



Protecting Southwest Florida's unique natural environment and quality of life ... now and forever.

December 6, 2019

Kaitlyn Sutton
Water Quality Standards Program
Florida Department of Environmental Protection
2600 Blair Stone Road, Mail Station 6511
Tallahassee, FL 32399-2400

RE: Triennial Review of State Water Quality Standards

Dear Ms. Sutton,

Thank you for the opportunity to provide the Conservancy of Southwest Florida's comments on the Florida Department of Environmental Protection's (FDEP) 2019 Triennial Review of State Water Quality Standards. The Conservancy, on behalf of our 7,000 supporting families, is dedicated to the protection of Florida's water quality for the benefit of our unique and diverse natural ecosystems, quality of life and economy.

The Triennial Review is an opportunity to address any needed changes or revisions to Florida's standards based upon the best available science, in addition to the most recently published recommended criteria from the Environmental Protection Agency (EPA). The Conservancy's comments pertain to the following topics:

- Requirements for SSACs
- Developing Cyanobacteria Standards
- Higher Designated Use Classification for Outstanding Florida Waters (OFWs)
- Lake Okeechobee Nitrogen Standards

SSAC requirements for information about threatened and endangered species

We appreciate the focus on protecting federally listed, threatened, or endangered species and critical habitats through an affirmative demonstration that the alternative criteria will not impact the species. However, we highly recommend that "affirmative demonstration" be more clearly defined. How would an applicant demonstrate that the proposed alternative criteria will not impact a species? Overall, ensuring that a proposed SSAC will not impact or affect a listed species or their habitat is a goal that would benefit from being supported by specific guidance and criteria for the affirmative demonstration.



Conservancy of Southwest Florida has been awarded Charity Navigator's prestigious 4-Star top rating for good governance, sound fiscal management and commitment to accountability and transparency. Charity Navigator is America's largest and most respected independent evaluator of charities.

The affirmative demonstration should also include state listed, threatened, and endangered species, in addition to those listed federally. Applying the provisions of 62.302.800(1)(a)(5) to state listed species will ensure the SSAC decisions will consider the full diversity of Florida's unique plant and animal species.

The Conservancy recommends language revisions in 62.302.800(1)(a)(5) to clarify the affirmative demonstration requirements and include state listed species:

"A description of the occurrence of any Federally listed and state listed threatened or endangered plant or animal species and critical habitats within the water or downstream waters. If species are present in the water or downstream waters, aAn affirmative demonstration must include a written determination by the applicable federal and state wildlife agencies - that the alternative criteria will not negatively impact or - affect threatened or endangered species or critical habitats. The affirmative demonstration must also determine that the alternative criteria is consistent with the Florida Endangered and Threatened Species Rule and the federal Endangered Species Act must be included if any are present in the water or downstream waters.

Developing Cyanobacteria Standards

Harmful algae blooms (HABs) of cyanobacteria are prevalent in the freshwater areas of Florida, including Lake Okeechobee, and the Caloosahatchee and St. Lucie rivers. The increasing prevalence in Florida is consistent with both national and worldwide trends. The environmental, health, and economic impacts of these HABs are of concern to the public, elected officials, NGOs, agencies, and the community as a whole. The toxins produced by some cyanobacteria blooms, known as cyanotoxins, can pose serious public health risks and can harm wildlife and aquatic species.

Recently, the EPA has developed guidelines and recommended concentrations of cyanotoxins at which levels human health should be protected while swimming or participating in other recreational activities. In 2016, EPA published draft recreational guidelines for microcystins (4 µg/L) and cylindrospermopsin (8 µg/L); these guidelines were then updated in May 2019 to be used for both swimming advisories and as new water quality standards by individual states.

The Conservancy supports FDEP adopting protective water quality standards for both microcystins and cylindrospermopsin. We also recommend FDEP adopt policies that require waterbodies that have experienced HABs be sampled regularly during seasons when blooms occur, whether or not a bloom is visible.

