

An Introduction to Federal Consistency

A presentation by:

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What are we going to learn about Federal Consistency?

- What it is.
- How it applies.
- How it works.
- Basics about the Guam Coastal Management Program.

Introductions

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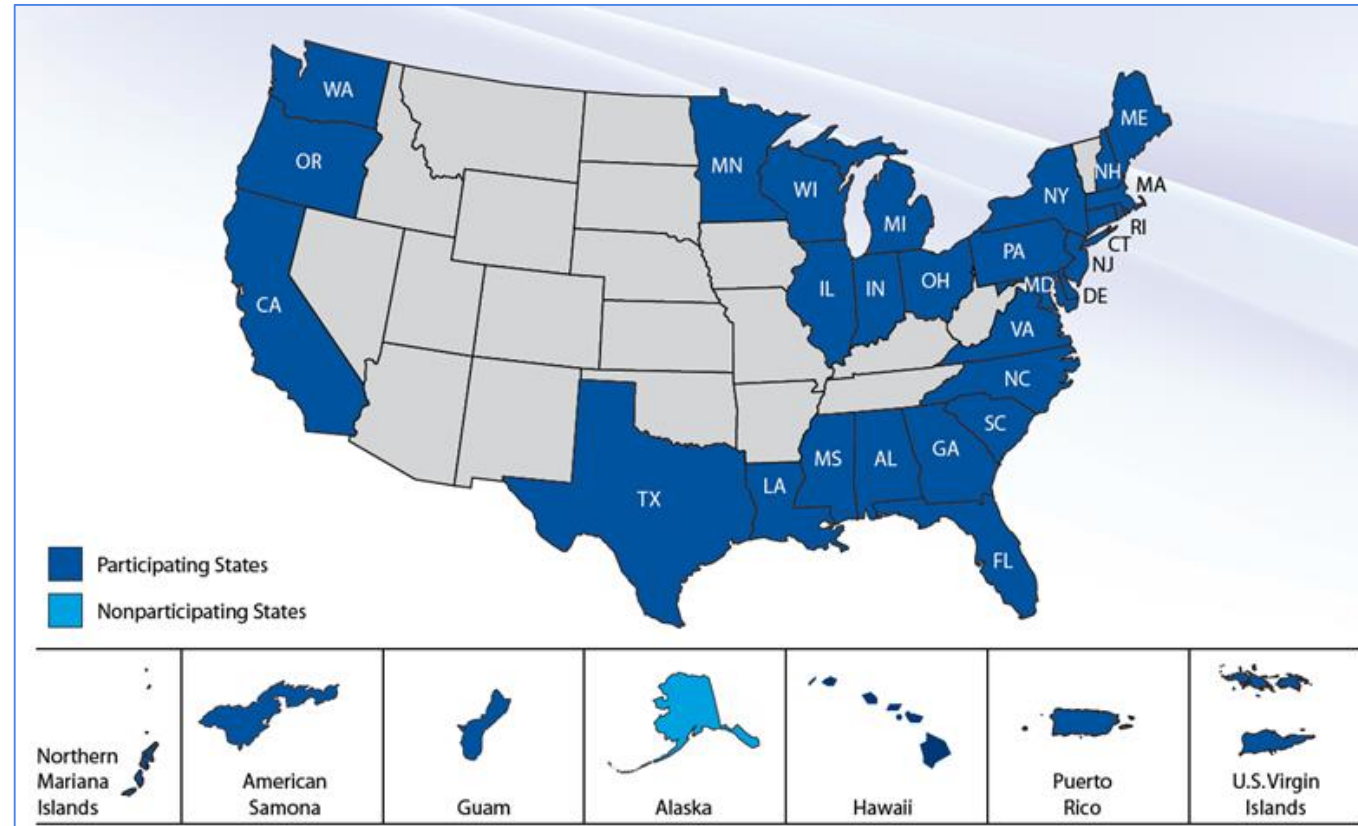
Background

- Fmr. Chief Analyst, Cmte. on Gen. Govt. Ops., Guam Legislature (2010-2019)
- BA, University of Guam

Coastal Zone Management Act of 1972 (CZMA)

- Recognizes the rich variety of natural, commercial, recreational, ecological, industrial, and esthetic resources of the nation's coastal zones.
- Aims “to preserve, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations.”
- Establishes the National Coastal Zone Management Program, which is a federal-state partnership for the development and implementation of management programs to achieve wise use of land and water resources of the coastal zone.

