

# Enforceable Policies Transcript



NOAA Office for Coastal Management  
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**Read the email from the policy team**

To Whom It May Concern:

Our state's office of the secretary is requesting comments on two bills drafted by Senator Sidewinder's office. Our legislative affairs office is preparing comments, but I'd like to get your input about how these bills might be viewed in light of the Coastal Zone Management Act. As you know, federal approval (through NOAA) of our coastal program means our coastal program has the responsibility to review and concur with, or object to, all federal permit requests in our state's coastal zone. Do you see anything in these bills that might jeopardize that status?

If you need a refresher on the key points that NOAA will consider, please go to the practice activity in the online learning module.

Thank you.  
Your Boss

**Become familiar with the seven checkpoints**

1. Does the policy include mandatory language?
2. Does the policy contain a clear standard?
3. Is the policy preempted by federal law?
4. Does the policy regulate federal agencies, lands, or waters?
5. Does the policy discriminate against a particular coastal user or federal agency?
6. Does the policy hinder the national interest objectives of the Coastal Zone Management Act?
7. Does the policy incorporate other policies or requirements by reference?

## Practice spotting potential red flags

When reviewing a state statute or regulation, looking for red flags can help you identify potential problems—problems that make it less likely NOAA would approve it as an enforceable policy. Learn about what to look for, and then practice identifying red flags.

### Checkpoint 1: Does the policy include mandatory language?

Hint: The words “shall,” “must,” and “will” are mandatory language. Typically, policies with words like “should,” “encourage,” “support,” and “promote” are not approvable as enforceable policies. However, if the state can explain how a word has a mandatory effect under state law, it might be approvable as an enforceable policy.

Does this policy include mandatory language?

Checkpoint 1, Question 1: “Buildings and other structures shall be sited in the coastal area so as to minimize damage to property and the endangering of human lives caused by flooding and erosion.”

- Yes – Correct

The policy states that “buildings and other structures shall be sited.” The word “shall” is mandatory language, although “must” or “must not” are ordinarily the better choice of words to state an obligation. Examples of non-mandatory language are “should,” “encourage,” “support,” and “promote.”

- No – Try again

The policy states that “buildings and other structures shall be sited.” The word “shall” is mandatory language, although “must” or “must not” are ordinarily the better choice of words to state an obligation. Examples of non-mandatory language are “should,” “encourage,” “support,” and “promote.”

Does this policy include mandatory language?

Checkpoint 1, Question 2: "To safeguard the vital economic, social, and environmental interests of the state and its citizens, proposed major actions in the coastal area must give full consideration to those interests and the safeguards the state has established."

- Yes – Correct

The word "must" is mandatory language as shown in this policy statement, "proposed major actions in the coastal area must give full consideration." The word "must" is mandatory language.

- No – Try again

The word "must" is mandatory language as shown in this policy statement, "proposed major actions in the coastal area must give full consideration." The word "must" is mandatory language.

Does this policy include mandatory language?

Checkpoint 1, Question 3: "Proponents of buildings along the beachfront are encouraged to minimize shading of the beach."

- Yes – Try again

The policy states that proponents of buildings "are encouraged to minimize shading." The word "encourage" is not mandatory language. A state must be able to compel someone to do, or not do, something in order for a policy to be enforceable. "Encourage" does not compel compliance. This is a red flag!

- No – Correct

The policy states that proponents of buildings "are encouraged to minimize shading." The word "encourage" is not mandatory language. A state must be able to compel someone to do, or not do, something in order for a policy to be enforceable. "Encourage" does not compel compliance. This is a red flag!

Does this policy include mandatory language?

Checkpoint 1, Question 4: “Before applying for a permit, the project proponent should consult with adjacent property owners.”

- Yes – Try again

The policy states, “the project proponent should consult with adjacent property owners.” The word “should” is not mandatory language. A state must be able to compel someone to do, or not do, something in order for a policy to be enforceable. The words “shall,” “must,” and “will” are mandatory language. This is a red flag!

