

*Alaska Coastal  
Management Program*

**HANDBOOK**

**Compiled by:**

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**August 1994**



# Introduction

The Alaska Coastal Management Program (ACMP) Handbook provides agencies, project applicants, coastal districts, and the public with information relevant to the program. The document includes Alaska statutes and regulations governing the ACMP, federal regulations relating to program development and federal consistency with approved state coastal management programs, the federal Coastal Zone Management Act and other useful information.

The ACMP was established by the Alaska Legislature in 1977. The Alaska Coastal Management Act (AS 46.40) provides legislative authority for the program. The Act was amended in 1994, adding two new sections, 46.40.094 and 46.40.096 and amending 46.40.100. The changes address petitions to the Alaska Coastal Policy Council and consistency determinations for phased uses and activities. In addition to AS 46.40, sections of AS 44.19 provide authority for the program.

State regulations have been adopted for the program. The Alaska Administrative Code, 6 AAC 50, describes how the State reviews projects for consistency with the ACMP. These regulations were adopted in 1984 and amended in 1990 and 1993. Also, 6 AAC 80 provides State standards for review of coastal development and 6 AAC 85 provides guidelines for the development or amendment of coastal management programs by local coastal resource districts. These regulations were originally adopted in 1978 with subsequent amendments over the years.

The federal Coastal Zone Management Act of 1972 was amended in 1990. A summary explaining the amendments, as well as the Act are included in this booklet.

Title 15 of the Code of Federal Regulations provides development and evaluation of state coastal management programs. Also, federal regulations provide direction to federal agencies conducting or supporting activities affecting the coastal zone, issuing permits for coastal projects, and consistency for Outer Continental Shelf (OCS) activities.

For further information about the Alaska Coastal Management Program, please contact:

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A



## TITLE 44. STATE GOVERNMENT

### CHAPTER 19. OFFICE OF THE GOVERNOR

#### Article 6. Office of Management and Budget

**Section**

- 141. Alaska office of management and budget
- 142. Director
- 143. Personnel

**Section**

- 144. Powers and duties of the director
- 145. Functions and duties of the office
- 152. Definitions

**Note:** Only those sections of Article 6 related to the Alaska Coastal Management Program are reprinted here.

**Sec. 44.19.145. FUNCTIONS AND DUTIES OF THE OFFICE.** (a) The office shall

(1) provide technical assistance to the governor and the legislature in identifying long range goals and objectives for the state and its political subdivisions;

(2) prepare and maintain a state comprehensive development plan;

(3) provide information and assistance to state agencies to aid in governmental coordination and unity in the preparation of agency plans and programs;

(4) review planning within state government as may be necessary for receipt of federal, state, or other funds;

(5) participate with other countries, provinces, states, or subdivisions of them in international or interstate planning, and assist the state's local governments, governmental conferences, and councils in planning and coordinating their activities;

(6) encourage educational and research programs that further state planning and development, and provide administrative and technical services for them;

(7) publish such statistical information or other documentary material as will further the provisions and intent of AS 44.19.141 - 44.19.152;

(8) assist the governor and the Department of Community and Regional Affairs in coordinating state agency activities that have an effect on the solution of local and regional development problems;

(9) serve as a clearinghouse for information, data, and other materials that may be helpful or necessary to federal, state, or local governmental agencies in discharging their respective responsibilities or in obtaining federal or state financial or technical assistance;

(10) review all proposals for the location of capital improvements by any state agency and advise and make recommendations concerning location of these capital improvements;

(11) render, on behalf of the state, all federal consistency determinations and certifications authorized by 16 U.S.C. 1456 (Sec. 307, Coastal Zone Management Act of 1972), and each conclusive state consistency determination when a project requires a permit, lease, or authorization from two or more state resource agencies.

(b) The office shall, in carrying out its functions, consult with local, regional, state and federal officials, private groups and individuals, and with officials of other countries, provinces, and states, and may hold public hearings to obtain information for the purpose of carrying out the provisions of AS 44.19.141 - 44.19.152.

(c) The governor may establish coordinating or advisory planning groups.

(d) The office shall

(1) coordinate its services and activities with those of other state departments and agencies to the fullest extent possible to avoid duplication;

(2) prepare an integrated annual report on the long-range development program of the state and submit it to the governor for incorporation into the governor's report to the legislature;

(3) cooperate with the University of Alaska and other appropriate public and private institutions in research and investigations. (§ 2 ch 103 SLA 1966; am § 2 ch 219 SLA 1970; am § 2 ch 60 SLA 1972; am § 8, 10 ch 200 SLA 1972; am § 5 ch 207 SLA 1975; am § 20 ch 63 SLA 1983; am § 1 ch 44 SLA 1990)

Federal  
Consistency  
Reviews

**AMENDMENT NOTES:** The 1990 amendment substituted "requires a permit, lease, or authorization from two or more state resource agencies" for "requires two or more state or federal permits, leases, or authorizations" at the end of paragraph (a)(11) and made grammatical changes.

**EDITOR NOTES:** Section 3, ch. 44, SLA 1990 provides that the 1990 amendment to (a) of this section is retroactive to March 11, 1984.

**DECISIONS:**

Competitive sale of oil and gas development rights to offshore state land constituted a project requiring a review and finding by the Office of Management and Budget as to whether the project was consistent with the Alaska Coastal Management Program. Trustees for Alaska v. State., Dept. of Natural Resources, 795 P.2d 805 (Alaska 1990).

Consistency determinations by Department of Natural Resources. The legislature has amended paragraph (a)(11) to permit the Department of Natural Resources to make consistency determinations pursuant to AS 46.40.010. Trustees for Alaska v. State, Dept. of Natural Resources, 847 P.2d 1061 (Alaska 1993).

Consistency determination to be in state's best interest. The Department of Natural Resources consistency determination is one section of its finding, made in accordance with AS 38.05.035(e), that a sale would serve the State's best interest. Trustees for Alaska v. State, 847 P.2d 1061 (Alaska 1993).

Consistency determinations to identify hazards. The Department of Natural Resources is to identify and report on known and, as to areas of high development potential, substantially possible areas of geographical hazards within the land for which it is making a consistency determination. Trustees for Alaska v. State, 847 P.2d 1061 (Alaska 1993).

**Sec. 44.19.152. DEFINITIONS.** In AS 44.19.141 - 44.19.152,

- (1) "director" means the director of the office of management and budget;
- (2) "office" means the Alaska office of management and budget;
- (3) "render" means to coordinate and issue;
- (4) "resource agency" means
  - (A) the Department of Environmental Conservation;

(B) the Department of Fish and Game; or  
(C) the Department of Natural Resources.  
(§ 1 ch 219 SLA 1970; am § 13 ch 207 SLA 1975; am § 21 ch 63  
SLA 1983; am § 2 ch 44 SLA 1990)

**AMENDMENT NOTES:** The 1990 amendment added paragraphs (3) and (4).

**EDITOR NOTES:** Section 3, ch. 44, SLA 1990 provides that (3) and (4) of this section are retroactive to March 11, 1984.

## Article 7. Alaska Coastal Policy Council

### Section

155. Alaska Coastal Policy Council	161. Duties of the Council
160. Powers of the Council	162. Council staff

**Sec. 44.19.155. ALASKA COASTAL POLICY COUNCIL.** (a) There is created in the Office of the Governor the Alaska Coastal Policy Council. The council consists of the following:

(1) nine public members appointed by the governor from a list comprised of at least three names from each region, nominated by the municipalities of each region; the nominees shall be the mayor or member of the assembly or council of a municipality; one public member shall be appointed from each of the following general regions:

(A) northwest Alaska, including, generally, the area of the North Slope Borough and the Northwest Arctic regional educational attendance area;

(B) Bering Straits, including, generally, the area of the Bering Straits regional educational attendance area;

(C) southwest Alaska, including, generally, the area within the Lower Yukon, Lower Kuskokwim, Southwest, and Lake & Peninsula regional educational attendance areas and the Bristol Bay Borough;

(D) Kodiak-Aleutians, including the area of the Kodiak Island Borough and the Aleutian, Adak and Pribilof regional educational attendance areas;

(E) Upper Cook Inlet, including the Municipality of Anchorage and the Matanuska-Susitna Borough;

Public members

(F) Lower Cook Inlet, including, generally, the area within the Kenai Peninsula Borough;

(G) Prince William Sound, including, generally, the area east of the Kenai Peninsula Borough to 141 W. longitude;

(H) northern Southeast Alaska, including the area southeast of 141 W. longitude and north of 57 N. latitude, including the entirety of the City and Borough of Sitka; and

(I) southern Southeast Alaska, including that portion of southeastern Alaska not contained within the area described in (H) of this paragraph

(2) each of the following:

(A) the director of the office of management and budget;

(B) the commissioner of commerce and economic development;

(C) the commissioner of community and regional affairs;

(D) the commissioner of environmental conservation;

(E) the commissioner of fish and game;

(F) the commissioner of natural resources; and

(G) the commissioner of transportation and public facilities.

(b) Each public member appointed by the governor under (a)(1) of this section serves a term of two years and until a successor is appointed and qualified. A public member may be reappointed.

(c) The council shall designate co-chairmen, one of whom shall be selected from among the public members appointed under (a)(1) of this section and one from among the members designated in (a)(2) of this section.

(d) Each member of the council shall select one person to serve as a permanent alternate at meetings of the council. If a member of the council is unable to attend, the member shall advise the alternate who may attend and act in the place of the member. The alternate for a public member appointed after July 9, 1978 under (a)(1) of this section shall, at the time of the alternate's designation and throughout the period of service as a permanent alternate, be the mayor or member of the assembly or council of a municipality within the region from which the permanent member is appointed. The alternate for the director of the office of management and budget, serving under (a)(2)(A) of this section, shall be the director's designee within that office. The alternate for a designated member serving under (a)(2)(B) - (G) of this section shall be a deputy

State members

Term of office

Permanent  
Alternates

commissioner of the department or the director of a division in the department. The names of alternates shall be filed with the council.

(e) Four public members and three designated members of the council constitute a quorum, but one or more of the members designated by the council may hold hearings. All decisions of the council shall be by a majority vote of the members present and voting.

Quorum

(f) Members of the council or their alternates are entitled to per diem and travel expenses authorized by law for members of boards and commissions.

(g) If an incumbent public member ceases to meet the qualifications prescribed in (a)(1) of this section for nomination to the council or if a vacancy exists among the public members for any other reason except for a vacancy due to the expiration of the term of a public member, the governor shall, within 30 days of the establishment of the vacancy by lack of qualification or other reason, make an appointment, to be immediately effective, for the unexpired portion of the term. An appointment by the governor made under this subsection to fill an unexpired term of a public member shall comply with the requirements of (a)(1) of this section; however, the governor may appoint from qualified persons without soliciting from municipalities nominations of persons to fill the unexpired portion of the term. (§ 3 ch 84 SLA 1977; am E.O. No. 39, § 11 (1977); am § 4, 5 ch 129 SLA 1978; am § 22, 23 ch 63 SLA 1983; am § 30 ch 168 SLA 1990)

Unexpired terms

AMENDMENT NOTES: The 1990 amendment, effective June 22, 1990, deleted an exception at the end of the first sentence in subsection (b) pertaining to the term of a public member first appointed.

Sec. 44.19.160. POWERS OF THE COUNCIL. The council may

(1) apply for and accept grants, contributions, and appropriations, including application for and acceptance of federal funds that may become available for coastal planning and management;

(2) contract for necessary services;

(3) consult and cooperate with

(A) persons, organizations, and groups, public or private, interested in, affected by, or concerned with coastal area planning and management;

(B) agents and officials of the coastal resource districts of the state, and federal and state agencies concerned with or having jurisdiction over coastal planning and management;

(4) take any reasonable action necessary to carry out the provisions of AS 44.19.155 - 44.19.162. (§ 3 ch 84 SLA 1977)

**Sec. 44.19.161. DUTIES OF THE COUNCIL.** In conformity with 16 U.S.C. 1451-1464 (Coastal Zone Management Act of 1972), as amended, the council shall

(1) through the public hearing process and the recording of the minutes of the hearings, develop guidelines and standards for the preparation of, and approve, in accordance with AS 46.40, the Alaska coastal management program;

(2) establish continuing coordination among state agencies to facilitate the development and implementation of the Alaska coastal management program; in carrying out its duties under this paragraph, the council shall initiate an interagency program of comprehensive coastal resource planning for each geographic region described in AS 44.19.155(a)(1);

(3) assure continued provision of data and information to coastal resource districts to carry out their planning and management functions under the program;

(4) [Repealed July 1, 1994.] (§ 3 ch 84 SLA 1977; am § 35 ch 126 SLA 1994)

**Sec. 44.19.162. COUNCIL STAFF.** The council shall use the staff of the office of coastal management within the office of management and budget in discharging its powers and duties. The coordinator of the office of coastal management, under the direction of the council co-chair who is selected from among the members designated in AS 44.19.155(a)(2), may contract with or employ personnel or consultants the coordinator considers necessary to carry out the powers and duties of the council. (§ 3 ch 84 SLA 1977; am § 24 ch 63 SLA 1983)

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**B**



## TITLE 44. STATE GOVERNMENT

### CHAPTER 47. DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

#### Article 2. Planning Assistance

**Sec. 44.47.095. Planning assistance for development and maintenance of district coastal management program.** The department shall conduct a program of research, training, and technical assistance to coastal resource districts necessary for the development and implementation of district coastal management programs under AS 46.40. The technical assistance shall include the direct granting to the coastal resource districts of a portion of any funds received by the state from the federal coastal zone management program, in amounts to be individually determined for each coastal resource district by the commissioner. State agencies shall assist the department in carrying out the purposes of this section. (§ 5 ch 84 SLA 1977)

**Cross references.** For Alaska Coastal Policy Council, see AS 44.19.155 - 44.19.162; for legislative findings and policy, see §§ 1 and 2, ch. 84, SLA 1977 in the Temporary and Special Acts.

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# LAWS OF ALASKA

1977

Source

Chapter No.

OCS SCS CSHB 342

84

## AN ACT

Relating to the management of the coastal resources of the state; and providing for an effective date.

### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

(1) the coastal area of the state is a distinct and valuable natural resource of concern to all the people of the state;

(2) the demands upon the resources of the coastal area are significant, and will increase in the future;

(3) the protection of the natural and scenic resources and the fostering of wise development of the coastal area are of concern to present and future citizens of the state;

(4) the capacity of the coastal area to withstand the demands upon it is limited;

(5) the degree of planning and resource allocation which has occurred in the coastal area has often been motivated by short-term considerations, unrelated to sound planning principles; and

(6) in order to promote the public health and welfare, there is a critical need to engage in comprehensive land and water use planning in coastal areas and to establish the means by which a planning process and management program involving the several governments and areas of the unorganized borough having an interest in the coastal area may be effectively implemented.

\* Sec. 2. LEGISLATIVE POLICY. It is the policy of the state to

(1) preserve, protect, develop, use, and, where necessary, restore or enhance the coastal resources of the state for this and succeeding generations;

(2) encourage coordinated planning and decision making in the coastal area among levels of government and citizens engaging in or affected by activities involving the coastal resources of the state;

(3) develop a management program which sets out policies, objectives, standards and procedures to guide and resolve conflicts among public and private activities involving the use of resources which have a direct and significant impact upon the coastal land and water of the state.

(4) assure the participation of the public, local governments, and agencies of the state and federal governments in the development and implementation of a coastal management program;

(5) utilize existing governmental structures and authorities, to the maximum extent feasible, to achieve the policies set out in this section; and

(6) authorize and require state agencies to carry out their planning duties, powers and responsibilities and take actions authorized by law with respect to programs affecting the use of the resources of the coastal area in accordance with the policies set out in this section and the guidelines and standards adopted by the Alaska Coastal Policy Council under AS 46.35.



**D**

**TITLE 46. WATER, AIR, ENERGY, AND  
ENVIRONMENTAL CONSERVATION**

**CHAPTER 40. THE ALASKA COASTAL MANAGEMENT  
PROGRAM**

**Article 1. Development of Alaska Coastal  
Management Program**

**Section**

- 10. Development of Alaska coastal management program
- 20. Objectives
- 30. Development of district coastal management programs
- 40. Duties of Alaska Coastal Policy Council
- 50. Action and submission by coastal resource districts
- 60. Review and approval by council

**Section**

- 70. Standards for council review and approval
- 80. Effective date of Alaska coastal management program
- 90. Implementation of coastal management programs
- 94. Consistency Determinations for Phased Uses and Activities
- 96. Consistency Reviews and Determinations
- 100. Compliance and enforcement

**Sec. 46.40.010. Development of Alaska coastal management programs.** (a) The Alaska Coastal Policy Council established in AS 44.19.155 shall approve, in accordance with this chapter, the Alaska coastal management program.

(b) The council may approve the Alaska coastal management program for a portion or portions of the coastal area before approving the complete program under (a) of this section. Portions of the program approved under this subsection shall be incorporated into the Alaska coastal management program.

(c) The Alaska coastal management program shall be reviewed by the council and, when appropriate, revised to

(1) add newly approved district coastal management programs, or revisions and amendments to the Alaska coastal management program;

(2) integrate newly approved district coastal management programs, or revisions and amendments of district coastal management programs, with existing approved programs and with plans developed by state agencies;

(3) add new or revised state statutes, policies, regulations or other appropriate material;

(4) review the effectiveness of implementation of

district coastal management programs; and

(5) consider new information acquired by the state and coastal resource districts.

(d) All reviews and revisions shall be in accordance with the guidelines and standards adopted by the council under AS 46.40.040. (§ 4 ch 84 SLA 1977)

#### ATTY GENERAL OPINION:

The doctrine of federal preemption, derived from the supremacy clause of the United States Constitution, Article VI, clause 2, would not apply to state regulation of outer continental shelf activities in the coastal zone. May 12, 1980 Op. Att'y Gen.

Reasonable restrictions on oil and gas activities embodied in a local coastal management plan, incorporated into the Alaska Coastal Management Program, would be enforceable against off-shore federal lessees. May 12, 1980 Op. Att'y Gen.

Municipal authority to regulate oil and gas activities of federal lessees depends upon whether the leases are on-shore or off-shore. In the case of the former, the doctrine of federal preemption may prohibit local coastal zone ordinances from affecting any measure of control. In the case of the latter, local coastal management programs which are approved by the Alaska Coastal Policy Council and thus part of the Alaska Coastal Management Program will become one of the touchstones in the state consistency determination required by section 307(c)(3) of the Coastal Zone Management Act, 16 U.S.C. Sec. 1451 et seq. May 12, 1980 Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations in Alaska Const., art. X, Sec. 11 on the exercise of municipal authority if that restriction or exclusion is reasonable, within the meaning of AS 46.40.070(c). May 12, 1980 Op. Att'y Gen.

The Alaska Oil and Gas Conservation Act, AS 31.05.005 et seq., which mandates the conservation of oil and gas and prohibits their waste, would not be contravened by a local coastal management plan which comports with the Alaska Coastal Management Program. May 12, 1980 Op. Att'y Gen.

#### DECISIONS:

Competitive sale of oil and gas development rights to offshore state land constituted a project requiring a review and finding by the Office of Management and Budget as to whether the project was consistent with the Alaska Coastal Management Program. Trustees for Alaska v. State, Dep't of Natural Resources, 795 P.2d 805 (Alaska 1990).

Consistency determinations by Department of Natural Resources. The legislature has amended AS 44.19.145 (a)(11) to permit the Department of Natural Resources to conduct ACMP consistency determinations, formerly under the strict purview of the Office of Management and Budget. Trustees for Alaska v. State, Dep't of Natural Resources, 847 P.2d 1061 (Alaska 1993).

**ARTICLE NOTES:**

Collateral References.- 78 Am. Jur. 2d, Waters, Sec. 59-116, 375-438 5 C.J.S., Navigable Waters, Sec. 10-18, 20-132; 93 C.J.S., Waters, Sec. 71-85.

**Sec. 46.40.020. Objectives.** The Alaska coastal management program shall be consistent with the following objectives:

(1) the use, management, restoration and enhancement of the overall quality of the coastal environment;

(2) the development of industrial or commercial enterprises which are consistent with the social, cultural, historic, economic and environmental interests of the people of the state;

(3) the orderly, balanced utilization and protection of the resources of the coastal area consistent with sound conservation and sustained yield principles;

(4) the management of coastal land and water uses in such a manner that, generally, those uses which are economically or physically dependent on a coastal location are given higher priority when compared to uses which do not economically or physically require a coastal location;

(5) the protection and management of significant historic, cultural, natural and aesthetic values and natural systems or processes within the coastal area;

(6) the prevention of damage to or degradation of land and water reserved for their natural values as a result of inconsistent land or water usages adjacent to that land;

(7) the recognition of the need for a continuing supply of energy to meet the requirements of the state and the contribution of a share of the state's resources to meet national energy needs; and

(8) the full and fair evaluation of all demands on the land and water in the coastal area. (§ 4 ch 84 SLA 1977)

**DECISIONS:**

Archeological identification at initial sale stage. Furtherance of the objectives of this section requires the identification of known archeological sites at the initial sale stage of government leases. Trustees for Alaska v. State, Dep't of Natural Resources, 847 P.2d 1061 (Alaska 1993). Stated in Hammond v. North Slope Borough, 645 P.2d 750 (Alaska 1982).

**Sec. 46.40.030. Development of district coastal management programs.** Coastal resource districts shall develop and adopt district coastal management programs in accordance with the provisions of this chapter. The program adopted by a coastal resource district shall be based upon a municipality's existing comprehensive plan or a new comprehensive resource use plan or comprehensive statement of needs, policies, objectives and standards governing the use of resources within the coastal area of the district. The program shall be consistent with the guidelines and standards adopted by the council under AS 46.40.040 and shall include:

(1) a delineation within the district of the boundaries of the coastal area subject to the district coastal management program;

(2) a statement, list, or definition of the land and water uses and activities subject to the district coastal management program;

(3) a statement of policies to be applied to the land and water uses subject to the district coastal management program;

(4) regulations, as appropriate, to be applied to the land and water uses subject to the district coastal management program;

(5) a description of the uses and activities which will be considered proper and the uses and activities which will be considered improper with respect to the land and water within the coastal area;

(6) a summary or statement of the policies which will be applied and the procedures which will be used to determine whether specific proposals for land or water uses or activities shall be allowed; and

(7) a designation of, and the policies which will be applied to the use of, areas within the coastal resource district which merit special attention. (§ 4 ch 84 SLA 1977)

**ATTY GENERAL OPINION:**

The adoption of forest practices regulations by the Department of Natural Resources at 11 AAC 95 has completely preempted the coastal policy council's regulations, 6 AAC 80.100, in regulating timber harvest and processing in the coastal area. April 20, 1981 Op. Att'y Gen.

The allocation of responsibility for administration of the forest practices regulations in coastal management consistency determinations is sufficiently unclear that it seems appropriate for resolution by the adoption of regulations since differing policy considerations emphasized in the Forest Practices Act, the Coastal Management Act, and proposed permit reform regulations will be served to a greater or lesser extent by assigning responsibility for interpreting and applying the forest practices regulations to more than one agency and since a particular result is not compelled under the various pieces of authorizing legislation. April 20, 1981 Op. Att'y Gen.

**DECISIONS:** Stated in *Hammond v. North Slope Borough*, 645 P.2d 750 (Alaska 1982).

**Sec. 46.40.040. Duties of the Alaska Coastal Policy Council.** Through the public hearing process and the recording of the minutes of the hearings, the Alaska Coastal Policy Council shall

(1) by regulation, adopt under the provisions of AS 44.62 Administrative Procedure Act, for the use of and application by coastal resource districts and state agencies for carrying out their responsibilities under this chapter, guidelines and standards for

(A) identifying the boundaries of the coastal area subject to the district coastal management program;

(B) determining the land and water uses and activities subject to the district coastal management program;

(C) developing policies applicable to the land and water uses subject to the district coastal management program;

(D) developing regulations applicable to the land and water uses subject to the district coastal management program;

(E) developing policies and procedures to determine whether specific proposals for the land and water uses or activities subject to the district coastal management program shall be allowed;

(F) designating and developing policies for the use of areas of the coast which merit special attention; and

(G) measuring the progress of a coastal resource district in meeting its responsibilities under this chapter;

(2) develop and maintain a program of technical and financial assistance to aid coastal resource districts in the development and implementation of district coastal management programs;

(3) undertake review and approval of district coastal management programs in accordance with this chapter;

(4) initiate a process for identifying and managing uses of state concern within specific areas of the coast;

(5) develop procedures or guidelines for consultation and coordination with federal agencies managing land or conducting activities potentially affecting the coastal area of the state;

(6) by regulation, establish a consistency review and determination or certification process that conforms to the requirements of AS 46.40.096. (§ 4 ch 84 SLA 1977; am § 1 ch 129 SLA 1978; am § 1 ch 34 SLA 1994)

**CROSS REFERENCES:** For regulations for the Alaska Coastal Management Program, see 6 AAC 50, 6 AAC 80 and 6 AAC 85.

**AMENDMENT NOTES:** 1994 amendment effective August 7, 1994 added subsection (6) pertaining to consistency review regulations.

**Sec. 46.40.050. Action and submission by coastal resource districts.** Each coastal resource district shall make substantial progress, in the opinion of the council, toward completion of an approvable district coastal management program and shall complete and submit to the council for approval its program within 30 months of June 4, 1977 or within 30 months of certification of the results of the district's organization, whichever is later. If, in the opinion of the council, after receipt of a written request for extension from the district which includes the reasons for the extension, an extension is considered proper, the council may grant an extension to a date which is not later than December 4, 1981, or to a date which is within 54 months of certification of the results of the district's organization, whichever is later. (§ 4 ch 84 SLA 1977; am § 1 ch 66 SLA 1979)

**Sec. 46.40.060. Review and approval by council.**

(a) If, upon submission of a district coastal management program for approval, the council finds that the program is substantially consistent with the provisions of this chapter and the guidelines and standards adopted by the council and does not arbitrarily or unreasonably restrict or exclude uses of state concern, the council may grant summary approval of the district coastal management program, or may approve portions of the district program which are consistent.

(b) If the council finds that a district coastal management program is not approvable or is approvable only in part under (a) of this section, it shall direct that deficiencies in the program submitted by the coastal resource district be mediated. In mediating the deficiencies, the council may call for one or more public hearings in the district. The council shall meet with officials of the coastal resource district in order to resolve differences.

(c) If, after mediation, the differences have not been resolved to the mutual agreement of the coastal resource district and the council, the council shall call for a public hearing and shall resolve the differences in accordance with the Administrative

Procedure Act (AS 44.62). After a public hearing held under this subsection, the council shall enter findings and, by order, may require

(1) that the district coastal management program be amended to make it consistent with the provisions of this chapter or the guidelines and standards adopted by the council;

(2) that the district coastal management program be revised to accommodate a use of state concern; or

(3) any other action be taken by the coastal resource district as appropriate.

(d) The superior courts of the state have jurisdiction to enforce orders of the council entered under (c) of this section. (§ 4 ch 84 SLA 1977)

#### ATTY GENERAL OPINION:

The invalid provisions of AS 46.40.080 are severable from the remainder of the Coastal Management Act. Thus, council guidelines take effect when adopted in accordance with the Administrative Procedure Act, AS 44.62. The effective date of council action on district programs is governed by the council's regulations and this section. April 29, 1980 Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations in Alaska Const., art. X, Sec. 11 on the exercise of municipal authority if that restriction or exclusion is reasonable, within the meaning of AS 46.40.070(c). May 12, 1980 Op. Att'y Gen.

**Sec. 46.40.070. Standards for council review and approval.** (a) The council shall approve a district coastal management program submitted for review and approval if the program is consistent with the provisions of this chapter and the guidelines and standards adopted by the council.

(b) Notwithstanding an inconsistency of a district coastal management program submitted for review and approval with the guidelines and standards adopted, the council shall approve the program if it finds that

(1) strict adherence to the guidelines and standards adopted would result in a violation of another state law or policy;

(2) strict adherence to the guidelines and standards adopted would cause or probably cause substantial irreparable harm to another interest or value in the coastal area of the district; or

(3) the inconsistency is of a technical nature and no substantial harm would result to the policies and objectives of

this chapter or the Alaska coastal management program.

(c) In determining whether a restriction or exclusion of a use of state concern is arbitrary or unreasonable, the council shall approve the restriction or exclusion if it finds that

(1) the coastal resource district has consulted with and considered the views of appropriate federal, state or regional agencies;

(2) the district has based its restriction or exclusion on the availability of reasonable alternative sites; and

(3) the district has based its restriction or exclusion on an analysis showing that the proposed use is incompatible with the proposed site.

(d) A decision by the council under this section shall be given within 90 days. (§ 4 ch 84 SLA 1977)

**ATTY GENERAL OPINION:**

Reading subsection (b) as vesting local officials with complete control over policy formulation would probably render the Alaska Coastal Management Act unconstitutional under Alaska Const., art. VIII, Sec. 2. May 12, 1980 Op. Att'y Gen.

Reasonable restrictions on oil and gas activities embodied in a local coastal management plan, incorporated into the Alaska Coastal Management Program, would be enforceable against off-shore federal lessees. May 12, 1980 Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations in Alaska Const., art. X, Sec. 11 on the exclusion of municipal authority if that restriction or exclusion is reasonable, within the meaning of subsection (c). May 12, 1980 Op. Att'y Gen.

The Alaska Oil and Gas Conservation Act, AS 31.05.005 et seq., which mandates the conservation of oil and gas and prohibits their waste, would not be contravened by a local coastal management plan which comports with the Alaska Coastal Management Program. May 12, 1980 Op. Att'y Gen.

**Sec. 46.40.080. Effective date of Alaska coastal management program.** The Alaska coastal management program adopted by the council, and any additions, revisions, or amendments of the program, take effect upon adoption of a concurrent resolution by a majority of the members of each house of the legislature or by a vote of the majority of the members of each house at the time the houses are convened in joint session to confirm executive appointments submitted by the governor. (§ 4 ch 84 SLA 1977)

**CROSS REFERENCES:** For effective dates related to the Alaska Coastal Management Program, see 6 AAC 80.170(n) and 6 AAC 85.180; for

resolution approving certain regulations under this section before the A.L.I.V.E. decision (discussed in notes below), see LR 41 in the 1978 Temporary and Special Acts and Resolves.

**ATTY GENERAL OPINION:**

Under the decision in *State v. A.L.I.V.E.* Voluntary, Sup. Ct. Op. No. 2022 (File No. 3670), 606 P.2d 769 (1980), that the use of legislative resolutions as a veto over regulations, programs or other actions or proposed actions is constitutionally impermissible except as expressly provided by the constitution, this section is invalid. March 6, 1980 Op. Att'y Gen.

The invalid provisions of section are severable from the remainder of the Coastal Management Act. Thus, council guidelines take effect when adopted in accordance with the Administrative Procedure Act, AS 44.62. The effective date of council action on district programs is governed by the council's regulations, and AS 46.40.060. April 29, 1980 Op. Att'y Gen.

**Sec. 46.40.090. Implementation of district coastal management programs.** (a) A district coastal management program approved by the council and the legislature for a coastal resource district which does not have and exercise zoning or other controls on the use of resources within the coastal area shall be implemented by appropriate state agencies. Implementation shall be in accordance with the comprehensive use plan or the statement of needs, policies, objectives and standards adopted by the district.

State agency  
implementation

(b) A coastal resource district which has and exercises zoning or other controls on the use of resources within the coastal area shall implement its district coastal management program. Implementation shall be in accordance with the comprehensive use plan or the statement of needs, policies, objectives and standards adopted by the district.

Local  
implementation

(§ 4 ch 84 SLA 1977)

**Sec. 46.40.094. Consistency determinations for phased uses and activities.** (a) The provisions of this section apply to a use or activity for which a consistency determination is required if

(1) at the time the proposed use or activity is initiated, there is insufficient information to evaluate and render a consistency determination for the entirety of the proposed use or activity;

(2) the proposed use or activity is capable of proceeding

in discrete phases based upon developing information obtained in the course of a phase; and

(3) each subsequent phase of the proposed use or activity is subject to discretion to implement alternative decisions based upon the developing information.

(b) When a use or activity is authorized or developed in discrete phases and each phase will require decisions relating to a permit, lease, or authorization for that particular phase, the agency responsible for the consistency determination for the particular phase

(1) may, in its discretion, limit the consistency review to that particular phase if, but only if,

(A) the agency or another state agency must carry out a subsequent consistency review and make a consistency determination before a later phase may proceed; and

(B) the agency responsible conditions its consistency determination for that phase on a requirement that a use or activity authorized in a subsequent phase be consistent with the Alaska coastal management program; and

(2) shall, when the consistency review is limited under (1) of this subsection, conduct the consistency review for the particular phase and make the consistency determination based on

(A) applicable statutes and regulations;

(B) the facts pertaining to a use or activity for which the consistency determination is sought that are

(i) known to the state agency responsible or made a part of the record during the consistency review; and

(ii) material to the consistency determination; and

(C) the reasonably foreseeable, significant effects of the use or activity for which the consistency determination is sought;

(3) shall, when the consistency review is limited under (1) of this subsection, describe in the consistency determination the reasons for its decision to make the consistency determination for the use or activity in phases.

(c) In this section,

(1) "agency responsible for the consistency determination" means

(A) the office of management and budget, for a consistency determination required to be made under AS 44.19.145(a)(11); and

(B) the commissioner of the resource agency that coordinates a consistency review for a proposed use or activity, or for a proposed phase of a use or activity, when required by this chapter for which a permit, lease, or authorization is

required to be approved or issued only by that resource agency;

(2) "resource agency" has the meaning given in AS 44.19.152. (§ 8 ch 38 SLA 1994)

**Sec. 46.40.096. Consistency reviews and determinations.**

(a) The council shall, by regulation, establish a consistency review and determination process that conforms to the requirements of this section.

(b) If a consistency review is not subject to AS 44.19.145(a)(11) because the project for which a consistency review is made requires a permit, lease, or authorization from only one state agency, that state agency shall coordinate the consistency review of the project. The state agency shall coordinate the consistency review according to the requirements of the regulations adopted by the council under this section.

(c) The regulations adopted by the council under this section must include provisions for public notice and provide the opportunity for public comment. The regulations adopted under this subsection may make distinctions relating to notice based upon differences in project type, anticipated effect of the project on coastal resources and uses, other state or federal notice requirements, and time constraints. However, a notice given under this subsection must contain sufficient information, expressed in commonly understood terms, to inform the public of the nature of the proposed project for which a consistency determination is sought, and must explain how the public may comment on the proposed project.

Public notice

(d) In preparing a consistency review and determination for a proposed project, the reviewing entity shall

(1) request consistency review comments for the proposed project from state resource agencies, affected coastal resource districts, and other interested parties as determined by regulation adopted by the council;

(2) prepare proposed consistency determinations;

(3) coordinate subsequent reviews of proposed consistency determinations prepared under (2) of this subsection; a subsequent review of a proposed consistency determination under this paragraph

(A) is limited to a review by the state resource agencies; and

(B) may occur only if requested by

(i) the project applicant;

(ii) a state resource agency; or

(iii) an affected coastal resource district;

(4) after providing an opportunity to file a petition for review under (e) of this section, render the final consistency determination and certification.

(e) Under regulations adopted by the council, the reviewing entity shall provide opportunity to file a petition under AS 46.40.100(b)(1) seeking a review by the council of the proposed consistency determination prepared under (d)(2) of this section. The regulations must include provisions that establish a reasonable limit on the time that may elapse between the completion of the proposed consistency determination prepared under (d)(2) of this section and a hearing to consider a petition filed under this subsection. Not more than 30 days shall elapse between the filing of the petition and the decision by the council. Under this subsection,

(1) the right to file a petition is limited to

(A) each of the following parties, but only if the party had submitted comments during the period for receipt of public comments established under (c) of this section:

(i) an affected coastal resource district;

(ii) a state agency; or

(iii) a citizen of an affected coastal resource district; or

(B) the project applicant; and

(2) the reviewing entity

(A) may not accept a petition filed under this subsection if a final consistency determination has been rendered under (d)(4) of this section;

(B) may accept a petition filed by a party identified in (1)(A)(i), (1)(A)(ii), or (1)(B) of this subsection only if a party had requested a review of the proposed consistency determination prepared under (d)(2) of this section;

(C) may accept a petition filed by a party identified in (1)(A)(iii) of this subsection without regard to whether a party had requested a review of the proposed consistency determination prepared under (d)(2) of this section.

(f) For a consistency review subject to AS 44.19.145(a)(11), the council may, by regulation, limit consideration of a petition under (e) of this section seeking review of a proposed consistency determination to the extent necessary to meet the deadlines set by federal law for timely submission of a federal consistency determination as allowed by 16 U.S.C. 1456.

(g) In this section,

(1) "affected coastal resource district" means a coastal resource district in which a project is proposed to be located or which may experience a direct and significant impact from a

Right to  
petition

proposed project;

(2) "reviewing entity" means the

(A) office, for a consistency review subject to AS 44.19.145(a)(11);

(B) state agency identified in (b) of this section, for a consistency review not subject to AS 44.19.145(a)(11).

(§ 2 ch 34 SLA 1994)

**Sec. 46.40.100. Compliance and enforcement.** (a) Municipalities and state agencies shall administer land and water use regulations or controls in conformity with district coastal management programs approved by the council and the legislature and in effect.

(b) A party that is authorized under AS 46.40.096(e)(1) or (g) of this section may file a petition showing that a district coastal management program is not being implemented, enforced, or complied with. On receipt of a petition, the council, after giving public notice in the manner required by (f) of this section, shall convene a hearing to consider the matter. A hearing called under this subsection shall be held in accordance with regulations adopted by the council. After hearing,

(1) if the petition was filed under AS 46.40.096(e) and the council finds that

(A) the office or the state agency responsible for coordinating the consistency review has not fairly considered the petitioner's comments in the development of a proposed consistency determination, the council shall remand the proposed consistency determination to the office or to the state agency responsible for coordinating the consistency review, for preparation of a revised proposed consistency determination that gives fair consideration to the petitioner's comments;

(B) a remand of the consistency determination is not required under (A) of this paragraph, the council shall dismiss the petition;

(2) if the petition was not filed under AS 46.40.096(e), the council may order that the coastal resource district or a state agency take any action the council considers necessary to implement, enforce, or comply with the district coastal management program.

(c) Except when a petition has been filed under AS 46.40.096(e), in determining whether an approved district coastal management program is being implemented, enforced, or complied with by a coastal resource district that exercises zoning authority or controls on the use of resources within the coastal area, the council shall find in favor of the district if

**Petition process**

**Council action on petition**

**Council review of district actions**

(1) zoning or other regulations have been adopted and are being enforced;

(2) variances are being granted according to procedures and criteria that are elements of the district coastal management program, or the variance is otherwise approved by the council; and

(3) procedures and standards adopted by the coastal resource district as required by this chapter or by the guidelines and standards adopted by the council and subsequently approved by the legislature have been followed and considered.

(d) Except when a petition has been filed under AS 46.40.096(e), in determining whether a state agency is complying with a district coastal management program with respect to its exercise of regulation or control of the resources within the coastal area, the council shall find in favor of the agency if

(1) the use or activity for which the permit, license, or approval is granted is consistent with the district coastal management program and regulations adopted under it; and

(2) the use or activity for which the permit, license, or approval is granted is consistent with requirements imposed by state statute, regulation, or local ordinance applicable to the use or activity.

(e) The superior courts of the state have jurisdiction to enforce lawful orders of the council.

(f) Upon receipt of a petition under (b) of this section, the council shall give notice of the hearing convened to consider the petition as follows:

(1) notice of the hearing shall be given at least 10 days before the scheduled date of the hearing

(A) by publication in

(i) a newspaper of statewide circulation; or

(ii) a newspaper of general circulation in the vicinity of the district coastal management program that is the subject of the petition; and

(B) by at least one of the following methods:

(i) publication through public service announcements on the electronic media serving the area affected by the district coastal management program;

(ii) posting in a conspicuous location in the vicinity of the proposed project or action;

(iii) notifying parties known or likely to be affected by the proposed project or action; or

(iv) another method calculated to effectively notify affected interested parties.

(2) a notice provided under (1) of this subsection must

Council review  
of State agency  
actions

(A) contain sufficient information in commonly understood terms to inform the public of the nature of the petition; and

(B) indicate the manner in which the public may comment on the petition if the petition is filed under (b)(2) of this section.

(g) The opportunity to petition under (b)(2) of this section is limited to

- (1) a coastal resource district;
- (2) a citizen of the coastal resource district; or
- (3) a state agency.

(§ 4 ch 84 SLA 1977; am §§ 3, 4, 5, 6 ch 34 SLA 1994)

**ATTY GENERAL OPINION:**

For effective date of coastal management programs, see notes under this heading following AS 46.40.080.

(Note: See Opinion dated March 2, 1993 regarding Coastal Policy Council member's eligibility to hear petitions under AS 46.40.100.)

**AMENDMENT NOTES:** The 1994 amendments make a distinction between a petition filed on a consistency determination under AS 46.40.096(e) and a petition filed on a general ACMP matter under AS 46.40.100(b). The 1994 amendments also clarify that the CPC will hold a hearing to consider a petition with public notice.

## Article 2. Coastal Management Programs in the Unorganized Borough

### Section

- 110. Authority in the unorganized borough
- 120. Coastal resource service areas
- 130. Organization of coastal resource service areas
- 140. Coastal resource service area boards
- 150. Elections in coastal resource service areas

### Section

- 160. Organization at the direction of the council
- 170. Preparation of district coastal management program by the Dept. of Community and Regional Affairs
- 180. Approval of programs in coastal resource service areas

**Sec. 46.40.110. Authority in the unorganized borough.** Under AS 29.03.020 and AS 46.40.110 - 46.40.180, the legislature authorizes organization of coastal resource service areas in the unorganized borough and grants authority to the service areas which may be organized to perform the duties required under this chapter. (§ 4 ch 84 SLA 1977)

**Collateral References** - 78 Am. Jur. 2d, Waters, § 59-116, 375-438 65 C.J.S., Navigable Waters, § 10-18, 20-132; 93 C.J.S., Waters, § 71-85.

**Sec. 46.40.120. Coastal resource service areas.** (a) Except as otherwise provided in this section, each regional educational attendance area established under AS 14.08.031 containing a part of the coastal area may be organized as a coastal resource service area.

(b) The commissioner of the Department of Community and Regional Affairs may, after public hearings held in the area affected, consolidate two or more regional educational attendance areas as a single coastal resource service area

(1) if a substantial portion of the coastal area contains land and water area owned by the federal government over which it exercises exclusive jurisdiction or land held in trust by the federal government for Alaska Natives over which the state would not exercise control as to use; or

(2) if, after giving due consideration to the standards applicable to incorporation of borough governments and the likelihood that a borough will be incorporated within the area, the commissioner determines that the functions to be performed under this chapter could be undertaken more efficiently through the combination of two or more regional educational attendance areas as a single coastal resource service area.

(c) A determination under (b) of this section shall be made

Consolidation  
of REAA's

before organization of the coastal resource service area.

(d) For purposes of coastal zone management only, the commissioner of the Department of Community and Regional Affairs may, after public hearings held in the regional educational attendance area affected, divide an existing regional educational attendance area into no more than three coastal resource service areas according to geographic, cultural, economic, environmental, or other features relevant to coastal management planning.

However

(1) each coastal resource service area formed by dividing an existing regional educational attendance area must contain at least one first class city or home rule city;

(2) a city within a coastal resource service area formed by dividing an existing regional educational attendance area may not elect to exclude itself from the coastal resource service area; and

(3) a coastal resource service area formed before June 1, 1980, may not be divided for coastal management planning purposes. (§ 4 ch 84 SLA 1977; am § 2 ch 129 SLA 1978; am § 1, 2 ch 48 SLA 1980)

Division of REAA's

**Sec. 46.40.130. Organization of coastal resource service area.** (a) Organization of a coastal resource service area may be initiated

(1) by submission to the council of a petition signed by a number of registered voters equal to 15 percent of the number of votes cast within the coastal resource service area at the last state general election;

(2) by submission to the council of a resolution approved by the city council or traditional village council of not less than 25 percent of the number of cities and villages within the coastal service area; or

(3) at the direction of a majority of the members of the council in the manner set out in AS 46.40.160.

(b) Acting at the request of the council, the lieutenant governor, not less than 60 nor more than 90 days after receipt of a proper petition under (a)(1) of this section, a proper resolution under (a)(2) of this section, or at the direction of the council under (a)(3) of this section, shall conduct an election on the question of organization of a coastal resource service area. (§ 4 ch 84 SLA 1977)

**Sec. 46.40.140. Coastal resource service area boards.** (a) Each coastal resource service area, upon organization, shall have an elected board representing the population of the service area. The board shall have the powers and duties and perform the functions prescribed for or required of coastal resource districts.

(b) A coastal resource service area board shall contain seven members. Board members shall be elected at large by the qualified voters of the coastal resource service area.

(c) The commissioner of the Department of Community and Regional Affairs, after consultation with residents of a coastal resource service area, may divide a service area into sections only for the purpose of nominating and electing board members. Division of a service area into sections for the purpose of nomination and election shall be in accordance with the provisions of AS 14.08.051(a). Division may be proposed in the petition submitted under AS 46.40.130(a)(1), in the resolution submitted under AS 46.40.130(a)(2), at the direction of the council under AS 46.40.130(a)(3), or may be proposed at any time by the members of the coastal resource service area board. If proposed by the board, the division of the service area into sections is subject to approval of a majority of the qualified voters voting on the question in the coastal resource service area at the next regular election or at a special election called for that purpose and, if approved, takes effect at the next regular election of members of the coastal resource service area board.

(d) The term of office of a member of a coastal resource service area board is three years, except that the terms of the members of the first board elected after organization of a coastal resource service area shall be determined by lot, with two members serving one-year terms, two members serving two-year terms, and three members serving three-year terms. Members serve until their successors are elected and have qualified. This section does not prohibit the reelection of a board member.

(e) The lieutenant governor shall provide for the election of the members of coastal resource service area boards. The first election of board members shall occur at the same time as the organization election under AS 46.40.130(b).

(f) Except for the first election of members of coastal resource service area boards, elections shall be held annually on the date of election of members of regional educational attendance area boards under AS 14.08.071(b). For an election under this subsection or under (e) of this section, a newly elected board member takes office at the first coastal resource service area board meeting after certification of the election. If

**Sectional  
CRSA  
elections**

**Term of  
office**

**Board  
Election**

no candidate files for election to a seat on the coastal resource service area board, the seat is considered vacant at the time a newly elected member would have taken office.

(g) A seat on a coastal resource service area board shall be declared vacant by the board if the criteria under AS 14.08.045(a) apply to the person elected. A vacancy on a coastal resource service area board shall be filled by appointment as provided in AS 14.12.070 for vacancies in the membership of regional educational attendance area boards.

**Vacancy**

(h) Members of coastal resource service area boards are subject to recall on the same grounds and in the same manner as provided for recall of municipal officials in AS 29.26.240 - 29.26.350. The lieutenant governor functions in place of the assembly or council and municipal clerk for receipt and review of recall petitions and the conduct of recall elections. (§ 4 ch 84 SLA 1977; am § 85 ch 74 SLA 1985; am § 5 - 7 ch 129 SLA 1990)

**Board member  
Recall**

**AMENDMENT NOTES:**

The 1990 amendment rewrote the second sentence in subsection (e); added the second and third sentences in subsection (f); and added the first sentence and made an internal reference change in the second sentence in subsection (g).

**Sec. 46.40.150. Elections in coastal resource service areas.** Organization elections under AS 46.40.130 and other elections, including recall elections conducted under AS 46.40.140, shall be administered by the lieutenant governor in the general manner provided in AS 15 (Election Code). In addition, the lieutenant governor may adopt regulations necessary to the conduct of coastal resource service area board elections. The state shall pay all election costs. (§ 4 ch 84 SLA 1977)

**Sec. 46.40.160. Organization at the direction of the council.** (a) Whenever it appears that major economic development activity will occur in a coastal resource service area or in water adjacent to a coastal resource service area which has not been organized, the council may direct the lieutenant governor to submit to the voters of the service area the question of organization. The council may require an election on the question only after holding at least one public hearing within the area proposed for organization.

**Council direction  
to seek  
CRSA organization**

(b) In this section, "major economic development activity" includes a call for nomination by the Secretary of the United

States Department of the Interior for leasing of tracts within petroleum basins in water of the outer continental shelf adjacent to the coastal resource service area or any other significant industrial or commercial activity which, in the opinion of the council, would commit the resources of the coastal area to a use of direct and significant impact upon the coastal water of the state. (§ 4 ch 84 SLA 1977)

**Sec. 46.40.170. Preparation of district coastal management program by the Department of Community and Regional Affairs.** (a) If residents of a coastal resource service area reject organization of the service area at an election called for the purpose and the council finds, after public hearing, that major economic development activity has occurred or will occur within the service area, the council may direct the Department of Community and Regional Affairs to prepare and recommend for consideration by the council and for submission to the legislature a district coastal management program for the service area.

(b) At the request of the council, the Department of Community and Regional Affairs shall complete the district coastal management program in accordance with this chapter and the guidelines and standards adopted by the council for a coastal resource service area which has been organized but which has failed to make substantial progress in the preparation of an approvable district coastal management program within 18 months of certification of the results of an organization election or which has not submitted for approval to the council a program within 30 months of certification of the results of its organization election. Preparation of the program shall be conducted in consultation with the coastal resource service area and shall, to the maximum extent consistent with this chapter, reflect the expressed concerns of the residents of the service area.

(c) Before requesting the department to complete the district coastal management program under (b) of this section, the council shall meet with the members of the coastal resource service area board to determine whether the board is able to complete a district coastal management program within the time limitations established in this section. (§ 4 ch 84 SLA 1977)

**Sec. 46.40.180. Approval of programs in coastal resource service areas.** (a) Before adoption by a coastal resource service area board, or by the Department of Community and Regional Affairs under AS 46.40.170, a district coastal management program shall be submitted for review to each city or village within the coastal resource service area. The council of a city or traditional village council shall consider the program submitted for review. Within 60 days of submission, the council of a city or traditional village council shall either approve the program or enter objections to all or any portion of the program.

