

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 08/16/2009

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Suzanne Hilding
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 01/22/2009

ACTION REQUESTED: Extension without change of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200812-0648-006
AGENCY ICR TRACKING NUMBER:
TITLE: Coastal Zone Management Program Administration
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0119
The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 08/31/2012 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	509	17,974	0
New	375	8,125	680
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	0	0	0
Change due to Agency Adjustment	-134	-9,849	680
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Coastal Zone Management Act Performance Management System			
Semiannual performance reports for 306,306a, 309, 310,6217			
Section C annual performance report			
Amendments and Program Changes documentation			
Section 306A documentation	NA	Section 306A checklist	
Section 309 Assessment and Strategy documents			15 CFR 923 Subpart K
Nonpoint Pollution Control Program			
Section 310 - Section A Semi-Annual Performance Report			

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. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> 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. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance d. <input type="checkbox"/> 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, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

SUPPORTING STATEMENT
COASTAL ZONE MANAGEMENT PROGRAM ADMINISTRATIVE GRANTS -
PERFORMANCE REPORTS, AMENDMENT AND ROUTINE PROGRAM CHANGES,
SECTION 306A AND SECTION 309 REQUIREMENTS, AND SECTION 6217
COASTAL NONPOINT POLLUTION PROGRAM
OMB CONTROL NO. 0648-0119

A. JUSTIFICATION

This request is for a renewal of this collection of information.

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

In 1972, in response to intense pressure on United States (U.S) coastal resources, and because of the importance of U.S. coastal areas, the U.S. Congress passed the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et. seq.* The CZMA authorized 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. ([CZMA as amended](#)). The 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, 34 of the 35 coastal states, including those of the Great Lakes and U.S. territories, have coastal management programs (CMPs) approved by the NOS Assistant Administrator. Officials in the last remaining state are making some progress toward 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) [Section 6217](#) established the Coastal Nonpoint Pollution* Control Program. The specific sections of the CZMA that authorize grant programs will be discussed in further detail.

*Pollution not from a specific location.

A. Performance Reporting Requirements

All thirty-four states and territories who receive funds under sections 305, 306, 306A, 309, 310 and/or 6217 must complete a cooperative agreement performance report, and submit data for the CZMA Performance Measurement System (CZMAPMS). 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) has provided to the states and territories updated, *OCRM FY 2009-2010 Performance Progress Report Guidelines*, November 2008 and the *OCRM, April 2008 Coastal Zone Management Act Performance Measurement System Guidance Document*.

According to the cooperative agreement 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. Also semi-annually, Section B describes the status of program implementation activities. Section C will be submitted on an as-requested basis (no more frequently than annually) and is not necessarily tied to specific award periods.

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

According to the guidance for the CZMAPMS, coastal states with approved CZM programs must submit data related to program progress in meeting the goals of the Coastal Zone Management Act. Data submission is electronic for 17 annual measures and 9 measures (for Section 309) to be submitted every 5 years.

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 authorizes the Secretary of Commerce to make grants to coastal states to implement their federally approved coastal zone management programs.
- 1.c. 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.

1.d. Section 309 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 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.

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.

Listed below are the requirements for specific documents that apply to most of the state and territorial coastal management programs.

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. Currently, no state is receiving section 305 funds to develop a coastal management program. However, the one state that is still eligible to receive section 305 funds is making some progress toward participating in the program.

[15 CFR 923.3](#) sets forth the requirements which must be fulfilled as a condition for state coastal management program approval. States must 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 request, 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 (and required) to develop a coastal nonpoint pollution program under section 6217 (see A.1.F.).

C. Section 306/306A Guidance Requirements

Under section 306 OCRM administers the program at the federal level and works with state coastal zone management partners and funds projects to:

1. Preserve, protect, develop, and, where possible, restore and enhance the resources of the nation's coastal zone for this and succeeding generations;
2. Encourage and assist the states to exercise effectively their responsibilities in the coastal zone to achieve wise use of land and water resources, giving full consideration to ecological, cultural, historic, and aesthetic values, as well as the need for compatible economic development;
3. Encourage the preparation of special area management plans to provide increased specificity in protecting significant natural resources, reasonable coastal-dependent economic growth, improved protection of life and property in hazardous areas and improved predictability in governmental decision-making; and
4. Encourage the participation, cooperation, and coordination of the public, federal, state, local, interstate and regional agencies, and governments affecting the coastal zone.

States with federally approved CMPs who are making satisfactory progress in meeting the objectives of the CZMA are eligible to apply for grants under this section as described in the *OCRM, April 2008 Coastal Zone Management Act Performance Measurement System Guidance Document*. OCRM has determined that based on the current and revised section 306A requirements, the annual burden hours will not change.

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

1. 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;
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;

3. Provision of access to public beaches and other coastal areas and to coastal waters in accordance with the planning process; or,
4. The development of a coordinated process among state agencies to regulate and issue permits for aquaculture facilities in the coastal zone.

D. Section 309 Assessment and Strategy Requirements

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. As described in [15 CFR 923, Subpart K](#), 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 annual burden hours are based on the current section 309 requirements. The section 309 requirements may be revised in the near future.

The purposes of the Assessment are:

- To determine whether coastal problems exist within each of the nine section 309 enhancement areas; and where problems exists, 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 addressing 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.

Section 309 Assessments and Strategies are completed by the states and territories every 5 years. The states and territories will begin working on the assessment and strategy in FY 09/10, with the documents due to OCRM by the end of FY 10.

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, *Program Change Guidance, July 1996*.

F. Coastal Nonpoint Pollution Program

The Coastal Nonpoint Pollution Control Program implements section 6217 (Protecting Coastal Waters) of the CZARA and is a joint program with the U.S. Environmental Protection Agency (EPA) and NOAA. 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. The Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters was prepared by EPA. The [Program Development and Approval Guidance](#) were prepared by the OCRM.

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 section 319 of the Clean Water Act (CWA) and section 306 of the CZMA 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' 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.

1. Review the program guidance document describing the contents required for the Coastal Nonpoint Program.
2. 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.

3. Plan activities (i.e., delegate collection tasks, plan interagency meetings, establish reviewers, and delegate writing activities).
4. Collect information relevant to the data items listed above, (e.g., lists of impaired coastal waters, 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.
5. 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.
6. Write draft Coastal Nonpoint Program.
7. Write final Coastal Nonpoint Program.

Once completed, the EPA and NOAA will jointly review the state's coastal nonpoint program. The Federal agencies will use the coastal nonpoint programs to evaluate state efforts to achieve the goals of the CWA and the CZMA.

OCRM provided to states and territories, *Program Development & Approval Guidance*, January 1993.

G. Coastal Zone Management Act Performance Measurement System

The purpose of the CZMAPMS is to track measures of effectiveness of the coastal management programs at the national level. The system consists of a suite of performance measures to assess how well programs are achieving the objectives of the CZMA and contextual indicators to provide information on environmental and socioeconomic factors influencing program actions. Data generated by the CZMAPMS will be used to communicate to stakeholders, including Congress, the importance of the national CZMP. In combination with qualitative reporting of program successes, quantitative measures provide stakeholders with information about how the CZMP is responding to environmental, economic, and social challenges to balance development with the protection and restoration of coastal resources. The CZMAPMS will provide a mechanism to document trends over time in program activities as well as management priorities.

The CZMAPMS was developed through a series of cooperative processes that resulted in the current list of performance measures. These processes included a contract between the OCRM and the H. John Heinz III Center for Science, Economics and the Environment to develop a system framework. The Heinz Center concluded that six categories captured the major CZMA objectives. Building on this report, OCRM worked with a group of eight Coastal Management Programs to develop a draft list of performance measures that were piloted by seven Coastal Management Programs. The pilot group narrowed the list of performance measures to those implemented by all 34 Coastal Management Programs.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with applicable NOAA Information Quality Guidelines.

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 in annual cooperative agreements. In addition, states submit data for the CZMA Performance Measurement System to report progress toward the goals of the CZMA. The cooperative agreement 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. Cooperative agreement performance reports are submitted semi-annually. Since CZM awards are annual appropriations, states and territories could have three concurrent CZM awards, and could submit per year, a maximum of six performance reports (two reports per award) until all tasks and activities are completed on the award. The majority of measures in the CZMA Performance Measurement System are submitted annually; however, some measures are submitted every 5 years.

Section A of cooperative agreement performance reports describes the status of each Section 306, 306A (if applicable), 309, 310 and coastal nonpoint program grant task and relevant special award conditions. The report must be detailed enough to provide OCRM with a clear understanding of what has been accomplished under each task during the performance period and include the following information:

- Status of each task, organized by task number and title (e.g., meetings held, permits processed, work products completed, contracts completed).
- Status of task benchmarks due during the performance period.
- Status of special award conditions due during the performance period.
- Progress in meeting any "necessary actions" or "program suggestions" identified in the most recent Section 312 evaluation.
- Progress in achieving program changes as identified in the Strategies supporting Section 309 tasks.

Section B of cooperative agreement performance reports describes the information required to assess the states' coastal program implementation as it relates to: (1) permit administration,

monitoring and enforcement, (2) federal consistency, and (3) program changes. Information reported under these topics should include sufficient detail to provide a clear understanding of the major activities, problems, controversies, and accomplishments during the reporting period. In the case of the first two topics, states should submit quantitative information in chart or tabular form, as well as narratives that briefly elaborate on the most significant aspects of the reporting elements. For permits and federal consistency, example charts are provided in the *OCRM, April 2008 Coastal Zone Management Act Performance Measurement System Guidance Document*.

States may use existing state reporting mechanisms to provide the tabular data requested as long as the information that meets the reporting requirements is provided. When a topic in Section B is also a grant task (and therefore reported under Section A), it is not necessary to repeat the same information in Section B, again as long as all the required information is provided.

Section C of the cooperative agreement performance reports requires states to submit three to six examples of projects or instances where the coastal management program has been successful in addressing coastal management issues. The purpose of this section is to enable OCRM to collect information on innovative management technical and resource protection programs for exchange between coastal programs and to cite specific accomplishments under the federal coastal zone management program. OCRM has used examples of success stories in technical assistance bulletins, Congressional testimony, factsheets, other NOAA documents, and in discussions with other coastal programs. Section C is not necessarily tied to a specific award period, and is requested on an as-needed basis (no more frequently than annually).

The narrative for each success story should include:

- Identification and description of the coastal resource management issue; description of how the coastal program was involved;
- Summary of improvements in increased resource protection and institutional relations (e.g., a Memorandum of Agreement with another agency to ensure that coastal policies are better addressed);
- Where possible, quantitative information on the degree of improvement (e.g., acres of wetlands protected as a result of increasing the state's monitoring and enforcement efforts); and
- Where possible, state federal, and local funds expended for the improvement.

Section A, B, and C of cooperative agreement performance reports and data for the CZMA Performance Measurement System also enable 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 in section 305, 306, 306A, 309, 310 and 6217. Through the information collected NOAA can: 1) document the success of section 309 projects; 2) contribute to the statutory Biennial Report of Congress on the administration of the CZMA; and 3) assesses the overall success of the national program.

The 34 states and territories with approved CZM Programs submit data for the CZMA Performance Measurement System annually. These thirty-four states and territories can have as many as three concurrent CZM awards. Each award requires a semi-annual performance report; Thus, the states could submit a maximum of six performance reports a year (two reports per award) until all tasks and activities are completed on the award.

B. Section 305 Coastal Management Program Document

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

Currently, there are no states receiving section 305 funds to develop a coastal management program. However, the one state that is still eligible is making some progress toward participating in the program.

C. Section 306/306A Requirements

The states and territories completing section 306A projects must submit all required section 306A documentation for NOAA approval. The only information required, unless notified by NOAA, is a completed and signed section 306A *Project Checklist* and title information for each proposed section 306A project. This process is directly related to the section 306 grant application, in that a state shall submit one application for a combined section 306/306A award.

D. Section 309 Assessment and Strategy

The 34 coastal states and territories with federally approved coastal zone management programs will complete assessments and strategies again during FY 09/10. Section 309 assessment and strategies are completed every five years.

The uses of this submission are described in section “A.1.D.” above.

E. Amendment and Routine Program Change

The states and territories must request approval of legal amendments or program changes to their approved CZM programs. This process is directly related to the program approval process. States are required to submit program changes on an as needed basis.

F. Coastal Nonpoint Pollution Control Program Document

Section 6217 authorizes states and territories with Federally-approved coastal zone management program to develop and implement coastal nonpoint pollution control programs. Of the thirty-four states and territories with approved coastal management programs, twenty-one (21) states

have an approved coastal nonpoint management program and thirteen (13) states continue to make progress towards full approval.

As explained in the preceding paragraphs, the information gathered has utility. NOS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to [Section 515 of Public Law 106-554](#).

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.

CZM Programs now submit cooperative agreement performance reports and work products in electronic format, through Grants Online (<https://grantsonline.rdc.noaa.gov/>). The Office of Ocean and Coastal Resource Management (OCRM) developed the Internet-based Coastal and Marine Management Program (CAMMP) Information System (<https://cammp.nos.noaa.gov/cammp/>) which is an electronic grant application and reporting and management system, a subset of the Grant Application and Reporting System (GARS) Information System.

4. Describe efforts to identify duplication.

NOAA is the only agency providing funds for these objectives. We have not identified any duplication. For the cooperative agreement performance report and CZMA Performance Measurement System requirements, 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, no determination of grant awards would be possible, and the reviewing agency personnel would have a difficult time documenting whether an awardee is adhering to its approved coastal zone management program and whether the state is making continued progress toward coastal management goals. 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 information on the PRA Federal Register Notice that solicited public comments on the information collection prior to the submission. Summarize the public comments received in response to the notice and describe the actions taken by the agency 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 published on October 10, 2008 (73 FR 60244) solicited comments on this renewal request. No comments were received.

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

No payments or gifts 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 nor provided.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or 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 data for the CZMA Performance Measurement System and semi-annual cooperative agreement performance reports. Section 306 awards will also include sections 306A, 309, 310 and 6217. For the CZM awards, the states and territories submit two cooperative agreement performance reports that include all the appropriate reporting sections. States and territories could have three concurrent CZM awards, which would require six performance reports in a year.

