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(5) A list of affected parties, reasonably identified, in and adjacent to the area which merits special attention, and a description of how these parties would be involved in plan development; and

(6) Justification that the area which merits special attention is the preferred planning and management mechanism for meeting the objectives of the proposal and the Alaska Coastal Management Program.

(b) Upon receipt of a recommendation for an area which merits special attention outside of a district, the division of governmental coordination (DGC) of the office of management and budget shall place the recommendation on the Council's agenda for consideration at its next regularly scheduled meeting and give notice of a public hearing. Direct notice shall be given to the affected parties identified in (a)(5) of this section. The recommendation shall be made available for public inspection at the time of the notice of the public hearing. The Council shall make an initial finding detailing its reasons to either authorize additional planning for the area which merits special attention outside a district, or to reject the recommendation. The Council's determination to authorize additional planning for the area which merits special attention shall not be construed as Council approval of the merits of the final plan.

(c) If the Council decides to authorize further planning for an area which merits special attention, public notice shall be provided by conspicuous advertisement (e.g. display notice) in a news publication of general circulation in the affected area and one of general circulation in the State. DGC, with assistance from the sponsor, shall compile a mailing list of State and federal agencies, affected municipalities and villages, landowners, and other interested parties and shall notify them that planning for the area which merits special attention is going to occur.

(d) The sponsor of the nomination is responsible for developing a public review draft for the area which merits special attention outside of a district. It must include the following information:

(1) The basis or bases for designation under AS 46.40.210(1) or (o) of this section;

(2) A map showing the geographical location, surface area and, where appropriate, bathymetry of the area, as well as a legal and narrative description of the boundaries and a justification of the size of the area which merits special attention;

(3) A description of the area which includes dominant physical and biological features;

(4) An evaluation of the potential impacts of the designation on the social, cultural, environmental and economic features of the area and adjacent areas;

(5) The existing ownership, jurisdiction, and management status of the area, including existing uses and activities;

(6) The existing ownership, jurisdiction, and management status of adjacent areas, including existing uses and activities;

(7) Present and anticipated conflicts among uses and activities within or adjacent to the area, if any; and

(8) A management plan, consisting of the following:

(A) A description of the uses and activities which will be considered proper and the uses and activities which will be considered improper with respect to land and water within the area, and rationale for the designation of proper and improper uses;

(B) A statement of the specific, enforceable policies that will be applied in managing the area; and

(C) An identification of the means and authority that will be used to implement the proposed management plan.

(e) Opportunities shall be provided for consultation and review of the proposal by appropriate State, federal and local governmental agencies, affected landowners, and other persons who have been identified as interested parties by the under (c) of this section. No less than two public meetings must be held during plan development to inform the public and receive comments concerning the plan.

(f) PUBLIC REVIEW DRAFT. The sponsor of the area which merits special attention will distribute a public review draft to all parties identified under (c) of this section. The public review draft must contain all elements listed in (d) of this section as well as evidence that the public participation requirements of this section have been satisfied. At least a 60-day review period must be provided. A transmittal letter that states the comment deadline and the recipient of comments must be sent with the document. Public notice will be given of the availability of the public review draft for review and comment. Advertisements shall be placed in news publications of general

circulation in the area affected by the nomination and in the State. Notice must also be posted prominently in municipalities and villages affected by the proposal.

(g) After the close of the public review and comment period, the sponsor of the area which merits special attention shall revise the public review draft as necessary to incorporate comments received. Council review of the area which merits special attention is initiated upon submission of the revised draft to the Council by the sponsor.

(h) COUNCIL REVIEW DRAFT. DGC shall distribute the Council review draft along with its preliminary findings on the plan to the mailing list compiled under (c) of this section. Any person may submit comments on the area which merits special attention nomination to the Council within 60 days of their distribution. Comments which are not received within the 60-day review period will not be considered.

(i) DGC shall prepare a summary of and a response to comments received on the Council review draft and, if necessary, revise its recommendations. DGC shall distribute these materials to all parties who commented on the draft. All comments and additional material submitted shall be placed in a record file maintained by DGC.

(j) The Council will, after public notice, hold a public hearing on the designation of the area which merits special attention.

(k) The Council's decision to designate an area which merits special attention outside of a district shall be made by a two-thirds (2/3) affirmative vote of the members present and voting.

(l) The Council will approve the designation of an area which merits special attention if it is substantially consistent with the requirements of this section; does not arbitrarily or unreasonably restrict or exclude uses of state concern, except as allowed in AS 46.40.070(c); does not violate another State law; and does not cause substantial irreparable harm to another interest or value in the coastal area. The Council's decision to designate or not designate the area which merits special attention outside of a district will contain findings and conclusions based on these requirements.

(m) DGC must provide public notice of the Council's action designating an area which merits special attention outside of a district by distributing a copy of the Council's order to all persons who testified or submitted timely written statements during public review and to all persons who have requested a copy

of the order in writing. Notice of the Council's action also must be published, at a minimum, in news publications of general circulation within the affected region and in the State.

(n) The Council's designation of an area which merits special attention outside of a district takes effect for State law purposes as part of the Alaska Coastal Management Program upon the Lieutenant Governor's filing of the Council's order approving the designation.

(o) In addition to the categories contained in AS 46.40.210(1), areas which merit special attention outside districts may include the following:

(1) Areas important for subsistence hunting, fishing, food gathering, and foraging;

(2) Areas with special scientific values or opportunities, including those where ongoing research projects could be jeopardized by development or conflicting uses and activities; and

(3) Potential estuarine or marine sanctuaries.

(p) Management schemes for areas which merit special attention outside districts must preserve, protect, enhance, or restore the value or values for which the area was designated. (Eff. / / , Reg.).

Authority: AS 44.19.161
AS 46.40.040

Section 6 AAC 80.900 is amended by adding two new paragraphs to read:

(24) "area which merits special attention" has the same meaning as in AS 46.40.210(1);

(25) "village" has the same meaning as in AS 46.40.180(d). (Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71; 9/9/81, Reg. 79; am / / , Reg.).

Authority: AS 44.19.160
AS 46.40.010(c)(2)
AS 46.40.030
AS 46.40.040
AS 46.40.060
AS 46.40.070

ARTICLE 5.
GENERAL PROVISIONS

Section
900. Definitions

6 AAC 80.900. DEFINITIONS. Unless the context indicates otherwise, in this chapter

(1) "barrier islands and lagoons" means depositional coastal environments formed by deposits of sediment offshore or coastal remnants which form a barrier of low-lying islands and bars protecting a salt-water lagoon with free exchange of water to the sea;

(2) "coastal water" means all water bodies in the coastal area, including wetlands and the intertidal area;

(3) "council" means the Alaska Coastal Policy Council;

(4) "district" means a coastal resource district as defined in AS 46.40.210(2);

(5) "district program" means a district coastal management program;

(6) "estuary" means a semiclosed coastal body of water which has a free connection with the sea and within which seawater is measurably diluted with freshwater derived from land drainage;

(7) "exposed high-energy coasts" means open and unprotected sections of coastline with exposure to ocean generated wave impacts and usually characterized by coarse sand, gravel, boulder beaches, and well-mixed coastal water;

(8) "facilities related to commercial fishing and seafood processing" includes hatcheries and related facilities, seafood processing plants and support facilities, marine industrial and commercial facilities, and aquaculture facilities;

(9) "geophysical hazard areas" means those areas which present a threat to life or property from geophysical or geological hazards, including flooding, tsunami run-up, storm surge run-up, landslides, snowslides, faults, ice hazards, erosion, and littoral beach process;

(10) "mining and mineral processing" means the development of mineral resources extracted in tidal rivers, coastal water, and on continental shelves of the open sea, and found in surface, subsurface, and aqueous deposits;

(11) "offshore areas" means submerged lands and waters seaward of the coastline;

(12) "rocky islands and seacliffs" means islands of volcanic or tectonic origin with rocky shores and steep faces, offshore rocks, capes, and steep rocky seafronts;

(13) "tideflats" means mostly unvegetated areas that are alternately exposed and inundated by the falling and rising of the tide;

(14) "transportation and utility routes and facilities" include power transmission lines, mineral slurry lines, oil and gas pipelines, land and marine corridors, railways, highways, roadways, air terminals, water and sewage transfer, and facilities required to operate and maintain the route or facility;

(15) "upland" means drainages, aquifers, and land, the use of which would have a direct and significant impact on coastal water;

(16) "uses of state concern" has the same meaning as in AS 46.40.210(6);

(17) "water-dependent" means a use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body;

(18) "water-related" means a use or activity which is not directly dependent upon access to a water body, but which provides goods or services that are directly associated with water-dependence and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered;

(19) "wetlands" includes both freshwater and saltwater wetlands; "freshwater wetlands" means those environments characterized by rooted vegetation which is partially submerged either continuously or periodically by surface freshwater with less than .5 parts per thousand salt content and not exceeding three meters in depth; "saltwater wetlands" means those coastal

areas along sheltered shorelines characterized by halophytic hydrophytes and macroalgae extending from extreme low tide to an area above extreme high tide which is influenced by sea spray or tidally induced water table changes;

(20) "feasible and prudent" means consistent with sound engineering practice and not causing environmental, social, or economic problems that outweigh the public benefit to be derived from compliance with the standard which is modified by the term "feasible and prudent";

(21) "including" means including but not limited to;

(22) "major energy facility" includes marine service bases and storage depots, pipelines and rights-of-way, drilling rigs and platforms, petroleum or coal separation, treatment, or storage facilities, liquid natural gas plants and terminals, oil terminals and other port development for the transfer of energy products, petrochemical plants, refineries and associated facilities, hydroelectric projects, other electric generating plants, transmission lines, uranium enrichment or nuclear fuel processing facilities, and geothermal facilities; "major energy facility" means a development of more than local concern carried out in, or in close proximity to, the coastal area, which meets one or more of the following criteria:

(A) a facility required to support energy operations for exploration or production purposes;

(B) a facility used to produce, convert, process, or store energy resources or marketable products;

(C) a facility used to transfer, transport, import, or export energy resources or marketable products;

(D) a facility used for in-state energy use; or

(E) a facility used primarily for the manufacture, production, or assembly of equipment, machinery, products, or devices which are involved in any activity described in (A) – (D) of this paragraph;

(23) "significant amendment" means an amendment to an approved district program which

(A) results in a major revision, addition or deletion to the policies or implementation methods or authorities included in the district program under 6 AAC 85.090 and 6 AAC 85.100;

(B) alters the district boundaries, other than by technical adjustments;

(C) designates an area which merits special attention or alters an existing area which merits special attention designation; or

(D) restricts or excludes a use of state concern not previously restricted or excluded.

(Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71; am 9/9/81, Reg. 79)

Authority: AS 44.19.160 AS 46.40.060
AS 46.40.010(c)(2) AS 46.40.070
AS 46.40.040

CHAPTER 85.
GUIDELINES FOR DISTRICT COASTAL MANAGEMENT PROGRAMS

Article

ARTICLE 1.
PROGRAM ELEMENTS

Section

6 AAC 85.010. COVERAGE OF CHAPTER. (a) This chapter contains guidelines for the use of and application by districts in carrying out their responsibilities under the Alaska Coastal Management Act (AS 46.40 and AS 44.19.891 – 44.19.894).

(b) At a minimum, the council will review this chapter annually. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.020. NEEDS, OBJECTIVES, AND GOALS. Each district program must include a statement of the district's overall coastal management needs, objectives, or goals, or the district's comprehensive land and resource use plan. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.030. ORGANIZATION. (a) Each district program must include a description of the district program organization for coastal management. Budgetary and staff needs and, where appropriate, a schedule for necessary reorganization must be included.

(b) The district program must clearly state the name and address of the individual or organization within the district that is assigned to receive from the state notice of proposed activities and authorizations affecting the district, and that is responsible for responding to the state on consistency reviews. (Eff. 7/18/78, Reg. 67 am 3/2/84, Reg. 89)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.040. BOUNDARIES. (a) Each district must include a map of the boundaries of the coastal area within the district subject to the district program. Boundaries must enclose those lands which would reasonably be included in the coastal area and subject to the district program if they were not subject to the exclusive jurisdiction of the federal government.

(b) Before council approval of the district program, initial boundaries must be based on *Biophysical Boundaries of Alaska's Coastal Zone* (published by the Office of Coastal Management and the Alaska Department of Fish and Game, 1978, a copy of which is on file with the Office of the Lieutenant Governor, and which is available from the Office of Coastal Management) and must include the zone of direct interaction and the zone of direct influence.

(c) Final boundaries of the coastal area subject to the district program may diverge from the initial boundaries if the final boundaries

(1) extend inland and seaward to the extent necessary to manage uses and activities that have or are likely to have a direct and significant impact on marine coastal water; and

(2) include all transitional and intertidal areas, salt marshes, saltwater wetlands, islands, and beaches.

(d) If the criteria in (c) of this section are met, final boundaries of the coastal area subject to the district program may be based on political jurisdiction, cultural features, planning areas, watersheds, topographic features, uniform

setbacks, or the dependency of uses and activities on water access.

(e) The boundaries of the district must be sufficiently compatible with those of adjoining areas to allow consistent administration of the Alaska coastal management program. (Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71)

Authority: AS 44.19.161
AS 46.40.040

6 AAC 85.050. RESOURCE INVENTORY. Each district program must include a resource inventory which describes, in a manner sufficient for program development and implementation

(1) habitats listed in 6 AAC 80.130 that are found within or adjacent to the district;

(2) major cultural resources that are found within or adjacent to the district;

(3) major land and water uses and activities which are conducted within or adjacent to the district;

(4) major land and resource ownership and management responsibilities within or adjacent to the district; and

(5) major historic, prehistoric, and archaeological resources which are found within or adjacent to the district. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.060. RESOURCE ANALYSIS. Each district program must include a resource analysis which describes, in a manner sufficient for program development and implementation

(1) significant anticipated changes in the matters identified under 6 AAC 85.050;

(2) an evaluation of the environmental capability and sensitivity of resources and habitats, including cultural resources, for land and water uses and activities; and

(3) an assessment of the present and anticipated needs and demands for coastal habitats and resources. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.070. SUBJECT USES. Each district program must include a description of the land and water uses and activities which are subject to the district program. The uses and activities mentioned in 6 AAC 80 are, if applicable, subject to the district program. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.080. PROPER AND IMPROPER USES. Each district program must include a description of the uses and activities, including uses of state concern, that will be considered proper, and the uses and activities, including uses of state concern, that will be considered improper within the coastal area, including land and water use designations. This description must be based on the district's statement of overall needs, objectives, or goals, or the district's comprehensive land and resource use plan, under 6 AAC 85.020, and must be consistent with the standards contained in 6 AAC 80. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.090. POLICIES. (a) Each district program must include the policies that will be applied to land and water uses and activities subject to the district program, and the process which will be used to determine whether specific land and water uses and activities will be allowed. It shall be the general policy of the district to approve specific proposals for uses and activities within areas designated for those uses and activities under 6 AAC 85.080. Districts shall use existing means appropriate for the evaluation of specific proposals to the greatest extent feasible and prudent. Policies and procedures under this section must be consistent with the standards contained in 6 AAC 80 and must meet the following criteria:

(1) comprehensiveness, so as to apply to all uses, activities, and areas in need of management;

(2) specificity, so as to allow clear understanding of who will be affected by the district program, how they will be affected, and whether specific proposals for land and water uses and activities will be allowed; and

(3) enforceability, so as to insure implementation of and adherence to the district program.

(b) All policies or enforceable rules of the district program must be clearly identified and located in a single section of the program document. The identified policies or enforceable rules will provide the basis for all determinations of consistency with the approved district program. (Eff. 7/18/78, Reg. 67; am 3/2/84, Reg. 89)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

NOTE:
The Coastal Policy Council is considering an amendment to the regulations dealing with the scope of district coastal management programs. The proposed addition to 6 AAC 85 would require that material relating to areas outside coastal districts be placed in a separate and distinct section of the plan.

