

the Federal agency pursuant to 15 CFR 930.39(a) is complete, is not a substantive review. Instead, it is a "checklist" review to see if the description of the activity, the coastal effects, and the evaluation of the State's enforceable policies are included in the submission to the State agency. If the items required by § 930.39(a) are included, then the 60-day review starts. This review does not determine or evaluate the *substantive adequacy* of the information. The adequacy of the information is a component of the State's substantive review which occurs during the 60-day review period.

To help resolve disputes as to when the 60-day review period started when a State later claims that required information was not provided, NOAA proposes to replace the requirement to "immediately" notify the Federal agency that information required by § 930.39(a) is missing with a 14-day notification period. If the State agency has not notified the Federal agency of missing information within this 14-day period, then the State waives the ability to make that claim and the 60-day review period started when the State received the initial determination and information. This would require that State agencies pay close attention to the consistency determinations they receive, but would not affect the State's ability to review the activity or to object for lack of information at the end of the 60-day review period.

Rule Change 8: § 930.51(a) Federal license or permit. The proposed changes would emphasize and clarify NOAA's long-standing view of the elements that are needed to subject a "federal license or permit" to State Federal Consistency review. First, Federal law must require that the applicant obtain the federal authorization. Second, the purpose of the federal authorization is to allow a non-federal applicant to conduct a proposed activity. Third, the proposed activity to be federally permitted must have reasonably foreseeable effects on a State's coastal uses or resources, and fourth, the proposed activity was not previously reviewed by the State agency for Federal Consistency (unless the authorization is a renewal or major amendment pursuant to § 930.51(b)). All four of these elements are required for Federal Consistency review.

Federal license or permit does not include, for CZMA Federal Consistency purposes, federal authorizations for activities that do not have coastal effects. Federal Consistency does not apply to a required federal certification of an applicant's ministerial paperwork which is merely incidental or related to an activity that either does not have

coastal effects or an activity that is already subject to Federal Consistency review. For example, when MMS makes certain determinations such as the qualification of bidders for OCS lease sales, bonding certifications, certifications of financial responsibility, approvals of departures from regulations in order to enhance safety. Or a Federal agency may be required to certify the equipment to be used for an activity which has already been the subject of a consistency review. Each of these certifications are merely incidental to the activity undertaken by the applicant which has already or will in the near future be the subject of a full Federal Consistency review.

As another example, MMS has "Notification requirements" which are not subject to Federal Consistency since they only require the operator to notify MMS of an activity and MMS' approval is not required. Another example would be when a power plant is transporting spent nuclear waste by ship; the plant must provide the U.S. Coast Guard with a transportation plan which the Coast Guard reviews, but Coast Guard approval is not required by Federal law. Because Coast Guard approval was not required and the Coast Guard merely reviewed the transportation plan, there was no Federal Consistency review under CZMA § 307(c)(1) or 307(c)(3)(A).

However, a lease issued by a Federal agency to a non-Federal entity that is the only authorization to use federal property for a non-Federal activity would still be reviewable under the listed and unlisted requirements in §§ 930.53 and 930.54, if the lease was required by law, the proposed activity will have coastal effects, and the State did not previously review a Federal authorization for the same project.

Thus, the proposed change to the rule would ensure that the definition of "Federal license or permits" is not overly-inclusive or beyond the commonly understood meaning of license or permit, while at the same time retaining the phrase "any required authorization" to capture any form of Federal license or permit that is: (1) Required by Federal law, (2) authorizes an activity, (3) the activity authorized has reasonably foreseeable coastal effects, and (4) the authorization is not incidental to a Federal license or permit previously reviewed by the State. Thus, the removal of the forms of approvals listed in the current language would not exclude a category of Federal authorizations from Federal Consistency, but would emphasize that any form of Federal authorization must have the required elements to be

considered a "Federal license or permit" for CZMA purposes.

Factual disputes concerning whether a Federal authorization is subject to Federal Consistency can be addressed through NOAA's regulations regarding the review of listed or unlisted federal license or permit activities. 15 CFR 930.53 and 930.54.

The effects test language at the end would be deleted as superfluous since subpart C contains the effects analysis for Federal agency activities.

Rule Change 9: § 930.51(e)

Substantially different coastal effects. Section (e) was added in the 2000 rule to emphasize that determining whether the effects from a renewal or major amendment are substantially different is a case-by-case factual determination that requires the input of all parties. NOAA used the phrase "the opinion of the State agency's views shall be *accorded deference*," (emphasis added) to help ensure that the State agency has the opportunity to review coastal effects which may be substantially different than previously reviewed. NOAA expected that the parties would discuss the matter and agree whether effects are substantially different. NOAA did not intend to use the phrase to have the State agency make the decision on whether coastal effects are substantially different. Thus, to provide clarification, NOAA proposes new language stating that the expert permitting Federal agency makes this determination after consulting with the State and applicant. If a State disagrees with a Federal agency's determination of substantially different coastal effects, then the State could either request NOAA mediation or seek judicial review to resolve the factual dispute.

Rule Change 10: § 930.58(a)(1)

Necessary data and information. This change would provide a greater level of specificity for information requirements for federal license or permit activities. The purpose of § 930.58 is to identify the information needed to start the six-month consistency review period and to the extent possible, identify the information needed by the State agency to make its concurrence or objection. Thus, the more specific the information requirements are, the more predictable and transparent the process.

Section 930.58(a)(1) would be reorganized to clarify that "necessary data and information" includes (1) a copy of the federal application, and (2) all supporting material provided to the Federal agency in support of the application, (3) information that is required and specifically described in the State's management program, and (4) if not included in 1 or 2, a detailed