOAA

A State CMP, proposing section 306A projects, shall include a section 306A section in its combined section 306/306A grant application. The application shall list the proposed section 306A projects by name and federal funds for each project or, if individual projects are not identified in the grant application, show the amount of federal funds to be allocated for section 306A projects. As discussed above, state CMPs approved after 1990 must also show a 1 to 1 match for the section 306A projects.

The only other information required, unless otherwise notified by CPD, is a completed and signed Section 306A Project Checklist, title information for each proposed section 306A project and other information required by the checklist. The Section 306A Project Checklist shall be signed by the state CMP's Program Manager. See Attachment I (Section 306A Project Checklist).

VII. Information the State Must Retain on File

The information retained by the state will vary depending on the type of section 306A project. The state CMP shall retain this information for at least three years after the grant has been closed-out by NOAA. CPD reserves the right to require submission of any or all of the information listed below for a project if the complexity of the project or other reasons indicates a need to review the project in more detail. The state CMP shall retain in its files the following information:

1. A copy of the completed and CPD approved Section 306A Project Checklist.
2. Site location map.
3. Site plan.
4. Title opinion or certification.
5. Appraisal.

6. State Historic Preservation Officer's clearance.
7. Floodplains/Wetlands notice.
8. Copies of required state and federal permits.

Each of these items are described below:

1. Section 306A Project Checklist. The checklist provides (1) the necessary section 306A information for CPD review and approval, and (2) state certification that the state has in its files the necessary information, the information meets the section 306A requirements as set forth in the CZMA and this guidance, that the state CMP attests to the truth of the information, and that the state CMP understands the consequences of noncompliance with the checklist and this guidance. See Appendix I.

2. Site location map. The site location map shows the exact location of the section 306A project.

3. Site plan. The site plan is a detailed drawing of the proposed construction project (or other physical alteration or acquisition) on the project site showing the relationship of the project to other facilities and significant natural features (slope, access points, wetlands, dunes, floodplains, etc.). The site plan shall also show how structures will be handicapped accessible.

4. Title opinion or certification. A title opinion, certification (or affidavit), or title insurance showing **public ownership or control** is required for any section 306A construction project (or other physical alteration), land acquisition project, or any other type of section 306A project which has a physical relationship to land, water or submerged lands. The title document must be signed by a state or local government official attesting that the property is in public ownership or control consistent with this section 306A guidance. It is in the state's or local government's interest to ensure that a public entity has clear title to property proposed for section 306A projects. See Appendix II for examples of a title opinion and certification. See also section VIII of this guidance regarding special award conditions.

5. Appraisal. Before purchasing a piece of property with section 306A funds, a state CMP shall obtain an independent appraisal by a state approved appraiser to determine fair market value. State CMPs shall adhere to the following steps in

negotiating acquisition price (adapted from 49 C.F.R. part 24.102):

- a. Secure independent property appraisal.
- b. Present appraisal to land owner and negotiate price based on appraisal. Property owner shall be given a reasonable opportunity to consider the offer and present material which the owner believes to be relevant to determining the property's value.
- c. If the property owner will not sell for the appraised price or lower, and the state wishes to pursue the acquisition, a second independent appraisal shall be done, or the original appraisal updated to account for changed circumstances, e.g., extensive time passage, natural disaster.
- d. If, after negotiations and a second or revised first appraisal, the purchase price still exceeds the appraised value, the state may be allowed to pay more than the appraised value (with federal section 306A funds) if the state demonstrates reasonable efforts to negotiate at the appraised value and if the state provides CPD with a written justification for the higher price, based on reasonableness, prudence, public interest, appraisals, estimated condemnation/trial costs, and/or valuation supports a settlement.

6. State Historic Preservation Officer-s (SHPO-s) clearance.

SHPO clearance is required before work can commence on all section 306A construction projects and before land can be purchased for all section 306A acquisition projects. However, SHPO clearance is not required for CPD approval. The state CMP Program Manager must certify, in the Section 306A Project Checklist, that the state CMP is seeking SHPO clearance and that work will not begin and land will not be purchased until SHPO clearance is received by the state CMP. The State CMP should resolve any National Historic Preservation Act section 106 issues with the SHPO.

7. Floodplains/Wetlands notice. Any state or federal notices regarding a section 306A project on impacts to floodplains or wetlands shall be retained by the state.

8. Copies of required permits. The state CMP shall place in the file for a section 306A project copies of any required local, state, tribal and federal permits. Required local, state, tribal and federal permits must be obtained before work can commence on all section 306A construction projects and before land can be

purchased for all section 306A acquisition projects. However, the state CMP is not required to have the permits in hand for CPD approval. The state CMP Program Manager must certify, in the Section 306A Project Checklist, that the state CMP (or other public entity) is seeking the required local, state and federal permits and that work will not begin and land will not be purchased until the permits have been issued and received by the state CMP.

VIII. Special Award Conditions

All NOAA section 306/306A grants will contain the following special award conditions regarding section 306A projects:

In the event there are title discrepancies or encumbrances that NOAA deems interfere with the purpose for which the 306A funds were granted, or if NOAA determines that project or property is no longer used for its original purpose, the Recipient shall reimburse NOAA for the Federal funds received for the project.

Federal funds are not permitted to be expended on any section 306A awards until NOAA/OCRM reviews and approves the projects in conformance with OCRM's section 306A Guidance. Specifically, no federal funds may be expended and no work may commence on a section 306A project until the state has submitted to CPD a complete and signed Section 306A Project Checklist (and any other required information) for each section 306A project and CPD approves. If, for any reason,

a section 306A project ceases to be used as approved by NOAA, the state shall reimburse to NOAA the federal share.

The recipient shall cause to be erected at the site of any construction project, and maintained during the construction, signs satisfactory to NOAA/OCRM that identify the project and indicate that the project is being funded under the Coastal Zone Management Act, by NOAA's Office of Ocean and Coastal Resource Management, in conjunction with the State Coastal Management Program. The recipient shall also maintain a permanent plaque or sign at the project site with the same information.

OMB Control # 0648-0119, expires 08/31/2001. OCRM requires this information in order to adequately assess the eligibility of proposed CZMA section 306A projects. Public reporting burden for this collection of information is estimated to average 5 hours per response, including 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 collection of information, including suggestions for reducing this burden, to Joseph A. Uravitch, AICP, Chief, Coastal Programs Division, OCRM, 1305 East-West Hwy., 11th Floor, Silver Spring, Maryland 20910. This reporting is required under and is authorized under 16 U.S.C. ' 1455a. Information submitted will be treated as public records. 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 Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Appendix I

Section 306A Project Checklist

See file 306achklist.pdf

Appendix II

Title Opinion and Certification Examples

TITLE OPINION (EXAMPLE)

April 1990
Date

RE: Inlet Park Boardwalk
Project Name on Section 306A Checklist

I hereby certify that I am a member in good standing of the bar of Maryland (state) and have been requested to determine record ownership for the parcel(s) of property on which the above-referenced project will be constructed, Inlet Boardwalk - along North Jetty at Ocean City Inlet (name and brief description of land).

After thoroughly examining the public land records or other appropriate records in accordance with the laws of Maryland (state), I hereby certify that record title to the parcel is held by U.S. Army Corps of Engineers/United States of America in (check one)
 fee simple absolute
 other (specify) _____

I have determined that there are (check one)
 no easements or other encumbrances on the property
 easements or other encumbrances on the property (list below or attach a list.

Other Comments: Easement to Town of Ocean City for construction of Boardwalk.

/S/
Signature

Guy R. Ayres III
Name
5200 B Coastal Highway

Ocean City, MD 21842
Address

XXXXXXX
Bar number (must include)

(XXX) XXX-XXXX
Telephone number

SUGGESTED AFFIDAVIT OR CERTIFICATION FORM

I solemnly affirm upon personal knowledge that the following statements are true:

I _____ being first and duly sworn state that:
(print name of official)

1. Official must state what his/her title is and what authority he/she has to say that the property is publicly owned.

2. Official must state that the property is owned or leased by the state or local government (in accordance with OCRM's CZMA Section 306A Guidance, February 1999) and there are no encumbrances on the property that interfere with the proposed section 306A project.

Signed _____
(name of official)

Subscribed and affirmed before me this _____ day of _____
(month), _____ (year).

Notary Public

My Commission expires:

Note: This form should be revised in accordance with state law.

Section 306A Project Checklist

State Coastal Management Programs (CMPs) shall complete a Section 306A Project Checklist for each Coastal Zone Management Act (CZMA) section 306A project and submit it to the Coastal Programs Division (CPD), Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA) for approval. A complete and signed checklist by the CMP Program Manager and CPD Chief, title document and other information that may be required by this checklist are required for project approval. These are the only documents required for CPD approval, unless otherwise notified by CPD. See CPD, *Coastal Zone Management Act Section 306A Guidance*, February 1999, for further information.

1. Grant Number: _____ State: _____

2. Project Title: _____

3. Project Proponent: _____
(Must be a Public Entity)

4. Total Cost: _____ Federal: _____ State/Local Match: _____

I ATTEST TO THE FOLLOWING: (1) THE STATEMENTS MADE AND OTHER INFORMATION PROVIDED IN THIS CHECKLIST ARE, TO THE BEST OF MY KNOWLEDGE, TRUE AND ACCURATE; (2) THE PROJECT DESCRIBED IN THIS CHECKLIST IS CONSISTENT WITH CZMA SECTION 306A AND CPD-S SECTION 306A GUIDANCE; (3) THE STATE HAS ON FILE THE DOCUMENTS IDENTIFIED IN THIS CHECKLIST; AND (4) I UNDERSTAND THE CONSEQUENCES, AS DESCRIBED IN CPD-S SECTION 306A GUIDANCE, IF THE PROJECT DESCRIBED IN THIS CHECKLIST DOES NOT COMPLY WITH CZMA SECTION 306A AND CPD-S SECTION 306A GUIDANCE.

Signature of State Coastal Management Program Manager Date

Name of Signatory (please print or type): _____

Title: _____

Address:

Phone Number: () - _____

The signature below by the Chief, Coastal Programs Division, OCRM/NOAA, is NOAA's approval that the applicable special award condition is satisfied and releases the federal CZMA section 306A funds for the project described in this Checklist.

Joseph A. Uravitch, A.I.C.P. Date
Chief, CPD

5. Project Eligibility:

a. 306A Objectives (check all that apply):

- 306A(b)(1)(A) (preservation or restoration of areas designated in the state CMP)
- 306A(b)(1)(B) (preservation or restoration of coastal resource of national significance or restoring or enhancing shellfish production/clutch)
- 306A(b)(2) (redevelopment of deteriorating or underused urban waterfronts designated as APCs in the state's CMP)
- 306A(b)(3) (providing public access to coastal areas)
- 306A(b)(4) (development of process for aquaculture)

b. 306A Uses (check all that apply):

- 306A(c)(2)(A) (fee simple or other interest in land)
- 306A(c)(2)(B) (low-cost construction projects)
- 306A(c)(2)(C)(i) (revitalize urban waterfronts-piers)
- 306A(c)(2)(C)(ii) (revitalize urban waterfronts-shoreline stabilization)
- 306A(c)(2)(C)(iii) (revitalize urban waterfronts-pilings)
- 306A(c)(2)(D) (designs and other 306A reports, including aquaculture process)
- 306A(c)(2)(E) (educational, and other management costs, including aquaculture process)

6. Project Description: (briefly describe the project and project location)

7. Public Benefit:

a. This project is on public land or on publicly controlled easement and is for public benefit. The project does not improve private property and is not for private or commercial gain. Yes No

If the answer to 7.a. is No, the project is not eligible for section 306A funding.

b. The facility will be open to the general public. Yes No N/A

c. If the answer to 7.b. is No, the project is not eligible for section 306A funding, unless access to the facility will be limited for one or more of the following reasons (if 7.c. applies, please briefly explain in 6. Project description).

N/A Public Safety Resource Protection

School Outings Scientific Research Other

d. The state or other applicant needs a deed, lease or easement to conduct the activity. Yes No

e. If the answer to 7.d. is Yes, what is the life of the document (provide duration, i.e., years, or specify if in perpetuity). _____

f. The document in 7.d. contains a reversionary clause. Yes No
If Yes, attach the reversionary clause to this checklist.

g. The state CMP or sub-awardee will contract with a non-profit organization to complete part or all of this project. Yes No
If Yes, the name of the non-profit is: _____

8. Title Opinion, Certificate, and Appraisal:

a. A title opinion, certificate, or affidavit showing that the property for the proposed project is publicly owned or leased in perpetuity or for the expected life of the project (at least 20 years) is attached. Yes No N/A

b. If purchasing an interest in land, the state has obtained an independent appraisal pursuant to CPD=s Section 306A Guidance. Yes No N/A

9. Site Location Map: The state CMP has on file a site location map. Yes No N/A

10. Site Plan: The state CMP has on file a site plan. Yes No N/A

11. State Historic Preservation Officer=s (SHPO=s) Clearance and National Historic Preservation Act: The state CMP has on file the SHPO=s clearance. Yes No If No, the state CMP Program Manager certifies, by signing this checklist, that the state is seeking SHPO clearance and that work will not begin and land will not be purchased until SHPO clearance is received by the state CMP.

The project will affect properties listed in the National Register of Historic Places or is otherwise protected by section 106 of the National Historic

Preservation Act or a similar State Preservation Act.

_____ Yes _____ No

12. National Flood Insurance Program:

a. The project is located in a designated floodway or AV@ zone on a National Flood Insurance Program Floodway Map. _____ Yes _____ No (If No, go to 13)

b. A coastal community proposing a section 306A project which includes the acquisition for construction or actual construction in special flood hazard areas shown on an FIA map is participating in the Flood Insurance Program.
_____ Yes _____ No

If the answer is No, the project is not eligible for section 306A funding.

13. Coastal Barriers Resource Act: The project is located on an undeveloped coastal barrier designated by the Coastal Barriers Resources Act.

_____ Yes _____ No

If the answer to 13. is Yes, attach to this checklist a brief analysis as to how the proposed project is consistent with the three CBRA purposes: to minimize (1) the loss of human life, (2) wasteful federal expenditures, and (3) damage to fish, wildlife and other natural resources.

14. Endangered Species Act: The proposed project may adversely affect threatened or endangered species or critical habitat under the jurisdiction of the National Marine Fisheries Service (NMFS) or U.S. Fish and Wildlife Service (USFWS) as defined by the Endangered Species Act. _____ Yes _____ No

If the answer to 14. is Yes, attach a description of the adverse effects (minor and significant effects), the species or habitat affected, and any coordination between the state and the USFWS or NMFS. CPD will not approve a project that USFWS or NMFS has determined will significantly affect threatened or endangered species or critical habitat.

15. National Environmental Policy Act:

a. The proposed project may significantly affect the human environment.
_____ Yes _____ No

b. The proposed project involves unresolved conflicts concerning alternative uses of available resources. _____ Yes _____ No

c. This action would have significant adverse effects on public health and safety. _____ Yes _____ No

d. This action will have highly controversial environmental effects.
_____ Yes _____ No

e. This action will have highly uncertain environmental effects or involve unique or unknown environmental impacts. _____ Yes _____ No

f. The project will have significant adverse impacts on other natural resources not covered elsewhere in this checklist, e.g., beaches and dunes, wetlands, estuarine areas, wildlife habitat, wild or scenic rivers, reefs, or other coastal resources. _____ Yes _____ No

g. The project will have insignificant effects when performed separately, but will have significant cumulative effects. Yes No

If the answer to any one subpart of 15. is Yes, then an Environmental Assessment (EA) may be required. If Yes, attach a description of the resource(s) affected and the nature and scope of the effects. If Yes, a state shall provide additional information stating why the applicant believes an EA or an EIS is not required. CPD may require additional environmental information in cases where project impacts are not clearly described or where probable impacts require an EA or EIS.

16. Coastal Nonpoint Pollution Control Program: The project will use best management practices in conformance with the Coastal Nonpoint Pollution Control Program. Yes No N/A

17. Handicapped accessibility: The proposed project is handicapped accessible. Yes No N/A

If the answer to 17. is No, attach to this checklist an explanation as to how the project meets the handicapped accessibility requirements in CPD's Section 306A Guidance. If the project does not meet the handicapped accessibility requirements the project will not be approved.

18. User fees: The public will be charged a user fee for the proposed project. Yes No N/A

If the answer to 18. is Yes, please attach a description of the user fee which includes: how much, differential fees (if any), the need for the fees, and proposed use of the revenue.

19. Environmental Justice. The project will not have disproportionately high and adverse human health or environmental effects on minority or low income populations. Yes No

20. State, Local and Tribal Laws. The project is consistent with state, local and tribal laws to protect the environment. Yes No

If the answer to either 19. or 20. is No the project will not be approved.

21. Required permits: Please list local, state, tribal or federal permits required for this project and the status of the permits. If the permits have not been obtained, then the state CMP Program Manager certifies, by signing this checklist, that the state CMP (or other public entity) is seeking the required local, state and federal permits and that work will not begin and land will not be purchased until the permits have been issued and received by the state CMP.

OMB Control # 0648-0119, expires 08/31/2001. OCRM requires this information in order to adequately assess the eligibility of proposed CZMA section 306A projects. Public reporting burden for this collection of information is estimated to average 5 hours per response, including 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 collection of information, including suggestions for reducing this burden, to Joseph A. Uravitch, AICP, Chief, Coastal Programs Division, OCRM, 1305 East-West Hwy., 11th Floor, Silver Spring, Maryland 20910. This reporting is required under and is authorized under 16 U.S.C. ' 1455a. Information submitted will be treated as public records. 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 Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

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(ii) the groin is placed at least ½ of the groin length from the adjacent property line or closer with written approval of the adjacent riparian.

(e) Filling for restoration of existing permitted fill, fills placed incidental to construction of other structures, and fills that do not exceed 300 cubic yards as a single and complete project, where the fill is of suitable material free from pollutants, waste metal products, debris, or organic materials.

(f) Dredging for the maintenance of previously dredged areas or dredging of not more than 300 cubic yards as a single and complete project when both of the following criteria are met:

(i) No reasonable expectation exists that the materials to be dredged are polluted; and

(ii) All dredging materials will be removed to an upland site exclusive of wetland areas.

(g) Structural repair of man-made structures, except as exempted by Michigan State Administrative Rule R 322.1008(3), when their design and purpose meet both of the following criteria:

(i) The repair does not alter the original use of a recently serviceable structure; and

(ii) The repair will not adversely affect public trust values or interests, including navigation and water quality.

(h) Fish or wildlife habitat structures which meet both of the following criteria:

(i) Are placed so the structures do not impede or create a navigational hazard; and

(ii) Are anchored to the bottomlands.

(i) Scientific structures such as staff gauges, water monitoring devices, water quality testing devices, survey devices, and core sampling devices, if the structures do not impede or create a navigational hazard.

(j) Navigational aids which meet both of the following criteria:

(i) Are approved by the United States Coast Guard; and

(ii) Are approved under Michigan State Act No. 303 of the Public Acts of 1967, as amended, being Section 281.1001 *et seq.* of the Michigan Compiled Laws, and known as the Marine Safety Act.

(k) Extension of a project where work is being performed under a current permit and which will result in no damage to natural resources.

(l) A sand trap wall which meets all of the following criteria:

(i) The wall is 300 feet or less in length along the shoreline;

(ii) The wall does not extend more than 30 feet lakeward of the toe of bluff;

(iii) The wall is low profile, that is, it is not more than 1 foot above the existing water level; and

(iv) The wall is constructed of wood or steel or other non-polluting material.

(m) Physical removal of man-made structures or natural obstructions which meet all of the following criteria:

(i) The debris and spoils shall be removed to an upland site, not in a wetland, in a manner which will not allow erosion into public waters;

(ii) The shoreline and bottom contours shall be restored to an acceptable condition; and

(iii) Upon completion of structure removal, the site does not constitute a safety or navigational hazard. Department staff shall consider fisheries and wildlife resource values when evaluating applications for natural obstruction removal.

PART 923—COASTAL ZONE MANAGEMENT PROGRAM REGULATIONS

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AUTHORITY: 16 U.S.C. 1451 et seq.; 31 U.S.C. 6506; 42 U.S.C. 3334; Sections 923.92 and 923.94 are also issued under E.O. 12372, July 14, 1982, 3 CFR 1982 Comp. p. 197, as amended by E.O. 12416, April 8, 1983, 3 CFR 1983 Comp. p. 186.

SOURCE: 44 FR 18595, Mar. 28, 1979, unless otherwise noted.

Subpart A—General

SOURCE: 61 FR 33805, June 28, 1996, unless otherwise noted.

§ 923.1 Purpose and scope.

(a) The regulations in this part set forth the requirements for State coastal management program approval by the Assistant Administrator for Ocean Services and Coastal Zone Management pursuant to the Coastal Zone Management Act of 1972, as amended (hereafter, the Act); the grant application procedures for program funds; conditions under which grants may be terminated; and requirements for review of approved management programs.

(b) Sections 306 and 307 of the Act set forth requirements which must be fulfilled as a condition of program approval. The specifics of these requirements are set forth below under the following headings: General Requirements; Uses Subject to Management; Special Management Areas; Boundaries; Authorities and Organization; and Coordination, Public Involvement and National Interest. All relevant sections of the Act are dealt with under one of these groupings, but not necessarily in the order in which they appear in the Act.

(c) In summary, the requirements for program approval are that a State develop a management program that:

- (1) Identifies and evaluates those coastal resources recognized in the Act as requiring management or protection by the State;
- (2) Reexamines existing policies or develops new policies to manage these

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resources. These policies must be specific, comprehensive, and enforceable;

(3) Determines specific use and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns;

(4) Identifies the inland and seaward areas subject to the management program;

(5) Provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements;

(6) Includes sufficient legal authorities and organizational arrangements to implement the program and to ensure conformance to it. In arriving at these elements of the management program, States are obliged to follow an open process which involves providing information to and considering the interests of the general public, special interest groups, local governments, and regional, State, interstate, and Federal agencies;

(7) Provides for public participation in permitting processes, consistency determinations, and other similar decisions;

(8) Provides a mechanism to ensure that all state agencies will adhere to the program; and

(9) Contains enforceable policies and mechanisms to implement the applicable requirements of the Coastal Nonpoint Pollution Control Program of the state required by section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990.

§ 923.2 Definitions.

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

(b) The term *Secretary* means the Secretary of Commerce and his/her designee.

(c) The term *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), or designee.

(d)(1) The term *relevant Federal agencies* means those Federal agencies with programs, activities, projects, regulatory, financing, or other assistance responsibilities in the following fields

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which could impact or affect a State's coastal zone:

(i) Energy production or transmission,

(ii) Recreation of a more than local nature,

(iii) Transportation,

(iv) Production of food and fiber,

(v) Preservation of life and property,

(vi) National defense,

(vii) Historic, cultural, aesthetic, and conservation values,

(viii) Mineral resources and extraction, and

(ix) Pollution abatement and control.

(2) The following are defined as relevant Federal agencies: Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Health and Human Services; Department of Housing and Urban Development; Department of the Interior; Department of Transportation; Environmental Protection Agency; Federal Energy Regulatory Commission; General Services Administration, Nuclear Regulatory Commission; Federal Emergency Management Agency.

(e) The term *Federal agencies principally affected* means the same as "relevant Federal agencies." The Assistant Administrator may include other agencies for purposes of reviewing the management program and environmental impact statement.

(f) 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. Pursuant to section 304(3) of the Act, the term also includes Puerto Rico, the Virgin Islands, Guam, and American Samoa. Pursuant to section 703 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the term also includes the Northern Marianas.

(g) The term *management program* includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, including an articulation of enforceable policies and citation of authorities providing this enforceability, prepared and adopted by the

State in accordance with the provisions of this Act and this part, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.

(h) The following terms, as used in these regulations, have the same definition as provided in section 304 of the Act:

- (1) Coastal zone;
- (2) Coastal waters;
- (3) Enforceable policy;
- (4) Estuary;
- (5) Land use; and
- (6) Water use.

(i) The term *grant* means a financial assistance instrument and refers to both grants and cooperative agreements.

§ 923.3 General requirements.

(a) The management program must be developed and adopted in accordance with the requirements of the Act and this part, after notice, and the opportunity for full participation by relevant Federal and State agencies, local governments, regional organizations, port authorities, and other interested parties and persons, and be adequate to carry out the purposes of the Act and be consistent with the national policy set forth in section 303 of the Act.

(b) The management program must provide for the management of those land and water uses having a direct and significant impact on coastal waters and those geographic areas which are likely to be affected by or vulnerable to sea level rise. The program must include provisions to assure the appropriate protection of those significant resources and areas, such as wetlands, beaches and dunes, and barrier islands, that make the State's coastal zone a unique, vulnerable, or valuable area.

(c) The management program must contain a broad class of policies for each of the following areas: resource protection, management of coastal development, and simplification of governmental processes. These three broad classes must include specific policies that provide the framework for the exercise of various management techniques and authorities governing coastal resources, uses, and areas. The three classes must include policies that ad-

dress uses of or impacts on wetlands and floodplains within the State's coastal zone, and that minimize the destruction, loss or degradation of wetlands and preserve and enhance their natural values in accordance with the purposes of Executive Order 11990, pertaining to wetlands. These policies also must reduce risks of flood loss, minimize the impact of floods on human safety, health and welfare, and preserve the natural, beneficial values served by floodplains, in accordance with the purposes of Executive Order 11988, pertaining to floodplains.

(d) The policies in the program must be appropriate to the nature and degree of management needed for uses, areas, and resources identified as subject to the program.

(e) The policies, standards, objectives, criteria, and procedures by which program decisions will be made must provide:

(1) A clear understanding of the content of the program, especially in identifying who will be affected by the program and how, and

(2) A clear sense of direction and predictability for decisionmakers who must take actions pursuant to or consistent with the management program.

Subpart B—Uses Subject to Management

SOURCE: 61 FR 33806, June 28, 1996, unless otherwise noted.

§ 923.10 General.

This subpart sets forth the requirements for management program approvability with respect to land and water uses which, because of their direct and significant impacts on coastal waters or those geographic areas likely to be affected by or vulnerable to sea level rise, are subject to the terms of the management program. This subpart deals in full with the following subsections of the Act: 306(d)(1)(B), Uses Subject to the Management Program, 306(d)(2)(H), Energy Facility Planning, and 306(d)(12)(B), Uses of Regional Benefit.

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§ 923.11 Uses subject to management.

(a)(1) The management program for each coastal state must include 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.

(2) The management program must identify those land and water uses that will be subject to the terms of the management program. These uses shall be those with direct and significant impacts on coastal waters or on geographic areas likely to be affected by or vulnerable to sea level rise.

(3) The management program must explain how those uses identified in paragraph (a)(2) of this section will be managed. The management program must also contain those enforceable policies, legal authorities, performance standards or other techniques or procedures that will govern whether and how uses will be allowed, conditioned, modified, encouraged or prohibited.

(b) In identifying uses and their appropriate management, a State should analyze the quality, location, distribution and demand for the natural and man-made resources of their coastal zone, and should consider potential individual and cumulative impacts of uses on coastal waters.

(c) States should utilize the following types of analyses:

(1) Capability and suitability of resources to support existing or projected uses;

(2) Environmental impacts on coastal resources;

(3) Compatibility of various uses with adjacent uses or resources;

(4) Evaluation of inland and other location alternatives; and

(5) Water dependency of various uses and other social and economic considerations.

(d) Examination of the following factors is suggested:

(1) Air and water quality;

(2) Historic, cultural and esthetic resources where coastal development is likely to affect these resources;

(3) Open space or recreational uses of the shoreline where increased access to the shorefront is a particularly important concern;

(4) Floral and faunal communities where loss of living marine resources or threats to endangered or threatened coastal species are particularly important concerns.

(5) Information on the impacts of global warming and resultant sea level rise on natural resources such as beaches, dunes, estuaries, and wetlands, on salinization of drinking water supplies, and on properties, infrastructure and public works.

