

TITLE 31 NATURAL RESOURCES AND CONSERVATION

PART 1 GENERAL LAND OFFICE

CHAPTER 30 COUNCIL PROCEDURES FOR FEDERAL CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND PRIORITIES

§30.10 Purpose and Policy

The purpose of this chapter is to describe procedures to ensure that federal actions and activities subject to the Texas Coastal Management Program (CMP) are consistent with the CMP goals and policies. This chapter provides procedures that are intended to allow the council to adequately identify, address, and resolve consistency issues. These rules do not create an obligation on the part of federal agencies independent of the Coastal Zone Management Act and the National Oceanic and Atmospheric Administration's (NOAA's) regulations at 15 CFR Parts 923 and 930. If there is a conflict between this chapter and NOAA's regulations, then NOAA's regulations, and NOAA's interpretation of the regulations, are the authoritative requirements for federal consistency.

§30.11 Definitions

The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Administratively complete--A consistency determination shall be determined to be administratively complete when the Council has received the information identified in §506.20 (relating to Consistency Determinations for Federal Agency Activities and Development Projects), §506.30 (relating to Consistency Certifications for Federal Agency Actions), and §506.40 (relating to Consistency Certifications for Outer Continental Shelf Plans).
- (2) Applicant--Any individual, public or private corporation, partnership, association, or other entity organized or existing under the laws of any state, or any state, regional, or local government that, following management program approval, files an application for a federal agency action to conduct an activity affecting the coastal zone.
- (3) Applicant entity--Any agency or subdivision or any related public entity such as a special purpose district, which, following federal CMP approval, submits an application for federal assistance.
- (4) Assistant administrator--The assistant administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, United States Department of Commerce.
- (5) Associated facilities--All proposed facilities:
 - (A) which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or in major part, to meet the needs of a federal action (e.g., activity, development project, license, permit, or assistance); and
 - (B) without which the federal action, as proposed, could not be conducted.
- (6) CMP boundary--The CMP boundary established in §503.1 of this title (relating to the Coastal Management Program Boundary).

- (7) Coastal area--The geographic area comprising all the counties in Texas which have any tidewater shoreline, including that portion of the bed and water of the Gulf of Mexico within the jurisdiction of the State of Texas.
- (8) Coastal zone--The portion of the coastal area located within the boundaries established by the CMP under Texas Natural Resources Code, §33.2053(k), and described in Chapter 503 of this title (relating to Coastal Management Program Boundary).
- (9) Consistency certification--The statement submitted by an applicant for a federal agency action subject to federal consistency review certifying that the proposed activity requiring the federal agency action is consistent with the CMP goals and policies.
- (10) Consistency determination--The statement and supporting documentation submitted by a federal agency undertaking or planning a federal agency activity subject to federal consistency review certifying that the federal agency activity is consistent with the CMP goals and policies to the maximum extent practicable.
- (11) Consistent to the maximum extent practicable--Being fully consistent with the CMP unless compliance is prohibited based upon the requirements of existing law.
- (12) Director--Director of the Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration.
- (13) Federal agency action--A federal license or permit that a federal agency may issue that represents the proposed federal authorization, approval, or certification needed by the applicant to begin an activity. An action to renew, amend, or modify an existing license or permit shall not be considered an action subject to the CMP if the action only extends the time period of the existing authorization without authorizing new or additional work or activities, would not increase pollutant loads to coastal waters or result in relocation of a wastewater outfall to a critical area, or is not otherwise directly relevant to the policies in §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas).
- (14) Federal agency activity--A function that is performed by or for a federal agency in the exercise of its statutory responsibility, including financial assistance, the planning, construction, modification, or removal of a public work, facility, or any other structure, and the acquisition, use, or disposal of land or water resources. The term does not include the issuance of a federal license or permit.
- (15) Federal assistance--Assistance provided under a federal program to an applicant entity through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other forms of financial aid. Except as otherwise requested by the applicant entity, council review of federal assistance for consistency with the CMP goals and policies is limited to federal programmatic requirements for project level funding. Agency management decisions such as funding priorities and allocation of funds among various projects are not subject to review. For purposes of the review procedures in this chapter, the term includes only the transfer or commitment of funds from the federal agency directly to an applicant entity.
- (16) Federal development project--A Federal activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources.
- (17) Federal license or permit--Any authorization, certification, approval, or other form of permission which any federal agency is empowered to issue to an applicant.
- (18) Interagency coordination team--For purposes of the general agreement in §506.28 of this title (relating to General Consistency Agreements), a group established to review proposed federal development projects and whose duties include, among other things, advising on the consistency determination. Members of the

team typically include, at a minimum, representatives of the local project sponsor and federal and state natural resource and regulatory agencies with jurisdiction over the project. The team seeks and promotes broad participation by local governments and coastal citizen groups.

(19) Outer continental shelf (OCS) plan--A plan for the exploration or development of, or production from, an area leased under the Outer Continental Shelf Lands Act (43 United States Code Annotated, §§1331-1356) and the rules adopted under that Act that is submitted to the secretary of the United States Department of the Interior after federal approval of the CMP.

(20) State single point of contact--The state single point of contact for the Texas Review and Comment System as defined by 1 TAC §5.194 (concerning Definitions).

§30.12 Federal Agency Actions, Federal Agency Activities and Development Projects, and Outer Continental Shelf Plans Subject to the Coastal Management Program

(a) For purposes of this section, the following federal actions within the CMP boundary may adversely affect coastal natural resource areas (CNRAs):

(1) Federal Agency Activities and Development Projects:

(A) United States Department of the Interior. Modifications to the boundaries of the Coastal Barrier Resource System under 16 United States Code Annotated, §3503(c);

(B) United States Environmental Protection Agency. Selection of remedial actions under 42 United States Code Annotated, §9604(c);

(C) United States Army Corps of Engineers:

(i) small river and harbor improvement projects under 33 United States Code Annotated, §577;

(ii) water resources development projects under 42 United States Code Annotated, §1962d-5;

(iii) small flood control projects under 33 United States Code Annotated, §701s;

(iv) small beach erosion control projects under 33 United States Code Annotated, §426g;

(v) operation and maintenance of civil works projects under the Code of Federal Regulations, Title 33, Parts 335 and 338;

