

**§ 930.5**

**15 CFR Ch. IX (1–12 Edition)**

conditions). The Federal agency shall immediately notify the State agency and applicant or applicant agency if the Federal agency will not approve the application as amended by the State agency’s conditions.

(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency’s conditional concurrence as an objection pursuant to the applicable subpart.

**§ 930.5 State enforcement action.**

The regulations in this part are not intended in any way to alter or limit other legal remedies, including judicial review or State enforcement, otherwise available. State agencies and Federal agencies should first use the various remedial action and mediation sections of this part to resolve their differences or to enforce State agency concurrences or objections.

**§ 930.6 State agency responsibility.**

(a) This section describes the responsibilities of the “State agency” described in § 930.11(o). A designated State agency is required to uniformly and comprehensively apply the enforceable policies of the State’s management program, efficiently coordinate all State coastal management requirements, and to provide a single point of contact for Federal agencies and the public to discuss consistency issues. Any appointment by the State agency of the State’s consistency responsibilities to a designee agency must be described in the State’s management program. In the absence of such description, all consistency determinations, consistency certifications and federal assistance proposals shall be sent to and reviewed by the State agency. A State may have two State agencies designated pursuant to § 306(d)(6) of the Act where the State has two geographically separate federally-approved management programs.

(b) The State agency is responsible for commenting on and concurring with or objecting to Federal agency consistency determinations and negative determinations (*see* subpart C of this part), consistency certifications for federal licenses, permits, and Outer Continental Shelf plans (*see* subparts

D, E and I of this part), and reviewing the consistency of federal assistance activities proposed by applicant agencies (*see* subpart F of this part). The State agency shall be responsible for securing necessary review and comment from other State, regional, or local government agencies, and, where applicable, the public. Thereafter, only the State agency is authorized to comment officially on or concur with or object to a federal consistency determination or negative determination, a consistency certification, or determine the consistency of a proposed federal assistance activity.

(c) If described in a State’s management program, the issuance or denial of relevant State permits can constitute the State agency’s consistency concurrence or objection if the State agency ensures that the State permitting agencies or the State agency review individual projects to ensure consistency with all applicable State management program policies and that applicable public participation requirements are met. The State agency shall monitor such permits issued by another State agency.

**Subpart B—General Definitions**

**§ 930.10 Index to definitions for terms defined in part 930.**

Term	Section
Act .....	930.11(a)
Any coastal use or resource .....	930.11(b)
Appellant .....	930.123
Applicant .....	930.52
Applicant agency .....	930.92
Assistant Administrator .....	930.11(c)
Associated facilities .....	930.11(d)
Coastal zone .....	930.11(e)
Consistent to the maximum extent practicable.	930.32
Consistent with the objectives or purposes of the Act.	930.121
Development project .....	930.31(b)
Director .....	930.11(f)
Effect on any coastal use or resource .....	930.11(g)
Enforceable policy .....	930.11(h)
Executive Office of the President .....	930.11(i)
Failure substantially to comply with an OCS plan.	930.85(c)
Federal agency .....	930.11(j)
Federal agency activity .....	930.31
Federal assistance .....	930.91
Federal license or permit .....	930.51
Federal license or permit activity described in detail.	930.71
Interstate coastal effect .....	930.151
Major amendment .....	930.51(c)
Management program .....	930.11(k)
Necessary in the interest of national security	930.122

Term	Section
OCS plan .....	930.73
OCRM .....	930.11(l)
Person .....	930.72
Secretary .....	930.11(m)
Section .....	930.11(n)
State agency .....	930.11(o)

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 826, Jan. 5, 2006]

**§ 930.11 Definitions.**

(a) *Act.* The term “Act” means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451–1464).

(b) *Any coastal use or resource.* The phrase “any coastal use or resource” means any land or water use or natural resource of the coastal zone. Land and water uses, or coastal uses, are defined in sections 304(10) and (18) of the act, respectively, and include, but are not limited to, public access, recreation, fishing, historic or cultural preservation, development, hazards management, marinas and floodplain management, scenic and aesthetic enjoyment, and resource creation or restoration projects. Natural resources include biological or physical resources that are found within a State’s coastal zone on a regular or cyclical basis. Biological and physical resources include, but are not limited to, air, tidal and nontidal wetlands, ocean waters, estuaries, rivers, streams, lakes, aquifers, submerged aquatic vegetation, land, plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, reptiles, and coastal resources of national significance. Coastal uses and resources also includes uses and resources appropriately described in a management program.

