



# Everglades Coalition

1000 Friends of Florida  
Arthur R. Marshall Foundation  
Audubon Florida  
Audubon of Southwest Florida  
Audubon of the Western Everglades  
Audubon Society of the Everglades  
Backcountry Fly Fishers of Naples  
Calusa Waterkeeper  
Cape Coral Friends of Wildlife  
Center for Biological Diversity  
Conservancy of Southwest Florida  
Defenders of Wildlife  
"Ding" Darling Wildlife Society  
Earthjustice  
Environment Florida  
Everglades Foundation  
Everglades Law Center  
Everglades Trust  
Florida Bay Forever  
Florida Conservation Voters Education Fund  
Florida Defenders of the Environment  
Florida Keys Environmental Fund  
Florida Native Plant Society  
Florida Oceanographic Society  
Friends of the Arthur R. Marshall  
Loxahatchee National Wildlife Refuge  
Friends of the Everglades  
Hendry-Glades Audubon Society  
International Dark-Sky Association,  
FL Chapter  
Izaak Walton League of America  
Izaak Walton League Florida Division  
Izaak Walton League Florida Keys Chapter  
Izaak Walton League Mangrove Chapter  
Lake Worth Waterkeeper  
Last Stand  
League of Women Voters of Florida  
Martin County Conservation Alliance  
Miami Pine Rocklands Coalition  
Miami Waterkeeper  
National Audubon Society  
National Parks Conservation Association  
National Wildlife Refuge Association  
Natural Resources Defense Council  
North Carolina Outward Bound School  
Ocean Research & Conservation Association  
Peace River Audubon Society  
Reef Relief  
Sanibel-Captiva Conservation Foundation  
Save It Now, Glades!  
Sierra Club  
Sierra Club Florida Chapter  
Sierra Club Broward Group  
Sierra Club Calusa Group  
Sierra Club Central Florida Group  
Sierra Club Loxahatchee Group  
Sierra Club Miami Group  
Snook and Gamefish Foundation  
South Florida Audubon Society  
Southern Alliance for Clean Energy  
The Florida Wildlife Federation  
The Institute for Regional Conservation  
The National Wildlife Federation  
Theodore Roosevelt Conservation  
Partnership  
Tropical Audubon Society

October 21, 2019

Administrator Andrew Wheeler  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Submitted via [regulations.gov](https://www.regulations.gov)

**RE: Comments on Docket ID No. EPA-HQ-OW-2019-0405**

Dear Administrator Wheeler,

On behalf of the 62 members of the Everglades Coalition – an alliance of local, state, and national conservation and environmental organizations dedicated to restoring America’s Everglades – we respectfully submit the following comments opposing the U.S. Environmental Protection Agency’s (EPA) proposal to revise the regulations governing state and tribal Clean Water Act Section 401 water quality certification process (Docket # EPA-HQ-OW-2019-0405).

America’s Everglades are a vital source of Florida’s tourism, commercial and recreational fishing, outdoor recreation, biodiversity, and the drinking water supply of nearly eight million Floridians. The EPA’s proposed rule would undermine longstanding state and tribal authority under the Clean Water Act to protect local waters from destructive projects or activities that require a federal permit or license, threatening the health of Florida’s waters. Additionally, the proposal threatens to reduce the scope of waters that require a water quality certification, including many Everglades wetlands. This is directly contradictory to the extensive state and federal investments made to restore America’s Everglades. These wetlands and their natural filtration capabilities are critical to ongoing efforts the state of Florida is taking to reduce harmful algal blooms.

We urge the EPA to immediately withdraw this proposal and instead uphold the longstanding cooperative federalism approach that has historically allowed states, tribes, and the federal government to work together to protect our shared water resources and the fish, wildlife, and outdoor traditions that depend on access to healthy wetlands and streams.

*Committed to full protection and restoration of America’s Everglades*

## **Gives the Federal Government the Ability to Override State and Tribal Water Quality Certification Decisions:**

The advancements made over recent decades towards restoring America's Everglades depends on a collaborative partnership between federal, state, and tribal governments. The EPA's proposed revisions to Section 401 threaten to unbalance this partnership by upending the cooperative federalism approach to managing our shared water resources, leaving states and tribes with greatly reduced ability to ensure their waters and tribal resources are protected from any negative impacts from federally permitted projects or activities.

