

Program Change Submission
To
State of Florida Coastal Management Program

Request for Concurrence

June 2022

Submitted by: Office of Resilience and Coastal Protection
Florida Department of Environmental Protection
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Program Change Submission

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 the five water management districts, throughout the state of Florida. In the 2021 legislative session, a new section was added to the statutes governing the FCMP through a proposed new enforceable policy, several sections were added which are not proposed as enforceable policies, and another section (passed during the 2020 legislative session) is proposed as a non-enforceable policy.

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 concludes that these are Program Changes as described in 15 C.F.R. s. 923.84, and defined in 15 C.F.R. s. 923.80. A new section created in Chapter 403 of the Florida Statutes (F.S.) is being proposed as an enforceable policy. However, it does not substantially change the FCMP in the following management program areas: uses subject to management; special management areas; boundaries; authorities and organization; or coordination, public involvement, and the national interest. FCMP is not submitting modifications of existing enforceable policies in this Program Change submission.

The State of Florida is requesting that the Office for Coastal Management (OCM) of the National Oceanic and Atmospheric Administration (NOAA) concur in the incorporation of these 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 161, 163, 252, 259, 267, 339, 373, 377, 380, 381, 403, and 597 of the Florida Statutes as Program Changes to the FCMP, with 403.0643, 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 OCM on notice of the submitted Program Changes.

In September 2019, 15 C.F.R s. 923 was updated with new rules that replaced the previous 1996 guidance and 2013 Addendum. Under the updated rule, all changes (including amendments and modifications mentioned in 16 U.S.C. S. 1455) submitted to NOAA are considered in rule as "program changes" as defined in 15 C.F.R. s. 923.80, with the program change criteria described in 15 C.F.R. s. 923.84. Program changes now include all changes to enforceable policies, as well as changes to one of the following management program areas under 15 C.F.R. s. 923: Uses Subject to Management; Special Management Areas; Boundaries; Authorities and Organization; and Coordination, Public Involvement and National Interest.

The Program Changes for 2021 which are being submitted as enforceable policies are summarized below, while all statutes that are being added (including non-enforceable policies for federal consistency purposes) are outlined in the following table.

Chapter 403, F.S.

Section 403.0643, F.S., was created allowing applicants to use the set of rules for injecting into receiving groundwater that has 1,000 to 3,000 mg/L Total Dissolved Solids (TDS) for reclaimed water aquifer storage and recovery wells injecting into receiving groundwater with less than 1,000 mg/L TDS if the applicant's project meets a listed set of requirements also included within this section.

Examination of Florida Statutes

For 2021, the FCMP and its partner state agencies initiated a 309 strategy that would investigate the development of narrative enforceable policies over the next few years and their potential benefits for federal consistency for Florida.

Alongside the exploration of draft narrative versions of these policies, another part of this strategy will look to investigate FCMP's enforceable policies with the relevant partner state agencies and water management districts who have the best knowledge of these Florida Statute sections.

The initial meeting for this project was hosted by FCMP in January 2022 and attendees included FCMP staff, staff from partner state agencies, NOAA, and staff from another CZM program that has undergone the development of these types of narrative policies. FCMP anticipates enhanced coordination with its partner state agencies for this project through this CZM Chapter 309 strategy.

During this process, FCMP will continue to submit annual program change submissions to keep the program up to date using the current format as this project continues.

Table of Changes

Statutory Change	Change in 2020	Meaning of Change
Chapter 161, F.S., Beach and Shore Preservation	New: 161.551	Creates 161.551, which requires state-financed constructors to complete a Sea Level Impact Projection Study for their project if it is being conducted within the coastal building zone.
Statutory Change	Change in 2021	Meaning of Change
Chapter 163, Part II, F.S., Growth Policy; County and Municipal Planning; Land Development Regulation	New: 163.3205	Creates 163.3205, which states that a solar energy facility will be a permitted use in all agricultural land use categories (in a local comprehensive plan) and all agricultural zoning districts within an unincorporated area. The facilities must also comply with setback and landscape buffer area criteria for other similar uses.
Chapter 186, F.S., State and Regional Planning	None	N/A
Chapter 252, F.S., Emergency Management	New: 252.3611	Creates 252.3611, which requires that the statutes or rules being waived in an emergency situation be specified when the Governor or agency issues an emergency order, proclamation, or rule. Additional requirements are listed if the emergency order, proclamation, or rule exceeds 90 days and additional requirements are triggered if that order/proclamation/rule exceeds 1 year.
Chapter 253, F.S., State Lands	None	N/A
Chapter 258, F.S., State Parks and Preserves	None	N/A
Chapter 259, F.S., Land Acquisitions for Conservation and Recreation	New: 259.1055	Creates 259.1055, establishes the Florida Wildlife Corridor Act. This establishes a framework to incentivize conservation and sustainable development while emphasizing the state's land management and purchase strategy to preserve wildlife and habitat corridors. Wildlife corridors are defined as a network of connected wildlife habitats required for the long-term survival of regional wildlife populations.