(b) If a city or village within a coastal resource service area fails to approve a portion of the district coastal management program prepared and submitted for approval under (a) of this section, the governing body shall advise the coastal resource service area board or the department, as applicable, of its objections to the proposed program and suggest alternative elements or components for inclusion in the district coastal management program. New matter submitted by a city or village which is substantially consistent with the guidelines and standards adopted by the council shall be accepted and the district coastal management program modified accordingly. If a city or village fails to provide objections and suggested alternatives within the time limits established in this section, the coastal resource service area board or the department, as applicable, may adopt the district coastal management program as initially offered.

(c) Objection by a city council under (b) of this section is limited to objection to elements of the program affecting resources or the use of resources within the corporate limits of the city. Objection by a traditional village council under (b) of this section is limited to objection to elements of the program affecting resources or the use of resources within the village or within two miles of the village.

(d) For purposes of this section, "village" means an unincorporated community where at least 25 persons reside as a social unit as determined by the Department of Community and Regional Affairs. (§ 4 ch 84 SLA 1977)

## Article 3. General Provisions

Section	Section
190. Cooperative administration	210. Definitions
200. State agencies	

**Sec. 46.40.190. Cooperative administration.** (a) A city within the coastal area which is not part of a coastal resource service area shall be included for purposes of this chapter within an adjacent coastal resource service area unless its governing body, by resolution adopted by a majority of its membership, chooses to exclude the city from an adjacent coastal resource service area and a copy of the resolution is filed with the commissioner of community and regional affairs.

City inclusion  
in CRSA

(b) This chapter does not restrict or prohibit cooperative or joint administration of functions between a municipality and a coastal resource service area organized under the provisions of this chapter upon initiation of a mutual agreement for the purpose. A city which elects to be excluded from an adjacent coastal resource service area under (a) of this section shall enter into a mutual agreement for cooperative or joint administration of functions with the coastal resource service area board from the adjacent coastal resource service area. (§ 4 ch 84 SLA 1977; am § 3 ch 48 SLA 1980)

**Collateral References** - 78 Am. Jur. 2d, Waters, § 59-116, 375-438 65 C.J.S., Navigable Waters, § 10-18, 20-132; 93 C.J.S., Waters, § 71-85.

**Sec. 46.40.200. State agencies.** Upon the adoption of the Alaska coastal management program, state departments, boards and commissions shall review their statutory authority, administrative regulations, and applicable procedures pertaining to land and water uses within the coastal area for the purpose of determining whether there are any deficiencies or inconsistencies which prohibit compliance with the program adopted. State agencies shall, within six months of the effective date of the Alaska coastal management program, take whatever action is necessary to facilitate full compliance with and implementation of the program, including preparation and submission of recommendations to the council for additional or amended legislation. (§ 4 ch 84 SLA 1977)

State agency  
compliance

**Sec. 46.40.210. Definitions.** In this chapter, unless the context otherwise requires,

(1) "area which merits special attention" means a delineated geographic area within the coastal area which is sensitive to change or alteration and which, because of plans or commitments or because a claim on the resources within the area delineated would preclude subsequent use of the resources to a conflicting or incompatible use, warrants special management attention, or which, because of its value to the general public, should be identified for current or future planning, protection, or acquisition; these areas, subject to council definition of criteria for their identification, include:

(A) areas of unique, scarce, fragile or vulnerable natural habitat, cultural value, historical significance, or scenic importance;

(B) areas of high natural productivity or essential habitat for living resources;

(C) areas of substantial recreational value or opportunity;

(D) areas where development of facilities is dependent upon the utilization of, or access to, coastal water;

(E) areas of unique geologic or topographic significance which are susceptible to industrial or commercial development;

(F) areas of significant hazard due to storms, slides, floods, erosion or settlement; and

(G) areas needed to protect, maintain, or replenish coastal land or resources, including coastal flood plains, aquifer recharge areas, beaches and offshore sand deposits;

(2) "coastal resource district" means each of the following which contains a portion of the coastal area of the state:

(A) unified municipalities;

(B) organized boroughs of any class which exercise planning and zoning authority;

(C) home rule and first class cities of the unorganized borough or within boroughs which do not exercise planning and zoning authority;

(D) second class cities of the unorganized borough, or within boroughs which do not exercise planning and zoning authority, which have established a planning commission, and which, in the opinion of the commissioner of community and regional affairs, have the capability of preparing and implementing a comprehensive district coastal management program under AS 46.40.030;

(E) coastal resource service areas established and organized under AS 29.03.020 and AS 46.40.110 - 46.40.180;

(3) "council" means the Alaska Coastal Policy Council;

(4) "department" means the Department of Community and Regional Affairs

(5) "use of direct and significant impact" means a use, or an activity associated with the use, which proximately contributes to a material change or alteration in the natural or social characteristics of a part of the state's coastal area and in which

(A) the use, or activity associated with it, would have a net adverse effect on the quality of the resources of the coastal area;

(B) the use, or activity associated with it, would limit the range of alternative uses of the resources of the coastal area; or

(C) the use would, of itself, constitute a tolerable change or alteration of the resources within the coastal area but which, cumulatively, would have an adverse effect;

(6) "uses of state concern" means those land and water uses which would significantly affect the long-term public interest; these uses, subject to council definition of their extent, include:

(A) uses of national interest, including the use of resources for the siting of ports and major facilities which contribute to meeting national energy needs, construction and maintenance of navigational facilities and systems, resource development of federal land, and national defense and related security facilities that are dependent upon coastal locations;

(B) uses of more than local concern, including those land and water uses which confer significant environmental, social, cultural, or economic benefits or burdens beyond a single coastal resource district;

(C) the siting of major energy facilities, activities pursuant to a state oil and gas lease, or large-scale industrial or commercial development activities which are dependent on a coastal location and which, because of their magnitude or the magnitude of their effect on the economy of the state or the surrounding area, are reasonably likely to present issues of more than local significance;

(D) facilities serving statewide or interregional transportation and communication needs; and

(E) uses in areas established as state parks or recreational areas under AS 41.21 or as state game refuges, game sanctuaries or critical habitat areas under AS 16.20.

(7) "consistency review" means the evaluation of a proposed project against the standards adopted by the council under AS 46.40.040 and a district coastal management program approved by the council under AS 46.40.060;

(8) "office" means the office of management and budget

established in the Office of the Governor.

(§ 4 ch 84 SLA 1977; am § 3 ch 129 SLA 1978; am § 86 ch 74 SLA 1985; am § 7 ch 34 SLA 1994)

AMENDMENT NOTES: The 1994 amendment added (7) and (8).



**TITLE 6. GOVERNOR'S OFFICE  
DIVISION OF GOVERNMENTAL COORDINATION**

**CHAPTER 50. PROJECT CONSISTENCY WITH  
THE ALASKA COASTAL MANAGEMENT PROGRAM**

**Section**

- 10. Purpose of regulations
- 20. Federal consistency determinations
- 30. State permit consistency determination
- 40. Preapplication assistance
- 50. Expedited review by categorical approval
- 60. Scope of project to be reviewed
- 70. Consistency review process

**Section**

- 80. Confidential information and fees
- 90. Emergency expedited review
- 100. Public Participation
- 110. Review period deadlines and extensions
- 120. Conclusive consistency determinations
- 130. Issuance of project permits
- 190. Definitions

**6 AAC 50.010. PURPOSE OF REGULATIONS.** The regulations in this chapter are intended to implement, interpret, and make specific

(1) the responsibility of the office of management and budget (OMB) to implement the Alaska Coastal Management Program (ACMP) by rendering on behalf of the state

(A) all responses concurring in or objecting to a federal consistency certification or determination which is required or authorized by sec. 307 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. \p1456, (CZMA), and

(B) all conclusive consistency determinations for any project requiring two or more state agency or federal permits as required by AS 44.19.145(a)(11); and

(2) the responsibility of resource agencies to implement the ACMP by making conclusive consistency determinations for projects requiring the permit of a single state agency and no federal permit, and to expedite their permit review procedures, to the extent permitted by law, by coordinating their own procedures with the consistency review of a project.

(Eff. 3/11/84, Register 89)

Authority: AS 44.19.145(a)  
AS 46.40.100(a)  
Art. III, sec. 1, Ak. Const.  
Art. III, sec. 16, Ak. Const.  
Art. III, sec. 21, Ak. Const.

**6 AAC 50.020. FEDERAL CONSISTENCY DETERMINATIONS.** The division of governmental coordination (DGC) of the office of management and budget will coordinate a consistency review and render a response concurring in or objecting to a federal consistency certification or determination which is required or authorized by sec. 307 of the CZMA. DGC will coordinate the review in the manner provided in this chapter and will render a response in the time and manner prescribed in the CZMA or in the regulations implementing that Act.

(Eff. 3/11/84, Register 89)

Authority: AS 44.19.145(a)

**6 AAC 50.030. STATE PERMIT CONSISTENCY DETERMINATIONS.** (a) DGC will coordinate the review and render a determination for a project which requires the permits of two or more state agencies or a federal permit, in the manner provided in this chapter.

DGC  
coordination

(b) A resource agency shall coordinate the consistency review and render a conclusive consistency determination for a project which requires only the permits of a single state agency and no federal permit. The agency shall coordinate the review and render its determination in the manner provided in this chapter.

Single agency  
review

(c) DGC will participate in a single-agency consistency review in the same manner as the other resource agencies participate. DGC will also, on request of the coordinating agency, act as a facilitator to attempt to resolve any disputed issues. If the project includes a disposal of interest in state land, DGC will either concur in the determination or require modifications necessary for its concurrence.

(d) DGC will, in its discretion, at any time, with reasonable notice, review the consistency review procedures, files, or decisions of a coordinating agency.

(Eff. 3/11/84, Register 89; em am 5/1/90 - 8/9/90, Register 114)

Authority: AS 44.19.145(a)  
AS 46.40.100(a)  
Art. III, sec. 1, Ak. Const.  
Art. III, sec. 16, Ak. Const.  
Art. III, sec. 24, Ak. Const.

**6 AAC 50.040. PREAPPLICATION ASSISTANCE.** DGC will, on request, assist a potential applicant for a state permit for a project by providing and explaining the coastal project questionnaire and the consistency review process as described in 6 AAC 50.070, identifying persons to contact in other state or federal agencies, determining the scope of activities which comprise the project, and providing any other assistance or information at its disposal to facilitate review and approval of the applicant's proposed project. A resource agency shall, on request, provide similar assistance and shall also provide application forms for its own permits. DGC and all resource agencies will attempt to regularly inform each coastal resource district of proposed projects which may have significant and direct impacts on that district. (Eff. 3/11/84, Register 89)

Authority: AS 44.19.145(a)  
AS 46.40.100(a)  
Art. III, sec. 1, Ak. Const.  
Art. III, sec. 16, Ak. Const.  
Art. III, sec. 24, Ak. Const.

**6 AAC 50.050. EXPEDITED REVIEW BY CATEGORICAL APPROVAL AND GENERAL CONCURRENCE DETERMINATIONS.** (a) The consistency review of a project will be expedited as provided in (b) or (c) of this section if the project meets the requirements of one of those subsections.

(b) A project which requires one or more state or federal permits, each of which appears on the list published under (e) of this section listing permits which have been categorically approved by DGC as being consistent with the ACMP, is considered to have been conclusively determined by DGC to be consistent with the ACMP. A permit will be categorically approved if DGC determines that the activity authorized by the permit will have no significant impact in the coastal zone.

Categorical approval

(c) A project which requires one or more state or federal permits not categorically approved as provided in (b) of this section will be considered consistent without further review, if it meets the requirements of a general concurrence determination contained on the list published under (e) of this section. A "general concurrence determination" is a consistency determination for a type of project which includes only routine activities, and which can be effectively made consistent with the ACMP by imposing standard stipulations on the applicable permit. If a subsequent project of any applicant fits the

General concurrence

description in a general concurrence determination, the project will be considered consistent with the ACMP if it complies with the stated standard stipulations.

(d) A project which requires one or more state or federal permits, and which is not within the categories described in (b) or (c) of this section, is subject to review as an individual project as provided in this chapter.

(e) DGC will publish a list of permits which have been categorically approved as being consistent with the ACMP, and a list of general concurrence determinations, and will identify on each list those permits or projects for which a coastal project questionnaire is not necessary. DGC will amend these lists as necessary on its own initiative, or on the request of a coastal resource district or a resource agency based on new information regarding the impacts of these activities, including cumulative impacts. Before publishing or amending these lists, DGC will distribute the proposed lists or amendments for comment in the manner provided in 6 AAC 50.070 for a project consistency review. (Eff. 3/11/84, Register 89)

Individual  
project  
review

List of  
permits

Authority: AS 44.19.145(a)  
Art. III, sec. 1, Ak. Const.  
Art. III, sec. 16, Ak. Const.  
Art. III, sec. 24, Ak. Const.

**6 AAC 50.060. SCOPE OF PROJECT TO BE REVIEWED.** The scope of activities which are to be reviewed for consistency with the ACMP as part of a project will be determined based on statements of the applicant, the information provided in the coastal project questionnaire, and any additional information which DGC or a resource agency finds necessary to request. If there is disagreement among the agencies, DGC will make the final decision. If DGC determines that a project under review by a resource agency is one requiring a federal permit, or the permits of two or more state agencies, DGC will immediately notify the applicant and the resource agency that the consistency review will be coordinated by DGC, and will commence as provided in 6 AAC 50.070 when DGC has received completed applications for all necessary permits and a completed coastal-project questionnaire. (Eff. 3/11/84, Register 89; em am 5/1/90 - 8/9/90, Register 114)

Authority: AS 44.19.145(a)  
Art. III, sec 1, Ak. Const.  
Art. III, sec. 16, Ak. Const.  
Art.III, sec. 24, Ak. Const.

**6 AAC 50.070. CONSISTENCY REVIEW PROCESS.** (a)

Except as provided in 6 AAC 50.050(e) or in (b) of this section, DGC on request, or a resource agency which receives an application for a permit for a coastal project, shall give the applicant a project questionnaire provided by DGC. Based on the information provided by the applicant in response to the questionnaire, the agency shall identify all state resource agencies which the applicant must contact regarding the project before submitting an application for a permit.

Project  
questionnaire

(b) A project questionnaire is not required for placer mining activity which is authorized by an annual application known as the "tri-agency placer mining application." These applications must be submitted to the Department of Natural Resources (DNR). DNR will distribute these applications to initiate the consistency review of the projects as provided in this chapter.

Placer  
mining

(c) For a project requiring a federal permit or the permits of two or more state agencies, the applicant shall submit a packet including all necessary state permit applications, copies of all necessary federal permit applications, and the project questionnaire to DGC, except that confidential information or fees must be handled as provided in 6 AAC 50.080. The coordinating agency may require the applicant to provide additional copies of maps or other documents which may not be conveniently duplicated.

Completed  
packets

(d) For a project requiring only the permits of a single state agency, the applicant shall submit a packet including all necessary applications and the project questionnaire to the agency.

(e) Immediately upon receipt, or within 7 days if the packet includes an oil discharge prevention and contingency plan submitted under 18 AAC 75, the coordinating agency shall review the packet and shall inform the applicant if it appears to be sufficient for public review. If the packet appears to be sufficient for public review, and the project does not include a disposal of interest in state land, the coordinating agency shall immediately assign a project number, and note the date as Day 1 of the consistency review process. If public notice is required, the coordinating agency will assign Day 1 as that day on which all required notices have been published. For a project which includes a disposal of interest in state land, the consistency review will begin at a date which DGC and DNR agree will most effectively allow for both the consistency review and DNR's own statutory responsibilities. Acceptance of the packet does not preclude an agency from requesting additional information or applications from the applicant as necessary for its consistency review or its own statutory responsibilities. On or before Day 2, the coordinating agency will distribute copies of the packet to all

Day 1

Copies  
distributed

review participants, and other interested parties. For a 30-day review, the distribution may be limited in the discretion of the coordinating agency but must, if requested in writing, include any affected coastal district with an approved program. Along with the packet, the coordinating agency will distribute a review schedule establishing a comment deadline at Day 34, or at Day 17 in a 30-day review period, or later if the review period is extended as provided in 6 AAC 50.110. The review schedule under this section will also state the applicable time limit, if any, imposed by the federal law or regulation.

**Review  
schedule**

(f) If the coordinating agency determines that the public notice, if any, provided by the resource agencies as part of their review of a permit is not adequate to inform the public about the project and the consistency review process, the coordinating agency shall, as soon as possible, publish a public notice in a newspaper or on radio or television in the affected areas, describing the project and the consistency review process. In evaluating the need for public notice of a project, the coordinating agency shall consider the magnitude of likely impacts, including cumulative impacts on the affected area, but may not unreasonably require public notice for a project for which notice is not statutorily required. DGC will encourage the joint public notice of project reviews when a permit from more than one agency is required.

**Public  
notice**

(g) The coordinating agency, on its own initiative or at the request of a review participant, may request from the applicant on or before Day 25, or Day 15 of a 30-day review period, additional information relevant to the proposed project, which is necessary for its consistency review or its own statutory responsibilities.

**Request for  
additional  
information**

(h) Comments must be received by the coordinating agency on or before the comment deadline established by the coordinating agency. Each commenter shall also send copies of its comments to the resource agencies. Verbal comments must be confirmed by written comments postmarked within five working days after the verbal comments. If the commenter recommends stipulations on the consistency determination, a brief written justification must be provided by the commenter for each stipulation. Upon request, the coordinating agency shall send copies of comments to other interested parties.

**Comments**

**Stipulations**

**Justification**

(i) The coordinating agency shall encourage and facilitate consideration of comments received and discussion among the review participants. The coordinating agency shall determine whether there is a consensus among the resource agencies regarding a proposed consistency determination. The coordinating agency shall notify the review participants, the applicant, and other commenting parties, on or before Day 44, or Day 24 in a

**Proposed  
determination**

30-day review period, of the proposed determination or the issues to be resolved.

(j) If a resource agency, an affected coastal resource district with an approved program, or the applicant does not concur with the proposed consistency determination, it may request elevation of the review by submitting a written statement which describes its concerns and includes a proposed alternative consistency determination which would meet its concerns. That party shall distribute this statement so that all review participants, the applicant, other commenting parties, and DGC will receive a copy on or before Day 49, or Day 29 in a 30-day review period, or within five days after receiving notice of the proposed determination, whichever is later. This requirement may be satisfied by transmitting the substance of the statement to the coordinating agency by telephone or other telecommunication device and sending written confirmation to all parties by mail or courier on or before the deadline under this subsection.

Request for  
elevation

(k) The coordinating agency shall issue a conclusive consistency determination on or before Day 50, or Day 30 in a 30-day review period, if it has not received a request to elevate the review. If the coordinating agency receives a request, the agency shall elevate the review as necessary to the division directors, and then commissioners of the resource agencies, and may extend the decision deadline in accordance with 6 AAC 50.110(b)(7). If the review is elevated, the coordinating agency, or DGC on request, shall arrange meetings and shall mediate among the resource agencies, the affected coastal resource districts with approved programs, and the applicant, for the purpose of attempting to resolve any disputed issues and to formulate a mutually acceptable consistency determination. If no consensus is reached, the coordinating agency shall render a determination consistent with any policy direction given by the commissioners or the governor. (Eff. 3/11/84, Register 89; em am 5/1/90 - 8/29/90, Register 114; am 5/20/93, Register 126)

Authority: AS 44.19.161  
AS 46.40.010  
AS 46.40.040

**6 AAC 50.080. CONFIDENTIAL INFORMATION AND FEES.** An application for a state permit requiring information which must by law be held in confidence, and any fee associated with a state permit, must be submitted by the applicant directly to the agency with responsibility for issuing the permit. The agency shall delete the confidential information from any copy of

the application which is distributed for a consistency review under this chapter. (Eff. 3/11/84, Register 89)

Authority: AS 44.19.145(a)  
Art. III, sec. 1, Ak. Const.  
Art. III, sec. 16, Ak. Const.  
Art. III, sec. 24, Ak. Const.

**6 AAC 50.090. EMERGENCY EXPEDITED REVIEW.** If, due to an emergency as described in AS 26.23 or AS 46.04.080 or other applicable law, an applicant needs an expedited agency permit or consistency review, or if the head of the coordinating agency finds that an expedited review is necessary for the preservation of the public peace, health, safety, or general welfare, the head of the coordinating agency may modify the review process established in this chapter as necessary to meet the emergency. Any modifications in the review process made under this section must be made in writing by the head of the coordinating agency, based upon clear and convincing evidence of a need for the modification. (Eff. 3/11/84, Register 89)

Authority: AS 44.19.145(a)  
Art. III, sec. 1, Ak. Const.  
Art. III, sec. 16, Ak. Const.  
Art. III, sec. 24, Ak. Const.

**6 AAC 50.100. PUBLIC PARTICIPATION.** (a) Any person may comment on a proposed project by submitting written comments to the coordinating agency on or before the comment deadline. The coordinating agency shall provide a copy of the project packet to any person on request.

(b) If the coordinating agency receives a request for public hearing regarding a project by Day 34, or Day 17 of a 30-day review period, and finds that the request is based on concerns not already adequately addressed in the review, the coordinating agency shall schedule and hold a hearing in the area affected by the project.

(c) Within seven days after receiving a request under (b) of this section, the coordinating agency shall decide whether or not to hold a public hearing.

(d) At least 15 but no more than 30 days before the date of a public hearing, the coordinating agency shall give notice of the time and place of the hearing.

(1) by publication in a newspaper which is circulated in the area to be affected by the project;

Public  
hearing

(2) by written notice to the governing body of an affected coastal resource district; and

(3) if the project is to be located in the unorganized borough, by radio or television announcements.

(e) If new information or issues are presented at a public hearing that have not been considered or resolved by project reviewers, the coordinating agency shall summarize those portions of the hearing testimony and distribute the summary to other resource agencies, affected coastal resource districts, and the applicant, within five days following the hearing. Recommendations for a proposed determination based on the summary may be submitted to the coordinating agency in writing within seven days after receipt of the summary.

(Eff. 3/11/84, Register 89)

Authority: AS 44.19.145(a)  
Art. III, sec. 1, Ak. Const.  
Art. III, sec. 16, Ak. Const.  
Art. III, sec. 24, Ak. Const.

**6 AAC 50.110. REVIEW PERIOD DEADLINES AND EXTENSIONS.** (a) The coordinating agency shall complete a review by either Day 30 or Day 50 unless it extends the applicable decision deadline as provided in (b) or (c) of this section. Each resource agency shall, after consultation with DGC, establish standards for determining whether a 30-day or 50-day decision deadline will apply. DGC will complete a review by Day 30 only if all required permits must by statute or regulation be issued within 30 days.

30-50 day  
review

(b) An associate director within OMB or a division director within the coordinating agency may grant an extension of a consistency review as long as the consistency determination is made within any time limit imposed by federal law or regulation. An extension and the reasons for it must be stated in writing and, except for an extension granted under (1) of this subsection, must be based on clear and convincing evidence of the need for the extension. The coordinating agency will notify the review participants and the applicant of the terms of an extension. The limits on extensions are

Extension of  
review

(1) for a project located in the unorganized borough, the coordinating agency may, without a request, extend both the comment and decision deadlines by 10 days;

(2) if a commenting agency requests time to perform a field review, the coordinating agency may extend the remaining deadlines by up to 10 days;

(3) if the project involves a disposal of interest in state land or

resources and DGC is the coordinating agency, it will, on DNR's request, extend both the comment and decision deadlines for a period necessary to most efficiently coordinate the consistency review and the DNR disposal process;

(4) for a project which is subject to the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 91 Stat. 445 (1977), 30 U.S.C. § 1201 et seq., the consistency review deadlines will be extended as necessary to conform to the requirements of that Act and AS 27.21;

(5) if a public hearing is held as part of the consistency review process, or as part of a resource-agency review of a necessary permit, the coordinating agency may extend both the comment and decision deadlines as necessary;

(6) if the coordinating agency requests additional information from the applicant as provided in 6 AAC 50.070, the agency may extend the remaining deadlines until the requested information has been received and deemed adequate by the requesting review participant. Within 7 days of receipt of the information by the requesting review participant, that participant shall notify the coordinating agency whether the information is adequate to find the project packet complete;

(7) if the coordinating agency determines that a consensus among the resource agencies, any affected coastal resource district, and the applicant cannot be reached within a 50-day review period, it shall state in writing the issues or conditions which require additional time for review, and may extend the remaining deadlines for up to 15 days for each higher level of review provided in 6 AAC 50.070(k);

(8) if the applicant requests an extension, the coordinating agency may extend the remaining deadlines as requested;

(9) if the coordinating agency determines that the project involves unusually complex issues, it may extend the deadlines as necessary; if the deadline is extended under this paragraph, the agency shall by Day 50, or Day 30 of a 30-day review period, distribute to the review participants, the applicant, and other commenting parties a written statement of the issues which remain to be resolved; the coordinating agency shall notify all interested parties promptly as issues are resolved.

(c) All time periods in this chapter must be calculated using calendar days. An action required to be taken on a Saturday, Sunday, or state or federal holiday must be taken on or before the next working day. (Eff. 3/11/84, Register 89; am. 5/20/93, Register 126)

Authority: AS 44.19.161  
AS 46.40.010  
AS 46.40.040

**6 AAC 50.120. CONCLUSIVE CONSISTENCY DETERMINATION.**

(a) In rendering a conclusive consistency determination, the coordinating agency shall give careful consideration to all comments, and shall give due deference to the comments of resource agencies and affected coastal districts with approved programs. "Due deference" means that deference which is appropriate in the context of the commenter's expertise and area of responsibility, and all the evidence available to support any factual assertions. A coastal resource district whose district program has been incorporated into the ACMP is considered to have expertise in the interpretation and application of its program. If the coordinating agency rejects a stipulation or recommendation requested by a commenting resource agency or affected coastal resource district with an approved program, within its respective area of expertise, the coordinating agency shall make a written finding stating the reasons for rejecting the stipulation.

**Due  
Deference**

(b) The coordinating agency shall render a written conclusive consistency determination before the decision deadline under 6 AAC 50.070 or 6 AAC 50.110. The agency shall distribute its determination to the applicants and to all resource agencies, all other agencies which commented on the project, and all affected coastal resource districts. The determination must describe the scope of the project which was reviewed. If the project is determined to be consistent with the ACMP, the determination must state any conditions or stipulations and must identify the state or federal permits in which each stipulation must be included to ensure that the project is consistent with the ACMP. If a resource agency is the coordinating agency, it may include the determination in its approval or denial of each permit required for the project. (Eff. 3/11/84, Register 89; em am 5/1/90 - 8/9/90, Register 114)

**Conclusive  
consistency  
determination**

**Authority:** AS 44.19.145(a)  
Art. III, sec. 1, Ak. Const.  
Art. III, sec. 16, Ak. Const.  
Art. III, sec. 24, Ak. Const.

**6 AAC 50.130. ISSUANCE OF PROJECT PERMITS.** A resource agency shall issue a permit which is necessary for a project, except a lease, within five days after it issues or receives the conclusive consistency determination for that project, unless the commissioner of that agency finds that additional review is necessary to fulfill statutory responsibilities. A resource agency shall issue a lease at the time and in the manner provided by applicable law, regulation, and agency procedure, but not before

**Permits issued  
within 5 days**

it issues or receives a conclusive consistency determination for the appropriate project. For a project which is deemed consistent, by either categorical approval of all necessary permits or a general concurrence determination, an agency shall issue a required permit as soon as possible in the time and manner prescribed by applicable statutes or regulations. A project permit must contain any applicable conditions or stipulations required by the conclusive consistency determination, and may not contain any additional condition or stipulation for the sole purpose of ensuring consistency. (Eff. 3/11/84, Register 89)

Authority: AS 44.19.145(a)  
Art. III, sec. 1, Ak. Const.  
Art. III, sec. 16, Ak. Const.  
Art. III, sec. 24, Ak. Const.

**6 AAC 50.190. DEFINITIONS.** In this chapter and in AS 44.19.145(a)(11) (1) "ACMP" means the Alaska Coastal Management Program, as amended, which was developed as provided in AS 46.40, 6 AAC 80, and 6 AAC 85, and approved by the Secretary of the United States Department of Commerce under authority of sec. 305 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. \p 1454;

(2) "**affected coastal resource district**" means a coastal resource district as defined in AS 46.40.210(2) in which a project is proposed to be located, or which may experience a direct and significant impact from a proposed project;

(3) "**approved program**" means a coastal resource district program that has been approved by the Alaska Coastal Policy Council and filed by the lieutenant governor's office;

(4) "**consistency**" means compliance with the standards of the ACMP, including the enforceable policies of an approved coastal resource district program;

(5) "**coordinating agency**" means the agency responsible for coordinating and facilitating the review and rendering the determination;

(6) "**CZMA**" means the federal Coastal Zone Management Act of 1972, as amended, 16 U.S.C. \p 1451 et seq.;

(7) "**DGC**" means division of governmental coordination within the office of management and budget in the Office of the Governor;

(8) "**DNR**" means the Department of Natural Resources;

(9) "**determination**" or "**consistency determination**" or "**conclusive consistency determination**" means

(A) a document issued by the coordinating agency containing a brief description of the project, and the findings of the

consistency review together with any stipulations, conditions, or modifications to the project which must be attached to the applicable permits, and a brief justification for those necessary modifications, conditions, or stipulations, and includes

(B) a response to a consistency certification or determination required or authorized under the CZMA;

(10) "**direct and significant impact**" means an effect of a project which will likely contribute or lead to a significant change in or alteration of the natural, social, cultural, or economic characteristics of a coastal resource district;

(11) "**disposal of interest in state land**" means the sale, lease, or other disposition of state-owned or state-managed land or resources by the Department of Natural Resources;

(12) "**OMB**" means the office of management and budget in the Office of the Governor;

(13) "**permit**" means a permit, lease, authorization, license or any other determination necessary for completion of a project or a discrete phase of a project;

(14) "**project**" means an activity or use which will be located in or may affect the coastal zone of Alaska and which is subject to consistency review under sec. 307 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1456), or which requires the issuance of one or more state permits; when a land or water activity is developed or authorized in discrete phases, and each phase requires agency decisions regarding permits, each phase is considered a "project";

(15) "**resource agency**" means the Alaska Department of Environmental Conservation, or the Alaska Department of Fish and Game, or the Alaska Department of Natural Resources;

(16) "**review**" or "**consistency review**" means the evaluation of a project against the ACMP standards.

(17) "**review participant**" means resource agencies, other state agencies on request and affected coastal districts; when a project includes an oil discharge prevention and contingency plan, "review participant" includes an affected regional citizens advisory council as defined in 33 U.S.C. 2732(d). (Eff. 3/11/84, Register 89; em am 5/1/90 - 8/9/90, Register 114; am 5/20/93, Register 126)

Authority: AS 44.19.161  
AS 46.40.010  
AS 46.40.040

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**TITLE 6. GOVERNOR'S OFFICE  
ALASKA COASTAL POLICY COUNCIL**

**CHAPTER 80. STANDARDS OF THE ALASKA  
COASTAL MANAGEMENT PROGRAM**

**Article**

1. Government Process (6 AAC 80.010-6 AAC 80.030)
2. Uses and Activities (6 AAC 80.040-6 AAC 80.120)
3. Resources and Habitats (6 AAC 80.130-6 AAC 80.150)
4. Areas Which Merit Special Attention (6 AAC 80.158-6 AAC 80.170)
5. General Provisions (6 AAC 80.900)

**Article 1. Government Process**

**Section**

10. Coverage of chapter
20. Public participation and information
30. Program management and coordination

**6 AAC 80.010. COVERAGE OF CHAPTER.** (a) This chapter contains standards for the use of and application by districts and state agencies in carrying out their responsibilities under the Alaska Coastal Management Act (AS 46.40, and AS 44.19.155 -44.19.162).

(b) Nothing in this chapter or in any district program displaces or diminishes the authority of any state agency or local government with respect to resources in the coastal area. Uses and activities conducted by state agencies in the coastal area must be consistent with the applicable district program and the standards contained in this chapter. In authorizing uses or activities in the coastal area under its statutory authority, each state agency shall grant authorization if, in addition to finding that the use or activity complies with the agency's statutes and regulations, the agency finds that the use or activity is consistent with the applicable district program and the standards contained in this chapter. However, if the district program and the standards in this chapter both address the same operational subject or issue, the provisions of the district program are controlling.

**State/local  
authorities**

**District program**

(c) At a minimum, the council will review this chapter annually. (Eff. 7/18/78, Register 67; am 9/9/81, Register 79)

Authority: AS 44.19.160  
AS 46.40.04C  
AS 46.40.100

6 AAC 80.020. PUBLIC PARTICIPATION AND INFORMATION. (a) The council will provide adequate, effective, and continuing opportunities for public participation from the beginning of the Alaska coastal management program. The council will give notice of when and where opportunities for public participation will be provided before adoption of guidelines and standards, review and approval of district programs and amendments to district programs, and amendments to the Alaska coastal management program.

(b) The council will not approve a district program or significant amendment of a district program unless evidence of significant opportunities for public participation at the district level has been provided.

(c) The council will make available to the public information and educational materials concerning coastal management, in understandable form, including

- (1) a guide for the development of district programs;
- (2) maps and narratives describing physical and biological characteristics to be used in establishing boundaries of coastal areas;
- (3) areas recommended for council designation as areas which merit special attention;
- (4) maps showing the distribution and abundance of coastal fish and wildlife species with commercial, recreational, subsistence, or general ecological importance;
- (5) an identification of major data and information sources concerning coastal management;
- (6) a summary of information regarding coastal regions;
- (7) summaries of public hearings and workshops;
- (8) films and slide programs;
- (9) written material summarizing or explaining the Alaska coastal management program; and
- (10) the council's annual report to the legislature.

(d) At public meetings concerning the Alaska coastal management program, the council will ensure that, when requested and reasonably necessary, translation into the appropriate Native language is provided.

(Eff. 7/18/78, Register 67)

Authority: AS 44.19.161  
AS 46.40.040

6 AAC 80.030. PROGRAM MANAGEMENT AND COORDINATION. (a) The division of governmental coordination of the Office of Management and Budget is the designated lead agency for the Alaska Coastal Management Program. The division of governmental coordination of the Office of Management and Budget shall

DGC  
lead agency

(1) present the staff position regarding matters before the council;

(2) coordinate the activities of state agencies participating in the Alaska coastal management program; and

(3) review state and federal actions for consistency with the Alaska coastal management program, as provided in 6 AAC 50.

(b) The council will initiate an interagency program of comprehensive resource management for each geographic region listed in AS 44.19.155. Regional programs will

Regional program

(1) assist the council and districts in identifying uses of state concern and developing management policies for these uses;

(2) provide resource, social, and economic information on a coordinated regional basis; and

(3) assist the council and districts in identifying, avoiding, or minimizing existing or potential conflicts.

(c) Plans and recommendations developed as part of the regional program described in (b) of this section must be transmitted to the district through the division of governmental coordination. District planning efforts must demonstrate review and consideration of these plans and recommendations. If the final district program proposed does not agree with the regional program plans and recommendations, the differences will be resolved by the council.

(d) The council will prepare a manual of standards for the management of land and water uses in the coastal area to assist in the development of district and state agency programs. (Eff. 7/18/78, Register 67; am 10/28/84, Register 92)

Authority: AS 44.19.145(a)  
AS 44.19.161  
AS 46.40.040

## Article 2. Uses and Activities

### Section

- 40. Coastal Development
- 50. Geophysical hazard areas
- 60. Recreation
- 70. Energy facilities
- 80. Transportation and utilities
- 90. Fish and seafood processing
- 100. Timber harvest and processing
- 110. Mining and mineral processing
- 120. Subsistence

**6 AAC 80.040. COASTAL DEVELOPMENT.** (a) In planning for and approving development in coastal areas, districts and state agencies shall give in the following order, priority to:

- (1) water-dependent uses and activities;
- (2) water-related uses and activities; and
- (3) uses and activities which are neither water-dependent

nor water-related for which there is no feasible and prudent inland alternative to meet the public need for the use or activity.

Public need

(b) The placement of structures and the discharge of dredged or fill material into coastal water must, at a minimum, comply with the standards contained in Parts 320-323, Title 33, Code of Federal Regulations (Vol. 42 of the Federal Register, pp. 37133 - 47 (July 19, 1977)). (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

Dredge/Fill

Authority: AS 44.19.161  
AS 46.40.040

### **6 AAC 80.050. GEOPHYSICAL HAZARD AREAS.**

(a) Districts and state agencies shall identify known geophysical hazard areas and areas of high development potential in which there is a substantial possibility that geophysical hazards may occur.

(b) Development in areas identified under (a) of this section may not be approved by the appropriate state or local authority until siting, design, and construction measures for minimizing property damage and protecting against loss of life have been provided. (Eff. 7/18/78, Register 67)

Siting/Design

Authority: AS 44.19.161  
AS 46.40.040

**6 AAC 80.060. RECREATION.** (a) Districts shall designate areas for recreational use. Criteria for designation of areas of recreational use are

(1) the area receives significant use by persons engaging in recreational pursuits or is a major tourist destination; or

(2) the area has potential for high quality recreational use because of physical, biological, or cultural features.

(b) Districts and state agencies shall give high priority to maintaining and, where appropriate, increasing public access to coastal water. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

Public access

Authority: AS 44.19.161  
AS 46.40.040

**6 AAC 80.070. ENERGY FACILITIES.** (a) Sites suitable for the development of major energy facilities must be identified by districts and the state in cooperation with districts.

(b) The siting and approval of major energy facilities by districts and state agencies must be based, to the extent feasible and prudent, on the following standards:

(1) site facilities so as to minimize adverse environmental and social effects while satisfying industrial requirements;

(2) site facilities so as to be compatible with existing and subsequent adjacent uses and projected community needs;

(3) consolidate facilities;

(4) consider the concurrent use of facilities for public or economic reasons;

(5) cooperate with landowners, developers, and federal agencies in the development of facilities;

(6) select sites with sufficient acreage to allow for reasonable expansion of facilities;

(7) site facilities where existing infrastructure, including roads, docks, and airstrips, is capable of satisfying industrial requirements;

(8) select harbors and shipping routes with least exposure to reefs, shoals, drift ice, and other obstructions;

(9) encourage the use of vessel traffic control and collision avoidance systems;

(10) select sites where development will require minimal site clearing, dredging and construction in productive habitats;

(11) site facilities so as to minimize the probability, along shipping routes, of spills or other forms of contamination which would affect fishing grounds, spawning grounds, and other biologically productive or vulnerable habitats, including marine mammal rookeries and hauling out grounds and waterfowl nesting areas;

(12) site facilities so that design and construction of those facilities and support infrastructures in coastal areas of Alaska will allow for the free passage and movement of fish and wildlife with due consideration for historic migratory patterns and so that areas of particular scenic, recreational, environmental, or cultural value will be protected;

Fish  
passage

(13) site facilities in areas of least biological productivity, diversity, and vulnerability and where effluents and spills can be controlled or contained;

(14) site facilities where winds and air currents disperse airborne emissions which cannot be captured before escape into the atmosphere;

(15) select sites in areas which are designated for industrial purposes and where industrial traffic is minimized through population centers; and

(16) select sites where vessel movements will not result in overcrowded harbors or interfere with fishing operations and equipment.

(c) Districts shall consider that the uses authorized by the issuance of state and federal leases for mineral and petroleum resource extraction are uses of state concern. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

Authority: AS 44.19.161  
AS 46.40.040

6 AAC 80.080. TRANSPORTATION AND UTILITIES. (a) Transportation and utility routes and facilities in the coastal area must be sited, designed, and constructed so as to be compatible with district programs.

(b) Transportation and utility routes and facilities must be sited inland from beaches and shorelines unless the route or facility is water-dependent or no feasible and prudent inland alternative exists to meet the public need for the route or facility. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

Authority: AS 44.19.161  
AS 46.40.040

**6 AAC 80.090. FISH AND SEAFOOD PROCESSING.** Districts shall identify and may designate areas of the coast suitable for the location or development of facilities related to commercial fishing and seafood processing. (Eff. 7/18/78, Register 67)

Authority: AS 44.19.161  
AS 46.40.040

**6 AAC 80.100. TIMBER HARVEST AND PROCESSING.** AS 41.17, Forest Resources and Practices, and the regulations and procedures adopted under that chapter with respect to the harvest and processing of timber, are incorporated into the Alaska coastal management program and constitute the components of the coastal management program with respect to those purposes. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71; am 3/30/84, Register 89)

Authority: AS 44.19.161  
AS 46.40.040

(Note: AS 41.17 was amended in 1990. The revised FPA regulations were incorporated into the ACMP effective August 4, 1993.)

**6 AAC 80.110. MINING AND MINERAL PROCESSING.** (a) Mining and mineral processing in the coastal area must be regulated, designed, and conducted so as to be compatible with the standards contained in this chapter, adjacent uses and activities, statewide and national needs, and district programs.

(b) Sand and gravel may be extracted from coastal waters, intertidal areas, barrier islands, and spits, when there is no feasible and prudent alternative to coastal extraction which will meet the public need for the sand or gravel. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

Sand/gravel  
extraction

Authority: AS 44.19.161  
AS 46.40.040

**6 AAC 80.120. SUBSISTENCE.** (a) Districts and state agencies shall recognize and assure opportunities for subsistence usage of coastal areas and resources.

(b) Districts shall identify areas in which subsistence is the dominant use of coastal resources.

Identified  
areas

(c) Districts may, after consultation with appropriate state agencies, Native corporations, and any other persons or groups, designate areas identified under (b) of this section as subsistence zones in which subsistence uses and activities have priority over all nonsubsistence uses and activities.

(d) Before a potentially conflicting use or activity may be authorized within areas designated under (c) of this section, a study of the possible adverse impacts of the proposed potentially conflicting use or activity upon subsistence usage must be conducted and appropriate safeguards to assure subsistence usage must be provided.

(e) Districts sharing migratory fish and game resources must submit compatible plans for habitat management. (Eff. 7/18/78, Register 67)

Authority: AS 44.19.161  
AS 46.40.040

### Article 3. Resources and Habitats

#### Section

130. Habitats

140. Air, land and water quality

150. Historic, prehistoric, and archaeological resources

**6 AAC 80.130. HABITATS.** (a) Habitats in the coastal area which are subject to the Alaska coastal management program include

- (1) offshore areas;
- (2) estuaries;
- (3) wetlands and tideflats;
- (4) rocky islands and seacliffs;
- (5) barrier islands and lagoons;
- (6) exposed high energy coasts;
- (7) rivers, streams, and lakes; and
- (8) important upland habitat.

(b) The habitats contained in (a) of this section must be managed so as to maintain or enhance the biological, physical, and chemical characteristics of the habitat which contribute to its capacity to support living resources,

(c) In addition to the standard contained in (b) of this section, the following standards apply to the management of the following habitats:

(1) offshore areas must be managed as a fisheries conservation zone so as to maintain or enhance the state's sport, commercial, and subsistence fishery;

(2) estuaries must be managed so as to assure adequate water flow, natural circulation patterns, nutrients, and oxygen levels, and avoid the discharge of toxic wastes, silt, and destruction of productive habitat.

(3) wetlands and tidflats must be managed so as to assure adequate water flow, nutrients, and oxygen levels and avoid adverse effects on natural drainage patterns, the destruction of important habitat, and the discharge of toxic substances;

(4) rocky islands and seacliffs must be managed so as to avoid the harassment of wildlife, destruction of important habitat, and the introduction of competing or destructive species and predators;

(5) barrier islands and lagoons must be managed so as to maintain adequate flows of sediments, detritus, and water, avoid the alteration or redirection of wave energy which would lead to the filling in of lagoons or the erosion of barrier islands, and discourage activities which would decrease the use of barrier islands by coastal species, including polar bears and nesting birds;

(6) high energy coasts must be managed by assuring the adequate mix and transport of sediments and nutrients and avoiding redirection of transport processes and wave energy; and

(7) rivers, streams, and lakes must be managed to protect natural vegetation, water quality, important fish or wildlife habitat and natural water flow.

(d) Uses and activities in the coastal area which will not conform to the standards contained in (b) and (c) of this section may be allowed by the district or appropriate state agency if the following are established:

(1) there is a significant public need for the proposed use or activity;

(2) there is no feasible prudent alternative to meet the public need for the proposed use or activity which would conform to the standards contained in (b) and (c) of this section; and

**Offshore areas**

**Estuaries**

**Wetlands**

**Islands and seacliffs**

**Barrier islands  
and lagoons**

**High energy coasts**

**Rivers, streams  
and lakes**

(3) all feasible and prudent steps to maximize conformance with the standards contained in (b) and (c) of this section will be taken.

(e) In applying this section, districts and state agencies may use appropriate expertise, including regional programs referred to in 6 AAC 80.030(b). (Eff. 7/18/78, Register 67)

Authority: AS 44.19.161  
AS 46.40.040

**6 AAC 80.140. AIR, LAND, AND WATER QUALITY.** Notwithstanding any other provision of this chapter, the statutes pertaining to and the regulations and procedures of the Alaska Department of Environmental Conservation with respect to the protection of air, land, and water quality, in effect on August 18, 1992, are incorporated into the Alaska coastal management program and, as administered by that agency, constitute the components of the coastal management program with respect to those purposes. (Eff. 7/18/78, Register 67; am 5/20/93, Register 126)

Authority: AS 44.19.161  
AS 46.40.010  
AS 46.40.040

**6 AAC 80.150. HISTORIC, PREHISTORIC, AND ARCHAEOLOGICAL RESOURCES.** Districts and appropriate state agencies shall identify areas of the coast which are important to the study, understanding, or illustration of national, state, or local history or prehistory. (Eff. 7/18/78, Register 67)

Authority: AS 44.19.161  
AS 46.40.040

## Article 4. Areas Which Merit Special Attention

### Section

- 158. Types of areas to be designated as areas which merit special attention
- 160. Areas which merit special attention inside districts
- 170. Areas which merit special attention outside districts

6 AAC 80.158. TYPES OF AREAS TO BE DESIGNATED AS AREAS WHICH MERIT SPECIAL ATTENTION. An area to be designated as an area which merits special attention may include the following, in addition to the categories contained in AS 46.40.210(1):

- (1) areas important for subsistence hunting, fishing, food gathering, and foraging;
- (2) areas with special scientific values or opportunities, including those areas where ongoing research projects could be jeopardized by development or conflicting uses and activities; and
- (3) potential estuarine or marine sanctuaries. (Eff. 6/9/85, Register 94)

Authority: AS 44.19.161  
AS 46.40.040

Editor's Note. Before 6/9/85, Register 94, the substance of 6 AAC 80.158 was contained in 6 AAC 80.160. The history of AAC 80.160 is not reflected in the history note for 6 AAC 80.158.

6 AAC 80.160. AREAS WHICH MERIT SPECIAL ATTENTION INSIDE DISTRICTS. (a) A person may recommend, to a district, areas inside the district to be nominated to the council as areas which merit special attention. A district may nominate, in a district program or as a significant amendment to its program, areas which merit special attention. Council designation of areas which merit special attention inside districts will be in accordance with the procedures for approval of district programs, or significant amendments to district programs, as described in 6 AAC 85. A nomination of an area which merits special attention must include the following information:

District  
nomination

(1) the basis or bases for designation under AS 46.40.210(1) or 6 AAC 80.158;

(2) a map showing the geographical location, surface area and, if appropriate, bathymetry of the area, along with a legal and narrative description of the boundaries and a justification of the size of the area which merits special attention;

(3) a description of the area which includes dominant physical and biological features;

(4) the existing ownership, jurisdiction, and management status of the area, including existing uses and activities;

(5) the existing ownership, jurisdiction, and management status of adjacent shoreland and sea areas, including existing uses and activities;

(6) present and anticipated conflicts among uses and activities within or adjacent to the area, if any; and

(7) a proposed management plan, consisting of the following:

(A) a description of the uses and activities that will be considered proper, and the uses and activities that will be considered improper, with respect to land and water within the area, and the rationale for the designate of proper and improper uses;

(B) a statement of the specific, enforceable policies that will be applied in managing the area; and

(C) an identification of the authority that will be used to implement the proposed management plan.

(b) A management plan for an area which merits special attention inside a district must preserve, protect, enhance, or restore the value or values for which the area was designated. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71; am 6/9/85, Register 94; am 4/2/86, Register 97)

Authority: AS 44.19.161  
AS 46.40.040

Basis for  
designation

**6 AAC 80.170. AREAS WHICH MERIT SPECIAL ATTENTION OUTSIDE DISTRICTS.** (a) A person may recommend to the council an area that is within the coastal area but outside a coastal resource district, to be designated as an area which merits special attention. A recommendation to the council of an area which merits special attention outside a district must include the following information:

Recommendation to  
Council

(1) a map showing the geographical location of the area, as well as a legal and narrative description of the boundaries, and a justification of the size of the area which merits special attention;

**Justification**

(2) a summary of the resource values and use conflicts, if any, in the area;

(3) a statement of the purpose and objectives to be met through planning for an area which merits special attention;

(4) a tentative schedule outlining timeframes for completion of planning tasks and reviews;

(5) a list of parties with interests in or adjacent to the proposed area which merits special attention who may be affected by its designation, and a description of how these parties would be involved in plan development; and

(6) justification that the area which merits special attention is the preferred planning and management mechanism for meeting the objectives of the proposal and the Alaska coastal management program.

(b) Upon receipt of a recommendation for an area which merits special attention outside of a district, the division of governmental coordination (DGC) of the office of management and budget shall place the recommendation on the council's agenda for consideration at its next regularly scheduled meeting, and shall give notice of a public hearing. DGC shall give direct notice to the affected parties identified in (a)(5) of this section. DGC shall make the recommendation available for public inspection at the time of the notice of the public hearing. The council will make an initial finding, detailing its reasons to either authorize additional planning for the area which merits special attention outside a district, or to reject the recommendation. The council's determination to authorize additional planning for the area which merits special attention may not be construed as council approval of the merits of the final plan.

**Council  
consideration**

(c) If the council decides to authorize further planning for an area which merits special attention, public notice will be provided by conspicuous advertisement, such as display notice, in a news publication of general circulation in the affected area and in one of general circulation in the state. DGC, with assistance from the sponsor, shall compile a mailing list of state and federal agencies, affected municipalities and villages, landowners, and other interested parties and shall notify them that planning for the area which merits special attention is going to occur.

(d) The sponsor of the nomination is responsible for developing a public review draft for the area which merits

**Public review  
draft**

special attention outside of a district. The review draft must include the information required under 6 AAC 80.160(a)(1) through (7), in addition to the following:

(1) an evaluation of the potential impacts of the designation on the social, cultural, environmental, and economic features of the area and adjacent areas;

(2) The proposed management plan required under 6 AAC 160(a)(7) must include a description of how the proposed management plan will be implemented.