The National Coastal Management Program includes 34 federally-approved programs.



(Courtesy of NOAA)

What is “Federal Consistency?”

Section 307 of the Coastal Zone Management Act facilitated cooperation and coordination with federal agencies to manage coastal activities and resources.

It is a unique and powerful tool Coastal Zone Management Programs use to work with federal agencies to manage coastal activities and resources.

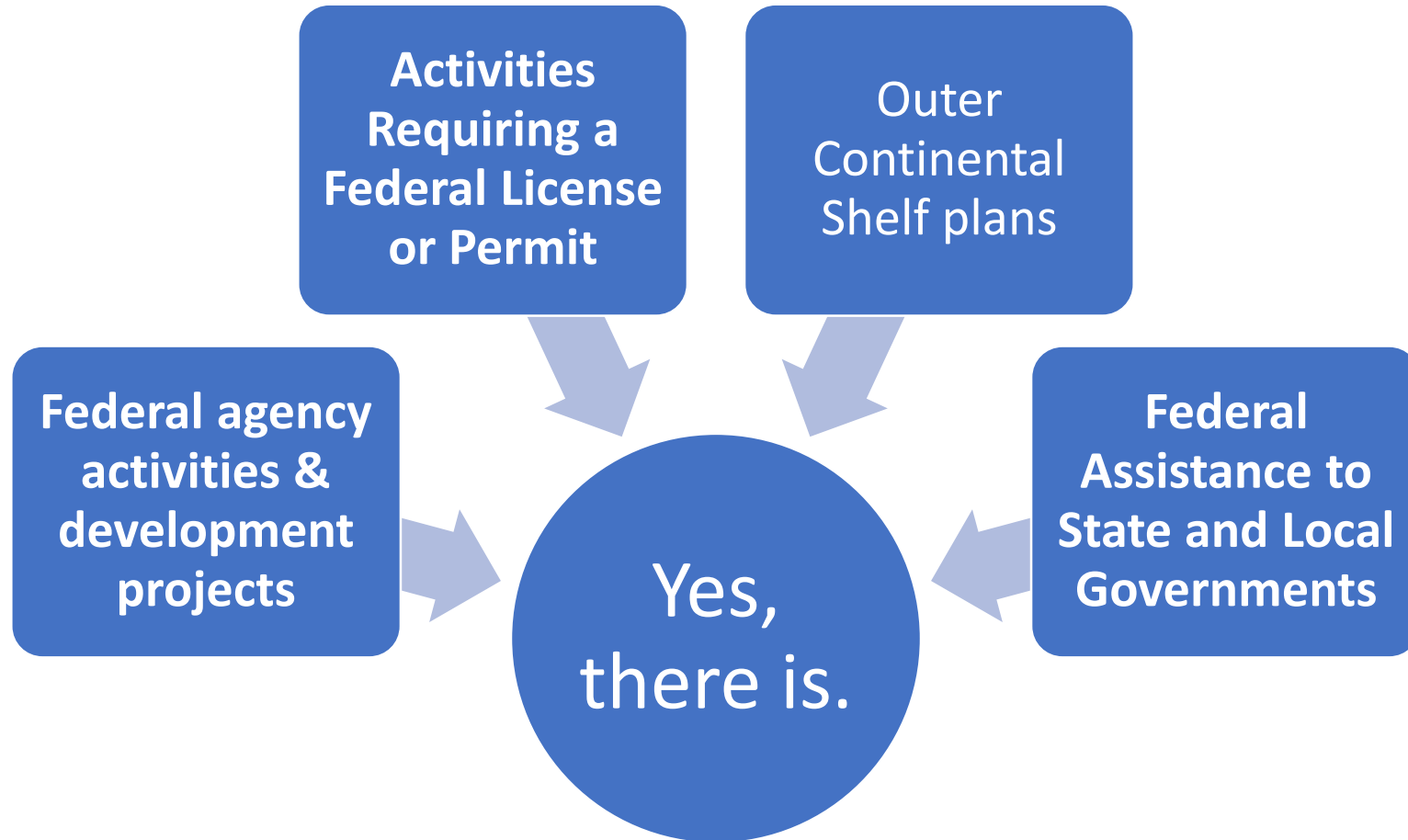
What is “Federal Consistency?”

