

(ii) The repair will not adversely affect public trust values or interests, including navigation and water quality.

(h) Fish or wildlife habitat structures which meet both of the following criteria:

(i) Are placed so the structures do not impede or create a navigational hazard; and  
 (ii) Are anchored to the bottomlands.

(i) Scientific structures such as staff gauges, water monitoring devices, water quality testing devices, survey devices, and core sampling devices, if the structures do not impede or create a navigational hazard.

(j) Navigational aids which meet both of the following criteria:

(i) Are approved by the United States Coast Guard; and

(ii) Are approved under Michigan State Act No. 303 of the Public Acts of 1967, as amended, being Section 281.1001 *et seq.* of the Michigan Compiled Laws, and known as the Marine Safety Act.

(k) Extension of a project where work is being performed under a current permit and which will result in no damage to natural resources.

(l) A sand trap wall which meets all of the following criteria:

(i) The wall is 300 feet or less in length along the shoreline;

(ii) The wall does not extend more than 30 feet lakeward of the toe of bluff;

(iii) The wall is low profile, that is, it is not more than 1 foot above the existing water level; and

(iv) The wall is constructed of wood or steel or other non-polluting material.

(m) Physical removal of man-made structures or natural obstructions which meet all of the following criteria:

(i) The debris and spoils shall be removed to an upland site, not in a wetland, in a manner which will not allow erosion into public waters;

(ii) The shoreline and bottom contours shall be restored to an acceptable condition; and

(iii) Upon completion of structure removal, the site does not constitute a safety or navigational hazard. Department staff shall consider fisheries and wildlife resource values when evaluating applications for natural obstruction removal.

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AUTHORITY: 16 U.S.C. 1451 *et seq.*; 31 U.S.C. 6506; 42 U.S.C. 3334; Sections 923.92 and 923.94 are also issued under E.O. 12372, July 14, 1982, 3 CFR 1982 Comp. p. 197, as amended by E.O. 12416, April 8, 1983, 3 CFR 1983 Comp. p. 186.

SOURCE: 44 FR 18595, Mar. 28, 1979, unless otherwise noted.

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### Subpart A—General

SOURCE: 61 FR 33805, June 28, 1996, unless otherwise noted.

#### § 923.1 Purpose and scope.

(a) The regulations in this part set forth the requirements for State coastal management program approval by the Assistant Administrator for Ocean Services and Coastal Zone Management pursuant to the Coastal Zone Management Act of 1972, as amended (hereafter, the Act); the grant application procedures for program funds; conditions under which grants may be terminated; and requirements for review of approved management programs.

(b) Sections 306 and 307 of the Act set forth requirements which must be fulfilled as a condition of program approval. The specifics of these requirements are set forth below under the following headings: General Requirements; Uses Subject to Management; Special Management Areas; Boundaries; Authorities and Organization; and Coordination, Public Involvement and National Interest. All relevant sections of the Act are dealt with under one of these groupings, but not necessarily in the order in which they appear in the Act.

(c) In summary, the requirements for program approval are that a State develop a management program that:

(1) Identifies and evaluates those coastal resources recognized in the Act as requiring management or protection by the State;

(2) Reexamines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive, and enforceable;

(3) Determines specific use and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns;

(4) Identifies the inland and seaward areas subject to the management program;

(5) Provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements;

(6) Includes sufficient legal authorities and organizational arrangements

to implement the program and to ensure conformance to it. In arriving at these elements of the management program, States are obliged to follow an open process which involves providing information to and considering the interests of the general public, special interest groups, local governments, and regional, State, interstate, and Federal agencies;

(7) Provides for public participation in permitting processes, consistency determinations, and other similar decisions;

(8) Provides a mechanism to ensure that all state agencies will adhere to the program; and

(9) Contains enforceable policies and mechanisms to implement the applicable requirements of the Coastal Nonpoint Pollution Control Program of the state required by section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990.

**§ 923.2 Definitions.**

(a) The term *Act* means the Coastal Zone Management Act of 1972, as amended.

(b) The term *Secretary* means the Secretary of Commerce and his/her designee.

(c) The term *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), or designee.

(d)(1) The term *relevant Federal agencies* means those Federal agencies with programs, activities, projects, regulatory, financing, or other assistance responsibilities in the following fields which could impact or affect a State's coastal zone:

- (i) Energy production or transmission,
- (ii) Recreation of a more than local nature,
- (iii) Transportation,
- (iv) Production of food and fiber,
- (v) Preservation of life and property,
- (vi) National defense,
- (vii) Historic, cultural, aesthetic, and conservation values,
- (viii) Mineral resources and extraction, and
- (ix) Pollution abatement and control.

(2) The following are defined as relevant Federal agencies: Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Health and Human Services; Department of Housing and Urban Development; Department of the Interior; Department of Transportation; Environmental Protection Agency; Federal Energy Regulatory Commission; General Services Administration, Nuclear Regulatory Commission; Federal Emergency Management Agency.

(e) The term *Federal agencies principally affected* means the same as "relevant Federal agencies." The Assistant Administrator may include other agencies for purposes of reviewing the management program and environmental impact statement.

(f) The term *Coastal State* means a State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. Pursuant to section 304(3) of the Act, the term also includes Puerto Rico, the Virgin Islands, Guam, and American Samoa. Pursuant to section 703 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the term also includes the Northern Marianas.

(g) The term *management program* includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, including an articulation of enforceable policies and citation of authorities providing this enforceability, prepared and adopted by the State in accordance with the provisions of this Act and this part, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.

(h) The following terms, as used in these regulations, have the same definition as provided in section 304 of the Act:

- (1) Coastal zone;
- (2) Coastal waters;
- (3) Enforceable policy;
- (4) Estuary;
- (5) Land use; and
- (6) Water use.

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(i) The term *grant* means a financial assistance instrument and refers to both grants and cooperative agreements.

#### § 923.3 General requirements.

(a) The management program must be developed and adopted in accordance with the requirements of the Act and this part, after notice, and the opportunity for full participation by relevant Federal and State agencies, local governments, regional organizations, port authorities, and other interested parties and persons, and be adequate to carry out the purposes of the Act and be consistent with the national policy set forth in section 303 of the Act.

(b) The management program must provide for the management of those land and water uses having a direct and significant impact on coastal waters and those geographic areas which are likely to be affected by or vulnerable to sea level rise. The program must include provisions to assure the appropriate protection of those significant resources and areas, such as wetlands, beaches and dunes, and barrier islands, that make the State's coastal zone a unique, vulnerable, or valuable area.

(c) The management program must contain a broad class of policies for each of the following areas: resource protection, management of coastal development, and simplification of governmental processes. These three broad classes must include specific policies that provide the framework for the exercise of various management techniques and authorities governing coastal resources, uses, and areas. The three classes must include policies that address uses of or impacts on wetlands and floodplains within the State's coastal zone, and that minimize the destruction, loss or degradation of wetlands and preserve and enhance their natural values in accordance with the purposes of Executive Order 11990, pertaining to wetlands. These policies also must reduce risks of flood loss, minimize the impact of floods on human safety, health and welfare, and preserve the natural, beneficial values served by floodplains, in accordance with the purposes of Executive Order 11988, pertaining to floodplains.

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(d) The policies in the program must be appropriate to the nature and degree of management needed for uses, areas, and resources identified as subject to the program.

(e) The policies, standards, objectives, criteria, and procedures by which program decisions will be made must provide:

(1) A clear understanding of the content of the program, especially in identifying who will be affected by the program and how, and

(2) A clear sense of direction and predictability for decisionmakers who must take actions pursuant to or consistent with the management program.

#### Subpart B—Uses Subject to Management

SOURCE: 61 FR 33806, June 28, 1996, unless otherwise noted.

#### § 923.10 General.

This subpart sets forth the requirements for management program approvability with respect to land and water uses which, because of their direct and significant impacts on coastal waters or those geographic areas likely to be affected by or vulnerable to sea level rise, are subject to the terms of the management program. This subpart deals in full with the following subsections of the Act: 306(d)(1)(B), Uses Subject to the Management Program, 306(d)(2)(H), Energy Facility Planning, and 306(d)(12)(B), Uses of Regional Benefit.

#### § 923.11 Uses subject to management.

(a)(1) The management program for each coastal state must include a definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.

(2) The management program must identify those land and water uses that will be subject to the terms of the management program. These uses shall be those with direct and significant impacts on coastal waters or on geographic areas likely to be affected by or vulnerable to sea level rise.

(3) The management program must explain how those uses identified in

paragraph (a)(2) of this section will be managed. The management program must also contain those enforceable policies, legal authorities, performance standards or other techniques or procedures that will govern whether and how uses will be allowed, conditioned, modified, encouraged or prohibited.

(b) In identifying uses and their appropriate management, a State should analyze the quality, location, distribution and demand for the natural and man-made resources of their coastal zone, and should consider potential individual and cumulative impacts of uses on coastal waters.

(c) States should utilize the following types of analyses:

(1) Capability and suitability of resources to support existing or projected uses;

(2) Environmental impacts on coastal resources;

(3) Compatibility of various uses with adjacent uses or resources;

(4) Evaluation of inland and other location alternatives; and

(5) Water dependency of various uses and other social and economic considerations.

(d) Examination of the following factors is suggested:

(1) Air and water quality;

(2) Historic, cultural and esthetic resources where coastal development is likely to affect these resources;

(3) Open space or recreational uses of the shoreline where increased access to the shorefront is a particularly important concern;

(4) Floral and faunal communities where loss of living marine resources or threats to endangered or threatened coastal species are particularly important concerns.

(5) Information on the impacts of global warming and resultant sea level rise on natural resources such as beaches, dunes, estuaries, and wetlands, on salinization of drinking water supplies, and on properties, infrastructure and public works.

**§ 923.12 Uses of regional benefit.**

The management program must contain a method of assuring that local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses

and water uses of regional benefit. To this end, the management program must:

(a) Identify what constitutes uses of regional benefit; and

(b) Identify and utilize any one or a combination of methods, consistent with the control techniques employed by the State, to assure local land and water use regulations do not unreasonably restrict or exclude uses of regional benefit.

[61 FR 33806, June 28, 1996; 61 FR 36965, July 15, 1996]

**§ 923.13 Energy facility planning process.**

The management program must contain a planning process for energy facilities likely to be located in or which may significantly affect, the coastal zone, including a process for anticipating the management of the impacts resulting from such facilities. (See subsection 304(5) of the Act.) This process must contain the following elements:

(a) Identification of energy facilities which are likely to locate in, or which may significantly affect, a State's coastal zone;

(b) Procedures for assessing the suitability of sites for such facilities designed to evaluate, to the extent practicable, the costs and benefits of proposed and alternative sites in terms of State and national interests as well as local concerns;

(c) Articulation and identification of enforceable State policies, authorities and techniques for managing energy facilities and their impacts; and

(d) Identification of how interested and affected public and private parties will be involved in the planning process.

[61 FR 33806, June 28, 1996; 61 FR 36965, July 15, 1996]

**Subpart C—Special Management Areas**

SOURCE: 61 FR 33806, June 28, 1996, unless otherwise noted.

**§ 923.20 General.**

(a) This subpart sets forth the requirements for management program approvability with respect to areas of

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particular concern because of their coastal-related values or characteristics, or because they may face pressures which require detailed attention beyond the general planning and regulatory system which is part of the management program. As a result, these areas require special management attention within the terms of the State's overall coastal program. This special management may include regulatory or permit requirements applicable only to the area of particular concern. It also may include increased intergovernmental coordination, technical, assistance, enhanced public expenditures, or additional public services and maintenance to a designated area. This subpart deals with the following subsections of the Act: 306(d)(2)(C)—Geographic Areas of Particular Concern; 306(d)(2)(E)—Guidelines on Priorities of Uses; 306(d)(2)(G)—Shorefront Access and protection Planning; 306(d)(2)(I)—Shoreline Erosion/Mitigation Planning; and 306(d)(9)—Areas for Preservation and Restoration.

(b) The importance of designating areas of particular concern for management purposes and the number and type of areas that should be designated is directly related to the degree of comprehensive controls applied throughout a State's coastal zone. Where a State's general coastal management policies and authorities address state and national concerns comprehensively and are specific with respect to particular resources and uses, relatively less emphasis need be placed on designation of areas of particular concern. Where these policies are limited and non-specific, greater emphasis should be placed on areas of particular concern to assure effective management and an adequate degree of program specificity.

**§ 923.21 Areas of particular concern.**

(a) The management program must include an inventory and designation of areas of particular concern within the coastal zone, on a generic and/or site-specific basis, and broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(b) In developing criteria for inventorying and designating areas of particular concern. States must consider whether the following represent areas of concern requiring special management:

(1) Areas of unique, scarce, fragile or vulnerable natural habitat; unique or fragile, physical, figuration (as, for example, Niagara Falls); historical significance, cultural value or scenic importance (including resources on or determined to be eligible for the National Register of Historic Places.);

(2) Areas of high natural productivity or essential habitat for living resources, including fish, wildlife, and endangered species and the various trophic levels in the food web critical to their well-being;

(3) Areas of substantial recreational value and/or opportunity;

(4) Areas where developments and facilities are dependent upon the utilization of, or access to, coastal waters;

(5) Areas of unique hydrologic, geologic or topographic significance for industrial or commercial development or for dredge spoil disposal;

(6) Areas or urban concentration where shoreline utilization and water uses are highly competitive;

(7) Areas where, if development were permitted, it might be subject to significant hazard due to storms, slides, floods, erosion, settlement, salt water intrusion, and sea level rise;

(8) Areas needed to protect, maintain or replenish coastal lands or resources including coastal flood plains, aquifers and their recharge areas, estuaries, sand dunes, coral and other reefs, beaches, offshore sand deposits and mangrove stands.

(c) Where states will involve local governments, other state agencies, federal agencies and/or the public in the process of designating areas of particular concern, States must provide guidelines to those who will be involved in the designation process. These guidelines shall contain the purposes, criteria, and procedures for nominating areas of particular concern.