The Clean Water Act seeks to achieve its goals to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" through a strong cooperative federalism partnership that "recognize[s], preserve[s], and protect[s] the primary responsibilities and rights of the States to prevent, reduce, and eliminate pollution" of their waters. State authority to reject Section 401 applications, or to place strong protective conditions on projects as a part of approving a certification - including minimum instream flows, fish passage requirements, sediment and temperature control conditions - has been instrumental in carrying out these goals.

By directly contradicting this approach, the EPA's proposed rule would allow the federal government to effectively override conditions placed on an approved permit or on a state or tribal certification denial. The text of the Clean Water Act does not give the EPA the authority to make autonomous determinations, instead it directs the federal permitting agency to incorporate state or tribal conditions and concerns. In doing so, the proposed rule improperly shifts the balance of power away from the states to the federal government, undermining states' and tribes' longstanding authority to allow federally permitted activities to move forward in a way that least harms a state's or tribe's natural resources.

## **Restricts State and Tribal Rights to Impose Conditions to Better Protect Water Resources:**

For decades, states and tribes have relied on Section 401 of the Clean Water Act to protect their rivers, streams, wetlands, and natural resources from pollution and destruction resulting from federally licensed projects like pipelines, dams, river alterations, and energy infrastructure. Denials of water quality certifications are rare, but states do use this authority to improve projects by placing protective conditions on them to limit harm to fish and wildlife habitat. This allows states and tribes to select conditions that benefit local natural resources, while also allowing the federal activity to move forward. The proposed rule, however, would limit the time frame for review, narrow the scope of review, and restrict the types of protective conditions states and tribes can place on federally licensed or permitted activities that threaten state or tribal waters. These limitations will likely result in the denial of more certifications instead of allowing projects to move forward with protective conditions.

Currently under Section 401, states can impose permit conditions to ensure that the project will comply with a state's broader water quality goals and relevant state or tribal laws, including requirements to ensure that proper conditions are maintained for fish to thrive, that habitat areas are not cut off from access or degraded, that serious risks to water quality and habitat such as spills or erosion are eliminated or mitigated, and that historical resources are preserved.

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The proposed rule would reject this longstanding interpretation and replace it with one not supported by judicial precedent, which established that state authority to make a water quality certification goes beyond the proposed discharge to the broader impacts to water quality of the project. The proposal restricts the scope of water quality certification to only impacts directly from a proposed project's point source discharges into "waters of the United States." The Administration is currently attempting to dramatically narrow the scope of the definition of "waters of the United States," which the Everglades Coalition opposes because it would undo federal protections for more than half our nation's wetlands and millions of miles of streams. Limiting the conditions that trigger a certification process to waters that the current administration considers to be a "water of the United States" could result in not requiring a water quality certification for federally permitted projects with discharges that impact state or tribal waters that are not considered "waters of the US."

The proposal also limits the amount of time states have to review and process permit applications. It would limit the amount of time for a state certification to one year, even if the applicant does not provide the state with the necessary information to review the project. If a state fails to act within one year, the federal government would see that as a waiver of certification. This could result in states providing permits for a project without the necessary technical information and before other reviews, including NEPA, have been completed. Though states certify most projects in under a year, in order to do a meaningful job, states may need more time to collect additional information. This allows projects to move forward in a way that least harms fish and wildlife habitat, water quality, and cultural resources.

### **Conclusion:**

Arbitrarily limiting state and tribal authority to protect waters within their borders from destructive impacts from federal projects will harm water quality, fish and wildlife habitat, and cultural resources and outdoor traditions that depend on access to healthy wetlands and streams. States and tribes must have adequate time to meaningfully review certifications, the ability to request additional information, and the ability to impose protective conditions on permits to protect water quality. The federal government should not have the ability to ignore state or tribal decisions that it does not like.

Among the waters the federal agencies may no longer require a water quality certification for could include many Everglades wetlands, which is contradictory to the extensive state and federal investments made to restore America's Everglades. These wetlands and their natural filtration capabilities are critical to ongoing efforts the state of Florida is taking to reduce harmful algal blooms. History shows that Section 401 of the Clean Water Act works and is not in need of fixing. The Everglades Coalition urges you to withdraw this damaging proposal immediately and allow states, tribes, and the federal government to continue to work together to protect our shared water resources.

Sincerely,



Mark Perry  
Co-Chair



Marisa Carrozzo  
Co-Chair

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