6 AAC 85.100. IMPLEMENTATION. Each district program must include a description of the methods and authority which will be used to implement the district program. Methods and authority must be adequate to insure program implementation, and any additional methods or authority which are required must be specified. Methods and authority include land and water use plans, municipal ordinances and resolutions, (including shoreline, zoning, and subdivision ordinances and building codes), state and federal statutes and regulations, capital improvement programs, the purchase, sale, lease, or exchange of coastal land and water resources, cooperative agreements, tax exemptions for nondevelopment purchase of development rights, memoranda of understanding, and coordinated project or permit review procedures. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.110. PUBLIC PARTICIPATION. Each district program must include evidence of effective and significant opportunities for public participation in program development under 6 AAC 85.130. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.030

ARTICLE 2.
GOVERNMENT PROCESS

Section
120. Submittals to council
130. Public involvement during program development
140. Coordination and review
145. Review of public hearing draft
150. Council review of district programs
170. Mediation
180. Effective date and local adoption

6 AAC 85.120. SUBMITTALS TO COUNCIL. (a) During program development, districts shall submit brief annual progress reports concerning program development to the council.

(b) Following adoption of the final program under 6 AAC 85.180(b), districts shall submit brief annual progress reports concerning program implementation to the council. The council will furnish copies of annual progress reports to any interested party upon request. An annual progress report must be submitted by December 31 of each year and must include

(1) a statement describing the district's progress in fulfilling any conditions stipulated at the time of the council's approval of the district program;

(2) a summary, on forms provided by the Office of Coastal Management, of significant district land and water use decisions and enforcement actions taken during the year;

(3) a description of routine program implementation during the year;

(4) additional details of the district program implementation, including the district's reponse to council recommendations made either at the time the district program was approved or as part of the council's continuing review after approval of the program; and

(5) identification of any problems encountered in implementing the district program and recommendations for solution of the problems.

(c) After conceptual approval as described in (d) of this section, a district program must be submitted to the council for approval as provided

in 6 AAC 85.150, and a significant amendment to a district program must be submitted to the council, through the Office of Coastal Management, for approval. The Office of Coastal Management will review proposed amendments to determine if council approval is required. The coastal resource district may make a recommendation on whether council approval of a proposed amendment is required when the amendment to the district program is submitted to the office. If the office determines that council approval is required, the procedures set out in 6 AAC 85.150 apply. The office's determination is subject to council review when requested by a council member or the coastal resource district. Amendments to the district program determined not to require council approval are matters of routine program implementation. Matters of routine program implementation will be considered incorporated into the district program without further council action. Timely notification of matters of routine program implementation will be made to the council and appropriate state and federal agencies by the Office of Coastal Management.

(d) Before submitting a district program or a significant amendment to a district program for approval, a district shall conceptually approve the district program or amendment by resolution of the district's governing body. However, a coastal resource service area shall conceptually approve the district program or amendment by resolution of the coastal resource service area board. (Eff. 7/18/78, Reg. 67; am 5/2/81, Reg. 78: am 9/9/81, Reg. 79: am 3/2/84, Reg. 89)

Authority: AS 44.19.160 AS 46.40.040
AS 44.19.162 AS 46.40.060
AS 46.40.010 AS 46.40.070
AS 46.40.030

6 AAC 85.130. PUBLIC INVOLVEMENT DURING PROGRAM DEVELOPMENT. (a) Districts shall provide publicly advertised opportunities for public involvement in the development of all program elements contained in 6 AAC 85.020 – 6 AAC 85.110.

(b) No less than two public meetings must be held within the district during program development to inform the public and receive comments concerning the program. A brief summary or report of the matters considered at the public meeting held under this subsection must be prepared by the district made available to the public, and retained for inclusion in the record file referred to in 6 AAC 85.150.

(c) Districts shall provide the public, in a timely manner and in understandable form, information explaining the district coastal management program, the requirements of public participation in program development, how and when the public may participate in program development, what information is available, and where that information may be obtained. (Eff. 7/18/78, Reg. 67: am 8/18/79, Reg. 71: am 3/2/84, Reg. 89)

Authority: AS 44.19.161
AS 46.40.040

6 AAC 85.140. COORDINATION AND REVIEW. District shall provide opportunities for coordination and review by federal, state, and local governmental agencies, including adjacent districts, and other persons with a significant interest in coastal resources or who are conducting or may conduct uses and activities that have or are likely to have a direct and significant impact on the district's coastal area. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.145. REVIEW OF PUBLIC HEARING DRAFT. (a) This section applies to district programs and significant amendments to district programs.

(b) A public hearing draft of the district program must be distributed to all parties identified as having a significant interest in the district program, including those parties described

in 6 AAC 85.140. The mailing list of these parties must be reviewed and approved by the Office of Coastal Management. The public hearing draft must include all elements to be included in the district program when it is conceptually approved. At least a 60-day review period must be provided. A transmittal letter that states the comment deadline and the recipient of comments must be sent with the document. One or more review meetings may be sponsored by the Office of Coastal Management, with the concurrence of the district.

(c) Public notice of the availability of the document must be given to any person who has requested it in writing, and through conspicuous advertisement in a newspaper of general circulation within the district. Notice must also be posted in villages and municipalities within the district. Comments received by the deadline must be considered by the district and, where appropriate, incorporated into the plan before conceptual approval.

(d) A public hearing on the district program must be held before conceptual approval is given and no sooner than 30 days after distribution and notice of the public hearing draft under (b) and (c) of this section. Notice specifying time and place of the hearing must be provided to all who were provided the public hearing draft, and also by conspicuous advertisement in a newspaper of general circulation within the district and by advertisement in a newspaper of general circulation within the state. Notice must be given at least 30 days before the hearing is held.

(e) At the public hearing, each person must be given the opportunity to present statements orally or in writing. Districts shall insure that translation into the appropriate native languages is provided. A written transcript or electronic recording of the public hearing must be provided to the council. Comments offered at the hearing must be considered by the district and, where appropriate, incorporated into the plan before conceptual approval.

(f) Districts must give conceptual approval to their district program before the program is submitted to the council. District programs must be adopted by resolution of the district's governing body except that coastal resource service area plans must be adopted by resolution of the board. (Eff. 3/2/84, Reg. 89)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.150. COUNCIL REVIEW OF DISTRICT PROGRAMS. (a) A district may prepare findings and conclusions on its program, based on AS 46.40.030, 46.40.060, 46.40.080, and the standards set out in this chapter.

(b) At least one copy of the district's conceptually approved program, including any changes made to the public hearing draft, and the district's findings and conclusions or a written statement indicating that the district has elected not to prepare findings and conclusions, must be forwarded to the Office of Coastal Management as soon as practicable after conceptual approval. The district shall also submit a recording or transcript of the public hearing held under 6 AAC 85.145(d), a list of names and addresses of those who testified, and copies of all materials on which it based its decision.

(c) Within 30 days after the district's submission to the Office of Coastal Management under (b) of this section, the office will prepare findings of fact and conclusions based on authorities cited in this section, to comprise its recommendation on the program. Any material on which the recommendation is based must be cited and placed in the district record file described in (f) of this section.

(d) Before the Office of Coastal Management will submit a program to the council review, the district must submit copies of its conceptually approved program to the office in sufficient number to allow distribution to the office's mailing list, the council, and persons who testified at the public hearing or presented written comments on the public hearing draft.

(e) The Office of Coastal Management will distribute the district program, its recommendations, and the district's recommendations, if any, to those identified in (d) of this section and to any other person who has requested this material in writing. This material will be distributed as soon as practicable after the 30-day period allowed in (c) of this section.

(f) A record file containing all material submitted by the district under this section, the Office of Coastal Management's recommendations under this section, and all material on which the recommendation was based must be maintained at the office and at a convenient location within the district.

(g) Within 45 days after the distribution of the Office of Coastal Management's recommendation, any person may submit comments on the recommendation. Comments which are not received within the 45-day period will not be considered.

(h) Within 25 days after the deadline for submitting comments to the council under (g) of this section, the Office of Coastal Management will submit its response to the comments and, if appropriate, revised findings and conclusions to the council and to all who responded to the original findings and conclusions. All comments and additional material submitted must be placed in the record files.

(i) Within a total of 45 days after the deadline in (g) of this section, the council will approve or disapprove the district program, in whole or in part. The council's decision will contain findings and conclusions based on this chapter, the standards contained in 6 AAC 80, AS 46.40.060, and 46.40.070. The council's findings and conclusions will be based on material contained in the record file. The council will, in its discretion, adopt the findings and conclusions of the Office of Coastal Management by reference.

(j) The council will serve its decision under this section on all persons who submitted timely comments on the staff recommendation under (g) of this section, to all persons who testified or submitted timely written statements at the public hearing held under 6 AAC 85.145(d), and to all persons who have requested a copy of the decision in writing. Notice of the council's action also must be published, at a minimum, in a newspaper of general circulation in the district. (Eff. 7/18/78, Reg. 67; am 1/22/81, Reg. 77; am 3/2/84, Reg. 89)

Authority: AS 44.19.160 AS 46.40.030
AS 44.19.161 AS 46.40.040
AS 46.40.010

Editor's Note: The provisions concerning mediation contained in 6 AAC 85.150 before March 2, 1984 are located at 6 AAC 85.170, effective March 2, 1984, Register 89.

6 AAC 85.170. MEDIATION. (a) If the council's decision under 6 AAC 85.150(i) disapproves, in whole or in part, the district program, the disapproved portion must be submitted to mediation as required by AS 46.40.060(b). Before the initial mediation session, the council will, in its discretion, call for one or more public hearings in the district concerned, for the purpose of discussing those portions of the program subject to mediation. Public hearings must be preceded by 30 days' notice. If public hearings are held, districts shall insure that, where reasonably requested, translation into the appropriate Native languages is provided. All public hearings must be electronically recorded. Oral or written testimony may be submitted, except that unduly repetitious testimony may be excluded. The oral testimony and written submissions constitute the hearing record, which must be transmitted to the mediator. Mediation sessions will be conducted as follows:

(1) The parties to the mediation will be the council and the district. The parties shall, within 10 days after the date of the council's decision under 6 AAC 85.150(i), agree upon the selection of a mediator. If the parties cannot agree, they shall immediately, in writing, ask the Federal Mediation and Conciliation Service to appoint a mediator. If that mediator is unacceptable to either party, that party shall request the Federal Mediation and Conciliation Service to submit to the parties the names of three qualified mediators. Upon receipt of these names, each party shall strike one name from the list and the remaining name will be the mediator. A mediator shall perform his or her duties in a manner consistent with the standards of conduct set out in the Code of Professional Conduct for Labor Mediators, referred to in and set out as an appendix to 29 C.F.R. 1.0.735-20.

(2) Mediation sessions must be held within the district. The mediator shall schedule the sessions, with due regard for the convenience of the parties, upon at least seven days' notice, except that the parties may, by mutual consent, waive the notice period. The parties shall mutually agree upon the place of the meeting.

(3) The mediator shall schedule the first mediation session to be held as soon as possible after he or she has been selected. At the initial session, the mediator shall establish reasonable rules of procedure. Mediation sessions must be conducted in a manner so that the parties will have the assurance and confidence that information disclosed to the mediator will remain confidential. The mediator shall determine the length and frequency of mediation sessions; however, if an accord is not reached within 60 days after the initial session, an impasse will be declared by the mediator. By mutual consent of the parties and the mediator, this deadline may be extended for a period not to exceed an additional 30 days.

(4) If the mediator determines that an impasse has been reached, he or she shall notify the parties in writing within 10 days after the determination is made.

(5) If the mediator determines that an accord has been reached, he or she shall direct the parties to set out in writing the terms of the agreement. This agreement, to be signed by the parties, signifies the final settlement of outstanding disputes, subject to ratification at a public meeting by the official bodies of each party. With the approval of the parties, mediation may be used to resolve any differences which may arise as the result of the public meetings. After ratification under (a)(5) of this section, the agreement may be set aside only for fraud, misconduct, or gross mistake.

(b) If the council and the district reach accord in mediation sessions held under (a) of this section, the council will, within 20 days after ratification by both parties, serve its modified decision, in the form of an order, on the district and all persons who were served with the council's decision under 6 AAC 85.150(i), and will place the modified decision in the record file. The modified decision will contain findings and conclusions, based on the record file and additional material presented during mediation necessary to demonstrate that the modified decision is consistent with this chapter, and the standards contained in 6 AAC 80, AS 46.40.060, or 46.40.070.

(c) If the council and the district do not reach an accord, the council will, within 20 days after a determination that an impasse has been reached, set the matter for an adjudicatory hearing under AS 46.40.060(c). Notice of the hearing must be served on the district and on all persons who were served with the council's decision under 6 AAC 85.150(i). Any person served with notice of the hearing under this subsection may intervene as a party to the hearing. (Eff. 3/2/84, Reg.89)

Authority: AS 44.19.160 AS 46.40.030
AS 46.19.167 AS 46.40.040
AS 46.40.010

6 AAC 85.180. EFFECTIVE DATE AND LOCAL ADOPTION. (a) A district program or significant amendment to a district program takes effect as part of the Alaska Coastal Management Program upon the lieutenant governor's filing of the council's decision approving the district program or significant amendment. A change or an amendment to the district program resulting from mediation under AS 46.40.060(b) and 6 AAC 85.170(a) and (b) or from adjudication under AS 46.40.060(c) and 6 AAC 85.170(c) takes effect upon the lieutenant governor's filing of the council's order either ratifying the results of the mediation or determining the adjudication. Filing will take place after local adoption as provided in (b) of this section.

(b) Within 90 days after the date a district program or significant amendment is approved by the council under 6 AAC 85.150, the district shall, by ordinance or resolution, whichever is required by other applicable provision of law, adopt the district program or amendment approved by the council. However, a coastal resource service area shall adopt the district program by resolution of the coastal resource service area board. In the same manner, a change in a district program resulting from mediation under AS 46.40.060(b) and 6 AAC 85.170(a) and (b) or from adjudication under AS 46.40-.060(c) and 6 AAC 85.170(c) must be adopted by the district following the council's order under 6 AAC 85.170 (b) or (c) ratifying the results of the mediation or determining the adjudication. (Eff. 3/2/84, Reg. 89)

Authority: AS 44.19.160 AS 46.40.040
AS 46.40.010 AS 46.40.060
AS 46.40.030 AS 46.40.070

ARTICLE 3.
GENERAL PROVISIONS

Section
900. Definitions

6 AAC 85.900. DEFINITIONS. Unless the context indicates otherwise, in this chapter

(1) "beaches" means the area affected by wave action directly from the sea;

(2) "marine coastal water" means water adjacent to shorelines which contains a measurable quantity of seawater, including sounds, bays, lagoons, bayous, ponds and estuaries, and the living resources which are dependent on these bodies of water;

(3) "council" means the Alaska Coastal Policy Council;

(4) "district" means a coastal resource district as defined in AS 46.40.210(2);

(5) "district program" means a district coastal management program;

(6) "islands" means bodies of land surrounded by water on all sides; interior portions of major islands may be excluded from the coastal area if uses of these islands do not cause direct and significant impacts on coastal waters;

(7) "saltwater wetlands" has the same meaning as that contained in 6 AAC 80.900(19);

(8) "transitional and intertidal areas" means areas subject to periodic or occasional inundation by tides, including coastal floodplains, storm surge areas, tsunami and hurricane zones, and washover channels;

(9) "feasible and prudent" has the same meaning as in 6 AAC 80.900;

(10) "including" has the same meaning as in 6 AAC 80.900; and

(11) "significant amendment" means an amendment to an approved district program which

(A) results in a major revision, addition or deletion to the policies or implementation methods or authorities included in the district program under 6 AAC 85.090 and 6 AAC 85.100;

(B) alters the district boundaries, other than by technical adjustments;

(C) designates an area which merits special attention or alters an existing area which merits special attention designation; or

(D) restricts or excludes a use of state concern not previously restricted or excluded.
(Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71; am 9/9/81, Reg. 79; am 3/2/84, Reg. 89)

Authority: AS 44.19.160 AS 46.40.040
AS 44.19.161 AS 46.40.060
AS 46.40.010(c)(2) AS 46.40.070

PART 930—FEDERAL CONSISTENCY WITH APPROVED COASTAL MANAGEMENT PROGRAMS

Subpart A—Objectives

Subpart B—General Definitions

Part 930

Subpart C—Consistency for Federal Activities

Subpart D—Consistency for Activities Requiring a Federal License or Permit

Title 15—Commerce and Foreign Trade

Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

Subpart F—Consistency for Federal Assistance to State and Local Governments

Subpart G—Secretarial Mediation

Subpart H—Secretarial Review Related to the Objectives or Purposes of the Act and National Security Interests

Subpart I—Assistant Administrator Reporting and Continuing Review of Federal Actions Subject to the Federal Consistency Requirements

AUTHORITY: Secs. 307, 316 and 317, Coastal Zone Management Act of 1972, Pub. L. 92-583, 86 Stat. 1280 (16 U.S.C. 1451 et seq.), as amended by Pub. L. 94-370, 90 Stat. 1013, unless otherwise noted.

