UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUL 24 2017

Mr. Tom Frick
Director
Division of Environmental Assessment and Restoration
Florida Department of Environmental Protection
Mail Station 3000
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Dear Mr. Frick:

The United States Environmental Protection Agency has completed its review of a majority of the revisions adopted as part of the State's Triennial Review and contained in Rules 62-4, 62-302, and 62-303. All of the Triennial Review revisions were considered and approved for adoption by the Florida Environmental Regulation Commission (ERC) at a public hearing on December 9, 2015. The Florida Department of Environmental Protection (FDEP) subsequently filed the amendments for adoption with the Florida Department of State on January 28, 2016. The rule amendments took effect on February 17, 2016. On June 14, 2016, the EPA received a letter from Frederick L. Aschauer, Jr., General Counsel of Florida Department of Environmental Protection to Ms. Heather McTeer Toney, Regional Administrator, U.S. EPA Region 4, dated June 7, 2016, certifying that the amendments were duly adopted pursuant to state law.

As laid out in the enclosed decision document, titled *Decision Document of the United States Environmental Protection Agency Determination Under § 303(c) of the Clean Water Act Review of a Portion of Florida's 2015 Triennial Review of Changes to Rules 62-4, 62-302 and 62-303*, the EPA is approving revisions that included, but were not limited to, upgrades to waterbody designated uses, revised statewide marine and freshwater bacteriological criteria, natural condition considerations regarding alkalinity criteria, the inclusion of total ammonia, freshwater nonylphenol, carbaryl, chlorpyrifos, and diazinon criteria, as well as certain revisions to the Identification of Impaired Surface Waters and Permits regulations. The revisions at 62-303.720(2)(k)2, 62-303.720(2)(k)6, and those provisions of subsection 62-302.530(46) addressing Class II, Class III Marine, and Class III-limited Marine waters that were adopted by the State as part of its Triennial Review are still under review by the EPA and will be addressed under separate cover.

In addition to the EPA's review pursuant to Section 303 of the Clean Water Act, Section 7(a)(2) of the Endangered Species Act (ESA) requires federal agencies, in consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the Services), to ensure that their actions are not likely to jeopardize the continued existence of federally listed species or result in the destruction or adverse modification of designated critical habitat of such species. Based on consultations to date with the Services, the consultation with the U.S. Fish and Wildlife Service for ammonia is complete following concurrence dated January 19, 2017. Consultation with the U.S. Fish and Wildlife Service for nonylphenol in freshwater and alkalinity is complete following concurrence dated February 9, 2017, and consultation continues with the National Marine Fisheries Service for nonylphenol in saltwater.

Consultation for carbaryl, chlorpyrifos, and diazinon has not concluded. The Agency's decisions regarding these criteria are subject to the results of consultation under Section 7 of the ESA. The Agency will notify the FDEP of the results of the Section 7 Fish and Wildlife Service and National Marine Fisheries Service consultations upon completion of those activities.

We would like to commend you and your staff for your continued efforts in environmental protection for the State of Florida, particularly your pre-adoption coordination efforts with our office and the Services. Should you have any questions regarding the EPA's action today, please contact me at (404) 562-9469 or have a member of your staff contact Dr. Katherine Snyder, Florida Water Quality Standards Coordinator at (404) 562-9840.

Sincerely,

Mary S. Walker
Director
Water Protection Division

Enclosure

cc: Mr. Frederick L. Aschauer, Jr., FDEP

Decision Document of the United States Environmental Protection Agency Determination Under § 303(c) of the Clean Water Act Review of a Portion of Florida's 2015 Triennial Review of Changes to Rules 62-4, 62-302 and 62-303

In a letter dated June 7, 2016, from Frederick L. Aschauer, Jr., General Counsel for the Florida Department of Environmental Protection (the FDEP or the Department), to Heather McTeer Toney, Regional Administrator of the EPA's Region 4 Office, the state of Florida submitted new and revised water quality standards for review by the U.S. Environmental Protection Agency pursuant to Section 303(c) of the Clean Water Act (CWA or Act). In the June 7, 2016 letter, the General Counsel certified that the WQS revisions were duly adopted pursuant to Florida law. These new and revised water quality standards (WQS) are set out primarily in Rule 62-302 of the Florida Administrative Code (F.A.C.) [Surface Water Quality Standards]. The State also submitted amendments to Rule 62-303, F.A.C. [Identification of Impaired Surface Waters], which establishes the state of Florida's methodology for assessing whether waters are attaining state water quality standards, and Rule 62-4, F.A.C [Permits], which, in part, sets out the state of Florida's antidegradation implementation procedures. As discussed more fully below, where the EPA has determined that amendments to Rule 62-302, Rule 62-303, and Rule 62-4 are, themselves, new or revised water quality standards, the EPA has reviewed and approved those revisions pursuant to Section 303(c) of the CWA.[1]

Clean Water Act Requirements

Section 303(c) of the CWA requires states to establish WQS and to submit any new or revised standards to the EPA for review and approval or disapproval. WQS describe the desired condition of a waterbody and consist of three principal elements. CWA Section 303(c)(2).

States first identify the "designated uses" of the state's waters, such as public water supply, recreation, propagation of fish, or navigation. 40 C.F.R 131.10. These designated uses are based on both the actual and potential uses of the waterbody. 40 C.F.R. 131.3(f), (i); 131.10.

The second element of state water quality standards is a set of criteria that protect the designated use. 40 C.F.R. 131.11. Such criteria must be based on a sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. 40 C.F.R. 131.11(a). For waters with multiple use designations, the criteria must support the most sensitive use. The EPA's regulations also require that in establishing criteria, a state shall consider WQS of downstream waters and shall ensure that its WQS provide for the attainment and maintenance of WQS of downstream waters. See 40 C.F.R. 131.10(b). A state's submission of water quality criteria must include, among other things, (1) the methods used and analyses conducted to support WQS revisions, (2) water quality criteria sufficient to protect the designated uses and (3) a certification by the State Attorney General or other appropriate legal authority within the state that the WQS were duly adopted under state law. 40 C.F.R. 131.6.

Finally, EPA's regulations require states to adopt a statewide antidegradation policy that limits degradation of state waters and to identify its methods for implementing their antidegradation policies. 40 C.F.R. § 131.12.

[1] The EPA has provided FAQs on "What is a New or Revised Water Quality Standard Under CWA 303(c)(3)?" at http://water.epa.gov/scitech/swguidance/standards/cwa303faq.cfm. The link provides detailed information of such analysis.

Endangered Species Act Requirements

In addition to the EPA's review under Section 303 of the CWA, Section 7(a)(2) of the Endangered Species Act (ESA) requires federal agencies, in consultation with the Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS), to ensure that their actions are not likely to jeopardize the continued existence of federally listed species or result in the destruction or adverse modification of designated critical habitat of such species. With regard to consultation activities for Section 7 of the ESA, the EPA Region 4 concluded that the WQS being approved by the Agency, would either have no effect or may affect, but not likely to adversely affect, threatened and endangered species or their designated critical habitat. The EPA also concluded that they had no discretion to consult for some provisions of the approved WQS because they were derived to protect human health and the EPA has no discretion to revise an otherwise approvable human health criterion to benefit listed species.

The EPA's Decision Summary

Each of the state of Florida's water quality standards revisions is addressed in detail below along with the EPA's analysis and conclusions. The state of Florida's revisions to their water quality standards are shown below with additions to rule language presented with underlined text and removals from rule language presented with a strike-out text.

Revisions to Chapter 62-302[2] Surface Water Quality Standards

Section 62-302.200 through Paragraphs 62-302.400(16)(b)
Section 62-302.530 renumbering
Paragraph 62-302.531(2)(a)
Subsection 62-302.531(3)
Subparagraph 62-302.532(1)(c)2
Subsections 62-302.532 (2) & (3)
Subparagraph 62-302.533(1)(a)3
Paragraph 62-302.533(1)(e)
Subsection 62-302.533(4)
Subparagraphs 62-302.800(2)(d)1. through 62-302.800(3)(a)2.

These sections include multiple revisions that change the contact information for the Department, dates, numbering, and/or the web address for documents in 62-302. These revisions do not alter the meaning or intent of the previously approved corresponding provisions. The EPA has determined that these revisions are editorial, non-substantive changes to Florida's EPA-approved water quality standards. A copy of the revised WQS with these changes highlighted in yellow is provided in Appendix A: Non-Substantive Changes. The EPA approves the non-substantive word change revisions in Appendix A as being consistent with the CWA and the EPA's implementing regulations. The EPA notes, however, that its approval of these non-substantive changes does not re-open the EPA's prior approval of the underlying substantive WQS. For Endangered Species Act Section 7(a)(2) consultation requirements, these revisions were determined to have no effect on endangered species or their critical habitat.

Paragraph 62-302.400(b)

(15) Unless otherwise specified, the following shall apply:

[2] Unless otherwise stated, all rule and subsection citations are to provisions in the Florida Administrative Code.

(a) The landward extent of a classification shall coincide with the landward extent of waters of the state, as defined in Rule 62-340.600, F.A.C.

(b) Water quality classifications shall be interpreted to include associated water bodies such as tidal creeks, coves, bays and bayous. Notwithstanding paragraph 62-302.400(15)(a), F.A.C., above, the ~~The~~ boundaries of Class II waters shall be limited to "Predominantly Marine Waters" as defined in subsection 62-302.200(30), F.A.C.

The revision to paragraph 62-302.400(b) further defines how designated uses will be delineated for waters in the state of Florida. The EPA approves the revision as consistent with CWA Section 303(c) and 40 C.F.R. Section 131.11. For Endangered Species Act Section 7(a)(2) consultation requirements, these revisions were determined to have no effect on endangered species or their critical habitat.

Subparagraphs 62-302.400(16)(b)5., 9., 15., 19., 29., 31., 38., 56., 64., and 66.

