

PART 2, CHAPTER 14

COASTAL ZONE CONSISTENCY

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PART 2, CHAPTER 14

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14.1 OVERVIEW

Pursuant to **23 United States Code (U.S.C.) § 327** and the implementing Memorandum of Understanding (MOU) executed on December 14, 2016, the Florida Department of Transportation (FDOT) has assumed and Federal Highway Administration (FHWA) has assigned its responsibilities under the **National Environmental Policy Act (NEPA)** for highway projects on the State Highway System (SHS) and Local Agency Program (LAP) projects off the SHS (**NEPA** Assignment). In general, FDOT's assumption includes all highway projects in Florida which source of federal funding comes from FHWA or which constitute a federal action through FHWA. **NEPA** Assignment includes responsibility for environmental review, interagency consultation and other activities pertaining to the review or approval of **NEPA** actions. Consistent with law and the MOU, FDOT will be the Lead Federal Agency for highway projects with approval authority resting in the Office of Environmental Management (OEM).

To resolve conflicts between competing uses in the nation's coastal zone, Congress passed the **Coastal Zone Management Act (CZMA)** in 1972. The **CZMA** sought to preserve, protect, develop, and where possible, restore and enhance the resources of the nation's coastal zone. In order to achieve its goal, Congress provided coastal states with incentives to encourage them to develop and implement comprehensive management programs which balance the need for coastal resource protection with the need for economic growth and development within the coastal zone.

The **CZMA** authorizes the federal government, through the Secretary of Commerce, to provide coastal states with grant-in-aid to assist with the development and implementation of their coastal management programs. Coastal states are first required to submit their management programs to the Secretary of Commerce's designee, the Director of the National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management for approval. When the state management program receives federal approval, **Section 307** of the **CZMA** provides the state with the ability to review federal activities within or adjacent to their coastal zone to determine whether the federal activity complies with the enforceable policies included in the state's approved management program.

Section 307 of the **CZMA** and its implementing regulations, **15 Code of Federal Regulation (CFR) Part 930**, stipulate that all federal agency activities that affect any land or water use or natural resource of the coastal zone must be consistent, to the maximum extent practicable, with the enforceable policies of the state's federally approved management program. Federal licenses or permits, and federal financial assistance for activities affecting any land or water use or natural resource of the coastal zone are

required by **Section 307** to be fully consistent with the enforceable policies of state coastal management programs.

The **Florida Coastal Management Act of 1978 [Chapter 380, Part II, Florida Statutes (F.S.)]** authorized the state to develop a comprehensive state coastal management program based on existing statutes and rules. The Florida Coastal Management Program (FCMP) received federal approval on September 24, 1981. The Florida Department of Environmental Protection (FDEP) published a **Florida Coastal Management Program Guide** detailing information about the program.

The FCMP consists of a network of twenty-four statutes administered by nine state agencies and the five water management districts, designed to ensure the wise use and protection of the state's water, cultural, historic, and biological resources; to minimize the state's vulnerability to coastal hazards; to ensure compliance with the state's growth management laws; to protect the state's transportation system; and to protect the state's proprietary interest as the owner of sovereign submerged lands. [Figure 14-1](#) provides a list of statutes included in the FCMP. [Figure 14-2](#) lists the participating state agencies.

The State of Florida's review of federal activities for consistency with the **CZMA** is coordinated by FDEP, which serves as the lead agency for the FCMP. In accordance with **Section 403.061(42), F.S.**, the FDEP serves as the state's single point of contact for performing the responsibilities described in **Executive Order 12372 - Intergovernmental review of Federal programs**. FDEP uses the State Clearinghouse (SCH), which is located within FDEP, to facilitate the coordination process. Federal agencies and applicants are required by the FCMP to provide the SCH with a detailed description of proposed federal activities in accordance with **15 CFR Part 930**. Proposed federal activities are distributed by the SCH to each FCMP member agency with a statutory interest in the activity (consistency reviewer). Comments provided by the FCMP agencies are used by FDEP to make a determination on behalf of the State of Florida regarding the consistency of a proposed federal action with the policies included in the FCMP.

