

# **Texas Coastal Management Program**

## **Federal Consistency Guidance**

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**Commissioner**  
**Dawn Buckingham, M.D.**

## I. Introduction

*This document reflects the new federal consistency procedures in 31 Texas Administrative Code (TAC) Chapter 30 that became effective on July 10<sup>th</sup>, 2023. The adopted rules have been reorganized, streamlined, and terminology and review timeframes are now consistent with the federal consistency regulations in 15 Code of Federal Regulations Part 930, Subparts C, D, E, F, and H.*

The Texas Coastal Management Program Consistency Review Guidance (Guidance) is a training and Guidance document intended for federal entities that conduct consistency reviews. The Guidance is also intended to help the public understand GLO's consistency review requirements and associated processes. The Guidance is based on the 1996 Texas Coastal Management Program (CMP) Final Environmental Impact Statement (FEIS) and includes information regarding: (1) coastal natural resource areas (CNRAs); (2) CMP enforceable goals and policies; (3) federal consistency review processes; and (4) permitting assistance provided by the Texas General Land Office (GLO).

The consistency review process is in place to ensure that actions of state and federal agencies and certain local government are consistent with the enforceable goals and policies of the CMP. The CMP has two distinct consistency review components - state consistency review and federal consistency review. While both components have unique processes, all consistency review processes must address the following questions:

- 1. Is the proposed project or action within the CMP coastal zone boundary (coastal zone)? (See 31 TAC Chapter 27)**
- 2. Will the proposed project or action adversely affect Coastal Natural Resource Areas (CNRAs)? (See 31 TAC Chapter 26)**
- 3. Is the proposed project or action a listed action or activity subject to consistency review? (See 31 TAC §30.12 and 15 CFR Part 930, Subparts C, D, E, and F)**
- 4. Is the proposed project or action consistent with the relevant CMP enforceable goals and policies? (See 31 TAC §26.12 and §§26.15-26.34)**

## **II. Overview of the Texas Coastal Management Program**

### ***a. Texas Coastal Management Program Establishment***

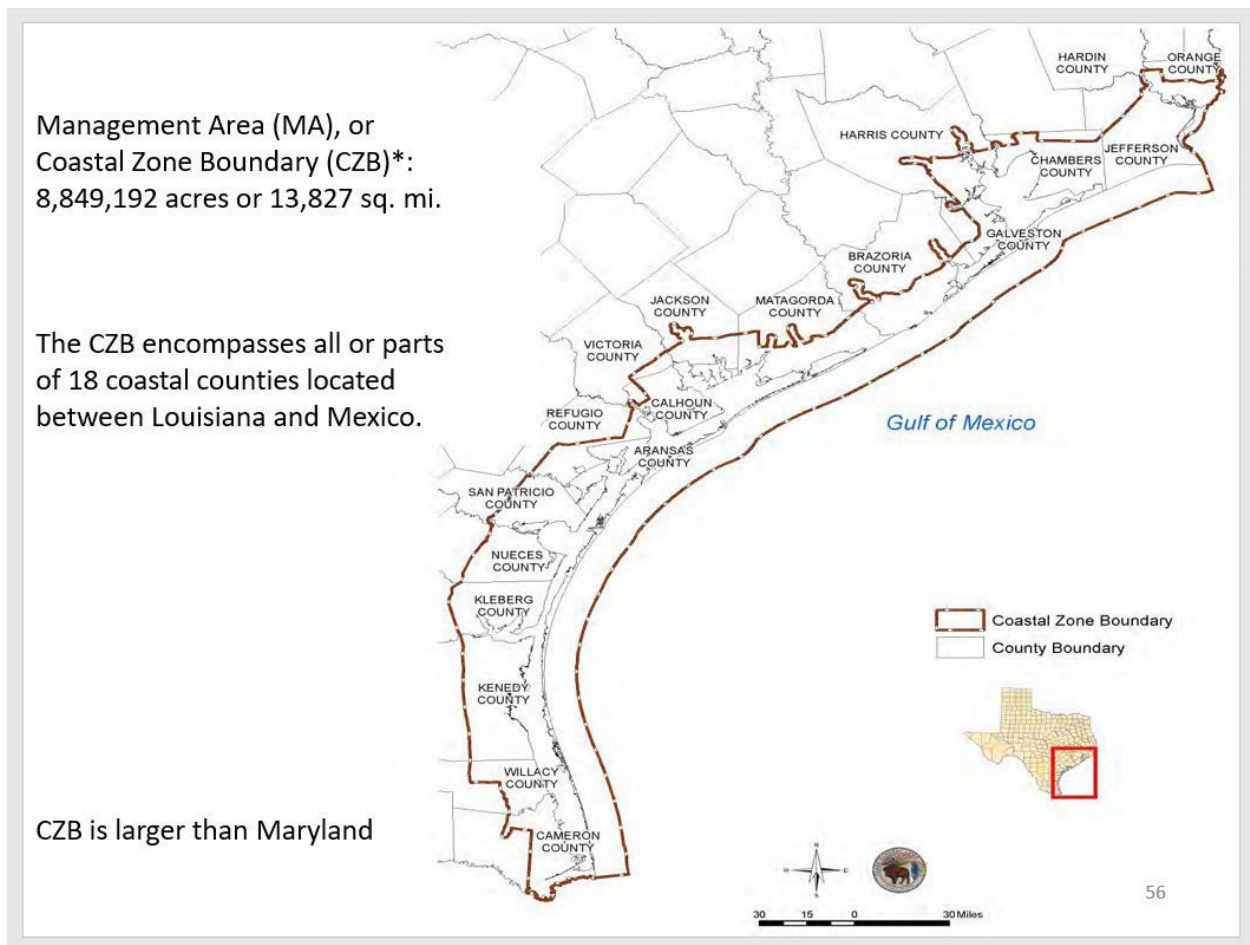
In 1972, Congress passed the Coastal Zone Management Act (CZMA) which established the federal Coastal Zone Management (CZM) Program. The CZM Program is a unique federal-state partnership that provides a proven framework for protecting, restoring, and responsibly developing the nation's diverse coastal communities and resources. Participation in the federal CZM Program allows a state to join in the federal consistency review process and have greater influence over federal actions occurring within the state's coastal area. Additional information on the CZM Program is available on National Oceanic Atmospheric Administration's (NOAA) website at: <https://coast.noaa.gov/czm/>.

In response to coastal issues and concerns raised by Texas citizens, the Texas Legislature (Legislature) passed the Coastal Coordination Act (Act) in 1991 (Tex. Nat. Res. Code Ann §33.201 et seq.). The Act directed the Texas General Land Office (GLO) to develop a long-range, comprehensive plan for the management of CNRAs in cooperation with federal and state agencies, local governments, and coastal citizens - the CMP. The Texas CMP is based on the Act, Texas Natural Resources Code, Chapter 33, Subchapter F. The enforceable goals and policies of the CMP are set forth in Title 31, Texas Administrative Code, Chapter 26.

In 1997, Texas received federal approval of its CMP in order to become a member of the CZM Program. The CZM Program allows states to operate their CMP in one of two ways: through a single permitting agency or by coordinating existing regulatory authorities through a networked program. Texas chose to implement its CMP through a networked program that utilizes existing statutes and regulatory programs of eight state agencies and local governments. The networked agencies include: (1) the GLO; (2) Texas Commission on Environmental Quality (TCEQ); (3) Railroad Commission of Texas (RRC); (4) Texas Parks and Wildlife Department (TPWD); (5) Texas Department of Transportation (TXDOT); (6) Texas State Soil and Water Conservation Board (TSSWCB); (7) the Texas Water Development Board (TWDB); and (8) Texas A&M Sea Grant (Sea Grant). The GLO serves as the lead agency for the networked agencies. The Act requires the networked agencies and local governments to undertake specified actions, authorizations, and rulemakings in compliance with the Texas CMP enforceable policies as set forth in 31 TAC Chapter 26. Through the exercise of their statutory authorities, networked agencies must also ensure that any proposed state agency actions identified in 31 TAC §29.11 are consistent with the enforceable goals and policies of the CMP.

### ***b. Texas Coastal Zone Boundary***

The CMP is intended to make the coastal decision-making process more effective and efficient while establishing uniform policies to address actions and activities within a defined coastal boundary known as the "coastal zone boundary" ("coastal zone"). The coastal zone delineates the area in which GLO can conduct federal consistency reviews of federal license or permit activities, federal agency activities and development projects, and federal financial assistance requests to ensure that the actions are consistent with the Texas CMP enforceable goals and policies. The coastal zone is defined by statute and is based on the Coastal Facilities Designation Line established by the Oil Spill Prevention and Response Act of 1991 (Tex. Nat. Res. Code Ann., Chapter 40), with modifications to include wetlands that are landward of the line, generally within one mile of tidal rivers.



This boundary encompasses all or portions of 18 coastal counties: Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Refugio, Calhoun, Victoria, Jackson, Matagorda, Brazoria, Galveston, Harris, Chambers, Jefferson, and Orange Counties. The seaward boundary is the state's territorial limit, which is approximately 10.3 miles seaward of the Gulf Shoreline in the Gulf of Mexico. The Texas CMP boundary is specifically described at 31 TAC §27.1. The Coastal Boundary may be viewed at the GLO's website: <https://www.glo.texas.gov/coast/coastal-management/forms/files/CoastalBoundaryMap.pdf>. A Google Earth KMZ file for the coastal zone boundary is available here: <https://www.glo.texas.gov/coast/coastal-management/federal-consistency/index.html>.

#### ***c. Role of the Coastal Coordination Council***

Prior to the federal approval of the CMP, the Legislature created the Coastal Coordination Council (Council) in 1991 for the purpose of developing CMP policy, facilitating interagency coordination, conducting dispute resolution, and overseeing the implementation of the CMP. The Texas Legislature designated GLO as the lead agency to coordinate the development and implementation of the CMP, with the Commissioner serving as the chair of the Council, as prescribed by Texas Natural Resources Code Annotated (Tex. Nat. Res. Code Ann. §33.204(f)). The Council consisted of the eight members representing the networked agencies along with four Governor-appointed citizen members that represented agriculture, coastal businesses, coastal elected officials, and coastal residents. The Texas Public Utility

Commission and Texas Historical Commission also served on the Council, but as non-voting members.

