



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office for Coastal Management
Silver Spring Metro Center, Building 4
1305 East-West Highway
Silver Spring, Maryland 20910

May 13, 2024

Mr. Phillip Roos, Director
Michigan Department of Environment,
Great Lakes, and Energy
Constitution Hall
525 West Allegan
P.O. Box 30473
Lansing, MI 48909

Dear Director Roos,

Thank you for the January 16, 2024, request for approval of changes to the Michigan Coastal Management Program pursuant to the National Oceanic and Atmospheric Administration (NOAA) Coastal Zone Management Act (CZMA) regulations at 15 CFR part 923, subpart H.

NOAA's Office for Coastal Management approves the request subject to the clarification and qualifications below.

NOAA's regulations require that the state post this decision by the Office for Coastal Management for public notice.¹ The public notice should state that as of the date of this decision letter the enforceable policies identified in the attached Table of Approved Changes shall be applicable in reviewing federal actions pursuant to the federal consistency requirements of the CZMA and its implementing regulations found at 15 CFR part 930.² Please send a copy of the public notice to the Office for Coastal Management for our records to close out this file.

PUBLIC AND FEDERAL AGENCY COMMENTS

The Office for Coastal Management did not receive any comments on this program change submission.

CHANGES APPROVED

See the enclosed Table of Approved Changes MI-2024-1.

CLARIFICATION, QUALIFICATION AND EXCEPTIONS

The Definition of Persons Subject to State Regulation

The administrative rules promulgated under the authority of Part 325 comprise rules R 322.1001 to R 322.1018 of the Michigan Administrative Code. Under the definitions section at R 322.1001,

¹ 15 CFR § 923.81(e)(5).

² 15 CFR § 923.81(f).

“Person” is defined as:

(1) "Person" means any individual, partnership, corporation, association, political subdivision, the state, the department, an instrumentality or agency of the state, a political subdivision of an instrumentality or agency of the state, *a department or other instrumentality or agency of the federal government*, or other legal entity. [italics added for emphasis]

The CZMA confers upon states authority to review federal actions for consistency with the federally approved enforceable policies of the state coastal management program. The CZMA does not confer regulatory authority over federal agencies, and states may not assert such authority. While definitions may be approved as enforceable policies for the purpose of adding necessary detail in applying the enforceable policies of the state coastal management program for CZMA review purposes, the Office for Coastal Management’s approval of the definitions at R 322.1001, pursuant to 15 CFR § 923.84(b)(4), does not confer such regulatory jurisdiction over federal agencies.

Prohibition on Oil and Gas Drilling Beneath Unpatented Bottomlands

The submission requests approval as an enforceable policy for CZMA review purposes a state law that prohibits the Michigan Department of Environment, Great Lakes, and Energy from entering into a lease or deed that allows oil or gas drilling beneath unpatented bottomlands. (MCL 324.32503(2)). The Office for Coastal Management, pursuant to 15 CFR §§ 923.84(b)(7) and (8) and as described below, denies the incorporation of the state law as an enforceable policy of the Michigan Coastal Management Program. Among the national policies established under the CZMA is that state coastal management programs give priority consideration to having orderly siting processes for major energy facilities. In applying this CZMA objective, the Office for Coastal Management has maintained a long-standing policy that state policies that establish absolute prohibitions on forms of energy development discriminate against a specific industry (15 CFR § 923.84(b)(7)) and are inconsistent with the national interest (15 CFR §§ 923.84(b)(8)), and may not be approved as enforceable policies for CZMA review purposes. The Office for Coastal Management does not see a need to create a precedent making an exception to this policy by approving the prohibition on drilling in the Great Lakes as a CZMA enforceable policy. As noted in discussions with the state coastal program staff, the state law will apply to state bottomlands regardless of whether the prohibition is approved as a CZMA enforceable policy. In addition, there are no adjacent federal waters to which this policy could be applied through the CZMA review process; and federal law also prohibits oil and gas drilling in the Great Lakes in which case there could be no circumstances where the proposed enforceable policy could be applied.