(e) A management plan for an area which merits special attention outside a district must preserve, protect, enhance, or restore the value or values for which the area is designated.

(f) The sponsor shall provide opportunities for consultation on and review of the proposal by appropriate state, federal, and local governmental agencies, affected landowners, and other persons who have been identified as interested parties under (c) of this section. The sponsor shall hold no less than two public meetings during plan development to inform the public and receive comments concerning the plan.

**Public  
meetings**

(g) The sponsor of the area which merits special attention shall distribute a public review draft to all parties identified under (c) of this section. The public review draft must contain all elements listed in (d) of this section, as well as evidence that the public participation requirements of this section have been satisfied. The sponsor shall provide at least a 60-day review period. The sponsor shall send with the public review draft a transmittal letter that identifies the comment deadline and the recipient of comments. The sponsor shall publish notice of the availability of the public review draft for review and comment, including advertising in news publications that are circulated in the area affected by the nomination and in news publications that are circulated statewide. The sponsor shall also post a notice prominently in municipalities and villages affected by the proposal.

(h) After the close of the public review and comment period, the sponsor of the area which merits special attention shall revise the public review draft as necessary to incorporate comments received. Council review of the area which merits special attention will begin upon the sponsor's submission of the revised draft to the council.

**Revised  
draft**

(i) DGC shall distribute the council review draft, along with its preliminary findings on the plan, to the mailing list compiled under (c) of this section. A person may submit comments on the area which merits special attention nomination to the council within 60 days after this distribution. Comments that are not received within the 60-day review period will not be considered.

(j) DGC shall prepare a summary of and a response to comments received on the council review draft and, if necessary, revise its recommendations. DGC shall distribute these materials to all parties who commented on the draft. All comments and additional material submitted will be placed in a record file maintained by DGC.

(k) The council will, after public notice, hold a public hearing on the designation of the area which merits special attention.

Council  
designation

(l) The council will approve the designation of an area which merits special attention if it (1) is substantially consistent with the requirements of this section; (2) does not arbitrarily or unreasonably restrict or exclude uses of state concern, except as allowed in AS 46.40.070(c); (3) does not violate another state law; and (4) does not cause substantial irreparable harm to another interest or value in the coastal area. The council's decision to designate, or not designate, the area which merits special attention outside of a district will contain findings and conclusions based on the requirements listed in this subsection.

(m) DGC shall provide public notice of the council's action designating an area which merits special attention outside of a district by distributing a copy of the council's order to all persons who testified or submitted timely written statements during public review, and to all persons who requested a copy of the order in writing. DGC shall also publish notice of the council's action, at a minimum, in news publications that are circulated within the affected region and in news publications that are circulated statewide.

Public notice  
of action

(n) The council's designation of an area which merits special attention outside of a district takes effect for state law purposes as part of the Alaska coastal management program upon the lieutenant governor's filing of the council's order approving the designation. (Eff. 6/9/85, Register 94; am 4/2/86, Register 97)

Authority: AS 44.19.161  
AS 46.40.040

## Article 5. General Provisions

### Section

### 900. Definitions

**6 AAC 80.900. DEFINITIONS.** (a) Unless the context indicates otherwise, in this chapter

(1) "**barrier islands and lagoons**" means depositional coastal environments formed by deposits of sediment offshore or coastal remnants which form a barrier of low-lying islands and bars protecting a salt-water lagoon with free exchange of water to the sea;

(2) "**coastal water**" means all water bodies in the coastal area, including wetlands and the intertidal area;

(3) "**council**" means the Alaska Coastal Policy Council;

(4) "**district**" means a coastal resource district as defined in AS 46.40.210(2);

(5) "**district program**" means a district coastal management program;

(6) "**estuary**" means a semiclosed coastal body of water which has a free connection with the sea and within which seawater is measurably diluted with freshwater derived from land drainage;

(7) "**exposed high-energy coasts**" means open and unprotected sections of coastline with exposure to ocean generated wave impacts and usually characterized by coarse sand, gravel, boulder beaches, and well-mixed coastal water;

(8) "**facilities related to commercial fishing and seafood processing**" includes hatcheries and related facilities, seafood processing plants and support facilities, marine industrial and commercial facilities, and aquaculture facilities;

(9) "**geophysical hazard areas**" means those areas which present a threat to life or property from geophysical or geological hazards, including flooding, tsunami run-up, storm surge run-up, landslides, snowslides, faults, ice hazards, erosion, and littoral beach process;

(10) "**mining and mineral processing**" means the development of mineral resources extracted in tidal rivers, coastal water, and on continental shelves of the open sea, and found in surface, subsurface, and aqueous deposits;

(11) "**offshore areas**" means submerged lands and waters seaward of the coastline;

(12) "**rocky islands and seacliffs**" means islands of volcanic or tectonic origin with rocky shores and steep faces, offshore rocks, capes, and steep rocky seafronts;

(13) **"tidflats"** means mostly unvegetated areas that are alternately exposed and inundated by the falling and rising of the tide;

(14) **"transportation and utility routes and facilities"** include power transmission lines, mineral slurry lines, oil and gas pipelines, land and marine corridors, railways, highways, roadways, air terminals, water and sewage transfer, and facilities required to operate and maintain the route or facility;

(15) **"upland"** means drainages, aquifers, and land, the use of which would have a direct and significant impact on coastal water;

(16) **"uses of state concern"** has the same meaning as in AS 46.40.210(6);

(17) **"water-dependent"** means a use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body;

(18) **"water-related"** means a use or activity which is not directly dependent upon access to a water body, but which provides goods or services that are directly associated with water-dependence and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered;

(19) **"wetlands"** includes both freshwater and saltwater wetlands; **"freshwater wetlands"** means those environments characterized by rooted vegetation which is partially submerged either continuously or periodically by surface freshwater with less than .5 parts per thousand salt content and not exceeding three meters in depth; **"saltwater wetlands"** means those coastal areas along sheltered shorelines characterized by halophilic hydrophytes and macroalgae extending from extreme low tide to an area above extreme high tide which is influenced by sea spray or tidally induced water table changes;

(20) **"feasible and prudent"** means consistent with sound engineering practice and not causing environmental, social, or economic problems that outweigh the public benefit to be derived from compliance with the standard which is modified by the term "feasible and prudent";

(21) **"including"** means including but not limited to;

(22) **"major energy facility"** includes marine service bases and storage depots, pipelines and rights-of-way, drilling rigs and platforms, petroleum or coal separation, treatment, or storage facilities, liquid natural gas plants and terminals, oil terminals and other port development for the transfer of energy products, petrochemical plants, refineries and associated facilities, hydroelectric projects, other electric generating plants, transmission lines, uranium enrichment or nuclear fuel processing

facilities, and geothermal facilities; "major energy facility" means a development of more than local concern carried out in, or in close proximity to, the coastal area, which meets one or more of the following criteria:

(A) a facility required to support energy operations for exploration or production purposes;

(B) a facility used to produce, convert, process, or store energy resources or marketable products;

(C) a facility used to transfer, transport, import, or export energy resources or marketable products;

(D) a facility used for in-state energy use; or

(E) a facility used primarily for the manufacture, production, or assembly of equipment, machinery, products, or devices which are involved in any activity described in (A) - (D) of this paragraph;

(23) "significant amendment" means an amendment to an approved district program which

(A) results in a major revision, addition or deletion to the policies or implementation methods or authorities included in the district program under 6 AAC 85.090 and 6 AAC 85.100;

(B) alters the district boundaries, other than by technical adjustments;

(C) designates an area which merits special attention or alters an existing area which merits special attention designation; or

(D) restricts or excludes a use of state concern not previously restricted or excluded;

(24) "area which merits special attention" has the same meaning as in AS 46.40.210(1);

(25) "village" has the same meaning as in AS 46.40.180(d).

(b) In AS 44.19.155, "deputy commissioner" includes assistant commissioners of state agencies. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71; am 9/9/81, Register 79; am 6/9/85, Register 94; am 10/16/87, Register 104)

Authority: AS 44.19.160(4)  
AS 44.19.161  
AS 46.40.010(c)  
AS 46.40.030  
AS 46.40.040  
AS 46.40.060  
AS 46.40.070

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**TITLE 6. GOVERNOR'S OFFICE  
ALASKA COASTAL POLICY COUNCIL**

**CHAPTER 85. GUIDELINES FOR DISTRICT  
COASTAL MANAGEMENT PROGRAMS**

**Article**

1. Program Elements (6 AAC 85.010-6 AAC 85.110)
2. Government Process (6 AAC 85.120-6 AAC 85.185)
3. General Provisions (6 AAC 85.900)

**Article 1. Program Elements**

**Section**

10. Coverage of chapter
20. Needs, objectives, and goals
30. Organization
40. Boundaries
50. Resource inventory
60. Resource analysis

**Section**

70. Subject uses
80. Proper and improper uses
90. Policies
100. Implementation
110. Public participation

**6 AAC 85.010. COVERAGE OF CHAPTER.** (a) This chapter contains guidelines for the use of and application by districts in carrying out their responsibilities under the Alaska Coastal Management Act (AS 46.40 and AS 44.19.891 - 44.19.894).

(b) At a minimum, the council will review this chapter annually. (Eff. 7/18/78, Register 67)

Authority: AS 44.19.161  
AS 46.40.030  
AS 46.40.040

**6 AAC 85.020. NEEDS, OBJECTIVES AND GOALS.** Each district program must include a statement of the district's overall coastal management needs, objectives, or goals, or the district's comprehensive land and resource use plan. (Eff. 7/18/78, Register 67)

Authority: AS 44.19.161  
AS 46.40.030  
AS 46.40.040

**6 AAC 85.030. ORGANIZATION.** (a) Each district program must include a description of the district program organization for coastal management. Budgetary and staff needs and, where appropriate, a schedule for necessary reorganization must be included.

(b) The district program must clearly state the name and address of the individual or organization within the district that is assigned to receive from the state notice of proposed activities and authorizations affecting the district, and that is responsible for responding to the state on consistency reviews. (Eff. 7/18/78, Register 67; am 3/2/84, Register 89)

Authority: AS 44.19.161  
AS 46.40.030  
AS 46.40.040

**6 AAC 85.040. BOUNDARIES.** (a) Each district must include a map of the boundaries of the coastal area within the district subject to the district program. Boundaries must enclose those lands which would reasonably be included in the coastal area and subject to the district program if they were not subject to the exclusive jurisdiction of the federal government.

(b) Before council approval of the district program, initial boundaries must be based on Biophysical Boundaries of Alaska's Coastal Zone (published by the Office of Coastal Management and the Alaska Department of Fish and Game, 1978, a copy of which is on file with the Office of the Lieutenant Governor, and which is available from the Office of Coastal Management) and must include the zone of direct interaction and the zone of direct influence.

(c) Final boundaries of the coastal area subject to the district program may diverge from the initial boundaries if the final boundaries

(1) extend inland and seaward to the extent necessary to manage uses and activities that have or are likely to have a direct and significant impact on marine coastal water; and

(2) include all transitional and intertidal areas, salt marshes, saltwater wetlands, islands, and beaches.

(d) If the criteria in (c) of this section are met, final boundaries of the coastal area subject to the district program may be based on political jurisdiction, cultural features, planning areas, watersheds, topographic features, uniform setbacks, or the dependency of uses and activities on water access.

(e) The boundaries of the district must be sufficiently compatible with those of adjoining areas to allow consistent administration of the Alaska coastal management program. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

Authority: AS 44.19.161  
AS 46.40.040

**6 AAC 85.050. RESOURCE INVENTORY.** Each district program must include a resource inventory which describes, in a manner sufficient for program development and implementation

(1) habitats listed in 6 AAC 80.130 that are found within or adjacent to the district;

(2) major cultural resources that are found within or adjacent to the district;

(3) major land and water uses and activities which are conducted within or adjacent to the district;

(4) major land and resource ownership and management responsibilities within or adjacent to the district; and

(5) major historic, prehistoric, and archaeological resources which are found within or adjacent to the district. (Eff. 7/18/78, Register 67)

Authority: AS 44.19.161  
AS 46.40.030  
AS 46.40.040

**6 AAC 85.060. RESOURCE ANALYSIS.** Each district program must include a resource analysis which describes, in a manner sufficient for program development and implementation

(1) significant anticipated changes in the matters identified under 6 AAC 85.050;

(2) an evaluation of the environmental capability and sensitivity of resources and habitats, including cultural resources, for land and water uses and activities; and

(3) an assessment of the present and anticipated needs and demands for coastal habitats and resources. (Eff. 7/18/78, Register 67)

Authority: AS 44.19.161 AS 46.40.040  
AS 46.40.030

**6 AAC 85.070. SUBJECT USES.** Each district program must include a description of the land and water uses and activities which are subject to the district program. The uses and activities mentioned in 6 AAC 80 are, if applicable, subject to the district program. (Eff. 7/18/78, Register 67)

Authority: AS 44.19.161  
AS 46.40.030  
AS 46.40.040

**6 AAC 85.080. PROPER AND IMPROPER USES.** Each district program must include a description of the uses and activities, including uses of state concern, that will be considered proper, and the uses and activities, including uses of state concern, that will be considered improper within the coastal area, including land and water use designations. This description must be based on the district's statement of overall needs, objectives, or goals, or the district's comprehensive land and resource use plan, under 6 AAC 85.020, and must be consistent with the standards contained in 6 AAC 80. (Eff. 7/18/78, Register 67)

Authority: AS 44.19.161  
AS 46.40.030  
AS 46.40.040

**6 AAC 85.090. POLICIES.** (a) Each district program must include the policies that will be applied to land and water uses and activities subject to the district program, and the process which will be used to determine whether specific land and water uses and activities will be allowed. It shall be the general policy of the district to approve specific proposals for uses and activities within areas designated for those uses and activities under 6 AAC 85.080. Districts shall use existing means appropriate for the evaluation of specific proposals to the greatest extent feasible and prudent. Policies and procedures under this section must be consistent with the standards contained in 6 AAC 80 and must meet the following criteria:

- (1) comprehensiveness, so as to apply to all uses, activities, and areas in need of management;
- (2) specificity, so as to allow clear understanding of who will be affected by the district program, how they will be affected, and whether specific proposals for land and water uses

and activities will be allowed; and

(3) enforceability, so as to insure implementation of and adherence to the district program.

(b) All policies or enforceable rules of the district program must be clearly identified and located in a single section of the program document. The identified policies or enforceable rules will provide the basis for all determinations of consistency with the approved district program. (Eff. 7/18/78, Register 67; am 3/2/84, Register 89)

Authority: AS 44.19.161  
AS 46.40.030  
AS 46.40.040

**6 AAC 85.100. IMPLEMENTATION.** Each district program must include a description of the methods and authority which will be used to implement the district program. Methods and authority must be adequate to insure program implementation, and any additional methods or authority which are required must be specified. Methods and authority include land and water use plans, municipal ordinances and resolutions, (including shoreline, zoning, and subdivision ordinances and building codes), state and federal statutes and regulations, capital improvement programs, the purchase, sale, lease, or exchange of coastal land and water resources, cooperative agreements, tax exemptions for nondevelopment purchase of development rights, memoranda of understanding, and coordinated project or permit review procedures. (Eff. 7/18/78, Register 67)

Authority: AS 44.19.161  
AS 46.40.030  
AS 46.40.040

**6 AAC 85.110. PUBLIC PARTICIPATION.** Each district program must include evidence of effective and significant opportunities for public participation in program development under 6 AAC 85.130. (Eff. 7/18/78, Register 67)

Authority: AS 44.19.161  
AS 46.40.030

## Article 2. Government Process

### Section

- 120. Submittals to council
- 130. Public involvement during program development
- 140. Coordination and review
- 145. Review of public hearing draft
- 150. Council review of district programs
- 170. Mediation
- 180. Effective date and local adoption
- 185. Petition for amendment to an approved district program regarding uses of state concern

6 AAC 85.120. SUBMITTALS TO COUNCIL. (a) During program development, districts shall submit brief annual progress reports concerning program development to the council.

(b) Following adoption of the final program under 6 AAC 85.180(b), districts shall submit brief annual progress reports concerning program implementation to the council. The council will furnish copies of annual progress reports to any interested party upon request. An annual progress report must be submitted by December 31 of each year and must include

(1) a statement describing the district's progress in fulfilling any conditions stipulated at the time of the council's approval of the district program;

(2) a summary, on forms provided by the Office of Coastal Management, of significant district land and water use decisions and enforcement actions taken during the year;

(3) a description of routine program implementation during the year;

(4) additional details of the district program implementation, including the district's response to council recommendations made either at the time the district program was approved or as part of the council's continuing review after approval of the program; and

(5) identification of any problems encountered in implementing the district program and recommendations for solution of the problems.

(c) After conceptual approval as described in (d) of this section, a district program must be submitted to the council for approval as provided in 6 AAC 85.150, and a significant amendment to a district program must be submitted to the council, through the Office of Coastal Management, for approval. The Office of Coastal Management will review proposed amendments to determine if council approval is

District annual reports

Significant amendment

required. The coastal resource district may make a recommendation on whether council approval of a proposed amendment is required when the amendment to the district program is submitted to the office. If the office determines that council approval is required, the procedures set out in 6 AAC 85.150 apply. The office's determination is subject to council review when requested by a council member or the coastal resource district. Amendments to the district program determined not to require council approval are matters of routine program implementation. Matters of routine program implementation will be considered incorporated into the district program without further council action. Timely notification of matters of routine program implementation will be made to the council and appropriate state and federal agencies by the Office of Coastal Management.

Routine program  
implementation

(d) Before submitting a district program or a significant amendment to a district program for approval, a district shall conceptually approve the district program or amendment by resolution of the district's governing body. However, a coastal resource service area shall conceptually approve the district program or amendment by resolution of the coastal resource service area board. (Eff. 7/18/78, Register 67; am 5/2/81, Register 78; am 9/9/81, Register 79; am 3/2/84, Register 89)

Conceptual approval

Authority: AS 44.19.160 AS 46.40.040  
AS 44.19.162 AS 46.40.060  
AS 46.40.010 AS 46.40.070  
AS 46.40.030

**6 AAC 85.130. PUBLIC INVOLVEMENT DURING PROGRAM DEVELOPMENT.** (a) Districts shall provide publicly advertised opportunities for public involvement in the development of all program elements contained in 6 AAC 85.020 - 6 AAC 85.110.

(b) No less than two public meetings must be held within the district during program development to inform the public and receive comments concerning the program. A brief summary or report of the matters considered at the public meeting held under this subsection must be prepared by the district, made available to the public, and retained for inclusion in the record file referred to in 6 AAC 85.150.

(c) Districts shall provide the public, in a timely manner and in understandable form, information explaining the district coastal management program, the requirements of public participation in program development, how and when the

public may participate in program development, what information is available, and where that information may be obtained. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71; am 3/2/84, Register 89)

Authority: AS 44.19.161  
AS 46.40.040

**6 AAC 85.140. COORDINATION AND REVIEW.**

Districts shall provide opportunities for coordination and review by federal, state, and local governmental agencies, including adjacent districts, and other persons with a significant interest in coastal resources or who are conducting or may conduct uses and activities that have or are likely to have a direct and significant impact on the district's coastal area. (Eff. 7/18/78, Register 67)

Authority: AS 44.19.161  
AS 46.40.030  
AS 46.40.040

**6 AAC 85.145. REVIEW OF PUBLIC HEARING DRAFT.** (a) This section applies to district programs and significant amendments to district programs.

(b) A public hearing draft of the district program must be distributed to all parties identified as having a significant interest in the district program, including those parties described in 6 AAC 85.140. The mailing list of these parties must be reviewed and approved by the Office of Coastal Management. The public hearing draft must include all elements to be included in the district program when it is conceptually approved. At least a 60-day review period must be provided. A transmittal letter that states the comment deadline and the recipient of comments must be sent with the document. One or more review meetings may be sponsored by the Office of Coastal Management, with the concurrence of the district.

60 day review

(c) Public notice of the availability of the document must be given to any person who has requested it in writing, and through conspicuous advertisement in a newspaper of general circulation within the district. Notice must also be posted in villages and municipalities within the district. Comments received by the deadline must be considered by the district and,

Public notice

where appropriate, incorporated into the plan before conceptual approval.

(d) A public hearing on the district program must be held before conceptual approval is given and no sooner than 30 days after distribution and notice of the public hearing draft under (b) and (c) of this section. Notice specifying time and place of the hearing must be provided to all who were provided the public hearing draft, and also by conspicuous advertisement in a newspaper of general circulation within the district and by advertisement in a newspaper of general circulation within the state. Notice must be given at least 30 days before the hearing is held.

Public hearing

(e) At the public hearing, each person must be given the opportunity to present statements orally or in writing. Districts shall insure that translation into the appropriate native languages is provided. A written transcript or electronic recording of the public hearing must be provided to the council. Comments offered at the hearing must be considered by the district and, where appropriate, incorporated into the plan before conceptual approval.

(f) Districts must give conceptual approval to their district program before the program is submitted to the council. District programs must be adopted by resolution of the district's governing body except that coastal resource service area plans must be adopted by resolution of the board. (Eff. 3/2/84, Register 89)

Conceptual approval

Authority: AS 44.19.161  
AS 46.40.030  
AS 46.40.040

**6 AAC 85.150. COUNCIL REVIEW OF DISTRICT PROGRAMS.** (a) A district may prepare findings and conclusions on its program, based on AS 46.40.030, 46.40.060, 46.40.080, and the standards set out in this chapter.

(b) At least one copy of the district's conceptually approved program, including any changes made to the public hearing draft, and the district's findings and conclusions or a written statement indicating that the district has elected not to prepare findings and conclusions, must be forwarded to the Office of Coastal Management as soon as practicable after conceptual approval. The district shall also submit a recording or transcript of the public hearing held under 6 AAC 85.145(d), a list of names and addresses of those who testified, and copies of all

Concept-approved  
draft

materials on which it based its decision.

(c) Within 30 days after the district's submission to the Office of Coastal Management under (b) of this section, the office will prepare findings of fact and conclusions based on authorities cited in this section, to comprise its recommendation on the program. Any material on which the recommendation is based must be cited and placed in the district record file described in (f) of this section.

**Preliminary findings**

(d) Before the Office of Coastal Management will submit a program to the council review, the district must submit copies of its conceptually approved program to the office in sufficient number to allow distribution to the office's mailing list, the council, and persons who testified at the public hearing or presented written comments on the public hearing draft.

(e) The Office of Coastal Management will distribute the district program, its recommendations, and the district's recommendations, if any, to those identified in (d) of this section and to any other person who has requested this material in writing. This material will be distributed as soon as practicable after the 30-day period allowed in (c) of this section.

(f) A record file containing all material submitted by the district under this section, the Office of Coastal Management's recommendations under this section, and all material on which the recommendation was based must be maintained at the office and at a convenient location within the district.

**45 day review**

(g) Within 45 days after the distribution of the Office of Coastal Management's recommendation, any person may submit comments on the recommendation. Comments which are not received within the 45-day period will not be considered.

(h) Within 25 days after the deadline for submitting comments to the council under (g) of this section, the Office of Coastal Management will submit its response to the comments and, if appropriate, revised findings and conclusions to the council and to all who responded to the original findings and conclusions. All comments and additional material submitted must be placed in the record files.

**Revised findings**

(i) Within a total of 45 days after the deadline in (g) of this section, the council will approve or disapprove the district program, in whole or in part. The council's decision will contain findings and conclusions based on this chapter, the standards contained in 6 AAC 80, AS 46.40.060, and 46.40.070. The council's findings and conclusions will be based on material contained in the record file. The council will, in its discretion, adopt the findings and conclusions of the Office of Coastal Management by reference.

**Council's decision**

(j) The council will serve its decision under this section on all persons who submitted timely comments on the staff recommendation under (g) of this section, to all persons who testified or submitted timely written statements at the public hearing held under 6 AAC 85 145(d), and to all persons who have requested a copy of the decision in writing. Notice of the council's action also must be published, at a minimum, in newspaper of general circulation in the district. (Eff. 7/18/78, Register 67; am 1/22/81, Register 77; am 3/2/84, Register 89)

Authority: AS 44.19.160 AS 44.19.161  
AS 46.40.010 AS 46.40.030  
AS 46.40.040

**6 AAC 85.170. MEDIATION.** (a) If the council's decision under 6 AAC 85.150(i) disapproves, in whole or in part, the district program, the disapproved portion must be submitted to mediation as required by AS 46.40.060(b). Before the initial mediation session, the council will, in its discretion, call for one or more public hearings in the district concerned, for the purpose of discussing those portions of the program subject to mediation. Public hearings must be preceded by 30 days' notice. If public hearings are held, districts shall insure that, where reasonably requested, translation into the appropriate Native languages is provided. All public hearings must be electronically recorded. Oral or written testimony may be submitted, except that unduly repetitious testimony may be excluded. The oral testimony and written submissions constitute the hearing record, which must be transmitted to the mediator. Mediation sessions will be conducted as follows:

(1) The parties to the mediation will be the council and the district. The parties shall, within 10 days after the date of the council's decision under 6 AAC 85.150(i), agree upon the selection of a mediator. If the parties cannot agree, they shall immediately, in writing, ask the Federal Mediation and Conciliation Service to appoint a mediator. If that mediator is unacceptable to either party, that party shall request the Federal Mediation and Conciliation Service to submit to the parties the names of three qualified mediators. Upon receipt of these names, each party shall strike one name from the list and the remaining name will be the mediator. A mediator shall perform his or her duties in a manner consistent with the standards of conduct set out in the Code of Professional Conduct for Labor Mediators, referred to in and set out as an appendix to 29 C.F.R. 1400.735-20.

(2) Mediation sessions must be held within the district. The mediator shall schedule the sessions, with due regard for the convenience of the parties, upon at least seven days' notice, except that the parties may, by mutual consent, waive the notice period. The parties shall mutually agree upon the place of the meeting.

Mediation held  
in district

(3) The mediator shall schedule the first mediation session to be held as soon as possible after he or she has been selected. At the initial session, the mediator shall establish reasonable rules of procedure. Mediation sessions must be conducted in a manner so that the parties will have the assurance and confidence that information disclosed to the mediator will remain confidential. The mediator shall determine the length and frequency of mediation sessions; however, if an accord is not reached within 60 days after the initial session, an impasse will be declared by the mediator. By mutual consent of the parties and the mediator, this deadline may be extended for a period not to exceed an additional 30 days.

Accord or  
impasse

(4) If the mediator determines that an impasse has been reached, he or she shall notify the parties in writing within 10 days after the determination is made.

(5) If the mediator determines that an accord has been reached, he or she shall direct the parties to set out in writing the terms of the agreement. This agreement, to be signed by the parties, signifies the final settlement of outstanding disputes, subject to ratification at a public meeting by the official bodies of each party. With the approval of the parties, mediation may be used to resolve any differences which may arise as the result of the public meetings. After ratification under (a)(5) of this section, the agreement may be set aside only for fraud, misconduct, or gross mistake.

Terms of  
agreement

(b) If the council and the district reach accord in mediation sessions held under (a) of this section, the council will, within 20 days after ratification by both parties, serve its modified decision, in the form of an order, on the district and all persons who were served with the council's decision under 6 AAC 85.150(i), and will place the modified decision in the record file. The modified decision will contain findings and conclusions, based on the record file and additional material presented during mediation necessary to demonstrate that the modified decision is consistent with this chapter, and the standards contained in 6 AAC 80, AS 46.40.060, or 46.40.070.

(c) If the council and the district do not reach an accord, the council will, within 20 days after a determination that an impasse has been reached, set the matter for an adjudicatory hearing under AS 46.40.060(c). Notice of the hearing must be

Adjudicatory  
hearing

served on the district and on all persons who were served with the council's decision under 6 AAC 85.150(i). Any person served with notice of the hearing under this subsection may intervene as a party to the hearing. (Eff. 3/2/84, Register 89)

Authority: AS 44.19.160 AS 46.40.030  
AS 46.19.167 AS 46.40.040  
AS 46.40.010

**6 AAC 85.180. EFFECTIVE DATE AND LOCAL ADOPTION.** (a) A district program or significant amendment to a district program takes effect as part of the Alaska Coastal Management Program upon the lieutenant governor's filing of the council's decision approving the district program or significant amendment. A change or an amendment in the district program resulting from mediation under AS 46.40.060(b) and 6 AAC 85.170(a) and (b) or from adjudication under AS 46.40.060(c) and 6 AAC 85.170(c) takes effect upon the lieutenant governor's filing of the council's order either ratifying the results of the mediation or determining the adjudication. Filing will take place after local adoption as provided in (b) of this section.

Lt. Governor  
filing

Local adoption

(b) Within 90 days after the date a district program or significant amendment is approved by the council under 6 AAC 85.150, the district shall, by ordinance or resolution, whichever is required by other applicable provision of law, adopt the district program or amendment approved by the council. However, a coastal resource service area shall adopt the district program by resolution of the coastal resource service area board. In the same manner, a change in a district program resulting from mediation under AS 46.40.060(b) and 6 AAC 85.170(a) and (b) or from adjudication under AS 46.40.060(c) and 6 AAC 85.170(c) must be adopted by the district following the council's order under 6 AAC 85.170 (b) or (c) ratifying the results of the mediation or determining the adjudication. (Eff. 3/2/84, Register 89)

Authority: AS 44.19.160 AS 46.40.040  
AS 46.40.010 AS 46.40.060  
AS 46.40.030 AS 46.40.070

**6 AAC 85.185. PETITION FOR AMENDMENT TO AN APPROVED DISTRICT PROGRAM REGARDING USES OF STATE CONCERN.**

(a) A state agency or other interested party may submit a petition for amendment to a district program if there is substantial evidence that a use of state concern, as defined in AS 46.40.210(6), is arbitrarily or unreasonably restricted or excluded by the district program. The petitioner must submit the petition to the division of governmental coordination (DGC), in the office of management and budget, office of the Governor, and to the district. The petition must include the following information:

(1) identification of one or more uses of state concern that are arbitrarily or unreasonably restricted or excluded by implementation of the program;

(2) specific documentation of how the use of state concern is being arbitrarily or unreasonably restricted or excluded;

(3) description of a significant change in circumstances or new information that has arisen since program approval, which provides a reasonable basis for concluding that the district program arbitrarily or unreasonably restricts or excludes a use of state concern; and

(4) the proposed program amendment.

(b) DGC will review the petition for completeness and distribute it to appropriate state agencies. Within 30 days after the petition is submitted to DGC, DGC will, in consultation with the district, and the petitioner, attempt to resolve the petitioner's concerns without initiating a program amendment. DGC will extend the 30-day consultation period by 20 days at the request of the district, the involved state agencies or the petitioner. DGC will, in its discretion, extend the consultation period by up to 60 days if more time is needed for all parties to assemble.

(c) If the concerns are not resolved through consultation and if DGC, in consultation with the district, the involved state agencies, and the petitioner, determines that after original program approval a significant change in circumstances has occurred or new information has developed that might cause the program to arbitrarily or unreasonably restrict or exclude a use of state concern, the procedure described in (d) of this section applies.

(d) If the criteria in (c) of this section are met, then within 20 days after the end of the consultation period specified in (b) of this section, DGC will distribute the petition, DGC's evaluation of the proposed amendment, and the district's response to the petition, to the council and to all parties identified as having a significant interest in the district program,

including those parties described in 6 AAC 85.140. DGC's evaluation will include:

- (1) a summary of the proposed program amendment;
- (2) an analysis of the evidence that the requirements in (c) have been satisfied; and
- (3) an evaluation of the amendment's consistency with the Alaska Coastal Management Program (ACMP).

(e) If the criteria established in (c) of this section are not met, then DGC will report this finding to the council. DGC's finding will be distributed to all parties involved during the consultation period specified in (b) of this section and to the council. DGC's finding is subject to council review if a review is requested by a council member.

(f) The procedures set out in 6 AAC 85.150(g) - (j) for review of district programs apply to council review of a petition under this section.

(g) The procedures set out in 6 AAC 85.170 for mediation and adjudicatory hearings apply if the district is dissatisfied with the council's decision on the petition.

(h) An amendment to a district program approved by the council under (f) of this section takes effect as part of the ACMP upon the lieutenant governor's filing of the council's decision approving the amendment. If mediation or an adjudicatory hearing under (g) of this section occurs, an amendment to a district program resulting from mediation under AS 46.40.060(b) and 6 AAC 85.170(a) and (b) or from adjudication under AS 46.40.060(c) and 6 AAC 85.170(c) takes effect upon the lieutenant governor's filing of the council's order either ratifying the results of the mediation or determining the adjudication, respectively. (Eff. 8/23/86, Register 99)

Authority: AS 44.19.160      AS 46.40.040  
          AS 44.19.161      AS 46.40.060  
          AS 46.40.010

**6 AAC 85.900. DEFINITIONS.** Unless the context indicates otherwise, in this chapter

(1) "**beaches**" means the area affected by wave action directly from the sea;

(2) "**marine coastal water**" means water adjacent to shorelines which contains a measurable quantity of seawater, including sounds, bays, lagoons, bayous, ponds and estuaries, and the living resources which are dependent on these bodies

of water;

(3) "**council**" means the Alaska Coastal Policy Council;

(4) "**district**" means a coastal resource district as defined in AS 46.40.210(2);

(5) "**district program**" means a district coastal management program;

(6) "**islands**" means bodies of land surrounded by water on all sides; interior portions of major islands may be excluded from the coastal area if uses of these islands do not cause direct and significant impacts on coastal waters;

(7) "**saltwater wetlands**" has the same meaning as that contained in 6 AAC 80.900(19);

(8) "**transitional and intertidal areas**" means areas subject to periodic or occasional inundation by tides, including coastal floodplains, storm surge areas, tsunami and hurricane zones, and washover channels;

(9) "**feasible and prudent**" has the same meaning as in 6 AAC 80.900;

(10) "**including**" has the same meaning as in 6 AAC 80.900; and

(11) "**significant amendment**" means an amendment to an approved district program which

(A) results in a major revision, addition or deletion to the policies or implementation methods or authorities included in the district program under 6 AAC 85.090 and 6 AAC 85.100;

(B) alters the district boundaries, other than by technical adjustments;

(C) designates an area which merits special attention or alters an existing area which merits special attention designation; or

(D) restricts or excludes a use of state concern not previously restricted or excluded. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71; am 9/9/81, Register 79; am 3/2/84, Register 89)

Authority: AS 44.19.160      AS 46.40.040  
                 AS 44.19.161      AS 46.40.060  
                 AS 46.40.010(c)    AS 46.40.070

H

## **OTHER DEPARTMENT STATUTES AND REGULATIONS THAT ARE INCORPORATED INTO THE ACMP**

The Alaska Forest Resources and Practices Act and Regulations are incorporated into the ACMP under 6 AAC 80.100 with respect to the harvest and processing of timber.

Likewise, Alaska Department of Environmental Conservation statutes and regulations are incorporated into the ACMP under 6 AAC 80.140 with respect to the protection of air, land, and water quality.

Listed below are the citations for statutes and regulations:

### **Alaska Department of Natural Resources**

Alaska Forest Resources and Practices Act  
AS 41.17.010 - .950

Alaska Forest Resources and Practices Regulations  
11 AAC 95.185 - .255

### **Department of Environmental Conservation**

Powers of the department.  
Solid Waste Management  
Wastewater Discharge  
AS 46.03

Oil and Hazardous Substance Pollution Control  
AS 46.04

Hazardous Substance Release Control  
AS 46.09

Air Quality Control  
AS 46.14



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# *Alaska Coastal Management Program*

## *Documents*

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The State statutes, regulations and program documents, coupled with the coastal district program documents, constitute the Alaska Coastal Management Program. State ACMP standards (6 AAC 80) and district program enforceable policies form the basis for ACMP consistency reviews.

### **STATE DOCUMENTS**

State of Alaska Coastal Management Program and Final Environmental Impact Statement, May 1979  
National Oceanic and Atmospheric Administration Findings and Approval of the Alaska Coastal Management Program, July 6, 1979  
Coastal Zone Boundaries of Alaska, June 1988 (updated June 1991)  
Alaska Statutes Title 44.19.145-152 and Title 46.40  
Alaska Administrative Code Title 6, Chapters 50, 80, and 85

### **COASTAL DISTRICT PROGRAM DOCUMENTS**

Each district program original effective date and subsequent revision dates are indicated in parentheses. Documents containing district policies enforceable in ACMP consistency reviews are indicated with an asterisk.

#### **Aleutians East Borough (1989; 1992)**

An Analysis of Potential Development and Environmental Sensitivity in the Aleutians East Coastal Resource Service Area, Volume III, July 1985  
Resource Inventory for the Aleutians East Coastal Resource Service Area, Volume II, June 1986  
Aleutians East Borough Akutan Attachment, Maps A, B, C, D, E, H, June 1990  
Supplemental Resource Inventory for Port Heiden/Stepovak Bay, Maps 1-5, January 1991  
Aleutians East Borough Coastal Management Program, April 1993\*

#### **Aleutians West Coastal Resource Service Area (1991)**

Annotated Bibliography of Resource Information for AWCRSA, June 1988  
AWCRSA Vol. II Resource Maps, 1989  
AWCRSA Vol. II Resource Inventory & Analysis, March 1990  
AWCRSA Vol III Coastal Management Plan, Final Approved Plan, December 1991\*

**Municipality of Anchorage (1981; 1982; 1987)**

Anchorage Coastal Resource Atlas, December 1980  
Anchorage Coastal Scenic Resources and Public Access Plan, 1981  
Anchorage Wetlands Management Plan, February 1982\*  
Anchorage Coastal Management Program, July 1987\*

**City of Angoon (1990; 1992)**

Angoon Coastal Management Program, Final Approved Plan, June 1992\*  
Areas Meriting Special Attention Plan for Mitchell, Hood and Chaik-Whitewater  
Bays, Final Approved Plan, June 1992\*  
Note: Both plans are contained in a single binder.

**Annette Island Indian Reserve (1980)**

Annette Island Coastal Management Program, November 1979\*  
Program Amendment, February 1981\*

**Areas Which Merit Special Attention (1983)**

Areas Which Merit Special Attention in Southern Alaska, July 1983\*

**Bering Straits Coastal Resource Service Area (1989)**

Bering Straits Resource Inventory, Volume 1, October 1984  
Bering Straits Conceptually Approved, Resource Analysis, Volume 2, October 1986  
Bering Straits Coastal Management Plan, Volume 3, June 1991\*

**City of Bethel (1984)**

City of Bethel Coastal Management Plan, January 1984\*  
City of Bethel Drainage Management Plan, December 1985\*

**Bristol Bay Borough (1984)**

Bristol Bay Borough Coastal Management Program, January 1993\*

**Bristol Bay Coastal Resource Service Area (CRSA) (1987; 1990)**

Bristol Bay CRSA Coastal Management Program, Volume 1, Resource Inventory,  
January 1984  
Bristol Bay CRSA Coastal Management Program, Volume 2, Management Plan,  
February 1987\*  
Nushagak and Mulchatna Rivers Recreation Management Plan, August 1990\*

**Ceñaliulriit Coastal Resource Service Area (1985)**

Ceñaliulriit Coastal Management Program, March 1985\*

**City of Cordova and Eyak Lake AMSA (1986)**

Eyak Lake Area Which Merits Special Attention (AMSA) Plan, March 1985\*  
Coastal Policy Council Order of Approval for the Eyak Lake AMSA Plan,  
May 1986\*  
Cordova Coastal Management Program, November 1986\*

**City of Craig (1985)**

Craig Coastal Management Program, July 1984\*

Coastal Policy Council Order of Approval, December 1984\*

Craig boundary change (Routine Program Implementation), May 1990

**City of Haines (1980; 1982; 1993)**

City of Haines, Port Chilkoot/Portage Cove Area Meriting Special Attention (waterfront design study), August 1982\*

Haines Coastal Management Program, September 1993\*

**City of Hoonah (1984)**

Hoonah Coastal Management Program, February 1984\*

**City of Hydaburg (1983)**

Hydaburg Coastal Management Program, January 1983\*

Coastal Policy Council Order of Approval, April 1983\*

**City and Borough of Juneau (1986; 1992; 1993)**

Downtown Waterfront Plan, Fall 1985

Juneau Coastal Management Program, November 1986\*

Policy Revision (RPI), October 1992\*

Juneau Wetlands Management Plan, February 1991\*

CPC Order of Approval, October 1991\*

Revisions to Wetlands Classifications (RPI), June 1993\*

**City of Kake (1985)**

Kake Coastal Management Program, June 1984\*

**Kenai Peninsula Borough (1990; 1992)**

Kenai Peninsula Borough Coastal Management Program, June 1990\*

Port Graham/Nanwalek Area Which Merits Special Attention Plan, March 1992\*

**Ketchikan Gateway Borough (1984)**

Ketchikan Gateway Borough Coastal Management Program, July 1983\*

Ketchikan Gateway Borough Coastal Management Program, revised pages, April 1984\*

Ketchikan CMP District Abstract with Enforceable Policies, December 1988\*

**City of Klawock (1985)**

Klawock Coastal Management Plan, June 1984\*

Coastal Policy Council Order of Approval, December 1984\*

**Kodiak Island Borough (1984)**

Kodiak Island Borough Coastal Management Program, Resource Maps, June 1981

Kodiak Island Borough Coastal Management Program, Progress Report Reprint  
(resource inventory), June 1983

Kodiak Island Borough Coastal Management Program, June 1983 (reprinted 1988)\*

**Matanuska-Susitna Borough (1984; 1993)**

Matanuska-Susitna Borough Coastal Management Plan, September 1987\*

Matanuska-Susitna Borough Coastal Management Plan Appendices, September 1987  
Coastal Policy Council Order of Approval, Amendment to Coastal Habitats  
Policy 2, March 1988\*

Point MacKenzie AMSA, May 1993\*

Coastal Policy Council Order of Approval, February 9, 1993\*

**City of Nome (1984)**

Nome Coastal Management Program, Background Report, Part I, July 1981

Nome Coastal Management Program, October 1983\*

Minor Amendments to Land Use Designations, July 1984

**North Slope Borough (1988)**

North Slope Borough Coastal Management Program, Background Report, 1984

North Slope Borough Coastal Management Program, Resource Atlas, July 1984

North Slope Borough Coastal Management Program, April 1988\*

**Northwest Arctic Borough (1989)**

NANA Region Coastal Management Plan, October 1985, Volumes 1-3\*

Coastal Policy Council Order of Approval, May 22, 1986\*

NANA CRSA Coastal Management Program Policies, Chapter 6.0 revised, December 1989\*

Northwest Arctic Borough Coastal Management Program Policies A-1 and G-6 (revised,  
December 1989\*

**City of Pelican (1984; 1994)**

Pelican Coastal Management Program, January 1994\*

**City and Borough of Sitka (1985; 1989; 1993)**

Sitka District Coastal Management Program, May 1989\*

Sitka Public Use Management Plan, June 1993\*

**City of Skagway (1983; 1991)**

Skagway Coastal Management Program, May 1991\*

Port of Skagway and Skagway River AMSAs, April 1991 with replacement  
pages inserted 1993\*

**City of St. Paul (1989)**

St. Paul Coastal Management Plan, June 1988\*

**City of Thorne Bay (1992)**

Thorne Bay District Coastal Management Program, September 1992\*

**City of Valdez (1987)**

Valdez Coastal Management Program, September 1986\*

Program Addendum, January 1987\*

**City of Whittier (1990)**

Whittier Coastal Management Plan, September 1989\*

Coastal Policy Council Order of Approval, September 1989\*

**City of Yakutat (1981)**

Yakutat Coastal Management Program, January 1981\*



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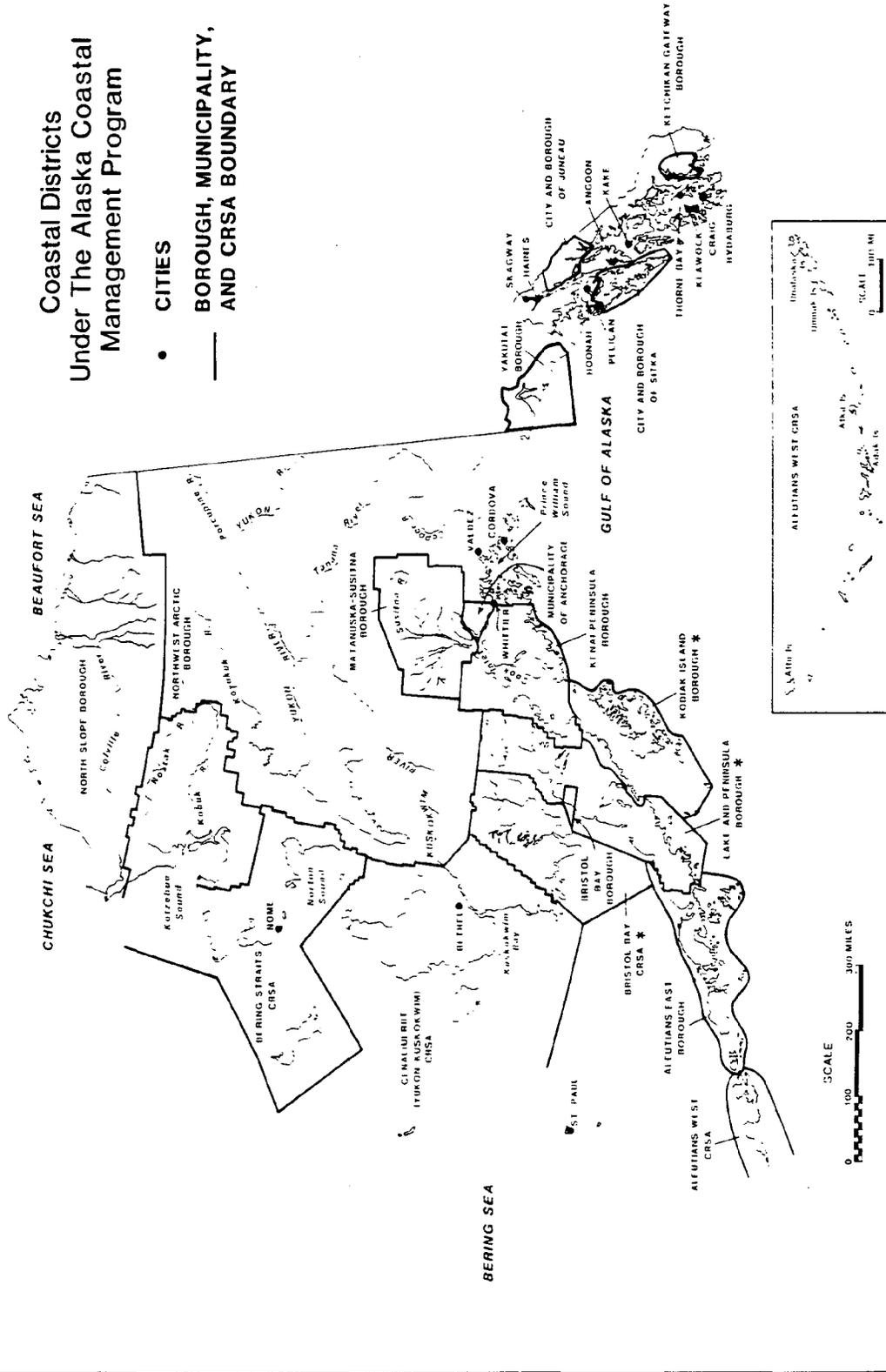
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# Coastal Districts Under The Alaska Coastal Management Program

- CITIES
- BOROUGH, MUNICIPALITY,  
AND CRSA BOUNDARY



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## Index of Legal Opinions and Memoranda Related to Alaska Coastal Management Program

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1990 AMENDMENTS  
TO THE  
*COASTAL ZONE MANAGEMENT ACT:*  
*A SUMMARY*

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Office of Ocean and Coastal Resource Management  
National Oceanic and Atmospheric Administration  
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## COASTAL ZONE MANAGEMENT ACT REAUTHORIZATION

On November 5, 1990, the President signed the Coastal Zone Management Act Amendments of 1990 (the Act), which reauthorized for five years the coastal zone management and estuarine research reserve programs. Approved by Congress just before it recessed for the November elections, the Act is designed to modernize and strengthen the Coastal Zone Management Act (CZMA) to address the new and emerging coastal issues of the 1990s. The Act makes a number of changes to the CZMA, including the addition of Outer Continental Shelf oil and gas lease sales to the Federal consistency provisions, the establishment of state coastal water quality protection programs, and the creation of a new enhancement grants program.

The final version of the five-year CZMA reauthorization, which was tied strategically to the Omnibus Budget Reconciliation Act of 1990, was negotiated by conferees from the Senate Commerce, Science and Transportation Committee and the House Merchant Marine and Fisheries Committee, as part of the House-Senate conference on the budget deficit reconciliation package. The conferees worked with the Senate Environment and Public Works Committee and the House Public Works and Transportation Committee to reach a compromise regarding the coastal water quality provisions. The final language reflects a compromise between the House-passed CZMA reauthorization bill, H.R. 5665, and a similar Senate measure (S. 2782).

### Federal Consistency

The final bill amends the Federal consistency provisions (Section 307) to overturn the Supreme Court's 1984 decision in Secretary of the Interior v. California and make clear that Outer Continental Shelf (OCS) oil and gas lease sales are subject to the requirements of Section 307(c)(1). The new language clarifies that all Federal agency activities, including OCS oil and gas lease sales and the designation of ocean dumping sites, whether in or outside of the coastal zone, are subject to the consistency requirements of Section 307(c)(1) of the CZMA if they affect natural resources, land uses or water uses in the coastal zone. This is in keeping with NOAA's current regulations, which say that the geographic scope of Federal consistency review is based on the effect of a Federal activity on coastal zone uses and resources, not on the location of the activity.

In the conference report on the bill, the House and Senate conferees provided a clarification regarding a Federal agency's determination of whether a specific Federal agency activity may affect any natural resource, land use, or water use in the coastal zone. The conferees stated that this determination "is to include effects in the coastal

zone which the federal agency may reasonably anticipate as a result of its action, including cumulative and secondary effects. Therefore, the term 'affecting' is to be construed broadly, including direct effects which may be caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable."

