DOCUMENTATION FOR THE 2002 UPDATE TO THE STATE OF FLORIDA'S 303(d) LIST

Bureau of Watershed Management
Division of Water Resource Management
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October 1, 2002
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Effective 6-10-02
CHAPTER 62-303
IDENTIFICATION OF IMPAIRED SURFACE WATERS

PART I
GENERAL

62-303.100 Scope and Intent.
(1) This chapter establishes a methodology to identify surface waters of the state that
will be included on the state's planning list of waters that will be assessed pursuant to
subsections 403.067(2) and (3), Florida Statutes (F.S.). It also establishes a methodology to
identify impaired waters that will be included on the state's verified list of impaired waters, for
which the Department will calculate Total Maximum Daily Loads (TMDLs), pursuant to
subsection 403.067(4), F.S., and which will be submitted to the United States Environmental
Protection Agency (EPA) pursuant to subparagraph 303(d)(1)(C) of the Clean Water Act (CWA).

(2) Subsection 303(d) of the CWA and section 403.067, F.S., describe impaired waters
as those not meeting applicable water quality standards, which is a broad term that includes
designated uses, water quality criteria, the Florida antidegradation policy, and moderating
provisions. However, as recognized when the water quality standards were adopted, many
water bodies naturally do not meet one or more established water quality criteria at all times,
even though they meet their designated use. Data on exceedances of water quality criteria will
provide critical information about the status of assessed waters, but it is the intent of this
chapter to only list waters on the verified list that are impaired due to point source or nonpoint
source pollutant discharges. It is not the intent of this chapter to include waters that do not
meet water quality criteria solely due to natural conditions or physical alterations of the water
body not related to pollutants. Similarly, it is not the intent of this chapter to include waters
where designated uses are being met and where water quality criteria exceedances are limited
to those parameters for which permitted mixing zones or other moderating provisions (such as
site-specific alternative criteria) are in effect. Waters that do not meet applicable water quality
standards due to natural conditions or to pollution not related to pollutants shall be noted in the
state's water quality assessment prepared under subsection 305(b) of the CWA [305(b) Report].

(3) This chapter is intended to interpret existing water quality criteria and evaluate
attainment of established designated uses as set forth in Chapter 62-302, F.A.C., for the
purposes of identifying water bodies or segments for which TMDLs will be established. It is not
the intent of this chapter to establish new water quality criteria or standards, or to determine the
applicability of existing criteria under other provisions of Florida law. In cases where this
chapter relies on numeric indicators of ambient water quality as part of the methodology for
determining whether existing narrative criteria are being met, these numeric values are
intended to be used only in the context of developing a planning list and identifying an impaired
water pursuant to this chapter. As such, exceedances of these numeric values shall not, by
themselves, constitute violations of Department rules that would warrant enforcement action.

(4) Nothing in this rule is intended to limit any actions by federal, state, or local
agencies, affected persons, or citizens pursuant to other rules or regulations.

(5) Pursuant to section 403.067, F.S., impaired waters shall not be listed on the verified
list if reasonable assurance is provided that, as a result of existing or proposed technology-
based effluent limitations and other pollution control programs under local, state, or federal
authority, they will attain water quality standards in the future and reasonable progress towards
attainment of water quality standards will be made by the time the next 303(d) list is scheduled
to be submitted to EPA.

Specific Authority 403.061, 403.067, FS.
Law Implemented 403.021(11), 403.062, 403.067, FS.
History -- New

62-303.150 Relationship Between Planning and Verified Lists.
(1) The Department shall follow the methodology in Section 62-303.300 to develop a
planning list pursuant to subsection 403.067(2), F.S. As required by subsection 403.067(2),
F.S., the planning list shall not be used in the administration or implementation of any regulatory
program, and shall be submitted to EPA for informational purposes only. Waters on this
planning list will be assessed pursuant to subsection 403.067(3), F.S., as part of the
Department’s watershed management approach. During this assessment, the Department
shall determine whether the water body is impaired and whether the impairment is due to
pollutant discharges using the methodology in Part III. The resultant verified list of impaired
waters, which is the list of waters for which TMDLs will be developed by the Department
pursuant to subsection 403.067(4), will be adopted by Secretarial Order and will be subject to
challenge under subsection 120.569 and 120.57, F.S. Once adopted, the list will be submitted
to the EPA pursuant to subparagraphs 303(d)(1)(A) and (C) of the CWA.
(2) Consistent with state and federal requirements, opportunities for public participation, including workshops, meetings, and periods to submit comments on draft lists, will be provided as part of the development of planning and verified lists.

Specific Authority. 403.061, 403.067, FS.

Law Implemented. 403.062, 403.067, FS.

History -- New.


As used in this chapter:

(1) "BioRecon" shall mean a bioassessment conducted following the procedures outlined in "Protocols for Conducting a Biological Reconnaissance in Florida Streams," Florida Department of Environmental Protection, March 13, 1995, which is incorporated by reference.

(2) "Clean techniques" shall mean those applicable field sampling procedures and analytical methods referenced in "Method 1669: Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels, July 1996, USEPA, Office of Water, Engineering and Analysis Division, Washington, D.C.,” which is incorporated by reference.

(3) “Department” or “DEP” shall mean the Florida Department of Environmental Protection.

(4) "Designated use" shall mean the present and future most beneficial use of a body of water as designated by the Environmental Regulation Commission by means of the classification system contained in Chapter 62-302, F.A.C.

(5) "Estuary" shall mean predominantly marine regions of interaction between rivers and nearshore ocean waters, where tidal action and river flow mix fresh and salt water. Such areas include bays, mouths of rivers, and lagoons.

(6) "Impaired water" shall mean a water body or water body segment that does not meet its applicable water quality standards as set forth in Chapters 62-302 and 62-4, F.A.C., as determined by the methodology in Part III of this chapter, due in whole or in part to discharges of pollutants from point or nonpoint sources.

(7) "Lake Condition Index" shall mean the benthic macroinvertebrate component of a bioassessment conducted following the procedures outlined in “Development of Lake Condition Indexes (LCI) for Florida,” Florida Department of Environmental Protection, July, 2000, which is incorporated by reference.