Chapter 260, F.S., Florida Greenways and Trails Act	None	N/A
Chapter 267, F.S., Historical Resources	New: 267.0721, 267.0723	267.0721 is transferred from Chapter 265, F.S., which established the Museum of Florida History and associated programs. 267.0723 is transferred from Chapter 265, F.S. which lists regulations with property loaned to or abandoned at museums.
Chapter 288, F.S., Commercial Development and Capital Improvements	None	N/A
Chapter 334, F.S., Transportation Administration	None	N/A
Chapter 339, F.S., Transportation Finance and Planning	New: 339.0803, 339.66, 339.67, 339.68	Creates 339.0803, which states that increased revenues to the State Transportation Trust Fund from Section 320.08, F.S., must be used to fund arterial highway projects identified by FDOT. Creates 339.66, which outlines the priorities and requirements for projects for DOT and the Florida Turnpike Enterprise to approve with regards to upgrades of arterial highways. Creates 339.67, which asks DOT to develop construction of controlled access facilities, using existing roadways, to achieve free flow of traffic on US 19 from Pasco County to north of the terminus of the Suncoast Parkway and to a logical terminus on I-10 in Madison County. Creates 339.68, which will identify projects that would expand some rural two-lane roads into four lane roads.
Chapter 373, F.S., Water Resources	New: 373.0466, 373.4599, 373.6075	373.0466 is created, which establishes the Central Florida Water Initiative Grant Program. DEP, in cooperation with the WMDs, will provide grants that promote alternative water supplies. 373.4599 is created, which establishes provisions and guidelines for the Lake Okeechobee Watershed Restoration Project. 373.6075 is created, which allows a WMD to purchase commodities and contractual services from government entities as long as they are in compliance with the procurement requirements of the WMD.
Chapter 375, F.S., Outdoor Recreation and Conservation Lands	None	N/A
Chapter 376, F.S., Pollutant Discharge Prevention and Removal	None	N/A

Chapter 377, F.S., Energy Resources	New: 377.707	Creates 377.707, which preempts local ordinances and regulations that prohibit siting fuel or transportation infrastructure or require investing in a specific kind of fueling infrastructure. This does not prevent local ordinances or regulations that are consistent with the general law relating to siting, development, or redevelopment of fuel retailers or related transportation infrastructure.
Chapter 379, F.S., Fish and Wildlife Conservation	None	N/A
Chapter 380, F.S., Land and Water Management	New: 380.093, 380.0933, 380.0935	380.093 is created, establishing the Resilient Florida Grant Program, vulnerability assessment requirements for assessments funded by the grants, Statewide Flooding and Sea Level Rise Resilience Plan, Statewide Flood Vulnerability and Sea Level Rise Data Set and Assessment, and funding opportunities for Regional Resilience entities. 380.0933 is created, establishing the Florida Flood Hub. 380.0935 is created, establishing the Resilient Florida Trust Fund.
Chapter 381, F.S., Public Health: General Provisions	New: 381.735	Creates 381.735, establishing the Office of Minority Health and Health Equity within DOH.
Chapter 388, F.S., Mosquito Control	None	N/A
Chapter 403, F.S., Environmental Control	New: 403.0643, 403.892, 403.9301, 403.9302	Creates 403.0643, which establishes the application of rules for reclaimed water with 1000-3000 mg/L of TDSs injected into receiving groundwater of less than 1000 mg/L if certain conditions are met. Creates 403.892, creating requirements and guidelines for the use of graywater technologies for the beneficial use of reclaimed water in developments of at least 25 single-family homes. Creates 403.9301, requiring counties, municipalities, and special districts to create 20 year needs assessment for providing wastewater services. Creates 403.9302, requiring counties, municipalities, and special districts to create 20 year needs assessment for providing stormwater services.
Chapter 553, F.S., Building Construction Standards	None	N/A

Chapter 582, F.S., Soil and Water Conservation	None	N/A
Chapter 597, F.S., Aquaculture	New: 597.0042	Creates 597.0042, establishing different types of aquaculture records that are exempt from 119.07(1), F.S., and s. 24, Art. I of the State Constitution for purposes of public records requirements.

Conclusion

The Department of Environmental Protection has determined that the proposed program changes are a program change as defined by the 15 CFR s. 923.84 decision criteria. This program change submission will incorporate new statutory changes enacted by the Florida Legislature during the 2020 and 2021 legislative sessions to statutes included in the FCMP.

Staff has evaluated these changes pursuant to 15 CFR s. 923, Subpart H and concluded that 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 for Coastal Management (OCM) to approve the incorporation of the changes to these statutes adopted by the Florida Legislature during the 2020 and 2021 legislative sessions, into the approved Florida Coastal Management Program.

Notice of Program Change Request

The Department of Environmental Protection's Office of Resilience and Coastal Protection has requested the concurrence of the federal Office for Coastal Management (OCM) of the National Oceanic and Atmospheric Administration (NOAA), in updating the statutory authorities included within the Florida Coastal Management Program (FCMP) as a program change. The Department of Environmental Protection has submitted these changes as a "program change" based on the decision criteria in 15 CFR 923.84.

This program change submission will incorporate relevant new Florida Statutes enacted by the Florida Legislature during the 2021 legislative session into the Florida Coastal Management Program. This includes incorporation of Section 403.0643, Florida Statutes, as an enforceable policy for federal consistency purposes. It is also seeking to include Section 161.551, Florida Statutes, as a non-enforceable policy. This section was created during the 2020 legislative session. The program change submittal is available at <https://floridadep.gov/rcp/fcmp/content/fcmp-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 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 923.81(e)(1). 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 923.81(e)(3), comments on the submitted program change to the FCMP may be submitted to Joelle Gore, NOAA/OCM, 1305 East-West Highway, Silver Spring, MD 20910 within 21 days of the date of issuance of this notice or posted online on the FCMP program change listing at <https://coast.noaa.gov/czmprogramchange/#/public/home>.

For more information on this Program Change 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@floridadep.gov. 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).