



**Office of Planning
and Development**

Coastal Consistency Review

An Office of New York Department of State

December 5, 2022

Federal Consistency Review

The Coastal Zone Management Act of 1972 (credit to Kerry Kehoe, NOAA)



What is “Federal Consistency?”

Federal actions, in or outside the coastal zone, that **affect** any **land or water use or natural resource of a state’s coastal zone** must be consistent with the **enforceable policies** of the state Coastal Management programs

See CZMA § 307 (16 U.S.C. § 1456)

The core idea

- Certain federal actions **cannot be undertaken** without being found consistent with the State's enforceable coastal policies.
 - Direct (ACOE dredging)
 - Authoritative (permit issuance)
 - Funding to a state or local gov't (HUD funding)
 - Outer Continental Shelf plans (oil & gas, renewables)
- The State uses this authority as ONE means of implementing its plans

A powerful tool for States

- Applies State policies to federal actions
 - Based on effects, not location
 - No categorical limitations
- Encourages State-federal coordination and cooperation
 - Brings agencies to the table
 - Avoids costly “last minute” changes
- Can build state and public support for federal actions



New York Coastal Management Program

- Adopted in 1982
- Incorporates multiple state laws into one set of policy statements (44 policies)
- Required the passage of Article 42 of the NYS executive law and the Coastal Erosion Hazard Area act
- Incorporates special management areas

The Coastal Area

- All tidal waters (Hudson R. to Troy)
- Lakes Ontario and Erie
- St. Lawrence and Niagara Rivers
- Certain tributaries to these waters
- Roughly 1,000 feet inland from these waters



Federal Consistency Reviews

- Federal Agency Actions (direct action, ACOE dredging)
- **Federal Permitting Actions** (ACOE permit)
- Federal Financial Assistance to State & Local Gov'ts (HUD funding, EPA grant)
- Outer Continental Shelf Plans (oil & gas, renewables)

Federal Permitting Actions

- An **APPLICANT** for a federal permit on this list must **CERTIFY** that they will conduct their activity in a manner fully consistent with all 44 coastal policies or policies within an applicable Local Waterfront Revitalization Program (LWRP).
- No balancing
- DOS decides application within 6 months of receipt of complete application
- Concurrence is “conclusively presumed” if longer than 6 months
 - Can “stay” the time clock by mutual consent
- If objection, federal agency may not authorize the activity (applicant may appeal State objection to U.S. Secretary of Commerce)

• A complete DOS application contains

- Completed Federal Consistency Assessment Form (FCAF)
- Copy of Federal Application (i.e., Joint Application for Permit)
- Detailed description
- Statement of purpose and need
- Analysis of alternatives
- Location map
- Site map / diagrams
- Color photos
- Identify all abutting owners
- Final Environmental Impact Statement (if required)
- Copies of any NYS application for permits (DEC, OGS, SHPO, etc.)

Federal Consistency Assessment Form

An applicant, seeking a permit, license, waiver, certification or similar type of approval from a federal agency which is subject to the New York State Coastal Management Program (CMP), shall complete this assessment form for any proposed activity that will occur within and/or directly affect the State's Coastal Area. This form is intended to assist an applicant in certifying that the proposed activity is consistent with New York State's CMP as required by U.S. Department of Commerce regulations (15 CFR 930.57). It should be completed at the time when the federal application is prepared. The Department of State will use the completed form and accompanying information in its review of the applicant's certification of consistency.

A. APPLICANT (please print)

1. Name: _____
 2. Address: _____
 3. Telephone: Area Code () _____

B. PROPOSED ACTIVITY:

1. Brief description of activity:

2. Purpose of activity:

3. Location of activity:

County	City, Town, or Village	Street or Site Description
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4. Type of federal permit/license required: _____

5. Federal application number, if known: _____

6. If a state permit/license was issued or is required for the proposed activity, identify the state agency and provide the application or permit number, if known: _____

C. COASTAL ASSESSMENT Check either "YES" or "NO" for each of these questions. The numbers following each question refer to the policies described in the CMP document (see footnote on page 2) which may be affected by the proposed activity.

