

## **PART 2, CHAPTER 14**

# **COASTAL ZONE CONSISTENCY**

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## PART 2, CHAPTER 14

# COASTAL ZONE CONSISTENCY

### 14.1 OVERVIEW

This chapter provides an overview of the Federal Consistency Review process and guidance on documenting of the Federal Consistency Determination in the Environmental Document to comply with the ***Coastal Zone Management Act (CZMA)*** and ***Florida Coastal Management Act of 1978***. This documentation is required for Florida Department of Transportation (FDOT) Federal Projects that qualify for screening in the Efficient Transportation Decision Making (ETDM) Environmental Screening Tool (EST).

#### 14.1.1 Definitions

**Consistency Reviewer-** Florida Coastal Management Program (FCMP) member agency with a statutory interest in the activity who provides Federal Consistency Review through the Florida State Clearinghouse (SCH).

**Federal Actions-** For the purposes of this chapter a Federal Action includes federal agency activities, federal license or permit activities, and federal financial assistance activities. Please note this is different from the definition of Federal Action used in other chapters of this ***Manual***. [***National Oceanographic and Atmospheric Administration (NOAA) Federal Consistency website***]

**Federal Consistency Determination-** The Florida Department of Environmental Protection (FDEP)'s determination on behalf of the State of Florida regarding the consistency of a Federal Action with the policies included in the FCMP.

**Federal Consistency Review-** The review of Federal Actions by consistency reviewers to ensure consistency with the laws contained in the FCMP that leads to FDEP's Federal Consistency Determination.

**Florida Coastal Management Program (FCMP) Member Agencies-** The state agencies and Water Management Districts (WMDs) participating in the FCMP.

**Florida State Clearinghouse (SCH)-** Section of the FDEP's Office of Intergovernmental Programs that administers the intergovernmental coordination and review process of certain state and federal activities within the State of Florida which involve federal financial assistance and/or direct federal activity. The SCH reviews all programs which federal agencies have indicated are eligible for inclusion under ***Presidential Executive Order 12372, Section 403.061(43), Florida Statute (F.S.)***, identifies the SCH as the state's single point of contact for coordinating the state's review of these activities.

## 14.1.2 Legislative and Regulatory Framework

### 14.1.2.1 Coastal Zone Management Act

Congress passed the **CZMA** in 1972 to resolve conflicts between competing uses in the nation's coastal zone. The **CZMA** sought to preserve, protect, develop, and where possible, restore and enhance the resources of the nation's coastal zone. 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 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.

### 14.1.2.2 Florida Coastal Management Program

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 FCMP member agencies.

The State of Florida's review of Federal Actions for consistency with the **CZMA** is coordinated by FDEP, which serves as the lead agency for the FCMP. In accordance with **Section 403.061(43), 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 Actions in accordance with **15 CFR Part 930**. Proposed Federal Actions are distributed by the SCH to each consistency reviewer. Comments provided by the FCMP member 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.

As a member of the FCMP, FDOT participates in the review of Federal Actions to ensure consistency with the FCMP statutes under its purview, and reviews Federal Actions within or adjacent to the state to ensure that the Federal Action 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.** In this capacity FDOT is a consistency reviewer; however, this chapter is focused on when FDOT Federal Projects undergo this review by other FCMP member agencies.

When FDOT is seeking federal assistance, a determination of consistency with the FCMP may be required prior to the allocation of federal assistance for the project. A determination of consistency with the FCMP is also required for other Federal Actions ([Section 14.2.1](#)). If the project also requires a federal license or permit, a separate Federal 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.** Federal 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. Procedures governing the Federal Consistency Review of state permits are included in **Section 373.428, F.S.**

## 14.2 PROCEDURE

### 14.2.1 Projects Requiring a Federal Consistency Review

FDOT Federal Projects that qualify for screening in the EST are subject to Federal Consistency Review as a part of the Advance Notification (AN) process. See [Section 14.2.1.1](#) for guidance on Federal Consistency Review with AN. These projects require

documentation of the Federal Consistency Determination in the Type 2 Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS). See [Section 14.2.2](#) for how this determination is documented in the applicable Environmental Document. Federal Consistency Review is typically not required for Type 1 CEs until permitting, if a permit is required.

FDOT State Projects such as State Environmental Impact Reports (SEIRs) and Non-Major State Actions (NMSAs) do not require a Federal Consistency Determination until permitting, if a federal permit is required.

### 14.2.1.1 Federal Consistency Review with Advance Notification

For FDOT Federal Projects qualifying for screening in the EST, the ETDM Coordinator or Project Manager prepares the Advance Notification (AN) package in accordance with [Part 1, Chapter 3, Preliminary Environmental Discussion and Advance Notification](#) and the [ETDM Manual, Topic No. 650-000-002](#). The AN can occur during the Programming Screen or be processed separately before the Project Development and Environment (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 consistency reviewer. The SCH may then forward the information to additional interested parties, if needed.

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 FCMP member 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. FDEP's Federal Consistency Determination is first documented in the **Final Programming Screen Summary Report**. The following determinations (defined below) are available for the SCH to select for documentation in the **Programming Screen Summary Report**:

**Consistent:** Based on the information contained in the Advance Notification and comments submitted by the reviewing agencies, the state has no objections to allocation of federal funds for the subject project and, therefore, the funding award is consistent with the Florida Coastal Management Program. State agency comments should be considered in developing the preliminary project design. For projects subject to coastal management consistency review that advance to the work program, the final review of the project's consistency with the Florida Coastal Management Program will be conducted during the environmental permitting review.

