



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, DC 20350-2000

IN REPLY REFER TO

5090
Ser N456S/ 8U158264
18 August 2008

Mr. Kerry Kehoe
Federal Consistency Specialist
Coastal Programs Division
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration
1305 East-West Highway, 11th Floor
Silver Spring, MD 20910

RE: CHANGES TO THE COASTAL ZONE MANAGEMENT ACT PROGRAM CHANGE
PROCEDURES, ADVANCED NOTICE OF PROPOSED RULEMAKING, 73
FEDERAL REGISTER 29093-29094 (MAY 20, 2008)

Dear Mr. Kehoe:

Thank you for the opportunity to comment on the above-referenced advanced notice of proposed rulemaking. The enclosed comments are provided for your consideration as you develop program change regulations. We are available to discuss these comments with you. My point of contact on this matter is Ms. Elizabeth Phelps who may be contacted at 703-604-5420 or Elizabeth.phelps@navy.mil.

Sincerely,

A handwritten signature in black ink, appearing to be "L. Rice", is written over a large, stylized, looped signature graphic.

L. RICE
Rear Admiral, U. S. Navy
Director, Environmental Readiness
Division (OPNAV N45)

Copy to:
DASN(E)

**Changes to the Coastal Zone Management Act
Program Change Procedures**
Advance Notice of Proposed Rulemaking
Docket No. 080416573-8574-01

Distinguish Routine Changes from Amendments

Existing Requirement: 15 CFR 923.80 defines “amendments” as substantial changes in any of five coastal management program areas. The regulation does not elaborate on what qualifies as substantial.

Comment: Develop a list and criteria to distinguish routine program changes from substantial changes.

Discussion: The Navy welcomes NOAA’s initiative towards improving the transparency and ease of the coastal zone management (CZM) program change review and approval process. We support NOAA’s suggestion that truly routine program changes be identified and their handling streamlined. However, we support a separate process for amendments (substantial changes) so that affected federal agencies can comment on the proposals.

Recommendations: NOAA should review the types of changes that have been approved over recent years and develop a list of examples deemed to be truly routine. NOAA should use the list to prepare descriptive criteria for routine changes and the criteria should be incorporated into proposed changes to 15 CFR Subpart H.

If separate processes for handling routine changes and program changes are developed, NOAA should keep separate within the written framework of the regulatory provisions distinct approval processes for each of the categories.

More Efficient and Transparent Process for Program Change Review

Comment: Increased transparency in the program change review procedures can be facilitated by electronic access to existing and proposed CZM program rules, and e-mail notification of proposed changes to interested (registered) parties. E-mail notification should be to a distribution list regularly updated and maintained by NOAA - such as by use of an automated list-server. In addition there is a need for clear approval process procedures and timelines.

Discussion: The Navy welcomes NOAA’s initiative towards improving the transparency and effectiveness of the CZM program change review and approval process. In particular, the Navy encourages NOAA to implement a requirement for submission of underline/strikeout documents showing changes to previously approved documents, and development of specific and reasonable time-lines with sufficient time for review.

As NOAA is aware, the CZMA (16 U.S.C. 1451-1465) was enacted to encourage coastal States, among other coastal jurisdictions, to be proactive in managing the uses and resources of the coastal zone for their benefit *and the benefit of the Nation*. To this end when evaluating changes to a state's coastal management program, NOAA must consider whether the proposed change would affect national interest areas, such as national defense. It is imperative therefore that federal agencies have an opportunity to review proposed changes to State's enforceable policies.

Field interviews with Navy personnel who are involved with CZMA suggest a consistent and widespread gap where the Navy is not on notice or otherwise aware of CMP changes with the current notification procedures. It is also important that interested parties be able to more readily access all of the state enforceable policies that are in full force and effect including a detailed understanding and access to documents detailing their background and legislative/regulatory history.

NOAA can encourage development of better access to proposed changes and existing program documentation by recognizing the Internet, when combined with an e-mail notification roster (list server) as an official medium for notification.

NOAA should encourage some standardization in state websites addressing coastal zone management. On their coastal management website, NOAA should provide links to state CZMA programs.

When NOAA conducts an EA or EIS supporting approval of state CZMA program changes, the resulting NEPA document contains very valuable information. Later however that document may not be easy to access. Either working with state's websites, or separately on their own website, NOAA should retain these public documents in an organized structure.

