

## Federal Consistency Review

The “federal consistency” requirement of the CZMA (16 U.S.C. § 1456) holds that federal actions that have reasonably foreseeable effects on any land or water use or natural resources of a state coastal zone must be consistent with the enforceable policies of the federally approved coastal management program for that state. Within this authority of the CZMA, state coastal programs may review federal actions affecting their coastal uses and/or resources—regardless of whether the action occurs within or outside the state coastal zone boundary—to ensure that such activities are consistent with the state’s enforceable program policies. The following information describes the federal consistency review process in Massachusetts. This process is administered in conformity with the federal regulations entitled *Federal Consistency with Approved Coastal Management Programs* at 15 CFR 930 Subparts A through I, as may be amended, applicable state regulations, and this Policy Guide.

### Coastal Effects

To review federal actions to determine if they are consistent with the Massachusetts coastal program policies, the “coastal effects” of those actions must be assessed. The term “coastal effects” refers not only to environmental effects (i.e., impacts on biological or physical resources found within the state coastal zone), but also to effects on human uses, such as fishing and boating, public access and recreation, scenic and aesthetic enjoyment, and resource creation or restoration. Furthermore, effects include both direct effects that occur from the federal action at the same time and place and indirect effects resulting from the incremental impact when added to other past, present, and anticipated actions, regardless of who undertakes such actions. Also known as cumulative and secondary effects, indirect effects of a federal action may result either later in time or farther removed in distance, but must always be reasonably foreseeable.

### Activities Subject to Federal Consistency Review

The following four types of federal actions are subject to the federal consistency requirement:

- Federal License or Permit Activity - Activities performed by a non-federal entity that require any authorization, certification, approval, or other form of permission from a federal agency. This includes renewals of, and major amendments to, previously issued federal licenses and permits. Some examples are U.S. Army Corps of Engineers (USACE) Section 10 or 404 permits for dredging or filling activities, U.S. Environmental Protection Agency (USEPA) Permits for National Pollutant Discharge Elimination System (NPDES) discharges, and energy facility licenses issued by the Nuclear Regulatory Commission.
- Outer Continental Shelf (OCS) Plans - Any plan for the exploration or development of, or production from, any area that has been leased pursuant to the Outer Continental Shelf Lands Act, and including all federal license or permit activities described in detail in such

plans and affecting any coastal use or resource. Some examples are exploration of oil and gas resources and the siting and leasing of renewable energy facilities.

- Federal Agency Activity - Activities performed by or on behalf of a federal agency, including but not limited to development projects (i.e., the planning, construction, modification, or removal of public works, facilities, or other structures and the acquisition, utilization, or disposal of land or water resources). Examples include dredging of federal navigation channels, construction of coastal engineering structures and erosion and flood control projects, preparation of fisheries management plans, and improvements in national parks and military bases.
- Federal Assistance to State and Local Governments - Assistance provided under a federal program through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other forms of financial aid. Examples include Federal Highway Administration funds to coastal state and local governments, construction grants for wastewater treatment works, and Housing and Urban Development grants.

Appendix 4 contains the listed federal actions, which is the complete and current list of federal activities that have been deemed by Massachusetts to have reasonably foreseeable effects on coastal uses or resources and may therefore be subject to federal consistency review.

## General Permits

CZM has worked closely with federal agencies to streamline review for projects with no or minimal coastal effects. With the input of Massachusetts regulatory agencies, both the USACE and USEPA have developed general permits that seek to integrate thresholds and standards for state and federal authorities. CZM has participated in the development of these general permits and has found them to be generally consistent with state coastal policies. Therefore, projects that qualify for these general permits are not usually subject to additional federal consistency review, unless the proposed activity was not anticipated in general permit development or the activity has foreseeable effects that may not be consistent with state enforceable coastal policies. CZM routinely participates in the federal Joint Processing Committee, which determines projects' eligibility for general permits.