Number of Respondents x Hours x Responses/Year	Annual Burden Hours
1) 34 respondents x 27 hours x 1 response/year CZMA Performance Management System	918 hours (<i>previously 2 responses per year required, and previous hours per response were mistakenly stated as 127 hours – correction results in 7,695 fewer hours.</i>)
2) 34 respondents x 27 hours x 2 responses/year (306/306A/309/310/6217 - Section A, B and C Semi-annual performance reports - first year of awards)	1,836 hours (<i>unchanged</i>)
3) 34 respondents x 10 hours x 2 responses/2 years (306/306A/309/310/6217 - Section A Semi-annual performance reports - second year of awards)	340 hours (<i>corrected from 227</i>)
4) 30 respondents x 5 hours x 2 responses/year (306/306A/309/310/6217 - Section A Semi-annual performance reports - third and last year of awards)	300 hours (<i>20 add'l hours, plus previous hours divided by 3 in error (93 instead of 280)</i>)
5) 34 respondents x 8 hours x 1 response/year (Section C Annual performance report)	272 hours (<i>unchanged</i>)
6) 15 respondents x 8 hour x 1 response/year (Amendments and Program Changes documentation)	120 hours (<i>unchanged</i>)
7) 11 respondents x 5 hours x 1 response/year (Section 306A documentation)	55 hours (<i>5 more hours</i>)
8) 34 respondents x 240 hours x 1 response/2 years (Section 309 Assessment and Strategy documents)	4,080 hours (<i>corrected from 5.440</i>)
9) 34 respondents x 4 hours x 1 response/year (Nonpoint Pollution Control Program)	136 hours (<i>response time reduced from 70 hours per response</i>)
10) 34 respondents x 1 hour x 2 responses/year (Section 310 funding - Section A Semi-Annual performance report)	68 hours (<i>all 34 respondent reporting, one report instead of 4, average response time 1 hour, 15 minutes less = 4 add'l hours net</i>)
11) 1 respondent x 800 hours x 1 response/year (Section 305 Program Development Document)	0 hours (<i>no change</i>)
12) 1 respondent x 5 hours x 2 responses/year (Section 305 - Section A Semi-annual performance report)	0 hours (<i>no change</i>)
Annual Totals: 375 responses	8,125 hours

13. Provide an estimate of the total annual cost burden to the respondents or record-keeper resulting from the collection (excluding the value of the burden hours in Question 12 above).

With use of e-mail and the Internet, costs for letters or records sent are minimal. We receive approximately 98 percent of our responses electronically. With 34 states reporting, spending per state averages \$20.00 on mailing, a small increase of \$180 from three years ago due to postage increases and inflation = \$680.00.

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

The annual Federal cost is estimated at \$166,010.00. This estimate cost represents the personnel time taken to collect, review, process, and analyze the data.

Number of Reports x Review Hours x \$65/hr. x Responses/year	Annualized Federal Cost
1) 34 respondents x 27 hours x 1 response/year CZMA Performance Management System	\$59,670.00
2) 34 reports x 10 hours x \$65/hr. x 2 responses/year (306/306A/309/310/6217 - Section A & B Semi-annual performance reports - first year report)	\$44,200.00
3) 34 reports x 2 hours x \$65/hr. x 2 responses/year (306/306A/309/310/6217 - Section A Semi-annual performance reports - second year report)	\$8,840.00
4) 30 reports x 2 hours x \$65/hr. x 2 responses/year (306/306A/309/310/6217 - Section A Semi-annual performance reports - third and last year report)	\$7,800.00
5) 34 reports x 2 hours x \$65/hr. x 1 response/year (Section C Annual Performance Report)	\$4,420.00
6) 15 reports x 10 hours x \$65/hr. (Amendments and Program Change documentation)	\$9,750.00
7) 11 reports x 2 hours x \$65/hr. (Section 306A documentation)	\$1,430.00
8) 34 reports x 10 hours x \$65/hr./year (Section 309 Assessment and Strategy documents)	\$22,100.00
9) 13 respondents x 4 hours x \$65/hr./year (Nonpoint Pollution Control Program)	\$3,380.00
10) 34 reports x 1 hours x \$65/hr. x 2 responses/year (Section 310 funding - Section A Semi-annual performance reports/coastal nonpoint source pollution)	\$4,420.00
11) 1 report x \$60/hour/year (Section 305 Program Development Document)	-0-
12) 1 report x 3 hours x \$60/hr. x 2 responses/year (Section 305 - Section A Semi-annual performance report)	-0-
Total Cost to Government	\$ 166,010.00

15. Explain the reasons for any program changes or adjustments.

The annualized burden hours has decreased from 17,974 to 8,261 due to: 1) some prior mathematical errors, 2) changes in both the number and type of grants open (fewer than at the time of the last submission), 3) electronic submission capability for all categories of response data, and 4) revised Performance Reporting Guidance. The burden hours for the Coastal Nonpoint Pollution Program decreased since no Congressional funding has been provided to States/Territories in the past three years and OCRM reviews have been fewer in number and size.

See the table in Question 12 for explanations of changes in burden for each information collection. NOTE: Miscellaneous costs increased from \$500 to \$680, based on the raises in postal rates. ROCIS shows the current cost as \$0 – and thus an increase of \$680 – due to the cost's having been rounded off when the ICR was migrated to the system.

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.

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 ("OCRM") 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 ("CMPs"). 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.

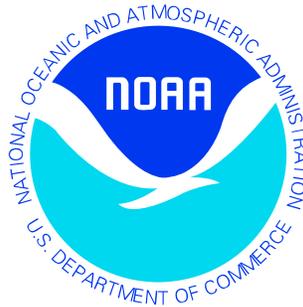
Please contact David Kaiser, Federal Consistency Coordinator, OCRM, at (301) 713-3098, x 144, if you have any questions on the program change guidance.

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 ("CMP") pursuant to the Coastal Zone Management Act of 1972 ("CZMA") 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 ("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. 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 ("CPD") 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 ("RPCs") (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 ("LCPs") 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 "substantial?"

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 "substantial." 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 ("FWS") or the National Marine Fisheries Service ("NMFS") 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 ("EIS") 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 ("EA"), with state CMP assistance as requested. The EA either leads to a Finding of No Significant Impact ("FONSI") 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 CMP's 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.

Appendix A

Program Change Regulations

61 Fed. Reg. 33815-33816 (1996)
(to be codified at 15 C.F.R. part 923)

(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.

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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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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 "beach" 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.

NOAA Office of Ocean and Coastal Resource Management FY2009-2010 Performance Progress Report Guidelines

November 2008

Introduction

This document provides Office of Ocean and Coastal Resource Management (OCRM) guidance for the submission of performance progress reports for financial assistance awards under Sections 306, 306A, 309, and 310 of the Coastal Zone Management Act of 1972, as amended (CZMA). OCRM needs the information contained in performance progress reports to determine adherence by State, Commonwealth and Territory coastal management programs (coastal programs) to the terms of financial assistance awards; compliance with grant tasks; adherence to the approved management program and plan; progress on meeting Section 312 evaluation necessary actions or program suggestions; and the extent to which the coastal program is addressing management needs identified in Section 303(2)(A) through (K) of the CZMA.

Under the Federal Chief Financial Officers 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 progress reports from recipients. If grant recipients have not submitted timely performance progress and/or financial reports as required by the Terms and Conditions of the award:

- NOAA cannot issue new grant awards,
- NOAA cannot approve post-award actions, and
- NOAA must deny access to funds under all financial assistance awards to that recipient.

The goal of OCRM's 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 progress reports while still providing necessary information.

General Reporting Requirements

Reporting frequency: Performance progress reports are divided into three sections: Section A (status of award tasks), Section B (status of program implementation activities), and Section C (success stories). For each open financial assistance award, coastal programs are required to submit performance progress reports on a semi-annual basis beginning from the start date of the award. Coastal programs must include Section A in every performance progress report and describe work performed under that award. Sections B and C should only be reported in the performance progress report for the most recent award and cover work performed under all open awards. Coastal programs should not submit quarterly performance progress reports. Although some coastal programs require quarterly performance reports from their sub-awardees and CPD leaves this decision to the coastal program, please do not send these quarterly reports under separate cover to CPD. Instead, summarize sub-awardees' quarterly reports in the semiannual performance progress report.

Reporting Deadline: Performance progress reports must be submitted no more than 30 days after the end of the performance period in order to ensure compliance with NOAA Standard Terms and Conditions, and to ensure compliance with the CFOA.

Electronic Reporting: All NOAA award recipients are deployed onto NOAA's online grants management system known as NOAA Grants Online. Therefore, all coastal programs MUST use Grants Online to submit their performance progress reports and, to the extent possible, associated work products as well. As there is only one module in Grants Online for each report, all sections of the performance progress report and work products must be submitted together. Also, in Grants Online, performance progress reports are submitted so that they are affiliated with a specific award. Thus, consolidated reports for all open awards are no longer feasible and coastal programs must submit a separate performance progress report for each open award.

In the Grants Online Performance Progress Report module, coastal programs can either choose to copy and paste short reports into the text box provided or attach a Word or PDF file of the performance progress report. Since the text box provided is small relative to the typical CZM performance progress report, it is most likely easier to submit the performance progress report as an attached file. Individual task reports and report sections should be compiled into one comprehensive file. All work products available in electronic format should also be submitted as attached files with the performance progress report. Work products should be submitted as individual files rather than embedded in the performance progress report and the file name should clearly indicate the task with which they are affiliated. Performance progress reports and work products can be submitted in a variety of electronic formats, however, Adobe PDF or Microsoft Word are the most commonly used.

CPD recognizes that it may not be possible to submit all work products electronically (e.g., videos, education posters). In these cases, work products can still be submitted in hard copy directly to the state's program specialist. Please ensure the product is identified by grant, task number, and performance period so the report they are associated with is clear. Only ONE copy is needed. A step-by-step guide to submitting performance progress reports in Grants Online is in Attachment D.

Last Performance Report: For CZM awards, a comprehensive "final" report, covering all tasks over the life of the award, is not required. Instead, CPD requires that the last report only cover open tasks and activities, clearly indicating when they are completed (after which it is no longer necessary to report on them). GMD has concurred with this decision (ref. Memorandum between Uravitch and Litton, "Final Performance Report Waiver," dated 12/28/98). The last performance progress report is due 30 days after the close of the final performance period and should be labeled as the last report for that award.

Coastal Zone Management Act Performance Measurement System: Congress directed NOAA to design and implement a performance measurement system to demonstrate national effectiveness in meeting the goals of the Coastal Zone Management Act (CZMA). The CZMA Performance Measurement System was developed in cooperation with coastal programs to report performance measures at the national level. FY2009 will be the first year of full implementation

by coastal programs. Annual guidance for the CZMA Performance Measurement System is issued separately and coastal programs are required to submit performance measure data through the Coastal Management Portal. Performance measures and financial measures must be reported annually in the Coastal Management Portal. State-reported contextual measures should be regularly tracked, but these measures are only required to be reported once every five years in the Coastal Management Portal. CZMA Performance Measurement System data will be used in combination with examples of program successes reported in Section C to communicate to stakeholders, including Congress, the importance of the national CZM Program.

OCRM will continue to work with CZM programs to improve and streamline the performance measures and data reporting requirements for the CZMA Performance Measurement System. To support such improvements, coastal programs are encouraged to include a task or sub-task in their awards related to implementation of the CZMA Performance Measurement System. Progress and implementation issues can then be reported for that task or sub-task in Section A of performance progress reports.

Performance Progress Report Title: Please include the following information in a title or on a cover page of the report:

Performance Progress Report for State Cooperative Agreement No.: NA09NOS419XXXX
for the Period from _____ to _____

Performance Progress Report Sections: This guidance document provides descriptions, examples, and a suggested format for the information that should be submitted in performance progress reports. Specific inconsistencies between OCRM reporting requirements and state reporting systems should be resolved by the state program managers and the appropriate CPD program specialist. Coastal programs are encouraged to make these reports as concise as possible. Narrative discussions can be particularly brief in cases where attachments (contracts, work products, meeting minutes, publications, public notices, etc.) provide a clear indication of progress. Attachments may be reports prepared for internal office purposes, reports prepared by the coastal program agency, or other statewide reports. Refer to Attachment A for examples.

Section A: Progress and Status of Award Tasks

Section A is reported semi-annually for each open award. Section A describes the status of each Section 306, 306A (if applicable), 310, and 309 grant task and relevant special award conditions. The report must be detailed enough to provide OCRM with a clear understanding of what has been accomplished under each task during the performance period. It must also be informative enough to provide OCRM with preliminary notice that revisions to a task or the award may be necessary due to problems encountered during the performance period. However, describing potential grant changes in the performance progress report does not replace the need to formally request such changes.

Section A should be organized in the following format for each task:

1. Task number and title, as written in the award application.
2. Status of associated special award conditions.
3. Description of task implementation progress (e.g., activities, key meetings held, permits processed, contracts or work products completed, and summaries of findings for studies).
 - a. For each 309 task: progress in achieving program changes as identified in the coastal program's approved Section 309 Assessment and Strategies document.
4. Status and description of task milestones or outcomes completed. If required work products, outcomes, or deadlines are not due for a task during the performance period, the narrative should describe progress in achieving these outcomes.
5. Status of task as either "not started", "in-progress", "not on schedule" or "completed" (including date of completion). If status is either "not started" or "not on schedule", please include an explanation and plans to complete task outcomes.

Section B: Status of Section 312 Evaluation Progress, State Permits, Federal Consistency, and Program Changes

Section B is reported semi-annually and should only be submitted with the performance progress report for the most recent award. Section B describes the work performed under all open awards directly related to coastal program implementation regarding: (1) Section 312 Evaluation Findings; (2) Permit administration, monitoring and enforcement, (3) Federal consistency, and (4) Program changes. Information reported under these topics should include sufficient detail to provide a clear understanding of the major activities, problems, controversies, and accomplishments during the performance period.

In the case of topics 2 and 3, states should submit quantitative information in chart or tabular form, as well as narratives that briefly describe the most significant aspects of the reporting elements; example charts are provided in Attachment B. Coastal programs may use existing state reporting mechanisms to provide the tabular data requested as long as the information that meets the reporting requirements is provided. When a topic area in Section B is also a grant task (and therefore reported under Section A), it is not necessary to repeat the same information in Section B, as long as all the required information is provided. The following provides a more detailed description of information to be reported under each topic of Section B.