(8) "Natural background" shall mean the condition of waters in the absence of man-induced alterations based on the best scientific information available to the Department. The
establishment of natural background for an altered waterbody may be based upon a similar
unaltered waterbody or on historical pre-alteration data.

(9) "Nuisance species" shall mean species of flora or fauna whose noxious
characteristics or presence in sufficient number, biomass, or areal extent may reasonably be
expected to prevent, or unreasonably interfere with, a designated use of those waters.

(10) "Physical alterations" shall mean human-induced changes to the physical structure
of the water body.

(11) "Planning list" shall mean the list of surface waters or segments for which
assessments will be conducted to evaluate whether the water is impaired and a TMDL is
needed, as provided in subsection 403.067(2), F.S.

(12) "Pollutant" shall be as defined in subsection 502(6) of the CWA. Characteristics of
a discharge, including dissolved oxygen, pH, or temperature, shall also be defined as pollutants
if they result or may result in the potentially harmful alteration of downstream waters.

(13) "Pollution" shall be as defined in subsection 502(19) of the CWA and subsection
403.031(2), F.S.

(14) "Predominantly marine waters" shall mean surface waters in which the chloride
concentration at the surface is greater than or equal to 1,500 milligrams per liter.

(15) "Secretary" shall mean the Secretary of the Florida Department of Environmental
Protection.

(16) "Spill" shall mean a short-term, unpermitted discharge to surface waters, not to
include sanitary sewer overflows or chronic discharges from leaking wastewater collection
systems.

(17) "Stream" shall mean a free-flowing, predominantly fresh surface water in a defined
channel, and includes rivers, creeks, branches, canals, freshwater sloughs, and other similar
water bodies.

(18) "Stream Condition Index" shall mean a bioassessment conducted following the
procedures outlined in "Development of the Stream Condition Index (SCI) for Florida," Florida
Department of Environmental Protection, May, 1996, which is incorporated by reference.

(19) "Surface water" means those waters of the State upon the surface of the earth to
their landward extent, whether contained in bounds created naturally or artificially or diffused.
Water from natural springs shall be classified as surface water when it exits from the spring
onto the earth's surface.
(20) "Tier 2 Data Quality Assessment" shall mean an assessment of the quality controls
used in generating water quality data, as outlined in the Department's Guidance Document, "A
Tiered Approach to Data Quality Assessment" (DEP EAS 001-00, October 2000), which is
incorporated by reference.

(21) "Total maximum daily load" (TMDL) for an impaired water body or water body
segment shall mean the sum of the individual wasteload allocations for point sources and the
load allocations for nonpoint sources and natural background. Prior to determining individual
wasteload allocations and load allocations, the maximum amount of a pollutant that a water
body or water segment can assimilate from all sources without exceeding water quality
standards must first be calculated. A TMDL shall include either an implicit or explicit margin of
safety and a consideration of seasonal variations.

(22) "Verified list" shall mean the list of impaired water bodies or segments for which
TMDLs will be calculated, as provided in subsection 403.067(4), F.S., and which will be
submitted to EPA pursuant to subparagraph 303(d)(1)(C) of the CWA.

(23) "Water quality criteria" shall mean elements of State water quality standards,
expressed as constituent concentrations, levels, or narrative statements, representing a quality
of water that supports the present and future most beneficial uses.

(24) "Water quality standards" shall mean standards composed of designated present
and future most beneficial uses (classification of waters), the numerical and narrative criteria
applied to the specific water uses or classification, the Florida antidegradation policy, and the
moderating provisions (mixing zones, site-specific alternative criteria, and exemptions)
contained in Chapter 62-302, F.A.C., and in Chapter 62-4, F.A.C., adopted pursuant to Chapter
403, F.S.

(25) "Water segment" shall mean a portion of a water body that the Department will
assess and evaluate for purposes of determining whether a TMDL will be required. Water
segments previously evaluated as part of the Department's 1998 305(b) Report are depicted in
the map titled "Water Segments of Florida," which is incorporated by reference.

(26) "Waters" shall be those surface waters described in Section 403.031(13), Florida
Statutes.

Specific Authority 403.061, 403.067, FS.

Law Implemented 403.062, 403.067, FS.
PART II
THE PLANNING LIST

62-303.300 Methodology to Develop the Planning List.

(1) This part establishes a methodology for developing a planning list of waters to be assessed pursuant to subsections 403.067(2) and (3), F.S. A waterbody shall be placed on the planning list if it fails to meet the minimum criteria for surface waters established in Rule 62-302.500, F.A.C.; any of its designated uses, as described in this part; or applicable water quality criteria, as described in this part. It should be noted that water quality criteria are designed to protect either aquatic life use support, which is addressed in sections 62-303.310-353, or to protect human health, which is addressed in sections 62-303.360-380.

(2) Waters on the list of water segments submitted to EPA in 1998 that do not meet the data sufficiency requirements for the planning list shall nevertheless be included in the state's initial planning list developed pursuant to this rule.

Specific Authority 403.061, 403.067, FS.
Law Implemented 403.062, 403.067, FS.


A Class I, II, or III water shall be placed on the planning list for assessment of aquatic life use support (propagation and maintenance of a healthy, well-balanced population of fish and wildlife) if, based on sufficient quality and quantity of data, it:

(1) exceeds applicable aquatic life-based water quality criteria as outlined in section 62-303.320,

(2) does not meet biological assessment thresholds for its water body type as outlined in section 62-303.330,

(3) is acutely or chronically toxic as outlined in section 62-303.340, or

(4) exceeds nutrient thresholds as outlined in section 62-303.350.

Specific Authority 403.061, 403.067, FS.
Law Implemented 403.062, 403.067, FS.

History -- New

62-303.320 Exceedances of Aquatic Life-Based Water Quality Criteria.
(1) Water segments shall be placed on the planning list if, using objective and credible data, as defined by the requirements specified in this section, the number of exceedances of an applicable water quality criterion due to pollutant discharges is greater than or equal to the number listed in Table 1 for the given sample size. This table provides the number of exceedances that indicate a minimum of a 10% exceedance frequency with a minimum of an 80% confidence level using a binomial distribution.
Table 1: Planning List

Minimum number of measured exceedances needed to put a water
on the Planning list with at least 80% confidence that the
actual exceedance rate is greater than or equal to ten percent.