(vi) dredging projects under the Code of Federal Regulations, Title 33, Part 336;

(vii) approval for projects for the prevention or mitigation of damages to shore areas attributable to federal navigation projects pursuant to 33 United States Code Annotated, §426i; and

(viii) approval for projects for the placement on state beaches of beach-quality sand dredged from federal navigation projects pursuant to 33 United States Code Annotated, §426j;

(D) Federal Emergency Management Agency:

(i) model floodplain ordinances; and

(ii) approval or suspension of a community's eligibility to sell flood insurance under the Code of Federal

Regulations, Title 44, Part 59, Subpart B;

(E) General Services Administration:

(i) acquisitions under 40 United States Code Annotated, §602 and §603; and

(ii) construction under 40 United States Code Annotated, §605; and

(F) All federal agencies:

(i) all other development projects; and

(ii) natural resource restoration plans developed pursuant to the Oil Pollution Act of 1990 (33 United States Code Annotated §§2701-2761) and the Comprehensive Environmental Response, Compensation and Liability Act (42 United States Code Annotated §§9601-9675);

(2) Federal Agency Actions:

(A) Environmental Protection Agency:

(i) National Pollution Discharge Elimination System (NPDES) permits under 33 United States Code Annotated, §1342;

(ii) ocean dumping permits under 33 United States Code Annotated, §1412;

(iii) approvals of land disposal of wastes under 42 United States Code Annotated, §6924(d);

(iv) development of total maximum daily loads (TMDLs) and associated federally developed TMDL implementation plans under 33 United States Code Annotated, §1313; and

(v) approvals of National Estuary Program Comprehensive Conservation Management Plans under 33 United States Code Annotated, §1330f;

(B) United States Army Corps of Engineers:

(i) ocean dumping permits under 33 United States Code Annotated, §1413;

(ii) dredge and fill permits under 33 United States Code Annotated, §1344;

(iii) permits under §9 of the River and Harbor Act of 1899, 33 United States Code Annotated, §401;

(iv) permits under §10 of the River and Harbor Act of 1899, 33 United States Code Annotated, §403; and

(v) Memoranda of Agreement for mitigation banking;

(C) United States Department of Transportation:

(i) approvals under §7(a) of the Federal-Aid Highway Amendments Act of 1963, 23 United States Code Annotated, §106; and

(ii) approvals under §502 of the General Bridge Act of 1946, 33 United States Code Annotated, §525;

(D) Federal Aviation Administration. Airport operating certificates under 49 United States Code Annotated, §44702;

(E) Federal Energy Regulatory Commission:

(i) certificates under §7 of the Natural Gas Act, 15 United States Code Annotated, §717f;

(ii) licenses under §4 of the Federal Power Act, 16 United States Code Annotated, §797(e); and

(iii) exemptions under §403 of the Public Utility Regulatory Policies Act of 1978, 16 United States Code Annotated, §2705(d);

(F) Nuclear Regulatory Commission. Licenses under §103 of the Atomic Energy Act of 1954, 42 United States Code Annotated, §2133.

(3) State and Local Government Applications for Federal Assistance. Federal assistance for state and local government activities that may adversely affect CNRAs. Federal assistance does not include applications from local governments and subdivisions to the Texas Water Development Board for financial assistance through the State Water Pollution Control Revolving Fund or the Colonia Wastewater Treatment Assistance Program.

(b) For purposes of this section, the following are federal actions outside the CMP boundary but within OCS waters, or on excluded federal land located within the coastal zone, that may adversely affect CNRAs.

(1) Federal Activities and Development Projects for all federal agencies: Activities in OCS waters or within the coastal zone occurring within federal lands excluded from the CMP boundary but which may adversely affect CNRAs.

(2) Federal Agency Actions:

(A) United States Department of the Interior:

(i) permits under §11 of the Outer Continental Shelf Lands Act, 43 United States Code Annotated, §1340, in OCS waters; and

(ii) rights-of-way under §5(e) of the Outer Continental Shelf Lands Act, 43 United States Code Annotated, §1334(e), in OCS waters;

(B) Environmental Protection Agency:

(i) NPDES permits under 33 United States Code Annotated, §1342, in OCS waters;

(ii) ocean dumping permits under 33 United States Code Annotated, §1412, in OCS waters;

(C) United States Army Corps of Engineers. Ocean dumping permits under 33 United States Code Annotated, §1413, in OCS waters;

(D) United States Department of Transportation: Deep water port licenses under 33 United States Code Annotated, §1503, in OCS waters.

(3) OCS Exploration, Development, and Production Activities. United States Department of the Interior:

(A) Federal agency actions described in detail in OCS plans, including pipeline activities, that may adversely affect CNRAs;

(B) OCS lease sales within the western and central Gulf of Mexico under 43 United States Code Annotated, §1337.

(c) In the event that a proposed activity requiring a state agency or subdivision action that falls below thresholds for referral approved under Chapter 505, Subchapter B of this title (relating to Council Certification of State Agency Rules and Approval of Thresholds for Referral) requires an equivalent federal permit or license under this chapter, the council may only determine the state agency or subdivision action's consistency by using the process provided in Chapter 505 of this title (relating to Council Procedure for State Consistency with Coastal Management Program Goals and Policies). The council's determination regarding the consistency of an action under this subsection constitutes the state's determination regarding consistency of the equivalent federal action.

(d) If an activity requiring a state agency or subdivision action above thresholds requires an equivalent federal permit or license, the council may determine the consistency of the state agency or subdivision action or the federal license or permit, but not both.

(e) The determinations regarding the consistency of an action made by the council under subsections (c) and (d) of this section constitute the state's determination regarding consistency of the equivalent agency or subdivision action or federal action.

(f) On a one-time basis, and subject to the provisions of paragraph (1) of this subsection and federal law, the council may elect to review a proposed federal agency activity of a type that is not listed in subsection (a)(1) of this section, a proposed federal license or permit action of a type that is not listed in subsection (a)(2) of this section, or a state or local government application for federal assistance of a type that is not listed in subsection (a)(3) of this section.

(1) Once the council has reviewed a proposed federal agency activity of a type that is not listed in subsection (a)(1) of this section, the council may not review any other proposed federal agency activity of that type under this subsection.

(2) Once the council has reviewed a proposed federal license or permit action of a type that is not listed in subsection (a)(2) of this section, the council may not review any other proposed federal license or permit action of that type under this subsection.

