



#E1-120  
291

North Carolina Department of Environment and Natural Resources  
Division of Coastal Management

Michael F. Easley, Governor

Charles S. Jones, Director

William G. Ross Jr., Secretary

October 28, 2005

Jerry R. Paschall  
Law Department  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA 23510-9241

DEC 18 2005  
RECEIVED

SUBJECT: STB Docket No. AB-290 (Sub. No. 262), Proposed Railway Abandonment Beaufort County, North Carolina

Dear Mr. Paschall:

We received a copy of the notice of intent (NOI) to abandon a railway segment in Beaufort County North Carolina. According to the NOI this project will require a Federal approval. Beaufort County is one of the State's coastal counties within the meaning of the Coastal Zone Management Act of 1972 (CZMA). Since the project requires a Federal approval and will be occurring in a coastal county, the proposed rail abandonment may require consistency review by the Division of Coastal Management should the proposed project have a coastal effect. The term "*coastal effect*" includes any reasonably foreseeable effects to coastal uses and/or resources<sup>1</sup>. Attached is our brochure describing the process for submitting a consistency certification to the Division of Coastal Management should such a submission be necessary.

We would encourage Norfolk Southern; at the time it applies to the Surface Transportation Board (Board), to provide the Board with an evaluation of whether the proposed rail abandonment would have a coastal effect thus triggering consistency review by the Division of Coastal Management. Should consistency review be required, the Surface Transportation Board may not take final action until the State of North Carolina agrees or objects to the consistency certification by Norfolk Southern. Please feel free to contact me at 252-808-2808 if you have any questions. Thank you for your consideration of the North Carolina Coastal Management Program.

Sincerely,

Stephen Rynas, AICP  
Federal Consistency Coordinator

Cc: Doug Huggett, Division of Coastal Management  
Vernon A. Williams, Surface Transportation Board

<sup>1</sup> 15 CFR 930.11

## NORTH CAROLINA FEDERAL CONSISTENCY CERTIFICATION SUBMISSION GUIDANCE (SUBPART "D" 15 CFR 930)

This brochure provides guidance to non-Federal applicants applying for a U.S. Army Corps of Engineers Individual permit on how to submit a consistency certification to the State of North Carolina under the Coastal Zone Management Act (CZMA). This guidance does not apply when a CAMA permit is required for the proposed project. The suggested format for submitting a consistency certification under Subpart "D" of 15 CFR 930 is presented on the second page.



The Coastal Zone Management Act requires that any applicant for a Federal license or permit (in or outside of the coastal zone when the proposed project will affect any coastal uses or natural resources within the coastal zone) provide the Federal agency with a certification that the proposed activity complies with the enforceable policies of the State's approved coastal management program, and that the proposed project will be conducted in a manner consistent with that program. The applicant must also provide the N.C. Division of Coastal Management (DCM) with a copy of the certification, including all necessary supporting information and data. This information and data is specified in 15 CFR 930.58. The text of 15 CFR 930.58 is attached to this brochure for reference.

North Carolina's coastal zone management program consists of, but is not limited to, the Coastal Area Management Act, the State's Dredge and Fill Law, and the land use plan of the County and/or local municipality in which the proposed project is located. The consistency process provides applicants with an opportunity to demonstrate how the proposed project will be consistent with the State's coastal management program.

State review will commence (15 CFR 930.60) when the State receives a copy of the consistency certification and all the information and data required by 15 CFR 930.58. The State has a maximum of six (6) months to either concur or object to the applicant's consistency certification. No license or permit can be granted by the Federal agency until the State has concurred with the applicant's certification. However, should the State fail to act within the six-month review period, concurrence can then be presumed. Applicants are encouraged to contact the Federal Consistency Coordinator at the address below for more information.

### FURTHER INFORMATION

- N.C. Division of Coastal Management (DCM): [www.nccoastalmanagement.net/rules/rules.htm](http://www.nccoastalmanagement.net/rules/rules.htm)
- Office of Coastal Resource Management: [http://coastalmanagement.noaa.gov/pcd/federal\\_consistency.html](http://coastalmanagement.noaa.gov/pcd/federal_consistency.html)
- Government Printing Office (15 CFR 930): [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html)

### CONTACT INFORMATION

Stephen Rynas  
Federal Consistency Coordinator  
NC Division of Coastal Management  
400 Commerce Avenue  
Morehead City, NC 28557-3421  
252-808-2808  
[stephen.rynas@ncmail.net](mailto:stephen.rynas@ncmail.net)



## SAMPLE SUBMISSION FORMAT

The N.C. Division of Coastal Management (DCM) recommends a two-part submission consisting of a cover letter and a supporting document that contains the information required by 15 CFR 930.58. The text of 15 CFR 930.58 is attached for reference.

**Cover Letter:** The cover letter should state the purpose of the letter (a request for concurrence from DCM of the applicant's consistency certification) and then briefly describe the proposed project, its location, the type of Federal permit or license that has been applied for, a statement that the applicant has reviewed the State's coastal program (citing specific policies as appropriate), a statement that the proposed activity is consistent with the State's coastal management program and will be conducted in a manner consistent with the program (see below), and a statement referring to the supporting document for more detail.

Pursuant of 15 CFR 930.57(b), the cover letter must include the phrase: "*The proposed activity complies with the enforceable policies of North Carolina's approved management program and will be conducted in a manner consistent with such program.*"

In the event the applicant is using a consultant as a point of contact, the cover letter should designate the consultant as an authorized representative.

