

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: AMENDMENTS TO THE
VERIFIED LIST OF IMPAIRED
WATERS FOR THE GROUP 5
INDIAN RIVER LAGOON BASIN

OGC Nos.: 19-1072 – 19-1077

ORDER

Pursuant to Section 403.067(4), Florida Statutes ("Fla. Stat."), and Chapter 62-303, Florida Administrative Code ("F.A.C."), the Florida Department of Environmental Protection ("department") is adopting amendments to the Verified List of Impaired Waters for three waterbodies in the Group 5 Indian River Lagoon basin.

The identification of impaired waters is a critical component of the department's comprehensive process to scientifically assess Florida's surface waters and restore those waterbodies not meeting their designated uses (e.g., recreation, a healthy, well-balanced aquatic ecosystem, etc.). To facilitate this process, the department has divided the surface waters of the State into five groups, with one group being assessed each year.

This Order addresses amendments to the Verified List of Impaired Waters for three waters in the Group 5 Indian River Lagoon Basin¹ due to the approval of the Mosquito Lagoon Reasonable Assurance Plan. In June 2018 Mosquito Lagoon was added to the Verified List of Impaired Waters for nutrients and chlorophyll-*a*. At the time, stakeholders had initiated development of a reasonable assurance plan (RAP) intended

¹ The department initially adopted the Group 5 Verified List in May 2009. The Group 5 Verified List was subsequently amended in January 2010, February 2012, January 2014 and June 2018.

to address the nutrient impairments identified in the lagoon, but had not finalized the plan. Since then, local stakeholders, with the assistance of department staff, completed the RAP through a coordinated public process that identified sources contributing to the water quality problems of the estuary, developed local restoration goals, established funding sources for restoration activities, and outlined a timeframe for achieving the restoration goals.

After a review of the documentation and projects identified in the RAP, there is sufficient information to demonstrate that the RAP will improve the water quality of the lagoon and is reasonably expected to redress the identified nutrient impairments in the future. The department supports and encourages the ongoing efforts of local stakeholders to expedite the restoration of the lagoon. As a result, the department is amending the Verified List of Impaired Waters by removing three waterbody segments covering Mosquito Lagoon and placing the impairments into assessment category 4b (Reasonable Assurance). This amendment is set forth in Exhibit 1, attached hereto and incorporated herein, and titled, 2019 AMENDMENT TO THE VERIFIED LIST OF IMPAIRED WATERS, GROUP 5 INDIAN RIVER LAGOON BASIN.

The changes in this Order are made in accordance with Chapter 62-303, F.A.C., and Section 403.067, Fla. Stat., and will be submitted to EPA with the intent of amending Florida's 303(d) list. This Order revises the previously adopted State lists.

Notice of Rights

The department's proposed agency action shall become final unless a timely petition for administrative hearing is filed under Sections 120.569 and 120.57, Fla. Stat., before the deadline for filing a petition. The procedures for petitioning for a hearing are set forth below.

Persons whose substantial interests are affected by this Order have a right to petition for an administrative hearing to contest this Order pursuant to Sections 120.569 and 120.57, Fla. Stat. The Petition must contain the information set forth below and must be filed (received) in the department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000, within 21 days of the date of receipt of this Order, or 21 days of the date of publication of notice of this Order, whichever occurs first. Failure to file a petition within 21 days of the date of publication of notice or receipt of written notice of this Order, whichever occurs first, constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Fla. Stat. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, F.A.C.

Extensions of Time

The department may, for good cause shown, grant a request for an extension of time for filing a petition. Requests for extension of time must be filed with the department prior to the applicable deadline. Such requests for extensions of time shall contain a certificate that the moving party has consulted with all other parties, if any, concerning the extension and whether any other parties agree to the extension. A timely

request for an extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Contesting A Water Body Or Water Segment Not Listed

A person whose substantial interest has been affected by the department choosing not to include a water segment on the basin Verified Lists must file a petition as directed herein.

Contesting The Listing Of A Water Segment

A person whose substantial interest has been affected by the department's listing of a water segment on the basin Verified List must file a petition as directed herein using OGC number listed for that particular water segment.

Contents of Petition for Hearing

A petition that disputes the material facts on which the department's action is based must contain the following information: (a) the name and address of each agency affected and each agency's file or identification number, if known, including the department's identification number (OGC number) for the water segment and the county in which the subject matter or activity is located; (b) the name, address, any e-mail address, any facsimile number, and telephone number of each petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination; ; (c) a statement of how and when each petitioner received notice of this Order; (d) a statement of all the material facts disputed by petitioner. If there are

none, the petition must so indicate; (e) a concise statement of the ultimate facts alleged, including the specific facts which petitioner contends warrant reversal or modification of this Order; (f) a statement of the specific rules or statutes petitioner contends require reversal or modification of this Order, including an explanation of how the alleged facts relate to the specific rules or statutes; and (g) a statement of the relief sought by petitioner, stating precisely the action petitioner wants the department to take with respect to this Order. A petition that does not dispute the material facts on which the department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28- 106.301, F.A.C.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means the department's final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any decision of the department with regard to the subject order have the right to petition to become a party to the proceeding.

