

CHAPTER 4. COASTAL ZONE MANAGEMENT

1. INTRODUCTION AND DEFINITIONS.

a. **Actions in coastal zones.** Under most circumstances, all airport actions that would occur in or that would affect a coastal zone of a state having an approved state coastal zone management program must comply with that program to meet the requirements of the Coastal Zone Management Act of 1972, as amended (CZMA). This includes those actions FAA directly undertakes (e.g., installing a radar lighting system for a proposed runway), as well as sponsor-proposed airport development actions (e.g, building or extending a runway or an access road).

b. **Coastal zones.** Coastal zones are those waters and their bordering areas in states along the coastlines of the Atlantic and Pacific Oceans and the Gulf of Mexico and the shorelines of the Great Lakes. These zones include islands, beaches, transitional and intertidal areas, and salt marshes. Note the CZMA applies to a project that would directly affect coastal resources, even if it is not within a state’s designated coastal zone.

c. **Coastal Zone Management Program (CZMP).** Coastal zone management plan consistency provisions apply only to states having a CZMP the National Oceanic and Atmospheric Administration (NOAA) has approved. Approved CZMPs contain a coastal state’s objectives, policies, and standards to minimize direct effects on its coastal or shoreline resources and information the CZM agency needs to assess an action’s consistency with the CZMP. This information often addresses recreational, historical, cultural, or aesthetic values. CZMPs also identify coastal or shoreline segments to which the CZMP applies. If an airport activity is proposed in a state not having an approved CZMP, this chapter does not apply.

2. APPLICABLE STATUTES AND IMPLEMENTING REGULATIONS.

This chart provides information on the law and regulations for proposed actions in states having approved CZMPs.

APPLICABLE STATUTES AND IMPLEMENTING REGULATIONS	SUMMARY DESCRIPTION	OVERSIGHT AGENCY
Coastal Zone Management Act (CZMA) as amended, 16 USC Sections 1451-1464.	When a proposed action would occur in a coastal zone or affect coastal zone resources of a state having an approved CZMP, the Act applies to a Federal agency or a non-Federal entity who seeks a Federal license or permit or Federal funding. The Act requires the action’s proponent to certify the proposed activity would be consistent with the policies of the state’s CZMP.  The responsible Federal agency may not approve the	State CZM Agency, NOAA’s Office of Coastal Zone Management

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	<p>proposed activity, unless:</p> <ul style="list-style-type: none"> <li>• the State agency managing the CZMP agrees with the Federal agency or project proponent's certification the action is consistent with the applicable CZMP;</li> <li>• State concurrence is conclusively presumed; or</li> <li>• The Secretary of Commerce determines the activity is either consistent with the objectives of the CZMA or it is needed for national security.</li> </ul>	
<p>NOAA regulations on Federal coastal zone consistency are:</p> <p>15 CFR, Part 930, Subpart C - Consistency for Federal Activities.</p> <p>15 CFR, Part 930, Subpart D – Consistency for Activities Requiring a Federal License or Permit.</p> <p>15 CFR, Part 930, Subpart F – Consistency for Federal Support to State and Local Governments.</p>	<p>Complying with this subpart assures that FAA activities (or those a party undertakes on FAA's behalf) that occur in or are reasonably foreseeable to affect coastal zones are consistent with the state's approved CZMP. These activities include rulemaking, planning, physical alteration, and exclusion of uses.</p> <p>Complying with this subpart assures that Federally licensed, permitted, or approved activities that occur in or that affect a state's coastal zone resources are consistent with the state's approved CZMP. It also includes any lease to a non-federal entity or approving use of Federal property for a non-Federal activity.</p> <p>Complying with this subpart assures that Federal agencies may approve Federal support (i.e., grants) to applicant agencies for actions that are consistent with a state's approved CZMP. Applicant agencies include any unit of state or local government, or a special purpose district.</p>	<p>State CZM Agency and NOAA's Office of Coastal Zone Management</p>

**3. APPLICABILITY TO AIRPORT DEVELOPMENT ACTIONS.**

**a. Listed or unlisted actions outside a designated coastal zone.** The CZM agency may determine that a listed or unlisted action would affect coastal resources. It is important to note that agency may make this determination for an action that would occur outside the

geographical bounds of a state's designated coastal zone area. Therefore, consultation with the CZM agency is highly recommended. When a CZM agency determines an action would occur in or affect coastal resources, FAA must assure compliance with this chapter.