14.1.1 Federal Consistency

As a member of the FCMP network, FDOT participates in the review of federal activities to ensure consistency with the FCMP statutes under its purview, and reviews federal activities within or adjacent to the state to ensure that the federal activity will not result in adverse impacts to the state transportation system, or FDOT's ability to perform its statutory functions. Individual federal actions are evaluated by FDOT for compliance with the applicable requirements of **Chapter 334** and **Chapter 339, F.S.**

When FDOT is seeking federal funding, a determination of consistency with the FCMP may be required prior to the allocation of federal funds for the project depending on the project's Class of Action. If the project also requires a federal license or permit, a separate consistency review for federal licenses or permit applications may be required in accordance with **15 CFR § 930, Subpart D** and **Section 380.23, F.S.** Consistency reviews of projects which require permits from the U.S. Army Corps of Engineers (USACE) or the U.S. Coast Guard (USCG), or a state Environmental Resource Permit

are conducted during the permitting process. In accordance with **Section 380.23, F.S.**, the issuance or denial of the state permit serves as the state's consistency decision for analogous USACE or USCG permits. Procedures governing the consistency review of state permits are included in **Section 373.428, F.S.**

14.2 PROCEDURE

14.2.1 Projects Requiring a Consistency Review

Environmental Assessment (EA) and Environmental Impact Statement (EIS) projects are always, and Type 2 Categorical Exclusions (CEs) are usually subject to consistency review. State Environmental Impact Reports (SEIRs) do not require a federal consistency determination during Project Development and Environment (PD&E) unless a federal license or permit is required. Federal consistency review is typically not required for minor projects during PD&E. Federal consistency determination for Type 1 CE and Non-Major State Action projects are completed at the time of project permitting if a permit is required.

14.2.2 Consistency Review with Advance Notification

For projects requiring the preparation of an Advance Notification (AN) Package, the District Efficient Transportation Decision Making (ETDM) Coordinator or Project Manager prepares the package in accordance with [Part 1, Chapter 3, Preliminary Environmental Discussion and Advance Notification](#) and [Chapter 4, Programming Screen](#) of the [ETDM Manual, Topic No. 650-000-002](#). The AN can occur during the Programming Screen or be processed separately before the PD&E Study. If done during screening, the completed AN package is emailed along with a Programming Screen Notice to the SCH and to each FCMP member agency with a statutory interest in the activity (consistency reviewer). The SCH may then forward the information to additional interested parties, if needed. The Federal Consistency Review Process in the Environmental Screening Tool (EST) can be found in [Chapter 4, Programming Screen](#) of the [ETDM Manual, Topic No. 650-000-002](#).

Issuance of the electronic notice for the Programming Screen begins a 45-calendar day comment period, to allow for the distribution, receipt, and discussion of agency responses consistent with the Programming Screen and federal consistency review. Upon notification by the District ETDM Coordinator/Project Manager, consistency reviewers are responsible for providing comments in the EST to ensure that the project complies with the statutes and requirements within their jurisdiction. Each state agency's consistency reviewer will also indicate whether the project is consistent with the FCMP.

The SCH has 15 days after receipt of all comments to complete the federal consistency review for the State of Florida. The SCH consolidates the consistency reviewers' comments, reviews the comments, and indicates a determination of the project's consistency with the FCMP in the EST. This consistency decision is based on the consistency comments, findings, or recommendations of all state agencies with a statutory interest in the project.

Should additional review time be required, a written request for a 15-day time extension must be submitted to the District ETDM Coordinator within the initial 45-day comment period. If more than a 30-day extension is required by the SCH, the project should be placed into dispute resolution ([Section 14.2.4.1](#)) until the review is complete. The District shall not proceed with further project development before receiving a consistency determination.

FDEP's consistency determination is included in the **Final Programming Screen Summary Report**. The Coastal Zone Consistency section of an EA, or EIS should reference this determination and include the following standard statement:

The State of Florida has determined that this project is consistent with the Florida Coastal Zone Management Program.

The standard statement should also be included in the Final Environmental Impact Statement (FEIS) Executive Summary when applicable. The statement is included on the **Type 2 Categorical Exclusion Determination Form, Form No. 650-050-11** for projects that were reviewed by the SCH through the ETDM screening.

