

Note: November 2022.

This Directive may no longer be current. Please check with the program office responsible for this Directive to determine if there are any updates or if the Directive is no longer in use.

U.S. Department of
Homeland Security

United States
Coast Guard



U.S. COAST GUARD COASTAL ZONE MANAGEMENT, FEDERAL CONSISTENCY PROCEDURES



COMDTINST M16004.2A
May 2014



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United States Coast Guard

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COMDTINST M16004.2A
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COMMANDANT INSTRUCTION M16004.2A

Subj: COASTAL ZONE MANAGEMENT, FEDERAL CONSISTENCY PROCEDURES

- Ref:
- (a) Coastal Zone Management Act of 1972, as amended, (16 U.S.C. §§1451 - 1466)
 - (b) Coastal Zone Management Act Federal Consistency Regulations, 15 CFR part 930
 - (c) Commanding Officer’s Environmental Guide, COMDTPUB P5090.1(series)
 - (d) Coastal Zone Management Program Regulations, 15 CFR part 923
 - (e) National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1(series)
 - (f) Natural Resources Management, COMDTINST M5090.3(series)
 - (g) Implementing National Ocean Stewardship Policy and Guidance for Coast Guard Involvement in Coastal and Marine Spatial Planning, COMDTINST 16003.2(series)

1. PURPOSE. This Manual establishes policy and prescribes responsibilities and procedures for Coast Guard implementation of references (a) and (b) and other related laws and regulations.
2. ACTION. All Coast Guard district, area and unit commanders, commanding officers, officers-in-charge, deputy/assistant commandants, and chiefs of headquarters staff elements shall ensure that the applicable legal requirements which this Manual provides guidance on are followed in the consideration of coastal effects or effects on any coastal use or resource for Coast Guard actions. All program guidance in implementing this Manual shall be submitted by program managers to Commandant (CG-47), Office of Environmental Management, for review and concurrence to ensure consistency with this Manual prior to issuance. Internet release is authorized.
3. DIRECTIVES AFFECTED. Coastal Zone Management, Federal Consistency Procedures, COMDTINST 16004.2 is hereby cancelled.

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4. DISCLAIMER. This guidance is not a substitute for applicable legal requirements, nor is it itself a rule. It is intended to provide operational guidance for Coast Guard personnel and is not intended to nor does it impose legally-binding requirements on any party outside the Coast Guard.
5. MAJOR CHANGES. Major changes to this Manual include: updated action paragraph, updated background section, introduction of distribution, disclaimer, records management considerations, environmental impacts and consideration paragraphs. Major changes also include organization, policies, and procedures.
6. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS.
 - a. The development of this Manual and the general policies contained within it have been thoroughly reviewed by the originating office, the Office of Environmental Management (CG-47), and are categorically excluded (CE) under current Coast Guard CE #33 from further environmental analysis. Coast Guard CE #33 is set out in Section 2.B.2. and Figure 2-1 of the National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1 (series). Coast Guard CE #33 provides that the preparation of guidance documents that implement, without substantive change, Federal agency regulations, procedures, manuals, and other guidance documents (as this Manual is intended to do) is categorically excluded from NEPA analysis.
 - b. This Manual will not have any of the following significant cumulative impacts on the human environment; substantial controversy or substantial change to existing environmental conditions; or inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. All future specific actions taken in accordance with the general policies set out in this Manual must be individually evaluated for compliance with National Environmental Policy Act (NEPA), DHS and Coast Guard NEPA policy, and with all other environmental guidance provided within it for compliance with all applicable environmental laws prior to promulgating any directive, all applicable environmental considerations are addressed appropriately in this Manual.
7. DISTRIBUTION. No paper distribution will be made of this Manual. An electronic version will be located on the following Commandant (CG-47) websites. Internet: <http://www.uscg.mil/directives/>, and CG Portal: <https://cgportal2.uscg.mil/library/directives/SitePages/Home.aspx>.

NOTE: If paper copies are required, please complete Certificate for Need of Printing, DHS Form 500-07, which can be found at http://www.uscg.mil/directives/Printing_Graphics.asp.
8. RECORDS MANAGEMENT CONSIDERATIONS. This Manual has been thoroughly reviewed during the directives clearance process, and it has been determined there are further records scheduling requirements, in accordance with Federal Records Act, 44 U.S.C. §§3101 et seq., NARA requirements, and Information and Life Cycle

Management Manual, COMDTINST M5212.12 (series). This policy does create significant or substantial change to existing records management requirements.

9. FORMS/REPORTS. The forms referenced in this Manual are available in Coast Guard Electronics Forms on the Standard Workstation or on the Internet:
<http://www.uscg.mil/forms/>; CG Portal
<https://cgportal2.uscg.mil/library/forms/SitePages/Home.aspx>; and Intranet at
<http://cgweb.comdt.uscg.mil/CGForms>.
10. REQUEST FOR CHANGES. Recommendations and amendments for improvement of the Coastal Zone Management Act (CZMA) implementing procedures shall be submitted to Commandant (CG-47).

