



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Silver Spring, Maryland 20910

MAR 28 2006

Mr. George R. Stafford
Director, Division of Coastal Resources
New York Department of State
41 State Street
Albany, New York 12231

Dear Mr. Stafford,

Thank you for your letter dated February 6, 2006, requesting that the Office of Ocean and Coastal Resource Management (OCRM) approve the incorporation of the changes to the text of Table 2 and the addition of Table 2A into the New York State Coastal Management Program (NYSCMP) as a Routine Program Change (RPC) pursuant to Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. part 923, subpart H and OCRM Program Change Guidance (July 1996). We did not receive any comments on your request.

A change to a state's federal consistency list, including interstate activities, is, generally, a change to Uses Subject to Management since a state is either adding new federal license or permit activities to review, or expanding its review of existing uses/federal license or permit activities to new geographic areas. The federal consistency lists are also part of a state's Coordination, Public Involvement and National Interest component.

Based on our review of your submission, we concur that the changes to Table 2 and the addition of Table 2A are RPCs to Uses Subject to Management and Coordination, Public Involvement and the National Interest, and OCRM approves the incorporation of these tables into the NYSCMP. Table 2A, Interstate Activities, was developed in accordance with 15 C.F.R. part 930, subpart I, as described below.

The NYCMP's list of interstate activities in Table 2A includes three activities that require permits, licenses, or other forms of approval by the U.S. Army Corps of Engineers. The activities are pursuant to sections 9 and 10 of the Rivers and Harbors Act of 1899, section 404 of the Clean Water Act, and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (permits for ocean disposal of dredged material). These three activities are currently part of New York's list of federal license or permit activities and subject to federal consistency review by New York. This RPC does not add new activities, but includes an expanded geographic area in Connecticut, as authorized by 15 C.F.R. part 930, subpart I.

The geographic location for these activities includes clearly defined areas in the state of Connecticut. The geographic areas were coordinated with Connecticut and are similar to those proposed by Connecticut, encompassing the Bryam River to the Route 1 Bridge, and Long Island Sound and Fishers Island Sound to the 20-foot contour closest to the opposing state.

New York described effects from activities occurring within these areas of Connecticut as follows. Activities pursuant to sections 9 and 10 of the Rivers and Harbors Act of 1899 affect



the use of New York waters by potentially interfering with navigation. Activities pursuant to section 404 of the Clean Water Act and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 affect New York resources by potentially increasing the load of sediments, which may also include contaminants. The sediments and the possible pollutants have various negative effects on habitats and species, including commercial fisheries. The effects are described in greater detail in New York's RPC submission. OCRM concurs with New York's description of effects since: (1) location of resources and uses in Long Island Sound and circulation of water in the Sound is well known; and 2) New York is limiting its interstate description to those activities that present the most common source of federal permits that would impact New York coastal uses or resources. If New York, or other states, propose reviewing interstate activities farther removed from a state's coastal zone or for areas or activities not as widely understood, the state's effects analysis may need further information.

During the development of the interstate activities list, the NYCMP consulted with Connecticut and relevant Federal agencies. Connecticut indicated in writing that it has no objections to the list.

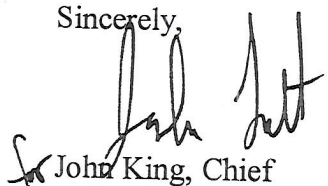
Federal consistency shall apply to the approved changes once you publish notice of the approval, pursuant to 15 C.F.R. § 923.84(b)(4). Please provide this office with a copy of the public notice.

Once you publish notice of OCRM's approval, only the listed federal license or permit activities located within the described geographic areas in Connecticut will be routinely subject to New York's interstate federal consistency review. If New York wants to review other interstate activities, or the listed interstate activities in areas outside of the described geographic areas, New York must either amend its list or seek case-by-case review as an unlisted activity under 15 C.F.R. § 930.54.

In addition, consistent with recent OCRM advice provided to states seeking interstate review, states do not need to describe geographic areas within other states for the review of Federal agency activities under 15 C.F.R. part 930, subpart C in their coastal management programs. This is because, whether listed or whether a geographic location is described, a Federal agency is obligated to determine whether its activity, regardless of location (including within the boundaries of another state) will have reasonably foreseeable effects on a state's coastal uses or resources. NOAA included 15 C.F.R. § 930.155(a) to specifically address this matter; that, while NOAA encourages states to consult with Federal agencies for interstate Federal agency activities, NOAA's interstate regulations do not affect the obligation for Federal agencies to provide consistency determinations to states for activities with coastal effects.

Should you have any questions, please call Carleigh Trappe at (301)-713-3155, extension 165.

Sincerely,



John King, Chief
Coastal Programs Division