SOURCE: 44 FR 37143, June 25, 1979, unless otherwise noted.

Subpart A—Objectives

§ 930.1 Overall objectives.

The objectives of these regulations are: (a) To describe the obligations of all agencies, individuals and other parties who are required to comply with the Federal consistency provisions of the Coastal Zone Management Act;

(b) To implement the Federal consistency provisions in a manner which strikes a balance between the need to ensure consistency for Federal actions affecting the coastal zone with approved coastal management and the need to promote Federal programs;

(c) To provide flexible procedures which foster intergovernmental cooperation and minimize duplicative effort and unnecessary delay, while making certain that the objectives of the Federal consistency provisions of the Act are satisfied;

(d) To interpret significant terms in the Federal consistency provisions so that they can be uniformly understood and adhered to by all agencies, individuals and other affected parties;

(e) To provide procedures to make certain that all Federal agency and State agency consistency decisions are directly related to the objectives, policies, standards and other criteria set forth in, or referenced as part of, approved coastal management programs;

(f) To provide procedures which the Secretary, in cooperation with the Executive Office of the President, may use to mediate serious disagreements which arise between Federal and State agencies during the administration of approved coastal management programs;

(g) To provide procedures which permit the Secretary to review Federal license or permit activities, or Federal assistance activities, to determine whether they are consistent with the objectives or purposes of the Act, or are necessary in the interest of national security;

(h) To provide procedures which permit interested parties to notify the Assistant Administrator for Coastal Zone Management of Federal actions believed to be inconsistent with approved coastal management programs, or believed to have been incorrectly determined to be inconsistent with an approved management program; and

(i) To provide procedures for the reporting of any Federal actions found by the Assistant Administrator for Coastal Zone Management to be inconsistent with an approved coastal zone management program, and for the performance review of State implementation of the Federal consistency provisions.

Subpart B—General Definitions

§ 930.10 Index to definitions.

The following list includes all terms defined in Part 930 of this title keyed to the section or paragraph in which they are defined.

Term	Section
Act	930.11
Appellant	930.123
Applicant	930.52
Applicant agency	930.92
Assistant Administrator	930.16
Associated facilities	930.21
Coastal Zone	930.29
Consistent to the maximum extent practicable	930.32
Consistent with the objectives or purposes of the Act	930.121
Development project	930.31(b)
Executive Office of the President	930.14
Failure substantially to comply with an OCS plan	930.86(d)
Federal activity	930.31
Federal agency	930.17
Federal assistance	930.91
Federal license or permit	930.51
Federal license or permit activity described in detail	930.71
Management program	930.19
Necessary in the interest of national security	930.122
OCS plan	930.73
OCZM	930.15
OMB A-95 process	930.93
Person	930.72
Secretary	930.13
Section	930.12
State agency	930.18

§ 930.11 Act.

The term "Act" means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.).

§ 930.12 Section.

The term "Section" means a section of the Coastal Zone Management Act of 1972, as amended.

§ 930.13 Secretary.

The term "Secretary" means the Secretary of the U.S. Department of Commerce.

§ 930.14 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.

§ 930.15 OCZM.

The term "OCZM" means the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

§ 930.16 Assistant Administrator.

The term "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

§ 930.17 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.

§ 930.18 State agency.

(a) The term "State agency" means the agency of the State government designated pursuant to section 306(c)(5) of the Act to receive and administer grants for an approved coastal management program, or a single designee State agency appointed by the 306(c)(5) State agency. Any appointment by the 306(c)(5) State agency of 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 306(c)(5) State agency.

(b) The State agency is responsible for commenting on Federal agency consistency determinations (see Subpart C of this part), concurring with or objecting to consistency certifications for Federal licenses, permits, and Outer Continental Shelf plans (see Subparts D and E of this part), and reviewing the consistency of Federal assistance activities proposed by State or local government 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. Thereafter, only the State agency is authorized to comment officially on a Federal consistency determination, concur with or object to a consistency certification, or determine the consistency of a proposed Federal assistance activity.

§ 930.19 Management program.

The term "management program" has the same definition as provided in section 304(11) 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.

§ 930.20 Coastal zone.

The term "coastal zone" has the same definition as provided in section 304(1) of the Act.

§ 930.21 Associated facilities.

The term "associated facilities" describes 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.

All further requirements in this part related to the review of and consistency for Federal activities including development projects (see Subpart C of this part), Federal license and permit activities (see Subparts D and E of this part) and Federal assistance activities (see Subpart F of this part) also apply to associated facilities related to those Federal actions. Therefore, the proponent of a Federal action must consider whether the Federal action and its associated facilities affect the coastal zone and, if so, whether these interrelated activities satisfy the relevant consistency requirement of the Act.

Subpart C—Consistency for Federal Activities

§ 930.30 Objectives.

The provisions of this subpart are provided to assure that all federally conducted or supported activities including development projects directly affecting the coastal zone are undertaken in a manner consistent to the maximum extent practicable with approved State coastal management programs.

§ 930.31 Federal activity.

(a) The term "Federal activity" means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities.

(b) A Federal development project is 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.

(c) The term "Federal 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).

§ 930.32 Consistent to the maximum extent practicable.

(a) The term "consistent to the maximum extent practicable" describes the requirement for Federal activities including development projects directly affecting the coastal zone of States with approved management programs to be fully consistent with such programs unless compliance is prohibited based upon the requirements of existing law applicable to the Federal agency's operations. If a Federal agency asserts that compliance with the management program is prohibited, it must clearly describe to the State agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to comply with the provisions of the management program.

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The duty the Act imposes upon Federal agencies is not set aside by virtue of section 307(e). The Act was intended to cause substantive changes in Federal agency decisionmaking within the context of the discretionary powers residing within such agencies. Accordingly, when read together, sections 307(c) (1) and (2) and 307(e) require Federal agencies, whenever legally permissible, to consider State-management programs as supplemental requirements to be adhered to in addition to existing agency mandates.

(b) A Federal agency may deviate from full consistency with an approved management program when such deviation is justified because of some unforeseen circumstances arising after the approval of the management program which present the Federal agency with a substantial obstacle that prevents complete adherence to the approved program.

§ 930.33 Identifying Federal activities directly affecting the coastal zone.

(a) Federal agencies shall determine which of their activities directly affect the coastal zone of States with approved management programs.

(b) Federal agencies shall consider all development projects within the coastal zone to be activities directly affecting the coastal zone. All other types of activities within the coastal zone are subject to Federal agency review to determine whether they directly affect the coastal zone.

(c) Federal activities outside of the coastal zone (e.g., on excluded Federal lands, on the Outer Continental Shelf, or landward of the coastal zone) are subject to Federal agency review to determine whether they directly affect the coastal zone.

§ 930.34 Federal agency consistency determinations.

(a) Federal agencies shall provide State agencies with consistency determinations for all Federal activities directly affecting the coastal zone. The Federal agency may provide the State agency with this information in any manner it chooses so long as the requirements of this subpart are satisfied.

(b) Federal agencies shall provide State agencies with a consistency determination at the earliest practicable time in the planning or reassessment of the activity. A consistency determination should be prepared following development of sufficient information to determine reasonably the consistency of the activity with the State's management program, but before the Federal agency reaches a significant point of decisionmaking in its review process. The consistency determination shall be provided to State agencies at least 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to an alternative notification schedule.

§ 930.35 Federal and State agency coordination.

(a) State agencies should list in their management programs Federal activities which, in the opinion of the State agency, are likely to directly affect the coastal zone and require a Federal agency consistency determination. Listed Federal activities must be described in terms of the specific type of activity involved (e.g., Federal reclamation projects). In the event the State agency chooses to describe Federal activities outside of the coastal zone but likely to directly affect the coastal zone, it must also describe the geographic location of such activities (e.g., reclamation projects in coastal floodplains).

(b) State agencies should monitor unlisted Federal activities (e.g., by use of intergovernmental review process established pursuant to E.O. 12372, review, review of National Environmental Policy Act (NEPA) environmental impact statements, etc.) and should notify Federal agencies of unlisted Federal activities which Federal agencies have not subjected to a consistency review but which, in the opinion of the State agency, directly affect the coastal zone and require a Federal agency consistency determination. State agencies must notify Federal agencies within 45 days from receipt of notice of the unlisted Federal activity, otherwise the State agency waives its right to request a consistency de-

termination. The waiver does not apply in cases where the State agency does not receive notice of the Federal activity (e.g., for those Federal activities which are not processed through Intergovernmental Review Process established pursuant to E.O. 12372, NEPA review or a similar procedure which permits State agency monitoring).

(c) The recommended listing and monitoring procedures described in paragraphs (a) and (b) of this section are neither a substitute for nor eliminate Federal agency responsibility under §§ 930.33(b) and 930.34 to provide State agencies with consistency determinations for all development projects in the coastal zone and for all other Federal activities which the Federal agency finds directly affect the coastal zone.

(d) If a Federal agency decides that a consistency determination is not required for a Federal activity (1) identified by a State agency on its list or through case-by-case monitoring, (2) which is the same as or similar to activities for which consistency determinations have been prepared in the past, or (3) for which the Federal agency undertook a thorough consistency assessment and developed initial findings on the effects of the activity on the coastal zone, the Federal agency shall provide the State agency with a notification, at the earliest practicable time in the planning of the activity, briefly setting forth the reasons for its negative determination. A negative determination shall be provided to the State agency at least 90 days before final approval of the activity, unless both the Federal agency and the State agency agree to an alternative notification schedule.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29136, June 24, 1983]

§ 930.36 Availability of mediation for negative determination disputes.

In the event of a serious disagreement between a Federal agency and a State agency regarding a determination related to whether a proposed activity directly affects the coastal zone, either party may seek the Secretarial mediation services provided for in Subpart G.

§ 930.37 Consistency determinations for proposed activities.

(a) Federal agencies shall review their proposed Federal activities which directly affect the coastal zone in order to develop consistency determinations which indicate whether such activities will be undertaken in a manner consistent to the maximum extent practicable with approved State management programs. Federal agencies are encouraged to consult with State agencies during their efforts to assess whether such activities will be consistent to the maximum extent practicable with such programs.

(b) In cases where Federal agencies will be performing repeated activity other than a development project (e.g., ongoing maintenance, waste disposal, etc.) which cumulatively has a direct effect upon the coastal zone, the agency may develop a general consistency determination thereby avoiding the necessity of issuing separate consistency determinations for each incremental action controlled by the major activity. A general consistency determination may only be used in situations where the incremental actions are repetitive or periodic, substantially similar in nature, and do not directly affect the coastal zone when performed separately. If a Federal agency issues a general consistency determination, it must thereafter periodically consult with the State agency to discuss the manner in which the incremental actions are being undertaken.

(c) In cases where the Federal agency has sufficient information to determine the consistency of a proposed development project from planning to completion, only one consistency determination will be required. However, in cases where major Feder-

al decisions related to a proposed development project will be made in phases based upon developing information, with each subsequent phase subject to Federal agency discretion to implement alternative decisions based upon such information (e.g., planning, siting, and design decisions), a consistency determination will be required for each major decision. In cases of phased decisionmaking, Federal agencies shall ensure that the development project continues to be consistent to the maximum extent practicable with the State's management program.

§ 930.38 Consistency determinations for activities initiated prior to management program approval.

(a) A consistency determination will be required for ongoing Federal activities other than development projects (e.g., waste disposal practices) initiated prior to management program approval, which are governed by statutory authority under which the Federal agency retains discretion to reassess and modify the activity. In these cases the consistency determination must be made by the Federal agency at the earliest practicable time following management program approval, and the State agency must be provided with a consistency determination no later than 120 days after management program approval for ongoing activities which the State agency lists or identifies through monitoring as subject to consistency with the management program.

(b) A consistency determination shall be required for major, phased Federal development project decisions described in § 930.37(c) which are made following management program approval and are related to development projects initiated prior to program approval. In making these new decisions, Federal agencies shall consider coastal zone effects not fully evaluated at the outset of the project. This provision shall not apply to phased Federal decisions which were specifically described, considered and approved prior to management program approval (e.g., in a final environmental impact statement issued pursuant to the National Environmental Policy Act).

§ 930.39 Content of a consistency determination.

(a) The consistency determination shall include a brief statement indicating whether or not the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the management program. The statement must be based upon an evaluation of the relevant provisions of the management program. The consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal zone effects, 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 on the coastal zone.

(b) Federal agencies shall be guided by the following in making their consistency determinations. The activity (e.g., project siting and constuction), its direct effects (e.g., air, water, waste discharges, etc.), and associated facilities (e.g., proposed siting and construction of access road, connecting pipeline, support buildings, etc.) and the direct effects of the associated facilities (e.g., erosion, wetlands, beach access impacts, etc.) must all be consistent to the maximum extent practicable with the management program. Although nonassociated facilities (e.g., recreational housing which is induced by but not necessarily related to a Federal harbor dredging project—see § 930.21) must be included within the consistency determination's description of the direct effects of the activity, Federal agencies are not responsible for evaluating the consistency of such facilities.

(c) In making their consistency determinations, Federal agencies shall give appropriate weight to the various types of provisions within the management program. Federal agencies must ensure that their activities are consistent to the maximum extent practicable with the enforceable, mandatory policies of the management program. However, Federal agencies need only give adequate consideration to man-

agement program provisions which are in the nature of recommendations. Finally, Federal agencies do not have to evaluate coastal zone effects for which the management program does not contain mandatory or recommended policies because, in the absence of such provisions, there is no basis for making a consistency determination with respect to such effects.

(d) When Federal agency standards are more restrictive than standards or requirements contained in the State's management program, the Federal agency may continue to apply its stricter standards (e.g., restrict project development or design alternatives notwithstanding permissive management program policies). In such cases the Federal agency should inform the State agency in the consistency determination of the statutory, regulatory or other basis for the application of the stricter standards.

§ 930.40 Multiple Federal agency participation.

Whenever more than one Federal agency is involved in conducting or supporting a Federal activity or its associated facilities directly affecting the coastal zone, or is involved in a group of Federal activities related to each other because of their geographic proximity, consideration should be given to the preparation of one consistency determination for all the Federal activities involved. In such cases, Federal agencies should consider joint preparation or lead agency development of the consistency determination. In either case, the consistency determination (a) must be transmitted to the State agency at least 90 days before final decisions are taken by any of the participating agencies, (b) must indicate whether or not each of the proposed activities is consistent to the maximum extent practicable with the management program, and (c) must include information on each proposed activity sufficient to support the consistency determination.

§ 930.41 State agency response.

(a) A State agency shall inform the Federal agency of its agreement or disagreement with the Federal agency's consistency determination at the earliest practicable time. If a final response has not been developed and issued within 45 days from receipt of the Federal agency notification, the State agency should at that time inform the Federal agency of the status of the matter and the basis for further delay. The Federal agency may presume State agency agreement if the State agency fails to provide a response within 45 days from receipt of the Federal agency notification.

(b) State agency agreement shall not be presumed in cases where the State agency, with the 45 day period, requests an extension of time to review the matter. Federal agencies shall approve one request for an extension period of 15 days or less. In considering whether a longer or additional extension period is appropriate, the Federal agency should consider the magnitude and complexity of the information contained in the consistency determination.

(c) Final Federal agency action may not be taken sooner than 90 days from the issuance of the consistency determination to the State agency unless both the Federal agency and the State agency agree to an alternative period (see § 930.34(b)).

§ 930.42 State agency disagreement.

(a) In the event the State agency disagrees with the Federal agency's consistency determination, the State agency shall accompany its response to the Federal agency with its reasons for the disagreement and supporting information. The State agency response must describe (1) how the proposed activity will be inconsistent with specific elements of the management program, and (2) alternative measures (if they exist) which, if adopted by the Federal agency, would allow the activity to proceed in a manner consistent to the maximum extent practicable with the management program.

(b) If the State agency's disagreement is based upon a finding that the Federal agency has failed to supply sufficient information (see § 930.39(a)), the State agency's response must describe the nature of the information requested and the necessity of having such information to de-

termine the consistency of the Federal activity with the management program.