(3) Once the council has reviewed a state or local government application for federal assistance of a type that is not specifically listed in subsection (a)(3) of this section, the council may not review any other state or local government application for federal assistance of that type under this subsection.

(4) Except as provided in this subsection, the list of federal actions described in subsection (a) of this section is an exclusive list of federal agency activities, licenses and permits, and state and local government applications for federal assistance that are subject to council review. The council may amend the list of actions and activities described in subsection (a) of this section from time to time, and any federal actions or activities described in such amended lists shall be subject to council review.

(g) If the council determines a federal agency action or application for federal assistance to be consistent with the CMP goals and policies, subsequent actions taken by state agencies or subdivisions or federal agencies to implement the activity described in the application shall not be subject to review by the council if the application for the federal agency action or federal assistance describes the activity in sufficient detail to determine consistency of the completed activity

§30.13 Conditional Concurrence

(a) Federal agencies should cooperate with the council to develop conditions that, if agreed to during the council's consistency review period, and included in a federal agency's final decision or approval for activities identified in §506.12 of this title (relating to Federal Agency Actions, Federal Agency Activities, Outer Continental Shelf Plans Subject to the Coastal Management Program), would allow the council to concur with the federal agency's decision. As an alternative to finding a proposed federal agency action, activity, or funding assistance inconsistent with the CMP goals and policies, the council may, by a vote of two-thirds of all members eligible to vote, issue a conditional concurrence letter as described under this section.

(1) The council shall include in its concurrence letter the conditions that must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies and an identification of the specific enforceable policies. The concurrence letter shall also inform the parties that if the requirements of paragraphs (2) through (3) of this subsection are not met, then all parties are to treat the conditional concurrence as a consistency objection. The conditional concurrence letter shall also notify the parties, pursuant to the Code of Federal Regulations, Title 15, Part 930, Subpart D, §930.63(c), of the opportunity to appeal the council's objection to the Secretary of Commerce within 30 days of receipt of the council's conditional concurrence/objection or 30 days after receiving notice from the federal agency that the application will not be approved as amended by the council's conditions; and

(2) The federal agency, applicant for a federal agency action, the person submitting an OCS plan, or the entity applying for federal assistance, as applicable, shall modify the applicable plan, project, proposal or application to the federal agency in accordance with the council's conditions. The federal agency, applicant, person, or applicant entity shall immediately notify the council secretary if the council's conditions are not acceptable; and

(3) The federal agency shall approve the amended application with the council's conditions. The federal agency shall immediately notify the council secretary and the applicant or applicant entity if the federal agency will not approve the application as amended by the council's conditions.

(b) If the requirements of subsection (a) paragraphs (2) and (3) of the section are not met, then all parties shall treat the council's conditional concurrence as an objection.

§30.20 Consistency Determinations for Federal Agency Activities and Development Projects

(a) At the earliest practicable time, but in no event later than 90 days prior to final approval, a federal agency considering the approval of a federal agency activity or development project listed in §506.12 of this title (relating to Federal Agency Actions, Federal Agency Activities, Outer Continental Shelf Plans and Development Plans Subject to the Coastal Management Program) shall provide the council secretary with a consistency determination that includes the following information:

(1) a brief statement, based upon an evaluation of the relevant CMP provisions, indicating whether or not the proposed activity or development project will be undertaken in a manner consistent with the CMP, to the maximum extent practicable; and

(2) a detailed description of the proposed activity or development project and its associated facilities which is adequate to permit an assessment of their probable effects on CNRAs, and comprehensive data and information sufficient to support the federal agency's consistency statement. The amount of detail in the statement evaluation, activity description, and supporting information shall be commensurate with the expected effects of the activity or development project on CNRAs. While federal agencies must be consistent to the maximum extent practicable with the enforceable, mandatory policies of the CMP, the agencies need only demonstrate adequate consideration of policies which are in the nature of recommendations. Federal

agencies need not evaluate effects for which the CMP does not contain mandatory or recommended policies.

(b) The chair or any three members of the council may request the federal agency to provide additional information as provided by federal regulations.

(c) For natural resource damage assessment restoration plans that are prepared solely by federal natural resource trustee(s), or are the product of a joint cooperative natural resource damage assessment by state and federal trustees, the consistency determination shall be made by the federal trustees and consistency review is delegated to the state trustees (TCEQ, TPWD, and the GLO). The consistency determinations of the federal trustee(s) and public notice of the determinations are encouraged to occur concurrently with the federal trustees' process of complying with the provisions of the National Environmental Policy Act, 42 United States Code Annotated §§4321 - 4370d.

(1) Any project implemented under a restoration plan determined to be consistent under this subsection shall not be subject to further review under Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies) and this chapter.

(2) Based on citizen input, the Council shall develop a list of potential restoration projects by major estuary for consideration by restoration planners. The federal trustees may choose for consideration projects from the list when appropriate and when the projects meet the statutory requirements for natural resource damage assessments. Projects on the Council's list are deemed consistent with the goals and policies of the CMP and shall not be subject to further review under Chapter 505 of this title and this chapter. When the federal trustees select a project that is not on the list, the state trustees shall conduct consistency reviews as provided in subsection (c) of this section.

(3) The state trustees shall give to the Council regular reports on consistency reviews of restoration plans resulting from natural resource damage assessments.

§30.21 Notification of Negative Determinations

(a) If a federal agency determines that a proposed activity or development project listed in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program) will not adversely affect any CNRA, the federal agency shall at the earliest practicable time, but in no event later than 90 days prior to final approval, provide the chair of the council with a notification briefly providing the reasons for the federal agency's negative determination.

(b) If the council disagrees with the negative determination and the federal agency does not modify the activity or the development project to achieve consistency with the program, the governor, with the assistance of the chair of the council, may seek mediation of the matter in accordance with federal law (as provided in the Code of Federal Regulations, Title 15, Part 930, Subpart G, §§930.110 et seq).

§30.22 General Consistency Determinations for Proposed Federal Agency Activities

(a) Federal agencies may provide a general consistency determination, in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.37(b), for repeated federal agency activities other than development projects which cumulatively may adversely affect CNRAs.

(b) If a federal agency issues a general consistency determination, the federal agency shall periodically consult with the council to discuss the manner in which the incremental actions are being undertaken.