R. J. RÁBAGO /s/
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Assistant Commandant for
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CHAPTER 1. BACKGROUND

A. Background. Reference (a) establishes a national policy to: "...preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone...." Coast Guard operations may be significantly impacted by the CZMA. The CZMA allows the States, with approval from the Office of Ocean and Coastal Resource Management (OCRM), under the National Oceanic and Atmospheric Administration (NOAA), to define their own coastal zones by developing and implementing Coastal Zone Management Programs (CMPs). References (a) and (b) also require that Federal agencies ensure that Federal actions that have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone, regardless of location, be consistent to the maximum extent practicable with the enforceable policies of a coastal State's federally approved CMP. Recognizing Coast Guard's federal environmental stewardship as stated in reference (c) and consistent with references (d), (e) (f), and (g) the purpose of this Manual is to provide policy and procedural guidance to Coast Guard officials as to our compliance requirements and federal environmental stewardship responsibilities under references (a), (b) and (c). Additional resources and tools for compliance with CZMA, including OCRM's CZMA Federal Consistency Overview, may be found on OCRM's website at: <http://coastalmanagement.noaa.gov/consistency/resources.html>.

B. Definitions.

1. "Associated facilities" means all proposed facilities which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or in major part, to meet the needs of a federal action (*e.g.*, Coast Guard activity, including but not limited to, a Coast Guard regulation, development project, license, permit, or assistance), and without which the activity, as proposed, could not be conducted.
2. "Coast Guard Activities" are any functions performed by or on behalf of the Coast Guard in the exercise of its statutory responsibilities (*e.g.*, regulations, facilities development, tests, or exercises). The term "action" is used interchangeably for the term "activity" and "project" in this Manual.
3. "Coast Guard Development Project" is an activity that involves: (1) the planning, construction, modification, or removal of public work facilities or other structures within the coastal zone or outside the coastal zone if the activity results in any spillover impacts that affect any land or water use or natural resource of the coastal zone within the purview of a State's management program; and, (2) includes the acquisition, use or disposal of any coastal use or resource.
4. "Coastal effects" or effect on any coastal use or resource means any reasonably foreseeable effect on any coastal use or resource resulting from a Federal action. Effects are not just environmental effects, but include both direct and indirect effects on coastal uses. Direct effects result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary), effects result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are also effects that result from the incremental impact of

the Federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions.

5. “Coastal State” means a State, commonwealth, or territory of the United States, in or bordering on the Atlantic, Pacific, or the Arctic Ocean, the Gulf of Mexico, Long Island Sound or one or more of the Great Lakes. This includes, in addition to the States, Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands, and American Samoa.
6. “Coastal use or resource” means any land or water use or natural resource of the coastal zone and any use of these resources described in a State's CMP. Land and water uses, or coastal uses include, but are not limited to, public access, recreation, fishing, historic or cultural preservation, development, hazards management, marinas and floodplain management, scenic and aesthetic enjoyment, and resource creations or restoration projects. Natural resources include biological or physical resources that are found within a State’s coastal zone on a regular or cyclical basis. Biological and physical resources include, but are not limited to, air, tidal and non-tidal wetlands, ocean waters, estuaries, rivers, streams, lakes, aquifers, submerged aquatic vegetation, land, plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, reptiles, and coastal resources of national significance. Coastal uses and resources also include uses and resources appropriately described in a management program.
7. “Coastal waters” means: (1) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes, and (2) in other areas, those waters adjacent to the shorelines, which contain a measurable quantity or percentage of sea water, including, but not limited to, sounds, bays, lagoons, bayous, ponds, and estuaries.
8. “Coastal zone” under the CZMA means the coastal waters (including the lands therein and thereunder), and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of State title and ownership under the Submerged Lands Act (43 U.S.C. §§1301 *et seq*), the Act of March 2, 1917 (48 U.S.C. §749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. §1681 note), or section 1 of the Act of November 20, 1963 (48 U.S.C. §1705), as applicable. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal [zone resources] including but not limited to, waters, and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal government, its officers or agents. However, consistency requirements of the Act also apply to Coast Guard activities, occurring or located on such excluded lands, that impact coastal zone resources outside those lands.

Coastal zones vary from state to state, so it is critical for Coast Guard planners and other program personnel to be aware of the individual State coastal zone definitions because they describe the areas within which the impacts of Coast Guard activities must be compliant with the State law. As such, a negative determination or consistency determination may still be required if the Coast Guard activity, located in “excluded land,” is listed by the State agency’s CMP as an activity that will have a reasonably foreseeable coastal effect(s).

