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

August 15, 2008

Re: Response to Advance Notice of Proposed Rulemaking: Changes to the Coastal Zone Management Act Program Change Procedures (73 FR 98 at 29093)

Dear Kerry:

Thank you for the opportunity to comment on the Coastal Zone Management Act program change regulations. State Coastal Programs have struggled along with OCRM over the years with the requirements for updating OCRM on changes to states' programs and enforceable policies. We appreciate the chance to help improve the procedures for both the state programs and OCRM.

State programs recognize the importance of keeping OCRM abreast of changes to their programs, but are also eager to minimize the resources devoted to program maintenance at the expense of better coastal management. State programs welcome a simplified and streamlined procedure for keeping OCRM abreast of changes in state programs' enforceable policies.

As the attached comments indicate, the new procedure needs to address two fundamental issues in program maintenance:

- Does the updated program fail to meet the requirements of Section 306 of the CZMA; and
- Does the updated program place unacceptable burdens on federal agencies?

OCRM should find a state's update to a coastal program sufficient when answering negatively to both of these questions and accompanied by the appropriate level of explanation and analysis.

Please refer to the attached Appendix for more detailed comments on the eight points raised in the Federal Register notice. Thank you for your time and attention.

Sincerely,

Kristen M. Fletcher
Executive Director
Coastal States Organization



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Appendix – Detailed Response to Items in Federal Register

1. Establishing a clearer and more efficient and transparent process for program change review;

CSO supports this as a broad goal of the new program change procedure.

2. Describing clearer approval/ disapproval criteria and how these apply;

As stated in the letter, the only applicable criteria are that the program continues to meet the standards set forth in Section 306 of the CZMA, and that the revised program does not place an unacceptable burden on a federal agency operating in the coastal zone. If those conditions are satisfied, it is appropriate for OCRM to approve any change to a coastal program.

3. Using the statutory language of the CZMA, including time lines, extensions, and preliminary approval;

CSO supports the faithful application of the CZMA to the program update process. In particular, CSO's position is that any updated state program which continues to meet the standards of Section 306 of the CZMA should be acceptable to OCRM (ref. CZMA Section 306(e)(3). Section 306 is the basis for the Secretary approving a program change.). CSO supports the timeline laid out in Section 306(e), and believes that the timeline can be met if states and OCRM use the streamlined procedure proposed herein.

4. Keeping the “routine” concept to streamline the process for truly routine changes, but do away with “routine program changes (RPCs)” and “Amendments” and replace with just “program changes;”

CSO supports this as a broad goal of the new program change procedure. The level of analysis should be tailored to fit the complexity of the change in the state's program. Assigning labels or categories to changes does not add to the process.

5. Removing the “substantial” evaluations currently done by states and replace with just describing what the change is to the program. Further evaluations (by states or NOAA) would be for specific CZMA, NEPA, ESA, NHPA, etc., purposes, *e.g.*, is a NEPA Environmental Assessment or Environmental Impact Statement, or ESA consultation needed;

CSO supports this as a broad goal of the new program change procedure. The level of analysis should be tailored to fit the complexity of the change in the state's program. Assigning labels or categories to changes does not add to the process.

6. Establishing use of NEPA categorical exclusions;

CSO supports this as a broad goal of the new program change procedure. Further explanation is required before a final determination of the appropriateness of this suggestion can be made.

7. Submitting underline/strikeout documents showing changes to previously approved policies; and

CSO finds this to be an unnecessary and overly burdensome requirement. There may be instances where such a technique is employed to clearly explain a program change, but this is more appropriately an available tool, rather than a strict requirement.

8. Creating a program change checklist that states would submit to ease state and NOAA paperwork burdens and promote consistent submissions and NOAA analyses.

CSO supports this as a broad goal of the new program change procedure. Both OCRM and the states would benefit from a clear set of requirements and expectations in the program change process.

One item on this checklist would be formal notification of federal agencies about program changes. A list of federal agencies and points of contact for notifications of program changes updated and maintained by OCRM would greatly improve this step in the process.