MCL 324.32504a – Authorization of Leases Pertaining to Lighthouse Properties

The state has requested approval of MCL 324.3204a as an enforceable policy for CZMA review purposes. This new section authorizes the state to enter into leases and agreements for lighthouse properties with approved organizations. This provision is merely an authorization. It does not contain standards as to leases, agreements or approved organizations. As such, the Office for Coastal Management does not approve the provision as an enforceable policy. The Table of Approved Changes designates this section as not enforceable for CZMA review purposes.

MCL 324.32513(1) — Application for permit; contents; fees; disposition of fees

The state has requested approval of MCL 324.325.13(1) as an enforceable policy for CZMA federal consistency review purpose. MCL 324.32513(1) establishes information requirements for permit applications. These are not standards and without standards this provision cannot qualify for approval as an enforceable policy for CZMA review purposes and the Office for Coastal Management does not approve the provision as an enforceable policy.

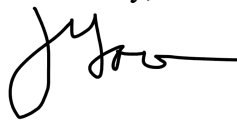
Incorporation by Reference

As a standard qualification applying to all program changes, states may not incorporate enforceable policies by reference. If an approved enforceable policy refers to another statute, regulation, policy, standard, guidance, or other such requirement or document, the referenced policy must be submitted to and approved by the Office for Coastal Management as an enforceable policy in order to be applied under the federal consistency review provisions of the CZMA. No referenced policy may be applied for CZMA federal consistency review purposes unless that policy has been separately reviewed and approved as an enforceable policy by the Office for Coastal Management.

Specifically, the Office for Coastal Management brings to your attention the Property Rights Acquisition Act which is incorporated by reference in MCL Section 324.32503(3), which states that “An agreement, lease, or deed entered into under this part by the department with the United States shall be entered into and executed pursuant to the property rights acquisition act, 1986 PA 201, MCL 3.251.” The Property Rights Acquisition Act requires state consent to the acquisition of any property right for any purpose with certain exceptions.³ Furthermore, the Act purports to extend concurrent jurisdiction⁴ and state taxing authority⁵ over federally acquired property. The Property Rights Acquisition Act has not been submitted for incorporation into the Michigan Coastal Management Program, and cannot be applied in the exercise of the CZMA federal consistency review authority. If the state resubmits MCL Section 324.32503(3) for reconsideration, the state analysis must provide a persuasive legal analysis as to why this is a permissible exertion of state authority over the federal government, and explain how this Act pertains to effects to coastal uses and resources.

Thank you for your cooperation in this review. Please contact Rachael Franks Taylor at (617) 834-2493, if you have any questions. For future correspondence regarding these program changes, please refer to the file number assigned to this action, MI-2024-1.

Sincerely,



Joelle Gore
Chief, Stewardship Division

Enclosure: Table of Approved Changes MI-2024-1

³ MCL 3.253.

⁴ MCL 3.258.

⁵ MCL 3.259.

TABLE OF APPROVED CHANGES TO THE MICHIGAN COASTAL ZONE MANAGEMENT PROGRAM (MI-2024-1)

Please reference the Office for Coastal Management May 13, 2024 decision letter for any clarifications, exceptions, or qualifications that may pertain to this approval.