9. “Coastal Zone Management Program” (CMP) is the State’s coastal program approved by OCRM, NOAA, pursuant to Section 306 of the CZMA which includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the State, that sets forth its objectives, policies and standards to guide public and private uses of lands and waters and resources within its coastal zone.
10. “Enforceable policy” means State policies which are legally binding under State law (*e.g.*, through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions), and by which a State exerts control over public and private land and water uses and natural resources, and which are incorporated in the State’s federally approved CMP.
11. “Interstate coastal effects” means any reasonably foreseeable effect resulting from a Federal action occurring in one State of the United States on any coastal use or resource of another State that has a federally approved CZMA management program.
12. “Listed Activities” are Federal agency activities listed by State agencies in their CMPs which, in the opinion of the State agency, will have reasonably foreseeable coastal effects and, therefore, may require a Federal agency consistency determination.
13. “Negative Determination” means the Coast Guard’s written determination that a project or activity, including but not limited to, a proposed regulation, will have no reasonably foreseeable effects on any coastal use or resource. The Coast Guard shall provide a negative determination to the relevant State agency for such a Coast Guard project or activity as discussed in Chapter 2.B of this Manual.
14. “Unlisted Activities” are those activities not specifically listed in the State’s CMP but which may have reasonably foreseeable coastal effects and for which a State may advise the Coast Guard that a consistency determination is required.

C. Discussion.

1. Implementation of the CZMA requires participation by Federal agencies that exercise responsibilities in, or which may have effects on, the coastal zone. The provisions of the CZMA are administered at the Federal level by the Coastal Programs Division (CPD) of the OCRM of NOAA, an agency of the Department of Commerce. NOAA’s primary role under CZMA is to assist the States in developing and implementing their CMPs. NOAA reviews and approves the States’ CMPs submitted along with an Environmental Impact Statement (EIS), for conformity with national policy and with

the guidelines and goals of the CZMA. In order to determine which of the 36 coastal states have an approved CMP and are participating in NOAA's CMP and to obtain State CMP Federal contacts, see

<http://coastalmanagement.noaa.gov/consistency/media/statefccontacts.pdf>.

2. By the very nature of its mission, many, but not all, Coast Guard activities are conducted in the coastal zone, and are potentially subject to the requirements of the CZMA's federally approved State CMPs. Construction, permitting and licensing, and regulatory activities, e.g., rule-making, are the Coast Guard activities most likely to be impacted by these requirements. All Coast Guard activities or development projects (within or outside the coastal zone), that have reasonably foreseeable direct or indirect effects on any land or water use, or on a natural resource of the coastal zone, shall be carried out in a manner that is consistent, to the maximum extent practicable, with the enforceable policies of a State's federally approved CMP. (See 16 U.S.C. §1456 (c)(1) and (2)). The following are examples of these activities which may include, but are not limited to:
 - a. Coast Guard projects or activities, (regardless of whether or not they will take place on Federal property), "that have reasonably foreseeable direct or indirect effects on any land use, or water use, or natural resource of the coastal zone" outside of the Federal property;
 - b. Coast Guard regulations or permits that have reasonably foreseeable direct or indirect effects on any land or water use or natural resource of the coastal zone.
 - c. Non-Federal projects or activities that will take place on non-Federal property but which will be paid for with Federal funds from the Coast Guard (with or with no other Federal agency involved), that have reasonably foreseeable direct or indirect effects on any land or water use or natural resource of the coastal zone.
3. All Coast Guard development projects or activities occurring in the coastal zone (outside of federally owned, leased or otherwise excluded lands) should be reviewed to see if they have an effect on any coastal use. Coast Guard development projects and activities occurring on excluded lands in the coastal zone may also require a CZMA determination if the project or activity effects coastal uses and natural resources. Enclosure (1) provides a list of some Coast Guard actions that may be subject to a Federal Consistency Determination.

D. Responsibilities.

1. The Coast Guard, not the State, shall determine whether Coast Guard development projects or activities are--to the maximum extent practicable--consistent with the federally approved State CMP. See Enclosure (1) for a list of some Coast Guard actions that may be subject to Federal consistency determination.

2. The consistency determination shall be issued by the District Commander or responsible official of the HQ program office unit/CG Station/facility (*e.g.*, CEU, SILC), under whose purview the project will take place.
3. Consistency determinations and negative determinations may be prepared as stand-alone documents or they may be incorporated into documentation (*e.g.*, EA, EIS, etc.), prepared pursuant to NEPA. If they are incorporated into a NEPA document, the document must specifically discuss consistency with the applicable State CMP. In either event, the determination must be submitted to the federally approved State CMP. Consistent with the NEPA decision-making policy/process it is advisable that the consistency determination be completed as early as possible in the planning stages of a project or activity.
4. The Coast Guard must conduct an “effects test” for every development project or activity. “Effects Test” is used to determine if a Federal action is subject to Federal consistency by determining if it is reasonably likely to affect any land or water use or natural resource of the coastal zone. If a project or an activity initiates a series of events where direct or indirect coastal effects on a coastal use or resource (water quality, habitat, wetlands, etc) are reasonably foreseeable, regardless of location of the activity (*e.g.*, if located outside a coastal State’s territorial waters or inland coastal zone boundary), then it is potentially subject to Federal consistency review and State coastal management policies and must be consistent to the maximum extent practicable with the enforceable policies of a State’s federally approved CMP.
5. Legal questions as to whether a consistency determination is necessary for a particular Coast Guard action or project, should be referred to Commandant (CG-0941E) or LSC environmental lawyers for legal analysis. Questions on interpretation of Coast Guard CZMA policy should be referred to Commandant (CG-47).