(c) *Assistant Administrator.* The term “Assistant Administrator” means the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA.

(d) *Associated facilities.* The term “associated facilities” means all proposed facilities 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 without which the federal action, as proposed, could not be conducted. The proponent of a federal action shall

consider whether the federal action and its associated facilities affect any coastal use or resource and, if so, whether these interrelated activities satisfy the requirements of the applicable subpart (subparts C, D, E, F or I).

(e) *Coastal Zone.* The term “coastal zone” has the same definition as provided in § 304(1) of the Act.

(f) *Director.* The term “Director” means the Director of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service, NOAA.

(g) *Effect on any coastal use or resource (coastal effect).* The term “effect on any coastal use or resource” means any reasonably foreseeable effect on any coastal use or resource resulting from a Federal agency activity or federal license or permit activity (including all types of activities subject to the federal consistency requirement under subparts C, D, E, F and I of this part.) Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions.

(h) *Enforceable policy.* “The term “enforceable policy” means State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone,” 16 USC 1453(6a), and which are incorporated in a management program as approved by OCRM either as part of program approval or as a program change under 15 CFR part 923, subpart H. An enforceable policy shall contain standards of sufficient specificity to guide public and private uses. Enforceable policies need not establish detailed criteria such that a proponent

## § 930.30

of an activity could determine the consistency of an activity without interaction with the State agency. State agencies may identify management measures which are based on enforceable policies, and, if implemented, would allow the activity to be conducted consistent with the enforceable policies of the program. A State agency, however, must base its objection on enforceable policies.

(i) *Executive Office of the President.* The term “Executive Office of the President” means the office, council, board, or other entity within the Executive Office of the President which shall participate with the Secretary in seeking to mediate serious disagreements which may arise between a Federal agency and a coastal State.

(j) *Federal agency.* The term “Federal agency” means any department, agency, board, commission, council, independent office or similar entity within the executive branch of the federal government, or any wholly owned federal government corporation.

(k) *Management program.* The term “management program” has the same definition as provided in section 304(12) of the Act, except that for the purposes of this part the term is limited to those management programs adopted by a coastal State in accordance with the provisions of section 306 of the Act, and approved by the Assistant Administrator.

(l) *OCRM.* The term “OCRM” means the Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (“NOAA”), U.S. Department of Commerce.

(m) *Secretary.* The term “Secretary” means the Secretary of Commerce and/or designee.

(n) *Section.* The term “Section” means a section of the Coastal Zone Management Act of 1972, as amended.

(o) *State agency.* The term “State agency” means the agency of the State government designated pursuant to section 306(d)(6) of the Act to receive and administer grants for an approved management program, or a single designee State agency appointed by the 306(d)(6) State agency.

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## 15 CFR Ch. IX (1–1–12 Edition)

### Subpart C—Consistency for Federal Agency Activities

#### § 930.30 Objectives.

The provisions of this subpart are intended to assure that all Federal agency activities including development projects affecting any coastal use or resource will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of approved management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for Federal agency activities having interstate coastal effects.

#### § 930.31 Federal agency activity.

(a) The term “Federal agency activity” means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities. The term “Federal agency activity” includes a range of activities where a Federal agency makes a proposal for action initiating an activity or series of activities when coastal effects are reasonably foreseeable, e.g., a Federal agency’s proposal to physically alter coastal resources, a plan that is used to direct future agency actions, a proposed rulemaking that alters uses of the coastal zone. “Federal agency activity” does not include the issuance of a federal license or permit to an applicant or person (see subparts D and E of this part) or the granting of federal assistance to an applicant agency (see subpart F of this part).

(b) The term federal “development project” means a Federal agency activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and includes the acquisition, use, or disposal of any coastal use or resource.

(c) The Federal agency activity category is a residual category for federal actions that are not covered under subparts D, E, or F of this part.

(d) A general permit proposed by a Federal agency is subject to this subpart if the general permit does not involve case-by-case or individual issuance of a license or permit by a Federal agency. When proposing a general permit, a Federal agency shall provide a consistency determination to