Multiple revisions were made to the subparagraphs listed above to reclassify the designated use for nine surface waters consisting of 12 sub-areas from Class III waters (Fish Consumption; Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife) to Class II waters (Shellfish Propagation or Harvesting). The state of Florida incorporated maps into rule by reference, instead of geographic descriptions, of Class II waters for the following ten counties where the reclassifications occurred:

County	Waterbodies Reclassified	Sub-Areas[3]
5. Brevard	All or portions of the Mosquito Lagoon, Banana River, Newfound Harbor, Indian River, and Goat, Kid and Trout Creeks	Banana River Mosquito Lagoon Indian River
9. Citrus County	All coastal waters and tidal creeks within the county, excluding (a) waters landward of the mouths of Bungalou Pass, East Pass, Johns Creek, Trout Creek, and the Cross Florida Barge Canal entrance next to Trout Creek, (b) Crystal River, (c) a portion of the Salt River south of the northern juncture of Salt Creek, and (d) the St. Martins River from its mouth to Greenleaf Bay	Coastal waters (including areas near Withlacoochee River mouth and Salt River)
15. Dixie County	All coastal waters within the county, excluding the mouth of the Suwannee River and its passes	Coastal waters (including Horseshoe Beach)

[3] Sub-areas are reference to the twelve sub-areas that were reclassified from Class III to Class II waters and these reclassifications were shown in maps in Florida Department of Environmental Protection's "Evaluation of Waters Under Consideration for Reclassification from Class III to Class II" October 2015.

19. Franklin County	All or portions of Alligator Harbor, Apalachicola Bay, East Bay and its tributaries, the coastal waters north of a line from Peninsula Point on Alligator Point to the southeastern tip of Dog Island, Ochlockonee Bay, St. George Sound, and St. Vincent Sound	Apalachicola Bay (portion) Chaires Creek (downstream portion)
29. Hillsborough County	All or portions of Tampa Bay, Old Tampa Bay, and Mobbly Bay, excluding waters in the Tampa Harbor Channel and waters north of SR 580 in Rocky and Double Branch Creeks	Tampa Bay (portion)
31. Indian River County	Portions of Indian River	Indian River (portion)
38. Levy County	All coastal waters and tidal creeks in the county, excluding the mouth of the Suwannee River and its passes, portions of Alligator Pass and Cedar Key, and the mouth of the Withlacoochee River	Coastal waters
56. St. Lucie County	Portions of Indian River	Indian River – St. Lucie North Indian River – St. Lucie South
64. Volusia County	All or portions of Indian River North, Indian River Lagoon, and Mosquito Lagoon	Indian River North Indian River Lagoon Mosquito Lagoon
66. Walton County	Portions of Choctawhatchee Bay and its tributaries	Choctawhatchee Bay (portion)

In this revision, the state of Florida has incorporated new areas into Class II, which had previously been Class III areas. This designated use upgrade is supported by an October 2015 evaluation (FDEP 2015)[4]. The state of Florida's evaluation explains that the new Class II area designations are based upon identified shellfish harvesting uses established by the Department of Agriculture and Consumer Services's Shellfish Evaluation and Assessment Section (SEAS). The state of Florida also identified that most of the waters achieve the more stringent Class II water quality criteria and few, if any, new Clean Water Act Section 303(d) listings would result from the reclassification. The reclassification of the Class III areas to Class II will provide additional protection for existing shellfish harvesting uses in these areas.

In addition, the state of Florida incorporated maps to identify the Class II areas, including the twelve new sub-area additions in the counties listed above. These maps provide additional clarity over the previous metes and bounds descriptions in the rule. The EPA approves the changes to subparagraphs 62-

[4] *Evaluation of Waters Under Consideration for Reclassification from Class III to Class II.* FDEP. October 2015.

302.400(16)(b)5., 9., 15., 19., 29., 31., 38., 56., 64., and 66. as consistent with the CWA and 40 CFR 131. The revisions provide increased protections to shellfish harvesting waters by upgrading the designated use from Class III to Class II and the incorporated maps provide increased clarity in the rule regarding the location of the Class II waters.

The revisions represent changes to a water's designated use to add additional protections for human health. For Endangered Species Act Section 7(a)(2) consultation requirements, the EPA determined that the Agency had no discretion for consultation on these revisions.

Subparagraphs 62-302.400(16)(b)17. and 57.

Subparagraphs 62-302.400(16)(b)17. and 57. were revised and read as follows:

17. Escambia County

Class II

Escambia Bay – Louisville and Nashville Railroad Trestle south to Pensacola Bay (Line from Emanuel Point east northeasterly to Garcon Point).

Pensacola Bay – East of a line connecting Emanuel Point on the north to the south end of the Pensacola Bay Bridge (U.S. Highway 98).

Santa Rosa Sound – East of a line connecting Gulf Breeze approach to Pensacola Beach (Pensacola Beach ~~Bascule~~ Bridge), and Sharp Point with exception of the Navarre Beach area from a north-south line through Channel Marker 106 to Navarre Bridge

57. Santa Rosa County

Class II

Blackwater Bay – From a line connecting Robinson's Point to Broad River south to East Bay (line due west from Escribano Point).

East Bay and Tributaries – Blackwater Bay (line due west from Escribano Point) southerly to Pensacola Bay (line from Garcon Point on the north to Redfish Point on the south).

Escambia Bay – Louisville and Nashville Railroad Trestle south to Pensacola Bay (Line from Emanuel Point east northeasterly to Garcon Point).

Pensacola Bay – East of a line connecting Emanuel Point on the north to the south end of the Pensacola Bay Bridge (U.S. Highway 98).

Santa Rosa Sound – From a line connecting Gulf Breeze approach to Pensacola Beach (Pensacola Beach ~~Bascule~~ Bridge), and Sharp Point, east to Santa Rosa/Okaloosa County line with exception of the Navarre Beach area from a north-south line through Channel Marker 106 eastward to Navarre Beach Toll Road.

The state of Florida deleted the reference to the Bascule Bridge and replaced it with a reference to the Pensacola Beach bridge. This change reflects the replacement of the Bascule Bridge with the newer

Pensacola Beach Bridge by the Florida Department of Transportation. There was no change to the area classified as Class II by updating the name of the bridge. The name in the revised rule is based on the most commonly applied local name for the bridge. These revisions do not alter the meaning or intent of the previously approved corresponding provisions as they are considered editorial. The EPA approves this change as a non-substantive revision to the state of Florida's water quality standards.

For Endangered Species Act Section 7(a)(2) consultation requirements, these revisions were determined to have no effect on endangered species or their critical habitat.

Subsection 62-302.530(1)

Subsection 62-302.530(1) [Alkalinity] was revised and reads as follows:

Parameter	Units	Class I	Class II	Class III and Class III-Limited (see Note 4)		Class IV	Class V
				Predominantly Fresh Waters	Predominantly Marine Waters		
(1) Alkalinity	Milligrams/L as $CaCO_3$	Shall not be depressed below 20. In waterbodies with natural alkalinity levels below 20 mg/L, alkalinity shall not be reduced by more than 25%.		Shall not be depressed below 20. In waterbodies with natural alkalinity levels below 20 mg/L, alkalinity shall not be reduced by more than 25%.		$\leq$ 600	

Before this revision, the state of Florida had only a numeric value of 20 mg/L as CaCO3 as the alkalinity criteria in Class I and Class III freshwaters. In this revision, the state of Florida is adding the natural condition provision contained in the EPA's national recommended criteria for alkalinity (EPA 1986)[5]. The state of Florida's consideration of natural conditions in water quality standards is protective of designated uses and consistent with the EPA's 304(a) guidance on aquatic life criteria[6]. For aquatic life uses, where the natural background concentration for a specific parameter is documented, by definition that concentration is sufficient to support the level of aquatic life expected to occur naturally at the site absent any interference by humans.

[5] EPA. 1986. *Quality Criteria for Water*. Office of Water. EPA 440/5-86-001.

[6] November 5, 1997 Memorandum from Tudor T. Davies titled *Establishing Site Specific Aquatic Criteria Equal to Natural Background.*

Considering the scientific and technical information supporting the 304(a) recommendations, the EPA has determined that the changes to Subsection 62-302.530(1) protect the state of Florida's designated uses, and therefore, are consistent with CWA Section 303(c) and 40 C.F.R. Section 131.11. For Endangered Species Act Section 7(a)(2) consultation requirements, these revisions were determined to have no effect or may effect, but not likely to adversely affect endangered species or their critical habitat. Informal consultation was initiated with FWS on January 26, 2017 and concurrence was received on February 9, 2017. These changes are approved by the EPA under CWA Section 303(c) and 40 CFR Part 131.

Subsection 62-302.530(3)

Subsection 62-302.530(3) [Ammonia] was revised and reads as follows:

Parameter	Units	Class I	Class II	Class III and Class III-Limited (see Note 4)		Class IV	Class V
				Predominantly Fresh Waters	Predominantly Marine Waters		
(3) Ammonia (Total Ammonia Nitrogen) (Class I, Class III fresh water, and Class III-Limited fresh water)	Milligrams/ L as Total Ammonia Nitrogen (TAN = $NH_4^+ + NH_3$)	The 30-day average TAN value shall not exceed the average of the values calculated from the following equation, with no single value exceeding 2.5 times the value from the equation: $30-\text{day Average} = 0.8876 \times \left(\frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}}\right) \times \left(2.126 \times 10^{0.028\times(20-MAX(T,7))}\right)$ *T* and *pH* are defined as the paired temperature (°C) and pH associated with the TAN sample. For purposes of total ammonia nitrogen criterion calculations, pH is subject to the range of 6.5 to 9.0. The pH shall be set at 6.5 if measured pH is < 6.5 and set at 9.0 if the measured pH is > 9.0.					
~~(3) Ammonia (un-ionized)~~	~~Milligrams/ L as NH_3~~	~~≤ 0.02~~		~~≤ 0.02~~			

Before these revisions, the state of Florida had criteria for un-ionized ammonia of $\leq$0.2mg/L as NH_3. This value was a historical EPA 304(a) recommended value (EPA 1976)[7]. The new criteria recommendation (EPA 2013)[8] has been updated to include additional data on sensitive species, particularly mussels. The deletion of the previous criteria for ammonia (un-ionized) and adoption of newer criteria allows for a more protective standard for mussels. The acute criterion duration represents a one-hour average. The chronic criterion duration represents a 30-day average with the additional restriction that the highest 4-day average within the 30 days be no greater than 2.5 times the chronic criterion magnitude. These values are not to be exceeded more than once in three years on average. The criteria magnitude is equation-based and affected by pH and temperature (EPA 2013).

