

Routine Program Change

To

State of Florida Coastal Management Program

Request for Concurrence

March 2019

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

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## 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 2018 legislative session, a new section was added to the statutes governing the FCMP through a proposed new enforceable policy and other sections which will not be proposed as enforceable policies.

A new section that is being proposed as an enforceable policy was created in Chapter 373 of the Florida Statutes (F.S.). However, it does 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 does 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). Only one existing enforceable policy was repealed during the 2018 legislative session, and FCMP is not submitting modifications of existing enforceable policies in this Routine Program Change.

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 163, 252, 253, 334, 373, 379, and 380 of the Florida Statutes as Routine Program Changes to the FCMP, with 373.4146, F.S., being proposed as an enforceable policy 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 2018 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 373, F.S.**

373.4146 was created, which gives the Department of Environmental Protection (DEP) authority to assume the dredge and fill permitting program established in Section 404 of the Clean Water Act that can legally be delegated by the US Army Corps of Engineers, should state assumption be approved by US EPA in the future. DEP must submit an application package to EPA to assume the Section 404 program in conjunction with the existing environmental resource permitting program, including rules to ensure that the State's program is as stringent as, and satisfies all requirements of federal law. Provisions of state law which conflict with federal requirements cited in the Clean Water Act would not apply to state-administered 404 permits. State administered 404 permits, if the program is approved, would be for a period of no more than 5 years.

## **Examination of Florida Statutes**

For 2018, the FCMP is continuing to work 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, and will continue to coordinate with the affected partner state agencies on these and other sections in response to legacy issues discussed with NOAA OCRM during the approval process for the 2014 Routine Program Change. FCMP anticipates enhanced coordination with its partner state agencies for this legacy review through a future CZM Chapter 309 strategy.

## Table of Changes

Statutory Change	Change in 2018	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	<b>New: 163.035</b>	Creates 163.035, barring local, regional, and state governments from creating rules or ordinances based on customary use of any portion of the beach above the mean high-water line, unless based on judicial declaration. Public notice must be given 30 days before a public meeting, and judicial determinations must be made within 60 days of a public meeting for a notice of intent for recreational customary use.	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 186, F.S., State and Regional Planning	None	N/A	N/A
Chapter 252, F.S., Emergency Management	<b>New: 252.3569</b>	Creates 252.3569, which establishes a state agricultural response team which would coordinate state emergency response activities for animal, agricultural, and vector issues	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	<b>New: 253.90</b>	Creates 253.90, which establishes the Southeast Florida Coral Reef Conservation Area	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 258, F.S., State Parks and Preserves	None	N/A	N/A

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	<b>New: 334.352</b>	Creates 334.352, which states that a local government cannot prevent public motor vehicle use on or access to transportation facilities that access a state university, except for emergency or maintenance needs.	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 339, F.S., Transportation Finance and Planning	None	N/A	N/A

Chapter 373, F.S., Water Resources	<b>New: 373.4146</b>	Creates 373.4146, which states, in statute, DEP's power and authority to assume the dredge and fill permitting program established Section 404 of the Clean Water Act, in accordance with 40 C.F.R., part 233, provided assumption of the program is approved by US EPA.	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	<b>New: 379.2311</b>	Creates 379.2133, which allows FWC to establish a pilot program for mitigation of priority invasive species.	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	Repealed: 380.065	380.065, which summarized certification of local government review of developments of regional impact, is repealed	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 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	None	N/A	N/A
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 new statutory changes enacted by the Florida Legislature during the 2018 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 2018 legislative session, into the approved Florida Coastal Management Program (FCMP).

## Notice of Routine Program Change Request

The Department of Environmental Protection's Office of Resilience and Coastal Protection 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 2018 legislative session into the Florida Coastal Management Program. This includes incorporation of Section 373.4146, Florida Statutes, as an enforceable policy for federal consistency purposes. The routine program change submittal is available at <https://floridadep.gov/rcp/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/rcp/fcmp/content/24-florida-statutes-florida-coastal-management-program>.

Staff has evaluated these changes pursuant to 15 CFR 923, Subpart H and concluded that the changes are routine program changes, rather than more elaborate 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 the national interest.

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, Office of Resilience and Coastal Protection, 3900 Commonwealth Boulevard, M.S. 235, Tallahassee, FL 32399-3000, (850) 245-2180 or [joseph.bauer@dep.state.fl.us](mailto: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).