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(2) The U.S. Environmental Protection Agency's Storage and Retrieval (STORET) database shall be the primary source of data used for determining water quality criteria exceedances. As required by rule 62-40.540(3), F.A.C., the Department, other state agencies, the Water Management Districts, and local governments collecting surface water quality data in Florida shall enter the data into STORET within one year of collection. Other sampling entities that want to ensure their data will be considered for evaluation should ensure their data are entered into STORET. The Department shall consider data submitted to the Department from other sources and databases if the data meet the sufficiency and data quality requirements of this section.

(3) When determining water quality criteria exceedances, data older than ten years shall not be used to develop planning lists. Further, more recent data shall take precedence over older data if:
   (a) the newer data indicate a change in water quality and this change is related to changes in pollutant loading to the watershed or improved pollution control mechanisms in the watershed contributing to the assessed area, or
   (b) the Department determines that the older data do not meet the data quality requirements of this section or are no longer representative of the water quality of the segment.

The Department shall note for the record that the older data were excluded and provide details about why the older data were excluded.

(4) To be assessed for water quality criteria exceedances using Table 1, a water segment shall have a minimum of ten, temporally independent samples for the ten year period. To be treated as an independent sample, samples from a given station shall be at least one week apart. Samples collected at the same location less than seven days apart shall be considered as one sample, with the median value used to represent the sampling period. However, if any of the individual values exceed acutely toxic levels, then the worst case value shall be used to represent the sampling period. The worst case value is the minimum value for dissolved oxygen, both the minimum and maximum for pH, or the maximum value for other parameters. However, when data are available from diel or depth profile studies, the lower tenth percentile value shall be used to represent worst case conditions. For the purposes of this chapter, samples collected within 200 meters of each other will be considered the same station or location, unless there is a tributary, an outfall, or significant change in the hydrography of the water. Data from different stations within a water segment shall be treated as separate samples even if collected at the same time. However, there shall be at least five
independent sampling events during the ten year assessment period, with at least one sampling
event conducted in three of the four seasons of the calendar year. For the purposes of this
chapter, the four seasons shall be January 1 through March 31, April 1 through June 30, July 1
through September 30, and October 1 through December 31.

(5) Notwithstanding the requirements of paragraph (4), water segments shall be
included on the planning list if:

(a) there are less than ten samples for the segment, but there are three or more
temporally independent exceedances of an applicable water quality criterion, or

(b) there are more than one exceedance of an acute toxicity-based water quality
criterion in any three year period.

(6) Outliers identified through statistical procedures shall be excluded from the
assessment. However, the Department shall note for the record that the data were excluded
and explain why they were excluded.

(7) The Department shall consider all readily available water quality data. However, to
be used to determine water quality exceedances,

(a) data shall be collected and analyzed in accordance with Chapter 62-160, F.A.C., and

(b) for data collected after one year from the effective date of this rule, the sampling
agency must provide the associated quality assurance data needed for a Tier 2 data quality
assessment, with appropriate data fields entered into STORET.

(8) To be used to determine exceedances of metals criteria,

(a) surface water data for mercury shall be collected and analyzed using clean sampling
and analytical techniques, and

(b) the corresponding hardness value shall be required to determine exceedances of
freshwater metals criteria that are hardness dependent, and if the ambient hardness value is
less than 25 mg/L as CaCO₃, then a hardness value of 25 will be used to calculate the criteria.

If data are not used due to sampling or analytical techniques or because hardness data
were not available, the Department shall note for the record that data were excluded and
explain why they were excluded.

(9) Surface water data with values below the applicable practical quantification limit
(PQL) or method detection limit (MDL) shall be assessed in accordance with Rules 62-
4.246(6)(b)-(d) and (8), F.A.C.

(a) If sampling entities want to ensure that their data will be considered for evaluation,
they should review the Department's list of approved MDLs and PQLs developed pursuant to
Rule 62-4.246, F.A.C., and, if available, use approved analytical methods with MDLs below the applicable water quality criteria. If there are no approved methods with MDLs below a criterion, then the method with the lowest MDL should be used. Analytical results listed as below detection or below the MDL shall not be used for developing planning lists if the MDL was above the criteria and there were, at the time of sample collection, approved analytical methods with MDLs below the criteria on the Department's list of approved MDLs and PQLs.

(b) If appropriate analytical methods were used, then data with values below the applicable MDL will be deemed to meet the applicable water quality criterion and data with values between the MDL and PQL will be deemed to be equal to the MDL.

(10) It should be noted that the data requirements of this rule constitute the minimum data set needed to assess a water segment for impairment. Agencies or groups designing monitoring networks are encouraged to consult with the Department to determine the sample design appropriate for their specific monitoring goals.

Specific Authority 403.061, 403.067, FS.
Law Implemented 403.062, 403.067, FS.
History -- New

62-303.330 Biological Assessment.

(1) Biological data must meet the requirements of paragraphs (3) and (7) in section 62-303.320.

(2) Bioassessments used to assess streams and lakes under this rule shall include BioRecons, Stream Condition Indices (SCIs), and the benthic macroinvertebrate component of the Lake Condition Index (LCI), which only applies to clear lakes with a color less than 40 platinum cobalt units. Because of the complexity of bioassessment procedures, persons conducting the bioassessment will, in addition to meeting the quality assurance requirements of Chapter 62-160, F.A.C., be required to pass a Department sanctioned field audit before their bioassessment data will be considered valid for use under this rule.

(3) Water segments with at least one failed bioassessment or one failure of the biological integrity standard, Rule 62-302.530(11), shall be included on the planning list for assessment of aquatic life use support.

(a) In streams, the bioassessment can be an SCI or a BioRecon. Failure of a bioassessment for streams consists of a "poor" or "very poor" rating on the Stream Condition Index, or not meeting the minimum thresholds established for all three metrics (taxa richness, Ephemeroptera/Plecoptera/Tricoptera Index, and Florida Index) on the BioRecon.
(b) Failure for lakes consists of a "poor" or "very poor" rating on the Lake Condition Index.

