



Instructions for the Coastal Zone Management Act Federal Consistency Form

BACKGROUND

Introduction

This form is intended to provide a standard format for, and facilitate the submission and the state's review of, a federal consistency determination, certification or negative determination under the federal Coastal Zone Management Act of 1972 (CZMA § 307 (16 U.S.C. § 1456), as amended, and the National Oceanic and Atmospheric Administration's (NOAA) Federal Consistency Regulations (15 C.F.R. Part 930). Federal agencies and applicants for federal consistency are not required to use this form. In addition, federal agencies and applicants are only required to provide the information required by NOAA's Federal Consistency Regulations.

Pursuant to the CZMA and NOAA's Federal Consistency Regulations (15 C.F.R. Part 930), all of the below activities that have reasonably foreseeable coastal effects must be conducted in a manner consistent with the enforceable policies of Delaware's NOAA-approved Delaware Coastal Management Program:

- Federal activities and development projects (15 C.F.R. Part 930, Subpart C)
- Non-federal activities authorized under a federal license or permit (15 C.F.R. Part 930, Subpart D) if listed in Delaware Coastal Management Program or, if not listed, upon Delaware's request to and approval from NOAA to review the activity as an unlisted activity on a case-by-case basis.
- Outer Continental Shelf (OCS) exploration and development plans (15 C.F.R. Part 930, Subpart E)
- Activities funded through federal financial assistance to state and local governments (15 C.F.R. Part 930, Subpart F)

Federal agencies, their contractors, or non-federal applicants for federal permits or funding for activities that are required to be consistent with the Delaware Coastal Management Program's (DCMP) enforceable policies should submit a complete federal consistency certification or determination to DCMP in advance (see deadlines, Table 1) of the proposed activities. The consistency certification or determination should contain the information described in NOAA's regulations for each subpart under 15 C.F.R. Part 930:

- Federal agency activities, 15 C.F.R. Part 930, Subpart C, 15 C.F.R. §930.39;
- Federal license or permit activities, 15 C.F.R. Part 930, Subpart D, 15 C.F.R. §930.58;
- OCS Plans, 15 C.F.R. Part 930, Subpart E, 15 C.F.R. § 930.76; and
- Federal financial assistance to state and local government agencies, 15 C.F.R. Part 930, Subpart F, 15 C.F.R. § 930.94.

The federal agency, its contracted agent, or the applicant for a federal permit, license, or funding, as applicable, is responsible for performing the analysis and making the determination of whether or not a proposed activity is consistent with DCMP's enforceable policies and for providing the supporting documentation to DCMP. DCMP will then either concur with, or object to, the federal agency's or applicant's findings. Federal activities with reasonably foreseeable coastal effects in Delaware may not commence without the DCMP's concurrence except as provided for in NOAA's regulations for each subpart of 15 C.F.R. Part 930.

Coastal Effects

NOAA's Federal Consistency Regulations (15 C.F.R. § 930.11(g)) define coastal effects as:

The term "effect on any coastal resource" means any reasonably foreseeable effect on any coastal use or resource resulting from a Federal agency activity or federal license or permit activity (including all types of activities subject to the federal consistency requirement under subparts C, D, E, F, or I of this part). Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting 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.

DCMP has developed a NOAA-approved list of Federal actions, permits, licenses, financial assistance programs and interstate activities that are expected to have reasonably foreseeable effects on Delaware's coastal uses and resources. The list is publicly available in the [DCMP Federal Consistency Policies and Procedures \(2018\)](#).

Proposed federal non-development activities under 15 C.F.R. Part 930, Subpart C that will occur Delaware's coastal zone are subject to a consistency review only if the federal agency determines that the activity will have reasonably foreseeable coastal effects, whether or not the activity is listed. For federal agency activities listed in the DCMP and that are proposed within the boundaries of the state's coastal zone, a federal agency must either provide a consistency determination or a negative determination.

All proposed federal development activities under 15 C.F.R. Part 930, Subpart C that will occur within Delaware's coastal zone are deemed to have reasonably foreseeable coastal effects in Delaware, and the submission of a consistency determination is required.

