

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 06/23/2010

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

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 09/22/2009

ACTION REQUESTED: Extension without change of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200909-0648-006
AGENCY ICR TRACKING NUMBER:
TITLE: Paperwork Submissions Under the Coastal Zone Management Act Federal Consistency Requirements
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0411

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 06/30/2013

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	6,414	35,799	9,000
New	6,414	35,799	9,024
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	0	0	0
Change due to Agency Adjustment	0	0	24
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE: In accordance with 5 CFR 1320, the information collection is approved for 3 years.

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

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Federal Agency/License or Permit and Assistance - States and Non-Federal Applicants			15 CFR 930.4
Federal Assistance Applications - States and Applicants			15 CFR 930.4
Unlisted activity requests - states are only respondents			15 CFR 930.33
Public notices - states are applicants			15 CFR 930.42
Remedial action requests - states are only respondents			15 CFR 930.45
Listing/notice coordination - states only respondents - state listing			15 CFR 930.53
Listing/notice coordination - states only respond - interstate listing			15 CFR 930.53
Mediation requests - states are only respondents			15 CFR 930.112
Secretarial appeals - individual appeal, state response, business appeal, state response			15 CFR 930.125

PAPERWORK REDUCTION ACT SUBMISSION

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

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

19. Certification for Paperwork Reduction Act Submissions

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

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

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

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

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

Signature of Senior Official or designee

Date

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

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
PAPERWORK SUBMISSIONS UNDER THE COASTAL ZONE MANAGEMENT ACT:
FEDERAL CONSISTENCY REQUIREMENTS
OMB CONTROL NO. 0648-0411**

A. JUSTIFICATION

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

The [Coastal Zone Management Act](#) (CZMA) creates a State-federal partnership to improve the management of the nation's coastal zone through the development of federally approved State coastal management plans (CMPs). The CZMA provides two incentives for States to develop federally approved CMPs: 1) the National Oceanic and Atmospheric Administration (NOAA) has appropriated monies to grant to States to develop and implement State CMPs that meet statutory and regulatory criteria; and 2) the CZMA requires federal agencies, non-federal licensees, and State and local government recipients of federal assistance to conduct their activities in a manner "consistent" with the enforceable policies of NOAA-approved CMPs. The latter incentive, referred to as the "federal consistency" provision, is found at 16 U.S.C. § 1456. NOAA's regulations at [15 C.F.R. part 930](#) implement NOAA's responsibilities to provide procedures for the consistency provision, the procedures available for an appeal of a State's objection to a consistency certification as provided for in 16 U.S.C. §§ 1456(c)(3)(A) and (B) and 1456(d), and changes in the appeal process created by Congressional amendments in 1990, 1996 and 2005, and found at 16 U.S.C. § 1465.

Paperwork and information collection occurs largely outside of NOAA by: 1) State and Federal agencies engaged in licensing and permitting activities affecting coastal resources, 2) Federal agencies taking actions affecting State coastal zones, and 3) Federal agencies providing federal assistance to State and local governments in the coastal zone. In each of these cases, information is collected by the entity making the license, permit, assistance or action decision and NOAA's regulations provide for the use of that information already required by the State or Federal entity in the consistency process. Pursuant to 16 U.S.C. § 1456, NOAA's regulations require the appropriate entity, Federal agency or applicant for license or permit, to prepare a consistency determination or certification. This information is provided to the relevant State CMP, not to NOAA. Information is provided to NOAA only when there is a State objection to a consistency certification, when informal mediation is sought by a Federal agency or State, or when an applicant for a federal license or permit appeals to the Secretary of Commerce for an override to a State CMPs objection to a consistency certification. Last, in 1990, Congress required State CMPs to provide for public participation in their permitting processes, consistency determinations and similar decisions, 16 U.S.C. § 1455(d)(14), and NOAA regulations at part 930 implement that requirement.

Note: performance reports on Coastal Management Plan activities are approved under OMB Control No. 0648-0119.

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 all applicable Information Quality Guidelines.

A. Consistency determinations/certifications and State objections/concurrences, subsequent evaluations of State CMPs pursuant to section 312 of the CZMA and, mediation to encourage settlement of disagreements between State CMPs and Federal agencies.

930.4 This regulation establishes a procedure for State CMPs seeking to impose conditions on Federal agencies or federal permittees without actually objecting to the consistency certification and triggering an appeal. The objective of the regulation is to ensure clarity between the State, Federal agency, and if relevant an applicant as to the specific nature of the State's concern and the Federal agency's or applicant's opportunity to respond to it.

930.35(c) This paragraph establishes procedures for Federal agencies to determine that there are no effects¹ to a State coastal zone related to a proposed federal activity and sets time periods for the issuance of such a "negative" determination by a Federal agency. If a State CMP wishes to have additional time in which to consider whether to object to the Federal agency's negative determination, this regulation requires the State to request such an extension of time in writing.

930.34(d) This paragraph is intended to enhance transparency and improve consultation amongst Federal agencies and State CMPs by requiring States make copies of the federally approved State CMPs available for public inspection. In addition, upon request, States are required to identify those enforceable policies of the State CMP applicable to a federal activity or applicant's project. There is no defined format for the identification and it may occur in any manner deemed appropriate by the State including telephone conversation, letter, fax, or email.

930.42(c) This provision is responsive to the 1990 amendments in which Congress required States to ensure public participation in review of consistency determinations. The contents of the public notice are set forth to provide uniformity in basic information provided by the State to the public about the consistency determinations.

930.43 This regulation provides the basic foundation for a State to exercise consistency authority to object to federal action affecting State coastal resources or the consistency certification. Because this objection document is a statement of the State's formal findings pursuant to the State CMP's enforceable policies in conformance with 16 U.S.C. § 1456(c)(1), it must contain certain elements to

¹ In the CZMA context, effects can have adverse and/or beneficial impacts. For example, there may be a beneficial effect to a coastal resource, but that might have a negative effect on a coastal use (e.g., fishing). Hence, for the purposes of this information collection, "effects" is used with no distinction.

which the Federal agency can respond. This information is supplied to NOAA for use in its responsibilities to ensure that consistency objections are correctly made and to resolve conflicts between States and federal agencies.

930.57 This provision requires applicants to submit consistency certifications for required federal license or permit activities to the State CZMA agency.

Excerpted from this section:

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

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

930.58 This provision is the basic foundation for the implementation of 16 U.S.C. § 1456(c)(3) where a non-federal applicant for a federal license or permit is required to ensure that its proposed project is consistent with the enforceable policies of the State CMP. This information is provided by the applicant to the State and is the basis for State’s decision that the project is or is not consistent with the State CMP.

Excerpted from this section:

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

(1) A copy of the application for the federal license or permit and

(i) All material relevant to a State’s management program provided to the Federal agency in support of the application; and

(ii) To the extent not included in paragraphs (a)(1) or (a)(1)(i) of this section, a detailed description of the proposed activity, its associated facilities, the coastal effects, and any other information relied upon by the applicant to make its certification. Maps, diagrams, and technical data shall be submitted when a written description alone will not adequately describe the proposal.

(2) Information specifically identified in the management program as required necessary data and information for an applicant’s consistency certification. The management program as originally approved or amended (pursuant to 15 CFR part 923, subpart H) may describe data and information necessary to assess the consistency of federal license or permit activities. Necessary data and information may include completed State or local government permit applications which are required for the proposed activity, but shall not include the issued State or local permits. NEPA documents shall not be considered necessary data and information when a Federal statute requires a Federal agency to initiate the CZMA federal consistency review prior to its completion of NEPA compliance. States shall not require that the consistency certification and/or the necessary data and information be included in NEPA documents. Required data and information may not include confidential and proprietary material; and

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

930.59 This provision allows for the consolidation of information relevant to multiple permits so that efficiency in the consistency process can be achieved. Consolidation is for the benefit of the permit applicant and does not prejudice the findings of consistency with State CMPs.

930.60 This provision provides for timely notification as to the completeness of

information provided under 930.58.

930.62 A State agrees with a federal permit applicant's consistency certification in one of two ways: 1) by letter stating its specific findings that the project is consistent with the State CMP; or 2) by the lapse of time after which the State is presumed to have concurred. This information is critical to all parties in the Federal permitting process. Without the State's concurrence the Federal agency cannot issue the requested permit. The concurrence letter is also the closing administrative document of the CZMA process and provides the rational basis for the State's action under the CZMA as well as its own State authorities.

930.63 Likewise, a State's objection to an applicant's consistency certification is its basis for rejecting the consistency findings of the applicant and may form the basis of the applicant's subsequent appeal to the Secretary of Commerce. This document is critical to the consistency process as it informs the applicant, the Federal agency and public of the enforceable policies with which the applicant is not consistent as well as the effects of the project on coastal uses or resources to which the State objects. The objection letter may or may not contain substantial technical information upon which the State CMP's decision was based and may provide some basis for any alternative the State believes would be consistent with the State CMP.

930.75 This requirement is a restatement of the requirement of State CMPs to provide information and copies of their enforceable policies to the affected members of the public and Federal agencies, in this case entities intending to develop mineral resources on the outer continental shelf (OCS) for which specific provision is made in 16 U.S.C. § 1456(c)(3)(B).

930.76 This request is the need for a consistency certification for persons to engage in certain activities on the OCS. These documents provide the foundation of the consistency process for OCS applicants. This section was revised to provide greater clarity and predictability to the submission of the necessary information.

“930.76 Submission of an OCS plan, necessary data and information and consistency certification.

(a) Any person submitting any OCS plan to the Secretary of the Interior or designee shall submit to the Secretary of the Interior or designee:

- (1) A copy of the OCS plan;
- (2) The consistency certification;
- (3) The necessary data and information required pursuant to § 930.58; and
- (4) The information submitted pursuant to the Department of the Interior's OCS operating regulations (*see* 30 CFR 250.203 and 250.204) and OCS information program regulations (*see* 30 CFR part 252).

(b) The Secretary of the Interior or designee shall furnish the State agency with a copy of the information submitted under paragraph (a) of this section, (excluding confidential and proprietary information).

(c) The person's consistency certification shall be in the following form:

The proposed activities described in detail in this plan comply with (name of State(s)) approved management program(s) and will be conducted in a manner consistent with such program(s).”

930.78 The concurrence documents the State's agreement that the proposed activities on the OCS are consistent with the State CMP. Without this concurrence document,

the Federal agency cannot issue the federal license or permit to the OCS applicant.

- 930.94 This rule provides a parallel process for State CMP review of federal assistance to State and local agencies. This procedure implements 16 U.S.C. § 1456(d) and parallels the other consistency procedures.

B. Unlisted activities and outside coastal zone notifications by States and de minimis activities

- 930.33(a)(3) This provision establishes a procedure for Federal agencies to obtain an exclusion from State agency review for de minimis activities (having a level of risk that is too small to be concerned with), other than development projects within the coastal zone. Pursuant to 16 U.S.C. § 1455(d)(14), NOAA regulations require the State agency to provide for public participation when reviewing the Federal agency's de minimis activity request. If the State agency objects to the Federal agency's de minimis finding then the Federal agency must provide the State agency with either a negative determination or a consistency determination.

- 930.34(c) Federal agencies are required to notify State CMPs of proposed Federal agency activities that the Federal agency determines will have reasonably foreseeable effects on the uses or resources of a State's coastal zone. Federal agencies are required to notify States of these activities regardless of whether the activity is listed in the State's CMP program document. The listing of federal agency activities merely puts Federal agency on notice that the State believes these activities, as a general matter, have coastal effects. In addition, if an activity is listed and Federal agency determines there are no reasonably foreseeable coastal effects, the Federal agency provides a negative determination. If the proposed Federal agency activity is not listed, and the Federal agency does not otherwise notify the State, and the State wants to review the activity, then this section provides the authority for the State to notify the Federal agency and for the Federal agency to respond. Since there is an affirmative duty on the part of Federal agencies to notify States of proposed activities that have coastal effects, there are few such State notifications needed.

- 930.54(a)(1) State CMPs are required to list federal license or permit activities that are subject to a State's federal consistency review. If a federal license or permit activity is not listed, and the State believes that the activity will have coastal effects, the State must notify the applicant, the approving Federal agency and Office of Ocean and Coastal Resource Management (OCRM) of its intent to review the activity and request OCRM approval for the review. OCRM approval is required to ensure that an unlisted activity should be subject to the CZMA federal consistency provision by finding whether the proposed activity will have reasonably foreseeable effects on any coastal use or resource. This section affords States the possibility of reviewing the unlisted activity. The CZMA requires that all federal license or permit activities that affect a State's coastal uses or resources are subject to consistency. Given the potentially large number of affected federal

approvals, State CMPs are required to list in their CMP Program Documents those federal license or permit activities that will have reasonably foreseeable effects on coastal uses or resources. The listing/unlisted procedures provide applicants and Federal agencies with notice and predictability of the federal authorizations that are subject to the consistency requirement and about which the State is most concerned. NOAA usually receives less than five, and often only one or two, unlisted activity requests each year for all 34 coastal States.

930.54(a)(2) This section encourages applicants for unlisted federal license, or for permits for activities that might affect a State's coastal uses or resources, to notify the State to give the State the opportunity to decide whether to review the activity. By coordinating early with the State, this section will help to reduce conflicts between States and applicants for unlisted federal approvals.

930.98(a) This section requires States to notify applicant agencies (State agencies or local governments applying for federal financial assistance) for activities that the State wants to review for consistency that are located outside of the State's coastal zone. The purposes for this section are the same as that provided above for listed/unlisted activities: providing applicant agencies and Federal agencies with notice and predictability of the federal approvals which are subject to the consistency requirement and about which the State is most concerned.

C. Public notice requirements for States and applicants

930.42(a), (b) This is a statutory requirement. It requires States to provide for public notice and comment on the State's review of a Federal agency's consistency determination. All States have approved public participation procedures for this section.