A new provision is added to the CZMA, Section 307(c)(2), which authorizes the President to exempt a specific Federal project if the President determines that it is in the paramount interest of the U.S. This exemption can only arise after a Federal court has determined that the Federal agency activity is inconsistent with a state CZM program. The provision is based on similar exemption provisions in other environmental statutes, including the Clean Water Act and the Clean Air Act. The Act clarifies that the exemption can not be applicable to a class of Federal agency activities, only to a specific activity.

### Coastal Nonpoint Pollution Control

The Act established a new, stand alone provision which requires states and territories with federally-approved CZM programs to develop a Coastal Nonpoint Pollution Control Program (CNPCP). The program, which must be submitted to NOAA and the Environmental Protection Agency for approval, will be implemented through changes to both the state coastal management and nonpoint source management programs (Section 319 of the Clean Water Act). The purpose of the program is to develop and implement management measures for nonpoint source pollution control to restore and protect coastal waters, working in close conjunction with other state and local authorities. The statute defines "management measures" as "economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives."

Under this new section, EPA must publish guidance, in consultation with NOAA and other Federal agencies, specifying management measures for sources of nonpoint pollution in coastal waters. The guidance must include: (1) a description of a range of methods, measures, or practices, including structural and nonstructural controls and operation and maintenance procedures, that constitute each measure; (2) a description of the categories and subcategories of activities and locations for which each measure may be suitable; (3) an identification of the individual pollutants or categories or classes of pollutants that may be controlled by the measures and the water quality effects of the measures; (4) quantitative estimates of the pollution reduction effects of the measures; (5) a description of the factors which should be taken into account in adapting the measures to specific sites or locations; and (6) any necessary monitoring techniques to accompany the measures to assess over time the success of the measures in reducing pollution loads and improving water quality. Draft guidance must be published six

months after enactment, with final guidance due within 18 months. Coastal states and other interested parties must have an opportunity to provide written comments on the draft guidance.

States have 30 months from issuance of final guidance to comply with this requirement. States which fail to submit approvable programs could lose up to 30 percent of their funding under Section 306 of the CZMA and Section 319 of the Clean Water Act. In addition to providing management measures, the programs must contain, among other things: identification of land uses which individually or cumulatively may cause or contribute significantly to the degradation of certain coastal waters; identification of "critical coastal areas" within which any new land uses or substantial expansion of existing land uses will be subject to the management measures; implementation of additional management measures applicable to the land uses and identified coastal areas that are necessary to achieve and maintain applicable water quality standards under Section 303 of the Clean Water Act; provision of technical assistance to local governments and the public for implementing the management measures; opportunities for public participation in all aspects of the program; and establishment of mechanisms to improve coordination among state agencies and between state and local officials.

NOAA and EPA are required to provide technical assistance to coastal states and local governments in developing and implementing programs under this section. The assistance must include: methods for assessing water quality impacts associated with coastal land uses; methods for assessing the cumulative water quality effects of coastal development; maintaining an inventory of model ordinances, and providing other assistance to coastal states and local governments in identifying, developing and implementing pollution control measures; and methods to predict and assess the effects of coastal land use management measures on coastal water quality and designated uses.

The Act also requires the Secretary of Commerce, in consultation with EPA, to review the inland coastal zone boundary of each coastal state with a federally-approved program and evaluate whether the state's coastal zone boundary extends inland to the extent necessary to control the land and water uses that have a significant impact on coastal waters of the state. This review must be completed within 18 months of enactment. If the Secretary finds that modifications are necessary for a state to more effectively manage land and water uses to protect coastal waters, he must recommend appropriate modifications in writing to the state.

### **CZM Program Enhancements**

CZMA's Section 309 was revised to establish a new enhancements grant program to encourage states to continually improve their federally-approved CZM programs in one or more of eight identified areas. The "Coastal Zone Enhancement Objectives"

include: (1) coastal wetlands management and protection; (2) natural hazards management (including the potential for sea and Great Lakes level rise); (3) public access improvements; (4) reduction of marine debris; (5) assessment of cumulative and secondary impacts of coastal development; (6) special area management planning; (7) ocean resource planning; and (8) siting of coastal energy and government facilities.

Beginning in Fiscal Year 1991, the Secretary is authorized to make grants (not less than 10 percent and not more than 20 percent of the amounts appropriated under Sections 306 and 306A of the CZMA) to coastal states to provide funding for development and submission for Federal approval of program changes that support attainment of one or more of the coastal zone enhancement objectives. As part of this effort, the Secretary is required to evaluate and rank state proposals for funding, and make funding awards based on those proposals. The Secretary has the authority to suspend a state's eligibility for funding under Section 309 for at least one year, if the Secretary finds that the state is not undertaking the actions committed to under the terms of the 309 grant.

NOAA must issue regulations relating to the new Section 309 within 12 months of enactment (by November 5, 1991). The regulations must establish: "(1) specific and detailed criteria that must be addressed by a coastal state (including the state's priority needs for improvement as identified by the Secretary after careful consultation with the state) as part of the state's development and implementation of coastal zone enhancement objectives; (2) administrative or procedural rules or requirements as necessary to facilitate the development and implementation of such objectives by coastal states; and (3) other funding award criteria as are necessary or appropriate to ensure that evaluations of proposals, and decisions to award funding, under this section are based on objective standards applied fairly and equitably to those proposals."

### Coastal Zone Management Fund

The Act repeals the Coastal Energy Impact Program (CEIP), but requires that repayments of the remaining \$87.5 million in program loans still outstanding be deposited into a new "Coastal Zone Management Fund" as they are repaid. Section 308(b)(2) authorizes the Secretary to expend amounts in the Fund for administration of the CZM program and for specified discretionary activities: regional and interstate projects (formerly Section 309); demonstration projects; emergency assistance; excellence awards pursuant to Section 313; program development grants pursuant to Section 305; and to assist states in applying the public trust doctrine in the implementation of their CZM programs. In recent years, annual loan repayments have ranged from a low of \$4 million to a high of \$15 million, with an annual average of some \$6-8 million. The House and Senate conferees anticipate an annual expenditure of between \$6 million and \$8 million through the CZM Fund, subject to appropriation.

## Coastal Zone Management Review

The Act provides new authority under Section 312 to impose "interim sanctions" on a state program for up to three years if the state is failing to adhere to its federally-approved program. The Secretary is authorized to suspend financial assistance awards, if he/she determines that the coastal state is failing to adhere to (A) the federally-approved coastal management program or a state plan developed to manage a National Estuarine Reserve established under Section 315, or a portion of the program or plan approved by the Secretary, or (B) the terms of any grant or cooperative agreement. Before suspending financial assistance, the Secretary must provide the Governor of the coastal state with written specifications and a schedule for the actions that should be taken by the State in order that the suspension be withdrawn, and written specifications stating how those funds from the suspended financial assistance will be expended by the coastal state to take actions identified by the Secretary. The suspension of financial assistance may not last for less than six months or more than 36 months.

The House and Senate conferees also revised the procedures for carrying out evaluations of State CZM programs and National Estuarine Research Reserves. In addition to mandating "full" public participation in the evaluation of state programs, the changes require: a 45-day notice for public meetings; written response to all written comments on the evaluation; and completion of the final evaluation report within 120 days after the last public meeting held in the state.

Other provisions of the 1990 CZMA Amendments include:

- \* **a new section 310 which requires the Secretary to provide technical assistance and management-oriented research to support development and implementation of state CZM programs, and appropriate to the furtherance of international cooperative efforts and technical assistance in coastal zone management;**
- \* **minor modifications to the National Estuarine Research Reserve System including an increase in the maximum amount of Federal financial assistance for land or water acquisition at Reserve sites and an increase in the Federal share of costs for managing a reserve and constructing facilities;**
- \* **authorization for NOAA to make annual achievement awards to individuals and local governments who have been recognized for outstanding accomplishments in the field of coastal zone management;**
- \* **a doubling of the authorization levels for the CZM program, from the fiscal year 1990 level of \$51.6 million -- of which \$41 million was appropriated -- to \$120.1 million for Fiscal Year 1995; and**

- \* clarification that the seaward coastal zone boundary extends only to the limit of state ownership and title (in most cases, three nautical miles), an issue that was clouded when President Ronald Reagan extended the U.S. territorial sea to 12 miles in 1988.

The implementation of these major, new CZMA provisions will be a challenge, and will require much work and close cooperation at the Federal, state and local level and with the public and private sectors. OCRM has already begun to organize its activities in order to meet the tight timelines for guidance and regulations as required by the 1990 Amendments. There is a 12-month statutory deadline for the enhancement grant regulations. In addition, there are revisions to Section 312 that are effective immediately and conflict with NOAA's current regulations. In order to meet these immediate requirements, OCRM anticipates conducting a phased rulemaking with the first phase limited to the enhancement grants program and program evaluations. We expect to complete issue papers on these subjects in late February or early March. The issue papers will be widely distributed. OCRM will look forward to your comments and your future involvement in the office's implementation activities.

For additional information, contact the Coastal Zone Information Center, Office of Ocean and Coastal Resource Management, NOAA, 1305 East West Highway, Silver Spring, MD 20910, Phone (301)713-3086.



**N**

## COASTAL ZONE MANAGEMENT ACT OF 1972

(PL 92-583, 16 U.S.C. 1451 *et seq.*, October 27, 1972; Amended by PL 93-612, January 2, 1975; PL 94-370, July 26, 1976; PL 95-219, December 28, 1977; PL 95-372, September 18, 1978; PL 96-464, October 17, 1980; PL 98-620, November 11, 1984; PL 99-272, April 7, 1986; PL 99-626, November 7, 1986; PL 101-508, November 5, 1990)

### SHORT TITLE

SEC. 301. This title may be cited as the "Coastal Zone Management Act of 1972".

### CONGRESSIONAL FINDINGS

SEC. 302. The Congress finds that —

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

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

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

(d) The habitat areas of the coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destructions by man's alterations. [302(a) amended by PL 101-508]

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

[302(f) added by PL 96-464; amended by PL 101-508]

(f) New and expanding demands for food, energy, minerals, defense needs, recreation, waste disposal, transportation, and industrial activities in the Great

Lakes, territorial sea, exclusive economic zone, and Outer Continental Shelf are placing stress on these areas and are creating the need for resolution of serious conflicts among important and competing uses and values in coastal and ocean waters.

[Former 302(f)—(i) redesignated as (g)—(j) by PL 96-464].

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

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

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

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

[302(k)—(m) added by PL 101-508]

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

(l) Because global warming may result in a substantial sea level rise with serious adverse effects in the

coastal zone, coastal states must anticipate and plan for such an occurrence.

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

#### CONGRESSIONAL DECLARATION OF POLICY

[303 revised by PL 96-464]

SEC. 303. The Congress finds and declares that it is the national policy—

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

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

[303(2) introductory paragraph amended by PL 101-508]

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

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

[303 (2)(B) amended, former (C)—(I) redesignated as new (D)—(J) and new (C) added by PL 101-508]

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

(D) priority consideration being given to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation, and the location, to the maximum extent practicable, of new

commercial and industrial developments in or adjacent to areas where such development already exists.

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

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

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

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

(I) the giving of timely and effective notification of, and opportunities for public and local government participation in, coastal management decisionmaking, [303(2)(I) amended by PL 101-508]

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

[303(2)(J) amended by PL 101-508]

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

[303(2)(K) amended by PL 101-508]

(3) to encourage the preparation of special area management plans which provide for increased specificity in protecting significant natural resources, reasonable coastal-dependent economic growth, improved protection of life and property in hazardous areas, including those areas likely to be affected by land subsidence, sea level rise, or fluctuating water levels of the Great Lakes, and improved predictability in governmental decisionmaking; [303(3) amended by PL 101-508]

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

[303(4) amended and (5) and (6) added by PL 101-508]

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

Federal regulation of land use practices affecting the coastal and ocean resources of the United States; and

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

### DEFINITIONS

SEC. 304. For the purposes of this title —

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

[304(1) amended by PL 101-508]

(2) The term "coastal resource of national significance" means any coastal wetland, beach, dune, barrier island, reef, estuary, or fish and wildlife habitat, if any such area is determined by a coastal state to be of substantial biological or natural storm protective value. [New 304(2) added by PL 96-464 and former 304(2)—(16) redesignated as (3)—(17) by PL 96-464]

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

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

[304(4) amended by PL 96-464]

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

(i) Any outer Continental Shelf energy activity.

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

(iii) Any transportation, transfer, or storage of oil, natural gas, or coal (including, but not limited to, by means of any deep-water port, as defined in section 3(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502(10))).

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

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

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

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

The term includes, but is not limited to (i) electric generating plants; (ii) petroleum refineries and associated facilities; (iii) gasification plants; (iv) facilities used for the transportation, conversion, treatment, transfer, or storage of liquefied natural gas; (v) uranium enrichment or nuclear fuel processing facilities; (vi) oil and gas facilities, including platforms, assembly plants, storage depots, tank farms, crew and supply bases, and refining complexes; (vii) facilities including deepwater ports, for the transfer of petroleum; (viii) pipelines and transmission facilities; and (ix) terminals which are associated with any of the foregoing.

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

[304(6a) added by the PL 101-508]

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

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

(9) The term "Fund" means the Coastal Energy Impact Fund established by section 308(h).

(10) The term "land use" means activities which are conducted in, or on the shorelands within, the coastal zone, subject to the requirements outlined in section 307(g).

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

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

(13) The term "outer continental shelf energy activity" means any exploration for, or any development or production of, oil or natural gas from the outer continental shelf (as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)), or the siting, construction, expansion, or operation of any new or expanded energy facilities directly required by such exploration, development, or production.

(14) The term "person" means any individual; any corporation, partnership, association, or other entity organized or existing under the laws of any state; the

Federal Government; any state, regional, or local government; or any entity of any such Federal, state, regional, or local government.

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

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

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

[304(17) added by PL 96-464]

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

[304(18) revised by PL 101-508]

#### MANAGEMENT PROGRAM DEVELOPMENT GRANTS

SEC. 305. (a) In fiscal years 1991, 1992, and 1993, the Secretary may make a grant annually to any coastal state without an approved program if the coastal state demonstrates to the satisfaction of the Secretary that the grant will be used to develop a management program consistent with the requirements set forth in section 306. The amount of any such grant shall not exceed \$200,000 in any fiscal year, and shall require State matching funds according to a 4-to-1 ratio of Federal-to-State contributions. After an initial grant is made to a coastal state pursuant to this subsection, no subsequent grant shall be made to that coastal state pursuant to this subsection unless the Secretary finds that the coastal state is satisfactorily developing its management program. No coastal state is eligible to receive more than two grants pursuant to this subsection.

(b) Any coastal state which has completed the development of its management program shall submit such program to the Secretary for review and approval pursuant to section 306.

[305 revised by PL 101-508]

## ADMINISTRATIVE GRANTS

[306 revised by PL 101-508]

SEC. 306. (a) The Secretary may make grants to any coastal state for the purpose of administering that state's management program, if the state matches any such grant according to the following ratios of Federal-to-State contributions for the applicable fiscal year:

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

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

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

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

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

(1) The State has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties and individuals, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303.

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

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

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

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

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

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

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

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

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

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

(3) The State has—

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

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

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

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

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

(ii) within the 30-day period commencing on the date of receipt of that notice, the local government may

submit to the management agency written comments on the management program decision, and any recommendation for alternatives; and

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

(I) shall consider the comments;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) The management program provides for—

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

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

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

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

(16) The management program contains enforceable policies and mechanisms to implement the applicable requirements of the Coastal Nonpoint Pollution Control Program of the State required by section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990.

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

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

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

in that period, then the amendment shall be conclusively presumed as approved.

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

(B) The Secretary, after determining on a preliminary basis, that an amendment, modification, or other change which has been submitted for approval under this subsection is likely to meet the program approval standards in this section, may permit the State to expend funds awarded under this section to begin implementing the proposed amendment, modification, or change. This preliminary approval shall not extend for more than 6 months and may not be renewed. A proposed amendment, modification, or change which has been given preliminary approval and is not finally approved under this paragraph shall not be considered an enforceable policy for purposes of section 307.

[Editor's note: Sec. 6206(b) of PL 101-508 provides:

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

(1) that the program complies with section 306(d)(14) and (15) of that Act, by not later than 3 years after the date of the enactment of this Act; and

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

#### RESOURCE MANAGEMENT IMPROVEMENT GRANTS

[306A added by PL 96-464]

SEC. 306A. (a) For purposes of this section—

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

(A) has a management program approved under section 306; and

(B) in the judgment of the Secretary, is making satisfactory progress in activities designed to result in significant improvement in achieving the coastal management objectives specified in section 303(2)(A) through (I).

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

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

(1) The preservation or restoration of specific areas of the state that (A) are designated under the management program procedures required by section 306(d)(9) because of their conservation recreational, ecological, or esthetic values, or (B) contain one or more coastal resources of national significance, or for the purpose of restoring and enhancing shellfish production by the purchase and distribution of clutch material on publicly owned reef tracts.

[306A(b)(1) amended by PL 101-508]

(2) The redevelopment of deteriorating and underutilized urban waterfronts and ports that are designated under section 305(b)(3) in the state's management program as areas of particular concern.

(3) The provision of access of public beaches and other public coastal areas and to coastal waters in accordance with the planning process required under section 305(b)(7).

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

(2) Grants made under this section may be used for—  
(A) the acquisition of fee simple and other interests in land;

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

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

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

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

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

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

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

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

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

[Former 306A(d)(1) deleted and new (d)(1) added by PL 99-272]

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

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

(e) With the approval of the Secretary, an eligible coastal state may allocate to a local government, an areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency, a portion of any grant made under this section for the purpose of carrying out this section; except that such an allocation shall not relieve that state of the responsibility for ensuring that any funds so allocated are applied in furtherance of the state's approved management program.

(f) In addition to providing grants under this section, the Secretary shall assist eligible coastal states and their local governments in identifying and obtaining other sources of available Federal technical and financial assistance regarding the objectives of this section.

#### COORDINATION AND COOPERATION

SEC. 307. (a) In carrying out his functions and responsibilities under this title, the Secretary shall consult with, cooperate with, and, to the maximum extent practicable, coordinate his activities with other interested Federal agencies.

(b) The Secretary shall not approve the management program submitted by a state pursuant to section 306 unless the views of Federal agencies principally affected by such program have been adequately considered.

(c)(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, United States Code, 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) 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 306(d)(6) 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.

[307(c)(1) revised by PL 101-508]

(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.

[307(c)(2) amended by PL 101-508]

(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 title or is otherwise necessary in the interest of national security.

[307(c)(3)(A) amended by PL 101-508]

(B) After the management program of any coastal state has been approved by the Secretary under section 306, 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 use 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 —

[307(c)(3)(B) introductory text amended by PL 101-508]

(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

[(ii) revised by PL 95-372, September 18, 1978]

(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 title 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) 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 title IV of the Intergovernmental Coordination Act of 1968 (82 Stat. 1098). 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 title or necessary in the interest of national security.

[307(d) amended by PL 101-508]

(e) Nothing in this title 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) Notwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or (2) established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control and air pollution control requirements applicable to such program.

(g) When any state's coastal zone management program, submitted for approval or proposed for modification pursuant to section 306 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) 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 305; or

(2) in the administration of a management program approved under section 306;

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) With respect to appeals under subsections (c)(3) and (d) which are submitted after the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 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. The Secretary shall collect such other fees as are necessary to recover the full costs of administering and processing such appeals under subsection (c).

[307(i), added by PL 101-508]

#### COASTAL ZONE MANAGEMENT FUND

[308 revised by PL 95-372; PL 101-508]

SEC. 308. (a)(1) The obligations of any coastal state or unit of general purpose local government to repay

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

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

(B) Refinance the loan.

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

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

(b)(1) The Secretary shall establish and maintain a fund, to be known as the 'Coastal Zone Management Fund' (hereinafter in this section referred to as the 'Fund'), which shall consist of amounts retained and deposited into the Fund under subsection (a).

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

(A) Expenses incident to the administration of this title, in an amount not to exceed—

(i) \$5,000,000 for fiscal year 1991;

(ii) \$5,225,000 for fiscal year 1992;

(iii) \$5,460,125 for fiscal year 1993;

(iv) \$5,705,830 for fiscal year 1994; and

(v) \$5,962,593 for fiscal year 1995.

(B) After use under subparagraph (A)—

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

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

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

(iv) appropriate awards recognizing excellence in coastal zone management as provided in section 314;

(v) program development grants as authorized by section 305; and

(vi) to provide financial support to coastal States for use for investigating and applying the public trust doctrine to implement State management programs approved under section 306.

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

#### COASTAL ZONE ENHANCEMENT GRANTS [309 revised by PL 96-464; PL 101-508]

SEC. 309. (a) For purposes of this section, the term 'coastal zone enhancement objective' means any of the following objectives:

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

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

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

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

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

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

(7) Planning for the use of ocean resources.

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

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

(c) The Secretary shall evaluate and rank State proposals for funding under this section, and make funding awards based on those proposals, taking into account the

criteria established by the Secretary under subsection (d). The Secretary shall ensure that funding decisions under this section take into consideration the fiscal and technical needs of proposing States and the overall merit of each proposal in terms of benefits to the public.

(d) Within 12 months following the date of enactment of this section, and consistent with the notice and participation requirements established in section 317, the Secretary shall promulgate regulations concerning coastal zone enhancement grants that establish—

(1) specific and detailed criteria that must be addressed by a coastal state (including the State's priority needs for improvement as identified by the Secretary after careful consultation with the State) as part of the State's development and implementation of coastal zone enhancement objectives;

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

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

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

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

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

#### TECHNICAL ASSISTANCE

[310 added by PL 101-508]

SEC. 310. (a) The Secretary shall conduct a program of technical assistance and management-oriented research necessary to support the development and implementation of State coastal management program amendments under section 309, and appropriate to the furtherance of international cooperative efforts and technical assistance in coastal zone management. Each department, agency, and instrumentality of the executive branch of the Federal Government may assist the Secretary, on a reimbursable basis or otherwise, in carrying out the purposes of this section, including the furnishing of information to the extent permitted by law, the transfer of personnel with their consent and without prejudice to their position

and rating, and the performance of any research, study, and technical assistance which does not interfere with the performance of the primary duties of such department, agency, or instrumentality. The Secretary may enter into contracts or other arrangements with any qualified person for the purposes of carrying out this subsection.

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

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

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

#### PUBLIC HEARINGS

SEC. 311. All public hearings required under this title must be announced at least thirty days prior to the hearing date. At the time of the announcement, all agency materials pertinent to the hearings, including documents, studies, and other data, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency.

#### REVIEW OF PERFORMANCE

[312 revised by PL 96-464]

SEC. 312. (a) The Secretary shall conduct a continuing review of the performance of coastal states with respect to coastal management. Each review shall include a written evaluation with an assessment and detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in section 303(2)(A) through (K), and adhered to the terms of any grant, loan, or cooperative agreement funded under this title.

[312(a) amended by PL 101-508]

(b) In evaluating a coastal state's performance, the Secretary shall conduct the evaluation in an open and public manner, and provide full opportunity for public participation, including holding public meetings in the State being evaluated and providing opportunities for the submission of written and oral comments by the public. The Secretary shall provide the public with at least 45 days' notice of such public meetings by placing a notice in the Federal Register, by publication of timely notices in newspapers of general circulation within the State being evaluated, and by communications with persons and organizations known to be interested in the

evaluation. Each evaluation shall be prepared in report form and shall include written responses to the written comments received during the evaluation process. The final report of the evaluation shall be completed within 120 days after the last public meeting held in the State being evaluated. Copies of the evaluation shall be immediately provided to all persons and organizations participating in the evaluation process.

[312(b) revised by PL 101-508]

(c)(1) The Secretary may suspend payment of any portion of financial assistance extended to any coastal state under this title, and may withdraw any unexpended portion of such assistance, if the Secretary determines that the coastal state is failing to adhere to (A) the management program or a State plan developed to manage a national estuarine reserve established under section 315 of this title, or a portion of the program or plan approved by the Secretary, or (B) the terms of any grant or cooperative agreement funded under this title.

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

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

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

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

[312(c) amended by PL 99-272; revised by PL 101-508]

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

[312(d) revised by PL 101-508]

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

(f) [Repealed]  
[312(f) repealed by PL 101-508]

[*Editor's note:* Section 9(b) of PL 96-464 provides:  
“(b) Within two hundred and seventy days after the date of the enactment of this Act, the Secretary of Commerce shall issue such regulations as may be necessary or appropriate to administer section 312 of the Coastal Zone Management Act of 1972 (as amended by subsection (a)\* of this section).”]

#### RECORDS AND AUDIT

SEC. 313. (a) Each recipient of a grant under this title or of financial assistance under Sec. 308 shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition of the funds received under the grant and of the proceeds of such assistance, the total cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

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

(1) after any grant is made under this title or any financial assistance is provided under section 308(d); and

(2) until the expiration of 3 years after —

(A) completion of the project, program, or other undertaking for which such grant was made or used, or  
(B) repayment of the loan or guaranteed indebtedness for which such financial assistance was provided.

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

[The second 313 was added by PL 101-508]

#### WALTER B. JONES EXCELLENCE IN COASTAL ZONE MANAGEMENT AWARDS

SEC. 313. (a) The Secretary shall, using sums in the Coastal Zone Management Fund established under section 308, implement a program to promote excellence in coastal zone management by identifying and acknowledging outstanding accomplishments in the field.

(b) The Secretary shall select annually—

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

\*Subsection (a) revised Section 312 of this Act.

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

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

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

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

(e) Using sums in the Coastal Zone Management Fund established under section 308, the Secretary shall establish and execute appropriate awards, to be known as the 'Walter B. Jones Awards', including—

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

(2) research grants; and

(3) public ceremonies to acknowledge such awards.

#### ADVISORY COMMITTEE

SEC. 314. [Repealed]

[314 repealed by PL 99-272]

#### NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM

[315 head amended by PL 101-508]

SEC. 315. (a) Establishment of the System.—There is established the National Estuarine Research Reserve System (hereinafter referred to in this section as the 'System') that consists of—

(1) each estuarine sanctuary designated under this section as in effect before the date of the enactment of the Coastal Zone Management Reauthorization Act of 1985; and

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

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

(b) Designation of National Estuarine Reserves.—After the date of the enactment of the Coastal Zone Management Reauthorization Act of 1985, the Secretary may designate an estuarine area as a national estuarine reserve if—

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

(2) the Secretary finds that—

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

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

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

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

(c) **Estuarine Research Guidelines.**—The Secretary shall develop guidelines for the conduct of research within the System that shall include—

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

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

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

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

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

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

(d) **Promotion and Coordination of Estuarine Research.**—The Secretary shall take such action as is necessary to promote and coordinate the use of the System for research purposes including—

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

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

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

(A) to a coastal State—

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

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

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

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

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

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

[315(e)(3)(A) amended by PL 101-508]

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

[315(e)(3)(B) amended by PL 101-508]

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

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

(3) The secretary may withdraw the designation of an estuarine area as a national estuarine reserve if evalua-

tion under paragraph (1) reveals that—

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

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

(g) Report.—The Secretary shall include in the report required under section 316 information regarding—

(1) new designations of national estuarine reserves;

(2) any expansion of existing national estuarine reserves;

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

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

[315 amended by PL 96-464; revised by PL 99-272]

#### COASTAL ZONE MANAGEMENT REPORT

[316 head revised by PL 96-464]

SEC. 316. (a) The Secretary shall consult with the Congress on a regular basis concerning the administration of this title and shall prepare and submit to the President for transmittal to the Congress a report summarizing the administration of this title during each period of two consecutive fiscal years. Each report, which shall be transmitted to the Congress not later than April 1 of the year following the close of the biennial period to which it pertains, shall include, but not be restricted to (1) an identification of the state programs approved pursuant to this title during the preceding Federal fiscal year and a description of those programs; (2) a listing of the states participating in the provisions of this title and a description of the status of each state's programs and its accomplishments during the preceding Federal fiscal year; (3) an itemization of the allocation of funds to the various coastal states and a breakdown of the major projects and areas on which these funds were expended; (4) an identification of any state programs which have been reviewed and disapproved and a statement of the reasons for such action; (5) a summary of evaluation findings prepared in accordance with subsection (a) of section 312, and a description of any sanctions imposed under subsections (c) and (d) of this section; (6) a listing of all activities and projects which, pursuant to the provisions of subsection (c) or subsection (d) of section 307, are not consistent with an applicable approved state management program; (7) a summary of the regulations issued by the Secretary or in effect during the preceding Federal fiscal year; (8) a summary of a coordinated national strategy and program for the Nation's coastal

zone including identification and discussion of Federal, regional, state, and local responsibilities and functions therein; (9) a summary of outstanding problems arising in the administration of this title in order of priority; (10) a description of the economic, environmental, and social consequences of energy activity affecting the coastal zone and an evaluation of the effectiveness of financial assistance under section 308 in dealing with such consequences; (11) a description and evaluation of applicable interstate and regional planning and coordination mechanisms developed by the coastal states; (12) a summary and evaluation of the research, studies, and training conducted in support of coastal zone management; and (13) such other information as may be appropriate.

[316(a) amended by PL 96-464]

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

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

(2) The Secretary shall promptly submit a report to the Congress consisting of the information required under paragraph (1) of this subsection. Such report shall include recommendations for changes necessary to resolve existing conflicts among Federal laws and programs that affect the uses of coastal resources.

[316(c) added by PL 96-464]

#### RULES AND REGULATIONS

SEC 317. The Secretary shall develop and promulgate, pursuant to section 553 of title 5, United States Code, after notice and opportunity for full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, both public and private, such rules and regulations as may be necessary to carry out the provisions of this title.

#### AUTHORIZATION OF APPROPRIATIONS

SEC. 318. (a) There are authorized to be appropriated to the Secretary —

[318(a) revised by PL 96-464; PL 99-272; PL 101-508]

(1) such sums, not to exceed \$750,000 for each of the fiscal years occurring during the period beginning October 1, 1990, and ending September 30, 1993, as may be necessary for grants under section 305, to remain available until expended;

(2) such sums, not to exceed \$42,000,000 for the fiscal year ending September 30, 1991, \$48,890,000 for the fiscal year ending September 30, 1992, \$58,870,000 for the fiscal year ending September 30, 1993, \$67,930,000 for the fiscal year ending September 30, 1994, and \$90,090,000 for the fiscal year ending September 30, 1995, as may be necessary for grants under sections 306, 306A, and 309, to remain available until expended;

(3) such sums, not to exceed \$6,000,000 for the fiscal year ending September 30, 1991, \$6,270,000 for the fiscal year ending September 30, 1992, \$6,552,000 for the fiscal year ending September 30, 1993, \$6,847,000 for the fiscal year ending September 30, 1994, and \$7,155,000 for the fiscal year ending September 30, 1995, as may be necessary for grants under section 315, to remain available until expended; and

(4) such sums, not to exceed \$10,000,000 for each of the fiscal years occurring during the period beginning October 1, 1990, and ending September 30, 1995, as may be necessary for activities under section 310 and for administrative expenses incident to the administration of this title; except that expenditures for such administrative expenses shall not exceed \$5,000,000 in any such fiscal year.

(b) There are authorized to be appropriated until October 1, 1986, to the Fund, such sums, not to exceed \$800,000,000, for the purposes of carrying out the provisions of section 308, other than subsection (b), of which not to exceed \$150,000,000 shall be for purposes of subsections (c)(1), (c)(2) and (c)(3) of such section.

[318(b) amended by PL 96-464]

(c) Federal funds received from other sources shall not be used to pay a coastal state's share of costs under section 306 or 309.

[318(c) amended by PL 96-464]

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

[318(d) added by PL 99-626]

[*Editor's note:* In addition to amending existing sections of the Coastal Zone Management Act of 1972 and adding new sections to the Act, PL 94-370 includes the following sections:]

#### SEC. 15. ADMINISTRATION

(a) [Repealed by PL 95-219]

(b) [Superseded by subsection (b) of PL 95-219. See editor's note below.]

(c) [Repealed by PL 99-272]

#### SEC. 16. SHELLFISH SANITATION REGULATIONS.

(a) The Secretary of Commerce shall —

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

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

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

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

[*Editor's note:* In addition to repealing Section 15(a) of PL 94-370, subsection (b) of PL 95-219 amended Section 5316 of Title 5, United States Code as follows:

“(140) Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

(141) Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

(142) Assistant Administrators (3), National Oceanic and Atmospheric Administration.

(143) General Counsel, National Oceanic and Atmospheric Administration.”]

[*Editor's note:* Sections 2 through 11 and 13 of PL 96-464 amended and have been incorporated into the existing language of this Act. Section 12 of PL 96-464 follows:]

#### SEC. 12. CONGRESSIONAL DISAPPROVAL PROCEDURE.

(a) (1) The Secretary, after promulgating a final rule, shall submit such final rule to the Congress for review in accordance with this section. Such final rule shall be delivered to each House of the Congress on the same date and to each House of the Congress while it is in session. Such final rule shall be referred to the Committee on Commerce, Science, and Transportation

of the Senate and to the Committee on Merchant Marine and Fisheries of the House, respectively.

(2) Any such final rule shall become effective in accordance with its terms unless, before the end of the period of sixty calendar days of continuous session, after the date such final rule is submitted to the Congress, both Houses of the Congress adopt a concurrent resolution disapproving such final rule.

(b) (1) The provisions of this subsection are enacted by the Congress—

(A) as an exercise in the rulemaking power of the House of Representatives and as such they are deemed a part of the Rules of the House of Representatives but applicable only with respect to the procedure to be followed in the House of Representatives in the case of concurrent resolutions which are subject to this section, and such provisions supersede other rules only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time in the same manner and to the same extent as in the case of any other rule of that House.

(2) Any concurrent resolution disapproving a final rule of the Secretary shall, upon introduction or receipt from the other House of the Congress, be referred immediately by the presiding officer of such House to the Committee on Commerce, Science, and Transportation of the Senate or to the Committee on Merchant Marine and Fisheries of the House, as the case may be.

(3) (A) When a committee has reported a concurrent resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the concurrent resolution. The motion shall be highly privileged in the House of Representatives, and shall not be debatable. An amendment to such motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate in the House of Representatives on the concurrent resolution shall be limited to not more than ten hours which shall be divided equally between those favoring and those opposing such concurrent resolution and a motion further to limit debate shall not be debatable. In the House of Representatives, an amendment to, or motion to recommit, the concurrent resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such concurrent resolution was agreed to or disagreed to.

(4) Appeals from the decision of the Chair relating to the application of the rules of the House of Representatives to the procedure relating to a concurrent resolution shall be decided without debate.

(5) Notwithstanding any other provision of this subsection, if a House has approved a concurrent resolution with respect to any final rule of the Secretary, then it shall not be in order to consider in such House any other concurrent resolution with respect to the same final rule.

(c) (1) If a final rule of the Secretary is disapproved by the Congress under subsection (a)(2), then the Secretary may promulgate a final rule which relates to the same acts or practices as the final rule disapproved by the Congress in accordance with this subsection. Such final rule—

(A) shall be based upon—

(i) the rulemaking record of the final rule disapproved by the Congress; or

(ii) such rulemaking record and the record established in supplemental rulemaking proceedings conducted by the Secretary in accordance with section 553 of title 5, United States Code, in any case in which the Secretary determines that it is necessary to supplement the existing rulemaking record; and

(B) may contain such changes as the Secretary considers necessary or appropriate.

(2) The Secretary after promulgating a final rule under this subsection, shall submit the final rule to the Congress in accordance with subsection (a)(1).

(d) Congressional inaction on, or rejection of a concurrent resolution of disapproval under this section shall not be construed as an expression of approval of the final rule involved, and shall not be construed to create any presumption of validity with respect to such final rule.

(e) (1) Any interested party may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this section. The district court immediately shall certify all questions of the constitutionality of this section to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

(2) Notwithstanding any other provision of law, any decision on a matter certified under paragraph (1) shall be reviewable by appeal directly to the Supreme Court of the United States. Such appeal shall be brought not later than twenty days after the decision of the court of appeals.

(3) [Repealed]

[12(e)(3) repealed by PL 98-620]

(f) (1) For purposes of this section—

(A) continuity of session is broken only by an adjournment sine die; and

(B) days on which the House of Representatives is not in session because of an adjournment of more

than five days to a day certain are excluded in the computation of the periods specified in subsection (a)(2) and subsection (b).

(2) If an adjournment sine die of the Congress occurs after the Secretary has submitted a final rule under subsection (a)(1), but such adjournment occurs—

(A) before the end of the period specified in subsection (a)(2); and

(B) before any action necessary to disapprove the final rule is completed under subsection (a)(2); then the Secretary shall be required to resubmit the final rule involved at the beginning of the next regular session of the Congress. The period specified in subsection (a)(2) shall begin on the date of such resubmission.

(g) For purposes of this section:

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

(2) The term "concurrent resolution" means a concurrent resolution the matter after the resolving clause of which is as follows: "That the Congress disapproves the final rule promulgated by the Secretary of Commerce dealing with the matter of \_\_\_\_\_, which final rule was submitted to the Congress on \_\_\_\_\_." (The blank spaces shall be filled appropriately.)

(3) The term "rule" means any rule promulgated by the Secretary pursuant to the Coastal Zone Management Act (16 U.S.C. 1450 et. seq.).

(h) The provisions of this section shall take effect on the date of the enactment of this Act and shall cease to have any force or effect after September 30, 1985.

[Editor's note: Sec. 6217 of P.L. 101-508 did not amend the Coastal Zone Management Act of 1972, but provides the following:

#### PROTECTING COASTAL WATERS

SEC. 6217. (a) In General. — (1) Program development. — Not later than 30 months after the date of the publication of final guidance under subsection (g), each State for which a management program has been approved pursuant to section 306 of the Coastal Zone Management Act of 1972 shall prepare and submit to the Secretary and the Administrator a Coastal Nonpoint Pollution Control Program for approval pursuant to this section. The purpose of the program shall be to develop and implement management measures for nonpoint source pollution to restore and protect coastal waters, working in close conjunction with other State and local authorities.

(2) Program coordination. — A State program under this section shall be coordinated closely with State and local water quality plans and programs developed pursuant to sections 208, 303, 319, and 320 of the Federal Water Pollution Control Act (33 U.S.C. 1288, 1313,

1329, and 1330) and with State plans developed pursuant to the Coastal Zone Management Act of 1972, as amended by this Act. The program shall serve as an update and expansion of the State nonpoint source management program developed under section 319 of the Federal Water Pollution Control Act, as the program under that section relates to land and water uses affecting coastal waters.

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

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

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

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

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

(3) Management measures. — The implementation and continuing revision from time to time of additional management measures applicable to the land uses and areas identified pursuant to paragraphs (1) and (2) that are necessary to achieve and maintain applicable water quality standards under section 303 of the Federal Water Pollution Control Act (33 U.S.C. 1313) and protect designated uses.

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

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

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

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

(c) Program Submission, Approval, and Implementation.—(1) Review and approval.—Within 6 months after the date of submission by a State of a program pursuant to this section, the Secretary and the Administrator shall jointly review the program. The program shall be approved if—

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

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

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

(A) changes to the State plan for control of nonpoint source pollution approved under section 319 of the Federal Water Pollution Control Act; and

(B) changes to the State coastal zone management program developed under section 306 of the Coastal Zone Management Act of 1972, as amended by this Act.

(3) Withholding coastal management assistance.—If the Secretary finds that a coastal State has failed to submit an approvable program as required by this section, the Secretary shall withhold for each fiscal year until such a program is submitted a portion of grants otherwise available to the State for the fiscal year under section 306 of the Coastal Zone Management Act of 1972, as follows:

(A) 10 percent for fiscal year 1996.

(B) 15 percent for fiscal year 1997.

(C) 20 percent for fiscal year 1998.

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

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

(4) Withholding water pollution control assistance.—If the Administrator finds that a coastal State has failed to submit an approvable program as required by this section, the Administrator shall withhold from grants available to the State under section 319 of the Federal Water Pollution Control Act, for each fiscal year until such a program is submitted, an amount equal to a percentage of the grants awarded to the State for the preceding fiscal year under that section, as follows:

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

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

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

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

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

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

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

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

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

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

(e) Inland Coastal Zone Boundaries.—(1) Review.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall, within 18 months after the effective date of this title, review the inland coastal zone boundary of each coastal State program which has been approved or is proposed for approval under section 306 of the Coastal Zone Management Act of 1972, and evaluate whether the State's coastal zone boundary extends inland to the extent necessary to control the land and water uses that have a significant impact on coastal waters of the State.

(2) Recommendation.—If the Secretary, in consultation with the Administrator, finds that modifications to

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

(f) **Financial Assistance.**—(1) In general.—Upon request of a State having a program approved under section 306 of the Coastal Zone Management Act of 1972, the Secretary, in consultation with the Administrator, may provide grants to the State for use for developing a State program under this section.

(2) **Amount.**—The total amount of grants to a State under this subsection shall not exceed 50 percent of the total cost to the State of developing a program under this section.

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

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

(g) **Guidance for Coastal Nonpoint Source Pollution Control.**—(1) In General.—The Administrator, in consultation with the Secretary and the Director of the United States Fish and Wildlife Service and other Federal agencies, shall publish (and periodically revise thereafter) guidance for specifying management measures for sources of nonpoint pollution in coastal waters.

(2) **Content.**—Guidance under this subsection shall include, at a minimum—

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

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

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

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

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

(F) any necessary monitoring techniques to accompany the measures to assess over time the success of the

measures in reducing pollution loads and improving water quality.

(3) **Publication.**—The Administrator, in consultation with the Secretary shall publish—

(A) proposed guidance pursuant to this subsection not later than 6 months after the date of the enactment of this Act; and

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

(4) **Notice and comment.**—The Administrator shall provide to coastal States and other interested persons an opportunity to provide written comments on proposed guidance under this subsection.

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

(h) **Authorizations of Appropriations.**—

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

(2) **Secretary.**—(A) Of amounts appropriated to the Secretary for a fiscal year under section 318(a)(4) of the Coastal Zone Management Act of 1972, as amended by this Act, not more than \$1,000,000 shall be available for use by the Secretary for carrying out this section for that fiscal year, other than for providing in the form of grants under subsection (f).

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

(i) \$6,000,000 for fiscal year 1992;

(ii) \$12,000,000 for fiscal year 1993;

(iii) \$12,000,000 for fiscal year 1994; and

(iv) \$12,000,000 for fiscal year 1995.

(i) **Definitions.**—In this section—

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

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

(3) each of the terms "coastal waters", and "coastal zone" has the meaning that term has in the Coastal Management Act of 1972;

(4) the term "coastal management agency" means a State agency designated pursuant to section 306(d)(6) of the Coastal Zone Management Act of 1972;

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

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



**N**

CODE OF FEDERAL REGULATIONS

Relevant portions of 15 CFR 923, 928, 930, and 932 are included in this handbook. For a complete set of Title IX (Part 800 to end), contact Mary Bixby at (907)465-8789.

# CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

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## REVISIONS TO CFR 923

Effective June 30, 1994

## DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

15 CFR Parts 923, 926, 927

[Docket No. 940109-4009]

RIN 0648-AE11

## Coastal Zone Management Program Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

**SUMMARY:** The Coastal Zone Act Reauthorization Amendments of 1990, enacted November 5, 1990, amended the Coastal Zone Management Act (CZMA) and reauthorized NOAA's Coastal Zone Management (CZM) Program under that Act. Among the amendments were revisions to findings, policies and definitions in the CZMA; repeal of provisions on preliminary program approval grants, program segmentation, and significant improvements; and reorganization and consolidation of approval requirements for state programs. The purpose of this final rule is to conform NOAA's regulations implementing the CZM program to the statutory changes.

**EFFECTIVE DATE:** This rule is effective on June 30, 1994.

**ADDRESSES:** Additional information may be obtained from the National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management at 1305 East-West Highway, 11th Floor, Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, 1305 East-West Highway, 11th Floor, Silver Spring, Maryland 20910. Telephone: 301-713-3086.

## SUPPLEMENTARY INFORMATION:

## I. Authority

This final rule is issued under the authority of the CZMA, as amended, 16 U.S.C. 1451 *et seq.*

## II. Background

The CZMA was enacted to encourage and assist coastal states and territories to develop and implement management programs to preserve, protect, develop and, where possible, restore or enhance the resources of the Nation's coasts.

Prior to the 1990 Amendments, the CZMA included statements of Congressional findings and policies for the CZM Program, identified nine national coastal management objectives and specified that all state CZM Programs were to make "significant improvements" in achieving these objectives, defined key terms, authorized grants for program development and implementation and specified allocation and match requirements, and specified program approval requirements. The program approval requirements were set forth in Section 305, Management Program Development Grants (at Section 305(b)(1)-(9)) and Section 306, Administrative Grants (at Section 306(c)-(h)). NOAA's regulations at 15 CFR parts 923, 926 and 927 implemented these provisions.

## III. Coastal Zone Act Reauthorization Amendments of 1990

The Coastal Zone Act Reauthorization Amendments of 1990 (Amendments) (Pub. L. No. 101-508, 104 Stat. 1388 (1990)) were enacted on November 5, 1990. The Amendments made a number of changes to the CZMA.

- New and revised Congressional findings. Section 6202 of the Amendments set forth nine new Congressional findings. In addition, the Amendments revise the existing findings at Section 302(d) and (f) and add three new findings at Section 302(k), (l) and (m).

- New and revised Congressional declarations of policy. The Amendments revise the statements of policy at Sections 303(2), 303(2)(B) and 303(3), and add new statements of policy at Section 303(2)(C) and (K) and Section 303(5) and (6).

- New and revised definitions. The Amendments revise the definitions of "coastal zone" at Section 304(1) and "water use" at Section 304(18), and add a definition of "enforceable policy" at Section 304(6a).

- Revisions to Management Program Development Grants. Section 305 on Management Program Development Grants was completely revised. Old

Section 305(b)(1)-(9), which contains requirements for management program approval, was moved to new Section 306(d)(2). The remaining provisions of old Section 305, including the authorization for preliminary approval grants, were deleted and replaced with an authorization for annual program development grants for Fiscal Years 1991, 1992 and 1993 not to exceed \$200,000 per year per state at a ratio of 4-to-1 Federal-to-state match. Program development grants are also an authorized use of the new Section 308 Coastal Zone Management Fund.

- Revisions to Administrative Grants. Section 306 on Administrative Grants also was completely revised. Section 306(a) was amended to change the match provisions for administrative grants to implement approved state CZM Programs. The "significant improvement" provisions of old Section 306(a)(3) were deleted. The minimum grants provisions of old Section 306(b) were deleted and a new provision was added which allows the Secretary, after consultation with the coastal states, to establish maximum and minimum grants for any fiscal year to promote equity and efficient coastal management. The program approval requirements of old Section 305(b)(1)-(9) and Section 306(c)-(h) were revised and consolidated in new Section 306(d). New program approval requirements were added at Section 306(d)(14), (15) and (16). Section 306(d)(14) and (15) must be met within three years of enactment (or by November 1993) and Section 306(d)(16) must be met within 30 months of EPA's issuance of final guidance on management measures for controlling coastal nonpoint pollution (or at the same time the Coastal Nonpoint Pollution Control Programs under Section 6217 of the Amendments are due). Old Section 306(g) on program changes was revised and renumbered as Section 306(e). Old Section 306(h) authorizing program segmentation was deleted.

- Revisions to Resource Management Improvement Grants. Section 306A(b)(1) was revised to authorize use of Section 306A funds for restoring and enhancing shellfish production.

## IV. Purpose of Today's Rule

Some of NOAA's current CZM Program regulations need to be revised to conform to the changes to the CZMA made by the Amendments. The purpose of this rule is to amend these regulations to make them consistent with the CZMA as amended. By modifying the current NOAA regulations to reflect the new statutory requirements, this notice serves to clarify the effect of the

Amendments on coastal states; Federal agencies and other affected groups.

**Codification of the Regulations**

The following is a brief description of changes made to the regulations.

**A. National Coastal Zone Management Program**

**Part 923—Coastal Zone Management Program Development and Approval Provisions.**

By reorganizing and consolidating CZM Program approval requirements previously found throughout Sections 305 and 306 of the CZMA into one section—Section 306(d)—the Amendments have changed almost all of the statutory references found throughout 15 CFR part 923. This rule replaces the old statutory references with the new references throughout 15 CFR part 923 and revises the referenced statutory citations wherever required.

The Amendments deleted several previously authorized program development and approval provisions, including authority for preliminary approval grants, authority for program segmentation, and the requirement that states devote an increasing proportion of Federal financial assistance for program implementation, up to 30%, toward making "significant improvement" in achieving nine national coastal management objectives. This rule removes the portions of NOAA's regulations implementing these provisions and rennumbers the regulations as necessary.

This rule revises the references to Congressional findings and declarations of policy to reflect the Amendments. This includes revising the phrase "as well as the needs for economic development" to "as well as the needs for compatible economic development" and adding the new Congressional findings on water quality, sea level rise, and ocean resources planning.

A definition of "enforceable policy" is added and the definitions of the terms "coastal zone" and "water use" are revised to reflect the Amendments. This includes revising all references to "the outer limit of the territorial sea" to read "the outer limit of State title and ownership under the Submerged Lands Act (43 U.S.C. 1301 *et seq.*), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note) or section 1 of the Act of November 20, 1962 (48 U.S.C. 1705), as applicable." It also includes revising all references to "direct and significant impacts on

coastal waters" to read "direct and significant impacts on coastal waters or areas which are likely to be affected by or vulnerable to sea level rise."

Other changes include adding the word "historical" at §§ 923.22 (a) and (b) to read "preserving or restoring areas for their conservation, recreational, ecological, historical or esthetic values," revising the chart at § 923.71 which summarizes the findings necessary for CZM Program approval, revising the statutory reference to and citation of Section 312 at § 923.80, and changing the costs of equipment purchases requiring prior NOAA approval from \$1,000 to \$5,000 at § 923.93(f) pursuant to OMB Circular A-102.

**Part 926—Coastal Zone Management Program Development Grants. Allocation of Funds to States.**

This part is removed. The Amendments revised old Section 305 to authorize annual program development grants to states for Fiscal Years 1991, 1992, and 1993, not to exceed \$200,000 per year per state at a 4-to-1 Federal-to-state match. In addition, program development grants are made an allowable use of the new CZM Fund (new Section 308).

**Part 927—Allocation of Section 306 Program Administration Grants.**

This part is revised to incorporate new statutory references and citations and new provisions for establishing annually the maximum and minimum share. The regulation on calculation of financial assistance award levels is revised to reflect the amendments to Section 312.