§30.23 Consistency Determinations for Development Projects

(a) Federal agencies may provide a single consistency determination for a proposed development project, in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.37(c), where the agency has sufficient information to determine consistency from planning to completion.

(b) In cases where decisions related to a proposed development project will be made in phases based upon developing information, and the federal agency retains the discretion to implement alternative decisions on the basis of such information, a consistency determination shall be required for each decision in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.37(c).

§30.24 Consistency Determinations for Federal Agency Activities Initiated Prior to Federal Approval of the Coastal Management Program

(a) Federal agencies shall provide a consistency determination for ongoing activities listed in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program), other than development projects, initiated prior to federal approval of the CMP where the agency retains discretion to reassess and modify the activity. In accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.38(a), federal agencies shall provide the council with a consistency determination for such ongoing activities no later than 120 days after program approval.

(b) Federal agencies shall provide a consistency determination, in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.38(b), for phased development projects described in §506.23(b) of this title (relating to Consistency Determinations for Development Projects) and initiated prior to federal approval of the CMP, for those phases of the project for which the agency retains discretion to reassess and modify the activity following CMP approval.

(c) The council shall review consistency determinations for the United States Army Corps of Engineers' ongoing maintenance of commercially navigable waterways as provided in the Memorandum of Agreement Between the Texas Coastal Coordination Council and the United States Army Corps of Engineers (Review of Coastal Maintenance Dredging Activities for Consistency with the Goals and Policies of the Texas Coastal Management Program, dated October 27, 1994, and subsequent amendments).

§30.25 Public Notice and Comment

(a) Upon receipt of an administratively complete consistency determination for a federal agency activity, the council secretary shall publish notice of the consistency determination on the council's web site and in the *Texas Register*.

(b) The public notice shall provide a summary of the proposed federal agency activity, announce the availability of the consistency determination for inspection, and request comment on whether the federal agency activity should be referred to the council for review and whether the activity is or is not consistent with the CMP goals and policies. Comments shall be submitted to the council secretary within 30 days of publication on the council's web site.

(c) When appropriate, the chair or any three members of the council may extend the public comment period or schedule a public hearing on:

(1) the consistency determination; and

(2) whether referral to the council is appropriate.

(d) After the close of the public comment period, the council members shall consider any comments received in response to the public notice and determine whether the federal activity should be placed on the agenda for

review because it presents a significant unresolved dispute regarding consistency with the CMP goals and policies. Upon the council members' decision, the council secretary shall immediately notify all council members, applicant, federal agency, and other affected parties, if any.

§30.26 Referral of Federal Agency Activities

- (a) The council shall review any federal agency activity that any three members of the council agree presents a significant unresolved issue regarding consistency with the CMP goals and policies and place the matter on the agenda of a meeting of the council for review.
- (b) To refer a federal activity to the council, any three members of the council must submit the action to the council secretary in writing.
- (c) The council secretary shall place the action on the agenda of the earliest council meeting at which consideration of the federal agency activity is reasonably practicable. If no regularly scheduled council meeting will allow the council to complete a review of the action and notify the federal agency of its decision within 45 days of receipt of the administratively complete consistency determination, the council secretary shall notify the chair, who shall schedule a special meeting.
- (d) If the council places an action on its agenda, but will not be able to complete a review and notify the federal agency within 45 days of the date the council secretary receives an administratively complete consistency determination, then the chair shall notify the federal agency of the status of the review and the basis for further delay and request an extension of time to review the matter.
- (e) The federal agency may presume council agreement with the federal agency's consistency determination 45 days after the date the council secretary receives an administratively complete consistency determination, unless the chair or any three members of the council request an extension of time to review the matter. Federal agencies shall approve the first request for an extension of 15 days or less. In considering whether a longer or additional extension period is appropriate, federal agencies should consider the magnitude and complexity of, or the information contained in, the consistency determination.
- (f) A federal agency shall not grant final approval for a federal agency activity identified in §506.12 of this title (relating to Federal Agency Actions, Federal Agency Activities, Outer Continental Shelf Plans Subject to the Coastal Management Program) until after the expiration of 90 days from the date the federal agency provides the council secretary with its consistency determination, unless the federal agency and the council agree to an alternative period of time

§30.27 Council Hearing to Review Federal Agency Activities and Availability of Mediation

- (a) Following referral of a federal agency activity, the council shall consider the public comments received, the relevant CMP goals and policies, information submitted by the federal agency, and other relevant information and determine whether the activity is consistent with the CMP goals and policies.
- (b) The council secretary shall, by certified mail or hand delivery, provide notice of the hearing at which the council will review the federal agency activity to the federal agency.
- (c) If the council decides to disagree with a consistency determination, the council shall notify the federal agency and the assistant administrator of its decision to disagree with the consistency determination prior to the time, including any extensions, that the federal agency is entitled to presume the activity's consistency under §506.26(e) of this title (relating to Referral of Federal Agency Activities). An affirmative vote of two-thirds of the council members is required for the council to disagree with a consistency determination.

(d) The council's finding that a proposed activity is inconsistent with the CMP goals and policies shall include:

(1) a description of how the proposed activity is inconsistent with specific CMP goals and policies;

(2) a description of any available alternative measures that would permit the proposed activity to be conducted in a manner consistent to the maximum extent practicable with the CMP; and

(3) in cases where the council's finding is based upon the federal agency's failure to supply sufficient information, the council shall include a description of the nature of the information requested and the necessity of having such information to determine the consistency of the federal activity with the CMP.

(e) If the council finds that a proposed activity is inconsistent with the CMP goals and policies and the federal agency does not modify the activity to achieve consistency with the program, the governor, with the assistance of the chair of the council, may seek secretarial mediation (as provided in Code of Federal Regulations, Title 15, Part 930, Subpart G, §§930.110 et seq).

(f) Federal and state agencies shall cooperate in their efforts to monitor federally approved activities in order to make certain that such activities continue to be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the CMP.