1. Will the proposed activity result in any of the following: YES/NO

- a. Large physical change to a site within the coastal area which will require the preparation of an environmental impact statement? (11, 22, 25, 32, 37, 38, 41, 43) ☐
- b. Physical alteration of more than two acres of land along the shoreline, land under water or coastal waters? (2, 11, 12, 20, 38, 35, 44) ☐
- c. Reclamation/development of a deteriorated or underutilized waterfront site? (1) ☐
- d. Reduction of existing or potential public access to or along coastal waters? (19, 20) ☐
- e. Adverse effect upon the commercial or recreational use of coastal fish resources? (9, 10) ☐
- f. Siting of a facility essential to the exploration, development and production of energy resources in coastal waters or on the Outer Continental Shelf? (29) ☐
- g. Siting of a facility essential to the generation or transmission of energy? (27) ☐
- h. Mining, excavation, or dredging activities, or the placement of dredged or fill material in coastal waters? (15, 35) ☐
- i. Discharge of toxics, hazardous substances or other pollutants into coastal waters? (8, 15, 35) ☐
- j. Draining of stormwater runoff or sewer overflows into coastal waters? (33) ☐
- k. Transport, storage, treatment, or disposal of solid wastes or hazardous materials? (36, 39) ☐
- l. Adverse effect upon land or water uses within the State's small harbors? (4) ☐

2. Will the proposed activity affect or be located in, on, or adjacent to any of the following: YES/NO

- a. State designated freshwater or tidal wetland? (44) ☐
- b. Federally designated flood and/or state designated erosion hazard area? (11, 12, 17) ☐
- c. State designated significant fish and/or wildlife habitat? (7) ☐
- d. State designated significant scenic resource or area? (24) ☐
- e. State designated important agricultural lands? (26) ☐
- f. Beach, dune or Barrier Island? (12) ☐
- g. Major ports of Albany, Buffalo, Oswego or New York? (3) ☐
- h. State, county, or local park? (19, 20) ☐
- i. Historic resource listed on the National or State Register of Historic Places? (23) ☐

3. Will the proposed activity require any of the following: YES/NO

- a. Waterfront site? (2, 21, 22) ☐
- b. Provision of new public services or infrastructure in undeveloped or sparsely populated sections of the coastal area? (5) ☐
- c. Construction or reconstruction of a flood or erosion control structure? (13, 14, 16) ☐
- d. State water quality permit or certification? (30, 38, 40) ☐
- e. State air quality permit or certification? (41, 43) ☐

4. Will the proposed activity occur within and/or affect an area covered by a State-approved local waterfront revitalization program, or State-approved regional coastal management program? (see policies in program document*) ☐D. ADDITIONAL STEPS

1. If all of the questions in Section C are answered "NO", then the applicant or agency shall complete Section E and submit the documentation required by Section F.

2. If any of the questions in Section C are answered "YES", then the applicant or agent is advised to consult the CMP, or where appropriate, the local waterfront revitalization program document*. The proposed activity must be analyzed in more detail with respect to the applicable state or local coastal policies. On a separate page(s), the applicant or agent shall: (a) identify, by their policy numbers, which coastal policies are affected by the activity; (b) briefly assess the effects of the activity upon the policy; and, (c) state how the activity is consistent with each policy. Following the completion of this written assessment, the applicant or agency shall complete Section E and submit the documentation required by Section F.

E. CERTIFICATION

The applicant or agent must certify that the proposed activity is consistent with the State's CMP or the approved local waterfront revitalization program, as appropriate. If this certification cannot be made, the proposed activity shall not be undertaken. If this certification can be made, complete this Section.

"The proposed activity complies with New York State's approved Coastal Management Program, or with the applicable approved local waterfront revitalization program, and will be conducted in a manner consistent with such program."

Applicant/Agent's Name: _____

Address: _____

Telephone: Area Code () _____

Applicant/Agent's Signature: _____ Date: _____

F. SUBMISSION REQUIREMENTS

1. The applicant or agent shall submit the following documents to the New York State Department of State, Office of Planning and Development, Attn: Consistency Review Unit, One Commerce Plaza-Suite 1010, 99 Washington Avenue, Albany, New York 12231.

