

COASTAL STATES ORGANIZATION



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Via Regulations.gov Portal

Hon. Brenda Mallory
Chair
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

Re: Notice of Proposed Rulemaking, National Environmental Policy Act Implementing Regulations Revisions Phase 2 (Docket No. CEQ-2023-0003)

Dear Chair Mallory:

The Coastal States Organization (CSO) respectfully submits these comments to the Council on Environmental Quality's (CEQ) notice of proposed rulemaking "National Environmental Policy Act Implementing Regulations Revisions Phase 2" ("Phase 2 proposed rule").¹ Since 1970, CSO has served as the collective voice for the nation's coastal states, commonwealths, and territories on policy issues relating to coastal, Great Lakes, and ocean management. CSO's governor-appointed delegates, leaders of the thirty-six state and territory coastal zone management programs, partner with federal agencies, coastal communities, tribal governments, and industry for the effective management, beneficial use, protection, and development of the coastal zone through the federal-state partnership established under the Coastal Zone Management Act (CZMA).²

These comments are limited to the implications of the proposed rule on the CZMA's federal consistency review process³ and its interplay with the National Environmental Policy Act (NEPA).⁴ CSO offers the following comments based on the experience and expertise of state and territory coastal programs. These comments are made in conjunction with and in support of comments submitted individually by coastal states and territories.

The federal consistency process is a cooperative federalism partnership that supports responsible management of the nation's coastal zone. Under the CZMA, federal agency activities that affect the uses or resources of a state's coastal zone, including federal programmatic decisions, management plans, and permits, are reviewed by the state for consistency with the enforceable policies of its federally-approved coastal program. Through federal consistency review process, coastal programs coordinate across agencies, industry, coastal communities, and stakeholders to ensure that coastal and ocean activities are sited, constructed, operated, and decommissioned in ways that avoid, minimize, and mitigate adverse effects on the environment, cultural resources, and existing uses.

¹ 88 Fed. Reg 49,924 (Jul. 31, 2023).

² 16 U.S.C. § 1451 *et seq.*

³ 16 U.S.C. § 1456.

⁴ 42 U.S.C. § 4321 *et seq.*

States and territories have worked closely with federal agencies to align NEPA review and federal consistency review processes, enabling states and territories to have an effective voice in federal decision making that affects their coasts. In turn, this coordination benefits federal agencies and project proponents by jointly developing data and information that fulfill the review requirements of both statutes. State and territory coastal programs rely on the information developed through NEPA for federal consistency to evaluate reasonably foreseeable coastal effects, alternatives, and impact avoidance, minimization, and mitigation measures. These integrated processes make project review more predictable, efficient, and effective.

CSO supports changes in the Phase 2 proposed rule which advance integration between NEPA and CZMA federal consistency processes and improve coordination between federal agencies and coastal states and territories to protect and enhance the nation’s coastal zone.

Information Standards

CSO supports the proposed removal of the provision at § 1502.23⁵ stating that federal “[a]gencies are not required to undertake new scientific and technical research to inform [NEPA] analyses.” This blanket exemption, implemented in 2020,⁶ is especially disruptive to reviews of large, complex, or novel projects, threatening to undermine the quality of data and information produced through the NEPA review process. The proposed § 1502.23, newly titled “Methodology and Scientific Accuracy,” would restore the capability of federal agencies to use the NEPA process to fully understand the environmental and socioeconomic impacts of proposed projects and programs, and to coordinate with state and territory coastal programs on the alignment of information needs for both NEPA and federal consistency processes.

CSO supports the introduction of new language in proposed § 1502.23 calling on federal agencies to use climate projections “where appropriate” to understand future conditions impacting the resilience of a proposed project or program. CEQ should provide guidance to federal agencies to coordinate with coastal states and territories to use state-developed or state-preferred climate modelling tools and data where those information sources are more accurate or higher-resolution than national resources, where states or territories have established a preference for those sources, or where coordination on shared datasets will improve alignment between state and federal climate adaptation activities.

Significance Determinations

CSO supports proposed reforms to § 1501.3(d) establishing holistic, comprehensive factors for the completion of significance determinations, used by federal agencies to determine whether to develop an environmental impact statement. In particular, expansion of the provision requiring examination of “[w]hether the [proposed] action may violate relevant Federal, State, Tribal, or local laws *or other requirements or be inconsistent with Federal, State, Tribal, or local policies*” (emphasis added) will provide a clear directive to federal agencies to cooperate with states and territories to ensure that federal decision making is consistent with and supportive of state-level policies, plans, and management efforts.

⁵ Section references are to CEQ NEPA regulations at Title 40 of the Code of Federal Regulations.

⁶ Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act. 85 Fed. Reg. 43,304 (July 16, 2020).

CEQ should provide guidance encouraging federal agencies to coordinate with coastal programs to achieve consistency with all relevant state and territory plans, policies, and initiatives to protect and enhance coastal uses and resources.

Innovative Approaches

Proposed § 1506.12 would authorize CEQ to approve federal agencies to take “innovative approach[es] for NEPA compliance” deviating from the procedures set out in CEQ regulations for “actions to address extreme environmental challenges.” Proposed innovative approaches would require CEQ review and consultation with potential cooperating agencies.

CSO recognizes the need for swift and comprehensive action that crosses federal, state, regional, and local jurisdictions both to mitigate climate change drivers and to adapt communities to climate change impacts, including through future-condition-focused hazard mitigation.

CEQ should provide clear guidance for federal agencies proposing innovative approaches under this provision to coordinate with state and territory coastal programs early in the process to ensure that 1) the federal and state/territory agencies can continue to successfully meet shared NEPA and CZMA information needs under the proposed innovative approach, 2) that federal and state/territory review processes, timelines, and requirements are well-aligned, and 3) that the agencies investigate opportunities to avoid duplicative or contradictory efforts and align the innovative approach with state/territory climate strategies, programs, and initiatives.

Thank you for the opportunity to provide feedback on this important rulemaking effort. Please direct any questions about these comments to John Ryan-Henry (jryan-henry@coastalstates.org).

Sincerely,



Derek Brockbank
Executive Director