- No – Correct

The policy states, “the project proponent should consult with adjacent property owners.” The word “should” is not mandatory language. A state must be able to compel someone to do, or not do, something in order for a policy to be enforceable. The words “shall,” “must,” and “will” are mandatory language. This is a red flag!

**Checkpoint 2: Does the policy contain a clear standard?**

Hint: An enforceable policy can be general, broad, or both, but it must have some definable standard so that it cannot be applied arbitrarily.

Does this policy contain a clear standard?

Checkpoint 2, Question 1: "Dredged material must be put to beneficial use to the extent it is practicable to do so."

- Yes - Correct

The standard provided in this policy is sufficiently specific to guide private and public uses. Although it's not specific as to what is "beneficial use" or "practicable," the policy is unambiguous. In this case, how the standard may be met is best determined case by case.

- No – Try again

The standard provided in this policy is sufficiently specific to guide private and public uses. Although it's not specific as to what is "beneficial use" or "practicable," the policy is unambiguous. In this case, how the standard may be met is best determined case by case.

Does this policy contain a clear standard?

Checkpoint 2, Question 2: "Only appropriate uses of the waterfront will be approved by the commission."

- Yes – Try again

"Appropriate" is not only ambiguous, it is open-ended. There is no clear standard to guide the proponent of an activity other than the preferences of the commissioners. This is a red flag!

- No – Correct

"Appropriate" is not only ambiguous, it is open-ended. There is no standard to guide the proponent of an activity other than the preferences of the commissioners. This is a red flag!

**Checkpoint 3: Is the policy preempted by federal law?**

Hint: If a policy is, on its face, preempted by federal law, then it cannot be approved as an enforceable policy. A policy is likely to be preempted if it regulates liquefied natural gas facilities, hydropower, marine mammals, overflight, or railroad abandonment.

Is this policy preempted by federal law?

Checkpoint 3, Question 1: State legislation is enacted to regulate low-level aircraft in flight with minimum altitude and decibel levels and other overflight restrictions.

- Yes – Correct

The state's policies are preempted by federal law administered by the Federal Aviation Administration. Flight regulation is one of the subject areas where federal laws typically preempt state policies. This is a red flag! View a list of other subject areas in this category.

- No – Try again

In this case, the state's policies are preempted by federal law administered by the Federal Aviation Administration. Flight regulation is one of the subject areas where federal laws typically preempt state policies. This is a red flag! View a list of other subject areas in this category.

Is the policy preempted by federal law?

Checkpoint 3, Question 2: "Liquefied natural gas facilities shall not be located within 5,000 feet of an existing residence."

- Yes – Correct

When the Natural Gas Act was amended in 2005 to provide the Federal Energy Regulatory Commission with the exclusive authority to regulate the siting and operations of liquefied natural gas facilities, state policies pertaining to liquefied natural gas siting and operations were preempted and could no longer be applied for Coastal Zone Management Act review purposes.

Liquefied natural gas is one of the subject areas where federal laws typically preempt state policies. View a list of other subject areas in this category. This is a red flag!

- No – Try again

When the Natural Gas Act was amended in 2005 to provide the Federal Energy Regulatory Commission with the exclusive authority to regulate the siting and operations of liquefied natural gas facilities, state policies pertaining to liquefied natural gas siting and operations were preempted and could no longer be applied for Coastal Zone Management Act review purposes.

Liquefied natural gas is one of the subject areas where federal laws typically preempt state policies. View a list of other subject areas in this category. This is a red flag!

**Checkpoint 4: Does the policy regulate federal agencies, lands, or waters?**

Hint: Legally binding state policies apply only to areas and entities within the state’s jurisdiction.

Does this policy regulate federal agencies, lands, or waters?

Checkpoint 4, Question 1: A state statute establishing a wetlands protection policy states that the requirements of the act shall apply to all private and public uses that would destroy or diminish wetlands.

- Yes – Try again

This policy does not refer to federal lands, federal waters, or federal agencies in general or by name. It is assumed that the legislature did not intend to include federal agencies within the term “public.”

