

DESCRIPTION OF PROPOSED PROGRAM CHANGES TO THE TEXAS COASTAL MANAGEMENT PROGRAM

Briefly summarize in one to three paragraphs the proposed program changes including the statutes or regulations, or other type of program provisions that are contained in the program change submission. 15 C.F.R. §923.83(a)(1).

Response:

The Texas General Land Office (GLO), as the lead agency for the Texas Coastal Management Program (CMP), is requesting that the National Oceanic and Atmospheric Administration's Office for Coastal Management (NOAA/OCM) concur with the incorporation of the program changes described in this document, pursuant to 15 C.F.R. part 923, subpart H.

The CMP is based on the Coastal Coordination Act, Texas Natural Resources Code, Chapter 33, Subchapter F, as amended, and was approved by NOAA in 1996. The last program change request was submitted to OCM in 2013 and approved as Routine Program Changes. These program changes included incorporation of the 2011 legislation (SB 656) abolishing the Coastal Coordination Council and transferring the Council's duties to the GLO and GLO Commissioner.

The currently proposed program changes consist of the three recent rule packages:

- I. Administrative Rule Transfer & Renumbering. In 2022, the CMP rules in Title 31 of the Texas Administrative Code (TAC) Chapters 501 – 506, Part 16, Coastal Coordination Council, were transferred to 31 TAC Chapters 26 – 30, Part 1, General Land Office. This transfer automatically renumbered the rule sections and chapters, but it did not revise the cross references embedded in the text of the rules.
- II. Correcting Cross-References. In 2023, the GLO amended the CMP rules in 31 TAC Chapters 26 – 29 to update cross references in the rule text and replace outdated terms, including removing references to the abolished Coastal Coordination Council.
- III. Replacing Chapter 30 (formerly, Chapter 506). In 2023, the GLO repealed and replaced 31 TAC Chapter 30, "Procedures for Federal Consistency with Coastal Management Program Goals and Policies." The main goals in replacing Chapter 30 were to streamline and update the rules to be consistent with the NOAA regulations in 15 C.F.R. Part 930. This rulemaking also removed references to the abolished Coastal Coordination Council; revised terminology and timeframes to align with 15 C.F.R. Part 930; and reordered Texas's Listed Activities for clarity. The new Chapter 30 rules were developed in close coordination with OCM to ensure these rules conform with 15 C.F.R. part 930.

6. Briefly summarize the changes contained within each separate law, regulation, policy, or other type of program provision in the program change request and briefly describe how the management program as changed is different than the previously approved management program. 15 CFR 923.83(a)(2). If a program change is in response to a CZMA 312 evaluation necessary action, indicate in the description. 15 CFR 923.83(a)(11). Upload any correspondence with federal agencies regarding the program change. 15 CFR 923.83(a)(10)

Response:

Background—Last Approved Program Changes (2013)

In 2010, the Coastal Coordination Council underwent review by the Texas Sunset Commission. The Sunset Commission concluded that the Council's role in the CMP had become duplicative of the GLO's role in administering the CMP, and so the Commission recommended abolishing the Council and transferring its duties to the GLO. In 2011, the 82nd Texas Legislature passed SB 656 based on the Sunset Commission's recommendations. SB 656 amended the Coastal Coordination Act to abolish the Council and transfer the Council's duties to the GLO.

The GLO's 2013 Program Change Request, which was approved by NOAA, incorporated the amendments to the Act made by SB 656. At the time of the approval, the GLO was working to update the CMP rules in 31 TAC Chapters 501 – 505 to reflect SB 656, and to redraft the federal consistency procedural rules in Chapter 506 to conform with 15 C.F.R. Part 930. Although SB 656 provided for the continuing validity of the CMP rules (the enacted bill stating, in relevant part, "a reference in another law or an administrative rule to the Coastal Coordination Council means the General Land Office"), the GLO also began planning to transfer the CMP rules in Title 31 from the TAC part reserved for the Council (Part 16) to the TAC part reserved for the GLO (Part 1).

Currently Proposed Program Changes (2025)

This program change request seeks approval from NOAA for the following: (i) the administrative rule transfer, which moved and renumbered the CMP rules from 31 TAC Chapters 501 – 506 to 31 TAC Chapters 26 – 30; (ii) the adoption of rule amendments to 31 TAC Chapters 26 – 30, which corrected cross references and revised outdated terminology; and (iii) the replacement of 31 TAC Chapter 30 ("Procedures for Federal Consistency with Coastal Management Program Goals and Policies"), which streamlined and updated these rules to conform with the NOAA regulations governing federal consistency.

The program changes included in (i) and (ii) are editorial, non-substantive, minor in scope and the type of changes described in 15 C.F.R. § 923.82(c). The changes included in (iii) consist of new provisions, but these provisions were drafted to closely track NOAA's current regulations on federal consistency, and, where applicable, to reflect the SB 656 legislative amendments previously incorporated in the 2013 approved program changes.

The proposed program changes do not change the CMP in any of the following five program approval areas: Uses Subject to Management; Special Management Areas; Boundaries; Authorities and Organization; and Coordination, Public Involvement, and National Interest.

I. Administrative Rule Transfer and Renumbering

The CMP rules were administratively transferred from 31 TAC Chapters 501 – 506 to 31 TAC Chapters 26 -30, effective December 1, 2022. This transfer merely renumbered rule sections and chapters; there were no changes to the text of the rules. The purpose of the transfer was to help clarify the GLO’s role and duties under the Coastal Coordination Act, in accordance with the amendments to the Act made by SB 656 and approved by NOAA in the 2013 program changes. The table below shows all renumbering resulting from this rule transfer:

| <i>Original Rules</i> | <i>Transferred to</i> |
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| Title 31. Natural Resources and Conservation Part 16. Coastal Coordination Council Chapter 501. Coastal Management Program | Title 31. Natural Resources and Conservation Part 1. General Land Office Chapter 26. Coastal Management Program |
| Subchapter A. General Provisions | Subchapter A. General Provisions |
| §501.1. Program for Special Management of Coastal Natural Resource Areas. | §26.1. Program for Special Management of Coastal Natural Resource Areas. |
| §501.2. Findings. | §26.2. Findings. |
| §501.3. Definitions and Abbreviations. | §26.3. Definitions and Abbreviations. |
| §501.4. Coastal Coordination Advisory Committee. | §26.4. Coastal Coordination Advisory Committee. |
| Subchapter B. Goals and Policies | Subchapter B. Goals and Policies |
| §501.10. Compliance with CMP Goals and Policies. | §26.10. Compliance with CMP Goals and Policies. |
| §501.11. Statutory and Constitutional Limits. | §26.11. Statutory and Constitutional Limits. |
| §501.12. Goals. | §26.12. Goals. |
| §501.13. Administrative Policies. | §26.13. Administrative Policies. |
| §501.15. Policy for Major Actions. | §26.15. Policy for Major Actions. |
| §501.16. Policies for Construction of Electric Generating and Transmission Facilities. | §26.16. Policies for Construction of Electric Generating and Transmission Facilities. |
| §501.17. Policies for Construction, Operation, and Maintenance of Oil and Gas Exploration and Production Facilities. | §26.17. Policies for Construction, Operation, and Maintenance of Oil and Gas Exploration and Production Facilities. |
| §501.18. Policies for Discharges of Wastewater and Disposal of Waste from Oil and Gas Exploration and Production Activities. | §26.18. Policies for Discharges of Wastewater and Disposal of Waste from Oil and Gas Exploration and Production Activities. |
| §501.19. Policies for Construction and Operation of Solid Waste Treatment, Storage, and Disposal Facilities. | §26.19. Policies for Construction and Operation of Solid Waste Treatment, Storage, and Disposal Facilities. |
| §501.20. Policies for Prevention, Response and Remediation of Oil Spills. | §26.20. Policies for Prevention, Response and Remediation of Oil Spills. |
| §501.21. Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters. | §26.21. Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters. |
| §501.22. Policies for Nonpoint Source (NPS) Water Pollution. | §26.22. Policies for Nonpoint Source (NPS) Water Pollution. |

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| §501.23. Policies for Development in Critical Areas. | §26.23. Policies for Development in Critical Areas. |
| §501.24. Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands. | §26.24. Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands. |
| §501.25. Policies for Dredging and Dredged Material and Placement. | §26.25. Policies for Dredging and Dredged Material and Placement. |
| §501.26. Policies for Construction in the Beach/Dune System. | §26.26. Policies for Construction in the Beach/Dune System. |
| §501.27. Policies for Development in Coastal Hazard Areas. | §26.27. Policies for Development in Coastal Hazard Areas. |
| §501.28. Policies for Development Within Coastal Barrier Resource System Units and Otherwise Protected Areas on Coastal Barriers. | §26.28. Policies for Development Within Coastal Barrier Resource System Units and Otherwise Protected Areas on Coastal Barriers. |
| §501.29. Policies for Development in State Parks, Wildlife Management Areas or Preserves. | §26.29. Policies for Development in State Parks, Wildlife Management Areas or Preserves. |
| §501.30. Policies for Alteration of Coastal Historic Areas. | §26.30. Policies for Alteration of Coastal Historic Areas. |
| §501.31. Policies for Transportation Projects. | §26.31. Policies for Transportation Projects. |
| §501.32. Policies for Emission of Air Pollutants. | §26.32. Policies for Emission of Air Pollutants. |
| §501.33. Policies for Appropriations of Water. | §26.33. Policies for Appropriations of Water. |
| §501.34. Policies for Levee and Flood Control Projects. | §26.34. Policies for Levee and Flood Control Projects. |
| Chapter 503. Coastal Management Program Boundary | Chapter 27. Coastal Management Program Boundary |
| §503.1. Coastal Management Program Boundary. | §27.1. Coastal Management Program Boundary. |
| Chapter 504. Permitting Assistance And Preliminary Consistency Review | Chapter 28. Permitting Assistance And Preliminary Consistency Review |
| Subchapter A. General Provisions | Subchapter A. General Provisions |
| §504.1. Purpose. | §28.1. Purpose. |
| §504.2. Definitions. | §28.2. Definitions. |
| §504.3. Permitting Assistance Group. | §28.3. Permitting Assistance Group. |
| Subchapter B. Permitting Assistance | Subchapter B. Permitting Assistance |
| §504.10. Permit Service Center. | §28.10. Permit Service Center. |
| §504.11. Permitting Assistance Coordinator. | §28.11. Permitting Assistance Coordinator. |
| §504.13. Permitting Assistance Services. | §28.13. Permitting Assistance Services. |
| Subchapter C. Preliminary Consistency Review | Subchapter C. Preliminary Consistency Review |
| §504.20. Requests for Preliminary Consistency Review. | §28.20. Requests for Preliminary Consistency Review. |
| §504.21. Preliminary Statement from Permitting Agencies or Subdivisions. | §28.21. Preliminary Statement from Permitting Agencies or Subdivisions. |
| §504.22. Preliminary Findings. | §28.22. Preliminary Findings. |

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| Subchapter D. Assistance With Federal Funds | Subchapter D. Assistance With Federal Funds |
| §504.30. Assisting Applicants for Federal Licenses and Permits with Consistency Certifications. | §28.30. Assisting Applicants for Federal Licenses and Permits with Consistency Certifications. |
| Chapter 505. Procedures For State Consistency With Coastal Management Program Goals And Policies | Chapter 29. Procedures For State Consistency With Coastal Management Program Goals And Policies |
| Subchapter A. Purpose And Scope | Subchapter A. Purpose And Scope |
| §505.10. Purpose and Policy. | §29.10. Purpose and Policy. |
| §505.11. Actions and Rules Subject to the Coastal Management Program. | §29.11. Actions and Rules Subject to the Coastal Management Program. |
| §505.12. Definitions. | §29.12. Definitions |
| Subchapter B. Commissioner Review And Certification Of Agency Rules | Subchapter B. Commissioner Review And Certification Of Agency Rules |
| §505.20. Commissioner Review and Certification of Agency Rules and Rule Amendments. | §29.20. Commissioner Review and Certification of Agency Rules and Rule Amendments. |
| §505.21. Effect of Commissioner Certification of Agency Rules and Rule Amendments. | §29.21. Effect of Commissioner Certification of Agency Rules and Rule Amendments. |
| §505.22. Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program. | §29.22. Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program. |
| §505.23. Expedited Certification of Rules and Rule Amendments. | §29.23. Expedited Certification of Rules and Rule Amendments. |
| §505.24. Pre-Certification Review of Draft Rules and Draft Rule Amendments. | §29.24. Pre-Certification Review of Draft Rules and Draft Rule Amendments. |
| §505.25. Revocation of Certification. | §29.25. Revocation of Certification. |
| §505.26. Approval of Thresholds for Referral. | §29.26. Approval of Thresholds for Referral. |
| Subchapter C. Consistency And Commissioner Review Of Proposed State Agency Actions | Subchapter C. Consistency And Commissioner Review Of Proposed State Agency Actions |
| §505.30. Agency Consistency Determination. | §29.30. Agency Consistency Determination. |
| §505.31. Preliminary Consistency Review of a Proposed Agency Action. | §29.31. Preliminary Consistency Review of a Proposed Agency Action. |
| §505.32. Requirements for Referral of a Proposed Agency Action. | §29.32. Requirements for Referral of a Proposed Agency Action. |
| §505.33. Filing of Request for Referral. | §29.33. Filing of Request for Referral. |
| §505.34. Referral of a Proposed Agency Action to the Commissioner for Consistency Review. | §29.34. Referral of a Proposed Agency Action to the Commissioner for Consistency Review. |
| §505.35. Procedures for Commissioner Review of a Proposed Agency Action. | §29.35. Procedures for Commissioner Review of a Proposed Agency Action. |
| §505.36. Standard of Commissioner Review of a Proposed Agency Action. | §29.36. Standard of Commissioner Review of a Proposed Agency Action. |
| §505.37. Activities Pending Commissioner Review of a Proposed Agency Action. | §29.37. Activities Pending Commissioner Review of a Proposed Agency Action. |
| §505.38. Commissioner Determination on Review of a Proposed Agency Action. | §29.38. Commissioner Determination on Review of a Proposed Agency Action. |

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| §505.39. Agency Action after Commissioner Protest. | §29.39. Agency Action after Commissioner Protest. |
| §505.42. Enforcement after Commissioner Protest of a Proposed Agency Action. | §29.42. Enforcement after Commissioner Protest of a Proposed Agency Action. |
| Subchapter D. Commissioner Advisory Opinions on General Plans | Subchapter D. Commissioner Advisory Opinions on General Plans |
| §505.50. General Plans. | §29.50. General Plans |
| §505.51. Request for a Non-Binding Advisory Opinion and Commissioner Action. | §29.51. Request for a Non-Binding Advisory Opinion and Commissioner Action. |
| §505.52. Request for Commissioner Participation in the Development of General Plans. | §29.52. Request for Commissioner Participation in the Development of General Plans. |
| §505.53. Purpose and Effect of an Advisory Opinion. | §29.53. Purpose and Effect of an Advisory Opinion. |
| Subchapter E. Consistency and Commissioner Review of Local Government Actions | Subchapter E. Consistency and Commissioner Review of Local Government Actions |
| §505.60. Subdivision Actions Subject to the Coastal Management Program. | §29.60. Subdivision Actions Subject to the Coastal Management Program. |
| §505.62. Subdivision Consistency Determination. | §29.62. Subdivision Consistency Determination. |
| §505.63. Preliminary Consistency Review of a Proposed Subdivision Action. | §29.63. Preliminary Consistency Review of a Proposed Subdivision Action. |
| §505.64. Requirements for Referral of a Proposed Subdivision Action. | §29.64. Requirements for Referral of a Proposed Subdivision Action. |
| §505.65. Filing of Request for Referral. | §29.65. Filing of Request for Referral. |
| §505.66. Referral of a Proposed Subdivision Action to the Commissioner for Review. | §29.66. Referral of a Proposed Subdivision Action to the Commissioner for Review. |
| §505.67. Procedures for Commissioner Review of a proposed Subdivision Action. | §29.67. Procedures for Commissioner Review of a proposed Subdivision Action. |
| §505.68. Standard of Commissioner Review of a Proposed Subdivision Action. | §29.68. Standard of Commissioner Review of a Proposed Subdivision Action. |
| §505.69. Activities Pending Commissioner Review of a Proposed Subdivision Action. | §29.69. Activities Pending Commissioner Review of a Proposed Subdivision Action. |
| §505.70. Commissioner Action on Review of a Proposed Subdivision Action. | §29.70. Commissioner Action on Review of a Proposed Subdivision Action. |
| §505.71. Subdivision Action after Commissioner Protest. | §29.71. Subdivision Action after Commissioner Protest. |
| §505.74. Enforcement after Commissioner Protest of a Proposed Subdivision Action. | §29.74. Enforcement after Commissioner Protest of a Proposed Subdivision Action. |
| Chapter 506. Council Procedures For Federal Consistency With Coastal Management Program Goals And Policies | Chapter 30. Council Procedures For Federal Consistency With Coastal Management Program Goals And Policies |
| §506.10. Purpose and Policy. | §30.10. Purpose and Policy. |
| §506.11. Definitions. | §30.11. Definitions. |
| §506.12. Federal Agency Actions, Federal Agency Activities and Development Projects, and Outer Continental Shelf Plans Subject to the Coastal Management Program. | §30.12. Federal Agency Actions, Federal Agency Activities and Development Projects, and Outer Continental Shelf Plans Subject to the Coastal Management Program. |

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| §506.13. Conditional Concurrence. | §30.13. Conditional Concurrence. |
| §506.20. Consistency Determinations for Federal Agency Activities and Development Projects. | §30.20. Consistency Determinations for Federal Agency Activities and Development Projects. |
| §506.21. Notification of Negative Determinations. | §30.21. Notification of Negative Determinations. |
| §506.22. General Consistency Determinations for Proposed Federal Agency Activities. | §30.22. General Consistency Determinations for Proposed Federal Agency Activities. |
| §506.23. Consistency Determinations for Development Projects. | §30.23. Consistency Determinations for Development Projects. |
| §506.24. Consistency Determinations for Federal Agency Activities Initiated Prior to Federal Approval of the Coastal Management Program. | §30.24. Consistency Determinations for Federal Agency Activities Initiated Prior to Federal Approval of the Coastal Management Program. |
| §506.25. Public Notice and Comment. | §30.25. Public Notice and Comment. |
| §506.26. Referral of Federal Agency Activities. | §30.26. Referral of Federal Agency Activities. |
| §506.27. Council Hearing to Review Federal Agency Activities and Availability of Mediation. | §30.27. Council Hearing to Review Federal Agency Activities and Availability of Mediation. |
| §506.28. General Consistency Agreements for Federal Activities; Interagency Coordination Teams for Federal Development Projects. | §30.28. General Consistency Agreements for Federal Activities; Interagency Coordination Teams for Federal Development Projects. |
| §506.29. Supplemental Interagency Coordination for Proposed Federal Agency Activities. | §30.29. Supplemental Interagency Coordination for Proposed Federal Agency Activities. |
| §506.30. Consistency Certifications for Federal Agency Actions. | §30.30. Consistency Certifications for Federal Agency Actions. |
| §506.31. Council Assistance. | §30.31. Council Assistance. |
| §506.32. Public Notice and Comment. | §30.32. Public Notice and Comment. |
| §506.33. Referral of Federal Agency Action. | §30.33. Referral of Federal Agency Action |
| §506.34. Council Hearing To Review a Federal Agency Action. | §30.34. Council Hearing To Review a Federal Agency Action. |
| §506.35. General Concurrence. | §30.35. General Concurrence. |
| §506.36. Supplemental Coordination for Proposed Federal Agency Actions. | §30.36. Supplemental Coordination for Proposed Federal Agency Actions. |
| §506.37. Remedial Action for Previously Reviewed Federal Agency Actions. | §30.37. Remedial Action for Previously Reviewed Federal Agency Actions. |
| §506.40. Consistency Certifications for Outer Continental Shelf Plans. | §30.40. Consistency Certifications for Outer Continental Shelf Plans. |
| §506.41. Public Notice and Comment. | §30.41. Public Notice and Comment. |
| §506.42. Referral of an Outer Continental Shelf Plan. | §30.42. Referral of an Outer Continental Shelf Plan. |
| §506.43. Council Hearing to Review Outer Continental Shelf Plan. | §30.43. Council Hearing to Review Outer Continental Shelf Plan. |
| §506.44. Effect of Council Concurrence. | §30.44. Effect of Council Concurrence. |
| §506.45. Failure to Comply Substantially with an Approved OCS Plan. | §30.45. Failure to Comply Substantially with an Approved OCS Plan. |
| §506.50. Notice to the Council of Applications for Federal Assistance. | §30.50. Notice to the Council of Applications for Federal Assistance. |

