

DECISION AND FINDINGS
BY THE NOAA CHIEF OF STAFF PERFORMING THE DUTIES OF THE
U.S. UNDER SECRETARY OF COMMERCE FOR OCEANS AND
ATMOSPHERE IN THE CONSISTENCY APPEAL OF ROBERT
HAGOPIAN FROM AN OBJECTION BY THE NEW YORK STATE
DEPARTMENT OF STATE

AUGUST 18, 2025

I. INTRODUCTION

Robert Hagopian has appealed the New York State Department of State’s (“the State” or “NYSDOS”) objection to Mr. Hagopian’s Coastal Zone Management Act, 16 U.S.C. §§ 1451 *et seq.*, (“CZMA”) consistency certification for a proposed U.S. Army Corps of Engineers (“the Corps”) permit. The proposed permit would allow Mr. Hagopian to perform shoreline stabilization, dock installation, and dredging within the cove of his property along the Hudson River.

After reviewing the consistency certification, the State approved the proposed dock installation and dredging, but found that the installation of the shoreline stabilization measures would not be consistent with its coastal management program established under the CZMA. Mr. Hagopian appeals, requesting that the National Oceanic and Atmospheric Administration (“NOAA” or “the Agency”) Administrator, as delegated, override the State’s objection.¹

After considering the parties’ briefs, past precedent, and the decision record, NOAA finds that Mr. Hagopian’s proposed activity does not further the national interest in a significant or substantial manner and is therefore not consistent with the objectives or purposes of the CZMA.² For this reason, NOAA declines to override the State’s objection.

II. BACKGROUND

A. Legal Framework

Section 307 of the CZMA requires federal actions that have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone to be consistent with the enforceable policies of the affected state’s federally-approved coastal management program.³ This requirement extends to activities that require federal permits or licenses.⁴

¹ Under Departmental Organization Order 10-15 Section 3.01.u, the Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator is delegated the authority to perform functions prescribed in the CZMA, 16 U.S.C. §§ 1451, *et seq.*, including administering and deciding consistency appeals.

² *See* 15 C.F.R. § 930.121.

³ 16 U.S.C. § 1456(c). The CZMA defines “enforceable policy” as a state’s “policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions.” *Id.* § 1453(6a).

⁴ *Id.* § 1456(c)(3)(A). Of note, states must develop and maintain “[a] list of Federal license and permit activities that will be subject to review” for consistency with their coastal management programs. *See* 15 C.F.R. § 923.53(a)(2); *see also id.* § 930.53(a). Once NOAA approves this list, any federal license or permit activities contained therein and occurring either within the state’s coastal zone or outside the coastal zone but within a NOAA-approved geographic location description, are subject to federal consistency review. 16 U.S.C. § 1456(c)(3)(A).

A state's timely objection to an applicant's federal consistency certification precludes the federal agency from issuing a license or permit authorizing such activity.⁵ On appeal by the applicant, the NOAA Administrator may override the state's objection if she or he finds that the activity is either consistent with the objectives and purposes of the CZMA or necessary in the interest of national security.⁶ These grounds are independent, and an affirmative finding on either ground is sufficient to override a state's objection.⁷

The CZMA implementing regulations provide a three-part test for determining whether a proposed activity is consistent with the objectives or purposes of the CZMA. First, the activity must further the national interest as articulated in the CZMA "in a significant or substantial manner" (Element 1); second, the national interest furthered by the activity must outweigh the activity's adverse coastal effects, "when those effects are considered separately or cumulatively" (Element 2); and third, there must be no reasonable alternative available that would allow the activity to be conducted "in a manner consistent with the enforceable policies of the [objecting state's coastal] management program" (Element 3).⁸ The NOAA Administrator must find that the appellant has satisfied each of these three elements to override a state's consistency objection on the ground that the project is consistent with the objectives or purposes of the CZMA.⁹

B. Factual and Procedural Background

Mr. Hagopian owns a parcel of land located along the shore of the Hudson River in the Town of Ulster, New York.¹⁰ According to Mr. Hagopian, the property was previously used for commercial purposes by the Consolidated Ice Company in the late 1800s, then by Goldrick's Brick Company as a brickyard until the 1940s, and finally by the Mid-Hudson Marina in the

⁵ See *supra* note 3.

