

Considerations for Drafting the Washington Coast MSP Boundary

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Federal Consistency under the CZMA



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

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

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Washington Marine Planning
Workshop
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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 (based on effects)
 - 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
- Avoids Costly Last Minute Changes to Federal Projects

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

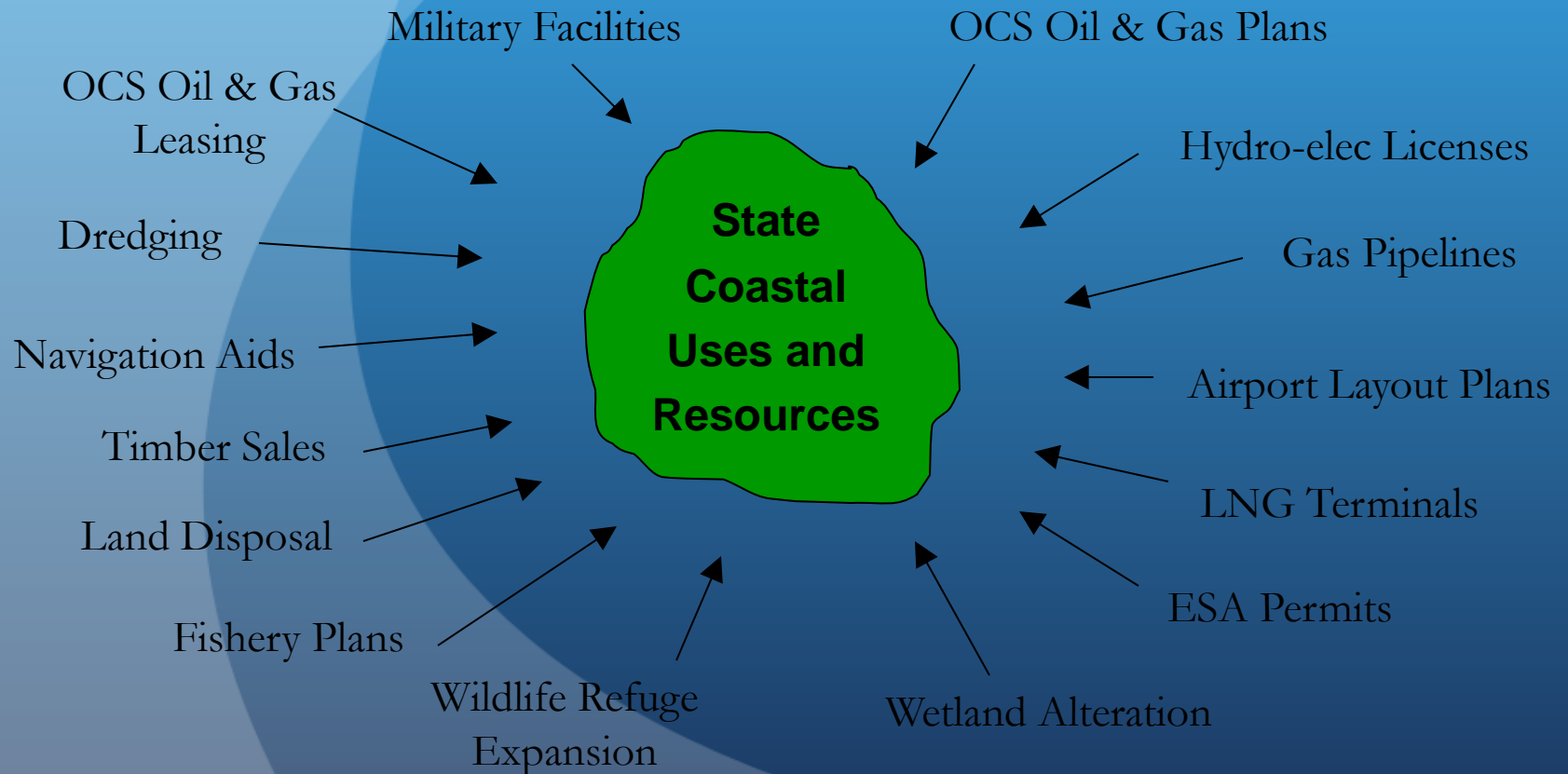
- ***Federal Financial Assistance to State or Local Agencies***

CZMA 307(d), 15 CFR part 930, subpart F

Coastal Effects

Federal Agency Activities

Federal Authorization Activities



Coastal Effects

- Direct
- Indirect
 - Cumulative
 - Secondary

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 (or may request a 1-time review unlisted activity)