(c) State agencies shall send to the Assistant Administrator a copy of responses which describe disagreements with Federal agency consistency determinations.

§ 930.43 Availability of mediation for disputes concerning proposed activities.

(a) In the event of a serious disagreement between a Federal agency and a State agency regarding the consistency of a proposed Federal activity directly affecting the coastal zone, either party may request the Secretarial mediation services provided for in Subpart G.

§ 930.44 Availability of mediation for previously reviewed activities.

(a) 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 State's management program.

(b) The State agency shall request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a State agency's objection to a Federal activity which was: (1) Previously determined to be consistent to the maximum extent practicable with the State's management program, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, is no longer consistent to the maximum extent practicable with the State's management program, or (2) previously determined not to be a Federal activity directly affecting the coastal zone, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, the activity directly affects the coastal zone and is not consistent to the maximum extent practicable with the State's management program. The State agency's request must include supporting information and a proposal for recommended remedial action.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists, either party may request the Secretarial mediation services provided for in Subpart G.

Subpart D—Consistency for Activities Requiring a Federal License or Permit

§ 930.50 Objectives.

The provisions of this subpart are provided to assure that Federally licensed or permitted activities affecting the coastal zone are conducted in a manner consistent with approved management programs.

§ 930.51 Federal license or permit.

(a) The term "Federal license or permit" means any authorization, certification, approval, or other form of permission which any Federal agency is empowered to issue to an applicant.

(b) The term also includes the following types of renewals and major amendments which affect the coastal zone:

(1) Renewals and major amendments of Federal license and permit activities not previously reviewed by the State agency;

(2) Renewals and major amendments of Federal license and permit activities previously reviewed by the State agency which are filed after and are subject to management program amendments not in existence at the time of original State agency review; and

(3) Renewals and major amendments of Federal license and permit activities previously reviewed by the State agency which will cause coastal zone effects substantially different than those originally reviewed by the State agency.

§ 930.52 Applicant.

The term "applicant" means 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, who, following

management program approval, files an application for a Federal license or permit to conduct an activity affecting the coastal zone. The term "applicant" does not include Federal agencies applying for Federal licenses or permits. Federal agency "activities" requiring Federal licenses or permits are subject to the consistency requirements of Subpart C of this part.

§ 930.53 Management program license and permit listing.

(a) During management program development, Federal agencies should assist State agencies in identifying Federal license and permit activities which reasonably can be expected to affect the coastal zone.

(b) State agencies shall develop a list of Federal license and permit activities which are likely to affect the coastal zone and which the State agency wishes to review for consistency with the management program. The list shall be included as part of the management program, and the Federal license and permit activities shall be described in terms of the specific licenses or permits involved (e.g., Corps of Engineers 404 permits, Coast Guard bridge permits, etc.). In the event the State agency chooses to review Federal licenses and permits for activities outside of the coastal zone but likely to affect the coastal zone, it must generally describe the geographic location of such activities.

(c) If a State agency wishes to avoid repeated review of minor Federally permitted activities which, while individually inconsequential, cumulatively cause effects on the coastal zone, the State agency, after developing conditions allowing concurrence for such activities, may issue a general public notice (see § 930.61) and general concurrence allowing similar minor work in the same geographic area to proceed without prior State agency review. In such cases, the State agency must set forth in the management program license and permit list the minor Federal license and permit activities and the relevent conditions which are covered by the general concurrence. Minor Federal license or permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification requirement of this subpart. Except in cases where the State agency indicates otherwise, copies of Federal license or permit applications for activities subject to a general concurrence must be sent by the applicant to the State agency to allow the State agency to monitor adherence to the conditions required by such concurrence. Confidential and proprietary material within such applications may be deleted.

(d) The license and permit list may be amended by the State agency following consultation with the affected Federal agency and approval of additions or deletions by the Assistant Administrator. The State agency shall provide copies of the list and any amendments to Federal agencies and shall make the information available to the public.

(e) No Federal license or permit described on an approved list shall be issued by a Federal agency until the requirements of this subpart have been satisfied. Federal agencies shall inform applicants for listed licenses and permits of the requirements of this subpart.

§ 930.54 Unlisted Federal license and permit activities.

(a) With the assistance of Federal agencies, State agencies should monitor unlisted Federal license and permit activities (e.g., by use of intergovernmental review process established pursuant to E.O. 12372, review of NEPA environmental impact statements, etc.) and shall immediately notify Federal agencies and applicants of unlisted activities affecting the coastal zone which require State agency review. State agencies must inform the Federal agency and applicant within 30 days from notice of the license or permit application, otherwise the State agency waives its right to review the unlisted activity. The waiver does not apply in cases where the State agency does not receive notice of the Federal license or permit activity.

(b) The State agency must also notify the Assistant Administrator of unlisted Federal license or permit activities which the State agency be-

termine the consistency of the Federal activity with the management program.

(c) State agencies shall send to the Assistant Administrator a copy of responses which describe disagreements with Federal agency consistency determinations.

§ 930.43 Availability of mediation for disputes concerning proposed activities.

(a) In the event of a serious disagreement between a Federal agency and a State agency regarding the consistency of a proposed Federal activity directly affecting the coastal zone, either party may request the Secretarial mediation services provided for in Subpart G.

§ 930.44 Availability of mediation for previously reviewed activities.

(a) 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 State's management program.

(b) The State agency shall request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a State agency's objection to a Federal activity which was: (1) Previously determined to be consistent to the maximum extent practicable with the State's management program, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, is no longer consistent to the maximum extent practicable with the State's management program, or (2) previously determined not to be a Federal activity directly affecting the coastal zone, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, the activity directly affects the coastal zone and is not consistent to the maximum extent practicable with the State's management program. The State agency's request must include supporting information and a proposal for recommended remedial action.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists, either party may request the Secretarial mediation services provided for in Subpart G.

Subpart D—Consistency for Activities Requiring a Federal License or Permit

§ 930.50 Objectives.

The provisions of this subpart are provided to assure that Federally licensed or permitted activities affecting the coastal zone are conducted in a manner consistent with approved management programs.

§ 930.51 Federal license or permit.

(a) The term "Federal license or permit" means any authorization, certification, approval, or other form of permission which any Federal agency is empowered to issue to an applicant.

(b) The term also includes the following types of renewals and major amendments which affect the coastal zone:

(1) Renewals and major amendments of Federal license and permit activities not previously reviewed by the State agency;

(2) Renewals and major amendments of Federal license and permit activities previously reviewed by the State agency which are filed after and are subject to management program amendments not in existence at the time of original State agency review; and

(3) Renewals and major amendments of Federal license and permit activities previously reviewed by the State agency which will cause coastal zone effects substantially different than those originally reviewed by the State agency.

§ 930.52 Applicant.

The term "applicant" means 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, who, following

lieves should be subject to State agency review. Following State agency notification to the Federal agency, applicant and the Assistant Administrator, the Federal agency may not issue the license or permit until the requirements of this subpart have been satisfied, unless the Assistant Administrator disapproves the State agency decision to review the activity.

(c) The Federal agency and the applicant have 15 days from receipt of the State agency notice to provide comments to the Assistant Administrator regarding the State agency's decision to review the activity. The sole basis for the Assistant Administrator's approval or disapproval of the State agency's decision will relate to whether the proposed activity can be reasonably expected to affect the coastal zone of the State. The Assistant Administrator shall issue a decision, with supporting comments, to the State agency, Federal agency and applicant within 30 days from receipt of the State agency notice.

(d) In the event of disapproval by the Assistant Administrator, the Federal agency may approve the license or permit application and the applicant need not comply with the requirements of this subpart. If the Assistant Administrator approves the State agency's decision, the Federal agency and applicant must comply with the consistency certification procedures of this subpart.

(e) Following an approval by the Assistant Administrator, the applicant shall amend the Federal application by including a consistency certification and shall provide the State agency with a copy of the certification along with necessary supporting data and information (see §§ 930.63 and 930.64). For the purposes of this section, concurrence by the State agency shall be conclusively presumed in the absence of a State agency objection within six months from the original Federal agency notice to the State agency (see paragraph (a) of this section) or within three months from receipt of the applicant's consistency certification and accompanying information, whichever period terminates last.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29136, June 24, 1983]

§ 930.55 Availability of mediation for license or permit disputes.

In the event of a serious disagreement between a Federal and State agency regarding whether a listed or unlisted Federal license or permit activity is subject to consistency review, either party may request the Secretarial mediation services provided for in Subpart G; notice shall be provided to the applicant. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding approval of a license or permit application for an activity on an approved management program list (see § 930.53) or individually approved by the Assistant Administrator (see § 930.54) pending satisfaction of the requirements of this subpart. Similarly, the existence of a serious disagreement will not prevent the Federal agency from approving a license or permit activity which has not received Assistant Administrator approval.

§ 930.56 State agency guidance and assistance to applicants; information requirements.

(a) As a preliminary matter, any applicant for a Federal license or permit selected for review by a State agency should obtain the views and assistance of that agency regarding the means for ensuring that the proposed activity will be conducted in a manner consistent with the State's management program. As part of its assistance efforts, the State agency shall make available for public inspection copies of the management program document.

(b) The management program as originally approved or amended may describe requirements regarding the data and information necessary to assess the consistency of Federal license and permit activities. Required data and information may not include confidential and proprietary material.

In the case of approved amendments, State agencies shall send copies to relevant Federal agencies who shall, in turn, provide the information requirements to applicants. If a State does not choose to develop or amend its management program to include information requirements, the applicant must, at a minimum, supply the State agency with the information required by § 930.58.

§ 930.57 Consistency certifications.

(a) When satisfied that the proposed activity meets the Federal Consistency requirements of this subpart, all applicants for Federal licenses or permits subject to State agency review shall provide in the application to the Federal licensing or permitting agency a certification that the proposed activity complies with and will be conducted in a manner consistent with the State's approved management program. At the same time, the applicant shall furnish to the State agency a copy of the certification.

(b) The applicant's consistency certification shall be in the following form: "The proposed activity complies with (name of State) approved coastal management program and will be conducted in a manner consistent with such program."

§ 930.58 Necessary data and information.

(a) The applicant shall furnish the State agency with necessary data and information along with the consistency certification. Such information and data shall include the following:

(1) A detailed description of the proposed activity and its associated facilities which is adequate to permit an assessment of their probable coastal zone effects. Maps, diagrams, technical data and other relevant material must be submitted when a written description alone will not adequately describe the proposal (a copy of the Federal application and all supporting material provided to the Federal agency should also be submitted to the State agency).

(2) Information required by the State agency pursuant to § 930.56(b).

(3) A brief assessment relating the probable coastal zone effects of the proposal and its associated facilities to the relevant elements of the management program.

(4) A brief set of findings, derived from the assessment, indicating that the proposed activity (e.g., project siting and construction), its associated facilities (e.g., access road, support buildings), and their effects (e.g., air, water, waste discharges, erosion, wetlands, beach access impacts) are all consistent with the provisions of the management program. In developing findings, the applicant shall give appropriate weight to the various types of provisions within the management program. While applicants must be consistent with the enforceable, mandatory policies of the management program, they need only demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to coastal zone effects for which the management program does not contain mandatory or recommended policies.

(b) At the request of the applicant, interested parties who have access to information and data required by subparagraphs (a) (1) and (2) of this section may provide the State agency with all or part of the material required. Furthermore, upon request by the applicant, the State agency shall provide assistance for developing the assessment and findings required by paragraphs (a) (3) and (4) of this section.

(c) When satisfied that adequate protection against public disclosure exists, applicants should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposal. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal zone effects of the proposal.

§ 930.59 Multiple permit review.

(a) Applicants shall, to the extent practicable, consolidate related Federal license and permit activities affecting the coastal zone for State agency review. State agencies shall, to the extent practicable, provide applicants

with a "one-stop" multiple permit review for consolidated permits to minimize duplication of effort and to avoid unnecessary delays.

(b) A State agency objection to one or more of the license or permit activities submitted for consolidated review shall not prevent the applicant from receiving Federal agency approval for those license and permit activities found to be consistent with the management program.

§ 930.60 Commencement of State agency review.

(a) Except as provided in § 930.54(e), State agency review of an applicant's consistency certification begins at the time the State agency receives a copy of the consistency certification, and the information and data required pursuant to § 930.58.

(b) A State agency request for information or data in addition to that required by § 930.58 shall not extend the date of commencement of State agency review.

§ 930.61 Public notice.

(a) Following receipt of the material described in § 930.60 the State agency shall ensure timely public notice of the proposed activity. At a minimum the provision of public notice must be in accordance with State law. In addition, public notice must be provided in the immediate area of the coastal zone which is likely to be affected by the proposed activity. Public notice shall be expanded in proportion to the degree of likely public interest resulting from the unique geographic area involved, the substantial commitment of or impact on coastal resources, the complexity or controversy of the proposal, or for other good cause.

(b) Public notice shall facilitate public comment by providing a summary of the proposed activity, by announcing the availability for inspection of the consistency certification and accompanying public information and data, and by requesting that comments be submitted to the State agency.

(c) A number of procedural options, if permitted by State law, are available to State agencies to satisfy the public notice requirements of this subpart. They include, but are not limited to:

(1) The State agency providing the public notice;

(2) The State agency requiring the applicant to provide the public notice; or

(3) The State agency relying upon the public notice provided by the Federal agency reviewing the application for the Federal license or permit (e.g., notice of availability of NEPA environmental impact statements) if such notice satisfies the minimum requirements set forth in paragraphs (a) and (b) of this section.

(d) Federal and State agencies are encouraged to issue joint public notices whenever possible to minimize duplication of effort and to avoid unnecessary delays.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29136, June 24, 1983]

§ 930.62 Public hearings.

(a) At the discretion of the State agency, public notice may include the announcement of one or more public hearings. Public hearings shall be scheduled with a view towards (1) allowing access to the consistency certification and accompanying public information within a reasonable time prior to the hearing, (2) facilitating broad public attendance and participation at the hearing, and (3) affording the applicant expeditious consideration of the proposed activity.

(b) Federal and State agencies are encouraged to hold joint public hearings in the event both agencies determine that a hearing on the action is necessary.

§ 930.63 State agency concurrence with a consistency certification.

(a) At the earliest practicable time, the State agency shall notify the Federal agency and the applicant whether the State agency concurs with or objects to a consistency certification. Concurrence by the State agency shall

be conclusively presumed in the absence of a State agency objection within six months following commencement of State agency review.

(b) State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to inform the public, obtain sufficient comment, and develop a reasonable decision on the matter. If the State agency has not issued a decision within three months following commencement of State agency review, it shall notify the applicant and the Federal agency of the status of the matter and the basis for further delay.

(c) If the State agency issues a concurrence or is conclusively presumed to concur with the applicant's consistency certification, the Federal agency may approve the Federal license or permit application. Notwithstanding State agency concurrence with a consistency certification, the Federal permitting agency may deny approval of the Federal license or permit application. Federal agencies should not delay processing applications pending receipt of a State agency's concurrence. In the event a Federal agency determines that an application will not be approved, it shall immediately notify the applicant and the State agency.

§ 930.64 State agency objection to a consistency certification.

(a) If the State agency objects to the applicant's consistency certification within six months following commencement of review, it shall notify the applicant, Federal agency and Assistant Administrator of the objection.

(b) State agency objections must describe (1) how the proposed activity is inconsistent with specific elements of the management program, and (2) alternative measures (if they exist) which, if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the management program.

(c) During the period when the State agency is reviewing the consistency certification, the applicant and the State agency should attempt to agree upon conditions, which, if met by the applicant, would permit State agency concurrence. The parties shall also consult with the Federal agency responsible for approving the Federal license or permit to ensure that proposed conditions satisfy Federal as well as State management program requirements.

(d) A State agency objection may be based upon a determination that the applicant has failed, following a written State agency request, to supply the information required pursuant to § 903.58. If the State agency objects on the grounds of insufficient information, the objection must describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program.

(e) A State agency objection shall include a statement informing the applicant of a right of appeal to the Secretary on the grounds described in Subpart H.

§ 930.65 Federal permitting agency responsibility.

Following receipt of a State agency objection to a consistency certification, the Federal agency shall not issue the Federal license or permit except as provided in Subpart H of this part.

§ 930.66 Availability of mediation for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor Federally licensed and permitted activities in order to make certain that such activities continue to conform to both Federal and State requirements.