§ 923.12 Uses of regional benefit.

The management program must contain 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. To this end, the management program must:

(a) Identify what constitutes uses of regional benefit; and

(b) Identify and utilize any one or a combination of methods, consistent with the control techniques employed by the State, to assure local land and water use regulations do not unreasonably restrict or exclude uses of regional benefit.

[61 FR 33806, June 28, 1996; 61 FR 36965, July 15, 1996]

§ 923.13 Energy facility planning process.

The management program must contain 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. (See subsection 304(5) of the Act.) This process must contain the following elements:

(a) Identification of energy facilities which are likely to locate in, or which may significantly affect, a State's coastal zone;

(b) Procedures for assessing the suitability of sites for such facilities designed to evaluate, to the extent practicable, the costs and benefits of proposed and alternative sites in terms of State and national interests as well as local concerns;

(c) Articulation and identification of enforceable State policies, authorities

and techniques for managing energy facilities and their impacts; and

(d) Identification of how interested and affected public and private parties will be involved in the planning process.

[61 FR 33806, June 28, 1996; 61 FR 36965, July 15, 1996]

Subpart C—Special Management Areas

SOURCE: 61 FR 33806, June 28, 1996, unless otherwise noted.

§ 923.20 General.

(a) This subpart sets forth the requirements for management program approvability with respect to areas of particular concern because of their coastal-related values or characteristics, or because they may face pressures which require detailed attention beyond the general planning and regulatory system which is part of the management program. As a result, these areas require special management attention within the terms of the State's overall coastal program. This special management may include regulatory or permit requirements applicable only to the area of particular concern. It also may include increased intergovernmental coordination, technical assistance, enhanced public expenditures, or additional public services and maintenance to a designated area. This subpart deals with the following subsections of the Act: 306(d)(2)(C)—Geographic Areas of Particular Concern; 306(d)(2)(E)—Guidelines on Priorities of Uses; 306(d)(2)(G)—Shorefront Access and protection Planning; 306(d)(2)(I)—Shoreline Erosion/Mitigation Planning; and 306(d)(9)—Areas for Preservation and Restoration.

(b) The importance of designating areas of particular concern for management purposes and the number and type of areas that should be designated is directly related to the degree of comprehensive controls applied throughout a State's coastal zone. Where a State's general coastal management policies and authorities address state and national concerns comprehensively and are specific with re-

spect to particular resources and uses, relatively less emphasis need be placed on designation of areas of particular concern. Where these policies are limited and non-specific, greater emphasis should be placed on areas of particular concern to assure effective management and an adequate degree of program specificity.

§ 923.21 Areas of particular concern.

(a) The management program must include an inventory and designation of areas of particular concern within the coastal zone, on a generic and/or site-specific basis, and broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(b) In developing criteria for inventorying and designating areas of particular concern. States must consider whether the following represent areas of concern requiring special management:

(1) Areas of unique, scarce, fragile or vulnerable natural habitat; unique or fragile, physical, figuration (as, for example, Niagara Falls); historical significance, cultural value or scenic importance (including resources on or determined to be eligible for the National Register of Historic Places.);

(2) Areas of high natural productivity or essential habitat for living resources, including fish, wildlife, and endangered species and the various trophic levels in the food web critical to their well-being;

(3) Areas of substantial recreational value and/or opportunity;

(4) Areas where developments and facilities are dependent upon the utilization of, or access to, coastal waters;

(5) Areas of unique hydrologic, geologic or topographic significance for industrial or commercial development or for dredge spoil disposal;

(6) Areas or urban concentration where shoreline utilization and water uses are highly competitive;

(7) Areas where, if development were permitted, it might be subject to significant hazard due to storms, slides, floods, erosion, settlement, salt water intrusion, and sea level rise;

(8) Areas needed to protect, maintain or replenish coastal lands or resources including coastal flood plains, aquifers

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and their recharge areas, estuaries, sand dunes, coral and other reefs, beaches, offshore sand deposits and mangrove stands.

(c) Where states will involve local governments, other state agencies, federal agencies and/or the public in the process of designating areas of particular concern, States must provide guidelines to those who will be involved in the designation process. These guidelines shall contain the purposes, criteria, and procedures for nominating areas of particular concern.

(d) In identifying areas of concern by location (if site specific) or category of coastal resources (if generic), the program must contain sufficient detail to enable affected landowners, governmental entities and the public to determine with reasonable certainty whether a given area is designated.

(e) In identifying areas of concern, the program must describe the nature of the concern and the basis on which designations were made.

(f) The management program must describe how the management program addresses and resolves the concerns for which areas are designated; and

(g) The management program must provide guidelines regarding priorities of uses in these areas, including guidelines on uses of lowest priority.

§ 923.22 Areas for preservation or restoration.

The management program must include procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, historical or esthetic values, and the criteria for such designations.

§ 923.23 Other areas of particular concern.

(a) The management program may, but is not required to, designate specific areas known to require additional or special management, but for which additional management techniques have not been developed or necessary authorities have not been established at the time of program approval. If a management program includes such designations, the basis for designation must be clearly stated, and a reason-

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able time frame and procedures must be set forth for developing and implementing appropriate management techniques. These procedures must provide for the development of those items required in § 923.21. The management program must identify an agency (or agencies) capable of formulating the necessary management policies and techniques.

(b) The management program must meet the requirements of § 923.22 for containing procedures for designating areas for preservation or restoration. The management program may include procedures and criteria for designating areas of particular concern for other than preservation or restoration purposes after program approval.

§ 923.24 Shorefront access and protection planning.

(a) The management program must include 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.

(b) The basic purpose in focusing special planning attention on shorefront access and protection is to provide public beaches and other public coastal areas of environmental, recreational, historic, esthetic, ecological or cultural value with special management attention within the purview of the State's management program. This special management attention may be achieved by designating public shorefront areas requiring additional access or protection as areas of particular concern pursuant to § 923.21 or areas for preservation or restoration pursuant to § 923.22.

(c) The management program must contain a procedure for assessing public beaches and other public areas, including State owned lands, tidelands and bottom lands, which require access or protection, and a description of appropriate types of access and protection.

(d) The management program must contain a definition of the term "beach" that is the broadest definition

allowable under state law or constitutional provisions, and an identification of public areas meeting that definition.

(e) The management program must contain an identification and description of enforceable policies, legal authorities, funding program and other techniques that will be used to provide such shorefront access and protection that the State's planning process indicates is necessary.

§ 923.25 Shoreline erosion/mitigation planning.

(a) The management program must include a planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the impact of, shoreline erosion, including potential impacts of sea level rise, and to restore areas adversely affected by such erosion. This planning process may be within the broader context of coastal hazard mitigation planning.

(b) The basic purpose in developing this planning process is to give special attention to erosion issues. This special management attention may be achieved by designating erosion areas as areas of particular concern pursuant to § 923.21 or as areas for preservation or restoration pursuant to § 923.22.

(c) The management program must include an identification and description of enforceable policies, legal authorities, funding techniques and other techniques that will be used to manage the effects of erosion, including potential impacts of sea level rise, as the state's planning process indicates is necessary.

[61 FR 33806, June 28, 1996; 61 FR 36965, July 15, 1996]

Subpart D—Boundaries

SOURCE: 61 FR 33808, June 28, 1996, unless otherwise noted.

§ 923.30 General.

This subpart sets forth the requirements for management program approvability with respect to boundaries of the coastal zone. There are four elements to a State's boundary: the inland boundary, the seaward boundary, areas excluded from the boundary, and, in most cases, interstate boundaries.

Specific requirements with respect to procedures for determining and identifying these boundary elements are discussed in the sections of this subpart that follow.

§ 923.31 Inland boundary.

(a) The inland boundary of a State's coastal zone must include:

(1) Those areas the management of which is necessary to control uses which have direct and significant impacts on coastal waters, or are likely to be affected by or vulnerable to sea level rise, pursuant to section 923.11 of these regulations.

(2) Those special management areas identified pursuant to § 923.21;

(3) Waters under saline influence—waters containing a significant quantity of seawater, as defined by and uniformly applied by the State;

(4) Salt marshes and wetlands—Areas subject to regular inundation of tidal salt (or Great Lakes) waters which contain marsh flora typical of the region;

(5) Beaches—The area affected by wave action directly from the sea. Examples are sandy beaches and rocky areas usually to the vegetation line;

(6) Transitional and intertidal areas—Areas subject to coastal storm surge, and areas containing vegetation that is salt tolerant and survives because of conditions associated with proximity to coastal waters. Transitional and intertidal areas also include dunes and rocky shores to the point of upland vegetation;

(7) Islands—Bodies of land surrounded by water on all sides. Islands must be included in their entirety, except when uses of interior portions of islands do not cause direct and significant impacts.

(8) The inland boundary must be presented in a manner that is clear and exact enough to permit determination of whether property or an activity is located within the management area. States must be able to advise interested parties whether they are subject to the terms of the management program within, at a maximum, 30 days of receipt of an inquiry. An inland coastal

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zone boundary defined in terms of political jurisdiction (e.g., county, township or municipal lines) cultural features (e.g., highways, railroads), planning areas (e.g., regional agency jurisdictions, census enumeration districts), or a uniform setback line is acceptable so long as it includes the areas identified.

(b) The inland boundary of a State's coastal zone may include:

(1) Watersheds—A state may determine some uses within entire watersheds which have direct and significant impact on coastal waters or are likely to be affected by or vulnerable to sea level rise. In such cases it may be appropriate to define the coastal zone as including these watersheds.

(2) Areas of tidal influence that extend further inland than waters under saline influence; particularly in estuaries, deltas and rivers where uses inland could have direct and significant impacts on coastal waters or areas that are likely to be affected by or vulnerable to sea level rise.

(3) Indian lands not held in trust by the Federal Government.

(c) In many urban areas or where the shoreline has been modified extensively, natural system relationships between land and water may be extremely difficult, if not, impossible, to define in terms of direct and significant impacts. Two activities that States should consider as causing direct and significant impacts on coastal waters in urban areas are sewage discharges and urban runoff. In addition, States should consider dependency of uses on water access and visual relationships as factors appropriate for the determination of the inland boundary in highly urbanized areas.

§ 923.32 Lakeward or seaward boundary.

(a)(1) For states adjoining the Great Lakes, the lakeward boundary of the State's coastal zone is the international boundary with Canada or the boundaries with adjacent states. For states adjacent to the Atlantic or Pacific Ocean, or the Gulf of Mexico, the seaward boundary is the outer limit of state title and ownership under the Submerged Lands Act (48 U.S.C. 1301 *et seq.*), the Act of March 2, 1917 (48 U.S.C.

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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 10, 1963, (48 U.S.C. 1705, as applicable).

(2) The requirement for defining the seaward boundary of a State's coastal zone can be met by a simple restatement of the limits defined in this section, unless there are water areas which require a more exact delineation because of site specific policies associated with these areas. Where States have site specific policies for particular water areas, these shall be mapped, described or referenced so that their location can be determined reasonably easily by any party affected by the policies.

(b) The seaward limits, as defined in this section, are for purposes of this program only and represent the area within which the State's management program may be authorized and financed. These limits are irrespective of any other claims States may have by virtue of other laws.

§ 923.33 Excluded lands.

(a) The boundary of a State's coastal zone must exclude lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers or agents. To meet this requirement, the program must describe, list or map lands or types of lands owned, leased, held in trust or otherwise used solely by Federal agencies.

(b) The exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency provisions of section 307 of the Act when Federal actions on these excluded lands have spillover impacts that affect any land or water use or natural resource of the coastal zone within the purview of a state's management program. In excluding Federal lands from a State's coastal zone for the purposes of this Act, a State does not impair any rights or authorities that it may have over Federal lands that exist separate from this program.

§ 923.34 Interstate boundary.

States must document that there has been consultation and coordination with adjoining coastal States regarding delineation of any adjacent inland and lateral seaward boundary.

Subpart E—Authorities and Organization

SOURCE: 61 FR 33809, June 28, 1996, unless otherwise noted.

§ 923.40 General.

(a) This subpart sets forth the requirements for management program approvability with respect to authorities and organization. The authorities and organizational structure on which a State will rely to administer its management program are the crucial underpinnings for enforcing the policies which guide the management of the uses and areas identified in its management program. There is a direct relationship between the adequacy of authorities and the adequacy of the overall program. The authorities need to be broad enough in both geographic scope and subject matter to ensure implementation of the State's enforceable policies. These enforceable policies must be sufficiently comprehensive and specific to regulate land and water uses, control development, and resolve conflicts among competing uses in order to assure wise use of the coastal zone. (Issues relating to the adequate scope of the program are dealt with in § 923.3.)

(b) The entity or entities which will exercise the program's authorities is a matter of State determination. They may be the state agency designated pursuant to section 306(d)(6) of the Act, other state agencies, regional or interstate bodies, and local governments. The major approval criterion is a determination that such entity or entities are required to exercise their authorities in conformance with the policies of the management program. Accordingly, the essential requirement is that the State demonstrate that there is a means of ensuring such compliance. This demonstration will be in the context of one or a combination of the

three control techniques specified in section 306(d)(11) of the Act. The requirements related to section 306(d)(12) of the Act are described in §§ 923.42 through 923.44 of this subchapter.

(c) In determining the adequacy of the authorities and organization of a state's programs, the Assistant Administrator will review and evaluate authorities and organizational arrangements in light of the requirements of this subpart and the finding of section 302(h) of the Act.

(d) The authorities requirements of the Act dealt with in this subpart are those contained in subsections 306(d)(2)(D)—Means of Control; 306(d)(10)—Authorities; 306(d)(10)(A)—Control Development and Resolve Conflicts; 306(d)(10)(B)—Powers of Acquisition; 306(d)(11)—Techniques of Control; and 307(f)—Air and Water Quality Control Requirements. The organization requirements of the Act dealt with in this subpart are those contained in sections 306(d)(2)(F)—Organizational Structure; 306(d)(6)—Designated State Agency; and 306(d)(7)—Organization.

§ 923.41 Identification of authorities.

(a)(1) The management program must identify the means by which the state proposes to exert control over the permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters, including a listing of relevant state constitutional provisions, laws, regulations, and judicial decisions. These are the means by which the state will enforce its coastal management policies. (See section 304(6a) of the Act.)

(2) The state chosen agency or agencies (including local governments, area-wide agencies, regional agencies, or interstate agencies) must have the authority for the management of the coastal zone. Such authority includes the following powers:

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

(ii) 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.

(b) In order to meet these requirements, the program must identify relevant state constitutional provisions, statutes, regulations, case law and such other legal instruments (including executive orders and interagency agreements) that will be used to carry out the state's management program, including the authorities pursuant to sections 306(d)(10) and 306(d)(11) of the Act which require a state to have the ability to:

(1) Administer land and water use regulations in conformance with the policies of the management program;

(2) Control such development as is necessary to ensure compliance with the management program;

(3) Resolve conflicts among competing uses; and

(4) Acquire appropriate interest in lands, waters or other property as necessary to achieve management objectives. Where acquisition will be a necessary technique for accomplishing particular program policies and objectives, the management program must indicate for what purpose acquisition will be used (i.e., what policies or objectives will be accomplished); the type of acquisition (e.g., fee simple, purchase of easements, condemnation); and what agency (or agencies) of government have the authority for the specified type of acquisition.

§ 923.42 State establishment of criteria and standards for local implementation—Technique A.

(a) The management program must provide for any one or a combination of general techniques specified in subsection 306(d)(11) of the Act for control of land uses and water uses within the coastal zone. The first such control technique, at subsection 306(d)(11)(A) of the Act, is state establishment of criteria and standards for local implementation, subject to administrative review and enforcement (control technique A).

(b) There are 5 principal requirements that control technique A must embody in order to be approved:

(1) The State must have developed and have in effect at the time of program approval enforceable policies that meet the requirements of § 923.3. These policies must serve as the standards and criteria for local program development or the State must have separate standards and criteria, related to these enforceable policies, that will guide local program development.

(2) During the period while local programs are being developed, a State must have sufficient authority to assure that land and water use decisions subject to the management program will comply with the program's enforceable policies. The adequacy of these authorities will be judged on the same basis as specified for direct State controls or case-by-case reviews.

(3) A State must be able to ensure that coastal programs will be developed pursuant to the State's standards and criteria, or failing this, that the management program can be implemented directly by the State. This requirement can be met if a State can exercise any one of the following techniques:

(i) Direct State enforcement of its standards and criteria in which case a State would need to meet the requirements of this section which address the direct State control technique;

(ii) Preparation of a local program by a State agency which the local government then would implement. To use this technique the State must have statutory authority to prepare and adopt a program for a local government, and a mechanism by which the State can cause the local government to enforce the State-created program. Where the mechanism to assure local enforcement will be judicial relief, the program must include the authority under which judicial relief can be sought;

(iii) State preparation and enforcement of a program on behalf of a local government. Here the State must have the authority to:

(A) Prepare and adopt a plan, regulations, and ordinances for the local government and

(B) Enforce such plans, regulations and ordinances;

(iv) State review of local government actions on a case-by-case basis or on appeal, and prevention of actions inconsistent with the standards and criteria. Under this technique, when a local government fails to adopt an approvable program, the State must have the ability to review activities in the coastal zone subject to the management program and the power to prohibit, modify or condition those activities based on the policies, standards and criteria of the management program; or

(v) If a locality fails to adopt a management program, the State may utilize a procedure whereby the responsibility for preparing a program shifts to an intermediate level government, such as a county. If this intermediate level of government fails to produce a program, then the State must have the ability to take one of the actions described above. This alternative cannot be used where the intermediate level of government lacks the legal authority to adopt and implement regulations necessary to implement State policies, standards and criteria.

(4) A State must have a procedure whereby it reviews and certifies the local program's compliance with State standards and criteria. This procedure must include provisions for:

(i) Opportunity for the public and governmental entities (including Federal agencies) to participate in the development of local programs; and

(ii) Opportunity for the public and governmental entities (including Federal agencies) to make their views known (through public hearings or other means) to the State agency prior to approval of local programs; and

(iii) Review by the State of the adequacy of local programs consideration of facilities identified in a State's management program in which there is a national interest.

(5) A State must be able to assure implementation and enforcement of a local program once approved. To accomplish this a State must:

(i) Establish a monitoring system which defines what constitutes and detects patterns of non-compliance. In the case of uses of regional benefit and

facilities in which there is a national interest, the monitoring system must be capable of detecting single instances of local actions affecting such uses or facilities in a manner contrary to the management program.

(ii) Be capable of assuring compliance when a pattern of deviation is detected or when a facility involving identified national interests or a use of regional benefit is affected in a manner contrary to the program's policies. When State action is required because of failure by a local government to enforce its program, the State must be able to do one or a combination of the following:

(A) Directly enforce the entire local program;

(B) Directly enforce that portion of the local program that is being enforced improperly. State intervention would be necessary only in those local government activities that are violating the policies, standards or criteria.

(C) Seek judicial relief against local government for failure to properly enforce;

(D) Review local government actions on a case-by-case basis or on appeal and have the power to prevent those actions inconsistent with the policies and standards.

(E) Provide a procedure whereby the responsibility for enforcing a program shifts to an intermediate level of government, assuming statutory authority exists to enable the immediate of government to assume this responsibility.

§ 923.43 Direct State land and water use planning and regulation—Technique B.

(a) The management program must provide for any one or a combination of general techniques specified in subsection 306(d)(11) of the Act for control of land and water uses within the coastal zone. The second such control technique, at subsection 306(d)(11)(B) of the Act, is direct state land and water use planning and regulation (control technique B).

(b) To have control technique B approved, the State must have the requisite direct authority to plan and regulate land and water uses subject to

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the management program. This authority can take the form of:

(1) Comprehensive legislation—A single piece of comprehensive legislation specific to coastal management and the requirements of this Act.

(2) Networking—The utilization of authorities which are compatible with and applied on the basis of coastal management policies developed pursuant to § 923.3.

(c) In order to apply the networking concept, the State must:

(1) Demonstrate that, taken together, existing authorities can and will be used to implement the full range of policies and management techniques identified as necessary for coastal management purposes; and

(2) Bind each party which exercises statutory authority that is part of the management program to conformance with relevant enforceable policies and management techniques. Parties may be bound to conformance through an executive order, administrative directive or a memorandum of understanding provided that:

(i) The management program authorities provide grounds for taking action to ensure compliance of networked agencies with the program. It will be sufficient if any of the following can act to ensure compliance: The State agency designated pursuant to subsection 306(d)(6) of the Act, the State's Attorney General, another State agency, a local government, or a citizen.

(ii) The executive order, administrative directive or memorandum of understanding establishes conformance requirements of other State agency activities or authorities to management program policies. A gubernatorial executive order will be acceptable if networked State agency heads are directly responsible to the Governor.

(3) Where networked State agencies can enforce the management program policies at the time of section 306 approval without first having to revise their operating rules and regulations, then any proposed revisions to such rules and regulations which would enhance or facilitate implementation need not be accomplished prior to program approval. Where State agencies cannot enforce coastal policies without first revising their rules and regula-

tions, then these revisions must be made prior to approval of the State's program by the Assistant Administrator.

§ 923.44 State review on a case-by-case basis of actions affecting land and water uses subject to the management program—Technique C.

(a) The management program must provide for any one or a combination of general techniques specified in subsection 306(d)(11) of the Act for control of land and water uses within the coastal zone. The third such control technique, at subsection 306(d)(11)(C) of the Act, is 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 (control technique C).

(b) Under case-by-case review, States have the power to review individual development plans, projects or land and water use regulations (including variances and exceptions thereto) proposed by any State or local authority or private developer which have been identified in the management program as being subject to review for consistency with the management program. This control technique requires the greatest degree of policy specificity because compliance with the program will not require any prior actions on the part of anyone affected by the program. Specificity also is needed to avoid challenges that decisions (made pursuant to the management program) are unfounded, arbitrary or capricious.

(c) To have control technique C approved, a State must:

(1) Identify the plans, projects or regulations subject to review, based on their significance in terms of impacts on coastal resources, potential for incompatibility with the State's coastal management program, and having greater than local significance;

(2) Identify the State agency that will conduct this review;

(3) Include the criteria by which identified plans, projects and regulations will be approved or disapproved;

(4) Have the power to approve or disapprove identified plans, projects or regulations that are inconsistent with the management program, or the power to seek court review thereof; and

(5) Provide public notice of reviews and the opportunity for public hearing prior to rendering a decision on each case-by-case review.

§ 923.45 Air and water pollution control requirements.

The program must incorporate, by reference or otherwise, all requirements established by the Federal Water Pollution Control Act, as amended (Clean Water Act or CWA), or the Clean Air Act, as amended (CAA), or established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements must be the water pollution control and air pollution control requirements applicable to such program. Incorporation of the air and water quality requirements pursuant to the CWA and CAA should involve their consideration during program development, especially with respect to use determinations and designation of areas for special management. In addition, this incorporation will prove to be more meaningful if close coordination and working relationships between the State agency and the air and water quality agencies are developed and maintained throughout the program development process and after program approval.

§ 923.46 Organizational structure.

The State must be organized to implement the management program. The management program must describe the organizational structure that will be used to implement and administer the management program including a discussion of those state and other agencies, including local governments, that will have responsibility for administering, enforcing and/or monitoring those authorities or techniques required pursuant to the following subsections of the Act: 306(d)(3)(B); 306(d)(10); 306(d)(10) (A) and (B); 306(d)(11) and (12); and 307(f). The manage-

ment program must also describe the relationship of these administering agencies to the state agency designated pursuant to subsection 306(d)(6) of the Act.

§ 923.47 Designated State agency.

(a) For program approval, the Governor of the state must designate a single state agency to receive and administer the grants for implementing the management program.

(1) This entity must have the fiscal and legal capability to accept and administer grant funds, to make contracts or other arrangements (such as passthrough grants) with participating agencies for the purpose of carrying out specific management tasks and to account for the expenditure of the implementation funds of any recipient of such monies, and

(2) This entity must have the administrative capability to monitor and evaluate the management of the State's coastal resources by the various agencies and/or local governments with specified responsibilities under the management program (irrespective of whether such entities receive section 306 funds); to make periodic reports to the Office of Ocean and Coastal Resource Management (OCRM), the Governor, or the State legislature, as appropriate, regarding the performance of all agencies involved in the program. The entity also must be capable of presenting evidence of adherence to the management program or justification for deviation as part of the review by OCRM of State performance required by section 312 of the Act.

(b)(1) The 306 agency designation is designed to establish a single point of accountability for prudent use of administrative funds in the furtherance of the management and for monitoring of management activities. Designation does not imply that this single agency need be a "super agency" or the principal implementation vehicle. It is, however, the focal point for proper administration and evaluation of the State's program and the entity to which OCRM will look when monitoring and reevaluating a State's program during program implementation.

(2) The requirement for the single designated agency should not be viewed

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as confining or otherwise limiting the role and responsibilities which may be assigned to this agency. It is up to the State to decide in what manner and to what extent the designated State agency will be involved in actual program implementation or enforcement. In determining the extent to which this agency should be involved in program implementation or enforcement, specific factors should be considered, such as the manner in which local and regional authorities are involved in program implementation, the administrative structure of the State, the authorities to be relied upon and the agencies administering such authorities. Because the designated State agency may be viewed as the best vehicle for increasing the unity and efficiency of a management program, the State may want to consider the following in selecting which agency to designate:

- (i) Whether the designated State entity has a legislative mandate to coordinate other State or local programs, plans and/or policies within the coastal zone;
- (ii) To what extent linkages already exist between the entity, other agencies, and local governments;
- (iii) To what extent management or regulatory authorities affecting the coastal zone presently are administered by the agency; and
- (iv) Whether the agency is equipped to handle monitoring, evaluation and enforcement responsibilities.

§ 923.48 Documentation.

A transmittal letter signed by the Governor is required for the submission of a management program for federal approval. The letter must state that the Governor:

- (a) Has reviewed and approved as State policy, the management program, and any changes thereto, submitted for the approval of the Assistant Administrator.
- (b) Has designated a single State agency to receive and administer implementation grants;
- (c) Attests to the fact that the State has the authorities necessary to implement the management program; and

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(d) Attests to the fact that the State is organized to implement the management program.

Subpart F—Coordination, Public Involvement and National Interest

SOURCE: 61 FR 33812, June 28, 1996, unless otherwise noted.

§ 923.50 General.

(a) Coordination with governmental agencies having interests and responsibilities affecting the coastal zone, and involvement of interest groups as well as the general public is essential to the development and administration of State coastal management programs. The coordination requirements of this subpart are intended to achieve a proper balancing of diverse interests in the coastal zone. The policies of section 303 of the Act require that there be a balancing of variety, sometimes conflicting, interests, including:

- (1) The preservation, protection, development and, where possible, the restoration or enhancement of coastal resources;
- (2) The achievement of wise use of coastal land and water resources with full consideration for ecological, cultural, historic, and aesthetic values and needs for compatible economic development;
- (3) The involvement of the public, of Federal, state and local governments and of regional agencies in the development and implementation of coastal management programs;
- (4) The management of coastal development to improve, safeguard, and restore coastal water quality; and
- (5) The study and development of plans for addressing the adverse effects of coastal hazards, including erosion, flooding, land subsidence and sea level rise.

(b) In order to be meaningful, coordination with and participation by various units and levels of government including regional commissions, interest groups, and the general public should begin early in the process of program development and should continue throughout on a timely basis to assure that such efforts will result in substantive inputs into a State's management program. State efforts should be

devoted not only to obtaining information necessary for developing the management program but also to obtaining reactions and recommendations regarding the content of the management program and to responding to concerns by interested parties. The requirements for intergovernmental cooperation and public participation continue after program approval.