In 2010, the Texas Sunset Advisory Commission (Sunset Commission) reviewed the role and functions of the Council and found the Council was only administering the CMP and was no longer meeting its original purpose of developing and implementing the CMP. The Sunset Commission also noted that since GLO was charged with the primary administrative responsibility for the CMP in the Act, GLO could more efficiently perform the Council's duties. Considering this determination, the Sunset Commission recommended the abolishment of the Council and the transfer of the Council's functions and duties to the Commissioner and GLO.

The Council was abolished by the 82<sup>nd</sup> Texas Legislature when it passed into law Senate Bill (SB) 656, effective September 1, 2011. SB 656 further transferred the Council's functions and duties to GLO and its Commissioner. The transfer of the Council's functions and rulemaking authority to the Commissioner and GLO provides for greater efficiency in the continued implementation of a comprehensive CMP.

#### ***d. Role of the Coastal Coordination Advisory Committee***

The Coastal Coordination Advisory Committee (CCAC) was created when SB 656 directed the Commissioner to create, by rule, the CCAC for the purpose of advising the Commissioner on matters related to the CMP. The CCAC's membership closely resembles that of the former Council's membership as it requires a representative from each designated agency identified in SB 656 as well as four public members appointed by the Commissioner to represent coastal priorities.

The CMP uses a networked program that links together the existing regulations, programs, and local, state, and federal entities that manage various aspects of coastal resource uses. The CCAC members represent the state agencies in the networked program. Each agency is required to consider an exclusive list of

proposed individual agency actions set out in 31 TAC §29.11, relating to Actions and Rules Subject to the CMP, that may adversely affect CNRAs and as a result must ensure the actions are consistent





with the CMP enforceable goals and policies, through the exercise of their statutory authorities. CCAC members also play an important role in elevating matters for state and federal consistency review, and is discussed in more detail on page 25. CCAC members, along with select members of their staff, also participate on one or more of the Coastal Issues Teams (CITs) to ensure the necessary technical expertise and background is available for resolution of important coastal issue. The CITs meet regularly to coordinate on cross-agency issues.

The current serving CCAC members are listed on GLO's website at: [Coastal Coordination Advisory Committee \(texas.gov\)](https://www.glo.texas.gov/coastal-coordination-advisory-committee).



- **Water Quality CIT** – The Water Quality CIT focuses on coastal water quality issues, and implementation of the Coastal Nonpoint Source Pollution Program.
- **CMP Grants CIT** – Each year, the CMP awards approximately \$1.8 million in grant funding to eligible entities along the coast to complete projects that enhance the management of the state's coastal natural resource areas. Grants CIT members review CMP grant pre-proposals and final applications and ultimately select which projects to fund each cycle. The CIT members also contribute annual updates to the CMP Grant Guidance document to ensure CMP continues to meet the goals and priorities of the networked agencies.
- **CMP Coastal Long-term Planning CIT** – The Coastal Long-term Planning CIT members participate in the development of the 309 Assessment and Strategies Report, serve as members of the Technical Advisory Committee for development of the Texas Coastal Resiliency Master Plan, and the Texas Coastal and Estuarine Land Conservation Program Plan.
- **Regulatory/Permitting PCIT** – The Regulatory/Permitting CIT focuses on federal consistency issues and information exchange on consistency reviews. The PCIT meets as needed to discuss projects that may have potential impacts to CNRAs. For example, networked agency staff will meet to voice concerns regarding projects going through the permitting process at the United States Army Corps of Engineers (USACE) (see p. 14) and to discuss the need to elevate projects to the Commissioner during the federal consistency review process.

### III. CMP Enforceable Goals and Policies and Coastal Natural Resource Areas

#### *a. Texas CMP Enforceable Goals*

The enforceable goals and policies of the CMP focus management efforts on five primary issues of concern to coastal communities, which include: (1) coastal erosion; (2) wetland protection; (3) water supply and water quality; (4) dune protection; and (5) shoreline access. The ten CMP goals guide the interpretation and long-term implementation of the CMP. These goals are also intended to provide the networked agencies with uniform guidelines to coordinate state and federal agency activities while managing CNRAs. The enforceable goals are to be considered when reviewing proposed activities for consistency with the CMP and are set out in 31 TAC §26.12.

#### **Figure No. 3 Texas CMP Enforceable Goals**

- 1) To protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs;
- 2) To ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone;
- 3) To minimize loss of human life and property due to the impairment and loss of protective features of CNRAs;
- 4) To ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone;
- 5) To balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone;
- 6) To coordinate agency and subdivision decision-making affecting CNRAs by establishing clear, objective policies for the management of CNRAs;
- 7) To make agency and subdivision decision-making affecting CNRAs efficient by identifying and addressing duplication and conflicts among local, state, and federal regulatory and other programs for the management of CNRAs;
- 8) To make agency and subdivision decision-making affecting CNRAs more effective by employing the most comprehensive, accurate, and reliable information and scientific data available and by developing, distributing for public comment, and maintaining a coordinated, publicly accessible geographic information system of maps of the coastal zone and CNRAs at the earliest possible date;
- 9) To make coastal management processes visible, coherent, accessible, and accountable to the people of Texas by providing for public participation in the ongoing development and implementation of the Texas CMP; and
- 10) To educate the public about the principal coastal problems of state concern and technology available for the protection and improved management of CNRAs.

***b. Texas CMP Enforceable Policies***

The CMP's enforceable policies are detailed in 31 TAC §§26.15 - 26.34. They are uniform, established, enforceable policies used by networked agencies to guide government decision-making that may affect CNRAs. These policies do not impose or create new requirements beyond the existing legal authority of any state agency or local government and the policies may not be applied in a manner that would result in a taking, damage, or destruction of property without adequate compensation. Enforceable policies are central to implementing federal consistency. The applicable enforceable policies listed below must be addressed when conducting consistency reviews for projects proposed in the coastal zone.

**Figure No. 4 Texas CMP Enforceable Policies**

|        |   |
|--------|---|
| §26.15 | Policy for Major Actions  |
| §26.16 | Policies for Construction of Electric Generating and Transmission Facilities  |
| §26.17 | Policies for Construction, Operation, and Maintenance of Oil and Gas Exploration and Production Facilities              |
| §26.18 | Policies for Discharges of Wastewater and Disposal of Waste from Oil and Gas Exploration and Production Activities      |
| §26.19 | Policies for Construction and Operation of Solid Waste Treatment, Storage, and Disposal Facilities                      |
| §26.20 | Policies for Prevention, Response and Remediation of Oil Spills   |
| §26.21 | Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters   |
| §26.22 | Policies for Nonpoint Source (NPS) Water Pollution  |
| §26.23 | Policies for Development in Critical Areas  |
| §26.24 | Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands                              |
| §26.25 | Policies for Dredging and Dredged Material Disposal and Placement   |
| §26.26 | Policies for Construction in the Beach/Dune System  |
| §26.27 | Policies for Development in Coastal Hazard Areas  |
| §26.28 | Policies for Development Within Coastal Barrier Resource System Units and Otherwise Protected Areas on Coastal Barriers |
| §26.29 | Policies for Development in State Parks, Wildlife Management Areas or Preserves   |
| §26.30 | Policies for Alteration of Coastal Historic Areas   |
| §26.31 | Policies for Transportation Projects  |
| §26.32 | Policies for Emission of Air Pollutants   |
| §26.33 | Policies for Appropriations of Water  |
| §26.34 | Policies for Levee and Flood Control Projects   |



***c. Texas Coastal Natural Resource Areas***

The CMP has identified sixteen CNRAs and possible uses or activities that may adversely affect coastal management under the CMP. Effects to CNRAs must be evaluated when a proposed activity is reviewed for consistency with the CMP. To protect CNRAs, the networked agencies and local and state governments are required by the Act to comply with a uniform set of CMP enforceable goals and policies when conducting activities in the coastal zone. The statutory authorities and rules of the networked agencies and subdivisions set standards to approve or disapprove activities that may adversely affect CNRAs. The Texas CMP has identified the following CNRAs that are defined in 31 TAC §26.3(b):

- Coastal Barriers
- Coastal Historic Areas
- Coastal Preserves
- Coastal Shore Areas
- Coastal Wetlands
- Critical Dune Areas
- Critical Erosion Areas
- Gulf Beaches
- Hard Substrate Reefs
- Oyster Reefs
- Special Hazard Areas
- Submerged Lands
- Submerged Aquatic Vegetation
- Tidal Sand or Mud Flats
- Waters of the Gulf of Mexico
- Waters Under Tidal Influence



## IV. Federal Consistency Overview

Federal consistency is a provision in the CZMA of 1972 that requires the federal government to comply with a state's federally approved CMP when taking actions that are likely to affect coastal resources. See CZMA §307 (16 U.S.C. §1456). Generally, federal consistency can be explained as:

***Federal 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 the state's coastal management program.*** <https://coast.noaa.gov/czm/consistency>

Federal consistency is also the review process coastal states with federally approved CMPs undertake when a federal activity or action is proposed in the state's coastal zone. The CZMA also addresses the competing uses and resource impacts occurring in the nation's coastal areas and grants authority to federally approved CMPs to concur or object to any federal action that is proposed in the state's coastal zone based on an analysis of consistency of the proposed activity or action with the state's federally approved CMP. See CZMA §307 (16 U.S.C. §1456).

Texas's federal consistency review authority stems from the CZMA of 1972 which specifically grants Texas authority to concur, or object based on an analysis of how consistent the proposed federal action is with the Texas CMP's enforceable goals and policies. To review an activity, the activity must be approved by NOAA and added to a state's Federal "Listed Activities" that are subject to CZMA review. See 15 CFR §930.53. Texas's Federal Listed Activities Subject to CZMA Review are available for review on NOAA's website at: <https://coast.noaa.gov/czm/consistency/states/> and codified in 31 Texas Administrative Code §30.12.



If the activity in question is an "unlisted activity", *i.e.*, an activity in which the state has not sought authorization from NOAA for CZMA review, a state may seek authorization from NOAA to review the activity on a case-by-case basis as provided for in 15 CFR §930.54. To secure this authorization from NOAA, the state must submit a request to NOAA within thirty (30) days from the date of the application. The state should include an assessment of why the state believes the activity in question would have reasonably foreseeable coastal effects upon the state's CNRAs. The process also affords the applicant and federal agency an opportunity to respond to the state's request within fifteen (15) days from the date of the request to NOAA. If NOAA agrees with the state's request for review of the unlisted activity, the state will have the legal authority to review the activity on a one-time basis.