- No – Correct

This policy does not refer to federal lands, federal waters, or federal agencies in general or by name. It is assumed that the legislature did not intend to include federal agencies within the term “public.”

**Checkpoint 5: Does the policy discriminate against a particular coastal user or federal agency?**

Hint: Policies should be applied to all relevant public and private entities and should not discriminate against a particular type of activity, or, even if neutrally written, against a particular federal agency. State policies should be based on the effects to coastal uses or resources and not on a particular type of activity.

Does this policy discriminate against a particular coastal user or federal agency?

Checkpoint 5, Question 1: A state regulation limits the siting of electrical transmission facilities along the waterfront only to those facilities that receive transmissions from renewable energy sources.

- Yes – Correct

While states can encourage renewable energy activities, they cannot discriminate. The effects of an activity are the basis for applying Coastal Zone Management Act enforceable policies. The effects to the waterfront from siting an electrical transmission facility are the same, regardless of the power source. To limit the application of the policy to favor renewable energy sources is discriminatory and has no rational basis as it pertains to the effects on the waterfront. This is a red flag!

- No – Try again

While states can encourage renewable energy activities, they cannot discriminate. The effects of an activity are the basis for applying Coastal Zone Management Act enforceable policies. The effects to the waterfront from siting an electrical transmission facility are the same, regardless of the power source. To limit the application of the policy to favor renewable energy sources is discriminatory and has no rational basis as it pertains to the effects on the waterfront. This is a red flag!

**Checkpoint 6: Would the policy hinder the “national interest” objectives of the Coastal Zone Management Act?**

Hint: A state should ensure that policies balance the objectives of the Coastal Zone Management Act and continue to give priority consideration to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports, and transportation. See [CZMA § 303\(2\)\(D\)](#). Enforceable policies affecting these “national interests” have implications for federal consistency.

Would this policy hinder the national interest objectives of the Coastal Zone Management Act?

Checkpoint 6, Question 1: A state law prohibits oil and gas exploration, development, and production within waters of the state.

- Yes – Correct

An absolute ban on oil and gas production could be found to be contrary to the national interest objectives of the Coastal Zone Management Act. This is a red flag!

- No – Try again

An absolute ban on oil and gas production could be found to be contrary to the national interest objectives of the Coastal Zone Management Act. This is a red flag!

**Checkpoint 7: Does the policy incorporate by reference any statutes, regulations, or other requirements that have not been approved as enforceable policies of a state's program?**

Hint: Enforceable policies cannot contain incorporations by reference. A reference to a state or local policy is only approvable as an enforceable policy if the state or local policy itself is also being submitted for approval or has already been approved by the Office for Coastal Management as an enforceable policy.

Does this policy incorporate by reference any statutes, regulations, or other requirements that have not been approved as enforceable policies of a state's program?

Checkpoint 7, Question 1: A state law requires that in order to obtain a building permit, an applicant must comply with regulations for sediment and erosion control.

- Yes – Correct

The regulations have not likely been approved as enforceable policies yet, and so cannot be incorporated into the state law. The new sediment and erosion regulations must be approved as part of the state's coastal management program first. This is a red flag!

- No – Try again

The regulations have not likely been approved as enforceable policies yet, and so cannot be incorporated into the state law. The new sediment and erosion regulations must first be approved as part of the state's coastal management program. This is a red flag!

## Bill 1: The Coastal Conservation, Protection, Safeguarding, Enhancement, and Improvement Act

### Section 1. Findings

- (a) The coastal waters of the state and the resources within –
  - (1) are critical components of a larger ecosystem;
  - (2) provide a broad range of benefits to the public; and
  - (3) are in need of protection from activities that could harm, either directly or indirectly, coastal resources, habitats, or benefits to the public at-large.
- (b) Certain uses within coastal waters –
  - (1) are incompatible with the protection of coastal resources, habitats, or their benefits and should not be authorized by the state; or
  - (2) should be limited to the carrying capacity of the waterbody or resource.

### Section 2. Purpose

The purpose of this act is to prohibit activities that may harm coastal resources, habitats, or the greater interests of the public in the use and enjoyment of coastal waters.

