

Section 400. Federal Consistency

A. Introduction

The federal consistency requirement, as provided for in section 307 of the Coastal Zone Management Act (CZMA) (16 USC §§ 1451-1464), is an important function of state coastal management programs. Under section 307, federal agencies conducting an activity which is reasonably likely to affect any land or water use or natural resource of the coastal zone, are required to do so in a manner consistent, to the maximum extent practicable, with the enforceable policies of the state's coastal management program developed and implemented under the CZMA. Federal permits and licenses, including those associated with outer continental shelf (OCS) plans, and grant-in-aid programs to local or state governments and related public entities, which are reasonably likely to affect any land or water use or natural resource of the coastal zone must also be consistent with the state's coastal management program.

As part of Rhode Island's coastal management program, both the geographical scope of the state's coastal zone and the enforceable policies applicable to the coastal zone have been defined and approved by the National Oceanic and Atmospheric Administration (NOAA). Rhode Island's approved coastal zone, for the purposes of exercising the federal consistency requirement of the CZMA, includes the area encompassed within the state's seaward boundary (three miles) to the inland boundaries of the state's 21 coastal communities. The Rhode Island Coastal Resources Management Program (RICRMP), which includes this "Redbook," the Council's Special Area Management Plans and Energy Amendments, and adopted State Guide Plan elements together make up Rhode Island's federally approved coastal program. The provisions of these programmatic documents and regulations which meet the definition of enforceable policies under the CZMA constitute the enforceable policies with which federal activities must be consistent in Rhode Island.

In order to assist federal agencies in determining whether a proposed activity is subject to the federal consistency requirement, and in accordance with the CZMA, the CRMC has listed activities, both direct and indirect, reasonably likely to affect any land or water use or natural resource of the coastal

zone. It is important to note that these lists are not exhaustive and that any federal activity reasonably likely to affect any land or water use or natural resource of the coastal zone may be subject to the federal consistency requirement.

The Council's *Federal Consistency Manual* details the CRMC's federal consistency process and requirements and includes tables of listed activities subject to the federal consistency requirement. The *Manual* also provides background and an explanation of the federal consistency requirement as provided for in section 307 of the CZMA and its implementation in Rhode Island. The Council's federal consistency procedures and requirements have been derived directly from federal regulations implementing the CZMA provided in the Code of Federal Regulations (15 CFR Part 930). Any changes to the federal regulations supercede those of Rhode Island.

B. Definitions

1. Enforceable policies are those policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone. 16 USC § 1453(6a).

2. Direct federal activities are activities, including development projects, performed by a federal agency, or contractor on behalf of the federal agency. Examples of such actions include: installation of mooring buoys by the National Park Service; fisheries management plans by the National Marine Fisheries Service; naval exercises; the disposal of excess federal land by the General Services Administration; U.S. Army Corps of Engineers (Corps) navigational dredging and beach renourishment projects; OCS oil and gas lease sales by the Minerals Management Service; improvements to military bases; and naval disposal of radioactive or hazardous waste performed by a private contractor.

3. Federal license or permit activities means any form of approval required by a federal agency (but does not include approvals to other federal agencies). Examples of such actions are: activities requiring Corps 404 permits; Interstate Commerce Commission water carrier licenses; Corps permits for use of ocean dump-sites; Nuclear Regulatory

Commission permits for nuclear power plants; and delicensing of nuclear facilities by the Nuclear Regulatory Commission.

4. Outer Continental Shelf Exploration, Development and Production Activities are those activities associated with the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act.

5. Federal Assistance to State and Local Governments means assistance provided under a federal program to any unit of state or local government or related public entity through grant or contractual arrangements, loans, subsidies, guarantees, insurance or other form of financial aid.

C. Policies

1. Federal agencies proposing an activity must follow the requirements of CZMA section 307(c)(1) and (2), 16 USC 1456 (c)(1), (2) and 15 CFR part 930, subpart C.

2. A private individual or business, a state or local government agency, or any other type of non-federal entity, applying to the federal government for a required permit or license or any other type of an approval or authorization, must follow the procedures for "Non-Federal Activities Requiring a Federal License or Permit" and the requirements of CZMA section 307(c)(3)(A)(16 USC 1456(c)(3)(A)) and 15 CFR part 930, subpart D.

3. Any private person or business applying to the federal government for outer continental shelf (OCS) exploration, development and production activities must follow the requirements of CZMA section 307(c)(3)(B), (16 USC §1456(c)(3)(B) and 15 CFR part 930, subpart E.

4. A state or local government agency, or related public entity, applying for federal financial assistance must follow the procedures for "Federal Assistance to State and Local Governments" and the requirements of CZMA section 307(d)(16 USC § 1456(d)) and 15 CFR part 930, subpart F.

5. The Council's *Federal Consistency Manual* provides guidance on federal and state procedures and requirements associated with federal consistency requirement contained in section 307 of the CZMA. Except where superseded by federal

regulations, federal activities, whether direct or indirect, shall be conducted in accordance with the procedures provided in the most recent version of the Council's *Federal Consistency Manual*.

D. Prerequisites

1. Where the Council requires other state permits as a prerequisite for application review, and the federal agency or non-federal entity is not exempt from obtaining those permits, the federal agency or non-federal entity shall obtain those permits prior to submitting its consistency determination.

2. In cases where the federal agency or non-federal entity may be exempt from obtaining other state permits which are a prerequisite for Council review of a proposed activity, and which are enforceable components of the RICRMP, the federal agency or non-federal entity shall furnish the CRMC with data and information adequate to ensure that the requirements of any prerequisite regulatory program have been met.