***a. Federal Actions Subject to CZMA Review***

To determine if a federal action is consistent with Texas's CMP enforceable goals and policies, GLO staff must determine:

- 1) If the action is located within the coastal zone boundary,
- 2) If there is a federal action that is subject to federal consistency review,
- 3) Whether the action will have reasonably foreseeable coastal effects, and
- 4) If the federal action is consistent with the Texas CMP enforceable goals and policies.

In addition to determining whether there is a federal action, GLO staff must also identify what type of federal action is under review. There are four types of federal actions which include:

- 1) Federal agency activities and development projects: These are projects that are performed by a federal agency or by a third-party contractor on behalf of the federal agency.
  - Examples include: a USACE beach renourishment project, an Outer Continental Shelf (OCS) oil and gas lease sale by the Bureau of Energy Management (BOEM), and activities in National Parks such as installation of mooring buoys or road construction. See 15 C.F.R. Part 930, Subpart C, 31 TAC §30.12(a)(1) and §30.20.
- 2) Federal license or permit activities: These are activities performed by a non-federal applicant seeking a federal permit, license, or other form of federal authorization.
  - Examples include: activities requiring USACE 404 permits, USACE permits for use of ocean dump sites, licenses from the Maritime Administration (MARAD) and U.S. Coast Guard (USCG) for a Deep-Water Port license. See 15 C.F.R. Part 930, Subpart D, 31 TAC §30.12(a)(2), and §30.30.
- 3) Outer Continental Shelf (OCS) Plans: This involves BOEM's approval for OCS plans, pursuant to the Outer Continental Shelf Land Act. The process is treated akin to a federal license or permit activities under 15 CFR Part 930, Subpart D. See 15 C.F.R. Part 930, Subpart E, 31 TAC §30.12 and §30.40.
- 4) Federal financial assistance: This involves federal assistance to state and local government applicants. See 15 C.F.R. Part 930, Subpart F, 31 TAC §30.12(a)(3).

If a proposed activity does not fall within the aforementioned types of federal actions, a consistency review is not required. However, a consistency review will be required when a proposed federal action falls within one of the four types of federal actions described above and the federal action is included on a State's NOAA approved Listed Federal Activities Subject to CZMA Review or is included in a State's Geographic Location Description (GLD) that has been approved by NOAA.

### ***b. Required Information for GLO Consistency Review***

In cases where the federal action is a federal agency activity or development project, the federal agency or third-party contractor will be required to submit a consistency determination (CD) or negative determination (ND) to GLO staff for review. The CD should include a statement that the proposed action is consistent with the state's enforceable goals and policies. The CD will be based on the federal agency's determination of whether the proposed activity occurring in the state's coastal zone is consistent to the "maximum extent practicable" with the CMP enforceable goals and policies. Additional information may be found at 15 CFR §930.39. For information pertaining to a negative determination see 15 CFR §930.35.

If the federal action involves a non-federal applicant for a federal license or permit activity, or OCS Plan, a consistency certification (CC) or equivalent documentation is required by GLO for a consistency review of the federal action. The CC should also include a statement that the proposed action is consistent with the Texas's CMP's enforceable goals and policies. See 31 TAC §30.30.

The proposed activity must be located within the coastal zone and included on the states "Listed Activities Subject to CZMA Review." An activity that occurs outside the coastal zone may also be reviewed but the activity would need to be included in the state's NOAA approved GLD or reviewed with NOAA's approval as an "unlisted activity."

After GLO has received a CD, ND, or CC, GLO staff will evaluate and consider the effects of the proposed action on "coastal uses and resources."

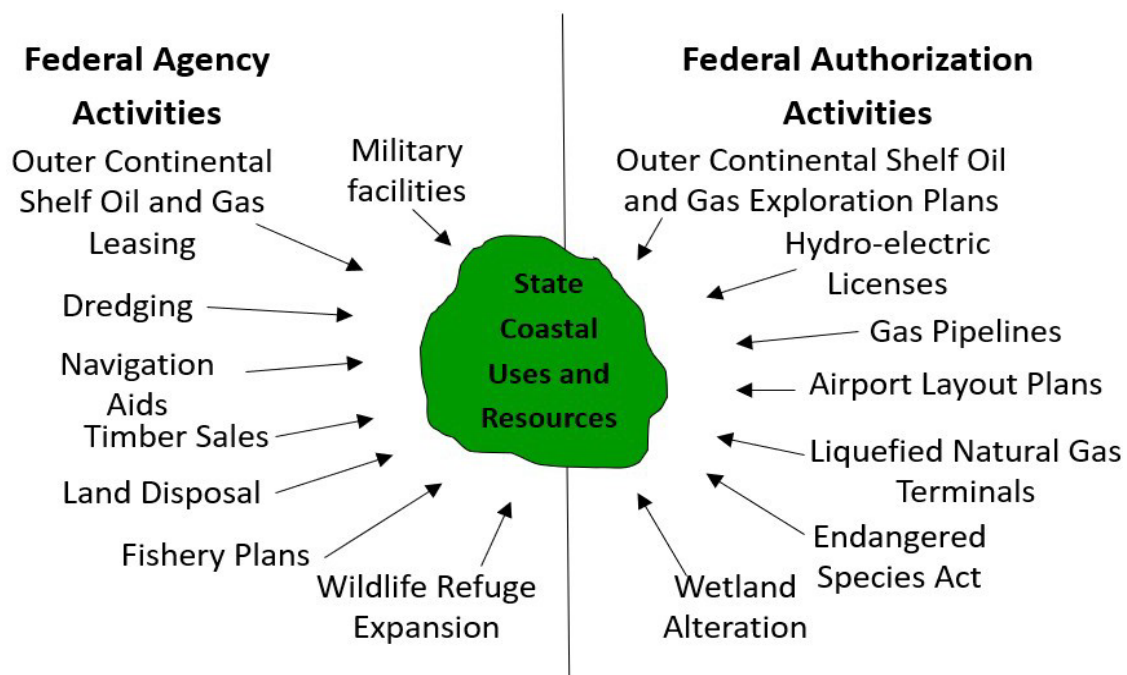
If a federal assistance application for a local or state government applicant is received, the proposed project should be located in the coastal zone or a consistency review is not applicable. If the proposed project is in the coastal zone, submitted voluntarily for review, or GLO has sought one-time review authority from NOAA and received approval, the activity will be reviewed for consistency with the Texas' CMP enforceable goals and policies. The four types of federal actions, required documentation, and review periods are summarized in the chart below.

|   | <b>Federal Agency Activity</b>                     | <b>Federal License or Permit Activity</b> | <b>OCS Plan</b>                         | <b>Federal Assistance Application</b>  |
|---|--|---|---|--|
| <b>Applicable Entity</b>                            | Federal Agency or 3 <sup>rd</sup> Party Contractor | Non-federal applicant                     | Person                                  | Applicant is the State or Local Government   |
| <b>Signed CMP Consistency Form/ Equivalent Doc.</b> | Required   | Required                                  | Required                                | Approved by NOAA for review or voluntarily submitted with application for federal assistance |
| <b>Consistency Certification</b>                    | N/A  | Required + Necessary Data & Information   | Required + Necessary Data & Information | N/A  |
| <b>Consistency Determination</b>                    | Required + Comprehensive Data & Information        | N/A                                       | N/A                                     | N/A  |
| <b>Review Period</b>                                | 60 days (+15 days)                                 | Up to 6 months                            | Up to 6 months                          | Up to 60 days  |

### ***c. Evaluating Reasonably Foreseeable Coastal Effects***

After identifying what the federal action is and whether it is subject to CZMA review, GLO will evaluate and consider if there are effects on coastal uses and resources in the coastal zone. See 15 CFR §930.11(g). As part of this analysis, GLO staff will consider both direct and indirect impacts. Indirect impacts include cumulative impacts which are repetitive in nature as well as secondary impacts. See 15 CFR §930.11(g). “Coastal resources” traditionally include resources such as air, wetlands and water bodies, aquifers, aquatic vegetation, plants, animals, land, minerals, and coastal resources of national significance. See 15 CFR §930.11(b). “Coastal uses” include public access, recreation, fishing, historic, cultural, development, hazards management, marinas, and resource creation or restoration. See 15 CFR §930.11(b).

## **Types of Federal Actions with Effects**



If GLO identifies adverse impacts to coastal uses or resources from federal actions, GLO will require mitigation and/or conditions to offset the adverse impacts. If GLO determines that there are no adverse impacts from the proposed federal action, then GLO will review the CC or CD for consistency with the Texas CMP enforceable goals and policies.



