



FACTSHEET OCSLA & CZMA FEDERAL CONSISTENCY REVIEW

Federal Consistency Review

Please refer to ELI's OCSLA Prospecting and Leasing Flowcharts and OCSLA 101 Factsheet in conjunction with this factsheet.

Overview

Section 307 of the Coastal Zone Management Act (CZMA) provides states and territories with NOAA-approved coastal management programs¹ a formal role in reviewing certain federal, federally authorized, and federally funded activities that may affect the uses and/or resources inside their designated “coastal zones,” which typically include a buffer strip of coastal land as well as the state’s or territory’s entire territorial sea.² This intergovernmental review process is referred to as “**federal consistency review**.”

The purpose of federal consistency is to ensure that when activities performed or authorized by federal agencies occur within and/or affect a state’s or territory’s coastal zone, the actions are conducted in a manner consistent with the “enforceable policies” (EPs) of the approved coastal management program.³ To be considered an EP, a policy must be based on a statute, regulation, or other legally binding action (e.g., executive order) through which the state or territory “exerts control over private and public land and water uses and natural resources in the coastal zone.”⁴ In general, if a state or territory identifies one or more specific EPs with which a federally authorized activity would not be consistent, a federal permit/license may not be issued for the activity as proposed.⁵ For activities to be conducted by a federal agency directly (e.g., issuance of an offshore lease), the bar is slightly lower: a federal action can proceed if it is found to be consistent with the enforceable policies “to the maximum extent practicable.”

The federal consistency review process is governed primarily by nationwide implementing regulations promulgated by NOAA, though some states and territories have adopted their own more detailed procedural requirements. NOAA’s Office of Coastal Management is the federal entity responsible for approving states’ and territories’ coastal management programs (and program changes), and it is sometimes involved in facilitating negotiations or resolving issues among states/territories, federal agencies, and/or project applicants.

States are not allowed to directly regulate mineral-related activities on the Outer Continental Shelf (OCS), since these activities occur within federal jurisdiction and are regulated at the federal level. Nevertheless, states are entitled to participate in federal decisions about OCS activities through the consistency review process, and a handful of states’ EPs address how the state will review offshore activities that occur outside of, but which may affect, state coastal waters.

Who performs a federal consistency review?

Each state's or territory's coastal management program has a designated state agency that is responsible for overseeing federal consistency reviews, though other state agencies are often involved or consulted. Importantly, the CZMA requires all coastal management programs to provide for some degree of public participation in "permitting processes, consistency determinations, and other similar decisions."⁶ Public participation opportunities and procedures vary across the states and territories, but generally involve public notice and an opportunity to comment. Stakeholders wishing to participate in the federal consistency process should visit their state's specific program website to find more information about when and how to engage.

Why are activities on the OCS subject to federal consistency review?

The submerged lands of the OCS are federal lands, meaning the federal government is in charge of decisions about whether, where, and how OCS resources are extracted. However, federal consistency review under the CZMA can serve as an important tool for coastal states and territories to have some influence over the direct and indirect impacts that OCS activities may have on their coastal uses and resources.⁷ For example, construction on the OCS can cause water and air pollution that reaches the coastal zone, and impacts to fish stocks can affect a state's or territory's commercial fishing industry. In addition to primary activities on the OCS, ancillary activities like ship traffic and port development—which often take place directly within the coastal zone—are typically included in the review and must be conducted consistent with enforceable policies.

For activities on the OCS, the specific process to implement federal consistency review depends on the type of federal action. The two types of federal actions most relevant in the context of OCS minerals are: 1) issuance of federal licenses or permits⁸ (e.g., OCSLA prospecting and scientific research permits, approval of OCS development plans); and 2) federal agency activities (e.g., offering OCS land in a lease sale).⁹

How does federal consistency apply to OCSLA prospecting and scientific research permits?

Because prospecting and scientific research permits issued under OCSLA by the Bureau of Ocean Energy Management (BOEM) qualify as “federal license or permits” under the CZMA, federal consistency review of these activities is governed by a set of procedural rules set out in Subpart D of the federal implementing regulations. **An important threshold question is whether the permit in question appears on the coastal management program’s official “list.”** All approved coastal management programs develop and publish a list of the specific types of federal license or permit activities that the state or territory wishes to routinely review for consistency with its enforceable policies.¹⁰

Once a permit type is on the list (amendments to which are approved by NOAA), every applicant whose project may have effects in that state’s or territory’s coastal zone is responsible for preparing and submitting a **consistency certification** (CC)—which must include the information and documentation necessary to support a finding of consistency—before obtaining the permit. As of April 2026, some but not all coastal management programs have included OCSLA prospecting and/or scientific research permits on their lists. In the states and territories where these permit types are not listed, federal consistency review does not occur automatically, but may still be possible if the state or territorial coastal agency makes a timely request to perform an unlisted activity review.¹¹

Upon the state’s or territory’s receipt of a complete consistency certification and all necessary supporting documents from the permit applicant, a **six-month review period** begins.¹² During this period, the state or territorial coastal management agency **must provide public notice and an opportunity for public comment.**¹³ By the end of the review period, the state or territory must issue a concurrence, conditional concurrence, or objection to the consistency certification. (If the state or territory does not act within the review period, concurrence is presumed.¹⁴) If the state or territory concurs, BOEM is allowed to issue the permit (assuming all other requirements are met). If the state or territory objects, BOEM may not issue the permit unless the applicant successfully appeals to the Secretary of Commerce, who has authority to override an objection upon finding that the activity is consistent with CZMA objectives or necessary for national security.¹⁵

Public comment opportunities under the CZMA for prospecting and scientific research permits are contingent upon those permit types being included on the state’s or territory’s official list or the timely initiation of an unlisted activity review by the relevant coastal management agency.

How does federal consistency apply to lease sales for OCS minerals?

A lease sale for OCS minerals qualifies as a “federal agency activity” under the CZMA, meaning the process is governed by Subpart C of NOAA’s implementing regulations.¹⁶ Pursuant to these rules, BOEM must start by using an “effects test” to determine whether the lease sale will directly or indirectly affect any coastal use or resource of states and territories with approved coastal management programs.¹⁷ If BOEM determines that there are no reasonably foreseeable effects, it will issue a **negative determination**.¹⁸ If BOEM determines that there are reasonably foreseeable coastal effects, it must prepare and submit a **consistency determination** to the states or territories affected. Notably, the CZMA regulations direct BOEM to “broadly construe” the effects test in favor of providing a consistency determination rather than a negative determination.¹⁹

It is widely recognized that seafloor-disturbing activities on the OCS can impact a state’s coastal zone through water pollution, air pollution, noise pollution, or a variety of other mechanisms, and BOEM ordinarily would be expected to prepare a consistency determination for a lease agreement authorizing significant physical alterations of OCS submerged lands.²⁰

However, according to NOAA guidance, “[t]he burden for determining or demonstrating effects is greater the farther removed an activity takes place outside of a state’s coastal zone,” and “[m]erely showing impacts from an activity outside of the coastal zone should not be sufficient by itself to demonstrate that reasonably foreseeable effects extend to uses or resources of the coastal zone.”²¹

In cases where coastal effects are reasonably foreseeable, it is BOEM’s responsibility to initiate consistency review and prepare a **consistency determination** (CD). A CD is a brief statement, based on an evaluation of the relevant enforceable policies, indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the coastal management program.²² When required, CDs must be provided to state and territorial coastal programs “at the earliest practicable time in the planning” of a lease sale for OCS minerals—meaning after BOEM has developed sufficient information to reasonably determine consistency, but before BOEM reaches a significant decision point (i.e., while BOEM still has the ability to modify the lease).

In practice, the CD can be provided either before or after BOEM issues formal notice of a proposed lease. Per the CZMA regulations, BOEM must provide the CD no later than 90 days before final approval of the lease sale, unless BOEM and the state or territorial agency agree to an alternative notification schedule.²⁴

After BOEM provides the CD (whether initially or in response to an objection), a 60-day review period begins. The state or territorial coastal agency must provide **public notice of the CD and provide a comment opportunity** on a timeline that is sufficient to allow the public to “develop and provide comments on whether the project is consistent with the program’s enforceable policies and still allow the state [or territorial] agency to issue its concurrence or objection” before the end of the review period.²⁵

If the state or territory ultimately decides to object to a CD, it must do so within 60 days (but can request a one-time extension of up to 15 days.)²⁶ In response to an objection, BOEM can **either work with the state or territory to resolve the basis for the objection** (and proceed to mediation for serious disputes) or **proceed with the lease sale over the objection**. Proceeding over a state’s objection is only legal if it has been at least 90 days since the CD was provided and: (1) BOEM determines and clearly describes why it cannot meet the “consistent to the maximum extent practicable” standard; or (2) BOEM has concluded that the lease sale is fully consistent with the applicable EPs despite the state or territory’s objection.²⁷

What happens if BOEM issues a negative determination?