The federal government, through Section 307 of the Coastal Zone Management Act of 1972, requires that its own actions, in or outside the coastal zone, that affect any land or water use or natural resource of a state’s coastal zone must be consistent with the enforceable policies of state CZMA programs. (See 16 USC §1456)

Important things to consider:

1. Is there a **federal action**?
2. Is there any **reasonably foreseeable effect** on any coastal use or **resource**?
3. Is the federal action consistent with the state's **enforceable policies**?

Is there a **federal action**?



What kind of federal action?

Examples:

- Private company applies to U.S. Army Corps of Engineers to build a recreational facility over navigable waters of the U.S.
- Guam Housing and Urban Renewal Authority plans new construction funded by a Community Development Block Grant.
- U.S. Department of Defense plans to establish a new Marine Corps Base.
- Private business plans an offshore Ocean Thermal Energy Conversion platform.
- Federal agency activity or development project (See 16 USC §1456 (c) (1) & (2); 15 CFR Part 930 **Subpart C**)
- Federal license or permit (See 16 USC §1456 (c)(3)(A); 15 CFR Part 930 **Subpart D**)
- Outer Continental Shelf plan (See 16 USC §1456 (c)(3)(B); 15 CFR Part 930 **Subpart E**)
- Federal financial assistance to state or local agencies (See 16 USC §1456 (d); 15 CFR Part 930 **Subpart F**)

What kind of federal action?

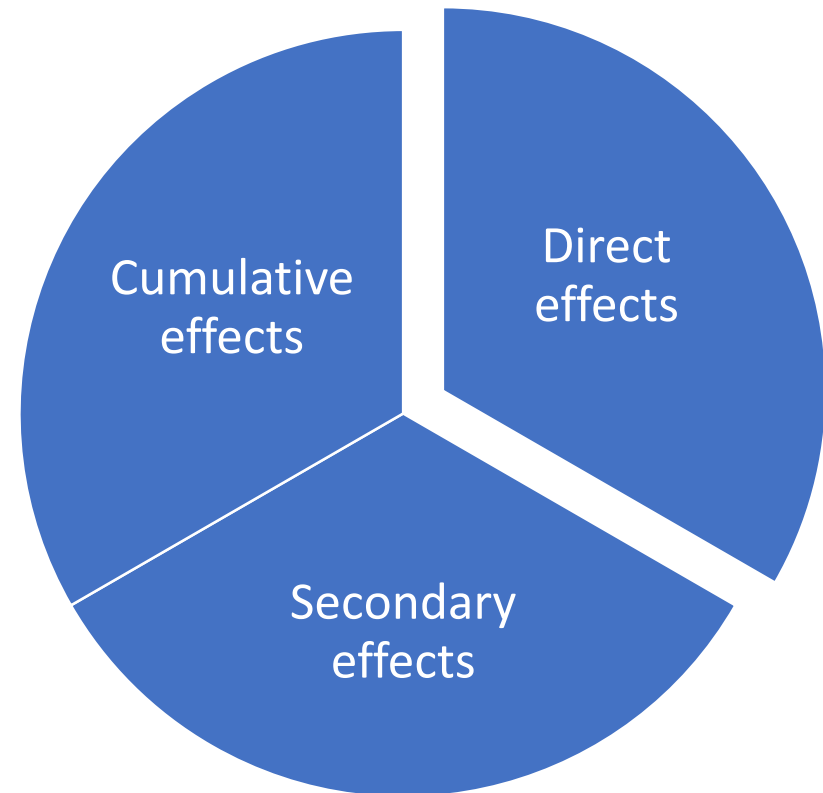
Examples:

- Private company applies to U.S. Army Corps of Engineers to build a recreational facility over navigable waters of the U.S. **“D”**
- Guam Housing and Urban Renewal Authority plans new construction funded by a Community Development Block Grant. **“F”**
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Is there any reasonably foreseeable effect on any coastal use or resource?

Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

(15 CFR §930.11(g))



Is there any **reasonably foreseeable effect** on **any coastal use or resource**?

Provide an example of a **direct effect** involving green sea turtles.

Provide an example of an **indirect effect** (it could be cumulative or secondary) involving green sea turtles.

Is there any **reasonably foreseeable effect** on **any coastal use or resource?**

Provide an example of a **direct effect** involving green sea turtles.

- Example: Injury by capturing, tagging, and releasing green sea turtles.

Provide an example of an **indirect effect** (it could be cumulative or secondary) involving green sea turtles.

Is there any reasonably foreseeable effect on any coastal use or resource?

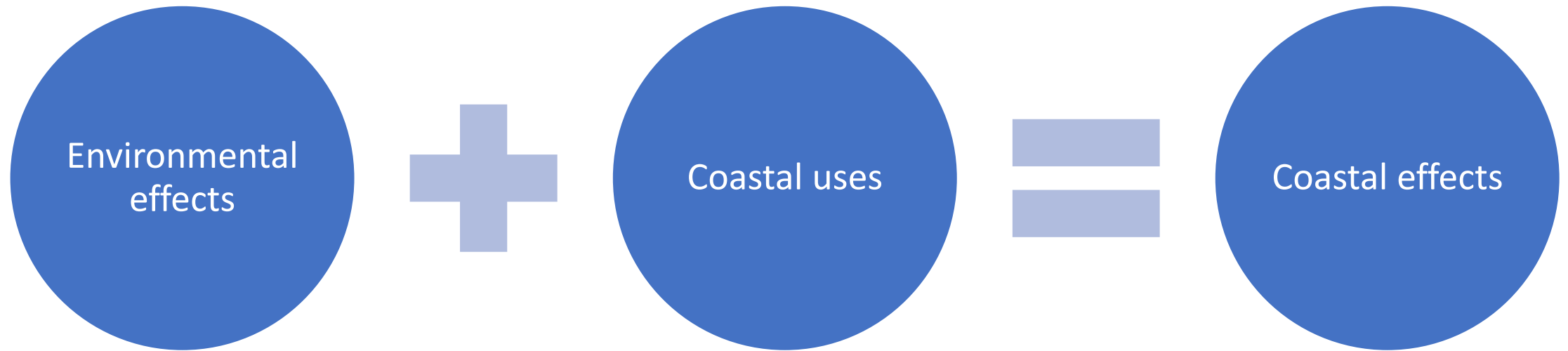
Provide an example of a **direct effect** involving green sea turtles.

- Example: Injury by capturing, tagging, and releasing green sea turtles.

Provide an example of an **indirect effect** (it could be cumulative or secondary) involving green sea turtles.

- Example: Intentional removal of buried containers for PCBs causing unintentional leakage which biomagnifies, affecting turtle fertility.

Is there any reasonably foreseeable effect on any coastal use or resource?



“Effects are not just environmental effects, but include effects on coastal uses.”

(15 CFR §930.11(g))

Things to note about **reasonably foreseeable effects** on coastal uses or resources

- They may be adverse or beneficial
- A finding of no effects under other federal statutes (for example, NEPA Findings of No Significant Impact) does not mean that there are no CZMA coastal effects.

Coastal Uses and Resources

- Uses include public access, recreation, fishing, historic, cultural, development, hazards management, marinas, and resource creation or restoration.
- Resources include air, wetlands and water bodies, aquifers, aquatic vegetation, plants, animals, land, minerals, and coastal resources of national significance.

Uses and resources outside of the coastal zone can sometimes still be subject to federal consistency.

Enforceable Policies

Enforceable policies are the key to implementing federal consistency.

An CZMA objection can only be based on enforceable policies approved by NOAA

The term “enforceable policy” has a unique meaning within the context of the CZMA.

Enforceable policies are based on a legally binding state authority and are approved by NOAA.

Benefits of Federal Consistency

- Federal consistency applies state policies to federal actions based upon effects not location.
- State-Federal coordination and cooperation helps to avoid costly last-minute changes to planned activities.
- Can bolster state and public support for federal actions.

