

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904-5200  
FAX (415) 904-5400  
TDD (415) 597-5885



March 2, 2015

**IMPORTANT PUBLIC NOTICE****SUBMITTAL OF ROUTINE PROGRAM CHANGE TO CALIFORNIA COASTAL MANAGEMENT PROGRAM (CCMP) TO OFFICE FOR COASTAL MANAGEMENT (OCM) FOR CHANGES TO CCMP LIST OF FEDERAL LICENSES AND PERMITS SUBJECT TO CONSISTENCY REVIEW**

The Commission is notifying you that it is submitting proposed changes to the California Coastal Management Program (CCMP), in the form of a Routine Program Change (RPC), to the Office for Coastal Management (OCM). The RPC would update and add to the CCMP list of federal licenses and permits subject to certification for consistency with the CCMP, under the federal Coastal Zone Management Act (CZMA, § 307(c)(3)(A)) and its implementing regulations (15 CFR §§ 930.53(a) and (c)). This notice provides you with the opportunity to submit comments to OCM, within three weeks of the date of issuance of the notice, on the question of whether the action constitutes a Routine Program Change.

**BACKGROUND:**

On November 7, 1977, the U.S. Secretary of Commerce, acting through the National Oceanic and Atmospheric Administration (NOAA), approved the California Coastal Management Program (CCMP), finding that the program met the requirements of the Coastal Zone Management Act of 1972, as amended (CZMA) (16 USC 1451-1464), and the implementing regulations at 15 CFR Parts 920 and 923. As required by NOAA regulation (15 CFR §930.53), the CCMP includes a list of federal license and permit activities likely to affect the coastal zone. The existing CCMP List can be found at: <http://www.coastal.ca.gov/fedcd/listlic.pdf>. Any applicant for a license or permit on this list must prepare a certification, with supporting facts and analysis, that the activity is consistent with the CCMP. This consistency certification is reviewed by the California Coastal Commission and, under Section 1456(c)(3)(A) of the CZMA, the federal license or permit cannot be issued until the Commission has concurred that the activity is consistent with the CCMP (or, if the Commission objects, the Secretary of Commerce overrides the Commission's objection on appeal by the applicant).

**PROPOSED CHANGES:**

On December 12, 2014, the Commission adopted (and authorized its staff to submit to OCM) the proposed modifications to the CCMP List, adding a number of federal permits to the CCMP, correcting outdated citations, updating federal agencies issuing the licenses, and making several

other modifications to the list. The Commission believes these changes to the CCMP constitute a Routine Program Change (RPC) to the CCMP. No changes are being made to the enforceable policies of the CCMP.

The Commission believes the proposed changes are “routine” rather than a “substantial change” because they simply replace one mechanism for reviewing federally listed permits with another, and would not fundamentally modify the Commission’s jurisdiction. Rather, they would improve notification to interested parties and make clearer which classes of federally permitted activities are considered “reasonably likely to affect” the coastal zone. The proposed changes were developed in light of experience gained since the Commission commenced conducting federal consistency reviews 36 years ago. Over that time period, the Commission’s existing list has become outdated, a number of changes have taken place in the federal regulatory scheme, and the Commission has gained experience in complying with the “unlisted permit” review process under 15 CFR § 930.54. The proposed changes are intended to: (1) give notice to applicants of their consistency certification responsibilities under the CZMA and CCMP; (2) minimize the chance that an activity with significant coastal zone effects will avoid consistency review because it goes unnoticed during the brief (30-day) notice period provided by federal regulation for unlisted activities; and (3) eliminate uncertainty and reduce time-consuming procedures which must be followed to obtain OCM authorization on a case-by-case basis to review activities *not* on the CCMP List.

Many of the proposed changes are simply updates and clarifications. The new federal permits proposed to be added to the CCMP list would be:

1. **Bureau of Land Management (BLM):** Approvals of renewable energy production on public lands.
2. **Surface Transportation Board (STB):** Approvals of construction or abandonment of railroad lines, track removal, and disposition of rights-of-ways.
3. **Federal Highway Administration (FHWA):** Approvals for interconnections with the interstate highway system.
4. **National Atmospheric and Oceanic Administration (NOAA):** Approvals of ocean thermal energy conversion facilities.
5. **National Marine Fisheries Service (NMFS):** Incidental Harassment Authorizations (IHAs) and Letters of Authorization (LOAs).