930.61 This is a statutory requirement for States to ensure that the public has an opportunity to comment on an applicant's consistency certification for the applicant's federal license or permit application. For part 930, subpart D, unlike the public participation requirement under part 930, subpart C, where the State provides the public notice, the State may issue a notice, the State may include its notice in the Federal agency's notice, or the State may require that the applicant provide the notice.

D. Remedial action/supplemental review notices and requests by States

930.45, 930.65, 930.100

These sections provide States with the opportunity to request that a Federal agency take remedial action when the State believes that a Federal agency activity, a federal license or permit activity, or a federal assistance activity is no longer being undertaken in a manner consistent with the State's management program. These sections are not used very often.

930.46(b), 930.66(b), 930.101(b)

These sections provide States with the opportunity to seek a supplemental consistency review, under the applicable subpart, when the State believes that an activity previously reviewed by the State, but which has not yet begun, will have coastal effects substantially different than originally described. These sections are not used very often.

930.85(b), 930.85(c)

This section is essentially the “remedial action” section for part 930, subpart E. The section provides States with the opportunity to notify the Minerals Management Service of previously approved OCS plans that the State believes is no longer consistent with the State’s management program. This section is rarely used.

E. State Federal Consistency listing and coordination

930.53(c)(1) This section clarifies that States need to consult with applicable Federal agencies when the State wants to add a federal license or permit to its list of activities subject to consistency review. The State-Federal consultation needs to occur prior to the State’s submittal to OCRM for approval. This section furthers the State-Federal consultation and coordination that is required when the State developed its federally approved program and provides the State and Federal agency with the opportunity to resolve any issues prior to submission to OCRM.

930.154 This section exists for the reasons noted above for listed and unlisted activities: to provide applicants and Federal agencies with notice and predictability of the federal approvals which are subject to the consistency requirement and about which the State is most concerned. The listing required for this section is so that the application of “interState consistency” is carried out in a predictable, reasonable and efficient manner, and to ensure that neighboring States are provided the opportunity to comment on the potential application of consistency in their State by another State.

930.155(b), 930.154(d)

These sections exist for the reasons stated above: so that the application of “interState consistency” is carried out in a predictable, reasonable and efficient manner, and to ensure that neighboring States are provided the opportunity to comment on the potential application of consistency in their State by another State. Because of the potential for conflict when one State is reviewing a federal activity in another State, specific notification of proposed activities and a reviewing State’s intent should help to alleviate potential problems and ensure that a consistency review is carried out in a timely and transparent manner.

F. Mediation requests by States

- 930.112 This section implements a statutory provision that gives States and federal agencies the opportunity to request that the Secretary of Commerce mediate a serious dispute between a State and a Federal agency. There have been numerous requests for mediation over the years, which requires only a letter to the Secretary, but only one instance where the mediation was actually initiated. Usually, the Federal agencies opt for more informal mediation through OCRM.
- 930.113(b) This section requires that the Federal and State agencies party to the mediation provide the public with an opportunity to review public information related to the mediation.

G. Appeals to the Secretary by applicants and State responses

- 930.125 This section implements the statutory provision allowing applicants for federal licenses or permits or federal assistance to appeal a State's objection to the Secretary of Commerce. If, on appeal, the Secretary overrides the State's objection, then the applicable Federal agency can issue its approval. These regulations provide a reasonable, efficient and predictable process to conduct the appeal and develop an administrative record for the Secretary's decision. In the history of the CZMA (as of August 17, 2009) there have been 139 appeals filed, but only 44 decisions by the Secretary. Thirty-two appeals were dismissed by NOAA on procedural grounds and 62 were withdrawn after negotiations between State and applicant. One appeal is pending as of August 17, 2009).

NOAA will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management, technical or general informational publications. Should NOAA decide to disseminate the information, it will be subject to the quality control measures and 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.

Most of the information collected must be signed or certified; reports with no such requirements may be emailed.

4. Describe efforts to identify duplication.

In Question 2 above, in referring to 15 CFR 930.43, we have described the efforts to avoid duplication of information collection which include provisions requiring copies of information provided to other Federal agencies to also be sent to NOAA.

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

Not applicable.

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

Without these regulations implementing the consistency provision of the CZMA at 16 U.S.C. § 1456, NOAA could not fulfill its obligations under that statute or its mission to assure consistency of Federal agency activities, federal license or permit activities and federal assistance activities with State CMPs.

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

There are no inconsistencies.

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

A Federal Register Notice published on July 1, 2009 (74 FR 31404) solicited public comment. None was received.

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

Not applicable.

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

The information provided to NOAA is a matter of public record except that information which is protected as proprietary under [FOIA](#) or applicable State law. This information is contained in the applicable regulations.

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

There are no sensitive questions.

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

Responses, burden hours and labor costs are summarized in Table 1, following #13.

Except for the following provisions of these regulations, the information is being gathered for other purposes by other entities, municipal, State or Federal.

A. State objection and concurrence to consistency certifications or determinations.

We estimate annually approximately: 500 Federal agency consistency determinations, 1,600 applications/certifications for federal licenses or permits, and 100 outer continental shelf (OCS) oil and gas plan certifications, totaling 2,200 submissions. These reviews generate, therefore, approximately 2,200 concurrence or objection letters under these rules. Additional requirements may include the provision of copies of the State enforceable policies to applicants.

The number of hours necessary for States to provide consistency concurrence or objection letters varies widely because the nature of proposed activities affecting the coastal zone varies widely. For instance a concurrence or objection letter for an OCS Plan of Exploration may require 20-30 hours of review and preparation, whereas a concurrence or objection letter for a project to install a dock at a private residence may require 1 hour or less. On average, NOAA estimates that State preparation of objection or concurrence letters will require 8 hours each. **Therefore, NOAA estimates that the preparation of concurrence/objection letters for Federal agency activities and federal license or permit activities by the 34 coastal States will require, collectively, approximately 17,600 hours.** Using an hourly rate of \$25 (equivalent of a GS-12) multiplied by 17,600 hours equals \$440,000 annually for the collective 34 coastal States.

The 500 submissions to States by federal agencies (paragraph 1) are not covered under the Paperwork Reduction Act; only the States' responses are covered. However, the applications/certifications for federal licenses or permits and the 100 OCS certifications generating the States' concurrence or objection letters are included in the burden of this information collection request. Thus, **1,700 x 8, or 13,600 hours are estimated for the non-federal applications, etc., for which the States write concurrence or objection letters.** At \$25 per hour, annual cost to the applicants would be \$340,000.

The concurrence or objection to the applications for federal assistance are, generally, much easier than the categories described above, and NOAA estimates that **2 hours will be required to prepare each of 600 estimated letters and therefore NOAA estimates that approximately 1,200 hours will be spent collectively for an estimated 600 concurrence or objection letters by the 34 coastal States to provide.** At a rate of \$25 per hour, multiplied by 1,200 hours, the approximate annual cost for the 34 coastal States is \$30,000. **The applicants' burden is**

estimated to be approximately the same (2 hours x 600, or 1,200), and the annual cost, thus, also \$30,000.

Total responses for this section: 1,700 Federal Agency/License or Permit and Assistance applications and 2,200 responses to the 1,700 non-federal applicants and to the 500 federal applicants not covered by PRA, plus 600 concurrences or objections to the applications for federal assistance, and 600 state responses to the concurrences or objections = 5,100 responses. *Total hours:* 500 x 8 hours = 4,000; 1700 x 2 x 8 hours = 27,200; 600 x 2 x 2 hours = 2,400 hours, totaling 33,600 hours.

Total labor costs: 33,600 hours x \$25 = \$470,000.

A (1). Federal Agency/License or Permit and Assistance - States	2,200
A (1). Federal Agency/License or Permit and Assistance - Non-Federal Applicants	1,700
A (2). Federal Assistance Applications - States	600
A (2). Federal Assistance Applications - Applicants	600

B. State requests for review of unlisted activities

NOAA receives approximately 3 requests to review unlisted activities per year from the participating State CMPs. These requests can vary in complexity depending on the nature of the activity the State wishes to review and the complexity of the anticipated effects on coastal resources. NOAA estimates the range would be similar to concurrence or objection letters from 2-6. On average, **NOAA estimates that such letters will require approximately 4 hours and therefore among the 34 coastal States, collectively, 12 hours annually.** At an hourly rate of \$25, when multiplied by 12 hours, NOAA estimates that the annual cost to the 34 coastal States is \$300.

C. Public Notice requirements

The total number of required public notices of the State consistency review of applications for federal license or permits, federal assistance and federal activities is less than the total number of concurrence or objection letters in A. above because many of the notices for federal license or permit activities are included in the Federal agency's public notice and the States are not required to provide separate public notice for federal assistance activities. The public notice format is simple and straight forward and each State may use whatever format is used for all other public notices. Therefore, NOAA assumes that the preparation of such notices is highly standardized and requires minimal time in each State. NOAA estimates that each State will take 1 hour to prepare a public notice for projects subject to consistency review and thus **for an estimated 1,300 responses, the total number of hours spent annually by the 34 coastal States will be approximately 1,300.** Using the hourly rate of a GS-10 earning approximately \$19 per hour, the annual costs for the 34 coastal States of providing public notice of their consistency review is approximately \$ 247,000 annually.

D. Remedial Action and Supplemental Review

These provisions are rarely used. NOAA estimates that no more than 3 requests for remedial or

supplemental will be requested of NOAA annually. It is difficult to estimate the number of hours involved by a State because the provisions are so rarely used. However, NOAA estimates **2-6 hours would be required to prepare such requests. A total annualized number could be approximately 12 hours.** Using an hourly rate of \$25, the labor costs among the collective 34 coastal States is approximately \$300 annually.

E. Listing Notice/Coordination

NOAA estimates that such listing coordination would take approximately 1 hour per listing change. Using an hourly rate of \$25, the annual cost of listing notices among the 34 coastal States is \$25. The “interstate” listing requires substantially more effort by the States. For such interstate listing, listing coordination would take approximately 30 hours per listing change. At the GS-13 hourly rate of approximately \$30 per hour, the annual cost of listing notices among the 34 coastal States per State is \$900. **Estimating one listing change and one interstate listing, the total hours are estimated to be 31,** with a total labor cost of \$925.

F. Mediation

NOAA receives approximately 0-2 requests for Secretarial mediation annually and of these, none carries through the entire mediation process. The request for mediation does not require a significant effort and NOAA estimates that such requests may require as little as 2 hours of each requester. **Therefore the time burden for mediation will be approximately 4 hours annually for the collective 34 coastal States.** As the wage costs of the persons requesting mediation is approximately the equivalent of a GS-14 costing approximately \$36 per hour, the annual cost of requesting mediation is \$144 among the 34 coastal States.

G. Appeals to the Secretary of Commerce

In the history of the CZMA (as of August 17, 2009) there have been 139 appeals filed, but only 44 decisions by the Secretary. Thirty-two appeals were dismissed by NOAA on procedural grounds and 62 were withdrawn after negotiations between State and applicant. One appeal is pending as of August 17, 2009). On average, that is roughly two per year.

Notices of appeal requirements were changed in 2006 to respond to shorter appeal processing times required by the Energy Policy Act of 2005. Notices of appeal must identify all issues the appellant will raise in later briefs. NOAA estimates Notices of Appeal will require approximately 10 hours. Preparation of briefing materials can vary widely from the pro se appellant seeking to restore a hurricane damaged single family dwelling to an appellant with a complex project such as an outer continental shelf oil and gas project. In these circumstances, preparation of briefs and other materials can range from as few as 5 hours to 1500 hours for each of the two parties, the applicant and the State. An average appeal is one of moderate complexity for which NOAA estimates 210 hours of supplemental briefing work may be required.

Preparation of appeal documents varies widely and may range from the pro se homeowner to the large company with sophisticated legal support. To estimate the costs, NOAA has reviewed the history of appeals and determined that about half are filed by homeowners and half are filed by

large/sophisticated companies. Since NOAA estimated above, that 2 appeals are filed annually, for the purposes of determining the wage rate costs, NOAA assumes 2 appeals will be filed; one by a pro se homeowner and one by a large/sophisticated company. NOAA estimates the wage rate of the pro se homeowner at the equivalent of a GS-14 or \$36 per hour. Therefore the costs of one appeal by a pro se homeowner are estimated to be \$7,560 annually for the entire program. Since States must participate in the appeal process and file equivalent documents, burden and labor costs would be doubled to account for State submissions. **Burden for 2 appeals and 2 states' participation, at 210 hours per response, would total 840 hours.** The individual and equivalent State costs would then be \$15,120. NOAA estimates the cost of a large/sophisticated company, is approximately \$200 per hour x 210 = \$42,000, again, doubled to account for State submissions and thus totaling \$84,000.

Total annualized respondents would be 2,334 (2300 non-State, non-Federal respondents and 34 States), responses would be 6,414, and hours would be 35,799. See Table 1 below.

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

Miscellaneous recordkeeping/reporting costs are shown in Table 1 on the following page. These are costs for copying and mailing documents, totaling \$9,024.

Table 1: Burden and Costs

Submission Type	Responses	Hours per Response	Total Hours	Labor Cost	Misc Cost per Response	Total Misc. Cost
A (1). Federal Agency/License or Permit and Assistance - <i>States</i>	2,200	8	17,600	\$440,000	\$1	\$ 2,200
A (1). Federal Agency/License or Permit and Assistance - <i>Non-Federal Applicants</i>	1,700	8	13,600	\$340,000	\$1	\$ 1,700
A (2). Federal Assistance Applications - <i>States</i>	600	2	1,200	\$ 30,000	\$1	\$ 600
A (2). Federal Assistance Applications - <i>Applicants</i>	600	2	1,200	\$ 30,000	\$1	\$ 600
B. Unlisted Activity Requests – <i>States are only respondents</i>	3	4	12	\$ 300	\$1	\$ 3
C. Public Notices – <i>States are applicants</i>	1,300	1	1,300	\$247,000	\$3	\$ 3,900
D. Remedial Action Requests – <i>States are only respondents</i>	3	4	12	\$ 300	\$1	\$ 3
E. Listing Notice/Coordination – <i>States are only respondents</i>						
State listing	1	1	1	\$ 25	\$4	\$ 4
Interstate listing	1	30	30	\$ 900	\$4	\$ 4
F. Mediation Requests - <i>States are only respondents</i>	2	2	4	\$ 144	\$1	\$ 2
G (1). Secretarial Appeals – <i>Individual appeal</i>	1	210	210	\$ 7,560	\$2	\$ 2
Secretarial Appeals – <i>state response</i>	1	210	210	\$ 7,560	\$2	\$ 2
G (2). Secretarial Appeals – <i>Business appeal</i>	1	210	210	\$ 42,000	\$2	\$ 2
G (2). Secretarial Appeals – <i>State response</i>	1	210	210	\$ 42,000	\$2	\$ 2
Totals	6,414		35,799	\$1,187,789		\$ 9,024

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

Since most of the submission requirements are for non-Federal entities, the costs to the Federal Government are few. The costs for the Federal Government are mostly to receive and respond to the unlisted activity requests, remedial action requests, mediation requests and Secretarial appeal requests. There are, generally, no costs associated with the Secretarial appeals since NOAA recovers its costs from the appellant, pursuant to 16 U.S.C. § 1456(i). For response costs for the other nine items, the cost is an estimate of a percentage (.05%) of an FTE for a GS-14, which provides an estimated annual cost of \$4,000.

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

No changes or adjustments were made. NOTE: in ROCIS, the costs were rounded off for the previous submission. Thus, although there was no change in costs, they appear to have increased by \$24.

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

No publication is planned.

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.

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

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PART 930—FEDERAL CONSISTENCY WITH APPROVED COASTAL MANAGEMENT PROGRAMS

Section Contents

[Subpart A—General Information](#)

- [§ 930.1 Overall objectives.](#)
- [§ 930.2 Public participation.](#)
- [§ 930.3 Review of the implementation of the federal consistency requirement.](#)
- [§ 930.4 Conditional concurrences](#)
- [§ 930.5 State enforcement action.](#)
- [§ 930.6 State agency responsibility.](#)

[Subpart B—General Definitions](#)

- [§ 930.10 Index to definitions for terms defined in part 930.](#)
- [§ 930.11 Definitions.](#)

[Subpart C—Consistency for Federal Agency Activities](#)

- [§ 930.30 Objectives.](#)
- [§ 930.31 Federal agency activity.](#)
- [§ 930.32 Consistent to the maximum extent practicable.](#)
- [§ 930.33 Identifying Federal agency activities affecting any coastal use or resource.](#)

- [§ 930.34 Federal and State agency coordination.](#)
- [§ 930.35 Negative determinations for proposed activities.](#)
- [§ 930.36 Consistency determinations for proposed activities.](#)
- [§ 930.37 Consistency determinations and National Environmental Policy Act \(NEPA\) requirements.](#)
- [§ 930.38 Consistency determinations for activities initiated prior to management program approval.](#)
- [§ 930.39 Content of a consistency determination.](#)
- [§ 930.40 Multiple Federal agency participation.](#)
- [§ 930.41 State agency response.](#)
- [§ 930.42 Public participation.](#)
- [§ 930.43 State agency objection.](#)
- [§ 930.44 Availability of mediation for disputes concerning proposed activities.](#)
- [§ 930.45 Availability of mediation for previously reviewed activities.](#)
- [§ 930.46 Supplemental coordination for proposed activities.](#)

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

- [§ 930.50 Objectives.](#)
- [§ 930.51 Federal license or permit.](#)
- [§ 930.52 Applicant.](#)
- [§ 930.53 Listed federal license or permit activities.](#)
- [§ 930.54 Unlisted federal license or permit activities.](#)
- [§ 930.55 Availability of mediation for license or permit disputes.](#)
- [§ 930.56 State agency guidance and assistance to applicants.](#)
- [§ 930.57 Consistency certifications.](#)
- [§ 930.58 Necessary data and information.](#)
- [§ 930.59 Multiple permit review.](#)
- [§ 930.60 Commencement of State agency review.](#)
- [§ 930.61 Public participation.](#)
- [§ 930.62 State agency concurrence with a consistency certification.](#)
- [§ 930.63 State agency objection to a consistency certification.](#)
- [§ 930.64 Federal permitting agency responsibility.](#)
- [§ 930.65 Remedial action for previously reviewed activities.](#)
- [§ 930.66 Supplemental coordination for proposed activities.](#)

Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

- [§ 930.70 Objectives.](#)
- [§ 930.71 Federal license or permit activity described in detail.](#)
- [§ 930.72 Person.](#)
- [§ 930.73 OCS plan.](#)
- [§ 930.74 OCS activities subject to State agency review.](#)
- [§ 930.75 State agency assistance to persons.](#)

[§ 930.76 Submission of an OCS plan, necessary data and information and consistency certification.](#)

[§ 930.77 Commencement of State agency review and public notice.](#)

[§ 930.78 State agency concurrence or objection.](#)

[§ 930.79 Effect of State agency concurrence.](#)

[§ 930.80 Federal permitting agency responsibility.](#)

[§ 930.81 Multiple permit review.](#)

[§ 930.82 Amended OCS plans.](#)

[§ 930.83 Review of amended OCS plans; public notice.](#)

[§ 930.84 Continuing State agency objections.](#)

[§ 930.85 Failure to substantially comply with an approved OCS plan.](#)

Subpart F—Consistency for Federal Assistance to State and Local Governments

[§ 930.90 Objectives.](#)

[§ 930.91 Federal assistance.](#)

[§ 930.92 Applicant agency.](#)

[§ 930.93 Intergovernmental review process.](#)

[§ 930.94 State review process for consistency.](#)

[§ 930.95 Guidance provided by the State agency.](#)

[§ 930.96 Consistency review.](#)

[§ 930.97 Federal assisting agency responsibility.](#)

[§ 930.98 Federally assisted activities outside of the coastal zone or the described geographic area.](#)

[§ 930.99 Availability of mediation for federal assistance disputes.](#)

[§ 930.100 Remedial action for previously reviewed activities.](#)

[§ 930.101 Supplemental coordination for proposed activities.](#)

Subpart G—Secretarial Mediation

[§ 930.110 Objectives.](#)

[§ 930.111 OCRM mediation.](#)

[§ 930.112 Request for Secretarial mediation.](#)

[§ 930.113 Public hearings.](#)

[§ 930.114 Secretarial mediation efforts.](#)

[§ 930.115 Termination of mediation.](#)

[§ 930.116 Judicial review.](#)

Subpart H—Appeal to the Secretary for Review Related to the Objectives of the Act and National Security Interests

[§ 930.120 Objectives.](#)

[§ 930.121 Consistent with the objectives or purposes of the Act.](#)

[§ 930.122 Necessary in the interest of national security.](#)

[§ 930.123 Definitions.](#)

[§ 930.124 Computation of time.](#)

[§ 930.125 Notice of appeal and application fee to the Secretary.](#)

[§ 930.126 Consistency appeal processing fees.](#)

[§ 930.127 Briefs and supporting materials.](#)

[§ 930.128 Public notice, comment period, and public hearing.](#)

[§ 930.129 Dismissal, remand, stay, and procedural override.](#)

[§ 930.130 Closure of the decision record and issuance of decision.](#)

[§ 930.131 Review initiated by the Secretary.](#)

Subpart I—Consistency of Federal Activities Having Interstate Coastal Effects

[§ 930.150 Objectives.](#)

[§ 930.151 Interstate coastal effect.](#)

[§ 930.152 Application.](#)

[§ 930.153 Coordination between States in developing coastal management policies.](#)

[§ 930.154 Listing activities subject to routine interstate consistency review.](#)

[§ 930.155 Federal and State agency coordination.](#)

[§ 930.156 Content of a consistency determination or certification and State agency response.](#)

[§ 930.157 Mediation and informal negotiations.](#)

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

Source: 65 FR 77154, Dec. 8, 2000, unless otherwise noted.

Subpart A—General Information

[↑ top](#)

§ 930.1 Overall objectives.

[↑ top](#)

The objectives of this part are:

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

(b) To implement the federal consistency requirement in a manner which strikes a balance between the need to ensure consistency for federal actions affecting any coastal use or resource with the enforceable policies of approved management programs and the importance of federal activities (the term "federal action" includes all types of activities subject to the federal consistency requirement under subparts C, D, E, F and I of this part.);

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

management program enforceable policies are considered. State agencies should participate in the administrative processes of federal agencies concerning federal actions that may be subject to state review under subparts C, D, E, F and I of this part.

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

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

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

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

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 826, Jan. 5, 2006]

§ 930.2 Public participation.

 [top](#)

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

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

 [top](#)

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

§ 930.4 Conditional concurrences

 [top](#)

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

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

(2) The Federal agency (for subpart C), applicant (for subparts D and I), person (for subpart E) or applicant agency (for subpart F) shall modify the applicable plan, project proposal, or application to the Federal agency pursuant to

the State agency's conditions. The Federal agency, applicant, person or applicant agency shall immediately notify the State agency if the State agency's conditions are not acceptable; and

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

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

§ 930.5 State enforcement action.

 [top](#)

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

§ 930.6 State agency responsibility.

 [top](#)

(a) This section describes the responsibilities of the "State agency" described in §930.11(o). A designated State agency is required to uniformly and comprehensively apply the enforceable policies of the State's management program, efficiently coordinate all State coastal management requirements, and to provide a single point of contact for Federal agencies and the public to discuss consistency issues. Any appointment by the State agency of the State's consistency responsibilities to a designee agency must be described in the State's management program. In the absence of such description, all consistency determinations, consistency certifications and federal assistance proposals shall be sent to and reviewed by the State agency. A State may have two State agencies designated pursuant to §306(d)(6) of the Act where the State has two geographically separate federally-approved management programs.

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

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

Subpart B—General Definitions

 [top](#)

§ 930.10 Index to definitions for terms defined in part 930.

 [top](#)

Term	Section
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Act	930.11(a)
Any coastal use or resource	930.11(b)
Appellant	930.123
Applicant	930.52
Applicant agency	930.92
Assistant Administrator	930.11(c)
Associated facilities	930.11(d)
Coastal zone	930.11(e)
Consistent to the maximum extent practicable	930.32
Consistent with the objectives or purposes of the Act	930.121
Development project	930.31(b)
Director	930.11(f)
Effect on any coastal use or resource	930.11(g)
Enforceable policy	930.11(h)
Executive Office of the President	930.11(i)
Failure substantially to comply with an OCS plan	930.85(c)
Federal agency	930.11(j)
Federal agency activity	930.31
Federal assistance	930.91
Federal license or permit	930.51
Federal license or permit activity described in detail	930.71
Interstate coastal effect	930.151
Major amendment	930.51(c)
Management program	930.11(k)
Necessary in the interest of national security	930.122
OCS plan	930.73
OCRM	930.11(l)
Person	930.72
Secretary	930.11(m)

Section	930.11(n)
State agency	930.11(o)

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 826, Jan. 5, 2006]

§ 930.11 Definitions.

 [top](#)

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

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

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

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

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

(f) *Director*. The term “Director” means the Director of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service, NOAA.

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

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

(i) *Executive Office of the President*. The term “Executive Office of the President” means the office, council, board,

or other entity within the Executive Office of the President which shall participate with the Secretary in seeking to mediate serious disagreements which may arise between a Federal agency and a coastal State.

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

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

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

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

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

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

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 826, Jan. 5, 2006]

Subpart C—Consistency for Federal Agency Activities

[↑ top](#)

§ 930.30 Objectives.

[↑ top](#)

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

§ 930.31 Federal agency activity.

[↑ top](#)

(a) The term “Federal agency activity” means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities. The term “Federal agency activity” includes a range of activities where a Federal agency makes a proposal for action initiating an activity or series of activities when coastal effects are reasonably foreseeable, e.g., a Federal agency’s proposal to physically alter coastal resources, a plan that is used to direct future agency actions, a proposed rulemaking that alters uses of the coastal zone. “Federal agency activity” does not include the issuance of a federal license or permit to an applicant or person (see subparts D and E of this part) or the granting of federal assistance to an applicant agency (see subpart F of this part).

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

(c) The Federal agency activity category is a residual category for federal actions that are not covered under subparts D, E, or F of this part.

(d) A general permit proposed by a Federal agency is subject to this subpart if the general permit does not involve case-by-case or individual issuance of a license or permit by a Federal agency. When proposing a general permit, a Federal agency shall provide a consistency determination to the relevant management programs and request that the State agency(ies) provide the Federal agency with review, and if necessary, conditions, based on specific enforceable policies, that would permit the State agency to concur with the Federal agency's consistency determination. State agency concurrence shall remove the need for the State agency to review individual uses of the general permit for consistency with the enforceable policies of management programs. Federal agencies shall, pursuant to the consistent to the maximum extent practicable standard in §930.32, incorporate State conditions into the general permit. If the State agency's conditions are not incorporated into the general permit or a State agency objects to the general permit, then the Federal agency shall notify potential users of the general permit that the general permit is not available for use in that State unless an applicant under subpart D of this part or a person under subpart E of this part, who wants to use the general permit in that State provides the State agency with a consistency certification under subpart D of this part and the State agency concurs. When subpart D or E of this part applies, all provisions of the relevant subpart apply.

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

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 826, Jan. 5, 2006]

§ 930.32 Consistent to the maximum extent practicable.

 [top](#)

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

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

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

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

and their coastal effects.

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

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

 [top](#)

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

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

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

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

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

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

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

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

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

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

§ 930.34 Federal and State agency coordination.

 [top](#)

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

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

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

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

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

§ 930.35 Negative determinations for proposed activities.

 [top](#)

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

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

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

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

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

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

(d) *General negative determinations.* In cases where Federal agencies will be performing a repetitive activity that a Federal agency determines will not have reasonably foreseeable coastal effects, whether performed separately or cumulatively, a Federal agency may provide a State agency(ies) with a general negative determination, thereby avoiding the necessity of issuing separate negative determinations for each occurrence of the activity. A general negative determination must adhere to all requirements for negative determinations under §930.35. In addition, a general negative determination must describe in detail the activity covered by the general negative determination and the expected number of occurrences of the activity over a specific time period. If a Federal agency issues a general negative determination, it may periodically assess whether the general negative determination is still applicable.

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

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 827, Jan. 5, 2006]

§ 930.36 Consistency determinations for proposed activities.

[↑ top](#)

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

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

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

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

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

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

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

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

[↑ top](#)

A Federal agency may use its NEPA documents as a vehicle for its consistency determination or negative determination under this subpart. However, a Federal agency's federal consistency obligations under the Act are independent of those required under NEPA and are not necessarily fulfilled by the submission of a NEPA document. State agencies shall not require Federal agencies to submit NEPA documents as information required pursuant to §930.39. If a Federal agency includes its consistency determination or negative determination in a NEPA document, the Federal agency shall ensure that the NEPA document includes the information and adheres to the timeframes required by this subpart. Federal agencies and State agencies should mutually agree on how to best coordinate the requirements of NEPA and the Act.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 827, Jan. 5, 2006]

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

[↑ top](#)

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

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

§ 930.39 Content of a consistency determination.

[↑ top](#)

(a) The consistency determination shall include a brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. The statement must be based upon an evaluation of the relevant enforceable policies of the management program. A description of this evaluation shall be included in the consistency determination, or provided to the State agency simultaneously with the consistency determination if the evaluation is contained in another document. Where a Federal agency is aware, prior to its submission of its consistency determination, that its activity is not fully consistent with a management program's enforceable policies, the Federal agency shall describe in its consistency determination the legal authority that prohibits full consistency as required by §930.32(a)(2). Where the Federal agency is not aware of any inconsistency until after submission of its consistency determination, the Federal agency shall submit its description of the legal authority that prohibits full consistency to the State agency as soon as possible, or before the end of the 90-day period described in §930.36(b)(1). The consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement. The amount of detail in the evaluation of the enforceable policies, activity description and supporting information shall be commensurate with the expected coastal effects of the activity. The Federal agency may submit the necessary information in any manner it chooses so long as the requirements of this subpart are satisfied.

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

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

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

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

§ 930.40 Multiple Federal agency participation.

[↑ top](#)

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

§ 930.41 State agency response.

[↑ top](#)

(a) A State agency shall inform the Federal agency of its concurrence with or objection to the Federal agency's consistency determination at the earliest practicable time, after providing for public participation in the State agency's review of the consistency determination. The Federal agency may presume State agency concurrence if the State agency's response is not received within 60 days from receipt of the Federal agency's consistency determination and supporting information required by §930.39(a). The 60-day review period begins when the State agency receives the consistency determination and supporting information required by §930.39(a). If the information required by §930.39(a) is not included with the determination, the State agency shall notify the Federal agency in writing within 14 days of receiving the determination and supporting information that the 60-day review period has not begun, identify missing information required by §930.39(a), and that the 60-day review period will begin when the missing information is received by the State agency. If the State agency has not notified the Federal agency that information required by §930.39(a) is missing within the 14 day notification period, then the 60-day review period shall begin on the date the State agency received the consistency determination and accompanying information. The State agency's determination of whether the information required by §930.39(a) is complete is not a substantive review of the adequacy of the information provided. Thus, if a Federal agency has submitted a consistency determination and information required by §930.39(a), then the State agency shall not assert that the 60-day review period has not begun because the information contained in the items required by §930.39(a) is substantively deficient. The failure to submit information not required by §930.39(a) shall not be a basis for asserting that the 60-day review period has not begun.

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

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

(d) *Time limits on concurrences.* A State agency cannot unilaterally place an expiration date on its concurrence. If a State agency believes that an expiration date is necessary, State and Federal agencies may agree to a time limit. If there is no agreement, later phases of, or modifications to, the activity that will have effects not evaluated at the time of the original consistency determination will require either a new consistency determination, a supplemental consistency determination under §930.46, or a phased review under §930.36(d) of this subpart.

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

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 827, Jan. 5, 2006]

§ 930.42 Public participation.

[↑ top](#)

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

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

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

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

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

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

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

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

§ 930.43 State agency objection.

[↑ top](#)

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

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

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

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

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

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

(d) In the event of an objection, Federal and State agencies should use the remaining portion of the 90-day notice

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

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

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

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

§ 930.44 Availability of mediation for disputes concerning proposed activities.

 [top](#)

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

§ 930.45 Availability of mediation for previously reviewed activities.

 [top](#)

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

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

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

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

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

§ 930.46 Supplemental coordination for proposed activities.

 [top](#)

(a) For proposed Federal agency activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, Federal agencies shall further coordinate with the

State agency and prepare a supplemental consistency determination if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

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

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

(3) Substantial changes were made to the activity during the period of the State agency's initial review and the State agency did not receive notice of the substantial changes during its review period, and these changes are relevant to management program enforceable policies and/or affect coastal uses or resources.

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

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 828, Jan. 5, 2006]

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

[↑ top](#)

§ 930.50 Objectives.

[↑ top](#)

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

§ 930.51 Federal license or permit.

[↑ top](#)

(a) The term "federal license or permit" means any authorization that an applicant is required by law to obtain in order to conduct activities affecting any land or water use or natural resource of the coastal zone and that any Federal agency is empowered to issue to an applicant. The term "federal license or permit" does not include OCS plans, and federal license or permit activities described in detail in OCS plans, which are subject to subpart E of this part, or leases issued pursuant to lease sales conducted by a Federal agency (e.g., outer continental shelf (OCS) oil and gas lease sales conducted by the Minerals Management Service or oil and gas lease sales conducted by the Bureau of Land Management). Lease sales conducted by a Federal agency are Federal agency activities under subpart C of this part.

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

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

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

original State agency review; and

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

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

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

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

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

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 827, Jan. 5, 2006]

§ 930.52 Applicant.

 [top](#)

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

§ 930.53 Listed federal license or permit activities.

 [top](#)

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

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

automatically included within the geographic location description; State agencies do not have to describe these areas. State agencies do have to describe the geographic location of listed activities occurring on federal lands located beyond the boundaries of a State's coastal zone.

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

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

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

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

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

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

§ 930.54 Unlisted federal license or permit activities.

 [top](#)

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

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

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

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

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

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

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

§ 930.55 Availability of mediation for license or permit disputes.

 [top](#)

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

§ 930.56 State agency guidance and assistance to applicants.

 [top](#)

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

§ 930.57 Consistency certifications.

[↑ top](#)

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

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

§ 930.58 Necessary data and information.

[↑ top](#)

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

(1) A copy of the application for the federal license or permit and

(i) All material relevant to a State's management program provided to the Federal agency in support of the application; and

(ii) To the extent not included in paragraphs (a)(1) or (a)(1)(i) of this section, a detailed description of the proposed activity, its associated facilities, the coastal effects, and any other information relied upon by the applicant to make its certification. Maps, diagrams, and technical data shall be submitted when a written description alone will not adequately describe the proposal;

(2) Information specifically identified in the management program as required necessary data and information for an applicant's consistency certification. The management program as originally approved or amended (pursuant to 15 CFR part 923, subpart H) may describe data and information necessary to assess the consistency of federal license or permit activities. Necessary data and information may include completed State or local government permit applications which are required for the proposed activity, but shall not include the issued State or local permits. NEPA documents shall not be considered necessary data and information when a Federal statute requires a Federal agency to initiate the CZMA federal consistency review prior to its completion of NEPA compliance. States shall not require that the consistency certification and/or the necessary data and information be included in NEPA documents. Required data and information may not include confidential and proprietary material; and

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

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

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

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 827, Jan. 5, 2006]

§ 930.59 Multiple permit review.

[↑ top](#)

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

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

§ 930.60 Commencement of State agency review.

[↑ top](#)

(a) The State agency's six-month review period (see §930.62(a)) of an applicant's consistency certification begins on the date the State agency receives the consistency certification required by §930.57 and all the necessary data and information required by §930.58(a).

(1) If an applicant fails to submit a consistency certification, the State agency shall notify the applicant and the Federal agency, within 30 days of receipt of the incomplete submission, that a consistency certification satisfying §930.57 was not received and that the State agency's six-month review period will commence on the date of receipt of the missing certification, subject to paragraph (a)(2) of this section.

(2) If an applicant fails to submit all necessary data and information required by §930.58(a), the State agency shall notify the applicant and the Federal agency, within 30 days of receipt of the incomplete submission, that necessary data and information described in §930.58(a) was not received and that the State agency's six-month review period will commence on the date of receipt of the missing necessary data and information, subject to the requirement in paragraph (a) of this section that the applicant has also submitted a consistency certification. The State agency may waive the requirement in paragraph (a) of this section that all necessary data and information described in §930.58(a) be submitted before commencement of the State agency's six-month consistency review. In the event of such a waiver, the requirements of §930.58(a) must be satisfied prior to the end of the six-month consistency review period or the State agency may object to the consistency certification for insufficient information.

(3) Within 30 days of receipt of the consistency certification and/or necessary data and information that was deemed missing, pursuant to paragraphs (a)(1) or (2) of this section, the State agency shall notify the applicant and Federal agency that the certification and necessary data and information required pursuant to §930.58 is complete, the date the certification and/or necessary data and information deemed missing was received, and, that the State agency's consistency review commenced on the date of receipt. In the event of a State waiver under paragraph (a)(2) of this section, receipt of the necessary data and information deemed missing shall not alter the date the consistency review period commenced.

(b) State agencies and applicants (and persons under subpart E of this part) may mutually agree in writing to stay the six-month consistency review period. Such an agreement shall be in writing and state a specific date on when the stay will end. The State agency shall provide a copy of the written agreement to the Federal agency and the Federal agency shall not presume State agency concurrence with an applicant's consistency certification when such a written agreement to stay the six-month consistency review period is in effect. The State agency shall not stop, stay, or otherwise alter the consistency review period without such a written agreement with the applicant.

(c) The State agency's determination that a certification and necessary data and information under paragraph (a) of this section is complete is not a substantive review of the adequacy of the information received. If an applicant has submitted all necessary data and information required by §930.58, then a State agency's or Federal agency's assertion that the submitted information is substantively deficient, or a State agency's or Federal agency's request for clarification of the information provided, or information or data requested that is in addition to that required by §930.58 shall not extend the date of commencement of State agency review.

[71 FR 827, Jan. 5, 2006]

§ 930.61 Public participation.

[↑ top](#)

(a) Following receipt of the material described in §930.60 the State agency shall ensure timely public notice of the proposed activity. Public notice shall be provided for the area(s) of the coastal zone likely to be affected by the proposed activity, as determined by the State agency. At the discretion of the State agency, public participation may include one or more public hearings. The State agency shall not require an applicant or a Federal agency to hold a public hearing. State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to reasonably inform the public, obtain sufficient comment, and develop a decision on the matter.

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

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

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

(3) Specify a source for additional information; and

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

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

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

§ 930.62 State agency concurrence with a consistency certification.

[↑ top](#)

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

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

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

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

see also §930.4).

§ 930.63 State agency objection to a consistency certification.

 [top](#)

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

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

(c) A State agency objection may be based upon a determination that the applicant has failed, following a written State agency request, to supply the information required pursuant to §930.58 or other information necessary for the State agency to determine consistency. If the State agency objects on the grounds of insufficient information, the objection shall describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program. The objection may describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program.

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

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

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

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 828, Jan. 5, 2006]

§ 930.64 Federal permitting agency responsibility.

 [top](#)

Following receipt of a State agency objection to a consistency certification, the Federal agency shall not issue the federal license or permit except as provided in subpart H of this part.

§ 930.65 Remedial action for previously reviewed activities.

 [top](#)

(a) Federal and State agencies shall cooperate in their efforts to monitor federal license or permit activities in order to make certain that such activities continue to conform to both federal and State requirements.

(b) The State agency shall notify the relevant Federal agency representative for the area involved of any federal license or permit activity which the State agency claims was:

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

(2) Previously determined not to be an activity affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having coastal effects substantially different than originally described and, as a result, the activity affects any coastal use or resource in a manner inconsistent with the management program.

(c) The State agency notification shall include:

(1) A description of the activity involved and the alleged lack of compliance with the management program;

(2) supporting information; and

(3) a request for appropriate remedial action. A copy of the request shall be sent to the applicant and the Director. Remedial actions shall be linked to coastal effects substantially different than originally described.

(d) If, after 30 days following a request for remedial action, the State agency still maintains that the applicant is failing to comply substantially with the management program, the governor or State agency may file a written objection with the Director. If the Director finds that the applicant is conducting an activity that is substantially different from the approved activity, the applicant shall submit an amended or new consistency certification and supporting information to the Federal agency and to the State agency, or comply with the originally approved certification.

(e) An applicant shall be found to be conducting an activity substantially different from the approved activity if the State agency claims and the Director finds that the activity affects any coastal use or resource substantially different than originally described by the applicant and, as a result, the activity is no longer being conducted in a manner consistent with the enforceable policies of the management program. The Director may make a finding that an applicant is conducting an activity substantially different from the approved activity only after providing 15 days for the applicant and the Federal agency to review the State agency's objection and to submit comments for the Director's consideration.

§ 930.66 Supplemental coordination for proposed activities.

[↑ top](#)

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

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

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

(3) Substantial changes were made to the activity during the period of the State agency's initial review and the State agency did not receive notice of the substantial changes during its review period, and these changes are relevant to management program enforceable policies and/or affect coastal uses or resources.

(b) The State agency may notify the applicant, the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the applicant to implement the proposed activity consistent with the management program. State agency notification

under subsection (b) does not remove the requirement under subsection (a) for applicants to notify State agencies.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 828, Jan. 5, 2006]

Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

 [top](#)

§ 930.70 Objectives.

 [top](#)

The provisions of this subpart are intended to ensure that all federal license or permit activities described in detail in OCS plans and which affect any coastal use or resource are conducted in a manner consistent with approved management programs.

§ 930.71 Federal license or permit activity described in detail.

 [top](#)

The term “federal license or permit activity described in detail” means any activity requiring a federal license or permit, as defined in §930.51, which the Secretary of the Interior determines must be described in detail within an OCS plan.

§ 930.72 Person.

 [top](#)

The term “person” means any individual, corporation, partnership, association, or other entity organized or existing under the laws of any State; the federal government; any State, regional, or local government; or any entity of such federal, State, regional or local government, who submits to the Secretary of the Interior, or designee following management program approval, an OCS plan which describes in detail federal license or permit activities.

§ 930.73 OCS plan.

 [top](#)

(a) The term “OCS plan” means any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*), and the regulations under that Act, which is submitted to the Secretary of the Interior or designee following management program approval and which describes in detail federal license or permit activities.

(b) The requirements of this subpart do not apply to federal license or permit applications filed after management program approval for activities described in detail in OCS plans approved by the Secretary of the Interior or designee prior to management program approval.

§ 930.74 OCS activities subject to State agency review.

 [top](#)

Except for States which do not anticipate coastal effects resulting from OCS activities, management program lists required pursuant to §930.53 shall include a reference to OCS plans which describe in detail federal license or permit activities affecting any coastal use or resource.

§ 930.75 State agency assistance to persons.

[↑ top](#)

As a preliminary matter, any person intending to submit to the Secretary of the Interior an OCS plan which describes in detail federal license or permit activities affecting any coastal use or resource should obtain the views and assistance of the State agency regarding the means for ensuring that such activities will be conducted in a manner consistent with the management program. As part of its assistance efforts, the State agency shall make available for inspection copies of the management program document. Upon request by such persons, the State agency shall identify any enforceable policies applicable to the proposed activities, based upon the information submitted to the State agency.

§ 930.76 Submission of an OCS plan, necessary data and information and consistency certification.

[↑ top](#)

Any person submitting any OCS plan to the Secretary of the Interior or designee shall:

(a) Any person submitting any OCS plan to the Secretary of the Interior or designee shall submit to the Secretary of the Interior or designee:

(1) A copy of the OCS plan;

(2) The consistency certification;

(3) The necessary data and information required pursuant to §930.58; and

(4) The information submitted pursuant to the Department of the Interior's OCS operating regulations (see 30 CFR 250.203 and 250.204) and OCS information program regulations (see 30 CFR part 252).

(b) The Secretary of the Interior or designee shall furnish the State agency with a copy of the information submitted under paragraph (a) of this section (excluding confidential and proprietary information).

(c) The person's consistency certification shall be in the following form:

The proposed activities described in detail in this plan comply with (name of State(s)) approved management program(s) and will be conducted in a manner consistent with such program(s).

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 828, Jan. 5, 2006]

§ 930.77 Commencement of State agency review and public notice.

[↑ top](#)

(a)(1) Except as provided in §930.60(a), State agency review of the person's consistency certification begins at the time the State agency receives the certification and information required pursuant to §930.76(a) and (b). If a person has submitted the documents required by §930.76(a) and (b), then a State agency's assertion that the information contained in the submitted documents is substantively deficient, or a State agency's request for clarification of the information provided, or information and data in addition to that required by §930.76 shall not delay or otherwise change the date on which State agency review begins.

(2) To assess consistency, the State agency shall use the information submitted pursuant to §930.76. If a State agency wants to augment the necessary data and information required by §930.76 to start the six-month review period for OCS plans, then the State can only do so if it amends its management program to include the

information under §930.58(a)(2).

(3) After the State agency's review begins, if the State agency requests additional information, it shall describe in writing to the person and to the Secretary of the Interior or its designee the reasons why the information provided under §930.76 is not adequate to complete its review, and the nature of the information requested and the necessity of having such information to determine consistency with the enforceable policies of the management program. The State agency shall make its request for additional information no later than three months after commencement of the State agency's review period. The State agency shall not request additional information after the three-month notification period described in §930.78(a). However, the State agency may request additional information after the three-month notification period if the person or the Secretary of the Interior or its designee changes the OCS plan after the three-month notification period such that the plan describes activities or coastal effects not previously described and for which information was not previously provided pursuant to §930.76.

(b) Following receipt of the material described in paragraph (a) of this section, the State agency shall ensure timely public notice of the proposed activities in accordance with §930.61.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 828, Jan. 5, 2006]

§ 930.78 State agency concurrence or objection.

[↑ top](#)

(a) At the earliest practicable time, the State agency shall notify in writing the person, the Secretary of the Interior or designee and the Director of its concurrence with or objection to the consistency certification. State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to reasonably inform the public, obtain sufficient comment, and develop a decision on the matter. If the State agency has not issued a decision within three months following commencement of State agency review, it shall notify the person, the Secretary of the Interior or designee and the Director of the status of review and the basis for further delay in issuing a final decision. Notice shall be in written form and postmarked no later than three months following the commencement of the State agency's review. Concurrence by the State agency shall be conclusively presumed if the notification required by this subparagraph is not provided.

(b) Concurrence by the State agency shall be conclusively presumed if the State agency's response to the consistency certification is not received within six months following commencement of State agency review.

(c) If the State agency objects to one or more of the federal license or permit activities described in detail in the OCS plan, it must provide a separate discussion for each objection in accordance with §930.63.

§ 930.79 Effect of State agency concurrence.

[↑ top](#)

(a) If the State agency issues a concurrence or is conclusively presumed to concur with the person's consistency certification, the person will not be required to submit additional consistency certifications and supporting information for State agency review at the time federal applications are actually filed for the federal licenses or permits to which such concurrence applies.

(b) Unless the State agency indicates otherwise, copies of federal license or permit applications for activities described in detail in an OCS plan which has received State agency concurrence shall be sent by the person to the State agency to allow the State agency to monitor the activities. Confidential and proprietary material within such applications may be deleted.

§ 930.80 Federal permitting agency responsibility.

[↑ top](#)

Following receipt of a State agency objection to a consistency certification related to federal license or permit activities described in detail in an OCS plan, the Federal agency shall not issue any of such licenses or permits except as provided in subpart H of this part.

§ 930.81 Multiple permit review.

[↑ top](#)

(a) A person submitting a consistency certification for federal license or permit activities described in detail in an OCS plan is strongly encouraged to work with other Federal agencies in an effort to include, for consolidated State agency review, consistency certifications and supporting data and information applicable to OCS-related federal license or permit activities affecting any coastal use or resource which are not required to be described in detail in OCS plans but which are subject to State agency consistency review (e.g., Corps of Engineer permits for the placement of structures on the OCS and for dredging and the transportation of dredged material, Environmental Protection Agency air and water quality permits for offshore operations and onshore support and processing facilities). In the event the person does not consolidate such OCS-related permit activities with the State agency's review of the OCS plan, such activities will remain subject to individual State agency review under the requirements of subpart D of this part.

(b) A State agency objection to one or more of the OCS-related federal license or permit activities submitted for consolidated review shall not prevent the person from receiving Federal agency approval:

(1) For those OCS-related license or permit activities found by the State agency to be consistent with the management program; and

(2) For the license or permit activities described in detail in the OCS plan provided the State agency concurs with the consistency certification for such plan. Similarly, a State agency objection to the consistency certification for an OCS plan shall not prevent the person from receiving Federal agency approval for those OCS-related license or permit activities determined by the State agency to be consistent with the management program.

§ 930.82 Amended OCS plans.

[↑ top](#)

If the State agency objects to the person's OCS plan consistency certification, and/or if, pursuant to subpart H of this part, the Secretary does not determine that each of the objected to federal license or permit activities described in detail in such plan is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, and if the person still intends to conduct the activities described in the OCS plan, the person shall submit an amended plan to the Secretary of the Interior or designee along with a consistency certification and data and information necessary to support the amended consistency certification. The data and information shall specifically describe modifications made to the original OCS plan, and the manner in which such modifications will ensure that all of the proposed federal license or permit activities described in detail in the amended plan will be conducted in a manner consistent with the management program. When satisfied that the person has met the requirements of the OCSLA and this subpart, the Secretary of the Interior or designee shall furnish the State agency with a copy of the amended OCS plan (excluding confidential and proprietary information), necessary data and information and consistency certification.

[71 FR 829, Jan. 5, 2006]

§ 930.83 Review of amended OCS plans; public notice.

[↑ top](#)

After receipt of a copy of the amended OCS plan, consistency certification, and necessary data and information, State agency review shall begin. The requirements of §§930.77, 930.78, and 930.79, apply to the review of amended OCS plans, except that the applicable time period for purposes of concurrence by conclusive presumption shall be three months instead of six months.

§ 930.84 Continuing State agency objections.

[↑ top](#)

If the State agency objects to the consistency certification for an amended OCS plan, the prohibition in §930.80 against Federal agency approval of licenses or permits for activities described in detail in such a plan applies, further Secretarial review pursuant to subpart H of this part may take place, and the development of an additional amended OCS plan and consistency certification may be required pursuant to §§930.82 through 930.83.

§ 930.85 Failure to substantially comply with an approved OCS plan.

[↑ top](#)

(a) The Department of the Interior and State agencies shall cooperate in their efforts to monitor federally licensed or permitted activities described in detail OCS plans to make certain that such activities continue to conform to both federal and State requirements.

(b) If a State agency claims that a person is failing to substantially comply with an approved OCS plan subject to the requirements of this subpart, and such failure allegedly involves the conduct of activities affecting any coastal use or resource in a manner that is not consistent with the approved management program, the State agency shall transmit its claim to the Minerals Management Service region involved. Such claim shall include a description of the specific activity involved and the alleged lack of compliance with the OCS plan, and a request for appropriate remedial action. A copy of the claim shall be sent to the person.

(c) If a person fails to substantially comply with an approved OCS plan, as determined by Minerals Management Service, pursuant to the Outer Continental Shelf Lands Act and applicable regulations, the person shall come into compliance with the approved plan or shall submit an amendment to such plan or a new plan to Minerals Management Service. When satisfied that the person has met the requirements of the OCSLA and this subpart, and the Secretary of the Interior or designee has made the determination required under 30 CFR 250.203(n)(2) or §250.204(q)(2), as applicable, the Secretary of the Interior or designee shall furnish the State agency with a copy of the amended OCS plan (excluding proprietary information), necessary data and information and consistency certification. Sections 930.82 through 930.84 shall apply to further State agency review of the consistency certification for the amended or new plan.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 829, Jan. 5, 2006]

Subpart F—Consistency for Federal Assistance to State and Local Governments

[↑ top](#)

§ 930.90 Objectives.

[↑ top](#)

The provisions of this subpart are intended to ensure that federal assistance to applicant agencies for activities affecting any coastal use or resource is granted only when such activities are consistent with approved management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for federal assistance activities having interstate coastal effects.

§ 930.91 Federal assistance.

[↑ top](#)

The term “federal assistance” means assistance provided under a federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other form of financial aid.

§ 930.92 Applicant agency.

[↑ top](#)

The term “applicant agency” means any unit of State or local government, or any related public entity such as a special purpose district, which, following management program approval, submits an application for federal assistance.

§ 930.93 Intergovernmental review process.

 [top](#)

The term “intergovernmental review process” describes the procedures established by States pursuant to E.O. 12372, “Intergovernmental Review of Federal Programs,” and implementing regulations of the review of federal financial assistance to applicant agencies.

§ 930.94 State review process for consistency.

 [top](#)

(a) States with approved management programs should review applications from applicant agencies for federal assistance in accordance with E.O. 12372 and implementing regulations.

(b) The applicant agency shall submit an application for federal assistance to the State agency for consistency review, through the intergovernmental review process or by direct submission to the State agency, for any proposed federal assistance activity that is listed in the management program as a type of activity that will have a reasonably foreseeable effect on any coastal use or resource and occurring within the coastal zone (see §930.95(a)) or within a described geographic area outside of the coastal zone (see §930.95(b)).

(c) *Applicant agency evaluation.* The applicant agency shall provide to the State agency, in addition to the federal application, a brief evaluation on the relationship of the proposed activity and any reasonably foreseeable coastal effects to the enforceable policies of the management program.

§ 930.95 Guidance provided by the State agency.

 [top](#)

(a) State agencies should include within the management program a listing of specific types of federal assistance programs subject to a consistency review. Such a listing, and any amendments, will require prior State agency consultation with affected Federal agencies and approval by the Director as a program change.

(b) In the event the State agency chooses to review applications for federal assistance activities outside of the coastal zone but with reasonably foreseeable coastal effects, the State agency shall develop a federal assistance provision within the management program generally describing the geographic area (e.g., coastal floodplains) within which federal assistance activities will be subject to review. This provision, and any refinements, will require prior State agency consultation with affected Federal agencies and approval by the Director as a program change. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its effects on any coastal use or resource. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries defined under the coastal nonpoint pollution control program, or other ecologically identifiable areas.

(c) The State agency shall provide copies of any federal assistance list or geographic provision, and any refinements, to Federal agencies and units of applicant agencies empowered to undertake federally assisted activities within the coastal zone or described geographic area.

(d) For review of unlisted federal assistance activities, the State agency shall follow the same procedures as it would follow for review of listed federal assistance activities outside of the coastal zone or the described geographic area. (See §930.98.)

§ 930.96 Consistency review.

[↑ top](#)

(a)(1) If the State agency does not object to the proposed activity, the Federal agency may grant the federal assistance to the applicant agency. Notwithstanding State agency consistency approval for the proposed project, the Federal agency may deny assistance to the applicant agency. Federal agencies should not delay processing (so long as they do not approve) applications pending receipt of a State agency approval or objection. In the event a Federal agency determines that an application will not be approved, it shall immediately notify the applicant agency and the State agency.

(2) During the period when the State agency is reviewing the activity, the applicant agency and the State agency should attempt, if necessary, to agree upon conditions which, if met by the applicant agency, would permit State agency approval. The parties shall also consult with the Federal agency responsible for providing the federal assistance to ensure that proposed conditions satisfy federal requirements as well as management program requirements.

