

Florida Department of Environmental Protection



Division of Environmental Assessment & Restoration

FDEP and EPA Process for Amending a TMDL

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Water Quality Process Overview

Develop and adopt **Water Quality Standards** to protect Florida waters.

Use WQS to assess Florida waters and determine if meeting **Designated Uses**.

If determined impaired, develop **Total Maximum Daily Load** (target to restore water).

Develop and implement **Basin Management Action Plan** to implement restoration.



Authority to Establish TMDLs

- FDEP authority derives from federal & state law
- CWA Section 303(d) requires states to establish TMDLs
- Florida Statutes Section 403.067 grant FDEP authority to develop and execute a TMDL program



Requirements of State Law

- Impairments of biological criteria
 - 403.067(3)(c) addresses narrative and biological criteria
 - For waters that are impaired based upon biological criteria, the TMDL must be developed for those criteria.
 - *Indian River Lagoon was listed for sea grass depth, so the TMDL must be developed for sea grass depth.*
- Phasing in a TMDL
 - 403.067(6)(c) provides authority to phase in a TMDL
 - Additional data collection and analysis are sometimes needed.
 - TMDLs are subject to change as additional data become available.
 - *FDEP can therefore revise an existing TMDL.*
 - Phases or revisions must still go through the rule adoption process.



State Rule Adoption Process

- Procedures of Chapter 120, F.S., apply to TMDLs
 - Notice of Rule Development
 - Public meetings and rule development workshops
 - Notice of Proposed Rule and public comment period
 - Opportunity to request a hearing or file a challenge
- Approval by other agencies and bodies
 - Joint Administrative Procedures Commission (Legislature)
 - Office of Fiscal Accountability and Regulatory Reform (Governor's Office)
- Additional requirements of Sec. and Gov.
 - Statement of Estimated Regulatory Costs (SERC)



Federal TMDL Approval Process

- EPA reviews State adopted TMDL for...
 - Public participation in TMDL development
 - Compliance with other programs and priorities
 - Backsliding / anti-degradation
 - Downstream protection
 - Protective of designated uses
 - Administrative requirements
 - FDEP followed the FDEP rule adoption process
 - Technical and scientific basis for TMDL
 - Criteria for (nutrient) water quality standards



Review of TMDLs as Standards

- Nutrient TMDLs now constitute site specific interpretations of the narrative nutrient criteria.
- Review as a WQ standard includes additional factors.
 - Magnitude, duration, and frequency must be addressed.
 - Criteria must be sufficient to verify impairment or delisting.
 - Criteria must be spatially and temporally representative.
 - Designated uses must be protected by the criteria.
 - Must protect downstream waters relative to WQ standards.
 - Must meet administrative requirements, including public notice.



Summary

- Indian River and Banana River Lagoons were listed as impaired based on seagrass depth.
 - TMDL must therefore address nutrient loading as an input and seagrass depth as an output.
 - Florida Statutes require it for a biological listing.
 - EPA will require it as a condition for approval.
- TMDL must go through rule adoption process
 - Notice of Rule Development through final certification
 - Documentation of public participation
- TMDL must ultimately be approvable by EPA
 - Or EPA remains on the hook to develop federal TMDL