(d) In identifying areas of concern by location (if site specific) or category of coastal resources (if generic), the program must contain sufficient detail to

enable affected landowners, governmental entities and the public to determine with reasonable certainty whether a given area is designated.

(e) In identifying areas of concern, the program must describe the nature of the concern and the basis on which designations were made.

(f) The management program must describe how the management program addresses and resolves the concerns for which areas are designated; and

(g) The management program must provide guidelines regarding priorities of uses in these areas, including guidelines on uses of lowest priority.

**§ 923.22 Areas for preservation or restoration.**

The management program must include procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, historical or esthetic values, and the criteria for such designations.

**§ 923.23 Other areas of particular concern.**

(a) The management program may, but is not required to, designate specific areas known to require additional or special management, but for which additional management techniques have not been developed or necessary authorities have not been established at the time of program approval. If a management program includes such designations, the basis for designation must be clearly stated, and a reasonable time frame and procedures must be set forth for developing and implementing appropriate management techniques. These procedures must provide for the development of those items required in § 923.21. The management program must identify an agency (or agencies) capable of formulating the necessary management policies and techniques.

(b) The management program must meet the requirements of § 923.22 for containing procedures for designating areas for preservation or restoration. The management program may include procedures and criteria for designating areas of particular concern for other than preservation or restoration purposes after program approval.

**§ 923.24 Shorefront access and protection planning.**

(a) The management program must include a definition of the term "beach" and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological or cultural value.

(b) The basic purpose in focusing special planning attention on shorefront access and protection is to provide public beaches and other public coastal areas of environmental, recreational, historic, esthetic, ecological or cultural value with special management attention within the purview of the State's management program. This special management attention may be achieved by designating public shorefront areas requiring additional access or protection as areas of particular concern pursuant to § 923.21 or areas for preservation or restoration pursuant to § 923.22.

(c) The management program must contain a procedure for assessing public beaches and other public areas, including State owned lands, tidelands and bottom lands, which require access or protection, and a description of appropriate types of access and protection.

(d) The management program must contain a definition of the term "beach" that is the broadest definition allowable under state law or constitutional provisions, and an identification of public areas meeting that definition.

(e) The management program must contain an identification and description of enforceable policies, legal authorities, funding program and other techniques that will be used to provide such shorefront access and protection that the State's planning process indicates is necessary.

**§ 923.25 Shoreline erosion/mitigation planning.**

(a) The management program must include a planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the impact of, shoreline erosion, including potential impacts of sea level rise, and to restore areas adversely affected by such erosion. This planning process

may be within the broader context of coastal hazard mitigation planning.

(b) The basic purpose in developing this planning process is to give special attention to erosion issues. This special management attention may be achieved by designating erosion areas as areas of particular concern pursuant to § 923.21 or as areas for preservation or restoration pursuant to § 923.22.

(c) The management program must include an identification and description of enforceable policies, legal authorities, funding techniques and other techniques that will be used to manage the effects of erosion, including potential impacts of sea level rise, as the state's planning process indicates is necessary.

[61 FR 33806, June 28, 1996; 61 FR 36965, July 15, 1996]

### Subpart D—Boundaries

SOURCE: 61 FR 33808, June 28, 1996, unless otherwise noted.

#### § 923.30 General.

This subpart sets forth the requirements for management program approvability with respect to boundaries of the coastal zone. There are four elements to a State's boundary: the inland boundary, the seaward boundary, areas excluded from the boundary, and, in most cases, interstate boundaries. Specific requirements with respect to procedures for determining and identifying these boundary elements are discussed in the sections of this subpart that follow.

#### § 923.31 Inland boundary.

(a) The inland boundary of a State's coastal zone must include:

(1) Those areas the management of which is necessary to control uses which have direct and significant impacts on coastal waters, or are likely to be affected by or vulnerable to sea level rise, pursuant to section 923.11 of these regulations.

(2) Those special management areas identified pursuant to § 923.21;

(3) Waters under saline influence—waters containing a significant quantity of seawater, as defined by and uniformly applied by the State;

(4) Salt marshes and wetlands—Areas subject to regular inundation of tidal salt (or Great Lakes) waters which contain marsh flora typical of the region;

(5) Beaches—The area affected by wave action directly from the sea. Examples are sandy beaches and rocky areas usually to the vegetation line;

(6) Transitional and intertidal areas—Areas subject to coastal storm surge, and areas containing vegetation that is salt tolerant and survives because of conditions associated with proximity to coastal waters. Transitional and intertidal areas also include dunes and rocky shores to the point of upland vegetation;

(7) Islands—Bodies of land surrounded by water on all sides. Islands must be included in their entirety, except when uses of interior portions of islands do not cause direct and significant impacts.

(8) The inland boundary must be presented in a manner that is clear and exact enough to permit determination of whether property or an activity is located within the management area. States must be able to advise interested parties whether they are subject to the terms of the management program within, at a maximum, 30 days of receipt of an inquiry. An inland coastal zone boundary defined in terms of political jurisdiction (e.g., county, township or municipal lines) cultural features (e.g., highways, railroads), planning areas (e.g., regional agency jurisdictions, census enumeration districts), or a uniform setback line is acceptable so long as it includes the areas identified.

(b) The inland boundary of a State's coastal zone may include:

(1) Watersheds—A state may determine some uses within entire watersheds which have direct and significant impact on coastal waters or are likely to be affected by or vulnerable to sea level rise. In such cases it may be appropriate to define the coastal zone as including these watersheds.

(2) Areas of tidal influence that extend further inland than waters under saline influence; particularly in estuaries, deltas and rivers where uses inland could have direct and significant impacts on coastal waters or areas that



are likely to be affected by or vulnerable to sea level rise.

(3) Indian lands not held in trust by the Federal Government.

(c) In many urban areas or where the shoreline has been modified extensively, natural system relationships between land and water may be extremely difficult, if not, impossible, to define in terms of direct and significant impacts. Two activities that States should consider as causing direct and significant impacts on coastal waters in urban areas are sewage discharges and urban runoff. In addition, States should consider dependency of uses on water access and visual relationships as factors appropriate for the determination of the inland boundary in highly urbanized areas.

**§ 923.32 Lakeward or seaward boundary.**

(a)(1) For states adjoining the Great Lakes, the lakeward boundary of the State's coastal zone is the international boundary with Canada or the boundaries with adjacent states. For states adjacent to the Atlantic or Pacific Ocean, or the Gulf of Mexico, the seaward boundary is the outer limit of state title and ownership under the Submerged Lands Act (48 U.S.C. 1301 *et seq.*), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note) or section 1 of the Act of November 10, 1963, (48 U.S.C. 1705, as applicable).

(2) The requirement for defining the seaward boundary of a State's coastal zone can be met by a simple restatement of the limits defined in this section, unless there are water areas which require a more exact delineation because of site specific policies associated with these areas. Where States have site specific policies for particular water areas, these shall be mapped, described or referenced so that their location can be determined reasonably easily by any party affected by the policies.

(b) The seaward limits, as defined in this section, are for purposes of this program only and represent the area

within which the State's management program may be authorized and financed. These limits are irrespective of any other claims States may have by virtue of other laws.

**§ 923.33 Excluded lands.**

(a) The boundary of a State's coastal zone must exclude lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers or agents. To meet this requirement, the program must describe, list or map lands or types of lands owned, leased, held in trust or otherwise used solely by Federal agencies.

(b) The exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency provisions of section 307 of the Act when Federal actions on these excluded lands have spillover impacts that affect any land or water use or natural resource of the coastal zone within the purview of a state's management program. In excluding Federal lands from a State's coastal zone for the purposes of this Act, a State does not impair any rights or authorities that it may have over Federal lands that exist separate from this program.

**§ 923.34 Interstate boundary.**

States must document that there has been consultation and coordination with adjoining coastal States regarding delineation of any adjacent inland and lateral seaward boundary.

**Subpart E—Authorities and Organization**

SOURCE: 61 FR 33809, June 28, 1996, unless otherwise noted.

**§ 923.40 General.**

(a) This subpart sets forth the requirements for management program approvability with respect to authorities and organization. The authorities and organizational structure on which a State will rely to administer its management program are the crucial underpinnings for enforcing the policies which guide the management of the uses and areas identified in its management program. There is a direct

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relationship between the adequacy of authorities and the adequacy of the overall program. The authorities need to be broad enough in both geographic scope and subject matter to ensure implementation of the State's enforceable policies. These enforceable policies must be sufficiently comprehensive and specific to regulate land and water uses, control development, and resolve conflicts among competing uses in order to assure wise use of the coastal zone. (Issues relating to the adequate scope of the program are dealt with in § 923.3.)

(b) The entity or entities which will exercise the program's authorities is a matter of State determination. They may be the state agency designated pursuant to section 306(d)(6) of the Act, other state agencies, regional or interstate bodies, and local governments. The major approval criterion is a determination that such entity or entities are required to exercise their authorities in conformance with the policies of the management program. Accordingly, the essential requirement is that the State demonstrate that there is a means of ensuring such compliance. This demonstration will be in the context of one or a combination of the three control techniques specified in section 306(d)(11) of the Act. The requirements related to section 306(d)(12) of the Act are described in §§ 923.42 through 923.44 of this subchapter.

(c) In determining the adequacy of the authorities and organization of a state's programs, the Assistant Administrator will review and evaluate authorities and organizational arrangements in light of the requirements of this subpart and the finding of section 302(h) of the Act.

(d) The authorities requirements of the Act dealt with in this subpart are those contained in subsections 306(d)(2)(D)—Means of Control; 306(d)(10)—Authorities; 306(d)(10)(A)—Control Development and Resolve Conflicts; 306(d)(10)(B)—Powers of Acquisition; 306(d)(11)—Techniques of Control; and 307(f)—Air and Water Quality Control Requirements. The organization requirements of the Act dealt with in this subpart are those contained in sections 306(d)(2)(F)—Organizational

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Structure; 306(d)(6)—Designated State Agency; and 306(d)(7)—Organization.

### § 923.41 Identification of authorities.

(a)(1) The management program must identify the means by which the state proposes to exert control over the permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters, including a listing of relevant state constitutional provisions, laws, regulations, and judicial decisions. These are the means by which the state will enforce its coastal management policies. (See section 304(6a) of the Act.)

(2) The state chosen agency or agencies (including local governments, area-wide agencies, regional agencies, or interstate agencies) must have the authority for the management of the coastal zone. Such authority includes the following powers:

(i) To administer land use and water use regulations to control development to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(ii) To acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(b) In order to meet these requirements, the program must identify relevant state constitutional provisions, statutes, regulations, case law and such other legal instruments (including executive orders and interagency agreements) that will be used to carry out the state's management program, including the authorities pursuant to sections 306(d)(10) and 306(d)(11) of the Act which require a state to have the ability to:

(1) Administer land and water use regulations in conformance with the policies of the management program;

(2) Control such development as is necessary to ensure compliance with the management program;

(3) Resolve conflicts among competing uses; and

(4) Acquire appropriate interest in lands, waters or other property as necessary to achieve management objectives. Where acquisition will be a necessary technique for accomplishing particular program policies and objectives, the management program must indicate for what purpose acquisition will be used (*i.e.*, what policies or objectives will be accomplished); the type of acquisition (e.g., fee simple, purchase of easements, condemnation); and what agency (or agencies) of government have the authority for the specified type of acquisition.

**§ 923.42 State establishment of criteria and standards for local implementation—Technique A.**

(a) The management program must provide for any one or a combination of general techniques specified in subsection 306(d)(11) of the Act for control of land uses and water uses within the coastal zone. The first such control technique, at subsection 306(d)(11)(A) of the Act, is state establishment of criteria and standards for local implementation, subject to administrative review and enforcement (control technique A).

(b) There are 5 principal requirements that control technique A must embody in order to be approved:

(1) The State must have developed and have in effect at the time of program approval enforceable policies that meet the requirements of § 923.3. These policies must serve as the standards and criteria for local program development or the State must have separate standards and criteria, related to these enforceable policies, that will guide local program development.

(2) During the period while local programs are being developed, a State must have sufficient authority to assure that land and water use decisions subject to the management program will comply with the program's enforceable policies. The adequacy of these authorities will be judged on the same basis as specified for direct State controls or case-by-case reviews.

(3) A State must be able to ensure that coastal programs will be developed pursuant to the State's standards and criteria, or failing this, that the management program can be imple-

mented directly by the State. This requirement can be met if a State can exercise any one of the following techniques:

(i) Direct State enforcement of its standards and criteria in which case a State would need to meet the requirements of this section which address the direct State control technique;

(ii) Preparation of a local program by a State agency which the local government then would implement. To use this technique the State must have statutory authority to prepare and adopt a program for a local government, and a mechanism by which the State can cause the local government to enforce the State-created program. Where the mechanism to assure local enforcement will be judicial relief, the program must include the authority under which judicial relief can be sought;

(iii) State preparation and enforcement of a program on behalf of a local government. Here the State must have the authority to:

(A) Prepare and adopt a plan, regulations, and ordinances for the local government and

(B) Enforce such plans, regulations and ordinances;

(iv) State review of local government actions on a case-by-case basis or on appeal, and prevention of actions inconsistent with the standards and criteria. Under this technique, when a local government fails to adopt an approvable program, the State must have the ability to review activities in the coastal zone subject to the management program and the power to prohibit, modify or condition those activities based on the policies, standards and criteria of the management program; or

(v) If a locality fails to adopt a management program, the State may utilize a procedure whereby the responsibility for preparing a program shifts to an intermediate level government, such as a county. If this intermediate level of government fails to produce a program, then the State must have the ability to take one of the actions described above. This alternative cannot be used where the intermediate level of government lacks the legal authority to adopt and implement regulations

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necessary to implement State policies, standards and criteria.

(4) A State must have a procedure whereby it reviews and certifies the local program's compliance with State standards and criteria. This procedure must include provisions for:

(i) Opportunity for the public and governmental entities (including Federal agencies) to participate in the development of local programs; and

(ii) Opportunity for the public and governmental entities (including Federal agencies) to make their views known (through public hearings or other means) to the State agency prior to approval of local programs; and

(iii) Review by the State of the adequacy of local programs consideration of facilities identified in a State's management program in which there is a national interest.

