

# FACT SHEET: STATE CERTIFICATION AND FEDERAL CONSISTENCY

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## Purpose:

- State certification: Insure state actions (other state permits) in the coastal zone are consistent with the SC Coastal Management Program (SCCMP) approved by the General Assembly.  
*"To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development."* S.C. Code Ann. Section 48-39-30 (B) (1).
- Federal consistency: Insure federal actions (harbor deepening), activities (federal permits such as 404 permits for freshwater wetland impacts), licenses and funding in the coastal zone are consistent with the SCCMP.  
*"Review direct federal actions in a manner which strikes a balance between the need to insure consistency for federal actions affecting any coastal use or resources with the enforceable policies of approved management programs and importance of federal activities."* (15 C.F.R. Section 930.1 (b) promulgated pursuant to Federal Coastal Zone Management Act)

## Authority:

- 15 C.F.R. Section 930, Federal consistency with approved coastal management programs
- S.C. Code Ann. Section 48-39-20 (A-F), Section 48-39-30 (A), (B) (1, 2, 3), Section 48-39-50 (A, C, M), Section 48-39-80 (A-E).  
*"Develop a system whereby the Department shall have the authority to review all state and federal permit applications in the coastal zone, and to certify that these do not contravene the management program."* S.C. Code Ann. Section 48-39-80 (B)(11)
- SC Coastal Management Program (SCCMP), February 14, 1979, and Program Refinements, August 2, 1993.

## Regulated activities and impacted public:

Activities that must receive consistency determinations include direct federal actions (i.e., harbor dredging), activities requiring Federal permits, licenses, or funding (i.e., 404 freshwater wetland fill), and activities requiring other state permits such as wastewater or water supply permits. Those impacted include property owners, developers and the general public.

## Geographic Jurisdiction:

The South Carolina coastal zone, including coastal waters and submerged bottom seaward to the State's jurisdictional limits, as well as the lands and waters of the eight coastal counties

## Description:

- In 2002, 444 state permits, 136 federal activities, 84 nationwide, and 26 federal actions were received for consistency reviews (690 total).
- Federal agency activity means any functions performed by or on behalf of a Federal agency and includes rulemaking, planning, physical alteration and exclusion of uses.
- Indirect management authority of coastal resources is granted to DHEC-OCRM throughout the eight coastal counties defined as the coastal zone.
- DHEC-OCRM places all notices of state certification and federal consistency on a 10 public notice. Notice for federal permits requiring consistency is provided by joint notice with the USACOE.
- General state certifications have been issued for 18 routine activities, such as private wells, so that consistency is automatically granted without an individual project review.

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- Timeframes for review:
  - 45 days for direct Federal activities
  - 180 days for Federal actions and licenses
  - 10 or 20 days for certification of Stormwater permits
  - Generally 30 days for certification of other state permits
- Staff site visits are made, decision documents prepared for the file, and applications are determined consistent or not consistent.
- The certification or consistency decision is made part of the initiating permit, which is generally the USACOE 404 permit or the state permit.

### **Coordination:**

- Notice of applications are routinely submitted to other State and federal agencies such as SC Department of Natural Resources, SC State Ports Authority, SC Department of Archives and History, US Fish and Wildlife Service, National Marine Fisheries Service, and US Environmental Protection Agency. These agencies provide comments that are considered in determining the final DHEC-OCRM decision.
- Local governments are also notified and included in the review.

### **Appeal Process:**

- 4 actions, 0.6%, were appealed in 2002.
- State certification and federal consistency decisions must be appealed within 15 days.
- The Administrative Law Judge (ALJ) Division hears appeals. They are typically heard within 4-6 months, depending on complexity.
- If the appeal is of the certification/consistency decision, the ALJ decision is appealed to Coastal Zone Management Appellate Panel (CZMAP). Additionally, consistency issues only of Navigable Waters permits are heard by the CZMAP. If the state permit is appealed, the Board of Health and Environmental Control hears the appeal. They are typically heard within 3-4 months.
- CZMAP/Board decision must be appealed within 30 days.
- Circuit Court review typically takes 12 months or more.

### **Strengths:**

- Provides the State with the ability to review and approve Federal activities with the potential to affect South Carolina's coastal zone.
- The consistency review is not limited to one issue (such as impacts to water quality or endangered habitats) but rather requires an evaluation of potential effects to a broad range of areas of concern including: water quality, cultural resources, natural habitats, and economic impacts.

### **Shortcomings:**

- This is an indirect management program that must be triggered by another state or federal action. Changes to those 'triggering' programs can therefore significantly impact the scope of the coastal program.
- SCCMP is 24 years old.
- A potential for redundancy with other permitting programs exists.
- Policies & standards are generally not as specific as those for permitting activities in critical areas.
- Policies and standards were approved by the General Assembly prior to enactment of the Administrative Procedures Act and are not codified as regulations.
- Lack of coordination in enforcement of DHEC-OCRM consistency conditions with the direct permitting authority.