⁶ 16 U.S.C. § 1456(c)(3)(A); see also 15 C.F.R. § 930.130(e)(1).

⁷ *Id.*; 15 C.F.R. § 930.120; see also *Decision and Findings by the Deputy Under Secretary for Operations Performing the Duties of U.S. Under Secretary of Commerce for Oceans and Atmosphere in the Consistency Appeal of Jordan Cove Energy Project, L.P., and Pacific Connector Gas Pipeline, LP, from an Objection by the Oregon Department of Land Conservation and Development* at 2 (Feb. 8, 2021) [hereinafter "*Jordan Cove*"]. CZMA appeal decisions are available at <https://coast.noaa.gov/czm/consistency/appeals/fcappeldecisions/>.

⁸ 15 C.F.R. § 930.121.

⁹ *Id.*; *Jordan Cove* at 10.

¹⁰ See Appellant's Principal Brief at 1 (Jan. 13, 2025).

1960–70s.¹¹ Mr. Hagopian purchased the property in 1997, and he now intends to build a residence for his family on this piece of riverfront.¹²

To that end, Mr. Hagopian applied to the Corps for a permit to: install a floating pier (44-feet by 8-feet) attached to a new bulkhead by a gangway with three finger piers (approximately 36-feet by 6-feet each); dredge a total of approximately 1,429 cubic yards of material for boat access; and install a stone bulkhead and stone rip rap along approximately 359 linear feet on the banks of the cove off of the Hudson River.¹³

Pursuant to the CZMA, on May 17, 2024, Mr. Hagopian notified the State of his permit application to the Corps.¹⁴ Between August and October of 2024, the State requested, and Mr. Hagopian provided, additional information on the proposed activities.¹⁵ On November 15, 2024, the State formally objected to the planned activity, as proposed.¹⁶ The State determined that the proposed installation of the dock, piers, and the associated dredging would be consistent with the enforceable policies of its coastal management program.¹⁷ However, the State concluded that the proposed installation of the stone bulkhead and stone rip rap along the shore would not be consistent with its enforceable policies.¹⁸ Specifically, the State concluded that the proposed installation of the stone bulkhead and rip rap violated two of its enforceable policies, which require “buildings and other structures [to be] sited in the coastal area so as to minimize damage to property and the endangering of human lives caused by flooding and erosion” and “non-structural measures to minimize damage to natural resources and property from flooding and erosion [to be] used whenever possible.”¹⁹

¹¹ *Id.* at 2.

¹² *Id.* at 1–2. Mr. Hagopian has not finalized plans or applied for permits for his proposed residence and plans for his proposed residence are not at issue in this appeal.

¹³ *Id.* at 2; *see also* State’s Appendix, Exh. 2 (Feb. 5, 2025) (U.S. Army Corps of Engineers’ denying permit request).

¹⁴ *See* Appellant’s Appendix, Exh. 1 (Consistency Certification Application Package Submitted to the State of New York Department of State on May 17, 2024).

¹⁵ *See* Appellant’s Appendix, Exhs. 15, 16.

¹⁶ *See* Appellant’s Appendix, Exh. 2 (State of New York Department of State Objection to Consistency Certification, dated November 15, 2024).

¹⁷ *Id.* at 71.

¹⁸ *Id.* at 70–71.