(c) This subpart deals with requirements for coordination with governmental entities, interest groups and the general public to assure that their interests are fully expressed and considered during the program development process and that procedures are created to insure continued consideration of their views during program implementation. In addition, this subpart deals with mediation procedures for serious disagreements between States and Federal agencies that occur during program development and implementation. This subpart addresses the requirements of the following subsections of the Act: 306(d)(1)—Opportunity for Full Participation; 306(d)(3)(A)—Plan Coordination; 306(d)(3)(B)—Continued State-Local Consultation; 306(d)(4)—Public Hearings; 306(d)(8)—Consideration of the National Interest in Facilities; 307(b)—Federal Consultation; and 307(h)—Mediation.

§ 923.51 Federal-State consultation.

(a) The management program must be developed and adopted with the opportunity of full participation by relevant Federal agencies and with adequate consideration of the views of Federal agencies principally affected by such program.

(b) By providing relevant Federal agencies with the opportunity for full participation during program development and for adequately considering the views of such agencies, States can effectuate the Federal consistency provisions of subsections 307 (c) and (d) of the Act once their programs are approved. (See 15 CFR part 930 for a full discussion of the Federal consistency provisions of the Act.)

(c) In addition to the consideration of relevant Federal agency views required during program development, Federal agencies have the opportunity to pro-

vide further comment during the program review and approval process. (See subpart G for details on this process.) Moreover, in the event of a serious disagreement between a relevant Federal agency and designated State agency during program development or during program implementation, the mediation provisions of subsection 307(h) of the Act are available. (See § 923.54 for details on mediation.)

(d) In order to provide an opportunity for participation by relevant Federal agencies and give adequate consideration to their views, each state must:

(1) Contact each relevant Federal Agency listed in § 923.2(d) and such other Federal agencies as may be relevant, owing to a State's particular circumstances, early in the development of its management program. The purpose of such contact is to develop mutual arrangements or understandings regarding that agency's participation during program development;

(2) Provide for Federal agency input on a timely basis as the program is developed. Such input shall be related both to information required to develop the management program and to evaluation of and recommendations concerning various elements of the management program;

(3) Solicit statements from the head of Federal agencies identified in Table 1 of § 923.52(c)(1) as to their interpretation of the national interest in the planning for and siting of facilities which are more than local in nature;

(4) Summarize the nature, frequency, and timing of contacts with relevant Federal agencies;

(5) Evaluate Federal comments received during the program development process and, where appropriate in the opinion of the State, accommodate the substance of pertinent comments in the management program. States must consider and evaluate relevant Federal agency views or comments about the following:

(i) Management of coastal resources for preservation, conservation, development, enhancement or restoration purposes;

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(ii) Statements of the national interest in the planning for or siting of facilities which are more than local in nature;

(iii) Uses which are subject to the management program;

(iv) Areas which are of particular concern to the management program;

(v) Boundary determinations;

(vi) Shorefront access and protecting planning, energy facility planning and erosion planning processes; and

(vii) Federally developed or assisted plans that must be coordinated with the management program pursuant to subsection 306(d)(3) of the Act.

(6) Indicate the nature of major comments by Federal agencies provided during program development (either by including copies of comments or by summarizing comments) and discuss any major differences or conflicts between the management program and Federal views that have not been resolved at the time of program submission.

§ 923.52 Consideration of the national interest in facilities.

(a) The management program must provide 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 State must have considered any applicable national or interstate energy plan or program.

(b) The primary purpose of this requirement is to assure adequate consideration by States of the national interest involved in the planning for and siting of facilities (which are necessary to meet other than local requirements) during:

(1) The development of the State's management program,

(2) The review and approval of the program by the Assistant Administrator, and

(3) The implementation of the program as such facilities are proposed.

(c) In order to fulfill this requirement, States must:

(1) Describe the national interest in the planning for and siting of facilities

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considered during program development.

(2) Indicate the sources relied upon for a description of the national interest in the planning for and siting of the facilities.

(3) Indicate how and where the consideration of the national interest is reflected in the substance of the management program. In the case of energy facilities in which there is a national interest, the program must indicate the consideration given any national or interstate energy plans or programs which are applicable to or affect a state's coastal zone.

(4) Describe the process for continued consideration of the national interest in the planning for and siting of facilities during program implementation, including a clear and detailed description of the administrative procedures and decisions points where such interest will be considered.

§ 923.53 Federal consistency procedures.

(a) A State must include in its management program submission, as part of the body of the submission an appendix or an attachment, the procedures it will use to implement the Federal consistency requirements of subsections 307 (c) and (d) of the Act. At a minimum, the following must be included:

(1) An indication of whether the state agency designated pursuant to subsection 306(d)(6) of the Act or a single other agency will handle consistency review (see 15 CFR 930.18);

(2) A list of Federal license and permit activities that will be subject to review (see 15 CFR 930.53);

(3) For States anticipating coastal zone effects from Outer Continental Shelf (OCS) activities, the license and permit list also must include OCS plans which describe in detail Federal license and permit activities (see 15 CFR 930.74); and

(4) The public notice procedures to be used for certifications submitted for Federal License and permit activities and, where appropriate, for OCS plans (see 15 CFR 930.61 through 930.62 and 930.78).

(b) Beyond the minimum requirements contained in paragraph (a) of

this section, States have the option of including:

(1) A list of Federal activities, including development projects, which in the opinion of the State agency are likely to significantly affect the coastal zone and thereby will require a Federal agency consistency determination (see 15 CFR 930.35); and

(2) A description of the types of information and data necessary to assess the consistency of Federal license and permit activities and, where appropriate, those described in detail in OCS plans (see 15 CFR 930.56 and 930.75).

§ 923.54 Mediation.

(a) Section 307(h) of the Act provides for mediation of serious disagreement between any Federal agency and a coastal state in the development and implementation of a management program. In certain cases, mediation by the Secretary, with the assistance of the Executive Office of the President, may be an appropriate forum for conflict resolution.

(b) State-Federal differences should be addressed initially by the parties involved. Whenever a serious disagreement cannot be resolved between the parties concerned, either party may request the informal assistance of the Assistant Administrator in resolving the disagreement. This request shall be in writing, stating the points of disagreement and the reason therefore. A copy of the request shall be sent to the other party to the disagreement.

(c) If a serious disagreement persists, the Secretary or other head of a relevant Federal agency, or the Governor or the head of the state agency designated by the Governor as administratively responsible for program development (if a state still is receiving section 305 program development grants) or for program implementation (if a state is receiving section 306 program implementation grants) may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the serious disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees and to the Assistant Administrator.

(d) Secretarial mediation efforts shall last only so long as the parties agree to participate. The Secretary shall confer with the Executive Office of the President, as necessary, during the mediation process.

(e) Mediation shall terminate:

(1) At any time the parties agree to a resolution of the serious disagreement,

(2) If one of the parties withdraws from mediation,

(3) In the event the parties fail to reach a resolution of the serious disagreement within 15 days following Secretarial mediation efforts, and the parties do not agree to extend mediation beyond that period, or

(4) For other good cause.

(f) The availability of the mediation services provided in this section 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 herein.

§ 923.55 Full participation by State and local governments, interested parties, and the general public.

The management program must be developed and adopted with the opportunity of full participation by state agencies, local governments, regional commissions and organizations, port authorities, and other interested public and private parties. To meet this requirement, a State must:

(a) Develop and make available general information regarding the program design, its content and its status throughout program development;

(b) Provide a listing, as comprehensive as possible, of all governmental agencies, regional organizations, port authorities and public and private organizations likely to be affected by or to have a direct interest in the development and implementation of the management program;

(c) Indicate the nature of major comments received from interested or affected parties, identified in paragraph (b)(2) of this section, and the nature of the State's response to these comments; and

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(d) Hold public meetings, workshops, etc., during the course of program development at accessible locations and convenient times, with reasonable notice and availability of materials.

§ 923.56 Plan coordination.

(a) The management program must be coordinated with local, areawide, and interstate plans applicable to areas within the coastal zone—

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

(2) Which have been developed by a local government, an areawide agency, a regional agency, or an interstate agency.

(b) A State must insure that the contents of its management program has been coordinated with local, areawide and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the State's management program is submitted to the Assistant Administrator for approval. To document this coordination, the management program must:

(1) Identify local governments, areawide agencies and regional or interstate agencies which have plans affecting the coastal zone in effect on January 1 of the year in which the management program is submitted;

(2) List or provide a summary of contacts with these entities for the purpose of coordinating the management program with plans adopted by a governmental entity as of January 1 of the year in which the management program is submitted. At a minimum, the following plans, affecting a State coastal zone, shall be reviewed: Land use plans prepared pursuant to section 701 of the Housing and Urban Development Act of 1968, as amended; State and areawide waste treatment facility or management plans prepared pursuant to sections 201 and 208 of the Clean Water Act, as amended; plans and designations made pursuant to the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended; hazard mitigation plans prepared pursuant to section 409 of the Robert T. Stafford Disaster Relief and Emergency Assist-

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ance Act; any applicable interstate energy plans or programs developed pursuant to section 309 of the Act; regional and interstate highway plans; plans developed by Regional Action Planning Commission; and fishery management plans developed pursuant to the Fisheries Conservation and Management Act.

(3) Identify conflicts with those plans of a regulatory nature that are unresolved at the time of program submission and the means that can be used to resolve these conflicts.

§ 923.57 Continuing consultation.

(a) As required by subsection 306(d)(3)(B) of the Act, a State must establish an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (6) of section 306(d) of the Act 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 Act.

(b) The management program must establish a procedure whereby local governments with zoning authority are notified of State management program decisions which would conflict with any local zoning ordinance decision.

(1) "Management program decision" refers to any major, discretionary policy decisions on the part of a management agency, such as the determination of permissible land and water uses, the designation of areas of particular concern or areas for preservation or restoration, or the decision to acquire property for public uses. Regulatory actions which are taken pursuant to these major decisions are not subject to the State-local consultation mechanisms. A State management program decision is in conflict with a local zoning ordinance if the decision is contradictory to that ordinance. A State management program decision that consists of additional but not contradictory requirements is not in conflict with a local zoning ordinance, decision or other action;

(2) "Local government" refers to these defined in section 304(11) of the

Act which have some form of zoning authority.

(3) "Local zoning ordinance, decision or other action" refers to any local government land or water use action which regulates or restricts the construction, alteration of use of land, water or structures thereon or thereunder. These actions include zoning ordinances, master plans and official maps. A local government has the right to comment on a State management program decision when such decision conflicts with the above specified actions;

(4) Notification must be in writing and must inform the local government of its right to submit comments to the State management agency in the event the proposed State management program decision conflicts with a local zoning ordinance, decision or other action. The effect of providing such notice is to stay State action to implement its management decision for at least a 30-day period unless the local government waives its right to comment.

(5) "Waiver" of the right of local government to comment (thereby permitting a State agency to proceed immediately with implementation of the management program decision) shall result:

(i) Following State agency receipt of a written statement from a local government indicating that it either:

(A) Waives its right to comment; or

(B) Concurs with the management program decision; or

(C) Intends to take action which conflicts or interferes with the management program decision; or

(ii) Following a public statement by a local government to the same effect as paragraph (b)(5)(i) of this section; or

(iii) Following an action by a local government that conflicts or interferes with the management program decision.

(6) The management program shall include procedures to be followed by a management agency in considering a local government's comments. These procedures shall include, at a minimum, circumstances under which the agency will exercise its discretion to hold a public hearing. Where public hearings will be held, the program

must set forth notice and other hearing procedures that will be followed. Following State agency consideration of local comments (when a discretionary public hearing is not held) or following public hearing, the management agency shall provide a written response to the affected local government, affected local government, within a reasonable period of time and prior to implementation of the management program decision, on the results of the agency's consideration of public comments.

§ 923.58 Public hearings.

The management program must be developed and adopted after the holding of public hearings. A State must:

(a) Hold a minimum of two public hearings during the course of program development, at least one of which will be on the total scope of the coastal management program. Hearings on the total management program do not have to be held on the actual document submitted to the Assistant Administrator for section 306 approval. However, such hearing(s) must cover the substance and content of the proposed management program in such a manner that the general public, and particularly affected parties, have a reasonable opportunity to understand the impacts of the management program. If the hearing(s) are not on the management document per se, all requests for such document must be honored and comments on the document received prior to submission of the document to the Assistant Administrator must be considered;

(b) Provide a minimum of 30 days public notice of hearing dates and locations;

(c) Make available for public review, at the time of public notice, all agency materials pertinent to the hearings; and

(d) Include a transcript or summary of the public hearing(s) with the State's program document or submit same within thirty (30) days following submittal of the program to the Assistant Administrator. At the same time this transcript or summary is submitted to the Assistant Administrator, it must be made available, upon request, to the public.

Subpart G—Review/Approval Procedures

SOURCE: 61 FR 33815, June 28, 1996, unless otherwise noted.

§ 923.60 Review/approval procedures.

(a) All state management program submissions must contain an environmental assessment at the time of submission of the management program to OCRM for threshold review. In accordance with regulations implementing the National Environmental Policy Act of 1969, as amended, OCRM will assist the State by outlining the types of information required. (See 40 CFR § 1506.5 (a) and (b).)

(b) Upon submission by a State of its draft management program, OCRM will determine if it adequately meets the requirements of the Act and this part. Assuming positive findings are made and major revisions to the State's draft management program are not required, OCRM will prepare draft and final environmental impact statements, in accordance with National Environmental Policy Act requirements. Because the review process involves preparation and dissemination of draft and final environmental impact statements and lengthy Federal agency review; states should anticipate that it will take at least 7 months between the time a state first submits a draft management program to OCRM for threshold review and the point at which the Assistant Administrator makes a final decision on whether to approve the management program. Certain factors will contribute to lengthening or shortening this time table; these factors are discussed in OCRM guidance on the review/approval process. The OCRM guidance also recommends a format for the program document submitted to the Assistant Administrator for review and approval.

Subpart H—Amendments to and Termination of Approved Management Programs

SOURCE: 61 FR 33815, June 28, 1996, unless otherwise noted.

§ 923.80 General.

(a) This subpart establishes the criteria and procedures by which amendments, modifications or other changes to approved management programs may be made. This subpart also establishes the conditions and procedures by which administrative funding may be terminated for programmatic reasons.

(b) Any coastal state may amend or modify a management program which it has submitted and which has been approved by the Assistant Administrator under this subsection, subject to the conditions provided for subsection 306(e) of the Act.

(c) As required by subsection 312(d) of the Act, the Assistant Administrator shall withdraw approval of the management program of any coastal state and shall withdraw financial assistance available to that state under this title as well as any unexpended portion of such assistance, if the Assistant Administrator determines that the coastal state has failed to take the actions referred to in subsection 312(c)(2)(A) of the Act.

(d) For purposes of this subpart, amendments are defined as substantial changes in one or more of the following coastal management program areas:

- (1) Uses subject to management;
- (2) Special management areas;
- (3) Boundaries;
- (4) Authorities and organization; and
- (5) Coordination, public involvement and the national interest.

(e) OCRM will provide guidance on program changes. The five program management areas identified in § 923.80(d) are also discussed in subpart B through F of this part.

§ 923.81 Requests for amendments.

(a) Requests for amendments shall be submitted to the Assistant Administrator by the Governor of a coastal state with an approved management program or by the head of the state agency (designated pursuant to subsection 306(d)(6) of the Act) if the Governor had delegated this responsibility and such delegation is part of the approved management program. Whenever possible, requests should be submitted prior to final State action to implement the amendment. At least one public hearing must be held on the

proposed amendment, pursuant to subsection 306(d)(4) of the Act. Pursuant to section 311 of the Act, notice of such public hearing(s) must be announced at least 30 days prior to the hearing date. At the time of the announcement, relevant agency materials pertinent to the hearing must be made available to the public.

(b) Amendment requests must contain the following:

(1) A description of the proposed change, including specific pages and text of the management program that will be changed if the amendment is approved by the Assistant Administrator. This description shall also identify any enforceable policies to be added to the management program;

(2) An explanation of why the change is necessary and appropriate, including a discussion of the following factors, as relevant; changes in coastal zone needs, problems, issues, or priorities. This discussion also shall identify which findings, if any made by the Assistant Administrator in approving the management program may need to be modified if the amendment is approved;

(3) A copy of public notice(s) announcing the public hearing(s) on the proposed amendments;

(4) A summary of the hearing(s) comments:

(i) Where OCRM is providing Federal agency review concurrent with the notice period for the State's public hearing, this summary of hearing(s) comments may be submitted to the Assistant Administrator within 60 days after the hearing;

(ii) Where hearing(s) summaries are submitted as a supplement to the amendment request (as in the case described in paragraph (b)(1) of this section), the Assistant Administrator will not take final action to approve or disapprove an amendment request until the hearing(s) summaries have been received and reviewed; and

(5) Documentation of opportunities provided relevant Federal, State, regional and local agencies, port authorities and other interested public and private parties to participate in the development and approval at the State level of the proposed amendment.

[61 FR 33815, June 28, 1996; 61 FR 36965, July 15, 1996]

§ 923.82 Amendment review/approval procedures.

(a) Upon submission by a State of its amendment request, OCRM will review the request to determine preliminarily if the management program, if changed according to the amendment request, still will constitute an approvable program. In making this determination, OCRM will determine whether the state has satisfied the applicable program approvability criteria of subsection 306(d) of the Act.

(b) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would no longer constitute an approvable program, or if any of the procedural requirements of section 306(d) of the Act have not been met, the Assistant Administrator shall advise the state in writing of the reasons why the amendment request cannot be considered.

(c) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would still constitute an approvable program and that the procedural requirements of section 306(d) of the Act have been met, the Assistant Administrator will then determine, pursuant to the National Environmental Policy Act of 1969, as amended, whether an environmental impact statement (EIS) is required.

§ 923.83 Mediation of amendments.

(a) Section 307(h)(2) of the Act provides for mediation of "serious disagreements" between a Federal agency and a coastal State during administration of an approved management program. Accordingly mediation is available to states or federal agencies when a serious disagreement regarding a proposed amendment arises.

(b) Mediation may be requested by a Governor or head of a state agency designated pursuant to subsection 306(d)(6) or by the head of a relevant federal agency. Mediation is a voluntary process in which the Secretary of Commerce attempts to mediate between disagreeing parties over major problems. (See § 923.54).

§ 923.84 Routine program changes.

(a) Further detailing of a State's program that is the result of implementing provisions approved as part of a State's approved management program, that does not result in the type of action described in § 923.80(d), will be considered a routine program change. While a routine change is not subject to the amendment procedures contained in §§ 923.81 through 923.82, it is subject to mediation provisions of § 923.83.

(b)(1) States must notify OCRM of routine program change actions in order that OCRM may review the action to ensure it does not constitute an amendment. The state notification shall identify any enforceable policies to be added to the management program, and explain why the program change will not result in the type of action described in § 923.80(d).

(i) States have the option of notifying OCRM of routine changes on a case-by-case basis, periodically throughout the year, or annually.

(ii) In determining when and how often to notify OCRM of such actions, States should be aware that Federal consistency will apply only after the notice required by paragraph (b)(4) of this section has been provided.

(2) Concurrent with notifying OCRM, States must provide notice to the general public and affected parties, including local governments, other State agencies and regional offices of relevant federal agencies of the notification given OCRM.

(i) This notice must:

(A) Describe the nature of the routine program change and identify any enforceable policies to be added to the management program if the State's request is approved;

(B) Indicate that the State considers it to be a routine program change and has requested OCRM's concurrence in that determination; and

(C) Indicate that any comments on whether or not the action does or does not constitute a routine program change may be submitted to OCRM within 3 weeks of the date of issuance of the notice.

(ii) Where relevant Federal agencies do not maintain regional offices, notice

must be provided to the headquarters office.

(3) Within 4 weeks of receipt of notice from a State, OCRM will inform the State whether it concurs that the action constitutes a routine program change. Failure to notify a State in writing within 4 weeks of receipt of notice shall be considered concurrence.

(4) Where OCRM concurs, a State then must provide notice of this fact to the general public and affected parties, including local governments, other State agencies and relevant Federal agencies.

(i) This notice must:

(A) Indicate the date on which the State received concurrence from OCRM that the action constitutes a routine program change;

(B) Reference the earlier notice (required in paragraph (b)(2) of this section) for a description of the content of the action; and

(C) Indicate if Federal consistency applies as of the date of the notice called for in this paragraph.

(ii) Federal consistency shall not be required until this notice has been provided.

(5) Where OCRM does not concur, a State will be advised to:

(i) submit the action as an amendment, subject to the provisions of §§ 923.81 through 923.82; or

(ii) resubmit the routine program change with additional information requested by OCRM concerning how the program will be changed as a result of the action.

[61 FR 33815, June 28, 1996; 61 FR 36965, July 15, 1996]

Subpart I—Applications for Program Development or Implementation Grants

SOURCE: 61 FR 33816, June 28, 1996, unless otherwise noted.

§ 923.90 General.

(a) The primary purpose of development grants made pursuant to section 305 of the Act is to assist coastal States in the development of comprehensive coastal management programs that can be approved by the Assistant Administrator. The primary

purpose of implementation grants made pursuant to section 306 of the Act is to assist coastal States in implementing coastal management programs following their approval, including especially administrative actions to implement enforceable program policies, authorities and other management techniques. The purpose of the guidelines in this subpart is to define the procedures by which grantees apply for and administer grants under the Act. These guidelines shall be used and interpreted in conjunction with applicable Federal laws and policies, Department of Commerce grants management regulations, policies and procedures, and any other applicable directives from the NOAA Grants Management Division and OCRM program offices.

(b) Grants awarded to a State must be expended for the development or administration, as appropriate, of a management program that meets the requirements of the Act, and in accordance with the terms of the award.

(c) All applications for funding under section 305 or 306 of the Act, including proposed work programs, funding priorities and allocations are subject to the discretion of the Assistant Administrator.

(d) For purposes of this subpart, the term *development grant* means a grant awarded pursuant to subsection 305(a) of the Act. "Administrative grant" and "implementation grant" are used interchangeably and mean grants awarded pursuant to subsection 306(a) of the Act.

(e) All application and preapplication forms are to be requested from and submitted to: National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, Coastal Programs Division, 1305 East-West Highway (N/ORM3), Silver Spring, MD 20910.

§ 923.91 State responsibility.

(a) Applications for program grants are required to be submitted by the Governor of a participating state or by the head of the state entity designated by the Governor pursuant to subsection 306(d)(6) of the Act.

(b) In the case of a section 305 grant, the application must designate a single

state agency or entity to receive development grants and to be responsible for development of the State's coastal management program. The designee need not be that entity designated by the Governor pursuant to subsection 306(d)(6) of the Act as a single agency to receive and administer implementation grants.

(c) One State application will cover all program activities for which program development or implementation funds under this Act and matching State funds are provided, irrespective of whether these activities will be carried out by State agencies, areawide or regional agencies, local governments, or interstate entities.

(d) The designated state entity shall be fiscally responsible for all expenditures made under the grant, including expenditures by subgrantees and contractors.

§ 923.92 Allocation.

(a) Subsections 303(4), 306(d)(3)(B) and 306(d)(10) of the Act foster intergovernmental cooperation in that a state, in accordance with its coastal zone management program, may allocate some of its coastal zone management responsibilities to several agencies, including local governments, areawide agencies, regional agencies and interstate agencies. Such allocations provide for continuing consultation and more effective participation and cooperation among state and local governments, interstate, regional and areawide agencies.

(b) A State may allocate a portion or portions of its grant to other State agencies, local governments, areawide or regional agencies, interstate entities, or Indian tribes, if the work to result from such allocation(s) will contribute to the effective development or implementation of the State's management program.

(1) Local governments. Should a State desire to allocate a portion of its grant to a local government, units of general-purpose local government are preferred over special-purpose units of local government. Where a State will be relying on direct State controls as provided for in subsection 306(d)(11)(B) of the Act, pass-throughs to local governments for local planning, regulatory

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or administrative efforts under a section 306 grant cannot be made, unless they are subject to adequate State overview and are part of the approved management program. Where the approved management program provides for other specified local activities or one-time projects, again subject to adequate State overview, then a portion of administrative grant funds may be allocated to local governments.

(2) Indian Tribes. Tribal participation in coastal management efforts may be supported and encouraged through a State's program. Individual tribes or groups of tribes may be considered regional agencies and may be allocated a portion of a State's grant for the development of independent tribal coastal management programs or the implementation of specific management projects provided that:

(i) The State certifies that such tribal programs or projects are compatible with its approved coastal management policies; and

(ii) On excluded tribal lands, the State demonstrates that the tribal program or project would or could directly affect the State's coastal zone.

§ 923.93 Eligible implementation costs.

(a) Costs claimed must be beneficial and necessary to the objectives of the grant project. As used herein the terms cost and grant project pertain to both the Federal and the matching share. Allowability of costs will be determined in accordance with the provisions of OMB Circular A-87: Cost Principles for State, Local and Indian Tribal Governments.

(b) Federal funds awarded pursuant to section 306 of the Act may not be used for land acquisition purposes and may not be used for construction purposes. These costs may be eligible, however, pursuant to section 306A of the Act.

(c) The primary purpose for which implementation funds, pursuant to section 306 of the Act, are to be used is to assure effective implementation and administration of the management program, including especially administrative actions to implement enforceable program policies, authorities and other management techniques. Implementa-

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tion activities should focus on achieving the policies of the Act.

(d) Section 306 funding in support of any of these purposes may be used to fund, among other things:

(1) Personnel costs,

(2) Supplies and overhead,

(3) Equipment, and

(4) Feasibility studies and preliminary engineering reports.

(e) States are encouraged to coordinate administrative funding requests with funding possibilities pursuant to sections 306A, 308, 309, 310 and 315 of the Act, as well as with funding possibilities pursuant to section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990. When in doubt as to the appropriate section of the Act under which to request funding, States should consult with OCRM. States should consult with OCRM on technical aspects of consolidating requests into a single application.

§ 923.94 Application for program development or implementation grants.

(a) OMB Standard Form 424 (4-92) and the NOAA Application Kit for Federal Assistance constitute the formal application. An original and two (2) copies must be submitted 45 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with E.O. 12372 requirements including the resolution of any problems raised by the proposed project. The administrative requirements for grants and subawards, under this program, to state, local and Indian tribal governments are set out in 15 CFR part 24. The administrative requirements for other entities are prescribed under OMB Circular A-110: Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

(b) Costs claimed as charges to the grant project must be beneficial and necessary to the objectives of the grant project. As used herein, the terms "cost" and "grant project" pertain to both the Federal amount awarded and the non-federal matching share. Allowability of costs will be determined in accordance with the provisions of OMB Circular A-87: Cost Principles for

State, Local and Indian Tribal Governments. Eligible implementation costs also shall be determined in accordance with §923.93 of these regulations. Allowability of costs for non-profit organizations will be determined in accordance with OMB Circular A-122: Cost Principles for Non-Profit Organizations. Allowability of costs for institutions of higher education will be determined in accordance with OMB Circular A-21: Cost Principles for Educational Institutions.

(c) In the grant application, the applicant must describe clearly and briefly the activities that will be undertaken with grant funds in support of implementation and administration of the management program. This description must include:

(1) An identification of those elements of the approved management program that are to be supported in whole or in part by the Federal and the matching share,

(2) A clear statement of the major tasks required to implement each element,

(3) For each task the application must:

(i) Specify how it will be accomplished and by whom;

(ii) Identify any sub-awardees (other State agencies, local governments, individuals, etc.) that will be allocated responsibility for carrying out all or portions of the task, and indicate the estimated cost of the sub-awards for each allocation; and

(iii) Indicate the estimated total cost.

(4) The sum of all task costs in paragraph (c)(3) of this section should equal the total estimated grant project cost.

(d) For program development grants, when evaluating whether a State is making satisfactory progress toward completion of an approvable management program which is necessary to establish eligibility for subsequent grants, the Assistant Administrator will consider:

(1) The progress made toward meeting management program goals and objectives;

(2) The progress demonstrated in completing the past year's work program;

(3) The cumulative progress toward meeting the requirements for preliminary or final approval of a coastal management program;

(4) The applicability of the proposed work program to fulfillment of the requirements for final approval; and

(5) The effectiveness of mechanisms for insuring public participation and consultation with affected Federal, State, regional and local agencies in program development.