#### ***d. Consistency with CMP Enforceable Goals and Policies***

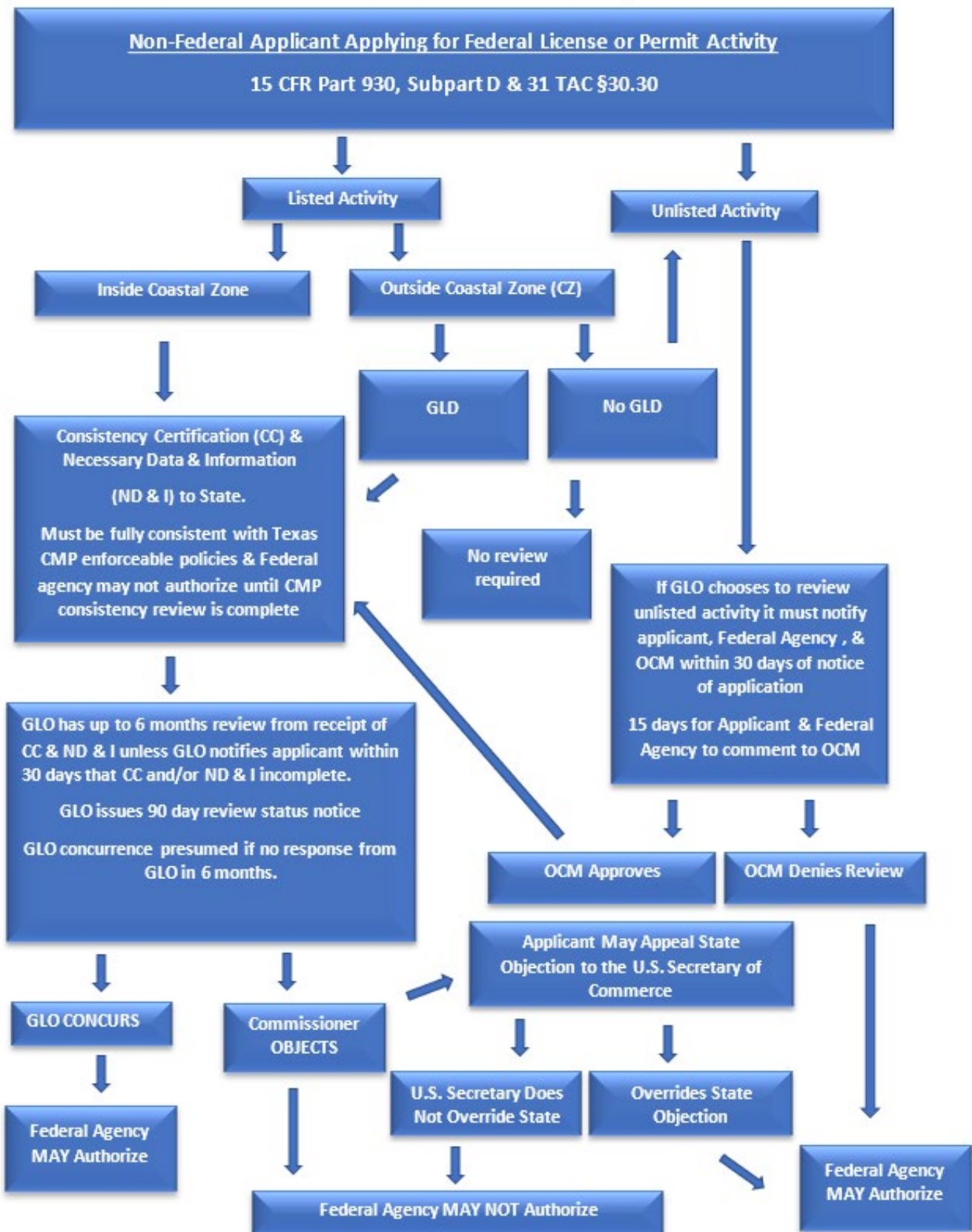
After assessing the federal actions reasonably foreseeable coastal effects, GLO will evaluate whether the federal action is consistent with the Texas CMP enforceable goals and policies in 31 TAC Chapter 26. Federal law requires federal agencies to fully comply with CMP enforceable policies when authorizing a federal license or permit activity. If GLO finds that a CC for a federal license or permit activity is inconsistent with the enforceable policies, the Commissioner may object but the objection must be based on approved CMP enforceable goals and policies in 31 TAC §26.12 and §§26.15-34. The GLO must also notify the applicant of its appeal rights to the United States Secretary of Commerce. If the applicant disagrees with the Commissioner's decision, the applicant may appeal the decision within thirty (30) days pursuant to 15 CFR Part 930, Subpart H and 31 TAC §30.30(n). Once the matter has been appealed, the United States Secretary of Commerce may overrule the Commissioner's decision if it is in the public or national interest. If the decision is overruled the CC will be deemed consistent and the federal agency may proceed with the issuance of the federal license or permit. This process is illustrated in Flowchart No. 1.

In the case of federal agency activities or development projects, federal law requires federal agencies to be consistent "to the maximum extent practicable," which is a lower standard than what is required for a federal license or permit activity. See 31 TAC §30.20 and 15 CFR Part 930, Subpart C. As a result, when a federal agency or third-party contractor submits a CD to GLO for consistency review, more deference is given to the federal agency's CD. In instances where the Commissioner issues an objection to the CD, the federal agency will, in many instances, still be able to proceed with the activity. For additional information, see the Federal Consistency Review Process for Federal Agency Activities in Flowchart No. 2.

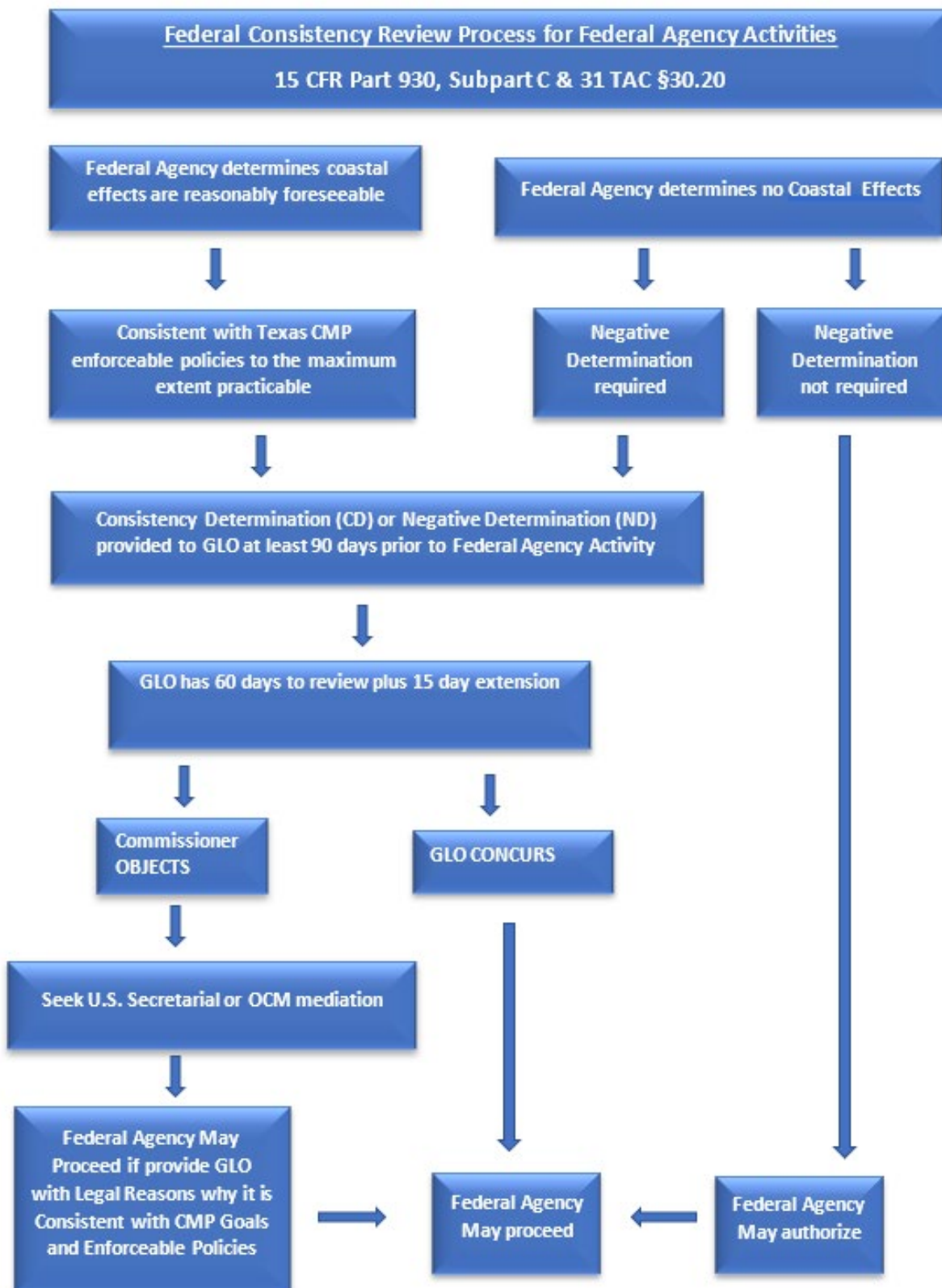
A federal agency may also submit a negative determination (ND) as provided for in 15 CFR §930.35 to GLO if the proposed activity is included on Texas's approved Listed Activities Subject to CZMA Review. Use of a ND is applicable when a federal agency determines there will be no reasonably foreseeable coastal effects. If GLO staff disagree with the ND, and the federal agency does not modify the activity or the development project to achieve consistency with the program, the governor, with the assistance of the Commissioner, may seek secretarial mediation or Office for Coastal Management (OCM) mediation of the matter in accordance with 15 CFR §§930.110 *et seq.* This process is described in the Federal Consistency Review Process for Federal Agency Activities Flowchart No. 2.



**Flowchart No. 1 FC Review Process for Federal License or Permit Activity**



**Flowchart No. 2 Federal Consistency Review Process for Federal Agency Activities**



## ***The GLO's Federal Consistency Review Process***

The GLO consistency review process and timeframes for review of federal actions (federal license or permit activity, federal agency activity and development projects, OCS Plans, and federal financial assistance) all vary, but will undergo an administrative review, a public notice and comment period, a technical review, and receive a GLO decision or finding.

In some instances, an elevated consistency review will be conducted by the Commissioner if there is a significant unresolved issue regarding a proposed action's consistency with the CMP enforceable goals and policies. See page 20. These processes and their associated steps are discussed in greater detail below.

### ***e. Administrative Review***

To initiate the consistency review process, a signed CMP Consistency Form or equivalent documentation must be submitted to GLO staff. The CMP Consistency Form should include an assertion that the proposed federal agency activity or action will be consistent with the CMP enforceable goals and policies. An assertion of consistency with the CMP enforceable goals and policies may be supported or verified by providing information that:

- Describes the proposed action or activity.
- Indicates if there are impacts to CNRAs.
- Explains why the proposed action or activity is consistent with the CMP enforceable goals and policies in 31 TAC Chapter 26.
- If related to a CC review request, all necessary data and information should demonstrate the federal license or permit activity is fully consistent with the CMP enforceable goals and policies. See 15 CFR Part 930, Subpart D and 31 TAC §30.30.
- If related to a CD review request, all comprehensive data and information should demonstrate that the federal agency activity or development project is consistent to the maximum extent practicable with the CMP enforceable goals and policies. See 15 CFR Part 930, Subpart C and 31 TAC §30.20.
- Includes signed statement confirming compliance with the CMP.

The CMP Consistency Form is available on GLO's website and may be downloaded at: [Forms \(texas.gov\)](https://forms.texas.gov). If the CMP Consistency Form is not utilized, documentation containing the same information must be supplied to GLO to initiate the consistency review process. The information submitted must contain a signed statement confirming compliance with the CMP.

The CMP Consistency Form and relevant information described above should be sent to GLO's federal consistency inbox at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov). Upon receipt, GLO staff will conduct a preliminary boundary determination to confirm the action or activity is located within the CMP's coastal zone. If the action or activity is not located in the CMP coastal zone, GLO staff will send a letter stating the activity is not subject to the CMP, in most instances.

Next, GLO staff will review the submitted information for a CC or CD. Upon review, the CD or CC will either be deemed administratively complete or incomplete. If complete, GLO staff will send a letter or email to

the applicant acknowledging receipt and confirming the application is administratively complete. If incomplete, GLO staff will send a Notice of Incomplete Submission to the applicant and request any incomplete information.