¹⁹ *Id.*

Consistent with federal regulation, the State identified an alternative measure, which, if adopted by the applicant, would permit the proposed activity to be consistent with the enforceable policies of its coastal management program.²⁰ Specifically, the State suggested that Mr. Hagopian may proceed with the dock, piers, and dredging, but forgo installation of the rip rap.²¹ The State suggested that Mr. Hagopian could locate his dwelling (which has not been formally sited) farther away from the shoreline to protect the home without a need for his proposed shoreline stabilization measures.²²

On December 13, 2024, Mr. Hagopian submitted a Notice of Appeal requesting that NOAA override the State’s objection solely on the first statutory basis (*i.e.*, his proposed activity is consistent with the objectives and purposes of the CZMA).²³ In accordance with NOAA’s Scheduling Order, the parties submitted briefings on the issues. On June 23, 2025, the decision record for this appeal closed pursuant to Section 319(b) of the CZMA. On the same day, NOAA published a notice in the *Federal Register* announcing the closure of the decision record.²⁴

III. STANDARD OF REVIEW

The NOAA Administrator considers the merits of a federal consistency appeal *de novo*.²⁵ The scope of review is a relatively narrow one; on appeal, the NOAA Administrator reviews the proposed activity based *only* on the national interest specified in the CZMA and its implementing regulations.²⁶ The NOAA Administrator does not review the substantive validity of a state’s consistency objection on appeal.²⁷

²⁰ See 15 C.F.R. § 930.63(b).

²¹ See Appellant’s Appendix at 71.

²² *Id.*

²³ Mr. Hagopian does not argue that his proposed project is “necessary in the interest of national security.” Therefore, the Administrator does not consider this basis as a ground for overruling NYSDOS’s objection. *See id.*; *see also* 16 U.S.C. § 1456(c)(3)(A).

²⁴ See Notice, Closure of Administrative Appeal Decision Record, 90 Fed. Reg. 26554 (June 23, 2025), available at <https://www.federalregister.gov/documents/2025/06/23/2025-10838/federal-consistency-appeal-by-robert-hagopian>.

²⁵ *De novo* means “anew.” *See* Black’s Law Dictionary (11th ed. 2019). Therefore, the NOAA Administrator does not apply any deference to determinations made by the state in its review process.

²⁶ *See Decision and Findings by the U.S. Under Secretary of Commerce for Oceans and Atmosphere in the Consistency Appeal of Electric Boat Corporation from an Objection by the New York State Department of State at 12* (Nov. 16, 2020) [hereinafter *Electric Boat*] (“NOAA does not second-guess the local factors underlying a state’s objection; rather, NOAA applies a broader, national scope based on the factors described in the CZMA.”); *see also Jordan Cove at 9.*

²⁷ *See Jordan Cove at 9; see also Decision and Findings by the U.S. Under Secretary of Commerce for Oceans and Atmosphere in the Consistency Appeal of WesternGeco from an Objection by the State of South Carolina at 8* (June

In the course of this review, the NOAA Administrator gives “deference to the views of interested Federal agencies when commenting in their areas of expertise.”²⁸ The appellant bears the ultimate burden of persuasion, and must prove his case by a preponderance of the evidence.²⁹

IV. THRESHOLD ISSUES

A. Service of Appellant’s Principal Brief

As a threshold matter, NYSDOS argued that Mr. Hagopian “did not properly and timely serve its Principal Brief and Appendix on the State.”³⁰ NYSDOS acknowledges that it timely received an email copy of the brief on January 13, 2025 (the day the brief was due).³¹ But NYSDOS asserts that this service was insufficient because the regulations require service to be effectuated “by mail or hand delivery.”³² Although Mr. Hagopian did provide (via email) a certificate of mailing where an agent of Mr. Hagopian attested they had sent a hard copy of the principal brief via FedEx to the State’s mailing address, NYSDOS did not receive the package until two days later (on January 15, 2025) and the FedEx slip had a mailing date of January 14, 2025.³³ Consequently, the State asks NOAA to exercise its discretionary authority under 15 C.F.R. § 930.127(d)(2) and disregard Mr. Hagopian’s brief and appendix in making its findings and to not enter these documents into the decision of record of this appeal.³⁴

These arguments are unpersuasive for two reasons. First, the argument appears to be factually inaccurate. In response to the State’s allegations, Mr. Hagopian alleges that the package was delivered to FedEx on January 13, 2025—attaching an affidavit in support from a legal assistant of Mr. Hagopian’s attorneys.³⁵ The legal assistant averred that, on Monday, January 13, 2025, she “tendered a package containing Appellant’s Principal Brief in this matter, together with a

15, 2020) [hereinafter “*WesternGeco S.C.*”] (“NOAA presumes the substantive validity of a state’s objection on appeal.”).