CHAPTER 2. PROCEDURES

- A. Procedures. The Coast Guard shall notify the State agency of its determination using the flowchart in Enclosure (2), CZMA Federal Consistency Compliance Summary Flowchart for determining the proper notification document.
- B. Negative Determinations.
1. The Coast Guard shall provide the State agency with a negative determination if the Coast Guard has determined that a development project or agency activity will have no reasonably foreseeable coastal effects and falls under one of the following categories:
 - a. The activity or project is identified as a Listed Activity by a State agency, as described in 15 CFR § 930.34(b) of reference (b); or
 - b. The State has notified the Coast Guard that, as a result of its case-by-case monitoring of Unlisted Activities, that a Coast Guard activity or project may have reasonably foreseeable coastal effects and that the Federal consistency provisions of CZMA Section 307 apply; or
 - c. The activity or project is the same as or similar to activities or projects for which consistency determinations have been prepared in the past; or
 - d. The activity or project was the subject of a “thorough consistency assessment” which was undertaken by the Coast Guard and which resulted in initial findings that the activity has no coastal effects.
 2. The negative determination shall be provided to the State agency at least 90 days before final approval of the project or activity, unless the Coast Guard and the State have agreed to an alternative notification schedule. A negative determination may be written in any format, so long as it contains a brief description of the project or activity, the project or activity’s location, and the basis for the Coast Guard’s determination that the project or activity will not affect any coastal use or resource.
 3. A State agency is not obligated to respond to a Negative Determination; consequently Coast Guard may presume State agency concurrence if a response is not received within 60 days from receipt of the Coast Guard determination. However, State agency concurrence shall not be presumed when an extension of time is requested to review the matter. In addition, if the State notifies the Coast Guard within 14 days of receipt of the negative determination that it did not contain sufficient information for their review, the 60 day presumptive concurrence period does not begin until the missing information is provided to the State.
 4. The State is entitled to one extension of 15 days or less to review the matter, but longer or additional extensions are at the discretion of the Coast Guard.

C. Consistency Determinations.

1. A consistency determination provides the Coast Guard with an effective mechanism to document coastal effects and to address state coastal management concerns. Early attention to federal consistency can provide the Coast Guard with State CMP and public support and a smoother and expeditious federal consistency review.
2. If the Coast Guard has determined that a development project or activity will have a reasonably foreseeable coastal effect, it shall provide a consistency determination (see Enclosure (3), USCG CZMA Consistency Determination Template) to the State agency indicating that the development project or agency activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the federally approved State CMP.
3. The consistency determination shall include a brief statement indicating whether or not the proposed activity or project is fully consistent, or will be undertaken in a manner consistent to the maximum extent practicable, with the enforceable provisions of the approved State CMP. It should also include a detailed description of the activity or project, its associated facilities, and their coastal effects, and comprehensive data and information sufficient to support Coast Guard's consistency statement.
4. The proposed activity or project is consistent to the maximum extent practicable with the enforceable provisions of the approved State CMP when the activity is fully consistent with the enforceable policies of a State's CMP to the extent not prohibited by federal legal requirements applicable to the Coast Guard. This ensures that the Coast Guard is able to meet its legally authorized mandates even though the activity may not be fully consistent with a state's enforceable policy. Among other reasons, the Coast Guard may deviate from full consistency due to "exigent circumstances" (*e.g.*, emergency or emergency-like or unexpected situations requiring the Federal agency to take quick or immediate action).
 - a. If the Coast Guard asserts that full consistency is prohibited by federal law, it shall provide the State agency a written description of the statutory provisions, legislative history, or other legal authority which limits Coast Guard's discretion to be fully consistent with the enforceable policies of the state CMP.
 - b. Less than full consistency is justified by an emergency or other similar unforeseen circumstances (exigent circumstances), which presents the Coast Guard with a substantial obstacle that prevents full consistency to the approved program. The Coast Guard shall consult with the State agency, to the extent that exigent circumstances allow, and shall attempt to seek the State agency concurrence prior to addressing the exigent circumstances. (Regulations at 15 CFR 930.32 should be consulted.)
5. The consistency determination shall be provided to the State agency at least 90 days before final approval of the proposed project development or agency activity unless an alternative notification between the Coast Guard and the State has been agreed upon and

provided that public participation requirements are met. The fact that the State has agreed to an alternative notification schedule must be documented in writing and must specify the new schedule agreed to by the State and the Coast Guard.