Mediation

Mediation is not available.


Judicial Review

This Order is final agency action unless a person who is substantially affected by the department's proposed agency action timely requests a hearing under Sections 120.569 and 120.57, Fla. Stat. A party who is adversely affected by this Order has the right to seek judicial review under Section 120.68, Fla. Stat., by filing a notice of appeal under Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the department in the Office of the General Counsel, Mail Station

35, 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this Order is filed with the clerk of the department.

DONE AND ORDERED this 15th day of September, 2019, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Noah Valenstein
Secretary

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

Donna M. Etheridge 9/17/19
CLERK DATE
Deputy

EXHIBIT 1

2019 AMENDMENT TO THE VERIFIED LIST OF IMPAIRED
WATERS, GROUP 5 INDIAN RIVER LAGOON BASIN

Indian River Lagoon Group 5 Basin - Central District - Cycle 3 Amended Verified List

OGC Case Number	WBID	Waterbody Name	Waterbody Type	Waterbody Class ¹	Parameters Assessed Using the Impaired Surface Waters Rule (IWR)	Criterion Concentration or Threshold Not Met	[†] Previous Cycle Summary Assessment Category ²	[†] Cycle 3 Assessment Category ³	[†] Integrated Report Category Summary Assessment	Summary Assessment Status	Planning Period Assessment Data ⁴	Verified Period Assessment Data ⁴	Comments
19-1072	2924	Mosquito Lagoon	Estuary	2	Nutrients (Chlorophyll-a)	ENRAA11 AGM ≤ 2.5 µg/L	3b	4b	4b	Reasonable Assurance	ENRAA11 (AGM) 2005 (1.4 µg/L) 2006 (1.2 µg/L) 2007 (1.1 µg/L) 2008 (1.4 µg/L) 2009 (1.9 µg/L) 2010 (4.3 µg/L) 2011 (10.5 µg/L) 2012 (12.6 µg/L) 2013 (9.6 µg/L) 2014 (2.4 µg/L)	ENRAA11 (AGM) 2010 (4.3 µg/L) 2011 (10.5 µg/L) 2012 (12.6 µg/L) 2013 (9.6 µg/L) 2014 (2.4 µg/L) 2015 (15.9 µg/L) 2016 (26.3 µg/L) 2017 (4.5 µg/L)	This waterbody is impaired for this parameter because the annual geometric means exceeded the criterion more than once in a three year period. However, it is being placed in category 4b (Reasonable Assurance) and is being removed from the State's Verified List and will not be added to the 303(d) List because there is reasonable assurance that it will attain water quality standards due to existing or proposed pollutant control measures. The department has approved the Mosquito Lagoon Reasonable Assurance Plan submitted by Volusia County and Mosquito Lagoon RAP Stakeholder Group to address the nutrient impairments in this waterbody.