### Section 3. Definitions

- (a) “Person” – For the purposes of this chapter, “person” includes all individuals and groups, corporations, charitable and not-for-profit organizations, academic institutions, and local, state, and federal government entities.
- (b) “Coastal resources” – Any fish and wildlife ordinarily found within coastal waters, and their habitat.
- (c) “Coastal uses” – Any current or past use of coastal waters by persons within the state.
- (d) “Coastal waters” – All waters where there is a tidal influence. From the coastline seaward, “coastal waters” includes all water extending out to 200 nautical miles.

### Section 4. Policy

- (a) No person shall engage in any activity within coastal waters that may harm coastal resources, their habitat, or coastal uses.
  - (1) Oil and gas exploration, development, and production poses a risk of harm to the state that outweighs the potential benefits, and should not be authorized anywhere within coastal waters of the state.
  - (2) Liquefied natural gas facilities shall not be located along coastal waters of the state.
  - (3) Other forms of energy production in offshore areas shall only be authorized where the Board of Public Works finds that the proposed location is appropriate for the proposed use.
  - (4) Mariculture activities may be authorized by the Board of Public Works so long as such activities are conducted in a manner that follows the *Guidelines for Mariculture* published by the Department of Natural Resources.
  - (5) Fish farming in coastal waters may not be authorized by the Board of Public Works.

(6) No activity shall be authorized by the Board of Public Works in coastal waters unless the adjacent community provides consent to the activity.

## Explanations of red flags

1. *Federal government entities*: States do not have jurisdiction over federal agencies. The assertion of state jurisdiction in definitions is a common problem seen with state statutes.
2. *“Coastal waters” includes all water extending out to 200 nautical miles*: This definition is not approvable. Even though it does not mention “federal agencies, lands, or waters,” waters extending out to 200 nautical miles include federal waters.
3. *No person shall engage in any activity within coastal waters that may harm coastal resources*: This statement would not be approvable as an enforceable policy. A state may not assert jurisdiction over federal waters. (Subsection (c)(3) defines the term “coastal waters” as applying to federal waters offshore of the state.)
4. *Should not be authorized anywhere within coastal waters of the state*:  
Is this an advisory policy with no enforceable mechanism behind it? The word “should” suggests there is some discretion on the part of the reviewer; otherwise, the word “shall” would have been used. Unless it can be shown that the word “should” has the force of law to compel compliance, this statement would not be approved as an enforceable policy. A state may not assert jurisdiction over federal waters. (Subsection (c)(3) defines the term “coastal waters” as applying to federal waters offshore of the state.)
5. *Liquefied natural gas facilities shall not be located along coastal waters of the state*:  
This statement would not be approvable as an enforceable policy. In 2005, Congress amended the Natural Gas Act to preempt state regulation of the siting of liquefied natural gas facilities. Other generic policies pertaining to impacts may be applicable.
6. *...the proposed location is appropriate for the proposed use*: What is appropriate? State enforceable policies do not need to include detailed information about how compliance is met; but a policy should not provide open-ended interpretation. For instance, subsection (b)(2) says uses that may be permissible should be limited to the carrying capacity of the waterbody or resource. This statement qualifies as an enforceable policy because it provides sufficient detail for determining “where appropriate.”
7. *So long as such activities are conducted in a manner that follows the Guidelines for Mariculture published by the Department of Natural Resources*: Have these guidelines been approved by NOAA as incorporated enforceable policies of the program? If not, this statement would not be approvable as an enforceable policy.
8. *Fish farming in coastal waters may not be authorized by the Board of Public Works*: A state may not assert regulatory jurisdiction over activities in federal waters. (See the definition of “coastal waters” in subsection (c)(3).) The CZMA provides states with authority to review federal activities, not manage them. Also, does this policy discriminate against fish farming in favor of mariculture? A state should make the distinction between the two by noting the different effects; the primary differences include the possibility of fish escapes and genetic contamination of native stocks.
9. *No activity shall be authorized by the Board of Public Works in coastal waters unless the adjacent community provides a consent to the activity*: A state permit can be contingent upon a local authorization, but the CZMA review is a separate process. Only the state may issue a consistency decision, and that decision must be based on substantive standards that a federal agency or permit applicant can use to measure whether a proposed activity is consistent. A state may not rely on a local decision as a basis for issuing a CZMA objection, but a local decision (and the basis for that decision) can be presented as a finding when an objection is issued.