## Pre-Application Consultation

CZM strongly encourages pre-application consultation for projects that are subject to federal consistency review. CZM staff can provide advance assistance on questions regarding jurisdiction, activities subject to review, contents of the consistency certification and material necessary to commence and complete review, review schedule, and project design and/or operation. Pre-application consultation helps to ensure the review procedures are well understood and that the consistency review process occurs in a timely and efficient manner.

For assistance, please call CZM's Project Review Coordinator at (617) 626-1050 or email CZM at [czm@state.ma.us](mailto:czm@state.ma.us) (please specify in the email that you have a federal consistency question).

## Application Requirements, Review Procedures, and Timetables

There are no application forms or fees for federal consistency review. To initiate the review process, project proponents must submit appropriate materials to:

Project Review Coordinator  
Massachusetts Office of Coastal Zone Management  
251 Causeway Street, Suite 800  
Boston, MA 02114

The application requirements, review procedures, and timetables vary for each of the four types of projects subject to federal consistency review, as indicated below. ***It is imperative to note that the following was developed for general guidance purposes only and does not substitute for or supersede actual statutory and regulatory provisions and requirements.***

### Federal License or Permit Activity

The following review procedures and timelines apply for federal license or permit activities:

- Proponents for activities (in or outside the coastal zone) that require federal licenses or permits and have reasonably foreseeable effects on coastal resources/uses must submit the following to initiate federal consistency review:
  - A federal consistency certification, which includes a description of the proposed project; a listing of the specific CZM enforceable program policies relevant to the project and complete analysis and descriptions of how the project is consistent with these policies and their underlying authorities; and this statement: "The proposed activity complies with the enforceable program policies of the Massachusetts approved coastal management program and will be conducted in a manner consistent with such policies."
  - A copy of the federal license or permit application (or in the case of a discharge, a copy of the draft NPDES permit issued by USEPA).
  - A detailed description of the proposed activity, its associated facilities, the coastal effects, and any other information relied upon by the applicant to make its certification. Maps, diagrams, and technical data shall be submitted when a written description alone will not adequately describe the proposal.
  - Materials listed in the Necessary Data and Information section below.

- Upon receipt of a complete consistency certification application, a project review schedule is sent to the proponent and the federal agency within 30 days. If the application is incomplete, a notice of incomplete submission is sent.
- Public notice of the review of the consistency certification for the federal license or permit activity is published concurrently by non-electronic means (e.g., local newspaper) by project proponent and in the next available *Environmental Monitor* by CZM. A 21-day comment period begins on the day that the *Monitor* is published.
- CZM must complete its review within six months. If CZM has not issued a decision within three months, it will notify the applicant and federal agency of the status of review. Review may be completed as soon as, but not before, the public comment period closes and all applicable state licenses and permits have been received by CZM.
- If a project undergoing federal consistency review is nearing the end of the six-month review period with outstanding informational requirements—including applicable state licenses and permits—or with unresolved technical or policy issues, CZM and the applicant may agree to a stay of the review period. The stay must be for a specified period of time while the issues are resolved, and such an arrangement must be agreed to in writing by both parties and provided by CZM to the federal permitting agency before the end of the review period.
- CZM may object to the consistency certification if the applicant has failed to provide copies of decisions on all issued state permit applications that are either specified in the Necessary Data and Information section below or otherwise specified by CZM in writing. CZM shall not concur with a consistency certification in the event any specified state permit is denied.
- In the case of an objection based on sufficient information to determine inconsistency with state enforceable policies, CZM's decision must include a description of how the proposed activity is inconsistent with specific enforceable policies; it may also include alternative measures that would permit the proposed activity to be conducted in a manner consistent with CZM's policies.
- In the case of an objection based on a determination that the applicant has not, after written request from CZM, provided information necessary for CZM to determine consistency, CZM's decision must include a description of the nature of the information requested and the necessity of having that information.
- All objections must include a specific statement indicating the applicant's right to appeal.
- In the case of an objection, the federal license or permit cannot be issued until CZM concurs with the applicant's consistency certification or the applicant successfully appeals CZM's decision to the Secretary of Commerce.

