

Routine Program Change

To

State of Florida Coastal Management Program

Request for Concurrence

June 2018

Submitted by: Florida Coastal Office
Department of Environmental Protection
3900 Commonwealth Blvd., MS 235
Tallahassee, Florida 32399

Table of Contents

Introduction	1
Analysis of Changes.....	1
Examination of Statutes	3
Statutory Changes.....	4
Conclusion	7
Public Notice	8
Text of Statute.....	Appendix A

Routine Program Change

Introduction

The Florida Coastal Management Program (FCMP) manages over 8,000 miles of coastline through the authority granted by the Florida Legislature in 24 different statutes. This network of statutes is administered by nine state agencies, including all of the water management districts, throughout the state of Florida. In the 2017 legislative session, new sections were added to the relevant statutes governing the FCMP through proposed new enforceable policies and sections which will not be proposed as enforceable policies. No existing enforceable policies were repealed during the 2017 legislative session, and FCMP is not submitting modifications of existing enforceable policies in this Routine Program Change.

New sections that are being proposed as enforceable policies were created in Chapters 379 and 403 of the Florida Statutes (F.S.). However, they do not substantially change the FCMP in the areas of uses subject management, special management areas, boundaries, authorities and organization, or coordination, public involvement, and the national interest, and therefore do not meet the definition of “amendment” as stated in 15 C.F.R. s. 923.80(d). The State of Florida has completed the following analysis of these changes according to the requirements of 15 C.F.R. s. 923 Subpart H and the Program Change Reminders provided by the OCRM in February 2007. It concludes that these are Routine Program Changes as stated in 15 C.F.R. s. 923.84 and not Amendments as defined by 15 C.F.R. s. 923.80(d).

The State of Florida is requesting that the Office of Ocean and Coastal Resource Management (OCRM) of the National Oceanic and Atmospheric Administration (NOAA) concur in the incorporation of the Routine Program Changes to the FCMP

Analysis of Changes

The submitted program changes amend the State of Florida’s enforceable policies of the Florida Coastal Management Program. The State of Florida submits the changes to Chapters 252, 258, 339, 373, 379, and 403 of the Florida Statutes as Routine Program Changes to the FCMP, with 379.2426 and 403.077, F.S., being proposed as enforceable policies for federal consistency purposes. Pursuant to 15 C.F.R. s. 923.84, this submitted analysis of changes places the OCRM on notice of the Routine Program Changes. This analysis will also explain why these modifications are Routine Program Changes and not amendments pursuant to 15 C.F.R. s. 923.80(d).

Amendments are defined in 15 C.F.R. s. 923.80 as substantial changes in one or more of the following: areas of uses subject to management, special management areas, boundaries, authorities and organization, or coordination, public involvement, and the national interest. In 1996, the OCRM published “Program Change Guidance” in order to clarify the difference between Routine Program Changes and program amendments. According to this guidance, a substantial change is a high threshold, which is determined case-by-case. Indicators of a substantial change include: new or revised enforceable policies that address coastal uses or resources not previously

managed (or major changes in the management); the extent to which the proposed change impacts the national interest reflected in the CZMA; and the extent to which the proposed change is similar to past program change requests that were treated as amendments. The Program Change Reminders of 2007 provided technical guidance on submitting Routine Program Changes, while again stating that the submission must explain how the changes do not result in a substantial change to one or more of the five program approvability areas.

The Routine Program Changes for 2017 which require a more detailed explanation are summarized below, while strictly technical changes to the statutes are outlined in the following table. All sections added are listed in the table.

Chapter 379, F.S.

379.2426 was created, creating new prohibitions and penalties for the possession of separated shark fins on the water. Possession of such fins are prohibited unless authorized by FWC rule or other specific circumstances that are part of the section. Penalties increase with subsequent violations. This new section also lists several prohibited activities for those whose license is either suspended or revoked.

Chapter 403, F.S.