In this revision, the state of Florida has adopted the following two of the three parts of the EPA criteria recommendation, with some modifications: 1) a 30-day average, not to exceed value, based on the equation using pH and temperature; and 2) a provision that no single value exceed 2.5 times the value from the equation. By adopting the EPA's chronic 30-day average value as a never to exceed, the State has adopted a criterion that is more stringent than the corresponding national criterion recommendation. In addition, rather than a 4-day average being no greater than 2.5 times the chronic criterion magnitude, the state of Florida has adopted a requirement that no single value can be greater than 2.5 times the chronic criterion magnitude, which is also more protective than the corresponding national criterion recommendation. The 30-day average, not to exceed value is more protective than the EPA's recommended acute criterion that the state of Florida has not adopted.

The EPA has reviewed the change to the previously applicable criteria and is approving the deletion of the previous criteria at 62-302.530(3) and the subsequent table revision to add total ammonia nitrogen criteria. Considering the scientific and technical information supporting the 304(a) recommendations, the EPA has determined that the changes to Subsection 62-302.530(3) protect the state of Florida's designated uses and, therefore, are consistent with CWA Section 303(c) and 40 C.F.R. Section 131.11.

For Endangered Species Act Section 7(a)(2) consultation requirements, these revisions were determined to have no effect or may effect, but not likely to adversely affect endangered species or their critical habitat. Informal consultation was initiated with FWS on September 6, 2016 and concurrence was received on January 19, 2017.

Subsection 62-302.530(6)

Subsection 62-302.530(6) [Bacteriological Quality (Fecal Coliform Bacteria)] was revised and reads as follows (Class IV and V columns not shown since no changes occurred in these classes):

[7] EPA. 1976. *Quality Criteria For Water (The Red Book).* Washington, DC. EPA 440/9-76-023.

[8] EPA. 2013. *Aquatic Life Ambient Water Quality Criteria for Ammonia – Freshwater.* Office of Water. Washington, DC. 822-R-13-001.

Parameter	Units	Class I	Class II	Class III Predominantly Fresh Waters	Class III Predominantly Marine Waters
(6) (a) Bacteriological Quality (Fecal Coliform Bacteria)	Number per 100 ml (Most Probable Number (MPN) or Membrane Filter (MF))	~~MPN or MF counts shall not exceed a monthly average of 200, nor exceed 400 in 10% of the samples, nor exceed 800 on any one day. Monthly averages shall be expressed as geometric means based on a minimum of 5 samples taken over a 30 day period.~~	MPN or MF counts shall not exceed a median value of 14 with not more than 10% of the samples exceeding the Ten Percent Threshold Value (TPTV) of 43 (for MPN) or 31 (for MF), nor exceed 800 on any one day. To determine the percentage of samples exceeding the criteria when there are both MPN and MF samples for a waterbody, the percent shall be calculated as $100*(n_{mpn}+n_{mf})/N$, where n_{mpn} is the number of MPN samples greater than 43, n_{mf} is the number of MF samples greater than 31, and N is the total number of MPN and MF samples.	~~MPN or MF counts shall not exceed a monthly average of 200, nor exceed 400 in 10% of the samples, nor exceed 800 on any one day. Monthly averages shall be expressed as geometric means based on a minimum of 10 samples taken over a 30 day period.~~	~~MPN or MF counts shall not exceed a monthly average of 200, nor exceed 400 in 10% of the samples, nor exceed 800 on any one day. Monthly averages shall be expressed as geometric means based on a minimum of 10 samples taken over a 30 day period.~~
(6) (b) Bacteriological Quality (*Escherichia coli* Bacteria)	Number per 100 ml (Most Probable Number (MPN) or Membrane Filter (MF))	MPN or MF counts shall not exceed a monthly geometric mean of 126 nor exceed the Ten Percent Threshold Value (TPTV) of 410 in 10% or more of the samples during any 30-day period. Monthly geometric means shall be based on a minimum of 5 samples taken over a 30-day period.		MPN or MF counts shall not exceed a monthly geometric mean of 126 nor exceed the Ten Percent Threshold Value (TPTV) of 410 in 10% or more of the samples during any 30-day period. Monthly geometric means shall be based on a minimum of 10 samples taken over a 30-day period.	

Parameter	Units	Class I	Class II	Class III Predominantly Fresh Waters	Class III Predominantly Marine Waters
(6) (c) Bacteriological Quality (*Enterococci* Bacteria)	Number per 100 ml (Most Probable Number (MPN) or Membrane Filter (MF))		MPN or MF counts shall not exceed a monthly geometric mean of 35 nor exceed the Ten Percent Threshold Value (TPTV) of 130 in 10% or more of the samples during any 30-day period. Monthly geometric means shall be based on a minimum of 10 samples taken over a 30-day period.		MPN or MF counts shall not exceed a monthly geometric mean of 35 nor exceed the Ten Percent Threshold Value (TPTV) of 130 in 10% or more of the samples during any 30-day period. Monthly geometric means shall be based on a minimum of 10 samples taken over a 30-day period.

The state of Florida deleted fecal coliform criteria from Class I and Class III marine and fresh waters. The state of Florida adopted *Enterococci* criteria for Class II and predominantly marine Class III waters and *Escherichia coli* for Class I and predominantly fresh Class III waters. These adopted bacteriological criteria are as protective as the EPA's 304(a) recommendation for Recreational Water Quality Criteria (EPA 2012)[9]. The State revised the Class II fecal coliform criteria to include a Ten Percent Threshold Value (TPTV) of 43 (for MPN) or 31 (for MF). These values are consistent with the National Shellfish Sanitation Program Model Ordinance which governs interstate commerce for molluscan shellfish.

The EPA has reviewed the change to the previously applicable bacteriological criteria and is approving the deletion of the previous criteria at 62-302.530(6) and the subsequent table revision to add *Enterococci* and *Escherichia coli* criteria. The EPA has determined that the state of Florida's water quality criteria for bacteria comply with the requirements of Section 303(c) and 303(i) of the CWA, as amended by the BEACH Act, and its implementing regulation at 40 CFR Part 131. With the exception of the phrases "be based on a minimum of 10 samples taken over a 30-day period" and "be based on a minimum of 5 samples taken over a 30-day period", which the EPA has determined not to be water quality standards, and found in Paragraphs 62-302.530(6)(b) and 62-302.530(6)(c) respectively, the EPA approves the revisions for CWA purposes pursuant to the Agency's authority under CWA Section 303(c) and its implementing regulations at 40 CFR Part 131. With the EPA's approval of revisions to the state of Florida's bacteria criteria for Class III marine waters to replace fecal coliform with enterococci as the bacteriological indicator, as well as adoption of ten percent threshold value that applies to all marine waters in the State and a geometric mean value, these standards become the applicable water quality standards for Clean Water Act purposes as specified in the BEACH Act rule (40 CFR 131.41(d)) and the federally promulgated standards under the BEACH Act will no longer apply in Florida waters.

[9] EPA. 2012. *Recreational Water Quality Criteria*. Office of Water. Washington, DC. 820-F-12-058.

The approved revisions represent changes to a water's designated use to add additional protections for human health. For Endangered Species Act Section 7(a)(2) consultation requirements, the EPA determined that the Agency had no discretion for consultation on these revisions. For the revisions the EPA determined were not new or revised WQS, consultation for Endangered Species Act Section purposes is not required.

Subsection 62-302.530(46)

Subsection 62-302.530(46) [Nonylphenol (4-nonylphenol)] was added and reads as follows:

Parameter	Units	Class I	Class II	Class III and Class III-Limited (see Note 4)		Class IV	Class V
				Predominantly Fresh Waters	Predominantly Marine Waters		
(46) Nonylphenol (4-nonylphenol)	Micrograms/L	≤ 6.6	≤ 1.7	≤ 6.6	≤ 1.7		

The Class II, Class III Predominantly Marine Waters, and Class III-Limited Predominantly Marine Waters adopted criteria for nonylphenol are still under review and not acted on in this decision document. These criteria will be acted upon in a separate decision document at a later date.

Before this revision, the state of Florida did not have criteria for nonylphenol in freshwaters. In this revision, the state of Florida is adopting the EPA's national recommended criteria for nonylphenol (EPA 2005)[10]. The state of Florida is adopting the freshwater chronic criterion recommendation as a never to exceed value in their criteria, which is a more stringent criterion than the national recommendation. This application of the EPA's recommended chronic magnitude value will be more protective to aquatic life.

Considering the scientific and technical information supporting the 304(a) recommendations, the EPA has determined that the changes to Subsection 62-302.530(46) Class I and Class III freshwaters protect the state of Florida's designated uses, and therefore, are consistent with CWA Section 303(c) and 40 C.F.R. Section 131.11. These changes to freshwater criteria are approved by the EPA under CWA Section 303(c).

For Endangered Species Act Section 7(a)(2) consultation requirements, these revisions to freshwater criteria were determined to have no effect or may effect, but not likely to adversely affect endangered species or their critical habitat. Informal consultation was initiated with FWS on January 26, 2017, and concurrence was received on February 9, 2017.

[10] EPA. 2005. *Aquatic Life Ambient Water Quality Criteria – Nonylphenol.* Office of Water. Washington, DC. EPA 822-R-05-005.

Subsection 62-302.530(51)

Subsection item 62-302.530(51)(e) [Carbaryl] was added and reads as follows:

Parameter	Units	Class I	Class II	Predominantly Fresh Waters	Predominantly Marine Waters	Class IV	Class V
(51)(e) Carbaryl	Micrograms/ L	< 2.1		< 2.1			

Before this revision, the state of Florida did not have criteria for carbaryl in fresh waters. In this revision, the state of Florida is adopting the EPA's national recommended acute criteria for carbaryl in fresh waters (EPA 2012)[11]. The state of Florida has adopted the same magnitude value for the criterion as EPA's recommendation; however, the state of Florida applies a never to exceed to the value, rather than EPA's not to exceed more than once in three years. The state of Florida's never to exceed application for frequency and duration will be more protective of aquatic life.