## Bill 2: Getting the Most Out of Mud Act

### Section 1. Findings

- (a) Bottomlands and tidelands are a natural resource owned by the state for the benefit of its citizens.
- (b) As the proprietor of these lands, the state shall determine their use.
- (c) There is a state interest in keeping certain waterbody channels open to navigation.
- (d) There is also a state interest in using dredged materials in such ways that there is a public benefit.
- (e) The state has a continuing interest in bottomland and tideland materials that originated from sediment sources within the state.

### Section 2. Purpose

The purpose of this act shall be to ensure the beneficial use of dredged material from the Army Corps of Engineers projects to the maximum extent practicable.

### Section 3. Definitions

- (a) "Beneficial Uses" – The placement of dredged material for the protection of property; public use; or protection, maintenance, or creation of wildlife habitat.
- (b) "Bottomlands" – Lands beneath navigable waters.
- (c) "Navigable waters" – Those waters that are, or were formerly, passable by vessels.
- (d) "Tidelands" – Lands beneath, or subject to, the ebb and flow of the tide up to the mean high-tide line regardless of whether the waters are navigable-in-fact.
- (e) "Secretary" – The Secretary of Natural Resources and Purdy Places.

### Section 4. Required plans

- (a) No dredging of bottomlands or tidelands may occur without a permit issued by the secretary.
- (b) No dredging of bottomlands or tidelands may be permitted by the secretary without a plan approved by the secretary for the disposal of the dredged materials. Such plans shall include:
  - (1) The location and parameters of the disposal site;
  - (2) An identification of resources and uses associated with the site, and the impacts of disposal on those resources and uses;
  - (3) A statement as to the beneficial use to which the dredged material will be put;
  - (4) Local government approval of the beneficial use plan; and
  - (5) Signatures from adjacent landowners agreeing to the project.

### Section 5. Project Costs

The state shall not be responsible for any share of the cost of removing, disposing of, or using dredged material.

### Section 6. Dredged Materials Unsuitable for Beneficial Use

(a) Where dredged material is found by the secretary to be unsuitable for beneficial use, the material may be disposed of in any manner and location found by the secretary not to cause environmental harm.

(b) In such instances, the project proponent shall identify other materials that may be suitable for beneficial use and incorporate those uses and materials into the dredging project conducted by the Corps of Engineers.

(c) In lieu of identifying other sources of dredged materials for beneficial use, the project proponent shall pay an amount set by the secretary into a mitigation fund established by the secretary.

#### Section 7. Prohibition of Uses of Materials not Beneficial to the State

(a) Any bottomland or tideland materials that originated from sediment sources from within the state, whether in whole or in part and regardless of where they are found, continue to be subject to the jurisdiction and control of the state.

(b) The secretary may not authorize or consent to the use of dredged material that originated from sediment sources within the state that benefits another state or public or private entity outside of the state unless it can be shown that there is a benefit to the state.