§ 923.95 Approval of applications.

(a) The application for a grant by any coastal State which complies with the policies and requirements of the Act and these guidelines shall be approved by the NOAA Grants Officer, upon recommendation by the Assistant Administrator, assuming available funding.

(b) Should an application be found deficient, the Assistant Administrator will notify the applicant in detail of any deficiency when an application fails to conform to the requirements of the Act or these regulations. Conferences may be held on these matters. Corrections or adjustments to the application will provide the basis for resubmittal of the application for further consideration and review.

(c) The NOAA Grants Officer, upon recommendation by the Assistant Administrator, may waive appropriate administrative requirements contained in this subpart, upon finding of extenuating circumstances relating to applications for assistance.

§ 923.96 Grant amendments.

(a) Actions that require an amendment to a grant award such as a request for additional Federal funds, changes in the amount of the non-Federal share, changes in the approved project budget as specified in 15 CFR part 24, or extension of the grant period must be submitted to the Assistant Administrator and approved in writing by the NOAA Grants Officer prior to initiation of the contemplated change. Such requests should be submitted at least 30 days prior to the proposed effective date of the change and, if appropriate, accompanied by evidence of compliance with E.O. 12372 requirements.

(b) NOAA shall acknowledge receipt of the grantee's request within the ten (10) working days of receipt of the correspondence. This notification shall indicate NOAA's decision regarding the request; or indicate a time-frame within which a decision will be made.

Subpart J—Allocation of Section 306 Program Administration Grants

§ 923.110 Allocation formula.

(a) As required by subsection 306(a), 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.

(3) As required by subsection 306(b), the Secretary may make a grant to a coastal state under subsection 306(a) only if the Secretary finds that the management program of the coastal state meets all applicable requirements of this title and has been approved in accordance with subsection 306(d).

(4) As required by subsection 306(c), grants under this section shall be allocated to coastal states under 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.

(b) *Minimum/maximum allocations.* The Assistant Administrator shall establish minimum and maximum state alloca-

tions annually, after consultation with the coastal states.

(c) *Allocation formula factors and weighting.* Each State eligible to receive a financial assistance award shall be allocated an amount of the total available Federal funding based on:

(1) A minimum share (established by the Assistant Administrator) of the total funding available for allocation to eligible State coastal management programs, plus

(2) A proportionate share of the remainder to be divided as follows:

(i) Sixty percent will be allocated based on each eligible State's proportionate share of the length of tidal shoreline and/or Great Lake shoreline mileage of all participating States based on the most recently available data from or accepted by the National Ocean Survey, and

(ii) Forty percent will be allocated on each eligible State's proportionate share of the aggregate population of all coastal counties contained in whole or in part within the designated coastal boundary of all eligible State coastal programs based on official data or the most recent U.S. census.

(3) Should any State's base allocation exceed the maximum established by the Assistant Administrator, the excess amount shall be subtracted from the established maximum and redistributed proportionately among those eligible States with allocations not exceeding the established maximum.

(d) *Use of the allocation formula.* The allocation formula shall be used to establish base level allocations for each State coastal management program eligible to receive Federal funding.

(e) *Adjustment for phase down of Federal funding.* The Assistant Administrator may adjust base level allocations as necessary to implement a phase down of Federal financial support. Any such adjustment shall be implemented in a manner which gives some priority to recently approved State coastal management programs. Options for implementation of a phase down will be submitted to the States for review and comment.

(f) *Calculation of financial assistance award levels.* Actual financial assistance award levels will be set from base level allocations, any adjustments

under paragraph (e) above, and in accordance with the provisions of Section 312(c) and (d).

(Secs. 306 and 317 of the Coastal Zone Management Act)

[47 FR 21021, May 17, 1982, as amended at 59 FR 27985, May 31, 1994. Redesignated at 61 FR 33818, June 28, 1996]

Subpart K—Coastal Zone Enhancement Grants Program

AUTHORITY: Section 309 of the Coastal Zone Management Act, as amended (16 U.S.C. 1456).

SOURCE: 57 FR 31116, July 14, 1992. Redesignated at 61 FR 33818, June 28, 1996.

§ 923.121 General.

(a) The purpose of this subpart is to set forth the criteria and procedures for awarding coastal zone enhancement grants under section 309 of the Coastal Zone Management Act, as amended (16 U.S.C. 1456). This subpart describes the criteria States must address in developing and implementing coastal zone enhancement objectives, the procedures for allocating section 309 funds between weighted formula and individual review of proposals of special merit, how the amount of section 309 weighted formula grants will be determined, the criteria NOAA will use to evaluate and rank individual proposals of special merit, and the procedures for applying for financial assistance under section 309. This subpart also allows use of section 309 funds for implementation of program changes for up to 2 fiscal years following the fiscal year in which a program change was approved.

(b) A coastal State with an approved program under section 306 of the Coastal Zone Management Act (CZMA), as amended (16 U.S.C. 1455), is eligible for grants under this subpart if the State meets the following requirements:

(1) The State must have a NOAA approved Assessment and Strategy, submitted in accordance with NOAA guidance and 923.128;

(2) The State must be found to be adhering to its approved program and must be making satisfactory progress in performing grant tasks under section 306, as indicated by not being under interim or final sanctions; and

(3) The State must be making satisfactory progress in carrying out its previous year's award under section 309.

(c) If the Assistant Administrator finds that a State is not undertaking the actions committed to under the terms of a section 309 grant, the Assistant Administrator shall suspend the State's eligibility for future funding under this section for at least one year.

(d) A State's eligibility for future funding under this section will be restored after the State demonstrates, to the satisfaction of the Assistant Administrator, that it will conform with the requirements under this part.

(e) Funds awarded to States under section 309 are for the enhancement of existing coastal zone management programs. A State which reduces overall State financial support for its CZM program as a result of having been awarded section 309 funding may lose eligibility for funding under section 309 in subsequent years.

(f) All applications for funding under section 309 of the CZMA, as amended, including proposed work programs, funding priorities and funding awards, are subject to the administrative discretion of the Assistant Administrator and any additional NOAA guidance.

(g) Grants awarded under section 309 may be used:

(1) To support up to 100 percent of the allowable costs of approved projects under section 309 of the CZMA, as amended; or

(2) To implement program changes approved by the Secretary for up to two fiscal years following the fiscal year in which a program change was approved.

(h) All application forms are to be requested from and submitted to: National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, Coastal Programs Division, 1305 East-West Highway (N/ORM3), Silver Spring, MD 20910.

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996; 62 FR 12541, Mar. 17, 1997]

§ 923.122 Objectives.

(a) The objective of assistance provided under this part is to encourage

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each State with a federally-approved coastal management program to continually improve its program in specified areas of national importance. The Secretary is authorized to make grants to a coastal State for the development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives.

(b) As required by section 309(a) of the Act, for purposes of this part, 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

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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.

[57 FR 31116, July 14, 1992. Redesignated at 61 FR 33818, June 28, 1996, as amended at 62 FR 12541, Mar. 17, 1997]

§ 923.123 Definitions.

(a) *Program change* means "routine program change" as defined in 15 CFR 923.84 and "amendment" as defined in 15 CFR 923.80, and includes the following:

(1) A change to coastal zone boundaries that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(2) New or revised authorities, including statutes, regulations, enforceable policies, administrative decisions, executive orders, and memoranda of agreement/understanding, that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(3) New or revised local coastal programs and implementing ordinances that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(4) New or revised coastal land acquisition, management and restoration programs that improve a State's ability to attain one or more of the coastal zone enhancement objectives.

(5) New or revised Special Area Management Plans or plans for Areas of Particular Concern (APC), including enforceable policies and other necessary implementing mechanisms or criteria and procedures for designating and managing APCs that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(6) New or revised guidelines, procedures and policy documents which are formally adopted by a State and provide specific interpretations of enforceable CZM policies to applicants, local governments and other agencies that will result in meaningful improvements in coastal resource management and that will improve a State's ability to attain one or more of the coastal zone enhancement objectives.

(b) *Assessment* means a public document, prepared by a State and approved by NOAA in accordance with guidance on Assessments and Strategies issued by NOAA (hereafter referred to as the guidance¹), that identifies the State's priority needs for improvement with regard to the coastal zone enhancement objectives. The Assessment determines the extent to which problems and opportunities exist with regard to each of the coastal zone enhancement objectives and the effectiveness of efforts to address those problems. The Assessment includes the factual basis for NOAA and the States to determine the priority needs for improvement of management programs in accordance with this part.

(c) *Strategy* means a comprehensive, multi-year statement of goals and the methods for their attainment, prepared by a State in accordance with NOAA guidance and these regulations and approved by NOAA, that sets forth the specific program changes the State will seek to achieve in one or more of the coastal zone enhancement objectives. The Strategy will address only the priority needs for improvement identified by the Assistant Administrator, after careful consultation with the State. The strategy will include specific task descriptions, cost estimates and milestones, as appropriate.

(d) *Weighted Formula Project* means a project or task for which NOAA awards funding based on the criteria at § 923.125(a). Such tasks are essential to meeting the milestones and objectives of each state's strategy. As funding for weighted formula tasks is more predictable than for projects of special merit, basic functions necessary to achieve the objectives of the strategy, such as hiring of full time staff should be included in weighted formula tasks.

(e) *Projects of Special Merit (PSM)* means a project or task that NOAA will rank and evaluate based on criteria at § 923.125(b). As PSM funds will be awarded competitively on an annual basis, these projects should further the objectives of the strategy but may not

be essential to meeting specific benchmarks in the strategy. PSM projects should not be dependent on long term levels of funding to succeed.

(f) *Fiscal needs* means the extent to which a State must rely solely on Federal funds to complete a project under section 309 because State funds are not otherwise available.

(g) *Technical needs* means the extent to which a State lacks trained personnel or equipment or access to trained personnel or equipment to complete a project under section 309.

(h) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, or the NOAA Official responsible for directing the Federal Coastal Zone Management Program.

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, 33819, June 28, 1996]

§ 923.124 Allocation of section 309 funds.

(a)(1) As required by section 309(e) of the Act, a State will not be required to contribute any portion of the cost of any proposal for which funding is awarded under this section.

(2) As required by section 309(f) of the Act, beginning in fiscal year 1991, not less than 10 percent and not more than 20 percent of the amounts appropriated to implement sections 306 and 306A of the Act shall be retained by the Secretary for use in implementing this section, up to a maximum of \$10,000,000 annually.

(b) The Assistant Administrator will annually determine the amount of funds to be devoted to section 309, which shall be not less than 10 percent nor more than 20 percent of the total amount appropriated under section 318(a)(2) of the Coastal Zone Management Act, as amended (16 U.S.C. 1464), taking into account the total amount appropriated under section 318(a)(2). The total amount of funds to be devoted to section 309 shall not exceed \$10,000,000 annually.

(c) Of the total amount determined in paragraph (b) of this section, the Assistant Administrator will annually determine the proportion to be awarded to eligible coastal States by weighted formula and the proportion to be awarded to eligible coastal States for

¹NOAA guidance is available from the Office of Ocean and Coastal Resource Management, Coastal Programs Division, 1305 East-West Highway (N/ORM3), Silver Spring, MD 20910.

projects of special merit. This determination will take into account the total amount appropriated under section 318(a)(2) of the CZMA, as amended.

(d) *Weighted formula funding.* (1)(i) A weighted formula funding target will be determined for each State that meets the eligibility requirements at § 923.121(b). The weighted formula funding target will be the State base allocation determined by the application of the formula at § 923.110(c), multiplied by a weighting factor derived from the Assistant Administrator's evaluation and ranking of the quality of the State's Strategy (as described in (d)(1) of this section), as supported by the State's Assessment.

(ii) The application of the weighting factor may result in a weighted formula funding target that is higher or lower than the State's base allocation. Each State's weighted formula funding target will be adjusted to reflect the funds available.

(iii) The Assistant Administrator may establish minimum and maximum weighted formula funding targets under § 923.124(d).

(2) The Assistant Administrator will determine each State's weighting factor based on an evaluation and ranking of the State's Strategy that takes into consideration the following:

(i) The scope and value of the proposed program change(s) contained in the Strategy in terms of improved coastal resource management;

(ii) The technical merits of the Strategy in terms of project design and cost effectiveness;

(iii) The likelihood of success that the State will have in attaining the proposed program change(s), including an evaluation of the State's past performance and support for the Strategy; and,

(iv) The fiscal and technical needs of the State.

(3) Each State will be notified individually of its weighting factor, the reasons for assigning this weighting factor, and any changes thereto. In consultation with the Assistant Administrator, a State may choose to make substantive changes to its approved Assessment and Strategy to improve its weighting factor, in accordance with the procedures at § 923.128.

(e) *Funding for projects of special merit.* The Assistant Administrator will award the remaining section 309 funds, which are not awarded under § 923.124(d), to States based on an annual evaluation and ranking of projects of special merit, as defined in § 923.123(d). Funding of projects of special merit will be limited to the highest ranked projects based on the criteria at § 923.125(b).

(f) The Assistant Administrator will notify each State annually of the total amount of funds to be devoted to section 309 pursuant to § 923.124(b), the proportion to be awarded by weighted formula pursuant to § 923.124(c), the State's weighted formula funding target pursuant to § 923.124(d), and the total amount of funds available for funding for projects of special merit pursuant to § 923.124(e).

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, 33819, June 28, 1996]

§ 923.125 Criteria for section 309 project selection.

(a) *Section 309 criteria for weighted formula funding.* (1) For those projects that will be funded by weighted formula, the Assistant Administrator will determine that:

(i) The project is consistent with the State's approved Assessment and Strategy and advances the attainment of the objectives of the Strategy;

(ii) Costs are reasonable and necessary to achieve the objectives of both the project and the Strategy. Allowability of costs will be determined in accordance with the provisions of OMB Circular A-87: Cost Principles for State and Local Governments

(iii) The project is technically sound;

(iv) The State has an effective plan to ensure proper and efficient administration of the project; and

(v) The State has submitted the required project information as specified in § 923.126(b)(1).

(2) In reviewing projects that will be considered under the weighted formula, the Assistant Administrator will 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.

(b) *Section 309 criteria for evaluation and ranking of projects of special merit.*

(1) After determining those projects that will be funded under weighted formula funding, the Assistant Administrator will evaluate and rank State funding proposals of special merit which may be funded under 15 CFR 932.4(e).

(2) In addition to meeting the criteria in paragraph (a)(1) of this section, proposals will be evaluated and ranked under this subsection using the following criteria:

(i) *Merit.* (90 points) The Assistant Administrator will review each application to determine the following:

(A) Degree to which the project significantly advances the program improvements and leads to a program change identified in the State's Strategy. In making this determination, the Assistant Administrator shall consider the weighting factor derived from the evaluation of the quality of the State's Strategy, as supported by the State's Assessment, relative to the weighting factors assigned to other eligible States;

(B) Overall benefit of the project to the public relative to the project's cost;

(C) Innovativeness of the proposal;

(D) Transferability of the results to problems in other coastal States; and

(E) The State's past performance under section 309.

(ii) *Fiscal needs.* (5 points) The Assistant Administrator will review each application to determine the "fiscal needs" of a State as defined in § 923.123(e).

(iii) *Technical needs.* (5 points) The Assistant Administrator will review each application to determine the "technical needs" of a State as defined in § 923.123(f).

(c) Section 309 funds not awarded to States under § 923.125(a) will be awarded to States under § 923.125(b).

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, 33819, June 28, 1996]

§ 923.126 Pre-application procedures.

(a) *Pre-submission consultation.* Each State is strongly encouraged to consult with the Assistant Administrator prior to the submission of its draft proposal (see § 923.126(b)) and formal application for section 309 funding. The purpose of the consultation will be to determine

whether the proposed projects are consistent with the purposes and objectives of section 309 and with the State's approved Strategy, to resolve any questions concerning eligibility for funding under section 309 (see § 923.121(b)), and to discuss preliminarily the State's recommendations regarding which projects should be funded by weighted formula and which projects should be individually evaluated and ranked as projects of special merit.

(b) *Draft proposals.* States shall submit draft proposals for section 309 funding annually on a schedule to be determined by the Assistant Administrator. These draft proposals shall contain all of the information needed for final application, including the following:

(1) A clear and concise description of the projects that the State proposes to be funded under section 309. This description shall explain the relationship of each proposed project to the State's approved Assessment and Strategy and how each proposed project will accomplish all or part of a program change that the State has identified in its Strategy. In addition, each project description shall include:

(i) A specific timetable for completion of each project;

(ii) A description of the activities that will be undertaken to complete each project and by whom;

(iii) The identification of any sub-awardees, pursuant to § 923.94(d)(3)(ii); and

(iv) The estimated total cost for each project.

(2) Section 309 funds may be used for any of the following allowable uses which support the attainment of a program change:

(i) Personnel costs;

(ii) Supplies and overhead;

(iii) Travel;

(iv) Equipment (pursuant to 15 CFR part 24);

(v) Projects, studies and reports; and

(vi) Contractual costs including sub-contracts, subawards, personal service contracts with individuals, memoranda of agreement/understanding, and other forms of passthrough funding for the purpose of carrying out the provisions of section 309.

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(3) Funds may not be used for land acquisition or low cost construction projects.

(4) The State may recommend which projects should be funded by weighted formula under § 923.125(a) and which projects should be funded as projects of special merit under § 923.125(b).

(5) The draft proposal shall contain documentation of fiscal needs and technical needs, if any. This documentation shall include:

(i) For fiscal needs, information on the current State budget (surplus or deficit), the budget of the applying agency (increase or decrease over previous fiscal year), future budget projections, and what efforts have been made by the applying agency, if any, to secure additional State funds from the Legislature and/or from off-budget sources such as user fees; and

(ii) For technical needs, identification of the technical knowledge, skills and equipment that are needed to carry out proposed projects and that are not available to the applying agency, and what efforts the applying agency has made, if any, to obtain the trained personnel and equipment it needs (for example, through agreements with other State agencies).

(6) The Assistant Administrator may request additional documentation of fiscal and technical needs.

(7) Following the first year of funding under section 309, the draft proposal shall describe how the past year's work contributed to the attainment of a program change as defined in § 923.123(a) in one or more of the coastal zone enhancement objectives.

(8) If the sum of estimated project costs for projects the State recommends be funded under § 923.125(a) exceeds the State's weighted formula funding target pursuant to § 923.124(d), NOAA shall determine, in consultation with the State, which projects are appropriate for funding with weighted formula funds.

(c) *Review of draft proposals.* (1) The Assistant Administrator will make the final determination of which projects should be funded by weighted formula and which projects should be funded as projects of special merit, taking into account the State's recommendations.

(2) The Assistant Administrator may seek advice from technical experts in the fields of the coastal zone enhancement objectives as to the technical soundness and overall merit of section 309 project proposals.

(3) The Assistant Administrator will make the final determinations on project selection using the criteria at § 923.125(a) and evaluate and rank projects of special merit based on the criteria at § 923.125(b).

(4) If the Assistant Administrator determines that a State's project proposal(s) for weighted formula funding fails to meet the criteria at § 923.125(a), the Assistant Administrator may either reduce or deny the amount available to the State under § 923.124(d).

(5) Each state will be notified of the results of the review of draft proposals, as described in paragraphs (c) (3) and (4) of this section, in time to include approved section 309 projects in their applications for financial assistance pursuant to subpart I of 15 CFR part 923.

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, 33819, June 28, 1996]

§ 923.127 Formal application for financial assistance and application review and approval procedures.

(a) Applications for financial assistance under this part must be developed and submitted on the same schedule as applications for financial assistance under subpart I of 15 CFR part 923.

(b) Applications for financial assistance under this part must be in a separate section of the application and must contain the information specified at § 923.126(b)(1) for each approved section 309 project.

(c) Applications will be reviewed for conformance with the regulations at subpart I of 15 CFR part 923.

(d) States will be notified of their section 309 awards at the time they are notified of their section 306/306A awards.

(e) If the Assistant Administrator seeks technical advice pursuant to § 923.126(c)(2), anonymous copies of the project reviews provided to the Assistant Administrator on projects proposed by a State will be made available to

the State upon request after October 1 of each year.

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, 33819, June 28, 1996]

§ 923.128 Revisions to assessments and strategies.

(a) A State, in consultation with the Assistant Administrator, may propose to revise its approved Strategy. Revision(s) to an approved Strategy must be submitted to and approved by the Assistant Administrator prior to the initiation of the contemplated change.

(b) The Assistant Administrator will review such proposed revision(s) and determine if public review and comment is required. This determination will be based on the extent to which the proposed revision(s) changes the original scope of the State's Strategy.

(c) If the Assistant Administrator determines that public review and comment is necessary, he/she will notify the State of his/her determination. The State will be required to provide public review and comment in accordance with NOAA guidance.

(d) A State that wants to revise substantively the program changes identified in its approved Strategy or to address new enhancement objectives not identified as a priority in the original Assessment, also must revise the Assessment through a public process as described in NOAA's guidance.

(e) The Assistant Administrator, in consultation with the State, may reduce a state's weighting factor assigned to its Strategy as a result of failure to meet the milestones in its Strategy.

(f) The Assistant Administrator will notify the State of his/her decision to approve or deny the proposed revision(s) to the Strategy, and any change in the weighting factor assigned to its Strategy.

Subpart L—Review of Performance

AUTHORITY: Section 312 of the Coastal Zone Management Act, as amended (16 U.S.C. 1458).

§ 923.131 General.

This subpart sets forth the requirements for review of approved State coastal zone management (CZM) pro-

grams pursuant to section 312 of the Act (16 U.S.C. 1458). This subpart defines "continuing review" and other important terms, and sets forth the procedures for:

(a) Conducting continuing reviews of approved State CZM programs;

(b) Providing for public participation;

(c) Invoking interim sanctions for non-adherence to an approved coastal zone management program or a portion of such program; and

(d) Withdrawing program approval and financial assistance.

[57 FR 31113, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996]

§ 923.132 Definitions.

(a) *Continuing review* means monitoring State performance on an ongoing basis. As part of the continuing review, evaluations of approved CZM programs will be conducted and written findings will be produced at least once every three years.

(b) *Adherence* means to comply with the approved CZM program and financial assistance award or work program.

(c) *Interim sanction* means suspension and redirection of any portion of financial assistance extended to any coastal State under this title, if the Secretary determines that the coastal State is failing to adhere to the management program or a State plan developed to manage a national estuarine reserve, or a portion of the program or plan approved by the Secretary, or the terms of any grant or cooperative agreement funded under this title.

(d) *Approved CZM program* means those elements of the program approved by the Secretary, under 15 CFR part 923 (Development and Approval Provisions), including any changes to those elements made by approved amendments and routine program implementation.

(e) *Financial assistance award* means a legal instrument that creates a relationship between the Federal government and another entity (recipient). The principal purpose of the award is the transfer of money or services in order to accomplish a public purpose authorized by Federal statute. The

term “financial assistance award” encompasses grants, loans, and cooperative agreements. The following elements constitute the award:

- (1) The work program described in the approved application;
- (2) The budget;
- (3) The standard terms and conditions of the award;
- (4) Any special award conditions included with the award;
- (5) The statutes and regulations under which the award is authorized; and
- (6) Applicable OMB cost principles and administrative requirements.

(f) *Work program* means a description of the tasks to be undertaken by a State for a given time period for the purpose of implementing and enforcing an approved CZM program. The work program is submitted as a part of a Federal financial assistance application, or separately in the absence of Federal financial assistance.

(g) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, or the NOAA Official responsible for directing the Federal Coastal Zone Management Program.

[47 FR 21021, May 17, 1982, as amended at 57 FR 31113, July 14, 1992. Redesignated at 61 FR 33818, June 28, 1996]

§923.133 Procedure for conducting continuing reviews of approved State CZM programs.

(a) As required by section 312(a), 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 303(2)(A) through (K), and adhered to the terms of any grant, loan, or cooperative agreement funded under this title (16 U.S.C. 1451-1464).

(b) *Continuing review procedures.* (1) Each State will submit a financial assistance application or work program, whichever is applicable, on a timetable negotiated with the Assistant Administrator, describing the tasks to be un-

dertaken by the State for the purpose of implementing and enforcing its approved CZM program.

(2) For the purpose of evaluation, the States will submit performance reports as specified in the Special Award Conditions, or, if the State is not receiving an award, as negotiated with the Assistant Administrator. The reports will address all areas identified in each State’s Performance Report Guidelines.

(3) The Assistant Administrator will collect information on the State CZM programs on a continuing basis. At the beginning of each evaluation, the Assistant Administrator will analyze available information, identify information gaps, and formulate any additional information needs that will be the subject of a supplemental information request to the State.

(4) The Assistant Administrator may conduct a site visit as a part of the evaluation.

(5) Draft findings of the evaluation will be transmitted to the State. The State will have a minimum of two weeks from receipt of the draft findings to review them and provide comments to the Assistant Administrator. This review time may be extended upon request from the State.

(6) Within two weeks from receipt of the draft findings, a State may request a meeting with the Assistant Administrator to discuss the draft findings and the State’s comments.

(7) The Assistant Administrator will issue final findings to the State CZM program manager and the head of the State CZM agency within 120 days of the last public meeting in the State. Copies of the final findings will be sent to all persons and organizations who participated in the evaluation. Participants may be asked to complete a card or sign-in sheet provided by the evaluation team indicating that they wish to receive the final findings. Notice of the availability of the final findings will also be published in the FEDERAL REGISTER.

(8) The final findings will contain a section entitled “Response to Written Comments.” This section will include a summary of all written comments received during the evaluation and NOAA’s response to the comments. If

appropriate, NOAA's response will indicate whether NOAA agrees or disagrees with the comment and how the comment has been addressed in the final findings.

(9) The Assistant Administrator may conduct issue or problem-specific evaluations between scheduled evaluations of approved State CZM programs. Such issue or problem-specific evaluations will be conducted to follow-up on potentially serious problems or issues identified in the most recent scheduled evaluation or to evaluate evidence of potentially serious problems or issues that may arise during day-to-day monitoring of State performance of grants tasks or other program implementation activities in the interim between scheduled evaluations. If the Assistant Administrator conducts an issue or problem specific evaluation, he/she will comply with the procedures and public participation requirements of §§ 923.133 and 923.134.

(c) Requirements for continuing review of approved State CZM programs.

(1) *Scope of continuing reviews.* The continuing review of a State's approved CZM program will include an evaluation of the extent to which the State has:

(i) Implemented and enforced the program approved by the Secretary;

(ii) Addressed the coastal management needs identified in section 303(2) (A)–(K) (16 U.S.C. 1452); and

(iii) Adhered to the terms of financial assistance awards.

(2) *Procedure for assessing adherence to the approved CZM program.* (i) In reviewing adherence of a State to its approved CZM program, the Assistant Administrator will evaluate all aspects of the "approved CZM program" as defined in § 923.132(d). The evaluation will examine the extent to which:

(A) The State is implementing and enforcing its approved CZM program;

(B) The management agency is effectively playing a leadership role in coastal issues, monitoring the actions of appropriate State and local agencies for compliance with the approved CZM program, and assuring the opportunity for full participation of all interested entities in CZM program implementation; and

(C) The management agency is effectively carrying out the provisions of Federal consistency.

(ii) The findings concerning the State's adherence to its approved CZM program will be used in negotiating the next financial assistance award or work program, whichever is applicable.

(3) Procedure for assessing how the State has addressed the coastal management needs identified in section 303(2) (A)–(K). The assessment of the extent to which the State has addressed the coastal management needs identified in section 303(2) (A)–(K) will occur as follows:

(i) The State, in its performance report, will provide the Assistant Administrator with a listing of all actions it is taking during the performance report period to address the national coastal management needs and how these actions relate to conditions in the State and the objectives and priorities in the State CZM program.