(4) Other information relevant to the biological integrity of the water segment, including information about alterations in the type, nature, or function of a water, shall also be considered when determining whether aquatic life use support has been maintained.

Specific Authority 403.061, 403.067, FS.

Law Implemented 403.062, 403.067, FS.

History -- New


(1) All toxicity tests used to place a water segment on a planning list shall be based on surface water samples and shall be conducted and evaluated in accordance with Chapter 62-160, F.A.C., and subsections 62-302.200(1) and (4), F.A.C., respectively.

(2) Water segments with two samples indicating acute toxicity within a twelve month period shall be placed on the planning list. Samples must be collected at least two weeks apart over a twelve month period, some time during the ten years preceding the assessment.

(3) Water segments with two samples indicating chronic toxicity within a twelve month period shall be placed on the planning list. Samples must be collected at least two weeks apart, some time during the ten years preceding the assessment.

Specific Authority 403.061, 403.067, FS.

Law Implemented 403.062, 403.067, FS.

History -- New


(1) Trophic state indices (TSIs) and annual mean chlorophyll a values shall be the primary means for assessing whether a water should be assessed further for nutrient impairment. Other information indicating an imbalance in flora or fauna due to nutrient enrichment, including, but not limited to, algal blooms, excessive macrophyte growth, decrease in the distribution (either in density or areal coverage) of seagrasses or other submerged aquatic vegetation, changes in algal species richness, and excessive diel oxygen swings, shall also be considered.

(2) To be used to determine whether a water should be assessed further for nutrient enrichment.

(a) data must meet the requirements of paragraphs (2)-(4), (6), and (7) in rule 62-303.320.
(b) at least one sample from each season shall be required in any given year to
calculate a Trophic State Index (TSI) or an annual mean chlorophyll a value for that year, and
(c) there must be annual means from at least four years, when evaluating the change in
TSI over time pursuant to paragraph 62-303.352(3).

(3) When comparing changes in chlorophyll a or TSI values to historical levels, historical
levels shall be based on the lowest five-year average for the period of record. To calculate a
five-year average, there must be annual means from at least three years of the five-year period.

Specific Authority 403.061, 403.067, FS.
Law Implemented 403.062, 403.067, FS.
A stream or stream segment shall be included on the planning list for nutrients if the
following biological imbalances are observed:
(1) algal mats are present in sufficient quantities to pose a nuisance or hinder
reproduction of a threatened or endangered species, or
(2) annual mean chlorophyll a concentrations are greater than 20 μg/l or if data indicate
annual mean chlorophyll a values have increased by more than 50% over historical values for
at least two consecutive years.

Specific Authority 403.061, 403.067, FS.
Law Implemented 403.062, 403.067, FS.
For the purposes of evaluating nutrient enrichment in lakes, TSIs shall be calculated
based on the procedures outlined on pages 86 and 87 of the State's 1996 305(b) report, which
are incorporated by reference. Lakes or lake segments shall be included on the planning list for
nutrients if:
(1) For lakes with a mean color greater than 40 platinum cobalt units, the annual mean
TSI for the lake exceeds 60, unless paleolimnological information indicates the lake was
naturally greater than 60, or
(2) For lakes with a mean color less than or equal to 40 platinum cobalt units, the annual
mean TSI for the lake exceeds 40, unless paleolimnological information indicates the lake was
naturally greater than 40, or
(3) For any lake, data indicate that annual mean TSI's have increased over the assessment period, as indicated by a positive slope in the means plotted versus time, or the annual mean TSI has increased by more than 10 units over historical values. When evaluating the slope of mean TSI's over time, the Department shall use a Mann's one-sided, upper-tail test for trend, as described in Nonparametric Statistical Methods by M. Hollander and D. Wolfe (1999 ed.), pages 376 and 724 (which are incorporated by reference), with a 95% confidence level.

Specific Authority 403.061, 403.067, FS.
Law Implemented 403.062, 403.067, FS.

History -- New

62-303.353 Nutrients in Estuaries.
Estuaries or estuary segments shall be included on the planning list for nutrients if their annual mean chlorophyll a for any year is greater than 11 ug/l or if data indicate annual mean chlorophyll a values have increased by more than 50% over historical values for at least two consecutive years.

Specific Authority 403.061, 403.067, FS.
Law Implemented 403.062, 403.067, FS.

History -- New

62-303.360 Primary Contact and Recreation Use Support.
(1) A Class I, II, or III water shall be placed on the planning list for primary contact and recreation use support if:
(a) the water segment does not meet the applicable water quality criteria for bacteriological quality based on the methodology described in section 62-303.320, or
(b) the water segment includes a bathing area that was closed by a local health Department or county government for more than one week or more than once during a calendar year based on bacteriological data, or
(c) the water segment includes a bathing area for which a local health Department or county government has issued closures, advisories, or warnings totaling 21 days or more during a calendar year based on bacteriological data, or
(d) the water segment includes a bathing area that was closed or had advisories or warnings for more than 12 weeks during a calendar year based on previous bacteriological data or on derived relationships between bacteria levels and rainfall or flow.
For data collected after August 1, 2000, the Florida Department of Health (DoH) database shall be the primary source of data used for determining bathing area closures.

(3) Advisories, warnings, and closures based on red tides, rip tides, sewage spills, sharks, medical wastes, hurricanes, or other factors not related to chronic discharges of pollutants shall not be included when assessing recreation use support. However, the Department shall note for the record that data were excluded and explain why they were excluded.

Specific Authority 403.061, 403.067, FS.
Law Implemented 403.062, 403.067, FS.

History -- New

62-303.370 Fish and Shellfish Consumption Use Support.
A Class I, II, or III water shall be placed on the planning list for fish and shellfish consumption if:

(1) the water segment does not meet the applicable Class II water quality criteria for bacteriological quality based on the methodology described in section 62-303.320, or
(2) there is either a limited or no consumption fish consumption advisory, issued by the DoH, or other authorized governmental entity, in effect for the water segment, or
(3) for Class II waters, the water segment includes an area that has been approved for shellfish harvesting by the Shellfish Evaluation and Assessment Program, but which has been downgraded from its initial harvesting classification to a more restrictive classification. Changes in harvesting classification from prohibited to unclassified do not constitute a downgrade in classification.