Section B.1: Section 312 Evaluation Progress

Section B.1 describes status and progress in meeting any ‘necessary actions’ or ‘program suggestions’ identified in the most recent Section 312 Evaluation Findings. This section must be detailed enough to provide OCRM with a clear understanding of what has been accomplished to meet each necessary action or program suggestion during the performance period. This section should also provide OCRM with preliminary notice if the coastal program is not on schedule to meet requirements of the Section 312 evaluation findings. OCRM recognizes that not every necessary action or program suggestion will have activities to report during every performance period. If no activity occurred, simply indicate status in the narrative. Section B.1 should be organized in the following format for each necessary action and program suggestion:

1. Title or summary, including identification as a necessary action or program suggestion
2. Description of progress in meeting requirements of the necessary action or program suggestion
3. Deadline(s), if established in Section 312 Evaluation Findings
4. Status of completion as either “not started”, “in-progress” “not on schedule” or “completed” (including date of completion). If status is either “not started” or “not on schedule”, please include an explanation and plans to address requirements.

Section B.2: Permit Administration, Monitoring, and Enforcement

Section B.2 includes quantitative summary data on the total number and type of coastal program-mandated permit applications received, issued, or denied for core programs. This section also includes a brief description of any major on-going issues; controversial development projects or permit applications; significant violations detected and their resolution; and other enforcement actions. You may append news clippings, memos, etc., to support abbreviated summaries for highly controversial projects. If an item had been discussed in previous reports, please update this information as necessary.

In addition, describe the CZM agency’s efforts to monitor activities of other state or local agencies (networked or otherwise); identify accomplishments or problems related to ensuring agency compliance with the approved CZM program; and where necessary, discuss actions to bring these agencies into compliance. If a coastal program is unable to provide information for one or more of these categories, please discuss this with your coastal program specialist.

Section B.3: Federal Consistency

Section B.3 includes both charts and narrative information that describe federal consistency reviews and activities during the performance period. The narrative report should briefly describe, in case study format, significant consistency reviews; specific examples of controversial projects; the type of project modifications required to meet consistency provisions; and important consistency negotiations during the performance period.

The narrative should also report on efforts to improve the consistency review or coordination process (i.e., to develop regulations, guidelines or other advisory materials). Internal reports, etc. that address these issues may be attached in lieu of additional narrative in the performance progress report.

Section B.4: Program Changes

Section B.4 briefly summarizes significant or developing changes to a program's authorities or organizational structure that may affect the federally-approved CZM program in order to provide preliminary notice to CPD of program change activities. Example activities include changes in CZM or other core program statutes; changes in organization or coordination agreements; amended regulations; approval of local coastal programs; and designation of special management areas. Development of any potential new authorities, programs, agreements, etc. for which the coastal program may seek incorporation should also be discussed and note any plans to submit a draft or formal program change. If no program change activities have occurred during the performance period, please include a statement to that effect. This report is not a substitute for a draft or formal submission to OCRM of such program changes pursuant to 15 CFR 923.80-84.

Section C: Success Stories

Section C is reported semi-annually for accomplishments under any open award and should only be submitted with the performance progress report for the most recent award. Section C should include success stories from work performed under any open award or accomplishments of the coastal program during the performance period. The purpose of Section C is to collect information on innovative management, technical, and resource protection programs to share among coastal programs and to cite specific accomplishments under the national CZM program. OCRM has used examples of success stories in technical assistance bulletins, Congressional testimony, factsheets, other NOAA documents, and in discussions with other coastal programs. Section C success stories may also be highlighted in the National CZM Program's quarterly newsletter. Examples provided in Section C are extremely beneficial to the National CZM Program to help demonstrate and communicate effectiveness.

For Section C, coastal programs will submit at least one or more examples of a project or instance where the coastal program has been successful in addressing coastal management issues. Coastal programs have considerable flexibility in choosing Section C examples and are encouraged to use the six focus areas from the CZMA Performance Measurement System: government coordination, public access, coastal habitat, coastal water quality, coastal hazards, and coastal community development and coastal dependent uses. Other suggested areas of focus are the coastal program's role or state accomplishments in areas such as: federal consistency, legislative or regulatory improvements, state or regional coordination, and conflict resolution.

The narrative for each success story should include:

- Identification and description of the coastal resource management issue;
- If applicable, a geographic location of the project should be identified including community name, Congressional district, and other location information;
- Description of how the coastal program was involved;
- Summary of the accomplishment and outcomes such as improvements in increased resource protection and institutional relations (e.g., a Memorandum of Agreement with another agency to ensure that coastal policies are better addressed);
- Where possible, quantitative information on the degree of improvement (e.g., acres of wetlands protected as a result of increasing the state's monitoring and enforcement efforts); and
- Where possible, CZM federal and matching funds expended and associated state, federal, and local funds leveraged for the improvement.

It is recommended that each Section C success story be approximately one half to one single spaced page in length. The description should include enough information that OCRM can use the report without requesting additional information. Coastal programs can attach any digital photos, reports, or other work products associated with the success story if a copy is not already provided through Sections A or B of the performance progress report. Examples of Section C success stories are provided in Attachment C. Articles about state successes in previous CZM newsletters are also good examples and can be found at <http://coastalmanagement.noaa.gov/news/czmnewsletter.html>.

OMB Control #0648-0119, expires 02/28/2009. 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 27 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, 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 collection information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB Control Number.

Attachment A

Section A: Section 306, 306A, 310, and 309 Tasks Status

‘STATE’ COASTAL MANAGEMENT PROGRAM FY2009 AWARD NA09NOS419xxxx July 1, 2009 - December 31, 2009 (1st Semi-Annual Report Period)

Task 306-1—Program Administration: No special award conditions.

The two staff funded under this task continued to oversee and implement a number of the major implementation activities as outlined in our grant. In the fall, contracts were executed for the local pass-through projects once we received notification via Grants Online that the award had been approved. The Program also hosted a workshop for potential grant applicants in the upcoming year in advance of the RFP due date of December 1. Staff reviewed the proposals and made preliminary selections of eligible projects. These will be forwarded to NOAA in the draft application due in March. Staff monitored the activities of the state legislature with respect to bills being considered that could impact the coastal program. Technical reviews were conducted for two pieces of proposed legislation (described further in our Section B report). The updated MOA between the Coastal Resources and the Water Quality Divisions was finalized and signed in December; a copy is included in Attachment 306-1. Staff continued to participate in the state dredging management workgroup and attended three meetings during the performance period. Copies of the month-by-month program reports prepared for our Department head are also included in Attachment 306-1 to provide additional detail regarding staff and program activities.

Task Milestones or Outcomes Completed:

- Local FY2009 Grant Workshop held August 15, 2009
- FY2008 sub-award contracts completed September 1, 2009
- MOA between Coastal Resources and Water Quality Division finalized on December 3, 2009

Task Status: In progress; on track to be completed by June 30, 2010

Task 306-2—Permit Administration and Federal Consistency: No special award conditions.

Staff working under this task is responsible for administering the CZM Program’s three major permitting programs. During this performance period staff reviewed 84 development projects. Of these, 12 were major, 11 were local, and 19 were federal actions. A complete summary of permit and consistency activities can be found in the tables in Section B. Seven sites were visited to assess potential impacts to wetlands. Staff also conducted six meetings with applicants to explain the consistency review process. Included in Attachment 306-2 are copies of significant consistency determinations and water quality certifications, as examples of on-going project review activities. One appeal was filed during this performance period; a hearing has yet to be scheduled. Copies of two final decisions for appeals that were issued in this period

are also included in the Attachment.

Task Milestones or Outcomes Completed:

- Task outcomes are ongoing

Status: In progress; on track to be completed by June 30, 2010

Task 306-3—Wetland Mitigation Study: No special award conditions.

The final version of the wetland mitigation study entitled “Saltwater Marsh Mitigation in Silver Bay,” was completed in November and the CZM Program is preparing to release the results during the next performance period. The next task progress report will include a summary of major findings from this study. To summarize, the study evaluated the relative success of 15 compensatory wetland mitigation projects performed from 2005-2007 around Silver Bay and recommended changes to the program’s mitigation criteria and standards and tracking database. Although the study began late due to heavy rains in the spring, the study team was able to meet the planned target date for completion of the report. The Program will begin to evaluate the steps necessary to implement the proposed changes in the next performance period. A copy of the study is included as Attachment 3.

Task Milestones or Outcomes Completed:

- Saltwater Marsh Mitigation in Silver Bay study completed in November 2009

Status: In progress; on track to be completed by June 30, 2010

Task 306-4—Technical Assistance to Local Governments for Inspection Staff: No special award conditions.

Contracts were executed for three of the cities identified in our application and they have begun work. The fourth, Washington, had to be cancelled owing to an inability to come up with the required match. A request to NOAA to reprogram the approximately \$25,000 in federal funds to a different locality or another task, will be submitted during the next performance period.

Task Milestones or Outcomes Completed:

- Finalized contracts for 3 of 4 cities targeted by this task

Status: Not on track; Sub-award to one community was not completed and will be reprogrammed to a different locality to accomplish task outcomes

Task 306A-1—Acorn Park Fishing Pier: Special award condition met: Title Opinion and Checklist submitted October 10, 2009.

This task has fallen 3 months behind schedule as the recipient was restricted from starting work on the project because they had not submitted a title opinion and project checklist. These documents were received in October and forwarded to OCRM immediately. The signed checklist was received from OCRM in November. The recipient anticipates being able to compress the construction schedule so as to still complete the project within the original 18-month award period.

Task Milestones or Outcomes Completed:

- Finalized contract with city

Status: Not on schedule; contract with sub-awardees has been finalized with a compressed construction schedule for completion by June 30, 2010

Task 309-1—Development of New Setback Regulations: No special award conditions.

Work is progressing on schedule for this task, which relates to the Sect. 309 Hazards strategy to establish new setback regulations for development in beach and dune habitat. The interagency workgroup met twice during the performance period; the second time to finally come to agreement on the new proposed setback distance. Consensus was reached in part based on the Division's completion of the new erosion rate calculations and shoreline change maps. Once a decision was made, staff was able to finalize the proposed rule language. The language will be presented to the Commission for consideration at their next quarterly meeting in March. Barring any complications, the rules should be adopted by fall 2010, as planned. Subsequent to that, the rules will be submitted to NOAA as a routine program change. A copy of the draft rules highlighting the revisions is included as Attachment 4.

Task Milestones or Outcomes Completed:

- Held 2 interagency workgroup meetings
- Issued new erosion rate and shoreline change maps
- Completed draft rules for interagency comments

Status: In progress; on schedule for completion by June 30, 2010

Attachment B

Section B: Status of Section 312 Evaluation Progress, State Permits, Federal Consistency, and Program Changes

Section B:
FY2009 AWARD NA09NOS419xxxx
FY2008 AWARD NA08NOS419xxxx
July 1, 2009 - December 31, 2009

B.1: Status of Section 312 Evaluation Progress

***Necessary Action:** Routine Program Changes: Program must submit all outstanding program changes within six months of receipt of final evaluation findings issued on October 15, 2008. Following submission of all outstanding program changes, program must work with their CPD program specialist to develop a schedule for submitting future program changes on a regular basis. Program will provide semi-annual updates to OCRM describing progress in addressing this Necessary Action”.*

Program has established a workgroup to hold regular meetings to review RPC needs and develop regular requests. Staff will use the RPC reporting section provided within Section B reports to submit a semi-annual RPC approval request. Beginning with the next Section B report, all RPCs for the performance period will be formally submitted to OCRM. On Dec. 11, 2009, staff submitted to OCRM a draft RPC document for comment and review to ensure that the product meets expectations.

Deadline: June 11, 2010

Status: In progress; on schedule to meet deadline

Section B.2: Permit Administration, Monitoring, and Enforcement

Permit Administration: The coastal program did not receive any unusual or controversial permit applications during the performance period. A summary of the total permits filed, issued, and denied are categorized by core coastal program and attached in Chart #1.

Monitoring State Consistency: The mitigation workgroup for state and local agencies held its annual mitigation review meeting on September 15, 2009. During the meeting, agencies reviewed state and local tidal wetland and beach/dune permits issued with mitigation requirements for adherence with coastal program policies. The workgroup found that all mitigation requirements adhered to coastal program policies. However, the workgroup agreed to update technical guidance related to “in-kind” mitigation.

Enforcement: The program obtained a favorable ruling regarding its authority to order the removal of houses on the public beach under the State Open Beaches Act (OBA), NAT. RES. CODE §§ 61.001-.026, and state law authorizing removal orders for unauthorized structures on state-owned submerged land, NAT. RES. CODE §§ 11.012(c), 11.041, 11.077, 51.302.

Severance v. State Commissioner, Cause No. 4:06-CV-2467, U.S. District Court, Southern District of State. Person x, a California resident, purchased three houses in ‘city’ that were on the public beach. Through the Pacific Legal Foundation, a property rights activist group, person x filed a federal lawsuit against the state commissioner in his official capacity, claiming that the possibility of enforcement of the Open Beaches Act through litigation for removal violated their constitutional rights. Person x argued that the imposition of the “rolling beach easement” which put the house on the beach is a governmental taking of property for public use without just compensation. In May 2007, United States District Judge granted the state’s motion to dismiss Severance’s claims on a number of grounds. Severance appealed the district court’s dismissal to the U.S. Court of Appeals. Briefing is complete. Oral argument has not yet been scheduled.

Section B.3: Federal Consistency

The coastal program reviewed 108 federal permit and license applications, of which nine were above the Program’s established thresholds. The average time taken to review federal permit and license applications was twelve days. A summary of federal consistency reviews is given in Chart III, “Federal Licenses and Permits.”

The U.S. Fish and Wildlife Service contacted the coastal program to enter into early coordination discussions regarding the issuance of new maps for the Coastal Barriers Resources System in the state’s coastal zone. Regular meetings have been scheduled for the next 6 months to coordinate this initiative.

In respect to permit streamlining, the program was informed at a meeting in July that the state has agreed to assume permit evaluation of the USACE pier General Permit. (A transfer timeline had not been identified as of this writing.) Additionally, the program was informed that the USACE plans to monitor usage of the boat ramp GP for specific bay systems before determining whether to offer permit evaluation responsibilities to a state agency. The program is also being kept informed regarding possible development of additional GP.