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| §506.51. Referral of Applications for Federal Assistance. | §30.51. Referral of Applications for Federal Assistance. |
| §506.52. Council Hearing to Review Applications for Federal Assistance. | §30.52. Council Hearing to Review Applications for Federal Assistance. |
| §506.53. Supplemental Coordination for Federal Assistance Activities Rule. | §30.53. Supplemental Coordination for Federal Assistance Activities Rule. |
| §506.54. Remedial Action for Previously Reviewed Federal Assistance Activities. | §30.54. Remedial Action for Previously Reviewed Federal Assistance Activities. |

II. Amendments to 31 TAC Chapters 26 – 29

On July 10, 2023, the GLO adopted rule amendments to Chapters 26 – 29. The main objectives of the amendments were to update cross-references within the rules that became outdated following the administrative rule transfer described above, and to update terminology. In addition, the amendments helped clarify the rules by reflecting the amendments to the Coastal Coordination Act made by SB 656 and previously approved by NOAA in the 2013 program change submission. The amendments consist of the following:

Amendments to Chapter 26 – Coastal Management Program

The amendments to Chapter 26 updated cross references within the following sections: §26.3, relating to Definitions and Abbreviations; §26.4, relating to Coastal Coordination Advisory Committee; §26.10, relating to Compliance with CMP Goals and Policies; §26.13, relating to Administrative Policies Review; §26.15, relating to Policy for Major Actions; §26.18, relating to Policies for Discharges of Wastewater and Disposal of Waste from Oil and Gas Exploration and Production Activities; §26.23, relating to Policies for Development in Critical Areas; §26.24, relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands; §26.25, relating to Policies for Dredging and Dredged Material and Placement; §26.31, relating to Policies for Transportation Projects; and §26.34, relating to Policies for Levee and Flood Control Projects.

The amendment to §26.21, relating to Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters, updated the name of a state agency from the Texas Department of Health to its successor agency, the Texas Department of State Health Services.

The amendments to Chapter 26 are minor administrative and editorial revisions that do not make any substantive changes to the enforceable policies. Moreover, these changes do not alter the authorities or organization of the approved CMP, and the changes merely reflect amendments to the Coastal Coordination Act approved by NOAA in the 2013 program change submission.

Amendment to Chapter 27 – Coastal Management Program Boundary

The amendment to Chapter 27 updated the rule reference labeling the Coastal Boundary Map Graphic in §27.1(a). This is a minor administrative and technical change. The CMP boundary and the content of the graphic were not changed by the amendment.

Amendments to Chapter 28 – Permitting Assistance and Preliminary Consistency Review

The amendments to Chapter 28 updated cross references within the following sections: §28.2, relating to Definitions; §28.11, relating to Permitting Assistance Coordinator; and §28.20, relating to Requests for Preliminary Consistency Review.

The amendment to §28.10, relating to Permit Service Center, updates terminology and clarifies that the Texas Parks and Wildlife Department issues "certificates of location."

The amendment to §28.3, relating to Permitting Assistance Group (PAG), added a new subsection (d) to reflect current practice by clarifying that the PAG may participate in the planning and development of regional general permits and general permits to support future beach management and nourishment, coastal restoration projects, and the continued development of the CMP, as needed.

The amendments to Chapter 28 are minor administrative and technical revisions that update cross references and terminology, and clarify the current practice of a working group, the PAG. These changes do not alter the authorities or organization of the approved CMP, and the changes merely reflect amendments to the Coastal Coordination Act approved by NOAA in the 2013 program change submission.

Amendments to Chapter 29 – Procedures for State Consistency with CMP Goals and Policies

The amendments to Chapter 29 updated cross references within the following sections: §29.11, relating to Actions and Rules Subject to the Coastal Management Program; §29.12, relating to Definitions; §29.20, relating to Commissioner Review and Certification of Agency Rules and Rule Amendments; §29.21, relating to Effect of Commissioner Certification of Agency Rules and Rule Amendments; §29.22, relating to Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program; §29.23, relating to Expedited Certification of Rules and Rule Amendments; §29.24, relating to Pre-Certification Review of Draft Rules and Draft Rule Amendments; §29.25, relating to Revocation of Certification; §29.26, relating to Approval of Thresholds for Referral; §29.30, relating to Agency Consistency Determination; §29.31, relating to Preliminary Consistency Review of Proposed Agency Action; §29.32, relating to Requirements for Referral of a Proposed Agency Action; §29.33, relating to Filing of Request for Referral; §29.34, relating to Referral of a Proposed Agency Action to the Commissioner for Consistency Review; §29.36, relating to Standard of Commissioner Review of a Proposed Agency Action; §29.42, relating to Enforcement after Commissioner Protest of a Proposed Agency Action; §29.51 relating to Request for a Non-Binding Advisory Opinion and

Commissioner Action; 29.52, relating to Request for Commissioner Participation in the Development of General Plans; §29.60, relating to Subdivisions Actions Subject to the Coastal Management Program; §29.62, relating to Subdivision Consistency Determinations; §29.63, relating to Preliminary Consistency Review of a Proposed Subdivision Action; §29.64, relating to Requirements for a Referral of a Proposed Subdivision Action; §29.65, relating to Filing of Request for Referral; §29.66, relating to Referral of a Proposed Subdivision Action to the Commissioner for Review; §29.68, relating to Standard of Commissioner Review of a Proposed Subdivision Action; and §29.74, relating to Enforcement after Commissioner Protest of a Proposed Subdivision Action.

The amendment to §29.11(a)(7)(A) added updated terminology, including a clarification that the Texas Parks and Wildlife Department issues "certificates of location."

The amendments to Chapter 29 are minor administrative and technical revisions to update outdated cross references and terminology. These changes do not alter the authorities or organization of the approved CMP, and the changes merely reflect amendments to the Coastal Coordination Act approved by NOAA in the 2013 program change submission.

III. Adoption of new Chapter 30 – Federal Consistency Procedures

In 2023, the GLO repealed and replaced Chapter 30 (labeled as Chapter 506 prior to the administrative rule transfer) with new sections and a new chapter title. The adopted rules closely adhere to the Coastal Zone Management Act (CZMA) and Federal Consistency regulations in 15 C.F.R. Part 930. Additionally, the rules reorganize, streamline, and clarify the GLO's federal consistency review procedures for federal license or permit activities, federal agency activities and development projects, and outer continental shelf (OCS) plans. The adopted rules also reorder and clarify Texas's Listed Activities Subject to CZMA review in §30.12. No new listed activities are added even though the proposed rules had originally included new federal financial assistance activities for FEMA and HUD. These federal financial assistance activities were subsequently withdrawn after consulting with OCM. The adopted rules also added in §30.30(b)(3) new Necessary Data and Information requirements pertaining to alternative analysis, habitat characterization, and any required surveys for the license or permit. After consulting with NOAA, the Necessary Data and Information will be removed in a subsequent rulemaking and not enforced in the interim. The cross references throughout Chapter 30 have also been updated to reflect the administrative transfer described above.

To reflect the amendments to the Coastal Coordination Act made by SB 656 and previously approved by NOAA in the 2013 program change submission, the new Chapter 30 rules omit any references to the Coastal Coordination Council, clarify the transfer of the Council's functions and duties to the Commissioner and GLO, and add references to the Coastal Coordination Advisory Committee formed following SB 656. The adopted rules also require the Commissioner to consider both written and oral testimony from public comments during an elevated consistency review by the Commissioner, as required by SB 656.

The newly adopted federal consistency procedures were developed in close consultation with

NOAA and their incorporation into the program would increase understanding and transparency regarding the CMP's federal consistency review process and associated review timeframes.

Section by Section Description

Deleted Sections

The GLO repealed the following sections: §§30.10 - 30.13, 30.20 - 30.37, 30.40 - 30.45, and 30.50 - 30.54.

Adopted Sections

GLO adopted new §§30.10, 30.11, 30.20, 30.30, 30.40, and 30.60 without changes to the proposed text as published in the January 27, 2023.

The GLO adopted new §30.12, relating to Listed Activities Subject to CZMA Review, with changes to the proposed text as published in the January 27, 2023, issue of the Texas Register (48 TexReg 326). The rule was republished to reflect the change.

The GLO withdrew proposed §30.50 because it was no longer needed.

The adopted rules repealed the title of Chapter 30, "Council Procedures for Federal Consistency with Coastal Management Program Goals and Priorities," and adopted a new title for Chapter 30, "Procedures for Federal Consistency with Coastal Management Program Goals and Policies."

Purpose and Policy

New §30.10, relating to Purpose and Policy, stipulates that the rules in the Chapter establish a process for federal consistency review, as required by Texas Natural Resources Code, §33.206(d). This new section reflects federal procedures for implementing the federal consistency requirements of the CZMA and provides that federal actions and activities subject to the Texas CMP are consistent with the goals and enforceable policies. The procedures in this Chapter are intended to allow the Commissioner to identify, address, and resolve federal consistency issues. The new section also stipulates that if any inconsistencies are found between these rules and those of the Federal Consistency regulations in 15 C.F.R. Part 930, the federal regulations control. This new section is necessary to implement SB 656 and to update the rules to conform with the Federal Consistency regulations in 15 C.F.R. Part 930.

Definitions

New §30.11, relating to Definitions, sets forth the meanings of key terms used in the Chapter.

New §30.11(a) adds an interpretive provision clarifying that the defined terms have the meanings set forth in this section unless the context clearly indicates otherwise.

New §30.11(a)(1) adds a definition for "associated facilities," which means all "proposed otherwise used, in full or in major part, to meet the needs of a federal action (e.g., activity,

development project, license, permit, or assistance); and (B) without which the federal action, as proposed, could not be conducted.” See 15 C.F.R. §930.11(d).

New §30.11(a)(2) adds a definition for “Coastal Coordination Act,” which is the short title of Texas Natural Resources Code, Chapter 33, Subchapter F.

New §30.11(a)(3) adds a definition for "coastal zone," which means the "portion of the coastal area located within the boundaries established by the CMP under Texas Natural Resources Code, §33.2053(k), and described in Chapter 27 of this title (relating to Coastal Management Program Boundary)."

New §30.11(a)(4) adds a definition for "CMP," which means "Texas Coastal Management Program, which was accepted into the federal Coastal Zone Management Program in 1996 after receiving approval from the federal Office for Coastal Management."

New §30.11(a)(5) adds a definition for "CMP coordinator," which means the "GLO Coastal Resources staff member designated by the commissioner." This new term replaces an obsolete reference to the Council Secretary.

New §30.11(a)(6) adds a definition for "CMP goals and enforceable policies," which means the "goals and enforceable policies set forth in Chapter 26 of this title."

New §30.11(a)(7) adds a definition for "Commissioner," which means the "Commissioner of the GLO."

New §30.11(a)(8) adds a definition for "Committee," which means the "Coastal Coordination Advisory Committee. The addition of the term Committee implements amendments to the Coastal Coordination Act by SB 656.

New §30.11(a)(9) adds a definition for "CZMA," which means the "Federal Coastal Zone Management Act of 1972, as amended."

New §§30.11(a)(10) – (16) adds definitions for "development project," "Director," "federal agency," "federal agency activity," "federal assistance," "federal license or permit activity," and "Outer Continental Shelf (OCS) plan," that are consistent with the Federal Consistency Regulations in 15 C.F.R. Part 930. Previously, NOAA had raised concerns with the use of the term “federal agency action” because it was confusing because it meant a federal license or permit activity. The adopted rules replaced this “federal license of permit activity”.

New §30.11(a)(17) adds a definition for "program boundary," which means "CMP program boundary established in §27.1 of this title (relating to the Coastal Management Program Boundary)."

New §30.11(b) adds an interpretive provision clarifying that statutory or regulatory terms or phrases that are not defined in the Chapter retain the meaning provided in the pertinent agency’s regulations unless a different meaning is assigned in the applicable regulations under the CZMA.

Texas’s Listed Activities Subject to CZMA Review

Texas's Listed Activities subject to CZMA Review set out in §30.12 does not include any new listed activities or substantive revisions but instead includes minor administrative and technical revisions that include a new title, reordering of sections, and added language for clarification. Additionally, references to the Council are removed and the term GLO is added.

New §30.12, relating to Federal Listed Activities Subject to CZMA Review, identifies federal agency actions that are subject to the Federal Consistency regulations set out in 15 C.F.R. Part 930.

New §30.12(a) states that federal actions within the CMP boundary may adversely affect coastal natural resource areas (CNRAs) within the coastal zone. The list of federal actions that are subject to CZMA federal consistency review by the GLO include federal agency activities, federal license or permit activities, and federal assistance applications.

New §30.12(a)(1) explains that a consistency determination is required for federal agency activities and development projects by or on behalf of federal agencies that may have reasonably foreseeable effects on CNRAs. The new subsection also states that a consistency determination or negative determination must be submitted to the GLO in accordance with the requirements of the Federal Consistency regulations found at 15 C.F.R. Part 930, subpart C.

New §§30.12(a)(1)(A) – (F) identify federal agencies that must submit consistency determinations or negative determinations to the GLO for specifically listed activities in this section.

New §30.12(a)(1)(A)(i) and (ii) identify the following United States Department of the Interior activities subject to consistency review: "(i) modifications to the boundaries of the Coastal Barrier Resource System under 16 United States Code Annotated, §3503(c); and (ii) OCS lease sales within the western and central Gulf of Mexico under 43 United States Code Annotated, §1337."

New §30.12(a)(1)(B) identifies a United States Environmental Protection Agency activity subject to consistency review: "Selection of remedial actions under 42 United States Code Annotated §9604(c)."

New §§30.12(a)(1)(C)(i)-(viii) identify the following United States Army Corps of Engineer activities subject to consistency review: "(i) small river and harbor improvement projects under 33 United States Code Annotated, §577; (ii) water resources development projects under 42 United States Code Annotated, §1962d-5; (iii) small flood control projects under 33 United States Code Annotated, §701s; (iv) small beach erosion control projects under 33 United States Code Annotated, §426g; (v) operation and maintenance of civil works projects under the Code of Federal Regulations, Title 33, Parts 335 and 338; (vi) dredging projects under the Code of Federal Regulations, Title 33, Part 336; (vii) approval for projects for the prevention or mitigation of damages to shore areas attributable to federal navigation projects pursuant to 33

United States Code Annotated, §426i; and (viii) approval for projects for the placement on state beaches of beach-quality sand dredged from federal navigation projects pursuant to 33 United States Code Annotated, §426j.”

New §§30.12(a)(1)(D)(i) and (ii) identify the following Federal Emergency Management Agency activities subject to consistency review: "(i) model floodplain ordinances; and (ii) approval of a community’s participation in the National Flood Insurance Program (NFIP) under the Code of Federal Regulations, Title 44, Part 59, subpart B.”

New §§30.12(a)(1)(E)(i) and (ii) identify the following General Services Administration activities subject to consistency review: "(i) acquisitions under 40 United States Code Annotated, §602 and §603; and (ii) construction under 40 United States Code Annotated, §605.”

New §§30.12(a)(1)(F)(i) and (ii) identify the following federal agency activities subject to consistency review: "(i) all other development projects; (ii) and natural resource restoration plans developed pursuant to the Oil Pollution Act of 1990 (33 United States Code Annotated §§2701- 2761) and the Comprehensive Environmental Response, Compensation and Liability Act (42 United States Code Annotated §§9601-9675).”

New §30.12(a)(2), relating to Federal License or Permit Activities, explains that for all proposed activities requiring a federal license or permit, a consistency certification must be submitted to GLO pursuant to the requirements of the Federal Consistency regulations in 15 CFR Part 930, subpart D.

New §§30.12(a)(2)(A)-(F) identify federal agencies and associated licenses and permits that have reasonably foreseeable adverse effects upon CNRAs and require applicants to submit a consistency certification to the GLO if the proposed action occurs in the Texas coastal zone.

New §§30.12(a)(2)(A)(i)-(v) identify the following Environmental Protection Agency activities that are subject to consistency review: "(i) National Pollution Discharge Elimination System (NPDES) permits under 33 United States Code Annotated, §1342; (ii) ocean dumping permits under 33 United States Code Annotated, §1412; (iii) approvals of land disposal of wastes under 42 United States Code Annotated, §6924(d); and (iv) development of total maximum daily loads (TMDLs) and associated federally developed TMDL implementation plans under 33 United States Code Annotated, §1313; and (v) approvals of National Estuary Program Comprehensive Conservation Management Plans under 33 United States Code Annotated, §1330f.”

New §§30.12(a)(2)(B)(i)-(v) identify the following United States Army Corps of Engineers activities and Memoranda of Agreement that are subject to consistency review: "(i) ocean dumping permits under 33 United States Code Annotated, §1413; (ii) dredge and fill permits under 33 United States Code Annotated, §1344; (iii) permits under §9 of the Rivers and Harbor Act of 1899, 33 United States Code Annotated, §401; (iv) permits under §10 of the Rivers and Harbor Act of 1899, 33 United States Code Annotated, §403; and (v) Memoranda of Agreement

for mitigation banking.”

New §§30.12(a)(2)(C)(i)-(iii) identify the following United States Department of Transportation approvals and licenses that are subject to consistency review: "(i) approvals under §7(a) of the Federal-Aid Highway Amendments Act of 1963, 23 United States Code Annotated, §106; (ii) approvals under §502 of the General Bridge Act of 1946, 33 United States Code Annotated, §525; and (iii) Deepwater port licenses under 33 United States Code Annotated, §1503."

New §30.12(a)(2)(D)(i) identifies airport operating certificates for the Federal Aviation Administration under 49 United States Code Annotated, §44702.