(g) The council may request that the federal agency take appropriate remedial action following a serious disagreement resulting from a federal agency activity, including those activities where the council's concurrence was presumed, which was:

(1) Previously determined to be consistent to the maximum extent practicable with the CMP goals and policies, but which the council later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent to the maximum extent practicable with the enforceable policies of the CMP; or

(2) Previously determined not to be a federal agency activity affecting any coastal use or resource, but which the council later maintains is having an effect on any coastal use or resource or is being conducted in a manner substantially different than originally described, and as a result, the activity affects any coastal use or resource and is not consistent to the maximum extent practicable with the enforceable policies of the CMP. The council's request shall include supporting information and a proposal for recommended remedial action.

(h) If, after a reasonable time following a request for remedial action, the council still maintains that a serious disagreement exists, either party may request the mediation services of the Secretary of Commerce or the Office of Ocean and Coastal Resource Management as provided in Code of Federal Regulations, Title 15, Part 930, Subpart G, §§930.110 et seq.

§30.28 General Consistency Agreements for Federal Activities; Interagency Coordination Teams for Federal Development Projects

(a) The council may issue a general consistency agreement with respect to a federal activity other than a development project. Prior to issuance of a general consistency agreement, the council shall request and consider public comments on the matter. If the conditions of a general consistency agreement are satisfied, the federal activity is deemed consistent, to the maximum extent practicable, with the CMP goals and policies and will not be subject to council review under §506.26 of this title (relating to Referral of Federal Agency Activities).

(b) The council shall, in lieu of council review under §506.26 of this title (relating to Referral of Federal

Agency Activities), issue a consistency agreement for a federal agency activity or development project for which:

- (1) the federal agency has elected to establish an interagency coordination team whose duties include advising the federal agency on the consistency of the federal agency activity or development project;
- (2) the interagency coordination team includes among its voting members representatives from a minimum of three council member agencies;
- (3) a majority of the council member agency representatives on the interagency coordination team concurs that the federal agency activity or development project is consistent, to the maximum extent practicable, with the CMP goals and policies;
- (4) the federal agency adopts the concurrence of the council member agency representatives on the interagency coordination team and submits it to the council as its consistency determination for the federal agency activity or development project; and
- (5) a majority of the council member agency representatives on the interagency coordination team, after considering public comment, affirm their concurrence with the federal agency's consistency determination by not objecting in writing within 15 days after the close of the public comment period.

(c) Disposal or placement of dredged material in existing dredge disposal sites identified and actively used as described in an environmental assessment or environmental impact statement issued prior to the effective date of this chapter shall be presumed consistent with §501.14(j)(1) of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas), unless such existing disposal or placement is modified in design, size, use, or function, provided that the material is generated by maintenance dredging of commercially navigable waterways for which a federal development project undergoes evaluation pursuant to the interagency coordination group process under subsection (b) of this section and such process was initiated prior to the adoption of this chapter, and provided further, if the interagency coordination group approves the project that requires disposal or placement in confined sites and/or beneficial use of the dredged material from those waterways and results in cessation of open water disposal of dredged material and such project is authorized in a final supplemental environmental impact statement.

§30.29 Supplemental Interagency Coordination for Proposed Federal Agency Activities

(a) For proposed federal agency activities that were previously determined by the council to be consistent with the CMP, but which have not yet begun, federal agencies shall further coordinate with the council and prepare a supplemental consistency determination if the proposed activity will affect any coastal use or resources in a manner substantially different than was reasonably foreseeable when the proposed activity was originally described. Substantially different coastal effects are reasonably foreseeable if:

- (1) The federal agency makes substantial changes in the proposed activity that are relevant to the CMP goals and policies; or
- (2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(b) The council may notify the federal agency and the Director of proposed activities that the council determines should be subject to supplemental coordination. The council's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant CMP goals and policies and may recommend modifications to the proposed activity (if any) that would allow the federal agency to implement the proposed activity consistent with the CMP. Council notification under this subsection does not remove the requirement under subsection (a) of this section for

federal agencies to notify the council when a proposed activity will affect any coastal use or resource in a manner substantially different than originally described.

§30.30 Consistency Certifications for Federal Agency Actions

(a) Upon filing an application for a federal agency action listed under §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program), the applicant shall provide to the council secretary a consistency certification that reads as follows: The proposed activity complies with Texas' approved coastal management program and will be conducted in a manner consistent with such program.

(b) The applicant shall include with the consistency certification all of the following information:

(1) a detailed description of the proposed activity and its associated facilities which is adequate to permit an assessment of their probable effects on CNRAs. Maps, diagrams, technical data, and other relevant material must be submitted when a written description will not adequately describe the proposed activity. The applicant may submit the federal application and all supporting material provided to the federal agency to meet the requirements of this paragraph, if the application and supporting material contain the required material;

(2) a list identifying all federal, state, and local permits or authorizations subject to the CMP and required for the proposed activity and its associated facilities;

(3) a brief assessment relating to the relevant elements of the CMP and the probable effects of the proposed activity and its associated facilities on CNRAs; and

(4) a brief set of findings, derived from the assessment, indicating that the proposed activity, its associated facilities, and their effects are all consistent with the CMP goals and policies.

(c) Applicants shall, to the extent practicable, consolidate related federal agency actions identified in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program) to assist the council in minimizing duplication of effort and unnecessary delays by reviewing all federal agency actions relating to a project at the same time.

(d) The chair or any three members of the council may request the applicant to submit additional information as provided by federal regulations. If the chair or three members of the council have not notified the applicant within 15 days that additional information is required, the certification shall be considered complete for purposes of activating the time periods within which the council must act on the certification.

§30.31 Council Assistance

Upon request of the applicant, the council shall provide assistance for development of the assessment and findings required by §506.30(b)(3) and (4) of this title (relating to Consistency Certifications for Federal License and Permit Activities).

§30.32 Public Notice and Comment

(a) Upon receipt of an administratively complete consistency certification for a proposed federal agency action, the council secretary shall publish public notice of the consistency certification on the council's web site and in the *Texas Register* .

(b) The public notice shall provide a summary of the proposed activity, announce the availability of the consistency certification for inspection, and request comment on whether the federal agency action should be

referred to the council for review and whether the action is or is not consistent with the CMP goals and policies. Comments shall be submitted to the council secretary within 30 days of publication of the notice on the council's web site.

(c) When appropriate, the chair or any three members of the council may extend the public comment period or schedule a public hearing on:

(1) the consistency certification; and

(2) whether referral to the council is appropriate.