(b) The State agency shall request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a State agency objection to a Federally licensed or permitted activity which was: (1) Previously determined to be consistent with the State's management program, but which the State agency later maintains is being conducted or is having coastal zone effects substantially different than originally proposed and, as a result, is no longer consistent with the State's management program; or (2) previous-

ly determined not to be an activity affecting the coastal zone, but which the State agency later maintains is being conducted or is having coastal effects substantially different than originally proposed and, as a result, the activity affects the coastal zone in a manner inconsistent with the State's management program. The State agency's request must include supporting information and a proposal for recommended remedial action; a copy of the request must be sent to the applicant.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists with the Federal agency, either party may seek the Secretarial mediation services provided for in Subpart G of this part.

Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

§ 930.70 Objectives.

The provisions of this subpart are provided to assure that all Federal license and permit activities described in detail in OCS plans and which affect the coastal zone are conducted in a manner consistent with approved coastal zone management programs.

§ 930.71 Federal license or permit activity described in detail.

The term "Federal license or permit activity described in detail" means any activity requiring a Federal license or permit, as defined in § 930.51, which the Secretary of the Interior determines must be described in detail within an OCS plan.

§ 930.72 Person.

The term "person" means any individual, corporation, partnership, association, or other entity organized or existing under the laws of any State, the Federal government, any State, regional, or local government, or any entity of such Federal, State, regional or local government, who submits to the Secretary of the Interior, or designee following management program approval, an OCS plan which describes in detail Federal license or permit activities.

§ 930.73 OCS plan.

(a) The term "OCS plan" means any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), and the regulations under that Act, which is submitted to the Secretary of the Interior or designee following management program approval and which describes in detail Federal license or permit activities.

(b) The requirements of this subpart do not apply to Federal license and permit applications filed after management program approval for activities described in detail in OCS plans approved by the Secretary of the Interior or designee prior to management program approval.

§ 930.74 OCS activities subject to State agency review.

Except for States which do not anticipate coastal zone effects resulting from OCS activities, management program lists required pursuant to § 930.53 shall include a reference to OCS plans which describe in detail Federal license and permit activities affecting the coastal zone.

§ 930.75 State agency assistance to persons; information requirements.

(a) As a preliminary matter, any person intending to submit to the Secretary of the Interior and OCS plan which describes in detail Federal license or permit activities affecting the coastal zone should obtain the views and assistance of the State agency regarding the means for ensuring that such activities will be conducted in a manner consistent with the State's management program. As part of its assistance efforts, the State agency shall make available for inspection copies of the management program document.

(b) In accordance with the provisions in § 930.56(b), the management program as originally approved or amended may describe requirements regarding data and information which

will be necessary for the State agency to assess the consistency of the Federal license and permit activities described in detail in OCS plans.

§ 930.76 Submission of an OCS plan and consistency certification.

Any person submitting to the Secretary of the Interior or designee any OCS plan shall:

(a) Identify all activities described in detail in the plan which are subject to State agency review;

(b) When satisfied that the proposed activities meet the Federal consistency requirements of this subpart, provide the Secretary of the Interior or designee with a consistency certification, attached to the OCS plan, and the Secretary of the Interior or designee shall furnish the State agency a copy of the OCS plan (excluding proprietary information) and consistency certification.

(c) The person's consistency certification shall be in the following form:

> The proposed activities described in detail in this plan comply with (name of State(s)) approved coastal management program(s) and will be conducted in a manner consistent with such program(s).

§ 930.77 Necessary data and information.

(a) The State agency shall use the information received pursuant to the Department of the Interior's operating regulations governing exploration, development and production operations on the OCS (see 30 CFR 250.34) and regulations pertaining to the OCS information program (see 30 CFR Part 252) to determine the consistency of proposed Federal license and permit activities described in detail in OCS plans.

(b) The person shall supplement the information provided by paragraph (a) of this section by supplying the State agency with:

(1) Information required by the State agency pursuant to § 930.75(b).

(2) A brief assessment relating the probable coastal zone effects of the activities and their associated facilities to the relevant elements of the management program, and

(3) A brief set of findings, derived from the assessment, indicating that each of the proposed activities (e.g., drilling, platform placement) and their associated facilities (e.g., onshore support structures, offshore pipelines), and their effects (e.g., air, water, waste discharge, erosion, wetlands, beach access impacts) are all consistent with the provisions of the management program. In developing findings, the person shall give appropriate weight to the various provisions within the management program in accordance with the guidance provided in § 930.58(a)(4).

(c) At the request of the person, interested parties who have access to information required by paragraphs (a) and (b)(1) of this section may provide the State agency with all or part of the material required. Furthermore, upon request by the person, the State agency shall provide assistance for developing the assessment and findings required by paragraphs (b) (2) and (3) of this section.

(d) When satisfied that adequate protection against public disclosure exists, persons should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposed activities. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal zone effects of the proposed activities.

§ 930.78 Commencement of State agency review; public notice.

(a) State agency review of the person's consistency certification begins at the time the State agency receives a copy of the OCS plan, consistency certification, and required necessary data and information. A State agency request for information and data in addition to that required by § 930.77 shall not extend the date of commencement of State agency review.

(b) Following receipt of the material described in paragraph (a) of this section, the State agency shall ensure timely public notice of the proposed activities in accordance with the directives within §§ 930.61 through 930.62.

§ 930.79 State agency concurrence or objection.

(a) At the earliest practicable time, the State agency shall notify the person, the Secretary of the Interior or designee and the Assistant Administrator of its concurrence with or objection to the consistency certification. State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to inform the public, obtain sufficient comment, and develop a reasonable decision on the matter. If the State agency has not issued a decision within three months following commencement of State agency review it shall notify the person, the Secretary of the Interior or designee and the Assistant Administrator of the status of review and the basis for further delay in issuing a final decision. Notice shall be in written form and postmarked no later than three months following the State agency's receipt of the certification and supporting information. Concurrence by the State agency shall be conclusively presumed if the notification required by this subparagraph is not provided.

(b) Concurrence by the State agency shall be conclusively presumed in the absence of a State agency objection to the consistency certification within six months following commencement of State agency review.

(c) If the State agency objects to one or more of the Federal license or permit activities described in detail in the OCS plan, it must provide a separate discussion for each objection in accordance with the directives within § 930.64 (b) and (d). The objection shall also include a statement informing the person of a right of appeal to the Secretary on the grounds described in Subpart H.

§ 930.80 Effect of State agency concurrence.

(a) If the State agency issues a concurrence or is conclusively presumed to concur with the person's consistency certification, the person will not be required to submit additional consistency certifications and supporting information for State agency review at the time Federal applications are actually filed for the Federal licenses and permits to which such concurrence applies.

(b) Unless the State agency indicates otherwise, copies of Federal license and permit applications for activities described in detail in an OCS plan which has received State agency concurrence shall be sent by the person to the State agency to allow the State agency to monitor the activities. Confidential and proprietary material within such applications may be deleted.

§ 930.81 Federal permitting agency responsibility.

Following receipt of a State agency objection to a consistency certification related to Federal license or permit activities described in detail in an OCS plan, the Federal agency shall not issue any of such licenses or permits except as provided in Subpart H of this part.

§ 930.82 Multiple permit review.

(a) A person submitting a consistency certification for Federal license or permit activities described in detail in an OCS plan is strongly encouraged to work with other Federal agencies in an effort to include, for consolidated State agency review, consistency certifications and supporting data and information applicable to OCS-related Federal license and permit activities affecting the coastal zone which are not required to be described in detail in OCS plans but which are subjected to State agency consistency review (e.g., Corps of Engineer permits for the placement of structures on the OCS and for dredging and the transportation of dredged material, Environmental Protection Agency air and water quality permits for offshore operations and onshore support and processing facilities, etc.). In the event the person does not consolidate such OCS-related permit activities with the State agency's review of the OCS plan, such activities will remain subject to individual State agency review under the requirements of Subpart D of this part.

(b) A State agency objection to one or more of the OCS-related Federal li-

cense or permit activities submitted for consolidated review shall not prevent the person from receiving Federal agency approval (1) for those OCS-related license or permit activities found by the State agency to be consistent with the management program, and (2) for the license and permit activities described in detail in the OCS plan provided the State agency concurs with the consistency certification for such plan. Similarly, a State agency objection to the consistency certification for an OCS plan shall not prevent the person from receiving Federal agency approval for those OCS-related license or permit activities determined by the State agency to be consistent with the management program.

§ 930.83 Amended or new OCS plans.

If the State agency objects to the person's OCS plan consistency certification, and if, pursuant to Subpart H, the Secretary does not determine that each of the objected to Federal license or permit activities described in detail in such plan is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, the person shall submit an amended or new plan to the Secretary of the Interior or designee and to the State agency along with a consistency certification and data and information necessary to support the new consistency determination. The data and information shall specifically describe modifications made to the original OCS plan, and the manner in which such modifications will ensure that all of the proposed Federal license or permit activities described in detail in the amended or new plan will be conducted in a manner consistent with the State's management program.

§ 930.84 Review of amended or new OCS plans; public notice.

(a) After receipt of a copy of the amended or new OCS plan, consistency certification, and accompanying data and information, State agency review shall begin.

(b) Following receipt of the material described in paragraph (a) of this section, the State agency shall ensure timely public notice of the proposed activities in accordance with the directives within §§ 930.61 through 930.62.

(c) The State agency shall concur with or object to the person's consistency certification in accordance with the directives within § 930.76, except that the applicable time period for purposes of concurrence by conclusive presumption shall be three months instead of six months.

(d) If the State agency issues a concurrence or is conclusively presumed to concur with the person's new consistency certification, the person will not be required to submit additional consistency certifications and supporting information for State agency review at the time Federal applications are actually filed for the Federal licenses and permits to which such concurrence applies.

(e) Unless the State agency indicates otherwise, copies of Federal license and permit applications for activities described in detail in an amended or new OCS plan which has received State agency concurrence shall be sent by the person to the State agency to allow the State agency to monitor the activities. Confidential and proprietary material within such applications may be deleted.

§ 930.85 Continuing State agency objections.

If the State agency objects to the consistency certification for an amended or new OCS plan, the prohibition in § 930.81 against Federal agency approval of licenses or permits for activities described in detail in such a plan applies, further Secretarial review pursuant to Subpart H may take place, and the development of an additional amended or new OCS plan and consistency certification may be required pursuant to §§ 930.83 through 930.84.

§ 930.86 Failure to comply substantially with an approved OCS plan.

(a) The Department of the Interior and State agencies shall cooperate in their efforts to monitor Federally licensed and permitted activities described in detail OCS plans to make certain that such activities continue to conform to both Federal and State requirements.

(b) If a State agency claims that a person is failing substantially to comply with an approved OCS plan subject to the requirements of this Subpart, and such failure allegedly involves the conduct of activities affecting the coastal zone in a manner that is not consistent with the approved management program, the State agency shall transmit its claim to the U.S. Geological Survey supervisor for the area involved. Such claim shall include: (1) A description of the specific activity involved and the alleged lack of compliance with the OCS plan, and (2) a request for appropriate remedial action. A copy of the claim shall be sent to the person and the Assistant Administrator.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that the person is failing to comply substantially with the OCS plan, the governor or section 306(c)(5) State agency (see § 930.18) may file a written objection with the Secretary. If the Secretary 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 State agency. Following such a finding by the Secretary, the person shall comply with the originally approved OCS plan, or with interim orders issued jointly by the Secretary and the U.S. Geological Survey, pending approval of the amended or new OCS plan. The directives within §§ 930.83 through 930.85 shall apply to further State agency review of the consistency certification for the amended or new plan.

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

Subpart F—Consistency for Federal Assistance to State and Local Governments

§ 930.90 Objectives.

The provisions of this subpart are provided to assure that Federal assistance to State and local governments for activities affecting the coastal zone is granted only when such activities are consistent with approved coastal zone managements programs.

§ 930.91 Federal assistance.

The term "Federal assistance" means assistance provided under a Federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other form of financial aid.

§ 930.92 Applicant agency.

The term "applicant agency" means any unit of State or local government, or any related public entity such as a special purpose district, which, following management program approval, submits an application for Federal assistance.

§ 930.93 Intergovernmental review process.

The term "intergovernmental review process" describes the procedures established by states pursuant to E.O. 12372, "Intergovernmental Review of Federal Programs," and implementing regulations of the review of Federal financial assistance to states and local governments.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and

Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[48 FR 29136, June 24, 1983]

§ 930.94 State intergovernmental review process for consistency.

The process by which states with approved coastal management programs may review applications from state agencies and local governments for Federal assistance should be developed by each state in accordance with Executive Order 12372 and implementing regulations. In accordance with the Executive Order and regulations, states may use this process to review such applications for consistency with their approved coastal management programs.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[48 FR 29137, June 24, 1983]

§ 930.95 Guidance provided by the State agency.

(a) State agencies should include within the management program a listing of specific types of Federal assistance programs subject to a consistency review. Such a listing, and any amendments, will require prior 306(c)(5) state agency (see § 930.18) consultation with affected Federal agencies and approval by the Assistant Administrator.

(b) In the event the State agency chooses to review applications for Federal assistance activities outside of the coastal zone but likely to affect the coastal zone, the State agency must develop a Federal assistance provision within the management program generally describing the geographic area (e.g. coastal floodplains) within which Federal assistance activities will be subject to review. This provision, and any refinements, will require prior 306(c)(5) State agency consultation with affected Federal agencies and approval by the Assistant Administrator.

(c) The State agency shall provide copies of any Federal assistance list or geographic provision, and any refinements, to Federal agencies, units of State or local government empowered to undertake Federally assisted activities within the coastal zone or described geographic area.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979. Redesignated and amended at 48 FR 29136, June 24, 1983]

§ 930.96 Consistency review.

(a) If pursuant to the intergovernmental review process, the State agency does not object to the proposed activity, the Federal agency may grant the Federal assistance to the applicant agency. Notwithstanding State agency consistency approval for the proposed project, the Federal agency may deny assistance to the applicant agency. Federal agencies should not delay processing applications pending receipt of a State agency approval or objection. In the event a Federal agency determines that an application will not be approved, it shall immediately notify the applicant agency and the State agency.

(b) If pursuant to the intergovernmental review process, the State agency objects to the proposed project, the state agency shall notify the applicant agency, Federal agency and the Assistant Administrator of the objection.

(c) State agency objections must describe: (1) How the proposed project is inconsistent with specific elements of the management program, and (2) alternative measures (if they exist) which, if adopted by the applicant agency, would permit the proposed project to be conducted in a manner consistent with the management program.

(d) A State agency objection may be based upon a determination that the applicant agency has failed, following a written State agency request, to supply necessary information. If the State agency objects on the grounds of insufficient information, the objection must describe the nature of the information requested and the necessity of having such information to determine

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the consistency of the activity with the management program.

(e) State agency objections shall include a statement informing the applicant agency of a right of appeal to the Secretary on the grounds described in Subpart H of this part.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29137, June 24, 1983]

§ 930.97 Federal assisting agency responsibility.

Following receipt of a State agency objection, the Federal agency shall not approve assistance for the activity except as provided in Subpart H of this part.

§ 930.98 Federally assisted activities outside of the coastal zone or the described geographic area.

(a) State agencies should monitor proposed Federal assistance activities outside of the coastal zone or the described geographic area (e.g., by use of the intergovernmental review process, review of NEPA environmental impact statements, etc.) and shall immediately notify applicant agencies, Federal agencies, and any other agency or office which may be identified by the state in its intergovernmental review process pursuant to E.O. 12372 of proposed activities which can reasonably be expected to affect the coastal zone and which the State agency is reviewing for consistency with the management program. Notification shall also be sent by the State agency to the Assistant Administrator. State agencies must inform the parties of objections within the time period permitted under the intergovernmental review process, otherwise the State agency waives its right to object to the proposed activity.

(b) If within the permitted time period the State agency notifies the Federal agency of its objection to a proposed Federally assisted activity, the Federal agency shall not provide assistance to the applicant agency except as provided in Subpart H, unless the Assistant Administrator disapproves the State agency's decision to review the activity. The Assistant Administrator shall be guided by the provisions in § 930.54 (c) and (d).

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29137, June 24, 1983]

§ 930.99 Availability of mediation for Federal assistance disputes.