Legal citation	Title of policy, section, or other descriptor	Is the change new, revised, or deleted	Date effective in state <i>MM/DD/YYYY</i>	Enforceable policy	Enforceable mechanism citation
Natural Resources and Environmental Protection Act (NREPA; Public Act 451 of 1994, as amended), Part 325, (Great Lakes Submerged Lands); Section 324.32501 of the Michigan Compiled Laws (MCL).	Additional definitions	Revised	07/02/2012	Yes	MCL 324.32503, 324.32512
MCL 324.32503	Agreements pertaining to waters over and filling in of submerged patented lands; lease or deed of unpatented lands; terms, conditions, and requirements; reservation of mineral rights; exception; lease or deed allowing drilling operations for exploration of oil or gas purposes; execution of agreement, lease, or deed with United States	Revised	07/02/2012	Yes with the exceptions of MCL 324.32503(2) pertaining to the prohibition of leases and deeds for oil and gas exploration and drilling, and MCL 324.32503(3) pertaining to the Property Rights Acquisition Act.	MCL 324.32503, 324.32512
MCL 324.32504	Unpatented lake lands and unpatented made lands; application for conveyance; contents; qualifications of applicant; consent; approval; fee	Revised	05/24/1995	Yes	MCL 324.32503, 324.32512

STATE CZM CHANGE REQUEST TABLE

Legal citation	Title of policy, section, or other descriptor	Is the change new, revised, or deleted	Date effective in state <i>MM/DD/YYYY</i>	Enforceable policy <i>Yes or No</i>	Enforceable mechanism citation
MCL 324.32504a	Restoration or maintenance of lighthouse; lease or agreement for use of lands; “approved organization” defined	New	12/23/2002	No	MCL 324.32503, 324.32512
MCL 324.32505	Unpatented lake bottomlands and unpatented made lands; consideration for conveyances or lease	Revised	05/14/2018	Yes	MCL 324.32503, 324.32512
MCL 324.32510	Land filled, excavated, or modified without approval; misdemeanor; penalty; issuance or service of appearance ticket; “minor offense” defined	Revised	05/24/1995	No	
MCL 324.32512	Acts prohibited; exceptions; activities not subject to regulation; applicability of subsection (2) to certain lands	Revised	07/02/2012	Yes	MCL 324.32503, 324.32512
MCL 324.32512a	Minor project categories; activities; conditions; application; notice; general permit	New	07/02/2012	No	
MCL 324.32513	Application for permit; contents; fees; disposition of fees	Revised	10/20/2021	No	MCL 324.32503, 324.32512
MCL 324.32514	Application for permit; copies to department of community health, local units, and adjacent riparian owners; objections; public hearing; notice; conditional permit; additional conditions	Revised	03/27/2013	Yes	MCL 324.32503, 324.32512

STATE CZM CHANGE REQUEST TABLE

Legal citation	Title of policy, section, or other descriptor	Is the change new, revised, or deleted	Date effective in state <i>MM/DD/YYYY</i>	Enforceable policy <i>Y or N</i>	Enforceable mechanism citation
MCL 324.32515	Artificial waterway; permit; issuance; conditions; maintenance	Revised	09/10/2004	Yes	MCL 324.32503, 324.32512
MCL 324.32515a	Dredging or placing dredged spoils on bottomland; permit; conditions	New	06/28/2013	Yes	MCL 324.32503, 324.32512
Administrative rule R 322.1013 of the Michigan Administrative Code (MAC)	Minor project permit; eligibility	Deleted	01/12/2012	N/A	
MAC R 322.1014	Minor project permit; application procedures	Deleted	01/12/2012	N/A	
MAC R 299.1021	Mollusks	Revised	03/20/2023	Yes	MCL 324.36505(1)(a)
MAC R 299.1022	Insects	Revised	03/20/2023	Yes	MCL 324.36505(1)(a)
MAC R 299.1023	Fishes	Revised	03/20/2023	Yes	MCL 324.36505(1)(a)
MAC R 299.1024	Amphibians	Revised	03/20/2023	Yes	MCL 324.36505(1)(a)
MAC R 299.1025	Reptiles	Revised	03/20/2023	Yes	MCL 324.36505(1)(a)
MAC R 299.1026	Birds	Revised	03/20/2023	Yes	MCL 324.36505(1)(a)
MAC R 299.1027	Mammals	Revised	03/20/2023	Yes	MCL 324.36505(1)(a)
MAC R 299.1028	Plants	Revised	03/20/2023	Yes	MCL 324.36505(1)(a)

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