#### Outer Continental Shelf Plans

These review procedures are applied for OCS plans:

- Proponents applying to the federal Department of Interior’s Bureau of Ocean Energy Management, Regulation, and Enforcement for OCS exploration, development, and/or production activities must submit the following to the Secretary of Interior:
  - A copy of the OCS plan.
  - A federal consistency certification, which includes a description of the proposed project; a listing of the specific CZM enforceable program policies relevant to the project and complete analysis and descriptions of how the project is consistent with these policies and their underlying authorities; and this statement: “The proposed activities described in detail in this plan comply with Massachusetts approved management program(s) and will be conducted in a manner consistent with such program.”
  - Materials listed in the Necessary Data and Information section below.
  - Information required under OCS rules.
- To commence federal consistency review, the Secretary of Interior must submit the materials and information described above to CZM.
- A project review schedule is sent to the proponent and the Secretary of Interior.
- Public notice of the review of the consistency certification for the OCS Plan activity is published concurrently by non-electronic means (e.g., local newspaper) by project proponent and in the next available *Environmental Monitor* by CZM. A 21-day comment period begins on the day that the *Monitor* is published.
- CZM must notify the proponent and the Secretary of Interior in writing if it requires additional information and describe why the information is necessary to determine consistency with its enforceable policies. This request must occur within three months of commencement of review.
- CZM must complete its review within six months. If CZM has not issued a decision within three months, it will notify the proponent, the Secretary of Interior, and the Director of NOAA’s Office of Ocean and Coastal Resource Management of the status of review. Concurrence by CZM may be presumed if this notification is not provided.
- Review may be completed as soon as, but not before, the public comment period closes and all applicable state licenses and permits have been received by CZM.
- CZM may object to the consistency certification if the applicant has failed to provide copies of decisions on all issued state permit applications that are either specified in the Necessary Data and Information section below or otherwise specified by CZM in writing. CZM shall not concur with a consistency certification in the event any specified state permit is denied.
- In the case of an objection based on sufficient information to determine inconsistency with state enforceable policies, CZM’s decision must include a

description of how the proposed activity is inconsistent with specific enforceable policies; it may also include alternative measures that would permit the proposed activity to be conducted in a manner consistent with CZM's policies.

- If CZM objects to one or more of the federal license or permit activities in the OCS plan, it must provide a separate discussion for each objection.
- In the case of an objection based on a determination that the applicant has not, after written request from CZM, supplied information necessary for CZM to determine consistency, CZM's decision must include a description of the nature of the information requested and the necessity of having that information.
- All objections must include a specific statement indicating the applicant's right to appeal.
- In the case of an objection, the federal license or permit cannot be issued until CZM concurs with the applicant's consistency certification or the applicant successfully appeals CZM's decision to the Secretary of Commerce.

## Federal Agency Activity

For federal agency activities, the following procedures apply:

- Federal agencies have an affirmative statutory duty to ensure their activities—including those that may not otherwise require state or local permits or licenses—are consistent with CZM enforceable program policies to the maximum extent practicable.
- Federal agencies—or their agents—must submit a consistency determination to CZM for a federal activity (in or outside the coastal zone) having reasonably foreseeable effects on coastal resources or uses. The consistency determination shall be prepared by the federal agency, or its agent, in accordance with the federal rules at 15 CFR 930 Subpart C.
- The consistency determination shall contain a brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the state's enforceable coastal policies. The consistency determination must also include a detailed description of the activity, the activity's location, an evaluation of the relevant enforceable policies, data and information sufficient to support the federal agency's consistency determination, and the analysis for the basis for the federal agency's determination.
- The consistency determination must be provided to the CZM at least 90 days before final approval of the activity, unless both the federal agency and CZM agree to an alternative notification schedule.

