

NORTH CAROLINA FEDERAL CONSISTENCY CERTIFICATION SUBMISSION GUIDANCE (SUBPART “D” 15 CFR 930)

This brochure provides guidance to non-Federal applicants applying for a U.S. Army Corps of Engineers Individual permit on how to submit a consistency certification to the State of North Carolina under the Coastal Zone Management Act (CZMA). This guidance does not apply when a CAMA permit is required for the proposed project. The suggested format for submitting a consistency certification under Subpart “D” of 15 CFR 930 is presented on the second page.



The Coastal Zone Management Act requires that any applicant for a Federal license or permit (in or outside of the coastal zone when the proposed project will affect any coastal uses or natural resources within the coastal zone) provide the Federal agency with a certification that the proposed activity complies with the enforceable policies of the State’s approved coastal management program, and that the proposed project will be conducted in a manner consistent with that program. The applicant must also provide the N.C. Division of Coastal Management (DCM) with a copy of the certification, including all necessary supporting information and data. This information and data is specified in 15 CFR 930.58. The text of 15 CFR 930.58 is attached to this brochure for reference.

North Carolina’s coastal zone management program consists of, but is not limited to, the Coastal Area Management Act, the State’s Dredge and Fill Law, and the land use plan of the County and/or local municipality in which the proposed project is located. The consistency process provides applicants with an opportunity to demonstrate how the proposed project will be consistent with the State’s coastal management program.

State review will commence (15 CFR 930.60) when the State receives a copy of the consistency certification and all the information and data required by 15 CFR 930.58. The State has a maximum of six (6) months to either concur or object to the applicant’s consistency certification. No license or permit can be granted by the Federal agency until the State has concurred with the applicant’s certification. However, should the State fail to act within the six-month review period, concurrence can then be presumed. Applicants are encouraged to contact the Federal Consistency Coordinator at the address below for more information.

FURTHER INFORMATION

- N.C. Division of Coastal Management (DCM): www.nccoastalmanagement.net/rules/rules.htm
- Office of Coastal Resource Management: http://coastalmanagement.noaa.gov/pcd/federal_consistency.html
- Government Printing Office (15 CFR 930): www.gpoaccess.gov/cfr/index.html

CONTACT INFORMATION

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SAMPLE SUBMISSION FORMAT

The N.C. Division of Coastal Management (DCM) recommends a two-part submission consisting of a cover letter and a supporting document that contains the information required by 15 CFR 930.58. The text of 15 CFR 930.58 is attached for reference.

Cover Letter: The cover letter should state the purpose of the letter (a request for concurrence from DCM of the applicant's consistency certification) and then briefly describe the proposed project, its location, the type of Federal permit or license that has been applied for, a statement that the applicant has reviewed the State's coastal program (citing specific policies as appropriate), a statement that the proposed activity is consistent with the State's coastal management program and will be conducted in a manner consistent with the program (see below), and a statement referring to the supporting document for more detail.

Pursuant of 15 CFR 930.57(b), the cover letter must include the phrase: "*The proposed activity complies with the enforceable policies of North Carolina's approved management program and will be conducted in a manner consistent with such program.*"

In the event the applicant is using a consultant as a point of contact, the cover letter should designate the consultant as an authorized representative.

Supporting Document: The supporting document should present the information required by 15 CFR 930.58 and should provide DCM with the data and analysis needed to document that the proposed project will be consistent with the State's coastal management program. DCM recommends that the State's coastal program be reviewed and that the project's compliance with specific policies be evaluated. For example, 15A NCAC 07M .0800 relates to the protection of water quality. The applicant must explain, as applicable, how the proposed project has been sited and designed to avoid and/or minimize any adverse impacts to water quality. The applicant should also describe how any unavoidable adverse impacts would be ameliorated. To the maximum extent practical, adverse impacts to coastal resources and coastal uses must be avoided. Impacts that cannot be avoided must be minimized and mitigated.

Areas of Environmental Concern: Section 113A-113 of the Coastal Area Management Act (CAMA) defines "*Areas of Environmental Concern*" (AECs). The proposed project's relationship to an AEC is important for determining the type of project review that DCM will conduct. DCM will review proposed development in a coastal county that is **outside** of an AEC and requires a Federal permit through the consistency process. However, should any portion of the proposed development occur **within** an AEC, then a CAMA permit would be required instead. The supporting document must evaluate whether any of the proposed development would occur within an AEC to determine whether the consistency process would be the appropriate form of DCM review.

Other State Permits: The supporting document should discuss other State permits that the proposed development may require, including the status of the permit applications. DCM suggests that any required State permits be obtained, if possible, by the applicant prior to initiating the consistency review process and that any issued permits be included as part of the supporting document. Addressing other State permits at the consistency stage minimizes the potential for "*late hits*" in the review process and aides the applicant in demonstrating implied conformance with the State's coastal management program.

Environmental Documents: If the proposed project requires the preparation of an environmental document, it can be used as the "*Supporting Document*" provided that it contains all the information required by 15 CFR 930.58.

**Relevant Sections of 15 CFR 930
Version of January 2007**

*(These citations have been reformatted and portions have been omitted; therefore they are unofficial.
Go to <http://www.gpoaccess.gov/cfr/index.html> for the official version.)*

§ 930.57 CONSISTENCY CERTIFICATIONS.

