

Development of Virginia's Narrative Enforceable Policies (NEPs)

CZM Program Workshop

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Requirement: Consistency With A State's Enforceable Policies

- Federal **agency activities** must be consistent to the maximum extent practicable with the enforceable policies of a state coastal management program.
 - *Federal agency* decides if its activity affects coastal resources.
- Federal **license and permit & financial assistance activities** must be fully consistent.

Narrative Enforceable Policies

Goals of redrafting Virginia's enforceable policies as Narrative Enforceable Policies:

- Clarity and brevity
- Administrative changes to statutes and regulations will not trigger NOAA Program Change requirements

Narrative Enforceable Policies

Process:

- CZM NEP Advisory Group composed of networked partners; currently developing draft NEPs
- They will be submitted to the Office for Coastal Management for **review and approval by NOAA**
- They will be submitted as **routine program changes** and include citations to the underlying statutes & regulations
- 15 C.F.R. § 923.84(b) requires that there be **public notice & comment** on the submission.

Narrative Enforceable Policies

Requirements for an NEP:

- It must contain a **standard** by which an activity can be determined to be consistent;
- There must be an **enforceable mechanism** based on state law to apply the standard, i.e., a means to compel someone to do or not do something;
- The policy must be **approved by NOAA** as an “enforceable policy.”

Tricky Points

- NEPs don't need to include information on *how* a policy is met. **Process is not the focus.**
- In fact, don't include "permit [or agency approval] required" – a state cannot force a federal agency to get a permit. **So focus on the purposes of the permit** and include those in the NEP.
- **The standard set forth in an NEP needs to be mandatory and clear;** it cannot be subject to open-ended interpretation.

Tricky Points

- The CZMA provides coastal states with the ability to **review** federal activities, **not manage them**. So ongoing requirements are not part of the CZMA review process.
- States have no authority over federally owned lands or management of resources in federal waters.
- Only a state may issue a consistency decision; a locality cannot. So **a state cannot rely upon a local government decision alone as the basis for a state objection**, but it can be used as a finding in support of a state objection.

Final, Important Point

Just because a state law/regulation is not included as a Narrative Enforceable Policy, does not make it null and void nor take anything away from its validity as a state requirement!

*The “federal consistency” review gives states a voice in federal agency decision making **which they otherwise would not have**. It does not change nor limit our state laws.*