New §§30.12(a)(2)(E)(i)-(iii) identify the following Federal Energy Regulatory Commission authorizations that are subject to consistency review: "(i) certificates under §7 of the Natural Gas Act, 15 United States Code Annotated, §717f; (ii) licenses under §4 of the Federal Power Act, 16 United States Code Annotated, §797(e); and (iii) exemptions under §403 of the Public Utility Regulatory Policies Act of 1978, 16 United States Code Annotated, §2705(d)."

New §30.12(a)(2)(F) identifies Nuclear Regulatory Commission licenses that are subject to consistency review: "Licenses under §103 of the Atomic Energy Act of 1954, 42 United States Code Annotated, §2133."

New §30.12(a)(3), relating to State and Local Government Applications for Federal Assistance, is adopted with changes from the language in the proposal. The change to this subsection was made in response to comments and discussion with NOAA Office for Coastal Management (OCM) staff regarding the list of federal financial assistance awards in the proposal, and the GLO's decision to postpone listing certain federal financial assistance awards pending further analysis and evaluation. Specifically, §30.12(a)(3) adopts language that provides as follows: "Federal financial assistance awards may be subject to federal consistency review in accordance with the procedures specified at 15 CFR §§ 930.98 and 930.54 with the approval of the Office for Coastal Management within the National Oceanic and Atmospheric Administration." As the GLO is no longer including listed federal financial assistance awards, the language in adopted §30.12(a)(3) is intended to outline the procedure for reviewing unlisted federal financial assistance awards pursuant to the federal regulations.

New §30.12(b), relating to the review of OCS Exploration Plans, and Development and Production Plans, as set out in 43 United States Code, §§1340(c) and 1351, includes "activities that are authorized by the United States Department of the Interior and provides for the review of a federal license or permit activity described in detail in OCS plans, including pipeline activities."

New §30.12(c), relating to the review of a proposed federal agency activity that is unlisted in subsection (a)(1) of this section, states that the GLO will follow the federal regulations process set out in 15 C.F.R. §930.34(c) and that if the GLO elects to review a proposed federal license or permit activity of a type that is unlisted in subsection (a)(2) of this section the GLO will follow

the procedures set out in 15 C.F.R. §930.54.

Consistency Determinations for Federal Agency Activities and Development Projects

New §30.20, relating to Consistency Determinations for Federal Agency Activities and Development Projects, adds a section that details the required information for a consistency determination and the associated federal consistency review process for a federal agency activity or development project.

New §30.20(a), relating to the Review of a Consistency Determination, sets forth the review standard that the GLO must follow when conducting a consistency review of a federal agency activity or development project as set out in 15 C.F.R. Part 930, subpart C. The new subsection requires a federal agency activity or development project to be consistent with the CMP goals and enforceable policies.

New §30.20(b), relating to Required Information for a Consistency Determination, identifies the information required for a consistency determination as set out in 15 C.F.R. §930.39. This includes: a detailed description of the activity, its associated facilities, coastal effects, and comprehensive data and information sufficient to support the federal agency's consistency statement. The new subsection also provides that the amount of detail in the evaluation of the enforceable policies, activity description and supporting information is to be commensurate with the expected coastal effects of the activity. Additionally, a federal agency may submit the information to the GLO in any manner that it chooses so long as the requirements in 15 C.F.R. §930.39 are met. The federal agency is also required to provide the consistency determination to the GLO for review no later than ninety (90) days prior to the approval of the activity. The new subsection also requires a statement in the consistency determination indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the Texas CMP. This is in conformance with 15 C.F.R. §930.39(a).

New §30.20(c), relating to Request for Information, explains how GLO staff may request information from a federal agency if the federal agency provides an incomplete consistency determination, the GLO provides notice of the incomplete submission in accordance with the federal regulations, and it is the type of information identified in 15 C.F.R. §930.39(a).

New §30.20(d), relating to NEPA or other Project documents, describes the types of documents, a federal agency may provide to GLO to sufficiently support the federal agency's consistency determination in accordance with 15 C.F.R. §930.39(a).

New §30.20(e), relating to Demonstration of Consistency, describes the type of information a federal agency must provide in support of the federal agency's consistency determination. The information is set out in 15 C.F.R. §930.39(a) and this section notes that the federal agency should demonstrate consistency to the maximum extent practicable with the CMP goals and enforceable policies. The demonstration of consistency may rely upon information contained in

NEPA documents or other project documents, but if a consistency determination is embedded within a NEPA document, this should be clearly stated and provided to the GLO. The consistency determination should also meet all of the information requirements of 15 C.F.R. §930.39(a) which can include a reference to the findings of the NEPA document.

New §30.20(f), relating to Public Participation, provides a description of the public notice and comment period for a consistency determination in accordance with 15 C.F.R. §930.42. The new subsection provides that the GLO may issue joint public notices with federal agencies involved with the respective activity or development project. The GLO may also extend the public notice and comment period or schedule a public meeting. The new subsection also provides that the GLO will consider all comments received during the notice period.

New §30.20(g), relating to Referral to Commissioner, describes the process for referring a matter to the Commissioner for an elevated consistency review. This new subsection states that to refer an issue, at least three committee members must agree that a significant unresolved issue exists regarding consistency with the CMP goals and enforceable policies. If this requirement is met, then at least three committee members must submit a letter or email addressed to the CMP coordinator with a request that the matter be referred to the Commissioner for an elevated consistency review. Any applicable CMP goals and enforceable policies that are unresolved and potential impacts to CNRAs should be addressed in the letter or email. The referral process tracks the requirements in Texas Natural Resources Code, §33.206(e), as amended by SB 656.

New §30.20(h), relating to Commissioner Review, describes the factors the Commissioner must consider when conducting an elevated consistency review for a federal agency activity or development project. The new subsection states that the Commissioner will consider: (1) oral or written testimony received during the public comment period; (2) applicable CMP goals and enforceable policies; (3) information submitted by the federal agency or applicant; and (4) other relevant information to determine consistency with CMP goals and enforceable policies. This new subsection conforms to the requirements of Texas Natural Resources Code, §33.204(e), as amended by SB 656.

New §30.20(i), relating to the Review Period, sets the timeframe in which GLO will provide a decision or status update to the federal agency on the consistency determination. Under the new subsection, the GLO will provide a status update to the federal agency in writing within sixty (60) days from the date the consistency determination was deemed administratively complete. If the GLO has not completed its review during this time, the GLO will explain the basis for delay and follow the procedures set out in 15 C.F.R. §930.36(b)(2) if an additional fifteen (15) days for review is necessary. The new subsection further states that a concurrence may be presumed by the federal agency if the matter has not been acted upon by the GLO after sixty (60) days from the date of administrative completeness and the GLO has not requested additional time for review. The sixty (60) day presumption of concurrence is set out in 15 C.F.R. §930.41.

New §30.20(j), relating to Commissioner Objection, describes the process in which the Commissioner may object to the consistency determination. The new subsection provides that the federal agency will be notified of the objection prior to the time, including any extensions, that the federal agency is entitled to presume the activity's consistency. The Commissioner's objection will follow the requirements provided in 15 C.F.R. §930.43 which set out the required content for an objection.

New §30.20(k), relating to Mediation, describes how mediation may be sought if the Commissioner objects to the federal agency's consistency determination because it is deemed inconsistent with the CMP goals and enforceable policies. The mediation process is set out in 15 C.F.R. §§930.110 et seq.

New §30.20(l), relating to Final Approval, describes the time that must pass before a federal agency may decide to undertake a proposed federal agency activity subject to CZMA review in §30.12 of this chapter.

The adopted rules for review of consistency determinations for federal agency activities and development projects were reorganized and streamlined for clarification and increased transparency. The adopted rules now follow the federal regulations review timeframes for a consistency determination and the public participation requirements as set out in 15 C.F.R. Part 930. The rules also implement SB 656 amendments to the Act by deleting references to the Council and CCC and adding references to the CCAC or Commissioner where applicable. The adopted rules also incorporate the requirement for the Commissioner to consider both oral and written testimony from the public comment period during an elevated federal consistency review.

Consistency Certifications for Federal License of Permit Activities

New §30.30, relating to Consistency Certifications for Federal License or Permit Activities, describes the requirements for a consistency certification and the federal consistency process associated with the review of federal license or permit activities as provided for in 15 C.F.R. Part 930, subpart D.

New §30.30(a), relating to Review of a Consistency Certification, describes the consistency certification review process for a non-federal applicant for a federal license or permit activity listed under §30.12 of this chapter. This new subsection provides the applicable review standard that the GLO will follow when conducting a consistency certification review of a federal license or permit activity in accordance with 15 C.F.R. Part 930, subpart D. The new subsection also requires a federal license or permit activity listed under §30.12 of this Chapter to be consistent with the CMP goals and enforceable policies.

New §30.30(b), relating to Required Information for a Consistency Certification, requires an applicant for a federal license or permit activity to submit a consistency certification to the GLO for a consistency review. The consistency certification must be complete and follow the

requirements set out in 15 C.F.R. §930.57. This includes the necessary data and information that is required in 15 C.F.R. §930.58 and §§30.30(b)(1), (2), (3), and (4) of this Chapter. The applicant must also provide a statement affirming that the "The proposed activity complies with the enforceable policies of Texas's approved coastal management program and will be conducted in a manner consistent with such program" which is in conformance with 15 C.F.R. §930.57(b).

New §30.30(c), relating to a Request for Necessary Data and Information, states that GLO staff may request necessary data and information from the applicant when it has received an incomplete submission of information, as required by 15 C.F.R. §§930.57 and 930.58. The GLO will send a notice of incomplete submission and may delay the start of the review period if the request for this information is provided within thirty (30) days from the date the consistency certification is received by the GLO.

New §30.30(d), relating to the Review Period, provides the GLO up to six (6) months to conduct the consistency review and issue a decision on the consistency certification request. The review period is initiated when the required necessary data and information has been received by the GLO. The required necessary data and information is identified in 15 C.F.R. §930.58 and 31 TAC §30.30(b). The GLO cannot require the issuance of state or local permits to begin the consistency review, but the lack of this information may result in an objection based on lack of information because the GLO is unable to complete the consistency review without the identified information.

New §30.30(e), relating to Mutual Stay Agreement, allows the GLO and applicant to enter into a mutual written agreement with the applicant to stay the CZMA review period in accordance with 15 C.F.R. §930.60(b). The mutual stay agreement provides additional time for the applicant and GLO to resolve any issues before the consistency review period expires. For a stay to be executed, the mutual stay agreement must be entered into before the consistency review period expires. The remaining day count in the federal consistency review period that is available on the date the mutual stay agreement is signed will be available to the GLO for purposes of completing the consistency review after the stay agreement expires.

New §30.30(f), relating to Permit Assistance, states that the GLO will provide permit assistance and guidance when requested by the applicant in accordance with 15 C.F.R. §930.56.

New §30.30(g), relating to Consolidation of Federal License or Permit Activities, encourages applicants to consolidate related federal license or permit activities that are identified in §30.12 of this chapter (relating to Listed Federal Activities Subject to CZMA Review) to maximize efficiency and avoid unnecessary delays by reviewing all federal license or permit activities relating to a project at the same time.

New §30.30(h), relating to Public Participation, describes the public participation process which is in accordance with 15 C.F.R. §930.61. The new subsection states that the GLO may issue joint public notices with the federal permitting or licensing agency. The new subsection also provides

that the GLO may extend the public comment period or schedule a public meeting on the consistency certification. Comments received during the comment period will be considered.

New §30.30(i), relating to Demonstration of Consistency, explains how an applicant should demonstrate that the federal license or permit activity under review is consistent with the CMP goals and enforceable policies. The new subsection allows required state and local permits that have been issued to the applicant to be used by the applicant as evidence to demonstrate consistency with the CMP goals and enforceable policies.

New §30.30(j), relating to Referral to Commissioner, explains the process for referring a matter to the Commissioner for an elevated consistency review of the consistency certification. To refer a matter, at least three committee members must agree that a significant unresolved issue exists regarding consistency with the CMP goals and enforceable policies. If this requirement is met, then at least three committee members must submit a letter or email addressed to the CMP coordinator with a request that the issue be referred to the Commissioner for an elevated consistency review. Any applicable CMP goals and enforceable policies that are unresolved and potential impacts should be addressed in the letter or email. The referral process is consistent with the requirements in Texas Natural Resources Code, §33.206(e), as amended by SB 656.

New §30.30(k), relating to Commissioner Review, describes the factors the Commissioner must consider when conducting an elevated consistency review of a consistency certification. The factors that will be considered include: (1) oral or written testimony received during the public comment period; (2) applicable CMP goals and enforceable policies; (3) information submitted by the federal agency or applicant; and (4) other relevant information to determine consistency with CMP goals and enforceable policies. This new subsection conforms to the requirements of Texas Natural Resource Code, §33.204(e), as amended by SB 656.

New §30.30(l), relating to Presumption of Concurrence, describes when a concurrence may be presumed. Under the new subsection, the GLO will provide a status update in writing within ninety (90) days to the applicant seeking a federal license or permit. If the GLO has not issued a decision within six (6) months from the date the GLO received the complete consistency certification, the applicant may presume a concurrence.

New §30.30(m), relating to Commissioner Objection, provides that once a matter has been referred to the Commissioner for an elevated consistency review with the goals and enforceable policies of the CMP, the Commissioner may object to the consistency certification in accordance with the requirements in 15 C.F.R. §930.63.

New §30.30(n), relating to Right of Appeal, provides that if the Commissioner finds that the proposed federal license or permit activity is inconsistent with the CMP goals and enforceable policies and objects to the consistency certification, the GLO shall notify the applicant of its appeal rights to the U.S. Secretary of Commerce, and the federal agency shall not authorize the federal license or permit activity, except as provided through the appeal process established in

15 C.F.R. Part 930, subpart H.

The adopted rules for consistency review of consistency certifications were reorganized and streamlined for clarification and increased transparency. The rules have adopted the federal regulations' review timeframes and adhere to the public participation requirements as set out in 15 C.F.R. Part 930. The rules also implement SB 656 amendments to the Act by deleting references to the Council or CCC and adding references to the CCAC or Commissioner where applicable. The adopted rules also incorporate the requirement for the Commissioner to consider both oral and written testimony from the public comment period during an elevated federal consistency review.

Consistency Review of Outer Continental Shelf (OCS) Exploration, Development, and Production Activities

New §30.40(a), relating to Consistency Review of an Outer Continental Shelf (OCS) Exploration, Development, and Production Activities, requires that an authorization from the U.S. Department of the Interior pursuant to the Outer Continental Shelf Lands Act (43 USC §§1331-1356(a)) be consistent with the goals and enforceable policies of the CMP. The GLO shall conform to the requirements and procedures set out in 15 C.F.R. Part 930, subpart E and 43 U.S.C. §§1331 et seq.

New §30.40(b), relating to Consistency Certification of an OCS Plan, requires that any person, as defined at 15 C.F.R. §930.72, submitting any OCS plan to the Secretary of Interior or designee shall provide a copy of the OCS plan and that the consistency certification include a provision affirming as follows: "The proposed activities described in detail in this plan shall comply with Texas' approved coastal management program and will be conducted in a manner consistent with the program." The new section also incorporates the requirement in 15 C.F.R. §930.76 that the Secretary of the Interior or designee must provide the plan and consistency certification to the appropriate State agency, which in this case is the GLO.

New §30.40(c), relating to Request for Information, states that GLO's six (6) month review period on a consistency certification for an OCS plan begins on the date the GLO receives the information required at 15 C.F.R. §930.76, and all the necessary data and information required at 15 C.F.R. §930.58(a). Pursuant to 15 C.F.R. §930.60(a), within thirty (30) days of an incomplete submission, GLO shall inform the person submitting the OCS plan that the GLO six (6) month review period will commence on the date of receipt of the missing consistency certification or necessary data and information. The GLO may waive the requirement that all necessary data and information described in §930.58(a) be submitted before commencement of the State agency's six (6) month consistency review. In the event of such a waiver, the requirements of 15 C.F.R. §930.58(a) must be satisfied prior to the end of the six (6) month consistency review period or the GLO may object to the consistency certification for insufficient information.

New §30.40(d), relating to Consolidation of Related Authorizations, encourages persons submitting OCS plans to consolidate related federal licenses and permits that are subject to GLO review. This is not required but would allow for a more efficient review and minimize the duplication of effort and unnecessary delays. See 15 C.F.R. §930.81.

New §30.40(e), relating to Public Participation, describes the public notice and comment period in accordance with 15 C.F.R. §930.77. The new subsection provides that the GLO may issue joint public notices with the federal permitting or licensing agency. The new subsection also provides that the GLO may extend the public comment period or schedule a public meeting on the consistency certification. Comments received during the comment period will be considered by the GLO.

New §30.40(f), relating to Referral to Commissioner, explains the process for referring a matter to the Commissioner for an elevated consistency review of the OCS plan's consistency certification. To refer an issue, at least three committee members must agree that a significant unresolved issue exists regarding the OCS plan's consistency with the CMP goals and enforceable policies. If this requirement is met, then at least three committee members must submit in writing a letter or email addressed to the CMP coordinator with a request that the issue be referred to the Commissioner for an elevated consistency review. Any applicable CMP goals and enforceable policies that are unresolved and potential impacts should be addressed in the letter or email. The referral process conforms to Texas Natural Resources Code, §33.206(e), as amended.

New §30.40(g), relating to Commissioner Review, describes the factors the Commissioner must consider when conducting an elevated consistency review of an OCS Plan's consistency certification. The factors that will be considered include: (1) oral or written testimony received during the public comment period; (2) applicable CMP goals and enforceable policies; (3) information submitted by the federal agency or person; and (4) other relevant information to determine consistency with CMP goals and enforceable policies. This new subsection follows the requirements of Texas Natural Resources Code, §33.204(e), as amended by SB 656.

New §30.40(h), relating to Review Period, states that if the GLO has not issued a decision regarding the OCS plan within three months from the date the GLO received the administratively complete consistency certification, then the GLO shall notify the person submitting the plan, Secretary of the Interior, and the Office for Coastal Management (OCM) Director of the status of the review and basis for further delay. See 15 C.F.R. §930.78. The GLO's review period is up to six (6) months but if no action is taken by the GLO, a concurrence may be presumed after three (3) months.

New §30.40(i), relating to Presumption of Concurrence, provides that if the GLO does not act on an OCS plan within three (3) months of the date from when the GLO receives an administratively complete consistency certification, then the GLO's concurrence with the consistency certification shall be conclusively presumed. If the GLO provides a status of review

letter within three (3) months and continues its review, a concurrence may be presumed at six (6) months. Additionally, if the GLO issues a concurrence or the action is presumed concurrent, then then person submitting the OCS plan is not required to submit additional consistency certifications to the GLO for the individual federal authorizations that will be required to authorize the activities described in detail in the OCS plan as set out in 15 C.F.R. §930.79.

New §30.40(j), relating to Commissioner Objection, provides that once a matter has been referred to the Commissioner for an elevated consistency review with CMP goals and enforceable policies, the Commissioner may object to a federal license or permit activity described in detail in the OCS plan's consistency certification as provided for in 15 C.F.R. §930.79. The GLO will notify the person of its appeal rights to the U.S. Secretary of Commerce.