- (a) Following appropriate coordination and cooperation with the State agency, all applicants for required federal licenses or permits subject to State agency review shall provide in the application to the federal licensing or permitting agency a certification that the proposed activity complies with and will be conducted in a manner consistent with the management program. At the same time, the applicant shall furnish to the State agency a copy of the certification and necessary data and information.
- (b) The applicant's consistency certification shall be in the following form: *“The proposed activity complies with the enforceable policies of (name of State) approved management program and will be conducted in a manner consistent with such program.”*

§ 930.58 NECESSARY DATA AND INFORMATION.

- (a) The applicant shall furnish the State agency with necessary data and information along with the consistency certification. Such information and data shall include the following:
 - (1) A copy of the application for the federal license or permit and
 - (i) All material relevant to a State's management program provided to the Federal agency in support of the application; and
 - (ii) To the extent not included in paragraphs (a)(1) or (a)(1)(i) of this section, a detailed description of the proposed activity, its associated facilities, the coastal effects, and any other information relied upon by the applicant to make its certification. Maps, diagrams, and technical data shall be submitted when a written description alone will not adequately describe the proposal;
 - (2) Information specifically identified in the management program as required necessary data and information for an applicant's consistency certification. The management program as originally approved or amended (pursuant to 15 CFR part 923, subpart H) may describe data and information necessary to assess the consistency of federal license or permit activities. Necessary data and information may include completed State or local government permit applications which are required for the proposed activity, but shall not include the issued State or local permits. NEPA documents shall not be considered necessary data and information when a Federal statute requires a Federal agency to initiate the CZMA federal consistency review prior to its completion of NEPA compliance. States shall not require that the consistency certification and/or the necessary data and information be included in NEPA documents. Required data and information may not include confidential and proprietary material; and
 - (3) An evaluation that includes a set of findings relating the coastal effects of the proposal and its associated facilities to the relevant enforceable policies of the management program. Applicants shall demonstrate that the activity will be consistent with the enforceable policies of the management program. Applicants shall demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to coastal effects for which the management program does not contain enforceable or recommended policies.
- (b) At the request of the applicant, interested parties who have access to information and data required by this section may provide the State agency with all or part of the material required. Furthermore, upon request by the applicant, the State agency shall provide assistance for developing the assessment and findings required by this section.
- (c) When satisfied that adequate protection against public disclosure exists, applicants should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposal. State agency requests for

such information must be related to the necessity of having such information to assess adequately the coastal effects of the proposal.

§ 930.60 COMMENCEMENT OF STATE AGENCY REVIEW.

- (a) The State agency's six-month review period (*see* § 930.62(a)) of an applicant's consistency certification begins on the date the State agency receives the consistency certification required by § 930.57 and all the necessary data and information required by § 930.58(a).
 - (1) If an applicant fails to submit a consistency certification, the State agency shall notify the applicant and the Federal agency, within 30 days of receipt of the incomplete submission, that a consistency certification satisfying § 930.57 was not received and that the State agency's six-month review period will commence on the date of receipt of the missing certification, subject to paragraph (a)(2) of this section.
 - (2) If an applicant fails to submit all necessary data and information required by § 930.58(a), the State agency shall notify the applicant and the Federal agency, within 30 days of receipt of the incomplete submission, that necessary data and information described in § 930.58(a) was not received and that the State agency's six-month review period will commence on the date of receipt of the missing necessary data and information, subject to the requirement in paragraph (a) of this section that the applicant has also submitted a consistency certification. The State agency may waive the requirement in paragraph (a) of this section that all necessary data and information described in § 930.58(a) be submitted before commencement of the State agency's six-month consistency review. In the event of such a waiver, the requirements of § 930.58(a) must be satisfied prior to the end of the six-month consistency review period or the State agency may object to the consistency certification for insufficient information.
 - (3) Within 30 days of receipt of the consistency certification and/or necessary data and information that was deemed missing, pursuant to paragraphs (a)(1) or (2) of this section, the State agency shall notify the applicant and Federal agency that the certification and necessary data and information required pursuant to § 930.58 is complete, the date the certification and/or necessary data and information deemed missing was received, and, that the State agency's consistency review commenced on the date of receipt. In the event of a State waiver under paragraph (a)(2) of this section, receipt of the necessary data and information deemed missing shall not alter the date the consistency review period commenced.
- (b) State agencies and applicants (and persons under subpart E of this part) may mutually agree in writing to stay the six-month consistency review period. Such an agreement shall be in writing and state a specific date on when the stay will end. The State agency shall provide a copy of the written agreement to the Federal agency and the Federal agency shall not presume State agency concurrence with an applicant's consistency certification when such a written agreement to stay the six-month consistency review period is in effect. The State agency shall not stop, stay, or otherwise alter the consistency review period without such a written agreement with the applicant.
- (c) The State agency's determination that a certification and necessary data and information under paragraph (a) of this section is complete is not a substantive review of the adequacy of the information received. If an applicant has submitted all necessary data and information required by § 930.58, then a State agency's or Federal agency's assertion that the submitted information is substantively deficient, or a State agency's or Federal agency's request for clarification of the information provided, or information or data requested that is in addition to that required by § 930.58 shall not extend the date of commencement of State agency review.

§ 930.62 STATE AGENCY CONCURRENCE WITH A CONSISTENCY CERTIFICATION.

- (a) At the earliest practicable time, the State agency shall notify the Federal agency and the applicant whether the State agency concurs with or objects to a consistency certification. The State agency may issue a general concurrence for minor activities (*see* § 930.53(b)). Concurrence by the State agency shall be conclusively presumed if the State agency's response is not received within six months following commencement of State agency review.