Section B.4: Program Changes

The interagency coastal council met on September 15, 2009 and reviewed proposed changes to state policies that are part of the coastal program network. Networked state agencies agreed to develop a summary of all proposed rule changes that will affect the coastal program by March 2009. An analysis of these summaries will be provided in the next performance progress report.

Examples of Permit Administration Status Charts for B.2

These charts are meant as guides. States may submit this data in another format if one is used by the applicable agency as long as the same information is included, or else manipulate the data to fit charts of this type.

Chart #1—Summary of Permits

(for coastal programs with direct permitting authority or if not, the networked permit and enforcement agencies, as well as local governments if the program has approved local components - indicate as appropriate)

State/Local Permitting Agency (Coastal Management Agency or Network Agency)	Core Program or Type of Permit Activity (where applicable, indicate major or minor)	Total Applications Filed	Total Permits Issued	Total Permits Denied
<i>Department of Environmental Quality</i>	<i>Tidal wetlands fill</i>	<i>10</i>	<i>7</i>	<i>3</i>
<i>Department of Marine Resources</i>	<i>Submerged Lands</i>			
<i>Local government (if appropriate)</i>	<i>Stormwater management permit</i>			
Total Activity				

Examples of Federal Consistency Status Charts for Section B.3

Chart #2—Direct Federal Agency Activities (Section 307(c)(1) and (2))

- Each individual project acted on during the past six months should be listed.

Federal Agency	Activity or Project	Concurrence	Non-concurrence		Time of Review
			Insufficient information	Inconsistent with state policies	
<i>DOD/ACOE</i>	<i>Dredge Material Disposal - Port Bienville Harbor</i>			<i>x</i>	<i>45 days</i>

Chart #3—Federal Licenses and Permits (Section 307 (c)(3)(A))

- Group projects by federal agency and type of license or permit

Federal Licensing or Permit Agency	Type of Permit	Number of Permits	Number of Concurrences	Number of Non-concurrences		Time of Review
				Insufficient information	Inconsistent with state policies	
<i>DOD/ACOE</i>	<i>Section 10</i>	<i>6</i>	<i>3</i>	<i>1</i>	<i>2</i>	<i>60 days</i>

Chart #4—Federal Licenses and Permit Activities Described in Detail in OCS Plans (Section 307(c)(3)(B))

- List each individual project

Federal Agency	Project Name and Plan of Exploration or Development	Concurrence	Non-concurrence		Time of Review
			Insufficient information	Inconsistent with state policies	
<i>DOI/MMS</i>	<i>Santa Lucia Unit - P0007 (POE)</i>			<i>x</i>	<i>6 days</i>

Chart #5—Federal Assistance to State and Local Governments (Section 307(d))

Agency	Type of Assistance	Total	Concurrence	Non-concurrence		Time of Review
				Insufficient information	Inconsistent with state policies	
<i>HUD</i>		<i>3</i>	<i>3</i>			

Attachment C

Examples of Section C Success Stories

Virginia CZM Efforts Result in Dune, Beach Protection: Virginia Governor Timothy Kaine signed legislation expanding the reach of the Virginia Coastal Primary Sand Dunes and Beaches Act to the entire coastal zone (roughly the area east of Interstate 95) on February 22nd. Passage of the legislation is the culmination of years of coordination and research by the Virginia Coastal Zone Management (CZM) Program. At the time of the original dune act legislation in 1980, it was known that coastal primary sand dunes existed in nine localities, but there was no comprehensive inventory of dune or beach resources.

A series of studies funded by the Virginia CZM Program and conducted by the Virginia Institute of Marine Science showed that extensive dune and beach resources were unprotected, especially from the effects of shoreline hardening structures designed to control shoreline erosion. Based on this new information the Virginia CZM Program's Coastal Policy Team, consisting of representatives from the program's network of coastal agencies and localities, supported the idea of expanding the act, and Virginia State Delegate Harvey Morgan sponsored the bill. As a result of the expanded legislation, more localities have the ability to manage these critical resources by adopting ordinances that would be administered by local wetlands boards. If a coastal locality chooses not to adopt the ordinance, then the Virginia Marine Resources Commission will regulate development affecting dunes and beaches in that locality.

Rhode Island Promotes Urban Waterfront Revitalization through its Metro Bay SAMP:

The Metro Bay area, comprised of the cities of Cranston, East Providence, Providence and Pawtucket at the northern end of Narragansett Bay, is a former industrial hub for the region. However, over the years, the waterfront area along this region has become outdated and underutilized. With the help of the Rhode Island Coastal Resources Management Council (CRMC), the cities are now acting to make the region a more appealing place to live and work by improving the economic, social, and environmental resources of the working waterfront; attracting major developers with more predictable and efficient permitting; and providing recreation and access to the water.

To achieve these goals, the CRMC is coordinating with the cities, government agencies and community organizations to prepare a special area management plan (SAMP) for the Metro Bay area. The Metro Bay SAMP will provide a functional framework for future environmentally and economically sensitive redevelopment within the SAMP boundary, encompassing most of the waterfront in the four cities. One key effort of the Metro Bay SAMP has included establishing an Urban Coastal Greenway (UCG) policy, a new regulatory approach for coastal vegetative buffers in the urbanized environment of northern Narragansett Bay. The UCG provides a mechanism to redevelop the urban waterfront of the Metro Bay region in a way that integrates economic development with expanded public access along and to the shoreline, as well as the management, protection and restoration of valuable coastal habitats.

For example, the policy establishes buffer width, vegetation, and public access standards, and requires low impact development techniques to manage stormwater. However, the UCG also

provides for increased flexibility compared to Rhode Island's standard buffer regulations. It established four different urban greenway zones (residential zone, area of particular concern zone, inner harbor and river zone, and development zone). Each zone has its own buffer standards. In addition, the UCG allows development to reduce the greenway width in return for site or coastal resource enhancements such as improved public access or habitat conservation.

The Urban Coastal Greenway policy is a vital part of the ongoing update of the Metro Bay SAMP, and will serve as the impetus for billions of dollars of redevelopment in the four cities. The policy will allow for a more predictable, flexible process for developers wanting to redevelop these former industrial areas while enhancing public access and protecting coastal resources. For additional information on the Metro Bay SAMP and the Urban Coastal Greenway policy visit www.crmc.state.ri.us/samp/metrobay.html

Indiana CZM Dunes Creek Project Received National Award: The Indiana Department of Natural Resources (DNR) was presented with the Award of Excellence by the National Association of Conservation Engineers (ACE) for the Dunes Creek daylighting project it completed in February 2006. "Daylighting" is an industry term for taking a stream that has been routed through a culvert and restoring it to an open channel, thereby exposing it to natural light. This was done to restore the stream's natural character and reduce storm-water runoff. The restored section is located within the Indiana Dunes State Park. In the 1930s, the Civilian Conservation Corps (CCC) directed the creek underground and into approximately 1,300 feet of concrete pipe beneath a parking lot. Approximately 500 feet of that stream section was daylighted and restored through this project. While one of the project goals was to restore Dunes Creek to a more natural look, the main driving force was to take advantage of the resulting water quality benefits. The stream empties into Lake Michigan, adjacent to the Indiana Dunes State Park bathing beach. High fecal coliform levels were occurring throughout the summer, forcing the beach to close periodically. Multiple state and federal agencies studied the issue for years, and concluded that the source of the coliform bacteria was not man made, but the result of runoff washing material from the adjacent woods into the creek during heavy rainfall. In addition to the beach problems, this created recurring erosion and flooding issues for the park. Restoration of the creek offered an opportunity to rectify these problems and improve both water quality and habitat.

This project is showing early signs of success. The newly planted vegetation has begun to grow and stabilize the bank. In addition, preliminary testing already has shown some reduction in coliform bacteria levels, even though experts predicted that it would take at least a year for the biological systems to begin to function as engineered. Ultimately this restoration project should lead to lower bacteria levels at the Indiana Dunes state park beach, and thus fewer days of beach closures.

**Attachment D:
How to Submit a Performance Progress Report in NOAA Grants Online**

1. Click the "Award" tab, located across the upper portion of your Grants Online page.
2. Click the "Search Report" link located on the left hand side of the page.
3. The "Search Financial and Performance Progress Reports" page is displayed. On this page, click the "Search" button to retrieve all reports available to you. In order to limit your selection to specific reports, populate the search criteria and click on the "Search."
4. In the search results, locate and click on the "Progress Report" you wish to complete. The "Performance Progress Report" detail page is displayed.
5. On this page, in the blue text box above the "Spell Check" button, include a comment that your performance report and any relevant items are attached to this report. Then, upload the report itself with any additional files under the "Attachments" section. Please note that large attachments may not upload; limit the size of your attachments to less than 10 megabytes.
6. To upload attachments:
 - a. Scroll to the bottom of the page and click the "Attachment" link.
 - b. Click the "[+]" link
 - Another section will display allowing you to search your computer for the file.
 - Click the "Browse" and follow the prompts.
 - You must fill in the "Description" field with a short description of the attachment. If you do not enter a description, the attachments will NOT save.
 - Click the "Save Attachment" button and the attachment is uploaded to Grants Online.
 - Repeat until all needed attachments are included. Unfortunately it is not possible to upload more than one file at a time.
7. To start workflow, click the "Save and Return to Main" button. A message will appear confirming that you want to start workflow; click the "Yes" button.
8. This action generates a review task, which is sent to your "Task Inbox" for this request. The report has not been submitted until you review this task and select "Forward to Agency". To forward the report to NOAA for review, it may take two cycles of "review" on your end. This is a functionality build into Grants Online to allow for hierarchical review and is not always relevant to Coastal Management awards; however, you must follow this process to ensure your report is sent to NOAA.
9. To submit the report, click the "Inbox" tab and then click on the "Tasks" link. You should see a task for the performance report; click the "View" link next to the task. The Launch page is displayed for the task. Select the action you wish to perform from the action dropdown menu, which initially should be "Forward Report to Recipient Authorized Representative." If you wish, you can add a comment in the box for your Authorized Representative (Note: you have to hit the "Save" button for the comment to be recorded). Click the "Submit" button. The review task will then be forwarded to the Recipient Authorized Representative(s) in your organization.
10. The Authorized Representative will need to follow the same steps as in #9, only their action will be "Forward Report to Agency." Note that if the person who initially created the report also has the role of "Recipient Authorized Representative," that person will have to process two tasks to submit the request to NOAA. Once "Forward Report to Agency" has been selected and "Submit" has been clicked, the report should have been finally submitted.

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, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**Coastal Zone Management Act Performance Measurement System
Coastal Management Program Performance Measures Guidance
April 2008**

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This guidance document will be maintained and periodically updated on the Coastal Management Portal, <https://ldresource.ncddc.noaa.gov/OCRM>. Comments on this guidance can be directed to Laurie Rounds, 240-753-4471, Laurie.Rounds@noaa.gov or to your program specialist.

Introduction

The National Coastal Zone Management Program (CZMP), authorized by the Coastal Zone Management Act (CZMA), is a partnership between the federal government and 34 of the 35 U.S. coastal and Great Lake States and Territories. The CZMP protects, develops, and restores the natural and cultural resources of coastal areas by balancing competing uses of, and impacts to, these resources. The CZMP has successfully managed the nation's coastal zone over the past 36 years. During this time great progress has been made to coordinate government programs and improve decision making; protect key coastal habitats, public access, and water quality; improve planning for and reduce impacts of coastal hazards; and responsibly develop the coastal zone. However, the technique of using quantitative performance measures is not part of the CZMA and therefore was not incorporated into State CZM programs. Despite this fact, it is recognized that using performance measures to demonstrate program effectiveness is a critical need for continued program support.

The purpose of the CZMA Performance Measurement System (CZMAPMS) is to track measures of effectiveness of the coastal management programs and estuarine research reserves at the national level. The system consists of a suite of performance measures to assess how well programs are achieving the objectives of the CZMA and contextual indicators to provide information on environmental and socioeconomic factors influencing program actions. Data generated by the CZMAPMS will be used to communicate to stakeholders, including Congress, the importance of the national CZMP. In combination with qualitative reporting of program successes, quantitative measures provide stakeholders with information about how the CZMP is responding to environmental, economic, and social challenges to balance development with the protection and restoration of coastal resources. Although historical baseline performance data does not exist for the CZMP, the CZMAPMS will provide a mechanism to document trends over time in program activities as well as management priorities.

The CZMAPMS was developed through a series of cooperative processes that resulted in the current list of performance measures. Beginning in 2001, the Office of Ocean and Coastal Resource Management (OCRM) contracted with the H. John Heinz III Center for Science, Economics and the Environment to develop a system framework. The Heinz Center concluded that six categories captured the major CZMA objectives. Building on this report, OCRM worked with a group of eight Coastal Management Programs in 2003 to develop a draft list of performance measures. In 2004, seven Coastal Management Programs volunteered to participate in a pilot project to evaluate the draft performance measures. The pilot group held their final meeting in January 2005 and narrowed the list of performance measures that would then be implemented by all 34 Coastal Management Programs. National implementation of the performance measures began in March 2005.

The first year of reporting was completed in December 2006 and significant revisions were made to the performance measures based on program experience and data. The second year of reporting was completed in December 2007. This guidance finalizes the revisions to the measures based on the second year of implementation and program comments submitted. The final phase of implementation will be completed in 2008.

Coastal Zone Management Program Vision and Mission

The CZMAPMS was developed in response to Congressional appropriations bills beginning in 2002 for quantitative information on program effectiveness in meeting the goals of the CZMA. OCRM must also provide quantitative data on the CZM Program for NOAA and National Ocean Service (NOS) strategic and annual operating plans. OCRM is also working with the federal Office of Management and Budget (OMB) to respond to an initial CZM Program evaluation of “results not demonstrated” under OMB’s Program Assessment Rating Tool (PART).

To meet OMB PART evaluation criteria, OCRM was required to develop a CZM Program strategic plan that includes a system of quantifiable goals and performance measures. An interim CZM Program Strategic Plan was developed by OCRM to meet these criteria in cooperation with a workgroup of volunteer CZM programs and the Coastal States Organization. The plan developed a vision, mission, outcomes, and strategic goals. It also set performance goals and utilized a subset of CZMAPMS performance measures as the data collection mechanism to demonstrate progress in meeting goals. Data reported from individual CZM programs for these measures will be compiled to report nationally. The corresponding strategic goals are included in this guidance to support the connection between the performance measures and programmatic goals.