- a. Copy of original signed form.
- b. Copy of the completed federal agency application.
- c. Other available information which would support the certification of consistency.

2. The applicant or agent shall also submit a copy of this completed form along with his/her application to the federal agency.

3. If there are any questions regarding the submission of this form, contact the Department of State at (518) 474-6000.

*These state and local documents are available for inspection at the offices of many federal agencies, Department of environmental Conservation and Department of State regional offices, and the appropriate regional and county planning agencies. Local program documents are also available for inspection at the offices of the appropriate local government.

Basic DOS Application Review Sequence

- Application submission
- Completeness determination
 - Within 30 days and limited to Necessary Data and Information (NDI)
- Request for information (if necessary)
- General Concurrence (GC) review
- Public notice (up to 45 days) if not GC eligible
- Comment review and response (if any)
- Consistency decision

Federal Permitting Actions – DOS Decision

- General Concurrence
 - Abbreviated review
 - No public notice required
- Nationwide Permits & Regional Permits
 - Established conditions on certain permits
 - Some require DOS review, some do not.
 - <https://www.lrb.usace.army.mil/Missions/Regulatory/New-York-Permit-Information/>
 - Great Lakes Erosion Control general permit
 - https://www.dec.ny.gov/docs/permits_ej_operations_pdf/gp020004glerosion.pdf

Federal Permitting Actions – DOS Decision

- Concurrence
 - Public Notice required
 - If conditional, applicant's refusal of conditions turn it to objection
- Objections
 - Public Notice required
 - Encouraged to identify alternatives that are consistent

Federal Permitting Actions – Appeals

- Federal Agency **CANNOT** issue permit or funds over State's objection unless the decision is overridden by US Sec. of Commerce
 - Consistent with the objectives or purposes of Coastal Zone Management Act (CZMA)
 - Significantly and substantially furthers national interest
 - Interests outweigh adverse coastal effects
 - No reasonable alternatives
 - Necessary in the interest of national security

Coastal Policies

The Coastal Policies

Development

Flooding and Erosion

Public Access

Historic & Scenic

Energy & Ice Management

Wetlands

Fish and Wildlife

General (major projects)

Recreation

Agricultural

Water & Air Resources

*LWRP policies are locally-refined & enforceable versions of the
44 State coastal policies*