Specific Authority 403.061, 403.067, FS.
Law Implemented 403.062, 403.067, FS.

History -- New

(1) A Class I water shall be placed on the planning list for drinking water use support if:
(a) the water segment does not meet the applicable Class I water quality criteria based on the methodology described in section 62-303.320, or
(b) a public water system demonstrates to the Department that either:
1. Treatment costs to meet applicable drinking water criteria have increased by at least 25% to treat contaminants that exceed Class I criteria or to treat blue-green algae or other nuisance algae in the source water, or

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2. the system has changed to an alternative supply because of additional costs that
would be required to treat their surface water source.

c) When determining increased treatment costs described in paragraph (b), costs due
solely to new, more stringent drinking water requirements, inflation, or increases in costs of
materials shall not be included.

(2) A water shall be placed on the planning list for assessment of the threat to human
health if the annual mean concentration for any year of the assessment period exceeds a
human health-based criteria expressed as an annual average. To be used to determine
whether a water should be assessed further for human-health impacts, data must meet the
requirements of paragraphs (2), (3), (6), and (7) in rule 62-303.320.

Specific Authority 403.061, 403.067, FS.
Law Implemented 403.062, 403.067, FS.

History -- New

PART III

THE VERIFIED LIST

62-303.400 Methodology to Develop the Verified List.

(1) Waters shall be verified as being impaired if they meet the requirements for the
planning list in Part II and the additional requirements of sections 62-303.420-.480. A water
body that fails to meet the minimum criteria for surface waters established in Rule 62-302.500,
F.A.C.; any of its designated uses, as described in this part; or applicable water quality criteria,
as described in this part, shall be determined to be impaired.

(2) Additional data and information collected after the development of the planning list
will be considered when assessing waters on the planning list, provided it meets the
requirements of this chapter. In cases where additional data are needed for waters on the
planning list to meet the data sufficiency requirements for the verified list, it is the Department's
goal to collect this additional data as part of its watershed management approach, with the data
collected during either the same cycle that the water is initially listed on the planning list (within
1 year) or during the subsequent cycle (six years). Except for data used to evaluate historical
trends in chlorophyll a or TSIs, the Department shall not use data that are more than 7.5 years
old at the time the water segment is proposed for listing on the verified list.

Specific Authority 403.061, 403.067, FS.
Law Implemented 403.062, 403.067, FS.
Draft (Notice of Proposed Rulemaking)

History -- New


Failure to meet any of the metrics used to determine aquatic life use support listed in sections 62-303.420-450 shall constitute verification that there is an impairment of the designated use for propagation and maintenance of a healthy, well-balanced population of fish and wildlife.

Specific Authority 403.061, 403.067, FS.

Law Implemented 403.062, 403.067, FS.

History -- New

62-303.420 Exceedances of Aquatic Life-Based Water Quality Criteria.

(1) The Department shall reexamine the data used in rule 62-303.320 to determine exceedances of water quality criteria.

(a) If the exceedances are not due to pollutant discharges and reflect either physical alterations of the water body that cannot be abated or natural background conditions, the water shall not be listed on the verified list. In such cases, the Department shall note for the record why the water was not listed and provide the basis for its determination that the exceedances were not due to pollutant discharges.

(b) If the Department cannot clearly establish that the exceedances are due to natural background or physical alterations of the water body but the Department believes the exceedances are not due to pollutant discharges, it is the Department's intent to determine whether aquatic life use support is impaired through the use of bioassessment procedures referenced in section 62-303.330. The water body or segment shall not be included on the verified list for the parameter of concern if two or more independent bioassessments are conducted and no failures are reported. To be treated as independent bioassessments, they must be conducted at least two months apart.

(2) If the water was listed on the planning list and there were insufficient data from the last five years preceding the planning list assessment to meet the data distribution requirements of section 303.320(4) and to meet a minimum sample size for verification of twenty samples, additional data will be collected as needed to provide a minimum sample size of twenty. Once these additional data are collected, the Department shall re-evaluate the data using the approach outlined in rule 62-303.320(1), but using Table 2, which provides the number of exceedances that indicate a minimum of a 10% exceedance frequency with a minimum of a 90% confidence level using a binomial distribution. The Department shall limit
the analysis to data collected during the five years preceding the planning list assessment and

the additional data collected pursuant to this paragraph.
Table 2: Verified List

Minimum number of measured exceedances needed to put on the Verified list with at least 90% confidence that the actual exceedance rate is greater than or equal to ten percent.

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(3) If the water was placed on the planning list based on worst case values used to represent multiple samples taken during a seven day period, the Department shall evaluate whether the worst case value should be excluded from the analysis pursuant to subsections (4) and (5). If the worst case value should not be used, the Department shall then re-evaluate the data following the methodology in rule 62-303.420(2), using the more representative worst case value or, if all valid values are below acutely toxic levels, the median value.

(4) If the water was listed on the planning list based on exceedances of water quality criteria for metals, the metals data shall be validated to determine whether the quality assurance requirements of rule 62-303.320(7) are met and whether the sample was both collected and analyzed using clean techniques, if the use of clean techniques is appropriate. If any data cannot be validated, the Department shall re-evaluate the remaining valid data using the methodology in rule 62-303.420(2), excluding any data that cannot be validated.

(5) Outliers identified through statistical procedures, water quality criteria exceedances due solely to violations of specific effluent limitations contained in state permits authorizing discharges to surface waters, water quality criteria exceedances within permitted mixing zones for those parameters for which the mixing zones are in effect, and water quality data collected following contaminant spills, discharges due to upsets or bypasses from permitted facilities, or rainfall in excess of the 25-year, 24-hour storm, shall be excluded from the assessment. However, the Department shall note for the record that the data were excluded and explain why they were excluded.

(6) Once the additional data review is completed pursuant to paragraphs (1) through (5), the Department shall re-evaluate the data and shall include waters on the verified list that meet the criteria in rules 62-303.420(2) or 62-303.320(5)(b).