(5) A State must be able to assure implementation and enforcement of a local program once approved. To accomplish this a State must:

(i) Establish a monitoring system which defines what constitutes and detects patterns of non-compliance. In the case of uses of regional benefit and facilities in which there is a national interest, the monitoring system must be capable of detecting single instances of local actions affecting such uses or facilities in a manner contrary to the management program.

(ii) Be capable of assuring compliance when a pattern of deviation is detected or when a facility involving identified national interests or a use of regional benefit is affected in a manner contrary to the program's policies. When State action is required because of failure by a local government to enforce its program, the State must be able to do one or a combination of the following:

(A) Directly enforce the entire local program;

(B) Directly enforce that portion of the local program that is being enforced improperly. State intervention would be necessary only in those local government activities that are violating the policies, standards or criteria.

(C) Seek judicial relief against local government for failure to properly enforce;

(D) Review local government actions on a case-by-case basis or on appeal and have the power to prevent those actions inconsistent with the policies and standards.

(E) Provide a procedure whereby the responsibility for enforcing a program shifts to an intermediate level of government, assuming statutory authority exists to enable the immediate of government to assume this responsibility.

**§ 923.43 Direct State land and water use planning and regulation—Technique B.**

(a) The management program must provide for any one or a combination of general techniques specified in subsection 306(d)(11) of the Act for control of land and water uses within the coastal zone. The second such control technique, at subsection 306(d)(11)(B) of the Act, is direct state land and water use planning and regulation (control technique B).

(b) To have control technique B approved, the State must have the requisite direct authority to plan and regulate land and water uses subject to the management program. This authority can take the form of:

(1) Comprehensive legislation—A single piece of comprehensive legislation specific to coastal management and the requirements of this Act.

(2) Networking—The utilization of authorities which are compatible with and applied on the basis of coastal management policies developed pursuant to § 923.3.

(c) In order to apply the networking concept, the State must:

(1) Demonstrate that, taken together, existing authorities can and will be used to implement the full range of policies and management techniques identified as necessary for coastal management purposes; and

(2) Bind each party which exercises statutory authority that is part of the management program to conformance with relevant enforceable policies and management techniques. Parties may be bound to conformance through an executive order, administrative directive or a memorandum of understanding provided that:

(i) The management program authorities provide grounds for taking action to ensure compliance of networked agencies with the program. It will be sufficient if any of the following can act to ensure compliance: The State agency designated pursuant to subsection 306(d)(6) of the Act, the State's Attorney General, another State agency, a local government, or a citizen.

(ii) The executive order, administrative directive or memorandum of understanding establishes conformance requirements of other State agency activities or authorities to management program policies. A gubernatorial executive order will be acceptable if networked State agency heads are directly responsible to the Governor.

(3) Where networked State agencies can enforce the management program policies at the time of section 306 approval without first having to revise their operating rules and regulations, then any proposed revisions to such rules and regulations which would enhance or facilitate implementation need not be accomplished prior to program approval. Where State agencies cannot enforce coastal policies without first revising their rules and regulations, then these revisions must be made prior to approval of the State's program by the Assistant Administrator.

**§ 923.44 State review on a case-by-case basis of actions affecting land and water uses subject to the management program—Technique C.**

(a) The management program must provide for any one or a combination of general techniques specified in subsection 306(d)(11) of the Act for control of land and water uses within the coastal zone. The third such control technique, at subsection 306(d)(11)(C) of the Act, is state administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings (control technique C).

(b) Under case-by-case review, States have the power to review individual development plans, projects or land and water use regulations (including variances and exceptions thereto) proposed by any State or local authority or private developer which have been identified in the management program as being subject to review for consistency with the management program. This control technique requires the greatest degree of policy specificity because compliance with the program will not require any prior actions on the part of anyone affected by the program. Specificity also is needed to avoid challenges that decisions (made pursuant to the management program) are unfounded, arbitrary or capricious.

(c) To have control technique C approved, a State must:

(1) Identify the plans, projects or regulations subject to review, based on their significance in terms of impacts on coastal resources, potential for incompatibility with the State's coastal management program, and having greater than local significance;

(2) Identify the State agency that will conduct this review;

(3) Include the criteria by which identified plans, projects and regulations will be approved or disapproved;

(4) Have the power to approve or disapprove identified plans, projects or regulations that are inconsistent with the management program, or the power to seek court review thereof; and

(5) Provide public notice of reviews and the opportunity for public hearing prior to rendering a decision on each case-by-case review.

**§ 923.45 Air and water pollution control requirements.**

The program must incorporate, by reference or otherwise, all requirements established by the Federal Water Pollution Control Act, as amended (Clean Water Act or CWA), or the Clean Air Act, as amended (CAA), or established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements must be the water pollution control and air pollution control requirements applicable to such program. Incorporation of the air and water quality requirements pursuant

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to the CWA and CAA should involve their consideration during program development, especially with respect to use determinations and designation of areas for special management. In addition, this incorporation will prove to be more meaningful if close coordination and working relationships between the State agency and the air and water quality agencies are developed and maintained throughout the program development process and after program approval.

### § 923.46 Organizational structure.

The State must be organized to implement the management program. The management program must describe the organizational structure that will be used to implement and administer the management program including a discussion of those state and other agencies, including local governments, that will have responsibility for administering, enforcing and/or monitoring those authorities or techniques required pursuant to the following subsections of the Act: 306(d)(3)(B); 306(d)(10); 306(d)(10) (A) and (B); 306(d)(11) and (12); and 307(f). The management program must also describe the relationship of these administering agencies to the state agency designated pursuant to subsection 306(d)(6) of the Act.

### § 923.47 Designated State agency.

(a) For program approval, the Governor of the state must designate a single state agency to receive and administer the grants for implementing the management program.

(1) This entity must have the fiscal and legal capability to accept and administer grant funds, to make contracts or other arrangements (such as passthrough grants) with participating agencies for the purpose of carrying out specific management tasks and to account for the expenditure of the implementation funds of any recipient of such monies, and

(2) This entity must have the administrative capability to monitor and evaluate the management of the State's coastal resources by the various agencies and/or local governments with specified responsibilities under the management program (irrespective

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of whether such entities receive section 306 funds); to make periodic reports to the Office of Ocean and Coastal Resource Management (OCRM), the Governor, or the State legislature, as appropriate, regarding the performance of all agencies involved in the program. The entity also must be capable of presenting evidence of adherence to the management program or justification for deviation as part of the review by OCRM of State performance required by section 312 of the Act.

(b)(1) The 306 agency designation is designed to establish a single point of accountability for prudent use of administrative funds in the furtherance of the management and for monitoring of management activities. Designation does not imply that this single agency need be a "super agency" or the principal implementation vehicle. It is, however, the focal point for proper administration and evaluation of the State's program and the entity to which OCRM will look when monitoring and reevaluating a State's program during program implementation.

(2) The requirement for the single designated agency should not be viewed as confining or otherwise limiting the role and responsibilities which may be assigned to this agency. It is up to the State to decide in what manner and to what extent the designated State agency will be involved in actual program implementation or enforcement. In determining the extent to which this agency should be involved in program implementation or enforcement, specific factors should be considered, such as the manner in which local and regional authorities are involved in program implementation, the administrative structure of the State, the authorities to be relied upon and the agencies administering such authorities. Because the designated State agency may be viewed as the best vehicle for increasing the unity and efficiency of a management program, the State may want to consider the following in selecting which agency to designate:

(i) Whether the designated State entity has a legislative mandate to coordinate other State or local programs, plans and/or policies within the coastal zone;

(ii) To what extent linkages already exist between the entity, other agencies, and local governments;

(iii) To what extent management or regulatory authorities affecting the coastal zone presently are administered by the agency; and

(iv) Whether the agency is equipped to handle monitoring, evaluation and enforcement responsibilities.

**§ 923.48 Documentation.**

A transmittal letter signed by the Governor is required for the submission of a management program for federal approval. The letter must state that the Governor:

(a) Has reviewed and approved as State policy, the management program, and any changes thereto, submitted for the approval of the Assistant Administrator.

(b) Has designated a single State agency to receive and administer implementation grants;

(c) Attests to the fact that the State has the authorities necessary to implement the management program; and

(d) Attests to the fact that the State is organized to implement the management program.

**Subpart F—Coordination, Public Involvement and National Interest**

SOURCE: 61 FR 33812, June 28, 1996, unless otherwise noted.

**§ 923.50 General.**

(a) Coordination with governmental agencies having interests and responsibilities affecting the coastal zone, and involvement of interest groups as well as the general public is essential to the development and administration of State coastal management programs. The coordination requirements of this subpart are intended to achieve a proper balancing of diverse interests in the coastal zone. The policies of section 303 of the Act require that there be a balancing of variety, sometimes conflicting, interests, including:

(1) The preservation, protection, development and, where possible, the restoration or enhancement of coastal resources;

(2) The achievement of wise use of coastal land and water resources with

full consideration for ecological, cultural, historic, and aesthetic values and needs for compatible economic development;

(3) The involvement of the public, of Federal, state and local governments and of regional agencies in the development and implementation of coastal management programs;

(4) The management of coastal development to improve, safeguard, and restore coastal water quality; and

(5) The study and development of plans for addressing the adverse effects of coastal hazards, including erosion, flooding, land subsidence and sea level rise.

(b) In order to be meaningful, coordination with and participation by various units and levels of government including regional commissions, interest groups, and the general public should begin early in the process of program development and should continue throughout on a timely basis to assure that such efforts will result in substantive inputs into a State's management program. State efforts should be devoted not only to obtaining information necessary for developing the management program but also to obtaining reactions and recommendations regarding the content of the management program and to responding to concerns by interested parties. The requirements for intergovernmental cooperation and public participation continue after program approval.

(c) This subpart deals with requirements for coordination with governmental entities, interest groups and the general public to assure that their interests are fully expressed and considered during the program development process and that procedures are created to insure continued consideration of their views during program implementation. In addition, this subpart deals with mediation procedures for serious disagreements between States and Federal agencies that occur during program development and implementation. This subpart addresses the requirements of the following subsections of the Act: 306(d)(1)—Opportunity for Full Participation; 306(d)(3)(A)—Plan Coordination; 306(d)(3)(B)—Continued State-Local

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Consultation; 306(d)(4)—Public Hearings; 306(d)(8)—Consideration of the National Interest in Facilities; 307(b)—Federal Consultation; and 307(h)—Mediation.

### § 923.51 Federal-State consultation.

(a) The management program must be developed and adopted with the opportunity of full participation by relevant Federal agencies and with adequate consideration of the views of Federal agencies principally affected by such program.

(b) By providing relevant Federal agencies with the opportunity for full participation during program development and for adequately considering the views of such agencies, States can effectuate the Federal consistency provisions of subsections 307 (c) and (d) of the Act once their programs are approved. (See 15 CFR part 930 for a full discussion of the Federal consistency provisions of the Act.)

(c) In addition to the consideration of relevant Federal agency views required during program development, Federal agencies have the opportunity to provide further comment during the program review and approval process. (See subpart G for details on this process.) Moreover, in the event of a serious disagreement between a relevant Federal agency and designated State agency during program development or during program implementation, the mediation provisions of subsection 307(h) of the Act are available. (See § 923.54 for details on mediation.)

(d) In order to provide an opportunity for participation by relevant Federal agencies and give adequate consideration to their views, each state must:

(1) Contact each relevant Federal Agency listed in § 923.2(d) and such other Federal agencies as may be relevant, owing to a State's particular circumstances, early in the development of its management program. The purpose of such contact is to develop mutual arrangements or understandings regarding that agency's participation during program development;

(2) Provide for Federal agency input on a timely basis as the program is developed. Such input shall be related both to information required to de-

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velop the management program and to evaluation of and recommendations concerning various elements of the management program;

(3) Solicit statements from the head of Federal agencies identified in Table 1 of § 923.52(c)(1) as to their interpretation of the national interest in the planning for and siting of facilities which are more than local in nature;

(4) Summarize the nature, frequency, and timing of contacts with relevant Federal agencies;

(5) Evaluate Federal comments received during the program development process and, where appropriate in the opinion of the State, accommodate the substance of pertinent comments in the management program. States must consider and evaluate relevant Federal agency views or comments about the following:

(i) Management of coastal resources for preservation, conservation, development, enhancement or restoration purposes;

(ii) Statements of the national interest in the planning for or siting of facilities which are more than local in nature;

(iii) Uses which are subject to the management program;

(iv) Areas which are of particular concern to the management program;

(v) Boundary determinations;

(vi) Shorefront access and protecting planning, energy facility planning and erosion planning processes; and

(vii) Federally developed or assisted plans that must be coordinated with the management program pursuant to subsection 306(d)(3) of the Act.

(6) Indicate the nature of major comments by Federal agencies provided during program development (either by including copies of comments or by summarizing comments) and discuss any major differences or conflicts between the management program and Federal views that have not been resolved at the time of program submission.

### § 923.52 Consideration of the national interest in facilities.

(a) The management program must provide for adequate consideration of the national interest involved in planning for, and managing the coastal



zone, including the siting of facilities such as energy facilities which are of greater than local significance. In the case of energy facilities, the State must have considered any applicable national or interstate energy plan or program.

(b) The primary purpose of this requirement is to assure adequate consideration by States of the national interest involved in the planning for and siting of facilities (which are necessary to meet other than local requirements) during:

(1) The development of the State's management program,

(2) The review and approval of the program by the Assistant Administrator, and

(3) The implementation of the program as such facilities are proposed.

(c) In order to fulfill this requirement, States must:

(1) Describe the national interest in the planning for and siting of facilities considered during program development.

(2) Indicate the sources relied upon for a description of the national interest in the planning for and siting of the facilities.

(3) Indicate how and where the consideration of the national interest is reflected in the substance of the management program. In the case of energy facilities in which there is a national interest, the program must indicate the consideration given any national or interstate energy plans or programs which are applicable to or affect a state's coastal zone.