403.076, 403.077, and 403.078 were created as part of the Public Notice of Pollution Act. 403.077 includes owner and operator responsibilities in the event of a reportable pollution release such as the event being reported to the State Watch Office within 24 hours. DEP will create a website where the public can view all public notices within 24 hours of receipt, and create a related mailing list for notices and allow to subscribe to it. DEP must also provide an electronic form and submission email for owners and operators to provide notice to the State Watch Office. 403.078 states that this does not change emergency management responsibilities for the Governor, Division of Emergency Management, or political subdivisions.

Examination of Florida Statutes

In response to legacy issues discussed with NOAA OCRM during the approval process for the 2014 Routine Program Change document, FCMP is continuing its review of enforceable policies with partner agencies. For 2017, the FCMP is continuing to coordinate with its partner state agencies on enforceable policy determinations on the sections that were discussed during the approval process for the 2016 Routine Program Change submission. FCMP will enhance coordination with its partner state agencies for this legacy review through a future CZM Chapter 309 strategy.

FCMP will continue to coordinate with the Florida Department of Environmental Protection Division of State Lands, Florida Department of State, Florida Department of Transportation, and Florida Department of Agriculture and Consumer Services regarding the status of F.S. Sections 259.04, 259.06, 267.031, 267.135, 339.175, 597.002, and 597.020 as enforceable policies for federal consistency purposes.

Table of Changes

Statutory Change	Change in 2017	Meaning of Change	Significance of Change
Chapter 161, F.S., Beach and Shore Preservation	None	N/A	N/A
Chapter 163, F.S., Growth Policy; County and Municipal Planning; Land Development Regulation	None	N/A	N/A
Chapter 186, F.S., State and Regional Planning	None	N/A	N/A
Chapter 252, F.S., Emergency Management	New: 252.3655	Creates 252.3655, which creates an interagency workgroup for sharing information on various hazards that could affect the state. An annual progress report on the implementation of the state's hazard mitigation plan will be submitted to the Governor, President of the Florida Senate, and the Speaker of the Florida House of Representatives.	None of the modifications substantially change the uses subject to management, the special management areas, or the authorities and organization within the coastal zone
Chapter 253, F.S., State Lands	None	N/A	N/A
Chapter 258, F.S., State Parks and Preserves	New: 258.0142	Creates 258.0142, which allows for state park fee discounts to licensed family foster homes and families who adopt a special needs child	None of the modifications substantially change the uses subject to management, the special management areas, or the authorities and organization within the coastal zone
Chapter 259, F.S., Land Acquisitions for Conservation and Recreation	None	N/A	N/A

Chapter 260, F.S., Florida Greenways and Trails Act	None	N/A	N/A
Chapter 267, F.S., Historical Resources	None	N/A	N/A
Chapter 288, F.S., Commercial Development and Capital Improvements	None	N/A	N/A
Chapter 334, F.S., Transportation Administration	None	N/A	N/A
Chapter 339, F.S., Transportation Finance and Planning	New: 339.83	Creates 339.83, which allows the Secretary of Transportation to enroll the state in any federal pilot program or project for the purposes of reviewing some federal or state transportation policies.	None of the modifications substantially change the uses subject to management, the special management areas, or the authorities and organization within the coastal zone
Chapter 373, F.S., Water Resources	New: 373.4598, 373.462, 373.463, 373.475	Creates 373.4598, which established water storage reservoirs in statute to help with issues in estuaries due to freshwater discharges from Lake Okeechobee. Creates 373.462, which establishes legislative finding and intent for the Green Swamp Area of Critical State Concern Creates 373.463, which directs the Polk Regional Water Cooperative to prepare a Heartland headwaters annual report Creates 373.475, which establishes a water storage facility revolving loan fund which will be managed by DEP	None of the modifications substantially change the uses subject to management, the special management areas, or the authorities and organization within the coastal zone
Chapter 375, F.S., Outdoor Recreation and Conservation Lands	None	N/A	N/A