(b) If the State agency objects to the proposed project, the State agency shall notify the applicant agency, Federal agency and the Director of the objection pursuant to §930.63.

§ 930.97 Federal assisting agency responsibility.

[↑ top](#)

Following receipt of a State agency objection, the Federal agency shall not approve assistance for the activity except as provided in subpart H of this part.

§ 930.98 Federally assisted activities outside of the coastal zone or the described geographic area.

[↑ top](#)

State agencies should monitor proposed federal assistance activities outside of the coastal zone or the described geographic area (e.g., by use of the intergovernmental review process, review of NEPA documents, Federal Register) and shall immediately notify applicant agencies, Federal agencies, and any other agency or office which may be identified by the State in its intergovernmental review process pursuant to E.O. 12372 of proposed activities which will have reasonably foreseeable coastal effects and which the State agency is reviewing for consistency with the management program. Notification shall also be sent by the State agency to the Director. The Director, in his/her discretion, may review the State agency's decision to review the activity. The Director may disapprove the State agency's decision to review the activity only if the Director finds that the activity will not affect any coastal use or resource. The Director shall be guided by the provisions in §930.54(c). For purposes of this subpart, State agencies must inform the parties of objections within the time period permitted under the intergovernmental review process, otherwise the State agency waives its right to object to the proposed activity.

§ 930.99 Availability of mediation for federal assistance disputes.

[↑ top](#)

In the event of a serious disagreement between a Federal agency and the State agency regarding whether a federal assistance activity is subject to the consistency requirement either party may request the OCRM mediation or Secretarial mediation services provided for in subpart G of this part. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding federal assistance for the activity pending satisfaction of the requirements of this subpart, except in cases where the Director has disapproved a State agency decision to review an activity.

§ 930.100 Remedial action for previously reviewed activities.

[↑ top](#)

(a) Federal and State agencies shall cooperate in their efforts to monitor federal assistance activities in order to make certain that such activities continue to conform to both federal and State requirements.

(b) The State agency shall notify the relevant Federal agency representative for the area involved of any federal assistance activity which the State agency claims was:

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

(2) Previously determined not to be a project affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result the project affects a coastal use or resource in a manner inconsistent with the management program.

(c) The State agency notification shall include:

(1) A description of the activity involved and the alleged lack of compliance with the management program;

(2) supporting information; and

(3) a request for appropriate remedial action. A copy of the request shall be sent to the applicant agency and the Director.

(d) If, after 30 days following a request for remedial action, the State agency still maintains that the applicant agency is failing to comply substantially with the management program, the State agency may file a written objection with the Director. If the Director finds that the applicant agency is conducting an activity that is substantially different from the approved activity, the State agency may reinitiate its review of the activity, or the applicant agency may conduct the activity as it was originally approved.

(e) An applicant agency shall be found to be conducting an activity substantially different from the approved activity if the State agency claims and the Director finds that the activity affects any coastal use or resource substantially different than originally determined by the State agency and, as a result, the activity is no longer being conducted in a manner consistent with the management program. The Director may make a finding that an applicant agency is conducting an activity substantially different from the approved activity only after providing a reasonable opportunity for the applicant agency and the Federal agency to review the State agency's objection and to submit comments for the Director's consideration.

§ 930.101 Supplemental coordination for proposed activities.

 [top](#)

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

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

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

(3) Substantial changes were made to the activity during the period of the State agency's initial review and the State agency did not receive notice of the substantial changes during its review period, and these changes are relevant to management program enforceable policies and/or affect coastal uses or resources.

(b) The State agency may notify the applicant agency, the Federal agency and the Director of proposed activities

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

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 829, Jan. 5, 2006]

Subpart G—Secretarial Mediation

 [top](#)

§ 930.110 Objectives.

 [top](#)

The purpose of this subpart is to describe mediation procedures which Federal and State agencies may use to attempt to resolve serious disagreements which arise during the administration of approved management programs.

§ 930.111 OCRM mediation.

 [top](#)

The availability of mediation does not preclude use by the parties of alternative means for resolving their disagreement. In the event a serious disagreement arises, the parties are strongly encouraged to make every effort to resolve the disagreement informally. OCRM shall be available to assist the parties in these efforts.

§ 930.112 Request for Secretarial mediation.

 [top](#)

(a) The Secretary or other head of a Federal agency, or the Governor or the State agency, may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees, to the Assistant Administrator, and to the Director.

(b) Within 15 days following receipt of a request for mediation the disagreeing agency shall transmit a written response to the Secretary, and to the agency requesting mediation, indicating whether it wishes to participate in the mediation process. If the disagreeing agency declines the offer to enter into mediation efforts, it must indicate the basis for its refusal in its response. Upon receipt of a refusal to participate in mediation efforts, the Secretary shall seek to persuade the disagreeing agency to reconsider its decision and enter into mediation efforts. If the disagreeing agencies do not all agree to participate, the Secretary will cease efforts to provide mediation assistance.

§ 930.113 Public hearings.

 [top](#)

(a) If the parties agree to the mediation process, the Secretary shall appoint a hearing officer who shall schedule a hearing in the local area concerned. The hearing officer shall give the parties at least 30 days notice of the time and place set for the hearing and shall provide timely public notice of the hearing.

(b) At the time public notice is provided, the Federal and State agencies shall provide the public with convenient access to public data and information related to the serious disagreement.

(c) Hearings shall be informal and shall be conducted by the hearing officer with the objective of securing in a timely fashion information related to the disagreement. The Federal and State agencies, as well as other interested parties, may offer information at the hearing subject to the hearing officer's supervision as to the extent and manner of presentation. A party may also provide the hearing officer with written comments. Hearings will be recorded and the hearing officer shall provide transcripts and copies of written information offered at the hearing to the Federal and State agency parties. The public may inspect and copy the transcripts and written information provided to these agencies.

§ 930.114 Secretarial mediation efforts.

 [top](#)

(a) Following the close of the hearing, the hearing officer shall transmit the hearing record to the Secretary. Upon receipt of the hearing record, the Secretary shall schedule a mediation conference to be attended by representatives from the Office of the Secretary, the disagreeing Federal and State agencies, and any other interested parties whose participation is deemed necessary by the Secretary. The Secretary shall provide the parties at least 10 days notice of the time and place set for the mediation conference.

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

§ 930.115 Termination of mediation.

 [top](#)

Mediation shall terminate:

(a) At any time the Federal and State agencies agree to a resolution of the serious disagreement,

(b) If one of the agencies withdraws from mediation,

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

(d) For other good cause.

§ 930.116 Judicial review.

 [top](#)

The availability of the mediation services provided in this subpart is not intended expressly or implicitly to limit the parties' use of alternate forums to resolve disputes. Specifically, judicial review where otherwise available by law may be sought by any party to a serious disagreement without first having exhausted the mediation process provided for in this subpart.

Subpart H—Appeal to the Secretary for Review Related to the Objectives of the Act and National Security Interests

 [top](#)

§ 930.120 Objectives.

 [top](#)

This subpart sets forth the procedures by which the Secretary may find that a federal license or permit activity,

including those described in detail in an OCS plan, or a federal assistance activity, which a State agency has found to be inconsistent with the enforceable policies of the management program, may be federally approved because the activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security.

§ 930.121 Consistent with the objectives or purposes of the Act.

 [top](#)

A federal license or permit activity, or a federal assistance activity, is “consistent with the objectives or purposes of the Act” if it satisfies each of the following three requirements:

- (a) The activity furthers the national interest as articulated in §302 or §303 of the Act, in a significant or substantial manner,
- (b) The national interest furthered by the activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively.
- (c) There is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program. The Secretary may consider but is not limited to considering previous appeal decisions, alternatives described in state objection letters and alternatives and other information submitted during the appeal. The Secretary shall not consider an alternative unless the State agency submits a statement, in a brief or other supporting material, to the Secretary that the alternative would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 829, Jan. 5, 2006]

§ 930.122 Necessary in the interest of national security.

 [top](#)

A federal license or permit activity, or a federal assistance activity, is “necessary in the interest of national security” if a national defense or other national security interest would be significantly impaired were the activity not permitted to go forward as proposed. Secretarial review of national security issues shall be aided by information submitted by the Department of Defense or other interested Federal agencies. The views of such agencies, while not binding, shall be given considerable weight by the Secretary. The Secretary will seek information to determine whether the objected-to activity directly supports national defense or other essential national security objectives.

§ 930.123 Definitions.

 [top](#)

- (a) The “appellant” is the applicant, person or applicant agency submitting an appeal to the Secretary pursuant to this subpart.
- (b) For the purposes of this subpart, the “Federal agency” is the agency whose proposed issuance of a license or permit or grant of assistance is the subject of the appeal to the Secretary.
- (c) The term “energy project” means projects related to the siting, construction, expansion, or operation of any facility designed to explore, develop, produce, transmit or transport energy or energy resources that are subject to review by a coastal State under subparts D, E, F or I of this part.
- (d) The term “consolidated record” means the record of all decisions made or actions taken by the lead Federal permitting agency or by another Federal or State administrative agency or officer, maintained by the lead Federal permitting agency, with the cooperation of Federal and State administrative agencies, related to any federal authorization for the permitting, approval or other authorization of an energy project.
- (e) The term “lead Federal permitting agency” means the Federal agency required to: issue a federal license or

permit under subparts D or I of this part; approve an OCS plan under subpart E of this part; or provide federal financial assistance under subparts F or I of this part for an energy project.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 829, Jan. 5, 2006]

§ 930.124 Computation of time.



The first day of any period of time allowed or prescribed by these rules, shall not be included in the computation of the designated period of time. The last day of the time period computed shall be included unless it is a Saturday, Sunday or a Federal holiday, in which case the period runs until the next day which is not one of the aforementioned days.

§ 930.125 Notice of appeal and application fee to the Secretary.



(a) To obtain Secretarial review of a State agency objection, the appellant shall file a notice of appeal with the Secretary within 30 days of receipt of a State agency objection.

(b) The appellant's notice of appeal shall include a statement explaining the appellant's basis for appeal of the State agency's objection under §§930.121 and/or 930.122 of this title, including any procedural arguments pursuant to §930.129(b). Bases for appeal (including procedural arguments) not identified in the appellant's notice of appeal shall not be considered by the Secretary.

(c) The appellant's notice of appeal shall be accompanied by payment of an application fee or a request for a waiver of such fees. An appeal involving a project valued in excess of \$1 million shall be considered a major appeal and the application fee is \$500.00. All other appeals shall be considered minor appeals and the application fee is \$200.00.

(d) The appellant shall send the Notice of appeal to the Secretary, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230; a copy of the notice of appeal to the objecting State agency; and to the Assistant General Counsel for Ocean Services (GCOS), 1305 East West Highway, Room 6111 SSMC 4, Silver Spring, Maryland 20910.

(e) No extension of time will be permitted for the filing of a notice of appeal.

(f) The Secretary shall waive any or all fees if the Secretary concludes upon review of the appellant's fee waiver request that such fees impose an economic hardship on appellant. The request for a waiver and demonstration of economic hardship shall accompany the notice of appeal. If the Secretary denies a request for a waiver and the appellant wishes to continue with the appeal, the appellant shall submit the appropriate fees to the Secretary within 10 days of receipt of the Secretary's denial. If the fees are not received by the 10th day, then the Secretary shall dismiss the appeal.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 830, Jan. 5, 2006; 71 FR 75865, Dec. 19, 2006]

§ 930.126 Consistency appeal processing fees.



The Secretary shall collect as a processing fee such other fees from the appellant as are necessary to recover the full costs of administering and processing appeals to the Secretary under section 307(c) of the Act. All processing fees shall be assessed and collected no later than 60 days after publication of the Federal Register Notice closing the decision record. Failure to submit processing fees shall be grounds for extending the time for issuance of a decision pursuant to section 319(a)(2) of the Act (16 USC 1465(a)(2)) and §930.130 of this subpart.

§ 930.127 Briefs and supporting materials.

[↑ top](#)

(a) Within 30 days of submitting the notice of appeal, as specified in §930.125, the appellant shall submit to the Secretary its principal brief accompanied by the appendix described in paragraph (c) of this section. Within 60 days of the appellant's filing of the notice of appeal, the State agency shall submit to the Secretary its principal brief accompanied by a supplemental appendix, if any, described in paragraph (c) of this section. Not later than 20 days after appellant's receipt of the State agency's brief, appellant may submit to the Secretary a reply brief accompanied by a supplemental appendix, if any, described in paragraph (c) of this section.

(b) A principal brief shall not exceed 30 double-spaced pages; appellant's reply brief shall not exceed 15 double-spaced pages. Any table of contents, table of citations, or certifications of mailing and/or service do not count toward the page limitations.

(c) The appellant must prepare and file an appendix with its brief containing:

(1) Its consistency certification;

(2) The State agency's objection; and

(3) All such supporting documentation and material as the appellant deems necessary for consideration by the Secretary. The State agency (or appellant on reply) shall cite to appellant's appendix or may file a supplemental appendix to include additional documentation and material as the State agency (or appellant on reply) deems necessary for consideration by the Secretary that was not included in appellant's appendix (or the State agency's supplemental appendix). The parties are encouraged to discuss the contents of appellant's appendix in order to include in the appendix as much of the supporting documentation and material as any party deems necessary for consideration by the Secretary. In an appeal for an energy project, supporting documentation and material shall be limited to the parts of the consolidated record described in paragraph (i)(1) of this section to which the appellant or the State agency wishes to direct the Secretary's attention.

(d)(1) Both the appellant and State agency shall send two copies of their briefs and supporting materials to the Office of General Counsel for Ocean Services (GCOS), NOAA, 1305 East West Highway, Room 6111 SSMC4, Silver Spring, Maryland 20910. One copy must be in an electronic format compatible (to the extent practicable) with the website maintained by the Secretary to provide public information concerning appeals under the CZMA.

(2) The appellant and State agency shall serve on each other at least one copy of their briefs, supporting materials, and all requests and communications submitted to the Secretary, at the same time that materials are submitted to the Secretary.

