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July 7, 2003

National Oceanic and Atmospheric Administration
1315 East-West Hwy,
Silver Spring, Maryland 20910

Mr. Kaiser,

The following are the U. S. Coast Guard's response to the Proposed Rulemaking to revise sections of NOAA's Coastal Zone Management Act (CZMA) Federal Consistency Regulations published at 68 Federal Register 34851-34874:

- 930.31(a) Federal agency activity. This proposed change would not alter the current application of the definition of Federal agency activity, but would clarify that a "function" by a Federal agency refers to an actual *proposal for action*. It is NOAA's long-standing view that Federal Consistency applies to proposals to take an action or initiate a series of actions that have reasonably foreseeable coastal effects, and not to all tasks, ministerial activities, meetings, discussions, exchanges of views, and interim or preliminary activities incidental or related to a proposed action.

USCG Comment: Concur

- 930.35(d) General Negative Determination. A General Negative Determination (General ND) is proposed to promote efficiency for Federal agencies which undertake repetitive activities that, either on an individual, case-by-case basis or cumulatively, do not have coastal effects. The General ND, similar to the existing General Consistency Determination, would not diminish the factual basis required for Federal Consistency reviews.

USCG Comment: Concur

- 930.51(a) Federal license or permit. The proposed changes would emphasize and clarify NOAA's long-standing view of the elements that are needed for a "federal license or permit." The proposed change would ensure that the definition of "federal license or permits" is not overly-inclusive or beyond the commonly understood meaning of license or permit, while at the same time retaining the phrase "any required authorization" to capture any form of federal license or permit that is: (1) required by federal law, (2) authorizes an activity, (3) the activity authorized has reasonably foreseeable coastal effects, and (4) the authorization is not incidental to a federal license or permit previously reviewed by the State. Thus, the removal of the forms of approvals listed in the current language would not exclude a category of federal authorizations from Federal Consistency, but would emphasize that any form of federal authorization must have the required elements.

USCG Comment: Concur

June 24, 2003

- 930.58(a)(1) Necessary data and information. This change would provide a greater level of specificity for information requirements for federal license or permit activities. The purpose of ' 930.58 is to identify the information needed to start the six-month consistency review period and to the extent possible, identify the information needed by the State agency to make its concurrence or objection. Thus, the more specific the information requirements are, the more predictable and transparent the process. Section 930.58(a)(1) would be reorganized to clarify that "necessary data and information" includes (1) a copy of the federal application, and (2) all supporting material provided to the Federal agency in support of the application, (3) information that is required and specifically described in the State's management program, and (4) if not included in 1 or 2, a detailed description of the activity, its associated facilities and the coastal effects.

USCG Comment: Concur

- Subpart H - Appeals to the Secretary. NOAA proposes 270 days as a definitive date by which the Secretary shall close the decision record in an appeal filed from a State CZMA objection. Two exceptions to the 270-day period are proposed: (1) to allow the parties to mutually agree to stay the 270-day period and (2) to ensure that the Secretary has relevant NEPA and ESA documents, if the Secretary determines that such information is needed to decide the appeal. In addition, many changes were made to the procedural aspects of the appeals in order to accommodate the 270-day period. These proposed changes would allow each party and the public, in most cases, only one opportunity to provide their arguments to the Secretary, and reflect the fact that the Secretary needs only sufficient time and information required to make a rational and well-reasoned determination of each of the elements in 15 CFR 930.121 or 930.122.

USCG Comment: Concur

Sincerely,

TOM HAYES
CHIEF, OFFICE OF ENVIRONMENTAL LAW

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