Reviewing Federal License or Permit Activities Outside the Coastal Zone

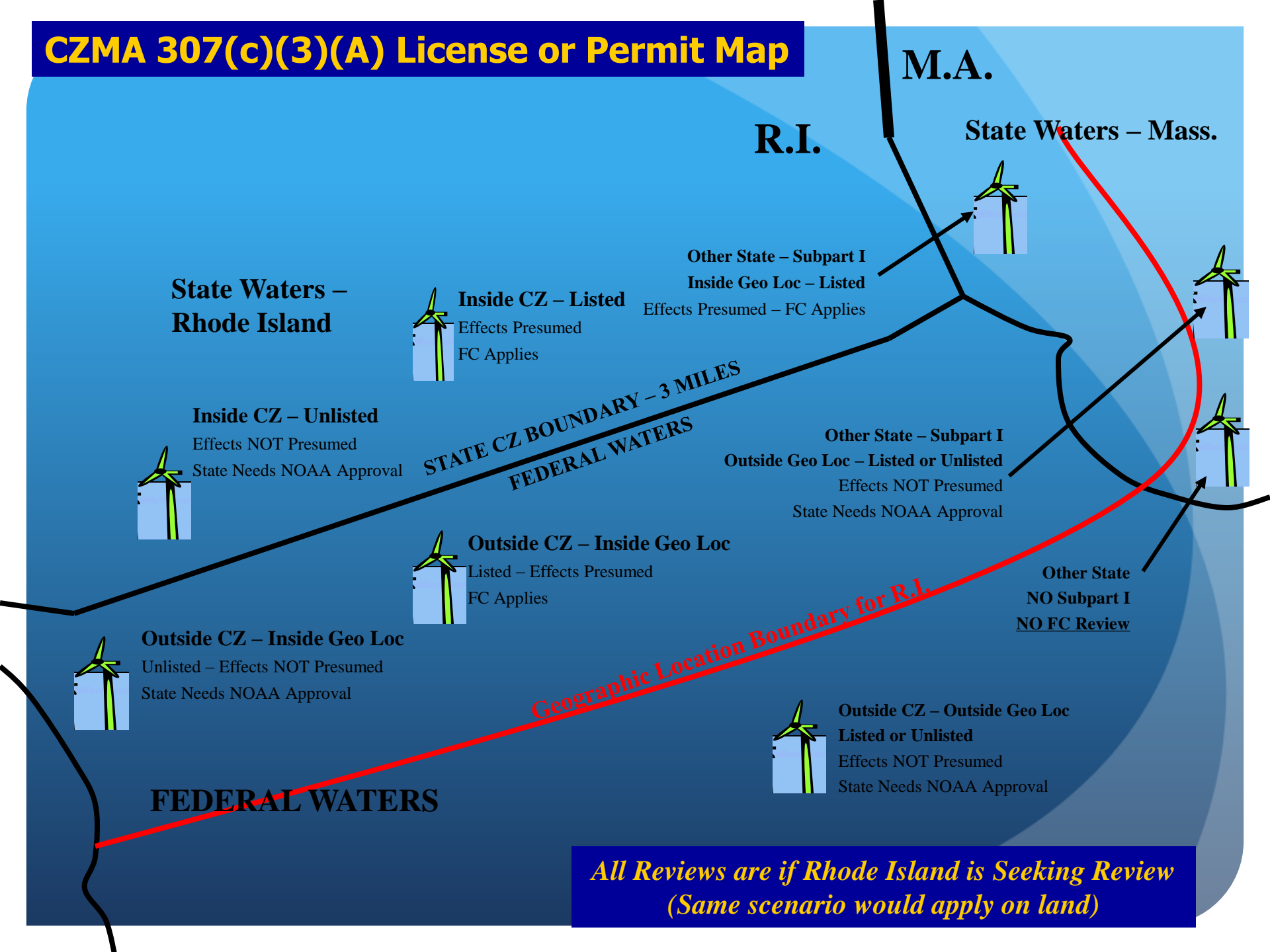
15 C.F.R. § 930.53

- 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



Boundary Suggestions/Considerations

- Consider which federal activities (licenses or permits) are mostly likely to have reasonably foreseeable coastal effects (that you would want to include in a GLD), and where those activities occur
- Link to existing federal NEPA (EA, EIS) documents/studies and their defined geographic extent (and data availability) – provide causal information
- Consider bathymetric features, ecologically critical areas (foraging, nursery), offshore migration patterns, etc.
- Boundary must be defined based on fixed natural features, or lat/long coordinates
- Consider geographic constraints/limits of certain activities or technologies (e.g. pipeline distances/costs, technology depths)
- Where *won't* things be, or *won't* activities occur – exclude/ignore these areas.
- Consider geographic extent of available spatial data that will be necessary for effects analysis

Effects Suggestions/Considerations

- In general, the further from shore, the more difficult it can be to attest to coastal effects
- Need to be able to attest to reasonably foreseeable coastal effects on state coastal resources or uses (not effects at the location in federal waters, but effects within the state coastal zone, or on state uses or resources)
- Demonstration of coastal effects needs to be based on science and data – cannot be conclusory statements
- Effect analysis does not have to show proof of coastal effects, but must show a reasonable causal connection (still a fairly high bar)
- Consider migration patterns, foraging areas, breeding areas, areas of unique species abundance or concentrations
- Don't forget effects to uses as well as resources (e.g. fishing, recreation)

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