



Everglades Coalition

1000 Friends of Florida
Arthur R. Marshall Foundation
Audubon of Florida
Audubon Society of the Everglades
Audubon of Southwest Florida
Caloosahatchee River Citizens
Association/ Riverwatch
Clean Water Action
Clean Water Network
Collier County Audubon Society
Conservancy of Southwest Florida
Defenders of Wildlife
Ding Darling Wildlife Society
Earthjustice
Environment Florida
The Environmental Coalition
Everglades Coordinating Council
Everglades Foundation
Everglades Law Center
Florida Defenders of the Environment
Florida Keys Environmental Fund
Florida Native Plant Society
Florida Oceanographic Society
Florida Wildlife Federation
Friends of the Arthur R. Marshall
Loxahatchee Wildlife Refuge
Friends of the Everglades
Hendry Glades Audubon Society
Izaak Walton League Florida Division
Izaak Walton League Florida Keys
Chapter
Izaak Walton League Mangrove
Chapter
Izaak Walton League of America
Last Stand
League of Women Voters of Florida
Loxahatchee River Coalition
Martin County Conservation Alliance
National Audubon Society
National Parks Conservation
Association
National Wildlife Federation
National Wildlife Refuge Association
Natural Resources Defense Council
The Ocean Conservancy
The Pegasus Foundation
Sanibel-Captiva
Conservation Foundation
Save It Now, Glades!
Sierra Club
Sierra Club Broward Group
Sierra Club Calusa Group
Sierra Club Central Florida Group
Sierra Club Florida Chapter
Sierra Club Loxahatchee Group
Sierra Club Miami Group
South Florida Audubon Society
Tropical Audubon Society
The Urban Environment League
World Wildlife Fund

July 28, 2011

Secretary Hershel Vinyard
Florida Department of Environmental Protection
3900 Commonwealth Boulevard M.S. 49
Tallahassee, Florida 32399

Mr. Eric Shaw
Environmental Manager
Standards & Assessments Section
Florida Department of Environmental Protection
2600 Blair Stone Road, MS 6511
Tallahassee, FL 32399

RE: June 2011 Draft Conceptual Framework for Florida Department of Environmental Protection's (DEP) Nutrient Standards

Dear Secretary Vinyard and Mr. Shaw:

The Everglades Coalition, representing 54 environmental organizations working to protect and restore the Everglades, is writing regarding the June 2011 Draft Conceptual Framework for Florida Department of Environmental Protection's (DEP) Nutrient Standards (herein referred to as the "proposal"). We appreciate the DEP's recognition that numeric nutrient criteria are necessary to protect Florida's water resources, as well as Florida's citizens, from the harmful impacts of nutrient pollution. However, we have concerns about the current Conceptual Framework for numeric nutrient standards that DEP is proposing. We believe numeric nutrient criteria and downstream protective values for Florida's fresh waterbodies, including South Florida flowing waters, should be developed immediately, and implemented to prohibit a multi-year exceedance. Additionally, any waterbody not meeting such criteria should be deemed impaired with a Total Maximum Daily Load (TMDL) and Basin Management Action Plan (BMAP) without waiting until Stream Condition Index (SCI) (or other currently un-adopted biological indices), or additional causative pollutant or stressor response studies are done.

DEP's proposal would set numeric nutrient "thresholds" – not criteria – and would only do so for some waterbodies (clear lakes, springs, and flowing waters outside South Florida). We wish to first express our concerns that the waterbodies with thresholds will not be protected by the proactive measures to prevent their impairment as they would with numeric criteria, as EPA has proposed. Per the DEP proposal, thresholds could be routinely exceeded without Total Maximum Daily Load pollutant limits or Basin Management Action Plan wasteload allocations set.

Waterbodies without thresholds in DEP's proposal, such as colored lakes, South Florida flowing waters (including Class III canals), intermittent streams, isolated or privately owned waterbodies, and wetlands, will not have numeric nutrient thresholds and would not get numeric nutrient criteria in DEP's proposed rule. Though canals in South Florida were originally designed to drain and prevent flooding, they may now constitute "essential" or "critical habitat" and be relied upon for many species of Florida fish and wildlife. Nutrient

criteria for canals are also important because almost every canal in South Florida eventually drains to our rivers and streams and then into our lakes, estuaries or the Everglades. The DEP proposal would not assign any numeric thresholds, or numeric criteria, for South Florida flowing waters including Class III canals.