Specific Authority: 403.061, 403.067, FS.

Law Implemented: 403.021(11), 403.062, 403.067, FS.

History -- New

62-303.430 Biological Impairment.

(1) All bioassessments used to list a water on the verified list shall be conducted in accordance with Chapter 62-160, F.A.C., including Department-approved Standard Operating Procedures. To be used for placing waters on the verified list, any bioassessments conducted before the adoption of applicable SOPs for such bioassessments as part of Chapter 62-160 shall substantially comply with the subsequent SOPs.

(2) If the water was listed on the planning list based on bioassessment results, the water
shall be determined to be biologically impaired if there were two or more failed bioassessments within the five years preceding the planning list assessment. If there were less than two failed bioassessments during the last five years preceding the planning list assessment, the Department will conduct an additional bioassessment. If the previous failed bioassessment was a BioRecon, then an SCI will be conducted. Failure of this additional bioassessment shall constitute verification that the water is biologically impaired.

(3) If the water was listed on the planning list based on other information specified in rule 62-303.330(4) indicating biological impairment, the Department will conduct a bioassessment in the water segment, conducted in accordance with the methodology in rule 62-303.330, to verify whether the water is impaired. For streams, the bioassessment shall be an SCI. Failure of this bioassessment shall constitute verification that the water is biologically impaired.

(4) Following verification that a water is biologically impaired, a water shall be included on the verified list for biological impairment if:

(a) There are water quality data specifying the particular pollutant(s) causing the impairment and the concentration of the pollutant(s); and

(b) One of the following demonstrations is made:

1. if there is a numeric criterion for the specified pollutant(s) in Chapter 62-302, F. A. C., but the criterion is met, an identification of the specific factors as to why the numeric criterion is not adequate to protect water quality, or

2. if there is not a numeric criterion for the specified pollutant(s) in Chapter 62-302, F.A.C., the specific factors concerning the particular pollutant(s) shall be identified which connect the specified pollutant to the observed biological effect.

Specific Authority 403.061, 403.067, FS.
Law Implemented 403.062, 403.067, FS.
History -- New

62-303.440 Toxicity.

(1) A water segment shall be verified as impaired due to surface water toxicity if:
(a) the water segment was listed on the planning list based on acute toxicity data, or
(b) the water segment was listed on the planning list based on chronic toxicity data and the impairment is confirmed with a failed bioassessment that was conducted within six months of a failed chronic toxicity test. For streams, the bioassessment shall be an SCI.

(2) Following verification that a water is impaired due to toxicity, a water shall be
Included on the verified list if the requirements of paragraph 62-303.430(4) are met.

(3) Toxicity data collected following contaminant spills, discharges due to upsets or bypasses from permitted facilities, or rainfall in excess of the 25-year, 24-hour storm, shall be excluded from the assessment. However, the Department shall note for the record that the data were excluded and explain why they were excluded.

Specific Authority 403.061, 403.067, FS.
Law Implemented 403.062, 403.067, FS.

History -- New

62-303.450 Interpretation of Narrative Nutrient Criteria.

(1) A water shall be placed on the verified list for impairment due to nutrients if there are sufficient data from the last five years preceding the planning list assessment, combined with historical data (if needed to establish historical chlorophyll a levels or historical TSSs), to meet the data sufficiency requirements of rule 62-303.350(2). If there are insufficient data, additional data shall be collected as needed to meet the requirements. Once these additional data are collected, the Department shall re-evaluate the data using the thresholds provided in rule 62-303.351-.353, for streams, lakes, and estuaries, respectively, or alternative, site-specific thresholds that more accurately reflect conditions beyond which an imbalance in flora or fauna occurs in the water segment. In any case, the Department shall limit its analysis to the use of data collected during the five years preceding the planning list assessment and the additional data collected in the second phase. If alternative thresholds are used for the analysis, the Department shall provide the thresholds for the record and document how the alternative threshold better represents conditions beyond which an imbalance in flora or fauna is expected to occur.

(2) If the water was listed on the planning list for nutrient enrichment based on other information indicating an imbalance in flora or fauna, as provided in Rule 62-303.350(1), the Department shall verify the imbalance before placing the water on the verified list for impairment due to nutrients and shall provide documentation supporting the imbalance in flora or fauna.

Specific Authority 403.061, 403.067, FS.
Law Implemented 403.062, 403.067, FS.

History -- New

62-303.460 Primary Contact and Recreation Use Support.
(1) The Department shall review the data used by the DoH as the basis for bathing area closures, advisories or warnings and verify that the values exceeded the applicable DoH thresholds and the data meet the requirements of Chapter 62-160. If the segment is listed on the planning list based on bathing area closures, advisories, or warnings issued by a local health department or county government, closures, advisories, or warnings based on red tides, rip tides, sewer line breaks, sharks, medical wastes, hurricanes, or other factors not related to chronic discharges of pollutants shall not be included when verifying primary contact and recreation use support. The Department shall then re-evaluate the remaining data using the methodology in rule 62-303.360(1)(c). Water segments that meet the criteria in rule 62-303.360(1)(c) shall be included on the verified list.

(2) If the water segment was listed on the planning list due to exceedances of water quality criteria for bacteriological quality, the Department shall, to the extent practical, evaluate the source of bacteriological contamination and shall verify that the impairment is due to chronic discharges of human-induced bacteriological pollutants before listing the water segment on the verified list. The Department shall take into account the proximity of municipal stormwater outfalls, septic tanks, and domestic wastewater facilities when evaluating potential sources of bacteriological pollutants. For water segments that contain municipal stormwater outfalls, the impairment documented for the segment shall be presumed to be due, at least in part, to chronic discharges of bacteriological pollutants. The Department shall then re-evaluate the data using the methodology in rule 62-303.320(1), excluding any values that are elevated solely due to wildlife. Water segments shall be included on the verified list if they meet the requirements in rule 62-303.420(6).

Specific Authority 403.061, 403.067, FS.
Law Implemented 403.061, 403.067, FS.
History -- New

62-303.470 Fish and Shellfish Consumption Use Support.

(1) In order to be used under this part, the Department shall review the data used by the DoH as the basis for fish consumption advisories and determine whether it meets the following requirements:

(a) the advisory is based on the statistical evaluation of fish tissue data from at least twelve fish collected from the specific water segment or water body to be listed,

(b) starting one year from the effective date of this rule, the data are collected in accordance with DEP SOP FS6000 (General Biological Tissue Sampling) and FS 6200 (Finfish
Tissue Sampling), which are incorporated by reference, the sampling entity has established Data Quality Objectives (DQOs) for the sampling, and the data meet the DQOs. Data collected before one year from the effective date of this rule shall substantially comply with the listed SOPs and any subsequently developed DQOs.

(c) there are sufficient data from within the last seven years to support the continuation of the advisory.

(2) If the segment is listed on the planning list based on fish consumption advisories, waters with fish consumption advisories for pollutants that are no longer legally allowed to be used or discharged shall not be placed on the verified list because the TMDL will be zero for the pollutant.

(3) Waters determined to meet the requirements of this section shall be listed on the verified list.

Specific Authority 403.061, 403.067, FS.

Law Implemented 403.062, 403.067, FS.

History -- New


If the water segment was listed on the planning list due to exceedances of a human health-based water quality criterion and there were insufficient data from the last five years preceding the planning list assessment to meet the data sufficiency requirements of section 303.320(4), additional data will be collected as needed to meet the requirements. Once these additional data are collected, the Department shall re-evaluate the data using the methodology in rule 62-303.380(2) and limit the analysis to data collected during the five years preceding the planning list assessment and the additional data collected pursuant to this paragraph (not to include data older than 7.5 years). For this analysis, the Department shall exclude any data meeting the requirements of paragraph 303.420(5). Any water segments that have a mean annual average that exceeds the applicable criterion shall be listed on the verified list.

Specific Authority 403.061, 403.067, FS.

Law Implemented 403.062, 403.067, FS.

History -- New

62-303.500 Prioritization.

(1) When establishing the TMDL development schedule for water segments on the verified list of impaired waters, the Department shall prioritize impaired water segments according to the severity of the impairment and the designated uses of the segment, taking into
account the most serious water quality problems; most valuable and threatened resources; and risk to human health and aquatic life. Impaired waters shall be prioritized as high, medium, or low priority.

(2) The following waters shall be designated high priority:

(a) Water segments where the impairment poses a threat to potable water supplies or to human health.
(b) Water segments where the impairment is due to a pollutant regulated by the CWA and the pollutant has contributed to the decline or extirpation of a federally listed threatened or endangered species, as indicated in the Federal Register listing the species.

(3) The following waters shall be designated low priority:

(a) Water segments that are listed before 2010 due to fish consumption advisories for mercury (due to the current insufficient understanding of mercury cycling in the environment).
(b) Man-made canals, urban drainage ditches, and other artificial water segments that are listed only due to exceedances of the dissolved oxygen criteria.
(c) Water segments that were not on a planning list of impaired waters, but which were identified as impaired during the second phase of the watershed management approach and were included in the verified list, unless the segment meets the criteria in paragraph (2) for high priority.

(4) All segments not designated high or low priority shall be medium priority and shall be prioritized based on the following factors:

(a) the presence of Outstanding Florida Waters.
(b) the presence of water segments that fail to meet more than one designated use.
(c) the presence of water segments that exceed an applicable water quality criterion or alternative threshold with a greater than twenty-five percent exceedance frequency with a minimum of a 90 percent confidence level.
(d) the presence of water segments that exceed more than one applicable water quality criteria.
(e) administrative needs of the TMDL program, including meeting a TMDL development schedule agreed to with EPA, basin priorities related to following the Department’s watershed management approach, and the number of administratively continued permits in the basin.

Specific Authority 403.061, 403.067, FS.
Law Implemented 403.062, 403.067, FS.
History -- New
62-303.600 Evaluation of Pollution Control Mechanisms.

(1) Upon determining that a water body is impaired, the Department shall evaluate whether existing or proposed technology-based effluent limitations and other pollution control programs under local, state, or federal authority are sufficient to result in the attainment of applicable water quality standards.

(2) If, as a result of the factors set forth in (1), the water segment is expected to attain water quality standards in the future and is expected to make reasonable progress towards attainment of water quality standards by the time the next 303(d) list is scheduled to be submitted to EPA, the segment shall not be listed on the verified list. The Department shall document the basis for its decision, noting any proposed pollution control mechanisms and expected improvements in water quality that provide reasonable assurance that the water segment will attain applicable water quality standards.

Specific Authority 403.061, 403.067, FS.

Law Implemented 403.062, 403.067, FS.

History -- New


(1) The Department shall, to the extent practical, develop basin-specific verified lists of impaired waters as part of its watershed management approach, which rotates through the State's surface water basins on a five year cycle. At the end of the first phase of the cycle, which is designed to develop a preliminary assessment of the basin, the Department shall update the planning list for the basin and shall include the planning list in the status report for the basin, which will be noticed to interested parties in the basin. If the specific pollutant causing the impairment in a particular water segment is not known at the time the planning list is prepared, the list shall provide the basis for including the water segment on the planning list. In these cases, the pollutant and concentration causing the impairment shall be identified before the water segment is included on the verified list to be adopted by Secretarial Order. During the second phase of the cycle, which is designed to collect additional data on waters in the basin, interested parties shall be provided the opportunity to work with the Department to collect additional water quality data. Alternatively, interested parties may develop proposed water pollution control mechanisms that may affect the final verified list adopted by the Secretary at the end of the second phase. To ensure that data or information will be considered in the preliminary basin assessment, it must be submitted to the Department or entered into STORET or, if applicable, the DoH database no later than September 30 during
(2) Within a year of the effective date of this rule, the Department shall also prepare a planning list for the entire state.

Specific Authority 403.061, 403.067, FS.

Law Implemented 403.062, 403.067, FS.

History -- New

62-303.710 Format of Verified List and Verified List Approval.