Proposed federally-permitted or licensed activities under 15 C.F.R. Part 930, Subparts D that are listed and will occur within Delaware's coastal zone are deemed to have reasonably foreseeable coastal effects in Delaware, and the submission of a consistency certification is required.

Proposed federally-permitted or licensed activities under 15 C.F.R. Part 930, Subpart D that are not listed are subject to a consistency review only if the DCMP notifies the applicant, the Federal agency, and NOAA that it intends to review the activity and NOAA approves DCMP's request. DCMP must make this notification within 30 days of receiving notification of the proposed application to the authorizing federal agency.

Proposed federal financial assistance activities under 15 C.F.R. Part 930, Subpart F that are not listed are not subject to a consistency review unless DCMP notifies the federal agency and the funding applicant that it intends to review the activity.

Proposed federal license or permit activities with interstate coastal effects under 15 C.F.R. Part 930, Subpart I that are listed are deemed to have reasonably foreseeable interstate coastal effects in Delaware only if the listed activity will occur within the designated geographic locations discussed in Section 4.4 of the [DCMP Federal Consistency Policies and Procedures \(2018\)](#). These activities require the submission of a consistency certification to DCMP.

Proposed outer continental shelf activities that are listed under 15 C.F.R. Part 930, Subpart E are not subject to a consistency review in Delaware. DCMP may request approval from NOAA to review Subpart E activities on a case-by-case basis.

Enforceable Policies

DCMP's enforceable policies are listed in Chapter 5.0 of the *DCMP Federal Consistency Policies and Procedures (2018)*. The enforceable policies fall under 25 categories:

1. Wetlands Management
2. Beach Management
3. Coastal Waters Management
4. Subaqueous Lands and Coastal Strip Management
5. Public Lands Management
6. Natural Areas Management
7. Flood Hazard Areas Management
8. Port of Wilmington
9. Woodlands and Agriculture Management
10. Historic and Cultural Areas Management
11. Living Resources
12. Mineral Resource Management
13. State Owned Coastal Recreation and Conservation
14. Public Trust Doctrine
15. Energy Facilities
16. Public Investment
17. Recreation and Tourism
18. National Defense and Aerospace Facilities
19. Transportation Facilities
20. Air Quality Management
21. Water Supply Management
22. Waste Disposal Management
23. Development
24. Pollution Prevention
25. Coastal Management Coordination

For each category, the policies and procedures document provides general policy statements and statutory references for the enforcement of those policies. Federal agencies, their contracted agents, and applicants for applicable federal permits or funding should evaluate how their proposed activities relate to each of these policies and describe the measures proposed or taken to ensure consistency. This policy analysis should be included with the submission of the federal consistency determination or certification to DCMP; otherwise the DCMP review period would not commence. DCMP encourages federal agencies and applicants to contact DCMP for assistance in determining which policies might apply to a federal action.

Negative Determination

If a federal agency determines that a federal agency activity under 15 C.F.R. Part 930, Subpart C will not have reasonably foreseeable effects on Delaware's coastal uses or resources, the federal agency or its contracted agent may be required to submit a negative determination pursuant to 15 C.F.R. § 930.35. This form can be used to submit a negative determination to DCMP.

Submission and DCMP Response Deadlines

Pursuant to 15 C.F.R. Part 930, the Delaware Coastal Management Program must provide its concurrence with or objection to a consistency determination or certification in accordance with the deadlines listed below. Concurrence will be presumed if the state's response is not received within the allowable time frame. All deadlines are from the date of DCMP's receipt of a complete consistency determination or certification.

Table 1: Federal Consistency Review Timeline:

Federal Activity	Public Notice Period	Deadline for DCMP Decision
Federal Activity or Development Project (15 C.F.R. Part 930, Subpart C)	20 days	60 days Option to extend an additional 15 days or stay review (15 C.F.R. § 930.41)
Federal License or Permit Activity (15 C.F.R. Part 930, Subpart D)	30 days	90 days Option to extend additional 90 days with mutual agreement (15 C.F.R. § 930.63)
Outer Continental Shelf Plans (15 C.F.R. Part 930, Subpart E)	30 days	90 days Option to extend additional 90 days or stay with mutual agreement (15 C.F.R. § 930.78)
Federal Financial Assistance to State or Local Governments (15 C.F.R. Part 930, Subpart F)	None	30 days State Clearinghouse schedule

Mediation

If DCMP objects to a federal agency’s consistency determination, the state and federal agency may agree to non-binding mediation by either the Secretary of the Department of Commerce or NOAA’s Office for Coastal Management. Secretarial mediation is a formal process that includes a public hearing, written briefs, and meetings between the parties. Office for Coastal Management mediation is less formal and historically has been successful at resolving conflict.