The adopted rules for consistency review of Outer Continental Shelf (OCS) Exploration, Development, and Production Activities were reorganized and streamlined for clarification and increased transparency. The new rules adopt the federal regulations in 15 C.F.R. Part 930. The rules also implement SB 656 amendments to the Act by deleting references to the Council or CCC and adding references to the CCAC or Commissioner where applicable. The adopted rules also incorporate the requirement for the Commissioner to consider both oral and written testimony from the public comment period during an elevated federal consistency review.

Equivalent Federal and State Actions

New §30.60, relating to Equivalent Federal and State Actions, sets out the referral thresholds of a proposed activity for state consistency review, and does not allow a state and federal consistency review to occur for the same action.

New §30.60(a), relating to Below Thresholds, provides that if a proposed activity requiring a state agency or subdivision action falls below thresholds for referral approved under Chapter 29, Subchapter B of this title (relating to Commissioner Certification of State Agency Rules and Approval of Thresholds for Referral) and requires an equivalent federal permit or license under this chapter, the GLO may only determine the state agency or subdivision action's consistency by using the process provided in Chapter 29 of this title (relating to Procedures for State Consistency with Coastal Management Program Goals and Policies). The GLO's determination regarding the consistency of an action under this subsection constitutes the state's determination regarding consistency of the equivalent federal action.

New §30.60(b), relating to Above Thresholds, states that if an activity requiring a state agency or subdivision action meets the threshold for referring the matter for an elevated consistency review and requires an equivalent federal permit or license, the GLO may determine the consistency of the state agency or subdivision action or the federal license or permit, but not both. Texas Natural Resource Code, §33.206(f), as amended by SB 656.

New §30.60(c), relating to Equivalent State Action or Federal Action, explains that an action made by the GLO under §§30.60(a) and (b) is the state's determination regarding consistency of

the equivalent agency or subdivision action or federal action. Texas Natural Resource Code, §33.206(f), as amended by SB 656.

The repeal of Chapter 30 and simultaneous replacement of new Chapter 30 was necessary to implement amendments to the Coastal Coordination Act by SB 656 and ensure the GLO's federal consistency procedures conform to the Federal Consistency regulations in 15 C.F.R. Part 930. The adopted new sections implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

Does the program change include changes or additions to Necessary Data and Information listed by the state to start a CZMA review? 15 C.F.R. §923.83(a)(6). See also 15 C.F.R. §930.58(a)(2).

After consultation with OCM, Texas is no longer seeking to have any new ND&I approved in the proposed program changes. New ND&I included in the rules will be removed in the next rule change and will not be enforced in the interim.

Additional responses to NOAA regarding this program change submission:

This submission includes the following attachments: (1) the proposed rules in redline format for 31 TAC Chapters 26-29, which were published in the Texas Register on January 27, 2023 and adopted without changes; (2) the changes to Texas's Listed Activities Subject to CZMA Review in redline format; and (3) the new Chapter 30 rules, as adopted. The amendments and new rules became effective on July 10, 2023, and have been referenced in the State Program Change Table as part of the submission in accordance with 15 C.F.R. §923.83(a)(4).

The changes to Texas's Listed Activities consist of non-substantive clarifications and reorganization. The GLO's review authority for federal financial assistance, as established in the federal regulations, has also been clarified in 31 TAC §30.12(a)(3). There are no requests for a Geographic Location Description.

In accordance with 15 C.F.R. §923.83(a)(7), the new rules filed as part of this program change submission meet each of the NOAA decision criteria in 15 C.F.R. §923.84.

Pursuant to 15 C.F.R. §923.83(a)(8), the program change submission does not impact: (i) Resources or interests of any federally-recognized Indian Tribe; (ii) Threatened or endangered species listed under the Federal Endangered Species Act; (iii) Historic Properties designated under the National Historic Preservation Act; (iv) Essential fish habitat designated under the Magnuson Stevens Fishery Conservation and Management Act; and (v) Marine mammals managed under the Marine Mammal Protection Act.

Texas Program Change Table

STATE CZM CHANGE REQUEST TABLE

- Provide a section by section listing of proposed changes to the program.
- Changes should be entered in order of citation unless the changes do not pertain to particular statutes or regulations.
- To add additional rows, right click inside any cell and use the "Insert" command to insert addition rows.
- Once completed, please use the "Save as PDF" command under the File tab and return to the CZM change portal to upload. The file name should be in this format *State-YYYY-Change # (SC-2018-14)*

Texas-2025-1 –

| Legal citation <i>1000 Character Limit</i> | Title of policy, section, or other descriptor | Is the change new, revised, or deleted <i>Enter one</i> | Date effective in state <i>MM/DD/YYYY</i> | Enforceable policy <i>Y or N</i> | Enforceable mechanism citation <i>1000 Character Limit</i> |
|---|---|---|--|-------------------------------------|---|
| Texas Administrative Code | | | | | |
| Part 16, Coastal Coordination Advisory Committee, 31 TAC Chapters 501-506 moved to Part 1, GLO, 31 TAC Chapters 26-30 | Administrative Rule Transfer | Revised | 12/17/2022 | | Texas Natural Resources Code, Chapter 33, Chapters C and F. |
| 31 TAC Chapter 26 | Coastal Management Program | Revised | 7/10/2023 | Y | Texas Natural Resources Code, Chapter 33, Chapters C and F. |
| 31 TAC Chapter 27 (Formerly 31 TAC Chapter 503) | Coastal Management Program Boundary | Revised | 7/10/2023 | N | |
| 31 TAC Chapter 28 (Formerly 31 TAC Chapter 504) | Permitting Assistance and Preliminary Consistency Review | Revised | 7/10/2023 | N | |
| 31 TAC Chapter 29 (Formerly 31 TAC Chapter 505) | Procedures for State Consistency with Coastal Management Program Goals and Policies | Revised | 7/10/2023 | N | |
| 31 TAC Chapter 30 (Formerly 31 TAC Chapter 506) | Federal Consistency Procedures | Repealed & replaced | 7/10/2023 | N | |
| | | | | | |

Proposed Rules for 31 Texas Admin. Code Chapters 26-29

Published in Texas Register on January 27, 2023 (48 TexReg 326)

Redline Format and Adopted Without Changes

◆ ◆ ◆

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 26. COASTAL MANAGEMENT PROGRAM

The General Land Office (GLO) proposes amendments to §§26.3, 26.4, 26.10, 26.13, 26.15, 26.18, 26.21, 26.23 - 26.25, 26.31, and 26.34 in 31 TAC Chapter 26, relating to the Coastal Management Program.

The purpose of the proposed amendments is to update cross references that became outdated as a result of the administrative transfer of rules from 31 TAC Chapter 501 to 31 TAC Chapter 26, effective on December 1, 2022. This rulemaking is necessary because it further implements amendments to the Coastal Coordination Act by Senate Bill 656, 82nd Texas Legislature, which abolished the Coastal Coordination Council and transferred the Council's powers and duties to the GLO.

The GLO proposes amendments to update cross references within the following sections: §26.3, relating to Definitions and Abbreviations; §26.4, relating to Coastal Coordination Advisory Committee; §26.10, relating to Compliance with CMP Goals and Policies; §26.13, relating to Administrative Policies Review; §26.15, relating to Policy for Major Actions; §26.18, relating to Policies for Discharges of Wastewater and Disposal of Waste from Oil and Gas Exploration and Production Activities; §26.23, relating to Policies for Development in Critical Areas; §26.24, relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands; §26.25, relating to Policies for Dredging and Dredged Material and Placement; §26.31, relating to Policies for Transportation Projects; and §26.34, relating to Policies for Levee and Flood Control Projects.

The proposed amendment to §26.21, relating to Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters, updates the name of a state agency from Texas Department of Health to Texas Department of State Health Services.

FISCAL AND EMPLOYMENT IMPACTS

Melissa Porter, Deputy Director, Coastal Resources, has determined that for each year of the first five years the proposed amended rules are in effect, there will be no fiscal impacts to state government as a result of enforcing or administering the rules. There are no anticipated fiscal implications for local governments as a result of enforcing or administering the rules.

Ms. Porter has also determined that the proposed rulemaking will not have an adverse economic effect on small or large businesses, micro-businesses, rural communities, or individuals for the first five years that the proposed amended rules are in effect.

Ms. Porter has determined that the proposed rulemaking will not affect a local economy, and the rules will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code, §2001.022.

PUBLIC BENEFIT

Ms. Porter has determined that for each year of the first five years the proposed amended rules are in effect, the public will benefit from the proposed amended rules because the amended rules will provide more clarity.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for the proposed rulemaking. During the first five years the amended rules would be in effect, the rules would not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation or expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability; or affect the state's economy.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §§17 and 19 of the Texas Constitution. Furthermore, the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. The proposed rulemaking will not result in a taking of private property, and there are no adverse impacts on private real property interests.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in accordance with Texas Government Code, §2001.0225, and determined that the action does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send written comments to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 475-1859 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §26.3, §26.4

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the GLO

and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; and §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§26.3. *Definitions and Abbreviations.*

(a) The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) Coastal zone--The area within the boundary established in §27.1 [~~§503.1~~] of this title (relating to Coastal Management Program Boundary).

(6) - (18) (No change.)

(b) - (d) (No change.)

§26.4. *Coastal Coordination Advisory Committee.*

(a) - (e) (No change.)

(f) In the event that a proposed action subject to consistency with the CMP goals and policies presents a significant unresolved consistency dispute, the committee may refer the matter to the commissioner for review pursuant to Chapter 29 [~~Chapter 505~~] (Procedures for State Consistency with Coastal Management Program Goals and Policies) or Chapter 30 [~~Chapter 506~~] (Procedures for Federal Consistency with Coastal Management Program Goals and Policies) of this title.

(g) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2023.

TRD-202300096

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Earliest possible date of adoption: February 26, 2023

For further information, please call: (512) 475-1859



SUBCHAPTER B. GOALS AND POLICIES

31 TAC §§26.10, 26.13, 26.15, 26.18, 26.21, 26.23 - 26.25, 26.31, 26.34

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; and §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§26.10. *Compliance with CMP Goals and Policies.*

(a) State agencies, municipalities, and counties identified in this subchapter shall comply with the goals and policies in this subchapter when taking an action listed in §29.11 [~~§505.11~~] of this title (relating to Actions and Rules Subject to the Coastal Management Program) or §29.60 [~~§505.60~~] of this title (relating to Local Government Actions Subject to the Coastal Management Program).

(b) - (c) (No change.)

§26.13. *Administrative Policies.*

(a) Agency and subdivision rules and ordinances subject to §26.10 [~~§501.10~~] of this title (relating to Compliance with Goals and Policies) shall:

(1) require applicants to provide information necessary for an agency or subdivision to make an informed decision on a proposed action listed in §29.11 [~~§505.11~~] of this title (relating to Actions and Rules Subject to the Coastal Management Program) or §29.60 [~~§505.60~~] of this title (relating to Local Government Actions Subject to the Coastal Management Program);

(2) identify the monitoring established to ensure that activities authorized by actions listed in §29.11 [~~§505.11~~] of this title [(relating to Actions and Rules Subject to the Coastal Management Program)] or §29.60 [~~§505.60~~] of this title [(relating to Local Government Actions Subject to the Coastal Management Program)] comply with all applicable requirements;

(3) - (4) (No change.)

(b) A threshold for referral adopted by an agency under the provisions of Chapter 29 [~~Chapter 505~~] of this title (relating to [Council] Procedures for State Consistency with Coastal Management Program Goals and Policies [Reviews]) [of this title] shall be set at a level that is reasonably calculated to ensure that actions that may have unique and significant adverse effects on coastal natural resource areas are above the threshold for referral.

§26.15. *Policy for Major Actions.*

(a) For purposes of this section, "major action" means an individual agency or subdivision action listed in §29.11 [~~§505.11~~] of this title (relating to Actions and Rules Subject to the Coastal Management Program), §30.12 [~~506.12~~] of this title (relating to Federal Listed Activities Subject to CZMA Review) [~~Federal Actions Subject to the Coastal Management Program~~], or §29.60 [~~§505.60~~] of this title (relating to Local Government Actions Subject to the Coastal Management Program), relating to an activity for which a federal environmental impact statement under the National Environmental Policy Act, 42 United States Code Annotated, §4321, et seq is required.

(b) - (c) (No change.)

§26.18. *Policies for Discharges of Wastewater and Disposal of Waste from Oil and Gas Exploration and Production Activities.*

(a) (No change.)

(b) Discharge of oil and gas exploration and production wastewater in the coastal zone shall comply with the following policies.

(1) All discharges shall comply with all provisions of surface water quality standards established by the TCEQ under §26.21 [~~§501.21~~] of this title (relating to Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters).

(2) - (3) (No change.)

(c) (No change.)

§26.21. Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters.

(a) - (c) (No change.)

(d) The TCEQ shall consult with the Texas Department of State Health Services when reviewing permit applications for wastewater discharges that may significantly adversely affect oyster reefs.

§26.23. Policies for Development in Critical Areas.

(a) Dredging and construction of structures in, or the discharge of dredged or fill material into, critical areas shall comply with the policies in this section. In implementing this section, cumulative and secondary adverse effects of these activities will be considered.

(1) - (6) (No change.)

(7) Development in critical areas shall not be authorized if significant degradation of critical areas will occur. Significant degradation occurs if:

(A) the activity will jeopardize the continued existence of species listed as endangered or threatened, or will result in likelihood of the destruction or adverse modification of a habitat determined to be a critical habitat under the Endangered Species Act, 16 United States Code Annotated, §§1531 - 1544;

(B) the activity will cause or contribute, after consideration of dilution and dispersion, to violation of any applicable surface water quality standards established under §26.21 [§501.21] of this title (relating to Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters);

(C) the activity violates any applicable toxic effluent standard or prohibition established under §26.21 [§501.21] of this title;

(D) the activity violates any requirement imposed to protect a marine sanctuary designated under the Marine Protection, Research, and Sanctuaries Act of 1972, 33 United States Code Annotated, Chapter 27; or

(E) taking into account the nature and degree of all identifiable adverse effects, including their persistence, permanence, areal extent, and the degree to which these effects will have been mitigated pursuant to subsections (c) and (d) of this section, the activity will, individually or collectively, cause or contribute to significant adverse effects on:

(i) human health and welfare, including effects on water supplies, plankton, benthos, fish, shellfish, wildlife, and consumption of fish and wildlife;

(ii) the life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, or spread of pollutants or their byproducts beyond the site, or their introduction into an ecosystem, through biological, physical, or chemical processes;

(iii) ecosystem diversity, productivity, and stability, including loss of fish and wildlife habitat or loss of the capacity of a coastal wetland to assimilate nutrients, purify water, or reduce wave energy; or

(iv) generally accepted recreational, aesthetic or economic values of the critical area which are of exceptional character and importance.

(b) - (c) (No change.)

(d) For any dredging or construction of structures in, or discharge of dredged or fill material into, critical areas that is subject to

the requirements of §26.15 [§501.15] of this title (relating to Policy for Major Actions), data and information on the cumulative and secondary adverse effects of the project need not be produced or evaluated to comply with this section if such data and information is produced and evaluated in compliance with §26.15(b) - (c) [§501.15(b) - (e)] of this title.

§26.24. Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands.

(a) Development on submerged lands shall comply with the policies in this section.

(1) - (9) (No change.)

(10) Facilities shall be located at sites which avoid the impoundment and draining of coastal wetlands. If impoundment or draining cannot be avoided, adverse effects to the impounded or drained wetlands shall be mitigated in accordance with the sequencing requirements of §26.23 [§501.23] of this title (relating to Policies for Development in Critical Areas). To the greatest extent practicable, facilities shall be located at sites at which expansion will not result in development in critical areas.

(11) - (17) (No change.)

(b) - (c) (No change.)

§26.25. Policies for Dredging and Dredged Material and Placement.

(a) Dredging and the disposal and placement of dredged material shall avoid and otherwise minimize adverse effects to coastal waters, submerged lands, critical areas, coastal shore areas, and Gulf beaches to the greatest extent practicable. The policies of this section are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public. In implementing this section, cumulative and secondary adverse effects of dredging and the disposal and placement of dredged material and the unique characteristics of affected sites shall be considered.

(1) Dredging and dredged material disposal and placement shall not cause or contribute, after consideration of dilution and dispersion, to violation of any applicable surface water quality standards established under §26.21 [§501.21] of this title (relating to Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters).

(2) Except as otherwise provided in paragraph (4) of this subsection, adverse effects on critical areas from dredging and dredged material disposal or placement shall be avoided and otherwise minimized, and appropriate and practicable compensatory mitigation shall be required, in accordance with §26.23 [§501.23] of this title (relating to Policies for Development in Critical Areas).

(3) Except as provided in paragraph (4) of this subsection, dredging and the disposal and placement of dredged material shall not be authorized if:

(A) there is a practicable alternative that would have fewer adverse effects on coastal waters, submerged lands, critical areas, coastal shore areas, and Gulf beaches, so long as that alternative does not have other significant adverse effects;

(B) all appropriate and practicable steps have not been taken to minimize adverse effects on coastal waters, submerged lands, critical areas, coastal shore areas, and Gulf beaches; or

(C) significant degradation of critical areas under §26.23(a)(7)(E) [§501.23(a)(7)(E)] of this title would result.

(4) A dredging or dredged material disposal or placement project that would be prohibited solely by application of paragraph (3) of this subsection may be allowed if it is determined to be of overriding importance to the public and national interest in light of economic

impacts on navigation and maintenance of commercially navigable waterways.

(b) Adverse effects from dredging and dredged material disposal and placement shall be minimized as required in subsection (a) of this section. Adverse effects can be minimized by employing the techniques in this subsection where appropriate and practicable.

(1) - (7) (No change.)

(8) Adverse effects from new channels and basins can be minimized by locating them at sites:

(A) that ensure adequate flushing and avoid stagnant pockets; or

(B) that will create the fewest practicable adverse effects on CNRAs from additional infrastructure such as roads, bridges, causeways, piers, docks, wharves, transmission line crossings, and ancillary channels reasonably likely to be constructed as a result of the project; or

(C) with the least practicable risk that increased vessel traffic could result in navigation hazards, spills, or other forms of contamination which could adversely affect CNRAs;

(D) provided that, for any dredging of new channels or basins subject to the requirements of §26.15 [~~§501.15~~] of this title (relating to Policy for Major Actions), data and information on minimization of secondary adverse effects need not be produced or evaluated to comply with this paragraph if such data and information is produced and evaluated in compliance with §26.15(b)(1) [~~§501.15(b)(1)~~] of this title.

(c) - (k) (No change.)

§26.31. Policies for Transportation Projects.

(a) Transportation construction projects and maintenance programs within the coastal zone shall comply with the policies in this section.

(1) - (4) (No change.)

(5) Construction and maintenance of transportation projects shall avoid the impoundment and draining of coastal wetlands. If impoundment or draining cannot be avoided, adverse effects to the impounded or drained wetlands shall be mitigated in accordance with the sequencing requirements of §26.23 [~~§501.23~~] of this title (relating to Policies for Development in Critical Areas).

(6) - (7) (No change.)

(b) (No change.)

§26.34. Policies for Levee and Flood Control Projects.

(a) Drainage, reclamation, channelization, levee construction or modification, or flood- or floodwater-control infrastructure projects shall be designed, constructed, and maintained to avoid the impoundment and draining of coastal wetlands to the greatest extent practicable. If impoundment or draining of coastal wetlands cannot be avoided, adverse effects to the wetlands shall be mitigated in accordance with the sequencing requirements in §26.23 [~~§501.23~~] of this title (relating to Policies for Development in Critical Areas).

