

Federal Consistency Overview

NOAA's Office of Ocean and Coastal Resource Management (OCRM), state governments, and local governments are working together under the Coastal Zone Management Act to effectively manage the nation's beaches, coastlines, and coastal resources for the benefit of all Americans.

The **Coastal Zone Management Act** (CZMA) was enacted on October 27, 1972, to encourage coastal states to develop comprehensive programs to manage and balance competing uses of and impacts to coastal resources. The CZMA emphasizes the primacy of state decision-making regarding the coastal zone. Section 307 of the CZMA (16 USC § 1456), called the federal consistency provision, is a major incentive for states to join the national coastal management program and is a powerful tool that states use to manage coastal uses and resources and to facilitate cooperation and coordination with federal agencies. The Federal Consistency Regulations (15 CFR Part 930) implement the CZMA.

Federal consistency is the CZMA requirement where **federal agency activities** that have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone must be consistent, to the maximum extent practicable, with the enforceable policies of a coastal state's federally approved coastal management program. (Federal agency activities are activities and development projects performed by a federal agency, or a contractor for the benefit of a federal agency.)

Federal license or permit activities and federal financial assistance activities that have reasonably foreseeable coastal effects must be fully consistent with the enforceable policies of state coastal management programs. (Federal license or permit activities are activities proposed by a non-federal applicant requiring federal authorization, and federal financial assistance activities are proposed by state agencies or local governments applying for federal funds for activities with coastal effects.)

At the **federal level**, the Office of Ocean and Coastal Resource Management (OCRM), within the National Oceanic and Atmospheric Administration's (NOAA's) National Ocean Service (NOS), interprets the CZMA and oversees the application of federal consistency; provides management and legal assistance to coastal states, federal agencies, tribes and others; and mediates CZMA-related disputes. NOAA's Office of the Assistant General Counsel for Ocean Services assists OCRM and processes federal consistency appeals to the Secretary of Commerce. More detailed information is provided at the following website:

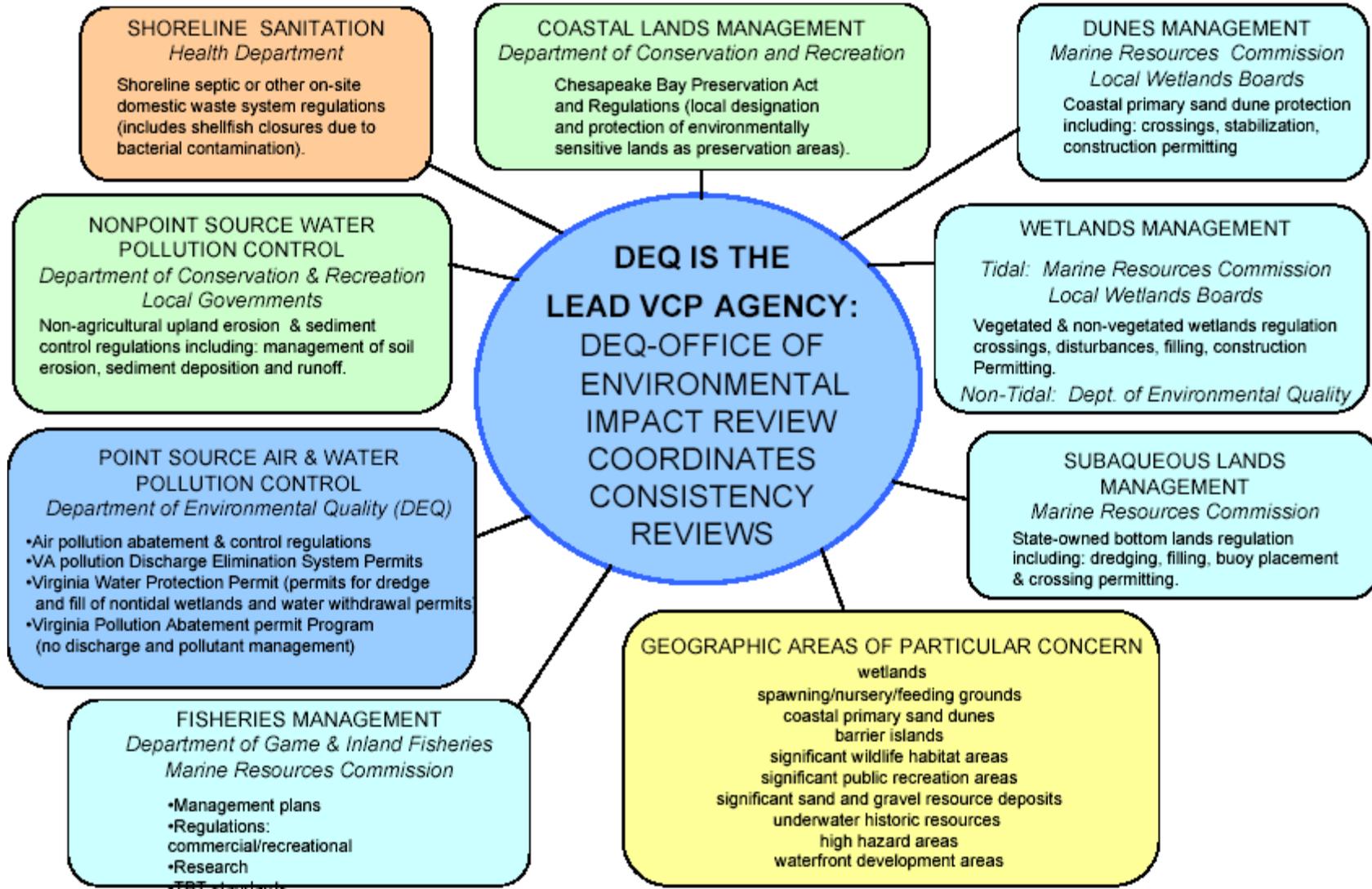
<http://coastalmanagement.noaa.gov/consistency/welcome.html>