Considering the scientific and technical information supporting the 304(a) recommendations, the EPA has determined that the changes to Subsection 62-302.530(51)(e) protect the state of Florida's designated uses and, therefore, are consistent with CWA Section 303(c) and 40 C.F.R. Section 131.11. These changes are approved by the EPA under CWA Section 303(c).

The EPA's approval of new aquatic life WQS for carbaryl is subject to the consultation requirement of Section 7(a)(2) of the Endangered Species Act (ESA). Under Section 7(a)(2) of the ESA, 16 U.S.C. §1536, the EPA has the obligation to insure that its approval of these modifications to the state of Florida's WQS regulation will not jeopardize the continued existence of threatened and endangered species and their critical habitat in the state of Florida.

On March 7, 2016, the EPA initiated consultation under Section 7(a)(2) of the ESA with the U.S. Fish and Wildlife Service (USFWS) regarding the effects of the EPA approving an addition to the state of Florida's water quality standards for carbaryl with a request to Mr. Channing St. Aubin (USFWS) for a state species list. That consultation has not concluded. Consistent with Section 7(d), the Agency's decision to approve revisions within the state of Florida's water quality standards contained in 62-302.530(51)(e) is subject to the results of consultation under Section 7 of the ESA. The Agency will notify the state of Florida of the results of the Section 7 consultation upon completion of the action.

[11] EPA. 2012. *Aquatic Life Ambient Water Quality Criteria – Carbaryl.* Office of Water. Washington, DC. EPA—820-R-12-007.

Subsection 62-302.530(51)

Subsection item 62-302.530(51)(g) [Chlorpyrifos] was added and reads as follows:

Parameter	Units	Class I	Class II	Predominantly Fresh Waters	Predominantly Marine Waters	Class IV	Class V
(51)(g) Chlorpyrifos	Micrograms/ L	< 0.041	< 0.0056	< 0.041	< 0.0056		

Before this revision, the state of Florida did not have criteria for chlorpyrifos in fresh or marine waters. In this revision, the state of Florida is adopting the EPA's national recommended criteria for chlorpyrifos in fresh and marine waters (EPA 1986)[12]. The state of Florida is adopting the fresh and marine water chronic criteria recommendations as never to exceed values, which is a more stringent criterion than the national recommendation. This application of EPA's 304(a) recommended chronic magnitude value will be more protective to aquatic life.

Considering the scientific and technical information supporting the 304(a) recommendations, the EPA has determined that the changes to Subsection 62-302.530(51)(g) protect the state of Florida's designated uses and therefore, are consistent with CWA Section 303(c) and 40 C.F.R. Section 131.11. These changes are approved by the EPA under CWA Section 303(c).

On March 7, 2016, the EPA initiated consultation under Section 7(a)(2) of the ESA with the USFWS and National Marine Fisheries Service (NMFS) regarding the effects of the EPA approving an addition to the state of Florida's water quality standards for chlorpyrifos with a request to Mr. Channing St. Aubin (USFWS) and Ms. Cathy Tortorici (NMFS) for a state species list. That consultation has not concluded. Consistent with Section 7(d), the Agency's decision to approve revisions within the state of Florida's water quality standards contained in 62-302.530(51)(g) is subject to the results of consultation under Section 7 of the ESA. The Agency will notify the state of Florida of the results of the Section 7 consultation upon completion of the action.

[12] EPA. 1986. *Aquatic Life Ambient Water Quality Criteria – Chlorpyrifos.* Office of Water. Washington, DC. EPA 440/5-86-005.

Subsection 62-302.530(51)

Subsection item 62-302.530(51)(j) [Diazinon] was added and reads as follows:

Parameter	Units	Class I	Class II	Predominantly Fresh Waters	Predominantly Marine Waters	Class IV	Class V
(51)(j) Diazinon	Micrograms/ L	≤ 0.17	≤ 0.82	≤ 0.17	≤ 0.82		

Before this revision, the state of Florida did not have criteria for diazinon in fresh or marine waters. In this revision, the state of Florida is adopting the EPA's national recommended criteria for diazinon in fresh and marine waters (EPA 2005)[13]. The state of Florida is adopting the fresh and marine water chronic criteria recommendations as never to exceed values, which is a more stringent criterion than the national recommendation. This application of EPA's 304(a) recommended chronic magnitude value will be more protective to aquatic life.

Considering the scientific and technical information supporting the 304(a) recommendations, the EPA has determined that the changes to Subsection 62-302.530(51)(j) protect the state of Florida's designated uses and, therefore, are consistent with CWA Section 303(c) and 40 C.F.R. Section 131.11. These changes are approved by the EPA under CWA Section 303(c).

On March 7, 2016, the EPA initiated consultation under Section 7(a)(2) of the ESA with the USFWS and NMFS regarding the effects of the EPA approving an addition to the state of Florida's water quality standards for diazinon with a request to Mr. Channing St. Aubin (USFWS) and Ms. Cathy Tortorici (NMFS) for a state species list. That consultation has not concluded. Consistent with Section 7(d), the Agency's decision to approve revisions within the state of Florida's water quality standards contained in 62-302.530(51)(j) is subject to the results of consultation under Section 7 of the ESA. The Agency will notify the state of Florida of the results of the Section 7 consultation upon completion of the action.

Section 62-302.531(2)(b)

Paragraph 62-302.531(2)(b) under Numeric Interpretations of Narrative Nutrient Criteria was revised and reads as follows:

(2) The narrative water quality criterion for nutrients in paragraph 62-302.530(47)(b), F.A.C., shall be numerically interpreted for both nutrients and nutrient response variables in a hierarchical manner as follows:

> (b) If site specific numeric interpretations, as described in paragraph 62-302.531(2)(a), F.A.C., above, have not been established for a waterbody, but there is an established, quantifiable cause-and-effect relationship between one or more nutrients and nutrient response variables linked to a value that protects against an imbalance in the natural populations of the aquatic flora or fauna,

[13] EPA. 2005. *Aquatic Life Ambient Water Quality Criteria – Diazinon.* Office of Water. Washington, DC. EPA-822-R-05-006.

then the numeric values for the nutrients or nutrient response variables, set forth in this paragraph (2)(b), shall be the applicable interpretations. Absent a numeric interpretation as established in paragraph 62-302.531(2)(a), F.A.C., site specific numeric interpretations are established as follows:

1. For lakes, the applicable numeric interpretations of the narrative nutrient criterion in paragraph 62-302.530(47)(b), F.A.C., for chlorophyll a are shown in the table below. The applicable interpretations for TN and TP will vary on an annual basis, depending on the availability of chlorophyll a data and the concentrations of nutrients and chlorophyll a in the lake, as described below. The applicable numeric interpretations for TN, TP, and chlorophyll a shall not be exceeded more than once in any consecutive three year period.

.....

c. For the purpose of subparagraph 62-302.531(2)(b)1., F.A.C., color shall be assessed as true color and shall be free from turbidity. Lake color and alkalinity shall be the long-term geometric mean <u>of all of the data for the period of record</u>, based on a minimum of ten data points over at least three years with at least one data point in each year. If insufficient alkalinity data are available, long-term geometric mean specific conductance values <u>of all of the data for the period of record</u> shall be used, with a value of <100 micromhos/cm used to estimate the 20 mg/L $CaCO_3$ alkalinity concentration until such time that alkalinity data are available. <u>Long-term geometric mean specific conductance shall be based on a minimum of ten data points over at least three years with at least one data point in each year.</u>

The state of Florida has revised sub-subparagraph 62-302.531(2)(b)1.c, which contains numeric nutrient criteria applicable to lakes, to clarify the duration associated with long-term geometric mean lake color and alkalinity. The color and alkalinity of a lake are key in determining the numeric nutrient criteria applicable to that lake. The revisions in paragraph 62-302.531(2)(b)1.c clarify that the term "long-term" means the period of record. These revisions are consistent with the state's explanation, in its Technical Support Document, of how the numeric nutrient criteria were developed for colored lakes, using data from the period of record when calculating long-term geometric means for lake color and alkalinity. These revisions also provide that all of the data for the period of record shall be used and that long-term geometric means for specific conductance.

The EPA has determined that the revisions to Subsection 62-302.531(2)(b) are consistent with CWA Section 303(c) and 40 C.F.R. Section 131.11. These revisions are approved by the EPA under CWA Section 303(c). Because the underlying numeric criteria for lakes remains unchanged, these revisions were determined to have no effect on endangered species or their critical habitat for the purposes of Endangered Species Act Section 7(a)(2) consultation requirements.

The EPA has concluded that the part of 62-302.531(2)(b)1.c that states "based on a minimum of ten data points over at least three years with at least one data point in each year" addresses data sufficiency and reliability, but does not establish or revise the magnitude, duration, or frequency of the chlorophyll *a* criteria established by the State. Therefore, that phrase is not a new or revised WQS for the purposes of the EPA's CWA Section 303(c) review and consultation for Endangered Species Act Section purposes is not required.

Paragraph 62-302.532(1)(c) and 62-302.532(1)(i)

The table in 62-302.532(1) under Estuary-Specific Numeric Interpretations of the Narrative Nutrient Criterion was revised and reads as follows:

(1) Estuary-specific numeric interpretations of the narrative nutrient criterion in paragraph 62-302.530(47)(b), F.A.C., are in the table below. The concentration-based estuary interpretations are open water, area-wide averages. Numeric values listed below for nutrient and nutrient response values do not apply to wetlands or to tidal tributaries that fluctuate between predominantly marine and predominantly fresh waters during typical climatic and hydrologic conditions unless specifically provided by name below. The interpretations expressed as load per million cubic meters of freshwater inflow are the total load of that nutrient to the estuary divided by the total volume of freshwater inflow to that estuary. The numeric values listed below will be superseded if, pursuant to subsection 62-302.531(2), F.A.C., a more recent numeric interpretation of the narrative nutrient criterion in paragraph 62-302.530(47)(b), F.A.C., such as a Level II Water Quality Based Effluent Limitation (WQBEL), Site Specific Alternative Criterion (SSAC), Total Maximum Daily Load (TMDL), or Reasonable Assurance Demonstration, is established by the Department.

