



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office for Coastal Management
Silver Spring Metro Center, Building 4
1305 East-West Highway
Silver Spring, Maryland 20910

August 14, 2020

Alex Reed
Director, Office of Resilience and
Coastal Protection
Florida Department of
Environmental Protection
3900 Commonwealth Blvd.
Tallahassee, FL 32399

Dear Ms. Reed,

Thank you for the June 1, 2020 request for approval of changes to the Florida Coastal Management Program pursuant to the National Oceanic and Atmospheric Administration (NOAA) Coastal Zone Management Act (CZMA) regulations at 15 CFR part 923, subpart H.¹

With the clarifications, exceptions, and qualifications noted below, the Office for Coastal Management approves the incorporation of the changes as part of the federally approved Florida Coastal Management Program. Please note that a public notice by the state of this decision is required under 15 CFR § 923.81(e)(5). Please include in the public notice the Table of Approved Changes provided with this letter, or a link thereto, and send a copy of the notice to the Office for Coastal Management for our records.

PUBLIC AND FEDERAL AGENCY COMMENTS

The Office for Coastal Management did not receive any comments on this program change submission.

CHANGES APPROVED

See the attached Table of Approved Changes to the Florida Coastal Management Program (FL-2020-1)

CLARIFICATIONS, EXCEPTIONS, AND QUALIFICATIONS

The submission by the state includes the request for approval of Section 379.2231 F.S. as an enforceable policy of the Florida Coastal Management Program. Section 379.2231 F.S. pertains to penalty assessments for violations of statutes in Chapter 379, F.S. Although Section 379.2231 F.S. is a mechanism to enforce the standards of Chapter 379, the section does not contain a

¹ This program change request was submitted under NOAA's revised CZMA program change regulations at 15 CFR part 923, subpart H (84 Federal Register (FR) 38118 (Aug. 6, 2019)). The Office for Coastal Management's original decision due date of July 1, 2020, was extended to August 14, 2020.

standard by which the determination of the consistency of a federal action with the section could be made. Under 15 CFR § 930.84(b)(2) of the CZMA Program Change regulations, enforceable policies to be used for CZMA review purposes must contain standards of sufficient specificity to guide public and private uses. Without a standard to determine consistency, the section is not approvable as an enforceable policy for CZMA review purposes. Although the section cannot be used in the CZMA review of federal actions, the NOAA Office for Coastal Management recognizes that Section 379.2231 serves other purposes in the state's management of coastal uses and resources and approves its incorporation into the Florida Coastal Management Program.

The state notes that other penalties associated with violations in Chapter 379, F.S., are already included as enforceable policies in previous submissions, and the FCMP asks for the inclusion of this section to remain consistent with this interpretation. As recognized in the preamble to the Final Rule for the 2019 revisions to the CZMA Program Change regulations, NOAA has previously approved statutes and regulations as enforceable policies for CZMA review purposes that did not contain sufficient standards to guide public and private uses. Nonetheless, without a standard, there is no way to determine whether an activity is consistent with the policy, and the policy would not be applicable for CZMA review purposes regardless of its approval by NOAA.²

As a standard qualification applying to all program changes, states may not incorporate enforceable policies by reference. If an approved enforceable policy refers to another statute, regulation, policy, standard, guidance, or other such requirement or document, the referenced policy must be submitted to and approved by the Office for Coastal Management as an enforceable policy in order to be applied under the federal consistency review provisions of the CZMA. No referenced policy may be applied for CZMA federal consistency review purposes unless that policy has been separately reviewed and approved as an enforceable policy by the Office for Coastal Management.

Thank you for your cooperation in this review. Please contact Kristin Ransom at 228-688-1966 if you have any questions. For future correspondence regarding these program changes, please refer to the file number assigned to this action, FL-2020-1.

Sincerely,



Joelle Gore, Chief
Stewardship Division

Attachment: Table of Approved Changes FL-2020-1

² See 84 FR 38118 (Aug. 6, 2019), at 38126.

TABLE OF APPROVED CHANGES TO THE FLORIDA COASTAL MANAGEMENT PROGRAM (FL-2020-1)

Please reference the Office for Coastal Management August 14, 2020, decision letter for qualifications and exceptions pertaining to this approval.

Legal citation	Title of policy, section, or other descriptor	Is the change new, revised, or deleted	Date effective in state	Enforceable policy	Enforceable mechanism citation
267.0618	The Women's Suffrage Centennial Commission	New	7/1/2019	No	N/A
334.179	Department standards or specifications for permissible use of aggregates	New	7/1/2019	No	N/A
339.1373	Multi-Use Corridors of Regional Economic Significance Program; funding	New	7/1/2019	No	N/A
379.107	Residential conservation programs	New	7/1/2019	No	N/A
379.2231	Additional assessment; Wildlife Alert Reward Association , Inc.	New	7/1/2019	No	N/A
379.2273	Florida Red Tide Mitigation and Technology Development Initiative; Initiative Technology Advisory Council	New	7/1/2019	No	N/A