(4) Describe the process for continued consideration of the national interest in the planning for and siting of facilities during program implementation, including a clear and detailed description of the administrative procedures and decisions points where such interest will be considered.

**§ 923.53 Federal consistency procedures.**

(a) A State must include in its management program submission, as part of the body of the submission an appendix or an attachment, the procedures it will use to implement the Federal consistency requirements of subsections

307 (c) and (d) of the Act. At a minimum, the following must be included:

(1) An indication of whether the state agency designated pursuant to subsection 306(d)(6) of the Act or a single other agency will handle consistency review (see 15 CFR 930.18);

(2) A list of Federal license and permit activities that will be subject to review (see 15 CFR 930.53);

(3) For States anticipating coastal zone effects from Outer Continental Shelf (OCS) activities, the license and permit list also must include OCS plans which describe in detail Federal license and permit activities (see 15 CFR 930.74); and

(4) The public notice procedures to be used for certifications submitted for Federal License and permit activities and, where appropriate, for OCS plans (see 15 CFR 930.61 through 930.62 and 930.78).

(b) Beyond the minimum requirements contained in paragraph (a) of this section, States have the option of including:

(1) A list of Federal activities, including development projects, which in the opinion of the State agency are likely to significantly affect the coastal zone and thereby will require a Federal agency consistency determination (see 15 CFR 930.35); and

(2) A description of the types of information and data necessary to assess the consistency of Federal license and permit activities and, where appropriate, those described in detail in OCS plans (see 15 CFR 930.56 and 930.75).

**§ 923.54 Mediation.**

(a) Section 307(h) of the Act provides for mediation of serious disagreement between any Federal agency and a coastal state in the development and implementation of a management program. In certain cases, mediation by the Secretary, with the assistance of the Executive Office of the President, may be an appropriate forum for conflict resolution.

(b) State-Federal differences should be addressed initially by the parties involved. Whenever a serious disagreement cannot be resolved between the parties concerned, either party may request the informal assistance of the Assistant Administrator in resolving

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the disagreement. This request shall be in writing, stating the points of disagreement and the reason therefore. A copy of the request shall be sent to the other party to the disagreement.

(c) If a serious disagreement persists, the Secretary or other head of a relevant Federal agency, or the Governor or the head of the state agency designated by the Governor as administratively responsible for program development (if a state still is receiving section 305 program development grants) or for program implementation (if a state is receiving section 306 program implementation grants) may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the serious disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees and to the Assistant Administrator.

(d) Secretarial mediation efforts shall last only so long as the parties agree to participate. The Secretary shall confer with the Executive Office of the President, as necessary, during the mediation process.

(e) Mediation shall terminate:

(1) At any time the parties agree to a resolution of the serious disagreement,

(2) If one of the parties withdraws from mediation,

(3) In the event the parties fail to reach a resolution of the serious disagreement within 15 days following Secretarial mediation efforts, and the parties do not agree to extend mediation beyond that period, or

(4) For other good cause.

(f) The availability of the mediation services provided in this section is not intended expressly or implicitly to limit the parties' use of alternate forums to resolve disputes. Specifically, judicial review where otherwise available by law may be sought by any party to a serious disagreement without first having exhausted the mediation process provided herein.

**§ 923.55 Full participation by State and local governments, interested parties, and the general public.**

The management program must be developed and adopted with the opportunity of full participation by state

agencies, local governments, regional commissions and organizations, port authorities, and other interested public and private parties. To meet this requirement, a State must:

(a) Develop and make available general information regarding the program design, its content and its status throughout program development;

(b) Provide a listing, as comprehensive as possible, of all governmental agencies, regional organizations, port authorities and public and private organizations likely to be affected by or to have a direct interest in the development and implementation of the management program;

(c) Indicate the nature of major comments received from interested or affected parties, identified in paragraph (b)(2) of this section, and the nature of the State's response to these comments; and

(d) Hold public meetings, workshops, etc., during the course of program development at accessible locations and convenient times, with reasonable notice and availability of materials.

**§ 923.56 Plan coordination.**

(a) The management program must be coordinated with local, areawide, and interstate plans applicable to areas within the coastal zone—

(1) Existing on January 1 of the year in which the state's management program is submitted to the Secretary; and

(2) Which have been developed by a local government, an areawide agency, a regional agency, or an interstate agency.

(b) A State must insure that the contents of its management program has been coordinated with local, areawide and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the State's management program is submitted to the Assistant Administrator for approval. To document this coordination, the management program must:

(1) Identify local governments, areawide agencies and regional or interstate agencies which have plans affecting the coastal zone in effect on January 1 of the year in which the management program is submitted;

(2) List or provide a summary of contacts with these entities for the purpose of coordinating the management program with plans adopted by a governmental entity as of January 1 of the year in which the management program is submitted. At a minimum, the following plans, affecting a State coastal zone, shall be reviewed: Land use plans prepared pursuant to section 701 of the Housing and Urban Development Act of 1968, as amended; State and areawide waste treatment facility or management plans prepared pursuant to sections 201 and 208 of the Clean Water Act, as amended; plans and designations made pursuant to the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended; hazard mitigation plans prepared pursuant to section 409 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act; any applicable interstate energy plans or programs developed pursuant to section 309 of the Act; regional and interstate highway plans; plans developed by Regional Action Planning Commission; and fishery management plans developed pursuant to the Fisheries Conservation and Management Act.

(3) Identify conflicts with those plans of a regulatory nature that are unresolved at the time of program submission and the means that can be used to resolve these conflicts.

**§ 923.57 Continuing consultation.**

(a) As required by subsection 306(d)(3)(B) of the Act, a State must establish an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (6) of section 306(d) of the Act and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of those local governments and agencies in carrying out the purposes of this Act.

(b) The management program must establish a procedure whereby local governments with zoning authority are notified of State management program decisions which would conflict with any local zoning ordinance decision.

(1) "Management program decision" refers to any major, discretionary policy decisions on the part of a management agency, such as the determination of permissible land and water uses, the designation of areas or particular concern or areas for preservation or restoration, or the decision to acquire property for public uses. Regulatory actions which are taken pursuant to these major decisions are not subject to the State-local consultation mechanisms. A State management program decision is in conflict with a local zoning ordinance if the decision is contradictory to that ordinance. A State management program decision that consists of additional but not contradictory requirements is not in conflict with a local zoning ordinance, decision or other action;

(2) "Local government" refers to these defined in section 304(11) of the Act which have some form of zoning authority.

(3) "Local zoning ordinance, decision or other action" refers to any local government land or water use action which regulates or restricts the construction, alteration of use of land, water or structures thereon or thereunder. These actions include zoning ordinances, master plans and official maps. A local government has the right to comment on a State management program decision when such decision conflicts with the above specified actions;

(4) Notification must be in writing and must inform the local government of its right to submit comments to the State management agency in the event the proposed State management program decision conflicts with a local zoning ordinance, decision or other action. The effect of providing such notice is to stay State action to implement its management decision for at least a 30-day period unless the local government waives its right to comment.

(5) "Waiver" of the right of local government to comment (thereby permitting a State agency to proceed immediately with implementation of the management program decision) shall result:

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(i) Following State agency receipt of a written statement from a local government indicating that it either:

- (A) Waives its right to comment; or
- (B) Concurs with the management program decision; or
- (C) Intends to take action which conflicts or interferes with the management program decision; or

(ii) Following a public statement by a local government to the same effect as paragraph (b)(5)(i) of this section; or

(iii) Following an action by a local government that conflicts or interferes with the management program decision.

(6) The management program shall include procedures to be followed by a management agency in considering a local government's comments. These procedures shall include, at a minimum, circumstances under which the agency will exercise its discretion to hold a public hearing. Where public hearings will be held, the program must set forth notice and other hearing procedures that will be followed. Following State agency consideration of local comments (when a discretionary public hearing is not held) or following public hearing, the management agency shall provide a written response to the affected local government, affected local government, within a reasonable period of time and prior to implementation of the management program decision, on the results of the agency's consideration of public comments.

**§ 923.58 Public hearings.**

The management program must be developed and adopted after the holding of public hearings. A State must:

(a) Hold a minimum of two public hearings during the course of program development, at least one of which will be on the total scope of the coastal management program. Hearings on the total management program do not have to be held on the actual document submitted to the Assistant Administrator for section 306 approval. However, such hearing(s) must cover the substance and content of the proposed management program in such a manner that the general public, and particularly affected parties, have a reasonable opportunity to understand the impacts of the management program.

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If the hearing(s) are not on the management document per se, all requests for such document must be honored and comments on the document received prior to submission of the document to the Assistant Administrator must be considered;

(b) Provide a minimum of 30 days public notice of hearing dates and locations;

(c) Make available for public review, at the time of public notice, all agency materials pertinent to the hearings; and

(d) Include a transcript or summary of the public hearing(s) with the State's program document or submit same within thirty (30) days following submittal of the program to the Assistant Administrator. At the same time this transcript or summary is submitted to the Assistant Administrator, it must be made available, upon request, to the public.

**Subpart G—Review/Approval Procedures**

SOURCE: 61 FR 33815, June 28, 1996, unless otherwise noted.

**§ 923.60 Review/approval procedures.**

(a) All state management program submissions must contain an environmental assessment at the time of submission of the management program to OCRM for threshold review. In accordance with regulations implementing the National Environmental Policy Act of 1969, as amended, OCRM will assist the State by outlining the types of information required. (See 40 CFR § 1506.5 (a) and (b).)

(b) Upon submission by a State of its draft management program, OCRM will determine if it adequately meets the requirements of the Act and this part. Assuming positive findings are made and major revisions to the State's draft management program are not required, OCRM will prepare draft and final environmental impact statements, in accordance with National Environmental Policy Act requirements. Because the review process involves preparation and dissemination of draft and final environmental impact statements and lengthy Federal agency review; states should anticipate that it will take at

least 7 months between the time a state first submits a draft management program to OCRM for threshold review and the point at which the Assistant Administrator makes a final decision on whether to approve the management program. Certain factors will contribute to lengthening or shortening this time table; these factors are discussed in OCRM guidance on the review/approval process. The OCRM guidance also recommends a format for the program document submitted to the Assistant Administrator for review and approval.

#### Subpart H—Amendments to and Termination of Approved Management Programs

SOURCE: 61 FR 33815, June 28, 1996, unless otherwise noted.

##### § 923.80 General.

(a) This subpart establishes the criteria and procedures by which amendments, modifications or other changes to approved management programs may be made. This subpart also establishes the conditions and procedures by which administrative funding may be terminated for programmatic reasons.

(b) Any coastal state may amend or modify a management program which it has submitted and which has been approved by the Assistant Administrator under this subsection, subject to the conditions provided for subsection 306(e) of the Act.

(c) As required by subsection 312(d) of the Act, the Assistant Administrator shall withdraw approval of the management program of any coastal state and shall withdraw financial assistance available to that state under this title as well as any unexpended portion of such assistance, if the Assistant Administrator determines that the coastal state has failed to take the actions referred to in subsection 312(c)(2)(A) of the Act.

(d) For purposes of this subpart, amendments are defined as substantial changes in one or more of the following coastal management program areas:

- (1) Uses subject to management;
- (2) Special management areas;
- (3) Boundaries;
- (4) Authorities and organization; and

(5) Coordination, public involvement and the national interest.

(e) OCRM will provide guidance on program changes. The five program management areas identified in § 923.80(d) are also discussed in subpart B through F of this part.

##### § 923.81 Requests for amendments.

(a) Requests for amendments shall be submitted to the Assistant Administrator by the Governor of a coastal state with an approved management program or by the head of the state agency (designated pursuant to subsection 306(d)(6) of the Act) if the Governor had delegated this responsibility and such delegation is part of the approved management program. Whenever possible, requests should be submitted prior to final State action to implement the amendment. At least one public hearing must be held on the proposed amendment, pursuant to subsection 306(d)(4) of the Act. Pursuant to section 311 of the Act, notice of such public hearing(s) must be announced at least 30 days prior to the hearing date. At the time of the announcement, relevant agency materials pertinent to the hearing must be made available to the public.

(b) Amendment requests must contain the following:

(1) A description of the proposed change, including specific pages and text of the management program that will be changed if the amendment is approved by the Assistant Administrator. This description shall also identify any enforceable policies to be added to the management program;

(2) An explanation of why the change is necessary and appropriate, including a discussion of the following factors, as relevant; changes in coastal zone needs, problems, issues, or priorities. This discussion also shall identify which findings, if any made by the Assistant Administrator in approving the management program may need to be modified if the amendment is approved;

(3) A copy of public notice(s) announcing the public hearing(s) on the proposed amendments;

(4) A summary of the hearing(s) comments;

## § 923.82

(i) Where OCRM is providing Federal agency review concurrent with the notice period for the State's public hearing, this summary of hearing(s) comments may be submitted to the Assistant Administrator within 60 days after the hearing;

(ii) Where hearing(s) summaries are submitted as a supplement to the amendment request (as in the case described in paragraph (b)(1) of this section), the Assistant Administrator will not take final action to approve or disapprove an amendment request until the hearing(s) summaries have been received and reviewed; and

(5) Documentation of opportunities provided relevant Federal, State, regional and local agencies, port authorities and other interested public and private parties to participate in the development and approval at the State level of the proposed amendment.

[61 FR 33815, June 28, 1996; 61 FR 36965, July 15, 1996]

## § 923.82 Amendment review/approval procedures.

(a) Upon submission by a State of its amendment request, OCRM will review the request to determine preliminarily if the management program, if changed according to the amendment request, still will constitute an approvable program. In making this determination, OCRM will determine whether the state has satisfied the applicable program approvability criteria of subsection 306(d) of the Act.

(b) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would no longer constitute an approvable program, or if any of the procedural requirements of section 306(d) of the Act have not been met, the Assistant Administrator shall advise the state in writing of the reasons why the amendment request cannot be considered.

(c) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would still constitute an approvable program and that the procedural requirements of section 306(d) of the Act have been met, the Assistant Administrator will then determine, pursuant to the National Environmental Policy Act

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of 1969, as amended, whether an environmental impact statement (EIS) is required.