(b) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2023.

TRD-202300097

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Earliest possible date of adoption: February 26, 2023

For further information, please call: (512) 475-1859



CHAPTER 27. COASTAL MANAGEMENT PROGRAM BOUNDARY

31 TAC §27.1

The General Land Office (GLO) proposes an amendment to §27.1 in 31 TAC Chapter 27, relating to the Coastal Management Program Boundary.

The purpose of the proposed amendment is to update a rule reference that became outdated as a result of the administrative transfer of rules from 31 TAC Chapter 503 to 31 TAC Chapter 27, effective on December 1, 2022. This rulemaking is necessary because it further implements amendments to the Coastal Coordination Act by Senate Bill 656, 82nd Texas Legislature, which abolished the Coastal Coordination Council and transferred the Council's powers and duties to the GLO.

The GLO proposes an amendment to update the rule reference labeling the Attached Graphic in §27.1(a). There are no substantive changes to the map in the Attached Graphic, and there are no proposed changes to the text of §27.1.

FISCAL AND EMPLOYMENT IMPACTS

Melissa Porter, Deputy Director, Coastal Resources, has determined that for each year of the first five years the proposed amended rule is in effect, there will be no fiscal impacts to state government as a result of enforcing or administering the rule. There are no anticipated fiscal implications for local governments as a result of enforcing or administering the rule.

Ms. Porter has also determined that the proposed rulemaking will not have an adverse economic effect on small or large businesses, micro-businesses, rural communities, or individuals for the first five years that the proposed amended rule is in effect.

Ms. Porter has determined that the proposed rulemaking will not affect a local economy, and the rule will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code, §2001.022.

PUBLIC BENEFIT

Ms. Porter has determined that for each year of the first five years the proposed amended rule is in effect, the public will benefit from the proposed amended rule because the amended rule will provide more clarity.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for the proposed rulemaking. During the first five years the amended rule would be in effect, the rule would not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation or expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability; or affect the state's economy.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §§17 and 19 of the Texas Constitution. Furthermore, the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendment. The proposed rulemaking will not result in a taking of private property, and there are no adverse impacts on private real property interests.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in accordance with Texas Government Code, §2001.0225, and determined that the action does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send written comments to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 475-1859 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendment is proposed under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; and §33.054, which allows the commissioner to review and amend the CMP.

The proposed amendment is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§27.1. Coastal Management Program Boundary.

(a) General Description of the Coastal Management Program Boundary. The coastal management program boundary delineates the coastal zone. The inland part of the boundary is a modification of the coastal facility designation line, which is the line the State of Texas adopted under the Oil Spill Prevention and Response Act of 1991 (Texas Natural Resources Code, Chapter 40) to describe areas where oil spills are likely to enter coastal waters. Generally, the boundary encompasses the area within Texas lying seaward of the coastal facility designation line. It also includes coastal wetlands landward of the coastal facility designation line. The boundary includes areas within

the following Texas counties: Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Refugio, Calhoun, Victoria, Jackson, Matagorda, Brazoria, Galveston, Harris, Chambers, Jefferson, and Orange. The seaward reach of the boundary extends into the Gulf of Mexico to the limit of state title and ownership under the Submerged Lands Management Act (43 United States Code, §§1301 et seq), that is, three marine leagues. The following maps outline the coastal management program boundary.

Figure: 31 TAC §27.1(a)
[Figure: 31 TAC §27.1]

(b) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2023.

TRD-202300099

Mark Havens

Chief Clerk, Deputy Land Commissioner
General Land Office

Earliest possible date of adoption: February 26, 2023

For further information, please call: (512) 475-1859



CHAPTER 28. PERMITTING ASSISTANCE AND PRELIMINARY CONSISTENCY REVIEW

The General Land Office (GLO) proposes amendments to §§28.2, 28.3, 28.10, 28.11, and 28.20 in 31 TAC Chapter 28, relating to Permitting Assistance and Preliminary Consistency Review.

The purpose of the proposed amendments is to update cross references that became outdated as a result of the administrative transfer of rules from 31 TAC Chapter 504 to 31 TAC Chapter 28, effective on December 1, 2022. The proposed amendments also include minor revisions to ensure that the role of the Permitting Assistance Group conforms with current practice. This proposed rulemaking is necessary because it further implements amendments to the Coastal Coordination Act by Senate Bill 656, 82nd Texas Legislature, which abolished the Coastal Coordination Council and transferred the Council's powers and duties to the GLO.

The GLO proposes amendments to update cross references within the following sections: §28.2, relating to Definitions; §28.11, relating to Permitting Assistance Coordinator; and §28.20, relating to Requests for Preliminary Consistency Review. The proposed amendment to §28.2 includes the alphabetization of the definitions.

The proposed amendment to §28.3, relating to Permitting Assistance Group (PAG), adds a new subsection (d) to conform with current practice by clarifying that the PAG's role may include participation in the planning and development of regional general permits and general permits to support future beach management and nourishment, coastal restoration projects, and the continued development of the Texas Coastal Management Program, as needed.

The proposed amendment to §28.10, relating to Permit Service Center, adds updated terminology, including a clarification that

the Texas Parks and Wildlife Department issues "certificates of location."

FISCAL AND EMPLOYMENT IMPACTS

Melissa Porter, Deputy Director, Coastal Resources, has determined that for each year of the first five years the proposed amended rules are in effect, there will be no fiscal impacts to state government as a result of enforcing or administering the rules. There are no anticipated fiscal implications for local governments as a result of enforcing or administering the rules.

Ms. Porter has also determined that the proposed rulemaking will not have an adverse economic effect on small or large businesses, micro-businesses, rural communities, or individuals for the first five years that the proposed amended rules are in effect.

Ms. Porter has determined that the proposed rulemaking will not affect a local economy, and the rules will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code, §2001.022.

PUBLIC BENEFIT

Ms. Porter has determined that for each year of the first five years the proposed amended rules are in effect, the public will benefit from the proposed amended rules because the amended rules will provide more clarity and better reflect current practice.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for the proposed rulemaking. During the first five years the amended rules would be in effect, the rules would not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation or expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability; or affect the state's economy.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §§17 and 19 of the Texas Constitution. Furthermore, the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. The proposed rulemaking will not result in a taking of private property, and there are no adverse impacts on private real property interests.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in accordance with Texas Government Code, §2001.0225, and determined that the action does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment,

or public health and safety of the state or a sector of the state. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send written comments to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 475-1859, or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §28.2, §28.3

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.205, which authorizes the commissioner to establish by rule processes for preliminary consistency review and permitting assistance.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§28.2. *Definitions.*

(a) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency of subdivision--Any state agency, department, board, or commission or political subdivision of the state.

(2) Applicant--An individual or small business. In addition, the term includes a city, county, or special district.

(3) ~~(6)~~ CMP goals and policies--The goals and policies set forth in Chapter 26 [~~Chapter 501~~] of this title.

(4) ~~(3)~~ Coastal zone--The area within the CMP boundary established in §27.1 [~~§503.1~~] of this title.

(5) (4) Commissioner--Commissioner of the General Land Office (GLO).

(6) ~~(5)~~ Committee--Coastal Coordination Advisory Committee.

(7) (9) Permit service center (PSC)--The center that administers permitting assistance for activities in the coastal zone. The PSC has an office that serves the Upper Coast and an office that serves the Lower Coast.

(8) (7) Permitting assistance coordinator--The GLO staff member designated by the commissioner.

(9) (8) Permitting assistance group (PAG)--The group composed of representatives of committee member agencies and other interested committee members.

(10) Program boundary--The CMP boundary established in §27.1 [~~§503.1~~] of this title.

(b) (No change.)

§28.3. *Permitting Assistance Group.*

(a) - (c) (No change.)

(d) The PAG may be convened to assist with the planning and development of regional general permits and general permits to support future beach management and nourishment, coastal restoration projects, and the continued development of the Coastal Management Program.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

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For further information, please call: (512) 475-1859



SUBCHAPTER B. PERMITTING ASSISTANCE

31 TAC §28.10, §28.11

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.205, which authorizes the commissioner to establish by rule processes for preliminary consistency review and permitting assistance.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§28.10. *Permit Service Center.*

(a) - (b) (No change.)

(c) Agency or subdivision permits and actions:

(1) - (6) (No change.)

(7) The Texas Parks and Wildlife Department [~~Commission~~] when issuing or approving:

(A) an oyster lease or certificate of location;

(B) a permit for taking, transporting, or possessing threatened or endangered species;

(C) a permit for disturbing marl, sand, shell, or gravel on state-owned land; or

(D) development by a person other than the Texas Parks and Wildlife Department [~~Commission~~] that requires the use or taking of any public land in a state park, wildlife management area, or preserve.

(8) - (10) (No change.)

(d) (No change.)

§28.11. *Permitting Assistance Coordinator.*

The permitting assistance coordinator will perform the following functions:

(1) Applicant Assistance: Upon the request of an applicant, the permitting assistance coordinator will assist the applicant and monitor the status of the application until the permitting agency or subdivision has all information necessary to decide to issue, condition, or deny the permit. The coordinator will be responsible for providing preapplication assistance, on behalf of the PAG, by performing the services described in §28.12 [~~§504.12~~] of this chapter.

(2) - (5) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER C. PRELIMINARY CONSISTENCY REVIEW

31 TAC §28.20

STATUTORY AUTHORITY

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.205, which authorizes the commissioner to establish by rule processes for preliminary consistency review and permitting assistance.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§28.20. *Requests for Preliminary Consistency Review.*

(a) An agency, subdivision, or applicant seeking a permit or other proposed action listed in §28.10(c) [~~§504.10(e)~~] of this chapter may request a preliminary consistency review.

(b) - (e) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 29. PROCEDURES FOR STATE CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND POLICIES

The General Land Office (GLO) proposes amendments to §§29.11, 29.12, 29.20 - 29.26, 29.30 - 29.34, 29.36, 29.42, 29.51, 29.52, 29.60, 29.62 - 29.66, 29.68, and 29.74 in 31 TAC Chapter 29, relating to Procedures for State Consistency with Coastal Management Program Goals and Policies.

The purpose of the proposed amendments is to update cross references that became outdated as a result of the administrative transfer of rules from 31 TAC Chapter 505 to 31 TAC Chapter 29, effective on December 1, 2022. This rulemaking is necessary because it further implements amendments to the Coastal Coordination Act by Senate Bill 656, 82nd Texas Legislature, which abolished the Coastal Coordination Council and transferred the Council's powers and duties to the GLO.

The GLO proposes amendments to update cross references in the following sections: §29.11, relating to Actions and Rules Subject to the Coastal Management Program; §29.12, relating to Definitions; §29.20, relating to Commissioner Review and Certification of Agency Rules and Rule Amendments; §29.21, relating to Effect of Commissioner Certification of Agency Rules and Rule Amendments; §29.22, relating to Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program; §29.23, relating to Expedited Certification of Rules and Rule Amendments; §29.24, relating to Pre-Certification Review of Draft Rules and Draft Rule Amendments; §29.25, relating to Revocation of Certification; §29.26, relating to Approval of Thresholds for Referral; §29.30, relating to Agency Consistency Determination; §29.31, relating to Preliminary Consistency Review of Proposed Agency Action; §29.32, relating to Requirements for Referral of a Proposed Agency Action; §29.33, relating to Filing of Request for Referral; §29.34, relating to Referral of a Proposed Agency Action to the Commissioner for Consistency Review; §29.36, relating to Standard of Commissioner Review of a Proposed Agency Action; §29.42, relating to Enforcement after Commissioner Protest of a Proposed Agency Action; §29.51 relating to Request for a Non-Binding Advisory Opinion and Commissioner Action; §29.52, relating to Request for Commissioner Participation in the Development of General Plans; §29.60, relating to Subdivisions Actions Subject to the Coastal Management Program; §29.62, relating to Subdivision Consistency Determinations; §29.63, relating to Preliminary Consistency Review of a Proposed Subdivision Action; §29.64, relating to Requirements for a Referral of a Proposed Subdivision Action; §29.65, relating to Filing of Request for Referral; §29.66, relating to Referral of a Proposed Subdivision Action to the Commissioner for Review; §29.68, relating to Standard of Commissioner Review of a Proposed Subdivision Action; and §29.74, relating to Enforcement after Commissioner Protest of a Proposed Subdivision Action.

The proposed amendments to §29.11(a)(7)(A) adds updated terminology, including a clarification that the Texas Parks and Wildlife Department issues "certificates of location."

FISCAL AND EMPLOYMENT IMPACTS

Melissa Porter, Deputy Director, Coastal Resources, has determined that for each year of the first five years the proposed amended rules are in effect, there will be no fiscal impacts to state government as a result of enforcing or administering the rules. There are no anticipated fiscal implications for local governments as a result of enforcing or administering the rules.

Ms. Porter has also determined that the proposed rulemaking will not have an adverse economic effect on small or large businesses, micro-businesses, rural communities, or individuals for the first five years that the proposed amended rules are in effect.

Ms. Porter has determined that the proposed rulemaking will not affect a local economy, and the rules will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code, §2001.022.

PUBLIC BENEFIT

Ms. Porter has determined that for each year of the first five years the proposed amended rules are in effect, the public will benefit from the proposed amended rules because the amended rules will provide more clarity and better reflect current practice.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for the proposed rulemaking. During the first five years the amended rules would be in effect, the rules would not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation or expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability; or affect the state's economy.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §§17 and 19 of the Texas Constitution. Furthermore, the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. The proposed rulemaking will not result in a taking of private property, and there are no adverse impacts on private real property interests.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in accordance with Texas Government Code, §2001.0225, and determined that the action does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector

of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send written comments to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 475-1859 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

SUBCHAPTER A. PURPOSE AND SCOPE

31 TAC §29.11, §29.12

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the commissioner to establish by rule a process by which an agency may submit rules to the commissioner for review and certification for consistency with the goals and policies of the CMP.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§29.11. Actions and Rules Subject to the Coastal Management Program.

(a) For purposes of this chapter and Chapter 26 [Chapter 504] of this title (relating to Coastal Management Program), the following is an exclusive list of proposed individual agency actions that may adversely affect a coastal natural resource area (CNRA) and that therefore must be consistent with the CMP goals and policies:

(1) - (6) (No change.)

(7) for the Texas Parks and Wildlife Department (TPWD) when issuing or approving:

(A) an oyster lease or certificate of location;

(B) a permit for taking, transporting, or possessing threatened or endangered species;

(C) a permit for disturbing marl, sand, shell, or gravel on state-owned land; or

(D) development by a person other than the TPWD that requires the use or taking of any public land in a state park, wildlife management area or preserve.

(b) For purposes of this chapter and Chapter 26 [Chapter 504] of this title [(relating to Coastal Management Program)], the following is an exclusive list of proposed agency rulemaking actions that must be consistent with the CMP goals and policies:

(1) a GLO rule governing the prevention of, response to, or remediation of a coastal oil spill;

(2) TCEQ rules governing air pollutant emissions, on-site sewage disposal systems, or underground storage tanks;

(3) a State Soil and Water Conservation Board rule governing agricultural or silvicultural nonpoint source pollution;

(4) any rule governing an individual action described in subsection (a) of this section, including thresholds for referral.

(c) - (e) (No change.)

§29.12. Definitions.

(a) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (5) (No change.)

(6) CMP goals and policies--The goals and policies set forth in Chapter 26 [Chapter 504] of this title (relating to Coastal Management Program).

(7) Program boundary--The CMP boundary established in §27.1 [§503.1] of this title (relating to Coastal Management Program Boundary).

(8) Subdivision--A local government or any political subdivision of the state.

(b) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER B. COMMISSIONER REVIEW AND CERTIFICATION OF AGENCY RULES

31 TAC §§29.20 - 29.26

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the commissioner to establish by rule a process by which an agency may submit rules to the commissioner for review and certification for consistency with the goals and policies of the CMP.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§29.20. Commissioner Review and Certification of Agency Rules and Rule Amendments

(a) Upon adoption of a rule or amendment to a rule listed in §29.11(b) [§505.11(b)] of this chapter (relating to Actions and Rules Subject to the Coastal Management Program), an agency may seek

certification from the commissioner that the rule or rule amendment is consistent with the CMP goals and policies by filing a written Request for Certification with the CMP coordinator. The request shall include a copy of the rule or rule amendment for which the agency seeks certification and a reasoned statement supporting the agency's determination that the rule or rule amendment is consistent with the CMP goals and policies.

(b) - (c) (No change.)

§29.21. Effect of Commissioner Certification of Agency Rules and Rule Amendments.

(a) Upon the commissioner's certification of an agency's rules or rule amendments pursuant to §29.20 [§505.20] of this chapter (relating to Commissioner Review and Certification of Agency Rules and Rule Amendments) or §29.23 [§505.23] of this chapter (relating to Expedited Certification of Rules and Rule Amendments), the agency's rules are incorporated into the CMP goals and policies, and any threshold for referral approved pursuant to §29.26 [§505.26] of this chapter (relating to Approval of Thresholds for Referral) that applies to actions under those rules shall become operative and limit the commissioner's authority to review individual actions of the agency, as provided in §29.32 [§505.32] of this chapter (relating to Requirements for Referral of a Proposed Agency Action).

(b) After an agency's rules are certified and an agency's thresholds are approved, the agency's consistency determination for an action is final and is not subject to referral and review, except as provided by §29.32 [§505.32] of this chapter [~~relating to Requirements for Referral of a Proposed Agency Action~~].

(c) Where commissioner certification of a rule or rule amendment takes place after the effective date of a rule or rule amendment, the provisions of §29.32 [§503.32] of this chapter [~~relating to Requirements for Referral of a Proposed Agency Action~~] will be considered to be in effect to limit commissioner review of an agency action listed in §29.11(a) [§505.11(a)] of this chapter (relating to Actions and Rules Subject to the Coastal Management Program) provided:

- (1) the agency files a request for certification of the rule or rule amendment within seven days of the date of adoption;
- (2) the action is undertaken pursuant to the rule or rule amendment for which certification is sought; and
- (3) the action was initiated after the rule or rule amendment was adopted and before the commissioner acted on the request for certification.

§29.22. Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program.

(a) When proposing to adopt or amend a rule listed in §29.11(b) [§505.11(b)] of this chapter (relating to Actions and Rules Subject to the Coastal Management Program) an agency shall include in the preamble to the proposed rule as published in the *Texas Register* the following:

- (1) a statement that the proposed rule or rule amendment is subject to the Coastal Management Program and must be consistent with all applicable CMP policies;
- (2) a reasoned justification explaining the basis upon which the agency concluded the proposed rule is consistent with each applicable CMP policy; and
- (3) a request for public comment on the consistency of the proposed rule or rule amendment.

(b) - (d) (No change.)

§29.23. Expedited Certification of Rules and Rule Amendments.