**Supporting Document:** The supporting document should present the information required by 15 CFR 930.58 and should provide DCM with the data and analysis needed to document that the proposed project will be consistent with the State's coastal management program. DCM recommends that the State's coastal program be reviewed and that the project's compliance with specific policies be evaluated. For example, 15A NCAC 07M .0800 relates to the protection of water quality. The applicant must explain, as applicable, how the proposed project has been sited and designed to avoid and/or minimize any adverse impacts to water quality. The applicant should also describe how any unavoidable adverse impacts would be ameliorated. To the maximum extent practical, adverse impacts to coastal resources and coastal uses must be avoided. Impacts that cannot be avoided must be minimized and mitigated.

**Areas of Environmental Concern:** Section 113A-113 of the Coastal Area Management Act (CAMA) defines "*Areas of Environmental Concern*" (AECs). The proposed project's relationship to an AEC is important for determining the type of project review that DCM will conduct. DCM will review proposed development in a coastal county that is outside of an AEC and requires a Federal permit through the consistency process. However, should any portion of the proposed development occur within an AEC, then a CAMA permit would be required instead. The supporting document must evaluate whether any of the proposed development would occur within an AEC to determine whether the consistency process would be the appropriate form of DCM review.

**Other State Permits:** The supporting document should discuss other State permits that the proposed development may require, including the status of the permit applications. DCM suggests that any required State permits be obtained, if possible, by the applicant prior to initiating the consistency review process and that any issued permits be included as part of the supporting document. Addressing other State permits at the consistency stage minimizes the potential for "*late hits*" in the review process and aides the applicant in demonstrating implied conformance with the State's coastal management program.

**Environmental Documents:** If the proposed project requires the preparation of an environmental document, it can be used as the "*Supporting Document*" provided that it contains all the information required by 15 CFR 930.58.

Relevant Sections of 15 CFR 930

Version of January 2004

*(These citations have been reformatted and are therefore unofficial.  
Go to <http://www.gpoaccess.gov/cfr/index.html> for the official version.)*

**§ 930.57 Consistency certifications.**

- (a) Following appropriate coordination and cooperation with the State agency, all applicants for required federal licenses or permits subject to State agency review shall provide in the application to the federal licensing or permitting agency a certification that the proposed activity complies with and will be conducted in a manner consistent with the management program. At the same time, the applicant shall furnish to the State agency a copy of the certification and necessary data and information.
- (b) The applicant's consistency certification shall be in the following form: "The proposed activity complies with the enforceable policies of (name of State) approved management program and will be conducted in a manner consistent with such program."

**§ 930.58 Necessary data and information.**

- (a) The applicant shall furnish the State agency with necessary data and information along with the consistency certification. Such information and data shall include the following:
  - (1) A detailed description of the proposed activity, its associated facilities, the coastal effects, and comprehensive data and information sufficient to support the applicant's consistency certification. Maps, diagrams, technical data and other relevant material shall be submitted when a written description alone will not adequately describe the proposal (a copy of the federal application and all supporting material provided to the Federal agency should also be submitted to the State agency);
  - (2) Information specifically identified in the management program as required necessary data and information for an applicant's consistency certification. The management program as originally approved or amended (pursuant to 15 CFR part 923, subpart H) may describe data and information necessary to assess the consistency of federal license or permit activities. Necessary data and information may include State or local government permits or permit applications which are required for the proposed activity. Required data and information may not include confidential and proprietary material; and
  - (3) An evaluation that includes a set of findings relating the coastal effects of the proposal and its associated facilities to the relevant enforceable policies of the management program. Applicants shall demonstrate that the activity will be consistent with the enforceable policies of the management program. Applicants shall demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to coastal effects for which the management program does not contain enforceable or recommended policies.
- (b) At the request of the applicant, interested parties who have access to information and data required by this section may provide the State agency with all or part of the material required. Furthermore, upon request by the applicant, the State agency shall provide assistance for developing the assessment and findings required by this section.
- (c) When satisfied that adequate protection against public disclosure exists, applicants should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposal. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal effects of the proposal.

**§ 930.60 Commencement of State agency review.**

- (a) Except as provided in § 930.54(e) and paragraph (a)(1) of this section, State agency review of an applicant's consistency certification begins at the time the State agency receives a copy of the consistency certification, and the information and data required pursuant to § 930.58.

- (1) If an applicant fails to submit a consistency certification in accordance with § 930.57, or fails to submit necessary data and information required pursuant to § 930.58, the State agency shall, within 30 days of receipt of the incomplete information, notify the applicant and the Federal agency of the missing certification or information, and that:
    - (i) The State agency's review has not yet begun, and that its review will commence once the necessary certification or information deficiencies have been corrected; or
    - (ii) The State agency's review has begun, and that the certification or information deficiencies must be cured by the applicant during the State's review period.
  - (2) Under paragraph (a)(1) of this section, State agencies shall notify the applicant and the Federal agency, within 30 days of receipt of the completed certification and information, of the date when necessary certification or information deficiencies have been corrected, and that the State agency's consistency review commenced on the date that the complete certification and necessary data and information were received by the State agency.
  - (3) State agencies and applicants (and persons under subpart E of this part) may mutually agree to stay the consistency timeclock or extend the sixmonth review period. Such an agreement shall be in writing and shall be provided to the Federal agency. A Federal agency shall not presume State agency concurrence with an activity where such an agreement exists or where a State agency's review period, under paragraph (a)(1)(i) of this section, has not begun.
- (b) A State agency request for information or data in addition to that required by § 930.58 shall not extend the date of commencement of State agency review.