In the event of a serious disagreement between a Federal and State agency regarding whether a Federal assistance activity is subject to consistency review, either party may request the Secretarial mediation services provided for in Subpart G of this part. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding Federal assistance for the activity pending satisfaction of the requirements of this subpart, except in cases where the Assistant Administrator has disapproved a State agency decision to review an activity.

§ 930.100 Availability of mediation for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor Federally assisted activities in order to make certain that such activities continue to conform to both Federal and State requirements.

(b) The State agency shall request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a State agency objection to a Federally assisted activity which was: (1) Previously determined to be consistent with the State's management program, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, is no longer consistent with the State management program, or (2) previously determined not to be a project affecting the coastal zone, but

which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result the project affects the coastal zone in a manner inconsistent with the State's management program. The State agency's request must include supporting information and a proposal for recommended remedial action; a copy of the request must be sent to the applicant agency.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists with the Federal agency, either party may seek the Secretarial mediation services provided for in Subpart G of this part.

Subpart G—Secretarial Mediation

§ 930.110 Objectives.

The purpose of this subpart is to describe mediation procedures which Federal and State agencies may use to attempt to resolve serious disagreements which arise during the administration of approved management programs.

§ 930.111 Informal negotiations.

The availability of mediation does not preclude use by the parties of alternative means for resolving their disagreement. In the event a serious disagreement arises, the parties are strongly encouraged to make every effort to resolve the disagreement informally. OCZM shall be available to assist the parties in these efforts.

§ 930.112 Request for mediation.

(a) The Secretary or other head of a Federal agency, or the Governor of the section 306(c)(5) State agency (see § 930.18), 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.

(b) Within 15 days following receipt of a request for mediation the disagreeing agency shall transmit a written response to the Secretary, and to the agency requesting mediation, indicating whether it wishes to participate in the mediation process. If the disagreeing agency declines the offer to enter into mediation efforts, it must indicate the basis for its refusal in its response. Upon receipt of a refusal to participate in mediation efforts, the Secretary shall seek to persuade the disagreeing agency to reconsider its decision and enter into mediation efforts. If the disagreeing agencies do not all agree to participate, the Secretary will cease efforts to provide mediation assistance.

§ 930.113 Public hearings.

(a) If the parties agree to the mediation process, the Secretary shall appoint a hearing officer who shall schedule a hearing in the local area concerned. The hearing officer shall give the parties at least 30 days notice of the time and place set for the hearing and shall provide timely public notice of the hearing.

(b) At the time public notice is provided, the Federal and State agencies shall provide the public with convenient access to public data and information related to the serious disagreement.

(c) Hearings shall be informal and shall be conducted by the hearing officer with the objective of securing in a timely fashion information related to the disagreement. The Federal and State agencies, as well as other interested parties, may offer information at the hearing subject to the hearing officer's supervision as to the extent and manner of presentation. Unduly repetitious oral presentation may be excluded at the discretion of the hearing officer; in the event of such exclusion the party may provide the hearing officer with a written submission of the proposed oral presentation. Hearings will be recorded and the hearing officer shall provide transcripts and copies of written information offered at the hearing to the Federal and State agency parties. The public may inspect and copy the transcripts and written information provided to these agencies.

§ 930.114 Secretarial mediation efforts.

(a) Following the close of the hearing, the hearing officer shall transmit the hearing record to the Secretary. Upon receipt of the hearing record, the Secretary shall schedule a mediation conference to be attended by representatives from the Office of the Secretary, the disagreeing Federal and State agencies, and any other interested parties whose participation is deemed necessary by the Secretary. The Secretary shall provide the parties at least 10 days notice of the time and place set for the mediation conference.

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

§ 930.115 Termination of mediation.

Mediation shall terminate (a) at any time the Federal and State agencies agree to a resolution of the serious disagreement, (b) if one of the agencies withdraws from mediation, (c) in the event the agencies fail to reach a resolution of the serious disagreement within 15 days following Secretarial conference efforts, and the agencies do not agree to extend mediation beyond that period, or (d) for other good cause.

§ 930.116 Judicial review.

The availability of the mediation services provided in this subpart 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 for in this subpart.

Subpart H—Secretarial Review Related to the Objectives or Purposes of the Act and National Security Interests

§ 930.120 Objectives.

The provisions of this subpart provide procedures by which the Secretary may find that a Federal license or permit activity, including those described in detail in an OCS plan, or a Federal assistance activity, which is inconsistent with a management program, may be federally approved because the activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security.

§ 930.121 Consistent with the objectives or purposes of the Act.

The term "consistent with the objectives or purposes of the Act" describes a Federal license or permit activity, or a Federal assistance activity which, although inconsistent with a State's management program, is found by the Secretary to be permissible because it satisfies the following four requirements:

(a) The activity furthers one or more of the competing national objectives or purposes contained in sections 302 or 303 of the Act,

(b) When performed separately or when its cumulative effects are considered, it will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest,

(c) The activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended, and

(d) There is no reasonable alternative available (e.g., location design, etc.) which would permit the activity to be conducted in a manner consistent with the management program.

§ 930.122 Necessary in the interest of national security.

The term "necessary in the interest of national security" describes a Federal license or permit activity, or a Federal assistance activity which, although inconsistent with a State's

management program, is found by the Secretary to be permissible because a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed. Secretarial review of national security issues shall be aided by information submitted by the Department of Defense or other interested Federal agencies. The views of such agencies, while not binding, shall be given considerable weight by the Secretary. The Secretary will seek information to determine whether the objected-to activity directly supports national defense or other essential national security objectives.

§ 930.123 Appellant.

The term "appellant" refers to an applicant, person or applicant agency submitting an appeal to the Secretary pursuant to the provisions of this subpart.

§ 930.124 Informal discussions.

In the event the State agency informs the applicant, person or applicant agency that it intends to object to the proposed activity, the parties should consult informally to attempt to resolve the matter in a manner which avoids the necessity of appealing the issue to the Secretary. OCZM shall be available to assist the parties in these discussions.

§ 930.125 Appeals to the Secretary.

(a) An appellant may file a notice of appeal with the Secretary with 30 days of the appellant's receipt of a State agency objection. The notice of appeal shall be accompanied by a statement in support of the appellant's position, along with supporting data and information. The appellant shall send a copy of the notice of appeal and accompanying documents to the Federal and State agencies involved.

(b) No extension of time will be permitted for the filing of a notice of appeal.

(c) The Secretary may approve a reasonable request for an extension of time to submit supporting information so long as the request is filed with the Secretary within the 30-day period. Normally, the Secretary shall limit an extension period to 15 days.

§ 930.126 Federal and State agency responses to appeals.

(a) Upon receipt of the notice of appeal and supporting information, the Federal and State agencies shall have 30 days to submit detailed comments to the Secretary. Copies of such comments shall be sent to the appellant and other agency within the same time period.

(b) Requests for extensions may be made pursuant to § 930.125(c).

§ 930.127 Public notice; receipt of comments.

(a) The Secretary shall provide timely public notice of the appeal within 15 days of receipt of the notice. At a minimum, public notice shall be provided in the immediate area of the coastal zone which is likely to be affected by the proposed activity. At the time public notice is provided, the Federal and State agencies shall provide the public with convenient access to copies of the appellant's notice of appeal and accompanying public information, and to the public information in the agencies' detailed comments.

(b) Interested persons may submit comments to the Secretary within 30 days from the date of public notice, with copies provided to the appellant and to the Federal and State agencies within the same time period.

(c) Requests for extensions may be made pursuant to § 930.125(c).

§ 930.128 Dismissal of appeals.

The Secretary may dismiss an appeal for good cause. Good cause shall include, but is not limited to:

(a) Failure of the appellant to submit a notice of appeal within the required 30-day period.

(b) Failure of the appellant to submit the supporting information within the required period or approved extension period;

(c) Secretarial receipt of a detailed comment from the Federal agency stating that the agency has disapproved the Federal license, permit or assistance application;

(d) Failure of the appellant to base the appeal on grounds that the proposed activity either (1) is consistent with the objectives or purposes of the Act or (2) is necessary in the interest of national security.

§ 930.129 Public hearings.

The Secretary may order a hearing independently or in reponse to a request. If a hearing is ordered by the Secretary it shall be guided by the procedures described within § 930.113.

§ 930.130 Secretarial review.

(a) In reviewing an appeal, the Secretary shall find that a proposed Federal license or permit activity, or a Federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, when the information submitted supports this conclusion.

(b) The Secretary shall make all reasonable efforts to complete consideration of an appeal within 90 days from the date of public notice.

(c) Following consideration of the appeal, the Secretary shall issue a decision in writing to the appellant and to the Federal and State agencies indicating whether the proposed activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security; the decision shall include the basis for such finding. The Secretary shall provide public notice of the decision.

(d) The decision of the Secretary shall constitute final agency action for the purposes of the Administrative Procedure Act.

§ 930.131 Federal agency responsibility.

(a) If the Secretary finds that the proposed activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, the Federal agency may approve the activity.

(b) If the Secretary does not make either of these findings, the Federal agency shall not approve the activity.

§ 930.132 Review initiated by the Secretary.

(a) The Secretary may choose to consider whether a Federal license or permit activity, or a Federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security. Secretarial review may be initiated either before of after the completion of State agency review. The Secretary's decision to review the activity may result from an independent concern regarding the activity or a request from interested parties. If the Secretary decides to initiate review, notification shall be sent to the applicant, person or applicant agency, and to the Federal and State agencies. The notice shall include a statement describing the reasons for the review and shall contain a request for submission of detailed comments to be submitted within 30 days from receipt of the notification. Copies of comments shall be exchanged among the parties.

(b) Requests for extensions may be made pursuant to § 930.125(c).

§ 930.133 Public notice; receipt of comments; public hearings.

(a) Upon receipt of detailed comments from the parties, the Secretary shall provide public notice and request public comments in accordance with the provisions in § 930.127.

(b) The Secretary may order a hearing in accordance with the provisions in § 930.129.

§ 930.134 Secretarial review; Federal agency responsibility.

(a) Secretarial review shall be undertaken in accordance with the provisions in § 930.130.

(b) Federal agencies are responsible for adhering to the provisions in § 930.131 when deciding to approve or deny an application for an activity objected to by a State agency and independently reviewed by the Secretary.

Subpart I—Assistant Administrator Reporting and Continuing Review of Federal Actions Subject to the Federal Consistency Requirements

§ 930.140 Objectives.

The provisions of this subpart provide procedures to permit interested parties to notify the Assistant Admin-

istrator of Federal actions (a) believed to be inconsistent with an approved management program but which are not so found by the Federal or State reviewing agency, and (b) believed to have been incorrectly determined to be inconsistent with an approved management program. This subpart also provides for the reporting of any Federal actions found by the Assistant Administrator to be inconsistent with an approved management program and for the performance review of State implementation of the Federal consistency provisions of this part.

§ 930.141 Notification of Federal actions believed to be inconsistent with approved management programs.

(a) Interested parties are invited to submit to the Assistant Administrator detailed comments related to the alleged inconsistency of Federal activities including development projects, Federal license or permit activities, including those described in detail in OCS plans, and Federal assistance activities which are subject to the requirements of this part, and which have not been found by a Federal agency or State agency to be inconsistent with an approved management program. Copies of such comments should be sent to relevant Federal and State agencies, and to the applicant, person or applicant agency as appropriate.

(b) Comments need not conform to any particular form, but should be specific, substantive and factual, and must describe how the Federal action is or would be inconsistent with an approved management program.

(c) Commentators are encouraged to recommend modifications or alternatives to the existing or proposed action which would enable it to be consistent with the management program.

(d) The Assistant Administrator shall assure that public information within such comments is made available for public inspection.

§ 930.142 Notification of Federal actions believed to have been incorrectly determined to be inconsistent with an approved management program.

(a) Interested parties are invited to submit to the Assistant Administrator detailed comments related to Federal license and permit activities, including those described in detail in OCS plans, and Federal assistance activities which are believed to have been incorrectly determined by a State agency to be inconsistent with an approved management program. Copies of such comments should be sent to the relevant Federal and State agencies, and to the applicant, person, or applicant agency as appropriate.

(b) Comments need not conform to any particular form, but should be specific, substantive, and factual, and must clearly describe the basis for the belief that the State agency has incorrectly objected to the Federal action on the grounds of its inconsistency with the management program.

(c) The Assistant Administrator shall assure that public information within such comments is made available for public inspection.

§ 930.143 Assistant Administrator reporting.

After considering the views of interested parties, the relevant Federal agency, State agency, and the applicant, person, or applicant agency, as appropriate, the Assistant Administrator shall determine whether the Federal action will be included in the annual report listing of inconsistent Federal actions.

§ 930.144 Assistant Administrator advisory statements.

Upon request, the Assistant Administrator may issue as advisory statement prior to the issuance of the annual report indicating whether a Federal action will be listed within the annual report as being inconsistent with an approved management program.

§ 930.145 Review of the implementation of Federal consistency provisions.

As part of the responsibility to conduct a continuing review of approved management programs, the Assistant Administrator shall review the performance of each State's implementation of the Federal consistency provisions in this part. The Assistant Administrator shall use information re-

ceived pursuant to this subpart to evaluate instances where a State agency is believed to have either failed to object to inconsistent Federal actions, or improperly objected to consistent Federal actions. This evaluation shall be incorporated within the Assistant Administrator's general efforts to ascertain instances where a State has not adhered to its approved management program and such lack of adherence is not justified.

Updates

If you wish to receive updates of this booklet please fill out the form below and return it to:

Division of Governmental Coordination
Office of Management and Budget
Pouch AW
Juneau, Alaska 99811

Please add my name to the mailing list to receive updates to the booklet of Statutes and Regulations on the Alaska Coastal Management Program:

Address:

_____
Name

_____
Organization

_____
Street or Box Number

_____
City State Zip

Change of Address:

If this is a change of address, please provide us with your old address below:

_____
Name

_____
Organization

_____
Street or Box Number

_____
City State Zip

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 4/26/85

REQUEST
Bill/Resolution No.: HB 73
Title: Processing Permits & Administration of the ACMP
Sponsor: Rep. Ringstad
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Natural Resources
Program Category Affected: NRMEC
BRU, Program or Subprogram(s) Affected: Land & Water

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
100 PERSONAL SERVICES		372	390.6	410.13	430.64	452.17
200 TRAVEL		13	13.65	14.33	15.05	15.80
300 CONTRACTUAL		50	52.5	55.13	57.88	60.78
400 SUPPLIES		20	21	22.05	23.15	24.31
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		455	477.75	501.64	526.72	553.06
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND		455	477.75	501.64	526.72	553.06
FEDERAL FUNDS						
OTHER						
TOTAL		455	477.75	501.64	526.72	553.06

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME		9	9	9	9	9
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary This bill would transfer responsibilities that are currently being conducted by personnel in the Division of Governmental Coordination, Office of Management and Budget. Assuming that these positions are transferred to DNR, net cost to the state would be near zero. A five per cent inflation factor has been used for FY 87-90.

Prepared By: Robert Butts [signature] Phone: 465-2400
Division: Division of Oil & Gas Date: 4-26-85

Approved by Commissioner: [signature], Deputy Date: 4-26-85
Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

Revised: 4/26/85

FISCAL NOTE ANALYSIS

HB 73
ALASKA DEPARTMENT OF NATURAL RESOURCES

HB 73 would transfer responsibilities that are currently being coordinated by personnel in the Division of Governmental Coordination, Office of Management and Budget. If the OMB positions are transferred to the Department of Natural Resources, then the net fiscal impact to the state for coordination would be $00.00.

100 Personal Services

1.	Statewide Coordinator - Juneau		
	Coordinator	Rg. 20	$63.0
	Clerk-Typist	Rg. 8	27.0
2.	Southeast Regional Staff - Juneau		
	Regional Coordinator	Rg. 18	50.0
	Clerk-Typist	Rg. 8	27.0
3.	Southcentral Regional Staff - Anchorage		
	Regional Coordinator	Rg. 18	50.0
	Land Management Officer	Rg. 16	42.0
	Clerk-Typist	Rg. 8	27.0
4.	Northern Regional Staff - Fairbanks		
	Regional Coordinator	Rg. 18	56.0
	Clerk-Typist	Rg. 8	30.0
		TOTAL PERSONAL SERVICES	$372.0

200 Travel

1.	Coordinator	$6.0
2.	Southeast Regional Staff	2.0
3.	Southcentral Regional Staff	3.0
4.	Northern Regional Staff	2.0
	TOTAL TRAVEL	13.0

300 Contractual

1.	Telephone	40.0
2.	Space, lights, heating, etc.	10.0
	TOTAL CONTRACTUAL	50.0

400 Supplies

1.	Zerox paper, etc.	20.0
	TOTAL SUPPLIES	20.0

TOTAL $455.0

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM April 23, 1985

SUBJECT: Sectional analysis of House Bill 73

TO: Representative John Ringstad

FROM: Billy G. Berrier
Director
Division of Legal Services

Section 1 contains legislative findings setting out the rationale for legislation in this area.