Guam Coastal Management Program

After nearly five years of program development, the Guam Coastal Management Program (GCMP) was approved for implementation in September 1979.

GCMP is the **only** state agency authorized to comment officially on or concur with or object to a federal consistency determination or negative determination, a consistency certification, or determine the consistency of a proposed application for federal assistance on Guam.

The government of Guam through Executive Order 78-37 established 18 policies which became the heart of GCMP.

GCMP as a Networked Program

E.O. 78-37 established GCMP to guide the use, protection, and development of land and ocean resources, in partnership with other GovGuam network agencies and the community to protect, conserve, restore, and enhance the environment and resources of Guam by ensuring balanced economic development with environmentally prudent use of resources for current and future generations.

GCMP network agencies include Department of Agriculture, Department of Land Management, Department of Parks and Recreation, Department of Public Works, Guam Environmental Protection Agency, and Guam Waterworks Authority. These agencies coordinate their permit processes, responsibilities and mandates through the Application Review Committee (ARC) and Federal Consistency Review.

Federal Consistency Review

Federal Consistency Reviews provide both network agencies and the general public the opportunity to weigh in on the potential impacts of federal actions.

Network agencies employ individuals who are both subject matter experts in environmental sciences, land use, wastewater management, engineering, water quality, air quality, historic preservation, and other disciplines relevant to the policies and authorities of GCMP. Network agencies employ the policies and authorities of GCMP in their analysis and positions on proposed federal actions.

In addition, the public is invited to provide input by the use of GCMP's federal consistency website and its Federal Consistency Notices.

When does Federal Consistency apply on Guam?

Short answer:

When a federal action has a reasonably foreseeable affect on coastal uses and resources within the jurisdiction of the Government of Guam.*

*Which includes activities in federally-owned lands and waters, where there is a reasonably foreseeable affect in Guam Territorial lands and waters.

Basic Steps for Federal Agency Activities

Step 1. Federal agency determines if the proposed activity has a reasonably foreseeable effect on any coastal use or resource.

Step 2. Federal agency submits materials* to GCMP:

(a) A letter which sets forth the statement of determination

(b) A detailed description of the proposed activity.

(c) An assessment of the proposed activity's impact with regard to the enforceable policies of GCMP and comprehensive data and information to support the agency's determination.

*See 15 CFR 930 Subpart C.

Basic Steps for Federal Agency Activities

Step 3. GCMP will review the materials for completeness and notify the Federal agency for any deficiency. Conferences may be arranged with the agency to clarify information submitted to resolve potential issues related to the proposed activity, or to discuss possible alternatives to assure consistency with GCMP to the maximum extent practicable.

Network agencies may be consulted by GCMP to review the determination and may participate in conferences. Their comments will be considered in preparing an official response to the consistency determination.*

15 CFR §930.18.

Basic Steps for Federal Agency Activities

Step 4. GCMP policies are applied to the review of federal activities, and written determination of consistency is provided.

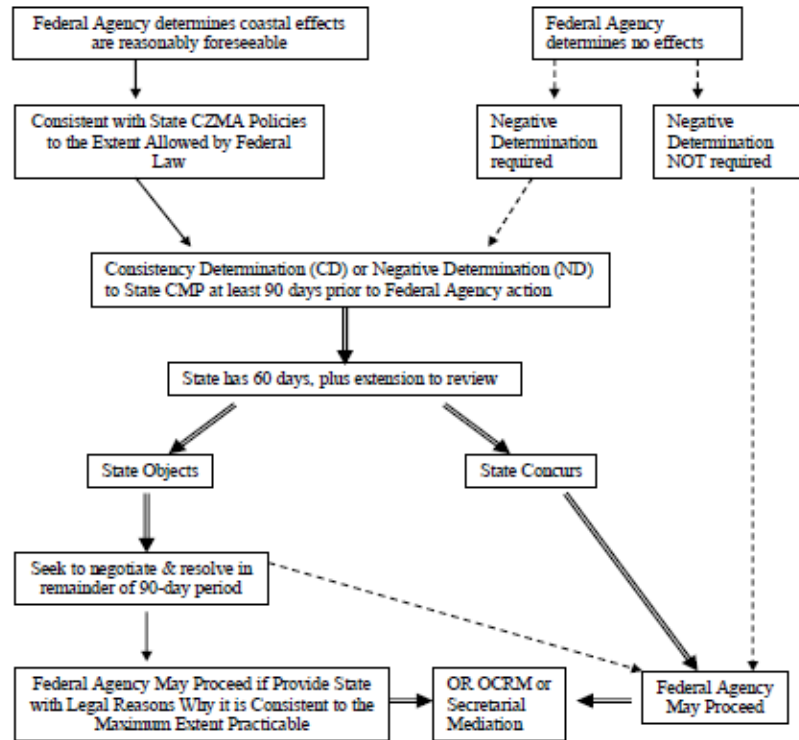
If GCMP concurs with the Federal agency's determination or concurs with comments to ensure full consistency with GCMP policies, GCMP will state its concurrence with accompanying comments.