Once the administrative review is deemed complete, the public notice and technical review period begins. To ensure all information is provided and to avoid a possible delay of the consistency review for a CC or CD, Federal agency applicants may use the CD Checklist and non-federal applicants may use the CC Checklist below as a guide for submitting consistency review requests to GLO.

| <b>Consistency Certification Checklist</b> |   |
|--|---|
| <input type="checkbox"/>                   | All material relevant to the CMP provided to the Federal agency in support of the application (which may include a list identifying all federal, state, and local permits or authorizations subject to the CMP and required for the proposed activity and its associated facilities). |
| <input type="checkbox"/>                   | A detailed description of the proposed activity and its associated facilities with enough information to adequately permit an assessment of the probable effects on CNRAs and coastal effects.  |
| <input type="checkbox"/>                   | Any other information relied upon by the applicant to make the consistency certification.   |
| <input type="checkbox"/>                   | Maps, diagrams, and technical data that includes a mitigation plan if required.   |
| <input type="checkbox"/>                   | An alternative analysis.  |
| <input type="checkbox"/>                   | Habitat Characterization.   |
| <input type="checkbox"/>                   | Any required surveys for the license or permit.   |
| <input type="checkbox"/>                   | Detailed information should be submitted when a written description alone will not adequately describe the proposal.  |
| <input type="checkbox"/>                   | A brief set of findings with an explanation on how their effects are consistent with Texas CMP enforceable goals and policies.  |
| <input type="checkbox"/>                   | Signed GLO CMP Consistency Form or equivalent documentation with signature.   |
| <input type="checkbox"/>                   | On the SIGNED CMP Consistency Form, statement affirming "The proposed activity complies with enforceable goals and policies of Texas' approved coastal management program and will be conducted in a manner consistent with such program".  |
|  | A CC is deemed administratively complete once GLO receives a complete consistency certification that is in conformance with 15 CFR §930.57 and includes the necessary data and information described in <a href="#">15 CFR §930.58</a> and §30.30(b)(1), (2), and (3).                |

## **Consistency Determination Checklist**

|                          |   |
|--------------------------|---|
| <input type="checkbox"/> | A detailed description of the proposed activity and its associated facilities.  |
| <input type="checkbox"/> | A discussion of anticipated coastal effects. Federal agencies may choose to use NEPA documents or other project documents to describe coastal effects.  |
| <input type="checkbox"/> | An analysis of the relevant enforceable goals and policies and how the project is consistent or is inconsistent with the enforceable goals and policies.  |
| <input type="checkbox"/> | A description of the evaluation should be included in the CD or provided simultaneously with the CD if the evaluation is contained in another document.   |
| <input type="checkbox"/> | Comprehensive data and information sufficient to support the federal agency's consistency statement.  |
| <input type="checkbox"/> | A brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable goals and policies of the Texas CMP. <i>See</i> 15 CFR §930.39(a). <i>See also</i> 31 TAC §30.20. |
| <input type="checkbox"/> | Signed CMP Consistency Form or equivalent documentation with signature.   |
| <input type="checkbox"/> | CD may be submitted to GLO for review in any format but must meet the content requirements set out in 15 CFR §930.39. <i>See also</i> 31 TAC §30.20.  |

### ***f. Public Notice and Comment Period***

After GLO staff sends a letter or email confirming the application is administratively complete, they will begin preparing the public notice. The GLO will provide a thirty (30) day public notice for the proposed project. *See* 15 CFR §§930.42, 930.61, and 930.77 and 31 TAC §§30.20(f), 30.30(h), and 30.40(e). Notices will be published in the Texas Register and on GLO's website. The public notice will contain a summary of the proposed federal license or permit activity, federal agency activity and development project, or OCS Plan (if applicable) and announce the availability of the CC or CD. The notice will also request public comments to address the consistency of the proposed action or activity with applicable elements of the CMP. The GLO may also issue a joint public notice with federal permitting or licensing agencies. The GLO may also at its discretion extend the public comment period or schedule a public meeting on the CC or CD. After the close of the public comment period the comments will be reviewed by GLO staff.

To view current public notices through GLO's website go to: <https://www.glo.texas.gov/coast/coastal-management/federal-consistency/index.html>. [Public Notices \(texas.gov\)](#)

### ***g. Technical Review***

The technical review is conducted concurrently with the public notice period. To conduct the review, GLO staff will classify what type of federal action is occurring and assess the following questions:

- 1) Does the project fall within the coastal zone?
- 2) Is it a listed or unlisted federal agency action or activity?
- 3) Was a CMP consistency statement or equivalent documentation received and signed?
- 4) Is there sufficient information regarding the project or action to conduct the review?
- 5) Will the project adversely affect CNRAs and if so which CNRAs?
- 6) Which enforceable goals and policies apply and is the project consistent with the CMP enforceable goals and policies?

In addition, GLO will evaluate whether project impacts will require mitigation. The GLO has a "no net loss" goal which may be achieved by requiring applicants to avoid, minimize, or, when practicable, compensate for unavoidable impacts to functions or values of critical areas by requiring mitigation.

There will also be instances when GLO may defer the technical review to the Texas Commission on Environmental Quality (TCEQ) or the Railroad Commission of Texas (RRC) if a Clean Water Act §401 Water Quality Certification is required. In these instances, GLO may defer to TCEQ or the RRC because they are networked agencies who have the requisite legal authority to issue §401 certifications in Texas. Once a matter has been deferred to either the TCEQ or RRC, the TCEQ or RRC will issue or deny the §401 water quality certification and conduct the state consistency review to ensure the proposed action is consistent with the CMP enforceable goals and policies. The TCEQ and RRC's agency rules and procedures provide for public notice, hearing, and comment on the water quality certification. After the decision is issued, the GLO is notified of the decision by email.

#### ***h. GLO's Decision or Commissioner Finding***

The GLO's consistency review may result in a concurrence, conditional concurrence, or objection. An action may be referred to the Commissioner for an elevated consistency review if at least three (3) CCAC representatives believe there is a significant unresolved issue regarding consistency with CMP enforceable goals and policies. If the Commissioner determines an objection is necessary for either lack of information or because the proposed action or activity is inconsistent with the CMP enforceable goals and policies, the Commissioner will issue an objection letter and the applicant, person, or federal agency will be notified by GLO staff. The content of the Commissioner's objection or finding will follow the requirements set out in 15 CFR §§930.43, 930.63(h), and 930.79, as appropriate. This will include an explanation of:

- How the proposed activity is inconsistent with specific elements of the Texas CMP,
- Alternative measures (if they exist) which, if adopted by the entity, would permit the proposed action or activity to be conducted in a manner consistent with the Texas CMP,
- The nature of the information requested and the necessity of having such information to determine the consistency of the proposed action or activity if the objection is on the grounds of insufficient information, and
- For federal actions, this will include a statement of information regarding the applicant's right of appeal to the Secretary of the United States Department of Commerce if the proposed action was deemed inconsistent with the Texas CMP.



If the Commissioner finds that a proposed activity is inconsistent with the CMP enforceable goals or policies, the matter may be appealed within thirty (30) days by following the federal regulations appeal process set out in 15 CFR Part 930 Subpart H.

| <b>GLO's Federal Consistency Review Timeframes &amp; Applicable Review Standards</b>   |   |   |
|--|---|---|
|  | <b>Federal Agency Activities &amp; Development Projects</b>   | <b>Federal License or Permit Activity, OCS Plans, and Federal Financial Assistance</b>  |
|  | <b>15 CFR Part 930, Subpart C<br/>15 TAC §30.20</b>   | <b>15 CFR Part 930, Subpart D, E, and F 15 TAC §30.30</b>   |
| <b>Who decides whether there are coastal effects?</b>  | Federal agency applicant decides whether there are coastal effects.   | State with NOAA approved CMP, decides whether there are coastal effects through "listing" and "unlisted" requirements for activities requiring federal authorization.   |
| <b>Who submits CD or CC?</b>   | Federal agency or third-party contractor submits CD if coastal effects.   | Non-federal applicant submits CC.   |
| <b>When is CD or CC submitted?</b>   | Submitted at least 90 days before federal agency starts activity.   | Submitted with or after federal license or permit activity application from Federal agency.<br><br>For federal assistance application, submitted to GLO's federal consistency review team.  |
| <b>When does the review start?</b>   | Review starts when CD received (if complete) and signed CMP Consistency Form or equivalent Documentation.                           | Review starts when CC and "necessary data and information" received. For federal financial assistance, review starts after GLO receives the application and has either been submitted voluntarily or approved for review by NOAA. |
| <b>How long is the state review process?</b>   | State has 60 days (+15 days if needed) to review. State and Federal agency can mutually agree to a shorter or longer review period. | State has up to 6 months to review. State and applicant can agree to mutually stay the 6 month review period for a mutually agreed upon time, after which the remainder of the 6 month review period applies.                     |
| <b>What is the applicable federal consistency review standard?</b>   | Federal Agency is required to be consistent to the maximum extent practicable.  | Activity must be fully consistent as determined by GLO.   |
| <b>Requests to review consistency certifications, consistency determinations, negative determinations, and federal financial assistance applications should be sent to GLO's federal consistency inbox @: <a href="mailto:federalconsistency@glo.texas.gov">federalconsistency@glo.texas.gov</a></b> |   |   |

## V. GLO's Consistency Review Steps for Federal Actions

The GLO conducts all federal consistency reviews in accordance with federal regulations as set out in 15 CFR Part 930, Subparts C, D, E, F, and H. The GLO review steps are explained below.