A negative determination must briefly describe the lease sale, its location, and the basis for BOEM’s conclusion on the effects test, including an evaluation of relevant enforceable policies.²⁸ BOEM must provide any negative determination to the appropriate state or territorial agency at least **90 days before the final lease sale** (unless BOEM and the state or territorial agency agree to an alternative schedule).²⁹ The level of detail in a negative determination must be enough to allow the state or territorial agency to evaluate whether coastal effects are reasonably foreseeable.³⁰ If a state or territory decides to object to a negative determination, BOEM must “consider submitting a consistency determination to the [s]tate [or territorial] agency or otherwise attempt to resolve any disagreement” before the end of the 90 days.³¹ If serious disputes continue, either party may seek mediation.³²

There is no guaranteed role for the public in cases where a negative determination is used to document a federal agency’s compliance with the CZMA. States and territories are **not obligated to respond to a negative determination, nor are they required to provide public notice of the receipt of a negative determination** (or the resolution of an objection to a negative determination.)³³

FOOTNOTES

¹ Of the 35 states and territories with marine coastlines, 34 have NOAA-approved coastal management programs in place as of April 2026. Alaska is the only exception.

² 16 U.S.C. § 1456(c). In most cases, state or territorial jurisdiction extends three nautical miles from the shoreline.

³ *Id.*

⁴ 16 U.S.C. § 1453(6a) (enforceable policies can be found in “constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions”). Enforceable policies take effect when they are approved as enforceable by NOAA upon initial program approval or through a subsequent program amendment.

⁵ The state has the option of issuing a “conditional concurrence”: a letter that sets out the conditions which must be satisfied for the activity to be consistent, explaining why these conditions are necessary to ensure consistency with specified enforceable policies of the coastal management program. The proposed project or plan must be modified pursuant to those conditions in order to proceed. 15 C.F.R. § 930.62.

⁶ 16 U.S.C. § 1455(d)(14).

⁷ Federal consistency review covers activities that may affect state and territorial coastal zones directly (i.e., effects occurring at the same time and place as the activity) or indirectly (i.e., secondary or cumulative effects that occur later in time or are farther removed in distance but are still reasonably foreseeable).

⁸ Federal licenses or permits include “any authorization that an applicant is required by law to obtain in order to conduct activities affecting any land or water use or natural resources of the coastal zone and that any federal agency is empowered to issue to an applicant.” 15 C.F.R. § 930.51(a).

⁹ Federal agency activities refer to “any functions performed by or on behalf of a federal agency in exercise of its statutory responsibilities.” 15 C.F.R. § 930.31(a).

¹⁰ 15 C.F.R. § 930.53(a).

¹¹ 15 C.F.R. §§ 930.53(a), 930.54.

¹² 15 C.F.R. § 930.60(a).

¹³ 15 C.F.R. § 930.61.

¹⁴ 15 C.F.R. § 930.62(a).

¹⁵ 15 C.F.R. §§ 930.57–930.64.

¹⁶ 15 C.F.R. § 930.51(a) (providing that lease sales conducted by a federal agency are federal agency activities under subpart C); 15 C.F.R. pt. 920, Subpart C.

¹⁷ 15 C.F.R. § 930.33.

¹⁸ 15 C.F.R. § 930.35.

¹⁹ 15 C.F.R. § 930.33(d).

²⁰ See generally BOEMRE, Alternative Energy Programmatic EIS at 5-115 (2007), available at:

https://www.boem.gov/sites/default/files/renewable-energy-program/Regulatory-Information/Alt_Energy_FPEIS_Chapter5.pdf.

²¹ Office of Coastal Management, NOAA, Federal Consistency Overview at 5 (2020), available at:

<https://coast.noaa.gov/data/czm/consistency/media/federal-consistency-overview.pdf>.

²² 15 C.F.R. § 930.39(a).

FOOTNOTES

²³ 15 C.F.R. §§ 930.36(b)(1), 930.39(a).

²⁴ 15 C.F.R. § 930.36(b)(1).

²⁵ 15 C.F.R. § 930.42(b).

²⁶ 15 C.F.R. § 930.35(c).

²⁷ 15 C.F.R. §§ 930.43–930.44.

²⁸ 15 C.F.R. § 930.35(b).

²⁹ 15 C.F.R. § 930.35(c).

³⁰ 15 C.F.R. § 930.35(b).

³¹ 15 C.F.R. § 930.35(c).

³² 15 C.F.R. § 930.35(e).

³³ 15 C.F.R. § 930.35(c).