If GCMP finds that conflicts with GCMP policies have not been resolved, GCMP may formally object to action.

NOAA Office of Coastal Management states that federal consistency results in concurrence for 95% of reviews.

Appendix B: Federal Agency Activities Flow Chart
 (CZMA § 307(c)(1); 15 C.F.R. part 930, subpart C)

↑ Effects-CD Path ↑ No Effects-ND Path ↑ Both CD & ND paths



Basic Steps for Federally Licensed or Permitted Activity

Step 1. Applicant determines if the proposed activity will affect the coastal zone (15 CFR §930.58)

The list of Federal Licenses and Permits for activities which are likely to affect land or water uses in the coastal zone have been included in the approved GCMP.

Basic Steps for Federally Licensed or Permitted Activity

Step 2. The applicant submits materials to GCMP

(a) A letter describing the proposed activity and certifying that it “complies with Guam’s approved coastal management program and will be conducted in a manner consistent with such program,” to be submitted to the Federal agency at the time of application for the license or permit and a copy provided to GCMP.

(b) A detailed description of the proposed activity and its associated facilities, including a copy of the Federal applications; and an assessment of the proposed activity’s impacts with respect to the enforceable policies of GCMP with findings indicating that the effects are consistent with the provisions of the management program.*

*The basis for determining consistency with the GCMP is an assessment of its conformance with CZM objectives, policies, and management network.

Basic Steps for Federally Licensed or Permitted Activity

Step 3. GCMP conducts review.

GCMP will initially review the submitted materials for completeness and notify the applicant of any deficiencies.

Network agencies may be consulted by GCMP to review the determination and may participate in conferences. Their comments will be considered in preparing an official response to the consistency determination.

Basic Steps for Federally Licensed or Permitted Activity

Step 4. Concurrence or objection.

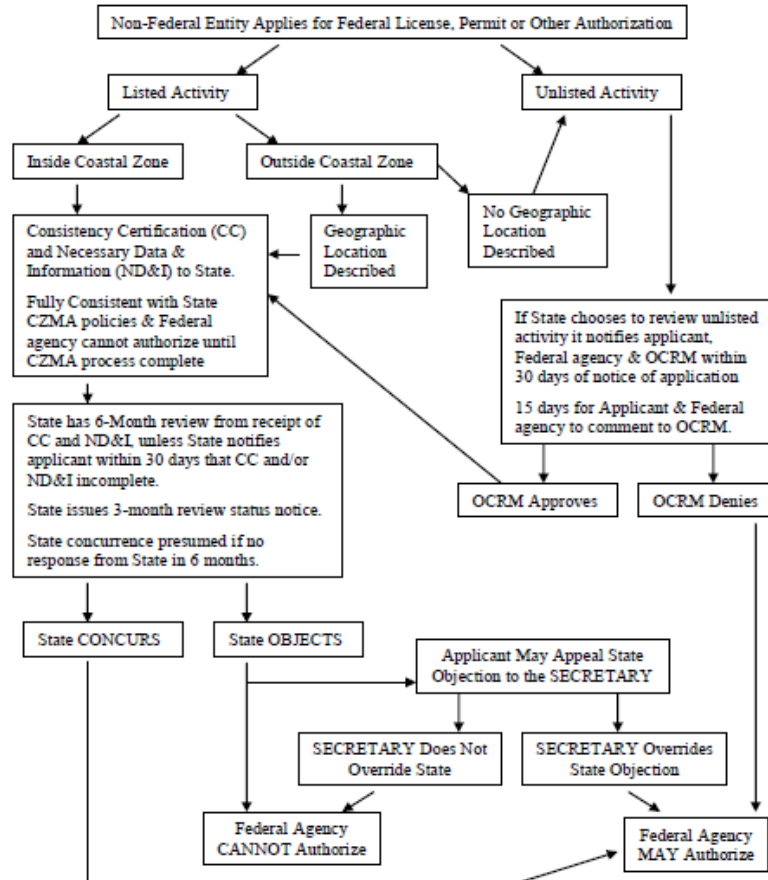
The review period for federally licensed or permitted activity is up to six (6) months. GCMP will at the earliest practicable time, notify the applicant and the Federal agency of the results of its review.