(ii) The Assistant Administrator, in the evaluation findings, will assess the extent to which the State's actions are targeted to meeting identified "needs" and the effectiveness of the actions in addressing those needs. Based on this assessment, the Assistant Administrator will make findings and recommendations of the extent to which each State is addressing the coastal management needs identified in section 303.

(iii) The findings concerning how the State has addressed the coastal management needs of section 303 will be used by the Assistant Administrator in negotiating the next financial assistance award.

(4) *Procedure for assessing adherence to the terms of financial assistance awards.*

(i) Adherence to financial and administrative terms of each financial assistance award will be determined by the NOAA Grants Office and the Department of Commerce Inspector General. Adherence to programmatic terms of each financial assistance award will be determined by the Assistant Administrator and the NOAA Grants Office. These determinations will be made in accordance with the requirements outlined in these regulations, the findings of a financial audit of the award, and the following criteria:

(A) Compliance with the statute, regulations, and applicable OMB circulars;

(B) Submission of required reports and satisfactory completion of work products as described in the approved application and within the timeframe specified;

(C) Compliance with Standard Terms and Conditions and Special Award Conditions within the specified timeframes;

(D) Use of award funds only for approved projects; and

(E) Substantive modification of approved projects only with the prior agreement of NOAA.

(ii) The findings concerning adherence to the terms of financial assistance awards will be used in negotiating the next financial assistance award, if any.

(d) Requirements for continuing review of State coastal energy impact programs.

(1) *Scope of continuing reviews.* The continuing review of State coastal energy impact programs will include the following elements:

(i) An evaluation of the State's adherence to the terms of financial assistance awards;

(ii) An evaluation of the relationship between coastal energy impact projects and the approved CZM program;

(iii) A description of energy activities in coastal areas and the impact resulting from these activities; and

(iv) An evaluation of the effectiveness of the coastal energy impact program in dealing with these consequences.

(2) *Procedure for assessing adherence to the terms of financial assistance awards.* See § 923.133(c)(4).

[47 FR 21021, May 17, 1982, as amended at 57 FR 31114, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996]

§ 923.134 Public participation.

(a) As required by section 312(b) of the Act, 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 pub-

lic. 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.

(b) *Requirements.* (1) The Assistant Administrator will publish a Notice of Intent to Evaluate in the FEDERAL REGISTER at least 45 days before the public meeting(s). The notice will include a Statement of the availability of the State's performance report and the supplemental information request.

(2) Each State will issue a notice of the public meeting(s) in its evaluation by placing a notice in the newspaper(s) of largest circulation in the coastal area where the meeting(s) is being held and by taking other reasonable action to communicate with persons and organizations known to be interested in the evaluation, such as sending a notice of the meeting(s) to persons on its mailing list and publishing a notice in its newsletter, at least 45 days before the date of the public meeting(s). The State will provide a copy of such notice to the Assistant Administrator. States are encouraged to republish the newspaper notice at least 15 days before the date of the public meeting(s). The State will inform the public that oral or written comments will be accepted and that attendance at the public meeting(s) is not necessary for submission of written comments.

(3) Notice of the availability of final findings will be published in the FEDERAL REGISTER. The notice will state that copies of the final findings will be available to the public upon written request. Copies of the final findings will be sent to persons and organizations who participated in the evaluation, in accordance with 923.133(b)(7).

[47 FR 21021, May 17, 1982, as amended at 57 FR 31114, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996]

§ 923.135 Enforcement.

(a) *Procedures and criteria for invoking and lifting interim sanctions.* (1) As required by section 312(c) of the Act:

(i) The Secretary may suspend payment of any portion of financial assistance extended to any coastal State, 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 315 of the Act (16 U.S.C. 1461), 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 title (16 U.S.C. 1451–1464).

(ii) Financial assistance may not be suspended under paragraph (a)(1)(i) of this section 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 paragraph (a)(1)(ii)(A) of this section.

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

(2) *Requirements.* (i) The Assistant Administrator will identify the need for interim sanctions through the continuing review process. The Assistant Administrator will use the criteria at § 923.135(a)(3) in determining when to invoke interim sanctions.

(ii) The Assistant Administrator will issue the State a preliminary finding of non-adherence with the approved CZM program, or a portion thereof, and/or with a term or terms of a grant or cooperative agreement. This preliminary finding of non-adherence may be contained in the draft evaluation findings, or in a preliminary notification letter to the State CZM program manager. If the preliminary finding is contained in a preliminary notification letter, the

Assistant Administrator will comply with the applicable public participation requirements of section 312(b) and NOAA's regulations at § 923.134. The draft evaluation findings or preliminary notification letter containing a preliminary finding of non-adherence will explain that if the finding of non-adherence is issued, the State is subject to suspension of financial assistance and, if the State fails to take the actions specified pursuant to section 312(c) and this part, to withdrawal of program approval and financial assistance.

(iii) The State will be given 30 days from receipt of the draft evaluation findings or preliminary notification letter to comment on and rebut the preliminary finding of non-adherence. During this 30-day period, the State may request up to 15 additional days to respond, for a maximum of 45 days from receipt of the draft evaluation findings or preliminary notification letter.

(iv) After considering the State's comments, the Assistant Administrator will decide whether or not to issue a final finding of non-adherence. If the Assistant Administrator decides to issue a final finding of non-adherence, he/she will do so in the final evaluation findings issued pursuant to section 312(b) or in a final notification letter as provided by paragraph (a)(2)(ii) of this section. The Assistant Administrator may invoke interim sanctions provided by section 312(c) immediately or at any time after issuing the final evaluation findings or final notification letter containing the finding of non-adherence, but not later than the next regularly scheduled evaluation.

(v) If the Assistant Administrator decides to invoke interim sanctions, he/she will do so by sending the final evaluation findings or final notification letter to the Governor of the State and the State CZM program manager. The final evaluation findings or final notification letter will contain the information required in section 312(c)(2) (A) and (B). This information will include the amount of financial assistance to be suspended and redirected, the actions the State should take in order to have the suspension withdrawn, how the suspended funds shall be expended

to take the required actions, and a schedule for taking the required actions. The final evaluation findings or final notification letter will also contain the length of the suspension, which may not last for less than 6 months or more than 36 months. The Assistant Administrator will establish the length of the suspension based on the amount of time that is reasonably necessary for the State to take the required actions. If the State can take the required actions faster than expected, the suspension can be withdrawn early (but not in less than six months).

(vi) The State must respond to the final evaluation findings or final notification letter by developing a proposed work program to accomplish the required actions on the schedule set forth in the final evaluation findings or final notification letter. The State may propose an alternative approach to accomplishing the required actions and/or an alternative schedule. The Assistant Administrator's approval of the State's work program will signify his/her agreement with the approach and schedule for accomplishing the actions necessary to withdraw the suspension.

(vii) The Assistant Administrator will monitor State performance under the work program. This may involve additional direction to the State through the grant administration process and/or a visit to the State by appropriate NOAA program staff, evaluation staff and/or other experts to work with the State on a specific problem or issue. The Assistant Administrator will consider proposals to revise the work program on a case-by-case basis, providing that the State will still be able to accomplish the necessary actions within a maximum of 36 months.

(viii) The State must document that it has taken the required actions on the schedule established under this section. The State must provide its documentation in writing to the Assistant Administrator. The Assistant Administrator may conduct a follow-up evaluation or otherwise revisit the State at his/her discretion.

(ix) If the Assistant Administrator determines that the required actions have been taken, the Assistant Administrator will promptly notify the Gov-

ernor and the State program manager, in writing, that NOAA has withdrawn the suspension of financial assistance. If, however, the State does not take the required actions, then the Assistant Administrator will invoke the final sanction provisions of section 312(d) on program termination and withdrawal of all financial assistance.

(3) *Criteria for invoking interim sanctions.* (i) The Assistant Administrator may consider the following indicators of non-adherence to an approved State CZM program in determining whether to invoke interim sanctions.

(A) Ineffective or inconsistent implementation of legally enforceable policies included in the CZM program. Indicators of ineffective or inconsistent implementation could include: evidence of non-compliance with core authorities by the regulated community; insufficient monitoring and inspecting of coastal development to ensure that it conforms to program requirements and applicable conditions; or inadequate enforcement action when development is found not to be in compliance with the program or permit under which it is authorized or is found to be an unpermitted activity. In applying this indicator, NOAA will consider any available evidence of the impacts of ineffective or inconsistent implementation on coastal resources.

(B) Inadequate monitoring of the actions of State and local agencies for compliance with the program. Indicators of inadequate monitoring of these agencies could include: evidence of non-compliance of networked agencies with the CZM program, unresolved conflicts between agencies regarding what constitutes compliance with the program, or lack of a mechanism to ensure that all State agencies will adhere to the program or to approved local coastal programs pursuant to NOAA's regulations at 15 CFR 923.40 (and pursuant to new section 306(d)(15), after November 5, 1993 and after states have been given reasonable opportunity to comply with NOAA's implementing guidance).

(C) Non-compliance of local coastal programs with the approved State program. Indicators of non-compliance could include: Local permitting or zoning decisions that are inconsistent

with State standards or criteria, widespread granting of variances such as to render a zoning program ineffective in meeting State standards or criteria, changes to local comprehensive plans or zoning maps that are inconsistent with State standards or criteria, or inadequate monitoring and enforcement, as described in paragraph (a)(3)(i)(A) of this section.

(D) Ineffective implementation of Federal consistency authority. Indicators of ineffective implementation could include: Not reviewing Federal activities, Federal licenses and permits, including offshore oil and gas exploration and development, and Federal financial assistance to State and local governments for consistency with the approved CZM program or employing review procedures that are not in accordance with State and NOAA regulations.

(E) Inadequate opportunity for inter-governmental cooperation and public participation in management program implementation. Indicators of inadequate opportunity could include: not carrying out procedures necessary to insure adequate consideration of the national interest in facilities which are necessary to meet requirements which are other than local in nature, not implementing effectively mechanisms for continuing consultation and coordination, not providing required notice that a management program decision would conflict with a local zoning ordinance, decision or other action pursuant to section 306(d)(3)(B)(i) and 15 CFR 923.57, or not providing opportunities for public participation in permitting processes, consistency determinations and other similar decisions pursuant to new section 306(d)(14) after November 5, 1993 and after states have been given reasonable opportunity to comply with NOAA's implementing guidance.

(F) Non-adherence to the terms of a grant or cooperative agreement, including the schedule for funded activities. The Assistant Administrator will also consider the extent to which priorities for expenditure of Federal funds reflect an appropriate priority for activities necessary to implement and enforce core program authorities effectively.

(G) Not submitting changes to the approved program for Federal approval on a schedule developed pursuant to 15 CFR 923.81(a) and 923.84(b)(1)(i) or developing and implementing changes to the approved program without Federal approval which are inconsistent with the Act or the approved program or which result in a reduced level of protection of coastal resources.

(i) The Assistant Administrator may consider whether an indication of non-adherence is of recent origin (in which case the State may be given a reasonable opportunity to correct it) or has been repeatedly brought to the State's attention without corrective action in determining whether to invoke interim sanctions.

(b) *Withdrawal of program approval and financial assistance.* (1) As required by sections 312(d) and 312(e) of the Act:

(i) The Secretary shall withdraw approval of the management program of any coastal State and shall withdraw financial assistance available to that State under this title 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 paragraph (a)(1)(ii)(A) of this section.

(ii) Management program approval and financial assistance may not be withdrawn under paragraph (b)(1)(i) 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 paragraph (b)(1)(i) 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.

(2) *Requirements.* (i) If the Assistant Administrator determines that the State has not taken the actions required in §923.135(a)(2), the Assistant Administrator will provide the Governor and the State CZM program manager with written notice of this finding and NOAA's obligation to withdraw program approval and financial assistance under this title. The State will be

given 30 days from receipt of this notice to respond with evidence that it has taken the actions specified pursuant to §923.135(a)(2). During this 30-day period, the State may request up to 30 additional days to respond, for a maximum of 60 days from receipt of notice.

(ii) If the State does not respond satisfactorily within the time allowed, the agency will notify the State of intent to take the proposed action. This notice will be published in the FEDERAL REGISTER and will inform the State of its right to a public hearing.

(iii) If the State does not request a public hearing or submit satisfactory evidence that it has taken the actions specified pursuant to §923.135(a)(2) within 30 days of publication of this notice, and the Assistant Administrator determines that the State has failed to take the actions specified pursuant to §923.135(a)(2), the Assistant Administrator will withdraw program approval and financial assistance and will notify the State in writing of the decision and the reasons for it. The notification will set forth actions that must be taken by the State which would cause the Assistant Administrator to cancel the withdrawal.

(iv) If the State requests a public hearing within 30 days of publication of the notice of intent to withdraw program approval and financial assistance, the Assistant Administrator will publish 30 days advance notice of the hearing in the FEDERAL REGISTER and the newspaper(s) of largest circulation in the State's coastal zone. The hearing will be held in a location convenient to the citizens of the State's coastal zone and a record of the hearing will be maintained. Within 30 days of the completion of the hearing, the agency will make the determination as set forth in paragraph (b)(2)(iii) of this section.

(3) If program approval and financial assistance are withdrawn pursuant to this section, a notice will be placed in the FEDERAL REGISTER and Federal consistency under section 307 of the Act will cease to apply to the State's CZM program.

[47 FR 21021, May 17, 1982, as amended at 57 FR 31114, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996]

PART 930—FEDERAL CONSISTENCY WITH APPROVED COASTAL MANAGEMENT PROGRAMS

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Coastal Zone Management Act Section 306A Guidance

Coastal Programs Division

Office of Ocean and Coastal Resource Management
National Ocean Service
National Oceanic and Atmospheric Administration

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I. Introduction

This guidance is issued by the Coastal Programs Division (CPD), of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA). This guidance implements the Coastal Zone Management Act (CZMA) section 306A. States, Commonwealths and Territories (hereafter referred to as **Astates@**) with federally approved coastal management programs (CMPs) shall use this guidance when developing section 306A projects; negotiating section 306A projects with other state agencies, local governments, American Indian tribes and others; and when applying for federal approval of section 306A projects. The guidance describes CZMA section 306A eligibility requirements, allowable uses of section 306A funds, section 306A application requirements, and information that the state CMP shall retain in its files. This guidance supersedes all previous OCRM guidance regarding section 306A.

This guidance delegates to the state CMPs much of the section 306A documentation and record keeping responsibilities. In addition, the NOAA Grants Management Division (NOAA GMD) has delegated to CPD federal approval authority for section 306A projects. The new Section 306A Project Checklist (Appendix I) should provide sufficient information for CPD approval. These changes should reduce federal, state CMP and local government administrative time and paperwork; expedite federal approval and state pass-through to local governments and others; and allow the projects to begin earlier in the grant cycle.

The delegation of section 306A responsibilities requires that state CMPs ensure that section 306A projects meet the eligibility and use requirements contained in this guidance and that the section 306A records are adequately maintained. State documentation and records will be subject to review by OCRM during periodic CZMA section 312 evaluations and will be necessary for state and federal audits. Failure by a state CMP to adhere to section 306A requirements or maintain state CMP section 306A files may result in one or more of the following actions: removal of CPD's delegation of section 306A requirements to the particular state CMP; deobligation of improperly used section 306A funds; a finding that the state may not fund section 306A projects; or other financial sanctions as authorized by the CZMA.

This guidance is derived from CZMA section 306A; H.R. Rep. No. 1012, 96th Cong., 2d Sess., pp. 18-19, 44-46 (1980); Cong. Rec. H 10113-H 10114 (Sep. 30, 1980); 15 C.F.R. part 24 (Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments); OMB Circular A-87 (cost principles); GAO/OGC 92-13 (Principles of Federal Appropriations Law), chapter 10 (grants and cooperative agreements); and OCRM's former section 306A guidance (May 1990).

State CMPs should contact their CPD Coastal Management Specialist for any assistance needed to apply for section 306A funding.

II. Objectives and Allowable Uses of Section 306A Funds

A section 306A project shall meet one or more of the following objectives:

1. Preservation or restoration of specific areas that (a) are designated under a state's CMP as required by CZMA section 306(d)(9) 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 [sic] material on publicly owned reef tracts. CZMA ' 306A(b)(1);
2. Redevelopment of deteriorating and underutilized urban waterfronts and ports that are designated under section 306(d)(2)(C) in the state's management program as areas of particular concern. CZMA ' 306A(b)(2);
3. Provision of access to public beaches and other coastal areas and to coastal waters in accordance with the planning process required under section 306(d)(2)(G). CZMA ' 306A(b)(3); or
4. The development of a coordinated process among state agencies to regulate and issue permits for aquaculture facilities in the coastal zone. CZMA ' 306A(b)(4) (added in 1996 for aquaculture planning and regulation processes. The section does not authorize the use of section 306A funds for the construction of aquaculture projects).

The use of section 306A funds is limited to:

1. The acquisition of fee simple or other interest in land,

e.g., purchasing an easement for a public right-of-way to the beach or to purchase an ecologically important area to preserve as an area of particular concern. CZMA ' 306A(c)(2)(A);

2. Low-cost construction projects consistent with the purposes of CZMA ' 306A, including but not limited to paths, walkways, fences, parks, and the rehabilitation of historic buildings and structures. CZMA ' 306A(c)(2)(B);
3. The revitalization of deteriorating or underutilized urban waterfronts or ports for:
 - a. the rehabilitation or acquisition of piers for public use, including compatible commercial activity,
 - b. the establishment of shoreline stabilization measures including the installation or rehabilitation of bulkheads for the purpose of public safety or increased public access and use of urban waterfront areas; and
 - c. the removal or replacement of pilings where such action will provide increased recreational use of urban waterfront areas. CZMA ' 306A(c)(2)(C);
4. Engineering designs, specifications, and other appropriate reports related to the above (including aquaculture processes). CZMA ' 306A(c)(2)(D); and
5. Educational, interpretive, and other management costs (including aquaculture processes). CZMA ' 306A(c)(2)(E).

III. Section 306A Project Eligibility

General Guidance

Section 306A provides state CMPs with federal funds to obtain on-the-ground results from state coastal management processes and enhance the overall effectiveness of state CMPs. Section 306A projects must be directly linked to a state CMP. A single state agency shall administer both CZMA sections 306 and 306A in order to plan activities and projects that complement each other and result in the overall improvement of a state's CMP.

Generally, states are eligible for section 306A funds if the state has a federally approved CMP and the state CMP is making satisfactory progress in activities designed to result in significant improvement in achieving the coastal management objectives specified in sections 303(2)(A) through (K). If CPD

determines that a state CMP is not making satisfactory progress, CPD will use its discretion to terminate section 306A eligibility until the problems are remedied. A section 306A project shall also meet one of the section 306A objectives, and the funds will be used for one of the section 306A allowable uses. These are all described in more detail in this guidance.

The amount of funds spent on any single section 306A project, and the amount spent on all section 306A projects from a particular CZMA section 306/306A grant, is negotiated with CPD. CPD approval depends on the requirements of this guidance and other state CMP program needs, e.g., state CMP section 306 implementation needs, CZMA section 312 evaluation necessary actions and recommendations, and CZMA section 309 and Coastal Nonpoint Pollution Control Program needs. Project costs for a single section 306A project in excess of \$100,000 may require additional justification and additional National Environmental Policy Act (NEPA) documentation. See section IV of this guidance for further discussion on NEPA. A state CMP shall not use more than 50 percent of its section 306/306A grant for section 306A low-cost construction projects. CZMA ' 306A(c)(2)(B).

Congress declared that section 306A projects shall not be capital intensive, but instead be minor in scope, and that section 306A funds shall not be used to finance large-scale erosion-prevention structures. Consistent with this directive, it is OCRM's policy that section 306A funds shall not be used for beach renourishment or hard structure erosion control projects. Small scale shoreline stabilization structures are allowed for the redevelopment of deteriorating or underutilized urban waterfronts or ports to provide for increased public use and access. (An urban waterfront is an area that is densely populated and has historically been developed.) OCRM may approve vegetative erosion control activities or planning activities for a beach renourishment project or non-structural erosion control projects if the project is on public land and the state CMP can show a substantial public benefit (e.g., the structure protects public investment that cannot be feasibly or technically relocated, protection of a historic structure or other important coastal resources), these benefits substantially outweigh the costs, there is a reasonable expectation that the project will last for a reasonable amount of time, the project is minor in scope and not capital intensive, and meets other section 306A requirements.

Public Benefit

Public benefit requirements for section 306A projects are:

1. Section 306A funds shall only be used for projects on publicly owned or leased land, or land for which an easement is obtained.
2. Leases and easements should be in perpetuity. However, a lease or easement shall, at a minimum, be for the expected life of the project (a minimum of 20 years). The life of a project includes expected repairs to a facility. If a deed, lease or easement conveying property to a public entity for section 306A purposes contains a reversionary clause, CPD must approve the reversionary clause. If the property reverts and is no longer used for its original purpose, then the state CMP shall reimburse NOAA for the federal funds received for the project.
3. Section 306A funds are for public benefit and may not be used to improve private property or for other private enterprises (including non-profit property or enterprises).
4. Indirect benefits to commercial, private or non-profit activities derived from section 306A projects are allowed so long as the indirect commercial, private or non-profit activities do not interfere with the purpose of the project, the requirements of this guidance, and public use and benefits are not diminished.
5. If the land ceases to be available (or the project ceases to be used) for the intended use at any time during the life of the project, the state CMP shall reimburse the full amount of the federal cost of the project to NOAA.
6. A section 306A public access facility must be open to the general public. Facilities that restrict use to specific persons or residents of a community are not eligible for section 306A funding. Access may be limited or controlled in an equitable manner at certain times for safety or resource protection reasons or for other good and reasonable cause such as: to accommodate special events, educational outings (e.g., a school group), or for scientific research (e.g., archaeological excavation).

7. In general, user fees should not be charged to access section 306A projects. If user fees are desired the fee must be described and justified in the Section 306A Project Checklist submitted to CPD. All user fees, income or other revenues derived from a section 306A project shall revert to the maintenance or management of either the federally funded section 306A project or, if the section 306A project is part of a larger public project, the larger public project. If a state or local government proposes to charge a higher fee for non-state, non-county, or non-city residents, the Section 306A Project Checklist submitted to CPD shall clearly demonstrate that the differential non-resident fee is based on the amount of project subsidization from the resident tax base. Moreover, non-resident fees shall be reasonable. OCRM may require additional information on the necessity or reasonableness of a fee and may deny the use of a user fee.

8. Section 306A funds shall not be allocated to a non-profit organization. A state CMP may allocate section 306A funds to local governments, area-wide agencies, regional agencies and interstate agencies, so long as the funds so allocated further the state's CMP. CZMA ' 306A(e). Section 306A funds shall not be used to purchase property for a non-profit organization or to otherwise directly or primarily benefit the organization. The term ~~A~~non-profit organization@ includes land trusts, development corporations/quasi-governmental units and other non-public not-for-profit entities. A state CMP, or other public entity, may, if permissible under state or local contracting authorities, contract with a non-profit organization to perform some or all of the tasks for a particular section 306A project, providing that: the non-profit organization is identified in the Section 306A Project Checklist (section 7.g.) and the project meets all section 306A requirements including the other public benefit requirements discussed above. A non-profit organization cannot be identified in the grant as a sub-awardee.

A state CMP, or other public entity, may enter into a partnership with a non-profit organization to purchase property, for preservation purposes only, so long as the federal section 306A funds are allocated to the public entity and the public entity retains ownership (title) and control of the property. If a land trust is involved, the land trust may retain an interest in the property consistent

with the purpose of preserving coastal uses or resources, e.g., a conservation easement, but not fee simple ownership.

IV. Other Federal Requirements

National Flood Insurance Program Requirements

Any coastal community listed by the Federal Insurance Administration (FIA) in its most current National Flood Insurance Program Community Status Book as being a community which is not participating in the Flood Insurance Program will not be eligible for any section 306A projects which include the acquisition or construction of buildings in special flood hazard areas shown on an FIA map. State CMPs should so notify such non-participating communities. This does not preclude the community from proposing section 306A projects both in the flood plain or outside of it, that are not acquisition for construction or actual construction projects, e.g., acquisition of wetlands.

Coastal Barriers Resource Act Requirements

Projects proposed for funding under section 306A must conform to the requirements of the Coastal Barrier Resources Act (CBRA). CBRA requires that federal funds shall only be used for projects on undeveloped coastal barriers designated in the CBRA system if they are consistent with the three purposes of the Act--to minimize: 1) the loss of human life, 2) wasteful federal expenditures, and 3) damage to fish, wildlife and other natural resources. If a project is to be located in a designated undeveloped coastal barrier, OCRM is required to consult with the relevant regional office of the U.S. Fish and Wildlife Service (USFWS). The USFWS consultation process requires that OCRM provide the USFWS with up to 30 days to render an opinion that the project is consistent with CBRA. Thus, some delays in awarding the grant may be expected or some projects may be conditioned pending the results of the consultation process. Therefore, early coordination by the applicant with the USFWS is advisable. While OCRM has the authority to make the final determination if a project is consistent with the purposes of the CZMA and CBRA, the USFWS opinion will be given deference.

Endangered Species Act Requirements

A state CMP shall indicate whether it believes that a proposed section 306A project may adversely affect threatened or endangered species or critical habitat as defined by the

Endangered Species Act (ESA). If a proposed section 306A project may have minor and temporary effects CPD will request that the state CMP informally consult with the relevant federal agency(ies) (either the USFWS or the National Marine Fisheries Service (NMFS)). If a proposed section 306A project may significantly affect threatened or endangered species or critical habitat, CPD will request that the state CMP withdraw the proposed project. If the state CMP still wants to proceed CPD will enter into ESA section 7 consultation with the USFWS or NMFS. However, CPD will not approve a proposed section 306A project that the USFWS or NMFS has determined will adversely and significantly affect threatened or endangered species or critical habitat.

National Environmental Policy Act Requirements

Section 306A projects are, generally, categorical exclusions under NEPA. See OCRM, *Generic Environmental Assessment of the CZMA Section 306A Land Acquisition and Construction Projects* (Nov. 1989). This determination was based on the small scale nature of section 306A projects and that the environmental impacts from section 306A projects are minimal when performed separately or cumulatively. Small scale projects are defined as costing less than \$100,000. States are required to complete a categorical exclusion checklist for each section 306A project. The categorical exclusion checklist has been subsumed into the attached Section 306A Project Checklist (Appendix I).

Some section 306A projects may not be eligible for a categorical exclusion. Section 306A projects costing more than \$100,000 (in federal and matching funds) or that may significantly affect the environment (regardless of cost) must be reviewed to determine if an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required. CPD may, on a case-by-case basis, require a state CMP to submit additional information to determine if an EA or EIS is required.

In order to reduce the environmental impacts of section 306A projects, a state CMP shall ensure that best management practices that conform with its approved Coastal Nonpoint Pollution Control Program be used at section 306A project sites.

Americans with Disabilities Act -- Handicapped Accessibility Requirements

Handicapped access requirements for section 306A projects are

based on the requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. " 12101 et. seq. (Pub. L. No. 101-336), and the U.S. Architectural and Transportation Barriers Compliance Board (Board). As a general rule, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. ADA ' 202. However, the ADA does not address handicapped accessibility issues for outdoor recreation projects and public access projects that are needed to reduce harm to natural resources. The following guidance is based on OCRM=s previous section 306A handicapped accessibility requirements. These requirements may change if the Board publishes a rule on handicapped accessibility to outdoor areas.

Section 306A public access projects shall be handicapped accessible unless the construction of a handicapped accessible structure would damage coastal resources or resource damage would occur in the absence of the section 306A project. In these instances the section 306A project shall be handicapped accessible to the extent that conditions allow. A state may not use increased cost as a reason to not construct a handicapped accessible section 306A project. A project is not eligible for section 306A funds unless it meets this criteria.

The section 306A handicapped accessible requirement applies to federally funded construction projects and any state funded construction projects used to match the section 306/306A awards.

Also, any federally funded construction improvements to an existing public access project shall be handicapped accessible regardless of the source of funds used to construct the original project.

