ATM DESIGN ENGINEERING CONSULTING

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Re: Proposed Rule Changes to 62-302.530(70), F.A.C.
Florida's Water Quality Standards
Submission of Public Comment

Dear Ms. Sutton:

This letter is provided as public comment to the proposed changes to 62-302.530(70), F.A.C. regarding turbidity. The following comments are provided relative to this rule change:

1. As presented, the rule is not specifically crafted to protect hardbottom resources. The rule change establishes arbitrary turbidity standards over a large portion of nearshore, including areas that are not near hardbottom resources.

2. The rule and supporting documentation provide no basis of need for this rule change. Monitoring of nearshore hardbottom resources in the vicinity of beach nourishment projects is a long-standing requirement under current permits. This wealth of monitoring data was not reviewed or referenced in the development of this rule change. The supporting documentation failed to identify a single incidence of impact to hardbottom resources from a current beach project that would have been addressed by this rule change. The rule change appears to have been crafted in response to impacts from the Miami harbor dredging project, which was not a beach nourishment project. Further, the incidence of unanticipated impacts to hardbottom resources from current nourishment projects based on specific monitoring data is a rare occurrence, and it is undetermined if this rule would materially improve this current condition.

3. The current regulatory process allows for additional protections for hardbottom resources within the vicinity of nourishment projects though specific conditions within the permit. These have included project-specific turbidity monitoring in the vicinity of resources within the area of influence of the project, additional sedimentation monitoring, and project-specific monitoring of resources during construction. The rule change represents an undue additional regulatory burden that is not a material improvement on this current process.

4. The rule change was developed without sufficient expertise or knowledge of the regulated activity. The rule change was developed without sufficient consultation with in-house FDEP staff who currently oversee the regulated activity. The rule change was developed with essentially no input from regulated stakeholders. The rule change was developed with no review of the wealth of measured data associated with current projects.

5. The rule change was developed without consideration of the FDEP's own Turbidity Committee, which previously reviewed these concerns and developed the turbidity monitoring protocols that are currently implemented.

6. The rule, as crafted, will significantly increase the cost of beach nourishment projects within the State without a demonstrated reduction in impacts to hardbottom resources.

7. The rule change was developed without review of turbidity monitoring data associated with established nourishment projects. These data have been provided to FDEP in association with every nourishment project as required by permit condition and include turbidity measurements associated with the regulated activity. These data were not considered in the development of this rule change, and it is undetermined to what extent the proposed rule change will impact nourishment projects.

8. The scientific studies referenced as justification for this rule change lack a sufficient basis for use in establishing a turbidity standard for beach nourishment projects. The study Fourney and Figueiredo (2017) was based on a sediment source that was artificially enriched with additional fine material. The study does not specifically state the percent fraction of fine material added or the nature of this fine material. This is not representative of current FDEP quality standards for nourishment material, which is more similar to the natural sediment source referenced in this study.

9. The referenced studies are only specific to a narrow number of coral species and not the range of hardbottom communities present within the proposed action area for the rule change. Non-coral hardbottom communities are considerably more resilient relative to turbidity, and no studies regarding these communities were used as a basis for rule development. The rule was developed solely for corals and is being applied to all other resources without specific consideration of these other resources.

10. The basis for determination of baseline values is fundamentally flawed. Turbidity within the coastal zone is primarily dependent on wave climate. The proposed values are based on measurements over a tidal cycle, with no consideration of wave climate. The protocol does not account for natural variability associated with wave climate.

11. The format of the proposed rule change is flawed through the use of incorporation by reference to other documents. Rule language should be explicit.

12. Consultation regarding the rule change did not allow for adequate participation by affected stakeholders.

13. As proposed, this rule change will drastically impede the ability to construct beach nourishment projects. This impact is contrary to current Florida Statues, specifically Florida Statue 161.088, which states that beach nourishment projects are in the public interest.

14. While it is acknowledged that protection of coral resources is in the public interest, the rule as presented does not accomplish this goal and imposes additional undue burdens on regulated actions that are in the public interest.

15. It is readily apparent that if FDEP proceeds with this rule change as proposed, it will be administratively challenged on multiple grounds. I would strongly urge FDEP to reconsider this agency action and work towards more effective and implementable criteria for the protection of coral and hardbottom resources.

Thank you for the opportunity to provide comments regarding the proposed agency action.

Sincerely,
APPLIED TECHNOLOGY & MANAGEMENT, INC.

Mike Jenkins, PhD, PE
Coastal Engineering Principal

cc: Lisa Armbruster (Sustainable Beaches, LLC)
Jackie Larson (Florida Shore and Beach Preservation Association)