**VI. Classification**

**A. Executive Order 12866**

This rule has been determined to be not significant for purposes of Executive Order 12866.

**B. Administrative Procedure Act**

The changes to the regulations made by this rule are required by the 1990 statute and, thus, are non-discretionary. Except for some minor editorial changes, the only revisions to the regulations are the incorporation of the new statutory language into them. Since no useful purpose would be served by giving notice and opportunity for comment, the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA, for good cause, found under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) that notice and opportunity for public comment procedure thereon is unnecessary.

**List of Subjects**

**15 CFR Part 923**

Coastal zone, Grant programs—Natural resources, Reporting and recordkeeping requirements.

**15 CFR Part 927**

Allocation formula.

Dated: May 10, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

For the reasons set out the Preamble, 15 CFR chapter IX is amended as follows:

**PART 923—COASTAL ZONE MANAGEMENT PROGRAM DEVELOPMENT AND APPROVAL REGULATIONS**

1. The authority citation for Part 923 is revised to read as follows:

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

**Subpart A—General**

2. Section 923.1 is amended by revising the first sentence of paragraph (b), and by adding paragraphs (c)(7), (8) and (9) to read as follows:

**§ 923.1 Purpose.**

(b) Sections 306 and 307 of the Act set forth requirements which must be fulfilled as a condition of program approval. \* \* \*

(c) \* \* \*  
(7) Provides for public participation in permitting processes, consistency determinations, and other similar decisions.

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

(9) Not later than 30 months after the date of publication of final guidance under section 6217(g) of the Act, contains enforceable policies and mechanisms to implement the applicable requirements of the Coastal Nonpoint Pollution Control Program of the state required by section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990.

3. Section 923.2 is amended by revising paragraphs (d)(2) and (h) to read as follows:

**§ 923.2 Definitions.**

(d) \* \* \*  
(2) The following are defined as relevant Federal agencies:

Department of Agriculture;  
Department of Commerce;

Department of Defense;  
 Department of Education;  
 Department of Energy;  
 Department of Health and Human Services;  
 Department of Housing and Urban  
 Development;  
 Department of the Interior;  
 Department of Transportation;  
 Environmental Protection Agency;  
 Federal Energy Regulatory Commission;  
 General Services Administration;  
 Nuclear Regulatory Commission.

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

- (1) coastal zone
- (2) coastal waters
- (3) enforceable policy
- (4) estuary
- (5) land use
- (6) water use

4. Section 923.3 is amended by revising paragraphs (a) and (b)(1) to read as follows:

**§ 923.3 General requirements.**

(a)(1) As required by subsection 306(d)(1) of the Act, before approving a management program submitted by a coastal state, the Secretary shall find that the state has developed and adopted a management program for its coastal zone which is adequate to carry out the purposes of the Act and is consistent with the policy declared in section 303 of the Act.

(2) As stated in section 302 of the Act, the Congress finds that—

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

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

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

(iv) The habitat areas of the coastal zone, and the fish, other living marine

resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations.

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

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

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

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

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

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

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

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

(xiii) Because of their proximity to and reliance upon the ocean and its resources, the coastal states have substantial and significant interests in

the protection, management, and development of the resources of the exclusive economic zone that can only be served by the active participation of coastal states in all Federal programs affecting such resources and, wherever appropriate, by the development of state ocean resource plans as part of their federally approved coastal zone management programs.

(3) As stated in section 303 of the Act the Congress finds and declares that it is the national policy—

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

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

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

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

(v) to encourage coordination and cooperation with and among the appropriate Federal, state, and local agencies, and international organizations where appropriate, in collection, analysis, synthesis, and dissemination of coastal management information, research results and technical assistance, to support state and Federal regulation of land use practices affecting the coastal and ocean resources of the United States; and

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

(b) \* \* \*

(1) The management program must provide for the management of those

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

**Subpart B—Uses Subject to the Management Program**

5. Section 923.10 is revised to read as follows:

**§ 923.10 General.**

This subpart deals with land and water uses which, because of their direct and significant impacts on coastal waters or those geographic areas likely to be affected by or vulnerable to sea level rise, are subject to the terms of the management program. Determination of these uses will assist in determining the appropriate coastal management boundary (see Subpart D). This subpart deals in full with the requirements of subsection 306(d)(1)(B), Uses subject to the management program, 306(d)(2)(H), Energy Facility Planning, and 306(d)(12)(B), Uses of Regional Benefit.

6. Section 923.11 is amended by revising paragraphs (a), the second sentence of paragraph (b)(1) and (c)(4)(ii), and by adding paragraph (c)(4)(v) to read as follows:

**§ 923.11 Uses subject to management.**

(a) As required by subsection 306(d)(2)(B), the management program for each coastal state must include a definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.

(b) *Requirements.* (1) \* \* \* These uses shall be those with direct and significant impacts on coastal waters or on geographic areas likely to be affected by or vulnerable to sea level rise.

(c) \* \* \*  
(4) \* \* \*

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

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

7. Section 923.12 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

**§ 923.12 Uses of regional benefit.**

(a) As required by subsection 306(d)(12), before approving a management program submitted by a coastal state, the Secretary shall find that the management program contains a method of assuring that local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses and water uses of regional benefit.

(b) In order to meet the requirements of subsection 306(d)(12) of the Act, states must:

8. Section 923.13 is amended by revising paragraph (a), the first sentence of paragraph (b) introductory text and (b)(3)(ii) to read as follows:

**§ 923.13 Energy facility planning process.**

(a) As required by subsection 306(d)(2)(H), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes a planning process for energy facilities likely to be located in or which may significantly affect, the coastal zone, including a process for anticipating the management of the impacts resulting from such facilities.

(b) *Requirements.* States must develop a planning process which is capable, at a minimum, of anticipating the management of the impacts from energy facilities in or affecting the state's coastal zone. \* \* \*

(3) \* \* \*

(ii) States must list relevant constitutional provisions, laws, regulations, judicial decisions and other appropriate official documents or actions that are specifically related to planning for, and anticipating the management of energy facilities or impacts, including licensing or permitting procedures.

**Subpart C—Special Management Areas**

9. Section 923.20 is amended by revising the last sentence of paragraph (a) to read as follows:

**§ 923.20 General.**

(a) \* \* \* This subpart deals with the following subsections of the Act: 306(d)(2)(C)—Geographic areas of Particular Concern; 306(d)(2)(E)—Guidelines on Priorities of Uses; 306(d)(2)(G)—Shorefront Access and

Protection Planning; 306(d)(2)(I)—Shoreline Erosion/Mitigation Planning; and 306(d)(9)—Areas for Preservation and Restoration.

10. Section 923.21 is amended by revising paragraphs (a) and (b)(1)(i)(C) to read as follows:

**§ 923.21 Areas of particular concern.**

(a)(1) As required by subsection 306(d)(2)(C), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes an inventory and designation of areas of particular concern within the coastal zone.

(2) As required by subsection 306(d)(2)(E), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(b) \* \* \*  
(1) \* \* \*  
(i) \* \* \*

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

11. Section 923.22 is amended by revising paragraph (a) and the second sentence of paragraph (b)(1) to read as follows:

**§ 923.22 Areas for preservation or restoration.**

(a) As required by subsection 306(d)(9), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, historical or esthetic values.

(b) *Requirements.* (1) \* \* \* Designations may be made for the purposes of preserving or restoring areas for their conservation, recreational ecological, historical or esthetic values.

12. Section 923.24(a) is revised to read as follows:

**§ 923.24 Shorefront access and protection planning.**

(a) As required by Subsection 306(d)(2)(G), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes a definition of the term "beach" and a

planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological or cultural value.

13. Section 923.25 is amended by revising paragraphs (a) and (c)(1) and (2) to read as follows:

**§ 923.25 Shoreline erosion/mitigation planning.**

(a) As required by Subsection 306(d)(2)(I), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes a planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the impact of, shoreline erosion, and to restore areas adversely affected by such erosion.

(c) *Requirements.* (1) The management program must include a method for assessing the effects of shoreline erosion, including potential impacts of sea level rise, and evaluating techniques for mitigating, controlling or restoring areas adversely affected by erosion.

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

**Subpart D—Boundaries**

14. Section 923.30 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 923.30 General.**

(a) This subpart deals in full with subsection 306(d)(2)(A) of the Act—Boundaries of the Coastal Zone.

(c) As required by subsection 306(d)(2)(A), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes an identification of the boundaries of the coastal zone subject to the management program.

(1) As required by subsection 304(1), the term "coastal zone" means the coastal waters (including the lands therein and thereunder), and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes,

wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas seaward to the outer limit of state title and ownership under the Submerged Lands Act (43 U.S.C. 1301 et seq.), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note) or section 1 of the Act of November 20, 1963 (48 U.S.C. 1705, as applicable). The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

(2) As required by subsection 304(2), the term "coastal waters" means (i) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows and marshes, and (ii) in other areas, those waters, adjacent to shorelines, which contain a measurable quantity or percentage of sea water, including but not limited to, sounds, bays, lagoons, bayous, ponds and estuaries.

15. Section 923.31 is amended by revising paragraphs (a)(1) and (b)(1) and (2) to read as follows:

**§ 923.31 Inland boundaries.**

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

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

(2) Areas of tidal influence that extend further inland than waters under saline influence; particularly in estuaries, deltas and rivers where uses inland could have direct and significant impacts on coastal waters or areas that

are likely to be affected by or vulnerable to sea level rise.

16. Section 923.32 is amended by revising paragraph (a)(1) to read as follows:

**§ 923.32 Seaward boundaries.**

(a) *Requirements.* (1) For states adjoining the Great Lakes, the seaward boundary is the international boundary with Canada or the boundaries with adjacent states. For all other states participating in the program, the seaward boundary is the outer limit of state title and ownership under the Submerged Lands Act (48 U.S.C. 1301 et seq.), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note) or section 1 of the Act of November 10, 1963, (48 U.S.C. 1705, as applicable).

17. Section 923.33 is amended by revising paragraph (c)(1) introductory text to read as follows:

**§ 923.33 Excluded lands.**

(c) *General comments.* (1) The exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency provisions of section 307 of the Act when Federal actions on these excluded lands have spillover impacts that affect any land or water use or natural resource of the coastal zone within the purview of a state's management program. Therefore, states should consider mapping the following types of excluded Federal lands:

**Subpart E—Authorities and Organizations**

18. Section 923.40 is amended by revising the second, fifth and sixth sentences of paragraph (b), and paragraphs (c) and (d) to read as follows:

**§ 923.40 General.**

(b) \* \* \* They may be the state agency designated pursuant to section 306(d)(6) of the Act, other state agencies, regional or interstate bodies, and local governments. \* \* \* This demonstration will be in the context of one or a combination of the three control techniques specified in section 306(d)(11) of the Act. The requirements related to section 306(d)(12) are

described in §§ 923.42 through 923.44 of this subchapter.

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

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

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

19. Section 923.41 is amended by revising paragraphs (a), (b)(1) and (b)(2) introductory text to read as follows:

**§ 923.41 Identification of authorities.**

(a)(1) As required by subsection 306(d)(2)(D), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes an identification of the means by which the state proposes to exert control over the land uses and water uses referred to in paragraph (B), including a listing of relevant state constitutional provisions, laws, regulations, and judicial decisions.

(2) As required by subsection 306(d)(10), before approving a management program submitted by a coastal state, the Secretary shall find that the state, acting through its chosen agency or agencies (including local governments, area-wide agencies, regional agencies, or interstate agencies) has authority for the management of the coastal zone. Such authority shall include power:

- (i) To administer land use and water use regulations to control development to ensure compliance with the management program, and to resolve conflicts among competing uses; and
- (ii) To acquire fee simple and less than fee simple interests in land, waters, and other property through

condemnation or other means when necessary to achieve conformance with the management program.

(b) \* \* \*

(1) Identify relevant state constitutional provisions, statutes, regulations, case law and such other legal instruments (including executive orders and interagency agreements) that will be used to carry out the state's management program.

(2) This identification will include the authorities pursuant to sections 306(d)(10) and 306(d)(11) of the Act which require a state to have the ability to:

\* \* \* \* \*  
20. Section 923.42 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

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

(a) As required by subsection 306(d)(11), before approving a management program submitted by a coastal state, the Secretary shall find that the management program provides for any one or a combination of general techniques for control of land uses and water uses within the coastal zone. The first such control technique, at subsection 306(d)(11)(A), is state establishment of criteria and standards for local implementation, subject to administrative review and enforcement.

(b) There are 5 principal requirements associated with use of the control technique at subsection 306(d)(11)(A). They are that:

\* \* \* \* \*  
21. Section 923.43 is amended by revising paragraph (a), the first sentence of paragraph (b) introductory text and the second sentence of paragraph (c)(2)(i) to read as follows:

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

(a) As required by subsection 306(d)(11), before approving a management program submitted by a coastal state, the Secretary shall find that the management program provides for any one or a combination of general techniques for control of land and water uses within the coastal zone. The second such control technique, at subsection 306(d)(11)(B), is direct state land and water use planning and regulation.

(b) Control technique subsection 306(d)(11)(B) of the Act allows for direct state control of land and water uses subject to the management program on the basis of direct state authority. \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) \* \* \* It will be sufficient if any of the following can act to ensure compliance: The state agency designated pursuant to subsection 306(d)(6) of the Act, the state's Attorney General, another state agency, a local government, or a citizen.

\* \* \* \* \*  
22. Section 923.44 is amended by revising paragraph (a) to read as follows:

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

(a) As required by subsection 306(d)(11), before approving a management program submitted by a coastal state, the Secretary shall find that the management program provides for any one or a combination of general techniques for control of land and water uses within the coastal zone. The third such control technique, at subsection 306(d)(11)(C), is state administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

\* \* \* \* \*  
23. Section 923.45 is amended by revising paragraph (a), by removing paragraph (b)(2), by redesignating paragraph (b)(3) as paragraph (b)(2) and revising it to read as follows:

**§ 923.45 Air and water pollution control requirements.**

(a) As required by subsection 307(f), notwithstanding any other provision of the title, nothing in the title shall in any way affect any requirement:

- (1) Established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or
- (2) Established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control and air pollution control requirements applicable to such program.

(b) *General comments.* \* \* \*  
(2) Water quality standards are established by EPA promulgation or approval of state standards, taking into consideration public water supplies, protection and propagation of fish, shellfish and wildlife, recreation, agriculture, industry and navigation. EPA itself develops standards on

effluent limitations, new source performance standards, pre-treatment standards and toxic pollutant discharge standards.

24. Section 923.46 is amended by revising paragraphs (a), (c)(1) and (c)(2) to read as follows:

§ 923.46 Organizational structure.

(a)(1) As required by subsection 306(d)(2)(F), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes a description of the organizational structure proposed to implement such management program, including the responsibilities and interrelationships of local, areawide, state, regional and interstate agencies in the management process.

(2) As required by subsection 306(d)(7), before approving a management program submitted by a coastal state, the Secretary shall find that the state is organized to implement the management program.

(c) Requirements. (1) States must describe the organizational structure that will be used to implement and administer the management program including a discussion of those state and other agencies, including local governments, that will have responsibility for administering, enforcing and/or monitoring those authorities or techniques required pursuant to the following subsections of the Act: 306(d)(3)(B); 306(d)(10); 306(d)(10) (A) and (B); 306(d) (11) and (12); and 307(f).

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

25. Section 923.47(a) is amended by revising paragraph (a) to read as follows:

§ 923.47 Designated state agency.

(a) As required by subsection 306(d)(6), before approving a management program submitted by a coastal state, the Secretary shall find that the Governor of the state has designated a single state agency to receive and administer the grants for implementing the management program.

SUBPART F—COORDINATION, PUBLIC INVOLVEMENT AND NATIONAL INTEREST

26. Section 923.50 is amended by revising paragraphs (a), (b)(2), (b)(3) and the third sentence of paragraph (d) and

by adding paragraphs (b)(4) and (b)(5) to read as follows:

§ 923.50 General.

(a) As required by Section 303, the Congress finds and declares that it is the national policy:

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

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

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

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

(5) To encourage coordination and cooperation with and among the appropriate Federal, state, and local agencies, and international organizations where appropriate, in collection, analysis, synthesis, and dissemination of coastal management information, research results, and technical assistance, to support state and Federal regulation of land use practices affecting the coastal and ocean resources of the United States; and

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

(b) (2) The achievement of wise use of coastal land and water resources with full consideration for ecological, cultural, historic, and aesthetic values and needs for compatible economic development;

(3) The involvement of the public, of Federal, state and local governments

and of regional agencies in the development and implementation of coastal management programs;

(4) The management of coastal development to improve, safeguard, and restore coastal water quality; and

(5) The study and development of plans for addressing the adverse effect of land subsidence and sea level rise.

(d) \* \* \* This subpart addresses the requirements of the following subsections of the Act: 306(d)(1)—Opportunity for Full Participation; 306(d)(3)(A)—Plan Coordination; 306(d)(3)(B)—Continued State-Local Consultation; 306(d)(4)—Public Hearings; 306(d)(8)—Consideration of the National Interest in Facilities; 307(b)—Federal Consultation; and 307(h)—Mediation.

27. Section 923.51 is amended by revising paragraph (a), the first sentence of paragraph (b), paragraph (d) introductory text and (d)(5)(vii) to read as follows:

§ 923.51 Federal-state consultation.

(a)(1) As required by subsection 306(d)(1), before approving a management program submitted by a coastal state, the Secretary shall find that the state has developed and adopted a management program for its coastal zone with the opportunity of full participation by relevant Federal agencies.

(2) As required by section 307(b), the Secretary shall not approve the management program submitted by a state pursuant to section 306 unless the views of Federal agencies principally affected by such program have been adequately considered.

(b) The requirements of subsections 306(d)(1) and 307(b) of the Act and those of subsections 307 (c) and (d) establish reciprocal State-Federal relationships.

(d) Requirements. In order to address that portion of subsection 306(d)(1) of the Act that deals with Federal agency participation, each state must:

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

28. Section 923.52 is amended by revising paragraphs (a) and (b)(3) to read as follows:

§ 923.52 Consideration of the national interest in facilities.

(a) As required by subsection 306(c)(8), the management program

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

(b) \* \* \*

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

\* \* \* \* \*

29. Section 923.53 is amended by revising paragraph (a)(1) to read as follows:

**§ 923.53 Federal consistency procedures.**

(a) \* \* \*

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

\* \* \* \* \*

30. Section 923.54 is amended by revising paragraph (d) to read as follows:

**§ 923.54 Mediation.**

\* \* \* \* \*

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

\* \* \* \* \*

Section 923.55 is amended by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

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

(a) As required by subsection 306(d)(1), before approving a management program submitted by a coastal state, the Secretary shall find that the state has developed and adopted a management program for its coastal zone with the opportunity of full participation by state agencies, local governments, regional organizations, port authorities, and other interested public and private parties.

(b) *Requirements.* In addition to consultation with Federal agencies, subsection 306(d)(1) of the Act requires that the opportunity for full participation in program development be provided state agencies, local governments, regional commissions and organizations, and other interested public and private parties. \* \* \*

\* \* \* \* \*

32. Section 923.56 is amended by revising paragraphs (a) and (b)(1) to read as follows:

**§ 923.56 Plan coordination.**

(a) As required by subsection 306(d)(3)(A), before approving a management program submitted by a coastal state, the Secretary shall find that the state has coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone—

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

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

(b) \* \* \*

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

33. Section 923.57 is amended by revising paragraphs (a), (b)(1), (b)(2)(i) and (b)(2)(iv) to read as follows:

**§ 923.57 Continuing consultation.**

(a) As required by subsection 306(d)(3)(B), before approving a management program submitted by a coastal state, the Secretary shall find that the state has established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (6) of section 306(d) and with local governments, interstate agencies, regional agencies, and areawide agencies within the

coastal zone to assure the full participation of those local governments and agencies in carrying out the purposes of this title; except that the Secretary shall not find any mechanism to be effective for purposes of this paragraph unless it requires that:

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

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

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

- (i) shall consider the comments;
- (ii) may, in its discretion, hold a public hearing on the comments; and
- (iii) may not take any action within the 30-day period to implement the management program decision.

(b) *Requirements.* (1) Establish a mechanism or mechanisms which will provide for continuing consultation and coordination after program approval between local governments, regional, areawide, multi-state and other state agencies with activities in the coastal zone and the state agency designated pursuant to subsection 306(d)(6) of the Act;

(2) \* \* \*

(i) "Management agency" refers to the state agency designated to the Governor pursuant to subsection 306(d)(6) of the Act and to any other state agency responsible for implementing a management program decision;

(iv) "Local government" refers to these defined in section 304(11) of the Act which have some form of zoning authority.

34. Section 923.58 is amended by revising paragraph (a) to read as follows:

**§ 923.58 Public hearings.**

(a) As required by subsections 306(d)(1) and 306(d)(4), before approving a management program submitted by a coastal state, the Secretary shall find that the state has developed and adopted a management program for its coastal zone after notice, and with the opportunity of full participation by relevant Federal

agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties and individuals, public and private, which is adequate to carry out the purposes of the Act and is consistent with the policy declared in section 303; and shall find that the state has held public hearings in the development of the management program.

35. Subpart G is revised to read as follows:

**Subpart G—Environmental Review**

**§ 923.60 Environmental assessment.**

(a) Requirements. All state management program submissions must contain an environmental assessment at the time of submission of the management program to OCRM for threshold review. In accordance with the Council on Environmental Quality regulations, 40 CFR 1506.5 (a) and (b), state environmental assessments shall contain the following information:

- (1) A summary of the state's management program;
- (2) A brief discussion of the need for the state's participation in the Federal program;

(3) A succinct description of the environment to be affected by program implementation;

(4) A description and discussion of the major alternatives which were considered by the state in developing the coastal management program;

(5) A discussion of the environmental impacts of implementing the program;

(6) A listing of agencies or persons consulted in determining the impacts of the management program.

(b) General comments. OCRM will independently evaluate the state's environmental assessment and use as much as possible in developing an EIS on the management program. An EIS will be produced for all state programs submitted for 306 approval. The timing and review procedure for the EIS are discussed in § 923.72.

36. Section 923.70 is revised to read as follows:

**Subpart H—Review/Approval Procedures**

**§ 923.70 General.**

The purpose of this subpart is to describe the process of state program review and approval following submission of a state's management

program to the Assistant Administrator. Because the review process involves preparation and dissemination of draft and final environmental impact statements and lengthy Federal agency review; states should at least anticipate that it normally will take 7 months between the time a state first submits a draft management program to OCRM for threshold review and the point at which the Assistant Administrator makes a final decision on whether to approve the management program. Certain factors will contribute to lengthening or shortening this time table; these factors are discussed in the sections that follow. This subpart also provides guidance on a recommended format for the program document submitted to the Assistant Administrator for review and approval.

37. Section 923.71 is amended by revising Table 2 in paragraph (b) and paragraph (c)(4) (i) through (vi), and removing paragraph (d) to read as follows:

**§ 923.71 Recommended format for program submission.**

\*\*\*\*\*  
(b) \* \* \*

TABLE 2. CHART—FINDINGS NECESSARY FOR SECTION 306 APPROVAL

Section of the act	Associated section(s) of these regulations
Section 306(d) which includes:	
306(d)(2)(A): Boundaries .....	923.31–923.34
306(d)(2)(B): Uses subject to management .....	923.11
306(d)(2)(C): Areas of particular concern .....	923.21–923.23
306(d)(2)(D): Means of control .....	923.41
306(d)(2)(E): Guidelines on priorities of uses .....	923.21
306(d)(2)(F): Organizational structure .....	923.46
306(d)(2)(G): Shorefront planning process .....	923.24
306(d)(2)(H): Energy facility planning process .....	923.13
306(d)(2)(I): Erosion planning process .....	923.25
306(d)(1): Notice: full participation; consistent with sec. 303 .....	923.3, 923.51, 923.55, & 923.58
306(d)(3)(A): Plan coordination .....	923.56
306(d)(3)(B): Continuing consultation mechanisms .....	923.57
306(d)(4): Public hearings .....	923.58
306(d)(5): Gubernatorial review and approval .....	923.48
305(d)(6): Designation of recipient agency .....	923.47
306(d)(7): Organization .....	923.46
306(d)(10): Authorities .....	923.41
306(d)(8): Adequate consideration of national interest .....	923.52
306(d)(9): Areas for preservation/restoration .....	923.22
306(d)(10)(A): Administer regulations, control development; resolve conflicts .....	923.41
306(d)(10)(B): Powers of acquisition, if necessary .....	923.41
306(d)(11): Technique of control .....	923.42–923.44
306(d)(12): Uses of regional benefit .....	923.12
Section 307 which includes:	
307(b): Adequate consideration of Federal agency views .....	923.51
307(f): Incorporation of air and water quality requirements .....	923.45

(c) \* \* \*  
(4) \* \* \*

(i) Boundaries. The requirements of subsection 306(d)(2)(A) of the Act and Subpart D of these regulations should be

addressed. States may want to indicate here, or as part of the EIA, major boundary alternatives considered.

General maps of the management boundaries and of excluded Federal lands, if provided, are recommended for inclusion in this section (or if more easily handled as a separate appendix, their location in the appendix should be indicated in this section).

(ii) *Uses subject to management.* The requirements of subsections 306(d)(2)(B), 306(d)(2)(H), and 306(d)(12) of the Act and related sections 923.11 through 923.13 of these regulations should be addressed.

(iii) *Special management areas.* The requirements of subsections 306(d)(2)(C), 306(d)(2)(E), 306(d)(2)(G), 306(d)(2)(I), and 306(d)(9) and the associated requirements of Subpart C of these regulations should be addressed. States are encouraged to include generalized maps located designated Areas of Particular Concern.

(iv) *Authorities and organization.* The requirements of subsections 306(d)(2)(D), 306(d)(2)(F), 306(d)(6), 306(d)(10), 306(d)(11), and 307(f) of the Act and the associated requirements of Subpart E of these regulations should be addressed. This should include a discussion of the administrative and legal bases that will be used to implement and insure enforcement of and compliance with the policies of the management program. This section should include, as applicable, discussion of six types of legal authorities: state legislation, state agency regulations, gubernatorial executive orders, interagency agreements, significant judicial decisions and significant constitutional provisions. With respect to the organization structure that will be used to implement the management program, this section should include a discussion of the roles and responsibilities during the program implementation of the state agency designated pursuant to subsection 306(d)(6) of the Act and of other state, local or regional agencies that will be involved in carrying out the management program. The relationship of the designated state agency to these other agencies also should be described.

(v) *Consultation, participation and national interests.* The requirements of subsections 306(d)(1) through (d)(4), 306(d)(8) and 307(b) of the Act and the related requirements of Subpart F of these regulations should be addressed. Included herein should be a summary of consultation efforts with relevant Federal and state agencies, local governments, regional, areawide and/or interstate entities. A summary of public information and participation during program development should be included. Also included herein should be discussions of national interest

considerations; what procedures the state will use to implement the Federal consistency provisions of the Act; and what mechanisms will be used to insure continued governmental consultation and public participation after program approval. Detailed documentation regarding a number of the requirements addressed in this section can be reserved for appendices.

(vi) *Miscellaneous.* Normally, states will address the requirements of subsection 306(d)(5) and related section 923.48 in the gubernatorial transmittal that will accompany the program submission.

38. Section 923.73 is revised to read as follows:

**§ 923.73 Miscellaneous.**

The timelines laid out in § 923.72 may be shortened if reduction of the time allotted to review environmental impact statements is proposed consistent with applicable procedures and guidelines of CEQ and their concurrence is requested. Reductions in review time normally are limited to emergency circumstances or conditions which would result in impaired program effectiveness.

**§§ 923.74, 923.75, 923.76 [Removed]**

39. Sections 923.74, 923.75 and 923.76 are removed.

40. Section 923.80 is amended by redesignating paragraph (c) as paragraph (d), revising paragraph (b), and adding a new paragraph (c) to read as follows:

**Subpart I—Amendments to and Termination of Approved Management Programs**

**§ 923.80 General.**

(b) As required by subsection 306(e), any coastal state may amend or modify a management program which it has submitted and which has been approved by the Secretary under this subsection, subject to the following conditions:

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

(2) Within 30 days after the date the Secretary receives any proposed amendment, the Secretary shall notify the state whether the Secretary approves or disapproves the amendment, or whether the Secretary finds it is necessary to extend the review of the proposed amendment for a period not to exceed 120 days after the date the

Secretary received the proposed amendment. The Secretary may extend this period only as necessary to meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). If the Secretary does not notify the coastal state that the Secretary approves or disapproves the amendment within that period, then the amendment shall be conclusively presumed as approved.

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

(ii) The Secretary, after determining on a preliminary basis, that an amendment, modification or other change which has been submitted for approval under subsection 306(e) is likely to meet the program approval standards, may permit the state to expend funds awarded under subsection 306(e) to begin implementing the proposed amendment, modification, or change. This preliminary approval shall not extend for more than 6 months and may not be renewed. A proposed amendment, modification, or change which has been given preliminary approval and is not finally approved under this paragraph shall not be considered an enforceable policy for purposes of subsection 307 of the Act.

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

41. Section 923.81 is amended by revising paragraphs (a) and (b)(3)(i) to read as follows:

**§ 923.81 Requests for amendments.**

(a) *Requirement.* Requests for amendments shall be submitted to the Assistant Administrator by the Governor of a coastal state with an approved management program or by the head of the state agency (designated pursuant to subsection 306(d)(6)) if the Governor had delegated this responsibility and such delegation is part of the approved management program.

(b) \* \* \*

(3) \* \* \*

(i) At least one public hearing must be held on the proposed amendment.

pursuant to subsection 306(d)(4) of the Act.

42. Section 923.82 is amended by revising paragraphs (a)(1)(i)(A), (a)(1)(v)(D), (a)(2), (b) and (c) to read as follows:

§ 923.82 Amendment review/approval procedures.

- (a)
(1)
(i)

(A) Areas the management of which is necessary to control uses with direct and significant impacts on coastal waters or areas likely to be affected by or vulnerable to sea level rise;

- (v)

(D) In the case of energy facilities, consideration of any applicable interstate energy plan or program (see § 923.52(c)(3)).

(2) The procedural requirements of section 306(d) of the Act have been met. These procedural requirements are that:

(i) The state has developed the amendment with the opportunity for full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested public and private parties (subsection 306(d)(1));

(ii) The state has coordinated the amendment with local, area-wide and interstate plans applicable to areas within the coastal zone affected by the amendment and existing on January 1 of the year in which the amendment request is submitted (subsection 306(d)(3)(A));

(iii) Notice has been provided and a public hearing held on the proposed amendment (subsections 306(d)(1), 306(d)(3) and 306(d)(4)); and

(iv) The Governor or the head of the state agency, designated pursuant to subsection 306(d)(6), has reviewed and approved the proposed amendment (subsection 306(d)(5)).

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

(c) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would still constitute an approvable program and that the procedural requirements of section 306(d) of the

Act have been met, the Assistant Administrator will then determine, pursuant to the National Environmental Policy Act of 1969, as amended, whether an environmental impact statement (EIS) is required.

43. Section 923.83 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 923.83 Mediation of amendments.

(b) Mediation may be requested by a Governor or head of a state agency designated pursuant to subsection 306(d)(6) or by the head of a relevant Federal agency.

44. Section 923.90 is amended by revising paragraphs (e) and (f) to read as follows:

Subpart J—Applications for Program Development or Implementation Grants

§ 923.90 General.

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

(f) All application and preapplication forms are to be requested from and submitted to: National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910.

45. Section 923.91 is amended by revising paragraphs (a) and (b) to read as follows:

§ 923.91 State responsibility.

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

(b) In the case of a section 305 grant, the application shall designate a single state agency or entity to receive development grants and to be responsible for development of the state's coastal management program. The designee need not be that entity designated by the Governor pursuant to subsection 306(d)(6) of the Act as a single agency to receive and administer implementation grants.

46. Section 923.92 is amended by revising paragraph (a) to read as follows:

§ 923.92 Allocation.

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

§§ 923.93, 923.98 [Removed]

47. In Subpart J, sections 923.93 and 923.98 are removed and sections 923.94, 923.95, 923.96, 923.97 923.99 and 923.100 are redesignated as sections 923.93, 923.94, 923.95, 923.96, 923.97 and 923.98, respectively.

48. Section 923.93 is amended by revising paragraph (c)(2)(i) and the first sentence of paragraphs (d) and (f) to read as follows:

§ 923.93 Eligible implementation costs.

- (c)
(2)

(i) Prevent or mitigate loss of life and property in such coastal hazard areas as floodplains, erosion-prone areas, areas subject to subsidence, saltwater intrusion, or sea level rise;

(d) Implementation funding may be applied to the management of designated areas of particular concern, especially areas designated for preservation or restoration purposes pursuant to section 306(d)(9) of the Act.

- (e)

(f) Equipment purchases by the grantee of more than five thousand (5,000) dollars per item require NOAA approval prior to purchase.

49. Section 923.95 is amended by revising paragraph (a)(4) to read as follows:

§ 923.95 Applications for subsequent program development grants.

- (a)

(4) Indicate when the state will submit a management program to the Assistant Administrator for review and final approval pursuant to section 306 of the Act.

50. Section 923.98 is amended by revising paragraph (a) to read as follows:

§ 923.98 Grant amendments.

(a) Actions which require an amendment to a grant award such as a request for additional Federal funds, changes in the amount of the non-Federal share, changes in the approved project budget as specified in OMB Circular A-102, or extension of the grant period must be submitted to the Assistant Administrator and approved in writing by him/her and the NOAA Grants Officer prior to initiation of the contemplated change. Such requests should be submitted at least 30 days prior to the proposed effective date of the change and, if appropriate, accompanied by evidence of compliance with E.O. 12372 requirements.

51. In 15 CFR part 923, subpart K is removed.

§§ 923.1, 923.47, 923.62, 923.70, 923.71, 923.72, 923.81, 923.82, 923.84, 923.93 [Amended]

52. In addition to the amendments set forth above, in 15 CFR part 923, remove the word "OCZM" and add, in its place, the word "OCRM" in the following places:

- a. Section 923.1(d)(5);
b. Section 923.47(b)(3) and (c)(1);
c. Section 923.70;
d. Section 923.71 (a) and (c);
e. Section 923.72(a);
f. Section 923.81(b)(4)(i);
g. Section 923.82(a) introductory text and (c)(1) introductory text;
h. Section 923.84(b)(1) introductory text, (b)(1)(i), (b)(1)(ii), (b)(2) introductory text, (b)(2)(i)(B), (b)(2)(i)(C), (b)(3), (b)(4) introductory text, (b)(4)(i)(A), and (b)(5);
i. Section 923.90(a); and
j. Section 923.93(e)(4)(ii) and (g).

53. Section 923.1(d)(5) is amended by removing the words "Office of Coastal Zone Management" and adding, in their place, the words "Office of Ocean and Coastal Resource Management".

54. Section 923.90(f) is revised to read as follows:

§ 923.90 General.

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

PART 926—COASTAL ZONE MANAGEMENT PROGRAM DEVELOPMENT GRANTS, ALLOCATION OF FUNDS TO STATES

55. Part 926 is removed and reserved.

PART 927—ALLOCATION OF SECTION 306 PROGRAM ADMINISTRATION GRANTS

56. Section 927.1 is amended by revising paragraphs (a), (b) and (f) to read as follows:

§ 927.1 Allocation formula.

(a) As required by subsection 306(a), the Secretary may make grants to any coastal state for the purpose of administering that state's management program, if the state matches any such grant according to the following ratios of Federal-to-state contributions for the applicable fiscal year:

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

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

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

(4) As required by subsection 306(c), grants under this section shall be allocated to coastal states under approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the program, population of the area, and other relevant factors. The Secretary shall establish, after consulting with the coastal states, maximum and minimum grants for any fiscal year to promote equity between coastal states and effective coastal management.

(b) Minimum/maximum allocations. The Assistant Administrator shall establish minimum and maximum state allocations annually, after consultation with the coastal states.

- (c) \* \* \*
(d) \* \* \*
(e) \* \* \*

(f) Calculation of financial assistance award levels. Actual financial assistance award levels will be set from base level allocations, any adjustments under paragraph (e) above, and in accordance

with the provisions of Section 312(c) and (d).

[FR Doc. 94-11715 Filed 5-27-94; 8:45 am] BILLING CODE 3510-08-P-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960-AD10

Supplemental Security Income for the Aged, Blind, and Disabled; Financial Institution Account Policy in the Supplemental Security Income Program

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We are codifying in regulations, certain procedures which currently appear in our internal operating instructions regarding how we attribute ownership of financial institution accounts for purposes of determining eligibility for supplemental security income (SSI). Existing regulations do not contain the rules we use to determine ownership of financial institution account funds.

EFFECTIVE DATES: These final regulations are effective May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Henry D. Berner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235 (410) 965-1762.

SUPPLEMENTARY INFORMATION: These regulations codify present SSI procedures with respect to attributing ownership of financial institution account funds for SSI eligibility purposes. These procedures appear in our operating instructions. Title XVI of the Social Security Act and existing regulations are silent on the issue of how funds in financial institution accounts are attributed for SSI resource eligibility purposes. Regulations at § 416.1201 define resources as "cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance." The term "bank account" as used in § 416.1201(b) has been replaced by the term "financial institution account" because, in the past, the use of the term "bank" has

ciated with it is of transcendent importance in the nation's history and the association consequential; or

(4) A birthplace, grave or burial if it is of a historical figure of transcendent national significance and no other appropriate site, building or structure directly associated with the productive life of that person exists; or

(5) A cemetery that derives its primary national significance from graves of persons of transcendent importance, or from an exceptionally distinctive design or from an exceptionally significant event; or

(6) A reconstructed building or ensemble of buildings of extraordinary national significance when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other buildings or structures with the same association have survived; or

(7) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own national historical significance; or

(8) A property achieving national significance within the past 50 years if it is of extraordinary national importance.

**TABLE 2: CRITERIA FOR INCLUSION OF CULTURAL PROPERTIES ON THE WORLD HERITAGE LIST**

(1) A monument, group of buildings or site which have been nominated for inclusion on the World Heritage List will be considered to be of outstanding universal value for the purposes of the World Heritage Convention when the World Heritage Committee finds that it meets one or more of the following criteria and the test of authenticity. Each property nominated should therefore:

(i) Represent a unique artistic achievement, a masterpiece of the creative genius; or

(ii) Have exerted great influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental arts or townplanning and landscaping; or

(iii) Bear a unique or at least exceptional testimony to a civilization which has disappeared; or

(iv) Be an outstanding example of a type of structure which illustrates a significant stage in history; or

(v) Be an outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change; or

(vi) Be directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance. (The Committee considered that this criterion should justify inclusion in the List only in exceptional cir-

cumstances or in conjunction with other criteria); and

In addition, the property must meet the test of authenticity in design, materials, workmanship, or setting.

(2) The following additional factors will be kept in mind by the Committee in deciding on the eligibility of a cultural property for inclusion on the List:

(i) The state of preservation of the property should be evaluated relatively, that is, it should be compared with that of other property of the same type dating from the same period, both inside and outside the country's borders; and

(ii) Nominations of immovable property which is likely to become movable will not be considered.

**PART 923—COASTAL ZONE MANAGEMENT PROGRAM DEVELOPMENT AND APPROVAL REGULATIONS**

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Act are dealt with under one of these groupings, but not necessarily in the order in which they appear in the Act.

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

(1) Identifies and evaluates those coastal resources recognized in the Act as requiring management or protection by the State;

(2) Reexamines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive, and enforceable;

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

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

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

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

(d) These regulations revise, consolidate, and supersede the following sets of existing regulations and guidance related to management program development and approval:

(1) Interim—Final Program Development and Approval regulations published March 1, 1978 (15 CFR part 923) published in the FEDERAL REGISTER on March 1, 1978, dealing with all sections 305 and 306 program development and approval requirements;

(2) Final Coastal Zone Management Program Development regulations (15 CFR part 920) published in the FEDERAL REGISTER on April 29, 1977, dealing with section 305 program development, preliminary approval and grant applications;

(3) Proposed Coastal Zone Management Program Approval regulations

amendments (15 CFR part 923) published in the FEDERAL REGISTER on December 30, 1976, dealing with subsections 306(c)(2)(B), 306(g), and 312 of the Act having to do with a continuing state-local consultation mechanism, changes to approved management programs, and termination and withdrawal of funding of approved management programs;

(4) Final Coastal Zone Management Program Approval regulations amendment (15 CFR part 923) published in the FEDERAL REGISTER on November 2, 1976, dealing with subsection 306(h) of the Act having to do with island segments;

(5) The "Threshold Papers," informal guidance papers issued by Office of Coastal Zone Management (OCZM) in December 1975, but never published in the FEDERAL REGISTER;

(6) Interim Coastal Zone Management Federal-State Consultation regulations (15 CFR part 925) published in the FEDERAL REGISTER on February 2, 1975, dealing with subsections 307 (b) and (h) of the Act which deal with federal consultation, review and approval procedures, and mediation during program development and preliminary approval; and

(7) Final Coastal Zone Management Program Approval regulations (15 CFR part 923) published in the FEDERAL REGISTER on January 9, 1975, dealing with section 306 program approval requirements.

(e) Each subpart of the regulations is organized as follows:

(1) An introductory section describing which subsections of the Act are addressed in the subpart;

(2) Relevant statutory citations;

(3) The requirements. Where comments are included among the requirements, they are clearly distinguished by label and type face from the requirements. Comments on individual requirements are included for the purpose of providing a clearer understanding of acceptable or recommended ways to meet the requirement; and

(4) General commentary applicable to all the requirements.

(f) While states must meet the requirements of these regulations, their presentation—either to the Assistant Administrator or to the public—need

not be in the order or terminology used herein. (See § 923.71 for further discussion of the program submission format.)

### § 923.2 Definitions.

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

(b) The term *Secretary* means the Secretary of Commerce and his/her designee. With the exception of the mediation functions discussed in § 923.54, all functions of the Act have been vested in the Assistant Administrator for Coastal Zone Management based on duly executed delegations of authority from the Secretary to the Administrator of the National Oceanic and Atmospheric Administration (NOAA) by Department of Commerce Organizational Order 25-5A, and from the Administrator to the Assistant Administrator for Coastal Zone Management by NOAA Circular 78-14.

(c) The term *Assistant Administrator* means the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d)(1) The term *relevant Federal agencies* means those Federal agencies with programs, activities, projects, regulatory, financing, or other assistance responsibilities in the following fields which could impact or affect a State's coastal zone:

- (i) Energy production or transmission,
- (ii) Recreation of a more than local nature,
- (iii) Transportation,
- (iv) Production of food and fiber,
- (v) Preservation of life and property,
- (vi) National defense,
- (vii) Historic, cultural, aesthetic, and conservation values,
- (viii) Mineral resources and extraction, and
- (ix) Pollution abatement and control.

(2) The following are defined as relevant Federal agencies:

Department of Agriculture;  
Department of Commerce;  
Department of Defense;  
Department of Energy;

Department of Health, Education, and Welfare;

Department of Housing and Urban Development;

Department of the Interior;

Department of Transportation;

Environmental Protection Agency;

Federal Energy Regulatory Commission;

General Services Administration;

Nuclear Regulatory Commission.

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

(f) The term *Coastal State* means a State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. Pursuant to section 304(3) of the Act, the term also includes Puerto Rico, the Virgin Islands, Guam, and American Samoa. Pursuant to section 703 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the term also includes the Northern Marianas.

(g) The term *management program* includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the State in accordance with the provisions of this title, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone. The management program shall include an articulation of enforceable policies and citation of authorities providing this enforceability.

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

- (1) Coastal zone,
- (2) Coastal waters,
- (3) Estuary,
- (4) Land use.

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

§ 923.3 General requirements.

(a) Statutory Citations, Subsection 306(c)(1):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that: (1) the State had developed and adopted a management program for its coastal zone . . . which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303 of this title.

Section 302:

The Congress finds that—

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

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

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

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

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

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

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

(h) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and

water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.

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

Section 303:

The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and where possible, to restore or enhance the resources of the Nation's coastal zone for this and succeeding generations; (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and aesthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with State and local governments and regional agencies in effectuating the purposes of this title, and (d) to encourage the participation of the public, of Federal, state and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint action particularly regarding environmental problems.

(b) *Requirements.* The approvability of any state program will be determined by the Assistant Administrator in accordance with the following general requirements:

(1) The management program must provide for the management of those land and water uses having a direct and significant impact on coastal waters and must take steps to assure the appropriate protection of those significant resources and areas, such as wetlands, beaches and dunes, and barrier islands, that make the state's coastal zone a unique, vulnerable, or valuable area;

(2) The management program must contain three broad classes of policies, consistent with the findings of section

velopment activities and are not subject to the Federal consistency requirements of section 307(c)(1));

(iii) Recreational facilities such as beaches, amusement parks, marinas and other boating facilities;

(iv) Public facilities and public works such as schools, hospitals, government buildings, dams and water treatment facilities; and

(v) Transportation facilities such as highways, railroads, airports, ports and harbors.

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

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

(ii) Environmental impacts on coastal resources;

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

(iv) Evaluation of inland and other location alternatives;

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

(4) Since management of uses must take into account the full range of considerations called for in sections 302, 303 and 307(f) of the Act, examination of the following representative factors is suggested:

(i) Air and water quality;

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

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

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

[44 FR 18595, Mar. 28, 1979, as amended at 50 FR 35213, Aug. 30, 1985]

§ 923.12 Uses of regional benefit.

(a) Statutory Citation, Subsection 306(e)(2):

Prior to granting approval, the Secretary shall also find that the program provides . . . for a method of assuring that local and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.

(b) *Requirement.* In order to meet the requirements of subsection 306(e)(2) of the Act, States must:

(1) Identify what constitute uses of regional benefit.

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

§ 923.13 Energy facility planning process.

(a) Statutory Citation Subsection 305(b)(8):

The management program for each coastal state shall include . . . (8) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including, but not limited to, a process anticipating and managing the impacts from such facilities . . .

(b) *Requirements.* States must develop a planning process which is capable, at a minimum, of anticipating and managing the impacts from energy facilities in or affecting a State's coastal zone. This process must include the following elements:

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

(i) In determining energy facilities which may significantly affect the coastal zone, States must consider, at a minimum, those facilities listed in subsection 304(5) of the Act.

(ii) At a minimum, "significantly affect" shall be defined in terms of substantial or potentially substantial changes in coastal zone resources which could be affected by a proposed energy facility. These include changes in land, air, water, mineral, flora, fauna, noise, and objects of historic, cultural, archeological or aesthetic significance.

(2) Procedures for assessing the suitability of sites for such facilities. This assessment procedure shall be designed to evaluate, to the extent practicable, the costs and benefits of proposed and alternative sites in terms of State and national interests as well as local concerns.

302 of the Act, that are related to resource protection, management of coastal development, and simplification of governmental processes.

(i) Within these three broad classes, states must include specific policies that provide the framework for the exercise of various management techniques and authorities governing coastal resources, uses, and areas.

(ii) As part of these three broad classes of policies, the management program must include policies that address uses of or impacts on wetlands and floodplains within the State's coastal zone. These particular policies shall minimize the destruction, loss or degradation of wetlands and preserve and enhance their natural values in accordance with the purposes of Presidential Executive Order 11990, pertaining to wetlands. These policies also shall reduce risks of flood loss, minimize the impact of floods on human safety, health and welfare, and preserve the natural, beneficial values served by floodplains, in accordance with the purposes of Presidential Executive Order 11988, pertaining to floodplains.

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

(4) The policies, standards, objectives, criteria, and procedures by which program decisions will be made must provide (i) a clear understanding of the content of the program, especially in identifying who will be affected by the program and how, and (ii) a clear sense of direction and predictability for decisionmakers who must take actions pursuant to or consistent with the management program.

#### Subpart B—Uses Subject to Management

##### § 923.10 General.

This subpart deals with land and water uses which, because of their direct and significant impacts on coastal waters, are subject to the terms of the management program. Determination of these uses will assist in determining the appropriate coastal management boundary (see subpart

D). This subpart deals in full with the requirements of subsections 305(b)(2)—Uses Subject to Management, 305(b)(8)—Energy Facility Planning, and 306(e)(2)—Uses of Regional Benefit.

##### § 923.11 Uses subject to management.

(a) Statutory Citation, Subsection 305(b)(2):

The management program for each coastal state shall include . . . A definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal water.

(b) *Requirements.* (1) States must identify those land and water uses that will be subject to the terms of the management program. These uses shall be those with direct and significant impacts on coastal waters.

(2) The management program must explain how those uses identified in paragraph (b)(1) of this section will be managed. The management program must contain those enforceable policies, legal authorities, performance standards or other techniques or procedures that will govern whether and how uses will be allowed, conditioned, modified, encouraged or prohibited.

(c) *General comments.* (1) In identifying uses and their appropriate management, States should analyze the quality, location, distribution and demand for the natural and man-made resources of their coastal zone.

(2) States also should consider potential individual and cumulative impacts of uses on coastal waters including, but not limited to the following uses:

(i) Residential and commercial developments such as subdivisions, highrise apartments or hotels, trailer parks and second-home developments, and shopping centers;

(ii) Industrial developments, such as tank farms and refineries, power plants, manufacturing complexes, industrial parks, onshore and offshore port facilities, mineral and sand extraction operations, liquified natural gas (LNG) facilities, petrochemical plants, and Outer Continental Shelf (OCS) development. (OCS oil and gas lease sale activities do not involve de-

(3) Articulation and identification of enforceable State policies, authorities and techniques for managing energy facilities and their impacts;

(i) States must identify any conditions that may be attached to State energy facility, planning and siting procedures;

(ii) States must list relevant constitutional provisions, laws, regulations, judicial decisions and other appropriate official documents or actions that are specifically related to planning for, anticipating and managing energy facilities or impacts, including licensing or permitting procedures.

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

(i) States must identify the organization and structure and procedure means by which energy facility planning and siting decisions are carried out in the State.

(ii) States must address the respective roles of relevant State agencies and their relationship to the lead agency and to the management program's requirements as well as the respective roles and opportunity for participation by Federal agencies, local governments, other interested and affected public and private parties.

(iii) States must integrate into this planning process the procedures by which the national interest in the planning for and siting of energy facilities, identified pursuant to § 923.52(c) can continue to be considered after program approval.