### **a. Consistency Determination Review Steps for Federal Agency Activities and Development Projects (See 15 CFR Part 930, Subpart C and 31 TAC §30.20)**

A federal agency activity is a function performed by or for a federal agency in the exercise of its statutory responsibility. Federal agencies or third-party contractor will be responsible for preparing and submitting the initial CD on proposed federal agency activity effects on coastal uses or resources and are required to request a concurrence with that determination. The federal agency or third-party contractor should submit the CD ninety (90) days before the activity is set to begin to allow adequate time for GLO to conduct the consistency review. Upon receipt of the federal agency's CD:

- 1) The GLO has fifteen (15) days to review the CD to ensure it incorporates the required information described in 15 CFR §930.39(a).
- 2) If the CD is not administratively complete, the sixty (60) day review period begins when GLO receives the required missing information, as provided in 15 CFR §930.39. This timeframe applies when GLO provides a Notice of Incomplete Submission to the federal applicant and identifies missing information within the fifteen (15) day review period. If administratively complete, the review period begins when the signed CMP Consistency Form or equivalent signed documentation is received.
- 3) The consistency review includes a thirty (30) day public notice and comment period which occurs concurrently with the technical review period. The public notice is published in the Texas Register and on GLO's website.
- 4) The sixty (60) day technical review begins as soon as the CD is deemed administratively complete. The GLO has an automatic fifteen (15) day extension for review, if needed, but GLO must notify the federal agency or third-party contractor it intends to utilize the time extension in writing before sixty (60) days from the date it is administratively complete. The GLO and the federal agency may negotiate a different timeline.
- 5) The federal agency may presume a concurrence if GLO has taken no action sixty (60) days from the administratively complete date if a fifteen (15) day extension request has not been received.
- 6) The federal agency may mutually agree with GLO to rely on information contained in NEPA documents or other project documents to provide comprehensive data and information sufficient to support the federal agency's consistency statement under 15 CFR §930.39(a).
- 7) The GLO may issue a concurrence, conditional concurrence, or the Commissioner may object for lack of consistency or lack of information. See page 17 and 20.
- 8) A CD letter will be provided to the federal agency stating the project is either consistent or that the proposed project is being referred to the Commissioner because of unresolved consistency issues.
- 9) If the Commissioner finds the proposed activity is inconsistent with the CMP goals and enforceable policies and objects to the CD, the federal agency may not proceed with the federal action, but may

appeal as set out in 15 CFR Part 930, subpart H.

**b. Consistency Certification Review Steps for Federal License or Permit Activity (See 15 CFR Part 930, Subpart D and 31 TAC §30.30)**

If the federal action involves a non-federal applicant seeking a federal license or permit within the coastal zone, the applicant must submit a consistency certification (CC) to GLO with a statement that the proposed action is fully consistent with Texas's CMP enforceable goals and policies. Activities subject to consistency review must be included on Texas Federal Listed Activities Subject to CZMA Review or authorized by NOAA for review of an unlisted activity. See 31 TAC §30.12. Upon receipt of a signed CMP Consistency Form (or equivalent signed documentation requesting a CC review) and the necessary data and information:

1. The GLO has thirty (30) days to determine whether the information is administratively complete. If deemed administratively complete, GLO will have up to six (6) months to complete the consistency review.
2. If the consistency certification submittal is incomplete, GLO must provide the applicant with a Notice of Incomplete Submission and identify what information is missing. The consistency review period begins when GLO receives the missing information. If GLO does not provide the applicant a Notice of Incomplete Submission, the consistency review is deemed administratively complete for purposes of starting the consistency review timeframe.
3. Once administratively complete, public notice is published by GLO in the Texas Register and on GLO's website for a thirty (30) day public comment period.
4. The public notice and technical review period run concurrently.
5. The GLO staff and the federal permitting agency will work together to ensure that all Texas CMP requirements are met. If additional information is needed for the technical review, GLO staff will identify the missing information and provide written notice to the applicant within ninety (90) days from the date the matter is deemed administratively complete.
6. The GLO will provide a ninety (90) day status update to the entity.
7. If no action is taken on the matter, the action is presumed concurrent after six (6) months.
8. If GLO is missing necessary information to make a consistency decision within the 6-month review period, both parties may enter into a signed mutual stay agreement to allow the applicant time to provide additional information. The mutual stay agreement is intended to provide the applicant additional time to provide GLO with the necessary data and information for the review and avoid an objection for lack of information.
9. When all pertinent documents are submitted to GLO, including any state and local permits, GLO may issue a consistency decision. The GLO can concur or concur with conditions. Any conditions provided with the concurrence are incorporated into the federal permit/license. If the applicant fails to follow any conditions that have been incorporated into the permit or license the decision becomes an automatic objection.
10. If three (3) Committee members refer the matter for an elevated review by the Commissioner

for a consistency review with the CMP enforceable goals and policies, the Commissioner may object to the consistency certification as provided for in 15 CFR §930.63(h).

11. If the commissioner finds that the proposed federal license or permit activity is inconsistent with the CMP enforceable goals and policies and objects to the consistency certification, GLO shall notify the applicant of its appeal rights to the United States Secretary of Commerce, and the federal agency shall not authorize the federal license or permit activity, except as provided in the appeals process established in 15 CFR Part 930, subpart H.

**c. Consistency Certification Review Steps for OCS Plans (See 15 CFR Part 930, Subpart E and 31 TAC §30.40)**

When reviewing an OCS plan for consistency with the enforceable goals and policies of the CMP, GLO will follow the requirements and procedures provided in 15 CFR Part 930, Subpart E and 43 USC §1331-1356(a). The federal regulations, 15 CFR Part 930, Subpart E, provide that OCS plans submitted to the United States Secretary of the Interior for OCS exploration, development and production, and all associated federal licenses and permits described in detail in such OCS plans, shall be subject to federal consistency review.

Any person, as defined at 15 CFR §930.72, submitting any OCS plan to the Secretary of the Interior or designee shall provide a copy of the plan along with a consistency certification that states as follows: "The proposed activities described in detail in this plan comply with Texas' approved coastal management program and will be conducted in a manner consistent with the program." The Secretary of the Interior or BOEM shall provide the plan and consistency certification to GLO. See 15 CFR §930.76.

1. Upon receipt of a signed CMP Consistency Form requesting a CC review and supporting data applicable to OCS-related federal agency actions affecting CNRAs, GLO has thirty (30)-days to determine whether the information is administratively complete.
2. If the CC submittal is incomplete, GLO staff will provide a Notice of Incomplete Submission and identify the missing information via email or letter. If GLO staff does not provide Notice of the Incomplete Submission within thirty (30) days, the CC will be considered complete for purposes of starting the federal consistency review period.
3. Once administratively complete, GLO's staff has up six (6 months) to review the OCS plan.
4. The thirty (30) day public notice will begin upon administrative completeness and the technical review period runs concurrently.
5. The GLO staff will provide a ninety (90) day status update. If no update has been provided at this time and no action taken by GLO, the OCS plan may be presumed concurrent.
6. If GLO needs additional information it may seek additional information that is identified in 15 CFR §930.76(a) and (b).
7. Both parties may enter into a signed mutual stay agreement to allow the person time to provide additional information.
8. When all pertinent documents are submitted to the GLO, it may issue a federal consistency decision. The GLO can concur or concur with conditions. If the person fails to follow any conditions that have been incorporated into the permit or license the decision becomes an automatic objection.
9. The Commissioner will issue an objection if the OCS Plan is inconsistent with the enforceable goals and policies of the CMP and will conform to the requirements set out in 15 CFR §930.79.

10. Any appeal will follow the appeals process established in 15 CFR Part 930, subpart H.

***d. Federal Assistance Consistency Review Steps (See 15 CFR Part 930, Subpart F)***

GLO will conduct federal financial assistance reviews in accordance with 31 TAC §30.12(a)(3). If the criteria are met, GLO will follow the review procedures below.

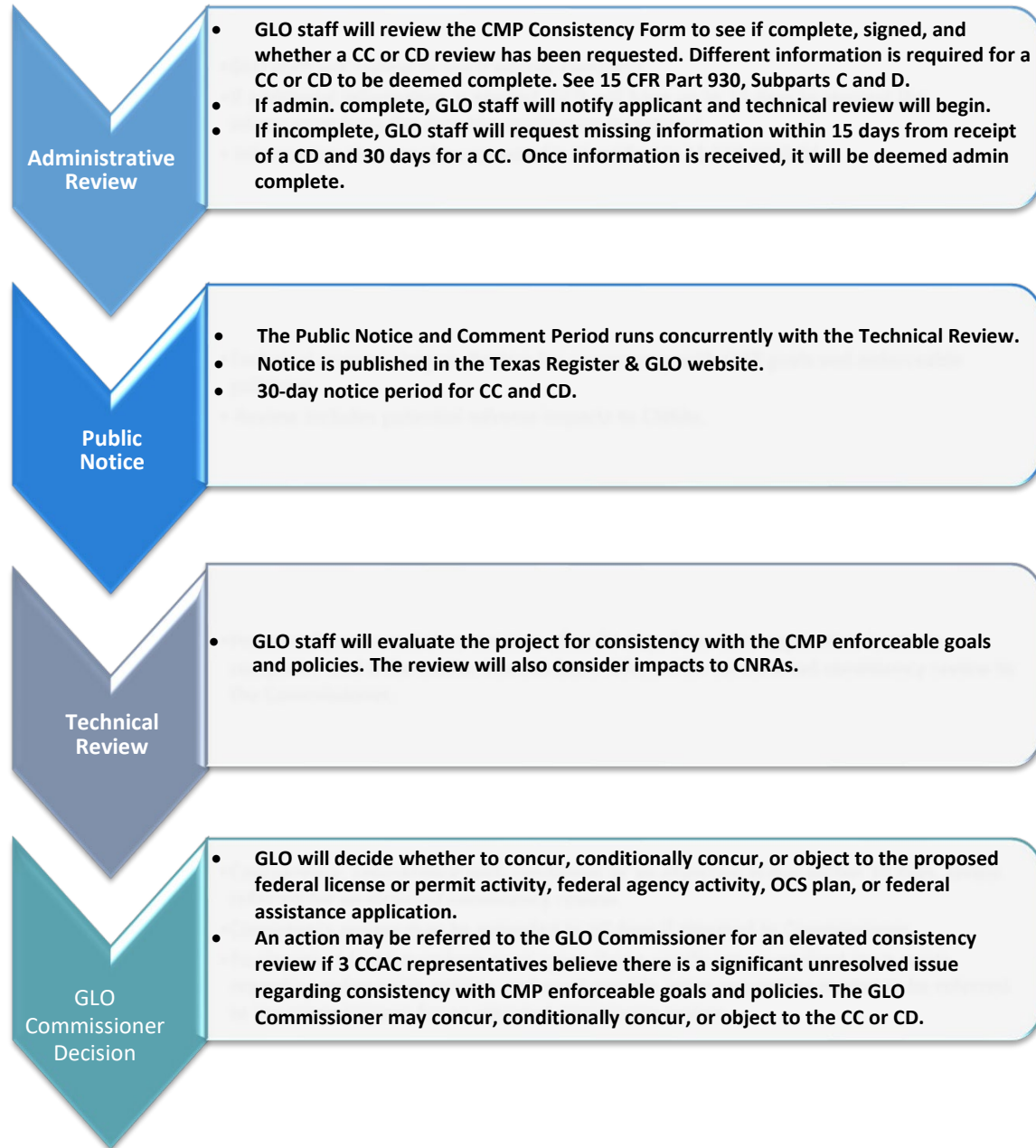
Federal assistance provided to state and local governments or related public entities goes through consistency review to ensure it is consistent with the enforceable goals and policies of the Texas CMP. Federal assistance includes grants, loans, subsidies, insurance, or other forms of financial aid. Entities seeking assistance should include, in addition to the consistency statement and, a brief evaluation of the relationship of the proposed activity and include any reasonably foreseeable coastal effects to the enforceable goals and policies of the CMP. The federal agency may not grant any federal assistance until GLO concurs. These items should be submitted to GLO staff for review via GLO's federal consistency inbox at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov). The federal assistance review process generally takes thirty (30) days.

