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.)
An Office of New York Department of State

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 CSM program (see footnote on page 2), which may be affected by the proposed activity.

1. YES/NO
   a. Large physical change to a site within the coastal area which will require the preparation of an environmental impact statement? (11, 12, 15, 20, 37, 38, 41, 43)
   b. Physical alteration of more than two acres of land along the shoreline, land under water or coastal water? (1, 2, 11, 12, 20, 37, 38, 41, 43)
   c. Revitalization, harbor participation or reclamation of a deteriorated or submerged waterfront site? (13)
   d. Revision of existing or potential public access to or along coastal waterways? (19, 20)
   e. Address effect on the commercial or recreational use of coastal fish resources? (12, 30)
   f. Sitting of a facility essential to the exploration, development, production or recovery of energy resources in coastal waters or in the Outer Continental Shelf? (28)
   g. Sitting of a facility essential to the protection in transmission of energy? (27)
   h. Marine, coastal or ocean activities, or the placement of dredged or fill material in coastal waters? (15, 20)
   i. Discharge of toxins, hazardous substances or other pollutants into coastal waterways? (8, 13, 37)
   j. Drawing of mineral resources or seawater from coastal waterways? (25)
   k. Transport, storage, treatment, or disposal of solid waste or hazardous materials? (9, 99)
   l. Advance effect upon land or water use within the State's coastal barrier? (6)

2. YES/NO
   a. State-designated beach or tidal wetland? (44)
   b. Publicly-designated flood or state-designated 100 year flood? (11, 12, 17)
   c. State-designated significant fish and/or wildlife habitat? (7)
   d. State-designated coastal resource or area? (24)
   e. State-designated improvement agreement lands? (26)
   f. Beach, dune or barrier island? (32)
   g. Marine area of Albany, Buffalo, Ogdensburg, Oswego or New York? (9)
   h. State, county, or local park? (9, 99)
   i. Historic resource listed on the National or State Register of Historic Places? (23)

3. YES/NO
   a. "Whiteface" site? (2, 20, 22)
   b. Revitalization, harbor participation or reclamation of a deteriorated or submerged waterfront site? (13)
   c. Construction or reclamation of a fixed or service control structure? (12, 14, 16)
   d. State water quality permits or certification? (39, 38, 40)
   e. State air quality permits or certification? (41, 42)

4. YES/NO
   a. "Tidal wetland" site? (11, 12, 20)
   b. "Whiteface" site? (2, 20, 22)

D. ADDITIONAL STEPS

1. If all of the questions in Section C are answered "YES", then the applicant or agency shall complete Section E and submit the documentation required by Sections E through F.

2. If any of the questions in Section C are answered "YES", then the applicant or agency shall complete Section E and submit the documentation required by Sections E through F.

3. The proposed activity is consistent with the State's CSM program. (2)

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

5. Applicant's Name:

6. Address:

7. Telephone:

8. Fax:

9. Applicant's Signature:

10. 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: Conservation Board, One Commerce Plaza, State 1400, 38 Washington Avenue, Albany, New York 12235:
   a. Copy of original signed form
   b. Copy of all federal or state agency applications
   c. Other available information which would support the certifications of consistency

2. The applicant or agent shall retain 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) 474-6400.
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 having 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
Useful links

- 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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