Section 2 creates a new Article 8 A in the Administration Procedure Act titled permit processing consisting of sections 44.62.362-640.

Sec. 44.62.362 requires each state resource agency (defined in Sec. 44.62.640(4)) to classify each permit it issues into one of two categories. Class 1 is permits for which the agency must issue a final decision within 30 days after receipt of a complete permit application. Class II permits must be issued within 65 days after application or, if a public hearing is held within 75 days. Class II permits are permits which cannot be issued in 30 days because of a necessary public notice or interagency review period.

Sec. 44.62.633 establishes conditions for other regulatory requirements.

Under (a) of this section if the head of a resource agency determines a permit cannot be decided within the time period established by Sec. 44.63.632 the agency head may prescribe a time period for the final decision not exceeding 120 days. The findings may be appealed by the applicant to the Superior Court under the Appellate Rules of Procedure.

Under (b) of this section, if adherence to the time periods would cause an irreconcilable conflict with a federal law or regulation and if the extension is necessary to facilitate

joint processing of a permit by state and federal agencies the time prescribed in AS 44.62.633 may be extended.

Under (c) of this section if a decision is not made within the prescribed period application for the permit is approved. In an appeal of a permit so approved the record shall be considered in the light most favorable to the applicant and the permit is presumed regularly issued.

Under (d) of this section a state agency may not condition the issuance of a permit on issuance of another permit by another governmental agency.

Sec. 44.62.634 relates to obtaining additional information concerning issuance of a permit.

Under (a) if an agency receives an application for a permit that does not have sufficient information concerning a project compliance with law and regulation the agency must notify the applicant within 15 days after receipt of the application if the permit is a Class I permit or within 30 days if the permit is a Class II permit.

Under (b) that notification must specify those particular facts or issues for which additional information is necessary.

Under (c) the time periods for final decision are suspended from the date of request to the date of full compliance with the request. Subsequent requests for information which may relate only to new issues raised by response to the initial notification may be made but these subsequent requests do not extend the required time periods.

Paragraph (d) provides that this section does not grant an agency authority to request information it is not otherwise authorized by law to request.

Sec. 44.62.635 creates a lead agency that is soley responsible for issuing coastal management consistency determinations under AS 46.40.

Paragraph (a) establishes a lead agency. It provides that the lead agency is (1) the Department of Natural Resources for resource development activities on state and federal land, water and submerged land, (2) the resource agency that has principal administrative responsibility for the type

development requiring the determination even though the development requires permits from more than one agency in cases except those set out in (1) and the resource agency designated by the governor where no agency has principal responsibility. The lead agency is soley responsible for preparing and submitting state comments on federal permit activities.

Paragraph (b) requires that the lead agency consult with other resource agencies and with coastal resource districts. It shall consider comments within the area of expertise of the commenting agency or district but has the discretion to reach contrary conclusions based on the weight of the evidence received. It shall balance competing factors in reaching its final decision and no other resource agency has primary expertise in balancing competing factors.

Under (c) no state agency other than the lead agency may comment to a federal permitting agency except as required by federal law.

Under (d) the Department of Natural Resources is the lead agency for activities involving a pla of operation and a certificate under the federal Clean W ter Act.

Under (e) the Department of Natural Resources is the lead agency for activities occuring on private land if a disposal of state land or permit to use state land is required to provide access or for purposes ancillary to the activity.

Paragraph (f) provides neither this section nor AS 46.40 authorizes an agency to deny or condition a consistency determination because of activities which do not themselves require a state or federal permit or a disposal of an interest in state land.

Under (g) the lead agency or any resource agency may only consider the statewide standards and guidelines adopted by the Alaska Coastal Policy Council if the activity for which a consistency determination occurs outside the boundaries of a coastal resource district with an approved district plan.

Sec. 44.62.636 establishes comment periods for comment in connection with a permit application or plan review being processed by a resource agency.

Under (a) the period is 15 days after request for comments on a Class I permit and 30 days for comment on a Class II permit.

Under (b), if the time period for a final decision on a permit has been extended the agency may extend the comment period but comments must still be submitted not later than 30 days before the date a final decision must be issued.

Sec. 44.62.637 concerns administrative appeals of a decision denying or conditioning a permit application.

Under (a) the permit applicant must file an administrative appeal within 10 days after issuance of a final decision denying or conditioning an application. The appeal is to the head of the resource agency involved and is not subject to the administrative adjudication requirement of the Administrative Procedure Act.

Under (b) the appeal must be resolved in 30 days from the date the appeal is filed or, if a hearing is held on the appeal within 45 days.

Under (c) the head of the agency may summarily dismiss an appeal during the resolution period established in (b). The dismissal is the decision for purpose of appeal to the Superior Court.

Under (d) the head of an agency may grant the permit or remove conditions on the permit until the appeal is determined if the head of the agency determines this would serve the public interest.

Sec. 44.62.638 allows judicial review of a decision made under this article by filing a notice of appeal under the applicable Rules of Appellate Procedure. The procedural requirements of AS 44.62.560(b)-(e) and 570 governing appeals under the administrative adjudication provisions of the Administrative Procedure Act are incorporated.

Section 3 defines certain terms used in this Act by adding to the definition section of AS 44.62.640.

BGB:ojb
J14/019

THE Aftl-DITTMAN POLL

of Alaska business leaders

The Aftl Dittman Poll is a regular monthly feature of Alaska Construction & Oil *and Alaska Analysts/Dittman Research. Each month several hundred Alaska businessmen and businesswomen are contacted and asked their opinions on questions of statewide importance. The statewide totals are combined and published in the weekly business newsletter* Alaska from the Inside (Aftl) *and in* Alaska Construction & Oil. *The respondents included in the sample are representative of their fields of activity and are located throughout the state.*

QUESTION

"Overall, do you feel state government regulations and policies are most likely to encourage or discourage well-planned, responsible resource development?"

RESULTS

	Encourage	Discourage	Undecided
Construction and Timber	22%	78%	—
Petroleum and Mining	13%	85%	2%
Finance and Services	42%	56%	2%
TOTAL	24%	74%	2%

ANALYSIS

Nearly three-quarters (74%) of Alaska's business leaders interviewed in November feel state government regulations and policies *discourage* well-planned and responsible resource development.

The percentage of respondents agreeing varies widely by industry. Petroleum and Mining respondents are the most adamant, with 85% answering "discourage."

A review of the respondents' comments offered during the poll shows that the Alaska Department of Fish and Game was the most frequently mentioned example of a state agency that discourages resource development. The comments also indicated two main reasons for respondents' concern about government policies:

(1) It is difficult to justify the expense and time required to design a well-planned development and take it through the permitting process when the likelihood of success is always in doubt.
(2) The state employees who work in regulatory agencies are more likely to have regulatory ("protective") mentalities which may blind them to the benefits of resource development.

COMMENTS

"Mainly in the permit area — the Department of Fish and Game stops more projects than any agency. They are always on the side of the Sierra Club and SEACC. *No development* is their policy."

"It took 16 years to get a water-use permit for mining and I have a coal prospecting permit application that is nine years old and still pending."

"The tendency in state government is to over-regulate. There can only be one result of that tendency — operating costs are increased both by the requirements for compliance and the cost of processing paper."

"It takes too much time and effort to get permission for access. It discourages people before they even start."

"Regulations are built around a negative attitude."

"Definitely encouraged — a marked improvement noted in both words and deeds!"

"Until the Department of Fish and Game is restricted from making unilateral and arbitary decisions concerning resource development, we will be unable to encourage development no matter how well-planned and responsible!"

CALENDAR

ENERGY-SOURCES TECHNOLOGY CONFERENCE & EXHIBITION — Sponsored by the American Society of Mechanical Engineers at Loews Anatole Hotel, Dallas, TX, (214) 247-1747, Feb. 17-22.

TRAINING SESSIONS ON DRILLING AND BLASTING TECHNIQUES — Explosives Services Corp. of Issaquah, Wash., (206) 392-7112, is conducting a five-day training session on drilling and blasting techniques in Ketchikan, Feb. 18-Feb. 22; and in Anchorage, Feb. 25-March 1.

INTRODUCTION TO MICROCOMPUTERS — A short course presented by the Society of Mining Engineers of the American Institute of Mining, Metallurgical and Petroleum Engineers, Hilton Hotel, New York, NY, (303) 973-9550, Feb. 23-24.

FINANCE FOR THE MINERALS INDUSTRY — A symposium that is part of the annual meeting events for the Society of Mining Engineers of the American Institute of Mining, Metallurgical and Petroleum Engineers; Hilton Hotel, New York, NY, (303) 973-9550, Feb. 24-28.

STATE OIL AND GAS LEASE SALE NO. 46A — Anchorage Westward Hilton Hotel, Anchorage, Feb. 26.

AGC 66TH ANNUAL CONVENTION/CONSTRUCTOR EXPOSITION — The Associated General Contractors of America 1985 convention, San Francisco, CA, Feb. 27-March 5.

ALASKA SUPPORT INDUSTRY ALLIANCE — Conference on marginal oil field development, Captain Cook Hotel, Anchorage, March 2.

FOURTH ANNUAL ALASKA CONSTRUCTION SUPPLY AND EQUIPMENT SHOW — Exhibits and technical sessions, Sullivan Arena, Anchorage, (907) 346-2424, March 21-22.

ARCTIC '85: CIVIL ENGINEERING IN THE ARCTIC OFFSHORE — A national specialty conference of the American Society of Civil Engineers at the Sheraton Palace Hotel, San Francisco, CA, (713) 772-0876, March 25-27.

34TH ANNUAL VEHICLE MAINTENANCE/MANAGEMENT CONFERENCE — Sponsored by the University of Washington, College of Engineering, at Kane Hall, Seattle, WA, (206) 543-5539, March 25-28.

ALASKA TRANSPORTATION FORUM — University of Alaska-Fairbanks, April 15-16.

CABLE HARVEST TECHNIQUES — Holiday Inn-Downtown, Spokane, WA, (509) 838-6101, April 15-19.

Status Report on Project Consistency Reviews in 1984

The new project consistency process, also known as Permit Reform, went into effect on January 1, 1984. Since that time, the Division of Governmental Coordination (DGC) has coordinated the review of projects in Alaska's coastal zone needing permits or approvals from one or more federal agencies or more than one State agency. Projects are reviewed on either a 30 or 50 day schedule, depending on the statutory or regulatory requirement for public notice.

In 1984, 715 projects were entered into review. By December 31, 1984, 529 of those projects were closed as follows:

review schedule	# of close outs which were consistent	# of close outs which were consistent with stips	# of close outs which were inconsistent	Average length of review	# of projects elevated to Directors	# of projects elevated to Commissioners
30 day	81	99	0	24 days	1	
50 day	141	204	4	43 days	2	3

Agency permits are to be issued 5 days after the DGC review is completed.

INCONSISTENT DETERMINATIONS

Of the 529 projects closed in 1984 only 4 projects were declared inconsistent:

1. Chuck River Timber Sale (U.S. Forest Service.) for impacts to water quality in an important

fish producing river. The Forest Service elevated the review to the Directors and Commissioner's who upheld the decision. The Forest Service did not appeal to the U.S. Department of Commerce, but is working to modify their proposal.

2. Resurrection River 8 (Carlson) a proposal to fill important wetlands for a pasture - in an area where uplands are available. The applicant did not elevate or appeal.

3. Kenai River (Dimick) a proposal to fill wetlands near the Kenai River for private uses. The applicant did not object to the denial.

4. Kenai Peninsula (Holoubelk) a proposal to modify the river for erosion control. The applicant needed to provide a new design and more information but chose not to do so; the applicant did not appeal.

ELEVATED REVIEWS

Aside from the Chuck River Timber Sale, 5 other projects were elevated:

To the Directors:

1. Unik-Chickamin Log Salvage - after numerous consultations between the agencies and the applicant, stipulations were developed that the applicant accepted.

2. Endicott Development (Sohio) - working with the agencies, acceptable conditions were agreed upon.

3. Cape Kruzenstern Land Exchange - An acceptable solution was reached.

To the Commissioners:

4. Tuluksak River Gold Mining (Northland Gold) while an agreement was not reached at the director's level, the applicant and agencies did work out a mutually acceptable set of permit conditions at the commissioner's level.

5. Lisburne (ARCO) dissatisfied with both regional and director level reviews, ARCO elevated to the Commissioners. New information and analysis led to a determination of consistent.

Out of the projects left in review, only those which the applicant has requested an extension for or agreed to one in order to provide more information or redesign the project, are in review beyond day 30 or 50. Agencies cannot put projects on hold.

The regional level reviews are conducted in 3 regional offices. Fairbanks has one project coordinator, while Anchorage and Juneau have two. The coordinators are responsible for circulating project documents, keeping the review on track to meet the deadlines, facilitating consensus decision making amongst applicants, coastal districts, and agencies with expertise and preparing a decision document. Elevated projects are coordinated by the appropriate analyst in the Juneau central office.

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Buried for years under the mountains of red tape and paperwork required for regulatory approval of projects, Alaska's resource development industries may be nearing the light at the end of the tunnel with recent state efforts to streamline the permitting process.

By Chuck Kleeschulte

FOR YEARS, industry in Alaska has been complaining that it's been buried in red tape. But at last, industry officials say state government has acknowledged the need for change and is taking steps to cure the malady. The only questions lingering are whether the state is going far enough and fast enough to satisfy those who want to develop Alaska's resource-dependent economy.

"We've really seen improvement in the permitting process in recent months," says Bob Swetnam, Alaska executive representative for Phillips Petroleum. "It may not be all we'd like, but we're all very appreciative of how much it has improved."

Behind industry's new partial contentment with the level of regulatory red tape is Gov. Bill Sheffield's order late in 1983 that the state's main resource agencies implement a new process for issuing many of the hundreds of permits required at the state level. The new procedures, in effect little more than a year, have cut the delays companies and individuals face when they apply for permits. Thrust of the Sheffield initiative has been to simplify the process and shorten the time it takes to get a decision on a project.

"The new regulations haven't been in effect all that long, so in a sense we're still in a wait-and-see mode," says Bill Hopkins, executive director of the Alaska Oil & Gas Association. "Still, they've streamlined the system and cut the level of concern in industry dramatically. That in itself is a major accomplishment."

The source of industry's concern has been no secret. The billion-dollar-plus annual cost of complying with regulations and confronting paperwork delays has been a major drag on business in the state. According to a 1980 report by the Alaska Legislature's Administrative Regulatory Review Committee, government regulation costs Alaskan industry in excess of $1.3 billion each year.

The direct cost of state regulatory agencies and their 400-plus employees was pegged at more than $50 million in 1980, and observers say the figure has held at that level since then.

Not surprisingly, the bulk of that expense is borne by the oil industry. Bill McConkey, who served as head of an administrative reform effort in the administration of former Gov. Jay Hammond, says intertwining state and federal regulations hike oil company costs several hundred million dollars each year in Alaska.

Nationally, the cost to industry of complying with federal regulations has been estimated at more than $100 billion annually. That expense, added to an estimated $25 billion annual pricetag for complying with additional state rules, has been a major drain on productivity and has funneled capital from new investment into the regulatory arena.

Says Kenneth Chilton, associate director for the Center for the Study of American Business at St. Louis's Washington University, "Regardless of the positive environmental goals we're trying to accomplish, we're attaining them inefficiently at a major cost." He estimates 20 percent of the nation's productivity loss during the late 1970s and the early 1980s was attributable to government regulation.

Industries largely accept the need for government regulation to protect the health and safety of residents and the environment of the "Last Frontier." But they don't like the complexity of the regulatory process or what they perceive to be a tendency on the part of some agencies to add unrealistic requirements for project approvals and to procrastinate on making decisions.