At the **state level**, the Department of Environmental Quality is the lead coastal zone management agency. Virginia's coastal management area, as approved by Executive Order 13 (86), includes 88 jurisdictions in Tidewater (29 counties, 17 cities, and 42 towns), and all coastal waters of the United States territorial sea, extending to the three-mile limit of Virginia sovereignty. **DEQ-Office of Environmental Impact Review** coordinates the review of federal consistency documents with agencies comprising

Virginia's network coastal program and provides guidance on federal consistency requirements. The public is invited to participate in the Commonwealth's consistency review process; public participation is a CZMA requirement (16 USC Section 306(d)(14)). More detailed information is located on the following website:

<http://www.deq.state.va.us/eir/federal.html>

LAWS AND POLICIES OF THE VIRGINIA COASTAL ZONE NETWORK AGENCIES



STATE RESPONSE TO FCC

In accordance with the Federal Consistency Regulations, the State has three options:

1. concur,
2. concur with conditions, or
3. object.

1. State Concurrence with FCC

The State has six months to concur with a federal consistency certification. However, the State must provide the applicant with a status report within ninety days of the start of the review. If the State does not provide a response within the six-month review period, concurrence by the State is conclusively presumed. If the State issues a concurrence or is conclusively presumed to concur (15 CFR §930.62(c)) the federal agency:

- may approve the federal permit or license, or
- may deny federal approval despite State concurrence with FCC.
- Federal agencies should not delay processing applications pending receipt of a State agency's concurrence.
- The federal agency must immediately notify the State agency and the applicant, in the event that the federal agency determines that it will not approve an application.

2. State Conditional Concurrence

The Consistency Regulations allow a State agency to issue a conditional concurrence (15 CFR §930.62(d)). However, the preamble to the revised regulations for the CZMA cautions against use of conditional concurrence, stating that "Once a State agency has concurred, even with conditions, the State agency retains no further consistency authority over the project ..." (Federal Register, Vol. 65, No. 237, Page 77127). Furthermore, a state agency cannot, through the CZMA, enforce its conditions after it has concurred. By issuing an objection rather than a conditional concurrence, the State retains more control and preserves its option to continue its objection or to revisit the issue and lift the objection to the consistency certification. If the State issues an objection, the State may provide that it will lift the objections if the applicant complies with certain conditions (15 CFR § 930.63(b)).

- During FCC review period State and Applicant may agree upon conditions, if met by applicant, would permit concurrence.
- State and Applicant must also consult with federal agency to ensure that conditions satisfy federal as well as coastal program requirements.
- State letter must include conditions and explanations, identify specific enforceable policies.
- State concurrence becomes an objection if 15 CFR §930.4(a)(1) to (a)(3) are not met.

3. State Objection to FCC

The State may object to a consistency certification based on (a) insufficient information or (b) inconsistent with specific enforceable policies.

- Federal agency cannot approve project over state objection.
- State must object within six months (unless prior agreement to extend the review period).
- State must inform the federal agency, the applicant, and NOAA of objection.
- Applicant can appeal to Secretary of Commerce.

Federal Consistency Appeals to the Secretary

- ONLY for Federal License or Permit activities and Financial Assistance activities; this does not apply to federal agency activities.
- Two Grounds for Secretary Override
 1. Consistent with CZMA Objectives
 2. National Security
- If Secretary overrides State's objection, Federal agency may approve or fund the activity.