1. The federal assistance state or local government entity will coordinate with GLO's Federal Consistency Coordinator on whether a federal consistency review is necessary. Applications should be emailed to: [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov).
2. If a consistency review is voluntarily requested, GLO should be provided a copy of the federal assistance application and a brief description of any coastal impacts the federal assistance may have.
3. If additional information is needed GLO will have up to 15 days to request the information from the date the application is received. Information that may be requested is identified in 15 CFR Part 930, Subpart F. If information is not requested by GLO staff within fifteen (15) days, the application will be deemed administratively complete.
4. The GLO begins the technical review and the decision is due thirty (30) days from the date the application is administratively complete.
5. The GLO may issue a concurrence, conditional concurrence, or an objection within thirty (30) days. The decision timeframe may be extended thirty 30 days if the matter is elevated to the Commissioner by at least three (3) CCAC members.
6. To elevate the consistency review, three (3) CCAC members must agree that a significant unresolved issue exists regarding consistency with the CMP enforceable goals and policies. The three (3) CCAC members must submit a letter or email addressed to the CMP coordinator that requests the matter to be referred to the Commissioner for an elevated consistency review.
7. If the Commissioner objects to the federal assistance application, the applicant, federal agency, and Director of the NOAA OCM will be notified of the objection by GLO. The content of the commissioner's objection will conform to the requirements set out in Subpart F and GLO will notify the applicant of its appeal rights to the U.S. Secretary of Commerce.
8. In the event GLO and the federal agency disagree about whether a federal consistency review should occur for the federal assistance activity, GLO and the federal agency may enter into

negotiation or formal mediation to find a resolution.

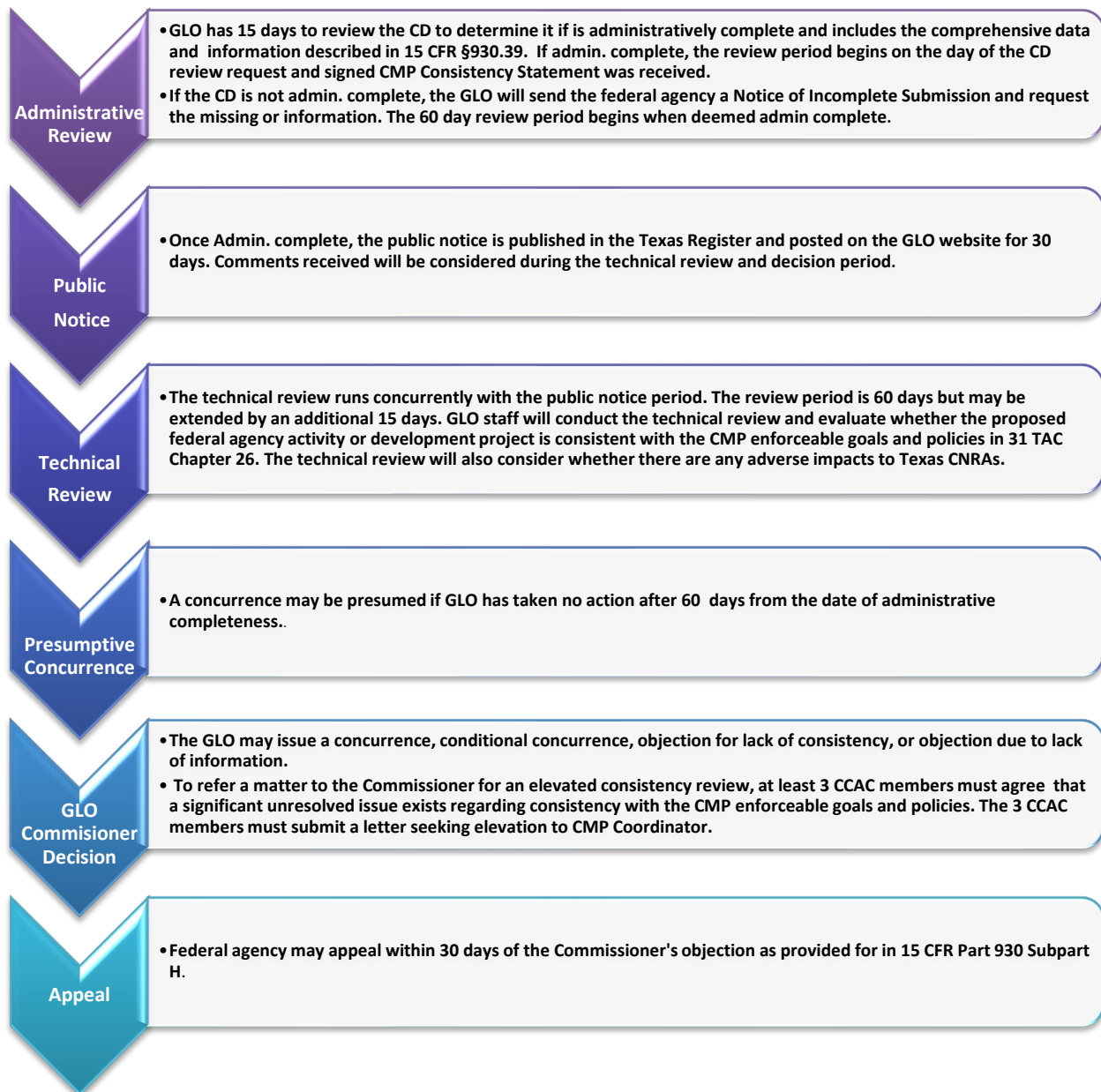
## VII. GLO's Consistency Review Stages and Flowcharts

