

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Diana Hynek 01/07/2005  
Departmental Paperwork Clearance Officer  
Office of the Chief Information Officer  
14th and Constitution Ave. NW.  
Room 6625  
Washington, DC 20230

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for the extension of approval of an information collection received on 11/19/2004.

TITLE: Coastal Zone Management Program Administration

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE

OMB NO.: 0648-0119

EXPIRATION DATE: 01/31/2008

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	195	6,598	0
New	407	9,361	0
Difference	212	2,763	0
Program Change		0	0
Adjustment		2,763	0

TERMS OF CLEARANCE: None

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OMB Authorizing Official Title

Donald R. Arbuckle Deputy Administrator, Office of  
Information and Regulatory Affairs

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# 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 <span style="float: right;">b. <input type="checkbox"/> None</span> 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
	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
	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) ( <i>if applicable</i> )	
9. Keywords	
10. Abstract	
11. Affected public ( <i>Mark primary with "P" and all others that apply with "x"</i> ) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond ( <i>check one</i> ) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden ( <i>in thousands of dollars</i> ) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting ( <i>check all that apply</i> ) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission)  Name: _____ Phone: _____

## 19. Certification for Paperwork Reduction Act Submissions

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

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

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

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

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

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, 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 FOR OMB NO. 0648-0119

#### A. JUSTIFICATION

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

In 1972, in response to intense pressure on coastal resources, and because of the importance of coastal areas, of the United States, the Congress passed the Coastal Zone Management Act of 1972 (CZMA). The CZMA 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).

Currently, 34 of the 35 coastal states, including those of the Great Lakes and U.S. territories, have coastal management programs (CMPs) that have been approved by the Assistant Administrator of NOS. Officials in the last remaining state are again expressing an interest in participating in the program.

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

Section 305 of the CZMA authorizes grants to states to develop a coastal management program. After its management program receives federal approval, the state is then eligible for annual grants under Section 306 to implement the program. Section 306A provides that states may use a portion of their Section 306 awards for low cost construction projects. Section 309 establishes a coastal enhancement grant program. Section 310 establishes a technical assistance and management-oriented research grant program. The Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) establishes section 6217 the Coastal Nonpoint Pollution Control

Program. The specific sections of the CZMA that authorize grant programs will be discussed in further detail.

This OMB Paperwork Reduction Act (PRA) clearance is for performance reports, section 305 program document development, section 306A requirements, section 309 assessment and strategy requirements, amendment and routine program changes, and section 6217 coastal nonpoint source pollution program development. Although OCRM is currently revising both requirements, the annual burden hours for section 306A and section 309 assessment and strategy requirements are included in this submittal. Based on the current and draft section 306A requirements, OCRM has determined that the annual burden hours will not change. The annual burden hours for the section 309 assessment and strategy were based on the draft section 309 requirements. Once finalized, the section 306A and section 309 assessment and strategy requirements will be submitted.

#### **A. Performance Report Requirements**

All thirty-four states and territories who receive funds under sections 305, 306, 306A, 309, 310 and/or 6217 must complete a performance report. In order to determine whether the states and territories are achieving their CZMA goals, the states and territories are responsible for reporting program performance to assure that adequate progress is being made toward those goals. The Office of Ocean and Coastal Resource Management (OCRM) provides to the states and territories, *OCRM, 2003-2004 Performance Report Guidelines*, September 2003 (Attachment A).

According to the performance report guidelines, the performance report is broken down into three sections. Section A describes semi-annually the status of each grant task. A listing of all actions taken during that time to meet national needs must also be provided. Also semi-annually, Section B describes the status of program implementation activities. Section C is submitted on 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 contains sections A, B, and C. In addition, performance reports for section 306 also include other relevant sections 306A, 309, 310 and/or 6217.

For the twelve coastal states and territories that receive other non-CZMA funding, semi-annual, section A performance reports will be completed.

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

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

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

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

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

1.e. Section 310 of the CZMA establishes a program of technical assistance and management-oriented research necessary to support the development and implementation of state coastal management program amendments under section 309, and appropriate to the furtherance of international cooperative efforts and technical assistance in coastal zone management.

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 again expressing an interest in 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. The requirements for program approval are that a state develop a management program that:

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

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

After completion of the management program, OCRM shall review the document to determine if it adequately meets the approval criteria. Once approved the applicant is eligible for section 306/306A, program implementation funds, section 309 - enhancement funds and section 310 - technical assistance funds. Applicants with approved CMPs are also eligible to develop a coastal nonpoint pollution program under section 6217 (see A.1.F.).

### **C. Section 306A Guidance Requirements**

States with Federally approved CMPs and are making satisfactory progress in meeting the objectives of the CZMA are eligible to apply for grants under this section. Section 306A is not a new requirement on the public and has been in place since 1985. Attached is the existing section 306A Guidance (Attachment B). As mentioned in Section A.1., the section 306A Guidance requirements are being revised, however, until the revised section 306A requirements are complete, the existing section 306A requirements will be used. The annual burden hours for Section 306A requirements are included in this submittal. OCRM has determined that based on the current and draft section 306A requirements, the annual burden hours will not change. Once finalized, the revised section 306A requirements will be submitted.

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

- Preservation of restoration of specific areas that (a) are designated under a state's CMP as required by CZMA section 306(d)(9) because of their conservation, recreational, ecological, or esthetic values, or (b) contain one or more coastal resources of national significance, or for the purpose of restoring and enhancing shellfish production by the purchase and distribution of clutch material on publicly owned reef tracts;
- Redevelopment of deteriorating and underutilized urban waterfronts and ports that are designated under section 306(d)(2)(C) in the state's management program as areas of particular concern;
- Provision of access to public beaches and other coastal areas and to coastal waters in accordance with the planning process; or,
- The development of a coordinated process among state agencies to regulate and issue permits for aquaculture facilities in the coastal zone.

#### **D. 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. 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. As mentioned in Section A.1. section 309 assessment and strategy requirements for FY 04/05 are currently being completed. Although OCRM is currently completing the section 309 assessment and strategy requirements, the annual burden hours for section 309 requirements are included in this submittal. The annual burden hours are based on the draft section 309 requirements. Once finalized, the section 309 requirements will be submitted.

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 04/05, with the documents due to OCRM by the end of FY 05.

#### **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 (Attachment C).

#### **F. Section 6217 Coastal Nonpoint Pollution Program**

The Coastal Nonpoint Pollution Control Program implements section 6217 (Protecting Coastal Waters) of the Coastal Zone Reauthorization Amendment of 1990 (CZARA) and is a joint program with 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 was prepared by the Office of Ocean and Coastal Resource Management.

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 on-time document describing their coastal nonpoint program. The respondents must perform the following activities to comply with the guidance.

- Review the program guidance document describing the contents required for the Coastal Nonpoint Program.
- Review the technical guidance document prepared under section 6217(g) which describes management measures for controlling nonpoint sources of water quality degradation in coastal areas.
- Plan activities (i.e., delegate collection tasks, plan interagency meetings, establish

reviewers, and delegate writing activities).

- Collect information relevant to the data items listed above, (e.g., lists of impaired coastal waters, lists of management measures to be adopted, legal and geographical jurisdiction of agencies implementing management measures). The states should be able to acquire all of the information from existing sources. EPA/NOAA does not expect the states to collect new data.
- Analyze the information and construct the Coastal Nonpoint Program. Program development includes revising coastal zone boundaries and planning new or modified state and local regulations to implement the Coastal Nonpoint Program.
- Write draft Coastal Nonpoint Program.
- Write final Coastal Nonpoint Program.

Once completed, the EPA and NOAA will jointly review the state'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 (Attachment D).

**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. The performance reports are reviewed by agency personnel who determine whether the state is adhering to its approved coastal zone management plan and whether it is making continued progress toward coastal management goals. If it is not, future grants could be reduced or a full scale program review could be triggered; the latter could result in a requirement for expenditure of federal funds to correct the program's deficiency; or, in the state losing Federal approval of its plan. All 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.

Section A 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 that were 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 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 Attachment B. 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 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, again as long as all the required information is provided.

Section C 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 as on-need basis (no more frequently than annually).

The narrative for each success story should included:

- 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 also enables 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: 1) a report was written that documents the success of the section 309 projects; 2) contributes to the statutory Biennial Report of Congress on the administration of the CZMA; and, 3) assesses the overall success of the national program. Also, this information is the data source for building the coastal information management system.

2.a. Currently, there are no states receiving section 305 funds to develop a coastal management program. However the one state that is still eligible is again expressing an interest in participating in the program.

2.b. Currently thirty-four states and territories are receiving CZM awards. All thirty-four states and territories must submit section A, section B and section C as requested by the Performance Report Guidelines. Section A provides the accomplishments and progress under each task. Section B provides the status of program implementation activities. Section C provides NOAA with success stories, on an as requested basis (no more frequently than annually).

These thirty-four states and territories could 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.

In addition, there are twelve coastal states that receive additional funding and are thus required to submit semi-annually section A of the Performance Report Guidelines. Of these twelve coastal states, six states (restoration funds) submit section A reporting requirements with their CZM performance report; and, two states (restoration and salt marsh funds) submit separate semi-annual, section A of the Performance Report Guidance. The remaining four states and territories (coral funds) submit separate semi-annual, section A performance reports, and could have three concurrent awards. Thus, these states and territories could submit 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 authorizes states to develop a coastal management program. A state must received federal approval to be eligible for annual grants under section 306 to implement the program.

Currently, there are no states receiving section 305 funds to develop a coastal management program. However, the one state that is still eligible is again expressing an interest in participating in the program.

### **C. Section 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 during FY 04/05. Section 309 assessment and strategy's 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, sixteen (16) states have an approved coastal nonpoint management program and eighteen (18) states continue to make progress towards full approval.

The information collection is designed to yield data that meet 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.**

We encourage the applicants to submit performance reports and work products in electronic format, via disk or electronic mail. The Office of Ocean and Coastal Resource Management (OCRM) is continuing to develop the Internet-based Coastal and Marine Management Program (CAMMP) Information System which is an electronic grant application, and reporting and management system, a subset of the Grant Application and Reporting System (GARS) Information System. Also the government-wide initiative, Grants.gov and the NOAA-wide initiative, Grants Online are being developed to assist the applicant in submitting electronic applications.

**4. Describe efforts to identify duplication.**

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

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

Small businesses and entities are not involved.

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

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

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

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

**8. Provide a copy of the PRA Federal Register Notice that solicited public comments on the information collection prior to 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.**

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

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

No payment or gift to respondents are provided.

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

Confidentiality is neither promised 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 semi-annual performance reports. Section 306 awards will also include sections 306A, 309, 310 and 6217. To ease the burden, for the CZM awards, the states and territories submit one performance report that includes all the appropriate reporting sections. Twelve coastal states and territories receive other sources of funding that requires the states and territories to submit semi-annual section A performance reports. Six states submit separate reports, and six states include the task in the sections 306/306A/309/310/6217 performance report. States and territories could have three concurrent CZM awards which would require six performance reports in a year.

The annual burden hours for the respondents are 9,361 hours.

Number of Respondents x Hours x Responses/Year	Annual Burden Hours
1) 34 respondents x 27 hours x 2 responses/year (306/306A/309/310/6217 - Section A & B Semi-annual performance reports - first year of awards)	1,836 hours

2) <u>34 respondents x 10 hours x 2 responses/2 years</u> 3 years* (306/306A/309/310/6217 - Section A Semi-annual performance reports - second year of awards)	227 hours
3) <u>28 respondents x 5 hours x 2 responses/year</u> 3 years* (306/306A/309/310/6217 - Section A Semi-annual performance reports - third and last year of awards)	93 hours
4) 34 respondents x 8 hours x 1 response/year (Section C Annual performance report)	272 hours
5) 15 respondents x 8 hours/year (Amendments and Program Changes documentation)	120 hours
6) 10 respondents x 5 hours/year (Section 306A documentation)	50 hours
7) 18 respondents x 70 hours/year (Section 6217 Nonpoint Pollution Control Program)	1,260 hours
8) <u>34 respondents x 240 hours/2 years</u> 3 years* (Section 309 Assessment and Strategy documents)	5,440 hours
9) 4 respondents x 5 hours x 2 responses/year (Section 310 coral funding - Section A Semi-Annual performance report - first year of award)	40 hours
10) <u>4 respondents x 3 hours x 2 responses/2 years</u> 3 years* (Section 310 coral funding - Section A Semi-Annual performance report - second year of award)	16 hours
11) <u>4 respondents x 1 hour x 2 responses/year</u> 3 years* (Section 310 coral funding - Section A Semi-Annual performance report - third and last year of award)	3 hours
12) <u>2 respondents x 3 hours x 2 responses/year</u> 3 years* (Section 310 restoration and salt marsh funding - Section A Semi-Annual performance report)	4 hours
Total Annual Burden Hours	9,361 hours

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

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

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

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

The annual Federal cost is estimated at \$96,520. This estimate cost represents the personnel time taken to collect, review, process, and analyze the data.

Number of Reports x Review Hours x \$60/hr. x Responses/year	Estimated Annualized Cost to Federal Gov.
1) 34 reports x 10 hours x \$60/hr. x 2 responses/year (306/306A/309/310/6217 - Section A & B Semi-annual performance reports - first year report)	\$40,800.00
2) <u>34 reports x 2 hours x \$60/hr. x 2 responses/year</u> 3 years* (306/306A/309/310/6217 - Section A Semi-annual performance reports - second year report)	\$2,720.00
3) <u>28 reports x 2 hours x \$60/hr. x 2 responses/year</u> 3 years* (306/306A/309/310/6217 - Section A Semi-annual performance reports - third and last year report)	\$2,240.00
4) 34 reports x 2 hours x \$60/hr. x 1 response/year (Section C Annual Performance Report)	\$4,080.00
5) 15 reports x 10 hours x \$60/hr. (Amendments and Program Change documentation)	\$9,000.00
6) 10 reports x 2 hours x \$60/hr. (Section 306A documentation)	\$1,200.00
7) 18 reports x 20 hours x \$60/hr. (Section 6217 Nonpoint Pollution Control Program)	\$21,600.00
8) <u>34 reports x 10 hours x \$60/hr./year</u> 3 years* (Section 309 Assessment and Strategy documents)	\$13,600.00

9) 4 reports x 2 hour x \$60/hr. x 2 responses/year (Section 310 coral funding - Section A Semi-Annual performance report - first year report)	\$960.00
10) 4 reports x 1 hour x \$60/hr. x 2 responses/year 3 years* (Section 310 coral funding - Section A Semi-Annual performance report - second year report)	\$160.00
11) 4 reports x .5 hours x \$60/hr. x 2 responses/year 3 years* (Section 310 coral funding - Section A Semi-annual performance reports - third and last year report)	\$80.00
12) 2 reports x 1 hours x \$60/hr. x 2 responses/year 3 years* (Section 310 restoration and salt marsh funding - Section A Semi-annual performance reports)	\$80.00
Total Cost to Government	\$ 96,520.00

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

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

The annualized cost to the Federal government has increased with the inclusion of the 34 Assessments and Strategies that will be reviewed during this reporting period. The cost to the Federal government would have decreased if the Assessments and Strategies were not due during this timeframe.

**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 83-1.**

None.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.

**Office Of Ocean and Coastal Resource Management  
2003-2004 Performance Report Guidelines**

**September 2003**

**Introduction**

This paper provides Office of Ocean and Coastal Resource Management (OCRM) guidance for the submission of performance reports for financial assistance awards under Sections 306, 306A, and 309 of the Coastal Zone Management Act of 1972, as amended (CZMA), as well as for the Coastal Nonpoint Program. OCRM needs the information contained in the reports to determine State, Commonwealth and Territory coastal management programs' (coastal programs') adherence 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 the management needs identified in Section 303(2)(A) through (K) of the CZMA.

Under the Federal Chief Financial Officer's Act of 1990 (CFOA), the files of all federal agencies, including those of NOAA, have become subject to annual CFOA audit. These audits include a determination as to whether Federal grant files contain up-to-date financial reports and performance reports from recipients. If grant recipients have not submitted timely performance and/or financial reports as required by the Terms and Conditions of the award:

- NOAA cannot issue 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 reports while still providing necessary information.

**General Reporting Requirements**

The performance report requirements are divided into three sections: Section A (status of grant tasks), Section B (status of program implementation activities), and Section C (success stories). CMP's are required to submit Section A and B reports on a semi-annual basis beginning from the start date of the award, and to submit Section C on an as-requested basis (no more frequently than annually). Section C reports are not necessarily tied to specific award periods.

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

Some coastal programs are submitting Section A reports separately from Section B reports. This can cause problems logging in the reports. Whenever possible, submit both sections together. In any event, clearly identify the award, time period, and section the report covers, as described further below.

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

“Performance Report for State Cooperative Agreement No.: NA03NOS419XXXX ”  
“for the Period from \_\_\_\_\_ to \_\_\_\_\_”

When reporting on more than one cooperative agreement in a reporting period, the applicant must submit separate performance reports for each award and place the award number in the title of the report and/or at the top of each page. This information is necessary to ensure that the reports are correctly logged in and correctly filed. Work products should also be identified by grant and task number so it is clear which report they are associated with.

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

*Last Report:* For coastal management awards a final report is not required. Instead, CPD requires that recipients continue to report on all tasks and activities until they are completed, that the performance report clearly indicate when individual tasks or activities are completed, and that the last report submitted should be labeled as such. GMD has concurred with this decision (ref. Memorandum between Uravitch and Litton, “Final Performance Report Waiver,” dated 12/28/98). Like other performance reports, the last performance report is due 30 days after the final reporting period (this is different from “final” reports, which are allowed up to 90 days).

*Copies:* Coastal programs are encouraged to submit copies of progress reports and work products in electronic form. Task reports should be compiled into one file, not submitted individually. The report should be submitted in Microsoft Word, WordPerfect, or another compatible word processing program, via disk or through e-mail. If the progress report is submitted in hard copy, there should be one original and two copies of the report as well as the cover letter (for a total of three). However, for work products submitted in hard copy, recipients are required to submit only two copies. Any document or other work product printed/funded with coastal zone management funds should be submitted to NOAA.

*NOAA Funding Credit/Disclaimer:* All work products must contain language acknowledging the NOAA funding, and if appropriate, a view disclaimer. Example language follows:

This [report/video] was prepared by [recipient name] under award [number] from the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of OCRM or NOAA.

Wherever possible, coastal programs are encouraged to use existing data as attachments to a performance report that summarizes and provides an analysis of work performed under the award for that time period. The attachments may be reports prepared for internal office purposes, reports prepared by the coastal program agency, or other statewide reports.

### **Coastal Management Performance Measurement**

In FY 2001, 2002, and 2003 appropriations language, Congress directed NOAA to begin designing and implementing a national coastal management performance measurement system and to periodically report on progress in developing a system. A joint OCRM-state working group formed in November 2002 is developing draft indicators for performance measurement and plans to report a preliminary set of indicators to Congress in December 2003. Eventually, indicators will be incorporated into performance reports.

The working group is currently developing indicators using a framework of the following six focus areas: coastal hazards, public access, coastal habitats, coastal water quality, coastal dependent uses, and coastal community development. Final indicators and important details such as data collection methodologies and time frames for measuring performance are yet to be determined. OCRM, however, encourages states that have developed indicators for these focus areas to include a report on their use and measures of the state's performance in the overall performance reports. (See Section C.)

### **Section Reports**

To provide guidance to Recipients, descriptions and examples of the information that should be submitted to NOAA are provided below and in attachments to this document. The attachments also provide suggested formats for completing specific sections of the reports. Information may be submitted in any usable format, provided that the required information is included. Specific inconsistencies between OCRM reporting requirements and state reporting systems should be resolved by the state program managers and the appropriate CPD program liaison.

#### **Section A: Status of Award Tasks and Section 312 Evaluation "Necessary Actions"**

This section describes the status of each Section 306, 306A (if applicable), 309, 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. The section should be organized in the same format as the original grant application and include the following information:

1. Status of each task, organized by task number and title (e.g., meetings held, permits processed, work products completed, contracts completed).
2. Status of task benchmarks that were due during the performance period.
3. Status of special award conditions due during the performance period.

4. Progress in meeting any “necessary actions” or “program suggestions” identified in the most recent Section 312 evaluation.
5. Progress in achieving program changes as identified in the Strategies supporting Section 309 tasks.

If identified work products, benchmarks or deadlines are not due for a task during the reporting period, the narrative should provide more information than “the work is on-going.” Instead, progress in achieving these elements should be described.

You should also indicate whether the task is on schedule and when the work is expected to be completed. The performance report should be informative enough to provide OCRM with preliminary notice that revisions to the task or grant may be necessary due to problems encountered during the reporting period. However, noting potential grant changes in the performance report does not replace the need to formally request such changes.

States are encouraged to make these reports as concise as possible. Depending on the size and complexity of the state grant, these reports may be no more than five to ten single-spaced pages. Narrative discussions can be particularly brief in cases where attachments (contracts, work products, meeting minutes, publications, public notices, etc.) provide a clear indication of status. Refer to Attachment A for an examples.

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

This section 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 Attachment B. 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 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, again as long as all the required information is provided. The following text is a more detailed description of information to be reported on under each topic of this section.

*Permit Administration, Monitoring, and Enforcement:* This section should include quantitative data on the number and type of all state and local government (if applicable) coastal program-mandated permit applications and the number of permits issued or denied. In the case of networked programs that rely on more than one regulatory program, quantitative information must be provided for each core program. The narrative should briefly discuss any major on-going issues, controversial development project permit applications and conditions, significant

violations detected and their resolution, other specific enforcement actions, and any other monitoring activities such as overflights or site visits. You may append news clippings, memos, etc., to support abbreviated summaries. If an item had been discussed in previous reports, please update this information as necessary. In addition, describe the lead 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 liaison.

*Federal Consistency:* This section must include both charts and narrative information that describe the federal consistency reviews and activities during the report period. The narrative report should briefly describe, in case study format, significant consistency reviews, specific examples of controversial projects, type of project modifications required to meet consistency provisions, and important consistency negotiations during the reporting period. The narrative should also report on efforts to improve the consistency review process (i.e., to develop regulations, guidelines or other advisory materials). Again, internal reports, etc. that address these issues may be included as attachments in lieu of narrative in the performance reports.

*Program Changes:* This section should identify any changes to (or on-going efforts to change) the coastal program's authorities or organizational structure that occurred during the reporting period and that may affect the federally-approved CZM program. Examples included 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. If no changes have occurred to the approved program during the reporting period, please include a statement to this effect. This report is not a substitute for the formal submission to OCRM of such program changes pursuant to 15 CFR 923.80-84.

### **Section C: Success Stories**

Note: Section C reports are encouraged, but are not required, for FY2004 grant awards.

Section C 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.

States have considerable flexibility in choosing examples. Consistent with the performance measurement initiative, States could choose from among the six major focus areas that are the initial focus of indicator development: coastal hazards management, coastal public access,

coastal habitats, coastal water quality, coastal dependent uses, and coastal community development. Other suggestions are the coastal program's role or state accomplishments in areas such as: wetlands protection, federal consistency, legislative or regulatory improvements, and conflict resolution.

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.

Although it is difficult to assign a page length to this exercise, OCRM envisions 1-2 single spaced pages per example. As this report should enable OCRM to relate the success stories to others, the narrative should include enough information that OCRM can use the report without requesting additional information. Coastal programs can attach any reports or other work products associated with the success story, if OCRM does not already have a copy through the Section A or Section B reporting.

Like for Section A and B, coastal programs are encouraged to submit the Section C report electronically.

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OMB Control #0648-0119, expires . 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., 11<sup>th</sup> Floor, Silver Spring, Maryland 20910. This report is required under and is authorized under 15 CFR 24.40. Information submitted will be treated as public records. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB Control Number.

**Attachment A**  
**Examples of Section 306, 306A, 309, and Coastal Nonpoint Implementation Task Status**

STATE COASTAL MANAGEMENT PROGRAM  
FY2003 AWARD – NA03NOS419xxxx  
July 1, 2003 - December 31, 2003 (1<sup>st</sup> Semi-Annual Report Period)

Task 306-1 – Program Administration: 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 our award letter was received. 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 April. 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 January; a copy is included in Attachment 1. Staff continued to participate in the state dredge management workgroup, attending three meetings during the reporting period. Copies of the month-by-month program reports prepared for our Department head are also included in Attachment 1 to provide additional detail regarding staff and program activities.

Task 306-2 – Permit Administration and Federal Consistency: Staff working under this task are responsible for administering the CZM Program’s three major permitting programs. During this reporting 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 Attachment 2 (i.e., 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. Also included in the attachment are copies of significant consistency determinations and water quality certifications, as examples of on-going project review activities. One appeal was filed during this reporting 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 306-3 – Wetland Mitigation Study: The final version of the wetland mitigation study entitled “Saltwater Marsh Mitigation in Silver Bay,” was completed in November 2003 and the CZM Program is preparing to release the results during the next reporting period. To summarize, the study evaluated the relative success of 15 compensatory wetland mitigation projects performed from 1998-2000 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 reporting period. A copy of the study is included as Attachment 3.

Task 306-4 – Technical Assistance to Local Governments for Inspection Staff: 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 reporting period.

Task 306A-1 – Acorn Park Fishing Pier: 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 compress the construction schedule so as to still complete the project within the original 18-month award period.

Task 306A-2 – Washington Harbor Boardwalk: This project was completed early and a dedication event is scheduled for April. A short project report with representative photos of the site and the funding credit sign is included in Attachment 4.

Task 309-1 – Development of New Setback Regulations: Work is progressing on schedule for this task. The interagency workgroup met twice during the reporting 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 (produced under Task 7 of Section 306). Once a decision was made, staff were able to finalize the proposed rule language. The language will be presented to the Commission for consideration at their next quarterly meeting in June. Barring any complications, the rules should be adopted by fall 2004, 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 5.

Task CNP-1 – Stormwater BMP Manual and Technical Assistance: During this reporting period, our consultant completed the Stormwater BMP Manual after making requested revisions. The first of the four planned workshops to present the new stormwater regulations and the manual to local contractors was held in February. Approximately 35 individuals participated. The remaining three workshops will be held in the next reporting period, about one every other month. Copies of the manual and the workshop syllabus and handouts are included as Attachment 6

Task CNP-2 – Clean Marina Program: During this reporting period, staff conducted one workshop and attended two boat shows. Members of the evaluation team visited 12 marinas for potential certification as clean marinas. Nine were found to have met a sufficient number of necessary elements to become certified. They will be formally accepted at an award ceremony planned for May. The other three were close and were scheduled for re-visits within the next few months. With the addition of nine, we have a total of 77 certified clean marinas, 61% of our target of having 25% of the marinas in the coastal zone certified by 2005 in accordance with our 5 year implementation plan. The quarterly issue of our clean marina newsletter was sent out in October; copies are included as Attachment 7.

**Attachment B**  
**Examples of Permit Administration and Federal Consistency Status Charts**

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 – Permits (to be used by 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)

<b>State/Local Permitting Agency (Coastal Management Agency or Network Agency)</b>	<b>Type of Permit Activity (where applicable, indicate major or minor)</b>	<b>Applications Filed</b>	<b>Permits Issued</b>	<b>Permits Denied</b>
<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>			
<b>Total Activity</b>				

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	
DOD/ACOE	Dredge Material Disposal - Port Bienville Harbor			x	45 days

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	
DOD/ACOE	Section 10	6	3	1	2	60 days

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	
DOI/MMS	<i>Santa Lucia Unit - P0007 (POE)</i>			x	6 days

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	
HUD		3	3			

# Coastal Zone Management Act Section 306A Guidance

**Coastal Programs Division**

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

**February 1999**



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Appendix I - Section 306A Project Checklist

Appendix II - Title Opinion and Certification Examples

## **I. Introduction**

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

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

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

This guidance is derived from CZMA section 306A; H.R. Rep. No. 1012, 96<sup>th</sup> Cong., 2d Sess., pp. 18-19, 44-46 (1980); Cong. Rec.

H 10113-H 10114 (Sep. 30, 1980); 15 C.F.R. part 24 (Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments); OMB Circular A-87 (cost principles); GAO/OGC 92-13 (Principles of Federal Appropriations Law), chapter 10 (grants and cooperative agreements); and OCRM's former section 306A guidance (May 1990).

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

## **II. Objectives and Allowable Uses of Section 306A Funds**

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

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

The use of section 306A funds is limited to:

1. The acquisition of fee simple or other interest in land, e.g., purchasing an easement for a public right-of-way to the beach or to purchase an ecologically important area to preserve as an area of particular concern.