(1) The Department shall follow the methodology established in this chapter to develop basin-specific verified lists of impaired water segments. The verified list shall specify the pollutant or pollutants causing the impairment and the concentration of the pollutant(s) causing the impairment. If the water segment is listed based on water quality criteria exceedances, then the verified list shall provide the applicable criteria. However, if the listing is based on narrative or biological criteria, or impairment of other designated uses, and the water quality criteria are met, the list shall specify the concentration of the pollutant relative to the water quality criteria and explain why the numerical criterion is not adequate.

(2) For waters with exceedances of the dissolved oxygen criteria, the Department shall identify the pollutants causing or contributing to the exceedances and list both the pollutant and dissolved oxygen on the verified list.

(3) For waters impaired by nutrients, the Department shall identify whether nitrogen or phosphorus, or both, are the limiting nutrients, and specify the limiting nutrient(s) in the verified list.

(4) The verified list shall also include the priority and the schedule for TMDL development established for the water segment, as required by federal regulations.

(5) The verified list shall also note any waters that are being removed from the current planning list and any previous verified list for the basin.

(6) The verified basin-specific 303(d) list shall be approved by order of the Secretary.

Specific Authority 403.061, 403.067, FS.

Law Implemented 403.062, 403.067, FS.

History -- New

PART IV

MISCELLANEOUS PROVISIONS

(1) Waters on planning lists developed under this Chapter that are verified to not be impaired during development of the verified list shall be removed from the State's planning list. Once a water segment is verified to not be impaired pursuant to Part III of this chapter, the data used to place the water on the planning list shall not be the sole basis for listing that water segment on future planning lists.

(2) Water segments shall be removed from the State's verified list only after completion of a TMDL for all pollutants causing impairment of the segment or upon demonstration that the water meets the water quality standard that was previously established as not being met.

(a) For waters listed due to failure to meet aquatic life use support based on water quality criteria exceedances or due to threats to human health based on exceedances of single sample water quality criteria, the water shall be delisted when:

1. the number of exceedances of an applicable water quality criterion due to pollutant discharges is less than or equal to the number listed in Table 3 for the given sample size, with a minimum sample size of 30. This table provides the number of exceedances that indicate a maximum of a 10% exceedance frequency with a minimum of a 90% confidence level using a binomial distribution, or

2. following implementation of pollution control activities that are expected to be sufficient to result in attainment of applicable water quality standards, evaluation of new data indicates the water no longer meets the criteria for listing established in section 62-303.420, or

3. following demonstration that the water was inappropriately listed due to flaws in the original analysis, evaluation of available data indicates the water does not meet the criteria for listing established in section 62-303.420.

New data evaluated under rule 62-303.720(2)(a)1. must meet the following requirements:

a. they must include samples collected during similar conditions (same seasons and general flow conditions) that the data previously used to determine impairment were collected, with no more than 50% of the samples collected in any one quarter,

b. the sample size must be a minimum of 30 samples, and

c. the data must meet the requirements of paragraphs 62-303.320(4), (6) and (7).

(b) For waters listed due to failure to meet aquatic life use support based on biological data, the water shall be delisted when the segment passes two independent follow-up
bioassessments and there have been no failed bioassessments for at least one year. The follow-up tests must meet the following requirements:

1. For streams, the new data may be two BioRecons or any combination of BioRecons and SCIs.

2. The bioassessments must be conducted during similar conditions (same seasons and general flow conditions) under which the previous bioassessments used to determine impairment were collected.

3. The data must meet the requirements of Section 62-303.330(1) and (2), F.A.C.

(c) For waters listed due to failure to meet aquatic life use support based on toxicity data, the water shall be delisted when the segment passes two independent follow-up toxicity tests and there have been no failed toxicity tests for at least one year. The follow-up tests must meet the following requirements:

1. The tests must be conducted using the same test protocols and during similar conditions (same seasons and general flow conditions) under which the previous test used to determine impairment were collected.

2. The data must meet the requirements of rules 62-303.340(1), and the time requirements of rules 62-303.340(2) or (3).

(d) For waters listed due to fish consumption advisories, the water shall be delisted following the lifting of the advisory or when data complying with rule 62-303.470(1)(a) and (b) demonstrate that the continuation of the advisory is no longer appropriate.

(e) For waters listed due to changes in shellfish bed management classification, the water shall be delisted upon reclassification of the shellfish harvesting area to its original or higher harvesting classification. Reclassification of a water from prohibited to unclassified does not constitute a higher classification.

(f) For waters listed due to bathing area closure or advisory data, the water shall be delisted if the bathing area does not meet the listing thresholds in rule 62-303.360(1) for five consecutive years.

(g) For waters listed based on impacts to potable water supplies, the water shall be delisted when applicable water quality criteria are met as defined in rule 62-303.380(1)(a) and when the causes resulting in higher treatment costs have been ameliorated.

(h) For waters listed based on exceedance of a human health-based annual average criterion, the water shall be delisted when the annual average concentration is less than the criterion for three consecutive years.
(i) For waters listed based on nutrient impairment, the water shall be delisted if it does not meet the listing thresholds in rule 62-303.450 for three consecutive years.

(i) For any listed water, the water shall be delisted if, following a change in approved analytical procedures, criteria, or water quality standards, evaluation of available data indicates the water no longer meets the applicable criteria for listing.
Table 3: Delisting

Maximum number of measured exceedances allowable to DELIST with at least 90% confidence that the actual exceedance rate is less than ten percent.

<table>
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<th>Sample sizes</th>
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(3) Any delisting of waters from the verified list shall be approved by order of the
Secretary at such time as the requirements of this section are met.
Specific Authority 403.061, 403.067, FS.
Law Implemented 403.062, 403.067, FS.
History -- New

62-303.810 Impairment of Interstate and Tribal Waters.
The Department shall work with Alabama, Georgia, and federally recognized
Indian Tribes in Florida to share information about their assessment methodology and
share water quality data for waters that form state boundaries or flow into Florida. In
cases where assessments are different for the same water body, the Department shall,
to the extent practical, work with the appropriate state, Indian Tribe and EPA to
determine why the assessments were different.
Specific Authority 403.061, 403.067 FS.
Law Implemented 403.062, 403.067 FS.
History -- New