The complete text of the Proposed Modifications to the CCMP Federal License and Permit List is attached. These are shown in “tracked changes” mode, with the proposed changes to the original list depicted in red (with ~~strikethrough~~ text for deletions, and **bold/underlined** text for additions).

Note that this public notice, as well as further background materials (including a more detailed explanation of the procedures associated with federal consistency review, and an explanation of the reasons for these changes), can be found on the Commission's website at:

[www.coastal.ca.gov](http://www.coastal.ca.gov).

Note also that this list has been modified in two ways compared to the list the Commission adopted on December 12, 2014. At the request of OCM, a few more legal citations have been added for clarity. In addition, in discussions with OCM occurring after the Commission's December 12, 2014 public hearing and adoption of this list, OCM pointed out that two of the federal permits issued by the Bureau of Ocean Energy Management (BOEM) that were proposed to be added (for renewable energy activities, and for seismic surveys that are *not* part of an approved OCS plan), would need Geographic Location Descriptions (GLDs) adopted for them before the Commission could legally consider them as included on the CCMP List. Therefore, the following two BOEM permits are not shown in the attachment, and are not being included in this RPC:

Department of the Interior (DOI) - Bureau of Ocean Energy Management (BOEM):

Leases, easements, and rights-of-way for renewable energy-related uses granted pursuant to subsection 8 of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1337), as amended by Section 388(a) of the Energy Policy Act of 2005 (EPA) (Pub. L. 109-58) (BOEM).

Geophysical survey permits not authorized through existing OCS Plans issued under OCSLA (43 U.S.C. 1331 et seq.) (BOEM).

**COMMENT PROCESS:**

Under the CZMA Program Change Regulations (15 CFR § 923.84), the Commission is required to provide notice to the general public and affected parties, including local governments, other State agencies and regional offices of relevant federal agencies of the notification given to OCM. Accordingly, you are notified of the opportunity to submit comments to OCM, at the address below, concerning whether or not these changes to the CCMP constitute a Routine Program Change (RPC).

Any such comments need to be submitted within three weeks of the date of issuance of this notice (i.e., by March 23, 2015), and should be sent to:

Joelle Gore  
Acting Chief, Stewardship Division  
Office for Coastal Management  
1305 East-West Highway  
SSMC 4, Room 10622  
Silver Spring, Maryland 20910

Comments to OCM should be submitted in writing.

Any questions you have regarding this matter may be directed to **Mark Delaplaine**, at (415) 904-5289, email [Mark.Delaplaine@coastal.ca.gov](mailto:Mark.Delaplaine@coastal.ca.gov), or the mailing address below:

Manager, Energy, Ocean Resources and Federal Consistency Division  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

## Attachment

### Proposed Modifications to the CCMP Federal License and Permit List

1. Department of Defense - U.S. Army Corps of Engineers:
  - a. Permits and licenses required under Section 9 and 10 of the Rivers and Harbors Act of 1899, as amended (33 USC §§ 401 and 403);
  - b. Permits and licenses required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 USC § 1413);
  - c. Permits and licenses required under Section 404 of the Federal Water Pollution Control Act of 1972 ~~and amendments~~, as amended (33 USC § 1344); and
  - d. Permits for artificial islands and fixed structures located on the Outer Continental Shelf (~~Rivers and Harbors Act of 1899 as extended by 43 U.S.C. § 1333(f)~~).
2. Nuclear Regulatory Commission (NRC):
  - a. Permits and licenses required for siting operation of nuclear power plants, approvals of nuclear power plant license termination plans and, prior to the approval of such license termination plans, the approval to release part of a nuclear power plant facility for unrestricted use (10 CFR § 50.82 and 50.83).
3. Department of the Interior (DOI) - Bureau of Land Management (BLM), ~~U.S. Geological Survey~~ Bureau of Safety and Environmental Enforcement (BSEE), and Bureau of Ocean Energy Management (BOEM):
  - a. Permits and licenses required for drilling and mining, or renewable energy production (e.g., wind or solar energy facilities), on public lands (BLM).
  - b. Permits for pipeline rights-of-way on the Outer Continental Shelf (BSEE) (30 CFR Part 250, Subpart J (§ 250.1000-250.1019)).
  - c. Permits and licenses for rights-of-way on public lands (BLM) (43 USC § 1761, and 30 USC § 185).