In cases where conflicts have not been resolved GCMP may make a formal objection to the certification.

Unlisted Federal License and Permit Activities

GCMP will monitor federal license and permit activities. Should it be determined that a federal license or permit activity not listed in GCMP's list will affect coastal zone uses or resources, GCMP will notify the Federal agencies and applicants of the need to review for consistency with GCMP. Notification shall occur within 30 days from notice of the license or permit application, otherwise GCMP waives its right to review the unlisted activity. This waiver shall not apply in cases where GCMP does not receive notice of the Federal license or permit activity.

Appendix C: Federal License or Permit Activities Flow Chart
 (CZMA § 307(e)(3)(A); 15 C.F.R. part 930, subpart D)



Basic Steps for Applications for Federal Assistance

Step 1. Applicant determines if the proposed activity will affect the coastal zone.

Step 2. Applicant submits materials to the Intergovernmental Review of Federal Programs.

Step 3. GCMP conducts review. Conferences may be arranged to clarify information submitted to resolve potential issues relative to the proposed activity.

Step 4. If any inconsistencies are identified and conflicts have not been resolved, GCMP will notify the Clearinghouse of its formal objection to the application. The applicant, the Federal agency, and NOAA OCM will in turn be notified by the Intergovernmental Review of Federal Program.

CZMA and the Regulations establish formal appeal and mediation which may be used when serious disagreements over an objection arise. The grounds for appeal of an objection are limited. (See 15 CFR Subparts G & H)

GCMP's 18 Program Policies

Government Processes Policy

Development Policies

1. Shore Area Development
2. Urban Development
3. Rural Development
4. Major Facility Siting
5. Hazardous Areas
6. Housing
7. Transportation
8. Erosion and Siltation

Conservation of Natural Resources - Overall Policy

Resource Policies

1. Air Quality
2. Water Quality
3. Fragile Areas
4. Living Marine Resources
5. Visual Quality
6. Recreational Areas
7. Public Access
8. Agricultural Lands

Recent activities under review

Guam Power Authority renewal of National Pollution Discharge Elimination System Permit No. GU00200001 for its Cabras Power Plant in Piti.

- Reviewed in connection with a U.S. E.P.A. National Pollution Elimination System Permit application.



Recent activities under review

Eun Sung Corporation's proposed Aqua Fun Park in Apra Harbor, Piti.

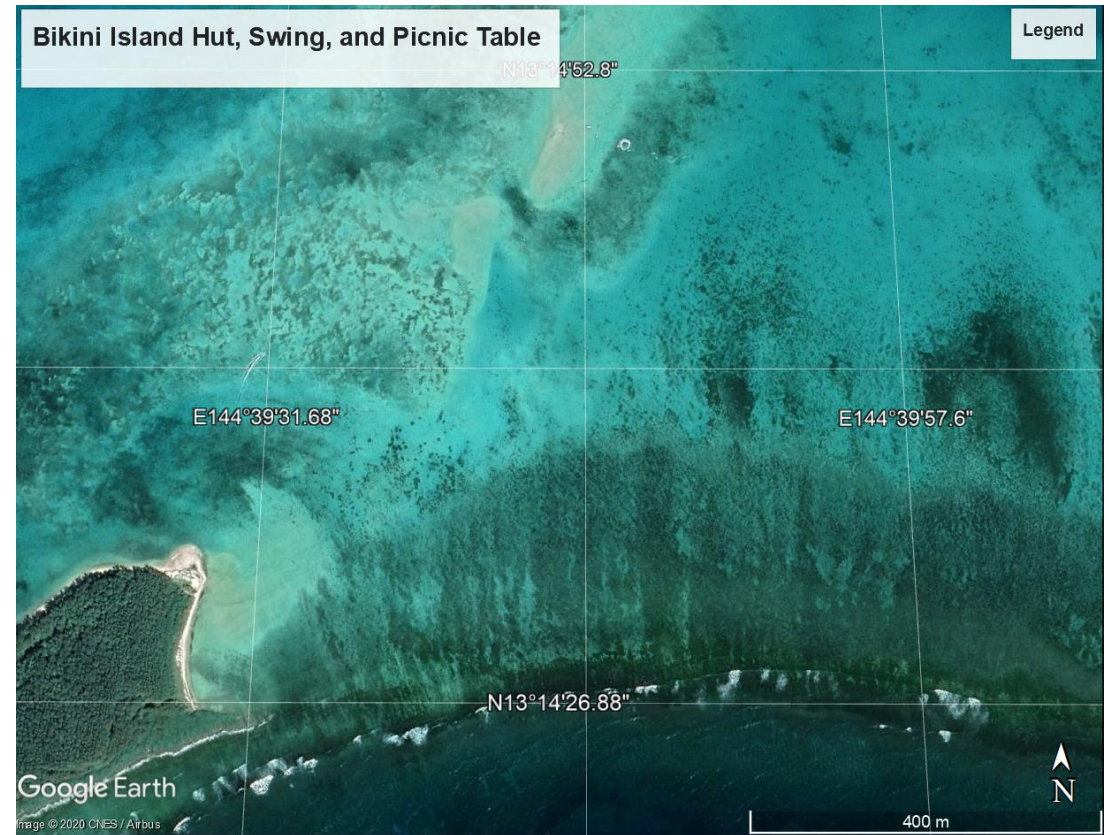
- Reviewed in connection with a U.S. Army Corps of Engineers Clean Water Act Section 404 Permit application.



Recent activities under review

Bikini Island Hut, Swing, and Picnic Table in Cocos Lagoon.

- Reviewed in connection with a U.S. Army Corps of Engineers Clean Water Act Section 404 Permit application.



Current proposed activities under review

Department of the Navy:

- Proposed NPDES MS4 Permit No. GUS040000 Modification (Stormwater Management).
- Proposed activities in Mariana Islands Training and Testing (MITT) Study Area (outlined in 2019 Supplemental MITT Environmental Impact Statement).

Guam Power Authority:

- LED Lighting Retrofits under Energizing Insular Communities 2019 Funding Opportunity (Agueda Johnston Middle School and Maria Ulloa Elementary School).

Guam Waterworks Authority:

- Northern Guam Lens Aquifer Monitoring System Expansion and Rehabilitation Project.

Current proposed activities under review

Department of the Navy:

- Proposed NPDES MS4 Permit No. GUS040000 Modification (Stormwater Management). **“D”**
- Proposed activities in Mariana Islands Training and Testing (MITT) Study Area (outlined in 2019 Supplemental MITT Environmental Impact Statement). **“C”**

Guam Power Authority:

- LED Lighting Retrofits under Energizing Insular Communities 2019 Funding Opportunity (Agueda Johnston Middle School and Maria Ulloa Elementary School). **“F”**

Guam Waterworks Authority:

- Northern Guam Lens Aquifer Monitoring System Expansion and Rehabilitation Project. **“F”**

Resources

Federal Consistency Publications:

“Procedures Guide for Achieving Federal Consistency with the Guam Coastal Management Program” (Rev. 2011) by GCMP*

“CZMA Federal Consistency Overview” by NOAA

Online resources:

<https://bsp.guam.gov/federal-consistency/>

<https://coast.noaa.gov/czm/consistency/>

*This booklet is available free of charge to any Federal Agency, applicant for federal license or permit, or applicant agency. It may also be downloaded as a .pdf from GCMP’s federal consistency website.