




U.S. DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Office for Coastal Management  
Silver Spring Metro Center, Building 4  
1305 East-West Highway  
Silver Spring, Maryland 20910

## MEMO

**TO:** State Coastal Management Program Managers  
State Nonpoint Management Program Managers (Coastal Region)

**FROM:** Joelle Gore, Stewardship Division Chief  
NOAA Office for Coastal Management 

**DATE:** November 23, 2015

**SUBJECT:** Strategy for Working with States to address CZMA Section  
312 Necessary Actions Related to Coastal Nonpoint Program Development

Since Fall 2010, as state coastal management programs with conditionally approved coastal nonpoint programs have come up for routine evaluation under Section 312 of the Coastal Zone Management Act (CZMA), it has been the National Oceanic and Atmospheric Administration's (NOAA) policy to place a "necessary action" on these state coastal management programs, requiring the state to develop and submit fully approvable coastal nonpoint programs within the next five years. The necessary action reads:

***Necessary Action:** The [state coastal management program] must work with NOAA's Office for Coastal Management (OCM) to develop and submit to OCM by [6 months after 312 findings issued] a work plan with interim benchmarks and a timeline for meeting the outstanding conditions of its conditionally approved coastal nonpoint program. The documentation indicating how [the state] met the outstanding conditions must be submitted to NOAA OCM no later than [five years after 312 findings issued].*

The strategy below outlines how NOAA and EPA will work with states and territories that receive these "necessary actions" and what will occur if a state is not able to submit a fully approvable coastal nonpoint program in the five year period. NOAA worked closely with EPA in developing this strategy, and EPA concurs with this approach.

### **5 Year Necessary Action Response Period:**

- NOAA and EPA will provide guidance to the state, as needed, in developing a work plan with interim benchmarks and a timeline for meeting the outstanding conditions.
- NOAA and EPA will provide feedback to the state on the work plan it submits and provide guidance to the state throughout the five year period so that the state knows what is needed to meet its remaining program gaps.
- NOAA and EPA will review state submittals and provide feedback back to the state.

***If the Necessary Action expires and the state has not submitted a fully approvable program:<sup>1</sup>***

- NOAA will send a letter to the state agency head stating the following:
  - Although progress was made (presumably), gap(s) in the state's coastal nonpoint program remain.
  - Request that the state lay out a strategy and milestones for meeting the remaining program gap(s) over the next 18 months.
  - If remaining gap(s) is/are within coastal management program's purview, NOAA could request that coastal management program sets aside a portion of CZMA Section 306 or Section 309 funds to help address the gaps. If the state is not able to complete the development of a fully approvable coastal nonpoint program at the end of the additional 18 month period, NOAA and EPA will prepare to announce in the Federal Register our intent to find that the state has failed to submit an approvable coastal nonpoint program.
  - NOAA and EPA are committed to working very closely with the state over the next 18 months to address its remaining program gaps.

***If the 18 month "Filling the Gaps" period expires and the state has not submitted a fully approvable program:***

- NOAA and EPA would trigger the disapproval process for a coastal nonpoint program, including:
  - hold meetings with and/or send letter to governor's office;
  - announce proposed decision in Federal Register for 90-day public comment period;
  - respond to public comments received and evaluate any new material the state provides in support of its programs during the comment period; and
  - make final decision on program.
- If program is disapproved, NOAA and EPA would follow the same process as followed for Oregon when withholding funds.
  - The agencies would place a special award condition preventing the state from drawing down 30% of its CZMA Section 306 and CWA Section 319 funds until the state demonstrates a satisfactory commitment to address remaining program gaps.

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<sup>1</sup> Note: This time period does not include the time needed for NOAA and EPA to evaluate a state's submission if provided late in the necessary action period. After NOAA and EPA complete their review of a state's submission, the federal agencies may have some clarifying questions for the state to respond to before they can make a final decision about the approvability of the state's program. These clarifying questions would not trigger a letter to the state agency head but be handled at the program staff level. Only if program gaps remain after the state has responded to any minor clarifying question will NOAA move forward with this step.