(c) *General comments.* (1) States are encouraged to develop the elements required in paragraph (b) in consultation and cooperation with other State, local and Federal agencies. General consultation requirements for program development, of which this consultation should be considered a part, are discussed more fully in § 923.51. Depending on the approach taken to energy facilities management, this consultation and coordination should include, but need not be limited, to procedures for:

(i) Assessing need/demand projections;

(ii) Allocating these needs among coastal and inland locations;

(iii) Identifying potential coastal impacts; and

(iv) Determining site suitability of alternative locations for particular facilities.

(2) In developing this planning process, States should address several common problems having to do with weak policy and planning linkages and, relatedly, fragmented and overlapping jurisdictions.

(i) Often there is no comprehensive planning process. While one state agency may develop energy plans or policy regarding energy facilities, other state or local agencies may have the responsibility for issuing necessary siting and operating permits. Often these other agencies operate independently of and without regard to state energy or coastal management policies.

(ii) Relatedly, the responsibility for permitting of facilities is diffuse. Often several permits are required from several different agencies at different levels of government.

(iii) Additionally, there frequently are differing permitting processes for different types of energy facilities (e.g., oil and gas facilities as distinct from electric power plants). This may result in a lack of standardized procedures as well as inconsistent application of coastal management policies.

(3) In order to address these problems and to assure the full integration of coastal management considerations with the energy facility planning process, States should consider the following:

(i) Establishment of the designated State coastal management agency as the lead agency in reviewing and making decisions related to siting and conditions of development for energy facilities located in or significantly affecting the coastal zone;

(ii) In states where siting authority is vested in an agency other than the coastal management agency, establishment of a formal means to assure the input and consideration of the coastal management agency's views as part of the decision-making process;

(iii) Establishment of a procedure whereby the management program policies are incorporated into location-

al or developmental decisions (e.g., licenses, permits, zoning approvals).

### Subpart C—Special Management Areas

#### § 923.20 General.

(a) This subpart deals with areas that are of particular concern because of their coastal-related values or characteristics, or because they may face pressures which require detailed attention beyond the general planning and regulatory system which is part of the management program. As a result, these areas require special management attention within the terms of the State's overall coastal program. This special management may include regulatory or permit requirements applicable only to the area of particular concern. It also may include increased intergovernmental coordination, technical assistance, enhanced public expenditures, or additional public services and maintenance to a designated area. This subpart deals with the following subsections of the Act: 305(b)(3)—Geographic Areas of Particular Concern; 305(b)(5)—Guidelines on Priorities of Uses; 305(b)(7)—Shorefront Access and Protection Planning; 305(b)(9)—Areas for Preservation and Restoration.

(b) The importance of designating areas of particular concern for management purposes and the number and type of areas that should be designated is directly related to the degree of comprehensive controls applied throughout a State's coastal zone. Where a State's general coastal management policies and authorities address state and national concerns comprehensively and are specific with respect to particular resources and uses, relatively less emphasis need be placed on designation of areas of particular concern. Where these policies are limited and non-specific, greater emphasis should be placed on areas of particular concern to assure effective management and an adequate degree of program specificity.

#### § 923.21 Areas of particular concern.

(a) Statutory Citations Subsection 305(b)(3):

The management program for each coastal state shall include . . .

(a) an inventory and designation of areas of particular concern within the coastal zone.

#### Subsection 305(b)(5):

The management program for each coastal state shall include . . .

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

(b) *Requirements.* (1) Inventory and designate geographic areas that are of particular concern, on a generic (i.e., by type of area, such as all wetlands or port areas) or site-specific basis, or both;

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

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

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

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

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

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

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

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

(H) Areas needed to protect, maintain or replenish coastal lands or resources including coastal flood plains, aquifers and their recharge areas, es-

tuaries, sand dunes, coral and other reefs, beaches, offshore sand deposits and mangrove stands.

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

(2) Identify areas by location (if site specific) or category of coastal resources (if generic) in sufficient detail that affected landowners, governmental entities and the public can determine with reasonable certainty if a given area is or is not designated.

(3) Describe the nature of the concern and the basis on which designations are made in order to: (i) Indicate why areas or types of areas have been selected for special management attention, and (ii) provide a basis for appropriate management policies and use guidelines.

(4) Describe how the management program addresses and resolves the concerns for which areas are designated; and

(5) Provide guidelines regarding priorities of uses in these areas, including guidelines on uses of lowest priority.

#### § 923.22 Areas for preservation or restoration.

(a) Statutory Citation, Subsection 306(c)(9):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that . . . The management program makes provisions for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological or aesthetic values.

(b) *Requirements.* (1) The criteria by which designations will be made must be included in the management program. Designations may be made for the purposes of preserving or restoring areas for their conservation, recreational, ecological, or aesthetic values.

(2) The procedures by which designations will be made must be included in the management program.

#### § 923.23 Other areas of particular concern.

(a) States must meet the requirements of § 923.21(b) in order to receive program approval. Beyond this, States have the option of designating specific areas known to require additional or special management, but for which additional management techniques have not been developed or necessary authorities have not been established at the time of program approval. Where States exercise this option, they must meet the requirements of paragraph (b) of this section.

(b) *Requirements.* (1) The basis for designation of these additional special management areas must be clearly stated;

(2) A reasonable time frame and procedures must be established for developing and implementing appropriate management techniques. These procedures must provide for the development of those items required in § 923.21(b);

(3) An agency (or agencies) capable of formulating the necessary management policies and techniques must be identified.

(c) States must meet the requirements of § 923.22(b) for having procedures for designating areas for preservation or restoration. Beyond this, States have the option of including procedures for designating areas of particular concern for other than preservation or restoration purposes after program approval. Where States exercise this option, they must meet the requirements of paragraph (d) of this section.

(d) *Requirements.* (1) The criteria by which designations of additional areas of particular concern will be made must be included in the management program; and

(2) The procedures by which such designations will be made must be included in the management program.

#### § 923.24 Shorefront access and protection planning.

(a) Statutory Citation, Subsection 305(b)(7):

The management program for each coastal shall include . . . (a) a definition of the term "beach" and a planning process for the

protection to, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological or cultural value.

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

(c) *Requirements.* (1) The management program must contain a procedure for assessing public beaches and other public areas, including State owned lands, tidelands and bottom lands, which require access or protection, and a description of appropriate types of access and protection.

(2) There must be a definition of the term "beach" that is the broadest definition allowable under state law or constitutional provisions, and an identification of public areas meeting that definition.

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

§ 923.25 Shoreline erosion/mitigation planning.

(a) Statutory Citation, Section 305(b)(9):

The management program for each coastal state shall include . . . A planning process for (A) assessing the effects of shoreline erosion (however caused), and (B) studying and evaluating ways to control, or lessen the impact of, such erosion, and to restore areas adversely affected by such erosion.

(b) The basic purpose in developing this planning process is to give special attention to erosion issues. This special management attention may be achieved by designating erosion areas as areas of particular concern pursu-

ant to § 923.21 or as areas for preservation or restoration pursuant to § 923.22.

(c) *Requirements.* (1) The management program must include a method for assessing the effects of shoreline erosion and evaluating techniques for mitigating, controlling or restoring areas adversely affected by erosion.

(2) There must be an identification and description of enforceable policies, legal authorities, funding techniques and other techniques that will be used to manage the effects of erosion as the State's planning process indicates is necessary.

Subpart D—Boundaries

§ 923.30 General.

(a) This subpart deals in full with subsection 305(b)(1) of the Act—Boundaries of the Coastal Zone.

(b) There are four elements to a State's boundary. The inland boundary, the seaward boundary, areas excluded from the boundary, and, in most cases, interstate boundaries. Specific requirements with respect to procedures for determining and identifying these boundaries are discussed in the sections of this subpart that follow.

(c) Statutory Citations, Subsection 305(b)(1):

The management program for each coastal state shall include . . . (1) An identification of the boundaries of the coastal zone subject to the management program.

Subsection 304(1):

The term "coastal zone" means the coastal waters (including the lands therein and thereunder), and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject

solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

**Subsection 304(2):**

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

**§ 923.31 Inland boundaries.**

(a) *Requirements.* The inland boundary of a State's coastal management area must include:

(1) Those areas the management of which is necessary to control uses which have direct and significant impacts on coastal waters, pursuant to § 923.11 of these regulations;

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

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

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

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

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

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

(8) The inland boundary must be presented in a manner that is clear and exact enough to permit determination of whether property or an activity is located within the manage-

ment area. States must be able to advise interested parties whether they are subject to the terms of the management program within, at a maximum, 30 days of receipt of an inquiry. An inland coastal zone boundary defined in terms of political jurisdiction (e.g., county, township or municipal lines) cultural features (e.g., highways, railroads), planning areas (e.g., regional agency jurisdictions, census enumeration districts), or a uniform setback line is acceptable so long as it includes the areas identified.

(b) Beyond those areas required by paragraph (a) of this section above States have the option of including the following within the coastal zone boundaries:

(1) Watersheds—A State may determine some uses within entire watersheds have direct and significant impact on coastal waters. In such cases it may be appropriate to define the coastal zone as including these watersheds.

(2) Areas of tidal influence that extend further inland than waters under saline influence; particularly in estuaries, deltas and rivers where uses inland could have direct and significant impacts on coastal waters.

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

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

**§ 923.32 Seaward boundaries.**

(a) *Requirements.* (1) For States adjoining the Great Lakes, the seaward boundary is the international boundary with Canada or the boundaries with adjacent States. For all other States

participating in the program, the seaward boundary is the outer limit of the United States territorial sea.

(2) The requirement for defining the seaward boundary of a State's coastal zone can be met by a simple restatement of the limits defined in this section, unless there are water areas which require a more exact delineation because of site specific policies associated with these areas.

Where States have site specific policies for particular water areas, these shall be mapped, described or referenced so that their location can be determined reasonably easily by any party affected by the policies.

(b) *General comments.* The seaward limits, as defined in this section, are for purposes of this program only and represent the area within which the State's management program may be authorized and financed. These limits are irrespective of any other claims States may have by virtue of the Submerged Lands Act or any changes that may occur as a result of the Fisheries Conservation and Management Act of 1976.

#### § 923.33 Excluded lands.

(a) *Requirement.* States must exclude from their coastal management zone those lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers or agents. To meet this requirement, States must describe, list or map lands or types of lands owned, leased, held in trust or otherwise used solely by Federal agencies.

(b) *Indian lands.* Tribal participation in coastal management efforts may be supported and encouraged through a State's program provided that:

(1) Tribal lands are not held in trust by the Federal Government or otherwise excluded from the coastal zone; and

(2) Such efforts are compatible with a State's coastal management policies and are in furtherance of the national policies of section 303 of the Act.

(c) *General comments.* (1) The exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency pro-

visions of section 307 of the Act when Federal actions on these excluded lands have spillover impacts that significantly affect coastal zone areas, uses or resources within the purview of a State's management program. Therefore, States should consider mapping the following types of excluded Federal lands:

(i) Large-scale holdings (of 100 or more acres), especially those on which Federal activities may have spillover effects;

(ii) Lands near special management areas; and,

(iii) Lands that may be declared surplus or excess in the near future, especially those for which the State has reuse priorities or policies.

(2) In excluding Federal lands from a State's coastal zone for the purposes of this Act, a State does not impair any rights or authorities that it may have over Federal lands that exist separate from this program.

#### § 923.34 Interstate boundaries.

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

### Subpart E—Authorities and Organization

#### § 923.40 General.

(a) The authorities and organizational structure on which a State will rely to administer its management program are the crucial underpinnings for enforcing the policies which guide the management of the uses and areas identified according to the previous subparts. There is a direct relationship between the adequacy of authorities and the adequacy of the overall program. The authorities need to be broad enough in both geographic scope and subject matter to ensure implementation of the State's enforceable policies. These enforceable policies must be sufficiently comprehensive and specific to regulate land and water uses, control development, and resolve conflicts among competing uses in order to assure wise use of the coastal

zone. (Issues relating to the adequate scope of the program are dealt with in § 923.3.)

(b) The entity or entities which will exercise the program's authorities is a matter of State determination. They may be the State agency designated pursuant to section 306(c)(5) of the Act, other State agencies, regional or interstate bodies, and local governments. The major approval criterion is a determination that such entity or entities are required to exercise their authorities in conformance with the policies of the management program. Accordingly, the essential requirement is that the State demonstrate that there is a means of ensuring such compliance. This demonstration will be in the context of one or a combination of the three control techniques specified in section 306(e)(1) of the Act. The requirements related to section 306(e)(2) are described in §§ 923.42 through 923.44 of this subchapter.

(c) In determining the adequacy of the authorities and organization of a State's program, the Assistant Administrator will review and evaluate authorities and organizational arrangements in light of the requirements of this subpart and the finding of section 302(g) of the Act, which provides:

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

(d) The authorities requirements of the Act dealt with in this subpart are those contained in subsections 305(b)(4)—Means of Control; 306(c)(7)—Authorities; 306(d)(1)—Control Development and Resolve Conflicts; 306(d)(2)—Powers of Acquisition; 306(e)(1)—Techniques of Control; and 307(f)—Air and Water Quality Control Requirements. The organizational requirements of the Act dealt with in this subpart are those contained in subsections 305(b)(6)—Organizational Structure; 306(c)(5)—Designated State Agency; and 306(c)(6)—Organization.

#### § 923.41 Identification of authorities.

(a) Statutory Citations, Subsection 305(b)(4):

The management program for each coastal state shall include \* \* \* (4) An identification of the means by which the state proposes to exert control over the land uses and water uses referred to in paragraph (2), including a listing of relevant constitutional provisions, laws, regulations, and judicial decisions.

Subsection 306(c)(7):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that \* \* \* (7) The state has the authorities necessary to implement the program, including the authority required under subsection (d) of this section.

Subsection 306(d):

Prior to granting approval of the management program, the Secretary shall find that the state, acting through its chosen agency or agencies, including local governments, areawide agencies designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, regional agencies, or interstate agencies, has authority for the management of the coastal zone, in accordance with the management program. Such authority shall include power:

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

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

(b) *Requirements.* In order to meet the requirements of the preceding subsections of the Act, States must:

(1) Identify relevant constitutional provisions, statutes, regulations, case law and such other legal instruments (including executive orders and inter-agency agreements) that will be used to carry out the State's management program.

(2) This identification will include the authorities pursuant to sections 306(d) and 306(e) of the Act which require a State have the ability to:

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

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

(iii) Resolve conflicts among competing uses;

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

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

(a) Statutory Citation, Subsection 306(e)(1)(A):

Prior to granting approval, the Secretary shall also find that the program provides:

(1) For anyone or a combination of the following general techniques for control of land and water uses within the coastal zone:

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

(b) Control technique subsection 306(e)(1)(A) of the Act allows for State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance. There are 5 principal requirements associated with use of this control technique. They are that:

(1) The State have in place adequate standards and criteria to guide local program development;

(2) During the period while local programs are being developed, the State has sufficient authority to assure compliance with the management program's enforceable policies;

(3) The State can ensure that local coastal programs will be developed pursuant to its standards and criteria;

(4) The State review and approve local coastal programs to assure their conformance to State standards and criteria; and

(5) The State has the ability to assure local compliance with its program once approved.

More detailed and specific requirements for each of these general items are contained in paragraph (c) of this section.

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

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

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

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

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

(iii) State preparation and enforcement of a program on behalf of a local

government. Here the State must have the authority to (A) prepare and adopt a plan, regulations, and ordinances for the local government and (B) enforce such plans, regulations and ordinances;

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

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

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

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

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

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

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

(1) Establish a monitoring system which defines what constitutes and detects patterns of non-compliance. In the case of uses of regional benefit and facilities in which there is a national interest, the monitoring system must be capable of detecting single instances of local actions affecting such uses or facilities in a manner contrary to the management program.

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

(i) Directly enforce the entire local program;

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

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

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

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

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

(a) Statutory Citation, Subsection 306(e)(1)(B):

Prior to granting approval, the Secretary shall also find that the program provides:

(1) For any one or a combination of the following general techniques for control of land and water uses within the coastal zone:  
• • • Direct state land and water use planning regulation.

(b) Control technique subsection 306(e)(1)(B) of the Act allows for

direct state control of land and water uses subject to the management program on the basis of direct State authority. This authority can take the form of:

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

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

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

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

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

(i) The management program authorities provide grounds for taking action to ensure compliance of networked agencies with the program. It will be sufficient if any of the following can act to ensure compliance: The State agency designated pursuant to subsection 306(c)(5) of the Act, the State's Attorney General, another State agency, a local government, or a citizen.

(ii) The executive order, administrative directive or memorandum of understanding establishes conformance requirements of other State agency activities or authorities to management program policies.

(3) A gubernatorial executive order will be an acceptable instrument to meet the requirements of paragraph (c)(2) of this section in those States where networked State agency heads are directly responsible to the Governor.

(4) Where networked State agencies can enforce the management program policies at the time of section 306 approval without first having to revise

their operating rules and regulations, then any proposed revisions to such rules and regulations which would enhance or facilitate implementation need not be accomplished prior to program approval. Where State agencies cannot enforce coastal policies without first revising their rules and regulations, then these revisions must be made prior to approval of the State's program by the Assistant Administrator.

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

(a) **Statutory Citation:** Subsection 306(e)(1)(C):

Prior to granting approval, the Secretary shall find that the program provides:

(1) For any one or a combination of the following general techniques for control of land and water uses within the coastal zone:

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

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

(c) **Requirements.** To use this control technique States must:

(1) Identify the plans, projects or regulations subject to review, based on their significance in terms of impacts on coastal resources, potential for incompatibility with the State's coastal

management program, and having greater than local significance;

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

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

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

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

§ 923.45 Air and water pollution control requirements.

(a) Statutory Citation, Subsection 307(f);

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

(b) *General Comments.* (1) Incorporation of the air and water quality requirements pursuant to the Clean Water Act, as amended (CWA) and Clean Air Act (CAA), as amended, should involve their consideration during program development, especially with respect to use determinations and designation of areas for special management. In addition, this incorporation will prove to be more meaningful if close coordination and working relationships between the State agency and the air and water quality agencies are developed and maintained throughout the program development process and after program approval.

(2) Following is a table of the most important Clean Air Act requirements. These requirements are categorized as either uniform, nationwide requirements or non-uniform requirements applicable to a specific State or local area. The first category of requirements is established in the Clean Air

Act or by the Environmental Protection Agency (EPA) pursuant to provisions of the CAA, and applies uniformly in all areas of the country. The second category of requirements is based on the nature of air quality problems that exist or are forecast in coastal areas, in locations where emission sources may affect air quality in coastal areas, and in other areas of a State. The majority of the second category of requirements will be included in the State Implementation Plans (SIPs) required by the Clean Air Act.

TABLE—CLEAN AIR ACT REQUIREMENTS

Uniform, nationwide requirements.	Nonuniform, nationwide requirements (SIPs).
National ambient air quality standards.	New source review.
Motor vehicle emission standards (except where States have been granted a waiver by EPA).	Emissions or air quality standards more stringent than Federal standards.
New source performance standards.	Prevention of significant deterioration.
National emissions standards for hazardous air pollutants.	Attainment and maintenance of national ambient air quality standards. Other attainment or maintenance measures such as transportation control measures.

(3) Water quality standards are established by EPA promulgation or approval of State standards, taking into consideration public water supplies, protection and propagation of fish, shellfish and wildlife, recreation, agriculture, industry and navigation, EPA itself develops standards on effluent limitations, new source performance standards, pre-treatment standards and toxic pollutant discharge standards.

(c) *Requirements.* (1) States must incorporate into their program, by reference or otherwise, requirements established pursuant to the Clean Water Act (CWA), as amended, and the Clean Air Act (CAA) as amended.

(2) If more stringent standards are developed by a State or locality pursuant to the CWA or CAA, and where such standards can be enforced under State authorities, they must be incorporated, by reference or otherwise, into the State's management program.

## § 923.46 Organizational structure.

## (a) Statutory Citation, Subsection 305(b)(6):

The management program for each coastal state shall include . . . A description of the organizational structure proposed to implement such management program including the responsibilities and interrelationships of local, areawide, state, regional and interstate agencies in the management process.

## Subsection 306(c)(6):

Prior to grant approval of management program submitted by a coastal state, the Secretary shall find that . . . the State is organized to implement the management program required under paragraph (1) of this subsection.

(b) The main purpose of this requirement is to provide a clear understanding of the entities that have responsibility for administering various aspects of the management program and the interrelationship of these entities.

(c) *Requirements.* (1) States must describe the organizational structure that will be used to implement and administer the management program including a discussion of those State and other agencies, including local governments, that will have responsibility for administering, enforcing and/or monitoring those authorities or techniques required pursuant to the following subsections of the Act: 306(c) (B); 306(c)(7); 306(d) (1) and (2); 306(e) (1) and (2) and 307(f)

(2) States must describe the relationship of these administering agencies to the State agency designated pursuant to subsection 306(c)(5) of the Act.

## § 923.47 Designated State agency.

## (a) Statutory Citation, Subsection 306(c)(5):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that . . . The Governor of the state has designated a single agency to receive and administer the grants for implementing the management program required under paragraph (1) of this section.

(b) *Requirements.* (1) The Governor must designate a single State entity to receive and administer section 306 grants.

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

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

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

(2) The requirements for the single designated agency contained herein need not be viewed as confining or otherwise limiting the role and responsibilities which may be assigned to this agency. It is up to the State to decide in what manner and to what extent the designated State agency will be involved in actual program implementation or enforcement. In determining the extent to which this agency should be involved in program implementation or enforcement, specific factors should be considered, such as

the manner in which local and regional authorities are involved in program implementation, the administrative structure of the State, the authorities to be relied upon and the agencies administering such authorities. Because the designated State agency may be viewed as the best vehicle for increasing the unity and efficiency of a management program, the State may want to consider the following in arriving at a designation:

(i) Whether the designated State entity has a legislative mandate to coordinate other State or local programs, plans and/or policies within the coastal zone;

(ii) To what extent linkages already exist between the entity, other agencies, and local governments;

(iii) To what extent management or regulatory authorities affecting the coastal zone presently are administered by the agency; and

(iv) Whether the agency is equipped to handle monitoring, evaluation and enforcement responsibilities.

#### § 923.48 Documentation.

(a) *Requirements.* Documentation in the form of a transmittal letter signed by the Governor, accompanying the management program submittal, is required to the effect that the Governor:

(1) Has reviewed and approved as State policy, the management program, and any changes thereto, submitted for the approval of the Assistant Administrator.

(2) Has designated a single State agency to receive and administer implementation grants;

(3) Attests to the fact that the State has the authorities necessary to implement the management program; and

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

#### Subpart F—Coordination, Public Involvement and National Interest

##### § 923.50 General.

(a) *Statutory Citation, Section 303:*

The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and, where possible, to restore or enhance the resources of the Nation's coast-

al zone for this and succeeding generations, (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with state and local governments and regional agencies in effectuating the purposes of this title, and (d) to encourage the participation of the public, of Federal, state and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint, action particularly regarding environmental problems.

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

(1) The preservation, protection, development and, where possible, the restoration or enhancement of coastal resources;

(2) The achievement of wise use of coastal land and water resources with full consideration for ecological, cultural, historic, and esthetic values and needs for economic development; and

(3) The involvement of the public, of Federal, State and local governments and of regional agencies in the development and implementation of coastal management programs.

(c) In order to be meaningful, coordination with and participation by various units and levels of government including regional commissions, interest groups, and the general public should begin early in the process of program development and should continue

throughout on a timely basis to assure that such efforts will result in substantive inputs into a State's management program. State efforts should be devoted not only to obtaining information necessary for developing the management program but also to obtaining reactions and recommendations regarding the content of the management program and to responding to concerns by interested parties. The requirements for intergovernmental cooperation and public participation continue after program approval.

(d) This subpart deals with requirements for coordination with governmental entities, interest groups and the general public to assure that their interests are fully expressed and considered during the program development process and that procedures are created to insure continued consideration of their views during program implementation. In addition, this subpart deals with mediation procedures for serious disagreements between States and Federal agencies that occur during program development and implementation. This subpart addresses the requirements of the following subsections of the Act: 306(c)(1)—Opportunity for Full Participation; 306(c)(2)(A)—Plan Coordination; 306(c)(2)(B)—Continued State—Local Consultation; 306(c)(3)—Public Hearings; 306(c)(8)—Consideration of the National Interest in Facilities; 307(b)—Federal Consultation; and 307(h)—Mediation.

#### § 923.51 Federal-State consultation.

##### (a) Statutory Citations, Subsection 306(c)(1):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that: The state has developed and adopted a management program for its coastal zone . . . with the opportunity for full participation by relevant Federal agencies.

##### Subsection 307(b):

The Secretary shall not approve the management program submitted by a State pursuant to section 306 unless the views of Federal agencies principally affected by such program have been adequately considered.

(b) The requirements of subsections 306(c)(1) and 307(b) of the Act and

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

(c) In addition to the consideration of relevant Federal agency views required during program development, Federal agencies have the opportunity to provide further comment during the program review and approval process. (See subpart H for details on this process.) Moreover, in the event of a serious disagreement between a relevant Federal agency and designated State agency during program development or during program implementation, the mediation provisions of subsection 307(h) of the Act are available. (See § 923.54 for details on mediation.)

(d) *Requirements.* In order to address that portion of subsection 306(c)(1) of the Act that deals with Federal agency participation, each State must:

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

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

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

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

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

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

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

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

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

(v) Boundary determinations;

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

(vii) Federally developed or assisted plans that must be coordinated with the management program pursuant to subsection 306(c)(2)(A) of the Act.

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

#### § 923.52 Consideration of the national interest in facilities.

(a) Statutory Citation, Subsection 306(c)(8):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that . . . The management program provides for adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, such state's coastal zone) which are necessary to meet requirements which are other than local in nature. In the case of such energy facilities, the Secretary shall find that the state has

given such considerations to any applicable interstate energy plan or program.

(b) The primary purpose of this requirement is to assure adequate consideration by States of the national interest involved in the planning for and siting of facilities (which are necessary to meet other than local requirements) during (1) the development of the State's management program, (2) the review and approval of the program by the Assistant Administrator, and (3) the implementation of the program as such facilities are proposed.

(c) *Requirements.* States must:

(1) Describe the national interest in the planning for and siting of facilities considered during program development.

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

(3) Indicate how and where the consideration of the national interest is reflected in the substance of the management program. In the case of energy facilities in which there is a national interest, the program must indicate the consideration given any interstate energy plans or programs, developed pursuant to section 309 of the Act, which are applicable to or affect a State's coastal zone.

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

#### § 923.53 Federal consistency procedures.

(a) *Requirements.* States shall include in their management program submission, as part of the body of the submission an appendix or an attachment, the procedures they will use to implement the Federal consistency requirements of subsections 307 (c) and (d) of the Act. At a minimum, the following shall be included:

(1) An indication of whether the state agency designated pursuant to subsection 306(c)(5) of the Act or a single other state agency will handle

consistency review (see 15 CFR 930.18);

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

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

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

(b) Beyond the minimum requirements contained in paragraph (a) of this section, States have the option of including the following in their management programs:

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

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

#### § 923.54 Mediation.

(a) Statutory Citation, Subsection 307(h):

In the 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 305; or

(2) in the administration of a management program approved under section 306; 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.

(b) The Act provides for the mediation of "serious disagreements" between any Federal agency and a coastal State during the development and

implementation of a management program. In certain cases, mediation by the Secretary or his/her designee, with the assistance of the Executive Office of the President, may be an appropriate forum for conflict resolution. This section describes the conditions of and processes for mediation of serious disagreements that may arise during program development or implementation.

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

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

(e) Within 15 days following receipt of a request for mediation, the disagreeing agency shall transmit a written response to the Secretary, the agency requesting mediation and to the Assistant Administrator indicating whether it wishes to participate in the mediation process. If the disagreeing agency declines the offer to enter into mediation efforts, the basis for refusal must be indicated. Upon receipt of a refusal to participate in mediation efforts, the Secretary shall seek to resolve the basis for refusal and persuade the disagreeing agency to reconsider its decision and enter into media-

tion efforts. The Secretary will not provide mediation assistance unless all parties to the serious disagreement agree to participate.

(f) In the case of a serious disagreement that occurs during program development, if all parties agree to mediation, the Secretary shall schedule a mediation conference to be attended by representatives from the Office of the Secretary, and the disagreeing Federal and State agencies. The Secretary shall provide the parties at least 10 days notice of the time and place set for the mediation conference. Notice also shall be placed in the **FEDERAL REGISTER** to allow other parties an opportunity to make known to the Secretary in writing their interest in the disagreement.

(g) If the mediation efforts do not resolve the disagreement, the Assistant Administrator shall determine whether inclusion in the management program of the State agency's position in the disagreement affects the Assistant Administrator's ability to approve the State's management program. The Assistant Administrator shall communicate his/her determination in writing, with the reason(s) therefor, the parties to the disagreement.

(h) In the case of a serious disagreement that occurs during program implementation, 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. Notice of the hearing also shall be placed in the **FEDERAL REGISTER**. At the time public notice is provided, the Federal and State agencies shall provide the public convenient access to public data and information related to the serious disagreement. Hearing 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. Unduly long or repetitious oral presentations may

be excluded at the discretion of the hearing officer. In the event of such exclusion, the party may provide the hearing officer with a written submission of the proposed oral presentation. 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. 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 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.

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

(j) Mediation shall terminate: (1) At any time the parties agree to a resolution of the serious disagreement, (2) if one of the parties withdraws from mediation, (3) in the event the parties fail to reach a resolution of the serious disagreement within 15 days following Secretarial mediation efforts, and the parties do not agree to extend mediation beyond that period, or (4) for other good cause.

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

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

(a) Statutory Citation, Subsection 306(c)(1):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that: the state has developed and adopted a management program for its coastal zone . . . with the opportunity of full participation by . . . state agencies, local governments, regional organizations, port authorities, and other interested parties, public and private . . .

(b) *Requirements.* In addition to consultation with Federal agencies, subsection 306(c)(1) of the Act requires that the opportunity for full participation in program development be provided State agencies, local governments, regional commissions and organizations, port authorities, and other interested public or private parties. To meet this requirement with respect to governmental entities (other than Federal) and other public or private parties States must:

- (1) Develops and make available general information regarding the program design, its content and its status throughout program development;
- (2) Provide a listing, as comprehensive as possible, of all governmental agencies, regional organizations, port authorities and public and private organizations likely to be affected by or to have a direct interest in the development and implementation of the management program;
- (3) Indicate the nature of major comments received from interested or affected parties, identified in paragraph (b)(2) of this section, and the nature of the State's response to these comments; and
- (4) Hold public meetings, workshops, etc., during the course of program development at accessible locations and convenient times, with reasonable notice and availability of materials.

§ 923.56 Plan coordination.

(a) Statutory Citation, Subsection 306(c)(2)(A):

Prior to granting approval to a management program submitted by a coastal state, the Secretary shall find that . . .

The State has coordinated its program with local, areawide, and interstate plans

applicable to areas within the coastal zone existing on January 1 of the year in which the state's management program is submitted to the Secretary, which plans have been developed by a local government, and areawide agency designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency . . .

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

- (1) Identify local governments, areawide agencies designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, and regional or interstate agencies which have plans affecting the coastal zone in effect on January 1 of the year in which the management program is submitted;
- (2) List or provide a summary of contacts with these entities for the purpose of coordinating the management program with plans adopted by a governmental entity as of January 1 of the year in which the management program is submitted. At a minimum, the following plans, affecting a State coastal zone, shall be reviewed: land use plans prepared pursuant to section 701 of the Housing and Urban Development Act of 1968, as amended; State and areawide waste treatment facility or management plans prepared pursuant to sections 201 and 208 of the Clean Water Act, as amended; plans and designations made pursuant to the Flood Insurance Act of 1974; any applicable interstate energy plans or programs developed pursuant to section 309 of the Act; regional and interstate highway plans; plans developed by Regional Action Planning Commission; and fishery management plans developed pursuant to the Fisheries Conservation and Management Act.
- (3) Identify conflicts with those plans of a regulatory nature that are

unresolved at the time of program submission and the means that can be used to resolve these conflicts.

§ 923.57 Continuing consultation.

(a) Statutory Citation, Subsection 306(c)(B):

Prior to granting approval to a management program submitted by a coastal state, the Secretary shall find that . . .

The state has . . . established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this section and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this title; except that the Secretary shall not find any mechanism to be "effective" for purposes of this subparagraph unless it includes each of the following requirements:

(i) Such management agency is required, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, to send a notice of such management program decision to any local government whose zoning authority is affected thereby.

(ii) Any such notice shall provide that such local government may, within the 30-day period commencing on the date of receipt of such notice, submit to the management agency written comments on such management program decision, and any recommendation for alternatives thereto, if no action is taken during such period which would conflict or interfere with such management program decision unless such local government waives its rights to comment.

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

(I) is required to consider any such comments,

(II) is authorized, in its discretion, to hold a public hearing on such comments, and

(III) may not take any action within such 30-day period to implement the management program decision, whether or not modified on the basis of such comments.

(b) *Requirements.* (1) Establish a mechanism or mechanisms which will provide for continuing consultation and coordination after program approval between local governments, regional, areawide, multistate and other State agencies with activities in the coastal zone and the State agency des-

ignated pursuant to subsection 306(c)(5) of the Act;

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

(i) "Management agency" refers to the State agency designated by the Governor pursuant to subsection 306(c)(5) of the Act and to any other State agency responsible for implementing a management program decision;

(ii) "Management program decision" refers to any major, discretionary policy decisions on the part of a management agency, such as the determination of permissible land and water uses, the designation of areas or particular concern or areas for preservation or restoration, or the decision to acquire property for public uses. Regulatory actions which are taken pursuant to these major decisions are not subject to the State-local consultation mechanisms;

(iii) A State management program decision shall be considered to be in conflict with a local zoning ordinance if the decision is contradictory to that ordinance. A State management program decision that consists of additional but not contradictory requirements shall not be considered to be in conflict with a local zoning ordinance, decision or other action;

(iv) "Local government" refers to those defined in section 304(10) of the Act which have some form of zoning authority.

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

(vi) Notification must be in writing and must inform the local government of its right to submit comments to the State management agency in the event

the proposed State management program decision conflicts with a local zoning ordinance, decision or other action. The effect of providing such notice is to stay State action to implement its management decision for at least a 30-day period unless the local government waives its right to comment.

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

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

- (1) Waives its right to comment; or
- (2) Concurs with the management program decision; or
- (3) Intends to take action which conflicts or interferes with the management program decision; or

(B) Following a public statement by a local government to the same effect as paragraph (b)(2)(vii)(A) of this section; or

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

(viii) The management program shall include procedures to be followed by a management agency in considering a local government's comments. These procedures shall include, at a minimum, circumstances under which the agency will exercise its discretion to hold a public hearing. Where public hearings will be held, the program must set forth notice and other hearing procedures that will be followed. Following State agency consideration of local comments (when a discretionary public hearing is not held) or following public hearing, the management agency shall provide a written response to the affected local government, affected local government, within a reasonable period of time and prior to implementation of the management program decision, on the results of the agency's consideration of public comments.

§ 923.58 Public hearings.

(a) Statutory Citations, Subsection 306(c)(1):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that:

The state has developed and adopted a management program for its coastal zone . . . after notice . . .

Subsection 306(c)(3):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that . . .

The state has held public hearings in the development of the management program.

Section 311:

All public hearings required under this title must be announced at least thirty days prior to the hearing date. At the time of the announcement, all agency materials pertinent to the hearings, including documents, studies, and other data, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency.

(b) Requirements. States shall:

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

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

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

(4) Include a transcript or summary of the public hearing(s) with the State's program document or submit same within thirty (30) days following submittal of the program to the As-

sistant Administrator. At the same time this transcript or summary is submitted to the Assistant Administrator, it must be made available, upon request, to the public.

### Subpart G—Miscellaneous

#### § 923.60 General.

The purposes of this subpart are to provide guidance on meeting the requirements of subsection 306(h) of the Act dealing with segmented management programs and fulfilling the requirements for an environmental impact assessment which all management program submissions, whether for a State's total coastal zone or for a segment, must contain.

#### § 923.61 Segmentation.

##### (a) Statutory Citation, Section 306(h):

At the discretion of the state and with the approval of the Secretary, a management program may be developed and adopted in segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs: Provided, that the state adequately provides for the ultimate coordination of the various segments of the management program into a single, unified program, and that the unified program will be completed as soon as reasonably practicable.

(b) This section of the Act reflects a recognition that it may be desirable for a State to develop and adopt its management program in segments rather than all at once because of a relatively long coastline, developmental pressures or public support in specific areas, or earlier regional management programs already developed and adopted. It is important to note, however, that the ultimate objective of segmentation is completion of a management program for the coastal zone of the entire State in a timely fashion.

(c) A segmented management program shall not be developed solely for the purpose of protecting or controlling a single coastal resource or use.

(d) Segmentation is at the State's option, but requires the approval of the Assistant Administrator.

(e) *Requirements.* If a State intends to adopt its management program in two or more segments, it shall advise

the Assistant Administrator as early as practicable, stating the reasons for segmenting the program, and requesting the Assistant Administrator's approval. Upon receipt of the Assistant Administrator's approval, the segment submission shall include:

(1) A geographic area on both sides of the coastal land/water interface;

(2) A timetable and budget for the timely completion of the remaining segment(s); and

(3) The management boundary for the entire coastal zone throughout the state as part of the segment submission.

(4) Documentation of how the requirements of subparts A through F are met for the segment.

#### § 923.62 Environmental assessment.

(a) *Requirements.* All State management program submissions must contain an environmental assessment at the time of submission of the management program to OCZM for threshold review. In accordance with the Council on Environmental Quality regulations (FEDERAL REGISTER Vol. 43, No. 230, Nov. 29, 1978) § 1506.5(a) and (b), state environmental assessments shall contain the following information:

(1) A summary of the state's management program;

(2) A brief discussion of the need for the State's participation in the Federal program;

(3) A succinct description of the environment to be affected by program implementation;

(4) A description and discussion of the major alternatives which were considered by the State in developing the coastal management program;

(5) A discussion of the environmental impacts of implementing the program;

(6) A listing of agencies or persons consulted in determining the impacts of the management program.

(b) *General comments.* OCZM will independently evaluate the State's environmental assessment and use as much as possible in developing an EIS on the management program. An EIS will be produced for all state programs submitted for 306 approval. The

timing and review procedures for the EIS are discussed in § 923.72.

Subpart H - Review/Approval  
Procedures

(Omitted from this booklet. Alaska already has an approved program.)

Subpart I—Amendments to and Termination of Approved Management Programs

§ 923.80 General.

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

(b) Statutory Citations, Subsection 306(g):

Any coastal state may amend or modify the management program which it has submitted and which has been approved by the Secretary under this section, pursuant to the required procedures described in subsection (c) . . . [N]o grant shall be made under this section to any coastal state after the date of such amendment or modifica-

tion, until the Secretary approves such amendment or modification.

Subsection 312(b):

The Secretary shall have the authority to terminate any financial assistance extended under section 306 and to withdraw any unexpended portion of such assistance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary, and (2) the state has been given notice of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program.

(c) For purposes of this subpart, amendments are defined as substantial changes in, or substantial changes to enforceable policies or authorities related to:

- (1) Boundaries;
- (2) Uses subject to the management program;
- (3) Criteria or procedures for designating or managing areas or particular concern or areas for preservation or restoration; and
- (4) Consideration of the national interest involved in the planning for and in the siting of, facilities which are necessary to meet requirements which are other than local in nature.

§ 923.81 Requests for amendments.

(a) *Requirement.* Requests for amendments shall be submitted to the Assistant Administrator by the Governor of a coastal State with an approved management program or by the head of the State agency (designated pursuant to section 306(c)(5)) if the Governor has delegated this responsibility and such delegation is part of the approved management program.

(b) *Requirements.* Amendment requests shall contain the following:

- (1) Description of the proposed change, including specific pages and text of the management program that will be changed if the amendment is approved by the Assistant Administrator;
- (2) Explanation of why the change is necessary and appropriate, including a discussion of the following factors, as relevant: Changes in coastal zone needs, problems, issues, or priorities. This discussion also shall identify

which findings, if any, made by the Assistant Administrator in approving the management program may need to be modified if the amendment is approved;

(3) Copy of public notice(s) announcing the public hearing(s) on the proposed amendments:

(i) At least one public hearing must be held on the proposed amendment, pursuant to section 306(c)(3) of the Act;

(ii) Pursuant to section 311 of the Act, notice of such public hearing(s) must be announced at least 30 days prior to the hearing date.

(iii) At the time of the announcement, relevant agency materials pertinent to the hearing must be made available to the public;

(4) Summary of the hearing(s) comments:

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

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

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

(c) Requests for amendments should be submitted to the Assistant Administrator whenever possible prior to final State action to implement a major program.

#### § 923.82 Amendment review/approval procedures.

(a) Upon submission by a State of its amendment request, OCZM will review the request to determine preliminarily if:

(1) The management program, if changed according to the amendment

request, still will constitute an approvable program.

(i) For amendments affecting management program boundaries, this will involve a determination that the program, if changed, will continue to include the following areas (as defined in § 923.31(a)) within the State's coastal zone:

(A) Areas the management of which is necessary to control uses with direct and significant impacts on coastal waters;

(B) Transitional and intertidal areas;

(C) Salt marshes and wetlands;

(D) Islands;

(E) Beaches; and

(F) Waters under tidal influence.

(ii) For amendments affecting uses subject to the management program, this will involve a determination that the program, if changed, will continue to:

(A) Identify which uses are subject to the management program (see § 923.10(b)(1));

(B) Assure that policies and authorities governing the management of these uses incorporate a sufficient range of considerations to address the findings and policies of sections 302 and 303 of the Act (see § 923.3(b)(1) and (2));

(C) Assure that policies and authorities related to use management are capable of effective implementation at the time of amendment approval (see § 923.10 (b)(2)); and

(D) Identify uses considered by the State to be of regional benefit and a method (or methods) of assuring local regulations do not unreasonably restrict or exclude such uses (see § 923.12(b)).

(iii) Amendments affecting criteria for designating or managing areas of particular concern, this will involve a determination that the management program, if changed, will continue to provide for:

(A) Criteria for designations (see § 923.21(b)(1));

(B) Designation of areas on a generic or site-specific basis (see § 923.21(b)(1) and (2));

(C) Description of how the management program addresses and resolves the management concerns for which

areas are designated (see § 923.21(b)(3) and (4)); and

(D) Guidelines regarding priority of uses, including uses of lowest priority (see § 923.21(b)(5)).

(iv) For amendments affecting criteria for designating or managing areas for preservation or restoration, this will involve a determination that the management program, if changed, will continue to provide for criteria and procedures for designations that are for the purposes of preserving or restoring areas for their conservation, recreational, ecological or esthetic values (see § 923.22(b)).

(v) For amendments affecting procedures for considering the national interest in particular facilities, this will involve a determination that the management program, if changed, will continue to provide for:

(A) A description of the national interest in the planning for and siting of the facilities which is taken into account by the consideration procedures (see § 923.52(c)(1));

(B) The sources relied upon for such consideration (see § 923.52(c)(2));

(C) A clear and detailed description of the administrative procedures and decisions points where this interest will be considered (see § 923.52(c)(4)); and

(D) In the case of energy facilities, consideration of any applicable interstate energy plan or program developed pursuant to section 309 of the Act (see § 923.52(c)(3)).

(2) The procedural requirements of section 306(c) of the Act have been met. These procedural requirements are that:

(i) The State has developed the amendment with the opportunity for full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested public and private parties (section 306(c)(1) of the Act);

(ii) The State has coordinated the amendment with local, area-wide and interstate plans applicable to areas within the coastal zone affected by the amendment and existing on January 1 of the year in which the amendment request is submitted (section 306(c)(2));

(iii) Notice has been provided and a public hearing held on the proposed amendment (section 306(c)(1) and (c)(3)); and

(iv) The Governor or the head of the State agency, designated pursuant to section 306(c)(5), has reviewed and approved the proposed amendment (section 306(c)(4)).

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

(1) Where problems exist with respect to the procedural requirements, States may redress these and resubmit its amendment request.

(2) Where problems exist with respect to basic program approvability, States also may modify their amendment request to redress the deficiencies with respect to approvability and thereafter may resubmit their amendment request.

(3) Where a State acts to implement the amendment request despite the Assistant Administrator's notification that such amendment would render the management program unapprovable, that State may be subject to withdrawal of program approval and withdrawal of administrative funding. (See 15 CFR 928.5(b).)

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

(1) If an EIS is appropriate, OCZM will prepare and distribute a DEIS and FEIS consistent with CEQ guidelines and NOAA procedures.

(i) Following review of comments on the FEIS, the Assistant Administrator

will take final action to approve or disapprove the amendment request.

(ii) Notice of the Assistant Administrator's decision will be given in the **FEDERAL REGISTER**. If the Assistant Administrator's decision is to approve the amendment, the notice also shall indicate that Federal consistency applies as of the time of the Assistant Administrator's approval.

(2) If an EIS is not required pursuant to CEQ guidelines and regulations, notice will be published in the **FEDERAL REGISTER** of the Assistant Administrator's intent to approve the amendment request.

(i) This notice will include the content of the proposed amendment; the basis for determining an EIS is not required; and a specified comment period of not less than 30 days.

(ii) If no serious disagreement is raised by the head of a Federal agency (see § 923.83) during the comment period and after taking into account all comments received, the Assistant Administrator will make a final decision on whether to approve the proposed amendment and issue notice thereof in the **FEDERAL REGISTER**.

[44 FR 18595, Mar. 28, 1979, as amended at 47 FR 21024, May 17, 1982]

#### § 923.83 Mediation of amendments.

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

(b) Mediation may be requested by a Governor or head of a State agency designated pursuant to section 306(c)(5) or by the head of a relevant Federal agency. Mediation is a voluntary process in which the Secretary of Commerce attempts to mediate between disagreeing parties over major problems.

(c) The specific mediation procedures to be followed when there are serious disagreements over amendments are the same as those utilized for serious disagreements during program implementation. (See § 923.54).

#### § 923.84 Routine program implementation.

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

(b) *Requirements.* (1) States shall notify OCZM of routine program implementation actions in order that OCZM may review the action to ensure it does not constitute an amendment.

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

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

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

(i) This notice shall:

(A) Describe the nature of the routine program implementation;

(B) Indicate that the State considers it routine program implementation and has requested OCZM's concurrence in that determination; and

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

(ii) Where relevant Federal agencies do not maintain regional offices, notice must be provided to the headquarters office.

(3) Within 4 weeks of receipt of notice from a State, OCZM shall inform the State whether it concurs that the action constitutes routine program implementation. Failure to

notify a State in writing within 4 weeks of receipt of notice shall be considered concurrence.

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

(i) This notice shall:

(A) Indicate the date on which the State received concurrence from OCZM that the action constitutes routine program implementation;

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

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

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

(5) Where OCZM does not concur, a State will be advised to submit the action as an amendment, subject to the provisions of §§ 923.81 through 923.82.

**Subpart J—Applications for Program Development or Implementation Grants**

**§ 923.90 General.**

(a) The primary purpose of development grants made pursuant to section 305 of the Act is to assist coastal States in the development of comprehensive coastal management programs that can be approved by the Assistant Administrator. The primary purpose of implementation grants made pursuant to section 306 of the Act is to assist coastal States in implementing coastal management programs following their approval. The purpose of the guidelines in this subpart is to define the procedures by which grantees apply for and administer grants under the Act. These guidelines shall be used and interpreted in conjunction with the Office of Management and Budget Circular A-102, Administrative Requirements for Grants-in-Aid to State and local governments, and other directives from the NOAA and OCZM grants offices.

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

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

(d) Grants shall not exceed eighty per cent of the annual total cost of the program.

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

(f) All application and preapplication forms are to be requested from and submitted to:

National Oceanic and Atmospheric Administration, Office of Coastal Zone Management, Grants and Loans Operations Staff, 3300 Whitehaven Street, NW., Washington, DC 20235.

**§ 923.91 State responsibility.**

(a) Applications for program grants shall be submitted by the Governor of a participating State or by the head of the State entity designated by the Governor pursuant to subsection 306(c)(5) of the Act.

(b) In the case of section 305 grant, the application shall designate a single State agency or entity to receive development grants and to be responsible for development of the State's coastal management program. The designee need not be that entity designated by the Governor pursuant to subsection 306(c)(5) of the Act as the single agency to receive and administer implementation grants.

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

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

#### § 923.92 Allocation.

##### (a) Statutory Citations, Subsections 305(g):

With the approval of the Secretary, any coastal state may allocate to any local government, to any areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, to any regional agency, or to any interstate agency, a portion of any grant received by it under this section for the purpose of carrying out the provisions of this section.

##### Subsection 306(f):

With the approval of the Secretary, a state may allocate to a local government, an areawide agency designated under section 204 Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency, a portion of the grant under this section for the purpose of carrying out the provisions of this section: Provided, that such allocation shall not relieve the state of the responsibility of ensuring that any funds so allocated are applied in furtherance of such state's approved management program.

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

(1) *Local governments.* Should a State desire to allocate a portion of its grant to a local government, units of general-purpose local government are preferred over special-purpose units of local government.

(2) *Local governments.* Where a State will be relying on direct State controls as provided for in subsection 306(e)(1)(B) of the Act, pass-throughs to local governments for local planning, regulatory or administrative efforts under a section 306 grant cannot be made, unless they are subject to adequate State overview and are part of the approved management program. Where the approved management program provides for specified

local activities or one-time projects, again subject to adequate State overview, then a proportional amount of administrative grant funds can be allocated to local governments.

(3) *Areawide agencies.* Should the State wish to allocate a portion of its program development grant to an areawide/regional agency under the provisions of subsection 305(g) of the Act, and in the absent of State law to the contrary, preference shall be given to those agencies recognized or designated as areawide/regional comprehensive planning and development agencies under the provisions of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 or Title IV of the Intergovernmental Cooperative Act of 1968.

(4) *Indian Tribes.* In furtherance of the policy enunciated in § 923.33(b)(2), individual tribes or groups of tribes may be considered regional agencies and may be allocated a portion of a State's grant for the development of independent tribal coastal management programs or the implementation of specific management projects provided that:

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

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

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 18595, Mar. 28, 1979, as amended at 48 FR 29136, June 24, 1983]

#### § 923.93 Geographic segments.

(a) Application procedures for a grant to be awarded pursuant to subsection 306(h) of the Act for a geographic segment of a State's coastal zone are the same as those set forth in this subpart for a grant to administer the approved management program of the entire coastal zone of a State.