²⁸ 15 C.F.R. § 930.127(e)(1).

²⁹ See *Jordan Cove* at 9; see also *WesternGeco S.C.* at 8.

³⁰ See State’s Principal Brief at 4.

³¹ *Id.* at 5.

³² *Id.* at 4–5.

³³ *Id.* at 5.

³⁴ *Id.* at 4.

³⁵ See Appellant’s Reply Brief at 5; Appellant’s Supplemental Appendix at 207.

cover letter, to FedEx at the FedEx Ship Center” located in New York.³⁶ Given this record evidence, NOAA finds that service was timely made, and the State’s argument fails as a factual matter.³⁷

Second, even if the hard-copy principal brief had not been mailed to NYSDOS until the following morning, the Agency would exercise discretion and accept both the brief and associated appendix as timely filed.³⁸ To do otherwise would disproportionately penalize Mr. Hagopian for a harmless error. In this case, the parties communicated with each other and with the Administrator’s staff primarily through email. NYSDOS admits to timely receiving an electronic copy of both Mr. Hagopian’s Brief and Appendix. NYSDOS does not allege it was prejudiced in any way by this supposed tardy service—nor can NOAA conceive of a way that NYSDOS could have been prejudiced, since it received the brief via email. And it does not appear that Mr. Hagopian flouted the regulations regarding hard-copy service. Even accepting the State’s version of events, a hard-copy was given to FedEx a mere day late and was received by NYSDOS the day after that. To exact such a heavy penalty for a minor, technical infraction, as NYSDOS asks, would be unjust.

For these reasons, Mr. Hagopian’s Principal Brief and Appendix are accepted into the record as timely filed and considered in full. NYSDOS’s threshold matter request is **DENIED**.

B. Scope of the Record

As a second threshold matter, Mr. Hagopian requests that the NOAA Administrator reject “new arguments raised” by NYSDOS as improper.³⁹ Specifically, in the Reply Brief, Mr. Hagopian argues that New York “significantly expand[ed]” the administrative record by raising arguments and evidence not presented during the State’s review of his application prior to the State’s objection.⁴⁰ Mr. Hagopian asserts that “[t]he appeal from NYSDOS’s Objection is analogous to a federal court’s review of an agency action under the Administrative Procedures Act” and so

³⁶ Appellant’s Supplemental Appendix at 207.

³⁷ See *United States v. Clingman*, 288 F.3d 1183, 1185 (10th Cir. 2002); *cf.*, N.Y. C.P.L.R. Rule 2103 Service of papers.

³⁸ 15 C.F.R. § 930.127(e)(1) (“The Secretary has broad authority to implement procedures governing the consistency appeal process to ensure efficiency and fairness to all parties.”); *see also id.* § 930.127(d)(3) (“Materials or briefs submitted to the Secretary not in compliance with this subpart *may* be disregarded and not entered into the Secretary’s decision record of the appeal.”) (emphasis added). As this was not a notice of appeal, and this pertains only to service on NYSDOS and not the Secretary, § 930.125(e) does not apply.

³⁹ See Appellant’s Reply Brief at 3 (Mar. 7, 2025).

⁴⁰ *Id.*

“NYSDOS’s introduction of new arguments and *post hoc* alleged factual justifications for its Objection are improper.”⁴¹

Mr. Hagopian appears to misunderstand the scope and purpose of a CZMA appeal. As explained above, the question is whether the activity proposed by Mr. Hagopian is consistent with the objectives and purposes of the CZMA; NOAA is *not* deciding whether Mr. Hagopian’s proposed activity is consistent with the enforceable policies of the State’s coastal management program and thus whether NYSDOS made the correct factual determination under those policies. For this reason, Mr. Hagopian’s reliance on an analogy to an administrative appeal governed by the Administrative Procedures Act is misplaced.