Whenever a project is determined to be inconsistent with the FCMP, a letter of inconsistency will be issued by the FDEP on behalf of the state. A finding of inconsistency must cite the section of the relevant statute under the reviewing agency's authority with which the project is inconsistent, and must identify actions that can be taken to resolve the conflict. Prior to issuing a finding of inconsistency, the reviewing agency should immediately call the SCH if problems are identified. If any consistency reviewing agency indicates that the project is not consistent, this would trigger discussions with the SCH and possibly initiate the dispute resolution process (**Chapter 4, Programming Screen** of the [ETDM Manual, Topic No. 650-000-002](#)). If an inconsistency letter is received, it is uploaded to the EST as support documentation for the project file.

If significant concerns are identified during the AN review, the District will be advised by FDEP of conditions of approval or the need for additional coordination. The SCH should be provided with project information of sufficient scope and detail to determine whether the project is consistent with the requirements of all applicable FCMP statutes. The requested project information should be provided as soon as the information becomes available. All issues or concerns identified during the AN review should be addressed. When **NEPA** documents are prepared for the project, a draft document may be used to provide the required data and information. If significant concerns are not identified during the review, additional coordination will not be required unless the nature, location, or scope of the project is substantially changed. The District is still required to comply with all conditions needed to ensure compliance with the FCMP.

14.2.3 Subsequent Consistency Review

Changes in a determination can come at any stage of project development. If after review of the AN for federal-aid projects that qualify for ETDM screening, a FCMP agency determines that the project is no longer consistent, the consistency determination may be

modified. There is also an opportunity for the SCH to review EA and EIS documents after Location Design and Concept Acceptance. Upon approval, these Environmental Documents are submitted to the SCH through the EST.

14.2.4 Mediation of Determinations of Inconsistency

14.2.4.1 Mediation During Advance Notification

If a recommendation or determination of inconsistency with the FCMP is made by the SCH and its consistency reviewing agencies during AN, the project will go through the ETDM Issue Resolution Process, which is discussed in detail in **Chapter 2, ETDM Process** of the [ETDM Manual, Topic No. 650-000-002](#). The goal of the ETDM issue resolution process is to resolve conflicts at the agency staff level, providing as many opportunities for resolution as possible prior to elevation of the dispute within FDOT and the review agencies. Once the issue has been resolved, the issue resolution process will be documented in the EST. The [EST Handbook](#) provides additional guidance on tracking and documenting the issue resolution process.

14.2.4.2 Mediation During Subsequent Consistency Review

If a state agency determines that a project is inconsistent at a later stage of project development, the agency must provide FDEP with a written determination signed by the agency head or authorized designee which includes the following:

1. The specific statutes, rules, or regulations with which the project is in conflict; and
2. Provide for FDOT's consideration of suggested alternatives, if any, that would allow the project to be consistent with the FCMP.

Where an agency fails to identify the authority with which the project is in conflict, or the agency's objection is signed by an unauthorized individual, the determination will not form the basis of a finding of inconsistency by FDEP, the lead coastal management agency.

If FDEP receives a state agency objection or notice of a pending objection; FDOT will be advised of the basis for the objection. FDEP will work in consultation with the Governor's Office, FDOT, and the objecting agency to resolve the objection prior to the need for a formal state consistency decision. If the objection cannot be resolved, the FDEP will provide FDOT and the NOAA Office for Coastal Management with a state consistency objection letter in accordance with **15 CFR Part 930**.

When FDOT receives a **Letter of Inconsistency** from FDEP, or when it is communicated via the Director level or above that a **Letter of Inconsistency** is anticipated, FDOT will not advance the project to the next development phase (Design) until an agreement, allowing the objection to be lifted, is reached between the objecting agency and FDOT. The FDEP will mediate interagency disputes in an attempt to resolve conflicts. This

mediation will be a tiered process, beginning with the interagency review group and continuing, if necessary, to the agency head.

If, after the FDEP mediation, an objecting agency continues to deem the project to be inconsistent, FDOT and/or the FDEP may refer the objection to the Governor for final determination in accordance with **Section 380.23(2)(b), F.S.**

In the event of a disagreement between FDEP and FDOT regarding whether or not a federal assistance activity is subject to consistency review, FDOT may seek mediation by the Secretary of Commerce in accordance with **15 CFR § 930.99**. In such cases, the procedures and time limits set forth in **15 CFR § 930, Subpart G**, will apply.