19-1073	2924	Mosquito Lagoon	Estuary	2	Nutrients (Total Nitrogen)	ENRAA11 AGM ≤ 1.14 mg/L	NA	4b	4b	Reasonable Assurance	ENRAA11 (AGM) 2005 (1.08 mg/L) 2006 (0.90 mg/L) 2007 (0.73 mg/L) 2008 (0.69 mg/L) 2009 (0.79 mg/L) 2010 (0.99 mg/L) 2011 (1.08 mg/L) 2012 (1.33 mg/L) 2013 (1.03 mg/L) 2014 (0.85 mg/L)	ENRAA11 (AGM) 2010 (0.99 mg/L) 2011 (1.08 mg/L) 2012 (1.33 mg/L) 2013 (1.03 mg/L) 2014 (0.85 mg/L) 2015 (1.34 mg/L) 2016 (1.49 mg/L) 2017 (1.21 mg/L)	This waterbody is impaired for this parameter because the annual geometric means exceeded the criterion more than once in a three year period. However, it is being placed in category 4b (Reasonable Assurance) and is being removed from the State's Verified List and will not be added to the 303(d) List because there is reasonable assurance that it will attain water quality standards due to existing or proposed pollutant control measures. The department has approved the Mosquito Lagoon Reasonable Assurance Plan submitted by Volusia County and Mosquito Lagoon RAP Stakeholder Group to address the nutrient impairments in this waterbody.
19-1074	2924	Mosquito Lagoon	Estuary	2	Nutrients (Total Phosphorus)	ENRAA11 AGM ≤ 0.034 mg/L	NA	4b	4b	Reasonable Assurance	ENRAA11 (AGM) 2005 (0.012 mg/L) 2006 (0.015 mg/L) 2007 (0.015 mg/L) 2008 (0.012 mg/L) 2009 (0.014 mg/L) 2010 (0.021 mg/L) 2011 (0.040 mg/L) 2012 (0.035 mg/L) 2013 (0.033 mg/L) 2014 (0.021 mg/L)	ENRAA11 (AGM) 2010 (0.021 mg/L) 2011 (0.040 mg/L) 2012 (0.035 mg/L) 2013 (0.033 mg/L) 2014 (0.021 mg/L) 2015 (0.045 mg/L) 2016 (0.050 mg/L) 2017 (0.037 mg/L)	This waterbody is impaired for this parameter because the annual geometric means exceeded the criterion more than once in a three year period. However, it is being placed in category 4b (Reasonable Assurance) and is being removed from the State's Verified List and will not be added to the 303(d) List because there is reasonable assurance that it will attain water quality standards due to existing or proposed pollutant control measures. The department has approved the Mosquito Lagoon Reasonable Assurance Plan submitted by Volusia County and Mosquito Lagoon RAP Stakeholder Group to address the nutrient impairments in this waterbody.
19-1075	2924B1	Mosquito Lagoon (Shellfish Portion)	Estuary	2	Nutrients (Chlorophyll-a)	ENRAA12 AGM ≤ 3.4 µg/L	3b	4b	4b	Reasonable Assurance	ENRAA12 (AGM) 2005 (2.3 µg/L) 2006 (1.8 µg/L) 2007 (1.8 µg/L) 2008 (3.5 µg/L) 2009 (3.9 µg/L) 2010 (5.3 µg/L) 2011 (7.5 µg/L) 2012 (9.4 µg/L) 2013 (7.8 µg/L) 2014 (5.7 µg/L)	ENRAA12 (AGM) 2010 (5.3 µg/L) 2011 (7.5 µg/L) 2012 (9.4 µg/L) 2013 (7.8 µg/L) 2014 (5.7 µg/L) 2015 (7.1 µg/L) 2016 (15.2 µg/L) 2017 (2.4 µg/L)	This waterbody is impaired for this parameter because the annual geometric means exceeded the criterion more than once in a three year period. However, it is being placed in category 4b (Reasonable Assurance) and is being removed from the State's Verified List and will not be added to the 303(d) List because there is reasonable assurance that it will attain water quality standards due to existing or proposed pollutant control measures. The department has approved the Mosquito Lagoon Reasonable Assurance Plan submitted by Volusia County and Mosquito Lagoon RAP Stakeholder Group to address the nutrient impairments in this waterbody.

Indian River Lagoon Group 5 Basin - Central District - Cycle 3 Amended Verified List

OGC Case Number	WBID	Waterbody Name	Waterbody Type	Waterbody Class ¹	Parameters Assessed Using the Impaired Surface Waters Rule (IWR)	Criterion Concentration or Threshold Not Met	[†] Previous Cycle Summary Assessment Category ²	[†] Cycle 3 Assessment Category ³	[†] Integrated Report Category Summary Assessment	Summary Assessment Status	Planning Period Assessment Data ⁴	Verified Period Assessment Data ⁴	Comments
19-1076	2924B1	Mosquito Lagoon (Shellfish Portion)	Estuary	2	Nutrients (Total Nitrogen)	ENRAA12 AGM ≤ 0.65 mg/L	NA	4b	4b	Reasonable Assurance	ENRAA12 (AGM) 2005 (0.58 mg/L) 2006 (0.47 mg/L) 2007 (0.51 mg/L) 2008 (0.50 mg/L) 2009 (0.49 mg/L) 2010 (0.57 mg/L) 2011 (0.68 mg/L) 2012 (0.95 mg/L) 2013 (0.71 mg/L) 2014 (0.74 mg/L)	ENRAA12 (AGM) 2010 (0.57 mg/L) 2011 (0.68 mg/L) 2012 (0.95 mg/L) 2013 (0.71 mg/L) 2014 (0.74 mg/L) 2015 (0.73 mg/L) 2016 (0.95 mg/L) 2017 (0.69 mg/L)	This waterbody is impaired for this parameter because the annual geometric means exceeded the criterion more than once in a three year period. However, it is being placed in category 4b (Reasonable Assurance) and is being removed from the State's Verified List and will not be added to the 303(d) List because there is reasonable assurance that it will attain water quality standards due to existing or proposed pollutant control measures. The department has approved the Mosquito Lagoon Reasonable Assurance Plan submitted by Volusia County and Mosquito Lagoon RAP Stakeholder Group to address the nutrient impairments in this waterbody.
19-1077	2924B2	Mosquito Lagoon	Estuary	2	Nutrients (Chlorophyll-a)	ENRAA13 AGM ≤ 4.0 µg/L	3b	4b	4b	Reasonable Assurance	ENRAA13 (AGM) 2005 (4.0 µg/L) 2006 (1.9 µg/L) 2007 (2.7 µg/L) 2008 (4.2 µg/L) 2009 (5.5 µg/L) 2010 (4.2 µg/L) 2011 (5.0 µg/L) 2012 (5.2 µg/L) 2013 (4.5 µg/L) 2014 (4.0 µg/L)	ENRAA13 (AGM) 2010 (4.2 µg/L) 2011 (5.0 µg/L) 2012 (5.2 µg/L) 2013 (4.5 µg/L) 2014 (4.0 µg/L) 2015 (5.7 µg/L) 2016 (8.1 µg/L) 2017 (2.8 µg/L)	This waterbody is impaired for this parameter because the annual geometric means exceeded the criterion more than once in a three year period. However, it is being placed in category 4b (Reasonable Assurance) and is being removed from the State's Verified List and will not be added to the 303(d) List because there is reasonable assurance that it will attain water quality standards due to existing or proposed pollutant control measures. The department has approved the Mosquito Lagoon Reasonable Assurance Plan submitted by Volusia County and Mosquito Lagoon RAP Stakeholder Group to address the nutrient impairments in this waterbody.

¹ Florida's waterbody classifications are defined as:

- 1 - Potable water supplies
- 2 - Shellfish propagation or harvesting
- 3F - Recreation, propagation, and maintenance of a healthy, well-balanced population of fish and wildlife in fresh water
- 3M - Recreation, propagation, and maintenance of a healthy, well-balanced population of fish and wildlife in marine water
- 4 - Agricultural water supplies
- 5 - Navigation, utility, and industrial use

² The Cycle 1 assessment was completed in 2009 and included data from that assessment period (January 1, 1994 through June 30, 2005).

The Cycle 2 assessment was completed in 2012 and included data from that assessment period (January 1, 1999 through June 30, 2011).

³ The Cycle 3 assessment is the current assessment and includes data from the Planning Period (January 1, 2005 through December 31, 2014) and the Verified Period (January 1, 2010 through June 30, 2017).

⁴ EPA's Integrated Report Category:

- 1 - Attains all designated uses.
- 2 - Attains some designated uses and insufficient or no information or data are present to determine if remaining uses are attained.
- 3a - No data and information are present to determine if any designated use is attained.
- 3b - Some data and information are present but not enough to determine if any designated use is attained.
- 3c - Enough data and information are present to determine that one or more designated uses may not be attained according to the Planning List methodology.
- 4a - Impaired for one or more designated uses but does not require TMDL development because a TMDL has already been completed.
- 4b - Impaired for one or more designated uses but does not require TMDL development because the water will attain water quality standards due to existing or proposed measures.
- 4c - Impaired for one or more criteria or designated uses but does not require TMDL development because impairment is not caused by a pollutant.
- 4d - Waterbody indicates nonattainment of water quality standards, but the Department does not have enough information to determine a causative pollutant; or current data show a potentially adverse trend in nutrients or nutrient response variables; or there are exceedences of stream nutrient thresholds, but the Department does not have enough information to fully assess nonattainment of the stream nutrient standard.
- 4e - Waterbody indicates nonattainment of water quality standards and pollution control mechanisms or restoration activities are in progress or planned to address nonattainment of water quality standards, but the Department does not have enough information to fully evaluate whether proposed pollution mechanisms will result in attainment of water quality standards.
- 5 - Water quality standards are not attained and a TMDL is required.

⁴ Where data are presented as x/y, x represents the number of exceedences and y represents the total number of samples.

Abbreviations: WBID - Waterbody Identification; NA - Not Applicable, does not apply, or was not assessed in the previous cycle (i.e. it's a new WBID, waterbody type change, etc.);

ENR - Estuary Nutrient Region; AAM - Annual Arithmetic Mean; AGM - Annual Geometric Mean; LTA - Long Term Average; LTAAM - Long Term Annual Arithmetic Mean.

The Group 5 Indian River Lagoon Amended Verified List is based on IWR Run 54_2 and the Impaired Waters Rule (IWR), Chapter 62-303, Florida Administrative Code, with the effective date of February 17, 2016.