Department of Commerce Environmental Justice Strategy

Consistent with the President=s Executive Order on Environmental Justice (Feb. 11, 1994) and the Department of Commerce=s Environmental Justice Strategy, state CMPs shall ensure that their section 306A projects will not have disproportionately high and adverse human health or environmental effects on minority or low income populations.

V. Application Procedures

Application Method

A state CMP shall submit one application for a combined section 306/306A grant. The section 306/306A grant application should include all required section 306A information (i.e., a completed and signed Section 306A Project Checklist, title opinions and other required information). If this is not possible, the section 306/306A grant application shall identify the portion of the grant that will be used for section 306A projects. In the latter case, the state CMP shall submit the required section 306A information within the first 120 days of the grant period. Submission at one time of section 306A project information for all section 306A projects results in an expedited and more efficient approval process. Submission of all section 306A project information with the section 306/306A grant application further speeds the section 306A project approval process.

Section 306A projects should be completed within the grant period. If a project will take longer to complete, it should be submitted in phases. Approval of a project for one grant does not guarantee that federal funds will be available for future phases or projects. Thus, each proposed section 306A project shall be a functional, stand alone project.

Section 306A Project Approval Steps

This guidance and the attached Section 306A Project Checklist are intended to expedite NOAA's approval of section 306A projects. The section 306A Project Approval Steps are:

1. State CMP submits section 306/306A application.
 - a. State includes, if possible, completed section 306A checklists, title opinions and any other information that may be required.
 - b. If projects are not finalized by the time of the final grant application, state CMPs identify in the section 306/306A grant application an amount of federal funds to be used for section 306A projects and, if possible, the name and type of section 306A projects proposed.
2. Where the state CMP submits all section 306A information with the final section 306/306A grant application, CPD, the Department

of Commerce's Office of General Counsel (OGC) and the NOAA GMD review the section 306/306A grant application. If the section 306A information is complete and approved, the state may begin the approved section 306A projects on the grant start date.

3. If the section 306A information was not complete in the approved section 306/306A application or award, the state CMP shall submit, within 120 days of the award date, the Section 306A Project Checklists, title opinions and any other required information for CPD approval.

4. When CPD receives the section 306A project information CPD will send the title opinion to OGC to review and approve. This is an OGC review and not a NOAA GMD Agrant action.® If OGC determines that the title opinion is adequate, CPD will continue to process the checklist. If OGC determines that the title opinion is inadequate, CPD will stay its review of the project until the state CMP remedies the inadequate title. Once the title opinion is cleared by OGC, CPD will either approve or deny the project or request additional information. If CPD approves, CPD will send the checklist to the state and NOAA GMD with CPD's approval signature (see first page of checklist). Once the state CMP receives a Section 306A Project Checklist with CPD's approval, the applicable special award condition is satisfied, federal funds are released, the section 306A funds may be allocated to the project proponent and work may commence.

5. OCRM monitors the delegation of section 306A documentation to the states and the section 306A projects through CPD oversight and CZMA section 312 reviews.

6. Any reprogramming of funds between sections 306 and 306A will require NOAA GMD approval. Section 306A Project Checklists for section 306A projects using funds reprogrammed from section 306 will be processed by NOAA GMD as a grant action.

Budget Information and State Match Requirements

The section 306A construction and acquisition project totals shall be entered under Aconstruction® in Section B of the section 306/306A grant application's Standard Form 424A.

A state CMP may use any eligible state or local funds and/or in-kind services to match both the sections 306 and 306A portions of its grant. A state CMP is required to match its section 306/306A grant on a 1 to 1 basis (except for newly approved states, see

below). A state CMP is not required to match federal section 306A funds with matching funds or services from section 306A projects. All that is required is that the entire section 306/306A grant is matched on a 1 to 1 basis and the match is from eligible sources. Requirements for eligible matching funds or services are contained in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. See 15 C.F.R. part 24.

Additional Match Requirements for State CMPs Approved After 1990

[NOTE: This section is subject to change if a statutory change is made to section 306A to address the match discrepancy]

CZMA section **306** funds awarded to states whose programs were approved after 1990 are to be matched in a federal to state ratio of 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 year thereafter. CZMA ' 306(a)(2). Section **306A** funds, however, must be matched 1 to 1, since there is not currently a Aphase-in@ for section 306A match. See CZMA ' 306A(d)(1).

Thus, state CMPs approved after 1990 must show the appropriate match for section 306 funds (4 to 1, 2.3 to 1, 1.5 to 1, or 1 to 1) and a 1 to 1 match for section 306A funds (but the match can still come from eligible non-section 306A sources).

An example of how a recently approved state CMP's first section 306/306A award would be matched is (section 306 match of 4 to 1 and section 306A match of 1 to 1):

Total Federal Award (306/306A combined):		\$1,000,000
<u>306</u> (4 to 1 ratio)	<u>306A</u> (1 to 1 ratio)	
\$800,000 federal	\$200,000 federal	
\$200,000 state/local match	\$200,000 state/local match	
from 306 or 306A sources	from 306 or 306A sources	
Total match: \$400,000 (2.5 to 1 ratio)		

For state CMPs approved after 1990 the grant application shall show separate matching funds for section 306 and section 306A. The state's internal record keeping should also show separate matching funds for each section. After CPD reviews the state's final section 306/306A grant application, CPD will verify the final combined section 306/306A matching ratio. (In the example

above, the final combined ratio is 2.5 to 1.) The final ratio will depend on the amount of federal funds a state chooses to expend on section 306A projects. NOAA must agree to the final combined match ratio to eliminate the need for a state CMP to submit separate Financial Status Reports on section 306 and section 306A funds. Any reprogramming of funds between section 306 and section 306A would require a state CMP to recalculate the combined section 306/306A match ratio and submit it to NOAA for approval. A Special Award Condition will be added to these grants explaining this requirement.

VI. Information Required in Application to NOAA

A State CMP, proposing section 306A projects, shall include a section 306A section in its combined section 306/306A grant application. The application shall list the proposed section 306A projects by name and federal funds for each project or, if individual projects are not identified in the grant application, show the amount of federal funds to be allocated for section 306A projects. As discussed above, state CMPs approved after 1990 must also show a 1 to 1 match for the section 306A projects.

The only other information required, unless otherwise notified by CPD, is a completed and signed Section 306A Project Checklist, title information for each proposed section 306A project and other information required by the checklist. The Section 306A Project Checklist shall be signed by the state CMP's Program Manager. See Attachment I (Section 306A Project Checklist).

VII. Information the State Must Retain on File

The information retained by the state will vary depending on the type of section 306A project. The state CMP shall retain this information for at least three years after the grant has been closed-out by NOAA. CPD reserves the right to require submission of any or all of the information listed below for a project if the complexity of the project or other reasons indicates a need to review the project in more detail. The state CMP shall retain in its files the following information:

1. A copy of the completed and CPD approved Section 306A Project Checklist.
2. Site location map.
3. Site plan.
4. Title opinion or certification.
5. Appraisal.

6. State Historic Preservation Officer's clearance.
7. Floodplains/Wetlands notice.
8. Copies of required state and federal permits.

Each of these items are described below:

1. Section 306A Project Checklist. The checklist provides (1) the necessary section 306A information for CPD review and approval, and (2) state certification that the state has in its files the necessary information, the information meets the section 306A requirements as set forth in the CZMA and this guidance, that the state CMP attests to the truth of the information, and that the state CMP understands the consequences of noncompliance with the checklist and this guidance. See Appendix I.

2. Site location map. The site location map shows the exact location of the section 306A project.

3. Site plan. The site plan is a detailed drawing of the proposed construction project (or other physical alteration or acquisition) on the project site showing the relationship of the project to other facilities and significant natural features (slope, access points, wetlands, dunes, floodplains, etc.). The site plan shall also show how structures will be handicapped accessible.

4. Title opinion or certification. A title opinion, certification (or affidavit), or title insurance showing **public ownership or control** is required for any section 306A construction project (or other physical alteration), land acquisition project, or any other type of section 306A project which has a physical relationship to land, water or submerged lands. The title document must be signed by a state or local government official attesting that the property is in public ownership or control consistent with this section 306A guidance. It is in the state's or local government's interest to ensure that a public entity has clear title to property proposed for section 306A projects. See Appendix II for examples of a title opinion and certification. See also section VIII of this guidance regarding special award conditions.

5. Appraisal. Before purchasing a piece of property with section 306A funds, a state CMP shall obtain an independent appraisal by a state approved appraiser to determine fair market value. State CMPs shall adhere to the following steps in

negotiating acquisition price (adapted from 49 C.F.R. part 24.102):

- a. Secure independent property appraisal.
- b. Present appraisal to land owner and negotiate price based on appraisal. Property owner shall be given a reasonable opportunity to consider the offer and present material which the owner believes to be relevant to determining the property's value.
- c. If the property owner will not sell for the appraised price or lower, and the state wishes to pursue the acquisition, a second independent appraisal shall be done, or the original appraisal updated to account for changed circumstances, e.g., extensive time passage, natural disaster.
- d. If, after negotiations and a second or revised first appraisal, the purchase price still exceeds the appraised value, the state may be allowed to pay more than the appraised value (with federal section 306A funds) if the state demonstrates reasonable efforts to negotiate at the appraised value and if the state provides CPD with a written justification for the higher price, based on reasonableness, prudence, public interest, appraisals, estimated condemnation/trial costs, and/or valuation supports a settlement.

6. State Historic Preservation Officer-s (SHPO-s) clearance.

SHPO clearance is required before work can commence on all section 306A construction projects and before land can be purchased for all section 306A acquisition projects. However, SHPO clearance is not required for CPD approval. The state CMP Program Manager must certify, in the Section 306A Project Checklist, that the state CMP is seeking SHPO clearance and that work will not begin and land will not be purchased until SHPO clearance is received by the state CMP. The State CMP should resolve any National Historic Preservation Act section 106 issues with the SHPO.

7. Floodplains/Wetlands notice. Any state or federal notices regarding a section 306A project on impacts to floodplains or wetlands shall be retained by the state.

8. Copies of required permits. The state CMP shall place in the file for a section 306A project copies of any required local, state, tribal and federal permits. Required local, state, tribal and federal permits must be obtained before work can commence on all section 306A construction projects and before land can be

purchased for all section 306A acquisition projects. However, the state CMP is not required to have the permits in hand for CPD approval. The state CMP Program Manager must certify, in the Section 306A Project Checklist, that the state CMP (or other public entity) is seeking the required local, state and federal permits and that work will not begin and land will not be purchased until the permits have been issued and received by the state CMP.

VIII. Special Award Conditions

All NOAA section 306/306A grants will contain the following special award conditions regarding section 306A projects:

In the event there are title discrepancies or encumbrances that NOAA deems interfere with the purpose for which the 306A funds were granted, or if NOAA determines that project or property is no longer used for its original purpose, the Recipient shall reimburse NOAA for the Federal funds received for the project.

Federal funds are not permitted to be expended on any section 306A awards until NOAA/OCRM reviews and approves the projects in conformance with OCRM's section 306A Guidance. Specifically, no federal funds may be expended and no work may commence on a section 306A project until the state has submitted to CPD a complete and signed Section 306A Project Checklist (and any other required information) for each section 306A project and CPD approves. If, for any reason,

a section 306A project ceases to be used as approved by NOAA, the state shall reimburse to NOAA the federal share.

The recipient shall cause to be erected at the site of any construction project, and maintained during the construction, signs satisfactory to NOAA/OCRM that identify the project and indicate that the project is being funded under the Coastal Zone Management Act, by NOAA's Office of Ocean and Coastal Resource Management, in conjunction with the State Coastal Management Program. The recipient shall also maintain a permanent plaque or sign at the project site with the same information.

OMB Control # 0648-0119, expires 08/31/2001. OCRM requires this information in order to adequately assess the eligibility of proposed CZMA section 306A projects. Public reporting burden for this collection of information is estimated to average 5 hours per response, including 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 collection of information, including suggestions for reducing this burden, to Joseph A. Uravitch, AICP, Chief, Coastal Programs Division, OCRM, 1305 East-West Hwy., 11th Floor, Silver Spring, Maryland 20910. This reporting is required under and is authorized under 16 U.S.C. ' 1455a. Information submitted will be treated as public records. 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 Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Appendix I

Section 306A Project Checklist

See file 306achklist.pdf

Appendix II

Title Opinion and Certification Examples

TITLE OPINION (EXAMPLE)

April 1990
Date

RE: Inlet Park Boardwalk
Project Name on Section 306A Checklist

I hereby certify that I am a member in good standing of the bar of Maryland (state) and have been requested to determine record ownership for the parcel(s) of property on which the above-referenced project will be constructed, Inlet Boardwalk - along North Jetty at Ocean City Inlet (name and brief description of land).

After thoroughly examining the public land records or other appropriate records in accordance with the laws of Maryland (state), I hereby certify that record title to the parcel is held by U.S. Army Corps of Engineers/United States of America in (check one)
 fee simple absolute
 other (specify) _____

I have determined that there are (check one)
 no easements or other encumbrances on the property
 easements or other encumbrances on the property (list below or attach a list.

Other Comments: Easement to Town of Ocean City for construction of Boardwalk.

/S/
Signature

Guy R. Ayres III
Name
5200 B Coastal Highway

Ocean City, MD 21842
Address

XXXXXXX
Bar number (must include)

(XXX) XXX-XXXX
Telephone number

SUGGESTED AFFIDAVIT OR CERTIFICATION FORM

I solemnly affirm upon personal knowledge that the following statements are true:

I _____ being first and duly sworn state that:
(print name of official)

1. Official must state what his/her title is and what authority he/she has to say that the property is publicly owned.

2. Official must state that the property is owned or leased by the state or local government (in accordance with OCRM's CZMA Section 306A Guidance, February 1999) and there are no encumbrances on the property that interfere with the proposed section 306A project.

Signed _____
(name of official)

Subscribed and affirmed before me this _____ day of _____
(month), _____ (year).

Notary Public

My Commission expires:

Note: This form should be revised in accordance with state law.

Section 306A Project Checklist

State Coastal Management Programs (CMPs) shall complete a Section 306A Project Checklist for each Coastal Zone Management Act (CZMA) section 306A project and submit it to the Coastal Programs Division (CPD), Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA) for approval. A complete and signed checklist by the CMP Program Manager and CPD Chief, title document and other information that may be required by this checklist are required for project approval. These are the only documents required for CPD approval, unless otherwise notified by CPD. See CPD, *Coastal Zone Management Act Section 306A Guidance*, February 1999, for further information.

1. Grant Number: _____ State: _____

2. Project Title: _____

3. Project Proponent: _____
(Must be a Public Entity)

4. Total Cost: _____ Federal: _____ State/Local Match: _____

I ATTEST TO THE FOLLOWING: (1) THE STATEMENTS MADE AND OTHER INFORMATION PROVIDED IN THIS CHECKLIST ARE, TO THE BEST OF MY KNOWLEDGE, TRUE AND ACCURATE; (2) THE PROJECT DESCRIBED IN THIS CHECKLIST IS CONSISTENT WITH CZMA SECTION 306A AND CPD-S SECTION 306A GUIDANCE; (3) THE STATE HAS ON FILE THE DOCUMENTS IDENTIFIED IN THIS CHECKLIST; AND (4) I UNDERSTAND THE CONSEQUENCES, AS DESCRIBED IN CPD-S SECTION 306A GUIDANCE, IF THE PROJECT DESCRIBED IN THIS CHECKLIST DOES NOT COMPLY WITH CZMA SECTION 306A AND CPD-S SECTION 306A GUIDANCE.

Signature of State Coastal Management Program Manager Date

Name of Signatory (please print or type): _____

Title: _____

Address:

Phone Number: () - _____

The signature below by the Chief, Coastal Programs Division, OCRM/NOAA, is NOAA's approval that the applicable special award condition is satisfied and releases the federal CZMA section 306A funds for the project described in this Checklist.

Joseph A. Uravitch, A.I.C.P. Date
Chief, CPD

5. Project Eligibility:

a. 306A Objectives (check all that apply):

- 306A(b)(1)(A) (preservation or restoration of areas designated in the state CMP)
- 306A(b)(1)(B) (preservation or restoration of coastal resource of national significance or restoring or enhancing shellfish production/clutch)
- 306A(b)(2) (redevelopment of deteriorating or underused urban waterfronts designated as APCs in the state's CMP)
- 306A(b)(3) (providing public access to coastal areas)
- 306A(b)(4) (development of process for aquaculture)

b. 306A Uses (check all that apply):

- 306A(c)(2)(A) (fee simple or other interest in land)
- 306A(c)(2)(B) (low-cost construction projects)
- 306A(c)(2)(C)(i) (revitalize urban waterfronts-piers)
- 306A(c)(2)(C)(ii) (revitalize urban waterfronts-shoreline stabilization)
- 306A(c)(2)(C)(iii) (revitalize urban waterfronts-pilings)
- 306A(c)(2)(D) (designs and other 306A reports, including aquaculture process)
- 306A(c)(2)(E) (educational, and other management costs, including aquaculture process)

6. Project Description: (briefly describe the project and project location)

7. Public Benefit:

a. This project is on public land or on publicly controlled easement and is for public benefit. The project does not improve private property and is not for private or commercial gain. Yes No

If the answer to 7.a. is No, the project is not eligible for section 306A funding.

b. The facility will be open to the general public. Yes No N/A

c. If the answer to 7.b. is No, the project is not eligible for section 306A funding, unless access to the facility will be limited for one or more of the following reasons (if 7.c. applies, please briefly explain in 6. Project description).

N/A Public Safety Resource Protection

School Outings Scientific Research Other

d. The state or other applicant needs a deed, lease or easement to conduct the activity. Yes No

e. If the answer to 7.d. is Yes, what is the life of the document (provide duration, i.e., years, or specify if in perpetuity). _____

f. The document in 7.d. contains a reversionary clause. Yes No
If Yes, attach the reversionary clause to this checklist.

g. The state CMP or sub-awardee will contract with a non-profit organization to complete part or all of this project. Yes No
If Yes, the name of the non-profit is: _____

8. Title Opinion, Certificate, and Appraisal:

a. A title opinion, certificate, or affidavit showing that the property for the proposed project is publicly owned or leased in perpetuity or for the expected life of the project (at least 20 years) is attached. Yes No N/A

b. If purchasing an interest in land, the state has obtained an independent appraisal pursuant to CPD=s Section 306A Guidance. Yes No N/A

9. Site Location Map: The state CMP has on file a site location map. Yes No N/A

10. Site Plan: The state CMP has on file a site plan. Yes No N/A

11. State Historic Preservation Officer=s (SHPO=s) Clearance and National Historic Preservation Act: The state CMP has on file the SHPO=s clearance. Yes No If No, the state CMP Program Manager certifies, by signing this checklist, that the state is seeking SHPO clearance and that work will not begin and land will not be purchased until SHPO clearance is received by the state CMP.

The project will affect properties listed in the National Register of Historic Places or is otherwise protected by section 106 of the National Historic

Preservation Act or a similar State Preservation Act.

_____ Yes _____ No

12. National Flood Insurance Program:

a. The project is located in a designated floodway or AV@ zone on a National Flood Insurance Program Floodway Map. _____ Yes _____ No (If No, go to 13)

b. A coastal community proposing a section 306A project which includes the acquisition for construction or actual construction in special flood hazard areas shown on an FIA map is participating in the Flood Insurance Program.
_____ Yes _____ No

If the answer is No, the project is not eligible for section 306A funding.

13. Coastal Barriers Resource Act: The project is located on an undeveloped coastal barrier designated by the Coastal Barriers Resources Act.

_____ Yes _____ No

If the answer to 13. is Yes, attach to this checklist a brief analysis as to how the proposed project is consistent with the three CBRA purposes: to minimize (1) the loss of human life, (2) wasteful federal expenditures, and (3) damage to fish, wildlife and other natural resources.

14. Endangered Species Act: The proposed project may adversely affect threatened or endangered species or critical habitat under the jurisdiction of the National Marine Fisheries Service (NMFS) or U.S. Fish and Wildlife Service (USFWS) as defined by the Endangered Species Act. _____ Yes _____ No

If the answer to 14. is Yes, attach a description of the adverse effects (minor and significant effects), the species or habitat affected, and any coordination between the state and the USFWS or NMFS. CPD will not approve a project that USFWS or NMFS has determined will significantly affect threatened or endangered species or critical habitat.

15. National Environmental Policy Act:

a. The proposed project may significantly affect the human environment.
_____ Yes _____ No

b. The proposed project involves unresolved conflicts concerning alternative uses of available resources. _____ Yes _____ No

c. This action would have significant adverse effects on public health and safety. _____ Yes _____ No

d. This action will have highly controversial environmental effects.
_____ Yes _____ No

e. This action will have highly uncertain environmental effects or involve unique or unknown environmental impacts. _____ Yes _____ No

f. The project will have significant adverse impacts on other natural resources not covered elsewhere in this checklist, e.g., beaches and dunes, wetlands, estuarine areas, wildlife habitat, wild or scenic rivers, reefs, or other coastal resources. _____ Yes _____ No

g. The project will have insignificant effects when performed separately, but will have significant cumulative effects. Yes No

If the answer to any one subpart of 15. is Yes, then an Environmental Assessment (EA) may be required. If Yes, attach a description of the resource(s) affected and the nature and scope of the effects. If Yes, a state shall provide additional information stating why the applicant believes an EA or an EIS is not required. CPD may require additional environmental information in cases where project impacts are not clearly described or where probable impacts require an EA or EIS.

16. Coastal Nonpoint Pollution Control Program: The project will use best management practices in conformance with the Coastal Nonpoint Pollution Control Program. Yes No N/A

17. Handicapped accessibility: The proposed project is handicapped accessible. Yes No N/A

If the answer to 17. is No, attach to this checklist an explanation as to how the project meets the handicapped accessibility requirements in CPD's Section 306A Guidance. If the project does not meet the handicapped accessibility requirements the project will not be approved.

18. User fees: The public will be charged a user fee for the proposed project. Yes No N/A

If the answer to 18. is Yes, please attach a description of the user fee which includes: how much, differential fees (if any), the need for the fees, and proposed use of the revenue.

19. Environmental Justice. The project will not have disproportionately high and adverse human health or environmental effects on minority or low income populations. Yes No

20. State, Local and Tribal Laws. The project is consistent with state, local and tribal laws to protect the environment. Yes No

If the answer to either 19. or 20. is No the project will not be approved.

21. Required permits: Please list local, state, tribal or federal permits required for this project and the status of the permits. If the permits have not been obtained, then the state CMP Program Manager certifies, by signing this checklist, that the state CMP (or other public entity) is seeking the required local, state and federal permits and that work will not begin and land will not be purchased until the permits have been issued and received by the state CMP.

OMB Control # 0648-0119, expires 08/31/2001. OCRM requires this information in order to adequately assess the eligibility of proposed CZMA section 306A projects. Public reporting burden for this collection of information is estimated to average 5 hours per response, including 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 collection of information, including suggestions for reducing this burden, to Joseph A. Uravitch, AICP, Chief, Coastal Programs Division, OCRM, 1305 East-West Hwy., 11th Floor, Silver Spring, Maryland 20910. This reporting is required under and is authorized under 16 U.S.C. ' 1455a. Information submitted will be treated as public records. 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 Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

306a\checklist.1

MEMORANDUM FOR: State and Territory Coastal Management
Program Managers

FROM: Jeffrey R. Benoit
Director

SUBJECT: Final Program Change Guidance

Attached is the Office of Ocean and Coastal Resource Management's (AOCRM) Final Program Change Guidance. Over the years OCRM has provided guidance on requirements and submission procedures for changes made to federally approved state and territory coastal management programs (ACMPs). The program change guidance attached to this memorandum consolidates and replaces all previous program change guidance. A draft of this guidance was sent to state and territory coastal management program managers on March 6, 1996. Seven states submitted comments, most of which supported the draft guidance. All issues raised by the commenters were discussed with the relevant states and resolved or addressed through changes in the final guidance.

The Program Change Guidance clarifies information and procedural 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 recent update of the program change regulations. See 61 Fed. Reg. 33801-33819 (1996) (to be codified at 15 C.F.R. part 923). In that update, OCRM replaced the four criteria by which program change requests are evaluated with a reference to the five program approvability areas addressed 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.

Please contact David Kaiser, Federal Consistency Coordinator, OCRM, at (301) 713-3098, x 144, if you have any questions on the program change guidance.

Attachment

Program Change Guidance

**The Coastal Zone Management Act and Changes to
State and Territory Coastal Management Programs**

July 1996



**Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration**

**Program Change Guidance:
The Coastal Zone Management Act and Changes to
State and Territory Coastal Management Programs**

July 1996

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I. Introduction

This guidance clarifies information and procedural requirements for program change requests by state and territory coastal management programs (ACMP@) pursuant to the Coastal Zone Management Act of 1972 (ACZMA@) and its implementing regulations. This guidance augments the program change requirements found at CZMA section 306(e)(16 U.S.C. ' 1455(e)) and 15 C.F.R. Part 923, Subpart H [redesignated].¹ 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 recent update of the program change regulations. See 61 Fed. Reg. 33801-33819 (1996) (to be codified at 15 C.F.R. part 923); Appendix A (for subpart H). In that update, the Office of Ocean and Coastal Resource Management (AOCRM@) replaced the four criteria by which program change requests are evaluated with a reference to the five program approvability areas addressed 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 preamble to the final rule issued on June 28, 1996, contains additional explanation of the program change regulations. See Appendix C of this guidance.

This guidance is, for the most part, not new. The intent of the changes to the regulations and this guidance is to reduce information and paperwork burdens on states and OCRM and to clarify that most changes to state CMPs are not substantial and are routine program changes. This guidance does not apply retroactively to any program change previously approved by OCRM. See also Appendix C of this guidance.

Please contact your OCRM Coastal Programs Division (ACPD@) program specialist for further assistance.

¹ While OCRM moved the program change regulations within 15 C.F.R. Part 923 from Subpart I to Subpart H, the citations to individual program change regulatory sections remain the same.

II. General Information on Program Change Submissions

This section of the guidance provides general information on program changes, definitions, and general procedural points. Sections III and IV provide detailed guidance for routine program changes (ARPCs) (formerly called routine program implementations or RPIs) and amendments, respectively.

A. Definition of Program Change

A program change is any amendment, modification, or other change to a federally approved CMP. 16 U.S.C. ' 1455(e). Changes in the manner in which states manage coastal uses and resources, that affect approved CMPs, must be reviewed by OCRM with respect to the original approval of the state CMP. Changes that do not affect the CMP should not be submitted as a program change. Changes that must be submitted are those that (1) affect the CMP as approved by OCRM, (2) the state CMP wishes to spend CZMA funds on, and (3) the state CMP wishes to use for federal consistency. For example, if a state makes a minor substantive change to an enforceable policy, then the state must submit the change to OCRM for approval in order to use the policy for federal consistency purposes. See also Appendix C of this guidance.

The program development and approval regulations establish five program areas. See 15 C.F.R. Part 923, Subparts B, C, D, E and F. Thus, program changes are changes to one or more of these five areas. The program areas are:

1. Uses Subject to Management (15 C.F.R. Part 923, Subpart B)
2. Special Management Areas (15 C.F.R. Part 923, Subpart C)
3. Boundaries (15 C.F.R. Part 923, Subpart D)
4. Authorities and Organization (15 C.F.R. Part 923, Subpart E)
5. Coordination, Public Involvement and National Interest (15 C.F.R. Part 923, Subpart F)

Subparts B through F of Part 923 provide a detailed explanation of each of these headings. States may refer to these subparts for assistance in their analysis of a program change. These subparts and detailed explanations, and statutory citations, are

also listed in Appendix B of this program change guidance. State CMPs need only discuss the subparts (or detailed explanation of those subparts) that apply to a particular program change.

