

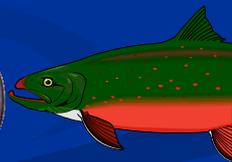
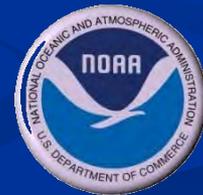
Federal Consistency under the CZMA



Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration

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

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



OR - BOEM Task Force
April 12, 2012

Coastal Zone Management Act (CZMA)

Participation and Incentives

- Administered by NOAA's Office of Ocean and Coastal Resource Management (OCRM)
- Voluntary
- Two Incentives
 - Federal Funding
 - Federal Consistency
- NOAA approval required
 - Original State Programs
 - Updates/Changes

The Coastal Zone Management Act: Federal Consistency Requirements

- Powerful Tool for States
 - Application of State Policies to Federal Actions
 - No Geographical Boundaries
 - No Categorical Exemptions
- State-Federal Coordination
 - Cooperation, Early Coordination, Negotiation
 - Helps Federal Agencies and States to Address Coastal Effects
 - States Concur with Approximately 95% of Reviewed Actions
- Public Input
- Can Build State and Public Support for Federal Actions
- Avoids Costly Last Minute Changes to Federal Projects

National Interest Considerations: Checks and Balances

- NOAA Approves State Programs & Changes – With Input from Federal Agencies, Industry and Public
- Federal Agency Activities:
 - Federal Agency May Proceed Over State's Objection if Consistent to the Maximum Extent Practicable
 - Presidential exemption in limited circumstances
- The Secretary of Commerce may override State Objections to Federal Licenses and Permits
- Mediation by the Secretary or OCRM

What is Federal Consistency?

It's An "Effects Test"

Federal Consistency is the requirement that *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 State Coastal Management Programs.

(*See* CZMA Section 307 (16 U.S.C. § 1456))

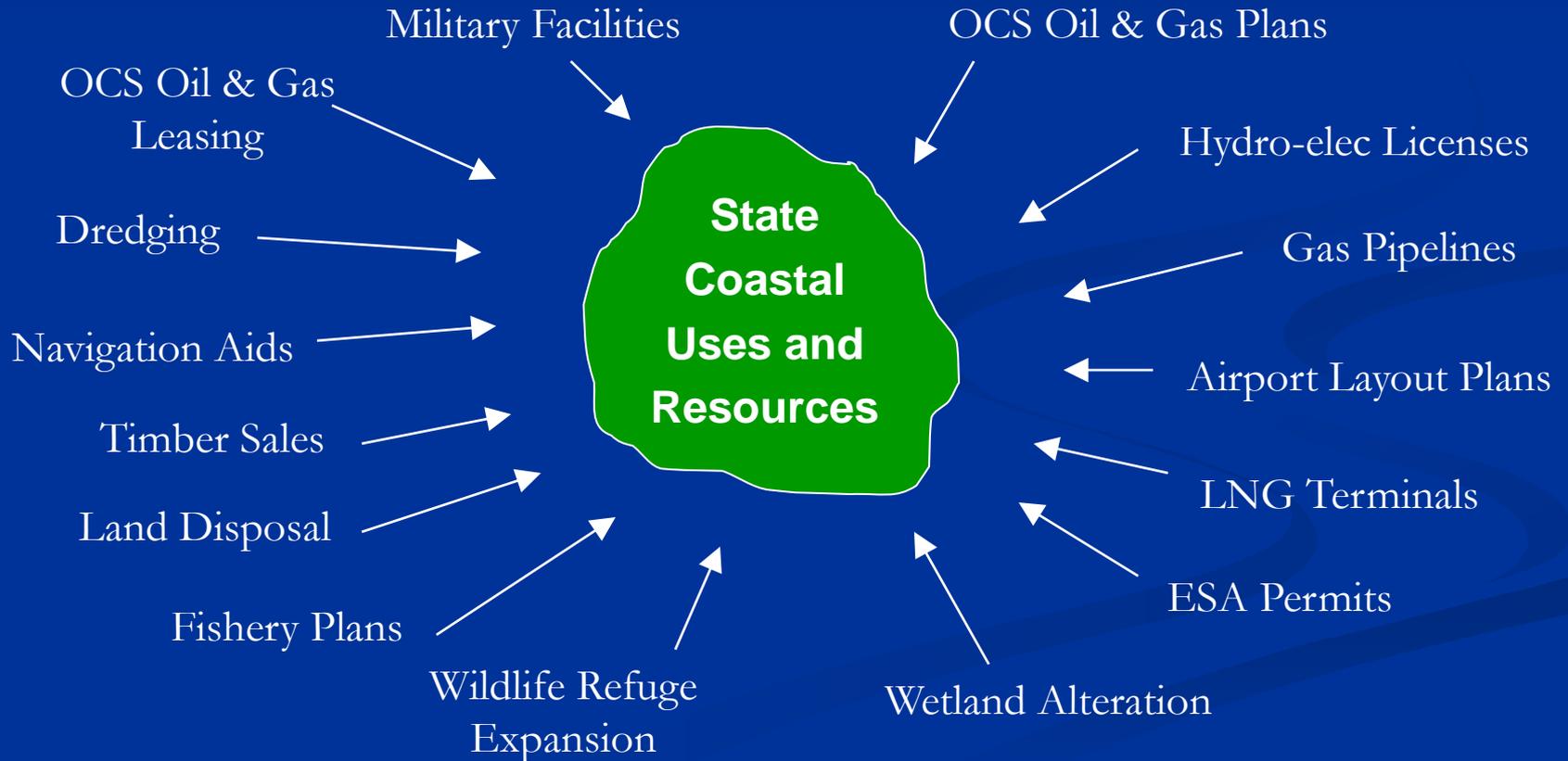
“Federal Actions”