6. A 60 day review period begins when the State agency receives the Consistency Determination and complete supporting information/documentation. If a State agency does not respond to the consistency determination within 60 days, State agency concurrence may be presumed.
7. The State is entitled to one extension of 15 days or less to review the matter, and longer or additional extensions are at the discretion of the Coast Guard action proponent.
8. There may be times when a legal requirement or an emergency or exigent situation requires that the Coast Guard act sooner than the end of the 90 day consistency period, in which case the Coast Guard should consult with the State CMP as early as possible.

D. De minimis Activities.

1. The Coast Guard should review its activities, other than development projects within the coastal zone, to identify *de minimis* activities, and request State agency concurrence that these *de minimis* activities should not be subject to further State agency review.
2. *De minimis* activities are activities that are expected to have insignificant direct or indirect (cumulative and secondary) coastal effects and which the State agency concurs are *de minimis*.
3. If the State agency objects to the Coast Guard's *de minimis* finding, then the Coast Guard shall provide the State agency with either a negative determination or a consistency determination.

E. General Consistency Determinations.

1. In cases where the Coast Guard will be performing repeated activity, other than a development project (*e.g.*, ongoing maintenance), which cumulatively has an effect upon any coastal use or resource, the Coast Guard may develop a general consistency determination, thereby avoiding the necessity of issuing separate consistency determinations for each incremental action controlled by the major activity.
2. Coast Guard must thereafter periodically consult with the State agency to discuss the manner in which such incremental actions are being undertaken.

F. Phased Consistency Determinations.

1. In cases where the Coast Guard has sufficient information to determine the consistency of a proposed development project or activity from planning to completion, the Coast Guard shall provide the State agency with one consistency determination for the entire activity

or development project.

2. In cases where Coast Guard decisions on a proposed development project or activity will be made in phases based upon developing information that is not available at the time of the original consistency determination, a consistency determination will be required for each major phase that is subjected to a decision-maker's discretion (*e.g.*, planning, siting, design decisions).
3. In cases of phased decision-making, the responsible official shall ensure that the development of the project or activity continues to be consistent to the maximum extent practicable with the State CMP.

G. National or Regional Consistency Determinations.

1. The Coast Guard may provide State agencies with a national consistency determination or regional consistency determination for its activities or projects that are national or regional in scope and that affect any coastal use or resource of more than one State.
2. The national or regional consistency determinations should, at a minimum, address the common coastal effects and management issues, and thereby address different States policies with one discussion and determination.

H. Consistency Determinations and NEPA.

1. The Coast Guard may use its NEPA documents as a vehicle for its negative determination or consistency determination, if the NEPA document includes an appropriate discussion of the consistency determination with the applicable State CMP.
2. The NEPA document and the consistency determination shall be accomplished in the early planning stages of the project or activity.
3. Either one or the other (or both), should be submitted to the CZMA State agency to comply with the CZMA.

I. Multiple Federal Agency Participation.

1. The Coast Guard should consider joint preparation or lead agency development of the consistency determination for the Federal activities and/or projects involved:
 - a. When more than one Federal agency is involved in a project or activity;
 - b. Whenever the Coast Guard is involved in an activity or project with another Federal agency or its associated facilities affecting any coastal use or resource;
 - c. Or, when it is involved in a group of Federal agency activities or projects related to each other because of their geographic proximity.

2. The consistency certification shall be transmitted to the State agency at least 90 days before final decisions are taken by any of the participating agencies.

J. Consistency of Federal Activities Having Interstate Coastal Effects.

1. Whenever a Coast Guard project or activity may affect coastal uses or resources of a State other than the State in which the activity will occur, the Coast Guard must ensure that the project or activity is conducted consistent with the enforceable policies of the CMP of each affected State.
2. Simultaneously engaging with NOAA OCRM to address and coordinate regional effects is recommended.

K. Consistency for Activities Requiring a Federal License or Permit.

1. The Coast Guard shall not issue licenses and/or permits to conduct an activity which has any reasonably foreseeable effect on land or water uses or natural resources in or outside the coastal zone (if the activity will result in any spillover impacts to any use or resource in the coastal zone) unless the applicant has certified to the State that the proposed project complies with and will be conducted in a manner consistent with the federally approved State CMP and the State concurs in that certification, or fails to object within six months after receipt from the applicant of a copy of the certification with complete supporting documents/information. This provision does not apply where the State has specifically excluded the activity from the State's federally approved CMP, in which case normal Coast Guard permitting procedures apply. (See 16 U.S.C. §1456(c)(3)) and see Enclosure (4), CZMA Consistency Determination for Non-Federal Applicants Template.)
2. Only "site specific" licenses and permits, *e.g.*, Marine Event Permits (regattas and marine parades), bridge permits, deepwater port development, and private aids-to-navigation permits, are subject to the requirements of this section.
3. Under this category, it is the permit applicant, not the Coast Guard, who makes the certification to the State. (NOTE: The Coast Guard action proponent is responsible for ensuring that the appropriate CZMA documentation is prepared by Federal licensees in order to satisfy the Federal consistency provisions of the CZMA and implementing regulations.)
4. Enclosure (5) lists examples of Coast Guard site specific permits, licenses and citations.