Estuary	Total Phosphorus	Total Nitrogen	Chlorophyll a
(a) through (b) No change.			
(c) Sarasota Bay	Criteria expressed as annual geometric mean (AGM) values for nutrients and annual arithmetic means for chlorophyll *a* are not to be exceeded more than once in a three year period. Nutrient and nutrient response values do not apply to tidally influenced areas that fluctuate between predominantly marine and predominantly fresh waters during typical climatic and hydrologic conditions.		
1. No change.			
2. Sarasota Bay (Total Phosphorus and Chlorophyll *a*)	0.19 mg/L as AGM	See paragraph 62-302.532(1)~~(3)~~(i), F.A.C.	6.1 µg/L as annual mean
3. through 5. No change.			
(d) through (h) No change.			

(i) Sarasota Bay	For TN, the annual geometric mean target is calculated from monthly arithmetic mean color by region and season. Annual geometric means ~~that~~ shall not be exceeded more than once in a three year period. The Sarasota Bay regions are defined as north (Manatee County) and south (Sarasota County). The wet season for Sarasota Bay is defined as July through October and the dry season is defined as all other months of the year. The seasonal region targets are calculated using monthly color data and shall be calculated as follows: NW_i=Ln[(13.35-(0.32*CN_i))/3.58] ND_i=Ln[(10.39-(0.32*CN_i))/3.58] SW_i=Ln[(8.51-(0.32*CS_i)/3.58] SD_i=Ln[(5.55-(0.32*CS_i))/3.58] Where, NW_i is the TN target for i^{th} month calculated for the north region during the wet season ND_i is the TN target for i^{th} month calculated for the north region during the dry season SW_i is the TN target for i^{th} month calculated for the south region during the wet season SD_i is the TN target for i^{th} month calculated for the south region during the dry season CN_i is the arithmetic mean color during the ith month within the north region During the wet season, CN_i shall be set to 41 PCU if the monthly arithmetic mean color is greater than 41 PCU During the dry season, CN_i shall be set to 32 PCU if the monthly arithmetic mean color is greater than 32 PCU CS_i is the arithmetic mean color during the ith month within the south region During the wet season, CS_i shall be set to 26 PCU if the monthly arithmetic mean color is greater than 26 PCU During the dry season, CS_i shall be set to 16 PCU if the monthly arithmetic mean color is greater than 16 PCU The annual TN target is calculated as the geometric mean of all monthly regional and season targets as follows: $e^{\sum_i^{12}\left(\frac{NWi+NDi+SWi+SDi}{24}\right)}$ Nutrient and nutrient response values do not apply to tidally influenced areas that fluctuate between predominantly marine and predominantly fresh waters during typical climatic and hydrologic conditions.
(j) through (cc) No change.	

The State made a revision to subsection 62-302.532(1)(c) to update the reference to the rule in 62-302.532(1)(i). In 602-302.532(1)(i), the state of Florida has revised the calculation procedure used to derive the total nitrogen (TN) criterion for Sarasota Bay to provide a cap for arithmetic mean color values in the North and South regions of the bay. The FDEP staff explained that the State's revisions to the Sarasota Bay TN criterion were made to correct a computational problem encountered when color data measured in the bay were above the values measured during the reference (baseline) period. The

computational problem is that the terms within the natural log functions become negative when color exceeds the upper limit thresholds specified in the revised rule. The natural log of a negative number is mathematical undefined; therefore, it was not possible to calculate the criterion for years with color exceeding the upper color limits. The state of Florida revised the rule, by capping the monthly color, at the highest value that would not result in an undefined computation. The revision also ensures that color data used in future calculations is within the baseline calibration range (email communication: K. Weaver (FDEP) 12/20/2016).

The revision to cap the arithmetic mean color values does not change the stringency or level of protection of the water quality standard. It clarifies that the equation is inoperable above those values and any values above the capped color values is not within the baseline calibration of the standard and thus results in an undefined computation. Upper color limits are protective because the TN criterion is constrained to values within the reference period range for the waterbody. If color limits were not capped, TN values would fall below the values during the reference period and result in abatement of natural conditions (email communication: K. Weaver (FDEP) 6/22/2017). The EPA has determined that the changes to Subsection 62-302.532(1) protect the state of Florida's designated uses and, therefore, are consistent with CWA Section 303(c) and 40 C.F.R. Section 131.11. These changes are approved by the EPA under CWA Section 303(c). Because the underlying calculation of the total nitrogen criteria for Sarasota Bay remains unchanged, these revisions were determined to have no effect on endangered species or their critical habitat for the purposes of Endangered Species Act Section 7(a)(2) consultation requirements.

Subsection 62-302.532(4)

> (4) To calculate an annual geometric or arithmetic mean for TN, TP, or chlorophyll a, there shall be at least four temporally-independent samples per year with at least one sample taken between May 1 and September 30 and at least one sample taken during the other months of the calendar year. To be treated as temporally-independent, samples must be taken at least one week apart.

This provision is related to data sufficiency requirements and does not establish or revise the magnitude, duration or frequency of the revised criteria. Therefore, the EPA has concluded that this provision does not constitute a new or revised water quality standard and therefore consultation for Endangered Species Act Section purposes is not required.

Overview of Revisions to the Impaired Waters Rule, Chapter 62-303

Chapter 62-303, F.A.C., entitled Identification of Impaired Surface Waters (Impaired Waters Rule or IWR), establishes a methodology for the state of Florida to identify waterbodies for inclusion on the list of water quality-limited segments requiring total maximum daily loads (TMDLs) pursuant to Section 303(d) of the Act and 40 C.F.R. Part 130.

The EPA previously reviewed and approved or disapproved new or revised WQS within the IWR in 2005[14], 2008[15], 2013[16], and 2014 after the state of Florida revised the rule to make substantive and editorial changes to the IWR. In its review and approval of the new or revised WQS portions of the 2015 amended IWR, the EPA applied the same analytical framework that it used in the 2005, 2008, 2013, and 2014 Determinations.[17] In this 2015 triennial review of the amended IWR, the EPA examined only those portions of the rule that were amended in 2015.

For the reasons discussed below, the EPA has concluded that several portions of the amended IWR are new or revised water quality standards, but also has concluded that many portions of the amended IWR are not new or revised water quality standards. Specifically, those provisions of the IWR relating to magnitude, duration and frequency of load or concentration exceedances that define or revise the "ambient condition" or "level of protection" that the State affords waters for purposes of making attainment decisions constitute new or revised water quality standards. An attainment decision is one where a State decides what it means to attain or to not attain any "water quality standard applicable to such waters" for purposes of establishing total maximum daily loads under Section 303(d)(1)(A) of the Act, 33 U.S.C. § 1313(d)(1)(A). TMDLs, in turn, serve as the basis for NPDES permit limitations. Provisions that affect attainment decisions made by the State and that define, change, or establish the level of protection to be applied in those attainment decisions have the effect of revising existing standards under Section 303(c) of the Act. These provisions constitute new or revised water quality standards subject to the EPA's review pursuant to the Act. Conversely, provisions that merely describe the sufficiency or reliability of information necessary for the State to make an attainment decision, and do not change a level of protection, are not WQS but are methodologies under Section 303(d) of the Act. See 40 C.F.R. § 130.7(b)(6). While these provisions are not reviewed by the EPA as new or revised water quality standards, they are considered by the EPA in reviewing lists of impaired waters submitted by the State pursuant to Section 303(d) of the CWA.

The EPA has determined that provisions of the amended IWR that affect only the State's decision to include a waterbody on the planning list do not constitute new or revised water quality standards, because placing a water on the planning list does not affect an attainment decision. To the extent that a planning list provision also affects the State's decision to identify a waterbody on the study or verified

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[14] "Determination on Referral Regarding Florida Administrative Code Chapter 62-303 Identification of Impaired Surface Waters," United States Environmental Protection Agency, July 7, 2005.

[15] "Determination Upon Review of Amended Florida Administrative Code Chapter 62-303 Identification of Impaired Surface Waters," United States Environmental Protection Agency, February 8, 2008.

[16] "Decision Document of the United States Environmental Protection Agency Determination Under § 303(c) of the Clean Water Act Review of a Portion of Florida's 2013 Triennial Review of Changes to Rules 62-302 and 62-303," United States Environmental Protection Agency, September 9, 2013.

"Decision Document of the United States Environmental Protection Agency Determination Under § 303(c) of the Clean Water Act Review of Florida's 2013 Triennial Review of Changes to Rules 62-4, 62-302, and 62-303," United States Environmental Protection Agency, November 12, 2014.

[17] See also the EPA's answers to frequently asked questions (FAQs) on "What is a New or Revised Water Quality Standard Under CWA 303(c)(3)?" at http://water.epa.gov/scitech/swguidance/standards/cwa303faq.cfm. The link provides detailed information of such analysis.

lists, however, that provision does affect an attainment decision. The EPA considered such provisions further to determine whether the provision also defined, changed, or established the level of protection to be applied in those attainment decisions.

Revisions to language that is not a water quality standard in 62-303 and 62-4

Copies of the revised 62-303 and 62-4 language are provided in Appendices B and C with changes highlighted in yellow to indicate the revision was to language that was determined not to be a water quality standard. These revisions are listed below.

62-303.100(1)-(3) & (5)
62-303.150(1)-(2)
62-303.200(3), (9), (11)-(12), (13)(f), (17), (19)-(21), (28)-(29), (31)-(32), (35)
62-303.300
62-303.310
62-303.320(1)-(3), (4)(b), (4)(g), (5), (6), (9), (11)-(12), (14)-(15)
62-303.330(2)-(6), (3)(c)
62-303.350(1)-(6)
62-303.351(1)-(2)
62-303.352(1)-(2)
62-303.353(1), (5)
62-303.354(1)
62-303.360(1), (2)-(4)
62-303.370(1)-(3)
62-303.380(1)-(3), ~~(4)~~
62-303.390(1), (2)(b)-(h), (3)-(10)
62-303.400(1)-(3)
62-303.420(1)(a), (2)-(5), (7)-(11), (13), (14)
62-303.430(1), (2), (5)-(6)
62-303.450(2)-(4), (6)-(7)
62-303.460(3)-(5)
62-303.470(1)-(4)
62-303.480(3)
62-303.500(1), (3)-(4)
62-303.600(1)-(3)
62-303.700
62-303.710(1)-(5)
62-303.720(1), (2), (2)(a)3, (2)(h)1-3, (2)(i), (2)(k)4-5, (2)(k)7, (2)(m), (2)(o), (2)(p), (2)(q), (3)
62-4.050

Non-substantive changes to approved water quality standards in 62-303

A copy of the revised 62-303 language is provided in Appendix B with changes highlighted in green to indicate if the change was a non-substantive revision to text that was previously approved as a water quality standard. The EPA approves the non-substantive word change revisions in Appendix B as being consistent with the CWA and the EPA's implementing regulations. The EPA notes, however, that its approval of these non-substantive changes does not re-open the EPA's prior approval of any underlying substantive WQSs. The revisions highlighted in Appendix B that were considered to be non-substantive are also listed below:

62-303.200(2), (11), (14), (27)
62-303.320(4), (7)
62-303.330(3), (3)(b)
62-303.351(4)-(5)
62-303.353(1), (4)
62-303.360(1), (2)(b)
62-303.390(2)
62-303.420(1)(b), (6), (13), (14)
62-303.430(2)(a)-(d), (3)-(4)
62-303.450(1), (5)
62-303.460(1), (2)
62-303.720(2)(c), (2)(c)2, (2)(k)1, (2)(k)(3), (2)(n)

Substantive Water Quality Standard Revisions in 62-303

Pursuant to Section 303(c) of the CWA, as set forth more fully below, the EPA has reviewed those portions of the amended IWR that the Agency has determined to be new or substantive revisions to water quality standards and the decisions on those revisions are set forth below.

Section 62-303.353

Section 62-303.353 was revised and reads as follows:

> (1) The numeric interpretation of the narrative nutrient criterion established in subsection 62-302.531(2) or 62-302.532(2), F.A.C., is exceeded for any parameter; or
>
> (2) For estuaries ~~or open coastal waters~~ without a numeric interpretation of the narrative nutrient criterion, their annual geometric mean chlorophyll *a* for any year is greater than 11 ug/l

During this rulemaking, the state of Florida added the phrase "or 62-302.532(2)" and "for any parameter" to subsection 62-303.353(1). These revisions, which are identified above as revisions that are not WQS, are provided as reference for the discussion below. Because the text being deleted in 62-303.353(2) was determined to be new or revised water quality standards in the EPA's September 9, 2013 action, the EPA must review the deletion of the phrase "or open coastal waters" from the previously approved WQS.

The state of Florida has revised 62-303.353(1) to provide how open coastal waters with numeric nutrient criteria, adopted in 62-302.532(2), will be assessed. The state has deleted text from subsection 62-303.353(2) that explains how open coastal waters without numeric criteria for chlorophyll *a* will be assessed. According to an email from the state of Florida (Daryll Joyner 4/4/17), chlorophyll *a* criteria (either satellite imagery-based criteria or criteria derived using a reference period approach) have been adopted for all of the state's open coastal waters. Therefore, there is no longer a need for an assessment methodology addressing open coastal waters without numeric criteria. This deletion of text in subsection 62-303.353(2) clarifies the applicable standard for assessment for open coastal waters. The EPA is approving the deletion as consistent with 40 CFR part 131 and the CWA pursuant to Section 303(c) of the Act. Because the underlying numeric criteria for nutrients remains unchanged, these revisions were determined to have no effect on endangered species or their critical habitat for the purposes of Endangered Species Act Section 7(a)(2) consultation requirements.

Section 62-303.354

Section 62-303.354 was revised and reads as follows:

A spring vent in predominantly fresh waters shall be included on the Planning List ~~planning list~~ for nitrate-nitrite if:

(1) The numeric interpretation of the narrative nutrient criterion established in subsection 62-302.531(2), F.A.C., is exceeded; or

(2) No change.

(3) There is a statistically significant increasing trend in the annual geometric means at the 95 percent confidence level in nitrate-nitrite over the planning period using 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 were incorporated by reference in Rule 62-303.351, F.A.C.

Because subsection 62-303.354(3) affects an attainment decision by specifying the applicable analytical method to be used in that assessment, this provision is a new or revised WQS that is subject to the EPA's review under CWA Ssection 303(c). The EPA has reviewed this method in previous decisions (November 30, 2012) and determined that this test is widely accepted as an appropriate tool for statistical evaluation of trends. The revisions to the text in subsection 62-303.354(3) provide reference to the method, which was previously unreferenced. The EPA is approving the revisions to 62-303.354(3) as consistent with 40 CFR part 131 and the CWA pursuant to Section 303(c) of the Act. Because the underlying numeric criteria for nutrients remain unchanged, these revisions were determined to have no effect on endangered species or their critical habitat for the purposes of Endangered Species Act Section 7(a)(2) consultation requirements.

Subsection 62-303.390(2)

Subsection 62-303.390(2) was revised and reads as follows:

(2) A Class I, II, III or Class III-Limited water shall be placed on the Study List ~~study list~~ if:

(a) For waters with a statistically-significant increasing trend in TN, TP, nitrate-nitrite, or chlorophyll *a* pursuant to subsection 62-303.351(5), 62-303.352(3), 62-303.353(4), or 62-303.354(3), F.A.C., the Department confirms the water does not exceed an applicable numeric nutrient criterion and there is:

Subsection 62-303.390(2) was previously determined to be a new or revised water quality standard in the EPA's November 30, 2012 action, because the provision affects attainment decisions made by the State since it establishes a level of protection to be applied in the attainment decision. The revision to subsection 62-303.390(2) provides that the statistical trend analysis described in 62-303.390(2)(a) will apply to Class III-Limited waters, in addition to Class I, II, and III waters.

The last change to 62-303.390(2)(a) provides that the trend analysis will not be used to put waters that exceed an applicable numeric nutrient criterion on the Study List. This provision does not affect the attainment status of such waters, since the EPA understands that waters that are not attaining an applicable numeric nutrient criterion would be included on the Verified List of impairments under 62-

303.450(3)[18]. Such waters would not be included on the Study List. The revision is a non-substantive change to 62-303.390(2)(a) that simply clarifies that the trend test is not used for list waters that would be determined to be impaired under a different provision of the IWR.

The EPA is approving the revisions to 62-303.390(2) as consistent with 40 CFR part 131 and Section 303(c) of the Act. Because the underlying numeric criteria for nutrients remain unchanged, these revisions were determined to have no effect on endangered species or their critical habitat for the purposes of Endangered Species Act Section 7(a)(2) consultation requirements.

Subsection 62-303.450(1)

Subsection 62-303.450(1) was revised and reads as follows:

> (1) A stream or estuary without applicable numeric criteria in subsection 62-302.531(2), F.A.C., shall be placed on the Verified List ~~verified list~~ for impairment due to nutrients if it exceeds the chlorophyll *a* thresholds in subsection 62-303.351(4), F.A.C., or subsection 62-303.353(2), F.A.C., more than once in any consecutive three year period, and there are sufficient data from the last 7.5 years~~, combined with historical data (if needed to establish historical chlorophyll *a* levels),~~ to meet the data sufficiency requirements of subsections 62-303.350(2)-(6), F.A.C. 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 determine if there is sufficient information~~, including paleoecological data,~~ to develop a site-specific chlorophyll *a* threshold that better reflects conditions beyond which an imbalance in flora or fauna occurs in the water segment. If there is sufficient information, the Department shall re-evaluate the data using the site-specific thresholds. If there is insufficient information, the Department shall re-evaluate the data using the thresholds provided in subsections 62-303.351(4) and 62-303.353(2) ~~(1)~~, F.A.C., for streams and estuaries and verify impairment if there is more than one exceedance in any consecutive three year period. In any case, the Department shall limit its analysis to the use of data collected during the last 7.5 years. 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.

In November 2012, the EPA determined that subsection 62-303.450(1) is a new or revised water quality standard because the provision establishes a level of protection to be applied in attainment decisions. The revision set above provides that subsection 62-303.450(1) will not be used to assess waters with applicable numeric criteria in subsection 62-302.531(2). This revision is a non-substantive change that simply clarifies that the assessment methodology set out in 303.450(1) does not modify criteria established in 302.531(2). The EPA understands that waters that are not attaining an applicable numeric nutrient criterion would be included on the verified list under a different provision of the IWR, that is, under 62-303.450(3) rather than under 62-303.450(1). The revisions also clarify data requirements for assessment. The data requirements are considered a change to assessment methodology and not new or revised WQS. In addition, the change to reference 62-303.353(2) identifies the citation for the chlorophyll a one-sided threshold for estuaries, which is used to determine attainment. The EPA is approving the revisions to subsection 62-303.450(1) as consistent with 40 CFR part 131 and Section

[18] Subsection 62-303.450(3) references 62-303.351(1), 62-303.352(1), 62-303.353(1), 62-303.354(1), which list waterbodies on the planning list for exceedance of numeric nutrient criterion.

303(c) of the Act. Because the underlying numeric criteria and attainment thresholds for nutrients in these waters remain unchanged, these revisions were determined to have no effect on endangered species or their critical habitat for the purposes of Endangered Species Act Section 7(a)(2) consultation requirements.

Subsection 62-303.460(1)

Subsection 62-303.460(1) was revised and reads as follows:

> (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, F.A.C. If the segment is listed on the Planning List ~~planning list~~ based on bathing area closures, advisories, or warnings issued by a local health department or county government, the closures, advisories, or warnings based on red tides, rip tides, sewage spills, sewer line breaks, dangerous aquatic life ~~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 subsection ~~paragraph~~ 62-303.360(2)~~(1)(c)~~, F.A.C. Water segments that meet the criteria in subsection ~~paragraph~~ 62-303.360(2)~~(1)(c)~~, F.A.C., shall be included on the Verified List ~~verified list~~ as impaired.