CZMA § 306A(c)(2)(A);

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

### **III. Section 306A Project Eligibility**

#### **General Guidance**

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

Generally, states are eligible for section 306A funds if the state has a federally approved CMP and the state CMP is making satisfactory progress in activities designed to result in significant improvement in achieving the coastal management objectives specified in sections 303(2)(A) through (K). If CPD determines that a state CMP is not making satisfactory progress, CPD will use its discretion to terminate section 306A eligibility until the problems are remedied. A section 306A project shall also meet one of the section 306A objectives, and the funds will

be used for one of the section 306A allowable uses. These are all described in more detail in this guidance.

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

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

#### Public Benefit

Public benefit requirements for section 306A projects are:

1. Section 306A funds shall only be used for projects on publicly owned or leased land, or land for which an easement is obtained.

2. Leases and easements should be in perpetuity. However, a lease or easement shall, at a minimum, be for the expected life of the project (a minimum of 20 years). The life of a project includes expected repairs to a facility. If a deed, lease or easement conveying property to a public entity for section 306A purposes contains a reversionary clause, CPD must approve the reversionary clause. If the property reverts and is no longer used for its original purpose, then the state CMP shall reimburse NOAA for the federal funds received for the project.
3. Section 306A funds are for public benefit and may not be used to improve private property or for other private enterprises (including non-profit property or enterprises).
4. Indirect benefits to commercial, private or non-profit activities derived from section 306A projects are allowed so long as the indirect commercial, private or non-profit activities do not interfere with the purpose of the project, the requirements of this guidance, and public use and benefits are not diminished.
5. If the land ceases to be available (or the project ceases to be used) for the intended use at any time during the life of the project, the state CMP shall reimburse the full amount of the federal cost of the project to NOAA.
6. A section 306A public access facility must be open to the general public. Facilities that restrict use to specific persons or residents of a community are not eligible for section 306A funding. Access may be limited or controlled in an equitable manner at certain times for safety or resource protection reasons or for other good and reasonable cause such as: to accommodate special events, educational outings (e.g., a school group), or for scientific research (e.g., archaeological excavation).
7. In general, user fees should not be charged to access section 306A projects. If user fees are desired the fee must be described and justified in the Section 306A Project Checklist submitted to CPD. All user fees, income or other revenues derived from a section 306A project shall revert to the maintenance or management of either the federally funded section 306A project or, if the section 306A project is part of a larger public project, the larger public project. If a state or local government proposes to charge a higher fee for non-state, non-county, or non-city residents, the

Section 306A Project Checklist submitted to CPD shall clearly demonstrate that the differential non-resident fee is based on the amount of project subsidization from the resident tax base. Moreover, non-resident fees shall be reasonable. OCRM may require additional information on the necessity or reasonableness of a fee and may deny the use of a user fee.

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

A state CMP, or other public entity, may enter into a partnership with a non-profit organization to purchase property, for preservation purposes only, so long as the federal section 306A funds are allocated to the public entity and the public entity retains ownership (title) and control of the property. If a land trust is involved, the land trust may retain an interest in the property consistent with the purpose of preserving coastal uses or resources, e.g., a conservation easement, but not fee simple ownership.

#### **IV. Other Federal Requirements**

##### **National Flood Insurance Program Requirements**

Any coastal community listed by the Federal Insurance Administration (FIA) in its most current National Flood Insurance Program Community Status Book as being a community which is not participating in the Flood Insurance Program will not be eligible

for any section 306A projects which include the acquisition or construction of buildings in special flood hazard areas shown on an FIA map. State CMPs should so notify such non-participating communities. This does not preclude the community from proposing section 306A projects both in the flood plain or outside of it, that are not acquisition for construction or actual construction projects, e.g., acquisition of wetlands.

#### Coastal Barriers Resource Act Requirements

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

#### Endangered Species Act Requirements

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

habitat.

### National Environmental Policy Act Requirements

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

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

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

### Americans with Disabilities Act -- Handicapped Accessibility Requirements

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

publishes a rule on handicapped accessibility to outdoor areas.

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

The section 306A handicapped accessible requirement applies to federally funded construction projects and any state funded construction projects used to match the section 306/306A awards. Also, any federally funded construction improvements to an existing public access project shall be handicapped accessible regardless of the source of funds used to construct the original project.

#### Department of Commerce Environmental Justice Strategy

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

### **V. Application Procedures**

#### Application Method

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

further speeds the section 306A project approval process.

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

#### Section 306A Project Approval Steps

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

1. State CMP submits section 306/306A application.
  - a. State includes, if possible, completed section 306A checklists, title opinions and any other information that may be required.
  - b. If projects are not finalized by the time of the final grant application, state CMPs identify in the section 306/306A grant application an amount of federal funds to be used for section 306A projects and, if possible, the name and type of section 306A projects proposed.
2. Where the state CMP submits all section 306A information with the final section 306/306A grant application, CPD, the Department of Commerce's Office of General Counsel (OGC) and the NOAA GMD review the section 306/306A grant application. If the section 306A information is complete and approved, the state may begin the approved section 306A projects on the grant start date.
3. If the section 306A information was not complete in the approved section 306/306A application or award, the state CMP shall submit, within 120 days of the award date, the Section 306A Project Checklists, title opinions and any other required information for CPD approval.
4. When CPD receives the section 306A project information CPD will send the title opinion to OGC to review and approve. This is an OGC review and not a NOAA GMD "grant action." If OGC determines that the title opinion is adequate, CPD will continue to process the checklist. If OGC determines that the title opinion is inadequate, CPD will stay its review of the project

until the state CMP remedies the inadequate title. Once the title opinion is cleared by OGC, CPD will either approve or deny the project or request additional information. If CPD approves, CPD will send the checklist to the state and NOAA GMD with CPD's approval signature (see first page of checklist). Once the state CMP receives a Section 306A Project Checklist with CPD's approval, the applicable special award condition is satisfied, federal funds are released, the section 306A funds may be allocated to the project proponent and work may commence.