CHAPTER 3. OBJECTIONS, MEDIATION AND APPEALS, AND EXEMPTIONS**A. State Agency Objection to Coast Guard Determination.**

1. If a State agency objects to a Coast Guard negative or consistency determination, the Coast Guard shall attempt to negotiate and resolve the issue with the State agency within the remainder of the 90-day period. The Coast Guard may proceed with an activity over a State's objection if the Coast Guard determines that:
 - a. Federal law prohibits the project or activity from fully complying with the state's enforceable policies, and so the project or activity is consistent to the maximum extent practicable with the enforceable policies of the approved State CMP, or;
 - b. There are emergency or exigent circumstances requiring the Coast Guard to take quick or immediate action, or;
 - c. The Coast Guard has concluded that the project or activity is fully consistent with the enforceable policies of the State CMP, even though the State agency objects.
 - d. Lack of funds should not be used as a basis for determining that full consistency is not possible and for proceeding with an activity over a State's objection, unless a Presidential exemption is obtained.
2. The responsible Coast Guard official should notify the State agency of its decision to proceed with the project or activity that is objected to by the State before the project or activity commences, describing how the activity is consistent to the maximum extent practicable. When notifying the State agency of its plan to proceed with the project, the Coast Guard should, when possible, provide the State agency a reasonable time (indicate the number of days *e.g.*, 5-14 days) to respond before the project or activity commences.

B. Mediation and Appeals.

1. In the event of a serious disagreement between the Coast Guard and State CMP, either party may seek mediation by OCRM or the Secretary of Commerce. The Secretary's mediation is a more formal process and is only available for states and Federal agencies.
2. All parties must agree to participate in mediation, any resulting agreement is non-binding, and either party may withdraw from mediation at any time.
3. Applicants for federal license or permits may appeal a State's objection to the Secretary of Commerce. (15 C.F.R. part 930, subpart H). Appeals to the Secretary are not available for Federal agency actions. If the Secretary overrides a State's objection, the Coast Guard may authorize the activity.

C. Necessary in the Interest of National Security and Presidential Exemptions.

1. If a Coast Guard development project or agency activity, or the issuance of a Coast Guard license or permit, is necessary in the interest of national security, a waiver of the consistency requirements may be obtained from the Secretary of Commerce. (Department of Commerce regulations at 15 CFR 930.122 should be consulted.)
2. A Presidential exemption is a classified activity that affects any coastal use or resource and is listed as exempted from the requirements of full consistency by the President under section 307(c)(1)(B) of the Act. (16 U.S.C. §1456(c)(1)(B)). A classified activity is an action for which the Coast Guard is required to protect from disclosure under national security policy, provided it has been properly classified in accordance with the substantive and procedural requirements of an executive order. Even when an activity is so classified, Coast Guard shall conduct the activity or project consistent to the maximum extent practicable with the enforceable policies of a State's CMP.
3. The Coast Guard may proceed with its project even if it does not meet full consistency due to lack of funding ONLY when it has been granted an exemption by the President in accordance with Section 307(c)(1)(B) of the CZMA (16 U.S.C. §1456(c)(1)(B)).

LIST OF SOME COAST GUARD ACTIONS THAT MAY BE SUBJECT TO FEDERAL CONSISTENCY DETERMINATION

[NOTE: These examples of Coast Guard actions may require consistency determinations if they have reasonably foreseeable direct or indirect effects on any land or water use or natural resource of the coastal zone. Refer to Chapter 2 of this Manual for more information on consistency determinations.]

DIRECT FEDERAL ACTIVITIES. These are direct Coast Guard activities and development projects performed by or on behalf of the Coast Guard in exercise of its statutory responsibilities

Examples:

Location, acquisition, design, construction, operation or enlargement of Coast Guard Stations, bases and lighthouses

Location, placement or removal of air or sea navigation devices

Expansion, abandonment, designation of anchorages, lightering areas, shipping lanes or pilot areas.

Designation and management of Regulated Navigation Areas and Limited Access Areas

Designation of Security and Safety Zones under the Port and Waterways Safety Act

Location and design of aviation communication and air navigation facilities within the coastal zone

Area Contingency Plans developed under the Oil Pollution Control Act of 1990 (Note that State and Federal agencies may agree to exclude environmentally beneficial Federal agency activities (either on a case-by case basis or for a category of activities from further State agency consistency review. See 15 CFR § 930.33[a][4]).

Transport and transfer of hazardous substances and materials

Ice breaking

Oil and hazardous material pollution response planning and response activities other than Area Contingency Plans

Changes in regulations affecting port and waterway safety, designation of anchorage grounds

Any activity related to oil spill or other clean-up operations which involves permanent alteration of a critical area

Enclosure (1) to COMDTINST M16004.2A

Coast Guard projects or activities that will take place on non-Federal property

Actions of private contractors acting at the Coast Guard's behest

LICENSES, PERMITS, APPROVALS, CERTIFICATIONS: This is when the Coast Guard issues any authorization, certification, approval, or other form of permission for an activity which may affect the coastal zone. Note that many renewals and major amendments to existing licenses may require a consistency determination. (*e.g.*, bridge permits, private aids-to-navigation, etc.)