**Consistent, With Comments:** Although the final alignment and design details have not yet been determined, at this time the State of Florida has no objections to the project concept described in the Advance Notification and no objections to the allocation of federal funds for the necessary planning, preliminary design and environmental evaluation activities. Therefore, the funding award is consistent with the Florida Coastal Management Program. Specific comments and recommendations concerning the project concept have been submitted to the project sponsor through the Efficient Transportation Decision Making (ETDM) process. Specific objections to the project, if any, that have been identified during ETDM will be resolved through the ETDM conflict resolution process prior to the project advancing in the FDOT Five-Year Work Program for any purpose other than technical studies and preliminary design to resolve the objections. For projects subject to coastal management consistency review that advance to final design, right-of-way acquisition or construction, the final review of the project's consistency with the Florida Coastal Management Program will be conducted during the environmental permitting review.

**Inconsistent:** The project has been determined to be inconsistent with the Florida Coastal Management Program. Unless the objections are addressed and the project determined to be consistent, the project shall not proceed further in the programming and PD&E phases.

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 issue resolution ([Section 14.2.2.1](#)) until the review is complete. The District should not proceed with further project development before receiving a Federal Consistency Determination.

If significant concerns are not identified during the AN 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.

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. Issues or concerns identified during the AN review should be addressed.

### **14.2.1.2 Subsequent Federal Consistency Review**

Changes in a Federal Consistency Determination can come at any stage of project development. If after the AN process is completed, an FCMP agency determines that the project is no longer consistent, the consistency determination may be modified. The final

review of the project's consistency with the FCMP is conducted during the environmental permitting review.

## **14.2.2 Determinations of Inconsistency**

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 consistency reviewer's authority with which the project is inconsistent and must identify actions that can be taken to resolve the conflict. However, prior to issuing a finding of inconsistency, the consistency reviewer should immediately call the SCH if problems are identified. If any consistency reviewer indicates that the project is not consistent, this would trigger discussions with the SCH and possibly initiate the issue resolution process (see 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.

### **14.2.2.1 Mediation During Advance Notification**

If a recommendation or determination of inconsistency with the FCMP is made by the SCH and its consistency reviewers during AN, the project will go through the ETDM Issue Resolution Process, which is discussed in detail in 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.

### **14.2.2.2 Mediation During Subsequent Federal Consistency Review**

If a FCMP member 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 FCMP member agency fails to identify the authority with which the project is in conflict, or the FCMP member 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 FCMP member 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 FCMP member 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 of Ocean and Coastal Resource Management (OCRM) with a state consistency objection letter in accordance with **15 CFR Part 930**.

When FDOT receives a **Letter of Inconsistency** from FDEP, 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 FCMP member 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 Federal Consistency Review, FDOT may request OCRM mediation or Secretarial mediation 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.

### 14.2.3 Documentation

During the PD&E phase, the Federal Consistency Determination from the **Final Programming Screen Summary Report** is documented in the Environmental Document.

**Type 2 CE:** The following standard statement along with the date of determination is included on the cover sheet.

*On (consistency date) the State of Florida has determined that this project is consistent with the Florida Coastal Zone Management Program.*

This statement auto-populates if this determination was made during the Programming Screen and the project's ETDM Number was previously entered into the StateWide Environmental Project Tracker (SWEPT). If the Type 2 CE was not screened in the EST, the following statement is included:

*The State of Florida will determine if the project is consistent with the Florida Coastal Zone Management Program during the permitting process if applicable.*

**EA and EIS:** The following standard statement is documented in a dedicated Coastal Zone Consistency section.

*On (consistency date) the State of Florida has determined that this project is consistent with the Florida Coastal Zone Management Program.*

It should include the date that the determination was made in the **Final Programming Screen Summary Report**. The statement should also be included in the Final

Environmental Impact Statement (FEIS) Executive Summary ([Part 1, Chapter 9, Final Environmental Impact Statement](#)) when applicable.

### 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 website. <https://floridadep.gov/rcp/fcmp>

FDEP, Florida Coastal Management Program Guide - A Guide to the Federally Approved Florida Coastal Management Program. 2024.  
<https://floridadep.gov/sites/default/files/FCMP-Program-Guide-2024-09-30.pdf>

FDEP, Florida State Clearinghouse website.  
<https://floridadep.gov/oip/oip/content/clearinghouse>

FDEP, Policy and Procedure Manual. <https://floridadep.gov/oip/oip/content/policy-and-procedure-manual>

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

NOAA, Federal Consistency website. <https://coast.noaa.gov/czm/consistency/>

Presidential Executive Order 12372, Intergovernmental Review of Federal Programs.  
<https://www.archives.gov/federal-register/codification/executive-order/12372.html>

Section 373.428, F.S., Federal Consistency

Section 403.061(43), F.S.,  
[https://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=0400-0499/0403/Sections/0403.061.html](https://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.061.html)

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

Title 16 United States Code 1456, Coordination and Cooperation

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
Chapter 186	State and Regional Planning
Chapter 252	Emergency Management
Chapter 253	State Lands
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
Chapter 379	Fish and Wildlife Conservation
Chapter 380	Land and Water Management
Chapter 381	Public Health; General Provisions
Chapter 388	Mosquito Control
Chapter 403	Environmental Control
Chapter 553	Building Construction Standards
Chapter 582	Soil and Water Conservation
Chapter 597	Aquaculture

**Figure 14-1 Florida Coastal Management Program Statutes**

Florida Department of Commerce

Florida Department of Environmental Protection

Florida Department of Agriculture and Consumer Services

Florida Department of Health, Division of Environmental Health

Division of Historical Resources of the Florida Department of State,

Florida Department of Transportation

Florida Fish and Wildlife Conservation Commission

Florida Division of Emergency Management

Florida Building Commission of the Florida Department of Business and Professional Regulation

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**