Subsection 62-303.460(1) was previously determined to be a new or revised water quality standard in the EPA's February 19, 2008 action, because the provision affects attainment decisions made by the state. The revisions in subsection 62-303.460(1) are both non-substantive and substantive changes. Non-substantive changes include changes in capitalization of Planning list and Verified List, addition of the word "the", and clarification of references from paragraph to subsections. Substantive changes to the existing water quality standard include the addition of sewage spills and dangerous aquatic life, and the deletion of sharks, as examples of factors that are not related to chronic discharges of pollutants used to verify primary contact and recreation use support. The EPA is approving the revisions to subsection 62-303.460(1) as consistent with 40 CFR part 131 and Section 303(c) of the Act. For Endangered Species Act Section 7(a)(2) consultation requirements, the EPA determined that the Agency had no discretion for consultation because all the revisions are related to protections for human health.

Subsection 62-303.460(2)

Subsection 62-303.460(2) was revised and reads as follows:

> (2) If the water segment was listed on the Planning or Study List ~~planning list~~ due to samples that do not meet 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 sources ~~discharges~~ of human-induced bacteriological pollutants before verifying ~~listing~~ the water segment is impaired ~~on the verified list~~. The Department shall take into account the proximity of municipal stormwater outfalls, septic tanks, ~~and~~ domestic wastewater facilities, and other anthropogenic discharges 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 subsection 62-303.320(1), F.A.C., excluding any values that have been demonstrated to be ~~are~~ elevated solely due to non-anthropogenic sources ~~wildlife, or for~~

~~enterococci in coastal recreational waters, adjusting the values based on the human health-related risk factors for wildlife-based enterococci upon meeting the relevant requirements of 40 CFR 131.41(c)(2)~~. If information is provided to the Department indicating that the exceedances may be due to natural sources but there is uncertainty whether anthropogenic sources contributed to the exceedances, the water segment shall be placed on the Study List pursuant to paragraph 62-303.390(2)(g), F.A.C.

Subsection 62-303.460(2) was previously determined to be a new or revised water quality standard in the EPA's February 19, 2008 action, because the provision affects attainment decisions made by the state. The revisions in subsection 62-303.460(2) are both non-substantive and substantive changes. Non-substantive changes include changes that are to wording only including the change from "listing" to verifying," a change from "on the verified list" to "is impaired," the deletion of the word "the" and inclusion of the phrase "have been demonstrated to be." These changes are non-substantive because the underlying meaning of the text is unchanged.

Substantive changes to subsection 62-303.460(2) include the change from "planning list" to "Planning or Study List." This change expands the waters that will be evaluated under this provision for attainment decisions. The change of the word "discharges" to "sources" clarifies that potential causes of an impairment may be point or non-point source related. The addition of the phrase "and other anthropogenic discharges" opens the assessment of waters for the verified list to sources outside of the list of examples in the rule. At the end of the subsection, the state of Florida added "non-anthropogenic sources" and deleted the previous reference to wildlife to more broadly cover naturally occurring sources of bacteria that can cause water quality impairment. The addition of the final sentence regarding uncertainty about anthropogenic sources will place waters on the Study List, which will give the state of Florida the opportunity to identify the cause of the impairment.

The EPA is approving the revisions to subsection 62-303.450(1) as consistent with 40 CFR part 131 and Section 303(c) of the Act. Regarding Endangered Species Act Section 7(a)(2) consultation requirements, the EPA determined that the Agency had no discretion for consultation because all the revisions are related to protections for human health.

Paragraphs 62-303.720(2)(a)-(c)

Paragraphs 62-303.720(2)(a)-(c) were revised and read as follows:

(2) Waterbody segments shall be removed from the State's Verified List ~~verified list~~ only after adoption of a TMDL, a Department determination that pollution control programs provide reasonable assurance that water quality standards will be attained pursuant to Rule 62-303.600 F.A.C., or upon a demonstration that the waterbody meets the waterbody 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 or due to threats to human health based on single sample water quality criteria, the water shall be delisted when:

1. through 2. No change.

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 Rule 62-303.420, F.A.C.

(b) New data evaluated under subparagraph 62-303.720(2)(a)1., F.A.C., must meet the following requirements:

a. through b. renumbered as 1. through 2. No change.

3. ~~c.~~ The data must meet the requirements of subsections 62-303.320(4), (8)~~(6)~~ and (9)~~(7)~~, F.A.C.

(c)~~(b)~~ For waters listed due to failure to meet aquatic life use support based on biological data pursuant to Rule 62-303.430, F.A.C., the waterbody shall be delisted when two temporally independent follow-up Biological Health Assessments have been conducted and the waterbody no longer qualifies for the Planning List ~~planning list~~ pursuant to subsection 62-303.330(3), F.A.C. The follow-up tests must meet the following requirements:

1. No change.
~~2. The Biological Health Assessments must be conducted during similar conditions (same seasons and general flow conditions) under which the previous Biological Health Assessments used to determine impairment were collected.~~
2. ~~3.~~ The data must meet the requirements of subsections 62-303.330(1) and (2), F.A.C.

The revisions in paragraphs 62-303.720(2)(a)-(c) are both non-substantive and substantive changes. Non-substantive changes include capitalization changes to Verified List and Planning List. In addition, the State made editorial revisions to renumber various sections and to update the references accurately.

In February 2008, the EPA determined that subparagraph 62-303.720(2)(c)2 (previously numbered 62-303.720(2)(b)2) was a new or revised water quality standard because it utilized established biological assessment criteria contained in 62-303.330(2) to make delisting decisions regarding previously listed waters. The deletion of old subparagraph 62-303.720(2)(b)2 about Biological Health Assessments and the addition of "temporally independent" in the preceding paragraph provides clarity on the requirements for delisting. The EPA is approving the deletion of 62-303.720(2)(c)2 as consistent with 40 CFR part 131 and the CWA pursuant to Section 303(c) of the Act.

The clarification of temporally independent samples in the new 62-303.720(2)(c) is an assessment methodology and does not change the previously approved standard, 62-303.720(2)(b), which is now numbered as 62-303.720(c). The EPA is approving the revisions to paragraph 62-303.720(2)(c) as consistent with 40 CFR part 131 and Section 303(c) of the Act.

Because the underlying numeric criteria in these waters remain unchanged, these revisions to subsection 62-303.720(2)(a)-(c) were determined to have no effect on endangered species or their critical habitat for the purposes of Endangered Species Act Section 7(a)(2) consultation requirements.

Subparagraph 62-303.720(2)(k)2.

Subparagraph 62-303.720(2)(k)2 was revised and reads as follows:

(2) Waterbody segments shall be removed from the State's Verified List ~~verified list~~ only after adoption of a TMDL, a Department determination that pollution control programs provide reasonable assurance that water quality standards will be attained pursuant to Rule 62-303.600 F.A.C., or upon a demonstration that the waterbody meets the waterbody quality standard that was previously established as not being met.

(k)~~(j)~~ For waters listed based on nutrient impairment, the waterbody shall be delisted if:

2. It was listed based on exceedances of a numeric nutrient criterion expressed as an annual geometric mean or annual mean, and the water attains the criterion for three consecutive years;

This provision is still under review and not acted on in this decision document. The EPA will address this provision in a separate decision document at a later date.

Subparagraph 62-303.720(2)(k)6

Subparagraph 62-303.720(2)(k)6 was revised and reads as follows:

(2) Waterbody segments shall be removed from the State's Verified List ~~verified list~~ only after adoption of a TMDL, a Department determination that pollution control programs provide reasonable assurance that water quality standards will be attained pursuant to Rule 62-303.600 F.A.C., or upon a demonstration that the waterbody meets the waterbody quality standard that was previously established as not being met.

(k)~~(j)~~ For waters listed based on nutrient impairment, the waterbody shall be delisted if:

6. It was listed based on exceedance of a loading based numeric nutrient criterion and the water attains the criterion for three consecutive years; or

This provision is still under review and not acted on in this decision document. The EPA will address this provision in a separate decision document at a later date.

Revisions to Chapter 62-4 Permits

Subsection 62-4.242(3)

Subsection 62-4.242(3) was revised and reads as follows:

(3) Standards Applying to Outstanding National Resource Waters:

(a) All discharges or activities that may cause degradation of water quality in Outstanding National Resource Waters are prohibited, other than:

1. No change.
2. Those discharges or activities described in sub-subparagraphs 62-4.242(2)(a)1.b., 62-4.242(2)(a)1.c., and 62-4.242(2)(a)2.b., ~~and 62-4.242(2)(b)2.,~~ F.A.C.

On November 12, 2014, the EPA disapproved Florida's revision to subparagraph 62-4.242(3)(a)2, which allowed the lowering of water quality in an Outstanding National Resource Water (ONRW) associated with discharges and activities described in subparagraph 62-4.242(2)(b)2. As described more completely in the EPA's November 12, 2014 decision document, the revised subparagraph 62-4.242(3)(a)2 exempted degradation associated with turbidity resulting from state-permitted beach nourishment projects from the prohibition of discharges or activities that may cause degradation in ONRWs. The Agency determined this revision was not consistent with 40 C.F.R. § 131.12(a)(3), which prohibits states from allowing anything other than a temporary lowering of water quality in an ONRW. Therefore, the EPA disapproved the revision under Section 303(c) of the CWA and recommended that the State remove the revision as part of a future rulemaking.

The deletion of the reference to subsection 62-4.242(2)(b)2 means that degradation from turbidity related to state-permitted beach nourishment projects is no longer exempt from the prohibition of discharges or activities that may cause degradation in ONRWs. This revision is approved as consistent with 40 CFR part 131 and Section 303(c) of the Act. There is no effect on endangered species or their critical habitat for the purposes of Endangered Species Act Section 7(a)(2) consultation requirements because the current action to approve the deletion of a provision, which never was effective for CWA purposes, and consequently not previously consulted on, can be considered an editorial change for the purposes of consultation.