- *Federal Agency Activities & Development Projects*
CZMA 307(c)(1), (2), 15 CFR part 930, subpart C
- *Federal License or Permit Activities* (non-federal applicants)
CZMA 307(c)(3)(A), 15 CFR part 930, subpart D
- *Outer Continental Shelf Oil and Gas Plans*
CZMA 307(c)(3)(B), 15 CFR part 930, subpart E
- *Federal Financial Assistance to State or Local Agencies*
CZMA 307(d), 15 CFR part 930, subpart F

Coastal Effects

Federal Agency Activities

Federal Authorization Activities



Coastal Effects

- Direct
- Indirect
 - Cumulative
 - Secondary
- Adverse or Beneficial

Enforceable Policies

- Legally binding under State Law
- Approved by NOAA
 - With input from Federal agencies and the public

Scope of Consistency Effects Test: Determining Geographic Scope

- For Federal agency activities – effects test applies, regardless of location of activity (within CZ, outside CZ, other state).
- Federal license or permit activities listed in a State's CMP within CZ boundary are automatically subject to FC requirements.
- Federal license or permit activities outside CZ boundary or in federal waters must be listed with a geographic location description.

Reviewing Federal License or Permit Activities Outside the Coastal Zone

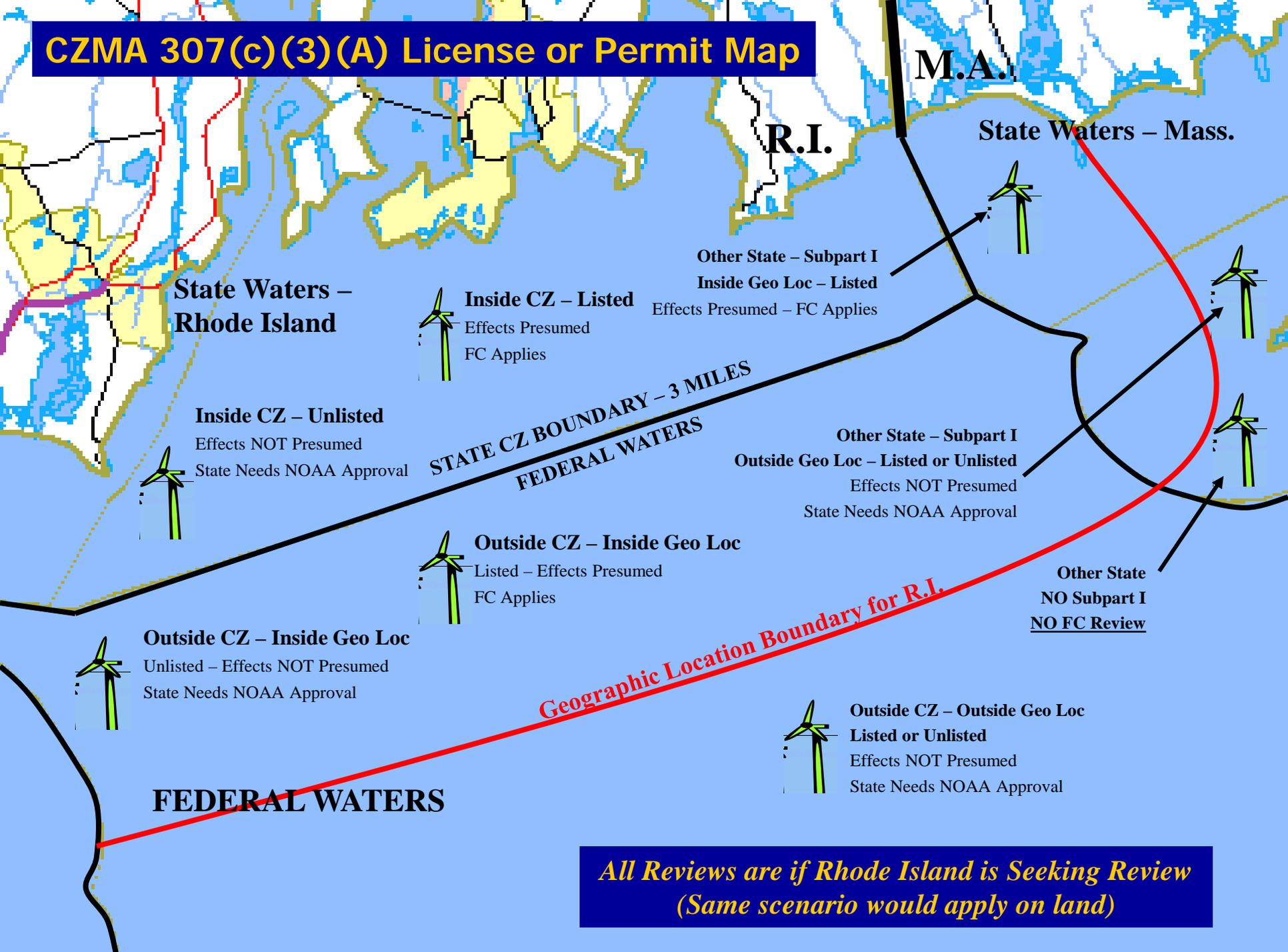
15 C.F.R. § 930.53

- OCRM approves state lists of federal license or permit activities subject to FC review
 - To review listed activities outside CZ, state must provide a geographic location description (GLD) of such activities and show that there are reasonably foreseeable coastal effects from the listed activity within the GLD.
 - Different listed activities may have different GLDs.
- If no GLD approved by OCRM, state may request OCRM approval to review listed activities outside the CZ on a case-by-case basis as an unlisted activity. (15 C.F.R. § 930.54)

GLD Approval Based on Showing of Effects

- Proposed GLDs must be geographically specific, apply to specific listed federal license or permit activities, and based on an analysis showing that effects on the state's coastal uses or resources are reasonably foreseeable.
- Effect analysis does not have to show proof of coastal effects, but must show a reasonable causal connection. The effects analysis cannot be based on conclusory statements.
- A GLD does not need to delineate the boundary of where effects are reasonably foreseeable and where they are not; it only needs to be show that within the area described that effects are reasonably foreseeable.