## § 923.83 Mediation of amendments.

(a) Section 307(h)(2) of the Act provides for mediation of "serious disagreements" between a Federal agency and a coastal State during administration of an approved management program. Accordingly mediation is available to states or federal agencies when a serious disagreement regarding a proposed amendment arises.

(b) Mediation may be requested by a Governor or head of a state agency designated pursuant to subsection 306(d)(6) or by the head of a relevant federal agency. Mediation is a voluntary process in which the Secretary of Commerce attempts to mediate between disagreeing parties over major problems. (See § 923.54).

## § 923.84 Routine program changes.

(a) Further detailing of a State's program that is the result of implementing provisions approved as part of a State's approved management program, that does not result in the type of action described in § 923.80(d), will be considered a routine program change. While a routine change is not subject to the amendment procedures contained in §§ 923.81 through 923.82, it is subject to mediation provisions of § 923.83.

(b)(1) States must notify OCRM of routine program change actions in order that OCRM may review the action to ensure it does not constitute an amendment. The state notification shall identify any enforceable policies to be added to the management program, and explain why the program change will not result in the type of action described in § 923.80(d).

(i) States have the option of notifying OCRM of routine changes on a case-by-case basis, periodically throughout the year, or annually.

(ii) In determining when and how often to notify OCRM of such actions, States should be aware that Federal consistency will apply only after the notice required by paragraph (b)(4) of this section has been provided.

(2) Concurrent with notifying OCRM, States must provide notice to the general public and affected parties, including local governments, other State agencies and regional offices of relevant federal agencies of the notification given OCRM.

(i) This notice must:

(A) Describe the nature of the routine program change and identify any enforceable policies to be added to the management program if the State's request is approved;

(B) Indicate that the State considers it to be a routine program change and has requested OCRM's concurrence in that determination; and

(C) Indicate that any comments on whether or not the action does or does not constitute a routine program change may be submitted to OCRM within 3 weeks of the date of issuance of the notice.

(ii) Where relevant Federal agencies do not maintain regional offices, notice must be provided to the headquarters office.

(3) Within 4 weeks of receipt of notice from a State, OCRM will inform the State whether it concurs that the action constitutes a routine program change. Failure to notify a State in writing within 4 weeks of receipt of notice shall be considered concurrence.

(4) Where OCRM concurs, a State then must provide notice of this fact to the general public and affected parties, including local governments, other State agencies and relevant Federal agencies.

(i) This notice must:

(A) Indicate the date on which the State received concurrence from OCRM that the action constitutes a routine program change;

(B) Reference the earlier notice (required in paragraph (b)(2) of this section) for a description of the content of the action; and

(C) Indicate if Federal consistency applies as of the date of the notice called for in this paragraph.

(ii) Federal consistency shall not be required until this notice has been provided.

(5) Where OCRM does not concur, a State will be advised to:

(i) submit the action as an amendment, subject to the provisions of §§ 923.81 through 923.82; or

(ii) resubmit the routine program change with additional information requested by OCRM concerning how the program will be changed as a result of the action.

[61 FR 33815, June 28, 1996; 61 FR 36965, July 15, 1996]

**Subpart I—Applications for Program Development or Implementation Grants**

SOURCE: 61 FR 33816, June 28, 1996, unless otherwise noted.

**§ 923.90 General.**

(a) The primary purpose of development grants made pursuant to section 305 of the Act is to assist coastal States in the development of comprehensive coastal management programs that can be approved by the Assistant Administrator. The primary purpose of implementation grants made pursuant to section 306 of the Act is to assist coastal States in implementing coastal management programs following their approval, including especially administrative actions to implement enforceable program policies, authorities and other management techniques. The purpose of the guidelines in this subpart is to define the procedures by which grantees apply for and administer grants under the Act. These guidelines shall be used and interpreted in conjunction with applicable Federal laws and policies, Department of Commerce grants management regulations, policies and procedures, and any other applicable directives from the NOAA Grants Management Division and OCRM program offices.

(b) Grants awarded to a State must be expended for the development or administration, as appropriate, of a management program that meets the requirements of the Act, and in accordance with the terms of the award.

(c) All applications for funding under section 305 or 306 of the Act, including proposed work programs, funding priorities and allocations are subject to the

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discretion of the Assistant Administrator.

(d) For purposes of this subpart, the term *development grant* means a grant awarded pursuant to subsection 305(a) of the Act. “Administrative grant” and “implementation grant” are used interchangeably and mean grants awarded pursuant to subsection 306(a) of the Act.

(e) All application and preapplication forms are to be requested from and submitted to: National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, Coastal Programs Division, 1305 East-West Highway (N/ORM3), Silver Spring, MD 20910.

### §923.91 State responsibility.

(a) Applications for program grants are required to be submitted by the Governor of a participating state or by the head of the state entity designated by the Governor pursuant to subsection 306(d)(6) of the Act.

(b) In the case of a section 305 grant, the application must designate a single state agency or entity to receive development grants and to be responsible for development of the State’s coastal management program. The designee need not be that entity designated by the Governor pursuant to subsection 306(d)(6) of the Act as a single agency to receive and administer implementation grants.

(c) One State application will cover all program activities for which program development or implementation funds under this Act and matching State funds are provided, irrespective of whether these activities will be carried out by State agencies, areawide or regional agencies, local governments, or interstate entities.

(d) The designated state entity shall be fiscally responsible for all expenditures made under the grant, including expenditures by subgrantees and contractors.

### §923.92 Allocation.

(a) Subsections 303(4), 306(d)(3)(B) and 306(d)(10) of the Act foster intergovernmental cooperation in that a state, in accordance with its coastal zone management program, may allocate some of its coastal zone management respon-

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sibilities to several agencies, including local governments, areawide agencies, regional agencies and interstate agencies. Such allocations provide for continuing consultation and more effective participation and cooperation among state and local governments, interstate, regional and areawide agencies.

(b) A State may allocate a portion or portions of its grant to other State agencies, local governments, areawide or regional agencies, interstate entities, or Indian tribes, if the work to result from such allocation(s) will contribute to the effective development or implementation of the State’s management program.

(1) Local governments. Should a State desire to allocate a portion of its grant to a local government, units of general-purpose local government are preferred over special-purpose units of local government. Where a State will be relying on direct State controls as provided for in subsection 306(d)(11)(B) of the Act, pass-throughs to local governments for local planning, regulatory or administrative efforts under a section 306 grant cannot be made, unless they are subject to adequate State overview and are part of the approved management program. Where the approved management program provides for other specified local activities or one-time projects, again subject to adequate State overview, then a portion of administrative grant funds may be allocated to local governments.

(2) Indian Tribes. Tribal participation in coastal management efforts may be supported and encouraged through a State’s program. Individual tribes or groups of tribes may be considered regional agencies and may be allocated a portion of a State’s grant for the development of independent tribal coastal management programs or the implementation of specific management projects provided that:

(i) The State certifies that such tribal programs or projects are compatible with its approved coastal management policies; and

(ii) On excluded tribal lands, the State demonstrates that the tribal program or project would or could directly affect the State’s coastal zone.



**§ 923.93 Eligible implementation costs.**

(a) Costs claimed must be beneficial and necessary to the objectives of the grant project. As used herein the terms cost and grant project pertain to both the Federal and the matching share. Allowability of costs will be determined in accordance with the provisions of OMB Circular A-87: Cost Principles for State, Local and Indian Tribal Governments.

(b) Federal funds awarded pursuant to section 306 of the Act may not be used for land acquisition purposes and may not be used for construction purposes. These costs may be eligible, however, pursuant to section 306A of the Act.

(c) The primary purpose for which implementation funds, pursuant to section 306 of the Act, are to be used is to assure effective implementation and administration of the management program, including especially administrative actions to implement enforceable program policies, authorities and other management techniques. Implementation activities should focus on achieving the policies of the Act.

(d) Section 306 funding in support of any of these purposes may be used to fund, among other things:

- (1) Personnel costs,
- (2) Supplies and overhead,
- (3) Equipment, and
- (4) Feasibility studies and preliminary engineering reports.

(e) States are encouraged to coordinate administrative funding requests with funding possibilities pursuant to sections 306A, 308, 309, 310 and 315 of the Act, as well as with funding possibilities pursuant to section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990. When in doubt as to the appropriate section of the Act under which to request funding, States should consult with OCRM. States should consult with OCRM on technical aspects of consolidating requests into a single application.

**§ 923.94 Application for program development or implementation grants.**

(a) OMB Standard Form 424 (4-92) and the NOAA Application Kit for Federal Assistance constitute the formal application. An original and two (2) copies

must be submitted 45 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with E.O. 12372 requirements including the resolution of any problems raised by the proposed project. The administrative requirements for grants and subawards, under this program, to state, local and Indian tribal governments are set out in 15 CFR part 24. The administrative requirements for other entities are prescribed under OMB Circular A-110: Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

(b) Costs claimed as charges to the grant project must be beneficial and necessary to the objectives of the grant project. As used herein, the terms "cost" and "grant project" pertain to both the Federal amount awarded and the non-federal matching share. Allowability of costs will be determined in accordance with the provisions of OMB Circular A-87: Cost Principles for State, Local and Indian Tribal Governments. Eligible implementation costs also shall be determined in accordance with § 923.93 of these regulations. Allowability of costs for non-profit organizations will be determined in accordance with OMB Circular A-122: Cost Principles for Non-Profit Organizations. Allowability of costs for institutions of higher education will be determined in accordance with OMB Circular A-21: Cost Principles for Educational Institutions.

(c) In the grant application, the applicant must describe clearly and briefly the activities that will be undertaken with grant funds in support of implementation and administration of the management program. This description must include:

(1) An identification of those elements of the approved management program that are to be supported in whole or in part by the Federal and the matching share,

(2) A clear statement of the major tasks required to implement each element,

(3) For each task the application must:

(i) Specify how it will be accomplished and by whom;

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(ii) Identify any sub-awardees (other State agencies, local governments, individuals, etc.) that will be allocated responsibility for carrying out all or portions of the task, and indicate the estimated cost of the sub-awards for each allocation; and

(iii) Indicate the estimated total cost.

(4) The sum of all task costs in paragraph (c)(3) of this section should equal the total estimated grant project cost.

(d) For program development grants, when evaluating whether a State is making satisfactory progress toward completion of an approvable management program which is necessary to establish eligibility for subsequent grants, the Assistant Administrator will consider:

(1) The progress made toward meeting management program goals and objectives;

(2) The progress demonstrated in completing the past year's work program;

(3) The cumulative progress toward meeting the requirements for preliminary or final approval of a coastal management program;

(4) The applicability of the proposed work program to fulfillment of the requirements for final approval; and

(5) The effectiveness of mechanisms for insuring public participation and consultation with affected Federal, State, regional and local agencies in program development.

**§ 923.95 Approval of applications.**

(a) The application for a grant by any coastal State which complies with the policies and requirements of the Act and these guidelines shall be approved by the NOAA Grants Officer, upon recommendation by the Assistant Administrator, assuming available funding.

(b) Should an application be found deficient, the Assistant Administrator will notify the applicant in detail of any deficiency when an application fails to conform to the requirements of the Act or these regulations. Conferences may be held on these matters. Corrections or adjustments to the application will provide the basis for resubmittal of the application for further consideration and review.

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(c) The NOAA Grants Officer, upon recommendation by the Assistant Administrator, may waive appropriate administrative requirements contained in this subpart, upon finding of extenuating circumstances relating to applications for assistance.

**§ 923.96 Grant amendments.**

(a) Actions that require an amendment to a grant award such as a request for additional Federal funds, changes in the amount of the non-Federal share, changes in the approved project budget as specified in 15 CFR part 24, or extension of the grant period must be submitted to the Assistant Administrator and approved in writing by the NOAA Grants Officer prior to initiation of the contemplated change. Such requests should be submitted at least 30 days prior to the proposed effective date of the change and, if appropriate, accompanied by evidence of compliance with E.O. 12372 requirements.

(b) NOAA shall acknowledge receipt of the grantee's request within the ten (10) working days of receipt of the correspondence. This notification shall indicate NOAA's decision regarding the request; or indicate a time-frame within which a decision will be made.

**Subpart J—Allocation of Section 306 Program Administration Grants**

**§ 923.110 Allocation formula.**

(a) As required by subsection 306(a), the Secretary may make grants to any coastal state for the purpose of administering that state's management program, if the state matches any such grant according to the following ratios of Federal-to-state contributions for the applicable fiscal year:

(1) For those states for which programs were approved prior to enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 1 to 1 for any fiscal year.

(2) For programs approved after enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 4 to 1 for the first fiscal year, 2.3 to 1 for the second fiscal year, 1.5 to 1 for the third fiscal year, and 1 to 1 for each fiscal year thereafter.

(3) As required by subsection 306(b), the Secretary may make a grant to a coastal state under subsection 306(a) only if the Secretary finds that the management program of the coastal state meets all applicable requirements of this title and has been approved in accordance with subsection 306(d).

(4) As required by subsection 306(c), grants under this section shall be allocated to coastal states under approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the program, population of the area, and other relevant factors. The Secretary shall establish, after consulting with the coastal states, maximum and minimum grants for any fiscal year to promote equity between coastal states and effective coastal management.

(b) *Minimum/maximum allocations.* The Assistant Administrator shall establish minimum and maximum state allocations annually, after consultation with the coastal states.

(c) *Allocation formula factors and weighting.* Each State eligible to receive a financial assistance award shall be allocated an amount of the total available Federal funding based on:

(1) A minimum share (established by the Assistant Administrator) of the total funding available for allocation to eligible State coastal management programs, plus

(2) A proportionate share of the remainder to be divided as follows:

(i) Sixty percent will be allocated based on each eligible State's proportionate share of the length of tidal shoreline and/or Great Lake shoreline mileage of all participating States based on the most recently available data from or accepted by the National Ocean Survey, and

(ii) Forty percent will be allocated on each eligible State's proportionate share of the aggregate population of all coastal counties contained in whole or in part within the designated coastal boundary of all eligible State coastal programs based on official data or the most recent U.S. census.