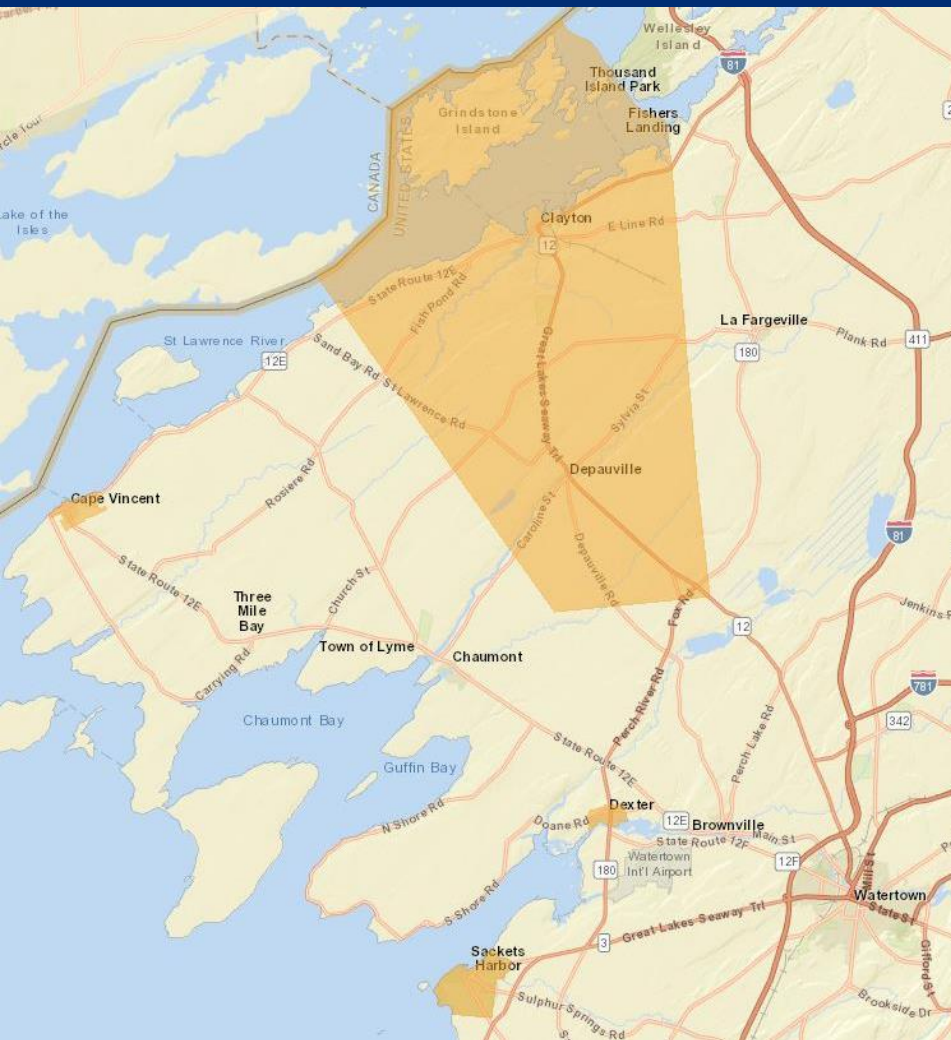
The Coastal Policies

- All coastal policies are enforceable by NYS Law
- Not a parts per million decision
- Guidance language advises, but does not control
- A project must be consistent with all policies (or N/A)
- Objections must be based on policy

Special Management Areas

Local Waterfront Revitalization Programs

- Municipality (1 or more) based local refinement of coastal policies
 - Can be completed in the coastal area or on a designated inland waterway.
 - Only those within the coastal area can be federally approved
 - Only those that are federally approved are binding on federal actions
- Requires communities to develop local consistency laws for their own actions



- Town/Village of Clayton
- Village of Cape Vincent
- Village of Dexter
- Village of Sackets Harbor

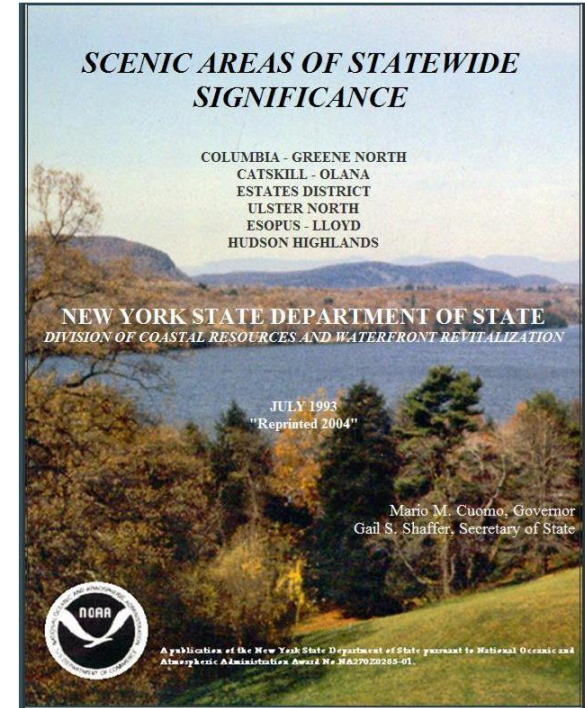
Significant Coastal Fish and Wildlife Habitats

- Areas designated by DOS upon recommendation by DEC that have special characteristics
- Incorporates comments from federal agencies
- A specific coastal policy applies if action is within or affecting the habitat
- The whole habitat is considered, not individual species.
- Species considered during designation
- Policy 7 affords the same protection to all Significant Coastal Fish and Wildlife (200+)



