

§ 930.58(a)(1) and replace it with a requirement for "information, if any, relied on by the applicant." This phrase describes a set of information that can be specifically defined and does not require additional evaluation by the applicant. NOAA also proposes restructuring the section to provide greater clarity.

*Comment 7.* More and more frequently, States are delaying the issuance of the consistency concurrence until the NEPA process is completed. If a final NEPA document contains no further analysis of coastal effects, the information in it is irrelevant to the State's concurrence or objection to the consistency determination. Furthermore, by withholding a State response to the consistency determination until a final NEPA document is published, the State denies the Federal agency any benefit the agency might get from the State's comments on the consistency determination. We recommend that States not be allowed to delay their responses to consistency determinations under the ruse of the need for additional information. States should be held to the timelines established in 15 CFR part 930. To accomplish this, NOAA should clarify the purpose of the consistency analysis, and the importance of a timely State response, so that Federal agencies can address that response in any final NEPA documentation.

*NOAA Response to Comment 7.* States cannot delay their consistency responses for any reason, unless the State, Federal agency and, if applicable, the applicant agree. If a State does not concur or object within the regulatory time frames, the State's concurrence is presumed, and the Federal agency may proceed. Requests for additional information do not toll or stay the regulatory time periods. For Federal agency activities under CZMA section 307(c)(1), the Federal agency makes the determination of coastal effects, consistency with the State's enforceable policies and whether the Federal agency has sufficient information to make such determinations, pursuant to 15 CFR part 930, subpart C. The State may request additional information or object, but the Federal agency is not obligated to provide information in addition to that required by 15 CFR 930.39, or to extend the regulatory review period. NOAA agrees that a final NEPA document may not be needed for CZMA review, unless there is a substantial change between a draft and final document.

*Comment 8.* A State agency may effectively extend the required 60-day consistency determination review period merely by requesting additional

information from the submitting Federal agency. The State agency is under no obligation to make its information request(s) in a timely manner.

*NOAA Response to Comment 8.* As discussed above and stated in the regulations, States cannot unilaterally alter the CZMA review periods. In this proposed rule NOAA has further clarified this fact. Section 930.39 sets out information requirements for consistency determinations. It is up to the Federal agency to determine the information necessary to support its consistency determination. NOAA's Federal Consistency regulations provide general information guidelines, but do not, and could not, presume to determine when another Federal agency's administrative record is complete and sufficient to support a consistency determination. Given the 60-day time period for review of Federal agency activities, NOAA proposes to require States to notify Federal agencies within 14 days of receipt of a consistency determination if the State believes the Federal agency has not submitted the information described in § 930.39. Otherwise, a Federal agency's submission is presumed complete and by operation of the NOAA rule, the 60-day review period began when the State received the consistency determination. If the Federal agency believes it has provided sufficient information to the State, the Federal agency can make a fully consistent finding or consistent to the maximum extent practicable finding based on its own administrative record.

*Comment 9.* Public participation is not required for State action on Federal Consistency determinations (*See* 16 U.S.C. 1456(c)(1) and (2)). There are times when, from the perspective of the Federal agency submitting information to a State agency, maintaining information security, especially handling of sensitive infrastructure and operational information (e.g., anti-terrorist/force protection related projects), is a critical concern. Consequently, NOAA should revise its rules or provide guidance that clarifies that Federal agencies, not State reviewing agencies, should make final determinations concerning the release of sensitive infrastructure or operational information that is submitted in support of a consistency determination under 16 U.S.C. 1456(c)(1) or (2).

*NOAA Response to Comment 9.* Public participation is required for State review of a Federal agency's consistency determination for Federal agency activities. CZMA section 306(d)(14), 15 CFR 930.42; *see* 65 FR 77126, 77141 (Dec. 8, 2000). NOAA's regulations provide ample means for Federal

agencies to deal with emergencies and sensitive information. *See* 15 CFR 930.32(a), (b) and (c). Section 930.32(c) on classified activities and information was added in 2000 with the assistance of the U.S. Navy.

*Comment 10.* Section 121(c), regarding the evaluation of alternatives on appeal to the Secretary, should be amended to require the Secretary to consult with expert Federal agencies regarding the availability or reasonableness of any alternatives considered by the Secretary.

*NOAA Response to Comment 10.* NOAA's regulations provide for Federal agency comment into all substantive aspects of a consistency appeal under § 930.121(a), (b) and (c) and Federal agency comments are a part of the Secretary's decision record. NOAA's regulation at 15 CFR 930.128(c) specifically provides for Federal agency comment. NOAA proposes to amend § 930.128 to clarify its historic practice regarding weight given to comments by Federal agencies.

*Comment 11.* A State can delay the start of the consistency review period for Federal agency activities by claiming the Federal agency's submission is incomplete or otherwise insufficient.

*NOAA Response to Comment 11.* NOAA proposes to clarify when the State's consistency review period begins for Federal agency activities.

#### *Appeal Time Frames*

*Comment 12.* States do not object to most Federal actions reviewed. No deadline for a Secretarial decision should be allowed to undermine the already well-established methods for resolving disputes in § 930.129(c) and (d) of the CZMA regulations. Retaining flexibility available under current regulations serves the interests of both applicants and regulatory agencies. The only way to further shorten the time frame for appeals would be to have a limited time period for development of the record, once an appeal is filed. However, this would prevent the Secretary from arriving at a decision based on all available information. It would also prejudice the States, because the State is the respondent to the appeal, which usually contains new information supplied by the appellant. If it is decided that a definitive date is necessary, it should not preclude consideration of federal environmental reviews, that include relevant information, in the administrative record.

*NOAA Response to Comment 12.* NOAA agrees that the States do not object to the great majority of projects reviewed and that of the few objections