Further, as laid out in regulation, the NOAA Administrator has broad authority to determine the content of the appeal decision record.⁴² Typically, the appeal decision record will be composed of briefs and supporting materials submitted by the state agency and appellant, public comments and comments submitted by interested Federal agencies.⁴³ However, the NOAA Administrator may also determine, on his or her own initiative, that additional information is necessary to the decision and may require additional briefs or information to be submitted.⁴⁴ Therefore, the appeal record is not limited to information submitted to the state during the consistency certification process.

Mr. Hagopian raises no other grounds for excluding the State’s evidence and arguments, and on review it appears that the information at issue is directly relevant to the question presented in this appeal. For example, Mr. Hagopian argues the State cannot argue the permit activity (installing stone riprap) will harm the environment by increasing erosion on neighboring properties because the State did not raise the issue at the time it denied consistency certification.⁴⁵ But information about the potential adverse coastal effects of the proposed activity is directly relevant to Element 2, when determining whether a proposed activity is consistent with the objectives or purposes of the CZMA.⁴⁶ And, as noted above, the State is not bound by the record established at the time of its denial of the consistency certification.

For these reasons, Mr. Hagopian’s threshold matter request to limit the record is **DENIED**.

⁴¹ *Id.* at 3–4.

⁴² 15 C.F.R. § 930.127(e)(1).

⁴³ *Id.*

⁴⁴ *Id.* § 930.127(e)(1), (3).

⁴⁵ *See* Appellant’s Reply Brief at 3.

⁴⁶ 15 C.F.R. § 930.121(b).

V. DISCUSSION ON THE MERITS

Turning to the merits, Mr. Hagopian argues that: (1) his proposed project is consistent with the purposes of the CZMA; (2) NYSDOS's objection wrongly found that the proposed permit activity is inconsistent with New York's Coastal Management Program; and (3) the objection was arbitrary and capricious.⁴⁷ As such, Mr. Hagopian argues that the Agency should override the State's objection and allow the Corps to consider, and ultimately issue, Mr. Hagopian's requested permit.

As explained below, the Agency declines to override the State's objection because Mr. Hagopian has not shown his proposed activity furthers the national interest in a significant or substantial manner, and Mr. Hagopian's alternative arguments challenging the validity of the State's objection are outside the scope of this appeal.

A. Mr. Hagopian has not shown his proposed activity furthers the national interest in a significant or substantial manner.

An activity is "consistent with the objectives or purposes of the [CZMA]" if it satisfies all three regulatory requirements.⁴⁸ The first requirement is that the activity furthers a national interest of the CZMA "in a significant or substantial manner."⁴⁹ The requirement that an activity must further the national interest in a "significant or substantial manner" was added by a 2000 revision to the CZMA implementing regulations.⁵⁰ In the preamble to that rulemaking, the term "significant" is interpreted to encompass activities that provide a valuable or important contribution to a national interest, without necessarily being large in scale or having a large impact on the national economy.⁵¹ The term "substantial" is interpreted to encompass activities that contribute to a CZMA objective to a degree that has a value or impact on a national scale.⁵²

⁴⁷ See Appellant's Principal Brief at 6, 11, 20. As noted above, Mr. Hagopian does not argue that his proposed project is "necessary in the interest of national security." Therefore, this basis was not considered.

⁴⁸ See 15 C.F.R. § 930.121.

⁴⁹ *Id.*

⁵⁰ See Procedural Changes to the Coastal Zone Management Act Federal Consistency Process, 65 Fed. Reg. 77123 (Dec. 8, 2000).

⁵¹ *Id.* at 77150.

⁵² *Id.*

Together, these terms encompass both the import and scale of a proposed activity.⁵³ To show that an activity furthers the national interest in a significant or substantial manner, an appellant must “demonstrate that the proposed activity is of such import to the national goals for coastal resource development that, despite the will of State and local government decisionmakers, the [NOAA Administrator] should independently review the proposed activity to determine its consistency with the CZMA.”⁵⁴

Here, Mr. Hagopian has failed to show that his proposed project rises to anything beyond a local land use activity whose effects, if any, are felt beyond the local level. Mr. Hagopian’s proposed project—to develop his own private property for his personal use—is a quintessential local government land use decision that should generally be left to the states and not overridden by a federal agency through the CZMA appeal process.⁵⁵

Nonetheless, Mr. Hagopian argues there is a “national or public interest in protecting against erosion along coastal waterways” and such erosion protection, *writ large*, is “critical” to the operations of the U.S. Coast Guard and others who use the river.⁵⁶ This argument is unpersuasive for multiple reasons.