Scenic Areas of Statewide Significance

- Areas designated by DOS as have scenic importance
- Only areas are in the Hudson Valley and East Hampton
- If a project is conducted within a SASS then policy 24 applies



[http://opdgig.dos.
ny.gov](http://opdgig.dos.ny.gov)



GEOGRAPHIC INFORMATION GATEWAY



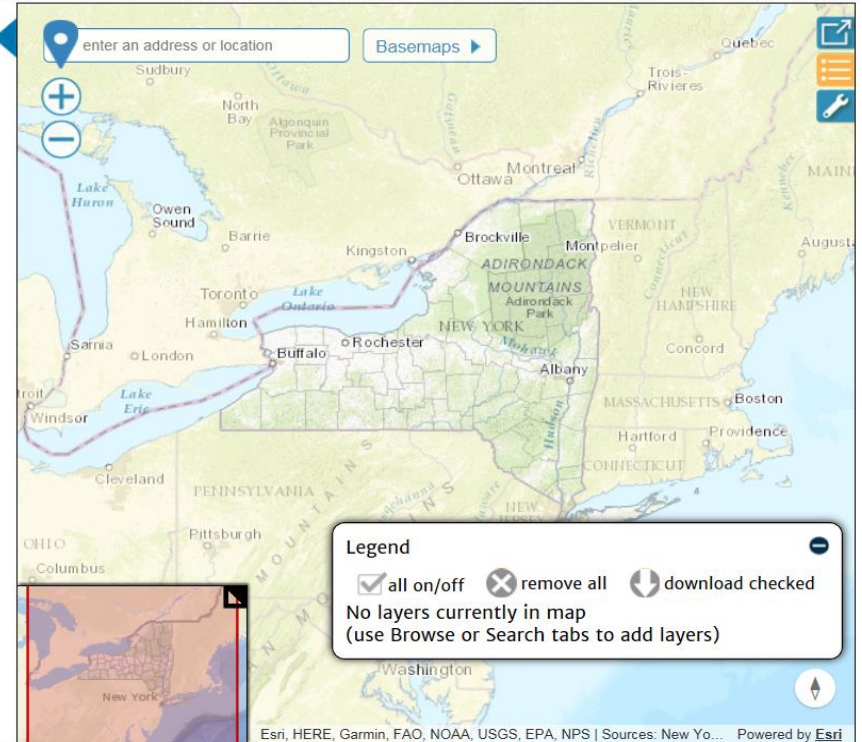
Special Achievement in GIS
2016 Award Winner

find & add
DATA

search

browse

- ▶ Biological
- ▶ Boundaries
- ▶ Commercial Fishing
- ▶ Cultural & Demographic
- ▶ Energy, Utilities & Disposal
- ▶ Physical Environment
- ▶ Recreation
- ▶ Transportation



data standards

privacy

technical

NYS DOS Office of Planning & Development



Useful links

- FCAF - https://dos.ny.gov/system/files/documents/2020/09/fcaf_fillable.pdf
- NYS Coastal Management Program and EIS – https://dos.ny.gov/system/files/documents/2021/04/ny_cmp_dec2020_w-bookmarks_working_topost.pdf
- NYS Coastal Management Program Policies (for federal consistency) – <https://dos.ny.gov/system/files/documents/2020/02/coastalpolicies.pdf>
- LIS CMP – <https://dos.ny.gov/long-island-sound-coastal-management-program-0>
- Approved LWRPs (for state and federal consistency as applicable)- http://www.dos.ny.gov/opd/programs/WFRevitalization/LWRP_status.html
- Coastal Map (coastal boundary, SCFWHs, LWRP, SASS, etc)- <https://dos.ny.gov/using-coastal-atlas-gis-gateway>
- LWRPs - <https://dos.ny.gov/local-waterfront-revitalization-program>
- SCFWHs – <https://dos.ny.gov/significant-coastal-fish-wildlife-habitats>
- SASS – <https://dos.ny.gov/scenic-areas-statewide-significance-sass>
- Consistency Website – <https://dos.ny.gov/coastal-consistency-review>
- Consistency Mailbox – cr@dos.ny.gov

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