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

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

#### Budget Information and State Match Requirements

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

A state CMP may use any eligible state or local funds and/or in-kind services to match both the sections 306 and 306A portions of its grant. A state CMP is required to match its section 306/306A grant on a 1 to 1 basis (except for newly approved states, see below). A state CMP is not required to match federal section 306A funds with matching funds or services from section 306A projects. All that is required is that the entire section 306/306A grant is matched on a 1 to 1 basis and the match is from eligible sources. Requirements for eligible matching funds or services are contained in the Uniform Administrative Requirements

for Grants and Cooperative Agreements to State and Local Governments. See 15 C.F.R. part 24.

#### Additional Match Requirements for State CMPs Approved After 1990

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

CZMA section **306** funds awarded to states whose programs were approved after 1990 are to be matched in a federal to state ratio

of 4 to 1 for the first fiscal year, 2.3 to 1 for the second fiscal year, 1.5 to 1 for the third fiscal year, and 1 to 1 for each year thereafter. CZMA § 306(a)(2). Section **306A** funds, however, must be matched 1 to 1, since there is not currently a "phase-in" for section 306A match. See CZMA § 306A(d)(1).

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

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

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

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

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

For state CMPs approved after 1990 the grant application shall show separate matching funds for section 306 and section 306A. The state's internal record keeping should also show separate matching funds for each section. After CPD reviews the state's final section 306/306A grant application, CPD will verify the final combined section 306/306A matching ratio. (In the example above, the final combined ratio is 2.5 to 1.) The final ratio will depend on the amount of federal funds a state chooses to expend on section 306A projects. NOAA must agree to the final combined match ratio to eliminate the need for a state CMP to submit separate Financial Status Reports on section 306 and section 306A funds. Any reprogramming of funds between section 306 and section 306A would require a state CMP to recalculate the combined section 306/306A match ratio and submit it to NOAA for approval. A Special Award Condition will be added to these grants explaining this requirement.

## **VI. Information Required in Application to NOAA**

A State CMP, proposing section 306A projects, shall include a section 306A section in its combined section 306/306A grant application. The application shall list the proposed section 306A projects by name and federal funds for each project or, if

individual projects are not identified in the grant application, show the amount of federal funds to be allocated for section 306A projects. As discussed above, state CMPs approved after 1990 must also show a 1 to 1 match for the section 306A projects.

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

#### **VII. Information the State Must Retain on File**

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

1. A copy of the completed and CPD approved Section 306A Project Checklist.
2. Site location map.
3. Site plan.
4. Title opinion or certification.
5. Appraisal.
6. State Historic Preservation Officer's clearance.
7. Floodplains/Wetlands notice.
8. Copies of required state and federal permits.

Each of these items are described below:

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

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

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

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

opinion and certification. See also section VIII of this guidance regarding special award conditions.

**5. Appraisal.** Before purchasing a piece of property with section 306A funds, a state CMP shall obtain an independent appraisal by a state approved appraiser to determine fair market value. State CMPs shall adhere to the following steps in negotiating acquisition price (adapted from 49 C.F.R. part 24.102):

- a. Secure independent property appraisal.
- b. Present appraisal to land owner and negotiate price based on appraisal. Property owner shall be given a reasonable opportunity to consider the offer and present material which the owner believes to be relevant to determining the property's value.
- c. If the property owner will not sell for the appraised price or lower, and the state wishes to pursue the acquisition, a second independent appraisal shall be done, or the original appraisal updated to account for changed circumstances, e.g., extensive time passage, natural disaster.
- d. If, after negotiations and a second or revised first appraisal, the purchase price still exceeds the appraised value, the state may be allowed to pay more than the appraised value (with federal section 306A

funds) if the state demonstrates reasonable efforts to negotiate at the appraised value and if the state provides CPD with a written justification for the higher price, based on reasonableness, prudence, public interest, appraisals, estimated condemnation/trial costs, and/or valuation supports a settlement.

**6. State Historic Preservation Officer's (SHPO's) clearance.**

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

resolve any National Historic Preservation Act section 106 issues with the SHPO.

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

**8. Copies of required permits.** The state CMP shall place in the file for a section 306A project copies of any required local, state, tribal and federal permits. Required local, state, tribal and federal permits must be obtained before work can commence on all section 306A construction projects and before land can be purchased for all section 306A acquisition projects. However, the state CMP is not required to have the permits in hand for CPD approval. The state CMP Program Manager must certify, in the Section 306A Project Checklist, that the state CMP (or other public entity) is seeking the required local, state and federal permits and that work will not begin and land will not be purchased until the permits have been issued and received by the state CMP.

**VIII. Special Award Conditions**

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

In the event there are title discrepancies or encumbrances that NOAA deems interfere with the purpose for which the 306A funds were granted, or if NOAA determines that project

or property is no longer used for its original purpose, the Recipient shall reimburse NOAA for the Federal funds received for the project.

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

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

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

OMB Control # 0648-0119, expires 11/31/2004. 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., 11<sup>th</sup> Floor, Silver Spring, Maryland 20910. This reporting is required under and is authorized under 16 U.S.C. § 1455a. Information submitted will be treated as public records. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

## **Appendix I**

### **Section 306A Project Checklist**

## **Appendix II**

### **Title Opinion and Certification Examples**

TITLE OPINION (EXAMPLE)

April 1990

Date

RE: Inlet Park Boardwalk

Project Name on Section 306A Checklist

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

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

fee simple absolute

other (specify) \_\_\_\_\_

I have determined that there are (check one)

no easements or other encumbrances on the property

easements or other encumbrances on the property (list below or attach a list.