VISION

The nation’s coasts and oceans, including the Great Lakes and island territories, are healthy and thriving for this and future generations

MISSION

To ensure the conservation and responsible use of our nation’s coastal and ocean resources

CZMP Outcomes:

Healthy and productive coastal ecosystems

Environmentally, economically, and socially vibrant and resilient coastal communities

GOALS:

1. Protect, restore, and enhance coastal ecosystems.
2. Enable the development of vibrant and resilient coastal communities.

CZMAPMS Implementation

In 2008, CZM Programs will report on measures under the following categories: Government Coordination, Public Access, Coastal Habitat, Coastal Water Quality, Coastal Hazards, and Coastal Dependent Uses and Community Development. The CZMAPMS will also continue to be refined during the phased implementation as OCRM and CZM programs gain experience in developing data sources, tracking activities, and reporting performance nationally. It will also be updated as needed so that the measures continue to reflect national priorities of the Coastal Zone Management Program.

Comprehensive List of Performance Measures

Government Coordination & Decision Making (reported annually)

1. Percent of federal consistency projects submitted where the project was modified due to consultation with the applicant to meet State CZM policies
2. Number of a) educational activities offered by the CZM program and b) the number of participants by category ¹:
3. Number of a) training opportunities offered by the CZM program and b) the number of participants, by category¹.

Public Access ² (reported annually)

4. Number of new public access sites added through acquisition or easement using CZM funds
5. Number of existing public access sites that have been enhanced using CZM funds
6. Number of sites where public access sites are a) created, b) protected, or c) enhanced through CZM regulatory activities

Coastal Habitat ³(reported annually)

7. Number of acres of coastal habitats a) created or b) restored using CZM funds
8. Number of acres of coastal habitats protected by acquisition or easement using CZM funds
9. Number of acres of coastal habitats lost or gained due to activities subject to core CZM regulatory (including mitigation) programs [to be phased in by all programs for reporting by FY2010]

Coastal Water Quality (reported annually)

10. Percent of marinas in the coastal zone participating in a Clean Marina designation program
11. Number of volunteer monitoring program activities in coastal watersheds conducted with CZM funds
12. Number of sites monitored by volunteer programs
13. Number of coastal communities supported by CZM funds in developing or implementing ordinances, policies, or plans to control or prevent polluted runoff to coastal waters.

¹ Reporting categories for education and training events and number of participants: a) Government Coordination; b) Public Access; c) Coastal Habitat; d) Coastal Water Quality; e) Coastal Hazards; and f) Coastal Dependent Uses and Community Development

² Reporting categories for public access: a) recreational boating access and b) all other public access in the coastal zone.

³ Reporting categories for coastal habitats: a) tidal wetlands (Great Lakes wetlands); b) beach and dune; c) nearshore (intertidal, sub-tidal, submerged) habitat; and d) Other

Coastal Hazards (reported annually)

14. Number of communities in the coastal zone that have a) undertaken activities to reduce future damage from hazards and b) implemented educational programs or campaigns to raise public awareness of coastal hazards using CZM funds

Coastal Dependent Uses & Community Development (reported annually)

15. Number of coastal communities supported by CZM funds in a) developing and implementing local plans that incorporate smart growth principles and b) port or waterfront redevelopment projects.

Financial Measures (reported annually)

16. CZM dollars a) spent and b) leveraged project dollars by CZM funds by category⁴:
17. CZM dollars used to support local governments through a) technical and b) financial assistance

State-reported Contextual Measures (reported every 5 years)

Public Access

18. Percent of public that feels they have adequate access to the coast for recreation purposes
19. Number of acres in coastal zone open for public access
20. Miles of shoreline open for public access

Coastal Habitat

21. Number of CZM programs that have habitat restoration plans for coastal habitats, by category³
22. Number of CZM programs that have mapped inventories of coastal habitat, by category³
23. Number of acres of coastal habitat a) created and restored and b) protected through acquisition or easement using State, non-CZM funds

Coastal Hazards

24. Number of communities in the coastal zone that use setbacks, buffers, or public ownership to direct development away from areas vulnerable to coastal hazards
25. Number of communities in the coastal zone that have a mapped inventory of areas affected by natural coastal hazards by category⁴

⁴ Reporting categories for financial reporting in performance reports: a) Government Coordination; b) Public Access; c) Coastal Habitat; d) Coastal Water Quality; e) Coastal Hazards; and f) Coastal Dependent Uses and Community Development

Government Coordination & Decision Making

Goals:

A central tenet of the CZMP is to improve government coordination and efficiency in coastal management while supporting active stakeholder and public participation. Therefore, many CZMP accomplishments involve the development and implementation of processes based on the needs and management structure of individual states. Because these processes are interwoven in every aspect of the CZMP, specific goals were not developed for this category in the CZMP Strategic Plan. The following set of performance measures focuses on the federal consistency review process and activities related to education and training.

Performance Measures:

1. Percent of federal consistency projects reviewed where the project was modified due to consultation with the applicant to meet State CZM policies.
2. Number of a) educational activities offered by the CZM program and b) the number of participants by category: A) Government Coordination; B) Public Access, C) Coastal Habitat, D) Coastal Water Quality, E) Coastal Hazards, and F) Coastal Dependent Uses and Community Development.
3. Number of a) training opportunities offered by the CZM program and b) the number of participants by category listed above.

Performance Measures Description:

1. Percent of federal consistency projects reviewed where the project was modified due to consultation with the applicant to meet State CZM policies

The purpose of this measure is to describe the role of CZM programs in reviewing and approving federal consistency projects. This measure should capture federal consistency projects that can be tracked from original proposal or submission to final decision. It may be difficult to capture all projects proposed. For example, projects that are informally proposed or that are withdrawn or substantially altered following informal consultation may not be captured. OCRM recognizes that some projects are reviewed prior to formal submission through an early coordination process. Projects that are proposed during an early coordination process that can be tracked from initial proposal to final decision can be included in the measure. Each program should establish a protocol for when to include projects based on program databases or tracking systems that will ensure that projects are only counted once for this measure.

Each program may also need to work with networked agencies that review consistency projects to establish a tracking mechanism for this measure. Long term project reviews that span multiple reporting periods should be included in the reporting period when the final decision is issued.

This measure focuses on federal consistency projects that require consultation and modifications for the project to meet enforceable policies. **“MODIFIED DUE TO CONSULTATION WITH**

THE APPLICANT” means that the CZM program or networked agencies consulted with the applicant to modify portions of the project that did not meet program enforceable policies. The project is then modified and found consistent for the CZM program. This measure may not capture instances where standard conditions are developed for a specific type of project or applicant and are incorporated into consistency decisions without individual consultation with the applicant.

Report the following:

1. Total number of federal consistency projects reviewed during the reporting period.
2. Number of federal agency activity projects reviewed where the project was modified due to consultation with the applicant to meet State CZM policies.
3. Number of federal license or permit activity projects reviewed where the project was modified due to consultation with the applicant to meet State CZM policies.
4. Number of Outer Continental Shelf (OCS) projects reviewed where the project was modified due to consultation with the applicant to meet State CZM policies.
5. Number of projects for federal financial assistance to State agencies or local governments reviewed where the project was modified due to consultation with the applicant to meet State CZM policies.

2. Number of educational activities and participants in educational activities offered by the CZM program, by category: Government Coordination, Public Access, Coastal Habitat, Coastal Water Quality, Coastal Hazards, and Coastal Dependent Uses and Community Development

The purpose of this measure is to describe the role of CZM programs in providing education to the public. **EDUCATIONAL ACTIVITIES** captured in this performance measure include stewardship or field events where the public participates in activities such as the removal of invasive species; presentations; seminars; and other activities to provide non-technical information *to the public* about environmental or socio-economic conditions, coastal management issues, coastal resources, and the role of planning. Educational activities that are conducted by partners and funded by CZM federal or matching funds can be included. The following educational efforts should not be included in this measure: publications (i.e. brochures, guides, etc.), Internet materials or web sites, mass media campaigns, interpretive kiosks or signage, or other efforts that provide education through indirect methods in this measure. This measure also does not capture activities such as maintaining a booth or display at a conference or other venue.

Marine debris (including derelict fishing gear) stewardship activities supported with CZM federal or matching funds will be reported separately from the primary categories above. Report the number of marine debris stewardship activities, the number of participants, and the number of pounds of debris removed.

Report the number of educational activities that are conducted jointly with a National Estuarine Research Reserve (NERR). If your state does not have a NERR, report not applicable for this question.

Educational activities should be categorized based on the dominant topic area addressed. Only record each educational activity once, even if multiple topics are covered. The following provides examples of educational (non-technical) topics under each category:

Government Coordination: activities to improve public understanding of CZM activities to improve government coordination and efficiency as well as opportunities for active public participation in coastal management decision making and activities.

Public Access: activities to improve public understanding of public access topics such as state public trust interpretation, access availability, and other public access related issues.

Coastal Habitat: activities to improve public understanding of coastal habitat topics such as habitat types and availability, importance, threats, and other habitat issues.

Coastal Water Quality: activities to improve public understanding of water quality topics such as protection needs, importance, threats, and other water quality issues.

Coastal Hazards: activities to improve public understanding of coastal hazard topics such as types of hazards, vulnerability, evacuation, and other coastal hazard issues.

Coastal Dependent Uses and Community Development: activities to improve public understanding of coastal dependent uses and community development topics such as types of uses, importance, threats, local waterfront areas, smart growth, and other topics.

Report the following:

1. Number of educational activities A) offered by the CZM program and B) offered jointly with a NERR, by category:
 - a. Government Coordination
 - b. Public Access
 - c. Coastal Habitat
 - d. Coastal Water Quality
 - e. Coastal Hazards
 - f. Coastal Dependent Uses and Community Development
2. Number of participants in educational activities A) offered by the CZM program and B) offered jointly with a NERR, by category:
 - a. Government Coordination
 - b. Public Access
 - c. Coastal Habitat
 - d. Coastal Water Quality
 - e. Coastal Hazards
 - f. Coastal Dependent Uses and Community Development
3. Number of marine debris (including derelict fishing gear) stewardship activities supported with CZM funds
4. Number of participants in marine debris (including derelict fishing gear) stewardship activities supported with CZM funds

5. Number of pounds of debris removed by marine debris (including derelict fishing gear) stewardship activities supported with CZM funds

3. Number of training opportunities and participants in training opportunities offered by the CZM program, by category listed above.

The purpose of this measure is to describe the role of CZM programs in providing training opportunities to groups such as local and state decision-makers and coastal management professionals. **TRAINING OPPORTUNITIES** captured in this measure focus on training to improve management capacity and technical understanding of coastal management issues. Training opportunities include events such as workshops, conferences, and training tailored to a *specific audience*, such as wetland regulators or local agencies. Training can include events for the public as well as for agencies and other professional audiences that focus on more technical subject matter than those provided through general educational activities. Training that is conducted by partners and funded by CZM federal or matching funds is also eligible.

Do not include training publications (e.g. manuals) or other materials that are distributed without a targeted training program. Training opportunities can be provided through the Internet to provide remote access to specific training topics for a specific type of audience. Internet training that does not require registration or a sign-up process to track users should only be reported during the reporting period in which it is first made available through the Internet. It is acceptable to include Internet training reported in a previous reporting period if additional materials or substantial updates are made so that it can be considered a new training opportunity.

Training opportunities should be categorized based on the dominant topic area addressed. Only record each training opportunity once, even if multiple topics are covered. The following provides examples of training (technical) topics under each category:

Government Coordination: activities to improve local, state, and federal agency capacity to improve government coordination and support active stakeholder and public participation; includes federal consistency training.

Public Access: activities to improve local and state management capacity and technical understanding for public access issues such as public trust, public access policies, planning, minimizing impacts, and other public access related management issues.

Coastal Habitat: activities to improve local and state management capacity and technical understanding for coastal habitat issues such as types, functions, status, trends, mapping, assessment, restoration, regulation, and other habitat management issues.

Coastal Water Quality: activities to improve local and state management capacity and technical understanding for water quality issues such as status, trends, assessment, restoration, regulation, monitoring, and other water quality management issues.

Coastal Hazards: activities to improve local and state capacity and technical understanding of coastal hazard issues such as types of hazards, regulatory programs, vulnerability mapping, evacuation planning, and other coastal hazard management issues.

Coastal Dependent Uses and Community Development: activities to improve local and state management capacity and technical understanding of coastal dependent uses and community development issues such as types of uses, status, trends, regulations, waterfront redevelopment, best management practices, and other management issues.

Report the following:

1. Number of training opportunities A) offered by the CZM program and B) offered jointly with a NERR, by category:
 - a. Government Coordination
 - b. Public Access
 - c. Coastal Habitat
 - d. Coastal Water Quality
 - e. Coastal Hazards
 - f. Coastal Dependent Uses and Community Development
2. Number of participants in training opportunities A) offered by the CZM program and B) offered jointly with a NERR, by category:
 - a. Government Coordination
 - b. Public Access
 - c. Coastal Habitat
 - d. Coastal Water Quality
 - e. Coastal Hazards
 - f. Coastal Dependent Uses and Community Development

Public Access

Goals and Objective

CZM Program Goal

Enable the development of vibrant and resilient coastal communities.

Public Access Objective

Increase and enhance public access to the coast for recreational purposes.

Public Access Performance Goal

Increase public access to the coastal zone for recreation relative to the coastal population.

Performance Measures:

4. Number new public access sites added through acquisition or easement using CZM funds
5. Number of existing public access sites that have been enhanced using CZM funds
6. Number of sites where public access is a) created, b) protected, or c) enhanced through CZM regulatory activities

Performance Measures Description:

4. Number of new public access sites added through acquisition or easement using CZM funds, by category: a) recreational boat access; b) all other public access.