(3) Should any State's base allocation exceed the maximum established by the Assistant Administrator, the ex-

cess amount shall be subtracted from the established maximum and redistributed proportionately among those eligible States with allocations not exceeding the established maximum.

(d) *Use of the allocation formula.* The allocation formula shall be used to establish base level allocations for each State coastal management program eligible to receive Federal funding.

(e) *Adjustment for phase down of Federal funding.* The Assistant Administrator may adjust base level allocations as necessary to implement a phase down of Federal financial support. Any such adjustment shall be implemented in a manner which gives some priority to recently approved State coastal management programs. Options for implementation of a phase down will be submitted to the States for review and comment.

(f) *Calculation of financial assistance award levels.* Actual financial assistance award levels will be set from base level allocations, any adjustments under paragraph (e) above, and in accordance with the provisions of Section 312(c) and (d).

(Secs. 306 and 317 of the Coastal Zone Management Act)

[47 FR 21021, May 17, 1982, as amended at 59 FR 27985, May 31, 1994. Redesignated at 61 FR 33818, June 28, 1996]

### Subpart K—Coastal Zone Enhancement Grants Program

AUTHORITY: Section 309 of the Coastal Zone Management Act, as amended (16 U.S.C. 1456).

SOURCE: 57 FR 31116, July 14, 1992, unless otherwise noted. Redesignated at 61 FR 33818, June 28, 1996.

#### § 923.121 General.

(a) The purpose of this subpart is to set forth the criteria and procedures for awarding coastal zone enhancement grants under section 309 of the Coastal Zone Management Act, as amended (16 U.S.C. 1456). This subpart describes the criteria States must address in developing and implementing coastal zone enhancement objectives, the procedures for allocating section 309 funds between weighted formula and individual review of proposals of special

## § 923.122

merit, how the amount of section 309 weighted formula grants will be determined, the criteria NOAA will use to evaluate and rank individual proposals of special merit, and the procedures for applying for financial assistance under section 309. This subpart also allows use of section 309 funds for implementation of program changes for up to 2 fiscal years following the fiscal year in which a program change was approved.

(b) A coastal State with an approved program under section 306 of the Coastal Zone Management Act (CZMA), as amended (16 U.S.C. 1455), is eligible for grants under this subpart if the State meets the following requirements:

(1) The State must have a NOAA approved Assessment and Strategy, submitted in accordance with NOAA guidance and 923.128;

(2) The State must be found to be adhering to its approved program and must be making satisfactory progress in performing grant tasks under section 306, as indicated by not being under interim or final sanctions; and

(3) The State must be making satisfactory progress in carrying out its previous year's award under section 309.

(c) If the Assistant Administrator finds that a State is not undertaking the actions committed to under the terms of a section 309 grant, the Assistant Administrator shall suspend the State's eligibility for future funding under this section for at least one year.

(d) A State's eligibility for future funding under this section will be restored after the State demonstrates, to the satisfaction of the Assistant Administrator, that it will conform with the requirements under this part.

(e) Funds awarded to States under section 309 are for the enhancement of existing coastal zone management programs. A State which reduces overall State financial support for its CZM program as a result of having been awarded section 309 funding may lose eligibility for funding under section 309 in subsequent years.

(f) All applications for funding under section 309 of the CZMA, as amended, including proposed work programs, funding priorities and funding awards, are subject to the administrative dis-

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cretion of the Assistant Administrator and any additional NOAA guidance.

(g) Grants awarded under section 309 may be used:

(1) To support up to 100 percent of the allowable costs of approved projects under section 309 of the CZMA, as amended; or

(2) To implement program changes approved by the Secretary for up to two fiscal years following the fiscal year in which a program change was approved.

(h) All application forms are to be requested from and submitted to: National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, Coastal Programs Division, 1305 East-West Highway (N/ORM3), Silver Spring, MD 20910.

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996; 62 FR 12541, Mar. 17, 1997]

### § 923.122 Objectives.

(a) The objective of assistance provided under this part is to encourage each State with a federally-approved coastal management program to continually improve its program in specified areas of national importance. The Secretary is authorized to make grants to a coastal State for the development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives.

(b) As required by section 309(a) of the Act, for purposes of this part, the term *coastal zone enhancement objective* means any of the following objectives:

(1) Protection, restoration, or enhancement of the existing coastal wetlands base, or creation of new coastal wetlands.

(2) Preventing or significantly reducing threats to life and destruction of property by eliminating development and redevelopment in high-hazard areas, managing development in other hazard areas, and anticipating and managing the effects of potential sea level rise and Great Lakes level rise.

(3) Attaining increased opportunities for public access, taking into account current and future public access needs,

to coastal areas of recreational, historical, aesthetic, ecological, or cultural value.

(4) Reducing marine debris entering the Nation's coastal and ocean environment by managing uses and activities that contribute to the entry of such debris.

(5) Development and adoption of procedures to assess, consider, and control cumulative and secondary impacts of coastal growth and development, including the collective effect on various individual uses or activities on coastal resources, such as coastal wetlands and fishery resources.

(6) Preparing and implementing special area management plans for important coastal areas.

(7) Planning for the use of ocean resources.

(8) Adoption of procedures and enforceable policies to help facilitate the siting of energy facilities and Government facilities and energy-related activities and Government activities which may be of greater than local significance.

(9) Adoption of procedures and policies to evaluate and facilitate the siting of public and private aquaculture facilities in the coastal zone, which will enable States to formulate, administer, and implement strategic plans for marine aquaculture.

[57 FR 31116, July 14, 1992. Redesignated at 61 FR 33818, June 28, 1996, as amended at 62 FR 12541, Mar. 17, 1997]

#### § 923.123 Definitions.

(a) *Program change* means "routine program change" as defined in 15 CFR 923.84 and "amendment" as defined in 15 CFR 923.80, and includes the following:

(1) A change to coastal zone boundaries that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(2) New or revised authorities, including statutes, regulations, enforceable policies, administrative decisions, executive orders, and memoranda of agreement/understanding, that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(3) New or revised local coastal programs and implementing ordinances

that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(4) New or revised coastal land acquisition, management and restoration programs that improve a State's ability to attain one or more of the coastal zone enhancement objectives.

(5) New or revised Special Area Management Plans or plans for Areas of Particular Concern (APC), including enforceable policies and other necessary implementing mechanisms or criteria and procedures for designating and managing APCs that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(6) New or revised guidelines, procedures and policy documents which are formally adopted by a State and provide specific interpretations of enforceable CZM policies to applicants, local governments and other agencies that will result in meaningful improvements in coastal resource management and that will improve a State's ability to attain one or more of the coastal zone enhancement objectives.

(b) *Assessment* means a public document, prepared by a State and approved by NOAA in accordance with guidance on Assessments and Strategies issued by NOAA (hereafter referred to as the guidance<sup>1</sup>), that identifies the State's priority needs for improvement with regard to the coastal zone enhancement objectives. The Assessment determines the extent to which problems and opportunities exist with regard to each of the coastal zone enhancement objectives and the effectiveness of efforts to address those problems. The Assessment includes the factual basis for NOAA and the States to determine the priority needs for improvement of management programs in accordance with this part.

(c) *Strategy* means a comprehensive, multi-year statement of goals and the methods for their attainment, prepared by a State in accordance with NOAA guidance and these regulations and approved by NOAA, that sets forth the

<sup>1</sup>NOAA guidance is available from the Office of Ocean and Coastal Resource Management, Coastal Programs Division, 1305 East-West Highway (N/ORM3), Silver Spring, MD 20910.

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specific program changes the State will seek to achieve in one or more of the coastal zone enhancement objectives. The Strategy will address only the priority needs for improvement identified by the Assistant Administrator, after careful consultation with the State. The strategy will include specific task descriptions, cost estimates and milestones, as appropriate.

(d) *Weighted Formula Project* means a project or task for which NOAA awards funding based on the criteria at §923.125(a). Such tasks are essential to meeting the milestones and objectives of each state's strategy. As funding for weighted formula tasks is more predictable than for projects of special merit, basic functions necessary to achieve the objectives of the strategy, such as hiring of full time staff should be included in weighted formula tasks.

(e) *Projects of Special Merit (PSM)* means a project or task that NOAA will rank and evaluate based on criteria at §923.125(b). As PSM funds will be awarded competitively on an annual basis, these projects should further the objectives of the strategy but may not be essential to meeting specific benchmarks in the strategy. PSM projects should not be dependent on long term levels of funding to succeed.

(f) *Fiscal needs* means the extent to which a State must rely solely on Federal funds to complete a project under section 309 because State funds are not otherwise available.

(g) *Technical needs* means the extent to which a State lacks trained personnel or equipment or access to trained personnel or equipment to complete a project under section 309.

(h) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, or the NOAA Official responsible for directing the Federal Coastal Zone Management Program.

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, 33819, June 28, 1996]

**§923.124 Allocation of section 309 funds.**

(a)(1) As required by section 309(e) of the Act, a State will not be required to contribute any portion of the cost of any proposal for which funding is awarded under this section.

(2) As required by section 309(f) of the Act, beginning in fiscal year 1991, not less than 10 percent and not more than 20 percent of the amounts appropriated to implement sections 306 and 306A of the Act shall be retained by the Secretary for use in implementing this section, up to a maximum of \$10,000,000 annually.

(b) The Assistant Administrator will annually determine the amount of funds to be devoted to section 309, which shall be not less than 10 percent nor more than 20 percent of the total amount appropriated under section 318(a)(2) of the Coastal Zone Management Act, as amended (16 U.S.C. 1464), taking into account the total amount appropriated under section 318(a)(2). The total amount of funds to be devoted to section 309 shall not exceed \$10,000,000 annually.

(c) Of the total amount determined in paragraph (b) of this section, the Assistant Administrator will annually determine the proportion to be awarded to eligible coastal States by weighted formula and the proportion to be awarded to eligible coastal States for projects of special merit. This determination will take into account the total amount appropriated under section 318(a)(2) of the CZMA, as amended.

(d) *Weighted formula funding.* (1)(i) A weighted formula funding target will be determined for each State that meets the eligibility requirements at §923.121(b). The weighted formula funding target will be the State base allocation determined by the application of the formula at §923.110(c), multiplied by a weighting factor derived from the Assistant Administrator's evaluation and ranking of the quality of the State's Strategy (as described in (d)(1) of this section), as supported by the State's Assessment.

(ii) The application of the weighting factor may result in a weighted formula funding target that is higher or lower than the State's base allocation. Each State's weighted formula funding target will be adjusted to reflect the funds available.

(iii) The Assistant Administrator may establish minimum and maximum weighted formula funding targets under §923.124(d).

(2) The Assistant Administrator will determine each State's weighting factor based on an evaluation and ranking of the State's Strategy that takes into consideration the following:

(i) The scope and value of the proposed program change(s) contained in the Strategy in terms of improved coastal resource management;

(ii) The technical merits of the Strategy in terms of project design and cost effectiveness;

(iii) The likelihood of success that the State will have in attaining the proposed program change(s), including an evaluation of the State's past performance and support for the Strategy; and,

(iv) The fiscal and technical needs of the State.

(3) Each State will be notified individually of its weighting factor, the reasons for assigning this weighting factor, and any changes thereto. In consultation with the Assistant Administrator, a State may choose to make substantive changes to its approved Assessment and Strategy to improve its weighting factor, in accordance with the procedures at § 923.128.

(e) *Funding for projects of special merit.* The Assistant Administrator will award the remaining section 309 funds, which are not awarded under § 923.124(d), to States based on an annual evaluation and ranking of projects of special merit, as defined in § 923.123(d). Funding of projects of special merit will be limited to the highest ranked projects based on the criteria at § 923.125(b).

(f) The Assistant Administrator will notify each State annually of the total amount of funds to be devoted to section 309 pursuant to § 923.124(b), the proportion to be awarded by weighted formula pursuant to § 923.124(c), the State's weighted formula funding target pursuant to § 923.124(d), and the total amount of funds available for funding for projects of special merit pursuant to § 923.124(e).

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, 33819, June 28, 1996]

**§ 923.125 Criteria for section 309 project selection.**

(a) *Section 309 criteria for weighted formula funding.* (1) For those projects

that will be funded by weighted formula, the Assistant Administrator will determine that:

(i) The project is consistent with the State's approved Assessment and Strategy and advances the attainment of the objectives of the Strategy;

(ii) Costs are reasonable and necessary to achieve the objectives of both the project and the Strategy. Allowability of costs will be determined in accordance with the provisions of OMB Circular A-87: Cost Principles for State and Local Governments

(iii) The project is technically sound;

(iv) The State has an effective plan to ensure proper and efficient administration of the project; and

(v) The State has submitted the required project information as specified in § 923.126(b)(1).

(2) In reviewing projects that will be considered under the weighted formula, the Assistant Administrator will take into consideration the fiscal and technical needs of proposing States and the overall merit of each proposal in terms of benefits to the public.

(b) *Section 309 criteria for evaluation and ranking of projects of special merit.*

(1) After determining those projects that will be funded under weighted formula funding, the Assistant Administrator will evaluate and rank State funding proposals of special merit which may be funded under 15 CFR 932.4(e).

(2) In addition to meeting the criteria in paragraph (a)(1) of this section, proposals will be evaluated and ranked under this subsection using the following criteria:

(i) *Merit.* (90 points) The Assistant Administrator will review each application to determine the following:

(A) Degree to which the project significantly advances the program improvements and leads to a program change identified in the State's Strategy. In making this determination, the Assistant Administrator shall consider the weighting factor derived from the evaluation of the quality of the State's Strategy, as supported by the State's Assessment, relative to the weighting factors assigned to other eligible States;

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(B) Overall benefit of the project to the public relative to the project's cost;

(C) Innovativeness of the proposal;

(D) Transferability of the results to problems in other coastal States; and

(E) The State's past performance under section 309.

(ii) *Fiscal needs.* (5 points) The Assistant Administrator will review each application to determine the "fiscal needs" of a State as defined in § 923.123(e).