(b) When a State has a program for a geographic segment of its coastal

zone approved pursuant to subsection 306(h) of the Act, that portion of a State's coastal zone not awarded segment approval will continue to be eligible for section 305 grants until authorization for such funds terminates.

**§ 923.94 Eligible implementation costs.**

(a) Costs claimed must be beneficial and necessary to the objectives of the grant project. As used herein the terms cost and grant project pertain to both the Federal and the matching share. Allowability of costs will be determined in accordance with the provisions of Federal Management Circular (FMC) 74-4: Cost Principles Applicable to Grants and Contracts with State and Local Governments.

(b) Federal funds awarded pursuant to section 306 of the Act may not be used for land acquisition purposes and may not be used for construction purposes except as described in paragraph (d) of this section.

(c) The primary purpose for which implementation funds, pursuant to section 306 of the Act, are to be used is to assure effective implementation and administration of the management program, including especially administrative actions to carry out and enforce program policies, authorities and other management techniques. Implementation activities should be related to achieving substantive results in the following 4 major areas, which are derived from the policies and findings of sections 302 and 303 of the Act:

(1) Protection of significant natural coastal resources, and areas including, as appropriate, wetlands, beaches, dunes, barrier islands, reefs and fisheries.

(2) Management of coastal development to:

(i) Prevent or mitigate loss of life and property in such coastal hazard areas as floodplains, erosion-prone areas, areas subject to subsidence or saltwater intrusion;

(ii) Provide priorities for water-dependent uses such as ports, fishing facilities and water-dependent energy facilities; and

(iii) Identify environmentally acceptable sites for dredge spoil disposal.

(3) Increase in public access for recreational purposes, including revital-

ization of urban waterfront and protection and restoration, where possible, of important historic, cultural and aesthetic coastal resources.

(4) Improvement in the predictability and efficiency of governmental decisionmaking especially with respect to permitting.

(d) Implementation funding may be applied to the management of designated areas of particular concern, especially areas designated for preservation or restoration purposes pursuant to section 306(c)(9) of the Act. Within areas designated for the purpose of restoring or preserving their ecological or conservation values, section 306 funds may be spent for projects involving expendable materials (as for example, seeds to be used as a non-structural erosion control technique or, for another example, materials to restore lighthouses designated as areas for restoration). All costs associated with such projects may not exceed a total of \$50,000 per grant, except in the case of a demonstration grant which may be negotiated with and approved by the Assistant Administrator. In addition the following conditions must be met:

(1) The project must be consistent with and fulfill the objectives of a related policy (or policies) in the State's management program;

(2) Basic program administration requirements discussed in paragraph (c) of this section are provided for;

(3) No other sources of funding are readily available; and

(4) An explanation is provided of how the area will be maintained and operated once preserved or restored.

(e) Section 306 funding in support of any of these purposes, except as limited in paragraph (d) of this section, may be used to fund:

(1) Personnel costs,

(2) Supplies and overhead,

(3) Equipment (subject to the limitations in paragraph (f) of this section), and

(4) Feasibility studies and preliminary engineering reports. A feasibility study is defined as a document, independent of a particular design solution for a project, which presents an analysis of the economic practicality of the project. A preliminary engineering

report is defined as a document which presents both engineering criteria, in sufficient detail to form the basis for the preparation of final design documents and detailed engineering cost estimates. Detailed architectural drawings and engineering specifications are eligible costs if:

(i) They are directly related to preservation and restoration projects discussed in (d) of this section;

(ii) They are for projects which are not in APC's but are directly related to the State's management program and the State can provide written documentation to OCZM that the other sources of funding have been secured to complete such projects.

(f) Equipment purchases by the grantee of more than one thousand (1,000) dollars per item require NOAA approval prior to purchase. Equipment purchases by sub-awardees may be approved by the grantee. Such purchases may be deemed eligible costs if the State:

(1) Has examined lease, rental or other non-purchase alternatives and purchase represents an equal or lesser cost alternative, and

(2) The equipment is essential to management activities that are anticipated to continue for more than 1 year.

(g) States are encouraged to coordinate administrative funding requests with funding possibilities pursuant to sections 308, 309, 310 and 315 of the Act. When in doubt as to the appropriate section of the Act under which to request funding, States should consult with OCZM. States should consult with OCZM on technical aspects of consolidating requests into a single application.

**§ 923.95 Application for initial program development or implementation grants.**

(a) The form SF-424, and an Application for Federal Assistance (Non-Construction Programs) constitutes the formal application. An original and two (2) copies must be submitted 45 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with E.O. 12372 requirements including the resolution of any problems raised by the proposed project. Grants

will not be awarded until A-55 requirements have been completed.

(b) States have the option of using a Preapplication for Federal Assistance. If used, the Preapplication must be submitted 120 days prior to the beginning date of the requested grant. The Preapplication shall include documentation, signed by the Governor, designating the State office, agency, or entity to apply for the administer the grant.

(c) Costs claimed as charges to the grant project must be beneficial and necessary to the objectives of the grant project. As used herein, the terms "cost" and "grant project" pertain to both the Federal grant and the matching share. Allowability of costs will be determined in accordance with the provisions of FMC 74-4: Cost Principles Applicable to Grants and Contracts with State and Local Governments. Eligible implementation costs also shall be determined in accordance with § 923.94 of these regulations.

(d) In Part IV—Program Narrative of the Form SF-424, the applicant shall describe clearly and briefly the activities that will be undertaken with grant funds in support of implementation and administration of the management program. This description shall include:

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

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

(3) For each task:

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

(ii) Identify any sub-awardees (other State agencies, local governments, individuals, etc.) that will be allocated responsibility for carrying out all or portions of the task, and indicate the estimated cost of the sub-awards for each allocation. Identify, if any, that portion of the task that will be carried out under contract with private firms or individuals and indicate the estimated cost of such contract(s);

(iii) Indicate the estimated total cost. Also indicate the estimated total

person-months if any, allocated to the task from the applicant's staff;

(iv) Indicate the percent estimated to be completed during the grant period.

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

(5) Using two categories, Professional and Clerical, indicate the total number of personnel in each category on the applicant's staff who will be assigned to the grant project. Also indicate the number assigned full time and the member assigned less than full time in the two categories. Additionally, indicate the number of new positions created in the two categories as a result of the grant project.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

(44 FR 18595, Mar. 28, 1979, as amended at 48 FR 29136, June 24, 1983)

**§ 923.96 Applications for subsequent program development grants.**

(a) Subsequent development grants will follow the procedures set forth in § 923.95. Additionally, the program design discussed in § 923.95(d) shall be updated to:

(1) Describe the anticipated design and content of the management program, including the major issues the program will address, and the policies and management techniques that will be proposed to address these issues;

(2) Describe how the past year's work contributed to the accomplishment of the overall program design and specifically to meeting the requirements for program approval;

(3) Examine and assess the need, if any, to modify the overall program design or the program's goals and objectives or both in view of the above or any emerging opportunities or problems; and

(4) Indicate when the State will submit a management program to the Assistant Administrator for review and final approval pursuant to section 306 of the Act or for preliminary approval

pursuant to subsection 305(d) of the Act.

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

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

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

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

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

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

**§ 923.97 Applications for subsequent program implementation grants.**

(a) Second and subsequent year applications will follow the procedures set forth in § 923.95 except that:

(1) The Governor's document designating the State agency to receive and administer the grant is not required unless there has been an approved change of designation; and

(2) Copies of the approved management program and approved changes are not required.

(b) No award for continued funding pursuant to section 306 will be made until an evaluation of the State's program pursuant to section 312 of the Act has been conducted and findings have been made by the Assistant Administrator.

**§ 923.98 Applications for preliminary approval grants.**

(a) The primary purposes of preliminary approval grants are to assist a State in insuring ultimate implementation of a fully developed program design and to provide for initial implementation of approved management elements. The purpose of these guide-

lines is to define the procedures by which grantees apply for and administer grants under the Act.

(b) The following represent allowable subsection 305(d) costs:

(1) Resolving section 306 deficiencies;

(2) Implementing those portions of a State's coastal management program for which sufficient authorities and organizational structures are in place;

(3) Updating coastal management programs if this updating would be an allowable cost after section 306 approval.

(c) The Form SF-424 and the Application for Federal Assistance (Non-Construction Programs), constitutes the formal application. An original and two (2) copies must be submitted at least 45 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with E.O. 12372 requirements including the resolution of any problems raised by the proposed project. A grant will not be awarded until E.O. 12372 requirements have been completed.

(d) In Part IV, Program Narrative of the Form SF-424, the applicant should respond to the following requirements:

(1) Set forth a work program describing the activities to be undertaken during the grant period. This work program shall include:

(i) A precise description of each major task to be undertaken to resolve section 306 deficiencies, and a specific timetable for remedying these deficiencies;

(ii) A precise description of implementation activities for approved management components, including a demonstration that these implementation funds will not be applied outside the approval coastal management boundaries;

(iii) A precise description of any other tasks necessary for and allowable under subsection 305(d);

(iv) For each task, identify any subawardees that will be allocated responsibility for carrying out all or portions of the tasks, and indicate the estimated cost of the subaward for each allocation. Identify, if any, that portion of the task that will be carried out under contract with consultants

and indicate the estimated cost of such contract(s); and

(v) For each task, indicate the estimated total cost. Also, indicate the estimated total person-months of effort, if any, allocated to the task from the applicant's staff.

(2) The sum of all task cost in the above paragraph should equal the total estimated grant project cost.

(3) Using two categories, Professional and Clerical, indicate the total number of personnel in each category on the applicant's staff that will be assigned to the grant project. Also indicate the number assigned full time and the number assigned less than full time in the two categories. Additionally, indicate the number of new positions created in the two categories as a result of the grant project.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec. 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

(44 FR 18595, Mar. 28, 1979, as amended at 48 FR 29136, June 24, 1983)

#### § 923.99 Approval of applications.

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

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

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

#### § 923.100 Grant amendments.

(a) Actions which require an amendment to a grant award such as a re-

quest for additional Federal funds, changes in the amount of the non-Federal share, changes in the approved project budget as specified in Attachment K of OMB Circular A-102, or extension of the grant period must be submitted to the Assistant Administrator and approved in writing by him/her and the NOAA Grants Officer prior to initiation of the contemplated change. Such requests should be submitted at least 30 days prior to the proposed effective date of the change and, if appropriate, accompanied by evidence of compliance with A-95 requirements.

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

#### Subpart K—Improving Coastal Zone Management

**AUTHORITY:** Secs. 303 and 306, Coastal Zone Management Act and sec. 5, Coastal Zone Management Improvement Act of 1980.

**SOURCE:** 47 FR 21019, May 17, 1982, unless otherwise noted.

#### § 923.101 General.

- (a) Statutory citations:  
(1) Section 303(2)

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

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

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

(B) The management of coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, and erosion-prone areas and in areas of sub-

sidence and saltwater intrusion and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands.

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

(D) Public access to the coasts for recreation purposes.

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

(F) The coordination and simplification of procedures in order to ensure expedited governmental decisionmaking for the management of coastal resources.

(G) Continued consultation and coordination with, and the giving of adequate consideration to the views of, affected Federal agencies.

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

(I) Assistance to support comprehensive planning, conservation, and management for living marine resources, including planning for the siting of pollution control and aquaculture facilities within the coastal zone.

- (2) Section 306(a).

The Secretary may make grants to any coastal State for not more than 80 per centum of the costs of administering such State's management program if the Secretary—

(3) Finds, if such program has been administered with financial assistance under this section for at least one year, that the coastal State will expend an increasing portion of each grant received under this section (but not more than 30 per centum of the grant unless the State chooses to expend a higher percentage) on activities that will result in significant improvement being made in achieving the coastal management objectives specified in Section 303(2)(A)-(D).

(b) States whose approved programs have been administered for at least one year with section 306 funds must expend an "increasing proportion" of each subsequent section 306 financial assistance award on activities that will result in "significant improvement" in achieving certain national coastal

management objectives. This subpart defines "significant improvement," describes the process for determining which significant improvement activities a State may perform, establishes the formula for determining "increasing proportion," and sets forth the consequences of failure to pursue significant improvements.

**§ 923.102 Significant improvement defined.**

(a) A "significant improvement" is an accomplishment that addresses any of the objectives of section 303(2)(A) through (I) by:

(1) Substantially expanding the scope of the approved program (such expansion of program scope includes, but is not limited to an amendment or routine program implementation), or

(2) Substantially strengthening the ability of the State to implement or enforce the approved program.

(b) Significant improvements include, but are not limited to, the following types of accomplishments:

(1) The adoption of new enforceable policies for coastal decisionmaking of the conversion of nonenforceable (encouragement) policies to enforceable policies. The State (or local government) may adopt new policies by legislation, rulemaking, memoranda of understanding, executive order or other legally sufficient means.

(2) The adoption of refined enforceable policies for coastal decisionmaking including:

(i) More specific standards for the implementation of existing statutes.

(ii) Site specific management plans for areas designated as Areas of Particular Concern and Areas for Preservation or Restoration or other areas beyond what is required by the approved program.

(3) The extension of existing enforceable coastal management policies to new geographic areas beyond what is required by the approved program.

(4) Development of more effective or efficient administration of the approved management program including:

(i) Improved capability of the coastal management agencies to implement State coastal regulatory, planning, and

management requirements contained in the approved program.

(ii) Streamlined intergovernmental coordination and public participation mechanisms.

(5) The following to the extent they exceed what is required by an approved program.

(i) Development of natural resource information critical to making informed coastal management decisions.

(ii) Development and implementation of State and local strategies, projects, and management programs for coastal resources and uses.

**§ 923.103 Selection and approval of activities leading to significant improvements.**

(a) The State will take the initiative in proposing significant improvement activities. The State's financial assistance application will describe the management activities it will perform and the significant improvements it expects to achieve over the course of the next financial assistance award period. This description will clearly identify specific schedules and expected products.

(b) Based on the results of the continuing review described in 15 CFR Part 928, the Assistant Administrator will determine in consultation with the State if the management activities proposed by the State are likely to result in significant improvement in achieving the coastal management objectives of section 303(2)(A) through (I).

(c) The States and the Assistant Administrator will negotiate an agreement at the beginning of each financial assistance award period establishing: (1) The specific significant improvement objectives to be achieved during the financial assistance award period, (2) the Federal funds to be devoted to each task, and (3) the basis for assessing the State's progress in accomplishing each significant improvement task. The agreement will be included as part of the financial assistance award. There is no requirement that the State address each of the nine significant improvement objectives within an individual financial assistance award period.

(d) If unforeseen circumstances arise that affect the accomplishment of any significant improvement task, the State must provide the Assistant Administrator with prompt notice and negotiate with the Assistant Administrator any necessary changes to the schedule and products before the scheduled completion dates. The Assistant Administrator shall provide the State agency with a schedule for negotiation and a time certain when a decision will be available to the State agency. Any such changes will be made part of the agreement included in the financial assistance award.

(e) Significant improvements need not be achieved within the period of one financial assistance award if there is specific reason to identify a longer period.

§ 923.104 Establishing the "increasing proportion".

(a) During the first year a State is required to make significant improvements (its second 306 award), it must agree to expend 20 percent of the Federal share of its upcoming section 306 financial assistance award on activities designed to lead to significant improvements. Thereafter, the State must agree to constant incremental increases of at least one percent in each succeeding year. The amount to be spent on significant improvements will be determined by multiplying the applicable percentage by the amount of Federal funds actually received.

(b) In no case may a State be required to expend more on significant improvement activities than the incremental increases established by this section. However, States may voluntarily exceed the minimum requirement on significant improvement expenditures established by this section. The failure to make significant improvements as a result of those expenditures in excess of the minimum requirement will not result in any reduction in financial assistance under the provisions of § 928.5(a), unless such failure results in an unjustified deviation under § 928.5(b).

§ 923.105 Failure to agree to pursue significant improvements.

(a) If a State chooses not to pursue significant improvements in accordance with this subpart, the Secretary must withhold all financial assistance under section 306. However, a decision not to award section 306 funds does not necessarily require withdrawal of program approval. A State may continue to implement and enforce its approved program with State funds. Under these circumstances, a State will still be able to exercise its Federal consistency review rights under section 307 and will remain eligible for CEIP funds if it meets all other eligibility requirements.

(b) A discussion of the procedures by which the Assistant Administrator will evaluate whether a State has failed to make significant improvements is contained in 15 CFR Part 928, Review of Performance of State Coastal Management and Coastal Energy Impact Programs.

**PART 924—MONITOR MARINE SANCTUARY**

- Sec.
- 924.1 Authority.
- 924.2 Description of the Sanctuary.
- 924.3 Activities prohibited within the Sanctuary.
- 924.4 Penalties for commission of prohibited acts.
- 924.5 Permitted activities.
- 924.6 Permit procedures and criteria.
- 924.7 Certification procedures.
- 924.8 Appeals of administrative action.

**AUTHORITY:** Secs. 302 and 303, Pub. L. 92-532, as amended; 66 Stat. 1061 (16 U.S.C. 1432 and 1433).

**SOURCE:** 40 FR 21706, May 19, 1975, unless otherwise noted.

§ 924.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of section 302(a) of the Act. The following regulations are issued pursuant to the authorities of sections 302(f), 302(g) and 303 of the Act.

establish minimum and maximum State allocations.

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

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

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

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

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

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

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

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

(f) *Calculation of financial assistance award levels.* Actual financial as-

sistance award levels will be set from base level allocations, any adjustments under paragraph (e) of this section, and in accordance with the provisions of section 312(a), (c), and (d). Award levels may fall below the one percent minimum established under section 306(b) for purposes of implementing section 312(c) of the Act.

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

[47 FR 21021, May 17, 1982]

## PART 928—REVIEW OF PERFORMANCE

Sec.

928.1 General.

928.2 Definitions.

928.3 Procedure for conducting continuing reviews of approved State CZM programs.

928.4 Public participation.

928.5 Enforcement.

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

**SOURCE:** 47 FR 21021, May 17, 1982, unless otherwise noted.

### § 928.1 General.

This part sets forth the requirements for review of approved State coastal zone management (CZM) programs pursuant to section 312 of the Act (16 U.S.C. 1458). This part defines "continuing review" and other important terms, and sets forth the procedures for:

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

(b) Providing for public participation;

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

(d) Withdrawing program approval and financial assistance.

[57 FR 31113, July 14, 1992]

### § 928.2 Definitions.

(a) *Continuing review* means monitoring State performance on an ongoing basis. As part of the continuing review, evaluations of approved CZM programs will be conducted and writ-

teri findings will be produced at least once every three years.

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

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

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

(e) *Financial assistance award* means a legal instrument that creates a relationship between the Federal government and another entity (recipient). The principal purpose of the award is the transfer of money or services in order to accomplish a public purpose authorized by Federal statute. The term "financial assistance award" encompasses grants, loans, and cooperative agreements. The following elements constitute the award:

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

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

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

(47 FR 21021, May 17, 1982, as amended at 57 FR 31113, July 14, 1992)

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

(a) As required by section 312(a), the Secretary shall conduct a continuing review of the performance of coastal States with respect to coastal management. Each review shall include a written evaluation with an assessment and detailed findings concerning the extent to which the State has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in section 303(2)(A) through (K), and adhered to the terms of any grant, loan, or cooperative agreement funded under this title (16 U.S.C. 1451-1464).

(b) *Continuing review procedures.*  
 (1) Each State will submit a financial assistance application or work program, whichever is applicable, on a timetable negotiated with the Assistant Administrator, describing the tasks to be undertaken by the State for the purpose of implementing and enforcing its approved CZM program.

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

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

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

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

(6) Within two weeks from receipt of the draft findings, a State may request a meeting with the Assistant Administrator to discuss the draft findings and the State's comments.

(7) The Assistant Administrator will issue final findings to the State CZM program manager and the head of the State CZM agency within 120 days of the last public meeting in the State. Copies of the final findings will be sent to all persons and organizations who participated in the evaluation. Participants may be asked to complete a card or sign-in sheet provided by the evaluation team indicating that they wish to receive the final findings. Notice of the availability of the final findings will also be published in the FEDERAL REGISTER.

(8) The final findings will contain a section entitled "Response to Written Comments." This section will include a summary of all written comments received during the evaluation and NOAA's response to the comments. If appropriate, NOAA's response will indicate whether NOAA agrees or disagrees with the comment and how the comment has been addressed in the final findings.

(9) The Assistant Administrator may conduct issue or problem-specific evaluations between scheduled evaluations of approved State CZM programs. Such issue or problem-specific evaluations will be conducted to follow-up on potentially serious problems or issues identified in the most recent scheduled evaluation or to evaluate evidence of potentially serious problems or issues that may arise during day-to-day monitoring of State performance of grants tasks or other program implementation activities in the interim between scheduled evaluations. If the Assistant Administrator conducts an issue or problem specific evaluation, he/she will comply with the procedures and public participation requirements of 15 CFR 928.3 and 928.4.

(c) Requirements for continuing review of approved State CZM programs.

(1) *Scope of continuing reviews.* The continuing review of a State's approved CZM program will include an evaluation of the extent to which the State has:

(i) Implemented and enforced the program approved by the Secretary;

(ii) Addressed the coastal management needs identified in section 303(2) (A)-(K) (16 U.S.C. 1452); and

(iii) Adhered to the terms of financial assistance awards.

(2) *Procedure for assessing adherence to the approved CZM program.* (i) In reviewing adherence of a State to its approved CZM program, the Assistant Administrator will evaluate all aspects of the "approved CZM program" as defined in § 928.2(d). The evaluation will examine the extent to which:

(A) The State is implementing and enforcing its approved CZM program;

(B) The management agency is effectively playing a leadership role in coastal issues, monitoring the actions of appropriate State and local agencies for compliance with the approved CZM program, and assuring the opportunity for full participation of all interested entities in CZM program implementation; and

(C) The management agency is effectively carrying out the provisions of Federal consistency.

(ii) The findings concerning the State's adherence to its approved CZM program will be used in negotiating the next financial assistance award or work program, whichever is applicable.

(3) *Procedure for assessing how the State has addressed the coastal management needs identified in section 303(2) (A)-(K).* The assessment of the extent to which the State has addressed the coastal management needs identified in section 303(2) (A)-(K) will occur as follows:

(i) The State, in its performance report, will provide the Assistant Administrator with a listing of all actions it is taking during the performance report period to address the national coastal management needs and how these actions relate to conditions in the State and the objectives and priorities in the State CZM program.

(ii) The Assistant Administrator, in the evaluation findings, will assess the extent to which the State's actions are targeted to meeting identified "needs" and the effectiveness of the actions in addressing those needs. Based on this assessment, the Assistant Administrator will make findings and recommendations of the extent to which each State is addressing the coastal management needs identified in section 303.

(iii) The findings concerning how the State has addressed the coastal management needs of section 303 will be used by the Assistant Administrator in negotiating the next financial assistance award.

(4) *Procedure for assessing adherence to the terms of financial assistance awards.* (i) Adherence to financial and administrative terms of each financial assistance award will be determined by the NOAA Grants Office and the Department of Commerce Inspector General. Adherence to programmatic terms of each financial assistance award will be determined by the Assistant Administrator and the NOAA Grants Office. These determinations will be made in accordance with the requirements outlined in these regulations, the findings of a financial audit of the award, and the following criteria:

(A) Compliance with the statute, regulations, and applicable OMB circulars;

(B) Submission of required reports and satisfactory completion of work products as described in the approved application and within the timeframe specified;

(C) Compliance with Standard Terms and Conditions and Special Award Conditions within the specified timeframes;

(D) Use of award funds only for approved projects; and

(E) Substantive modification of approved projects only with the prior agreement of NOAA.

(ii) The findings concerning adherence to the terms of financial assistance awards will be used in negotiating the next financial assistance award, if any.

(d) Requirements for continuing review of State coastal energy impact programs.

(1) *Scope of continuing reviews.* The continuing review of State coastal energy impact programs will include the following elements:

(i) An evaluation of the State's adherence to the terms of financial assistance awards;

(ii) An evaluation of the relationship between coastal energy impact projects and the approved CZM program;

(iii) A description of energy activities in coastal areas and the impact resulting from these activities; and

(iv) An evaluation of the effectiveness of the coastal energy impact program in dealing with these consequences.

(2) *Procedure for assessing adherence to the terms of financial assistance awards.* See § 928.3(c)(4).

[47 FR 21021, May 17, 1982, as amended at 57 FR 31114, July 14, 1992]

#### § 928.4 Public participation.

(a) As required by section 312(b) of the Act, in evaluating a coastal State's performance, the Secretary shall conduct the evaluation in an open and public manner, and provide full opportunity for public participation, including holding public meetings in the State being evaluated and providing opportunities for the submission of written and oral comments by the public. The Secretary shall provide the public with at least 45 days notice of such public meetings by placing a notice in the **FEDERAL REGISTER**, by publication of timely notices in newspapers of general circulation within the State being evaluated, and by communications with persons and organizations known to be interested in the evaluation. Each evaluation shall be prepared in report form and shall include written responses to the written comments received during the evaluation process.

(b) *Requirements.* (1) The Assistant Administrator will publish a Notice of Intent to Evaluate in the **FEDERAL REGISTER** at least 45 days before the public meeting(s). The notice will include a Statement of the availability of the

State's performance report and the supplemental information request.

(2) Each State will issue a notice of the public meeting(s) in its evaluation by placing a notice in the newspaper(s) of largest circulation in the coastal area where the meeting(s) is being held and by taking other reasonable action to communicate with persons and organizations known to be interested in the evaluation, such as sending a notice of the meeting(s) to persons on its mailing list and publishing a notice in its newsletter, at least 45 days before the date of the public meeting(s). The State will provide a copy of such notice to the Assistant Administrator. States are encouraged to republish the newspaper notice at least 15 days before the date of the public meeting(s). The State will inform the public that oral or written comments will be accepted and that attendance at the public meeting(s) is not necessary for submission of written comments.

(3) Notice of the availability of final findings will be published in the FEDERAL REGISTER. The notice will state that copies of the final findings will be available to the public upon written request. Copies of the final findings will be sent to persons and organizations who participated in the evaluation, in accordance with 15 CFR 928.3(b)(7).

[47 FR 21021, May 17, 1982, as amended at 57 FR 31114, July 14, 1992]

#### § 928.5 Enforcement.

(a) *Procedures and criteria for invoking and lifting interim sanctions.*

(1) As required by section 312(c) of the Act:

(i) The Secretary may suspend payment of any portion of financial assistance extended to any coastal State, and may withdraw any unexpended portion of such assistance, if the Secretary determines that the coastal State is failing to adhere to—

(A) The management program or a State plan developed to manage a national estuarine reserve established under section 315 of the Act (16 U.S.C. 1461), or a portion of the program or plan approved by the Secretary; or

(B) The terms of any grant or cooperative agreement funded under this title (16 U.S.C. 1451-1464).

(ii) Financial assistance may not be suspended under paragraph (a)(1)(i) of this section unless the Secretary provides the Governor of the coastal State with—

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

(B) Written specifications stating how those funds from the suspended financial assistance shall be expended by the coastal State to take the actions referred to in paragraph (a)(1)(ii)(A) of this section.

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

(2) *Requirements.* (i) The Assistant Administrator will identify the need for interim sanctions through the continuing review process. The Assistant Administrator will use the criteria at 15 CFR 928.5(a)(3) in determining when to invoke interim sanctions.

(ii) The Assistant Administrator will issue the State a preliminary finding of non-adherence with the approved CZM program, or a portion thereof, and/or with a term or terms of a grant or cooperative agreement. This preliminary finding of non-adherence may be contained in the draft evaluation findings, or in a preliminary notification letter to the State CZM program manager. If the preliminary finding is contained in a preliminary notification letter, the Assistant Administrator will comply with the applicable public participation requirements of section 312(b) and NOAA's regulations at 15 CFR 928.4. The draft evaluation findings or preliminary notification letter containing a preliminary finding of non-adherence will explain that if the finding of non-adherence is issued, the State is subject to suspension of financial assistance and, if the State fails to take the actions specified pursuant to section 312(c) and this part, to withdrawal of program approval and financial assistance.

(iii) The State will be given 30 days from receipt of the draft evaluation

findings or preliminary notification letter to comment on and rebut the preliminary finding of non-adherence. During this 30-day period, the State may request up to 15 additional days to respond, for a maximum of 45 days from receipt of the draft evaluation findings or preliminary notification letter.

(iv) After considering the State's comments, the Assistant Administrator will decide whether or not to issue a final finding of non-adherence. If the Assistant Administrator decides to issue a final finding of non-adherence, he/she will do so in the final evaluation findings issued pursuant to section 312(b) or in a final notification letter as provided by paragraph (a)(2)(ii) of this section. The Assistant Administrator may invoke interim sanctions provided by section 312(c) immediately or at any time after issuing the final evaluation findings or final notification letter containing the finding of non-adherence, but not later than the next regularly scheduled evaluation.

(v) If the Assistant Administrator decides to invoke interim sanctions, he/she will do so by sending the final evaluation findings or final notification letter to the Governor of the State and the State CZM program manager. The final evaluation findings or final notification letter will contain the information required in section 312(c)(2) (A) and (B). This information will include the amount of financial assistance to be suspended and redirected, the actions the State should take in order to have the suspension withdrawn, how the suspended funds shall be expended to take the required actions, and a schedule for taking the required actions. The final evaluation findings or final notification letter will also contain the length of the suspension, which may not last for less than 6 months or more than 36 months. The Assistant Administrator will establish the length of the suspension based on the amount of time that is reasonably necessary for the State to take the required actions. If the State can take the required actions faster than expected, the suspension can be withdrawn early (but not in less than six months).

(vi) The State must respond to the final evaluation findings or final notification letter by developing a proposed work program to accomplish the required actions on the schedule set forth in the final evaluation findings or final notification letter. The State may propose an alternative approach to accomplishing the required actions and/or an alternative schedule. The Assistant Administrator's approval of the State's work program will signify his/her agreement with the approach and schedule for accomplishing the actions necessary to withdraw the suspension.

(vii) The Assistant Administrator will monitor State performance under the work program. This may involve additional direction to the State through the grant administration process and/or a visit to the State by appropriate NOAA program staff, evaluation staff and/or other experts to work with the State on a specific problem or issue. The Assistant Administrator will consider proposals to revise the work program on a case-by-case basis, providing that the State will still be able to accomplish the necessary actions within a maximum of 36 months.

(viii) The State must document that it has taken the required actions on the schedule established under this section. The State must provide its documentation in writing to the Assistant Administrator. The Assistant Administrator may conduct a follow-up evaluation or otherwise revisit the State at his/her discretion.

(ix) If the Assistant Administrator determines that the required actions have been taken, the Assistant Administrator will promptly notify the Governor and the State program manager, in writing, that NOAA has withdrawn the suspension of financial assistance. If, however, the State does not take the required actions, then the Assistant Administrator will invoke the final sanction provisions of section 312(d) on program termination and withdrawal of all financial assistance.

(3) *Criteria for invoking interim sanctions.* (i) The Assistant Administrator may consider the following indicators of non-adherence to an approved State CZM program in deter-

mining whether to invoke interim sanctions.

(A) Ineffective or inconsistent implementation of legally enforceable policies included in the CZM program. Indicators of ineffective or inconsistent implementation could include: evidence of non-compliance with core authorities by the regulated community; insufficient monitoring and inspecting of coastal development to ensure that it conforms to program requirements and applicable conditions; or inadequate enforcement action when development is found not to be in compliance with the program or permit under which it is authorized or is found to be an unpermitted activity. In applying this indicator, NOAA will consider any available evidence of the impacts of ineffective or inconsistent implementation on coastal resources.

(B) Inadequate monitoring of the actions of State and local agencies for compliance with the program. Indicators of inadequate monitoring of these agencies could include: evidence of non-compliance of networked agencies with the CZM program, unresolved conflicts between agencies regarding what constitutes compliance with the program, or lack of a mechanism to ensure that all State agencies will adhere to the program or to approved local coastal programs pursuant to NOAA's regulations at 15 CFR 923.40 (and pursuant to new section 306(d)(15), after November 5, 1993 and after states have been given reasonable opportunity to comply with NOAA's implementing guidance).

(C) Non-compliance of local coastal programs with the approved State program. Indicators of non-compliance could include: Local permitting or zoning decisions that are inconsistent with State standards or criteria, widespread granting of variances such as to render a zoning program ineffective in meeting State standards or criteria, changes to local comprehensive plans or zoning maps that are inconsistent with State standards or criteria, or inadequate monitoring and enforcement, as described in paragraph (a)(3)(1)(A) of this section.

(D) Ineffective implementation of Federal consistency authority. Indicators of ineffective implementation

could include: Not reviewing Federal activities, Federal licenses and permits, including offshore oil and gas exploration and development, and Federal financial assistance to State and local governments for consistency with the approved CZM program or employing review procedures that are not in accordance with State and NOAA regulations.

(E) Inadequate opportunity for intergovernmental cooperation and public participation in management program implementation. Indicators of inadequate opportunity could include: not carrying out procedures necessary to insure adequate consideration of the national interest in facilities which are necessary to meet requirements which are other than local in nature, not implementing effectively mechanisms for continuing consultation and coordination, not providing required notice that a management program decision would conflict with a local zoning ordinance, decision or other action pursuant to section 306(d)(3)(B)(1) and 15 CFR 923.57, or not providing opportunities for public participation in permitting processes, consistency determinations and other similar decisions pursuant to new section 306(d)(14) after November 5, 1993 and after states have been given reasonable opportunity to comply with NOAA's implementing guidance.

(F) Non-adherence to the terms of a grant or cooperative agreement, including the schedule for funded activities. The Assistant Administrator will also consider the extent to which priorities for expenditure of Federal funds reflect an appropriate priority for activities necessary to implement and enforce core program authorities effectively.

(G) Not submitting changes to the approved program for Federal approval on a schedule developed pursuant to 15 CFR 923.81(c) and 923.84(b)(1)(i) or developing and implementing changes to the approved program without Federal approval which are inconsistent with the Act or the approved program or which result in a reduced level of protection of coastal resources.

(H) The Assistant Administrator may consider whether an indication of non-adherence is of recent origin (in which

case the State may be given a reasonable opportunity to correct it) or has been repeatedly brought to the State's attention without corrective action in determining whether to invoke interim sanctions.

(b) *Withdrawal of program approval and financial assistance.* (1) As required by sections 312(d) and 312(e) of the Act:

(i) The Secretary shall withdraw approval of the management program of any coastal State and shall withdraw financial assistance available to that State under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal State has failed to take the actions referred to in paragraph (a)(1)(ii)(A) of this section.

(ii) Management program approval and financial assistance may not be withdrawn under paragraph (b)(1)(i) of this section, unless the Secretary gives the coastal State notice of the proposed withdrawal and an opportunity for a public hearing on the proposed action. Upon the withdrawal of management program approval under paragraph (b)(1)(i) of this section, the Secretary shall provide the coastal State with written specifications of the actions that should be taken, or not engaged in, by the State in order that such withdrawal may be canceled by the Secretary.

(2) *Requirements.* (i) If the Assistant Administrator determines that the State has not taken the actions required in 15 CFR 928.5(a)(2), the Assistant Administrator will provide the Governor and the State CZM program manager with written notice of this finding and NOAA's obligation to withdraw program approval and financial assistance under this title. The State will be given 30 days from receipt of this notice to respond with evidence that it has taken the actions specified pursuant to 15 CFR 928.5(a)(2). During this 30-day period, the State may request up to 30 additional days to respond, for a maximum of 60 days from receipt of notice.

(ii) If the State does not respond satisfactorily within the time allowed, the agency will notify the State of intent to take the proposed action. This notice will be published in the

FEDERAL REGISTER and will inform the State of its right to a public hearing.

(iii) If the State does not request a public hearing or submit satisfactory evidence that it has taken the actions specified pursuant to 15 CFR 928.5(a)(2) within 30 days of publication of this notice, and the Assistant Administrator determines that the State has failed to take the actions specified pursuant to 15 CFR 928.5(a)(2), the Assistant Administrator will withdraw program approval and financial assistance and will notify the State in writing of the decision and the reasons for it. The notification will set forth actions that must be taken by the State which would cause the Assistant Administrator to cancel the withdrawal.

(iv) If the State requests a public hearing within 30 days of publication of the notice of intent to withdraw program approval and financial assistance, the Assistant Administrator will publish 30 days advance notice of the hearing in the FEDERAL REGISTER and the newspaper(s) of largest circulation in the State's coastal zone. The hearing will be held in a location convenient to the citizens of the State's coastal zone and a record of the hearing will be maintained. Within 30 days of the completion of the hearing, the agency will make the determination as set forth in paragraph (b)(2)(iii) of this section.

(3) If program approval and financial assistance are withdrawn pursuant to this section, a notice will be placed in the FEDERAL REGISTER and Federal consistency under section 307 of the Act will cease to apply to the State's CZM program.

[47 FR 21021, May 17, 1982, as amended at 57 FR 31114, July 14, 1992]

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**NOTE:** The CZMA's federal consistency regulations, 15 C.F.R. Part 930. These regulations are still authoritative to the extent that they are consistent with the 1990 amendments to the CZMA. However, where the regulations say "directly affecting the coastal zone," they should be read as "affecting any land or water use or natural resource of the coastal zone."

Per CZMA Sec. 307(c)(1)(A)

**PART 930—FEDERAL CONSISTENCY WITH APPROVED COASTAL MANAGEMENT PROGRAMS**

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**AUTHORITY:** Secs. 307, 316 and 317, Coastal Zone Management Act of 1972, Pub. L. 92-583, 86 Stat. 1280 (16 U.S.C. 1451 et seq.), as amended by Pub. L. 94-370, 90 Stat. 1013.

**SOURCE:** 44 FR 37143, June 25, 1979, unless otherwise noted.

**Subpart A—Objectives**

§ 930.1 Overall objectives.

The objectives of these regulations are:

- (a) To describe the obligations of all agencies, individuals and other parties who are required to comply with the

Federal consistency provisions of the Coastal Zone Management Act;

(b) To implement the Federal consistency provisions in a manner which strikes a balance between the need to ensure consistency for Federal actions affecting the coastal zone with approved coastal management and the need to promote Federal programs;

(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 provisions of the Act are satisfied;

(d) To interpret significant terms in the Federal consistency provisions so that they can be uniformly understood and adhered to by all agencies, individuals and other affected parties;

(e) To provide procedures to make certain that all Federal agency and State agency consistency decisions are directly related to the objectives, policies, standards and other criteria set forth in, or referenced as part of, approved coastal 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 coastal management programs;

(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;

(h) To provide procedures which permit interested parties to notify the Assistant Administrator for Coastal Zone Management of Federal actions believed to be inconsistent with approved coastal management programs, or believed to have been incorrectly determined to be inconsistent with an approved management program; and

(i) To provide procedures for the reporting of any Federal actions found by the Assistant Administrator for Coastal Zone Management to be inconsistent with an approved coastal zone management program, and for

the performance review of State implementation of the Federal consistency provisions.

### Subpart B—General Definitions

#### § 930.10 Index to definitions.

The following list includes all terms defined in part 930 of this title keyed to the section or paragraph in which they are defined.

Term	Section
Act	930.11
Appellant	930.123
Applicant	930.52
Applicant agency	930.92
Assistant Administrator	930.16
Associated facilities	930.21
Coastal Zone	930.29
Consistent to the maximum extent practicable	930.32
Consistent with the objectives or purposes of the Act	930.121
Development project	930.31(b)
Executive Office of the President	930.14
Failure substantially to comply with an OCS plan	930.66(d)
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#### § 930.11 Act.

The term *Act* means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*).

#### § 930.12 Section.

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

#### § 930.13 Secretary.

The term *Secretary* means the Secretary of the U.S. Department of Commerce.

#### § 930.14 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.

#### § 930.15 OCZM.

The term *OCZM* means the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

#### § 930.16 Assistant Administrator.

The term *Assistant Administrator* means the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

#### § 930.17 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.

#### § 930.18 State agency.

(a) The term *State agency* means the agency of the State government designated pursuant to section 306(c)(5) of the Act to receive and administer grants for an approved coastal management program, or a single designee State agency appointed by the 306(c)(5) State agency. Any appointment by the 306(c)(5) State agency of 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 306(c)(5) State agency.

(b) The State agency is responsible for commenting on Federal agency consistency determinations (see subpart C of this part), concurring with or objecting to consistency certifications for Federal licenses, permits, and Outer Continental Shelf plans (see subparts D and E of this part), and reviewing the consistency of Federal assistance activities proposed by State or local government 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. Thereafter, only the State agency is authorized to comment officially on a Federal consistency determination, concur with or object to a consistency certification, or determine the consistency of a proposed Federal assistance activity.

#### § 930.19 Management program.

The term *management program* has the same definition as provided in section 304(11) 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.

#### § 930.20 Coastal zone.

The term *coastal zone* has the same definition as provided in section 304(1) of the Act.

#### § 930.21 Associated facilities.

The term *associated facilities* describes all proposed facilities:

(a) 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

(b) Without which the Federal action, as proposed, could not be conducted.

All further requirements in this part related to the review of and consistency for Federal activities including development projects (see subpart C of this part), Federal license and permit activities (see subparts D and E of this part) and Federal assistance activities (see subpart F of this part) also apply to associated facilities related to those Federal actions. Therefore, the proponent of a Federal action must consider whether the Federal action and its associated facilities affect the coastal zone and, if so, whether these interrelated activities satisfy the relevant consistency requirement of the Act.

### Subpart C—Consistency for Federal Activities

#### § 930.30 Objectives.

The provisions of this subpart are provided to assure that all federally conducted or supported activities including development projects directly affecting the coastal zone are undertaken in a manner consistent to the maximum extent practicable with approved State coastal management programs.

#### § 930.31 Federal activity.

(a) The term *Federal activity* means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities.

(b) A Federal development project is a Federal activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources.

(c) The term "Federal 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).

#### § 930.32 Consistent to the maximum extent practicable.

(a) The term "consistent to the maximum extent practicable" describes the requirement for Federal activities including development projects directly affecting the coastal zone of States with approved management programs to be fully consistent with such programs unless compliance is prohibited based upon the requirements of existing law applicable to the Federal agency's operations. If a Federal agency asserts that compliance with the management program is prohibited, it must clearly describe to the State agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to comply with the provisions of the management program.

The duty the Act imposes upon Federal agencies is not set aside by virtue of section 307(e). The Act was intended

to cause substantive changes in Federal agency decisionmaking within the context of the discretionary powers residing within such agencies. Accordingly, when read together, sections 307(c) (1) and (2) and 307(e) require Federal agencies, whenever legally permissible, to consider State-management programs as supplemental requirements to be adhered to in addition to existing agency mandates.

(b) A Federal agency may deviate from full consistency with an approved management program when such deviation is justified because of some unforeseen circumstances arising after the approval of the management program which present the Federal agency with a substantial obstacle that prevents complete adherence to the approved program.

#### § 930.33 Identifying Federal activities directly affecting the coastal zone.

(a) Federal agencies shall determine which of their activities directly affect the coastal zone of States with approved management programs.

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

(c)(1) Federal activities outside of the coastal zone, as defined in section 304(1) of the Act, are subject to Federal agency review to determine whether they directly affect the coastal zone.

(2) OCS oil and gas lease sale activities conducted pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*) are not Federal activities which directly affect the coastal zone within the meaning of section 307(c)(1) of the Act, and, therefore, are not subject to review under this subpart.

[44 FR 37143, June 25, 1979, as amended at 50 FR 35213, Aug. 30, 1985]

#### § 930.34 Federal agency consistency determinations.

(a) Federal agencies shall provide State agencies with consistency determinations for all Federal activities di-

rectly affecting the coastal zone. The Federal agency may provide the State agency with this information in any manner it chooses so long as the requirements of this subpart are satisfied.

(b) 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 determine reasonably the consistency of the activity with the State's management program, but before the Federal agency reaches a significant point of decisionmaking in its review process. The consistency determination shall be provided to State agencies at least 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to an alternative notification schedule.

**§ 930.35 Federal and State agency coordination.**

(a) State agencies should list in their management programs Federal activities which, in the opinion of the State agency, are likely to directly affect the coastal zone and require a Federal agency consistency determination. Listed Federal activities must 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 activities outside of the coastal zone but likely to directly affect the coastal zone, it must also describe the geographic location of such activities (e.g., reclamation projects in coastal floodplains).

(b) State agencies should monitor unlisted Federal activities (e.g., by use of intergovernmental review process established pursuant to E.O. 12372, review of National Environmental Policy Act (NEPA) environmental impact statements, etc.) and should notify Federal agencies of unlisted Federal activities which Federal agencies have not subjected to a consistency review but which, in the opinion of the State agency, directly affect the coastal zone and require a Federal agency consistency determination.

State agencies must notify Federal agencies within 45 days from receipt of notice of the unlisted Federal activity, otherwise the State agency waives its right to request a consistency determination. The waiver does not apply in cases where the State agency does not receive notice of the Federal activity (e.g., for those Federal activities which are not processed through Intergovernmental Review Process established pursuant to E.O. 12372, NEPA review or a similar procedure which permits State agency monitoring).

(c) The recommended listing and monitoring procedures described in paragraphs (a) and (b) of this section are neither a substitute for nor eliminate Federal agency responsibility under §§ 930.33(b) and 930.34 to provide State agencies with consistency determinations for all development projects in the coastal zone and for all other Federal activities which the Federal agency finds directly affect the coastal zone.

(d) If a Federal agency decides that a consistency determination is not required for a Federal activity (1) identified by a State agency on its list or through case-by-case monitoring, (2) which is the same as or 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 effects of the activity on the coastal zone, the Federal agency shall provide the State agency with a notification, at the earliest practicable time in the planning of the activity, briefly setting forth the reasons for its negative determination. A negative determination 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.

(Executive Order 12372, July 14, 1983 (47 FR 30969), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec. 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29136, June 24, 1983]

**§ 930.36 Availability of mediation for negative determination disputes.**

In the event of a serious disagreement between a Federal agency and a State agency regarding a determination related to whether a proposed activity directly affects the coastal zone, either party may seek the Secretarial mediation services provided for in subpart G.

**§ 930.37 Consistency determinations for proposed activities.**

(a) Federal agencies shall review their proposed Federal activities which directly affect the coastal zone in order to develop consistency determinations which indicate whether such activities will be undertaken in a manner consistent to the maximum extent practicable with approved State management programs. Federal agencies are encouraged to consult with State agencies during their efforts to assess whether such activities will be consistent to the maximum extent practicable with such programs.

(b) In cases where Federal agencies will be performing repeated activity other than a development project (e.g., ongoing maintenance, waste disposal, etc.) which cumulatively has a direct effect upon the coastal zone, the 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 general consistency determination may only be used in situations where the incremental actions are repetitive or periodic, substantially similar in nature, and do not directly affect the coastal zone when performed separately. If a Federal agency issues a general consistency determination, it must thereafter periodically consult with the State agency to discuss the manner in which the incremental actions are being undertaken.

(c) In cases where the Federal agency has sufficient information to determine the consistency of a proposed development project from planning to completion, only one consist-

ency determination will be required. However, in cases where major Federal decisions related to a proposed development project will be made in phases based upon developing information, 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 continues to be consistent to the maximum extent practicable with the State's management program.

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

(a) A consistency determination will be required for ongoing Federal activities other than development projects (e.g., waste disposal practices) 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 shall be required for major, phased Federal development project decisions described in § 930.37(c) 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 coastal zone effects 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 environ-

mental impact statement issued pursuant to the National Environmental Policy Act).

**§ 930.39 Content of a consistency determination.**

(a) The consistency determination shall include a brief statement indicating whether or not the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the management program. The statement must be based upon an evaluation of the relevant provisions of the management program. The consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal zone effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement. The amount of detail in the statement evaluation, activity description and supporting information shall be commensurate with the expected effects of the activity on the coastal zone.

(b) Federal agencies shall be guided by the following in making their consistency determinations. The activity (e.g., project siting and construction), its direct effects (e.g., air, water, waste discharges, etc.), and associated facilities (e.g., proposed siting and construction of access road, connecting pipeline, support buildings, etc.) and the direct effects of the associated facilities (e.g., erosion, wetlands, beach access impacts, etc.) must all be consistent to the maximum extent practicable with the management program. Although nonassociated facilities (e.g., recreational housing which is induced by but not necessarily related to a Federal harbor dredging project—see § 930.21) must be included within the consistency determination's description of the direct effects of the activity, Federal agencies are not responsible for evaluating the consistency of such facilities.

(c) In making their consistency determinations, Federal agencies shall give appropriate weight to the various types of provisions within the management program. Federal agencies must ensure that their activities are consistent to the maximum extent practicable with the enforceable, mandatory

policies of the management program. However, Federal agencies need only give adequate consideration to management program provisions which are in the nature of recommendations. Finally, Federal agencies do not have to evaluate coastal zone effects for which the management program does not contain mandatory or recommended policies because, in the absence of such provisions, there is no basis for making a consistency determination with respect to such effects.

(d) When Federal agency standards are more restrictive than standards or requirements contained in the State's management program, the Federal agency may continue to apply its stricter standards (e.g., restrict project development or design alternatives notwithstanding permissive management program policies). In such cases the Federal agency should inform the State agency in the consistency determination of the statutory, regulatory or other basis for the application of the stricter standards.

**§ 930.40 Multiple Federal agency participation.**

Whenever more than one Federal agency is involved in conducting or supporting a Federal activity or its associated facilities directly affecting the coastal zone, or is involved in a group of Federal activities related to each other because of their geographic proximity, consideration should be given to the preparation of 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 (a) must be transmitted to the State agency at least 90 days before final decisions are taken by any of the participating agencies, (b) must indicate whether or not each of the proposed activities is consistent to the maximum extent practicable with the management program, and (c) must include information on each proposed activity sufficient to support the consistency determination.

**§ 930.41 State agency response.**

(a) A State agency shall inform the Federal agency of its agreement or disagreement with the Federal agency's consistency determination at the earliest practicable time. If a final response has not been developed and issued within 45 days from receipt of the Federal agency notification, the State agency should at that time inform the Federal agency of the status of the matter and the basis for further delay. The Federal agency may presume State agency agreement if the State agency fails to provide a response within 45 days from receipt of the Federal agency notification.