First, Mr. Hagopian relies heavily on his own expert opinions, but fails to provide sufficient evidence of his own relevant qualifications. In his briefing, Mr. Hagopian asserts that as a “professional engineer,” he has “determined that non-structural measures alone are insufficient to satisfy his primary goal of stopping the erosion.”⁵⁷ However, Mr. Hagopian has not presented evidence as to how he is qualified to make this expert conclusion. For example, he did not provide a copy of his resume, describe his education, or explain his relevant work experience. While he asserts he is a “professional engineer” it is unclear from the record if he has any relevant experience in the field of hydrology or erosion. Nor could the Agency accept any opinions he offered as those of an unbiased expert, as Mr. Hagopian has a vested interest in the outcome of this case.⁵⁸

⁵³ See *WesternGeco S.C.* at 16–17; see also *Decision and Findings by the U.S. Secretary of Commerce in the Consistency Appeal of Weaver’s Cove Energy L.L.C. and Mill River Pipeline, L.L.C. from an Objection by the State of Massachusetts* 10–11 (June 26, 2008).

⁵⁴ 65 Fed. Reg. 77123, 77150.

⁵⁵ *Id.*

⁵⁶ See Appellant’s Principal Brief at 8–9.

⁵⁷ See Appellant’s Principal Brief at 9.

⁵⁸ See, e.g., *Accrued Fin. Servs., Inc. v. Prime Retail, Inc.*, 298 F.3d 291, 300 (4th Cir. 2002); see also *Evans v. Novolex Holdings, LLC*, No. CV 20-98, 2024 WL 5275558, *2 (E.D. Ky. Mar. 25, 2024).

Second, even if the Agency credited Mr. Hagopian’s allegations that structural erosion control measures are necessary to prevent erosion from his property, Mr. Hagopian fails to demonstrate that the amount of erosion rises to the requisite level of national significance. Although Mr. Hagopian repeatedly claims that erosion from his property is a problem, he makes no effort to quantify how the effects of erosion from his property are felt beyond the local level. For example, he neither attempts to explain the historical rate of erosion nor attempts to estimate erosion in the future. He claims that “[t]he banks have suffered a continuous loss of the natural protective features that had established itself over the years, including loss of soils, vegetation, and trees.”⁵⁹ But no further detail is provided. For example, Mr. Hagopian does not offer information on roughly how much soil is lost each year, *e.g.*, is it on the order of magnitude of cubic inches or cubic feet or more (or less)? Mr. Hagopian also warns that “many trees have fallen and . . . [the remaining trees] are in danger of falling into the river.”⁶⁰ But again, Mr. Hagopian provides no sense of scope—how many trees a year are falling? How many are in danger of falling? And what is the impact, if any, of a single tree falling into a river the size of the Hudson? The record is silent. Without more, the Administrator cannot find that erosion from Mr. Hagopian’s property is of national significance.

Third, Mr. Hagopian has not shown that any marginal improvement in erosion from his property would not be countervailed by a corresponding increase in erosion on neighboring properties—meaning that Mr. Hagopian has not shown that his proposed property would result in a net decrease of erosion on the Hudson River. As NYSDOS argues in its responsive brief, “any national interest furthered by the project does not outweigh the activity’s adverse coastal effects” because Mr. Hagopian’s planned revetment wall “could adversely affect the coast of his and the neighboring properties in several different ways.”⁶¹ Mr. Hagopian failed to present any persuasive evidence contradicting NYSDOS’s assertions.⁶² As such, Mr. Hagopian again failed

⁵⁹ See Appellant’s Principal Brief at 2.