Examples of program changes include, but are not limited to:

- Changes to boundaries or organization of approved CMPs.
- Changes to new or revised enforceable policies that may be contained in statutes, executive orders, implementing regulations and memoranda of agreement, which comprise a CMP.
- Additions of or revisions to enforceable local coastal programs (ALCPs@) incorporated into a CMP (if the change to an LCP affects the approved CMP, or the state CMP wants to use CZMA funds to implement the change, or the state intends to use the change for federal consistency purposes).
- New or revised Special Area Management Plans or other plans for specific areas that are not LCPs such as Areas of Particular Concern.
- Changes to policies and procedures affecting state or federal consistency review or federal agency, local government, and public participation.
- Changes to guidelines, policy documents, manuals, which provide additional information to public and private entities concerning how CMP requirements can be met or which provide specific interpretations of the general standards in the CMP.
- Additions or deletions to listed permits for federal consistency.

B. Types of Program Changes

The CZMA regulations define two types of program changes: amendments and RPCs. OCRM anticipates that most program changes will continue to be routine.

1. Amendment

Amendments are defined in 15 C.F.R. ' 923.80(d), as substantial changes in one or more of the five program areas identified in subparts B through F of Part 923. These areas are listed above in section II.A. and Appendix B of this guidance. Appendix C of this guidance contains additional discussion of section 923.80(d).

2. Routine Program Changes

RPCs are the further detailing of a state CMP that does not result in a substantial change to one or more of the five program areas identified in subparts B through F of Part 923. See 15 C.F.R. ' 923.84(a). State CMPs should, prior to submitting a program change, obtain CPD-s preliminary view as to whether the change is an RPC or an amendment. Such prior consultations will facilitate the process by giving OCRM a better understanding of the proposed change and should reduce the overall work effort of both the state CMP and OCRM. The scope of a change may be such that OCRM can (1) determine, prior to receiving an RPC submission, that the change is an amendment, or (2) identify information and analysis requirements necessary to support the RPC.

3. Amendment or RPC: When is a program change Asubstantial?@

The key in determining whether a program change is an amendment or an RPC is whether a change in one or more of the five program areas is Asubstantial.@ The indicators and examples below illustrate that most program changes will continue to be RPCs, and not substantial changes to CMPs; that a substantial change is a high threshold. (The closer a program change is to this threshold, the more information and analysis will be required.) Whether a program change is substantial is based on a case-by-case determination. Indicators of a substantial change include:

1. New or revised enforceable policies that address coastal uses or resources not previously managed (or major changes in the way a state CMP manages coastal uses or resources) may be substantial. It will often depend on the scope of the change. (New or revised enforceable policies that make minor revisions to existing CMP components are generally not substantial changes.)

2. The extent to which the proposed change impacts the national interest reflected in the CZMA such as, OCS oil and gas development, energy facility siting, water and air quality.
3. The extent to which the proposed change is similar to past program change requests (by any state) that were treated as amendments.

One example of how substantial is applied is when a coastal county adopted a revision to its LCP that would prohibit all offshore oil and gas related development within its waters and on its land. OCRM preliminarily considered this change to be an amendment. In addition, its approvability was questioned due to inadequate consideration of the national interest in energy facility siting and uses of regional benefit. Eventually OCRM approved the change as being routine, but only because the change was limited in scope geographically, there were sound economic and environmental reasons, and the state CMP had the authority to override any local decisions that substantially affected the national interest. OCRM also conditioned the approval on the fact that the oil and gas industry was not shut out of the state's entire coastal zone. OCRM noted that if other coastal counties adopted similar policies, those changes would likely be reviewed as amendments because of the cumulative impact on the national interest in energy facility siting in the state.

Whether a change is substantial is further illustrated by the development of local government components by three different states. (1) The first state proposed a routine change to its program by incorporating a new statute and regulations requiring the development of local government plans and ordinances. The local plans and ordinances themselves were not included in the program change. The state felt that the statute and regulations contained sufficient enforceable policies for federal consistency purposes. OCRM concurred that the change was routine after determining that the statute and regulations were based on or contained existing enforceable policies that addressed coastal uses and resources currently included in the CMP. The new statute and regulations applied these existing policies to new areas of the state (but did not expand the coastal zone).

(2) The routine nature of local government change in the first example is distinguished from an earlier instance where another state's statute and regulations requiring local governments to develop coastal management plans and ordinances was substantial. In the second state, the statute and regulations mandated a

program that managed coastal uses and resources in an entirely new way and with new enforceable policies. Even though the local plans and ordinances were not incorporated, the new policies and program included in the statute and regulations was a substantial change and, therefore, an amendment.

(3) The third state proposes a similar local government component. The state also intends to incorporate the LCPs into the CMP. Incorporation of the LCPs is needed as the statute and the regulations merely specify the types of activities that must be included in the LCPs and do not contain many new enforceable policies. OCRM has preliminarily determined that this would be a substantial change to the CMP and should be submitted as an amendment.

C. General Procedural Guidance

1. Early consultation with OCRM

When possible, states should consult with CPD staff to discuss possible changes during program change development and prior to state adoption. States should informally submit proposed statutory or regulatory language to CPD staff so that (1) potential conflicts can be identified prior to incorporation into state authorities, (2) CPD staff can help clarify whether the program change is an amendment or RPC, and (3) CPD can ensure that the program change submission will satisfy all procedural, information, and public notice requirements.

Lack of early consultation with OCRM can lead to problems. State CMPs often submit program changes to OCRM only after they have been adopted into state law or regulation. In some cases, OCRM was unaware that such changes were being considered. This has two possible negative effects. The change may cause a state CMP to fall below the requirements of CZMA section 306(d) and 15 C.F.R. Part 923. Also, state implementation of changes not approved by OCRM could lead to adverse evaluation findings.

We also recommend that you consult early with federal agencies that could be affected by the changes you are considering. OCRM has received complaints from federal agencies that they are not involved early at the state level in program change deliberations. (States are required to provide an opportunity for federal agency involvement in the development of an amendment. See 15 C.F.R. ' 923.81(b)(5).) Federal agencies may raise problems during OCRM processing and may cause delay in approval of the state's program change request. If a state

believes that a federal agency consistently does not participate during state review process, the state may ask OCRM's assistance in encouraging federal agency participation.

2. Submitting program changes in a timely manner

The CZMA requires that state CMPs promptly notify OCRM of any proposed change to its approved CMP. 16 U.S.C. ' 1455(e)(1). OCRM may suspend all or part of a CZMA section 306 award pending the submission of proposed changes to a CMP. Id. Program changes should be submitted on a regular basis, both to avoid processing delays caused by large volume submissions and to assure that a CMP is up to date. NOAA regulations allow the submission of changes either on a case-by-case basis, periodically throughout the year, or annually. 15 C.F.R. ' 923.84(b)(1)(i). Each CMP should develop and maintain a submission schedule with its CPD contact.

The regular and timely submission of program changes is also important to keep a program up to date. Except as provided under 16 U.S.C. ' 1455(e)(3)(B), until program changes are approved by OCRM and a public notice of OCRM's approval is published by the state CMP, the state CMP may not use the program changes for CZMA section 307 federal consistency purposes and CZMA section 306 funds may not be used to implement the proposed change.

3. Submitting complete information with the program change request

State CMPs should ensure that all required information is included in the program change request. Incomplete requests result in a delay of OCRM's review pending receipt of additional information from the state. The necessary substantive and procedural information requirements are included in sections III and IV of this guidance.

D. OCRM Review and Approval Criteria

OCRM reviews all program change requests, whether an amendment or an RPC, on a case-by-case basis to determine if the program change is approvable. OCRM determines whether the CMP, if amended, would continue to satisfy the applicable program approval criteria of CZMA section 306(d) and 15 C.F.R. Part 923, Subparts B through F. See 15 C.F.R. ' 923.82(a), section II.A. and, for more detailed criteria, Appendix B of this guidance. For routine changes, OCRM determines whether it concurs with the state's assessment that the action is an RPC. 15 C.F.R. '

923.84(b)(3). OCRM will also evaluate whether any policies to be added are preempted by federal law. The proposed change, in conjunction with the CMP, must be applied to all relevant public and private activities, and not discriminate against a federal agency or activity.

E. Endangered Species Act Consultation

If the program change may affect federally listed endangered species or their critical habitat, OCRM will consult with the U.S. Fish and Wildlife Service (AFWS@) or the National Marine Fisheries Service (ANMFS@) pursuant to our obligations under the Endangered Species Act. We encourage state CMPs to consult informally with the FWS or NMFS on any such changes prior to its adoption as a matter of state law. Any comments the state CMP receives from FWS or NMFS should be included in the program change package.

III. Routine Program Changes

A. Information Requirements

RPCs must be submitted to the Chief of CPD by the designated CMP agency. The requirements for RPC requests are found at 15 C.F.R. ' 923.84. The level of detail in the state CMP=s analysis and information depends on the scope of the change. The state CMP=s analysis should be more detailed for more substantive changes. Minor RPCs require minimal information and analysis. The amount of information and analysis should be discussed with OCRM prior to submittal. The information requirements contained in 15 C.F.R. ' 923.84 are:

1. A complete copy of the text of the program change.
2. An identification of any new or changed policies, both enforceable and advisory. At a minimum identification of the policies should list the sections of the statute, regulation, ordinance, etc. The state CMP=s analysis should include the mechanism (e.g., zoning, permit) by which the state ensures that any new or changed enforceable policies are legally binding under state law.
3. A description of the nature of the program change, including specific pages of the management program proposed to be changed. The description must include

an analysis that explains why the program change is an RPC and not an amendment. In other words, the explanation should describe what elements of the approved program are affected, and explain why the proposed change will not result in a substantial change to one or more of the five program approvability areas identified in Part 923, subparts B through F.

4. A copy of the state CMP's public notice of the submittal to OCRM. This notice must be distributed to the general public and affected parties, including local governments, other state agencies, and regional offices of relevant federal agencies (or the agency's headquarters if it does not maintain a regional office), as well as a listing of individuals notified of the RPC. The public notice must be published at the same time or before (but not after) the state submits the program change package to OCRM. Electronic notification may be used, but may not be the exclusive method of notification (many people and organizations do not yet have access to the Internet or other means of electronic transfer).

The public notice must:

- a. Describe the nature of the program change and identify any enforceable policies to be added to the CMP.
 - b. Indicate that the state considers the change to be an RPC and has requested OCRM's concurrence in that determination; and
 - c. Indicate that any comments on whether or not the action does or does not constitute an RPC may be submitted to OCRM within three weeks of the date of issuance of the notice.
5. In addition, the state CMP may submit any comments from state and federal agencies or the public or other information received during the development and review process which could aid OCRM's review.

B. The RPC Process

The state CMP submits the RPC request to the Chief of CPD. OCRM has four weeks from the date of receipt of the request to complete its review and make a final determination. 15 C.F.R. ' 923.84(b)(3). OCRM's final determination will be in writing (either mailed, faxed, or electronically transmitted).

Submitted RPC packages will be distributed to appropriate OCRM and NOAA Office of General Counsel for Ocean Services staff for substantive review. If no additional information is needed by OCRM and OCRM concurs with the state CMP's determination, then the Director of OCRM will provide written concurrence (either mailed, faxed, or electronically transmitted) to the state CMP. If OCRM does not concur, the state CMP will be advised to either submit the change as an amendment or resubmit the RPC with additional information requested by OCRM concerning how the program will be changed as a result of the action.

If the RPC package is incomplete, two actions may occur: (1) OCRM may deny the RPC request and the denial letter will identify deficiencies in the RPC package, or (2) rather than deny the request, the state CMP may request a suspension of the four week deadline in order to resolve any differences between the state and OCRM on the content of an RPC request. Upon resolution, the review period would resume.

When OCRM concurs with the state CMP's RPC request, the state CMP must then provide notice to the general public and affected parties, including local governments, other state agencies, and relevant federal agencies. This notice shall:

1. Indicate the date on which the state CMP received concurrence from OCRM and that the action constitutes an RPC;
2. Reference the earlier public notice for a description of the content of the RPC action; and
3. Indicate if federal consistency applies as of the date of the new notice.

Until the state CMP publishes this notice the provisions of this change cannot be used for federal consistency purposes.

IV. Amendments

A. Information Requirements

The amendment submittal and review process addresses both CZMA and NEPA requirements. Relevant CZMA requirements are found at section 306(e) and 15 C.F.R. ' 923.80 - 923.83. See also Appendix C of this guidance for information contained in the preamble to the final rule issued on June 28, 1996.

Program amendment requests must be submitted to OCRM by the Governor of a coastal state or by the head of the designated state 306 agency, if the governor has delegated this responsibility and the delegation is part of the approved CMP. 15 C.F.R. ' 923.81(a). Information requirements for amendment requests are set forth at 15 C.F.R. ' 923.81. In brief, the request must include the following:

1. A description of the proposed change, including specific pages and text of the management program that are proposed for amendment. This description shall also identify any enforceable policies to be added to the management program. The state CMP=s analysis should include the mechanism (e.g., zoning, permit) by which the state ensures that the policies are legally binding under state law.
2. An explanation of why the program change is necessary and appropriate, including a detailed analysis of the effects of the change on the approvability of the program.
3. A copy of the public notice(s) announcing the public hearing(s) on the proposed amendment. The state must hold at least one public hearing on the proposed amendment, pursuant to CZMA section 306(d)(4). The notice must precede the hearing by at least 30 days. The state=s public hearing may be concurrent with OCRM=s review.
4. A summary of the hearing(s).
5. Documentation of opportunities provided relevant federal (including appropriate federal regional offices), state, regional, and local agencies, port authorities, and other public and private parties to participate in the development and approval of the

amendment at the state level (prior to submission to OCRM as an amendment).

B. The Amendment Process

OCRM reviews amendment requests according to the procedures described at 15 C.F.R. ' 923.82. As a first step, OCRM undertakes a preliminary review to determine whether a CMP, if amended as proposed, would still constitute an approvable program. See section II.D. of this guidance for OCRM's approval criteria.

OCRM will prepare and disseminate internally a set of preliminary findings of approval or disapproval. If the Director of OCRM determines that the program, if amended, would no longer be approvable, or that the procedural requirements of the CZMA have not been met, the state CMP will be advised in writing of the reasons the amendment request may not be approved. The state CMP may, of course, modify its amendment request and resubmit it for approval by the Director.

If the Director determines, as a preliminary matter, that the program as amended remains approvable, the Director must decide whether an Environmental Impact Statement (AEIS®) is required as part of the approval process. If an EIS is necessary, OCRM, with state CMP assistance, will prepare and distribute a draft EIS and final EIS according to Council on Environmental Quality guidelines and NOAA procedures.

If an EIS may not be necessary, OCRM will prepare an Environmental Assessment (AEA®), with state CMP assistance as requested. The EA either leads to a Finding of No Significant Impact (AFONSI®) or a determination that the effects of the proposed amendment are such that an EIS must be prepared.

Following completion of the NEPA review process and consultation as appropriate with FWS or NMFS, OCRM will take final action to approve or disapprove the amendment request. Notice of the proposed decision on the amendment, as well as the statement that federal consistency applies as of the date the amendment is approved, will be published by OCRM in the Federal Register.

If a state implements an amendment despite notification from the Director of OCRM that the amendment would render the management program unapprovable, that state may be subject to withdrawal of program approval and withdrawal of administrative funding. See 15 C.F.R. ' 928.5(a)(3)(G)[to be redesignated at 15 C.F.R.

' 923.135(a)(3)(G)].

The time frame for review and approval of amendment requests is established by CZMA section 306(e)(2). Within 30 days of receiving an amendment request, OCRM must notify the state CMP whether it approves or disapproves the amendment, or whether it is necessary to extend the review for a period not to exceed 120 days. OCRM may extend the review period further, if necessary to meet NEPA requirements.

If a serious disagreement occurs between a state CMP proposing an amendment and federal agencies objecting to the amendment, the Governor, or the head of the state CMP agency, or the head of the relevant federal agency may request mediation by the Secretary of Commerce under CZMA section 307(h). 15 C.F.R. ' 923.54.

V. Clean Air and Water Act Requirements

Requirements established by the Clean Water Act, the Clean Air Act, or established by the Federal Government or by any state or local government pursuant to such Acts shall be incorporated in CMPs and shall be the water pollution control and air pollution control requirements applicable to such program. Section 307(f) of the CZMA provides:

Notwithstanding any other provision of [the CZMA], nothing in [the CZMA] shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, 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 [the CZMA] and shall be the water pollution control and air pollution control requirements applicable to such program.

State CMPs do not have to submit these requirements as program changes. However, state CMPs must notify OCRM, federal, state, and local agencies, and other interested parties, of the incorporation of the requirements into the state CMP. The lead coastal management agency may provide the required notice at various points in the rule-making process, e.g., (1) when the requirements are distributed for public comment, the state CMP may choose to add a provision stating that the rules, when adopted, will be incorporated into the CMP, or (2) after the rules have been adopted, the state CMP may send a notice to the state CMPs program change mailing list indicating that the

requirements are now incorporated into the coastal management program and indicating the applicability of federal consistency.

OMB Control # 0648-0119, expires June 2001. OCRM requires this information in order to adequately assess the eligibility of proposed changes to state and territory coastal management programs. Public reporting burden for this collection of information is estimated to average 8 hours per response, including 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 collection of information, including suggestions for reducing this burden, to Joseph A. Uravitch, AICP, Chief, Coastal Programs Division, OCRM, 1305 East-West Hwy., 11th Floor, Silver Spring, Maryland 20910. This reporting is required under and is authorized under 16 U.S.C. ' 1455 and 15 C.F.R. part 923, subpart H. Information submitted will be treated as public records. 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 Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

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Appendix A

Program Change Regulations

61 Fed. Reg. 33815-33816 (1996)
(to be codified at 15 C.F.R. part 923)

Appendix B - Five Program Approval Areas and Detailed Explanations

A proposed change in one or more of the areas listed below, and the detailed explanations of the areas, or in the way a state CMP manages these areas, would be a program change. OCRM also uses this list to evaluate whether a state's CMP would continue to satisfy these criteria if a proposed change is approved.

1. Uses Subject to Management (15 C.F.R. Part 923, Subpart B)

- Permissible land uses and water uses within the coastal zone which have a direct and significant impact on coastal waters and how these uses will be managed. CZMA ' 306(d)(2)(B).
- The planning process and the enforceable policies for energy facilities likely to be located in, or which may significantly affect, the coastal zone. CZMA ' 306(d)(2)(H).
- The CMP's 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. CZMA ' 306(d)(12).
- The inventory and designation of areas that contain one or more coastal resources of national significance; and the enforceable policies to protect such resources. CZMA ' 306(d)(13).

2. Special Management Areas (15 C.F.R. Part 923, Subpart C)

- Designation of areas of particular concern within the coastal zone. CZMA ' 306(d)(2)(C).
- Guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority. CZMA ' 306(d)(2)(E).
- The term **Abeach@** and the planning process and enforceable policies for the protection of, and access to, public beaches and other public coastal areas. CZMA ' 306(d)(2)(G).
- The 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. CZMA ' 306(d)(2)(I).

- The CMP's procedures for specifying areas that may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, historical, or esthetic values. CZMA ' 306(d)(9).

3. Boundaries (15 C.F.R. Part 923, Subpart D)

- Boundaries of the coastal zone. CZMA ' 306(d)(2)(a).

4. Authorities and Organization (15 C.F.R. Part 923, Subpart E)

- CMP enforceable polices. CZMA ' 306(d)(2)(D).

- The organizational structure approved to implement the management program. CZMA ' 306(d)(2)(F).

- The designated single State agency to receive and administer grants for implementing the CMP. CZMA ' 306(d)(6).

- The State organization to implement the management program. CZMA ' 306(d)(7).

- The State's authority for the management of the coastal zone in accordance with the management program, including the authority to administer land use and water use regulations to control development to ensure compliance with the management program, and to resolve conflicts among competing uses; and 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. CZMA ' 306(d)(10).

- The state CMPs general techniques for control of land uses and water uses within the coastal zone. CZMA ' 306(d)(11).

- The State's mechanism to ensure that all State agencies will adhere to the program. CZMA ' 306(d)(15).

- The enforceable policies and mechanisms to implement the

Coastal Nonpoint Pollution Control Program of the State required by section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990. CZMA ' 306(d)(16).

5. Coordination, Public Involvement and National Interest (15 C.F.R. Part 923, Subpart F)

- The mechanism for continuing consultation and coordination between the lead CMP agency and with local governments, interstate agencies, regional agencies, and area wide agencies within the coastal zone. CZMA ' 306(d)(3)(B).
- The CMP=s 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. CZMA ' 306(d)(8).
- The CMP=s procedures for public participation in permitting processes, consistency determinations, and other similar decisions. CZMA ' 306(d)(14).
- The CMPs federal consistency procedures.

Appendix C

**Preamble to the Final Rule Issued on
June 28, 1996.**

OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT 1999-2000 PERFORMANCE REPORT GUIDELINES

April 1999

The goal of the Office of Ocean and Coastal Resource Management's (OCRM) Coastal Programs Division (CPD) and NOAA's Grants Management Division (GMD) is to reduce the amount of paperwork required and staff time necessary to prepare and process performance reports. Under the Federal Chief Financial Officer's Act of 1990 (CFOA), the files of all Federal agencies, including those of NOAA, have become subject to annual CFOA audit. These audits include a determination as to whether Federal grant files contain up-to-date financial reports and performance reports from recipients.

If grant recipients have not submitted timely performance and/or financial reports as required by the Terms and Conditions of the award:

- NOAA cannot issue a new grant award;
- NOAA cannot approve grant amendments; and
- NOAA's financial office must deny access to funds under all financial assistance awards to that recipient.

CPD has made some changes to the performance report guidance to ensure that this does not happen. The following guidelines describe these changes:

General Reporting Requirements:

The requirements for performance reports are divided into three sections: Section A, B, and C. Section A and B of the performance reports are to be submitted to CPD semi-annually during the financial assistance award period. Section C is not required this year.

Unless required by CPD, states should not be submitting quarterly performance reports. Some states continue to require quarterly performance reports from their subawardees. This is a decision that CPD leaves up the applicant. However, **DO NOT** send these quarterly reports under separate cover to CPD. Instead, summarize the subawardees' quarterly reports in your semiannual report.

All reports must be submitted no more than 30 days after the end of the reporting period in order to ensure compliance with NOAA Standard Terms and Conditions, and to ensure compliance with the CFOA.

Full explanations are not provided in this document. For specific guidance and detailed examples of Section A and B refer to the "1992 - 1993 Performance Report Guidelines."
Format:

All performance reports received in CPD are logged in. To ensure that the performance reports are correctly logged in, include the following information in the title of the report:

“Performance Report for Cooperative Agreement No: NA97OZ0xxx”
“for the Period from _____ to _____”

When reporting on more than one cooperative agreement in a reporting period, the applicant must submit separate performance reports for each award and place the award number in the title of the report and/or at the top of each page. This information is necessary to ensure that the reports are correctly logged in and correctly filed.

Some states are submitting Section A reports separately from Section B reports. This can cause problems logging in the reports. Whenever possible, submit both sections together. In any event, clearly identify the section and award number the report covers.

Copies:

Please provide CPD with electronic copies of all performance reports completed under the cooperative agreement. The report should be submitted in WordPerfect format or a compatible word processing program, via disk or through e-mail. If the report is submitted in hard copy, the applicant must include an original and TWO copies of the report as well as the cover letter (NOAA Administrative Special Award Condition 27). Therefore, CPD should receive THREE copies of reports if submitted in hard copy.

If publications or reports are submitted in hard copy, recipients are required to submit THREE copies of all publications or reports printed/funded with coastal zone management funds. Also, such reports must contain the appropriate NOAA notations (NOAA Administrative Special Award Condition 17).

Final Report:

NOAA Administrative Special Award Condition 9 states that final reports, in addition to performance reports, are to be submitted within 90 days of the expiration date of the award. For Coastal Management awards a final report is **NOT** required (See attached memorandum dated 12/28/98). Instead CPD requires that recipients continue to report on all tasks and activities until they are completed, and that the performance report clearly indicate that the task or activity is completed. GMD has concurred with this decision.

CAMMP Performance Reporting:

The CAMMP Grant Application and Reporting System (GARS) will have a performance report section. This section is scheduled to be completed by December 1999. At that time performance reports will be able to be submitted over the Internet via GARS.

Section A: Status of Award Tasks and Section 312 Evaluation Finding “Necessary Actions”

This section should describe the status of each section 306/306A, 309, 310 and 6217 award task and relevant special award conditions. The report must be detailed enough to provide CPD with a clear understanding of what was accomplished under each task during the performance period. The section should be organized in the same format as the original award application and include the following information:

1. Status of task, organized by task number and title (e.g., meeting held, work products completed, contracts completed, difficulties/problems that may impede timely completion?).
2. Status of benchmarks due during the performance period.
3. Status of special award conditions due during the performance period.

States should also report on progress in meeting “necessary actions” identified in section 312 evaluations.

Section B: Status of State Permits, Federal Consistency, and Program Changes:

Information under this section will focus on administration of the state CZM core regulatory programs and related efforts. Three major topic will be reported on: (1) permit administration; (2) Federal consistency; and, (3) program changes. In the case of the first two topics, states must submit quantitative information in chart or tabular form and narrative section which briefly discuss significant accomplishments, problems, or controversial activities regarding program implementation and Federal consistency requirements. The charts for Federal consistency are contained in the “1992 - 1993 Performance Report Guidelines.”

While there is flexibility in providing quantitative information on state permits, the Federal consistency charts should be filled out as specified. However, the information as requested in the charts may be submitted in some other form, as long as the information is provided. The narrative for program changes should identify any changes to state authorities or organizational structure that occurred during the reporting period and which may affect the federally approved CZM program. This report is not a substitute for the formal submission of such program changes pursuant to 15 CFR 923.80-84.

Section C: Habitat Protection Efforts:

Section C is not required during FY 1999.

OMB Control #0648-0119, expires 08/31/2001. OCRM requires this information to report progress in relation to projected work schedules and stated objectives. The data will be used to assure compliance. Public reporting burden for this collection of information is estimated to average 33 hours per response, including 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 collection of information, including suggestions for reducing this burden to Joseph A. Uravitch, AIPC, Chief, Coastal Programs Division, OCRM, 1305 East-West Highway, Silver Spring, Maryland 20910. This report is required under and is authorized under 15 CFR 24.40. Information submitted will be treated as public records. 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 Paperwork Reduction Act, unless that collection displays a currently valid OMB Control Number.

MEMORANDUM FOR: State, Territorial, and Commonwealth
Coastal Program Managers

FROM: Joseph A. Uravitch, AICP
Chief, Coastal Programs Division

SUBJECT: Section 309 Update and Interim Guidance for FY 99

In this year's final funding guidance, we noted that FY 99 is the last year covered by state section 309 strategies, and that states should focus their FY 99 efforts on activities necessary to bring key elements of the strategy to closure. The guidance also indicated that states could reserve a small amount of 309 funds to begin work on the next round of assessment updates and strategies sometime early in the year 2000.

We have held off on developing section 309 guidance for the next round of assessments and strategies pending reauthorization of the Coastal Zone Management Act. There are ongoing efforts to move reauthorization forward, but it may take several more months before a final bill passes Congress. Both the House and Senate reauthorization bills include changes to section 309. A chart summarizing the changes in both bills is attached to this memorandum. Once the Coastal Zone Management Act is reauthorized, we will undertake a cooperative process with state coastal managers to develop guidance to implement the program over the next five years.

While the reauthorization process proceeds, several states have indicated a desire to begin working on updating their section 309 assessments and strategies. Although changes to some 309 requirements are likely, we anticipate that the current assessment and strategy structure of the program and most of the enhancement areas will remain intact. This memo provides guidance for those states that want to begin work on updating their 309 programs. Use of FY 99 section 309 funds for this purpose is optional. The requirements and schedule for revising section 309 assessments and strategies will be based on states initiating work with FY 00 funding. States that did not set aside FY 99 funds to update their assessments and strategies need not make any changes to their cooperative agreement.