(b) State agency agreement shall not be presumed in cases where the State agency, with the 45 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 may not be taken sooner than 90 days from the issuance of the consistency determination to the State agency unless both the Federal agency and the State agency agree to an alternative period (see § 930.34(b)).

**§ 930.42 State agency disagreement.**

(a) In the event the State agency disagrees with the Federal agency's consistency determination, the State agency shall accompany its response to the Federal agency with its reasons for the disagreement and supporting information. The State agency response must describe (1) how the proposed activity will be inconsistent with specific elements of the management program, and (2) 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 management program.

(b) If the State agency's disagreement is based upon a finding that the Federal agency has failed to supply sufficient information (see

§ 930.39(a)), 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 activity with the management program.

(c) State agencies shall send to the Assistant Administrator a copy of responses which describe disagreements with Federal agency consistency determinations.

**§ 930.43 Availability of mediation for disputes concerning proposed activities.**

(a) In the event of a serious disagreement between a Federal agency and a State agency regarding the consistency of a proposed Federal activity directly affecting the coastal zone, either party may request the Secretarial mediation services provided for in subpart G.

**§ 930.44 Availability of mediation for previously reviewed activities.**

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

(b) The State agency shall request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a State agency's objection to a Federal activity which was: (1) Previously determined to be consistent to the maximum extent practicable with the State's management program, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, is no longer consistent to the maximum extent practicable with the State's management program, or (2) previously determined not to be a Federal activity directly affecting the coastal zone, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, the activity directly affects the coastal

zone and is not consistent to the maximum extent practicable with the State's management program. The State agency's request must 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 services provided for in subpart G.

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

##### **§ 930.50 Objectives.**

The provisions of this subpart are provided to assure that Federally licensed or permitted activities affecting the coastal zone are conducted in a manner consistent with approved management programs.

##### **§ 930.51 Federal license or permit.**

(a) The term *Federal license or permit* means any authorization, certification, approval, or other form of permission which any Federal agency is empowered to issue to an applicant.

(b) The term also includes the following types of renewals and major amendments which affect the coastal zone:

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

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

(3) Renewals and major amendments of Federal license and permit activities previously reviewed by the State agency which will cause coastal zone effects substantially different than those originally reviewed by the State agency.

##### **§ 930.52 Applicant.**

The term *applicant* means any individual, public or private corporation,

partnership, association, or other entity organized or existing under the laws of any State, or any State, regional, or local government, who, following management program approval, files an application for a Federal license or permit to conduct an activity affecting the coastal zone. The term "applicant" does not include Federal agencies applying for Federal licenses or permits. Federal agency "activities" requiring Federal licenses or permits are subject to the consistency requirements of subpart C of this part.

##### **§ 930.53 Management program license and permit listing.**

(a) During management program development, Federal agencies should assist State agencies in identifying Federal license and permit activities which reasonably can be expected to affect the coastal zone.

(b) State agencies shall develop a list of Federal license and permit activities which are likely to affect the coastal zone 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 and 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, etc.). In the event the State agency chooses to review Federal licenses and permits for activities outside of the coastal zone but likely to affect the coastal zone, it must generally describe the geographic location of such activities.

(c) If a State agency wishes to avoid repeated review of minor Federally permitted activities which, while individually inconsequential, cumulatively cause effects on the coastal zone, 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 and permit ac-

tivities 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.

(d) The license and permit list may be amended by the State agency following consultation with the affected Federal agency and approval of additions or deletions by the Assistant Administrator. The State agency shall provide copies of the list and any amendments to Federal agencies and shall make the information available to the public.

(e) 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 and permits of the requirements of this subpart.

**§ 930.54 Unlisted Federal license and permit activities.**

(a) With the assistance of Federal agencies, State agencies should monitor unlisted Federal license and permit activities (e.g., by use of intergovernmental review process established pursuant to E.O. 12372, review of NEPA environmental impact statements, etc.) and shall immediately notify Federal agencies and applicants of unlisted activities affecting the coastal zone which require State agency review. State agencies must inform the Federal agency and applicant within 30 days from notice of the license or permit application, 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 activity.

(b) The State agency must also notify the Assistant Administrator of unlisted Federal license or permit activities which the State agency believes should be subject to State agency review. Following State agency notification to the Federal agency, applicant and the Assistant Administrator, the Federal agency may not issue the license or permit until the requirements of this subpart have been satisfied, unless the Assistant Administrator disapproves the State agency decision 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 Assistant Administrator regarding the State agency's decision to review the activity. The sole basis for the Assistant Administrator's approval or disapproval of the State agency's decision will relate to whether the proposed activity can be reasonably expected to affect the coastal zone of the State. The Assistant Administrator 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.

(d) In the event of disapproval by the Assistant Administrator, the Federal agency may approve the license or permit application and the applicant need not comply with the requirements of this subpart. If the Assistant Administrator approves the State agency's decision, the Federal agency and applicant must comply with the consistency certification procedures of this subpart.

(e) Following an approval by the Assistant Administrator, 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 supporting data and information (see §§ 930.63 and 930.64). 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 accompanying information, whichever period terminates last.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec. 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29136, June 24, 1983]

**§ 930.55 Availability of mediation for license or permit disputes.**

In the event of a serious disagreement between a Federal and State agency regarding whether a listed or unlisted Federal license or permit activity is subject to consistency review, either party may request the Secretarial mediation services provided for in subpart G; 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 Assistant Administrator (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 Assistant Administrator approval.

**§ 930.56 State agency guidance and assistance to applicants; information requirements.**

(a) 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 that agency regarding the means for ensuring that the proposed activity will be conducted in a manner consistent with the State's management program. As part of its assistance efforts, the State agency shall make available for public inspection copies of the management program document.

(b) The management program as originally approved or amended may describe requirements regarding the data and information necessary to

assess the consistency of Federal license and permit activities. Required data and information may not include confidential and proprietary material. In the case of approved amendments, State agencies shall send copies to relevant Federal agencies who shall, in turn, provide the information requirements to applicants. If a State does not choose to develop or amend its management program to include information requirements, the applicant must, at a minimum, supply the State agency with the information required by § 930.58.

**§ 930.57 Consistency certifications.**

(a) When satisfied that the proposed activity meets the Federal Consistency requirements of this subpart, all applicants for 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 State's approved management program. At the same time, the applicant shall furnish to the State agency a copy of the certification.

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

**§ 930.58 Necessary data and information.**

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

(1) A detailed description of the proposed activity and its associated facilities which is adequate to permit an assessment of their probable coastal zone effects. Maps, diagrams, technical data and other relevant material must be submitted when a written description alone will not adequately describe the proposal (a copy of the Federal application and all supporting material provided to the Federal agency should also be submitted to the State agency).

(2) Information required by the State agency pursuant to § 930.56(b).

(3) A brief assessment relating the probable coastal zone effects of the proposal and its associated facilities to the relevant elements of the management program.

(4) A brief set of findings, derived from the assessment, indicating that the proposed activity (e.g., project siting and construction), its associated facilities (e.g., access road, support buildings), and their effects (e.g., air, water, waste discharges, erosion, wetlands, beach access impacts) are all consistent with the provisions of the management program. In developing findings, the applicant shall give appropriate weight to the various types of provisions within the management program. While applicants must be consistent with the enforceable, mandatory policies of the management program, they need only demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to coastal zone effects for which the management program does not contain mandatory or recommended policies.

(b) At the request of the applicant, interested parties who have access to information and data required by subparagraphs (a) (1) and (2) of 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 paragraphs (a) (3) and (4) of 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 zone effects of the proposal.

#### § 930.59 Multiple permit review.

(a) Applicants shall, to the extent practicable, consolidate related Feder-

al license and permit activities affecting the coastal zone 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 and permit activities found to be consistent with the management program.

#### § 930.60 Commencement of State agency review.

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

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

#### § 930.61 Public notice.

(a) Following receipt of the material described in § 930.60 the State agency shall ensure timely public notice of the proposed activity. At a minimum the provision of public notice must be in accordance with State law. In addition, public notice must be provided in the immediate area of the coastal zone which is likely to be affected by the proposed activity. Public notice shall be expanded in proportion to the degree of likely public interest resulting from the unique geographic area involved, the substantial commitment of or impact on coastal resources, the complexity or controversy of the proposal, or for other good cause.

(b) Public notice shall facilitate public comment by providing a summary of the proposed activity, by announcing the availability for inspection of the consistency certification and accompanying public information and data, and by requesting that com-

ments be submitted to the State agency.

(c) A number of procedural options, if permitted by State law, are available to State agencies to satisfy the public notice requirements of this subpart. They include, but are not limited to:

(1) The State agency providing the public notice;

(2) The State agency requiring the applicant to provide the public notice; or

(3) The State agency relying 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 environmental impact statements) 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 whenever possible to minimize duplication of effort and to avoid unnecessary delays.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec. 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29136, June 24, 1983]

§ 930.62 Public hearings.

(a) At the discretion of the State agency, public notice may include the announcement of one or more public hearings. Public hearings shall be scheduled with a view towards (1) allowing access to the consistency certification and accompanying public information within a reasonable time prior to the hearing, (2) facilitating broad public attendance and participation at the hearing, and (3) affording the applicant expeditious consideration of the proposed activity.

(b) Federal and State agencies are encouraged to hold joint public hearings in the event both agencies determine that a hearing on the action is necessary.

§ 930.63 State agency concurrence with a consistency certification.

(a) At the earliest practicable time, the State agency shall notify the Federal agency and the applicant whether the State agency concurs with or objects to a consistency certification. Concurrence by the State agency shall be conclusively presumed in the absence of a State agency objection within six months following commencement of State agency review.

(b) State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to inform the public, obtain sufficient comment, and develop a reasonable 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 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.

§ 930.64 State agency objection to a consistency certification.

(a) If the State agency objects to the applicant's consistency certification within six months following commencement of review, it shall notify the applicant, Federal agency and Assistant Administrator of the objection.

(b) State agency objections must describe (1) how the proposed activity is inconsistent with specific elements of the management program, and (2) alternative measures (if they exist) which, if adopted by the applicant,

would permit the proposed activity to be conducted in a manner consistent with the management program.

(c) During the period when the State agency is reviewing the consistency certification, the applicant and the State agency should attempt 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 State management program requirements.

(d) 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 § 903.58. If the State agency objects on the grounds of insufficient information, the objection must describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program.

(e) A State agency objection shall include a statement informing the applicant of a right of appeal to the Secretary on the grounds described in Subpart H.

**§ 930.65 Federal permitting agency responsibility.**

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

**§ 930.66 Availability of mediation for previously reviewed activities.**

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

(b) The State agency shall request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a State agency objection to a Federally licensed or permitted activity which was: (1) Previously determined to be

consistent with the State's management program, but which the State agency later maintains is being conducted or is having coastal zone effects substantially different than originally proposed and, as a result, is no longer consistent with the State's management program; or (2) previously determined not to be an activity affecting the coastal zone, but which the State agency later maintains is being conducted or is having coastal effects substantially different than originally proposed and, as a result, the activity affects the coastal zone in a manner inconsistent with the State's management program. The State agency's request must include supporting information and a proposal for recommended remedial action; a copy of the request must be sent to the applicant.

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

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

**§ 930.70 Objectives.**

The provisions of this subpart are provided to assure that all Federal license and permit activities described in detail in OCS plans and which affect the coastal zone are conducted in a manner consistent with approved coastal zone management programs.

**§ 930.71 Federal license or permit activity described in detail.**

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

**§ 930.72 Person.**

The term *person* means any individual, corporation, partnership, association, or other entity organized or existing under the laws of any State, the

Federal government, any State, regional, or local government, or any entity of such Federal, State, regional or local government, who submits to the Secretary of the Interior, or designee following management program approval, an OCS plan which describes in detail Federal license or permit activities.

§ 930.73 OCS plan.

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

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

§ 930.74 OCS activities subject to State agency review.

Except for States which do not anticipate coastal zone 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 and permit activities affecting the coastal zone.

§ 930.75 State agency assistance to persons; information requirements.

(a) As a preliminary matter, any person intending to submit to the Secretary of the Interior and OCS plan which describes in detail Federal license or permit activities affecting the coastal zone 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 State's management program. As part of its assistance efforts, the State agency shall make available for inspection

copies of the management program document.

(b) In accordance with the provisions in § 930.56(b), the management program as originally approved or amended may describe requirements regarding data and information which will be necessary for the State agency to assess the consistency of the Federal license and permit activities described in detail in OCS plans.

§ 930.76 Submission of an OCS plan and consistency certification.

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

(a) Identify all activities described in detail in the plan which are subject to State agency review;

(b) When satisfied that the proposed activities meet the Federal consistency requirements of this subpart, provide the Secretary of the Interior or designee with a consistency certification, attached to the OCS plan, and the Secretary of the Interior or designee shall furnish the State agency a copy of the OCS plan (excluding proprietary information) and consistency certification.

(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 coastal management program(s) and will be conducted in a manner consistent with such program(s).

§ 930.77 Necessary data and information.

(a) The State agency shall use the information received pursuant to the Department of the Interior's operating regulations governing exploration, development and production operations on the OCS (see 30 CFR 250.34) and regulations pertaining to the OCS information program (see 30 CFR part 252) to determine the consistency of proposed Federal license and permit activities described in detail in OCS plans.

(b) The person shall supplement the information provided by paragraph (a) of this section by supplying the State agency with:

(1) Information required by the State agency pursuant to § 930.75(b).

(2) A brief assessment relating the probable coastal zone effects of the activities and their associated facilities to the relevant elements of the management program, and

(3) A brief set of findings, derived from the assessment, indicating that each of the proposed activities (e.g., drilling, platform placement) and their associated facilities (e.g., onshore support structures, offshore pipelines), and their effects (e.g., air, water, waste discharge, erosion, wetlands, beach access impacts) are all consistent with the provisions of the management program. In developing findings, the person shall give appropriate weight to the various provisions within the management program in accordance with the guidance provided in § 930.58(a)(4).

(c) At the request of the person, interested parties who have access to information required by paragraphs (a) and (b)(1) of this section may provide the State agency with all or part of the material required. Furthermore, upon request by the person, the State agency shall provide assistance for developing the assessment and findings required by paragraphs (b) (2) and (3) of this section.

(d) When satisfied that adequate protection against public disclosure exists, persons 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 proposed activities. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal zone effects of the proposed activities.

**§ 930.78 Commencement of State agency review; public notice.**

(a) State agency review of the person's consistency certification begins at the time the State agency receives a copy of the OCS plan, consistency certification, and required necessary data and information. A State agency request for information and data in addition to that required by § 930.77 shall not extend the date of commencement of State agency review.

(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 the directives within §§ 930.61 through 930.62.

**§ 930.79 State agency concurrence or objection.**

(a) At the earliest practicable time, the State agency shall notify the person, the Secretary of the Interior or designee and the Assistant Administrator 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 inform the public, obtain sufficient comment, and develop a reasonable 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 Assistant Administrator 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 State agency's receipt of the certification and supporting information. 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 in the absence of a State agency objection to the consistency certification 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 the directives within § 930.64 (b) and (d). The objection shall also include a statement informing the person of a right of appeal to the Secretary on the grounds described in subpart H.

§ 930.80 Effect of State agency concurrence.

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

(b) Unless the State agency indicates otherwise, copies of Federal license and 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.

§ 930.81 Federal permitting agency responsibility.

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

§ 930.82 Multiple permit review.

(a) A person submitting a consistency certification for Federal license or permit activities described in detail in an OCS plan is strongly encouraged to work with other Federal agencies in an effort to include, for consolidated State agency review, consistency certifications and supporting data and information applicable to OCS-related Federal license and permit activities affecting the coastal zone which are not required to be described in detail in OCS plans but which are subjected 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, etc.). 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 and 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.

§ 930.83 Amended or new OCS plans.

If the State agency objects to the person's OCS plan consistency certification, and if, pursuant to Subpart H, 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, the person shall submit an amended or new plan to the Secretary of the Interior or designee and to the State agency along with a consistency certification and data and information necessary to support the new consistency determination. 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 or new plan will be conducted in a manner consistent with the State's management program.

**§ 930.84 Review of amended or new OCS plans; public notice.**

(a) After receipt of a copy of the amended or new OCS plan, consistency certification, and accompanying data and information, State agency review shall begin.

(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 the directives within §§ 930.61 through 930.62.

(c) The State agency shall concur with or object to the person's consistency certification in accordance with the directives within § 930.79, except that the applicable time period for purposes of concurrence by conclusive presumption shall be three months instead of six months.

(d) If the State agency issues a concurrence or is conclusively presumed to concur with the person's new 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 and permits to which such concurrence applies.

(e) Unless the State agency indicates otherwise, copies of Federal license and permit applications for activities described in detail in an amended or new 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.

**§ 930.85 Continuing State agency objections.**

If the State agency objects to the consistency certification for an amended or new OCS plan, the prohibition in § 930.81 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 may take place, and the development of an additional amended or new OCS plan and consistency certification may be required pursuant to §§ 930.83 through 930.84.

**§ 930.86 Failure to comply substantially with an approved OCS plan.**

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

(b) If a State agency claims that a person is failing substantially to comply with an approved OCS plan subject to the requirements of this Subpart, and such failure allegedly involves the conduct of activities affecting the coastal zone in a manner that is not consistent with the approved management program, the State agency shall transmit its claim to the U.S. Geological Survey supervisor for the area involved. Such claim shall include: (1) A description of the specific activity involved and the alleged lack of compliance with the OCS plan, and (2) a request for appropriate remedial action. A copy of the claim shall be sent to the person and the Assistant Administrator.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that the person is failing to comply substantially with the OCS plan, the governor or section 306(c)(5) State agency (see § 930.18) may file a written objection with the Secretary. If the Secretary finds that the person is failing to comply substantially with the OCS plan, the person shall submit an amended or new OCS plan along with a consistency certification and supporting information to the Secretary of the Interior or designee and to the State agency. Following such a finding by the Secretary, the person shall comply with the originally approved OCS plan, or with interim orders issued jointly by the Secretary and the U.S. Geological Survey, pending approval of the amended or new OCS plan. The directives within §§ 930.83 through 930.85 shall apply to further State agency review of the consistency certification for the amended or new plan.

(d) A person shall be found to have failed substantially to comply with an

approved OCS plan if the State agency claims and the Secretary finds that one or more of the activities described in detail in the OCS plan which affects the coastal zone are being conducted or are having a coastal zone effect substantially different than originally described by the person in the plan or accompanying information and, as a result, the activities are no longer being conducted in a manner consistent with the State's management program. The Secretary may make a finding that a person has failed substantially to comply with an approved OCS plan only after providing a reasonable opportunity for the person and the Secretary of the Interior to review the State agency's objection and to submit comments for the Secretary's consideration.

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

**§ 930.90 Objectives.**

The provisions of this subpart are provided to assure that Federal assistance to State and local governments for activities affecting the coastal zone is granted only when such activities are consistent with approved coastal zone managements programs.

**§ 930.91 Federal assistance.**

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

**§ 930.92 Applicant agency.**

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

**§ 930.93 Intergovernmental review process.**

The term "intergovernmental review process" describes the procedures established by states pursuant to E.O. 12372, "Intergovernmental Review of

Federal Programs," and implementing regulations of the review of Federal financial assistance to states and local governments.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).  
[48 FR 29136, June 24, 1983]

**§ 930.94 State intergovernmental review process for consistency.**

The process by which states with approved coastal management programs may review applications from state agencies and local governments for Federal assistance should be developed by each state in accordance with Executive Order 12372 and implementing regulations. In accordance with the Executive Order and regulations, states may use this process to review such applications for consistency with their approved coastal management programs.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[48 FR 29137, June 24, 1983]

**§ 930.95 Guidance provided by the State agency.**

(a) State agencies should include within the management program a listing of specific types of Federal assistance programs subject to a consistency review. Such a listing, and any amendments, will require prior 306(c)(5) state agency (see § 930.18) consultation with affected Federal agencies and approval by the Assistant Administrator.

(b) In the event the State agency chooses to review applications for Federal assistance activities outside of the coastal zone but likely to affect the coastal zone, the State agency must 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 306(c)(5) State agency consultation with affected Federal agencies and approval by the Assistant Administrator.

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

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec. 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, Redesignated and amended at 48 FR 29136, June 24, 1983]

#### § 930.96 Consistency review.

(a) If pursuant to the intergovernmental review process, 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 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.

(b) If pursuant to the intergovernmental review process, the State agency objects to the proposed project, the state agency shall notify the applicant agency, Federal agency and the Assistant Administrator of the objection.

(c) State agency objections must describe: (1) How the proposed project is inconsistent with specific elements of the management program, and (2) alternative measures (if they exist) which, if adopted by the applicant agency, would permit the proposed project to be conducted in a manner consistent with the management program.

(d) A State agency objection may be based upon a determination that the applicant agency has failed, following a written State agency request, to supply necessary information. If the State agency objects on the grounds of insufficient information, the objection must describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program.

(e) State agency objections shall include a statement informing the applicant agency of a right of appeal to the Secretary on the grounds described in subpart H of this part.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec. 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29137, June 24, 1983]

#### § 930.97 Federal assisting agency responsibility.

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

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

(a) 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 environmental impact statements, etc.) 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 can reasonably be expected to affect the coastal zone and which the State agency is reviewing for consistency with the management program. Notification shall also be sent by the State agency to the Assistant Administrator. 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.

(b) If within the permitted time period the State agency notifies the Federal agency of its objection to a proposed Federally assisted activity, the Federal agency shall not provide assistance to the applicant agency except as provided in Subpart H, unless the Assistant Administrator disapproves the State agency's decision to review the activity. The Assistant Administrator shall be guided by the provisions in § 930.54 (c) and (d).

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29137, June 24, 1983]

**§ 930.99 Availability of mediation for Federal assistance disputes.**

In the event of a serious disagreement between a Federal and State agency regarding whether a Federal assistance activity is subject to consistency review, either party may request the 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 Assistant Administrator has disapproved a State agency decision to review an activity.

**§ 930.100 Availability of mediation for previously reviewed activities.**

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

(b) The State agency shall request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a State agency objection to a Federally assisted activity which was: (1) Previously

determined to be consistent with the State's management program, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, is no longer consistent with the State management program, or (2) previously determined not to be a project affecting the coastal zone, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result the project affects the coastal zone in a manner inconsistent with the State's management program. The State agency's request must include supporting information and a proposal for recommended remedial action; a copy of the request must be sent to the applicant agency.

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

**Subpart G—Secretarial Mediation**

**§ 930.110 Objectives.**

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

**§ 930.111 Informal negotiations.**

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. OCZM shall be available to assist the parties in these efforts.

**§ 930.112 Request for mediation.**

(a) The Secretary or other head of a Federal agency, or the Governor or the section 306(c)(5) State agency (see § 930.18), may notify the Secretary in writing of the existence of a serious

disagreement, and may request that the Secretary seek to mediate the serious disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees, and to the Assistant Administrator.

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

#### § 930.113 Public hearings.

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

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

(c) Hearings shall be informal and shall be conducted by the hearing officer with the objective of securing in a timely fashion information related to the disagreement. The Federal and State agencies, as well as other interested parties, may offer information at the hearing subject to the hearing officer's supervision as to the extent and manner of presentation. Unduly repetitious oral presentation may be excluded at the discretion of the hearing officer; in the event of such exclusion the party may provide the hearing officer with a written submission of the proposed oral presentation. Hearings

will be recorded and the hearing officer shall provide transcripts and copies of written information offered at the hearing to the Federal and State agency parties. The public may inspect and copy the transcripts and written information provided to these agencies.

#### § 930.114 Secretarial mediation efforts.

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

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

#### § 930.115 Termination of mediation.

Mediation shall terminate (a) at any time the Federal and State agencies agree to a resolution of the serious disagreement, (b) if one of the agencies withdraws from mediation, (c) in the event the agencies fail to reach a resolution of the serious disagreement within 15 days following Secretarial conference efforts, and the agencies do not agree to extend mediation beyond that period, or (d) for other good cause.

#### § 930.116 Judicial review.

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

tion process provided for in this subpart.

**Subpart H—Secretarial Review Related to the Objectives or Purposes of the Act and National Security Interests**

**§ 930.120 Objectives.**

The provisions of this subpart provide 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 is inconsistent with a 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.**

The term "consistent with the objectives or purposes of the Act" describes a Federal license or permit activity, or a Federal assistance activity which, although inconsistent with a State's management program, is found by the Secretary to be permissible because it satisfies the following four requirements:

(a) The activity furthers one or more of the competing national objectives or purposes contained in section 302 or 303 of the Act.

(b) When performed separately or when its cumulative effects are considered, it will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest.

(c) The activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended, and

(d) There is no reasonable alternative available (e.g., location design, etc.) which would permit the activity to be conducted in a manner consistent with the management program.

**§ 930.122 Necessary in the interest of national security.**

The term "necessary in the interest of national security" describes a Fed-

eral license or permit activity, or a Federal assistance activity which, although inconsistent with a State's management program, is found by the Secretary to be permissible because a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed. Secretarial review of national security issues shall be aided by information submitted by the Department of Defense or other interested Federal agencies. The views of such agencies, while not binding, shall be given considerable weight by the Secretary. The Secretary will seek information to determine whether the objected-to activity directly supports national defense or other essential national security objectives.

**§ 930.123 Appellant.**

The term "appellant" refers to an applicant, person or applicant agency submitting an appeal to the Secretary pursuant to the provisions of this subpart.

**§ 930.124 Informal discussions.**

In the event the State agency informs the applicant, person or applicant agency that it intends to object to the proposed activity, the parties should consult informally to attempt to resolve the matter in a manner which avoids the necessity of appealing the issue to the Secretary. OCZM shall be available to assist the parties in these discussions.

**§ 930.125 Appeals to the Secretary.**

(a) An appellant may file a notice of appeal with the Secretary with 30 days of the appellant's receipt of a State agency objection. The notice of appeal shall be accompanied by a statement in support of the appellant's position, along with supporting data and information. The appellant shall send a copy of the notice of appeal and accompanying documents to the Federal and State agencies involved.

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

(c) The Secretary may approve a reasonable request for an extension of time to submit supporting information so long as the request is filed with the Secretary within the 30-day period. Normally, the Secretary shall limit an extension period to 15 days.

**§ 930.126 Federal and State agency responses to appeals.**

(a) Upon receipt of the notice of appeal and supporting information, the Federal and State agencies shall have 30 days to submit detailed comments to the Secretary. Copies of such comments shall be sent to the appellant and other agency within the same time period.

(b) Requests for extensions may be made pursuant to § 930.125(c).

**§ 930.127 Public notice; receipt of comments.**

(a) The Secretary shall provide timely public notice of the appeal within 15 days of receipt of the notice. At a minimum, public notice shall be provided in the immediate area of the coastal zone which is likely to be affected by the proposed activity. At the time public notice is provided, the Federal and State agencies shall provide the public with convenient access to copies of the appellant's notice of appeal and accompanying public information, and to the public information in the agencies' detailed comments.

(b) Interested persons may submit comments to the Secretary within 30 days from the date of public notice, with copies provided to the appellant and to the Federal and State agencies within the same time period.

(c) Requests for extensions may be made pursuant to § 930.125(c).

**§ 930.128 Dismissal of appeals.**

The Secretary may dismiss an appeal for good cause. Good cause shall include, but is not limited to:

(a) Failure of the appellant to submit a notice of appeal within the required 30-day period.

(b) Failure of the appellant to submit the supporting information within the required period or approved extension period;

(c) Secretarial receipt of a detailed comment from the Federal agency

stating that the agency has disapproved the Federal license, permit or assistance application;

(d) Failure of the appellant to base the appeal on grounds that the proposed activity either (1) is consistent with the objectives or purposes of the Act or (2) is necessary in the interest of national security.

**§ 930.129 Public hearings.**

The Secretary may order a hearing independently or in response to a request. If a hearing is ordered by the Secretary it shall be guided by the procedures described within § 930.113.

**§ 930.130 Secretarial review.**

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

(b) The Secretary shall make all reasonable efforts to complete consideration of an appeal within 90 days from the date of public notice.

(c) Following consideration of the appeal, the Secretary shall issue a decision in writing to the appellant and to the Federal and State agencies indicating whether the proposed activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security; the decision shall include the basis for such finding. The Secretary shall provide public notice of the decision.

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

**§ 930.131 Federal agency responsibility.**

(a) 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.

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

§ 930.132 Review initiated by the Secretary.

(a) The Secretary may 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 may be initiated either before or after the completion of State agency review. 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 Federal and State agencies. The notice shall include a statement describing the reasons for the review and shall contain a request for submission of detailed comments to be submitted within 30 days from receipt of the notification. Copies of comments shall be exchanged among the parties.

(b) Requests for extensions may be made pursuant to § 930.125(c).

§ 930.133 Public notice; receipt of comments; public hearings.

(a) Upon receipt of detailed comments from the parties, the Secretary shall provide public notice and request public comments in accordance with the provisions in § 930.127.

(b) The Secretary may order a hearing in accordance with the provisions in § 930.129.

§ 930.134 Secretarial review; Federal agency responsibility.

(a) Secretarial review shall be undertaken in accordance with the provisions in § 930.130.

(b) Federal agencies are responsible for adhering to the provisions in § 930.131 when deciding to approve or deny an application for an activity objected to by a State agency and independently reviewed by the Secretary.

**Subpart I—Assistant Administrator Reporting and Continuing Review of Federal Actions Subject to the Federal Consistency Requirements**

§ 930.140 Objectives.

The provisions of this subpart provide procedures to permit interested parties to notify the Assistant Administrator of Federal actions (a) believed to be inconsistent with an approved management program but which are not so found by the Federal or State reviewing agency, and (b) believed to have been incorrectly determined to be inconsistent with an approved management program. This subpart also provides for the reporting of any Federal actions found by the Assistant Administrator to be inconsistent with an approved management program and for the performance review of State implementation of the Federal consistency provisions of this part.

§ 930.141 Notification of Federal actions believed to be inconsistent with approved management programs.

(a) Interested parties are invited to submit to the Assistant Administrator detailed comments related to the alleged inconsistency of Federal activities including development projects, Federal license or permit activities, including those described in detail in OCS plans, and Federal assistance activities which are subject to the requirements of this part, and which have not been found by a Federal agency or State agency to be inconsistent with an approved management program. Copies of such comments should be sent to relevant Federal and State agencies, and to the applicant, person or applicant agency as appropriate.

(b) Comments need not conform to any particular form, but should be specific, substantive and factual, and must describe how the Federal action is or would be inconsistent with an approved management program.

(c) Commentators are encouraged to recommend modifications or alternatives to the existing or proposed action

which would enable it to be consistent with the management program.

(d) The Assistant Administrator shall assure that public information within such comments is made available for public inspection.

§ 930.142 Notification of Federal actions believed to have been incorrectly determined to be inconsistent with an approved management program.

(a) Interested parties are invited to submit to the Assistant Administrator detailed comments related to Federal license and permit activities, including those described in detail in OCS plans, and Federal assistance activities which are believed to have been incorrectly determined by a State agency to be inconsistent with an approved management program. Copies of such comments should be sent to the relevant Federal and State agencies, and to the applicant, person, or applicant agency as appropriate.

(b) Comments need not conform to any particular form, but should be specific, substantive, and factual, and must clearly describe the basis for the belief that the State agency has incorrectly objected to the Federal action on the grounds of its inconsistency with the management program.

(c) The Assistant Administrator shall assure that public information within such comments is made available for public inspection.

§ 930.143 Assistant Administrator reporting.

After considering the views of interested parties, the relevant Federal agency, State agency, and the applicant, person, or applicant agency, as appropriate, the Assistant Administrator shall determine whether the Federal action will be included in the annual report listing of inconsistent Federal actions.

§ 930.144 Assistant Administrator advisory statements.

Upon request, the Assistant Administrator may issue as advisory statement prior to the issuance of the annual report indicating whether a Federal action will be listed within the annual report as being inconsistent

with an approved management program.

§ 930.145 Review of the implementation of Federal consistency provisions.

As part of the responsibility to conduct a continuing review of approved management programs, the Assistant Administrator shall review the performance of each State's implementation of the Federal consistency provisions in this part. The Assistant Administrator shall use information received pursuant to this subpart to 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 Assistant Administrator'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.

## PART 931—COASTAL ENERGY IMPACT PROGRAM

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- 931.1 Coastal Energy Impact Program—general description.
- 931.2 Objectives of the CEIP.

### Subpart B—General Definitions

- 931.9 Index to definitions.
- 931.10 Act.
- 931.11 Coastal zone.
- 931.12 Fund.
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- 931.14 Significantly affected.
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- 931.25 Eligible coastal State.

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- 931.26 Satisfactory progress.
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**Subpart D—Coastal Energy Impact Grants**

- 931.30 General.
- 931.31 Objectives.
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- 931.33 Eligibility for financial assistance under this subpart.
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- 931.81 Establishment of delimitation lines when agreements exist between States.
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- 931.121 Definitions.
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- 931.124 Eligibility.
- 931.125 Allotment of section 308(b) formula grants.
- 931.126 Recall of formula grants.

**AUTHORITY:** Sec. 308, Coastal Zone Management Act of 1972 (Pub. L. 92-583, 86 Stat. 1280, 16 U.S.C. 1451 et seq.), as amended by Pub. L. 95-327, unless otherwise noted.

**SOURCE:** 44 FR 29584, May 21, 1979, unless otherwise noted.

**Subpart A—General**

§ 931.1 Coastal Energy Impact Program—general description.

The Coastal Energy Impact Program (CEIP) was established under section

TA=Total amount available under section 308(b).

F=Formula amount for that State.

SF=Sum of the formula amounts that exceeds 2 percent of the amount available.

S=Number of States where formula amount exceed 2 percent.

(4) *Maximum amount.* If after the calculations performed in paragraphs (c)(1) and (3) of this section any coastal State would receive an allotment that is greater than 37½ percent of the amount available, the Assistant Administrator shall reduce the allotment of that State to 37½ percent of the amount available.

(5) *Redistribution.* Any amount not allotted by virtue of application of paragraph (c)(4) of this section will be reallocated proportionally among those coastal States that at this point in the calculation receive an allotment greater than 2 percent but less than 37½ percent of the amount available. For purposes of this paragraph "reallocated proportionally" means allotment in accordance with the provisions of paragraph (c)(1) of this section except that only those States that receive an allotment greater than 2 percent and less than 37½ percent will participate in the calculations described in that paragraph.

[44 FR 29584, May 21, 1979; 44 FR 31011, May 30, 1979]

#### § 931.126 Recall of formula grants.

(a) Except as provided in subpart C, funds allotted under this subpart will remain available for application by the recipient coastal State until September 30, 1988. Funds not applied for by this date will be returned to the United States Treasury.

(b) Funds allotted under this subpart and which have been awarded to a State must be expended or committed by the State by the end of the fiscal year immediately following the fiscal year in which such funds were awarded or be subject to recovery under § 931.97.

(c) If an application for which funds have been committed by a State is withdrawn either within sixty (60) days before the end of the fiscal year that follows the fiscal year in which the funds were awarded to the State, or anytime after the end of the fiscal

year that follows the fiscal year in which the funds were awarded to the State, the State will have sixty (60) days to resubmit an application for these funds. If a substitute application is not submitted within this time period the funds will be subject to recovery under § 931.97. Funds recovered under this section and § 931.97 will be reallocated among eligible coastal States as soon as practicable.

[44 FR 31011, May 30, 1979]

### PART 932—COASTAL ZONE ENHANCEMENT GRANTS PROGRAM

#### Sec.

- 932.1 General.
- 932.2 Objectives.
- 932.3 Definitions.
- 932.4 Allocation of section 309 funds.
- 932.5 Criteria for section 309 project selection.
- 932.6 Pre-application procedures.
- 932.7 Formal application for financial assistance and application review and approval procedures.
- 932.8 Revisions to assessments and strategies.

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

**SOURCE:** 57 FR 31116, July 14, 1992, unless otherwise noted.

#### § 932.1 General.

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

(b) A coastal State with an approved program under section 306 of the Coastal Zone Management Act (CZMA), as amended (16 U.S.C. 1455),

is eligible for grants under this part if the State meets the following requirements:

(1) The State must have a NOAA approved Assessment and Strategy, submitted in accordance with NOAA guidance and 15 CFR 932.8;

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

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

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

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

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

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

(g) Grants awarded under section 309 may be used to support up to 100 percent of the allowable costs of approved projects under section 309 of the CZMA, as amended.

(h) All application forms are to be requested from and submitted to: National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, Coastal Programs Division, 1825 Connecti-

cut Avenue, NW., suite 724, Washington, DC 20235.

#### § 932.2 Objectives.

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

(b) As required by section 309(a) of the Act, for purposes of this part, the term "coastal zone enhancement objective" means any of the following objectives:

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

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

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

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

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

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

(7) Planning for the use of ocean resources.

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

### § 932.3 Definitions.

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

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

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

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

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

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

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

(b) *Assessment* means a public document, prepared by a State and ap-

proved by NOAA in accordance with guidance on Assessments and Strategies issued by NOAA (hereafter referred to as the guidance<sup>1</sup>), that identifies the State's priority needs for improvement with regard to the coastal zone enhancement objectives. The Assessment determines the extent to which problems and opportunities exist with regard to each of the coastal zone enhancement objectives and the effectiveness of efforts to address those problems. The Assessment includes the factual basis for NOAA and the States to determine the priority needs for improvement of management programs in accordance with this part.

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

(d) *Weighted Formula Project* means a project or task for which NOAA awards funding based on the criteria at 15 CFR 932.5(a). Such tasks are essential to meeting the milestones and objectives of each state's strategy. As funding for weighted formula tasks is more predictable than for projects of special merit, basic functions necessary to achieve the objectives of the strategy, such as hiring of full time staff should be included in weighted formula tasks.

(e) *Projects of Special Merit (PSM)* means a project or task that NOAA will rank and evaluate based on criteria at 15 CFR 932.5(b). As PSM funds

<sup>1</sup> NOAA guidance is available from the Office of Ocean and Coastal Resource Management, Coastal Programs Division, Universal South Building, room 724, 1825 Connecticut Avenue, NW., Washington, DC 20238.

will be awarded competitively on an annual basis, these projects should further the objectives of the strategy but may not be essential to meeting specific benchmarks in the strategy. PSM projects should not be dependent on long term levels of funding to succeed.

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

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

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

#### § 932.4 Allocation of section 309 funds.

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

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

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

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

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

(d) *Weighted formula funding.* (1)(i) A weighted formula funding target will be determined for each State that meets the eligibility requirements at 15 CFR 932.1(b). The weighted formula funding target will be the State base allocation determined by the application of the formula at 15 CFR 927.1(c), multiplied by a weighting factor derived from the Assistant Administrator's evaluation and ranking of the quality of the State's Strategy (as described in (d)(1) of this section), as supported by the State's Assessment.

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

(iii) The Assistant Administrator may establish minimum and maximum weighted formula funding targets under 15 CFR 932.4(d).

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

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

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

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

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

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

prove its weighting factor, in accordance with the procedures at 15 CFR 932.8.

(e) *Funding for projects of special merit.* The Assistant Administrator will award the remaining section 309 funds, which are not awarded under 15 CFR 932.4(d), to States based on an annual evaluation and ranking of projects of special merit, as defined in 15 CFR 932.3(d). Funding of projects of special merit will be limited to the highest ranked projects based on the criteria at 15 CFR 932.5(b).

(f) The Assistant Administrator will notify each State annually of the total amount of funds to be devoted to section 309 pursuant to 15 CFR 932.4(b), the proportion to be awarded by weighted formula pursuant to 15 CFR 932.4(c), the State's weighted formula funding target pursuant to 15 CFR 932.4(d), and the total amount of funds available for funding for projects of special merit pursuant to 15 CFR 932.4(e).

§ 932.5 Criteria for section 309 project selection.

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

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

(ii) Costs are reasonable and necessary to achieve the objectives of both the project and the Strategy. Allowability of costs will be determined in accordance with the provisions of OMB Circular A-87: Cost Principles for State and Local Governments<sup>2</sup>;

(iii) The project is technically sound;

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

<sup>2</sup> OMB Circular A-87: Cost Principles for State and Local Governments is available from the Office of Ocean and Coastal Resource Management, Policy Coordination Division, Universal South Building, room 701, 1825 Connecticut Avenue, NW., Washington, DC 20238.

(v) The State has submitted the required project information as specified in 15 CFR 932.6(b)(1).

(2) In reviewing projects that will be considered under the weighted formula, the Assistant Administrator will take into consideration the fiscal and technical needs of proposing States and the overall merit of each proposal in terms of benefits to the public.

(b) *Section 309 criteria for evaluation and ranking of projects of special merit.* (1) After determining those projects that will be funded under weighted formula funding, the Assistant Administrator will evaluate and rank State funding proposals of special merit which may be funded under 15 CFR 932.4(e).

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

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

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

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

(C) Innovativeness of the proposal;

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

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

(ii) *Fiscal needs.* (5 points) The Assistant Administrator will review each application to determine the "fiscal needs" of a State as defined in 15 CFR 932.3(e).

(iii) *Technical needs.* (5 points) The Assistant Administrator will review each application to determine the "technical needs" of a State as defined in 15 CFR 932.3(f).

(c) Section 309 funds not awarded to States under § 932.5(a) will be awarded to States under 15 CFR 932.5(b).

**§ 932.6 Pre-application procedures.**

(a) *Pre-submission consultation.* Each State is strongly encouraged to consult with the Assistant Administrator prior to the submission of its draft proposal (see 15 CFR 932.6(b)) and formal application for section 309 funding. The purpose of the consultation will be to determine whether the proposed projects are consistent with the purposes and objectives of section 309 and with the State's approved Strategy, to resolve any questions concerning eligibility for funding under section 309 (see 15 CFR 932.1(b)), and to discuss preliminarily the State's recommendations regarding which projects should be funded by weighted formula and which projects should be individually evaluated and ranked as projects of special merit.

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

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

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

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

(iii) The identification of any subawardees, pursuant to 15 CFR 923.95(d)(3)(ii); and

(iv) The estimated total cost for each project.

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

(i) Personnel costs;

(ii) Supplies and overhead;

(iii) Travel;

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

(v) Projects, studies and reports; and

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

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

(4) The State may recommend which projects should be funded by weighted formula under 15 CFR 932.5(a) and which projects should be funded as projects of special merit under 15 CFR 932.5(b).

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

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

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

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

(7) Following the first year of funding under section 309, the draft proposal shall describe how the past year's work contributed to the attainment of a program change as defined in 15 CFR 932.3(a) in one or more of the coastal zone enhancement objectives.

(8) If the sum of estimated project costs for projects the State recommends be funded under 15 CFR

932.5(a) exceeds the State's weighted formula funding target pursuant to 15 CFR 932.4(d), NOAA shall determine, in consultation with the State, which projects are appropriate for funding with weighted formula funds.

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

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

(3) The Assistant Administrator will make the final determinations on project selection using the criteria at 15 CFR 932.5(a) and evaluate and rank projects of special merit based on the criteria at 15 CFR 932.5(b).

(4) If the Assistant Administrator determines that a State's project proposal(s) for weighted formula funding fails to meet the criteria at 15 CFR 932.5(a), the Assistant Administrator may either reduce or deny the amount available to the State under 15 CFR 932.4(d).

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

**§ 932.7 Formal application for financial assistance and application review and approval procedures.**

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

(b) Applications for financial assistance under this part must be in a separate section of the application and must contain the information specified at 15 CFR 932.6(b)(1) for each approved section 309 project.

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

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

(e) If the Assistant Administrator seeks technical advice pursuant to 15 CFR 932.6(c)(2), anonymous copies of the project reviews provided to the Assistant Administrator on projects proposed by a State will be made available to the State upon request after October 1 of each year.

**§ 932.8 Revisions to assessments and strategies.**

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

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

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

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

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

(f) The Assistant Administrator will notify the State of his/her decision to approve or deny the proposed revision(s) to the Strategy, and any

change in the weighting factor assigned to its Strategy.

**PART 933—COASTAL ZONE MANAGEMENT RESEARCH AND TECHNICAL ASSISTANCE**

**Subpart A—General**

Sec.

- 933.1 Basic purposes.
- 933.2 Definitions.

**Subpart B—National Research and Technical Assistance Program**

- 933.10 General.
- 933.11 Eligible entities and arrangements.
- 933.12 Use of funds.

**Subpart C—Operation of National Research and Technical Assistance Program**

- 933.20 Priorities and annual spending plans.
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**Subpart D—State Grants for Research and Technical Assistance**

- 933.30 General.
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**AUTHORITY:** Sec. 310, Coastal Zone Management Act of 1972 (Pub. L. 92-583, 86 Stat. 1280, as amended by Pub. L. 94-370, 90 Stat. 1013).

**SOURCE:** 42 FR 38738, July 29, 1977, unless otherwise noted.

**Subpart A—General**

**§ 933.1 Basic purposes.**

(a) This section sets forth the basic purposes for which the national research and technical assistance program, pursuant to subsection 310(a) of the Act, will be operated, and for which State research and technical assistance grants, pursuant to subsection 310(b) of the Act, will be awarded. The

basic intent of both subsections is to fund research, study, and training which supports the development and administration of State coastal zone management programs. However, there is a significance difference in focus between the two subsections in that State grants pursuant to subsection 310(b) will be awarded to State coastal zone development or management agencies for the purpose of meeting State-specific research, study and training needs, while the national program pursuant to subsection 310(a) will work with a variety of entities and will endeavor to address needs which are regional or national in scope.

(b) *Comment.* Statutory citation, subsection 310(a):

The Secretary may conduct a program of research, study, and training to support the development and implementation of management programs. . . . The Secretary may enter into contracts or other arrangements with any qualified person for the purposes of carrying out this subsection.

(c) *Comment.* Statutory citation, subsection 310(b):

The Secretary may make grants to coastal states to assist such states in carrying out research, studies, and training required with respect to coastal zone management.

**§ 933.2 Definitions.**

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

(b) The term *Secretary* means the Secretary of Commerce or his/her designee. Delegations of authority from the Secretary to the Administrator, National Oceanic and Atmospheric Administration (NOAA), have been duly executed by Amendment 5 of Department of Commerce Organization Order 25-5A, dated October 13, 1976, and from the Administrator to the Associate Administrator for Coastal Zone Management, by NOAA Circular 76-82, effective October 13, 1976.

(c) The term *Associate Administrator* means the Associate Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d) The term *person* is as defined in subsection 304(13) of the Act and



## **Federal Licenses and Permits**

**The following federal licenses and permits are reviewed by the State for consistency with the Alaska Coastal Management Program pursuant to 15 CFR 930.53:**

### **Department of Agriculture, U.S. Forest Service**

- 1) **Permits for water easement of USFS lands.**
- 2) **Permits for construction on USFS lands.**
- 3) **Special use permits meeting the criteria of 15 CFR 930.21(b).**

### **Department of Commerce, Office of Coastal Zone Management**

- 1) **Permits within Marine Sanctuaries under 33 USC 1401-1444.**

### **Department of Defense, Army Corps of Engineers**

- 1) **Permits under Sections 9 and 10 of the Rivers and Harbors Act, authorizing the construction of bridges, causeways, dams and dikes, and the obstruction of navigable waters.**
- 2) **Permits under Section 4(F) of the Outer Continental Shelf Lands Act and amendment, authorizing artificial islands or fixed structures on the OCS.**
- 3) **Permits under Section 103 of the Marine Protection Research and Sanctuaries Act, authorizing ocean dumping outside the limits of the territorial sea.**
- 4) **Permits under Section 404 of the Federal Water Pollution Control Act, authorizing discharges into navigable waters (also subject to state certificate of reasonable assurance, FWPCA Section 401).**

### **Department of Energy, Federal Energy Regulatory Commission**

- 1) **Licenses for the construction and operation of non-federal hydroelectric projects and associated transmission lines under sections 4(e) and 15 of the Federal Power Act (16 U.S.C. 787(e) and 808).**

**Department of Energy (continued):**

- 2) **Orders for interconnection of electric transmission facilities under section 202(b) of the Federal Power Act (16 U.S.C. 824a(b)).**
- 3) **Certificates of public convenience and necessity for the construction and operation of natural gas pipeline facilities, including both interstate pipeline and LNG terminal facilities under section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)).**
- 4) **Permission and approval for the abandonment of natural gas pipeline facilities under section 7(b) of the Natural Gas Act (15 U.S.C. 717f(b)).**

**Environmental Protection Agency**

- 1) **Permits required under Section 402 (NPDES) of the 1972 Federal Water Pollution Control Act and amendments, authorizing discharge of pollutants into navigable waters. (also subject to state certificate of reasonable assurance, FWPCA Section 401).**
- 2) **Permits required under Section 405 (NPDES) of the 1972 Federal Water Pollution Control Act and amendments, authorizing disposal of sewage sludge.**
- 3) **Permits for new sources or for modification of existing sources and waivers of compliance allowing extensions of time to meet air quality standards under Section 112(c)(1) of the 1972 Clean Air Act.**
- 4) **Exemptions granted under the Clean Air Act for stationary sources.**
- 5) **Permits that provide for the regulation of the generation, treatment, storage, transportation and disposal of hazardous waste, under Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended. (Note: These permits are jointly issued by EPA and DEC.)**

**Department of the Interior**

- 1) **Permits and licenses for drilling and mining and related facilities on public lands (BLM).**
- 2) **Permits for pipeline rights-of-way on public lands and the Outer Continental Shelf.**
- 3) **Permits and licenses for rights-of-way on public lands.**
- 4) **Permits and licenses required for drilling and mining on OCS lands (USGS).**

**Nuclear Regulatory Commission**

- 1) **Permits and licenses for the siting, construction and operation of nuclear facilities.**

**Department of Transportation, U.S. Coast Guard**

- 1) **Permits for construction or modification of bridge structures and causeways across navigable waters.**
- 2) **Permits for siting, construction and operation of deepwater ports.**

All federal activities, including OCS oil and gas lease sales and the designation of ocean dumping sites, whether in or outside of the coastal zone, are subject to the consistency requirements of Section 307(c)(1) of the Coastal Zone Management Act if they affect natural resources, land uses or water uses in the coastal zone.

## UPDATES

If you want to receive updates of this handbook, please fill out the form below and return it to:

Division of Governmental Coordination  
Office of the Governor  
P.O. Box 110030  
Juneau, AK 99811-0030

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Change of Address:

If this is a change of address, please provide us with your old address.

Name

Organization

Street or Box Number

City

State

Zip