The purpose of this measure is to quantify the impact of CZM programs in providing for new public access in the coastal zone. Because CZM funding may have provided only a portion of the funding necessary to add a public access site, OCRM will use text with this measure that indicates that public access sites are created in cooperation with CZM program partners. This measure reports recreational boat access separately from other types of public access. Examples of **PUBLIC ACCESS SITES** are vertical walking paths to the shore; publicly owned property including parks, beaches, piers providing fishing access to coastal waters; boardwalks or trails associated with coastal habitat such as wetlands, forested habitat, marshes; and access to historic areas or structures, such as lighthouses. Examples of **RECREATIONAL BOAT ACCESS SITES** are boat launches, ramps, docks, and marinas that are publicly owned. Sites can support all boating types including canoes and kayaks.

NEW SITES are properties acquired for public ownership through fee simple ownership or through an easement. There may be instances where a property has been in public ownership but not open to the public. In this case, the property can be counted as a new site if it has not been counted previously and it is open to the public during the reporting period. However, in the case where there is an unimproved site that is open to the public and it is improved for recreation (i.e. facilities are constructed) during the reporting period, the addition of those facilities should be considered an enhancement to an existing public access site and recorded in measure #5.

Programs should consistently count sites either as they are acquired or as they are opened to the public to ensure that sites are not counted more than once.

If your CZM program does not incorporate a 306A program, enter “**CZM program does not include a 306A component**”. If no sites were acquired during the reporting period, enter “0”.

Report the following:

1. Number of new recreational boating public access sites added through acquisition or easement using CZM funds.
2. Number of new, non-boating, public access sites added through acquisition or easement using CZM funds.

5. Number of existing public access sites that have been enhanced using CZM funds by category: a) recreational boat access and b) all other public access.

The purpose of this measure is to quantify the impact of CZM programs in enhancing public access in the coastal zone. **ENHANCEMENTS** can include activities eligible under Section 306A, including educational signage, trail or boardwalk construction or renovation, the addition of fish cleaning stations, parking, or bathroom facilities, and other low-cost construction to improve recreational facilities.

If your CZM program does not incorporate a 306A program, enter “**CZM program does not include a 306A component**”. If no sites were enhanced during the reporting period, enter 0.

Report the following:

1. Number of existing recreational boating public access sites enhanced using CZM funds.
2. Number of existing, non-boating public access sites enhanced using CZM funds.

6. Number of sites where public access sites are a) created, b) protected, or c) enhanced through CZM regulatory activities

The purpose of this measure is to describe the role of CZM programs in protecting public access through regulatory and permitting activities. All CZM programs provide protection of public access through a variety of mechanisms. This measure is intended to provide information about those CZM programs that have regulatory programs that can either require the creation or enhancement of new public access sites or that incorporate a specific review process of permit applications for impacts to existing public access sites. This measure focuses on the number of sites where public access was created, enhanced, or where the loss of public access was prevented primarily due to revisions to permit applications, conditions imposed, or permits denied as part of permitting, federal consistency, or other regulatory activities.

A public access site is considered “**CREATED**” through CZM regulatory activities when a permit or other administrative action requires the designation of an area as a public access site

where one did not exist previously. The created public access site must have previously been privately held or otherwise unavailable to the general public. The State does not have to hold ownership of the new site, but there must be a reasonable assurance that the new site is available to the general public and will be a public site in perpetuity. A public access site is considered “**PROTECTED**” when the loss of public access due to proposed permit activities is prevented or mitigated. Do not include all sites subject to CZM policies or all permits reviewed. Only report those sites where action was taken to modify a proposed project or a permit was denied to prevent the loss of public access during the reporting period. A public access site is considered “**ENHANCED**” through CZM regulatory activities when a permit or other administrative action required the improvement of facilities or the site itself for public recreation.

If your CZM program does not use regulatory mechanisms to create or enhance public access sites or review permit applications for impacts to existing public access sites, enter “**CZM program does not include a regulatory component to create, review, or enhance public access sites**”. If no sites were created, enhanced, or protected from impacts during the reporting period, enter 0.

Report the following:

1. Number of new, recreational boating public access sites created through CZM regulatory activities.
2. Number of new, non-boating, public access sites created through CZM regulatory activities.
3. Number of recreational boating public access sites protected through CZM regulatory activities.
4. Number of non-boating, public access sites protected through CZM regulatory activities.
5. Number of recreational boating public access sites enhanced through CZM regulatory activities.
6. Number of non-boating, public access sites enhanced through CZM regulatory activities.

Coastal Habitat

Goals and Objectives

CZM Program Goal

Protect, restore, and enhance coastal ecosystems.

Coastal Habitat Objectives:

- Acquire coastal habitats that are important for conserving natural resources of national and State concern.
- Restore and create key coastal habitats that are essential habitat for fish and wildlife and that will lead to the re-establishment of healthy natural communities.

Coastal Habitat Performance Goals:

- Increase the total acreage of key coastal habitats acquired.
- Increase the total acreage of key coastal habitats restored, enhanced, and created.

Key Coastal Habitat Categories

1. Tidal (or Great Lakes) Wetlands—

Wetlands are "those areas that are inundated or saturated at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." [33 CFR 328.3(b)]. Note: "under normal circumstances" means that such areas support plant growth unless such growth is removed or prevented from growing by man or infrequent natural events (like mudslides or volcanic eruptions).

Tidal wetlands are wetlands that are inundated by tidal waters. Definitions of wetlands and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal wetlands can include salt and brackish marshes (tidally flooded grasslands), and mangrove swamps (salty shrub thickets and forests). Tidal wetlands in saline and brackish areas, or estuarine wetlands, which are part of the estuary where salt water mixes with fresh water running off the land via rivers, are also included.

Great Lakes coastal wetlands occur along the Great Lakes shoreline proper and portions of tributary rivers and streams that are directly affected by Great Lakes water regimes. These wetlands form a transition between the Great Lakes and adjacent terrestrial uplands, and are influenced by both.

Additional guidance for defining Great Lakes Wetlands:

- Great Lakes Coastal Wetlands: Abiotic and Floristic Characterization: A Summary of Reports Prepared for Michigan Natural Features Inventory:
<http://www.epa.gov/glnpo/ecopage/wetlands/glc/index.html#List%20of%20Tables>

- Site Types for Great Lakes Coastal Wetlands:
<http://www.epa.gov/glnpo/ecopage/wetlands/glc/table1.pdf>

2. Beach and Dune –

Beach is the zone of unconsolidated material between the mean low-water line and the line of permanent vegetation, which is also the effective limit of storm waves; sometimes includes the material moving in offshore, onshore, and longshore transport.

Dune is a wind formed hill or ridge of sand

3. Nearshore

Nearshore (intertidal, subtidal or submerged) habitats should include intertidal rocky areas and pools, mud flats, coral reefs, shellfish beds, submerged aquatic vegetation such as seagrass beds, rocky hard bottom habitat, and other nearshore benthic habitat.

Performance Measures:

7. Number of acres of key coastal habitats a) created or b) restored using CZM funds
8. Number of acres of key coastal habitats protected by acquisition or easement using CZM funds
9. Number of acres of key coastal habitats lost or gained due to core CZM regulatory (including mitigation) programs [to be phased in by all programs for reporting by FY2010]

Performance Measures Description:

7. Number of acres of coastal habitats a) created or b) restored using CZM funds, by category

The purpose of this measure is to describe trends in acres created and restored for habitats in the coastal zone. This measure will help describe the role of CZM programs in maintaining a balance in competing uses of coastal habitats. It is acceptable to report acres created or restored due to CZM-funded staff that provide critical management, planning, or coordination for a specific project completed during the reporting period. However, this measure does not capture those instances where CZM staff involvement is limited primarily to permit review for habitat creation or restoration projects. Programs may also wish to add habitat categories for their own purposes to track key coastal habitats not included in this national measure or track more specific sub-categories of community types that represent program priorities. An “other” category is included to facilitate individualized reporting.

CREATED refers to the construction of habitat where it did not exist before. Created wetlands can include wetlands constructed for wastewater or stormwater treatment. **RESTORATION** refers to the rehabilitation of habitat that may be degraded or altered and often involves reestablishing native vegetation and natural hydrology. Acres of habitat should be counted in the reporting period in which planned creation or restoration activities are completed. Habitat protected through a mitigation program should be included in measure 9.

Report the following:

1. Number of acres of tidal (or Great Lakes) wetlands created using CZM funds.
2. Number of acres to tidal (or Great Lakes) wetlands restored using CZM funds.
3. Number of acres of beach and dune created using CZM funds.
4. Number of acres of beach and dune restored using CZM funds.
5. Number of acres of nearshore (intertidal, subtidal, submerged) habitat created using CZM funds.
6. Number of acres of nearshore (intertidal, subtidal, submerged) habitat restored using CZM funds.
7. Number of acres of other key habitat created using CZM funds.
8. Number of acres of other key habitat restored using CZM funds.

8. Number of acres of coastal habitats protected by acquisition or easement using CZM funds, by category

The purpose of this measure is to describe trends in habitat protection through acquisition or easement for habitats in the coastal zone. Because CZM funding may have only provided a portion of the funding necessary to protect an area, OCRM will use text with this measure that indicates that habitat is often protected in cooperation with CZM program partners. It is acceptable to report acres protected due to CZM funded staff that provide critical management, planning, or coordination for a specific project that resulted in protection during the reporting period. However, this measure does not capture those instances where CZM staff involvement is limited primarily to permit review for habitat acquisition or easement projects. Programs may also wish to add habitat categories for their own purposes to track key coastal habitats not included in this national measure or track more specific sub-categories of community types that represent program priorities. An “other” category is included to facilitate individualized reporting.

Categorize the number of acres protected by acquisition or easement using the following categories: tidal (Great Lakes) wetlands; beach and dune; and nearshore habitat. Guidance for each category is provided above. Because habitat classification can be difficult, programs should use best available property information to estimate the number of acres per category for habitat protection projects. Estimates can be based on large scale data such as topographic maps.

If your CZM program does not incorporate a 306A component and staff does not participate in acquisition activities, enter “**CZM program does not include a 306A component for habitat acquisition activities**”.

Report the following:

1. Number of acres of tidal (or Great Lakes) wetlands protected by acquisition or easement using CZM funds.
2. Number of acres of beach and dune habitat protected by acquisition or easement using CZM funds.
3. Number of acres of nearshore (intertidal, subtidal, submerged) habitat protected by acquisition or easement using CZM funds.
4. Number of acres of other habitat protected by acquisition or easement using CZM funds.

9. Number of acres of coastal habitats lost or gained due to activities subject to core CZM regulatory (including mitigation) programs, by category [to be phased in by all programs for reporting by FY2010]

The purpose of this measure is to describe the demand for competing uses of habitats in the coastal zone and the role of CZM programs in maintaining an appropriate balance through core CZM regulatory programs. Reporting is not required until FY2010; however, if the data is available, please submit it through the portal. **CORE CZM REGULATORY PROGRAMS** should be defined by each program to include those State programs/CZM enforceable policies that prevent the loss of tidal (or Great Lakes) wetlands, beach and dune habitat, and nearshore (intertidal, subtidal, submerged) habitat and those programs that require mitigation for unavoidable impacts or losses of coastal habitats. An “other” category is included to facilitate individualized reporting.

Report the following:

1. Number of acres of tidal (or Great Lakes) wetlands lost or gained due to activities subject to core CZM regulatory programs.
2. Number of acres of beach and dune lost or gained due to activities subject to core CZM regulatory programs.
3. Number of acres of nearshore (intertidal, subtidal, submerged) habitat lost or gained due to activities subject to core CZM regulatory programs.
4. Number of acres of other key habitat lost or gained due to activities subject to core CZM regulatory programs.

Coastal Water Quality

CZM Program Goal

Protect, restore, and enhance coastal ecosystems.

Performance Measures:

10. Percent of marinas in the coastal zone participating in a Clean Marina designation program
11. Number of volunteer monitoring program activities in coastal watersheds supported with CZM funds
12. Number of sites monitored by volunteer programs supported with CZM funds
13. Number of coastal communities supported by CZM funds in developing or implementing ordinances, policies, or plans to control or prevent polluted runoff to coastal waters.

Performance Measures Description:

10. Percent of marinas in the coastal zone participating in a Clean Marina designation program

The purpose of this measure is to describe the role of the CZM Program in promoting the implementation of best management practices by marinas to reduce pollution of coastal waters. This measure focuses on the number of marinas that are designated or recognized as ‘clean marinas’ through a state program. For this measure, the state marina designation program should include a designation or certification program that recognizes marinas that pledge to implement best management practices or action plans to reduce and prevent pollution. You are requested to report for this measure if there is a clean marina designation program in your state, regardless of whether CZM funds are provided to support the designation program itself. If your state does not have a Clean Marina designation program enter “**State (or Territory) does not have a Clean Marina designation program.**”

Report the following:

1. Number of marinas in the coastal zone
2. Number of marinas in the coastal zone designated or recognized by a Clean Marina designation program

11. Number of volunteer monitoring program activities in coastal watersheds supported with CZM funds

The purpose of this measure is to describe the role of the CZM program in increasing local capacity and participation in activities to protect and restore coastal water quality.

VOLUNTEER MONITORING PROGRAM ACTIVITIES include water quality and aquatic habitat monitoring conducted by the public, universities, and other non-governmental agencies. It does not include monitoring conducted by the State to meet regulatory or planning requirements.

The purpose of volunteer monitoring should be educational and may or may not contribute to a water quality databases. Activities conducted using CZM funds or CZM funded support such as staff coordination, training of volunteers, equipment, or supplies are eligible. If no CZM funds were used during the reporting period to support volunteer monitoring program activities, enter “0”.

Report the following:

1. Number of volunteer monitoring program activities in coastal watersheds conducted with CZM funds

12. Number of sites monitored by volunteer programs supported with CZM funds.

The purpose of this measure is to describe the geographic extent of volunteer monitoring programs supported by CZM funds in coastal watersheds. If a volunteer monitoring program conducts single point sampling in a waterbody then report the number of sites at which they monitor. However, if a volunteer monitoring program conducts shoreline or multiple point sampling, indicate the total number of miles that are monitored by volunteers. If “0” was entered for measure #11, enter “not applicable”.

Report the following:

1. Number of sites monitored by volunteer monitoring programs supported with CZM funds

13. Number of coastal communities supported by CZM funds in developing or implementing ordinances, policies, or plans to control or prevent polluted runoff to coastal waters.

