



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(INSTALLATIONS AND ENVIRONMENT)
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

AUG 22 2003

Mr. David W. Kaiser
Federal Consistency Coordinator
Coastal Programs Division
Office of Ocean and Coastal Resources Management
National Oceanic and Atmospheric Administration
1305 East-West Highway, 11th Floor
Silver Spring, MD 20910

RE: COASTAL ZONE MANAGEMENT ACT FEDERAL CONSISTENCY
REGULATIONS, PROPOSED RULE, 68 FEDERAL REGISTER 34851-34874
(JUNE 11, 2003)

Dear Mr. Kaiser:

Thank you for the opportunity to comment on the above-referenced proposed rule. We are pleased to notice that this version of the rule addresses several of the issues raised by the Navy, on the Defense Department's behalf, as part of the advance notice review process.

We are enclosing additional comments on the revised rule for your consideration. If you have any questions regarding these comments, please contact Mr. Thomas Egeland on my staff at (703) 614-1173, or Ms. Aileen Smith in the Office of the Chief of Naval Operations, Environmental Readiness Division at (703) 602-6844.

Sincerely,

A handwritten signature in cursive script, appearing to read "Donald R. Schregardus".

Donald R. Schregardus
Deputy Assistant Secretary
(Environment)

Enclosure

**DEPARTMENT OF THE NAVY COMMENTS ON PROPOSED REVISIONS TO
FEDERAL CONSISTENCY REGULATIONS UNDER THE COASTAL ZONE
MANAGEMENT ACT OF 1972 (FR 34851-34874, 11 JUNE 2003)**

Issue 1: Proposed Section 930.31 Federal Agency Activity. “(a) The term ‘Federal agency activity’ means any functions performed by or on behalf of a Federal agency...e.g., a plan that is used to direct future agency actions...” (FR 34870)

Comment: The Navy is concerned over the inclusion of plans in the revised section 930.31. The Navy believes that, as drafted, the proposed section’s recitation of a “plan” as an example of an action requiring a consistency analysis would introduce considerable ambiguity into the interpretation of the regulations. A “plan” can be many things to many people, as can something that “direct[s] federal agency action.” The Navy believes that as a practical matter, any proposal would have to have a certain degree of specificity in order for a meaningful coastal consistency analysis to be undertaken at all. In light of the emphasis placed in the preamble on the significant level of planning necessary to require a coastal consistency analysis, the Navy believes that the revised rule’s proposed language of “proposal for action which initiates an activity or series of activities...” adequately captures those plans that would be ripe for analysis. Accordingly, the Navy recommends that the planning example be stricken from the rule as revised. If NOAA believes it is necessary to retain the current language in the rule, the Navy recommends adding the following statement to the preamble discussion of the Navy pier project on page 34855 of the Federal Register, following “The Federal agency activity for purposes of 15 CFR 930.31 is the proposal to build the pier.” (add): “Until this activity is sufficiently concrete to require analysis under the National Environmental Policy Act, it is not subject to a consistency determination.”

Issue 2: Supplementary Information, Section V, Comment 3. “For Virginia’s Chesapeake Bay Preservation Act Program, the State would like detailed maps showing (1) the layout of proposed on shore facilities and other elements of the project...; and (2) delineation of Chesapeake Bay Preservation Areas on the properties under study.” (FR 34861)

Comment: The Navy requests that NOAA clarify its response to comment 3. According to comment 3, the Commonwealth of Virginia wants federal agencies to provide detailed maps. In response, NOAA commented that the Commonwealth could amend its management program to describe the information as being “necessary data and information” pursuant to 15 CFR 930.58(a)(2) and (c), and thus required of the applicant. The Navy requests that NOAA clarify this response by adding that federal land which is by law subject solely to the discretion of, or which is held in trust by, the Federal Government, its officers, or agents is excluded from the “coastal zone” [see 16 U.S.C. § 1453 (1) (2000)] and is not directly subject to federal consistency under the CZMA. A federal agency is not required to provide the Commonwealth with a layout or a delineation of Chesapeake Bay Preservation Areas *if* the federal land is excluded from the “coastal zone”. We agree, however, that an “applicant” for a federal license might be required to provide this type of information to a state.

Issue 3: Section 930.35(d) General Negative Determination and Section 930.41(a) State Agency response.

Comment: The Navy appreciates the clarifications and streamlining the proposed sections provide to the federal consistency process. We particularly support the 930.41(a) requirement for states to provide a written response within 14 days if more information is required pursuant to 930.39(a). Written responses will alleviate the scheduling ambiguity that can occur based on informal discussions. Navy requests that NOAA similarly consider written notification response requirements for states under Section 930.35(c), thereby requiring states to provide written notification to a federal agency if a state objects to a negative determination. Any such state response should also be required to provide supporting information regarding the state's assertion that coastal effects are reasonably foreseeable.