(iii) *Technical needs.* (5 points) The Assistant Administrator will review each application to determine the "technical needs" of a State as defined in § 923.123(f).

(c) Section 309 funds not awarded to States under § 923.125(a) will be awarded to States under § 923.125(b).

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, 33819, June 28, 1996]

### § 923.126 Pre-application procedures.

(a) *Pre-submission consultation.* Each State is strongly encouraged to consult with the Assistant Administrator prior to the submission of its draft proposal (see § 923.126(b)) and formal application for section 309 funding. The purpose of the consultation will be to determine whether the proposed projects are consistent with the purposes and objectives of section 309 and with the State's approved Strategy, to resolve any questions concerning eligibility for funding under section 309 (see § 923.121(b)), and to discuss preliminarily the State's recommendations regarding which projects should be funded by weighted formula and which projects should be individually evaluated and ranked as projects of special merit.

(b) *Draft proposals.* States shall submit draft proposals for section 309 funding annually on a schedule to be determined by the Assistant Administrator. These draft proposals shall contain all of the information needed for final application, including the following:

(1) A clear and concise description of the projects that the State proposes to be funded under section 309. This description shall explain the relationship of each proposed project to the State's approved Assessment and Strategy and how each proposed project will accom-

plish all or part of a program change that the State has identified in its Strategy. In addition, each project description shall include:

(i) A specific timetable for completion of each project;

(ii) A description of the activities that will be undertaken to complete each project and by whom;

(iii) The identification of any sub-awardees, pursuant to § 923.94(d)(3)(ii); and

(iv) The estimated total cost for each project.

(2) Section 309 funds may be used for any of the following allowable uses which support the attainment of a program change:

(i) Personnel costs;

(ii) Supplies and overhead;

(iii) Travel;

(iv) Equipment (pursuant to 15 CFR part 24);

(v) Projects, studies and reports; and

(vi) Contractual costs including sub-contracts, subawards, personal service contracts with individuals, memoranda of agreement/understanding, and other forms of passthrough funding for the purpose of carrying out the provisions of section 309.

(3) Funds may not be used for land acquisition or low cost construction projects.

(4) The State may recommend which projects should be funded by weighted formula under § 923.125(a) and which projects should be funded as projects of special merit under § 923.125(b).

(5) The draft proposal shall contain documentation of fiscal needs and technical needs, if any. This documentation shall include:

(i) For fiscal needs, information on the current State budget (surplus or deficit), the budget of the applying agency (increase or decrease over previous fiscal year), future budget projections, and what efforts have been made by the applying agency, if any, to secure additional State funds from the Legislature and/or from off-budget sources such as user fees; and

(ii) For technical needs, identification of the technical knowledge, skills and equipment that are needed to carry out proposed projects and that are not available to the applying agency, and what efforts the applying agency has



made, if any, to obtain the trained personnel and equipment it needs (for example, through agreements with other State agencies).

(6) The Assistant Administrator may request additional documentation of fiscal and technical needs.

(7) Following the first year of funding under section 309, the draft proposal shall describe how the past year's work contributed to the attainment of a program change as defined in § 923.123(a) in one or more of the coastal zone enhancement objectives.

(8) If the sum of estimated project costs for projects the State recommends be funded under § 923.125(a) exceeds the State's weighted formula funding target pursuant to § 923.124(d), NOAA shall determine, in consultation with the State, which projects are appropriate for funding with weighted formula funds.

(c) *Review of draft proposals.* (1) The Assistant Administrator will make the final determination of which projects should be funded by weighted formula and which projects should be funded as projects of special merit, taking into account the State's recommendations.

(2) The Assistant Administrator may seek advice from technical experts in the fields of the coastal zone enhancement objectives as to the technical soundness and overall merit of section 309 project proposals.

(3) The Assistant Administrator will make the final determinations on project selection using the criteria at § 923.125(a) and evaluate and rank projects of special merit based on the criteria at § 923.125(b).

(4) If the Assistant Administrator determines that a State's project proposal(s) for weighted formula funding fails to meet the criteria at § 923.125(a), the Assistant Administrator may either reduce or deny the amount available to the State under § 923.124(d).

(5) Each state will be notified of the results of the review of draft proposals, as described in paragraphs (c) (3) and (4) of this section, in time to include approved section 309 projects in their applications for financial assistance pursuant to subpart I of 15 CFR part 923.

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, 33819, June 28, 1996]

**§ 923.127 Formal application for financial assistance and application review and approval procedures.**

(a) Applications for financial assistance under this part must be developed and submitted on the same schedule as applications for financial assistance under subpart I of 15 CFR part 923.

(b) Applications for financial assistance under this part must be in a separate section of the application and must contain the information specified at § 923.126(b)(1) for each approved section 309 project.

(c) Applications will be reviewed for conformance with the regulations at subpart I of 15 CFR part 923.

(d) States will be notified of their section 309 awards at the time they are notified of their section 306/306A awards.

(e) If the Assistant Administrator seeks technical advice pursuant to § 923.126(c)(2), anonymous copies of the project reviews provided to the Assistant Administrator on projects proposed by a State will be made available to the State upon request after October 1 of each year.

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, 33819, June 28, 1996]

**§ 923.128 Revisions to assessments and strategies.**

(a) A State, in consultation with the Assistant Administrator, may propose to revise its approved Strategy. Revision(s) to an approved Strategy must be submitted to and approved by the Assistant Administrator prior to the initiation of the contemplated change.

(b) The Assistant Administrator will review such proposed revision(s) and determine if public review and comment is required. This determination will be based on the extent to which the proposed revision(s) changes the original scope of the State's Strategy.

(c) If the Assistant Administrator determines that public review and comment is necessary, he/she will notify the State of his/her determination. The State will be required to provide public review and comment in accordance with NOAA guidance.

(d) A State that wants to revise substantively the program changes identified in its approved Strategy or to address new enhancement objectives not

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identified as a priority in the original Assessment, also must revise the Assessment through a public process as described in NOAA's guidance.

(e) The Assistant Administrator, in consultation with the State, may reduce a state's weighting factor assigned to its Strategy as a result of failure to meet the milestones in its Strategy.

(f) The Assistant Administrator will notify the State of his/her decision to approve or deny the proposed revision(s) to the Strategy, and any change in the weighting factor assigned to its Strategy.

## Subpart L—Review of Performance

AUTHORITY: Section 312 of the Coastal Zone Management Act, as amended (16 U.S.C. 1458).

### § 923.131 General.

This subpart sets forth the requirements for review of approved State coastal zone management (CZM) programs pursuant to section 312 of the Act (16 U.S.C. 1458). This subpart defines "continuing review" and other important terms, and sets forth the procedures for:

- (a) Conducting continuing reviews of approved State CZM programs;
- (b) Providing for public participation;
- (c) Invoking interim sanctions for non-adherence to an approved coastal zone management program or a portion of such program; and
- (d) Withdrawing program approval and financial assistance.

[57 FR 31113, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996]

### § 923.132 Definitions.

(a) *Continuing review* means monitoring State performance on an ongoing basis. As part of the continuing review, evaluations of approved CZM programs will be conducted and written findings will be produced at least once every three years.

(b) *Adherence* means to comply with the approved CZM program and financial assistance award or work program.

(c) *Interim sanction* means suspension and redirection of any portion of finan-

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cial assistance extended to any coastal State under this title, if the Secretary determines that the coastal State is failing to adhere to the management program or a State plan developed to manage a national estuarine reserve, or a portion of the program or plan approved by the Secretary, or the terms of any grant or cooperative agreement funded under this title.

(d) *Approved CZM program* means those elements of the program approved by the Secretary, under 15 CFR part 923 (Development and Approval Provisions), including any changes to those elements made by approved amendments and routine program implementation.

(e) *Financial assistance award* means a legal instrument that creates a relationship between the Federal government and another entity (recipient). The principal purpose of the award is the transfer of money or services in order to accomplish a public purpose authorized by Federal statute. The term "financial assistance award" encompasses grants, loans, and cooperative agreements. The following elements constitute the award:

- (1) The work program described in the approved application;
- (2) The budget;
- (3) The standard terms and conditions of the award;
- (4) Any special award conditions included with the award;
- (5) The statutes and regulations under which the award is authorized; and
- (6) Applicable OMB cost principles and administrative requirements.

(f) *Work program* means a description of the tasks to be undertaken by a State for a given time period for the purpose of implementing and enforcing an approved CZM program. The work program is submitted as a part of a Federal financial assistance application, or separately in the absence of Federal financial assistance.

(g) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, or the NOAA Official responsible

for directing the Federal Coastal Zone Management Program.

[47 FR 21021, May 17, 1982, as amended at 57 FR 31113, July 14, 1992. Redesignated at 61 FR 33818, June 28, 1996]

**§ 923.133 Procedure for conducting continuing reviews of approved State CZM programs.**

(a) As required by section 312(a), the Secretary shall conduct a continuing review of the performance of coastal States with respect to coastal management. Each review shall include a written evaluation with an assessment and detailed findings concerning the extent to which the State has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in section 303(2)(A) through (K), and adhered to the terms of any grant, loan, or cooperative agreement funded under this title (16 U.S.C. 1451-1464).

(b) *Continuing review procedures.* (1) Each State will submit a financial assistance application or work program, whichever is applicable, on a timetable negotiated with the Assistant Administrator, describing the tasks to be undertaken by the State for the purpose of implementing and enforcing its approved CZM program.

(2) For the purpose of evaluation, the States will submit performance reports as specified in the Special Award Conditions, or, if the State is not receiving an award, as negotiated with the Assistant Administrator. The reports will address all areas identified in each State's Performance Report Guidelines.

(3) The Assistant Administrator will collect information on the State CZM programs on a continuing basis. At the beginning of each evaluation, the Assistant Administrator will analyze available information, identify information gaps, and formulate any additional information needs that will be the subject of a supplemental information request to the State.

(4) The Assistant Administrator may conduct a site visit as a part of the evaluation.

(5) Draft findings of the evaluation will be transmitted to the State. The State will have a minimum of two weeks from receipt of the draft find-

ings to review them and provide comments to the Assistant Administrator. This review time may be extended upon request from the State.

(6) Within two weeks from receipt of the draft findings, a State may request a meeting with the Assistant Administrator to discuss the draft findings and the State's comments.

(7) The Assistant Administrator will issue final findings to the State CZM program manager and the head of the State CZM agency within 120 days of the last public meeting in the State. Copies of the final findings will be sent to all persons and organizations who participated in the evaluation. Participants may be asked to complete a card or sign-in sheet provided by the evaluation team indicating that they wish to receive the final findings. Notice of the availability of the final findings will also be published in the FEDERAL REGISTER.

(8) The final findings will contain a section entitled "Response to Written Comments." This section will include a summary of all written comments received during the evaluation and NOAA's response to the comments. If appropriate, NOAA's response will indicate whether NOAA agrees or disagrees with the comment and how the comment has been addressed in the final findings.

(9) The Assistant Administrator may conduct issue or problem-specific evaluations between scheduled evaluations of approved State CZM programs. Such issue or problem-specific evaluations will be conducted to follow-up on potentially serious problems or issues identified in the most recent scheduled evaluation or to evaluate evidence of potentially serious problems or issues that may arise during day-to-day monitoring of State performance of grants tasks or other program implementation activities in the interim between scheduled evaluations. If the Assistant Administrator conducts an issue or problem specific evaluation, he/she will comply with the procedures and public participation requirements of §§ 923.133 and 923.134.

(c) *Requirements for continuing review of approved State CZM programs—*(1) *Scope of continuing reviews.* The continuing review of a State's approved

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CZM program will include an evaluation of the extent to which the State has:

- (i) Implemented and enforced the program approved by the Secretary;
- (ii) Addressed the coastal management needs identified in section 303(2) (A)–(K) (16 U.S.C. 1452); and
- (iii) Adhered to the terms of financial assistance awards.

(2) *Procedure for assessing adherence to the approved CZM program.* (i) In reviewing adherence of a State to its approved CZM program, the Assistant Administrator will evaluate all aspects of the “approved CZM program” as defined in § 923.132(d). The evaluation will examine the extent to which:

(A) The State is implementing and enforcing its approved CZM program;

(B) The management agency is effectively playing a leadership role in coastal issues, monitoring the actions of appropriate State and local agencies for compliance with the approved CZM program, and assuring the opportunity for full participation of all interested entities in CZM program implementation; and

(C) The management agency is effectively carrying out the provisions of Federal consistency.

(ii) The findings concerning the State’s adherence to its approved CZM program will be used in negotiating the next financial assistance award or work program, whichever is applicable.

(3) Procedure for assessing how the State has addressed the coastal management needs identified in section 303(2) (A)–(K). The assessment of the extent to which the State has addressed the coastal management needs identified in section 303(2) (A)–(K) will occur as follows:

(i) The State, in its performance report, will provide the Assistant Administrator with a listing of all actions it is taking during the performance report period to address the national coastal management needs and how these actions relate to conditions in the State and the objectives and priorities in the State CZM program.

(ii) The Assistant Administrator, in the evaluation findings, will assess the extent to which the State’s actions are targeted to meeting identified “needs” and the effectiveness of the actions in

addressing those needs. Based on this assessment, the Assistant Administrator will make findings and recommendations of the extent to which each State is addressing the coastal management needs identified in section 303.

(iii) The findings concerning how the State has addressed the coastal management needs of section 303 will be used by the Assistant Administrator in negotiating the next financial assistance award.

(4) *Procedure for assessing adherence to the terms of financial assistance awards.*

(i) Adherence to financial and administrative terms of each financial assistance award will be determined by the NOAA Grants Office and the Department of Commerce Inspector General. Adherence to programmatic terms of each financial assistance award will be determined by the Assistant Administrator and the NOAA Grants Office. These determinations will be made in accordance with the requirements outlined in these regulations, the findings of a financial audit of the award, and the following criteria:

(A) Compliance with the statute, regulations, and applicable OMB circulars;

(B) Submission of required reports and satisfactory completion of work products as described in the approved application and within the timeframe specified;

(C) Compliance with Standard Terms and Conditions and Special Award Conditions within the specified timeframes;

(D) Use of award funds only for approved projects; and

(E) Substantive modification of approved projects only with the prior agreement of NOAA.