Subsection 62-4.242(4)

Subsection 62-4.242(4) was revised and reads as follows:

~~(4) Equitable Abatement.~~

~~(a) It shall be Department policy to further protect and enhance the quality of those surface waters whose quality has been artificially lowered below the quality necessary to support their designated uses. For such waters, no new activity or discharge shall be issued a Department license to construct unless the applicant affirmatively demonstrates that:~~

~~1. Water quality standards once achieved would not be violated as a result of the proposed activity or discharge;~~

~~2. The proposed activity or discharge is necessary or desirable under federal standards; and~~

~~3. The proposed activity or discharge is clearly in the public interest.~~

~~(b) To allocate equitably the relative levels of responsibility for abatement among persons directly discharging significant amounts of pollutants into waters which fail to meet one or more of the water quality criteria applicable to those waters, it is necessary to determine the amounts of those pollutants contributed by each of those persons and to consider all factors relevant to the equitable allocation of that responsibility. The following provisions of this section prescribe the means by which the Department, upon the petition of a license applicant, will equitably allocate among such persons the relative levels of abatement responsibility of each for abatement of those pollutants and by which it will establish for each of those persons, if necessary, an abatement program and schedule to accomplish any abatement determined necessary under the provisions of this section.~~

~~(c)1. For a surface water body, or portion thereof, which is determined by the Department to fail to meet one or more of the water quality criteria applicable to that water body, an applicant for a license to construct or operate a stationary installation to discharge wastes which contributes, or will contribute, to that failure may petition the Department in writing for an equitable allocation of the relative levels of responsibility for abatement among the stationary installations which discharge significant amounts of one or more of the pollutants which contribute to the failure of those waters to meet the water quality criterion (a) specified in the petition.~~

~~2. The applicant shall identify in the petition the location of each of the existing stationary installations which it wishes the Department to consider and the legal name and mailing address of the owners of each of those stationary installations.~~

~~3. The county government within which each stationary installation identified under subparagraphs 1. and 2. of this paragraph is located shall be given notice of the proceeding, as shall the municipality, if the stationary installation is located within a municipality.~~

~~4. The Department may identify any other owners of existing stationary installations which it deems necessary to allocate equitably the relative levels of responsibility for abatement of~~

~~pollutants which contribute to the failure of those waters to meet any criterion specified in the petition.~~

~~5. Those owners identified by the petitioner and the Department shall be joined as parties in the licensing proceeding. Nothing shall preclude any party from requiring the joinder, as a party to the proceeding, of the owner of any other existing stationary installation upon written motion and an affirmative demonstration that such stationary installation is discharging significant amounts of one or more pollutants which contribute to the failure of the subject water body to meet any criterion specified in the petition. A motion for joinder shall be filed within 20 days of receipt by the movant of notice that it has been joined in the proceeding.~~

~~(d) License applications filed by the petitioner, or any other party, for waste discharges which are identified pursuant to paragraph (2)(c) above in the equitable allocation process under this section shall be deemed incomplete or the subject of a dispute of material fact for purposes of Chapter 120, F.S. However, if an application for renewal of an existing license has been timely filed with the Department, the existing license shall remain in full force and effect until such time as a new or modified license has been issued pursuant to paragraph (2)(k).~~

~~(e) Prior to determining the most equitable allocation of responsibility for abatement under paragraph (f), the Department shall determine the percentage and quantification of the total contribution and the contribution by each of the stationary installations identified under paragraph (c) of the pollutants identified under paragraph (c) which contributes to the failure of the subject waters to meet the water quality criterion specified in the petition. Provided, however, that the Department, upon petition by an affected party pursuant to Rule 62-3.031, F.A.C., may establish more appropriate less stringent criteria upon which to base quantification calculations. For the purpose of performing quantification calculations, the Department shall assume waste discharges entering the water body from an adjacent state as a separate point source of pollution.~~

~~(f) The following factors shall be considered by the Department in determining the most equitable allocation among the parties identified pursuant to paragraph (c) of the relative levels of responsibility of each for abatement of the pollutants with which the petition is concerned:~~

~~1. The percentage and quantification of the abatement achieved by abatement techniques previously undertaken, if any, by each of those stationary installations and the costs previously incurred, if any, with respect to each, along with any economic or production benefits gained from said abatement techniques.~~

~~2. The identification and estimated cost of alternative abatement techniques available for each stationary installation. Identified techniques shall include:~~

~~a. Those techniques which would abate the level of pollutants to the degree required by the quantities of contributed pollutants determined under paragraph (e), or the maximum degree possible, if the degree required is not presently attainable.~~

~~b. Those techniques which would abate additional quantities of pollutants beyond the quantities determined under paragraph (e) and the approximate percentage of additional abatement which could be provided.~~

~~3. The economic and production impacts of additional abatement on each party, if any.~~

~~4. Other environmental impacts of available abatement techniques.~~

~~(g) In determining the percentages and quantities under paragraph (e), the Department shall use the best scientific and technical information, methods, and data in the possession of the Department.~~

~~(h) Each party to the licensing proceeding shall provide the Department, and each other party except as provided by Section 403.111, F.S., with any information which is requested by the Department and necessary for the determination under paragraphs (e) and (f). With regard to the determination under sub-subparagraph (f)2.ii., however, parties shall only be required to provide~~

~~that information within their possession at the time of the Department's request. The Department shall make available to a party any information in its possession, and shall provide reasonable assistance to any party in identifying that information which would assist the party in complying with the Department's request.~~

~~(i) Each party shall undertake a program approved by the Department to abate the quantity of contributed pollutants for which it is determined responsible under paragraph (e). Such abatement program shall include but not be limited to, a quantified effluent limitation, best management practices or specific techniques for abatement, and a schedule for commencement and completion of the required abatement. In establishing an abatement schedule, the Department shall consider the previous abatement efforts and their costs, the reasonable remaining usable life of the discharge facility, and any commitments for phasing out the discharge from the facility.~~

~~(j) An abatement program required under paragraph (i) may include the agreement of one owner to undertake additional abatement on behalf of another owner. When such an agreement has been executed fully and filed in writing with the Department within a reasonable period of time set by the Department, the agreement shall be recognized in the licenses of the signatory parties to the extent that it satisfies the levels of abatement, determined for those parties under paragraph (e).~~

~~(k) Each party shall be issued an appropriate license or modified license, which shall include any abatement program required of the party and approved under paragraph (i), as well as any other conditions authorized by Chapter 403, F.S.~~

The state of Florida has deleted subsection 62-4.242(4) its entirety. Subsection 62-4.242(4), which established an equitable abatement process as part of the state's antidegradation requirements, was approved as a water quality standard by the EPA in 1979. The state of Florida explained that subsection 62-4.242(4) is being repealed because: 1) the process could undermine the TMDL and Basin Management Action Plan (BMAP) processes, which equitably allocate loads; 2) the provision is inconsistent with water quality credit trading; and 3) Section 403.067, F.S., has been revised so that the subsection 62-4.242(4) process is not an option in basins with adopted BMAPs. The EPA is approving the revisions to 62-4.242(4) as consistent with 40 CFR part 131 and Section 303(c) of the Act. These revisions were determined to have no effect on endangered species or their critical habitat for the purposes of Endangered Species Act Section 7(a)(2) consultation requirements.

Section 62-4.244 Mixing Zones: Surface Waters.

Subsection 62-4.244 was revised and reads as follows:

(1) through (2) No change.
(3)(a) No change.
(b) Except for open ocean discharges described in paragraph (c) and ionic imbalanced demineralization concentrate discharges, described in paragraph (d) below, the maximum concentration of wastes in the mixing zone may exceed the 96 hr. LC_{50} only when all of the following conditions are satisfied.
1. through 2. No change.
3. Toxicity must be less than acute [as defined in subsection 62-302.200(1) ~~62-3.021(1)~~, F.A.C.] no more than a distance of 50 times the discharge length scale in any spatial direction. The discharge length scale is defined as the square root of the cross-sectional area of any discharge outlet. In the case of a multiport diffuser, this requirement must be met for each port, using the appropriate discharge length scale for that port. This restriction will ensure a dilution factor of at least 10 within

this distance under all possible circumstances, including situations of severe bottom interaction, surface interaction, or lateral merging.
4. through 5. No change.
(c) through (d) No change.
(4) through (6) No change.
(7) Additional relief from mixing zone restrictions necessary to prevent significant impairment of a designated use is through:
(a) through (b) No change.
(c) Modification of the requirements of this section for specific criteria by the Secretary upon compliance with the notice and hearing requirements for mixing zones set forth in paragraph (1)(c) above and upon affirmative demonstration by an applicant that the applicant's discharge from a source existing on the effective date of this rule complies with best technology economically achievable, best management practices, or other requirements set forth in Chapter 62-600 ~~62-6~~, F.A.C., and the economic, environmental and social costs of compliance with the existing criteria outweigh the social, environmental, and economic benefits of compliance with more stringent discharge limitations necessary to comply with mixing zone requirements of subsection 62-4.244(1), F.A.C., and the provisions relating to dissolved oxygen in Rule 62-4.244, F.A.C.
1. through 2. No change.
(d) No change.

Section 62-4.246 references previously approved water quality standards. The revisions to 62-4.244 update references to definitions and rules within the permitting regulations. These are not substantive revisions and the EPA is approving the revisions to Section 62-4.244 as consistent with 40 CFR part 131 and Section 303(c) of the Act. These revisions were determined to have no effect on endangered species or their critical habitat for the purposes of Endangered Species Act Section 7(a)(2) consultation requirements.

Conclusions

Based on the reasons outlined above, the EPA concludes that the state of Florida's new or revised water quality standards meet the requirements of the CWA and 40 CFR Part 131, with the exception of subparagraphs 62-303.720(2)(k)2; 62-303.720(2)(k)6; and the Class II, Class III Marine, and Class III-Limited Marine provisions contained in subsection 62-302.530(46). The EPA is taking no action regarding subparagraphs 62-303.720(2)(k)2; 62-303.720(2)(k)6; and the Class II, Class III Marine, and Class III-Limited Marine provisions contained in subsection 62-302.530(46) and will review those provisions under separate cover. With the exception of those provisions which the EPA determined not to be a new or revised water quality standard and those provisions which will have actions under separate cover, the revised criteria addressed in this Decision Document are approved by the EPA pursuant to Section 303(c) of the Act.

JUL 24 2017
Date

Mary S. Walker
Director, Water Protection Division