

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA)  
PUBLIC COMMUNICATION INFORMATION — June 11, 2003  
Proposed Rulemaking - Coastal Zone Management Act Federal Consistency Regulations**

**What action is NOAA proposing?**

- On June 11, 2003, NOAA published in the *Federal Register* a Proposed Rule to revise certain sections of NOAA's *Coastal Zone Management Act (CZMA) Federal Consistency* regulations.

The *CZMA* encourages coastal States, Great Lakes States and U.S. Territories (collectively referred to as "coastal States") to develop management programs based on State law in accordance with Federal guidelines. These programs balance protection of coastal resources with coastal development, recreation, fishing, energy development and other uses of the coastal zone. There are 35 eligible coastal States and 34 have federally approved programs (Illinois is not participating). Once a State program is approved, the State receives two primary benefits: (1) annual federal implementation grants, and (2) Federal Consistency is required.

*Federal Consistency* (CZMA § 307) is the key to the States' rights emphasis in the CZMA, which provides for the primacy of State decisions regarding coastal uses and resources. Federal Consistency requires any action proposed by a Federal agency that will have a reasonably foreseeable effect on any land or water use or natural resource of the State's coastal zone must be consistent to the maximum extent practicable with the enforceable policies of States' federally approved CZMA programs. Activities proposed by non-Federal applicants for Federal licenses or permits, and State agencies or local governments applying for Federal funds, must be fully consistent with State enforceable policies.

**Why is NOAA the agency to do this?**

- NOAA administers the CZMA, including the Federal Consistency requirement, approves and oversees State CZMA programs, issues CZMA grants, and provides technical and management assistance and mediation support to CZMA stakeholders.

**Why is NOAA proposing changes to the existing regulations?**

- NOAA fully supports the objectives of the CZMA and the authority granted to States under Federal Consistency. As such, NOAA seeks to effectively and efficiently administer the CZMA. NOAA issued the Proposed Rule for three reasons:
  1. Issues regarding information needs for Federal Consistency review, deadlines for the Secretary's decision in Federal Consistency appeals, and determining when some types of federal actions are subject to Federal Consistency review warrant improvements to NOAA's regulations.
  2. The National Energy Policy Development Group's Report (May 2001), recommended the Department of Commerce and the Department of the Interior determine if changes are needed to their programs to address procedural time frames, information needed to assess offshore oil and gas projects, and whether other procedural efficiencies can be achieved through regulation.
  3. NOAA supports reauthorization of the CZMA and believes that the Proposed Rule would, if adopted, address issues that have delayed CZMA reauthorization.

### What are the next steps in the rulemaking process?

- Comments are due on July 11, 2003 (30 days after publication in the *Federal Register*), and should be submitted as a WordPerfect or MSWord attachment to an email and sent to: [CZMAFC.ProposedRule@noaa.gov](mailto:CZMAFC.ProposedRule@noaa.gov)
- The Proposed Rule, an underline/strikeout version of the proposed changes, this Public Communication Information document, and comments submitted to NOAA, can/will be found at the Office of Ocean and Coastal Resource Management's (OCRM's) Federal Consistency web page: [http://coastalmanagement.noaa.gov/czm/federal\\_consistency.html](http://coastalmanagement.noaa.gov/czm/federal_consistency.html)
- NOAA will evaluate comments submitted on the Proposed Rule, modify changes as appropriate, and expects to issue a Final Rule in the Fall of 2003.

### What would the Proposed Rule do?

- The Proposed Rule addresses the Energy Report recommendations and comments submitted to NOAA in response to NOAA's Advanced Notice of Proposed Rulemaking published in the *Federal Register* on July 2, 2002 (67 *Federal Register* 44407-44410 (July 2, 2002)).

Highlights of the Proposed Rule are:

- § 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.
- § 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.
- § 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.

- § 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.
- 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.

The proposed rule contains a strong package of improvements to the CZMA Federal Consistency regulations. If adopted, it will result in increased efficiency, expedited approval of energy and other projects, and enhanced certainty and transparency in the regulatory process.

Press inquiries: Ben Sherman, NOAA Public Affairs, 301-713-3066, x178

All other inquiries: David Kaiser, NOAA/OCRM, 301-713-3155, x144