



Coastal Zone Management Act: Federal Consistency Requirements

What is “Federal Consistency”?

The Coastal Zone Management Act (CZMA) requires that all federal actions that may have reasonably foreseeable effects on the uses or resources of a state’s coastal zone be consistent with the enforceable policies of the state’s coastal management program.

See CZMA § 307 (16 U.S. Code § 1456).

1. Is there a proposed federal action?

Federal Actions

For federal consistency purposes, a federal action is one proposed in or outside the coastal zone that affects any land or water use or natural resource of a state’s coastal zone.

Types of Federal Actions Subject to CZMA Review

- Federal agency activities and development projects
CZMA § 307(c)(1), (2), 15 Code of Federal Regulations (CFR) Part 930, Subpart C
- Federal license or permit (non-federal applicants)
CZMA § 307(c)(3)(A), 15 CFR Part 930, Subpart D
- Outer Continental Shelf plans
CZMA § 307(c)(3)(B), 15 CFR Part 930, Subpart E
- Federal financial assistance to state or local agencies
CZMA § 307(d), 15 CFR Part 930, Subpart F

Federal Consistency Rules (15 CFR Part 930):

Importance of Determining Applicable Subpart

The CFR subparts for types of federal actions differ on:

- Terminology
- Who decides the question of effects
- Timeframes
- Standards
- Consequences of state objections

2. Are there reasonably foreseeable effects?

Effects on Coastal Uses and Resources

- Uses – For example, public access, recreation, fishing, historic, cultural, development, hazards management, marinas, navigation, resource creation or restoration.
- Resources – For example, air, wetlands and water bodies, aquifers, aquatic vegetation, plants, animals, land, minerals, corals, and dunes.
- Effects – These can be direct or indirect and must be “reasonably foreseeable.” There is no set definition of “effects” or “reasonably foreseeable.” The application of consistency, the varied state management programs, the analysis of effects, and the case-by-case nature of federal consistency precludes fast and hard definitions of effects and what is reasonably foreseeable. See 65 Federal Register 77123-77175, 77129-77130 (Dec. 8, 2000) (preamble to final rule).

Things to Keep in Mind

- Not all impacts to coastal uses or resources result in coastal effects.
- Consider whether coastal effects have occurred from similar actions in the past.
- A National Environmental Policy Act categorical exclusion or finding of no significant impact does not mean there are no reasonably foreseeable effects for CZMA purposes.
- Coastal effects are not limited to within a state’s coastal zone. Effects must be on the uses or resources “of” the coastal zone of the state, not “in” the coastal zone. Coastal uses and resources, the federal action, and the source of the coastal effects may be found outside of the coastal zone.

3. Is the federal action consistent with enforceable policies of the state’s approved coastal management program?

State CZMA federal consistency reviews and objections must be based on NOAA-approved *enforceable policies*, a term that has a unique CZMA meaning.

Enforceable Policies

- Must be based on a state legal authority that can compel someone to do or not to do something.
- Must contain a standard by which to determine consistency.

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Activities Being Proposed by Federal Agencies (15 CFR Part 930, Subpart C)

I am a federal agency proposing to undertake an action.

What do I need to do? (Note: for federal license or permit activities, see Subparts D and E below.)

1. Determine if there are coastal effects.
 - If so, consult with the state on enforceable policies.
 - Next, submit *consistency determination* to the state. See 15 CFR § 930.39.
2. If there are no coastal effects, determine if a *negative determination* is required. See 15 CFR § 930.35.
 - If not, you have completed your federal consistency obligations.

I am a federal agency. When should a consistency determination be submitted to the state?

At least 90 days before a decision on the proposal.

I am a state in receipt of a consistency determination or negative determination from a federal agency. What do I need to do?

Issue a decision within 60 days (review can be extended an additional 15 days with notice to the agency). Provide public notice. See 15 CFR § 930.42. State is not required to respond to or provide public notice for negative determinations. See 15 CFR § 930.35.

I am a federal agency. What if a state objects?

The federal agency determines whether the proposed action is “consistent to the maximum extent practicable.” If so, it may proceed over a state’s objection after notifying the state in writing. See 15 CFR § 930.32 and 930.43(d) and (e).

Activities Authorized by Federal Agencies to Non-Federal Applicants (15 CFR Part 930, Subparts D and E)

I am a non-federal applicant for a federal license or permit.

What do I need to do?

1. Check the state’s federal consistency list of licenses and permits at coast.noaa.gov/czm/consistency/states.
2. If the license or permit you are working under is listed, consult with the state on enforceable policies.
3. Submit *consistency certification* to the state and authorizing federal agency. See 15 CFR § 930.57-58.

I am an authorizing federal agency. What do I need to do?

1. Check the state’s federal consistency list of licenses and permits at coast.noaa.gov/czm/consistency/states.
2. If your license or permit is listed, withhold authorization to conduct activity until CZMA review process has been completed.

I am a state in receipt of a consistency certification from an applicant for a federal license or permit.

What do I need to do?

Provide public notice or require applicant to do so. Issue a decision within six months. Must issue a status response in three months for Subparts D and E.

What if the state objects?

The federal agency cannot authorize the activity unless the state removes its objection or the applicant appeals to the Secretary of Commerce and the secretary overrides the state’s objection. If an applicant chooses to appeal, it must file an appeal with the Secretary of Commerce within 30 days of the state’s objection.

Federal Financial Assistance to State and Local Governments (15 CFR Part 930, Subpart F)

I am a state agency (includes state universities and other governmental entities) or local government applicant for federal financial assistance. What do I need to do?

1. Check the state’s federal consistency list for financial assistance activities at coast.noaa.gov/czm/consistency/states.
2. If the funding program is listed, submit *consistency certification* to the state.

I am a federal agency making financial assistance awards to state or local governments. What do I need to do?

1. Check the state’s federal consistency list for financial assistance activities at coast.noaa.gov/czm/consistency/states.
2. If your funding program is listed, withhold the release of funds until the CZMA review process has been completed.

I am a state reviewing a consistency certification for federal financial assistance to a state or local government.

What do I need to do?

Issue a decision in accordance with state-specific timeframes (30-60 days).

What if the state objects?

The federal agency cannot authorize the use of the funds unless the state removes its objection or the applicant appeals to the Secretary of Commerce and the secretary overrides the state’s objection. If an applicant chooses to appeal, it must file an appeal with the Secretary of Commerce within 30 days of the state’s objection.

How Do I Learn More?

NOAA federal consistency website: coast.noaa.gov/czm/consistency

- CZMA
- Federal consistency regulations, 15 CFR Part 930
- Preambles to 2000 and 2006 regulations
- Federal consistency overview
- State–federal consistency lists
- Federal consistency appeals
- State–federal consistency contacts

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