14.3 REFERENCES

Chapter 334, F.S., Transportation Administration

Chapter 339, F.S., Transportation Finance and Planning

Chapter 380, Part II, F.S., Coastal Planning and Management

FDEP, Florida Coastal Management Program State Clearinghouse Manual.

http://www.dep.state.fl.us/secretary/oip/state_clearinghouse/manual2.htm

FDEP, 2017. Florida Coastal Management Program Guide - A Guide to the Federally Approved Florida Coastal Management Program.

https://floridadep.gov/sites/default/files/FCMP-Program-Guide-2017_0.pdf

FDOT, Efficient Transportation Decision Making (ETDM) Manual, Topic No. 650-000-002

FDOT, Environmental Screening Tool (EST) Handbook

Memorandum of Understanding Between FHWA and FDOT Concerning the State of Florida's Participation in the Surface Transportation Project Delivery Program Pursuant to 23 U.S.C. 327, December 14, 2016.

<http://www.fdot.gov/environment/pubs/Executed-FDOT-NEPA-Assignment-MOU-2016-1214.pdf>

Section 373.428, F.S., Federal Consistency

Title 15 CFR Part 930, Federal Consistency with Approved Coastal Management Programs

Title 16 United States Code 1456, Coordination and Cooperation

14.4 FORMS

Type 2 Categorical Exclusion Determination Form, Form No. 650-050-11*

*To be completed in the [StateWide Environmental Project Tracker](#)

14.5 HISTORY

8/18/1999, 4/12/2011, 1/5/2016, 6/14/2017: NEPA Assignment and re-numbered from Part 2, Chapter 25

The enforceable policies of Florida's federally approved management program, the Florida Coastal Management Program, consist of the following Florida Statutes and their implementing regulations in the Florida Administrative Code. The authority derived from these statutes is applied by the state agencies charged with their implementation to ensure protection of Florida's coastal resources.

Chapter 161	Beach and Shore Preservation
Chapter 163, Part II	Intergovernmental Programs: Growth Policy; County and Municipal Planning; Land Development Regulation <i>Enforceable policy includes only Sections 163.3164; .3177(6)(a), (10)(h&l), & (11)(a&c); .3178(1) & (2)(d-l); .3180(2)(a-c), (5)(a&c), (6), & (8); .3194(1)(a); .3202(2)(a-h); and .3220(2)&(3)</i>
Chapter 186	State and Regional Planning
Chapter 252	Emergency Management
Chapter 253	State Lands <i>Section 253.61(1)(d) is not approved as enforceable policy</i>
Chapter 258	State Parks and Preserves
Chapter 259	Land Acquisitions for Conservation or Recreation
Chapter 260	Florida Greenways and Trails Act
Chapter 267	Historical Resources
Chapter 288	Commercial Development and Capital Improvements
Chapter 334	Transportation Administration
Chapter 339	Transportation Finance and Planning
Chapter 373	Water Resources
Chapter 375	Outdoor Recreation and Conservation Lands
Chapter 376	Pollutant Discharge, Prevention and Removal
Chapter 377	Energy Resources <i>Sections 377.06, .24(9), and .242(1)(a)5 are not approved as enforceable policy</i>
Chapter 379	Fish and Wildlife Conservation <i>Sections 379.2551 and .362 are not approved as enforceable policy</i>
Chapter 380	Land and Water Management <i>Section 380.23(3)(d) is not approved as enforceable policy</i>
Chapter 381	Public Health; General Provisions <i>Enforceable policy includes only Sections 381.001, .0011, .0012, .006, .0061, .0065, .0066, and .0067</i>
Chapter 388	Mosquito Control
Chapter 403	Environmental Control <i>Section 403.7125(2) and (3) are not approved as enforceable policy</i>
Chapter 553	Building Construction Standards <i>Enforceable policy includes only Sections 553.73 and .79</i>
Chapter 582	Soil and Water Conservation
Chapter 597	Aquaculture

Figure 14-1 Florida Coastal Management Program Statutes

Department of Economic Opportunity

Department of Environmental Protection

Department of Agriculture and Consumer Services

Department of Health

Department of State, Division of Historical Resources

Department of Transportation

Fish and Wildlife Conservation Commission

Florida Division of Emergency Management

Florida Department of Business and Professional Regulation, Florida Building Commission

Northwest Florida Water Management District

St. Johns River Water Management District

South Florida Water Management District

Southwest Florida Water Management District

Suwannee River Water Management District

Figure 14-2 Florida Coastal Management Program Agencies