The purpose of this measure is to describe the role of CZM programs in supporting local communities in the implementation of local ordinances, policies, and plans to control or prevent polluted runoff. This measure **does not** document state-wide policies or plans that apply to all coastal communities. Instead, the focus is on the coastal community level. A **COASTAL COMMUNITY** is a unit of local government that is the recipient of CZM funds. For those CZM program without units of local government, a coastal community can be represented by unincorporated or local groups that represent local interests.

Report the following:

1. Number of coastal communities and special units of government such as storm water districts or planning districts supported by CZM funds in developing or implementing ordinances, policies, or plans to control or prevent polluted runoff to coastal waters.

Coastal Hazards

Goals and Objective

CZM Program Goal

Enable the development of vibrant and resilient coastal communities.

Coastal Hazards Objective:

Reduce the loss of life and property from coastal hazards and enhance the ability of state and local governments to respond to hazard events.

Coastal Hazards Performance Goal:

Increase the percentage of communities in the coastal zone implementing management practices to improve resilience to natural hazards.

Performance Measure:

14. Number of communities in the coastal zone that have a) undertaken activities to reduce future damage from hazards and b) implemented educational programs or campaigns to raise public awareness of coastal hazards using CZM funds.

Performance Measure Description:

The purpose of this measure is to describe the role of CZM programs in working with communities to reduce loss of life and property from coastal hazards, enhance the ability of the state and local governments to respond to hazard events, and raise awareness of coastal hazards. A **COMMUNITY** is a unit of local government. For this measure, activities conducted with coastal communities can include planning, technical assistance, education and outreach, mitigation, and on-the-ground projects to reduce future damage from hazards. CZM funded educational programs or campaigns may be on-going efforts; however, this measure requires reporting the number of communities that conducted educational programs or campaigns during the reporting period. CZM funded activities such as Internet programs or campaigns should only be included in the reporting period in which they are first made available through the Internet, unless substantial updates or additional materials are added during a subsequent reporting period.

Report the following:

1. Number of communities that undertook activities to reduce future damage from hazards using CZM funds.
2. Number of communities that implemented educational programs or campaigns to raise public awareness of coastal hazards using CZM funds.

Coastal Dependent Uses and Community Development

Goals and Objectives

CZM Program Goal

Enable the development of vibrant and resilient coastal communities.

Objectives:

- Improve the capacity of state and local governments to make decisions that balance coastal growth and development with protection of ecosystems and quality of life.
- Reduce the loss of life and property from coastal hazards and enhance the ability of state and local governments to respond to hazard events.
- Improve state and local processes to redevelop port or waterfront areas, giving priority consideration to coastal dependent uses.

Performance Goals:

- Increase the percentage of communities in the coastal zone implementing sustainable coastal management practices.
- Increase the total number of coastal communities implementing projects to redevelop port and waterfront areas.

Performance Measure:

15. Number of coastal communities supported by CZM funds in a) developing and implementing local plans that incorporate sustainable coastal management practices and b) port or waterfront redevelopment projects that give priority consideration to coastal dependent uses.

Performance Measure Description:

15. Number of coastal communities supported by CZM funds in a) developing and implementing local plans that incorporate sustainable coastal management practices and b) port or waterfront redevelopment projects that give priority consideration to coastal dependent uses.

The purpose of this measure is to describe the role of CZM programs in working with communities in the coastal zone to develop and implement local plans to manage growth and development and in redeveloping underutilized and deteriorating urban waterfront areas and ports. A **COMMUNITY** is a unit of local government that is a recipient of CZM funds. **LOCAL PLANS** should be developed or adopted by a local unit of government and can include State mandated plans, land use plans, watershed management plans, stormwater management plans, and other planning documents focused on local management and coastal dependent uses.

Examples of **SUSTAINABLE PRACTICES** include: mixed land uses, compact building design, walkable neighborhoods, preservation of open space, farmland, natural beauty, and critical environmental areas, directing development towards existing communities, and collaborating in development decisions by the community and stakeholders. More information on sustainable practices can be found at: http://www.epa.gov/livability/about_sg.htm. Eligible support activities include financial assistance, technical assistance, and training.

Port or waterfront redevelopment support activities can include planning, technical assistance, and on the ground projects eligible under CZMA Section 306A. **PORT OR WATERFRONT REDEVELOPMENT PROJECTS** can include development or implementation of redevelopment plans; land acquisition or protection through easement; rehabilitation or acquisition of piers for public use; rehabilitation of bulkheads for improved public safety or access, removal or replacement of pilings to provide increased recreational use; zoning or other development ordinances to support redevelopment; and visioning and other public involvement processes. Projects should give priority consideration to coastal dependent uses. Development of public access facilities should be reported under the Public Access performance measures.

Report the following:

1. Number of coastal communities supported by CZM funds in developing and implementing local plans that incorporate sustainable coastal management practices
2. Number of coastal communities supported by CZM funds in port or waterfront redevelopment projects that give priority consideration to coastal dependent uses

Financial Measures

16. a) CZM dollars spent and b) leveraged project dollars by CZM funds, by category:

The purpose of this measure is to quantify the financial contribution of the CZM program and the additional or leveraged dollars that CZM activities generate in accomplishing the goals of the CZMA. This measure includes activities eligible under CZMA Section 306, 306A, or 309. **CZM DOLLARS** are federal CZM funds and the required matching funds identified by the CZM program in annual cooperative agreements. Matching dollars reported should be limited to the amount identified in the cooperative agreement.

LEVERAGED PROJECT DOLLARS are funds in addition to CZM federal and matching funds that are spent on a CZM funded project. For example, a coastal program may partner with several entities to acquire land; funds in addition to CZM federal or matching dollars spent to acquire the land would be considered leveraged dollars. Another example is a project where CZM staff partner with a city's planning department to develop a greenway plan for a coastal community. The city planning department provides the required federal match. During the project, the city's recreation department contributes staff time to conduct visioning and public outreach for the greenway project. The cost to the recreation department to conduct the visioning and outreach activities can be considered leveraged project dollars.

In-kind funds and services that qualify under Office of Management and Budget Circular A110 (see sect. 23 "Cost sharing or matching" <http://www.whitehouse.gov/omb/circulars/a110/a110.html#23>) can be included as leveraged project dollars. Sources of leveraged project dollars can be federal, state, or local government agencies or other organizations such as non-profits or foundations.

If your CZM program does not incorporate activities that result in leveraged project dollars enter "CZM program does not incorporate activities that result in leveraged project dollars".

Report the following:

- 1. Government Coordination:** a) Number of CZM federal and matching dollars spent on activities to improve government coordination and efficiency in coastal management while supporting active stakeholder and public participation, including reviewing and approving federal consistency projects and general education and training activities; b) Number of dollars leveraged by government coordination projects.
- 2. Public Access:** a) Number of CZM federal and matching dollars spent on activities that provide, enhance, create, protect, or maintain public access in the coastal zone; b) Number of dollars leveraged by public access projects.
- 3. Coastal Habitat:** a) Number of CZM federal and matching dollars spent on activities that protect coastal habitat in the coastal zone; b) Number of dollars leveraged by coastal habitat projects.
- 4. Coastal Water Quality:** a) Number of CZM federal and matching dollars spent on activities to manage coastal development to improve, safeguard, and restore the quality of coastal waters; b) Number of dollars leveraged by coastal water quality projects.

5. **Coastal Hazards:** a) Number of CZM federal and matching dollars spent on activities to manage development in the coastal zone to minimize the loss of life and property from coastal hazards; b) Number of dollars leveraged by coastal hazards projects.
6. **Coastal Dependent Uses and Community Development:** a) Number of CZM federal and matching dollars spent on activities to improve coastal community planning and development in the coastal zone; b) Number of dollars leveraged by coastal dependent uses and community development projects.

17. CZM dollars used to support local governments through a) technical and b) financial assistance

The purpose of this measure is to describe the role of CZM programs in supporting local governments in balancing coastal uses and improving local decision-making. For coastal management programs without formal local government bodies, this measure can include assistance to unincorporated bodies or local groups that represent local interests. **TECHNICAL ASSISTANCE** includes staff consultation, review, training, and other types of support to local coastal programs or government agencies on planning, managing local resources, meeting state requirements, using technical tools, and other activities to increase local management capacity. Technical assistance does not have to be conducted directly by coastal program staff. CZM funded or managed projects to provide technical assistance to local governments that are conducted by non-CZM staff can be included. **FINANCIAL ASSISTANCE** is the provision of sub-awards or other contractual arrangements to provide CZM federal or matching funds to local government agencies. Financial assistance can include funds to conduct specific local projects, administer local coastal programs, and locally enforce CZM policies. Dollars reported should include only the amount provided to the local government.

Report the following:

1. a) Number of CZM federal and matching dollars spent on activities to support local governments through technical assistance; b) Number of CZM federal and matching dollars provided to local governments as financial assistance.

State-reported Contextual Measures

Following the phased implementation period, these measures will be reported through the CZMA Sect. 309 Assessment reports.

18. Percent of public that feels they have adequate access to the coast for recreation purposes

The purpose of this measure is to quantify the level of satisfaction the public feels with their recreational access in the coastal zone. State data may not currently exist for this measure or may be limited geographically. This measure will focus on the number of people that respond that their access to the coast was adequate or better. For example, this measure will indicate that a survey resulting in responses from 1,000 people found that 800 reported adequate or better access to the coast. NOAA will continue to identify national data sources that may also provide data for this measure. If the State does not have an appropriate survey, report “Not Available”.

Report the following:

1. Number of people that responded to the survey on recreational access.
2. Number of people surveyed that responded that public access to the coast for recreation is adequate or better.
3. What type of survey was conducted (i.e. phone, mail, personal interview, etc.)?
4. What was the geographic coverage of the survey?
5. In what year was the survey conducted?

19. Number of acres in coastal zone available for public access

The purpose of this measure is to describe the number of acres available for public recreational use within a state’s coastal zone. All properties, including offshore islands, that provide recreational access to the general public in the coastal zone can be counted, including land owned by local, state, and federal agencies and not-for-profit organizations. **AVAILABLE FOR PUBLIC ACCESS** means that the property is publicly owned, there is a public access easement, or the property is otherwise designated for recreational access for the general public.

Each program should establish the total number of acres in the coastal zone (both public and privately held) as a number that will remain constant unless the coastal management program boundary is altered in the future. Areas available for public access should include publicly owned properties such as parks, but can also include properties owned by not-for-profit organizations such as land trusts or foundations that have designated the property as open to the general public. It is acceptable to have a small fee charged to the public for using these properties; however, the fee should be minimal. Properties such as privately owned campgrounds (e.g. KOA) and properties restricted to members only (e.g. yacht clubs) should not be included in this measure.

Report the following:

1. Number of acres in the coastal zone.
 - a. Describe the scale or resolution for the data source and the method of measurement (i.e. satellite images, aerial photography, topographic maps, etc.)
2. Number of acres of public lands available for public use.
 - a. Describe the source of data used and its resolution or scale.

20. Miles of shoreline available for public access

The purpose of this measure is to describe the amount of the shoreline available for public access within the coastal zone. **SHORELINE** includes the strip of land bordering coastal waters (oceans, bays, estuaries, and similar systems in the Great Lakes). Total shoreline miles can also include offshore island shorelines. Programs should establish a protocol for the measurement of shoreline miles to be consistent over time. **AVAILABLE FOR PUBLIC ACCESS** means that the property is publicly owned, there is a public access easement, or the property is otherwise designated for recreational access for the general public.

1. Number of miles of shoreline.
2. Number of miles of shoreline that are available for public use.
3. What is the scale or resolution of the data source?
4. Describe the source of data and method of measurement (i.e. satellite images, aerial photography, topographic map, etc.)

21. Number of CZM programs that have habitat restoration plans for key coastal habitats, by category

The purpose of this measure is to describe the role of CZM programs in planning for the restoration of key habitats in the coastal zone. **HABITAT RESTORATION PLANS** can include plans to guide habitat restoration that are developed by the State, regional organizations, or local governments to meet State or CZM planning requirements. This should not include site specific restoration plans. If one restoration plan covers multiple habitat types, then it should be counted for each habitat type included in the plan. At a minimum, the components of the habitat restoration plan should provide data and information about the type of habitat targeted, resources and tools available for restoration, and identify potential opportunities or priorities for restoration. Programs may also wish to add habitat categories for their own purposes to track key coastal habitats not included in this national measure.

Report the following:

1. Does the CZM Program have a habitat restoration plan for tidal (or Great Lakes) wetlands in the coastal zone?
2. Does the CZM Program have a habitat restoration plan for beach or dune habitat?
3. Does the CZM Program have a habitat restoration plan for nearshore (intertidal, subtidal, submerged) habitat?
4. Does the CZM Program have a habitat restoration plan for other types of habitat in the coastal zone?

22. Number of CZM programs that have mapped inventories of coastal habitat, by category

The purpose of this measure is to describe the role of CZM programs in supporting comprehensive planning, conservation, and management of coastal habitats in the coastal zone. This measure focuses on supporting management of key coastal habitats through mapped inventories. A mapped inventory can be either a paper map or a geographic information system (GIS) and may include data on habitat location and general information on the ownership/protection status of the site. The mapped inventory must have been completed or substantially updated within the previous 5 years from the end of the reporting period and provide data for at least 30% of the area within the coastal zone where the habitat would be expected to occur. See guidance under Coastal Habitat for descriptions of each habitat category.

Report the following:

1. Does the CZM program have a mapped inventory of tidal (or Great Lakes) wetlands in the coastal zone?
2. Does the CZM program have a mapped inventory of beach or dune habitat?
3. Does the CZM program have a mapped inventory of nearshore (intertidal, subtidal, submerged) habitat?
4. Does the CZM program have a mapped inventory of other habitat in the coastal zone?

23. Total number of acres of coastal habitat a) created and restored and b) protected through acquisition or easement using State, non-CZM funds

The purpose of this measure is to describe trends in the protection of coastal habitat conducted by the State using non-CZM funds. An important role of CZM programs is planning, coordination, policy development, research, and technical assistance to improve the protection and management of coastal habitats. This measure will provide an indication of the level of habitat protection activity in the coastal zone.