4. Environmental Protection Agency:
  - a. Permits and licenses required under Sections 402 and 405 of the Federal Water Pollution Control Act of 1972 ~~and amendments,~~ as amended (33 USC §§ 1342 and 1345).
  - b. Permits and applications for reclassification of land areas under regulations for the prevention of significant deterioration (PSD) of air quality (42 USC § 7474).
5. Department of Transportation - U.S. Coast Guard:
  - a. Permits for construction of bridges under 33 USC §§ 401, 491-507 and 525-534 (42 USC §§ 7470-7492).
  - b. ~~Permits for deepwater ports under the Deepwater Port Act of 1974 (PL 93-627).~~
6. Department of Transportation - Maritime Administration (MARAD):
  - a. ~~Permits for deepwater ports under the Deepwater Port Act of 1974,~~ as amended (33 USC §§ 1501-1524). ~~(PL 93-627)~~
7. Department of Transportation - Federal Aviation Administration:
  - a. Certificates for the operation of new airports (49 USC § 44706). ~~Federal Aviation Regulations, Part 139)~~
8. Department of Transportation - Surface Transportation Board (STB):
  - a. Permits for railroad construction (49 U.S.C. § 10901).
  - b. Exemption from service requirements for rail transportation and applications for rail line abandonments (49 USC. §§ 10502, 10903).
  - c. Removal of trackage and disposition of right-of-way (49 USC. § 10101 et seq.).
9. Department of Transportation - Federal Highway Administration (FHWA):
  - a. Final Interstate Access Approvals for access to the Interstate Highway System (23 U.S.C. §§ 109 and 111, 23 C.F.R. § 624.5, and 49 CFR § 1.48(b)(1)).

10. Federal ~~Power~~ **Energy Regulatory** Commission (FERC):
  - a. Licenses for construction and operation of hydroelectric **and hydrokinetic** generating projects including primary transmission lines **(16 USC § 797)**.
  - b. Certifications required for interstate gas pipelines **(15 USC § 717f)**.
  - c. Permits and licenses for construction and operation of facilities needed to import, export, or transship natural gas or electrical energy **(15 USC § 717b and 16 USC §§ 824a and 824p)**.
11. **National Atmospheric and Oceanic Administration (NOAA):**
  - a. **Authorization to construct or operate an ocean thermal energy conversion facility under the Ocean Thermal Energy Conversion Act of 1980 (42 USC § 9101 et seq.)**.
12. **National Atmospheric and Oceanic Administration (NOAA)/National Marine Fisheries Service (NMFS):**
  - a. **Incidental Harassment Authorizations and Letters of Authorization required under the Marine Mammal Protection Act (MMPA) of 1972, as amended (Sections 101(a)(5)(A) and (D) (16 U.S.C. 1361 et seq.), and the Endangered Species Act of 1973 (ESA), as amended (Section 10 (16 U.S.C. 1531 et seq.))**.

In addition to amending the CCMP List under the 15 CFR Part 930 Subpart D regulations, the following minor changes are also included in this RPC, to reflect current OCS Plan federal permitting agencies:

#### **Federal Licenses and Permits Described in Detail in OCS Plans**

The following Federal agency licenses and permits will be subject to the certification process for consistency with the management program under Section 307(c)(3)(B) of the CZMA if the activity being licensed or permitted is described in detail in an OCS exploration or development plan and affects land or water uses in the coastal zone:

#### **Department of the Interior (DOI) – ~~U.S. Geological Survey~~ **Bureau of Ocean Energy Management (BOEM)****

Approval of offshore drilling operations.

Approval of design plans for the installation of platforms.

Approval of gathering and flow lines.

Any other OCS-related Federal license or permit activities described in paragraph (b) (i)<sup>1</sup> (for example, ~~BLM~~ pipeline rights-of-way on the OCS) which ~~U.S.G.S.~~ BOEM determines should be described in detail in OCS plans.

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<sup>1</sup> Note: the reference to “paragraph (b) (i)” in this sentence refers back to the CCMP Permit List described above (i.e., Appendices A and B).