Note: An action proposed for any coastal zone along the Atlantic Ocean, the Gulf of Mexico, or the Great Lakes shorelines may also be subject to the requirements of the Coastal Zone Resources Act (CZRA) protecting coastal barriers. Refer to Chapter 3 of this Desk Reference for information on the CZRA.

**b. Listed activities in or affecting a State's coastal zone.** To comply with 15 CFR Sections 930.53(b) and 930.95(a), states having approved CZMPs develop a list of activities that are likely to affect a coastal zone or its resources. The responsible FAA official or the airport sponsor should review that list to determine if the following airport activities or any others under the scope of the Office of Airports are likely to affect a state's coastal zone or its resources. The official or sponsor must do so to meet 15 CFR Section 930.53. Direct questions addressing CZMA applicability to the CZM agency in the state where the proposed action would occur. Examples of airport-related activities that may be listed include:

(1) actions funded under the Airport Improvement Program (AIP) or Passenger Facility Charge (PFC) Program; or

(2) airport development actions the AIP or PFC do not fund, but that require Office of Airports approval.

**c. Unlisted activities in or affecting a State's coastal zone.** Executive Order 12372, *Intergovernmental Review of Federal Programs*, sets up an intergovernmental review process for EAs and EISs. This process allows CZM agencies to review pending actions to determine if an unlisted Federal action would occur in or affect the coastal zone or its resources. When the CZM agency decides an unlisted action might cause coastal zone impacts, that agency has the right to require compliance with the state CZMP (15 CFR Section 930.53(a)). CZMP compliance for unlisted actions is contingent on the CZM agency notifying the sponsor, FAA, and NOAA's Office of Coastal Resource Management the action would occur in a coastal zone or affect its resources. The CZM agency must notify them within 30 days of receiving notice of the proposed action. If the CZM agency fails to do so, it waives the right to review the unlisted activity.

**d. Categorically excluded actions.** The intergovernmental review noted above does not occur for actions FAA normally categorically excludes (CATEX). As a result, the CZM agency does not have the opportunity to review a proposed CATEX, nor does the sponsor or FAA know if the CZM agency wishes to review the proposed action. FAA cannot categorically exclude an action that is not consistent with any Federal requirement. As a result, *to avoid environmental processing delays*, the airport sponsor or FAA, as fitting, should consult the CZM agency about any proposed categorically excluded action that is in the coastal zone or that could affect coastal resources. If the CZM agency does not wish to review the action, FAA may categorically exclude it, provided no other extraordinary circumstance applies. If

the CZM agency issues a consistency concurrence, the responsible FAA official may categorically exclude the proposed categorically excluded action. If the CZM agency will not issue its concurrence for the proposed categorically excluded action, FAA will require an EA or EIS.

#### 4. PERMITS, CERTIFICATIONS, AND APPROVALS.

**a. Documents needed for unlisted actions.** The CZM agency has the authority to require activities not listed in a state's CZMP to comply with the CZMA (unlisted activities). When this occurs, the environmental document should include the following information:

(1) The CZM agency's notice to the sponsor and FAA that the CZM agency wishes to review the proposed, unlisted activity. The CZM agency must provide this notice within 30 days after learning of the proposed activity.

(2) If FAA or the sponsor contests the CZM agency's determination to review the action, either party must file comments with the NOAA Assistant Administrator within 15 days after receiving the CZM agency's notice of that determination. The environmental document should include the notice and FAA or sponsor-prepared comments.

(3) The NOAA Assistant Administrator must issue a decision on the CZM agency's determination to review the proposed action. That decision must occur within 30 days from the date of the CZM agency's notice of determination noted above. The sponsor, the CZM agency, and FAA must receive written notice of NOAA's decision. The environmental document should include the decision.

Note: The sponsor or FAA has the right to appeal a CZM agency's decision to review an unlisted action. Either party may file an appeal with the NOAA Assistant Administrator. But to avoid delays in the environmental review process, ARP recommends seeking the CZM agency's consistency concurrence rather than filing the appeal.