Appeal to Secretary of Commerce

If DCMP objects to an applicant’s consistency certification under 15 C.F.R. Part 930, Subparts D, E or F, the applicant may appeal the state’s objection to the Secretary of Commerce. An applicant must file its appeal with the Secretary of Commerce within 30 days of receipt of DCMP’s objection. Appeal procedures can be found at 15 C.F.R. Part 930, Subpart H. The appeals process is not available to federal agencies.

FEDERAL CONSISTENCY DETERMINATION FORM (3010-FM-IWO0007) – ITEM-BY-ITEM INSTRUCTIONS

Introduction: Project/Activity Name:

Provide a name or title for the proposed project or activity. A reference number is optional, but if available should be provided. A reference number can be a permit ID, public announcement number, funding application number, or any other unique identifier.

Section I: Applicant Contact Information

Provide contact details for the project manager or other organizational representative. If the form is being prepared and submitted by a federal agency’s contractor, provide both the agency name and name of the contracted company or business. If the applicant is providing a consistency certification under a federal permit, license, or funding program, provide both the name of the applicant and the applicable federal agency.

Section II: Federal Consistency Category

Federal consistency provisions and deadlines are dependent upon the type of activity being proposed. The applicant should identify under which provision of NOAA’s federal consistency regulations the activity being proposed is included. If the consistency determination is being submitted for an activity with interstate coastal effects (15 C.F.R. Part 930, Subpart I), the applicant should also identify under which other category the proposed activity is included.

Section III: Detailed Project Description and Federal permit/license application

Provide a detailed description of the proposed activity, including the precise location/activity boundaries. Attach additional sheets if necessary. For consistency certifications being submitted for federal licenses, permits, or funding, please include the associated permit, license, or funding application for DCMP review. Attach additional sheets as necessary.

Section IV: General Analysis of Coastal Effects

Federal agencies, their contracted agents, or applicants for federal licenses, permits, or funding, should describe, pursuant to NOAA's regulations, the reasonably foreseeable effects on Delaware's coastal resources and uses with sufficient detail to allow for adequate DCMP review of the consistency certification or determination. Coastal effects include cumulative and secondary indirect effects that may be displaced in time or distance from the occurrence of the proposed activity. Attach additional sheets as necessary.

Section V: Detailed Analysis of Consistency with DCMP's Enforceable Policies

In addition to listing and describing the reasonably foreseeable coastal effects, entities submitting a federal consistency certification or determination should describe, pursuant to NOAA's regulations, the measures that have been taken or that they plan to take to ensure that the proposed activity will be conducted in a manner consistent with each of DCMP's enforceable policies. It is likely that one or more DCMP policies will not apply to the proposed activity. For example, Policy 5.1 (Wetlands Management) would not apply to a proposed development project that does not impact any existing or historical wetlands. For policies that do not apply to a proposed activity, write "not applicable" in the text box. Attach additional sheets as necessary.

Section VI: JPP and RAS Review

Some projects may have already been presented at early coordination meetings, such as Joint Permit Processing and Regulatory Advisory Service reviews. Please indicate if the project has been presented at either of these meetings and include the meeting date(s).

Section VII: Certification and Signature

The form or other submitted format should be signed and dated. Electronic signatures and submissions are acceptable.

SUBMISSION OF THE FEDERAL CONSISTENCY FORM

Electronic Submission

Electronic submissions can be e-mailed to: DNREC_FederalConsistency@delaware.gov

U.S. Mail:

Delaware Department of Natural Resources and Environmental Control
ATTN: Kimberly Cole
Delaware Coastal Programs
100 W. Water Street, Ste 7B
Dover, Delaware 19904