Examples:

Permits for construction and modification of bridges, causeways, and pipelines over navigable waters (Note that, in 15 CFR § 930.53[a], NOAA specifically mentions Coast Guard bridge permits as an example of a type of license or permit which may trigger a consistency determination.)

Permits and licenses for siting, construction, and operation of deepwater ports

Marine event permits

Permits for private aids-to-navigation

Permits and authorization for handling of dangerous cargo by vessels in U.S. ports

FINANCIAL ASSISTANCE to STATE and LOCAL GOVERNMENTS: This includes any financial aid given by the Coast Guard to any State or local government unit through grant or contract, loans, subsidies, guarantees, insurance, etc. which might affect the coastal zone. (*e.g.*, State recreational boating safety programs, and possibly Oil Pollution Act of 1990 (OPA 90) Trust Fund.

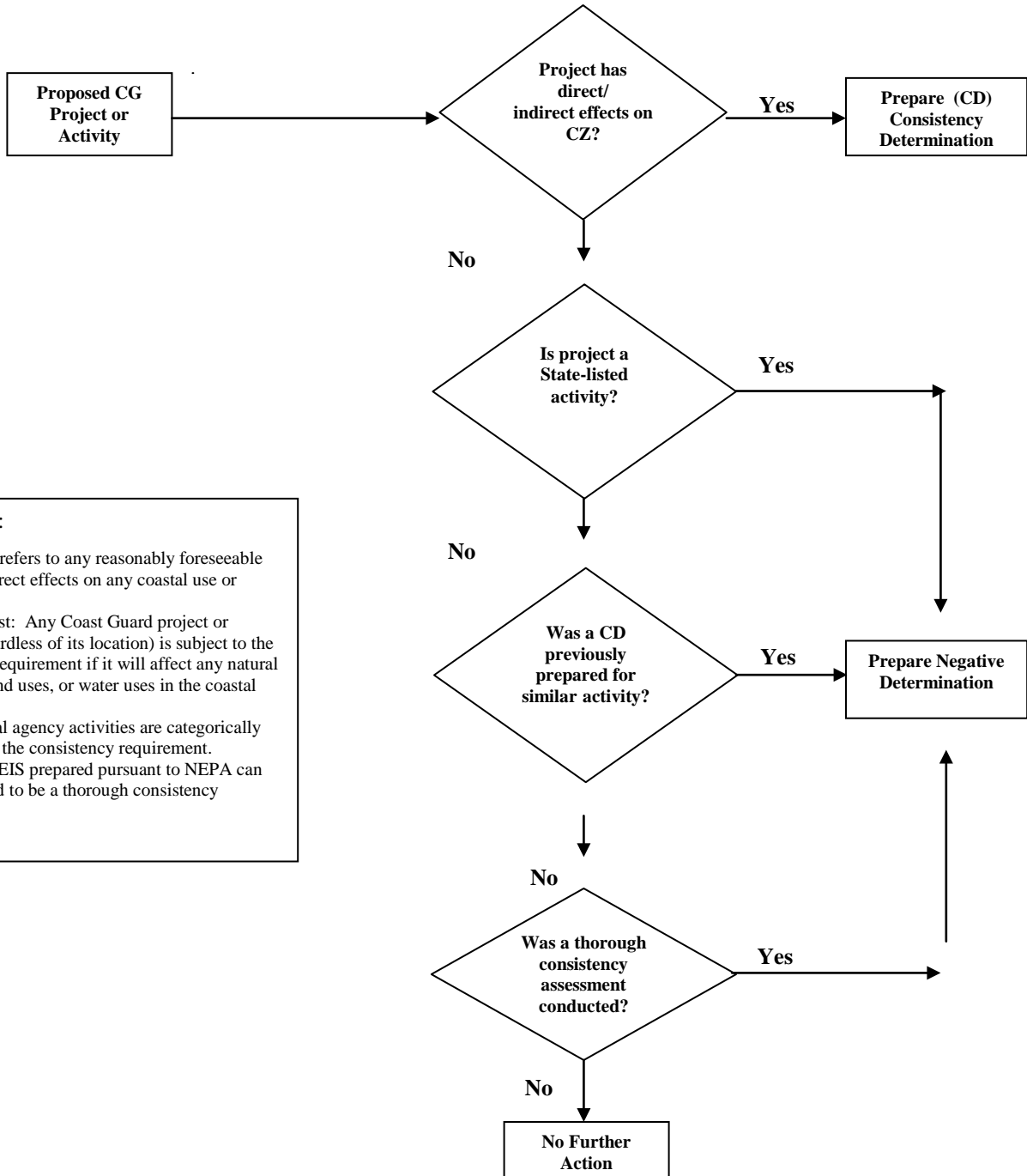
Examples:

Funding of State boating safety programs

Boating Safety Financial Assistance

OUTER CONTINENTAL SHELF (OCS) EXPLORATION, DEVELOPMENT and PRODUCTION ACTIVITIES: These are any kind of permit or license activities which are "described in detail" in OCS plans. Generally, this involves oil and mineral leasing. The Coast Guard is only tangentially involved.