According to 1982's consolidated state permitting manual, state, federal and local agencies process applications for more than 300 major classifications of permits and licenses in Alaska. On top of those, there are dozens more lesser types of permits required. They cover everything from deepening an oil well to processing milk to filling in wetlands to operating a gas pump. They range from the complex—such as those for coastal zone consistency determinations, wetland and fill and air and water quality requirements—to the simple, like food service, burning and unemployment insurance permits and requirements.

THAT PAPERWORK TAKES time, and in business, time is money. "If you're in business, you worry about everything that entails cost, and government regulations entail a big cost," says Alaska Oil & Gas's Hopkins. "When drilling a rig in Norton Sound can cost $250,000 a day, avoiding delays is vital."

A listing compiled by Joar Hughes in the Alaska Permit Information Center of the Department of Environmental Conservation in Juneau states the petroleum industry could need as many as 97 different types of state, federal and local permits and approvals to conduct onshore or offshore production in Alaska.

Exxon USA reported two years ago it would need approval on 42 different permits before it could launch offshore oil exploration efforts in Norton Sound. Marathon Oil Co. reportedly submitted some 96 pounds of documentation to win a single permit for one of its Cook Inlet tracts. Two years ago, say industry sources, state regu-

Battle of the (Red

Photo By Mark Kelley

Tape) Bulge

lations governing oil and gas filled more than 1,550 pages.

The oil industry, however, isn't alone in the regulatory and paperwork jungle. Don Finney, project manager for U.S. Borax's Quartz Hill molybdenum mine outside Ketchikan, says his firm will need approval on 59 different types of permits before it can begin mining.

Several efforts were undertaken during the Hammond years to wipe out some of the permitting requirements. In 1977, lawmakers set up the "one-stop" permitting office in the Department of Environmental Conservation. The agency compiled information on all permits and created a "master" permit application in an effort to cut paperwork and delays stemming from processing state and federal permits sequentially instead of concurrently. While some firms have used the service as an aid in preparing large, complex projects, most have elected to sidestep the process.

During the Hammond years, attempts also were made to combine permits for fisheries and mining. They met with mixed success. Observers say industry attitudes are one of the major differences between the Hammond years and Sheffield's administration.

"For whatever reason, the old process didn't work very well," says Bob Grogan, associate director of the current Division of Government Coordination. "On a controversial permit, the reviews were set up so that it was too easy for government to go into an indefinite stall to avoid making an unpopular decision."

Under Sheffield's system, put into effect by executive order in December 1983, all firms seeking permits from more than one state or federal agency for activity in the state's coastal areas can have the Division of Government Coordination organize permit reviews.

Agencies must review projects on a 30- or 50-day schedule, and permits must be granted or rejected within five days of the deadline.

According to Wendy Wolf, manager for permitting in the division, a review of the first six months of the program showed the state processed more than 600 permits. Seven were denied, and all that were approved were issued within the specified time frame. Those figures don't reflect extensions requested by applicants.

"The applicant can stop the clock, but we can't," Wolf says. "We're all treating the time frames as very serious."

The evaluation found that on average, all state multi-agency permits took 48 days to issue during 1984. Wolf says oil-related coastal zone permits were taking an average of 70 days to process in 1979-80.

Under the new system, some permit processes that used to require individual permit approvals are being processed with general reviews instead of specific ones. Most still require some review. The review must take place within the new deadlines, but there is no formal penalty for failing to meet those deadlines.

Grogan: Eliminating delays.

DIFFERENT AGENCIES MUST get together and decide on a permit within 18 to 24 days when permits don't require public notice and within 35 to 44 days on others. Applicants then have the right to object, either to the proposed decision or to stipulations state agencies are proposing.

If the applicant disagrees with the tentative decision, it can appeal the decision to state division directors of the three resource agencies: the departments of Natural Resources, Environmental Conservation and Fish and Game. If the applicant still doesn't concur, it can appeal to agency commissioners. The governor himself is the final unofficial arbitrator.

"All we can do is act as a facilitator to get all the agencies to sit down at one table and talk over their problems," says the coordination division's permitting manager. "So far at least there hasn't been a case where agencies haven't been able to work out reasonable solutions once they sat down and talked."

Initial reaction to Sheffield's streamlining efforts have been positive.

Harold Heinze, president of ARCO Alaska, says the changes have had a "positive impact" for ARCO, which last year won approval for development of the Lisburne oilfield on the state's North Slope.

"It provided an avenue for direct access to policymakers who had the full spectrum of decisionmaking ability," Heinze says. "You used to have problems with your issue just getting lost. The new process takes the 'black hole' out of the bureaucracy."

Sohio-Alaska Petroleum Co., which wants to invest $2 billion to develop the Endicott Reservoir surrounding Prudhoe Bay, achieved state approval for the project in 83 days after the company itself requested a delay. The company cleared the final government hurdle of North Slope Borough approval early this year. One Sohio staffer says that in the past, the state review could have taken more than a year.

Since the new system went into effect, few controversial permits have been processed, and few applicants have invoked the "elevation" process enabling appeals to commissioners. One of the most controversial involved a request to set up a gold dredging operation near Tuluksak on the Kuskokwim River northeast of Bethel. The applicant, C.C. Hawley & Associates of Anchorage, ultimately got its permit, but only after a variety of stipulations were added to protect the water quality of the river for village consumption and fish spawning.

Says Chuck Hawley, president of the mining firm, "The process works . . . in a way. It does get the resource agencies together so it makes sure no one is left out in left field. It establishes a timetable. It's not perfect, but it works."

In other quarters, the verdict on the new system is still out. Owen Graham, chief control manager for Louisiana-Pacific's Ketchikan pulp mill, says the timber industry has been so depressed in recent months that it hasn't had the opportunity to apply for many permits for logging or log transfer sites. He adds the industry won't be able to evaluate the system until logging rebounds and there are additional wetland and tideland applications.

Heinze: No more 'black holes.'

OTHERS SAY THE system's dependence on personalities may be its greatest defect. Jim Jinks, executive director for the Alaska Miners Association, says that while the new system is an improvement over the previous method, he's concerned that it was enacted by government regulation and not by statute.

"The folly of the current system is that it's entirely dependent on the person who's sitting in the governor's chair," says the mining official. "If you have a governor who wants to make the permitting system work, it might (work). But if you were to change administrations, it wouldn't take much for the system to backslide. We just feel the system is too contingent on the personalities of the governor, his commissioners and the staffers in his office."

Jinks says the miners support a legislative solution. One legislative approach first proposed in 1981 failed to win approval that year and then again in 1982 and 1984. State Rep. John Ringstad, R-Fairbanks, reintroduced the bill earlier this year. Under the proposal (House Bill 73), the Department of Natural Resources would be designated the "lead agency" on all resource-related permits. While it would have to listen to comments from other state agencies, Natural Resources would have the final say on permit approvals and stipulations.

Agencies also would have mandatory time limits for acting on applications, generally 30 to 65 days. If applications weren't acted upon within the specified time frames, they automati-

cally would be granted. The bill was tailored to avoid interagency deadlocks by making one agency ultimately responsible. Industry officials say those deadlocks traditionally have resulted in additional stipulations.

Jinks says not having a single agency responsible is another shortcoming of the current system. "My gut feeling is that the new system won't be that satisfactory over the long run since there's still no single agency ultimately responsible for saying another agency is off base in its requirements – not without elevating every complaint to the governor," he says.

Ringstad adds, however, that changes in the permitting process have lessened clamor for his proposed legislation. He concedes the bill has little chance for adoption before 1986, though he was hoping hearings on it could open during the 1985 session.

Other complaints about the new system focus on time requirements. Jim Posey, land manager for ARCO Alaska, says the system at least initially tended to extend the time required for firms to secure more routine permits. "It's great for the big projects," he says. "But we used to just walk in and get some permits. Now the agencies wait most of their 30 days before they issue them."

The Division of Government Coordination's associate director agrees agencies rigidly were following the guidelines in the early stages. "The system initially tended to overkill the routine permits," Grogan says. "We're trying to solve the problem by expanding the number of permits that can be issued automatically on the concept of general concurrence. We're aware of the problem, and we're going to eliminate it."

Mike Abbott, project coordinator for Resource Development Council for Alaska, argues that since the deadlines aren't binding or enforceable, there's no guarantee they'll be followed. "There are just too many ways to slow up permits in agencies," he says.

STATE ENVIRONMENTALISTS counter that Sheffield's reforms have gone far enough. Jay Nelson, a volunteer and former lobbyist for the Alaska Environmental Lobby, says environmentalists are "comfortable" with the regulations as they stand. "We believe they address the legitimate concern of industry about delays, and they cut horror stories," he says.

Nelson adds environmentalists strongly oppose any provision that would enable automatic approval of permits if agencies miss deadlines. "In some cases, there are good reasons for delays," he says.

Still others question whether HB 73 is even a viable alternative. While it names the Department of Natural Resources as the lead agency for permitting, it doesn't repeal existing state statutes bursting with clauses giving other agencies control over certain resource regulation. Without modification of existing statutes, the proposed law might accomplish nothing but to generate an endless string of lawsuits.

State agencies aren't the only problem. Industry complains about the lack of coordination among state and federal agencies, and several federal agencies have joined the state in attempting to cut permit delays.

U.S. Army Corps of Engineers, for example, moved in 1982 to speed its issuance of wetland permits – a key permit since more than 213 million acres of the state are classified as wetlands. In 1981, it took an average of 180 days to get a wetlands permit. But for the first quarter of fiscal 1985, the average was 57 days. The Corps of Engineers is targeting 60-day processing on all permits.

More importantly, says Corps spokeswoman Pat Richardson, the government agency meshed its public notice requirement with the state's so permit reviews run concurrently. The Corps, like the state, also is seeking to classify more types of common activities under general permits to cut down on similar reviews – drilling pad reviews for the North Slope, for example.

Whether the new system remains intact or it's replaced by a legislatively-mandated substitute, it clearly will continue to be scrutinized and revised. An inter-agency working group spent the entire fall and much of the winter ironing out bugs in the new process. Says Grogan, "It's clear that achieving accord is an ongoing process; you don't just fix a system and expect it to run like a charm. You have to make an ongoing effort to get the process to work."

The system may never work as well as industry would like. There are signs, however, that while government may not be doing much to trim its red tape, it is taking initiatives to make the red tape easier to untangle. □

League of Women Voters of Alaska

9151 Skywood Lane
Juneau, Alaska 99801
April 24, 1985

Rep. Adelheid Herrmann, Co-Chairman
Rep. Richard Shultz, Co-Chairman
House Resources Committee
Alaska Legislature
Pouch V
Juneau, Alaska 99811

Re: HB 73: Permit Processing and Coastal Zone Consistency Determinations

Dear Representatives Herrmann and Shultz:

The League of Women Voters of Alaska opposes HB 73. We will continue to oppose it unless we are shown convincing information to the effect that the Governor's permit reform program[1]/ (which we support) is not functioning, and that HB 73 would provide a better result. Based on the information available to us thus far, the Governor's permit reform program is functioning properly. Our main concern about HB 73 is the potential for disrupting a new system that is in place and seems to be working.

The League in Alaska has participated in the subject of permit reform for four years, and we have understood the need for improving the system. We have supported the Governor's permit reform program as a promising means of improving the system, and have energetically opposed last year's bills (HB 14 and SB 219, including the final amended versions). Last year's "finalists," CS HB 14 (Fin) and CS SB 219 (Res) [and especially the former], are the sources for most of the text in the bill before you now, HB 73. We have also supported agency operating budgets to provide adequate staffing for permit processing functions within DNR, DF&G and DEC.

1/ See Administrative Order No. 78 (12/20/83); regulations at 6 AAC 50.010-.190; and a series of OMB/OCC memoranda classifying permits and issuing general concurrences (dated 5/1/84, 10/8/84, 1/30/85 and 1/31/85).

We especially oppose legislation which (as HB 73 does) would provide for automatic issuance of a permit if a stated time limit is exceeded.[2]/ We fear this may, in some cases, inadequately allow for input from affected public, affected local government and coastal resource service areas. There is also the danger (especially if permit issuing and reviewing agencies' staffs are decimated by smaller operating budgets in future years) that an agency faced with such an immovable deadline will simply deny the permit on the last possible decision date. We also note that HB 73 is not even-handed with respect to administrative appeals; only the permit applicant (not other other interested persons, such as affected local governments) is afforded a right to appeal the permit issuing agency staff's decision to the head of the agency.

In the event it may be of any assistance to your Committee, I enclose one copy of a comparison sheet which I prepared last year and have extended to include this year's HB 73.

Thank you for considering our views. We have informed Representative Ringstad's staff that we would like to hear of any problems any sector is having with the present system, as we are always open to persuasive facts.

Sincerely,

Elizabeth Cuadra

Elizabeth Cuadra, Board Member
(Natural Resources Portfolio)

Enclosure

cc (w/out encl.): Committee Members (Wallace, Sund, Thompson, Miller, Cato, Pearce and Jenkins)

Sponsor (Ringstad)
Bob Grogan (OMB)

Paula Ziegler, LWVAK President

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[2]/ The Governor's permit reform program does contain time limits, different time limits for different classifications of permits.

	Governor's (AO 78 and cons. Regs)*	SB 219 (as passed by Senate)	HB 14 (CS HB 14 (Res))	Proposed HCS (Fin.) for SB 219	CS HB 14 (Finance)	1985 Legislature HB 73 (Ringstad)
(1) "Lead Agency" Assignment	OMB where ≥ 2 state agencies' permits (or a federal permit) required on project	DNR in most cases (i.e., when project is resource devel. on state or fed'l land or waters)	<=	OMB for resource devel. activities on state or fed'l lands/waters	Like SB 219	DNR in most cases (same as SB 219)
	Permit issuing agency where only 1 state agency's permit (& no federal) required	In other cases, that resource agency with principal responsibility for that type of devel. (If none, Gov. designates, by A.O., 10/1/84)		In other cases, that resource devel. agency with principal responsibility for the type of development (If none, Gov. designates by A.O., 10/1/84)		
(2) Special Issues -		Automatic issuance of permit (or CZM consistency) if deadline missed.			Similar to SB 219	- Automatic issuance of permit if time limit exceeded - For consistency determinations for activities outside coastal resource districts w/approved plans, only the statewide CZM stds/guidelines can be considered. [also in final versions of HB 14 and SB 219]

	Governor's (AO 78 and cons. Regs)*	SB 219 (as passed by Senate)	HB 14 (CS HB 14 (Res))	Proposed HCS (Fin.) for SB 219	CS HB 14 (Finance)	1985 Legislature HB 73 (Ringstad)
(3) Time Limits -	(1) 30 da or (2) 50-60 da (limited extensions) for projects that require case-by-case review. Some projects (i.e., "categorically approved" list) require no CZM cons. det. Others require only "general concurrence determination" r CZM	Class I: 30 da Class II: 60/85 (limited extensions; e.g., unusually complex issues finding)	Cl I: 30 Cl II: 60/75 same (up to 120 da max total)	Cl I: 30 Cl II: 65/85 (limited extensions; e.g., "unusually complex issues" finding)	Same as CS HB 14 (Res.)	Cl I: 30 days Cl II: 65/75 [120 day max if "complex issues] appealable [extendable to allow joint fed-state processing if limits cause "irreconcilable conflict" w/fed. law.]
(4) Lead agency duties re DEIS & federal permit clearances (incl. CZM consistency)	OMB coordinate all agency comment collection & provide single state result to feds	Lead agency (usually DNR) "solely responsible" for preparing & submitting state comments on federal permit applic's, etc.				Same as SB 219 [and no agency except lead agency can comment to feds unless fed. law requires it]

	Governor's (AO 78 and cons. Regs)*	SB 219 (as passed by Senate)	HB 14 (CS HB 14 (Res))	Proposed HCS (Fin.) for SB 219	CS HB 14 (Finance)	1985 Legislature HB 73 (Ringstad)
(5) Appeal Process	Cabinet level review avail., + Governor, Silent as to admin. appeals, judicial review	Not specified (except: appeal of "unusually complex issues" finding to Superior Ct.)	Admin. appeals: to agency head (deadline for decision 45 da.) Judicial review: All agency decisions appealable to Super. Ct. (refs. to A.P.A.) Only the permit applicant can appeal	Same as SB 219	Same as CS HB 14 (Res)	Same as HB 14