Recommendations.

- Require submission of underline/strikeout documents showing changes to previously approved documents
- Develop specific and reasonable time-lines that allow sufficient time for review, and set timelines for related issues such as extensions, preliminary approvals, and requesting mediation
- The public should be provided immediate notice of proposed and final program changes, including routine changes, rather than periodically as currently allowed.
- Impose a new requirement for states to assist with notification of the public and federal agencies that may wish to review proposed changes. Use modern information technology by providing that posting the proposed changes on the Internet, when combined with an e-mail notification roster (list server) serves as official notification. For substantial changes (amendments) NOAA should also provide Federal Register Notice to ensure that the public understands what is being contemplated for changes. This assists agency personnel not on the email

list with the opportunity to ensure their agency office with responsibility for CZM changes understands their concerns. Basically, we wish to be informed of all proposed changes, and allowed to offer comment to NOAA's Office of Coastal and Ocean Resource Management (OCRM) on any change.

- Encourage standardization in state websites used to meet this notification requirement by identifying required text and map content. This content should include the text of state enforceable policies that are in effect, when they went into effect, and the NEPA document relied upon by OCRM, if applicable, when approving the changes. Ideally, maps or jurisdictional hierarchies would be used to organize access to the information.
- NOAA's website should provide links to state CZMA programs.

Promoting Use of De Minimis Exemptions

Existing Requirement: Existing requirements at 15 CFR 930.33(a)(3) provide a mechanism for state coastal commissions and federal agencies to agree on a list of de minimis activities that will not generally be subject to further state agency review. Federal agency NEPA categorical exclusions may include items appropriate for listing on such de minimis agreements and could be the basis for a universal de minimis list.

Comment: Navy supports the concept that a universal list of de minimis activities might be developed based on NEPA categorical exclusions existing state agreements with federal agencies that identify de minimis activities exempted from further consistency review. If a universal list of de minimis activities is developed, the existing ability of federal agencies and states to mutually agree on additional de minimis activities should still be retained.

Discussion: Development of a universal list of de minimis activities should increase efficiency of coastal zone program administration. In practice, states will probably wish to attach mitigating conditions or requirements, which may be local in nature. For example, a de minimis agreement with the State of Hawaii allows maintenance dredging (with wording identical to the Navy NEPA categorical exclusion) but, unlike the NEPA categorical exclusion, also allows new dredging of less than 100 cubic yards. The agreement applies several mitigating conditions to any dredging, for example specifying that dredging shall be scheduled to avoid coral spawning and recruitment periods.

Recommendations:

- Consider developing a list of universal de minimis activities based on NEPA categorical exclusions and on existing federal activity de minimis lists that have been approved by state agencies.
- Retain the ability of states and federal agencies to mutually agree on additional de minimis activities

- Consider allowing individual states to modify the universal de minimis lists by adding mitigating or compliance conditions. Such additions should be subject to the change review procedures.

Strive for Consistency in Regulatory Language

Comment: In developing the proposed rulemaking NOAA should be careful to maintain consistency in regulatory language to avoid confusion.

Discussion: The federal register announcement of May 20, 2008 lists the five program management areas in which substantial changes constitute amendments – however the list in the federal register is not identical to current language in 15 CFR 923.

The subject FR notice states that there are “...five program approval areas (includes related changes to, or new, enforceable policies related to the five areas). The areas set forth are:

1. Uses subject to program;
2. Coastal Zone Boundaries;
3. National Interest;
4. Special Area Management Plans;
5. Authorities and Organizations.

On the other hand, this list differs slightly in wording from the “... five approvability areas” as set forth in the OCRM Program Change Guidance of July 1996 (discussed in the Introduction section of the guidance at page 1; and which is the current language cited in 15 CFR 923.80(d)(1)-(5), as follows:

1. Uses subject to management (15 CFR Part 923, Subpart B);
2. Special management areas (15 CFR 923, Subpart C);
3. Boundaries (15 CFR Part 923, Subpart E);
4. Authorities and organization (15 CFR Part 923, Subpart E);
5. Coordination, public involvement, and the national interest (15 CFR Subpart F)

References:

73 Fed.Reg. 98, at 29092

15 CFR §§923/80-923.84 (15 CFR Part 923, Subpart H

Office of Ocean and Coastal Resource Management (OCRM), Program Change Guidance (July 1996)