Chapter 376, F.S., Pollutant Discharge Prevention and Removal	None	N/A	N/A
Chapter 377, F.S., Energy Resources	None	N/A	N/A
Chapter 379, F.S., Fish and Wildlife Conservation	New: 379.2426	379.2426 is created, prohibiting unauthorized possession of separated shark fins from a shark on the water	None of the modifications substantially change the uses subject to management, the special management areas, or the authorities and organization within the coastal zone
Chapter 380, F.S., Land and Water Management	None	N/A	N/A
Chapter 381, F.S., Public Health: General Provisions	None	N/A	N/A
Chapter 388, F.S., Mosquito Control	None	N/A	N/A
Chapter 403, F.S., Environmental Control	New: 403.076, 403.077, 403.078	Creates 403.076, 403.077, and 403.078, which create new standards for public notices of pollution events.	None of the modifications substantially change the uses subject to management, the special management areas, or the authorities and organization within the coastal zone
Chapter 553, F.S., Building Construction Standards	None	N/A	N/A
Chapter 582, F.S., Soil and Water Conservation	None	N/A	N/A
Chapter 597, F.S., Aquaculture	None	N/A	N/A

Conclusion

The Department of Environmental Protection has determined that the proposed program changes are a routine program change as defined by 15 CFR s. 923.84. This routine program change (RPC) submission will incorporate relevant statutory changes enacted by the Florida Legislature during the 2017 legislative session to statutes included in the FCMP.

Staff has evaluated these changes pursuant to 15 CFR s. 923, Subpart H and concluded that the changes are not amendments to the FCMP. These changes will not result in any substantial change to the enforceable policies or authorities of the FCMP related to uses subject to management, special management areas, boundaries, authorities and organization, or coordination, public involvement and national interest.

The State of Florida requests the federal Office of Ocean and Coastal Resources Management (OCRM) to approve the incorporation of the changes to these statutes adopted by the Florida Legislature during the 2017 legislative session, into the approved Florida Coastal Management Program (FCMP).

Notice of Routine Program Change Request

The Department of Environmental Protection's Florida Coastal Office has requested the concurrence of the federal Office of Ocean and Coastal Resource Management (OCRM) of the National Oceanic and Atmospheric Administration (NOAA), in updating the statutory authorities included within the Florida Coastal Management Program (FCMP) as a routine program change (RPC). The Department of Environmental Protection has determined that the proposed program changes are a routine program change as defined by 15 CFR 923.84. This routine program change submission will incorporate relevant new Florida Statutes enacted by the Florida Legislature during the 2017 legislative session into the Florida Coastal Management Program, including incorporation of Sections 379.2426 and 403.077, Florida Statutes, as enforceable policies. In a change from previous Routine Program Change submissions, FCMP is not submitting modifications to previously-existing enforceable policies in this submittal. The routine program change submittal is available at <https://floridadep.gov/fco/fcmp/content/routine-program-changes> and describes the nature of the changes as well as identifies the enforceable policies to be added to the management program of the State if approved. A list of all statutes that make up the FCMP is available at <https://floridadep.gov/fco/fcmp/content/24-florida-statutes-florida-coastal-management-program>.

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Notice is being provided to the general public and affected parties, including local governments, state agencies, and regional offices of relevant federal agencies as required by 15 CFR 923.84(b)(2). A list of persons and organizations notified is available for inspection or can be provided upon request from the department contact below.

Pursuant to 15 CFR 923.84, comments on whether the changes constitute a routine program change of the FCMP may be submitted to Joelle Gore, NOAA/OCRM, 1305 East-West Highway, Silver Spring, MD 20910 within 21 days of the date of issuance of this notice.

For more information on this RPC submittal, please contact: Mr. Joseph Bauer, Department of Environmental Protection, Florida Coastal Office, 3900 Commonwealth Boulevard, M.S. 235, Tallahassee, FL 32399-3000, (850) 245-2180 or joseph.bauer@dep.state.fl.us. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice)