



*The New Jersey*

# COASTAL MANAGEMENT PROGRAM

## *Federal Consistency*

Fact Sheet 5 August 2004

### What is Federal Consistency?

Coastal states have a special responsibility to protect America's ecologically and economically significant coastal and marine resources. Consequently, coastal states have authority over a broad range of activities that could affect these coastal zone resources. New Jersey's coastal zone extends to the limit of its territorial waters, three nautical miles (3.5 statute miles) to sea from its shoreline. While many coastal activities are under direct control of the state, actions by federal agencies or actions in federal waters may also adversely affect a state's coastal or marine resources or uses. Federal Consistency provides states the

ability to protect their coastal and marine resources and uses by ensuring that federal actions are consistent with state policy.

Federal actions subject to Federal Consistency review fall into three categories (see right). These are: Federal Agency Activities, which are direct actions of federal agencies, Federal Licenses, Permits and Other Regulatory Approvals, which are permits or licenses granted by federal agencies to a public or private entity, and Federal Financial Assistance to State and Local Governments, which is federal funding granted by federal agencies to State or local governments.

### What are examples of federal actions subject to Federal Consistency review?

#### Federal Agency Activities

The designation of a dredged material disposal site in federal waters

The adoption of a fishery management plan

The construction of a shore protection project by the US Army Corps of Engineers

#### Federal Licenses and Permits

A permit to construct a pier, dock or float in navigable waters

A permit to install a submerged telecommunication cable

#### Federal Financial Assistance to State and Local Governments

A housing and urban development grant

A construction grant for a wastewater treatment facility

### The Federal Consistency Process

In the United States, coastal areas are managed through the Coastal Zone Management Act of 1972 (CZMA). This law authorizes individual states to develop plans that incorporate the strategies and policies they will employ to manage development and use of coastal land and water areas. Each plan must be approved by the National Oceanic and Atmospheric Administration (NOAA). One of the components of an approved plan is "enforceable policies," that is, state policies that are legally binding and by which a state exerts control over coastal uses and resources. In New Jersey, the enforceable policies are contained in the Coastal Zone Management Rules (N.J.A.C. 7:7E), the Coastal Permit Program Rules (N.J.A.C.7:7) and the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A). Three major state laws are implemented through the Coastal Zone Management Rules: the Waterfront Development Law, the Wetlands Act of 1970, and the Coastal Area Facility Review Act (CAFRA). The Hackensack Meadowlands Reclamation and Development Act and rules are additional authorities for Federal Consistency review.

Federal Consistency requires "federal actions, occurring inside or outside of a state's coastal zone, that have a reasonable potential to affect the coastal resources or uses of that state's coastal zone, to be consistent with that state's enforceable coastal policies, to the maximum extent practicable". In other words, if a federal action might have an effect on a state's coastal resources or uses, then the federal agency must comply with the enforceable policies of the coastal state where the effect would occur.

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## Federal Consistency in New Jersey

In New Jersey, most Federal Consistency determinations are made by the New Jersey Department of Environmental Protection's Land Use Regulation Program. Federal Consistency determinations for dredging projects and port facilities are made by the Department's Office of Dredging and Sediment Technology.

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### Applying Federal Consistency

The following exemplifies the value of techniques employed in the Federal Consistency process as a tool for the protection of coastal uses and natural resources in New Jersey. Historically, New Jersey was the landing point for a number of submarine telecommunications cables, many of which were transatlantic cables. In the mid-1990's New Jersey witnessed an increase in the number of proposals for submarine cables along its coast. Armed with new technologies, cable operators began to view submarine cables as an economically attractive alternative to land-based cables. The traditional method of submarine cable installation, laying the cable on the surface of the ocean floor, rendered broad areas of the ocean floor surrounding the cable "off-limits" to fishing because of the risk of cable damage posed by fishing gear, particularly clam dredges. As the number of submarine cable proposals increased, the state's fishing industry expressed alarm that substantial additional areas of the ocean floor would be inaccessible to them.

Submarine cable installation must be authorized by the U.S. Army Corps of Engineers. Approval of a federal permit for cable installation is a federal action that

may effect uses of New Jersey's coastal zone. The NJDEP concluded that the issuance of federal permits for cable projects, would be inconsistent with New Jersey's enforceable coastal policies (Coastal Zone Management Rules) in the absence of measures to reduce conflict between competing coastal uses.

The following factors led to the NJDEP conclusion. Surf clamming boats operate out of New Jersey ports and processing facilities for harvested marine resources are located in the State's coastal zone. New Jersey leads the nation in surf clam landings and in 1999 more than 84% of the Mid-Atlantic and New England regions' surf clams harvest was landed in New Jersey. The value of surf clams and ocean quahogs landed in the state exceeds \$300 million. In response to the potential effect that additional submarine cables might have on this industry, the State initiated discussions with representatives of the telecommunications industry, the fishing industry and various state and federal agencies.

Drawing on these discussions, new standards were developed for installation and maintenance of cables. These standards require sufficient burial of cables to allow for passage of fishing gear and also stipulate preparation of surveys with GPS coordinates to accurately establish cable route locations to inform fishermen and others of the cable

locations. Measures to compensate for lost fishing areas were also developed. Burial of the cables contributes to their protection from inadvertent damage, and at the same time, reduces the loss of fishing areas to the fishing industry. These standards establish an equitable balance between two important economic interests regarding use of the ocean.

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## The Federal Consistency Initiative in New Jersey

NOAA encourages coastal states to list federal actions that are subject to Federal Consistency review. The purpose of this listing is to improve coordination between federal and state agencies by describing the state process for Federal Consistency review, as well as the types of activities that the state intends to review. The New Jersey Coastal Management Office is updating its list of federal actions subject to consistency review. The comprehensive list will facilitate coordinated and effective use of the Federal Consistency process in managing New Jersey's valuable coastal resources and uses.

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