(a) In accordance with this section, the commissioner may provide expedited certification of a rule or rule amendment. An agency may request and the commissioner may provide expedited certification of an agency's rule or rule amendment only if:

(1) the agency has included in the preamble to the proposed rule or rule amendment published in the *Texas Register* notice that the agency will seek expedited certification upon adoption of the rule;

(2) the agency has filed with the CMP coordinator at the time the rule or rule amendment is proposed a Notice of Intent to Seek Expedited Certification and attached a copy of the proposed rule or rule amendment; and

(3) the agency submitted the draft rule or draft rule amendment to the CMP coordinator for pre-certification review pursuant to §29.24 [§505.24] of this chapter (relating to Pre-Certification Review of Draft Rules and ~~or~~ Draft Rule Amendments).

(b) - (d) (No change.)

§29.24. Pre-Certification Review of Draft Rules and Draft Rule Amendments.

(a) Prior to the publication in the *Texas Register* of a proposed rule or amendment to a rule listed in §29.11(b) [§505.11(b)] of this chapter (relating to Actions and Rules Subject to the Coastal Management Program), an agency may seek pre-certification review by filing a Request for Pre-certification Review with the CMP coordinator. The request shall include a copy of the draft rule or draft rule amendment and any information the agency wishes the commissioner to consider. This request shall allow the commissioner a minimum of 30 days to review and comment on the draft rule or rule amendment.

(b) - (d) (No change.)

§29.25. Revocation of Certification.

The commissioner may issue a Notice of Program Deficiency if the commissioner finds that the agency has implemented its rules in a manner that is inconsistent with the CMP goals and policies, or has amended certified rules in a manner inconsistent with the CMP goals and policies. The notice shall set forth the specific findings of deficiency, the basis for such findings, and include recommendations to correct the deficiencies within a reasonable period established in the notice. If the agency fails to correct the deficiencies as provided in the notice and within the time allowed, the commissioner may, after notice and opportunity for public comment, revoke certification of the agency's rules. Upon revocation of certification, §29.21 [§505.21] of this chapter (relating to Effect of Commissioner Certification of Agency Rules and Rule Amendments) shall not apply to limit commissioner review of any agency actions.

§29.26. Approval of Thresholds for Referral.

As applicable, the provisions of §29.20 [§505.20] of this chapter (relating to Commissioner Review and Certification of Agency Rules and Rule Amendments) or §29.23 [§505.23] of this chapter (relating to Expedited Certification of Rule and Rule Amendments) shall be applied in requesting and responding to a request for approval of thresholds. Notwithstanding any other provision of this section to the contrary, when applying §29.20 [§505.20] or §29.23 of this chapter [§505.23] to thresholds, the term "threshold" or "thresholds" shall be substituted for the term "rule" or "rules" and the term "approval" shall be substituted for the term "certified" or "certification." Thresholds for referral shall be set a level consistent with the standard in §26.13(b) [§501.13(b)] of this title (relating to Administrative Policies).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER C. CONSISTENCY AND COMMISSIONER REVIEW OF PROPOSED STATE AGENCY ACTIONS

31 TAC §§29.30 - 29.34, 29.36, 29.42

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the commissioner to establish by rule a process by which an agency may submit rules to the commissioner for review and certification for consistency with the goals and policies of the CMP.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§29.30. *Agency Consistency Determination.*

(a) An agency, when proposing an action listed in §29.11(a) [~~§505-11(a)~~] of this chapter (relating to Actions and Rules Subject to the Coastal Management Program) that may adversely affect a coastal natural resource area (CNRA), shall comply with the CMP goals and policies.

(b) - (e) (No change.)

§29.31. *Preliminary Consistency Review of a Proposed Agency Action.*

(a) An agency or permit applicant may request and receive a preliminary consistency review of any action listed in §29.11(a) [~~§505-11(a)~~] of this chapter (relating to Actions and Rules Subject to the Coastal Management Program) or §29.60 [~~§505-60~~] of this chapter (relating to Subdivision Actions Subject to the Coastal Management Program) prior to the agency's proposed action.

(b) A request for preliminary consistency review shall be submitted and processed pursuant to Chapter 28 [~~Chapter 504~~] of this title (relating to Permitting Assistance and Preliminary Consistency Review).

§29.32. *Requirements for Referral of a Proposed Agency Action.*

(a) A proposed action of an agency listed in §29.11(a) [~~§505-11(a)~~] of this chapter (relating to Actions and Rules Subject to the Coastal Management Program) may be referred to the commissioner for review to determine consistency with the CMP goals and policies only if:

(1) the agency has proposed the action for which referral is sought;

(2) the consistency determination for the proposed action was contested by:

(A) a committee member or an agency that was a party in a formal hearing under Government Code, Chapter 2001, or in an alternative dispute resolution process; or

(B) a committee member or other person by the filing of written comments with the agency before the action was proposed if the proposed action is one for which a formal hearing under Government Code, Chapter 2001, is not available;

(3) a person described by subsection (a)(2) of this section files a request for referral within ten days of the date the action is proposed alleging a significant unresolved dispute regarding the proposed action's consistency with the CMP goals and policies; and

(4) any three committee members other than the representative of the Texas Sea Grant College Program agree within 13 days of the date the action is proposed that there is a significant unresolved dispute regarding the proposed action's consistency with the CMP goals and policies and the matter is referred to the commissioner for review.

(b) If consistency review thresholds are in effect under §29.26 [~~§505-26~~] of this chapter (relating to Approval of Thresholds for Referral), the commissioner may not review a proposed action for consistency with the CMP goals and policies unless the requirements of subsection (a) of this section are satisfied and:

(1) if the proposed action is one for which a formal hearing under Government Code, Title 10, Subtitle A, Chapter 2001, is available:

(A) the action exceeds the applicable thresholds and the agency's consistency determination was contested in a formal hearing or an alternative dispute resolution process; or

(B) the action does not exceed the applicable thresholds but may directly and adversely affect a critical area, critical dune area, coastal park, wildlife management area or preserve, or Gulf beach and a state agency contested the agency's consistency determination in a formal hearing; or

(2) if the proposed action is one for which a formal hearing under Government Code, Chapter 2001, is not available to contest the agency's determination, the action exceeds the applicable thresholds.

(c) For purposes of this subchapter, an action subject to the contested case provisions of Government Code, Chapter 2001, is proposed when a notice of a decision or order is issued under Government Code, §2001.142.

(d) The commissioner must consider and act on a matter referred under this section before the 26th day after the date the agency or subdivision proposed the action.

§29.33. *Filing of Request for Referral.*

(a) To seek commissioner review of a proposed agency action listed in §29.11(a) [~~§505-11(a)~~] of this chapter (relating to Actions and Rules Subject to the Coastal Management Program), a person described in §29.32(a)(2) [~~§505-32(a)(2)~~] of this chapter (relating to Requirements for Referral of a Proposed Agency Action) must file a written Request for Referral with the CMP coordinator. The request must be filed no later than ten days after the agency has proposed the action for which consistency review is sought.

(b) The Request for Referral shall include:

(1) the names, addresses, and signatures of all persons joining in the request;

(2) a certificate of service indicating that copies of the request have been provided by hand delivery or certified mail to:

(A) the agency proposing the action for which review is sought;

(B) the applicant, if any, before the agency; and

(C) if the proposed action was the subject of a formal hearing under Government Code, Chapter 2001, all persons who were named as parties to the proceeding or their representatives;

(3) a description of the proposed action for which review is sought indicating the date of the agency's proposed action and a copy of the proposed order, permit, or other official agency decision document;

(4) a statement demonstrating, by reference to the requirements of §29.32 [§505.32] of this chapter [~~(relating to Requirements for Referral of a Proposed Agency Action)~~], that the proposed action is subject to referral; and

(5) a clear and concise statement of the significant unresolved dispute regarding the proposed action's consistency with the CMP goals and policies, including specific reference to the applicable goals and policies and to the applicable facts in the agency's decision record.

§29.34. Referral of a Proposed Agency Action to the Commissioner for Consistency Review.

(a) Upon receipt of a timely Request for Referral which satisfies the requirements of §29.33 [§505.33] of this chapter (relating to Filing of Request for Referral), the CMP coordinator shall provide a copy to each committee member.

(b) - (e) (No change.)

§29.36. Standard of Commissioner Review of a Proposed Agency Action.

(a) The only basis on which the commissioner may protest a proposed agency action is that the proposed action is inconsistent with the CMP goals and policies.

(b) Following certification of an agency's rules as consistent with the CMP goals and policies pursuant to Subchapter B of this chapter:

(1) the commissioner shall presume that the agency's consistency determination is valid if it is supported by the agency's findings of fact and conclusions of law;

(2) the burden shall be on the person filing the request for referral to demonstrate that the agency's proposed action is inconsistent with the CMP goals and policies; and

(3) any thresholds for referral approved pursuant to §29.26 [§505.26] of this chapter (relating to Approval of Thresholds for Referral) shall become operative and limit the commissioner's authority to review individual proposed actions of an agency as provided in §29.32 [§505.32] of this chapter (relating to Requirements for Referral of a Proposed Agency Action).

§29.42. Enforcement after Commissioner Protest of a Proposed Agency Action.

(a) The agency with jurisdiction over a proposed action shall enforce provisions of the CMP.

(b) If the attorney general issues an opinion under §29.39 [§505.39] of this chapter (relating to Agency Action After Commissioner Protest) that a proposed agency action is inconsistent with the CMP, the attorney general shall file suit in a district court of Travis County unless otherwise directed by the commissioner.

(c) Notwithstanding the request for an opinion from, or the filing of a suit by the attorney general, the commissioner and the agency may enter into a settlement agreement with regard to the proposed action. If the commissioner and the agency enter into a settlement agreement, the commissioner may rescind the commissioner's request for an opinion from the attorney general.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER D. COMMISSIONER ADVISORY OPINIONS ON GENERAL PLANS

31 TAC §29.51, §29.52

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the commissioner to establish by rule a process by which an agency may submit rules to the commissioner for review and certification for consistency with the goals and policies of the CMP.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§29.51. Request for a Non-Binding Advisory Opinion and Commissioner Action.

(a) An agency or subdivision which has produced a general plan described or listed in §29.50 [§505.50] of this chapter (relating to General Plans) may request a non-binding advisory opinion on the consistency of its general plan.

(b) - (e) (No change.)

§29.52. Request for Commissioner Participation in the Development of General Plans.

(a) An agency or subdivision which is producing a general plan described or listed in §29.50 [§505.50] of this chapter (relating to General Plans) may request commissioner participation in the development of a plan by submitting a written request to the CMP coordinator. The commissioner shall participate in the plan development according to the schedule of the agency developing the plan.

(b) The commissioner may direct the committee to participate in the development of the plan and make regular reports to the commissioner.

(c) At the request of an agency or subdivision which is producing a general plan described or listed in §29.50 [§505.50] of this

chapter [(relating to General Plans)], the commissioner may enter into a memorandum of agreement establishing the manner of commissioner participation in plan development, the criteria to be used in evaluating the plan, criteria to determine the adequacy of alternatives for resolving potential inconsistencies in the plan with the CMP goals and policies, and such other matters as are deemed appropriate by the parties to the agreement.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER E. CONSISTENCY AND COMMISSIONER REVIEW OF LOCAL GOVERNMENT ACTIONS

31 TAC §§29.60, 29.62 - 29.66, 29.68, 29.74

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the commissioner to establish by rule a process by which an agency may submit rules to the commissioner for review and certification for consistency with the goals and policies of the CMP.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§29.60. *Subdivision Actions Subject to the Coastal Management Program.*

For purposes of this chapter and Chapter 26 [Chapter 504] of this title (relating to Coastal Management Program), issuance of a dune protection permit or beachfront construction certificate are the only proposed actions by a subdivision that may adversely affect a coastal natural resource area and that therefore must be consistent with the CMP goals and policies provided such actions authorize:

- (1) construction activity that is located 200 feet or less landward of the line of vegetation and that results in the disturbance of more than 7,000 square feet of dunes or dune vegetation;
- (2) construction activity that results in the disturbance of more than 7,500 cubic yards of dunes;
- (3) a coastal shore protection project undertaken on a Gulf beach or 200 feet or less landward of the line of vegetation and that affects more than 500 linear feet of Gulf beach; or

(4) a closure, relocation, or reduction in existing public beach access or public beach access designated in an approved local government beach access plan, other than for a short term.

§29.62. *Subdivision Consistency Determinations.*

(a) Prior to a proposed action identified in §29.60 [§505.60] of this title (relating to Subdivision Actions Subject to the Coastal Management Program), a subdivision shall comply with the CMP goals and policies.

(1) For dune protection permits, the subdivision determination made pursuant to §15.4 of this title (relating to Dune Protection Standards) that the proposed activity will not materially weaken any dune, or materially damage any dune vegetation, or reduce the effectiveness of any dune as a means of protection against erosion and high wind and water, shall constitute a determination that such permit is consistent with CMP goals and policies.

(2) For beachfront construction certificates, the subdivision determination made pursuant to §15.5 of this title (relating to Beachfront Construction Standards) that the proposed activity is consistent with the beach access portion of its approved dune protection and beach access plan and does not interfere with, or otherwise restrict, the public's right to use and have access to and from the Gulf beach shall constitute a determination that such permit is consistent with CMP goals and policies.

(b) A subdivision proposing an action listed in §29.60 [§505.60] of this title [(relating to Subdivision Actions Subject to the Coastal Management Program)] shall affirm that it has taken into account the CMP goals and policies by issuing a written determination that the proposed action is consistent with program goals and policies.

§29.63. *Preliminary Consistency Review of a Proposed Subdivision Action.*

(a) Prior to taking final action, a subdivision may request preliminary consistency review for any proposed action listed in §29.60 [§505.60] of this chapter (relating to Subdivision Actions Subject to the Coastal Management Program).

(b) A subdivision's request for preliminary consistency review shall be submitted and handled in accordance with the provisions of Chapter 28 [Chapter 504] of this title (relating to Permitting Assistance and Preliminary Consistency Review).

§29.64. *Requirements for Referral of a Proposed Subdivision Action.* A proposed subdivision action listed in §29.60 [§505.60] of this chapter (relating to Subdivision Actions Subject to the Coastal Management Program) may be referred to the commissioner for review to determine consistency with the CMP goals and policies only if:

- (1) the subdivision proposed the action for which referral is sought;
- (2) the consistency determination for the proposed action was contested by a member of the committee or other person by the filing of written comments with the subdivision;
- (3) a person described in paragraph (2) of this section files a request for referral within ten days of the date the action was proposed alleging a significant unresolved dispute regarding the proposed action's consistency with the CMP goals and policies; and
- (4) any three committee members other than the representative of the Texas Sea Grant College Program agree within 13 days of the date the action was proposed that there is a significant unresolved dispute regarding the proposed action's consistency with the CMP goals and policies and the matter is referred to the commissioner for review.

§29.65. *Filing of Request for Referral.*

(a) To seek commissioner review of an action identified in §29.60 [§505-60] of this chapter (relating to Subdivision Actions Subject to the Coastal Management Program), a member of the committee or other person must file a written Request for Referral with the CMP coordinator. The request must be filed no later than ten days after the subdivision has proposed the action for which consistency review is sought.

(b) The Request for Referral shall include:

(1) the names, addresses, and signatures of all persons joining in the request;

(2) a certificate of service indicating that requestor has provided copies of the request by personal delivery or certified service to:

(A) the subdivision proposing the action for which review is sought; and

(B) the applicant, if other than the subdivision;

(3) a description of the proposed action for which review is sought, indicating the date of the proposed subdivision action, including a copy of the order, permit, or other official subdivision proposal;

(4) a statement demonstrating, by reference to the requirements of §29.64 [§505-64] of this chapter (relating to Requirements for Referral of a Proposed Subdivision Action [Aetions]), that the proposed action is one subject to referral; and

(5) a clear and concise statement of the proposed action's inconsistencies with the CMP goals and policies, including specific reference to the applicable goals and policies and to the applicable facts in the subdivision's proposal.

§29.66. *Referral of a Proposed Subdivision Action to the Commissioner for Review.*

(a) Upon receipt of a timely Request for Referral which satisfies the requirements of §29.65 [§505-65] of this chapter (relating to Filing of Request for Referral), the CMP coordinator shall provide a copy to each member of the committee.

(b) - (e) (No change.)

§29.68. *Standard of Commissioner Review of a Proposed Subdivision Action.*

(a) The only basis on which the commissioner may protest a proposed subdivision action is that the proposed action is inconsistent with the CMP goals and policies.

(b) Following the GLO's certification of a subdivision's dune protection and beach access plan under §15.3(o) of this title (relating to Administration) as consistent with the CMP goals and policies:

(1) the subdivision's consistency determination is final and is not subject to referral and review, except as provided in §29.64 [§505-64] of this chapter (relating to Requirements for Referral of a Proposed Subdivision Action [Aetions]); and

(2) the commissioner shall presume that the subdivision's consistency determination is valid, if such determination is documented by the underlying record, and the burden shall be on the person filing the Request for Referral to demonstrate that the subdivision's proposed action is inconsistent with the CMP goals and policies.

§29.74. *Enforcement after Commissioner Protest of a Proposed Subdivision Action.*

(a) The agency or subdivision with jurisdiction over a proposed action shall enforce the CMP provisions.

(b) If the attorney general issues an opinion pursuant to §29.71 [§505-71] of this chapter (relating to Subdivision Action After Commissioner Protest) finding that a proposed subdivision action is inconsistent with the CMP and the agency or subdivision fails to implement the commissioner's recommendation, the attorney general shall file suit in a district court of Travis County unless otherwise directed by the commissioner.

(c) Notwithstanding the request for an opinion from, or the filing of a suit by the attorney general, the commissioner and the subdivision may enter into a settlement agreement with regard to the proposed action. If the commissioner and the subdivision enter into a settlement agreement, the commissioner may rescind the commissioner's request for an opinion from the attorney general.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Texas Listed Activities Subject to CZMA Review

Redline Format

§30.12. Federal ~~Agency Actions, Federal Agency Listed Activities and Development Projects, and Outer Continental Shelf Plans~~ Subject to ~~the Coastal Management Program~~ CZMA Review.