- If a review of the information submitted by the federal agency determines that the applicant has not supplied necessary data and information for CZM to determine consistency, CZM must notify the federal agency of the deficiency within 14 days.
- A project review schedule is sent to the federal agency or its agent.
- Public notice of the review of the consistency determination for the federal agency activity is published concurrently by non-electronic means (e.g., local newspaper) and in the next available *Environmental Monitor* by CZM. A 21-day comment period begins on the day that the *Monitor* is published.
- CZM must complete its review within 60 days unless CZM and the federal agency have mutually agreed to an alternative timeframe.
- In the case of an objection based on sufficient information to determine inconsistency with state enforceable policies, CZM's decision must include a description of how the proposed activity is inconsistent with specific enforceable policies; it may also include alternative measures that would permit the proposed activity to be conducted in a manner consistent with CZM's policies.
- In the event of an objection, the federal agency and CZM should use the remaining portion of the 90-day notice period to attempt to resolve the issues. If resolution has not been reached at the end of the 90-day period, federal agencies are advised to consider using the dispute resolution mechanisms of 15 CFR Subpart D and postponing final federal action until the problems have been resolved.

## Federal Assistance to State and Local Governments

Review procedures are as follows for federal assistance to state and local governments:

- Any unit of state or local government (or any related public entity, such as a special purpose district)—or its agent—that submits an application for a listed federal assistance activity (in or outside the coastal zone) that will have a reasonably foreseeable effect on any coastal use or resource must submit the following to initiate federal consistency review:
  - A copy of the federal assistance application.
  - An evaluation of the relation of the proposed activity and any reasonably foreseeable coastal effects to CZM, which includes a description of the proposed project, a listing of the specific CZM enforceable program policies relevant to the project, and an analysis and description of how the project is consistent with these policies and their underlying authorities.
  - Materials listed in the Necessary Data and Information section below.
- A project review schedule is sent to the applicant.

- Public notice of the review of the consistency determination for the federal assistance activity is published in the next available *Environmental Monitor*. A 21-day comment period begins on the day that the *Monitor* is published.
- CZM will seek to complete its review within 60 days. Review may be completed as soon as, but not before, the public comment period closes. If the federal application action results in the requirement of a state license or permit, CZM will review that project under 15 CFR 930 Subpart D (see Federal License or Permit Activity above).
- CZM may object to the consistency certification if the applicant has failed to provide copies of decisions on all issued state permit applications that are either specified in the Necessary Data and Information section below or otherwise specified by CZM in writing. CZM shall not concur with a consistency certification in the event any specified state permit is denied.
- In the case of an objection based on sufficient information to determine inconsistency with state enforceable policies, CZM's decision must include a description of how the proposed activity is inconsistent with specific enforceable policies; it may also include alternative measures that would permit the proposed activity to be conducted in a manner consistent with CZM's policies.
- In the case of an objection based on a determination that the applicant has not, after written request from CZM, supplied necessary data and information for CZM to determine consistency, CZM's decision must include a description of the nature of the information requested and the necessity of having that information.
- All objections must include a specific statement indicating the applicant's right to appeal.
- In the case of an objection, the federal assistance cannot be granted to the applicant agency until CZM concurs with the applicant's consistency certification or the applicant successfully appeals CZM's decision to the Secretary of Commerce.

## Necessary Data and Information

The data and/or information listed below are necessary for commencement of federal consistency review.