### GLO Consistency Review Stages (31 TAC Chapter 30)

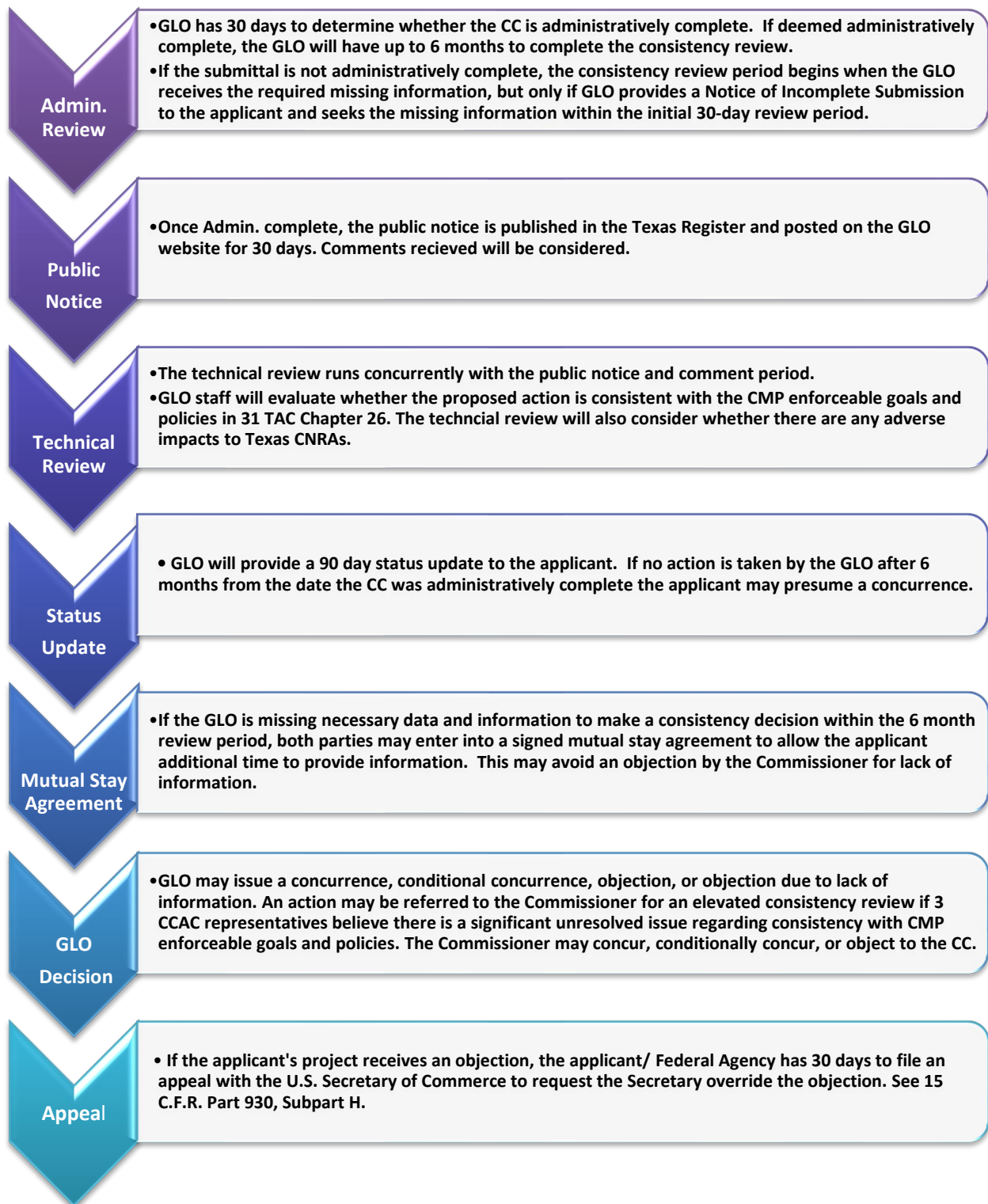




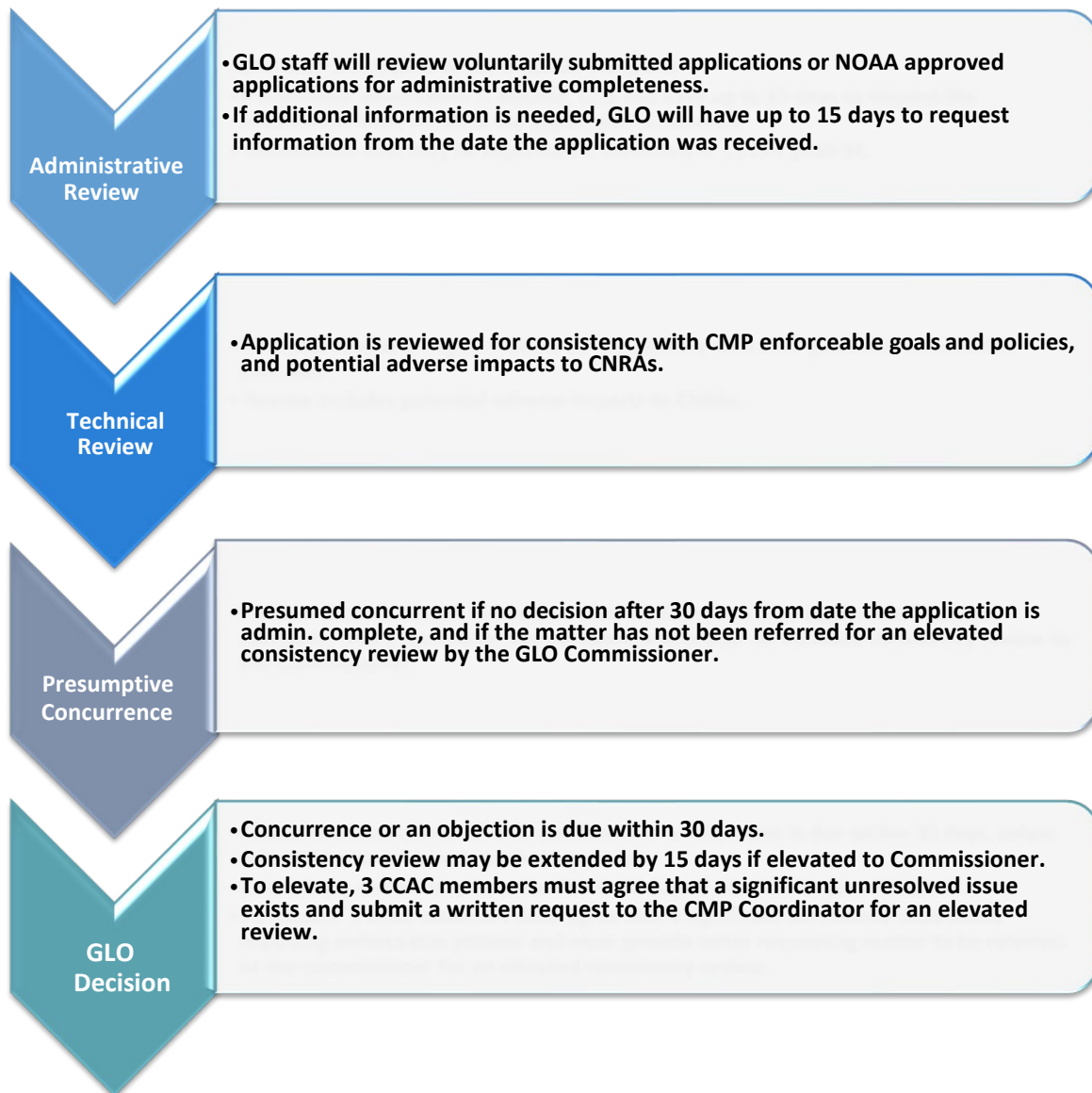
## Consistency Determination Review Process (31 TAC Chapter §30.20)



## Consistency Certification Review Process (31 TAC Chapter §30.30)



## Federal Financial Assistance Review Process



## **VIII. Equivalent State and Federal Agency Actions**

To avoid duplication and delays in consistency reviews of equivalent state and federal permits, only a federal consistency review or a state consistency review may occur but not both. Equivalent state and federal actions are those that authorize the same activities because they have, as their legal foundation, the same or very similar origins.

State consistency reviews are focused on state agency rules, thresholds of review, state permits, and authorizations, as well as local governments' permits, and authorizations. In contrast, federal consistency reviews concern actions and activities that are proposed to be undertaken, licensed, permitted, authorized, or funded by a federal agency.

If an equivalent state action falls below the threshold for referral established under the state consistency review rule (Chapter 29, Subchapter B), the Commissioner may only determine the agency or subdivision action's consistency by using the same process provided in 31 TAC Chapter 29. Once deferred for state consistency review, GLO would be unable to review the same action under a federal consistency review.

If an equivalent state action is for a proposed action above the threshold for referral established under the state consistency review rule (Chapter 29, Subchapter B), the Commissioner may determine the consistency of the agency or subdivision action or of the federal license or permit, but not both.

Local governments are also required to conduct consistency reviews and make determinations that projects are consistent with the CMP enforceable goals and policies when a project exceeds thresholds (thresholds pertaining to consistency reviews are located at 31 TAC §29.60(1-4)). The consistency review is then submitted to CCAC and if may be reviewed by the Commissioner if elevated.

## **IX. Permit Service Centers**

The Permit Service Center (PSC) was established under the CMP by the Coastal Coordination Act and provides individuals and small businesses in the coastal zone permitting assistance at no charge. The overall goal is to streamline the permitting process for the applicant and assist them with applying for authorizations from the GLO, USACE, Texas Parks and Wildlife Department, and TCEQ.

The PSC Coordinators:

- Provide clarification on authorizations needed for a project.
- Serve as a central receiving point to streamline the process.
- Screen applications and help ensure applications are complete.
- Provide technical guidance to applicant on project design.
- Provide information on avoidance and minimization of impacts to natural resources.
- Coordinate interagency pre-application meetings with state and federal permitting agencies.
- Track of applications through the permitting process.

- Forward screened applications to the appropriate state and/or federal agency for processing.

The GLO encourages applicants to contact the PSC early in the permit planning process to identify potential adverse impacts to CNRAs or to identify actions that may be inconsistent with the enforceable goals and policies of the CMP. If either of these issues are identified, PSC and federal consistency staff can attempt to work with the applicant to mitigate potential adverse impacts or resolve inconsistent actions.

Permit Coordinators also attend Permitting Assistance Group (PAG) meetings when needed. The PAG, which is ad hoc, was established by the Coastal Coordination Act and designed to address policy and operational issues associated with coastal permitting. The PAG helps facilitate coordination among agencies involved in the coastal permitting process. The PAG consists of representatives appointed by each CCAC agency as well as federal agency representatives involved in the coastal permitting process.

One function of the PAG was to coordinate preliminary consistency reviews. A preliminary consistency review allows agencies, subdivisions, and applicants the opportunity to request recommendations with respect to the consistency of a proposed action. To help facilitate this review, the PAG recommended that applicants utilize interagency pre-application meetings with state and federal permitting agencies. These meetings are now referred to as Joint Evaluation Meetings (JEMs) and are held bimonthly at the USACE regulatory branch locations along the Texas coast.

PSC Coordinators routinely attend the JEMs to provide guidance to applicants on Texas CMP policies and agency permitting requirements.

## X. Frequently Asked Questions

|  |
|--|
| <b><i>Why Does GLO Conduct Federal Consistency Reviews?</i></b>  |
| <ul style="list-style-type: none"> <li>By conducting federal consistency reviews, GLO ensures the state's interests are considered when the federal government proposes to undertake a federal action within the Texas coastal zone. The federal consistency process provides GLO the opportunity to work cooperatively with federal agency applicants early in the process. This fosters cooperation and coordination between coastal states and the federal government.</li> </ul>   |
| <b><i>What is the difference between a consistency certification and consistency determination?</i></b>  |
| <ul style="list-style-type: none"> <li>Consistency determinations (CD's) are submitted by federal agencies and third-party contractors for activities and development projects. In contrast, consistency certifications (CC's) are used by a non- federal applicant when a federal license or permit activity is required for the project to be undertaken.</li> </ul>   |
| <b><i>What is the difference between a consistency determination and a negative determination?</i></b>   |
| <ul style="list-style-type: none"> <li>A consistency determination is submitted when a federal agency activity affects the coastal zone. It is a project description and analysis of the activity's coastal zone effects based on the CMP enforceable goals and policies in 31 TAC Chapter 26. A negative determination is a project description and an explanation of why a federal agency has concluded that an activity does not affect the coastal zone.</li> </ul>  |
| <b><i>Who can I contact regarding questions on the federal consistency process?</i></b>  |
| <ul style="list-style-type: none"> <li>You may request assistance from the Federal Consistency Coordinator by emailing: <a href="mailto:federal.consistency@glo.texas.gov">federal.consistency@glo.texas.gov</a></li> </ul>  |
| <b><i>Do I need to analyze all the enforceable goals and policies in Chapter 26 in a consistency certification or determination?</i></b>   |
| <ul style="list-style-type: none"> <li>All applicable enforceable goals and polices should be reviewed to ensure compliance with the CMP.</li> </ul>   |
| <b><i>Is there a standard application form for a consistency determination, negative determination, or consistency certification?</i></b>  |
| <ul style="list-style-type: none"> <li>There is not a standard form for providing a required consistency determination, negative determination, or a consistency certification. Any format is acceptable if the information requirements are met. The GLO uses a CMP Consistency Form which can assist with a CC or CD review request to the GLO. The CMP Consistency Form seeks information regarding: <ol style="list-style-type: none"> <li>Impacts to coastal natural resource areas;</li> <li>Proposed activity, additional permits/authorizations including leases, easements, permits;</li> <li>Relevant enforceable goals and policies;</li> <li>Statement affirming that the activity in question will be consistent with CMP enforceable goals and policies.</li> </ol> <p>*Equivalent documentation may be submitted to meet information requirements instead of submitting CMP Consistency Form.</p> </li> </ul> |



## **X. Appendix A**

- Statutory Authority
  - Coastal Coordination Act, Tex. Nat. Res. Code §33.201 et seq.
- CMP Rules
  - 31 Tex. Admin. Code Chapters 26 – 30

### **Helpful References & Links:**

- [CZMA Federal Consistency Overview: §307 of the Coastal Zone Management Act of 1972.](#)
- [Texas's Listed Federal Activities](#)
- [cmp-consistency-statement.pdf \(texas.gov\)](#)