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NH Coastal Program
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Mr. David Kaiser
Federal Consistency Coordinator
Coastal Programs Division
NOAA/Office of Ocean and Coastal Resource Management
1305 East-West Highway
Silver Spring, MD 20910

Re: Proposed Federal Consistency Regulation Changes

Dear Mr. Kaiser:

Reference my 27 Sep 02 letter "Federal Consistency Energy Review Comments" in response to the 2 Jul 02 advanced notice of proposed rulemaking, I continue to maintain that there is no need at this time for changes to the regulations. The December 2000 final rule implemented procedures which appear to be working well. Continued consultation and cooperation between federal agencies and state coastal programs, not more regulatory detail, will result in improved procedures. We have found this to be the case in past approval of a natural gas pipeline from Nova Scotia.

In general, some of the proposed changes appear to dilute the authority of states or the Department of Commerce to evaluate coastal effects. Rather than react to regulatory revisions with uncertain effects, managers at all levels - state CZM entities, NOAA staff, federal agencies, and industry - should be encouraged to confer and develop appropriate tools (e.g. MOUs, etc) for a particular situation when problems arise. Considering the track record since 1978 (of 10,600 EPs and over 6000 DPPs, state concurrence obtained over 99.9% of the time), rationale for regulatory change is not obvious.

There are a few specific rule changes worth mentioning:

- Section 930.31(a) introduces the term "proposal for action." This approach would likely eliminate some activities from consistency review. In its 1990 CZMA amendments, Congress' intent was for broad interpretation of federal activity subject to consistency review. Keep the existing terminology in this section, with perhaps the exception of the present "(e.g.)" examples. The new examples ("e.g. a Federal agency's proposal...that alters uses of the coastal zone.") are too specific. A better approach would be to delete the current examples, actually most of sentence 2 – leaving interpretation to precedent. The text could read:

930.31 “(a) The term “Federal agency activity” means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities, functions for which coastal effects are reasonably foreseeable. The term “Federal agency activity” does not include...”

- Section 930.41(a) and State Agency Response. There is no demonstrated need to insert a checklist review step. Without more justification of the scope of problems in this area, this language should not be changed.
- Section 930.51(e)’s new language about “substantially different coastal effects” proposes to remove a state’s ability to make input jointly along with the federal agency and the applicant. As above, Congress’ had an expressed intent in the CZMA suggesting there be a joint and equal partnership between the state and federal agencies. Let’s keep that sense of partnership with the existing language.
- Section 930.128’s proposed change would cause the Secretary of Commerce to favor administrative appeals by federal agencies commenting in their areas of expertise. A state coastal program’s expertise is secondary by this regulatory change. Retention of the existing language would allow the Secretary to conduct impartial reviews of all comments/arguments...another case where the states retain their joint role in managing their coastal zones. Do not change.

NH recognizes that there are some minor administrative updates that could be made. However, in sum we have concerns that the majority of the proposed changes would retreat from the spirit and intent of the CZMA and its amendments. Please call me at (603) 431-9366 with any questions.

Sincerely,

Brian K. Mazerski
Principal Planner
Federal Consistency Coordinator
NH Coastal Program