**CZMA FEDERAL CONSISTENCY COMPLIANCE
SUMMARY FLOWCHART**



Notes:

1. An effect refers to any reasonably foreseeable direct or indirect effects on any coastal use or resources.
2. Effects test: Any Coast Guard project or activity (regardless of its location) is subject to the consistency requirement if it will affect any natural resources, land uses, or water uses in the coastal zone.
3. No Federal agency activities are categorically exempt from the consistency requirement.
4. An EA or EIS prepared pursuant to NEPA can be considered to be a thorough consistency assessment.

**USCG CZMA FEDERAL ACTIVITIES
CONSISTENCY DETERMINATION TEMPLATE**

This document provides the [Name of the State] Coastal Management Program with the Coast Guard's Consistency Determination under CZMA Section 307(c)(1)[or (2)] and 15 CFR Part 930, subpart C for the [name the CG project/activity]. The information in this Consistency Determination is provided pursuant to 15 CFR Part 930 Section 930.39. This project/activity includes:

[Describe the Coast Guard project/activity or reference relevant pages of NEPA document.]

The Coast Guard has determined that the [project/activity] affects the coastal zone of [Name of the State] in the following manner:

[Provide analysis of effects on coastal zone or reference relevant pages of NEPA document.]

The [Name of the State's] Coastal Management Program contains the following applicable enforceable policies:

[List and/or briefly describe the State's applicable enforceable policies.]

Based upon the following information, data and analysis the Coast Guard finds that the [project/activity] is consistent to the maximum extent practicable with the enforceable policies of the [Name of the State] Coastal Management Program. [Provide information, data and analysis supporting the determination of consistency with the applicable enforceable policies.]

Pursuant to 15 CFR Section 930.41, the [Name of the State] Coastal Management Program has 60 days from the receipt of this letter in which to concur with or object to this Consistency Determination, or to request an extension under 15 CFR Section 930.41(b). The State's concurrence will be presumed if the State's response is not received by the Coast Guard on the 60th day from receipt of this Determination. The State's response should be sent to:

[Provide Coast Guard contact information.]

**CZMA CONSISTENCY DETERMINATION FOR
COAST GUARD PERMITS AND LICENSES TO NON-FEDERAL APPLICANTS
TEMPLATE**

This document provides the [Name of the State] Coastal Management Program with the [Name of Applicant's] Consistency Determination and necessary data and information under CZMA Section 307(c)(3)(A) and 15 CFR Part 930, subpart D, for the [Name of Activity].

Certification:

[Name of Applicant] certifies that the proposed activity complies with the enforceable policies of [Name of State's] approved management program and will be conducted in a manner consistent with such program.

Necessary Data and Information:

1. [Describe the Federal license or permit activity or reference relevant pages of the Federal application, any associated facilities, and coastal effects. Provide materials which will facilitate evaluation of coastal effects].
2. [Provide additional information required by the State pursuant to 15 CFR 930.58(a)(2)].
3. [Provide an evaluation that includes a set of findings relating the probable coastal effects of the proposed project and its associated facilities to the relevant enforceable policies of the State's Coastal Management Program].

[Contact State agency to help determine relevant enforceable policies].

By this certification that the [project] is consistent with [Name of State's] Coastal Management Program, [Name of State] is notified that it has six months from the receipt of this letter and accompanying information in which to concur with or object to [Applicant's Name] certification. Pursuant to 15 CFR 930.63(b), if [Name of State] has not issued a decision within three months following commencement of State agency review, it shall notify [Name of Applicant] and the Federal agency of the status of the matter and the basis for further delay. The State's concurrence, objection, or notification of review status shall be sent to: [Provide Applicant and Federal agency's contact information].

EXAMPLES OF USCG SITE SPECIFIC PERMITS, LICENSES, AND CITATIONS

These examples may have been cited in State CMPs, thereby requiring applicants to obtain consistency certifications to be provided to the Coast Guard:

1. Bridge and Causeway Permits 33 U.S.C. §§401, 491, 514 and 525
2. Permits to site, construct and operate Deepwater Ports 33 U.S.C. §§1501, *et seq.*
3. Private Aids-to-Navigation 14 U.S.C. §83
4. Marine Event Permits 33 U.S.C. §1233

Additional Coast Guard license, lease or permit actions not currently listed in State CZMPs would also require an applicant to obtain a consistency certification if the involved State receives approval from the Director of OCRM to review such unlisted licensing activities that will have reasonably foreseeable effects on any coastal use or resource.