⁶⁰ See Appellant’s Principal Brief at 13.

⁶¹ See State’s Principal Brief at 11, 14. NYSDOS, relying on some scientific studies and policies, alleged that if Mr. Hagopian is permitted to construct his revetment wall, it could negatively affect both his and his neighbor’s property by: (1) “reducing or destroying the protection afforded riparian landowners against erosion or high storm waters by blocking the flow of water near [Mr. Hagopian’s] property and redirecting its force to the neighboring properties”; (2) “eliminating the sandy areas seaward of the riprap wall, lowering the reserves of sand or other natural materials available to replenish storm losses through natural processes”; (3) “eliminating 10-20 trees that act as natural wave barriers”; and (4) “preventing natural vegetation that would otherwise expand the biodiversity of the area and further stabilize the area.” *Id.* at 14.

⁶² Specifically, Mr. Hagopian replies that the State’s arguments “are plainly without merit” because a separate New York state agency issued a “NYS Coastal Consistency Certification” to Mr. Hagopian. Reply, p. 10. But the Consistency Certification certified only that the project “will not substantially hinder the achievement of any of the policies and purposes” of New York’s Waterfront Revitalization of Coastal Areas and Inland Waterways Act—and this Act has a completely different set of policies from the Coastal Management Plan that are reviewed under the CZMA. So it is of no import that a different New York agency certified consistency with a different set of policies. Appendix, 178-79.

to carry his burden of persuasion to show that the proposed activity would further the national interest in a significant or substantial manner.

This conclusion is consistent with past agency decisions, which have generally found that it is inappropriate for the Administrator to override state objections to local projects with local effects. For example, in 2021, Norwalk Cove Marina, Inc. appealed NYSDOS's objection to its consistency certification for a permit to dredge to improve the marina's facility and accommodate deep draft vessels.⁶³ The marina argued that its proposed activity would promote the national interest in a significant manner, citing that its facility is a significant driver of economic activity to the surrounding area and noting that the state's marina industry produces significant economic value in the region.⁶⁴ NOAA rejected these arguments, noting that the marina impacted the *local* economy and produced *local* jobs.⁶⁵ Ultimately, NOAA concluded that the marina failed to show that deepening the dredged footprint of the southern portion of the marina was of national importance or scale, such that it met the "significant or substantial" threshold of Element 1, and so NOAA declined to override the state's consistency objection.⁶⁶

Similarly, in 2013, Mark Smolinski challenged an objection by NYSDOS to the consistency certification for a federal permit to install a solar-panel array onto an existing dock for the purpose of collecting renewable solar energy for his private home, with excess energy provided to the electric grid.⁶⁷ Despite only directly impacting a single residence, Mr. Smolinski argued the activity was nationally significant as it was intended to reduce the United States' reliance on foreign sources of energy.⁶⁸ There, too, the NOAA Administrator found this argument unpersuasive and declined to override the state's objection. The NOAA Administrator's decision noted that the energy projects that have been found to significantly or substantially further the national interest include major, coastal-development facilities, such as liquefied natural gas import terminals.⁶⁹ NOAA contrasted this with small local projects, such as the development of a house, restaurant, or food store.⁷⁰ NOAA held that Mr. Smolinski's small solar-array that would

⁶³ See *Decision and Findings by the U.S. Undersecretary of Commerce for Oceans and Atmosphere in the Consistency Appeal of Norwalk Cove Marina, Inc., From an Objection by the New York State Department of State* at 4 (Jan. 25, 2022) [hereinafter "*Norwalk Cove*"].

⁶⁴ See *Norwalk Cove* at 15.

⁶⁵ See *id.*

⁶⁶ See *id.* at 17.

⁶⁷ See *Decision in the Consistency Appeal of Mark Smolinski* at 1 (Apr. 14, 2014) [hereinafter "*Smolinski*"].

⁶⁸ *Id.* at 3.

⁶⁹ *Id.* at 4.