(d) After the close of the public comment period, the council members shall consider any comments received in response to the public notice and determine whether the proposed federal agency action presents a significant unresolved dispute regarding consistency with the CMP goals and policies and should be placed on the agenda of the council for review. Upon council members' decision, the council secretary shall immediately notify all council members, applicant, federal agency, and other affected parties, if any.

§30.33 Referral of Federal Agency Action

(a) The council shall review any federal agency action that any three members agree presents a significant unresolved dispute regarding consistency with the CMP goals and policies.

(b) To refer a federal agency action, any three members must submit the request for referral to the council secretary in writing within 45 days of receipt of the administratively complete consistency certification.

(c) The council secretary shall add the action to the agenda of the earliest council meeting at which consideration of the action is reasonably practicable. If no regularly scheduled council meeting will allow the council to complete a review of the action within 90 days of receipt of the administratively complete consistency certification, the council secretary shall notify the chair, who shall schedule a special meeting.

(d) If the council has not issued a decision with respect to a proposed federal agency action within 45 days of the date when the council secretary receives an administratively complete consistency certification, then the chair shall notify the applicant and the federal agency of the status of the review and the basis for further delay.

(e) If any three members of the council do not refer a proposed federal agency action to the council within 45 days of the date when the council secretary receives an administratively complete consistency certification, then that proposed federal agency action is conclusively presumed to be consistent with the CMP.

§30.34 Council Hearing To Review a Federal Agency Action

(a) Following referral of a proposed federal agency action, the council shall consider the public comments received, the relevant CMP goals and policies, information submitted by the federal agency or applicant, and other relevant information and determine whether the proposed action is consistent with the CMP goals and policies within 90 days of the date the council secretary received the administratively complete consistency certification.

(b) The council secretary shall, by certified mail or hand delivery, provide notice of the hearing at which the council will review the proposed federal action to the federal agency and the applicant.

(c) If the council decides to object to a consistency certification, the council shall notify the applicant, the federal agency, and the assistant administrator. The affirmative vote of two-thirds of the council members

shall be required to object to a consistency determination.

(d) The council's objection shall include:

(1) a description of how the proposed federal agency activity is inconsistent with specific CMP goals and policies;

(2) a description of any available alternative measures that would permit the proposed activity to be conducted in a manner consistent with the CMP;

(3) in cases where the council objects on the grounds of insufficient information, a description of the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the CMP; and

(4) a statement informing the applicant of a right of appeal to the secretary of commerce on the grounds that the proposed activity is consistent with the objectives or purposes of the federal Coastal Zone Management Act (CZMA), 16 United States Code Annotated, §§1451-1464, or is necessary in the interest of national security as provided in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §§930.120 et seq.

(e) If the council finds that the proposed federal action is inconsistent with the CMP goals and policies, the federal agency shall not proceed with the federal action, except as provided in the appeals process established in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §§930.120 et seq.

§30.35 General Concurrence

The council may develop general concurrences in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart D, §930.53.

§30.36 Supplemental Coordination for Proposed Federal Agency Actions

(a) For proposed federal actions that were previously determined by the council to be consistent with the CMP, but which have not yet begun, applicants shall further coordinate with the council and prepare a supplemental consistency certification if the proposed action will affect any coastal use or resources in a manner substantially different than was reasonably foreseeable when the proposed action was originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The applicant makes substantial changes in the proposed action that are relevant to the CMP goals and policies; or

(2) There are significant new circumstances or information relevant to the proposed action and the proposed action's effect on any coastal use or resource.

(b) The council may notify the applicant, the federal agency, and the Director of proposed actions that the council determines should be subject to supplemental coordination. The council's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant CMP goals and policies, and may recommend modifications to the proposed action (if any) that would allow the applicant to implement the proposed activity consistent with the CMP. Council notification under this subsection does not remove the requirement under subsection (a) of this section for applicants to notify the council when a proposed activity will affect any coastal use or resource in a manner substantially different than originally described.

§30.37 Remedial Action for Previously Reviewed Federal Agency Actions

(a) Federal agencies and the council shall cooperate in their efforts to monitor federal agency actions in order to make certain that such actions continue to conform to both federal and state requirements.

(b) The council shall notify the relevant federal agency representative for the area involved of any federal agency action which the council claims was:

(1) Previously determined to be consistent with the CMP, but which the council later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described, and as a result, is no longer consistent with the CMP; or

(2) Previously determined not to be an action affecting any coastal use or resource, but which the council later maintains is having coastal effects or is being conducted in a manner substantially different than originally described, and as a result, the action affects any coastal use or resource in a manner inconsistent with the CMP.

(c) The council notification shall include:

(1) A description of the implemented activity involved and the alleged lack of compliance with the CMP;

(2) supporting information; and

(3) a request for appropriate remedial action. A copy of the request shall be sent to the applicant and the Director. Remedial actions shall be linked to the coastal effects substantially different than originally described.

(d) If, after 30 days following a request for remedial action, the council still maintains that the applicant is failing to comply substantially with the CMP, the council may file a written objection with the Director. If the Director finds that the applicant is conducting an activity that is substantially different from the approved activity, the applicant shall submit an amended or new consistency certification and supporting information to the federal agency and to the council, or comply with the originally approved consistency certification.

(e) An applicant shall be found to be conducting an activity substantially different from the activity as originally approved if the council claims and the Director finds that the activity affects any coastal use or resource substantially different than originally described by the applicant and, as a result, the activity is no longer being conducted in a manner consistent with the CMP goals and policies. The Director may make a finding that an applicant is conducting an activity substantially different from the approved activity only after providing 15 days for the applicant and the federal agency to review the council's objections and to submit comments for the Director's consideration.

§30.40 Consistency Certifications for Outer Continental Shelf Plans

(a) Upon submission to the secretary of the interior or designee of an OCS plan, which must include a detailed description of the proposed activities which will require federal actions subject to federal consistency review, the person submitting the plan shall provide the council secretary with a copy of the plan along with a consistency certification that reads as follows: The proposed activities described in detail in this plan comply with Texas' approved coastal management program and will be conducted in a manner consistent with such program.