**b. The sponsor's consistency certification.** After finding the proposed action complies with the applicable State CZMP, the airport sponsor must make the following written certification to the CZM agency in the state where the action will occur (15 CFR Section 930.57(b)). The responsible FAA official must include a copy of the sponsor's certification in an appendix to FAA's environmental document.

"The proposed activity complies with the enforceable policies of (enter State's name) approved management program and will be conducted in a manner consistent with such program."

The airport sponsor should include the following data and information with that certification (15 CFR Section 930.58):

(1) A detailed description of the proposed action and its associated facilities (e.g, access road, support buildings, etc). The information must be sufficient to allow an evaluation of effects on coastal resources;

(2) Data and information in the CZMP the CZM agency will need to assess the action's consistency with the CZMP; and

(3) A brief assessment noting the coastal zone effects the proposed action and its associated facilities would have on relevant CZMP elements.

Note: An airport sponsor should provide the CZM agency confidential information, only if: 1) the agency clearly explains why it needs that information to make a reasoned decision on the proposal's consistency, and 2) the sponsor is satisfied that acceptable protection against public disclosure exists (15 CFR Section 930.58(c)).

**c. CZM agency concurrence with the sponsor's consistency certification.** CZMA section 307(c)(3)(A) (16 USC Section 1456(c)(3)(A) and 15 CFR Section 930.63(a)) require the responsible CZM agency to notify FAA and the airport sponsor of its concurrence or objection to the sponsor's consistency certification. The CZM agency must make this finding within 6 months following start of its review. The environmental document must contain proof that:

(1) The CZM agency agrees with the sponsor's consistency certification; or

(2) The state's concurrence is presumed. In this case, include a copy of the sponsor's dated consistency certification to demonstrate the CZM agency's 6-month review period requirement has been met.

**d. CZM agency objection to sponsor consistency certification.** If the CZM agency objects to the sponsor's consistency certification, that agency must notify the sponsor and FAA of its objection. As noted above, the State agency must do so within 6 months after beginning its review of the sponsor's certification and the information the CZM agency needs to assess that certification. To comply with 15 CFR Section 930.64, once FAA receives a State agency objection to a consistency certification, FAA shall not issue a Federal license or permit (in FAA's case, an unconditional ALP approval or AIP funding), except under certain specific circumstances.

As set forth in 15 CFR Section 930.63, the CZM agency objections based on insufficient information may contain the following information:

(1) reason(s) why the action is inconsistent with specific elements of the CZMP;

(2) an alternative measure (if one exists) that, if the airport sponsor adopts it, may allow the action to occur in a manner consistent with the enforceable policies of the CZM program;

(3) a description of the information needed and why the agency needs that information to determine if the action would comply with the CZM program; and

(4) a statement from the agency telling the sponsor the sponsor has the right to appeal to NOAA about the objection (see section 4.e. of this chapter).

**e. The sponsor's appeal of a CZM agency's objection.** If more information or informal discussions do not enable the sponsor and CZM agency to resolve the agency's objection to the sponsor's consistency certification, the sponsor may appeal the CZM agency's objection to the NOAA Assistant Administrator for Coastal Management (Assistant Administrator). The sponsor must file the appeal with the Assistant Administrator within 30 days of the date the CZM agency notifies the sponsor of its objection. When the sponsor files an appeal, the approving FAA Official *cannot* approve the action, unless the Assistant Administrator determines the action is consistent with the purposes of the CZMA. The environmental document prepared for this situation should contain the following information:

(1) a copy of the sponsor's intent to file an appeal under 15 CFR, Subpart H (the sponsor should tell the responsible FAA official that it intends to file an appeal);

(2) a copy of the NOAA Assistant Administrator's finding that the action is permissible because it is: "...consistent with the objectives or purposes of the Act", if it satisfies each of the following three requirements. Per 15 CFR Section 930.121, the finding will cite all of the following reasons as the basis for the NOAA Assistant Administrator's decision:

(a) the action significantly or substantially promotes the national interest, as defined in the CZMA;

(b) the action's contribution to the national interest outweighs adverse coastal zone impacts, separately or cumulatively; and

(c) there is no reasonable alternative. and

(3) a copy of the NOAA Assistant Administrator's concurrence with the CZM agency's objection;

Note: 15 CFR, Subpart G, Sections 930.110-930.116 describe mediation procedures Federal and CZM agencies may use to resolve disagreements about the state's administration of CZMP requirements. Refer to that Subpart as necessary. The NOAA Assistant Administrator will try to issue a decision within the 90-day period following public notice of the sponsor's appeal request.