(3) Each submission to the Secretary shall be accompanied by a certification of mailing and/or service on the other party. Service may be done by mail or hand delivery. Materials or briefs submitted to the Secretary not in compliance with this subpart may be disregarded and not entered into the Secretary's decision record of the appeal.

(e)(1) The Secretary has broad authority to implement procedures governing the consistency appeal process to ensure efficiency and fairness to all parties. The appeal decision record is composed of the briefs and supporting materials submitted by the State agency and appellant, public comments and the comments, if any, submitted by interested Federal agencies. As noted in §930.128(c)(1), the Secretary gives deference to the views of interested Federal agencies when commenting in their areas of expertise and takes notice of relevant administrative decisions, including licenses or permits, related to an appellant's proposed activity when submitted to the appeal decision record. The Secretary determines the content of the appeal decision record. The Secretary may determine, on the Secretary's own initiative, that additional information is necessary to the Secretary's decision, including documents prepared by Federal agencies pursuant to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and the Endangered Species Act (16 U.S.C. 1531 *et seq.*), and may request such information.

(2) To promote efficient use of time and resources, the Secretary may, upon the Secretary's own initiative, require the appellant and the State agency to submit briefs and supporting materials relevant only to procedural or jurisdictional issues presented in the Notice of Appeal or identified by the Secretary. Following a decision of the procedural or jurisdictional issues, the Secretary may require briefs on substantive issues raised by the appeal if necessary.

(3) The Secretary may require the appellant and the State agency to submit briefs in addition to those described in paragraphs (a) and (e) of this section as necessary.

(4) Any briefs not requested or required by the Secretary may be disregarded and not entered into the Secretary's decision record of the appeal.

(f) The appellant bears the burden of submitting evidence in support of its appeal and the burden of persuasion.

(g) The Secretary may extend the time for submission, and length, of briefs and supporting materials for good cause.

(h) Where a State agency objection is based in whole or in part on a lack of information, the Secretary shall limit the record on appeal to information previously submitted to the State agency and relevant comments thereon, except as provided for in §930.129(b) and (c).

(i) Appeal Decision Record for Energy Projects. The provisions of this paragraph apply only to appeals for energy projects.

(1) The Secretary shall use the consolidated record maintained by the lead Federal permitting agency as the initial record for an appeal under this subpart for energy projects.

(2) The appellant's notice of appeal required by §930.125(a) and (b) must be accompanied by two copies of the consolidated record maintained by the lead Federal permitting agency. One copy of the consolidated record must be in an electronic format compatible (to the extent practicable) with the website maintained by the Secretary to provide public information concerning appeals under the CZMA. Notwithstanding §930.125(e), the Secretary may extend the time for filing a notice of appeal in connection with an energy project for good cause shown to allow appellant additional time to prepare the consolidated record for filing.

(3) The appellant and the State agency shall submit briefs as required by paragraphs (a), (b) and (c) of this section.

(4) Supplemental information may be accepted and included in the decision record by the Secretary only as allowed by §930.130(a)(2).

[71 FR 830, Jan. 5, 2006, as amended at 71 FR 75865, Dec. 19, 2006]

§ 930.128 Public notice, comment period, and public hearing.

 [top](#)

(a) The Secretary shall provide public notice of the appeal within 30 days after the receipt of the Notice of Appeal by publishing a Notice in the Federal Register and in a publication of general circulation in the immediate area of the coastal zone likely to be affected by the proposed activity.

(b) Except in the case of appeals involving energy projects, the Secretary shall provide a 30-day period for the public and interested Federal agencies to comment on the appeal. Notice of the public and Federal agency comment period shall be provided in the Notice required in paragraph (a) of this section.

(c)(1) The Secretary shall accord greater weight to those Federal agencies whose comments are within the subject areas of their technical expertise.

(2) The Secretary may, on the Secretary's own initiative or upon written request, for good cause shown, reopen the period for Federal agency comments before the closure of the decision record.

(d) Except in the case of appeals involving energy projects, the Secretary may hold a public hearing in response to a request or on the Secretary's own initiative. A request for a public hearing must be filed with the Secretary within 30 days of the publication of the Notice in the Federal Register required in paragraph (a) of this section. If a hearing is held by the Secretary, it shall be noticed in the Federal Register and guided by the procedures described within §930.113. If a hearing is held by the Secretary, the Federal Register notice for the hearing shall reopen the public and Federal agency comment period and shall close such comment period 10 days after the hearing.

[71 FR 831, Jan. 5, 2006]

§ 930.129 Dismissal, remand, stay, and procedural override.

[↑ top](#)

(a) The Secretary may dismiss an appeal for good cause. A dismissal is the final agency action. Good cause shall include, but is not limited to:

- (1) Failure of the appellant to submit a notice of appeal within the required 30-day period.
- (2) Failure of the appellant to submit a brief or supporting materials within the required period;
- (3) Failure of the appellant to pay a required fee;
- (4) Denial by the Federal agency of the federal license, permit or assistance application; or
- (5) Failure of the appellant to base the appeal on grounds that the proposed activity is either consistent with the objectives or purposes of the Act, or necessary in the interest of national security.

(b) If the State agency's consistency objection is not in compliance with section 307 of the Act and the regulations contained in subparts D, E, F, or I of this part, the Secretary shall override the State's objection. The Secretary may make this determination as a threshold matter.

(c) The Secretary may stay the processing of an appeal in accordance with §930.130.

(d) The Secretary may remand an appeal to the State agency for reconsideration of the project's consistency with the enforceable policies of the State's management program if significant new information relevant to the State agency's objection, not previously provided to the State agency during its consistency review, is submitted to the Secretary. The Secretary shall determine a time period for the remand to the State agency. The time period for remand must be completed within the period described in §930.130 for the development of the Secretary's decision record. If the State agency responds that it still objects to the activity, then the Secretary shall continue to process the appeal. If the State agency concurs that the activity is consistent with the enforceable policies of the State's management program, then the Secretary shall declare the appeal moot and notify the Federal agency that the activity may be federally approved.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 831, Jan. 5, 2006]

§ 930.130 Closure of the decision record and issuance of decision.

[↑ top](#)

(a)(1) With the exception of paragraph (a)(2) of this section, the Secretary shall close the decision record not later than 160 days after the date that the Secretary's Notice of Appeal is published in the Federal Register under §930.128(a). After closing the decision record, the Secretary shall immediately publish a notice in the Federal Register stating that the decision record has been closed. The notice shall also state that the Secretary shall not consider additional information, briefs or comments.

(2) The Secretary may stay the closing of the decision record during the 160-day period described in paragraph (a)(1) of this section:

- (i) For a specific period mutually agreed to in writing by the appellant and the State agency; or
- (ii) As the Secretary determines necessary to receive, on an expedited basis:

(A) Any supplemental information specifically requested by the Secretary to complete a consistency review under the Act; or

(B) Any clarifying information submitted by a party to the proceeding related to information in the consolidated record compiled by the lead Federal permitting agency.

(3) The Secretary may only stay the 160-day period described in paragraph (a)(1) of this section for a period not to exceed 60 days.

(b) Not later than 60 days after the date of publication of a Federal Register notice stating when the decision record for an appeal has been closed, the Secretary shall issue a decision or publish a notice in the Federal Register explaining why a decision cannot be issued at that time. The Secretary shall issue a decision not later than 15 days after the date of publication of a Federal Register notice explaining why a decision cannot be issued within the 60-day period.

(c) The decision of the Secretary shall constitute final agency action for the purposes of the Administrative Procedure Act.

(d) In reviewing an appeal, the Secretary shall find that a proposed federal license or permit activity, or a federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, when the information in the decision record supports this conclusion.

(e)(1) If the Secretary finds that the proposed activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, the Federal agency may approve the activity.

(2) If the Secretary does not make either of these findings, the Federal agency shall not approve the activity.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 831, Jan. 5, 2006]

§ 930.131 Review initiated by the Secretary.

 [top](#)

(a) The Secretary may, on her own initiative, choose to consider whether a federal license or permit activity, or a federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security. Secretarial review shall only be initiated after the completion of State agency review pursuant to the relevant subpart. The Secretary's decision to review the activity may result from an independent concern regarding the activity or a request from interested parties. If the Secretary decides to initiate review, notification shall be sent to the applicant, person or applicant agency, and to the relevant Federal and State agencies. The notice shall include a statement describing the reasons for the review.

(b) With the exception of application and processing fees, all other provisions under this subpart governing the processing and administering of appeals will apply to Secretarial reviews initiated under this section.

Subpart I—Consistency of Federal Activities Having Interstate Coastal Effects

 [top](#)

§ 930.150 Objectives.

 [top](#)

(a) A federal activity may affect coastal uses or resources of a State other than the State in which the activity will occur. Effective coastal management is fostered by ensuring that activities having such reasonably foreseeable interstate coastal effects are conducted consistent with the enforceable policies of the management program of each affected State.

(b) The application of the federal consistency requirement to activities having interstate coastal effects is addressed by this subpart in order to encourage cooperation among States in dealing with activities having interstate coastal effects, and to provide States, local governments, Federal agencies, and the public with a predictable framework for evaluating the consistency of these federal activities under the Act.

§ 930.151 Interstate coastal effect.

[↑ top](#)

The term “interstate coastal effect” means any reasonably foreseeable effect resulting from a federal action occurring in one State of the United States on any coastal use or resource of another State that has a federally approved management program. Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions. The term “affects” means have an effect on. Effects on any coastal use or resource may also be referred to as “coastal effects.”

§ 930.152 Application.

[↑ top](#)

(a) This subpart applies to federal actions having interstate coastal effects, and supplements the relevant requirements contained in 15 CFR part 930, subparts C (Consistency for Federal Agency Activities), D (Consistency for Activities Requiring a Federal License or Permit), E (Consistency for OCS Exploration, Development and Production Activities) and F (Consistency for Federal Assistance to State and Local Governments). Except as otherwise provided by this subpart, the requirements of other relevant subparts of part 930 apply to activities having interstate coastal effects.

(b) Federal consistency is a requirement on federal actions affecting any coastal use or resource of a State with a federally-approved management program, regardless of the activities' locations (including States without a federally approved management program). The federal consistency requirement does not alter a coastal State's jurisdiction. The federal consistency requirement does not give States the authority to review the application of laws, regulations, or policies of any other State. Rather, the Act allows a management program to review federal actions and may preclude federal action as a result of a State objection, even if the objecting State is not the State in which the activity will occur. Such objections to interstate activities under subparts D, E and F may be overridden by the Secretary pursuant to subpart H of this part.

§ 930.153 Coordination between States in developing coastal management policies.

[↑ top](#)

Coastal States are encouraged to give high priority to:

- (a) Coordinating State coastal management planning, policies, and programs with respect to contiguous areas of such States;
- (b) Studying, planning, and implementing unified coastal management policies with respect to such areas; and
- (c) Establishing an effective mechanism, and adopting a federal-State consultation procedure, for the identification, examination, and cooperative resolution of mutual problems with respect to activities having interstate coastal effects.

§ 930.154 Listing activities subject to routine interstate consistency review.

[↑ top](#)

(a) *Geographic location of listed activities.* Each coastal State intending to conduct a consistency review of federal activities occurring in another State shall:

- (1) List those Federal agency activities, federal license or permit activities, and federal assistance activities that the

State intends to routinely review for consistency; and

(2) Generally describe the geographic location for each type of listed activity.

(b) In establishing the geographic location of interstate consistency review, each State must notify and consult with the State in which the listed activity will occur, as well as with relevant Federal agencies.

(c) *Demonstrate effects.* In describing the geographic location for interstate consistency reviews, the State agency shall provide information to the Director that coastal effects from listed activities occurring within the geographic area are reasonably foreseeable. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its effects on any coastal use or resource. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries under the State's coastal nonpoint pollution control program, or other ecologically identifiable areas.

(d) *Director approval.* State agencies shall submit their lists and geographic location descriptions developed under this section to the Director for approval as a routine program change under subpart H of 15 CFR part 923. Each State submitting this program change shall include evidence of consultation with States in which the activity will occur, evidence of consultation with relevant Federal agencies, and any agreements with other States and Federal agencies regarding coordination of activities.

(e) *State failure to list interstate activities.* A coastal State that fails to list federal activities subject to interstate review, or to describe the geographic location for these activities, under paragraphs (a) through (d) of this section, may not exercise its right to review activities occurring in other States, until the State meets the listing requirements. The listing of activities subject to interstate consistency review, and the description of the geographic location for those listed activities, should ensure that coastal States have the opportunity to review relevant activities occurring in other States. States may amend their lists and geographic location descriptions pursuant to the requirements of this subpart and subpart H of 15 CFR part 923. States which have complied with paragraphs (a) through (d) of this section may also use the procedure at §930.54 to review unlisted activities. States will have a transition period of 18 months from the date this rule takes effect. In that time a State may review an interstate activity pursuant to §930.54 of this part. After the transition period States must comply with this subpart in order to review interstate activities.

§ 930.155 Federal and State agency coordination.

[↑ top](#)

(a) Identifying activities subject to the consistency requirement. The provisions of this subpart are neither a substitute for nor eliminate the statutory requirement of federal consistency with the enforceable policies of management programs for all activities affecting any coastal use or resource. Federal agencies shall submit consistency determinations to relevant State agencies for activities having coastal effects, regardless of location, and regardless of whether the activity is listed.

(b) *Notifying affected States.* Federal agencies, applicants or applicant agencies proposing activities listed for interstate consistency review, or determined by the Federal agency, applicant or applicant agency to have an effect on any coastal use or resource, shall notify each affected coastal State of the proposed activity. State agencies may also notify Federal agencies and applicants of listed and unlisted activities subject to State agency review and the requirements of this subpart.