(b) The person submitting the OCS plan shall include all of the following information in support of the consistency certification:

(1) a detailed description of the proposed activities and their associated facilities which is adequate to permit

an assessment of their probable effects on CNRAs. Maps, diagrams, technical data, and other relevant material must be submitted when a written description will not adequately describe the proposed activities;

(2) a list identifying all federal, state, and local actions subject to the CMP and required for the proposed activities and their associated facilities;

(3) a brief assessment relating the probable effects of the activities and their associated facilities on CNRAs to the relevant elements of the CMP; and

(4) a brief set of findings, derived from the assessment, indicating that federal actions authorizing each of the proposed activities will be consistent with the CMP goals and policies. In considering whether such federal actions will be consistent with the CMP, associated facilities authorized under such actions and the effects of such associated facilities shall be considered.

(c) The council strongly encourages persons submitting OCS plans to consolidate related federal licenses and permits that are not required to be described in detail in the plan but which are subject to council review. This consolidation will minimize duplication of effort and unnecessary delays by providing for council review of all licenses and permits relating to an OCS plan at the same time.

(d) The chair or any three members of the council may request the person submitting the plan to submit additional information as provided in federal regulations. The chair or three members of the council have not notified the person submitting the plan within 15 days that additional information is required, the certification shall be considered complete for purposes of activating the time periods within which the council must act on the certification.

§30.41 Public Notice and Comment

(a) Upon receipt of an administratively complete consistency certification for an OCS plan, the council secretary shall publish notice of the consistency certification on the council's web site and in the *Texas Register* .

(b) The public notice shall provide a summary of the OCS plan, announce the availability of the consistency determination for inspection, and request comment on whether any part of the OCS plan relating to federal agency actions required to authorize proposed activities described in detail in the OCS plan should be referred to the council for review and whether any part is or is not consistent with the CMP goals and policies. Comments shall be submitted to the council secretary within 30 days of publication of the notice on the council's web site.

(c) When appropriate, the chair or any three members of the council may extend the public comment period or schedule a public hearing on:

(1) the consistency certification; and

(2) whether referral to the council is appropriate.

(d) After the close of the public comment period on the OCS plan, the council shall consider any comments received in response to the public notice and determine whether any part of the OCS plan relating to federal agency actions required to authorize proposed activities described in detail in the OCS plan presents significant unresolved issues regarding consistency with the CMP goals and policies and should be placed on the agenda of a meeting of the council for review. Upon the council's decision, the council secretary shall immediately notify the council members, applicant, federal agency, and other affected parties, if any.

§30.42 Referral of an Outer Continental Shelf Plan

- (a) The council shall review any part of an OCS plan relating to federal agency actions required to authorize proposed activities described in detail in the OCS plan which any three members agree presents a significant unresolved dispute regarding consistency with the CMP goals and policies.
- (b) To refer part of an OCS plan, three members of the council must submit the request for referral to the council secretary in writing within 45 days of receipt of the administratively complete consistency certification.
- (c) The council secretary shall place the action on the agenda of the earliest council meeting at which consideration of the action is reasonably practicable. If no regularly scheduled council meeting will allow the council to act on the action within 90 days of receipt of the administratively complete consistency certification, the council secretary shall notify the chair, who shall schedule a special meeting.
- (d) If the council has not issued a decision with respect to a matter referred under the provisions of this section within 45 days of the date when the council secretary received the administratively complete consistency certification, then the chair shall notify the person submitting the plan, the secretary of the interior, and the assistant administrator of the status of the review and the basis for further delay.
- (e) If any three members of the council do not refer any federal actions that will be required to authorize an activity described in detail in an OCS plan to the council within 45 days of the date when the council secretary receives an administratively complete consistency certification, then the council's concurrence with the consistency certification shall be conclusively presumed.

§30.43 Council Hearing To Review Outer Continental Shelf Plan

- (a) Following referral of part of an OCS plan, the council shall consider the public comments received, the relevant CMP goals and policies, information submitted by the federal agency or applicant, and other relevant information and determine whether any part of the OCS plan relating to federal agency actions required to authorize proposed activities described in detail in the OCS plan is consistent with the CMP goals and policies within 90 days of the date the council secretary received the consistency certification.
- (b) The council secretary shall, by certified mail or hand delivery, provide notice of the hearing at which the council will review a part of the OCS plan to the person submitting the OCS plan, the secretary of the interior, and the assistant administrator.
- (c) If the council decides to object to a consistency certification, the council shall notify the person submitting the plan, the secretary of the interior, and the assistant administrator. The affirmative vote of two-thirds of the council members is required to object to a consistency certification.
- (d) The council's objection shall include:
- (1) a description of how the activity requiring the federal action described in the OCS plan will be inconsistent with the CMP goals and policies;
 - (2) a description of any available alternative measures that would permit the activity requiring the federal action to be conducted in a manner consistent with the CMP;
 - (3) in cases where the council objects on the grounds of insufficient information, a description of the nature of the information requested and the necessity of having such information to determine the consistency with the CMP of the federal action authorizing the activity described in the OCS plan; and

(4) a statement informing the person submitting the plan of a right of appeal to the secretary of commerce on the grounds that the federal action authorizing the activity described in the OCS plan will be consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security as provided in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §§930.120 et seq.

(e) If the council objects to a consistency certification related to a federal action authorizing an activity described in detail in an OCS plan, the federal agency shall not take the federal action when it is proposed, except as provided in the appeals process established in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §§930.120 et seq.

§30.44 Effect of Council Concurrence

(a) If the council either issues a concurrence or is conclusively presumed to concur with the consistency certification of a person submitting an OCS plan, then the person submitting the plan shall not be required to submit additional consistency certifications to the council secretary for the individual federal actions that will be required to authorize the activities described in detail in the OCS plan.

(b) To allow the council to monitor those federal actions that relate to activities described in detail in an OCS plan whose consistency certification has received council concurrence, the person submitting the OCS plan shall provide the council secretary with copies of applications for those federal actions when they are filed.

§30.45 Failure to Comply Substantially with an Approved OCS Plan

(a) The Department of the Interior and the council shall cooperate in their efforts to monitor federally licensed or permitted activities described in detail in OCS plans to make certain that such activities continue to conform to both federal and state requirements.

(b) If the council claims that a person is failing to comply substantially with an approved OCS plan subject to the requirements of the Code of Federal Regulations, Title 15, Part 930, Subpart E, §§930.70 - 930.85, and such failure allegedly involves the conduct of activities affecting any coastal use or resource in a manner that is not consistent with the CMP, the council shall transmit its claim to the Minerals Management Service. Such claim shall include: a description of the specific activity involved and the alleged lack of compliance with the OCS plan, and a request for appropriate remedial action. A copy of the claim shall be sent to the person.