(a) For purposes of this section, the following federal actions within the CMP boundary may adversely affect coastal natural resource areas (CNRAs) ~~within the coastal zone. This list of federal actions includes federal agency activities, federal license or permit activities, and federal assistance applications that are subject to CZMA federal consistency review by the GLO.~~

(1) Federal Agency Activities and Development Projects: ~~For all actions proposed by or on behalf of federal agencies that may have reasonably foreseeable effects on CNRAs, a consistency determination or negative determination must be submitted to the GLO pursuant to the requirements of the Federal Consistency regulations found at 15 CFR Part 930, subpart C.~~

(A) United States Department of the Interior: ~~Modifications:~~

(i) ~~modifications~~ to the boundaries of the Coastal Barrier Resource System under 16 United States Code Annotated, §3503(c); ~~and~~

(ii) ~~OCS lease sales within the western and central Gulf of Mexico under 43 United States Code Annotated, §1337;~~

(B) United States Environmental Protection Agency. Selection of remedial actions under 42 United States Code Annotated, §9604(c);

(C) United States Army Corps of Engineers:

(i) small river and harbor improvement projects under 33 United States Code Annotated, §577;

(ii) water resources development projects under 42 United States Code Annotated, §1962d-5;

(iii) small flood control projects under 33 United States Code Annotated, §701s;

(iv) small beach erosion control projects under 33 United States Code Annotated, §426g;

(v) operation and maintenance of civil works projects under the Code of Federal Regulations, Title 33, Parts 335 and 338;

(vi) dredging projects under the Code of Federal Regulations, Title 33, Part 336;

(vii) approval for projects for the prevention or mitigation of damages to shore areas attributable to federal navigation projects pursuant to 33 United States Code Annotated, §426i; and

(viii) approval for projects for the placement on state beaches of beach-quality sand dredged from federal navigation projects pursuant to 33 United States Code Annotated, §426j;

(D) Federal Emergency Management Agency:

(i) model floodplain ordinances; and

(ii) approval ~~or suspension~~ of a community's ~~eligibility to sell flood insurance~~ participation in the National Flood Insurance Program (NFIP) under the Code of Federal Regulations, Title 44, Part 59, subpart B;

(E) General Services Administration:

(i) acquisitions under 40 United States Code Annotated, §602 and §603; and

(ii) construction under 40 United States Code Annotated, §605; ~~and~~

(F) All federal agencies:

(i) all other development projects; and

(ii) natural resource restoration plans developed pursuant to the Oil Pollution Act of 1990 (33 United States Code Annotated §§2701-2761) and the Comprehensive Environmental Response, Compensation and Liability Act (42 United States Code Annotated §§9601-9675);

Commented [GLO1]: Already part of our list (see below). Just moved up to be included with other federal agency activities.

(2) Federal Agency Actions:

(2) Federal license or permit activities. For all actions proposed by an applicant a consistency certification must be submitted to the GLO pursuant to the requirements of the Federal Consistency regulations in 15 CFR Part 930, subpart D.

(A) Environmental Protection Agency:

(i) National Pollution Discharge Elimination System (NPDES) permits under 33 United States Code Annotated, §1342;

(ii) ocean dumping permits under 33 United States Code Annotated, §1412;

(iii) approvals of land disposal of wastes under 42 United States Code Annotated, §6924(d);

(iv) development of total maximum daily loads (TMDLs) and associated federally developed TMDL implementation plans under 33 United States Code Annotated, §1313; and

(v) approvals of National Estuary Program Comprehensive Conservation Management Plans under 33 United States Code Annotated, §1330f;

(B) United States Army Corps of Engineers:

(i) ocean dumping permits under 33 United States Code Annotated, §1413;

(ii) dredge and fill permits under 33 United States Code Annotated, §1344;

(iii) permits under §9 of the River and Harbor Act of 1899, 33 United States Code Annotated, §401;

(iv) permits under §10 of the River and Harbor Act of 1899, 33 United States Code Annotated, §403; and

(v) Memoranda of Agreement for mitigation banking;

(C) United States Department of Transportation:

(i) approvals under §7(a) of the Federal-Aid Highway Amendments Act of 1963, 23 United States Code Annotated, §106; ~~and~~

(ii) approvals under §502 of the General Bridge Act of 1946, 33 United States Code Annotated, §525; ~~and~~

(iii) Deepwater port licenses under 33 United States Code Annotated, §1503;

(D) Federal Aviation Administration: Airport operating certificates under 49 United States Code Annotated, §44702;

(E) Federal Energy Regulatory Commission:

(i) certificates under §7 of the Natural Gas Act, 15 United States Code Annotated, §717f;

(ii) licenses under §4 of the Federal Power Act, 16 United States Code Annotated, §797(e); and

(iii) exemptions under §403 of the Public Utility Regulatory Policies Act of 1978, 16 United States Code Annotated, §2705(d);

(F) Nuclear Regulatory Commission. Licenses under §103 of the Atomic Energy Act of 1954, 42 United States Code Annotated, §2133.

(3) State and Local Government Applications for Federal Assistance. ~~Federal assistance for state and local government activities that may adversely affect CNRAs. Federal assistance does not include applications from local governments and subdivisions to the Texas Water Development Board for financial assistance through the State Water Pollution Control Revolving Fund or the Colonia Wastewater Treatment Assistance Program occurring within the Texas coastal zone:~~

(A) Federal Emergency Management Agency federal assistance grants for:

(i) 97.008 Non-Profit Security Program for physical security enhancements and other security-related activities to nonprofit organizations that are at high risk of a terrorist attack if outside the original footprint;

Commented [GLO2]: Already part of our list (see below). Just moved up to be included with other federal license activities.

Commented [GLO3]: Everything highlighted was not included in the adopted final rule. Following consultation with OCM, the GLO instead adopted new § 30.12(a)(3) which states: "Federal financial assistance awards may be subject to federal consistency review in accordance with the procedures specified at 15 CFR §§ 930.98 and 930.54 with the approval of the Office for Coastal Management within the National Oceanic and Atmospheric Administration." As the GLO is not listing any federal financial assistance awards, the language in adopted new § 30.12(a)(3) is intended to outline the procedure for reviewing unlisted federal financial assistance awards pursuant to the federal regulations.

- (ii) 97.029 Flood Mitigation Assistance (FMA) for flood mitigation projects to reduce or eliminate the long-term risk of flood damage to properties insured under the National Flood Insurance Program (NFIP) are eligible for the FMA program;
 - (iii) 97.036 Disaster Grants - Public Assistance (Presidentially Declared Disasters) for debris removal, emergency protective measures, and the repair, restoration, reconstruction or replacement of public and eligible private nonprofit facilities or infrastructure damaged or destroyed as the result of federally declared disasters or emergencies;
 - (iv) 97.039 Hazard Mitigation Grant (Presidentially Declared Disasters - earthquakes, hurricanes, tornados, or wildfires) for construction activities, relocation or demolition of structures, major or minor flood reduction projects, elevation of structures if outside the original footprint;
 - (v) 97.041 National Dam Safety Program relating to Rehabilitation of High Hazard Potential Dams (HPHD) for construction, repair, removal, and rehabilitation activities to address risk and bring the dams into compliance with state dam regulations;
 - (vi) 97.042 Emergency Management Performance Grants relating to the review of construction, renovation and infrastructure improvement projects if outside original footprint;
 - (vii) 97.047 BRIC: Building Resilient Infrastructure and Communities to conduct mitigation activities with a focus on critical services and facilities and large-scale infrastructure;
 - (viii) 97.048 Federal Disaster Assistance to Individuals and Households in Presidential Declared Disaster Areas for repair, replacement, and permanent or semipermanent housing construction;
 - (ix) 97.052 Emergency Operations Center (EOC) relating to construction or renovation of a State, local or Tribal government's principal EOC;
 - (x) 97.056 Port Security Grant Program relating to review of construction and infrastructure improvement project is outside original footprint;
 - (xi) 97.067 Homeland Security Grant Program relating to physical protective measures such as fences and concrete barriers; and
 - (xii) 97.092 Repetitive Flood Claims for acquisition of insured structures for the purpose of converting flood-prone land to permanent open space use, elevation of existing structures if outside the original footprint; and minor localized flood reduction projects;
- (B) Department of Housing and Urban Development federal assistance grants for:
- (i) 14.218 Community Development Block Grants/Entitlement Grants; and
 - (ii) 14.239 Home Investment Partnerships Program.

(b) For purposes of this section, the following are federal actions outside the CMP boundary but within OCS waters, or on excluded federal land located within the coastal zone, that may adversely affect CNRAs:

(1) Federal Activities and Development Projects for all federal agencies: Activities in OCS waters or within the coastal zone occurring within federal lands excluded from the CMP boundary but which may adversely affect CNRAs.

(2) Federal Agency Actions:

(A) United States Department of the Interior:

(i) permits under §11 of the Outer Continental Shelf Lands Act, 43 United States Code Annotated, §1340, in OCS waters; and

(ii) rights-of-way under §5(e) of the Outer Continental Shelf Lands Act, 43 United States Code Annotated, §1334(e), in OCS waters;

(B) Environmental Protection Agency:

(i) NPDES permits under 33 United States Code Annotated, §1342, in OCS waters;

~~(ii) ocean dumping permits under 33 United States Code Annotated, §1412, in OCS waters;
(C) United States Army Corps of Engineers. Ocean dumping permits under 33 United States Code Annotated, §1413, in OCS waters;
(D) United States Department of Transportation: Deep water port licenses under 33 United States Code Annotated, §1503, in OCS waters.~~

~~(3)(b) OCS Exploration, Plans and Development, and Production PlansActivities. 43 United States Code, §§1340(c) and 1351. United States Department of the Interior: This includes
(A) Federal agency actions described in detail in OCS plans, including pipeline activities, that may adversely affect CNRAs;
(B) OCS lease sales within the western and central Gulf of Mexico under 43 United States Code Annotated, §1337.~~

Commented [GLO4]: Moved above to (a)(1)(A)(ii).

~~(e) In the event that a proposed activity requiring a state agency or subdivision action that falls below thresholds for referral approved under Chapter 505, Subchapter B of this title (relating to Council Certification of State Agency Rules and Approval of Thresholds for Referral) requires an equivalent federal permit or license under this chapter, the council may only determine the state agency or subdivision action's consistency by using the process provided in Chapter 505 of this title (relating to Council Procedure for State Consistency with Coastal Management Program Goals and Policies). The council's determination regarding the consistency of an action under this subsection constitutes the state's determination regarding consistency of the equivalent federal action.~~

~~(c) In the event the GLO elects to review a proposed federal agency activity of a type that is unlisted in subsection (a)(1) of this section the GLO will follow the federal regulations process set out in 15 CFR §930.34(c). If the GLO elects to review a proposed federal license or permit activity of a type that is unlisted in subsection (a)(2) of this section, the GLO will follow the procedures set out in 15 CFR §930.54.~~

~~(d) If an activity requiring a state agency or subdivision action above thresholds requires an equivalent federal permit or license, the council may determine the consistency of the state agency or subdivision action or the federal license or permit, but not both.~~

~~(e) The determinations regarding the consistency of an action made by the council under subsections (c) and (d) of this section constitute the state's determination regarding consistency of the equivalent agency or subdivision action or federal action.~~

~~(f) On a one-time basis, and subject to the provisions of paragraph (1) of this subsection and federal law, the council may elect to review a proposed federal agency activity of a type that is not listed in subsection (a)(1) of this section, a proposed federal license or permit action of a type that is not listed in subsection (a)(2) of this section, or a state or local government application for federal assistance of a type that is not listed in subsection (a)(3) of this section.~~

~~(1) Once the council has reviewed a proposed federal agency activity of a type that is not listed in subsection (a)(1) of this section, the council may not review any other proposed federal agency activity of that type under this subsection.~~

~~(2) Once the council has reviewed a proposed federal license or permit action of a type that is not listed in subsection (a)(2) of this section, the council may not review any other proposed federal license or permit action of that type under this subsection.~~

~~(3) Once the council has reviewed a state or local government application for federal assistance of a type that is not specifically listed in subsection (a)(3) of this section, the council may not review any other state or local government application for federal assistance of that type under this subsection.~~

~~(4) Except as provided in this subsection, the list of federal actions described in subsection (a) of this section is an exclusive list of federal agency activities, licenses and permits, and state and local government applications for federal assistance that are subject to council review. The council may amend the list of actions and activities described in subsection (a) of this section from time to time, and any federal actions or activities described in such amended lists shall be subject to council review.~~

~~(g) If the council determines a federal agency action or application for federal assistance to be consistent with the CMP goals and policies, subsequent actions taken by state agencies or subdivisions or federal agencies to implement the activity described in the application shall not be subject to review by the council if the application for the federal agency action or federal assistance describes the activity in sufficient detail to determine consistency of the completed activity.~~

31 Texas Admin. Code Chapter 30, Adopted

As in effect on July 20, 2023

TITLE 31 NATURAL RESOURCES AND CONSERVATION

PART 1 GENERAL LAND OFFICE

CHAPTER 30 PROCEDURES FOR FEDERAL CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND POLICIES

§30.10 Purpose and Policy

The rules in this Chapter establish a process for federal consistency review, as required by Texas Natural Resources Code, §33.206(d) and federal procedures for implementing the federal consistency requirements of the federal Coastal Zone Management Act of 1972 (CZMA) and provides that federal actions and activities subject to the Texas Coastal Management Program (CMP) are consistent with the goals and enforceable policies of the CMP. The procedures in this Chapter are intended to allow the Commissioner of the General Land Office (GLO) to identify, address, and resolve federal consistency issues and provide guidance that if any inconsistencies are found between these rules and those of the CZMA Federal Consistency regulations provided in 15 Code of Federal Regulations (CFR) Part 930, the federal regulations are controlling.

§30.11 Definitions

(a) The following words, terms, and phrases, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Associated facilities--All proposed facilities:

(A) which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or in major part, to meet the needs of a federal action (e.g., activity, development project, license, permit, or assistance); and

(B) without which the federal action, as proposed, could not be conducted. See 15 CFR §930.11(d).

(2) Coastal Coordination Act--Texas Natural Resources Code, Chapter 33, Subchapter F.

(3) Coastal Zone--The portion of the coastal area located within the boundaries established by the CMP under Texas Natural Resources Code, §33.2053(k), and described in Chapter 27 of this title (relating to Coastal Management Program Boundary).

(4) CMP--Texas Coastal Management Program, which was accepted into the federal Coastal Zone Management Program in 1996 after receiving approval from the federal Office for Coastal Management. The CMP was implemented on January 10, 1997 and incorporates all federally approved amendments thereafter.

(5) CMP coordinator--The GLO Coastal Resources staff member designated by the commissioner.

(6) CMP goals and enforceable policies--The goals and policies set forth in Chapter 26 of this title.

(7) Commissioner--Commissioner of the GLO.

(8) Committee--Coastal Coordination Advisory Committee.

(9) CZMA--Federal Coastal Zone Management Act of 1972, as amended.

(10) Development project--Federal agency activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and includes the acquisition, use, or disposal of coastal use or resource. See 15 CFR §930.31(b).

(11) Director--Director of the Office for Coastal Management (OCM), National Ocean Service, NOAA.

(12) Federal agency--Any department, agency, board, commission, council, independent office or similar entity within the executive branch of the federal government, or any wholly owned federal government corporation. See 15 CFR §930.11(j).

(13) Federal agency activity--Any functions performed by or on behalf of a federal agency in the exercise of its statutory responsibilities, including a range of activities where a Federal agency makes a proposal for action initiating an activity or series of activities when coastal effects are reasonably foreseeable, e.g., a Federal agency's proposal to physically alter coastal resources, a plan that is used to direct future agency actions, a proposed rulemaking that alters uses of the coastal zone. The term does not include the issuance of a federal license or permit or the granting of federal assistance to an applicant agency. See 15 CFR §930.31(a).

(14) Federal assistance--Assistance provided under a federal program to a state or local government applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other form of financial aid. See 15 CFR §930.91.

(15) Federal license or permit activity--An activity proposed by a non-federal applicant that requires any federal license, permit, or other authorization that an applicant is required by law to obtain in order to conduct activities affecting any land or water use or natural resource of the coastal zone and that any federal agency is empowered to issue to an applicant. See 15 CFR §930.51(a). An action to renew, amend, or modify an existing license or permit is not subject to review under this Chapter if the action only extends the time period of the existing authorization without authorizing new or additional work or activities, would not increase pollutant loads to coastal waters or result in relocation of a wastewater outfall to a critical area, or is not otherwise directly relevant to the CMP enforceable policies in Chapter 26. See also, 15 CFR §930.51(a).

(16) Outer continental shelf (OCS) plan--Any plan for the exploration or development of, or production from, an area which has been leased under the Outer Continental Shelf Lands Act (43 United States Code Annotated, §§1331-1356), and the regulations under that Act, which is submitted to the Secretary of the Interior or designee following management program approval and which describes in detail activities federal license or permit activities. See 15 CFR §930.73.

(17) Program boundary--CMP program boundary established in §27.1 of this title (relating to the Coastal Management Program Boundary).

(b) Any statutory or regulatory terms or phrases that are not defined in the Chapter retain the meaning provided for in the pertinent agency's regulations unless a different meaning is assigned in the applicable regulations under the CZMA.

§30.12 Federal Listed Activities Subject to CZMA Review

(a) For purposes of this section, the following federal actions within the CMP boundary may adversely affect coastal natural resource areas (CNRAs) within the coastal zone. This list of federal actions includes federal agency activities, federal license or permit activities, and federal assistance applications that are subject to CZMA federal consistency review by the GLO.

(1) Federal Agency Activities and Development Projects. For all actions proposed by or on behalf of federal agencies that may have reasonably foreseeable effects on CNRAs, a consistency determination or negative

determination must be submitted to the GLO pursuant to the requirements of the Federal Consistency regulations found at 15 CFR Part 930, subpart C.

(A) United States Department of the Interior:

- (i) modifications to the boundaries of the Coastal Barrier Resource System under 16 United States Code Annotated, §3503(c); and
- (ii) OCS lease sales within the western and central Gulf of Mexico under 43 United States Code Annotated, §1337;

(B) United States Environmental Protection Agency. Selection of remedial actions under 42 United States Code Annotated, §9604(c);

(C) United States Army Corps of Engineers:

- (i) small river and harbor improvement projects under 33 United States Code Annotated, §577;
- (ii) water resources development projects under 42 United States Code Annotated, §1962d-5;
- (iii) small flood control projects under 33 United States Code Annotated, §701s;
- (iv) small beach erosion control projects under 33 United States Code Annotated, §426g;
- (v) operation and maintenance of civil works projects under the Code of Federal Regulations, Title 33, Parts 335 and 338;
- (vi) dredging projects under the Code of Federal Regulations, Title 33, Part 336;
- (vii) approval for projects for the prevention or mitigation of damages to shore areas attributable to federal navigation projects pursuant to 33 United States Code Annotated, §426i; and
- (viii) approval for projects for the placement on state beaches of beach-quality sand dredged from federal navigation projects pursuant to 33 United States Code Annotated, §426j;

(D) Federal Emergency Management Agency:

- (i) model floodplain ordinances; and
- (ii) approval of a community's participation in the National Flood Insurance Program (NFIP) under the Code of Federal Regulations, Title 44, Part 59, subpart B;

(E) General Services Administration:

- (i) acquisitions under 40 United States Code Annotated, §602 and §603; and
- (ii) construction under 40 United States Code Annotated, §605;

(F) All federal agencies:

- (i) all other development projects; and

(ii) natural resource restoration plans developed pursuant to the Oil Pollution Act of 1990 (33 United States Code Annotated §§2701-2761) and the Comprehensive Environmental Response, Compensation and Liability Act (42 United States Code Annotated §§9601-9675).

(2) Federal license or permit activities. For all actions proposed by an applicant a consistency certification must be submitted to the GLO pursuant to the requirements of the Federal Consistency regulations in 15 CFR Part 930, subpart D.