### Explanations of red flags

1. *No dredging of bottomlands or tidelands may occur without a permit issued by the secretary:* Although this policy is approvable, it is understood that this requirement does not pertain to federal agencies. A state cannot require a federal agency to obtain a permit.
2. *Local government approval of the beneficial use plan:* This can be a requirement for the state coastal program but not a policy for the program's federal consistency review authority. A state may not delegate that authority to local government, although the state coastal management program may consider local government policies and input in their decision-making process.
3. *Signatures from adjacent landowners agreeing to the project:* Enforceable policies used for federal consistency reviews must be based on substantive standards. A requirement for approval from adjacent landowners is not a substantive standard.
4. *The state shall not be responsible for any share of the cost of removing, disposing of, or using dredged material:* The Corps project could be approved, even without adherence to the federal requirement for cost sharing, if the state determines that the Corps is complying with state policies to the maximum extent possible.
5. *The project proponent shall identify other materials that may be suitable for beneficial use and incorporate those uses and materials into the dredging project conducted by the Corps of Engineers:* If a state identifies additional ways the federal project might benefit the state, the federal agency is not required to change its proposed action.
6. *The project proponent shall pay an amount set by the secretary into a mitigation fund established by the secretary:* While this requirement may be approvable, it is understood that the Coastal Zone Management Act is not to be used to require federal agencies to pay fees or enforce any fee agreement the state and federal agency may have in place.
7. *Whether in whole or in part and regardless of where they are found:* States do not have management jurisdiction over materials in federal waters regardless of the source of the sediment.
8. *... that benefits another state or public or private entity outside of the state unless it can be shown that there is a benefit to the state:* States do not have management jurisdiction over materials in federal waters regardless of the source of the sediment.

## Enforceable Policies Frequently Asked Questions

### What is an enforceable policy?

An enforceable policy is a state policy, legally binding under state law, by which a state exerts control over private and public coastal uses and resources. These policies are incorporated in the state's federally approved coastal management plan and include an enforceable "mechanism" through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions. [CZMA § 304(6a) and 15 C.F.R. § 930.11(h)]

Enforceable policies are given legal effect by state law and do not apply to federal lands, federal waters, federal agencies or other areas or entities outside a state's jurisdiction, unless authorized by federal law (the CZMA does not confer such authorization).

For federal consistency activities, early coordination and identification of applicable state policies is essential. Early coordination will help determine what measures, if any, need to be taken to make the activity consistent with the policies of the state coastal management program.

Approval by NOAA's Office for Coastal Management is required when state coastal management programs want to change or incorporate new enforceable policies. [CZMA §§ 306(d) and 306(e)] This process serves an important notice and review purpose in the CZMA state-federal partnership. In return for the federal consistency authority granted to states, federal agencies are provided with an opportunity to review and comment on the development of a state's coastal management program and on subsequent changes. NOAA's Office for Coastal Management also evaluates proposed enforceable policy changes. [15 C.F.R. part 923, subpart H), [Program Change Guidance](#) (July 1996) and [Addendum](#) (November 2013)]

### How do enforceable policies fit in with the CZMA?

Since 1996 states have been required to identify the enforceable policies when requesting NOAA approval of changes to the state's coastal management program. [15 C.F.R. § 923.84(b)(1)]

Important note: Enforceable policies are not limited to federal consistency projects. There are integral parts of a state's regulatory program that are enforceable under state law but would not likely be applied through federal consistency (e.g., permit regulations regarding fines, appeals processes, exemptions for state agencies, etc.). These provisions do not need NOAA approval if they will not be used for federal consistency review.

### Are all state coastal management programs organized similarly? Do they contain similar enforceable policies?

Coastal management programs are organized differently among coastal states, as are the enforceable policies. Some derive their enforceable policies from state statutes, while other states use statutes and regulations, just regulations, or general policies.

If a state's enforceable policies are derived from state or local statutes, the state's ability to modify the policies is obviously somewhat limited.

Examples of how some state coastal management program's enforceable policies are organized:

- **Statutes:** The enforceable policies are all derived from state statutes.
- **Regulations:** State statute includes information such as purpose, findings, goals and objectives, and establishes a permitting framework to manage various uses and resources. While the statute itself does not contain enforceable policies, it may direct a state agency to establish substantive regulations for a particular resource (e.g., wetlands regulations). The substantive regulations then serve as the enforceable policies in the state's coastal management program.
- **Statutes and regulations:** State statute includes enforceable policies and provides for the development of additional policies through regulations.
- **General and narrative policies:** Comprehensive set of general policies that may or may not be contained in statute or regulation. For example, a state may have enforceable policies that are not derived directly from a statute or regulation but are enforced through a statute or regulation.