**f. FAA action when the CZM agency objects to a sponsor's consistency certification.** The approving FAA Official *cannot* approve or finance any airport action after the CZM agency tells FAA it objects to the sponsor's consistency certification. Here, FAA may approve the proposed action only if the NOAA Assistant Administrator finds the action consistent with the purposes of the CZMA. If, during its review of an action, FAA decides it will not approve

or finance a proposed action, the responsible FAA official must immediately notify the sponsor and the CZM agency of that decision.

**g. FAA's consistency certification.** When FAA itself will build a facility connected to a proposed airport project (e.g., installing NAVAIDS for a proposed runway), the FAA Line of Business (LOB) responsible for the connected facility must make its own consistency certification. The LOB should do so as soon as practicable after finding its proposed action complies with the applicable state CZMP (15 CFR Section 930.36(b)). The text of the environmental document must tell the reader about FAA's certification and refer the reader to the appendix of that document that includes a copy of that certification. That certification should briefly state that the proposed action would/would not be consistent to the maximum extent practicable with the CZMP (15 CFR 930.39). The certification should also include this information:

(1) A detailed description of the proposed action and its associated facilities (e.g., access roads, support buildings, etc.) and their coastal zone effects; and

(2) Information sufficient to support FAA's consistency statement. The statement should infer the proposed action and its facilities are consistent with the CZMP. In making this finding, the airport sponsor must show consistency with the management program to the maximum extent practicable. There is no need to make findings for policies the CZMP does not address.

**h. State agency response to a Federal consistency determination.** A state CZM agency must tell FAA of its agreement or disagreement with FAA's consistency determination as early as practical after providing for public participation (15 CFR Section 930.41(a)). If the CZM agency does not issue a decision on FAA's determination within the 45-day period following receipt of FAA's determination, it must tell FAA about the status of the matter and why there is a delay (15 CFR Section 930.41(a)). In no case may FAA approve the action or any connected action sooner than 90 days from the date FAA issued its consistency determination, unless FAA and the CZM agency agree to an alternative period as discussed in 15 CFR Section 930.34(c).

**i. CZM agency objection to FAA's consistency determination.** If the CZM agency objects to FAA's consistency determination, the CZM agency must provide the reasons for its objection (15 CFR Section 930.43). That agency must describe why FAA's action is inconsistent with the CZMP and which alternatives, if adopted, would make the action consistent with the CZMP. If, as grounds for objecting, the state CZM agency maintains that FAA did not provide enough information, the CZM agency must describe the nature of the missing information and why it is needed.

**j. Conflict with existing law.** If the CZM agency objects to FAA's consistency determination, FAA and that agency should try to resolve their differences during the remainder of the 90-day period mentioned above. If they do not resolve the differences

within that period, FAA should consider delaying the final action until it and the CZM agency resolve their issues. However, at the end of the 90-day period, FAA may proceed with its action, even if the CZM agency has not withdrawn its objection. FAA may do so because an existing requirement particular to FAA (i.e., aviation laws or safety standards) may prohibit consistency with the CZMP. In this case, FAA must provide the CZM agency or local agency with a written statement citing the statutory provisions or legal authority limiting FAA's discretion to comply with the CZMP.

i. **Mediating an objection.** Either FAA or the CZM agency may request that the Secretary of Commerce mediate an objection (15 CFR Section 930.44). Procedures to do so are in 15 CFR Part 930, Subpart G.

## 5. ENVIRONMENTAL COMPLIANCE PROCEDURES – ENVIRONMENTAL ANALYSIS.

a. **Required consultation.** Consultation with NOAA or the state CZM agency is necessary to verify coastal zone management areas near the proposed action. If coastal zone effects would occur, the environmental document must record needed consultation with the State agency or NOAA.