CZMA 307(c)(3)(A) License or Permit Map



*All Reviews are if Rhode Island is Seeking Review
(Same scenario would apply on land)*

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

OCRM National Interest Team

David Kaiser, Senior Policy Analyst

david.kaiser@noaa.gov -- 603-862-2719

Kerry Kehoe, Federal Consistency Specialist

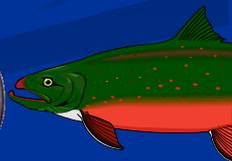
kerry.kehoe@noaa.gov -- 301-563-1151

Carleigh Rodriguez, Coastal Management Specialist

carleigh.rodriguez@noaa.gov -- 301-563-1125

OCRM West Coast Regional Coastal Management Specialist

Kris Wall, kris.wall@noaa.gov -- 503-231-2221



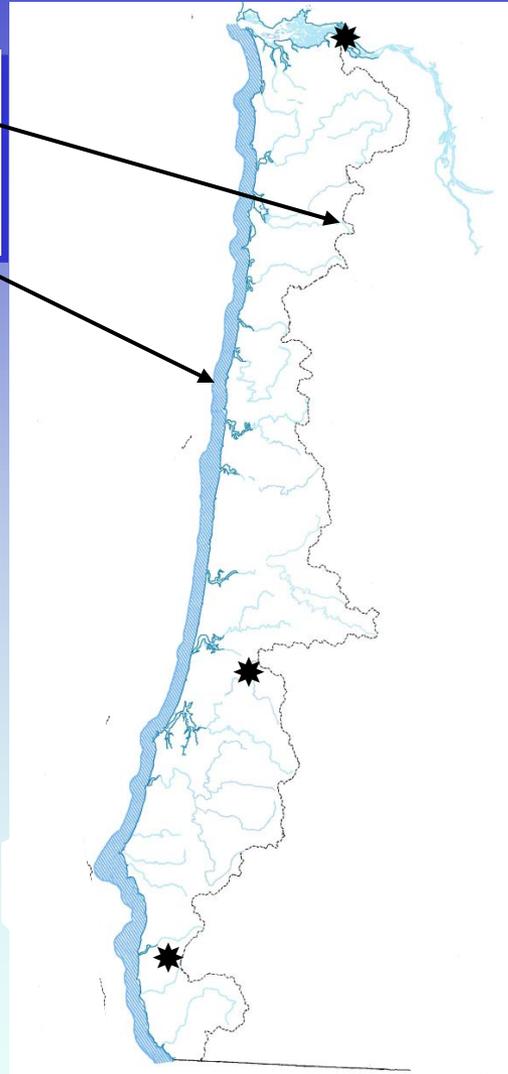
NOAA's Office of Ocean and Coastal Resource Management

Oregon Coastal Management Program

COASTAL ZONE

Coastal Watershed

Territorial Sea



JURISDICTIONS

Counties

- Clatsop
- Tillamook
- Lincoln
- Lane
- Douglas
- Coos
- Curry

Cities

- Astoria
- Warrenton
- Seaside
- Gearhart
- Cannon Beach
- Manzanita
- Nehalem
- Wheeler
- Rockaway Bch
- Garibaldi
- Bay City
- Tillamook
- Lincoln City
- Depoe Bay
- Siletz
- Newport
- Toledo
- Waldport
- Yachats
- Florence
- Dunes City
- Reedsport
- Lakeside
- North Bend
- Coos Bay
- Coquille
- Myrtle Point
- Powers
- Bandon
- Port Orford
- Gold Beach
- Brookings

Oregon Coastal Management Program (OCMP)

- “Networked” program
- Integrates authorities of local governments and other state agencies
- DLCD is the lead agency, but does not exercise direct regulatory authority.
- Local governments and several networked agencies administer Oregon’s coastal program laws

“Enforceable Policies” of the OCMP

- Statewide Planning Goals
- Acknowledged local comprehensive plans and land use regulations
- Regulatory requirements of networked state agencies (e.g., DEQ, DSL, ODFW, Energy, Water Resources)

Examples of Federal Licenses and Permits Subject to OCMP Review

- EPA:** Licenses and permits required under Section 102 of Marine Protection, Research and Sanctuaries Act
- Corps:** Permits issued pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act
- FERC:** Licenses for pipelines, LNG or wave energy facilities