- A project description, which includes:
  - The name and location of the project;
  - A narrative summary of the project in clear, nontechnical language;
  - The EEA Massachusetts Environmental Policy Act (MEPA) number, if applicable;
  - A detailed description and analysis of the nature, location, type, size, proposed use, and anticipated lifespan of the project, illustrated with map(s) and site plan(s);
  - A detailed description and analysis of the project objectives and anticipated benefits;
  - A detailed description of the physical, biological, chemical, economic, and social conditions of the project site, surroundings, and affected environment, including

resource area delineations, illustrated with map(s) and site plan(s) depicting both existing and proposed conditions;

- A timetable, approximate cost, and the methods and timing of construction and operation of the project (including types of equipment, temporary impacts associated with construction, monitoring and maintenance plans, proposed reporting schedule);
- A detailed description and assessment of the negative and positive potential coastal effects of the project including direct and indirect resource and use impacts from all aspects of the project, short-term and long-term impacts for all phases of the project (e.g., acquisition, development, construction, and operation), and cumulative impacts of the project;
- A detailed description of alternatives considered, analysis of the impacts on the resource areas, and explanation and justification as to why the preferred alternative was selected;
- A description detailing any changes made to the project during MEPA review, if applicable; and
- A description of measures taken to avoid, minimize, and mitigate adverse coastal effects and a description of how the project meets performance standards under the applicable regulations.

Maps and plans should be of adequate size, scale, and detail to completely and accurately describe the site, existing resources and uses, and the proposed project and its associated changes. The project description should also include a presentation of adequate and accurate technical data (e.g., calculations, modeling) to support the certification of consistency with coastal policies.

- The following complete state license or permit applications, as applicable:
  - Surface Water Discharge Permit pursuant to 314 CMR 3.00 and 4.00.
  - Ground Water Discharge Permit pursuant to 314 CMR 5.00.
  - 401 Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters pursuant to 314 CMR 9.00.
  - Chapter 91 Waterways License pursuant to 310 CMR 9.00.
  - Wetlands Protection Act Notice of Intent pursuant to 310 CMR 10.00.
  - Massachusetts Endangered Species Act pursuant to 321 CMR 10.00.
  - Energy Facility Siting Board pursuant to 980 CMR 1.00.
- The final Environmental Impact Report submitted pursuant to 301 CMR 11.00.

## Cape Cod Commission Referral

In accordance with Chapter 716 of the Acts of 1989, CZM shall refer all consistency certifications it receives for proposed activities in Barnstable County to the Cape Cod Commission. Such referral will consist of the consistency certification submitted to CZM and the public notice for publication in the Environmental Monitor. The referral will be sent to the Cape Cod Commission's Executive

Director via electronic mail with delivery confirmation before the commencement of the public comment period.

Within the comment period stipulated in the public notice, the Cape Cod Commission will notify CZM in writing of any objections it may have to a consistency certification where the Commission finds inconsistencies between the proposed activities and the Cape Cod Commission's Regional Policy Plan and local comprehensive plans certified by said Commission. CZM shall take into account elements of those objections by the Commission that are directly related to the enforceable policies. Any conflict between CZM and the Commission shall be referred to and resolved by the EEA Secretary.

## Project Modifications

When a modification to a use, activity, or facility (in or outside the coastal zone) that will have a reasonably foreseeable effect on any coastal use or resource area(s) is proposed for a project that has received concurrence with a federal consistency certification, the project proponent must notify CZM of the proposed change. These modifications include any changes resulting from permit, license, or certification revisions, including those ensuing from an appeal, or instances where the project is noted to be having effects on coastal resources or uses that are different than originally proposed. The notification should include an explanation of the nature of the change pursuant to 15 CFR 930 and any modified state permits, licenses, or certifications. Depending on the proposed modification and the effects, CZM may determine that no further review is necessary or that further federal consistency review may be warranted.

## Emergency Certifications

Following a catastrophic event, such as a hurricane, there are typically necessary actions that require accelerated approval from local, state, and federal agencies. The federal consistency process recognizes such situations and provides for emergency certifications. The action proposed for emergency certification must be necessary to avoid or eliminate imminent threat to public health and safety and is limited to what is necessary to abate the emergency. Full compliance with all pertinent state licensing procedures, including CZM federal consistency review, is required when the immediate need for undertaking the emergency action no longer exists.