

FREQUENT QUESTIONS



Enforceable Policies

NOAA Office for Coastal Management

What is an enforceable policy?

An enforceable policy is a state policy, legally binding under state law, by which a state exerts control over private and public coastal uses and resources. These policies are incorporated in the state's federally approved coastal management plan and include an enforceable "mechanism" through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions. [CZMA § 304(6a) and 15 C.F.R. § 930.11(h)]

Enforceable policies are given legal effect by state law and do not apply to federal lands, federal waters, federal agencies or other areas or entities outside a state's jurisdiction, unless authorized by federal law (the CZMA does not confer such authorization).

For federal consistency activities, early coordination and identification of applicable state policies is essential. Early coordination will help determine what measures, if any, need to be taken to make the activity consistent with the policies of the state coastal management program.

Approval by NOAA's Office for Coastal Management is required when state coastal management programs want to change or incorporate new enforceable policies. [CZMA §§ 306(d) and 306(e)] This process serves an important notice and review purpose in the CZMA state-federal partnership. In return for the federal consistency authority granted to states, federal agencies are provided with an opportunity to review and comment on the development of a state's coastal management program and on subsequent changes. NOAA's Office for Coastal Management also evaluates proposed enforceable policy changes. [15 C.F.R. part 923, subpart H), [Program Change Guidance](#) (July 1996) and [Addendum](#) (November 2013)]

How do enforceable policies fit in with the CZMA?

Since 1996 states have been required to identify the enforceable policies when requesting NOAA approval of changes to the state's coastal management program. [15 C.F.R. § 923.84(b)(1)]

Important note: Enforceable policies are not limited to federal consistency projects. There are integral parts of a state's regulatory program that are enforceable under state law but would not likely be applied through federal consistency (e.g., permit regulations regarding fines,

appeals processes, exemptions for state agencies, etc.). These provisions do not need NOAA approval if they will not be used for federal consistency review.

Are all state coastal management programs organized similarly? Do they contain similar enforceable policies?

Coastal management programs are organized differently among coastal states, as are the enforceable policies. Some derive their enforceable policies from state statutes, while other states use statutes and regulations, just regulations, or general policies.

If a state's enforceable policies are derived from state or local statutes, the state's ability to modify the policies is obviously somewhat limited.

Examples of how some state coastal management program's enforceable policies are organized:

- **Statutes:** The enforceable policies are all derived from state statutes.
- **Regulations:** State statute includes information such as purpose, findings, goals and objectives, and establishes a permitting framework to manage various uses and resources. While the statute itself does not contain enforceable policies, it may direct a state agency to establish substantive regulations for a particular resource (e.g., wetlands regulations). The substantive regulations then serve as the enforceable policies in the state's coastal management program.
- **Statutes and regulations:** State statute includes enforceable policies and provides for the development of additional policies through regulations.
- **General and narrative policies:** Comprehensive set of general policies that may or may not be contained in statute or regulation. For example, a state may have enforceable policies that are not derived directly from a statute or regulation but are enforced through a statute or regulation.

Why is it important for states to keep enforceable policies up-to-date?

If a state law supersedes or substantively revises an existing enforceable policy, neither the old policy nor the new or revised policy can be used for federal consistency until the changes are approved by NOAA.

A federal consistency objection can only be based upon the NOAA-approved enforceable policies of a state's coastal management program. Projects undergoing a federal consistency review are also subject to other applicable state or local laws and regulations.

If a policy is enforceable under state law, does that automatically mean it is NOAA approved for CZMA federal consistency purposes?

No. NOAA policies do not enforce authorizations and directives that do not impose

requirements on non-governmental entities. For example:

- Authorizations: “The state DNR is authorized to promulgate rules for public access.”
- Directives: “The state DNR shall establish a program to manage invasive species.”

However, a directive to a state or local agency that sets forth the standards the agency must use in its decision-making may be approvable as an enforceable policy. For example:

- State agencies shall apply the following requirements prior to making a decision.”
- “The following guidelines shall be used by the agency when reviewing projects.”

Do maps need to be submitted as enforceable policies?

Generally not, as maps are considered implementation or enforcing mechanisms. Maps *should* be submitted as enforceable policies for special area management plans, ocean plans, and exclusion zones that relate to national interest areas.

Are there any red flags I should look for when reviewing policies?

Yes. When reviewing a state statute or regulation, looking for key red flags can help you identify potential problems—problems that make it less likely NOAA would approve it as an enforceable policy. Here’s what to look for:

Does the policy include mandatory language?

Does the policy contain a clear standard?

Is the policy preempted by federal law?

Does the policy regulate federal agencies, lands, or waters?

Does the policy discriminate against a particular coastal user or federal agency?

Does the policy hinder the national interest objectives of the Coastal Zone Management Act?

Does the policy incorporate other policies or requirements by reference?