Additionally, we support FDEP and the Department of Health establishing a proactive protective standard for posting signage and issuing swimming advisories at water bodies impacted by HABs. A

precautionary standard should include signage posting and swimming advisories when **any** detection of cyanobacteria occurs, no matter the level of the cyanotoxins.

Higher Designated Use Classification for Outstanding Florida Waters (OFWs)

Outstanding Florida Waters, designated as such for their exceptional natural attributes and having been found worthy of special protection, are subject to Florida's antidegradation requirements in Ch. 62-4. No degradation in existing ambient water quality is allowed in OFWs or Outstanding National Resource Waters (ONRWs) per Ch. 62-302.700. Ambient water quality is defined in Ch. 62-4 as either the water quality at time of designation or existing water quality – whichever is better. Unfortunately, this requirement is only administered through permitting of point source discharges, and lowering of water quality from the baseline in an OFW has not historically been subject to Total Maximum Daily Loads (TMDLs) under the Section 303(d) of the Clean Water Act (CWA), unless the applicable water quality standards for the OFW's current designated use classification are violated.

In order to address this deficiency, the Conservancy highly recommends implementing a higher designated use classification or supplemental use classification for pristine or Outstanding Florida Waters. The Conservancy made this same recommendation during the 2012 and 2015 Triennial Review process, and FDEP's response at the time was that the Environmental Regulation Commission (ERC) in 2009 had directed FDEP to simplify the classification scheme and thereby remove the "exceptional waters" classification. FDEP also pointed to the ability to apply for Type I SSACs for higher quality waters and the Impaired Waters Rule (IWR) provisions for exceptional Biological Health scores. However, based on the continued water quality degradation seen in OFWs, a more proactive measure is warranted and we recommend that FDEP revisit adopting a higher use classification for OFWs.

Lake Okeechobee Nitrogen Standards

We have mentioned in previous letters to FDEP that the current Numeric Nutrient Criteria (NNC) does not accurately identify waters impaired for both nutrients, as evidenced by the lack of impaired WBIDs in and around Lake Okeechobee. After reviewing the current IWR Run 56, there are no WBIDs within Lake Okeechobee proper that are in category 5 (impaired) for total nitrogen (TN). These designations are despite the reoccurrence of multiple cyanobacteria blooms within the Lake – including in 2016, 2018, and bloom incidence in May 2019—that are clear and unequivocal indicators of nutrient pollution that have resulted in an imbalance in populations of flora and fauna. Lake Okeechobee is widely known for having a significant problem with algae blooms caused by excess nutrients. Toxic blue green algae in Lake Okeechobee require high levels of water-borne nitrogen, and due to the public health, economic and environmental consequences of these blooms, nitrogen within the lake and surrounding watershed must be addressed in addition to phosphorus.

The current TMDL and BMAP for Lake Okeechobee do not directly address reductions in nitrogen, which is the nutrient of concern for the estuaries. However, we are appreciative of the proposed changes to

the Lake Okeechobee BMAP process, which will begin to address TN as well as TP. This new approach will allow FDEP to focus additional efforts and regulatory clean-up requirements to reduce the nitrogen pollution in the watershed, the Lake, and by extension, the downstream waters.

Nevertheless, it is apparent that the underlying criteria for TN is not reflecting the nutrient over-enrichment within Lake Okeechobee; the standards for TN for highly colored lakes are not protective enough. As evidenced by the lack of impaired WBIDs in and around Lake Okeechobee for nutrients, particularly Total Nitrogen, the Conservancy strongly supports revising the TN criteria for lakes.

Conclusion

The Conservancy of Southwest Florida greatly appreciates DEP's consideration of our comments on the 2019 Triennial Review of State Water Quality Standards and requests a written response to the recommendations and requests we have raised in these comments. Please do not hesitate to contact us should you have any questions.

Sincerely,



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