### Why is it important for states to keep enforceable policies up-to-date?

If a state law supersedes or substantively revises an existing enforceable policy, neither the old policy nor the new or revised policy can be used for federal consistency until the changes are approved by NOAA.

A federal consistency objection can only be based upon the NOAA-approved enforceable policies of a state's coastal management program. Projects undergoing a federal consistency review are also subject to other applicable state or local laws and regulations.

### If a policy is enforceable under state law, does that automatically mean it is NOAA approved for CZMA federal consistency purposes?

No. NOAA policies do not enforce authorizations and directives that do not impose requirements on non-governmental entities. For example:

- Authorizations: "The state DNR is authorized to promulgate rules for public access."
- Directives: "The state DNR shall establish a program to manage invasive species."

However, a directive to a state or local agency that sets forth the standards the agency must use in its decision-making may be approvable as an enforceable policy. For example:

- State agencies shall apply the following requirements prior to making a decision."
- "The following guidelines shall be used by the agency when reviewing projects."

### Do maps need to be submitted as enforceable policies?

Generally not, as maps are considered implementation or enforcing mechanisms. Maps *should* be submitted as enforceable policies for special area management plans, ocean plans, and exclusion zones that relate to national interest areas.

### Are there any red flags I should look for when reviewing policies?

Yes. When reviewing a state statute or regulation, looking for key red flags can help you identify potential problems—problems that make it less likely NOAA would approve it as an enforceable policy. Here's what to look for:

Does the policy include mandatory language?

Does the policy contain a clear standard?

Is the policy preempted by federal law?

Does the policy regulate federal agencies, lands, or waters?

Does the policy discriminate against a particular coastal user or federal agency?

Does the policy hinder the national interest objectives of the Coastal Zone Management Act?

Does the policy incorporate other policies or requirements by reference?

## **Coastal Zone Management Act**

The [Coastal Zone Management Act](#) encourages coastal states to better plan for and manage coastal uses and resources. If a state chooses to participate, it must develop and implement a coastal zone management program that follows federal requirements.

The Coastal Zone Management Act (CZMA) encourages coastal and Great Lakes states, as well as U.S. territories, to better plan for and manage coastal uses and resources. The CZMA recognizes not only local and state interests in the coast, but also a national interest in balancing the many competing uses of the coastal zone.

State participation in this voluntary program requires the state to develop and implement a coastal management program that meets the criteria for approval by the National Oceanic and Atmospheric Administration [CZMA § 306(d); 15 C.F.R. part 923]. Each state program must describe the land and water uses that it manages, the program's authorities and enforceable policies, the boundaries of the state's coastal zone, the organization of the management program, and related state coastal management concerns.

State coastal management programs are developed with participation by federal, state, and local agencies, as well as industries, other interested groups, and the public. Thirty-five coastal states are eligible to participate. Currently, all eligible states except Alaska have federally approved coastal management programs.

## **Federal Consistency**

The CZMA federal consistency provision gives states a powerful and unique tool to manage coastal uses and resources and ensure that federal agencies consider state policies when their actions may affect coastal uses and resources of the coastal zone.

The federal consistency requirement is a cornerstone of the CZMA program and is a primary incentive for state participation. This provision lays the foundation for greater cooperation between the states and federal government. Once a state has a federally approved coastal management program, federal activities (including the issuance of federal licenses, permits, and financial assistance) are required to be consistent with the federally approved enforceable policies of those programs.

State CZMA federal consistency reviews are conducted by a single lead state agency within the state's coastal management program. This lead state agency issues a state's federal consistency decision and coordinates federal consistency reviews among other state agencies and local governments (when applicable), and provides for public participation.

At the federal level, NOAA's [Office for Coastal Management](#) oversees the application of federal consistency, as well as provides management and regulatory assistance on this topic to coastal states, federal agencies, federal permit and funding applicants, tribes, and others. The Office for Coastal Management also mediates CZMA-related disputes. Appeals of state CZMA objections, which are filed before the secretary of commerce, are processed by NOAA's Office of General Counsel for Oceans and Coasts.

[Federal Consistency Overview \(PDF\)](#)