(c) *Notice of intent to review.* Within 30 days from receipt of the consistency determination or certification and necessary data and information, or within 30 days from receipt of notice of a listed federal assistance activity, each State intending to review an activity occurring in another State must notify the applicant or applicant agency (if any), the Federal agency, the State in which the activity will occur (either the State's management program, or if the State does not have a management program, the Governor's office), and the Director, of its intent to review the activity for consistency. The State's notice to the parties must be received by the 30th day after receipt of the consistency determination or certification. If a State fails, within the 30 days, to notify the applicant or applicant agency (if any), the Federal agency, the State in which the activity will occur, and the Director, of its intent to review the activity, then the State waives its right to review the activity for consistency. The waiver does not apply where the State intending to review the activity does not receive notice of the activity.

§ 930.156 Content of a consistency determination or certification and State agency response.

 [top](#)

(a) The Federal agency or applicant is encouraged to prepare one determination or certification that will satisfy the requirements of all affected States with approved management programs.

(b) State agency responses shall follow the applicable requirements contained in subparts C, D, E and F of this part.

§ 930.157 Mediation and informal negotiations.

 [top](#)

The relevant provisions contained in subpart G of this part are available for resolution of disputes between affected States, relevant Federal agencies, and applicants or applicant agencies. The parties to the dispute are also encouraged to use alternative means for resolving their disagreement. OCRM shall be available to assist the parties in these efforts.

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-CITE-

16 USC Sec. 1456

01/02/01

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 33 - COASTAL ZONE MANAGEMENT

-HEAD-

Sec. 1456. Coordination and cooperation

-STATUTE-

(a) Federal agencies

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

(b) Adequate consideration of views of Federal agencies

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

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

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

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

(C) Each Federal agency carrying out an activity subject to

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

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

(3)(A) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state or its

designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.

(B) After the management program of any coastal state has been approved by the Secretary under section 1455 of this title, any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land or water use or natural resource of the coastal zone of such state, attach to such plan a

certification that each activity which is described in detail in such plan complies with the enforceable policies of such state's approved management program and will be carried out in a manner consistent with such program. No Federal official or agency shall grant such person any license or permit for any activity described in detail in such plan until such state or its designated agency receives a copy of such certification and plan, together with any other necessary data and information, and until -

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

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

(iii) the Secretary finds, pursuant to subparagraph (A), that each activity which is described in detail in such plan is

consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.

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

(d) Application of local governments for Federal assistance;

relationship of activities with approved management programs

State and local governments submitting applications for Federal assistance under other Federal programs, in or outside of the coastal zone, affecting any land or water use of natural resource of the coastal zone shall indicate the views of the appropriate

state or local agency as to the relationship of such activities to the approved management program for the coastal zone. Such applications shall be submitted and coordinated in accordance with the provisions of section 6506 of title 31. Federal agencies shall not approve proposed projects that are inconsistent with the enforceable policies of a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this chapter or necessary in the interest of national security.

(e) Construction with other laws

Nothing in this chapter shall be construed -

(1) to diminish either Federal or state jurisdiction, responsibility, or rights in the field of planning, development, or control of water resources, submerged lands, or navigable waters; nor to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more states or of two or more states and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

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

at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico.

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

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

(g) Concurrence with programs which affect inland areas

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

(h) Mediation of disagreements

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

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

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

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

(i) Application fee for appeals

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

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

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

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

-SOURCE-

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

-REFTEXT-

REFERENCES IN TEXT

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

The Federal Water Pollution Control Act, referred to in subsec. (f), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, Sec. 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (Sec. 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to

the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, referred to in subsec. (f), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (Sec. 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

-COD-

CODIFICATION

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

-MISC3-

AMENDMENTS

1992 - Subsec. (c)(3)(B). Pub. L. 102-587, Sec. 2205(b)(13), made technical amendment to directory language of Pub. L. 101-508, Sec. 6208(b)(3)(B). See 1990 Amendment note below.

Subsec. (i). Pub. L. 102-587, Sec. 2205(b)(14), designated existing provisions as par. (1), added pars. (2) and (3), and struck out at end of par. (1) ''The Secretary shall collect such

other fees as are necessary to recover the full costs of administering and processing such appeals under subsection (c) of this section.''

1990 - Subsec. (c)(1). Pub. L. 101-508, Sec. 6208(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.''

Subsec. (c)(2). Pub. L. 101-508, Sec. 6208(b)(1), which directed the insertion of ''the enforceable policies of'' before ''approved State management programs'', was executed by making the insertion before ''approved state management programs'' to reflect the probable intent of Congress.

Subsec. (c)(3)(A). Pub. L. 101-508, Sec. 6208(b)(2), in first sentence inserted ', in or outside of the coastal zone,' after ''to conduct an activity'', substituted ''any land or water use or natural resource of'' for ''land or water uses in'', and inserted ''the enforceable policies of'' after ''the proposed activity complies with''.

Subsec. (c)(3)(B). Pub. L. 101-508, Sec. 6208(b)(3)(A), substituted ''land or water use or natural resource of'' for ''land use or water use in'' in first sentence.

Pub. L. 101-508, Sec. 6208(b)(3)(B), as amended by Pub. L.

102-587, Sec. 2205(b)(13), inserted ''the enforceable policies of'' after ''such plan complies with'' in first sentence.

Subsec. (d). Pub. L. 101-508, Sec. 6208(b)(4), substituted '', in or outside of the coastal zone, affecting any land or water use of natural resource of'' for ''affecting'' and inserted ''the enforceable policies of'' after ''that are inconsistent with''.

Subsec. (i). Pub. L. 101-508, Sec. 6208(c), added subsec. (i).

1978 - Subsec. (c)(3)(B)(ii). Pub. L. 95-372 inserted '', except if such state fails to concur with or object to such certification within three months after receipt of its copy of such certification and supporting information, such state shall provide the Secretary, the appropriate federal agency, and such person with a written statement describing the status of review and the basis for further delay in issuing a final decision, and if such statement is not so provided, concurrence by such state with such certification shall be conclusively presumed'' after ''as provided for in subparagraph (A)''.

1976 - Subsec. (b). Pub. L. 94-370, Sec. 6(2), struck out provisions requiring that in case of serious disagreement between Federal agency and state in development of program, Secretary shall seek to mediate the differences in cooperation with the Executive Office of the President and incorporated such provision into subsec. (h).

Subsec. (c)(3). Pub. L. 94-370, Sec. 6(3), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h). Pub. L. 94-370, Sec. 6(4), added subsec. (h) which incorporates former provision of subsec. (b) relating to mediation by Secretary of disagreements between Federal agencies and state.

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1453, 1455, 1456a, 1462, 1465 of this title; title 43 sections 1340, 1351.



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Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543-2787.

SUPPLEMENTARY INFORMATION: Items to be covered on the agenda include: (1) Lake Tahoe Southern Nevada Public Land Act (SNPLMA) Round 10 update; (2) Status and preparation for SNPLMA Round 11; and, (3) Public Comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: June 23, 2009.

Cheva Heck,

Acting Forest Supervisor.

[FR Doc. E9-15393 Filed 6-30-09; 8:45 am]

BILLING CODE 3410-11-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Arlington, VA, Wednesday through Friday, July 15-17, 2009, at the times and location noted below.

DATES: The schedule of events is as follows:

Wednesday, July 15, 2009

9:30-Noon Planning and Evaluation Committee (Closed to Public).

1:30-3 p.m. Technical Programs Committee.

3-4 Budget Committee.

Thursday, July 16, 2009

9:30-5 p.m. Ad Hoc Committee Meetings (Closed to Public).

Friday, July 17, 2009

9:30-Noon Committee of the Whole: Board structure discussion.

1:30-3 p.m. Board Meeting.

ADDRESSES: All meetings will be held at the Westin Arlington Gateway Hotel, 801 North Glebe Road, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272-0010 (voice) and (202) 272-0082 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on Friday, July 17, the Access Board will consider the following agenda items:

- Election of Vice Chairs for Standing Committees
- Approval of the draft March 2009 Board Meeting Minutes
- Technical Programs Committee Report
- Budget Committee Report
- Planning and Evaluation Committee Report
- Accessible Design in Education
- Acoustics
- Airport Terminal Access
- Emergency Transportable Housing
- Information and Communications Technologies
- Outdoor Developed Areas
- Passenger Vessels
- Public Rights-of-Way
- Transportation Vehicles
- Election Assistance Commission Report
- Executive Director's Report
- ADA and ABA Guidelines; Federal Agency Updates

All meetings are accessible to persons with disabilities. An assistive listening system, computer assisted real-time transcription (CART), and sign language interpreters will be available at the Board meeting. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

David M. Capozzi,

Executive Director.

[FR Doc. E9-15502 Filed 6-30-09; 8:45 am]

BILLING CODE 8150-01-P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, July 10, 2009; 9:30 a.m. EDT.

PLACE: 624 9th St., NW., Room 540, Washington, DC 20425.

Meeting Agenda

- This meeting is open to the public.
- I. Approval of Agenda
 - II. Approval of Minutes of June 12, 2009 Meeting
 - III. Announcements

IV. Program Planning:

- National Civil Rights Conference;
- Update on Status of 2009 Statutory Report;
- Discussion of 2010 Statutory Report Topic;
- Approval of Briefing Report on Title IX.

V. State Advisory Committee Issues:

- Virginia SAC.

VI. Adjourn

FOR FURTHER INFORMATION CONTACT:

Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376-8591. TDD: (202) 376-8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202-376-8105. TDD: (202) 376-8116.

Dated: June 29, 2009.

David Blackwood,

General Counsel.

[FR Doc. E9-15709 Filed 6-29-09; 4:15 pm]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Paperwork Submissions Under the Coastal Zone Management Act Federal Consistency Requirements

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 August 31, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 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 David Kaiser, 603-862-2719 or at david.kaiser@noaa.gov.

SUPPLEMENTARY INFORMATION:**I. Abstract**

A number of paperwork submissions are required by the Coastal Zone Management Act (CZMA) federal consistency provision, 16 U.S.C. 1456, and by NOAA to provide a reasonable, efficient and predictable means of complying with CZMA requirements. The requirements are detailed in 15 CFR part 930. The information will be used by coastal states with federally-approved Coastal Zone Management Programs to determine if Federal agency activities, Federal license or permit activities, and Federal assistance activities that affect a state's coastal zone are consistent with the states' programs. Information will also be used by NOAA and the Secretary of Commerce for appeals to the Secretary by non-federal applicants regarding State CZMA objections to federal license or permit activities.

II. Method of Collection

Information that must be signed or certified is mailed; other information may be e-mailed.

III. Data

OMB Control Number: 0648-0411.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, Local, or Tribal government; individuals or households; business or other for-profit organizations; and Federal government.

Estimated Number of Respondents: 2,334.

Estimated Time per Response: 8 hours for a State objection or concurrence letter for a consistency certification or determination; 4 hours for a State request for review of unlisted activities; 1 hour for public notice requirements for a project; 4 hours for a request for remedial action of a supplemental review; 1 hour for coordination of a listing notice; 2 hours for a request for Secretarial mediation; and 200 hours for an appeal. These are average estimates and burden can significantly vary based on the individual situation.

Estimated Total Annual Burden Hours: 35,799.

Estimated Total Annual Cost to Public: \$9,022.

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 25, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9-15504 Filed 6-30-09; 8:45 am]

BILLING CODE 3510-08-P

DEPARTMENT OF COMMERCE**Bureau of the Census**

[Docket Number 090429803-9711-01]

Procedures for Participating in the 2010 Decennial Census New Construction Program

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of the Census (Census Bureau) requests public comment on the New Construction Program, which allows tribal and local governments to submit lists of addresses for newly constructed housing units to the Census Bureau. The purpose of this program is to ensure that the Census Bureau's address list is as complete and accurate as possible for the conduct of the Decennial Census on April 1, 2010.

DATES: To ensure consideration during the decision-making process, the Census Bureau must receive all comments in writing on or before July 31, 2009.

ADDRESSES: Comments concerning the proposed 2010 Census New Construction Program should be submitted to Arnold A. Jackson, Associate Director for Decennial Census, U.S. Census Bureau, through one of the following methods:

FAX: Comments may be faxed to (301) 763-8867.

E-mail: Comments may be e-mailed to Arnold.A.Jackson@census.gov.

FOR FURTHER INFORMATION CONTACT: Correspondence about the Census Bureau's 2010 Census New Construction Program in general should be directed to Timothy F. Trainor, Chief, Geography

Division, U.S. Census Bureau, through one of the following methods:

FAX: Correspondence may be faxed to (301) 763-4710.

E-mail: Correspondence may be e-mailed to

Timothy.F.Trainor@census.gov.

SUPPLEMENTARY INFORMATION: As part of its objective to produce a complete and accurate population count, the Census Bureau proposes to implement the 2010 Decennial Census New Construction Program to capture the addresses of newly constructed housing units. Specifically, the purpose is to utilize tribal and local knowledge of recent and in-progress construction to identify, and add to the census address list, the addresses for housing units not yet existent at the time of the Address Canvassing Operation, a nationwide check during the Spring/Summer of 2009 in which the Census Bureau verified the census address list that will be used to deliver questionnaires for the Decennial Census. During address canvassing, census workers systematically canvassed all census blocks looking for living quarters and add, delete, and correct entries on the census address list to ensure its completeness and accuracy. The Address Canvassing Operation is expected to conclude on July 17, 2009. In order to account for any housing units whose construction began after the start of the Address Canvassing Operation, the Census Bureau is proposing to implement the New Construction Program.

The 2010 Decennial Census New Construction Program is conducted by the Census Bureau under the authority of Title 13, United States Code (U.S.C.), Section 141(a), and is separate and distinct from the Local Update of Census Addresses Program (*see* 73 FR 12369) in that its only purpose is to identify addresses for housing units newly constructed starting in March 2009 that are expected to be closed to the elements (final roof, windows and doors) by Census Day, April 1, 2010. The New Construction Program was conducted for the first time as part of Census 2000.

Proposed 2010 Decennial Census New Construction Program

The 2010 Census New Construction Program is offered to Federally Recognized American Indian tribal governments with reservations and/or trustlands, and local governments (counties, incorporated places, and functioning minor civil divisions) with jurisdictions where the Census Bureau will deliver the census questionnaires