Report the following:

1. Total number of acres of coastal habitat created or restored using State, non-CZM funds
2. Total number of acres of coastal habitat protected through acquisition or easement using State, non-CZM funds

24. Number of communities in the coastal zone that use setbacks, buffers, or public ownership to direct development away from areas vulnerable to coastal hazards

The purpose of this measure is to describe the role of CZM programs in increasing local capacity to protect coastal areas that are vulnerable to hazards through the use of location requirements or land acquisition. At a minimum, setback or buffer requirements should include development restrictions that prevent new construction of commercial or residential buildings in inappropriate, hazardous coastal areas. A **COMMUNITY** for the purposes of this measure is the unit of local

government with the authority to enact or enforce the setbacks, buffers, or other policies to direct development away from hazardous areas.

Report the following:

1. Number of communities in the coastal zone required by state law or policy to implement setbacks, buffers, or other land use policies to direct develop away from hazardous areas.
2. Number of communities in the coastal zone that have setback, buffer, or other land use policies to direct development away from hazardous areas that are more stringent than state mandated standards or that have policies where no state standards exist.

25. Number of communities in the coastal zone that have a mapped inventory of areas affected by natural coastal hazards by category

The purpose of this measure is to describe the role of CZM programs in supporting comprehensive planning, conservation, and management of areas in the coastal zone affected by natural hazards. At a minimum, a mapped inventory should include data on specific areas affected and general information on the current land use, provide data for at least 50% of hazardous areas in the coastal zone, and have been completed or substantially updated within the last 5 years. A **COMMUNITY** for the purposes of this measure is a unit of local government. Enter “not applicable” if the coastal zone is not affected by a hazard.

Report the following:

1. Total number of communities as represented by units of local government in the coastal zone.
2. Number of communities that have a mapped inventory of areas affected by flooding.
3. Number of communities that have a mapped inventory of areas affected by storm surge.
4. Number of communities that have a mapped inventory of areas affected by shoreline erosion.
5. Number of communities that have a mapped inventory of areas affected by sea level rise (Great Lake level fluctuation).
6. Number of communities that have a mapped inventory of areas affected by geologic hazards.
7. Number of communities that have a mapped inventory of areas affected by land subsidence.

CZMAPMS Timeline

Reporting Timeline for Core Performance Measures:

Deadlines for July 1 Award Start Date	Reporting Period	Deadlines for Oct. 1 Award Start Date	Reporting Period	Measures Reported
July 30, 2008	July 1, 2007 to June 30, 2008	October 30, 2008	Oct. 1, 2007 to Sept. 30, 2008	Measures #1-15
July 30, 2009	July 1, 2008 to June 30, 2009	October 30, 2009	Oct. 1, 2008 to Sept. 30, 2009	Measures #1-15

Reporting Timeline for Financial Performance Measures:

Deadlines for July 1 Award Start Date	Reporting Period	Deadlines for Oct. 1 Award Start Date	Reporting Period	Categories Reported
January 30, 2008	July 1, 2006 to June 30, 2007.	April 30, 2008	October 1, 2006 to September 30, 2007.	Gov't Coordination, Public Access, Habitat, and Water Quality
January 30, 2008	July 1, 2007 to Dec. 31, 2007.	April 30, 2008	October 1, 2007 to March 30, 2008.	Gov't Coordination, Public Access, Habitat, and Water Quality
July 30, 2008	Jan. 1, 2008 to June 30, 2008	October 30, 2008	April 1, 2008 to Sept. 30, 2008	ALL
July 30, 2009	July 1, 2008 to June 30, 2009	October 30, 2009	October 1, 2008 to Sept 30, 2009	ALL

Reporting Timeline for State-Collected Contextual Measures:

Deadlines for July 1 Award Start Date	Deadlines for Oct. 1 Award Start Date	Categories Reported
July 30, 2008	October 30, 2008	Hazards and Coastal Dependent Uses & Community Development
309 Assessment and Strategy Deadline	309 Assessment and Strategy Deadline	ALL CATEGORIES

CZMA Objectives by CZMAPMS Categories

Government Coordination and Decision Making

CZMA Objective – The goals of improved government coordination and decision-making were incorporated throughout Section 303 of the CZMA. Section 303(2)(G) - "the coordination and simplification of procedures in order to ensure expedited governmental decision-making ... "; Section 303(2)(J) - "assistance to support comprehensive planning, conservation, and management ... and improved coordination between State and Federal coastal zone management agencies and State and wildlife agencies"; Section 303(4) - "to encourage the participation and cooperation of the public, state, and local governments, and interstate and other regional agencies, as well as the Federal agencies having programs affecting the coastal zone ... "; and Section 303(5) - "to encourage coordination and cooperation with and among the appropriate Federal, state, and local agencies ... in collection, analysis, synthesis, and dissemination of coastal management information, research results, and technical assistance" (CZMA Section 303)

Public Access

CZMA Objective – "Public access to coasts for recreation purposes." (CZMA Section 303(2)(E))

Coastal Habitat

CZMA Objective - "The protection of natural resources, including wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife and their habitat, within the coastal zone." (CZMA Section 303(2)(A))

Coastal Water Quality

CZMA Objective – "The management of coastal development to improve, safeguard, and restore the quality of coastal waters, and to protect natural resources and existing uses of those waters." (CZMA Section 303(2)(C))

Coastal Hazards

CZMA Objective – "The management of coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm-surge, geological hazard, and erosion-prone areas and in areas likely to be affected by or vulnerable to sea level rise, land subsidence and saltwater intrusion, and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands." (CZMA Section 303(2)(B))

Coastal Dependent Uses and Community Development

Coastal Dependent Uses

CZMA Objective – "Priority consideration being given to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fishery development, recreation, ports and transportation, and the location, to the maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such development already exists." (CZMA Section 303(2)(D))

Community Development

CZMA Objective – "Assistance in the redevelopment of deteriorating urban waterfronts and ports, and sensitive preservation and restoration of historic, cultural, and esthetic coastal features." (CZMA Section 303(2)(F))

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. Approval of a 306A project requires a completed checklist, signed by the CMP Program Manager and CPD Chief; title documentation and appraisal (if applicable); and other information that may be required by this checklist. 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. **Name of Project:** _____

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.

John King
Chief, CPD

Date

5. Project Eligibility:

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

- 306A(b)(1)(A) (preservation or restoration of areas designated in the state CMP)
Identify APC or APR: _____
- 306A(b)(1)(B) (preservation or restoration of coastal resource of national significance or restoring or enhancing shellfish production/clutch)
Identify coastal resource: _____
- 306A(b)(2) (redevelopment of deteriorating or underused urban waterfronts designated as APCs in the state's CMP)
Identify APC or APR: _____
- 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 – do not simply reference the task description from the CZM grant application):

7. Public Benefit:

a. The project will be located on a property that is publicly owned or accessible via a publicly-held easement. Yes No

b. The project will be for public benefit. Yes No

c. The project will not improve private property and/or result in private or commercial gain. Yes No

If the answer to any of the above is No, the project is not eligible for section 306A funding.

d. The state or sub-recipient will need to secure an easement or lease to conduct the project (i.e., because the state or sub-recipient does not own the property). Yes No

If the answer to 7d is Yes, attach a copy of the easement or lease to this checklist; if No, go on to 7e.

What is the term of the easement or lease (provide date of expiration or specify if in perpetuity)? _____

The easement or lease contains a reversionary clause. Yes No

e. The project will be open to the general public. Yes No N/A

If the answer to 7e is No, the project is not eligible for section 306A funding unless access is to be limited for a legitimate reason, such as public safety, resource protection, or scientific research. Attach an explanation for why the project will not be open to the public and describe the public benefits that would be provided by the project in the absence of public access.

f. The public will be charged a user fee to access the project. Yes No N/A

If the answer to 7f is Yes, attach an explanation for the user fee, including the amount, whether there will be differential fees (and a justification thereof), the need for the fees, and proposed use of the revenue.

8. Involvement of Non-profit Organizations:

The state CMP or sub-recipient will contract with a non-profit organization to complete part or all of the project. Yes No If the answer to 8 is Yes, the name of the organization is: _____

9A. Supporting Documentation for Low-Cost Construction Projects (if your project is land acquisition, skip to 9B):

a. A title opinion, title insurance commitment/certificate, or affidavit showing that the property on which the proposed project will be located is publicly owned, leased, or under easement in perpetuity or for the expected life of the project (at least 20 years) is attached. Yes No

b. The state CMP has on file a site plan for the project. Yes No

c. The state CMP has on file a site location map for the project. Yes No

(Go on to 10.)

9B. Supporting Documentation for Land Acquisition Projects:

a. A title opinion or title insurance commitment/certificate showing that the property to be acquired is owned by the contracted seller and is free of encumbrances that could affect the future viability of the property in its intended use is attached. Yes No N/A

b. The State or grant sub-recipient has obtained an independent appraisal of the fair market value for the property

to be purchased that was developed pursuant to CPD's Section 306A Guidance. Yes No

10. National Historic Preservation Act and State Historic Preservation Office's (SHPO's) Clearance:

- a. The project will affect sites listed or eligible to be listed on the National Register of Historic Places or a similar State registry. Yes No
- b. The state CMP has on file the SHPO's clearance. Yes No

If the answer to 10b is No, the CMP Program Manager certifies, by signing this checklist, that the State is seeking the SHPO clearance and that work will not begin and/or land will not be purchased until the SHPO clearance is received.

11. National Flood Insurance Program:

- a. The project involves land acquisition to support construction or actual construction. Yes No (If the answer to 11a is no, go on to 12)
- b. The project will be located in a Special Flood Hazard Area shown on a National Flood Insurance Program (NFIP) Flood Insurance Rate Map. Yes No (If the answer to 11b is No, go on to 12)
- c. The community in which the project will be located is participating in the NFIP. Yes No If the answer to 11c is No, the project is not eligible for section 306A funding.

12. Coastal Barrier Resources Act:

The project is located on a coastal barrier island designated as a unit of the Coastal Barriers Resources System.
 Yes No

If the answer to 12. 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.

13. Endangered Species Act:

- a. There are known listed threatened or endangered plant or animal species or their critical habitat (as defined by the Endangered Species Act) that are under the jurisdiction of the National Marine Fisheries Service (NMFS) or U.S. Fish and Wildlife Service (USFWS) on the proposed project site. Yes No

If the answer to 13a is Yes, attach a list of the species and/or their critical habitats.

- b. The proposed project may have adverse effects on species listed or proposed for listing as endangered or threatened or on their designated critical habitats. Yes No

If the answer to 13b. is Yes, attach a description of the species and/or habitats affected, the adverse effects (minor and significant effects), and any coordination that has occurred between the state and the USFWS or NMFS. CPD will not approve a project that USFWS or NMFS has determined will have significant adverse effects on listed species or their critical habitat.

14. National Environmental Policy Act

- a. The proposed project may significantly affect the quality of the human environment. Yes No
- b. The proposed project involves unresolved conflicts concerning alternative uses of available resources.
 Yes No

- c. This action may have significant adverse effects on public health and safety. Yes No
- d. This action may have highly controversial effects to the human environment. Yes No
- e. This action may have highly uncertain and potentially significant environmental effects or involve unique or unknown risks. Yes No
- f. The project may 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's effects may be individually insignificant, but their addition to effects from existing and reasonably foreseeable actions may result in cumulatively significant impacts. Yes No

If the answer to any one subpart of 14 is Yes, then additional NEPA review and documentation may be required. Attach a description of the resource(s) affected, the nature and scope of the effects, and information explaining why the state or sub-recipient believes an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) should not be required. CPD may require additional information in cases where potential impacts are not clearly described or where probable impacts require an EA or EIS.

15. Environmental Justice:

The project will have disproportionately high and adverse human health or environmental effects on minority or low income populations. Yes No

16. Coastal Nonpoint Pollution Control Program:

The project will employ best management practices as appropriate in conformance with the applicable State's Coastal Nonpoint Pollution Control Program. Yes No N/A

17. Americans with Disabilities Act:

The proposed project will be accessible to people with disabilities. Yes No N/A

If the answer to 17 is No, attach an explanation for how the project conforms with ADA requirements as described in CPD's Section 306A Guidance. If the project does not meet the requirements, it will not be approved.

18. State and Local Laws:

The project is consistent with applicable state and local laws. Yes No If the answer is No, the project will not be approved.

19. Tribal Interests:

a. The project is located on or will affect Tribal lands. Yes No (If No, go on to 20)

b. The project is consistent with applicable tribal laws. Yes No If No, the project will not be approved.

20. 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 or land will not be purchased until the permits have been issued and received by the state CMP.

OMB Control # 0648-0119, expires **2/28/2009**. 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 John King, 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

issue its final results of review within 270 days after the date on which the changed circumstances review was initiated (i.e., no later than January 19, 2009).

We are issuing and publishing this notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216.

Dated: October 6, 2008.

David M. Spooner,
Assistant Secretary for Import Administration.

[FR Doc. E8-24205 Filed 10-9-08; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Coastal Zone Management Program Administration

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

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, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 9, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Diana Olinger, 301-563-1149 or e-mail at diana.olinger@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

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

authorized 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. The 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).

The coastal zone management grants provide funds to states and territories to implement federally-approved coastal management plans; complete information for the Coastal Zone Management Program (CZMP) Performance Management System, revise assessment document and multi-year strategy; submit documentation as described in the CZMA Section 306A on the approved coastal zone management plans; submit requests to approve amendments or program changes; and report on the states' coastal nonpoint (not from a specific location) source pollution programs (CNSPP).

II. Method of Collection

Information may be submitted by mail or by e-mail.

III. Data

OMB Control Number: 0648-0119.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, Local and Tribal Government.

Estimated Number of Respondents: 34.

Estimated Time per Response: Performance reports, 27 hours; assessment and strategy, 240 hours; Section 306A documentation, 5 hours; amendments and routine program changes, 8 hours; CNSPP documentation, 4 hours, and CZMA Performance Management System information, 27 hours.

Estimated Total Annual Burden Hours: 8,261.

Estimated Total Annual Cost to Public: \$680.

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: October 6, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8-24018 Filed 10-9-08; 8:45 am]

BILLING CODE 3510-08-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Pacific Islands Region Coral Reef Ecosystems Permit Form

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

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.

DATES: Written comments must be submitted on or before December 9, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Walter Ikehara, (808) 944-2275 or Walter.Ikehara@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

As described in 50 CFR Part 665, Subpart G, National Marine Fisheries Service (NMFS) requires any person: (1) Fishing for, taking, retaining, or using a vessel to fish for Western Pacific coral