(ii) The findings concerning adherence to the terms of financial assistance awards will be used in negotiating the next financial assistance award, if any.

(d) *Requirements for continuing review of State coastal energy impact programs.*—(1) *Scope of continuing reviews.* The continuing review of State coastal energy impact programs will include the following elements:

(i) An evaluation of the State’s adherence to the terms of financial assistance awards;

(ii) An evaluation of the relationship between coastal energy impact projects and the approved CZM program;

(iii) A description of energy activities in coastal areas and the impact resulting from these activities; and

(iv) An evaluation of the effectiveness of the coastal energy impact program in dealing with these consequences.

(2) *Procedure for assessing adherence to the terms of financial assistance awards.* See § 923.133(c)(4).

[47 FR 21021, May 17, 1982, as amended at 57 FR 31114, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996]

**§ 923.134 Public participation.**

(a) As required by section 312(b) of the Act, in evaluating a coastal State's performance, the Secretary shall conduct the evaluation in an open and public manner, and provide full opportunity for public participation, including holding public meetings in the State being evaluated and providing opportunities for the submission of written and oral comments by the public. The Secretary shall provide the public with at least 45 days notice of such public meetings by placing a notice in the FEDERAL REGISTER, by publication of timely notices in newspapers of general circulation within the State being evaluated, and by communications with persons and organizations known to be interested in the evaluation. Each evaluation shall be prepared in report form and shall include written responses to the written comments received during the evaluation process.

(b) *Requirements.* (1) The Assistant Administrator will publish a Notice of Intent to Evaluate in the FEDERAL REGISTER at least 45 days before the public meeting(s). The notice will include a Statement of the availability of the State's performance report and the supplemental information request.

(2) Each State will issue a notice of the public meeting(s) in its evaluation by placing a notice in the newspaper(s) of largest circulation in the coastal area where the meeting(s) is being held and by taking other reasonable action to communicate with persons and organizations known to be interested in the evaluation, such as sending a notice of

the meeting(s) to persons on its mailing list and publishing a notice in its newsletter, at least 45 days before the date of the public meeting(s). The State will provide a copy of such notice to the Assistant Administrator. States are encouraged to republish the newspaper notice at least 15 days before the date of the public meeting(s). The State will inform the public that oral or written comments will be accepted and that attendance at the public meeting(s) is not necessary for submission of written comments.

(3) Notice of the availability of final findings will be published in the FEDERAL REGISTER. The notice will state that copies of the final findings will be available to the public upon written request. Copies of the final findings will be sent to persons and organizations who participated in the evaluation, in accordance with 923.133(b)(7).

[47 FR 21021, May 17, 1982, as amended at 57 FR 31114, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996]

**§ 923.135 Enforcement.**

(a) *Procedures and criteria for invoking and lifting interim sanctions.* (1) As required by section 312(c) of the Act:

(i) The Secretary may suspend payment of any portion of financial assistance extended to any coastal State, and may withdraw any unexpended portion of such assistance, if the Secretary determines that the coastal State is failing to adhere to—

(A) The management program or a State plan developed to manage a national estuarine reserve established under section 315 of the Act (16 U.S.C. 1461), or a portion of the program or plan approved by the Secretary; or

(B) The terms of any grant or cooperative agreement funded under this title (16 U.S.C. 1451-1464).

(ii) Financial assistance may not be suspended under paragraph (a)(1)(i) of this section unless the Secretary provides the Governor of the coastal State with—

(A) Written specifications and a schedule for the actions that should be taken by the State in order that such suspension of financial assistance may be withdrawn; and

(B) Written specifications stating how those funds from the suspended financial assistance shall be expended by the coastal State to take the actions referred to in paragraph (a)(1)(ii)(A) of this section.

(iii) The suspension of financial assistance may not last for less than 6 months or more than 36 months after the date of suspension.

(2) *Requirements.* (i) The Assistant Administrator will identify the need for interim sanctions through the continuing review process. The Assistant Administrator will use the criteria at §923.135(a)(3) in determining when to invoke interim sanctions.

(ii) The Assistant Administrator will issue the State a preliminary finding of non-adherence with the approved CZM program, or a portion thereof, and/or with a term or terms of a grant or cooperative agreement. This preliminary finding of non-adherence may be contained in the draft evaluation findings, or in a preliminary notification letter to the State CZM program manager. If the preliminary finding is contained in a preliminary notification letter, the Assistant Administrator will comply with the applicable public participation requirements of section 312(b) and NOAA's regulations at §923.134. The draft evaluation findings or preliminary notification letter containing a preliminary finding of non-adherence will explain that if the finding of non-adherence is issued, the State is subject to suspension of financial assistance and, if the State fails to take the actions specified pursuant to section 312(c) and this part, to withdrawal of program approval and financial assistance.

(iii) The State will be given 30 days from receipt of the draft evaluation findings or preliminary notification letter to comment on and rebut the preliminary finding of non-adherence. During this 30-day period, the State may request up to 15 additional days to respond, for a maximum of 45 days from receipt of the draft evaluation findings or preliminary notification letter.

(iv) After considering the State's comments, the Assistant Administrator will decide whether or not to issue a final finding of non-adherence.

If the Assistant Administrator decides to issue a final finding of non-adherence, he/she will do so in the final evaluation findings issued pursuant to section 312(b) or in a final notification letter as provided by paragraph (a)(2)(ii) of this section. The Assistant Administrator may invoke interim sanctions provided by section 312(c) immediately or at any time after issuing the final evaluation findings or final notification letter containing the finding of non-adherence, but not later than the next regularly scheduled evaluation.

(v) If the Assistant Administrator decides to invoke interim sanctions, he/she will do so by sending the final evaluation findings or final notification letter to the Governor of the State and the State CZM program manager. The final evaluation findings or final notification letter will contain the information required in section 312(c)(2) (A) and (B). This information will include the amount of financial assistance to be suspended and redirected, the actions the State should take in order to have the suspension withdrawn, how the suspended funds shall be expended to take the required actions, and a schedule for taking the required actions. The final evaluation findings or final notification letter will also contain the length of the suspension, which may not last for less than 6 months or more than 36 months. The Assistant Administrator will establish the length of the suspension based on the amount of time that is reasonably necessary for the State to take the required actions. If the State can take the required actions faster than expected, the suspension can be withdrawn early (but not in less than six months).

(vi) The State must respond to the final evaluation findings or final notification letter by developing a proposed work program to accomplish the required actions on the schedule set forth in the final evaluation findings or final notification letter. The State may propose an alternative approach to accomplishing the required actions and/or an alternative schedule. The Assistant Administrator's approval of the State's work program will signify his/her agreement with the approach and

schedule for accomplishing the actions necessary to withdraw the suspension.

(vii) The Assistant Administrator will monitor State performance under the work program. This may involve additional direction to the State through the grant administration process and/or a visit to the State by appropriate NOAA program staff, evaluation staff and/or other experts to work with the State on a specific problem or issue. The Assistant Administrator will consider proposals to revise the work program on a case-by-case basis, providing that the State will still be able to accomplish the necessary actions within a maximum of 36 months.

(viii) The State must document that it has taken the required actions on the schedule established under this section. The State must provide its documentation in writing to the Assistant Administrator. The Assistant Administrator may conduct a follow-up evaluation or otherwise revisit the State at his/her discretion.

(ix) If the Assistant Administrator determines that the required actions have been taken, the Assistant Administrator will promptly notify the Governor and the State program manager, in writing, that NOAA has withdrawn the suspension of financial assistance. If, however, the State does not take the required actions, then the Assistant Administrator will invoke the final sanction provisions of section 312(d) on program termination and withdrawal of all financial assistance.

(3) *Criteria for invoking interim sanctions.* (i) The Assistant Administrator may consider the following indicators of non-adherence to an approved State CZM program in determining whether to invoke interim sanctions.

(A) *Ineffective or inconsistent implementation of legally enforceable policies included in the CZM program.* Indicators of ineffective or inconsistent implementation could include: evidence of non-compliance with core authorities by the regulated community; insufficient monitoring and inspecting of coastal development to ensure that it conforms to program requirements and applicable conditions; or inadequate enforcement action when development is found not to be in compliance with the program or permit under which it

is authorized or is found to be an unpermitted activity. In applying this indicator, NOAA will consider any available evidence of the impacts of ineffective or inconsistent implementation on coastal resources.

(B) *Inadequate monitoring of the actions of State and local agencies for compliance with the program.* Indicators of inadequate monitoring of these agencies could include: evidence of non-compliance of networked agencies with the CZM program, unresolved conflicts between agencies regarding what constitutes compliance with the program, or lack of a mechanism to ensure that all State agencies will adhere to the program or to approved local coastal programs pursuant to NOAA's regulations at 15 CFR 923.40 (and pursuant to new section 306(d)(15), after November 5, 1993 and after states have been given reasonable opportunity to comply with NOAA's implementing guidance).

(C) *Non-compliance of local coastal programs with the approved State program.* Indicators of non-compliance could include: Local permitting or zoning decisions that are inconsistent with State standards or criteria, widespread granting of variances such as to render a zoning program ineffective in meeting State standards or criteria, changes to local comprehensive plans or zoning maps that are inconsistent with State standards or criteria, or inadequate monitoring and enforcement, as described in paragraph (a)(3)(i)(A) of this section.

(D) *Ineffective implementation of Federal consistency authority.* Indicators of ineffective implementation could include: Not reviewing Federal activities, Federal licenses and permits, including offshore oil and gas exploration and development, and Federal financial assistance to State and local governments for consistency with the approved CZM program or employing review procedures that are not in accordance with State and NOAA regulations.

(E) *Inadequate opportunity for inter-governmental cooperation and public participation in management program implementation.* Indicators of inadequate opportunity could include: not carrying out procedures necessary to insure adequate consideration of the national interest in facilities which are necessary

to meet requirements which are other than local in nature, not implementing effectively mechanisms for continuing consultation and coordination, not providing required notice that a management program decision would conflict with a local zoning ordinance, decision or other action pursuant to section 306(d)(3)(B)(i) and 15 CFR 923.57, or not providing opportunities for public participation in permitting processes, consistency determinations and other similar decisions pursuant to new section 306(d)(14) after November 5, 1993 and after states have been given reasonable opportunity to comply with NOAA's implementing guidance.

(F) *Non-adherence to the terms of a grant or cooperative agreement, including the schedule for funded activities.* The Assistant Administrator will also consider the extent to which priorities for expenditure of Federal funds reflect an appropriate priority for activities necessary to implement and enforce core program authorities effectively.

(G) Not submitting changes to the approved program for Federal approval on a schedule developed pursuant to 15 CFR 923.81(a) and 923.84(b)(1)(i) or developing and implementing changes to the approved program without Federal approval which are inconsistent with the Act or the approved program or which result in a reduced level of protection of coastal resources.

(ii) The Assistant Administrator may consider whether an indication of non-adherence is of recent origin (in which case the State may be given a reasonable opportunity to correct it) or has been repeatedly brought to the State's attention without corrective action in determining whether to invoke interim sanctions.

(b) *Withdrawal of program approval and financial assistance.* (1) As required by sections 312(d) and 312(e) of the Act:

(i) The Secretary shall withdraw approval of the management program of any coastal State and shall withdraw financial assistance available to that State under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal State has failed to take the actions referred to in paragraph (a)(1)(ii)(A) of this section.

(ii) Management program approval and financial assistance may not be withdrawn under paragraph (b)(1)(i) of this section, unless the Secretary gives the coastal State notice of the proposed withdrawal and an opportunity for a public hearing on the proposed action. Upon the withdrawal of management program approval under paragraph (b)(1)(i) of this section, the Secretary shall provide the coastal State with written specifications of the actions that should be taken, or not engaged in, by the State in order that such withdrawal may be canceled by the Secretary.

(2) *Requirements.* (i) If the Assistant Administrator determines that the State has not taken the actions required in § 923.135(a)(2), the Assistant Administrator will provide the Governor and the State CZM program manager with written notice of this finding and NOAA's obligation to withdraw program approval and financial assistance under this title. The State will be given 30 days from receipt of this notice to respond with evidence that it has taken the actions specified pursuant to § 923.135(a)(2). During this 30-day period, the State may request up to 30 additional days to respond, for a maximum of 60 days from receipt of notice.

(ii) If the State does not respond satisfactorily within the time allowed, the agency will notify the State of intent to take the proposed action. This notice will be published in the FEDERAL REGISTER and will inform the State of its right to a public hearing.

(iii) If the State does not request a public hearing or submit satisfactory evidence that it has taken the actions specified pursuant to § 923.135(a)(2) within 30 days of publication of this notice, and the Assistant Administrator determines that the State has failed to take the actions specified pursuant to § 923.135(a)(2), the Assistant Administrator will withdraw program approval and financial assistance and will notify the State in writing of the decision and the reasons for it. The notification will set forth actions that must be taken by the State which would cause the Assistant Administrator to cancel the withdrawal.

(iv) If the State requests a public hearing within 30 days of publication of



the notice of intent to withdraw program approval and financial assistance, the Assistant Administrator will publish 30 days advance notice of the hearing in the FEDERAL REGISTER and the newspaper(s) of largest circulation in the State's coastal zone. The hearing will be held in a location convenient to the citizens of the State's coastal zone and a record of the hearing will be maintained. Within 30 days of the completion of the hearing, the agency will make the determination as set forth in paragraph (b)(2)(iii) of this section.

(3) If program approval and financial assistance are withdrawn pursuant to this section, a notice will be placed in the FEDERAL REGISTER and Federal consistency under section 307 of the Act will cease to apply to the State's CZM program.

[47 FR 21021, May 17, 1982, as amended at 57 FR 31114, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996]

**PART 930—FEDERAL CONSISTENCY WITH APPROVED COASTAL MANAGEMENT PROGRAMS**

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