The DEP proposal would also not set numeric downstream protective values (DPVs) for upstream flowing waterways as the EPA has proposed. DPVs are essential for effectively providing downstream water quality protection. The proposed narrative approach of “not causing or contributing to downstream water quality impairment” is already currently in use, and has not prevented such impairment from occurring. The in-stream thresholds are set to maintain the health of the waterbody itself, without regard to what is needed to protect downstream waterbodies. Without numeric downstream protective values, there is no proactive mechanism to ensure loads upstream are in alignment with meeting downstream nutrient pollution limits ahead of the TMDL process, which is activated only after the waterbody is impaired.

The proposal’s requirement to fail a biological health assessment before potentially setting criteria also reflects a reactive approach that would not prevent impairment to the extent that criteria without such a requirement would. Additionally, the SCI or other unspecified measures of floral health mentioned here are not current approved water quality standards and are not appropriate to be incorporated as such for many of the systems for which they are being proposed.

Additionally, the proposal requirement that thresholds could not be exceeded 2 times in every 5 years, or 1 in 3 excluding “extreme events,” creates multi-year exceedance of the thresholds, which were set in order to prevent harm. The EPA’s proposal already set extremely lenient guidelines for criteria implementation: 1. nutrient standards could not be exceeded more than 1 time in every 3 years; and 2. averaging across a whole year would be allowed even though nutrient pollution-related events are more seasonal. Implementation standards that allow thresholds to be exceeded over multiple years without limit and loading reduction requirements, as found in the DEP proposal, will not improve nutrient pollution control or water quality.

The current Impaired Waters Rule (IWR) listing process would also be further complicated by the DEP proposal. It would no longer allow for impairment determinations on surrogate parameters, such as the use of the EPA approved and finite existing chlorophyll-*a* state water quality standards. Additionally, applying revised assessment area boundaries to assessment of other pollutants could nullify over a decade of existing assessment, leave insufficient data set sizes for further assessment, and obstruct the pollution-reduction actions already underway.

Moreover, this proposal would put waterbodies that do have multi-year exceedance on a “study list,” where they would be in limbo from further action indefinitely until funding constraints allow for biological assessments and a host of other studies to theoretically verify whether criteria development is even warranted.

Only current state nutrient TMDLs would be incorporated as Site Specific Alternative Criteria (SSACs) in this proposal and not the EPA TMDLs that haven’t been adopted by the state. This leaves the National Pollution Discharge Elimination System (NPDES) permits held by point sources within the EPA TMDL basins as the only avenue for reductions, neglecting nonpoint sources that would be left unregulated and without nutrient limits. Even the NPDES permit limits in those basins might not be revised, if the new additional biological assessment proposed is never done or does not yield an “unhealthy” response.

Overall, instead of dealing with the current nutrient impairment determination process as it existed prior to EPA’s intervention, the DEP proposal would perpetuate and further exacerbate the time and difficulty involved, by continuing the case-by-case interpretation of nutrient criteria. The process is further complicated by the addition of clauses which allow for multi-year exceedance of ambiguous thresholds and the requirement of further biological assessments if a prolonged excursion is detected. We are ultimately concerned that this process will

not sufficiently meet the protections that EPA has stated must be achieved and find the current proposal unacceptable.

Successful Everglades restoration is dependent on effective nutrient pollution control, which is most effectively achieved by numeric nutrient criteria. Therefore, we urge DEP to set numeric nutrient criteria and downstream protective values for Florida's fresh waterbodies, including South Florida flowing waters and to enact similar implementation guidelines that prohibit multi-year exceedance. It should also deem a waterbody impaired and develop TMDLs and BMAPs for any waterbody where those numeric criteria or DPVs are exceeded, without waiting until SCI (or other currently un-adopted biological indices), or additional causative pollutant or stressor response studies are done, in order to prevent impairment ahead of adverse biological responses.

Thank you for your time and consideration of our input on this matter.

Sincerely,



Julie Hill-Gabriel
State Co-Chair
305-371-6399 x136
Jhill-gabriel@audubon.org



Dawn Shirreffs
National Co-Chair
954-961-1280 x 205
dshirreffs@npca.org

cc: Jeff Littlejohn, DEP
Drew Bartlett, DEP
Dr. Laura Ehlers
EPA Region 4