For FY 99, there are a number of activities that a state could pursue to lay the groundwork for next year. These activities should be useful, regardless of how section 309 is changed.

Potential FY 99 Tasks

- Review and evaluate the progress that has been made under section 309, identify improvements, successes, areas where goals remain unmet, etc...
- Initial public outreach -- contact key constituencies (advisory groups, councils, working group members, state agencies, etc.) and describe progress under the last round, and prepare people to participate in a new round of assessing the issues facing the state coastal management program.
- Review list of potential enhancement areas, and begin gathering information to update the status of the issues within the state.
- Identify and begin to fill data/information gaps that, if filled, would significantly improve previous assessments.
- Prepare to participate in developing new national guidance for FY 00. Review last guidance, and consider possible improvements.

This list is exemplary, and we are interested in working with individual states to identify other activities and develop more specific work programs. If you have any questions, please contact John King (Phone: 301/713-3121 extension 188, or via e-mail: john.king@noaa.gov).

cc: OCRM/CPD Staff
JBenoit, OCRM
MJackson, OCRM
TMacDonald, CSO

Comparison of Section 309 Reauthorization Proposals

Statutory Element	Current CZMA	Senate Bill (SB 1534)	House Bill (HR 2669)
ENHANCEMENT AREAS			
Wetlands	X		X
Hazards	X	X	X
Public Access	X	X	X
Marine Debris	X	X	X
Cumulative & Secondary Impacts	X	X	X
Special Area Mgmt. Planning	X	X	X
Ocean Resources	X	X	X
Energy & Gov't. Facility Siting	X	X	X
Aquaculture	X	X	X
Coastal Habitats (includes wetlands)	X	X	
Coastal Nonpoint Pollution Control Program Components		X	
Improving permitting for Aquaculture			X
Emerging Issues		X	X
FUNDING			
Appropriation	10 - 20% percent of section 306/306A appropriation up to \$10 million	Separate appropriation for sections 309/309A. Authorized levels begin at \$20 million in FY00 and rise to \$24 million in FY04	10 - 15% of section 306/309 appropriation
Match	No match	No match	100% match
Allocation	Evaluate and rank state proposals, which is accomplished through a weighted formula based on ranking of state strategies. Can also award funds for Projects of Special Merit	Evaluate and rank state proposals. Could still use weighted formula/PSM approach.	Use 306 allotment formula based on shoreline mileage and coastal population
Other		State may use a portion of 309/309A funds for projects under section 309A - Coastal Community Program. Split between 309 and 309A is not specified, and would vary by state. 309A funds require a 100% match	

DATE:

MEMORANDUM FOR: Coastal Program Managers

FROM: Joseph A. Uravitch, AICP
Chief, Coastal Programs Division

SUBJECT: Draft Section 309 Guidance

Attached is draft guidance for revising section 309 Assessments and developing new Strategies. Please provide any comments to John King (Phone: 301/713-3121 ext. 188, or e-mail: john.king@noaa.gov) by May 30, 2000.

The last major guidance for this program was issued in June 1996, and reflected a series of administrative and statutory changes designed to streamline the system and provide added flexibility. The Strategies that were developed under the 1996 guidance have been completed, and have resulted in some significant enhancements to state coastal management programs.

The current draft guidance is based on the 1996 guidance with some streamlining and clarification. We anticipate that there may be some changes to the section 309 program when the Coastal Zone Management Act is reauthorized, but that the basic structure will remain intact. In the mean time, we are issuing this draft guidance so that states can update their Assessments and develop new Strategies using FY 2000 funding.

We will review state comments, make needed changes, and provide final guidance in June 2000, so that states may begin the assessment and strategy process by July 1, 2000. I look forward to your comments.

Attachments

Section 309 Guidance

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I. OVERVIEW

Section 309 of the Coastal Zone Management Act (CZMA), as amended in 1990 and again in 1996, establishes a voluntary coastal zone enhancement grants program to encourage states and territories to develop program changes in one or more of the following nine coastal zone enhancement areas: wetlands, public access, coastal hazards, cumulative and secondary impacts, energy and government facility siting, marine debris, ocean resources, special area management plans, and aquaculture. Under this program, the Secretary of Commerce is authorized to make awards to states and territories to develop and submit for federal approval program changes that support attainment of the objectives of one or more of the enhancement areas. Section 309 further requires the Office of Ocean and Coastal Resource Management (OCRM) to identify, in close cooperation with each state and territory, that state's or territory's priority needs for improvement; and to evaluate and rank state and territory funding proposals.

The last major guidance for this program was issued in October 1996, and reflected a series of administrative and statutory changes designed to streamline the system and provide added flexibility. Substantively, this guidance is very similar to the 1996 guidance, and maintains the Section 309 program's structure and goals. In addition to a number of clarifying changes, the revised guidance encourages states to address endangered and threatened species needs in their Assessments and Strategies. The guidance also describes ways that the section 309 program could support the Executive Order on Marine Protected Areas.

We anticipate that there will be some changes to the section 309 program when the CZMA is reauthorized, but that the basic structure will remain intact. In the mean time, we are issuing this guidance so that states can develop assessments and strategies under the FY 2000 awards. This guidance supercedes the guidance documents issued May 31, 1991 and June 24, 1996.

This document provides guidance to states and territories on the types of activities eligible for section 309 funding, the process and content for the next round of Assessments and Strategies, and OCRM's process and criteria for reviewing the Assessments and reviewing and ranking the Strategies. This guidance is based on the 1996 Guidance and maintains the existing program structure. States and territories will update their Assessments based on a set of questions that was developed by OCRM, in consultation with states and territories (attached). Strategies will be based on the needs and priority enhancement areas identified in the Assessment and will cover the five year period from FY 2001 - FY 2005. States and territories must update their Assessment and successfully complete a new Strategy to be eligible for section 309 funding in FY 2001 and beyond.

II. ELIGIBLE SECTION 309 ACTIVITIES

The following activities are eligible for section 309 funding.

A. Assessments and Strategies

States may fund activities necessary to develop section 309 Assessments and Strategies with section 309 funds.

B. Program Changes

Program changes are, as the term indicates, changes to federally-approved CZM programs as opposed to changes in the manner states and territories implement their programs. Program changes clearly include changes to state and territory enforceable policies and authorities. The definition of program change also includes new or revised state and territory coastal land acquisition and management programs as may be necessary to fully meet state and territory needs in such enhancement areas as public access and wetland habitat restoration. Program change, for the purposes of 309, means "routine program change" as defined in section 923.84 and "amendment" as defined in section 923.80, and includes the following activities that will enhance a state's or territory's ability to achieve one or more of the coastal zone enhancement objectives:

1. A change to coastal zone boundaries;
2. New or revised authorities, including statutes, regulations, enforceable policies, administrative decisions, executive orders, and memoranda of agreement/understanding;
3. New or revised local coastal programs and implementing ordinances;
4. New or revised coastal land acquisition, management, and restoration programs;
5. New or revised Special Area Management Plans or plans for Areas of Particular Concern (APC) including enforceable policies and other necessary implementation mechanisms or criteria and procedures for designating and managing APCs; and,
6. New or revised guidelines, procedures and policy documents which are formally adopted by a state or territory and provide specific interpretations of enforceable CZM program policies to applicants, local government and other agencies that will result in meaningful improvements in coastal resource management.

C. Program Implementation

Section 309 funds may be used to support selected implementation activities for section 309 program changes for up to two years. Program implementation activities should be described in the Strategy and must meet the following general requirements:

1. must relate to one or more 309 program changes;
2. must be a component of the activity that measures, within two years, how it will improve effectiveness of the program; and,
3. must be cost effective.

Within these general requirements, eligible program implementation activities include:

1. administrative actions to carry out and enforce program change policies, authorities and other management techniques;
2. equipment purchases related to the program change; and
3. allowable costs as determined in accordance with the provisions of OMB Circular A-87: Cost Principles for State and Local Governments.

Please note that eligible section 309 implementation activities do not include 306A type projects such as acquisition and construction projects.

III. DISTRIBUTION OF 309 FUNDS: FORMULA AND PSM

Section 309 funds may be awarded in two ways: (1) formula; and (2) individual evaluation and ranking of Projects of Special Merit (PSMs). Over the past five years, all 309 funding has been distributed via formula. The decision on whether to conduct a PSM round will continue to be made on an annual basis as part of the allotment guidance development process. A primary consideration in determining the split between formula and PSM funding will be maintaining adequate and predictable formula funding.

A. Formula Activities

The purpose of the formula funding allocation is to provide a predictable multi-year level of funding to support states and territories in undertaking projects in compliance with their Strategies. Formula projects are those that are critical to meeting the work plan in the Strategy. Because funding for formula tasks is more predictable than that for PSMs, basic functions necessary to achieve the objectives of the Strategy, such as hiring staff, should be included in formula projects. Projects proposed for the formula funding category must meet the following requirements:

1. Projects are consistent with the state's or territory's approved Assessment and Strategy and advance the objectives/program changes of the Strategy;
2. Project costs are reasonable and necessary to achieve the objectives of both the project and the Strategy. Allowable costs will be determined in accordance with the provisions of OMB Circular A-87: "Cost Principles for State and Local Governments;"
3. The projects are technically sound;
4. The state or territory has an effective plan to ensure proper and efficient administration of the projects; and,
5. The state or territory has submitted the required project information as described in Section IV.B.2.

B. Projects of Special Merit

OCRM may award a portion of section 309 funds to states and territories based on an annual evaluation and ranking of PSMs. The purpose of PSMs is to offer states and territories that are particularly innovative and have performed in an exemplary fashion under the formula program an opportunity to obtain additional funds. As PSM funds will be awarded competitively, these projects should further the objectives of a state's or territory's Strategy, but may not be essential to meeting specific elements of the work plan. PSM projects should not be dependent on long-term levels of funding to succeed. States and territories may submit multi-year PSM proposals; however all proposals will be evaluated for single-year funding. In reviewing proposals for out-

year funding for multi-year PSMs, OCRM will recognize prior funding commitments; however, OCRM does not guarantee that funds will be awarded for subsequent years. In any case, only the highest ranked PSM projects will be funded.

OCRM will establish a maximum amount of PSM funds a state or territory may be awarded annually, which may vary depending on the total section 309 funds available. PSM proposals must meet the same criteria as the standard formula projects, listed above. In addition, they will be evaluated and ranked using the following criteria:

1. Merit (90 points). OCRM will review each proposal to determine the following:
 - \$ Degree to which the project significantly advances the program improvements and leads to a program change, or implementation activity identified in the state's or territory's Strategy;
 - \$ Degree to which the project will result in improved management of coastal resources or uses;
 - \$ Overall benefit of the proposal to the public relative to the proposal's cost;
 - \$ Innovativeness of the proposal;
 - \$ Transferability of the results to problems in other coastal states; and
 - \$ The state's or territory's past performance under section 309.
2. Fiscal needs (5 points). OCRM will review each proposal to determine the "fiscal needs" of a state or territory.
3. Technical needs (5 points). OCRM will review each proposal to determine the technical needs of a state or territory.

IV. ASSESSMENT AND STRATEGY

This section covers the following items: purpose of the Assessment and Strategy, guidance on content and format for the Assessment and Strategy, the process for determining priority enhancement areas, and public review requirements. OCRM encourages states and territories to combine the Assessment and Strategy into one document. If the Assessment and Strategy are combined, the Strategy for addressing a priority enhancement area may either be included directly after the Assessment of that priority enhancement area, or as part of a separate Strategy section. The length of the Assessment/Strategy document should be limited to 60 pages (or, if produced separately, 35 pages for the Assessment and 25 - 30 pages for the Strategy). States and territories should submit the Assessment/Strategy on computer disk, as well as in hard copy.

A. Assessments and Priority Enhancement Areas

1. Purpose

The revised Assessment will build on the last Assessment and serve many of the same purposes, including:

1. identifying changes that have taken place within each of the nine section 309 enhancement areas, including problems that have been addressed, new issues that have arisen, and changes in the status of the resources;
2. describing the nature of problems, changes in the status of resources, or new issues, including the extent to which they are being addressed and their relative importance;
3. providing the basis for determining the priority needs for improvement of state and territorial coastal management programs; and,
4. providing the public with an opportunity to learn more about accomplishments under section 309 and to comment on the state's or territory's identification and justification of current priority needs, as well as the possible means that the state or territory is considering to address the identified needs.

2. General Content and Format

The revised Assessment is structured to: (1) simplify the process for completing the Assessment; (2) provide information in a consistent format that can be useful in developing national products such as reports and databases; and, (3) summarize section 309 accomplishments.

The Assessment will essentially be a combination of responses to questions and directives which have been provided in Attachment A, and will consist of three major sections: Introduction; Summary of Past 309 Efforts; and, Enhancement Area Analysis. States that will be undertaking their first assessment may need to expand on the question and answer format to provide adequate background information.

1. Introduction: The introduction should briefly summarize the state's or territory's section 309 program and the state's or territory's proposed priority enhancement areas (1-2 pages). If the Strategy is being included in the same document, the introduction should describe the format that is being followed.
2. Summary of Past 309 Efforts: The state or territory should include a brief summary of past efforts under the section 309 program since the last assessment update. This section should describe major accomplishments under 309 since the last Assessment, including not only program changes but other improvements, either planned or unplanned. If the state or territory is including implementation activities in its Strategy for a particular enhancement area, it may want to use the summary of past efforts to demonstrate the need to undertake implementation activities.
3. Enhancement Area Analysis: This section should address the questions, directives and charts for each of the nine priority enhancement areas. The purpose of these questions, directives and charts is to determine the status of each enhancement area since the previous Assessment, and to clearly identify priority needs. It is expected that this section will make up the bulk of the Assessment. Answers should be succinct, but include a context for the response. Bullets are acceptable, as long as sufficient relevant information is provided. Additional documentation may be attached as appendices. States and territories should rely on existing data and information.

In developing the revised Assessment, states and territories should keep in mind that the document will be undergoing public review (discussed further below), and therefore should be concise and focused. We are also considering posting the updated and approved Assessments on the OCRM website. To provide adequate background information, states and territories should also make the previous Assessment available to the public.

3. Determining Priority Enhancement Areas

States and territories will continue to rank enhancement areas as high, medium and low priority, based on the Assessment. While developing the Assessment, states and territories should review the priorities identified in the previous Assessment and consider the objectives and sub-objectives for each of the nine enhancement areas. There have been a few minor changes to the objectives and sub-objectives for each of the enhancement areas. The priorities should also reflect the suitability of section 309, with its emphasis on program changes, for addressing the underlying issues.

States and territories should work closely with the regional manager and regional staff in the Coastal Programs Division to review the state's or territory's existing priorities and make a preliminary determination during development of the Assessment on whether these priorities should be revised. This preliminary determination will help guide the formulation of the revised Assessment since it is anticipated that high priority areas, and changes in priorities, will require more detailed answers to the Assessment questions discussed above.

Pursuant to section 309(d)(1), the final determination of each state's or territory's priority needs rests with OCRM. However, this determination will be made in full consultation with each state and territory both during the development of the Assessment, and with due consideration of public comment once the Assessment has been submitted to OCRM for review and approval.

B. Strategy

1. General Content

The principal purpose of the Strategy is to describe projects the state or territory will undertake to meet the priority enhancement area needs identified in the updated Assessment. In FY 2001, each participating state and territory will submit a Strategy (either separately or combined with the Assessment), to be evaluated and ranked by OCRM. Strategies must be based on the needs and priority enhancement areas identified in the Assessments, and should cover the 5-year period from FY 2001 - FY 2005. The Strategy must adhere to the outline described below. The Strategy should include enough information for OCRM to determine whether: (1) the proposed program change or implementation activity adequately addresses the needs identified in a state's or territory's Assessment; and, (2) the state's or territory's general work program to achieve the program change is appropriate and cost-effective.

The Strategy should identify program changes and implementation activities and include general outlines demonstrating the approach the state or territory is proposing to accomplish these efforts. The Strategy must include estimated costs, a schedule, and a general work plan listing necessary steps for achieving the program changes and implementation activities. Detailed information on annual work programs, budgets, benchmarks, and work products, previously required in the Strategy itself, will now be determined through the annual award negotiation process. It is not necessary for states and territories to differentiate between weighted formula projects and PSMs in the Strategy. However, states and territories should keep in mind the differing criteria for weighted formula projects and PSMs in developing their Strategy and in out-years when submitting projects for PSM funding.

2. Format

States and territories should use the following format in writing their draft and final Strategy. State and territory Strategies should reflect the specific criteria that OCRM will use to evaluate

and rank Strategies (pages 11-13). For each priority enhancement area that will be addressed in the Strategy, states and territories must include the following:

1. Information for each priority enhancement area addressed in the Strategy including a brief summary of the coastal management problem identified in the state's or territory's Assessment (1-2 paragraphs). Please note that this summary is not necessary if the state or territory is producing a combined Assessment/Strategy document.
2. Identification of proposed program changes and/or implementation activities including a description of the program changes or implementation activities as defined on page 2 of this guidance.
3. Discussion of the anticipated effect of the changes or implementation activities: What will they actually accomplish? What is their scope and value in improved coastal management and resource protection?
4. For implementation activities, the state or territory should briefly describe the program change that has been adopted, and how the proposed activities will accomplish that program change.
5. Explanation as to why the proposed program changes or implementation activities are the most appropriate means to address the priority need. This discussion should reference the key findings of the Assessment and explain how the Strategy addresses those findings.
6. A general work plan that identifies the major steps necessary for achieving the program changes or implementation, and a general schedule for completing the work plan.
7. A summary of estimated costs.
8. Discussion of the likelihood of attaining the proposed program changes and implementation activities, including: the nature and degree of support for pursuing the Strategy and the proposed changes; and, the specific actions the state or territory will undertake to maintain or build future support for achieving and implementing program changes, including education and outreach activities.

3. Fiscal and Technical Needs:

The Strategy should document fiscal and technical needs and such documentation should include:

1. For fiscal needs, information on the current state or territory budget (surplus or deficit), the budget of the applying agency (increase or decrease over previous fiscal year), future budget projections, and what efforts have been made by the applying agency, if any, to secure additional state funds from the legislature and/or from off-budget sources such as user fees; and,

2. For technical needs, identification of the technical knowledge, skills and equipment that are needed to carry out proposed projects and that are not available to the applying agency, and what efforts the applying agency has made, if any, to obtain the trained personnel and equipment it needs (for example, through agreements with other state agencies).

C. Public Review

Because the CZMA places a strong emphasis on public participation, states and territories will provide opportunities for public review and comment on the revised Assessment. Since OCRM is encouraging a combined Assessment/Strategy document, states and territories may choose to present either the entire document for public review, or only the Assessment portion. The public review process does not necessarily require formal public hearings. Public review may occur through a variety of means, e.g., advisory committees, Commission meetings, or informal public workshops. At a minimum, states and territories should provide adequate public notice, document availability, and a minimum 30-day public comment period. As indicated in the attached schedule, OCRM will review the draft Assessment concurrently with public review. A summary of public comments and responses should be included with the final Assessment/Strategy document.

D. Threatened and Endangered Species Considerations

An increasing number of species found in the coastal zone have been identified as endangered or threatened, both at the state and federal levels, with the loss or modification of habitat being identified as a concern. Consequently it has become increasingly important to look at how CZM activities might affect threatened and endangered species. Most states, particularly those with numerous ESA listed species, already address threatened and endangered species as part of planning and permitting activities. Considering these issues in the Assessments and Strategies can help states to plan for projects that address these needs through section 309 funding in future years. States should consider the following when preparing Assessments and Strategies:

- § Examine potential endangered and threatened species issues in each of the appropriate enhancement areas, including their implications for identifying priority enhancement areas.
- § Identify opportunities for program changes and/or habitat conservation and restoration as a component of the Strategies to address these issues.
- § Consider whether other proposed program changes in the Strategies could have negative effects on endangered and threatened species, and whether there are ways to lessen or eliminate these potential effects.

5. Relationship to Marine Protected Areas

On May 27, 2000, President Clinton issued an Executive Order on Marine Protected Areas. As part of this Executive Order, the U.S. Department of Commerce and the U.S. Department of the Interior are required to establish a system of marine protected areas. This will require a strong cooperative effort with the states, commonwealths and territories that have primary management responsibility for the territorial sea and coastal zone. It also provides an important opportunity for states to enhance protection and management of marine and other special land and water coastal areas.

Section 309 provides several opportunities for addressing special areas. First, there is a specific enhancement area (section 309(6)) that calls for preparing and implementing special area management plans for important coastal areas. Second, there are opportunities to address specific issues within special management areas through the other enhancement areas such as coastal hazards, public access, wetlands, and planning for ocean resources.

Because of the increasing recognition of the importance of special marine and coastal areas, and the coastal management program's responsibility and capability to address this issue, we encourage states to consider how they can improve management of their special areas as they update their section 309 Assessments and Strategies.

V. OCRM REVIEW AND RESPONSE TO THE ASSESSMENT/STRATEGY

OCRM will review the state and territory Assessments/Strategies to determine (1) whether the Assessment has been successfully updated; (2) priority enhancement areas; and (3) if the Strategy is acceptable and therefore eligible for funding. States and territories that receive an acceptable ranking will receive funding based the standard allocation formula described at 15 C.F.R. 927.1(c). A state or territory whose Strategy receives a ranking of not acceptable, will not

receive section 309 funding, but will have the opportunity to submit a revised Strategy for approval during the following fiscal year.

A. Review of Assessments

States are required to update Assessments as described above. OCRM will review the Assessments for compliance with the requirements, and the identification of priority enhancement areas. We expect that the approval of this third round of section 309 Assessments and Strategies will be streamlined, since they update and build upon previous, approved Assessments.

B. Criteria for Review and Ranking of Strategies

As with the last section 309 round, OCRM will apply two ranking levels to the Strategies: acceptable and not acceptable. OCRM will evaluate each state's and territory's Strategy individually, using the four criteria identified below. This evaluation will occur solely within the context of each state's and territory's coastal resource management needs, its existing coastal management program and its governmental structure. Listed below are the criteria that will be applied when evaluating and ranking the Strategies:

1. Scope and Value

In evaluating the scope and value of a proposed program change or implementation activity, OCRM will consider the following factors:

1. The scope of the proposed change in terms of quantifiable improvements in coastal resource management. Examples are: relative number of acres of wetlands protected or percentage of wetlands restored; number of public accessways improved, etc.
2. The qualitative magnitude of the proposed change in terms of improved management of coastal resource(s) of local, state, or national significance, including state or federally listed endangered and threatened species.

- c. The threat to the resource or the need for improved management. Will the opportunity to protect the resource or address the issue be lost in the short term if the proposed change is not made?

In applying these factors, OCRM recognizes that it may be difficult to determine the quantitative and qualitative values of some program changes or implementation activities, particularly in

cases where broad institutional improvements are proposed. States and territories should, however, provide the best possible estimates of the impacts of the proposed activities.

If a state or territory cannot identify a specific program change or implementation activity to address a priority enhancement area, it may identify a range of possible options it will pursue. In this case, the state or territory must still specify the basic scope and direction of the enhancement grant work.

2. Technical Merit

In reviewing the work plan component of state and territory Strategies, OCRM will consider the following questions:

- a. Is the program change or implementation activity an appropriate means for addressing the "priority need?" Is the state or territory addressing the most appropriate objective with the appropriate tools or mechanisms (planning, regulation, management) at the right level of government (state, regional, local), or are there more effective and/or efficient ways of addressing the need?
- b. Is the work plan comprehensive in overall design, personnel, schedule and sequencing? Are data collection, synthesis, concept development, and public involvement tasks appropriate? Does the work program include sufficient information to gauge progress toward attaining the proposed activity?
- c. Does the work plan schedule reflect the most effective and logical approach to enacting the proposed program change or implementation?
- d. Is the work plan cost-effective? Are the costs of developing the program change or implementation activity commensurate with the value of the proposed improvement in coastal management?

3. Likelihood of Success

In evaluating the likelihood of attaining the proposed change(s) or implementation steps, OCRM will consider the following factors:

1. The nature and degree of existing support for the Strategy and its objectives.
2. The strength of the state's or territory's Strategy to maintain and build future support and consensus regarding the objectives of the Strategy.
3. Past performance of the state or territory under section 309.

4. Technical and Fiscal Needs

OCRM will consider the technical and fiscal needs of each state and territory as described in its Strategy.

VI. SCHEDULE

June 2000	Final guidance on revising Assessments and Strategies.
July 2000	States and territories begin work on Assessments and Strategies.
December 2000	OCRM issues draft allotments for FY 2001 306/309 funding.
January 2001	OCRM issues final allotments for FY 2001 306/309 funding.
March 1, 2001	Final Assessments, including public comments and responses, and Strategies due in OCRM.
April 1, 2001	OCRM ranks and advises states and territories on Strategy approval and ranking. States notified of an unacceptable ranking will have two weeks to address concerns. Following that, OCRM will provide final rankings to those states.

Dated: May 15, 2001.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.*

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BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051701E]

Coastal Zone Management Program Administration Grants

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 23, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John King, Acting Chief, Coastal Programs Division, NOS, 1305 East-West Highway, Room 11110, Silver Spring, MD 20910 (phone: 301-713-3121, ext. 188).

SUPPLEMENTARY INFORMATION:

I. Abstract

Coastal zone management grants provide funds to states and territories to implement federally approved Coastal Zone Management Programs and to develop assessment documents and multi-year strategies. Paperwork Reduction Act approval is being sought for performance and annual reports, requests for amendments or routine program changes to an approved program, and the submission of program management and assessment/strategy documents.

II. Method of Collection

Information is submitted to respond to requirements detailed in regulations. No forms are used.

III. Data

OMB Number: 0648-0119.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, local, or tribal government.

Estimated Number of Respondents: 34.

Estimated Time Per Response: 15 hours for a performance report on a state's Coastal Zone Management Program, 27 hours for any other performance report, 800 hours for a program management document, 6 hours for an annual report, 240 hours for an Assessment and Strategy document, 8 hours for an amendment, and 5 hours for documentation related to section 306A of the Coastal Zone Management Act.

Estimated Total Annual Burden Hours: 6,598.

Estimated Total Annual Cost to Public: \$250.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 15, 2001.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.*

[FR Doc. 01-12875 Filed 5-21-01; 8:45 am]

BILLING CODE 3510-08-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 001214351-1124-02]

RIN: 0648-ZB02

Dr. Nancy Foster Scholarship Program; Financial Assistance for Graduate Students

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is announcing funding availability for graduate students pursuing masters or doctoral level degrees in oceanography, marine biology, or maritime archaeology through the Dr. Nancy Foster Scholarship Program and is inviting applications for such scholarships. Applicants who have submitted an application for a Dr. Nancy Foster scholarship prior to the publication of this notice should review their applications and submit any revisions or supplemental materials necessary to comply with the application requirements or in recognition of the funding priorities and selection criteria set forth in this notice.

DATES: The Dr. Nancy Foster Scholarship Program application period opened March 26, 2001, 66 FR 16445, and will close June 21, 2001. Applications must be postmarked by the closing date. Scholarship awards will be announced on or about July 19, 2001.

ADDRESSES: Applications should be sent to the Dr. Nancy Foster Scholarship Program, Attention: Office of the Assistant Administrator, 13th Floor, National Ocean Service, 1305 East-West Highway, Silver Spring, MD 20910. Copies of form CD-511 may be requested from this address or may be downloaded from the Department of Commerce Web site: <http://www.doc.gov>. Information on the scholarship program may be obtained from the Web site: <http://fosterscholars.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Foster Scholarship Program, Office of the Assistant Administrator, 13th Floor, National Ocean Service, 1305 East-West Highway, Silver Spring, MD 20910 (301-713-3074).

SUPPLEMENTARY INFORMATION: Authority: The Dr. Nancy Foster Scholarship Program is authorized by the National Marine Sanctuaries Amendments Act of 2000 (Pub. L. 106-513) to recognize