

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.