(A) Environmental Protection Agency:

(i) National Pollution Discharge Elimination System (NPDES) permits under 33 United States Code Annotated, §1342;

(ii) ocean dumping permits under 33 United States Code Annotated, §1412;

(iii) approvals of land disposal of wastes under 42 United States Code Annotated, §6924(d);

(iv) development of total maximum daily loads (TMDLs) and associated federally developed TMDL implementation plans under 33 United States Code Annotated, §1313; and

(v) approvals of National Estuary Program Comprehensive Conservation Management Plans under 33 United States Code Annotated, §1330f;

(B) United States Army Corps of Engineers:

(i) ocean dumping permits under 33 United States Code Annotated, §1413;

(ii) dredge and fill permits under 33 United States Code Annotated, §1344;

(iii) permits under §9 of the Rivers and Harbor Act of 1899, 33 United States Code Annotated, §401;

(iv) permits under §10 of the Rivers and Harbor Act of 1899, 33 United States Code Annotated, §403; and

(v) Memoranda of Agreement for mitigation banking;

(C) United States Department of Transportation:

(i) approvals under §7(a) of the Federal-Aid Highway Amendments Act of 1963, 23 United States Code Annotated, §106;

(ii) approvals under §502 of the General Bridge Act of 1946, 33 United States Code Annotated, §525; and

(iii) Deepwater port licenses under 33 United States Code Annotated, §1503;

(D) Federal Aviation Administration: Airport operating certificates under 49 United States Code Annotated, §44702;

(E) Federal Energy Regulatory Commission:

(i) certificates under §7 of the Natural Gas Act, 15 United States Code Annotated, §717f;

(ii) licenses under §4 of the Federal Power Act, 16 United States Code Annotated, §797(e); and

(iii) exemptions under §403 of the Public Utility Regulatory Policies Act of 1978, 16 United States Code Annotated, §2705(d);

(F) Nuclear Regulatory Commission. Licenses under §103 of the Atomic Energy Act of 1954, 42 United States Code Annotated, §2133.

(3) State and Local Government Applications for Federal Assistance. Federal financial assistance awards may be subject to federal consistency review in accordance with the procedures specified at 15 CFR §§ 930.98 and 930.54 with the approval of the Office for Coastal Management within the National Oceanic and Atmospheric Administration.

(b) OCS Exploration Plans and Development and Production Plans. 43 United States Code, §§1340(c) and 1351. United States Department of the Interior. This includes federal agency actions requiring a license or permit described in detail in OCS plans, including pipeline activities.

(c) In the event the GLO elects to review a proposed federal agency activity of a type that is unlisted in subsection (a)(1) of this section the GLO will follow the federal regulations process set out in 15 CFR §930.34(c). If the GLO elects to review a proposed federal license or permit activity of a type that is unlisted in subsection (a)(2) of this section, the GLO will follow the procedures set out in 15 CFR §930.54.

§30.20 Consistency Determinations for Federal Agency Activities and Development Projects

(a) Review of a Consistency Determination. When reviewing a federal agency activity or development project for consistency with the goals and enforceable policies of the CMP, the GLO shall follow the requirements and procedures provided in 15 CFR Part 930, subpart C.

(b) Required Information for a Consistency Determination. A federal agency considering the approval of a federal agency activity or development project listed in §30.12 of this chapter (relating to Federal Listed Activities Subject to CZMA Review) shall provide the GLO with a consistency determination that incorporates the information described in 15 CFR §930.39 as early as practicable, but no later than 90 days prior to final approval of the activity. The consistency determination shall include a detailed description of the activity, its associated facilities, and their coastal effects, and comprehensive data and information sufficient to support the federal agency's consistency statement. The amount of detail in the evaluation of the enforceable policies, activity description and supporting information shall be commensurate with the expected coastal effects of the activity. The federal agency may submit the information in any manner it chooses, so long as the requirements of subpart C are satisfied as set out in 15 CFR in §930.39. Additionally, the consistency determination should include a brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the CMP in accordance with 15 CFR §930.39(a).

(c) Request for Information. GLO staff may request information from a federal agency if the federal agency provides an incomplete consistency determination, the GLO notifies the federal applicant in accordance with federal regulations of the incomplete submission, and the requested information is the type of information required for a consistency determination review as identified in 15 CFR §930.39(a).

(d) NEPA or Other Project Documents. A federal agency may provide the GLO with information contained in NEPA documents or other project documents to provide some of the comprehensive data and information sufficient to support the federal agency's consistency determination under 15 CFR §930.39(a).

(e) Demonstration of Consistency. If a federal agency elects to rely on information contained in NEPA documents or other project documents to demonstrate consistency to the maximum extent practicable with the goals and enforceable policies of the CMP, the federal agency should demonstrate how the materials support a finding of consistency of the goals and enforceable policies of the CMP, in accordance with 15

CFR §930.39(a). This section notes that a consistency determination embedded within a NEPA document should meet all of the information requirements of 15 CFR §930.39(a), which can include a reference to the findings of the NEPA document. Federal agencies are not required to file applications for state and local permits and other authorizations, unless required to do so by provisions of federal law other than the CZMA. However, federal agencies are required to demonstrate that the proposed activity is consistent to the maximum extent practicable with the applicable state and local enforceable policies underlying the permits. Where the law authorizes or requires a federal agency to apply for state and local permits and other authorizations, the GLO will consider such applications when determining whether the federal activity or development project is consistent with the enforceable policies underlying the permit or authorization. See 15 CFR §930.39(a).

(f) Public Participation. The GLO shall provide public participation consistent with the provisions of 15 CFR §930.42. The GLO may also issue joint public notices with the federal agency involved. The GLO may extend the public comment period or schedule a public meeting on the consistency determination. Comments received in response to the public notice will be considered.

(g) Referral to Commissioner. To refer a matter to the commissioner for an elevated consistency review, at least three committee members must agree that a significant unresolved issue exists regarding consistency with the CMP goals and enforceable policies. At least three committee members must also submit in writing a letter or email addressed to the CMP coordinator that requests the matter at issue to be referred to the commissioner for an elevated consistency review. The referral letter or email should identify any enforceable policies that are unresolved and address any potential impacts to coastal natural resource areas.

(h) Commissioner Review. Following referral of a federal agency activity or development project to the commissioner for an elevated consistency review, the commissioner shall consider:

(1) oral or written testimony received during the comment period. The commissioner may reasonably limit the length and format of the testimony and the time at which it may be received;

(2) applicable CMP goals and enforceable policies set out in 31 Texas Administrative Ch. 26;

(3) information submitted by the federal agency or applicant; and

(4) other relevant information to determine whether the proposed action is consistent with the CMP goals and enforceable policies.

(i) Review Period. The GLO will provide a decision or status update to the federal agency within sixty (60) days from receipt of the administratively complete consistency determination. If the GLO is unable to complete the review of the consistency determination within the initial sixty (60) day review period, the GLO will notify the federal agency in writing of the status of the review, the basis for delay, and the GLO will follow the procedures set out in 15 CFR §930.36(b)(2) if an additional fifteen (15) days for review is necessary. If no action is taken by the GLO after sixty (60) days from the date an administratively complete consistency determination was submitted and additional time is not sought under 15 CFR §930.36(b)(2), the federal agency may presume the GLO's concurrence.

(j) Commissioner Objection. If the commissioner objects to the consistency determination, the federal agency will be notified of the objection by the GLO prior to the time, including any extensions, that the federal agency is entitled to presume the activity's consistency. The content of the commissioner's objection will conform to the requirements set out in 15 CFR §930.43.

(k) Mediation. If the commissioner finds that a proposed activity is inconsistent with the CMP goals and enforceable policies and the federal agency does not modify the activity to achieve consistency with the program, the governor, with the assistance of the commissioner, may seek secretarial mediation or OCM

mediation as set out in 15 CFR §§930.110 et seq.

(l) Final Approval. Final federal agency action for a federal agency activity identified in §30.12(a) of this chapter shall not be taken sooner than ninety (90) days from the receipt by the GLO of the consistency determination, unless the federal agency and GLO agree to an alternative period of time or unless the GLO concurs or the concurrence is presumed.

§30.30 Consistency Certifications for Federal License or Permit Activities

(a) Review of a Consistency Certification. When reviewing a consistency certification submitted by a non-federal applicant for a federal license or permit activity listed under §30.12 of this chapter, the GLO shall conform to the requirements and procedures set out in 15 CFR Part 930, subpart D. The federal license or permit activity must be consistent with the CMP goals and enforceable policies.

(b) Required Information for a Consistency Certification. For review of a federal license or permit activity application, an applicant must submit to the GLO a complete consistency certification in conformance with 15 CFR §930.57 and all necessary data and information described in 15 CFR §930.58 and including the following:

(1) all material relevant to the CMP provided to the federal agency in support of the application;

(2) a detailed description of the proposed activity, its associated facilities, the coastal effects, and any other information relied upon by the applicant to make its certification. Maps, diagrams, and technical data shall be submitted when a written description alone will not adequately describe the proposal. See 15 CFR §930.58;

(3) if a mitigation plan is required, an alternative analysis, habitat characterization, and any required surveys for the license or permit must be submitted; and

(4) the consistency certification must also provide: "The proposed activity complies with enforceable policies of Texas' approved coastal management program and will be conducted in a manner consistent with such program." See 15 CFR §930.57(b).

(c) Request for Necessary Data and Information. If an applicant fails to submit all necessary data and information required by 15 CFR §930.58(a), the GLO shall notify the applicant and the federal agency, within thirty (30) days of receipt of the incomplete submission, that necessary data and information described in 15 CFR §930.58(a) was not received and that the GLO's review period will commence on the date of receipt of the missing necessary data and information, subject to the requirement in paragraph (a) of 15 CFR §930.58 that the applicant has also submitted a consistency certification. The GLO may waive the requirement that all necessary data and information described in 15 CFR §930.58(a) be submitted before commencement of the six (6) month consistency review period. In the event of such a waiver, the requirements of §930.58(a) must be satisfied prior to the end of the six (6) month consistency review period or the GLO may object to the consistency certification for insufficient information. The type of information that may be requested is identified in subsection (b) of this section consistent with the information requirements specified at 15 CFR §930.58(a).

(d) Review Period. To initiate the GLO's six (6) month review period, the necessary data and information that is required by 15 CFR §930.58 and subsection (b) of this section must be provided to the GLO. The GLO cannot require issued state or local permits as necessary data or information to initiate the review period. If at the end of this review period, the applicant has failed to obtain all required state and local permits this may result in a finding by the GLO that it lacks the required information to complete the consistency review and may object for lack of information.

(e) Mutual Stay Agreement. The GLO and the applicant may enter into a mutual written agreement to stay

the CZMA review period to allow for resolution of the remaining issues as provided for at 15 CFR §930.60(b).

(f) Permit Assistance. Upon request of the applicant, the GLO will provide guidance and assistance to applicants in conformance with 15 CFR §930.56.

(g) Consolidation of Federal License or Permit Activities. The GLO encourages applicants to consolidate related federal license or permit activities identified in §30.12 of this chapter (relating to Federal Listed Activities Subject to CZMA Review) to assist the GLO in minimizing duplication of effort and unnecessary delays by reviewing all federal license or permit activities relating to a project at the same time.

(h) Public Participation. The GLO shall provide for public participation consistent with the provisions of 15 CFR §930.61. The GLO may issue joint public notices with the federal permitting or licensing agency. The GLO may also extend the public comment period or schedule a public meeting on the consistency certification. Comments received in response to the public notice will be considered.

(i) Demonstration of Consistency. For activities located within the state's jurisdiction that require state or local permits or authorization, the issued permit or authorization is considered evidence that demonstrates consistency with the enforceable policies that the permit or authorization covers. In cases where an applicant relies on draft NEPA documents to satisfy some of the necessary data and information requirements for federal consistency review under subsection C, an applicant should demonstrate how draft NEPA or other project documentation materials support a finding of consistency with the CMP goals and enforceable policies in a written document.

(j) Referral to Commissioner. To refer a matter to the commissioner for an elevated consistency review, at least three committee members must agree that a significant unresolved issue exists regarding consistency with the CMP goals and enforceable policies. At least three committee members must also submit in writing a letter or email addressed to the CMP coordinator that requests the matter at issue to be referred to the commissioner for an elevated consistency review. The referral letter or email should identify any enforceable policies that are unresolved and address any potential impacts.

(k) Commissioner Review. Following referral of a federal activity or development project to the commissioner for an elevated consistency review, the commissioner shall consider:

(1) oral or written testimony received during the comment period and the commissioner may reasonably limit the length and format of the testimony and the time at which it may be received;

(2) applicable CMP goals and enforceable policies;

(3) information submitted by the federal agency or applicant; and

(4) other relevant information to determine whether the proposed action is consistent with the CMP goals and enforceable policies.

(l) Presumption of Concurrence. If the GLO has not issued a decision with respect to a proposed federal license and permit activity within ninety (90) days from the date when the GLO receives an administratively complete consistency certification, then the GLO shall notify the applicant and the federal agency of the status of the review and the basis for further review. If no action is taken by the GLO or the commissioner within six (6) months from the date the GLO received the complete consistency certification, then the action is conclusively presumed to be consistent with the CMP.

(m) Commissioner Objection. Once a matter has been elevated to the commissioner for a consistency review

with the CMP goals and enforceable policies, the commissioner may object to the consistency certification as provided for in 15 CFR §930.63(h).

(n) Right of Appeal. If the commissioner finds that the proposed federal license or permit activity is inconsistent with the CMP enforceable policies and objects to the consistency certification, GLO shall notify the applicant of its appeal rights to the U.S. Secretary of Commerce, and the federal agency shall not authorize the federal license or permit activity, except as provided in the appeals process established in 15 CFR Part 930, subpart H.

§30.40 Consistency Certifications for Outer Continental Shelf (OCS) Exploration, Development, and Production Activities

(a) Review of a Consistency Certification for an OCS Plan. When reviewing an OCS plan for consistency with the goals and enforceable policies of the CMP, the GLO shall follow the requirements and procedures provided in 15 CFR Part 930, subpart E and 43 USC §§1331-1356(a). The federal regulations, 15 CFR Part 930, subpart E, provide that OCS plans submitted to the U.S. Secretary of the Interior for OCS exploration, development and production, and all associated federal licenses and permits described in detail in such OCS plans, shall be subject to federal consistency review.

(b) Consistency Certification. Any person, as defined at 15 CFR §930.72, submitting any OCS plan to the Secretary of the Interior or designee shall provide a copy of the plan along with a consistency certification that states as follows: "The proposed activities described in detail in this plan comply with Texas' approved coastal management program and will be conducted in a manner consistent with the program." The Secretary of the Interior or designee shall provide the plan and consistency certification to the GLO. See 15 CFR §930.76.

(c) Request for Information. The GLO's six (6) month review period on a consistency certification for an OCS plan begins on the date the GLO receives the information required at 15 CFR §930.76, and all the necessary data and information required at 15 CFR §930.58(a). Pursuant to 15 CFR §930.60(a), within thirty (30) days of an incomplete submission, the GLO shall inform the person submitting the OCS plan that the GLO six (6) month review period will commence on the date of receipt of the missing consistency certification or necessary data and information. The GLO may waive the requirement that all necessary data and information described in 15 CFR §930.58(a) be submitted before commencement of the State agency's six (6) month consistency review. In the event of such a waiver, the requirements of 15 CFR §930.58(a) must be satisfied prior to the end of the six (6) month consistency review period or the GLO may object to the consistency certification for insufficient information.

(d) Consolidation of Related Authorizations. The GLO encourages persons submitting OCS plans to consolidate related federal licenses and permits that are not required to be described in detail in the plan but which are subject to GLO review. This consolidation will minimize duplication of effort and unnecessary delays by providing for review of all licenses and permits relating to an OCS plan at the same time. See 15 CFR §930.81.

(e) Public Participation. The GLO shall provide for public participation consistent with the provisions of 15 CFR §930.77. After the close of the public comment period on the OCS plan's consistency certification, the GLO will consider comments received in response to the public notice. The GLO may extend the public comment period or schedule a public meeting on the consistency certification.

(f) Referral to Commissioner. If three committee members agree there is a significant unresolved issue regarding the OCS Plan's consistency with the CMP goals and enforceable policies relating to any part of the OCS plan, the matter may be referred to the commissioner for an elevated consistency review. To refer the matter to the commissioner, three committee members must submit the request for referral to the CMP coordinator in writing. The CMP coordinator will immediately notify the committee members, applicant,

federal agency, and other affected parties that the matter has been elevated for commissioner review. The referral letter or email should identify any enforceable policies that are unresolved and address any potential impacts.

(g) Commissioner Review. The commissioner shall review any part of an OCS plan relating to federal agency actions required to authorize proposed activities described in detail in the OCS plan which any three committee members agree presents a significant unresolved issue regarding consistency with the CMP goals and enforceable policies. Following referral for review, the commissioner shall consider:

- (1) oral or written testimony received during the comment period. The commissioner may reasonably limit the length and format of the testimony and the time at which it may be received;
- (2) applicable CMP goals and enforceable policies;
- (3) information submitted by the federal agency or person; and
- (4) other relevant information to determine whether the proposed action is consistent with the CMP goals and enforceable policies.

(h) Review Period. If the GLO has not issued a decision with respect to a matter referred under the provisions of this section, within three (3) months from the date when the GLO received the administratively complete consistency certification, then the GLO staff shall notify the person submitting the plan, the Secretary of the Interior, and the OCM Director of the status of the review and the basis for further delay. See 15 CFR §930.78. The GLO's review period is up to six (6) months but a concurrence may be presumed at three (3) months if GLO has taken no action.

(i) Presumption of Concurrence. If GLO does not act on an OCS plan within three (3) months of the date when the GLO receives an administratively complete consistency certification, then the GLO's concurrence with the consistency certification shall be conclusively presumed. See 15 CFR §930.78. If the GLO provides a status of review letter within three (3) months and continues its review, a concurrence may be presumed at six (6) months. If the GLO issues a concurrence or concurrence is conclusively presumed, then the person submitting the plan shall not be required to submit additional consistency certifications to the GLO for the individual federal authorizations that will be required to authorize the activities described in detail in the OCS plan as set out in 15 CFR §930.79.

(j) Commissioner Objection. If the commissioner objects to a consistency certification related to a federal license or permit activity authorizing an activity described in detail in an OCS plan, the federal agency shall not act on the federal action when it is proposed, except as provided in the appeals process established in the 15 CFR §§930.120 et seq. The contents of the commissioner's objection will conform to the requirements set out in 15 CFR §930.79 and will notify the person of its appeal rights to the U.S. Secretary of Commerce.

§30.60 Equivalent Federal and State Actions

(a) Below Thresholds. If a proposed activity requiring a state agency or subdivision action falls below thresholds for referral approved under Chapter 29, Subchapter B of this title (relating to Commissioner Certification of State Agency Rules and Approval of Thresholds for Referral) and requires an equivalent federal permit or license under this chapter, the GLO may only determine the state agency or subdivision action's consistency by using the process provided in Chapter 29 of this title (relating to Commissioner Procedure for State Consistency with Coastal Management Program Goals and Policies). The GLO's determination regarding the consistency of an action under this subsection constitutes the state's determination regarding consistency of the equivalent federal action.

(b) Above Thresholds. If an activity requiring a state agency or subdivision action is above thresholds and

requires an equivalent federal permit or license, the GLO may determine the consistency of the state agency or subdivision action or the federal license or permit but may only conduct either a state or a federal consistency review, not both. Texas Natural Resource Code, §33.206(f), as amended by SB 656.

(c) Equivalent State Action or Federal Action. Determinations regarding the consistency of an action made by the GLO under §§30.60(a) and (b) constitute the state's determination regarding consistency of the equivalent agency or subdivision action or federal action. Texas Natural Resource Code, §33.206(f), as amended by SB 656.