(1) **Project description.** Refer the reader to that portion of the environmental document describing the proposed action. If a written description is not enough, include maps, diagrams, or other relevant material.

(2) **Consistency findings.** The sponsor or the responsible FAA LOB, as proper, should review the terms of the CZMP (i.e., air, water, erosion, beach access, etc.), briefly describe the proposed action's effects on those terms, assess those effects, and explain why the project is consistent with the CZMP.

6. **DETERMINING IMPACTS.** Use the information prepared to meet the requirements noted earlier in this chapter. The environmental document's Coastal Zone Management chapter should use that information to determine the severity of impacts on coastal resources by using the information discussed in section 7 of this chapter.

## 7. DETERMINING IMPACT SIGNIFICANCE.

a. **General.** Due to their locations, some airport development actions are in or affect coastal zones. The responsible FAA official should consider the following factors in consultation with the airport sponsor, an allied FAA LOB, and the CZM agency. For airport development actions, use the following information to determine the level of a proposed action's impacts on coastal zone resources.

ORDER 1050.1E THRESHOLD	FACTORS TO CONSIDER
None.	<p>FAA Order 1050.1E, Appendix A, Section 3, does not provide a threshold for these resources. Because of the number of airports in coastal areas or that could affect coastal resources, ARP recommends the responsible FAA official consider the following factors when addressing effects on coastal zone resources.</p> <ul style="list-style-type: none"> <li>• Does the CZM agency object to the sponsor’s consistency certification?</li> <li>• If yes, has the sponsor changed the project so it is consistent with the applicable coastal zone management plan(s)?</li> <li>• If not, has the sponsor successfully appealed the CZM agency’s consistency objection to the NOAA Assistant Administrator?</li> <li>• If the airport action includes facilities FAA will install, did the responsible FAA organization provide proof that it will install the necessary aviation facilities in a manner consistent with the approved coastal zone management plan to the maximum extent practicable?</li> <li>• Did the CZM agency agree or disagree with FAA’s finding?</li> <li>• If not, has FAA changed the proposed installation to meet the CZM plan? If not, explain why.</li> </ul>

From: Table 7-1, Order 5050.4B

**b. Mitigation.** During the environmental review process, the CZM agency provides information on the approved CZMP, if requested. That information may include recommended measures to promote consistency with the CZMP. An appendix to the environmental document should include the recommendations. The environmental document should summarize the most important information and accurately cross-reference the appendix and pages in that appendix to aid the reader. If the sponsor or FAA rejects any recommended mitigation, the environmental document should explain clearly why the recommendation was rejected.

**8. ENVIRONMENTAL IMPACT STATEMENT CONTENT.**

**a. General.** Focus EIS scoping and content on any issues impeding the State agency’s consistency concurrence. The EIS must include any information that agency determines necessary, unless the information is protected from public disclosure (see 15 CFR Section 930.58(c)). The responsible FAA official should consider inviting the state CZM agency to be a cooperating agency during the EIS process.

**b. Cooperating agency.** If consultation with the CZM agency signals that agency will object to a consistency certification, the Approving FAA Official cannot approve the proposed

action (15 CFR Sections 930.64 and 930.90). To address this, FAA should consider inviting the CZM agency to engage as a cooperating agency during environmental document preparation. The environmental document should contain the applicable information discussed in this chapter and any information the State agency determines necessary to make the action consistent with its CZM plan. The Approving FAA Official may approve the proposed action only when the CZM agency determines the proposed action is consistent with that plan.

**c. Mitigation.** The EIS should describe proposed mitigation or CZM agency changes to the proposed action. The approving FAA official cannot authorize the action, unless the CZM agency agrees the action, as proposed or adjusted, will be consistent with the CZMP (15 CFR Sections 930.64 and 930.90). The airport sponsor and FAA should consider fully the mitigation or changes and balance their benefits against those of the proposed action. If needed, the EIS should explain why the sponsor or FAA did not adopt any mitigation or changes the CZM agency recommended. If feasible, provide and a schedule for undertaking accepted mitigation.