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

/S/  
Signature

Guy R. Ayres III  
Name  
5200 B Coastal Highway

Ocean City, MD 21842  
Address

XXXXXXX  
Bar number (must include)

(XXX) XXX-XXXX  
Telephone number

SUGGESTED AFFIDAVIT OR CERTIFICATION FORM

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

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

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

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

Signed \_\_\_\_\_  
(name of official)

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

Notary Public

\_\_\_\_\_

My Commission expires:

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

# 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].<sup>1</sup> 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.

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<sup>1</sup> 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 November 30, 2004. 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 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 to John King, Chief, Coastal Programs Division, OCRM, 1305 East-West Hwy., 11<sup>th</sup> Floor, Silver Spring, Maryland 20910. This reporting is required under and is authorized under the Coastal Zone Act Reauthorization Amendments of 1990. Information submitted will be treated as public records. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

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**Appendix A**

**Program Change Regulations**

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

## **Appendix B - Five Program Approval Areas and Detailed Explanations**

A proposed change in one or more of the areas listed below, and the detailed explanations of the areas, or in the way a state CMP manages these areas, would be a program change. OCRM also uses this list to evaluate whether a state's CMP would continue to satisfy these criteria if a proposed change is approved.

### 1. Uses Subject to Management (15 C.F.R. Part 923, Subpart B)

- Permissible land uses and water uses within the coastal zone which have a direct and significant impact on coastal waters and how these uses will be managed. CZMA § 306(d) (2) (B).

- The planning process and the enforceable policies for energy facilities likely to be located in, or which may significantly affect, the coastal zone. CZMA § 306(d) (2) (H).

- The CMP's method of assuring that local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses and water uses of regional benefit. CZMA § 306(d) (12).

- The inventory and designation of areas that contain one or more coastal resources of national significance; and the enforceable policies to protect such resources. CZMA § 306(d) (13).

### 2. Special Management Areas (15 C.F.R. Part 923, Subpart C)

- Designation of areas of particular concern within the coastal zone. CZMA § 306(d) (2) (C).

- Guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority. CZMA § 306(d) (2) (E).

- The term "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.

**Appendix C**

**Preamble to the Final Rule Issued on  
June 28, 1996.**

## Attachment D

### Section 310 (Section 6217 Coastal NonPoint Program)

OMB Control # 0648-0119, expires 11/30/2004. OCRM requires this information in order to adequately assess the eligibility of proposed section 6217 coastal nonpoint program. Public reporting burden for this collection of information is estimated to average for a new coastal program 240 hours per response; and for recipients continuing to make progress toward full approval 70 hours per response. This includes 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 to John King, Chief, Coastal Programs Division, OCRM, 1305 East-West Hwy., 11<sup>th</sup> Floor, Silver Spring, Maryland 20910. This reporting is required under and is authorized under the Coastal Zone Act Reauthorization Amendments of 1990. 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.



approval of this information collection; they also will become a matter of public record.

Dated: June 30, 2004.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04-15401 Filed 7-6-04; 8:45 am]

BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[I.D. 070104I]

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

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**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 September 7, 2004.

**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 Masi Okasaki, 301-713-3155, extension 185 or e-mail at masi.okasaki@noaa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The coastal zone management grants provide funds to states and territories to implement federally-approved coastal management plans; revise assessment document and multi-year strategy; submit Section 306A documentation on the approved coastal zone management plans; submit requests to approve amendments or program changes; and complete the state's coastal nonpoint source pollution program.

**II. Method of Collection**

Information for Performance Reports is collected according to the Performance Report Guideline; Assessment and Strategy documents is collected according to the Assessment and Strategy Guidelines; Section 306A documentation is collected according to the Section 306A Guidance; Amendment or program changes is collected according to the Final Program Change Guidance; and Coastal Nonpoint Source Pollution Program document is collected according to guidance specifying management measures for sources of nonpoint pollution in coastal waters and coastal nonpoint pollution control program, program development and approval guidance.

**III. Data**

*OMB 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; 306A documentation - 5 hours; Amendments and Routine Program Changes 8 hours; and 6,217 Nonpoint Pollution Control Program 150 hours.

*Estimated Total Annual Burden Hours:* 6,598 hours.

*Estimated Total Annual Cost to Public:* \$450.

**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: June 30, 2004.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[I.D. 062904E]

**Pacific Fishery Management Council; Public Hearings**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public hearings.

**SUMMARY:** The Pacific Fishery Management Council (Council) and NMFS will hold two public scoping hearings on alternatives and impacts to be included in an environmental impact statement (EIS) on dedicated access privileges for the Pacific Coast groundfish trawl fishery.

**DATES:** The hearings will be held Tuesday, July 20, 2004, at 3 p.m. and Tuesday, July 27, 2004, at 3:30 p.m.

**ADDRESSES:** The hearings will be held respectively at the Jim Traynor Conference Room, Building 4, 7600 Sand Point Way, Seattle, WA 98115; telephone: (206) 526-4490 and in the Auditorium of the Mark O. Hatfield Marine Science Center, 2030 S. Marine Science Drive, Newport, OR 97365; telephone: (541) 867-0212.

**FOR FURTHER INFORMATION CONTACT:** Jim Seger, Staff Officer (Economist); Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1384; telephone (503) 820-2280.

**SUPPLEMENTARY INFORMATION:** The Council and NMFS announced their intent to hold public scoping meetings on May 24, 2004, (69 FR 29482-29485) when the Council and NMFS issued their notice of intent to prepare an EIS on dedicated access privileges for the Pacific Coast groundfish trawl fishery. The first scoping meeting was held June 13, 2004, in conjunction with a Council meeting in Foster City, CA. The purpose of these hearings is to identify alternatives to be considered and the notable impacts that should be evaluated. These scoping hearings are not intended as a forum for comments in favor of or opposed to the alternatives. A scoping information pamphlet and detailed public scoping