(c) If the Director finds that the person is failing to comply substantially with the OCS plan, the person shall submit an amended or new OCS plan along with a consistency certification and supporting information to the Secretary of the Interior or designee and to the council. Following such a finding by the Director, the person shall comply with the originally approved OCS plan, or with interim orders issued jointly by the Director and the Minerals Management Service, pending approval of the amended or new OCS plan. The requirements of the Code of Federal Regulations, Title 15, Part 930, Subpart E, §930.82 (relating to Amended OCS Plans), §930.83 (relating to Review of Amended OCS Plans), and §930.84 (relating to Continuing State Agency Objections) shall apply to further council review of the consistency certification for the amended or new OCS plan.

(d) A person shall be found to have failed to comply substantially with an approved OCS plan if the council claims and the Director finds that one or more of the activities described in detail in the OCS plan which affects any coastal use or resource are being conducted or are having an effect on any coastal use or resource substantially different than originally described by the person in the OCS plan or accompanying information and, as a result, the activities are no longer being conducted in a manner consistent with the CMP. The Director may make a finding that a person has failed to comply substantially with an approved OCS plan only after providing a reasonable opportunity for the person and the Secretary of the Interior to review the council's objection and to submit comments for the Director's consideration.

§30.50 Notice to the Council of Applications for Federal Assistance

- (a) If the state single point of contact receives an application for federal assistance listed in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program), the state single point of contact shall provide a copy of such application to the council secretary. If an application for federal assistance is not submitted to the state single point of contact, the entity applying for federal assistance shall provide a copy of such application to the council secretary.
- (b) The council secretary shall distribute copies of the applications to all council members.
- (c) In addition to the application, the applicant shall provide the council a brief evaluation on the relationship of the proposed activity to the CMP goals and policies and an evaluation of any reasonably foreseeable coastal effects.

§30.51 Referral of Applications for Federal Assistance

- (a) The council shall review any application for federal assistance that any three members of the council refer to the council for review.
- (b) To refer an application for federal assistance to the council, three members must submit the request for referral to the council secretary in writing.
- (c) The council secretary shall add the application to the agenda of the earliest council meeting at which consideration of the action is reasonably practicable.
- (d) If three members do not refer an application to the council within 30 days of the date the council secretary receives a copy of the application, then the application is conclusively presumed to be consistent with the CMP.

§30.52 Council Hearing to Review Applications for Federal Assistance

- (a) Following referral of an application for federal assistance, the council shall review and either concur with or object to the application for federal assistance
- (b) The council secretary shall, by certified mail or hand delivery, provide notice of the hearing at which the council will review the application for federal assistance to the applicant, the federal agency, and the assistant administrator.
- (c) The council's objection shall include:
 - (1) a description of how the proposed activity is inconsistent with specific CMP goals and policies;
 - (2) a description of any available alternative measures that would permit the proposed activity to be conducted in a manner consistent with the CMP;
 - (3) in cases where the council objects on the grounds of insufficient information, a description of the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the CMP; and
 - (4) a statement informing the applicant of a right of appeal to the secretary of commerce on the grounds that the proposed activity is consistent with the objectives or purposes of the Coastal Zone Management Act or is necessary in the interest of national security as provided in the Code of Federal Regulations, Title 15, Part

930, Subpart H, §§930.120 et seq.

(d) If the council objects to an application for federal assistance, the federal agency shall not approve assistance for the activity, except as provided in the appeals process established in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §§930.120 et seq.

§30.53 Supplemental Coordination for Federal Assistance Activities Rule

(a) For federal assistance activities that were previously determined by the council to be consistent with the CMP, but which have not yet begun, the applicant entity shall further coordinate with the council if the proposed activity will affect any coastal use or resources in a manner substantially different than was reasonably foreseeable when the proposed activity was originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The applicant entity makes substantial changes in the proposed activity that are relevant to the CMP goals and policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(b) The council may notify the applicant entity, the federal agency, and the Director of proposed activities that the council believes should be subject to supplemental coordination. The council's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant CMP goals and policies, and may recommend modifications to the proposed activity (if any) that would allow the applicant entity to implement the proposed activity consistent with the CMP. Council notification under this subsection does not remove the requirement under subsection (a) of this section for applicant entities to notify the council when a proposed activity will affect any coastal use or resource in a manner substantially different than originally described.

§30.54 Remedial Action for Previously Reviewed Federal Assistance Activities

(a) Federal agencies and the council shall cooperate in their efforts to monitor federal assistance activities in order to make certain that such activities continue to conform to both federal and state requirements.

(b) The council shall notify the relevant federal agency representative for the area involved of any federal assistance activity which the council claims was:

(1) Previously determined to be consistent with the CMP goals and policies, but which the council later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent with the CMP goals and policies; or

(2) Previously determined not to be a project affecting any coastal use or resource, but which the council later maintains is having an effect on any coastal use or resource or is being conducted in a manner substantially different than originally described, and as a result, the project affects a coastal use or resource in a manner inconsistent with the CMP goals and policies.

(c) The council notification shall include:

(1) A description of the activity involved and the alleged lack of compliance with the CMP goals and policies;

(2) supporting information; and

(3) a request for appropriate remedial action. A copy of the request shall be sent to the applicant agency and the Director.

(d) If, after 30 days following a request for remedial action, the council still maintains that the applicant entity is failing to comply substantially with the CMP goals and policies, the council may file a written objection with the Director. If the Director finds that the applicant entity is conducting an activity that is substantially different from the approved activity, the council may reinitiate its review of the activity, or the applicant entity may conduct the activity as it was originally approved.

(e) An applicant entity shall be found to be conducting an activity substantially different from the approved activity if the council claims and the Director finds that the activity affects any coastal use or resource substantially different than originally determined by the council and, as a result, the activity is no longer being conducted in a manner consistent with the CMP goals and policies. The Director may make a finding that an applicant entity is conducting an activity substantially different from the approved activity only after providing a reasonable opportunity for the applicant entity and the federal agency to review the council's objection and to submit comments for the Director's consideration.