⁷⁰ *Id.*

provide electricity to a single home would not further a national interest in a substantial or significant way and declined to intervene.⁷¹

Under the CZMA, the standard is clear: the proposed activity *itself* (taking into account downstream effects) must meet the “significant or substantial” national requirement. It is not enough that a project addresses, in some small and local way, a problem that as a whole may rise to the level of national significance. And here Mr. Hagopian has made no showing that a stone bulkhead and a stone rip rap along a few hundred feet of shoreline on his own personal property meets this high bar. As with these past cases, Mr. Hagopian’s private land development project is a local land use activity that does not rise to the requisite level of national significance.

In light of past precedent and the foregoing record, NOAA finds that Mr. Hagopian’s proposed project is not consistent with the objectives or purposes of the CZMA because it does not further the national interest as articulated in Sections 302 or 303 of the CZMA in a significant or substantial manner (Element 1). It is therefore unnecessary to determine whether the national interest furthered by the proposed activity outweighs the activity’s adverse coastal effects (Element 2) or whether a reasonable alternative to the proposed activity is available (Element 3).⁷²

B. Mr. Hagopian’s arguments challenging the validity of the State’s objection are outside of the scope of the CZMA appeal.

In his Principal Brief, Mr. Hagopian raises what he describes as two additional grounds upon which the Administrator should override the State’s objection: (1) that the objection wrongly found that the proposed activity is inconsistent with the enforceable policies of the State’s coastal management plan; and (2) the State’s objection was arbitrary and capricious.⁷³

As explained above, the scope of review is limited to whether a proposed activity, which a State agency has found to be inconsistent with the enforceable policies of its management program, may nonetheless be federally approved because the activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security.⁷⁴ Mr. Hagopian points to no authority of the NOAA Administrator to determine whether the State’s decision was arbitrary

⁷¹ *Id.* at 4–5.

⁷² *See Norwalk Cove* at 17; *Smolinski* at 4; *see also Electric Boat* at 14.

⁷³ *See Appellant’s Principal Brief* at 11, 20.

⁷⁴ *See* 15 C.F.R. § 930.120; *see also* 16 U.S.C. 1456(c)(3)(A) (providing that upon a state objection, “[n]o license or permit shall be granted by the Federal agency . . . unless the Secretary . . . finds . . . that the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security”).

and capricious, or incorrect.⁷⁵ In contrast, as noted in past decisions, a state agency's finding of inconsistency with the state's program is presumed to be correct and is not an issue on appeal.⁷⁶ The federal consistency appeal process does not empower NOAA to adjudicate any and all possible disputes arising out of the proposed federal permit or license activity.⁷⁷ Thus, Mr. Hagopian's arguments regarding the underlying validity of the State's decision cannot serve as a basis for the Administrator to override the State's objection.

For these reasons, Mr. Hagopian's arguments regarding the validity of the State's objection are unpersuasive.

VI. CONCLUSION

The State's objection to Mr. Hagopian's proposed activity is **SUSTAINED**. For the reasons set forth above, the record does not establish that Mr. Hagopian's proposed activity is consistent with the objectives or purposes of the CZMA, as it does not further the national interest in a significant or substantial manner. For this reason, NOAA declines to override the State's consistency objection.



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Administrator

⁷⁵ To the extent Mr. Hagopian wishes to challenge NYSDOS's substantive factual findings, that is not a question properly before NOAA, but rather one that should be decided under state law.

⁷⁶ See, e.g., *Decision and Findings in the Consistency Appeal of Chevron U.S.A., Inc. from an Objection by the State of Florida* at 4 (Jan. 8, 1991) ("As in previous decisions, I do not consider in this appeal whether Florida was correct in its determination that the proposed activity is inconsistent with the state's coastal management program, nor do I consider whether the state's objection is correct as a matter of other state law."); see also *Federal Consistency with Approved Coastal Zone Management Programs Proposed Regulations*, 41 Fed. Reg. 42878, 42883 (Sept. 28, 1976) ("The State agency's finding of inconsistency with the State's program is presumed to be correct and is not an issue on appeal.").

⁷⁷ See *Jordan Cove* at 21; see also *Norwalk Cove* at 10.