



June 1, 2022

Submitted via email

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Re: Rulemaking Implementing Section 380.093, F.S., Relating to the Statewide Flooding and Sea Level Rise Resilience Plan

Dear Ms. Shipley,

On behalf of the Center for Biological Diversity (Center), and our more than 100,000 Florida members and activists, I offer the following comments on the May 2022 draft rule 62S-8 to implement the Statewide Flooding and Sea Level Rise Resilience Plan. The Center is a nonprofit, public interest environmental organization dedicated to protecting imperiled species and the habitat and climate they need to survive through science, law, and policy.

We provide the following comments, which we believe would help incentivize natural solutions; protect ecosystems, imperiled species, and habitat; and prioritize Black, Brown, Indigenous, and other communities of color, as well as low-wealth and other frontline communities who experience the greatest impacts from climate-change-driven sea level rise and flooding.

Prioritizing Natural Solutions and Protecting Ecosystems, Imperiled Species, and Habitat

While we appreciate that the draft rule incorporates natural and nature-based features into the project-scoring criteria, we recommend placing even more emphasis on natural solutions—including the restoration or establishment of wetlands, mangroves, marshes, and oyster or coral reefs, and the installation of living shorelines—by allocating more points to projects that incorporate these types of solutions. Natural solutions are more flexible and multifaceted, minimizing and mitigating climate impacts while slowing further warming, securing ecosystem services, and protecting biodiversity.¹ Many benefits of natural solutions cannot be attained through traditional “gray” infrastructure like seawalls, breakwaters, groins, and jetties.

Indeed, while gray infrastructure can help divert water from floods and rising seas in the short-term, it can also have extensive negative impacts on native ecosystems, rare and imperiled

¹ See Seddon N, Chausson A, Berry P, Girardin CAJ, Smith A, Turner B. 2020 Understanding the value and limits of nature-based solutions to climate change and other global challenges. *Phil. Trans. R. Soc. B* 375: 20190120. <http://dx.doi.org/10.1098/rstb.2019.0120>; Bridges, T. S., J. K. King, J. D. Simm, M. W. Beck, G. Collins, Q. Lodder, and R. K. Mohan, eds. 2021. *International Guidelines on Natural and Nature-Based Features for Flood Risk Management*. 213-15 Vicksburg, MS: U.S. Army Engineer Research and Development Center.

species, and their habitats. These negative impacts can reverberate throughout the system, hampering critical ecosystem services provided by the natural landscape and even working at odds with flooding and sea-level-rise resilience goals. Therefore, we also recommend that, in addition to adapting the project scoring system to strongly prioritize projects that protect natural landscapes, including endangered and threatened species and their habitats, the project-scoring criteria should also *deter* projects that cause or exacerbate harm to these landscapes, species, and habitats.

Prioritizing the protection of imperiled species and their habitat, in particular, is consistent with the statutory goal to reduce risk to “critical assets,” which are defined to include but are not limited to “[n]atural . . . resources, including conservation lands, parks, shorelines, surface waters, [and] wetlands.”² These critical assets should be protected not only from direct impacts of flooding and sea level rise but also from indirect effects caused by gray infrastructure constructed in response to flooding and sea level rise. Addressing direct *and* indirect “environmental . . . challenges to the state” posed by flooding from increases in frequency and duration of rainfall, storm surge from more frequent and severe storms, and sea level rise is consistent with the Florida Legislature’s intent in promulgating the Statewide Flooding and Sea Level Rise Resilience Plan.³

Along those lines, we provide the following specific recommendations to encourage natural solutions and deter solutions that will exacerbate harm to the natural landscape, imperiled species, and associated ecosystem services:

- **62S-8.003(2)(b)** – We recommend that this paragraph specify that when considering whether a project “addresses risks to regionally significant assets,” 380.093(5)(h)1.b., F.S., the analysis should balance potential benefits to assets with potential harm to assets caused by the project itself. This addition would be consistent with the purpose and language of the statute, incentivize natural solutions, and provide stronger protection for natural critical assets that help minimize and mitigate harm from flooding and sea level rise.
- **62S-8.003(2)(c)2.** – We recommend that this paragraph define “serving” a critical asset to include positive impacts to critical assets from risk reduction while explicitly excluding negative impacts to critical assets. For example, the rule could define “serving” to mean “when a project eliminates or alleviates a current or future risk of adverse impacts from flooding or erosion *and does not degrade any critical assets through its implementation.*”
- **62S-8.003(2)(d)** – There is no clear basis for this section awarding more points for contributing to an existing flood mitigation project that includes *both* “new or enhanced structures” *and* “natural system restoration and revegetation,” when compared to a project that has only one feature or the other. The statute does not appear to make such a distinction. 380.093(5)(h)1.d., F.S. (accounting for “[t]he degree to which the project . . . incorporat[es] new or enhanced structures *or* restoration and revegetation projects” (emphasis added)).

² Fla. Stat. § 380.093 (2)(a)(4).

³ *Id.* § 380.093(1)(a).

- **62S-8.003(3)(d)** – We recommend that this section explain that reasonable cost-effectiveness analyses may include any avoided costs of project alternatives that may have indirect negative impacts on critical resources. For example, such an analysis could compare the costs of completing a nature-based project with the potential cost of completing a gray infrastructure project that could destroy or degrade natural critical assets or weaken ecosystem services that protect critical assets from flooding or sea level rise.

Prioritizing Disadvantaged Communities

We recommend revising the project-scoring criteria to give greater weight to projects that assist financially disadvantaged communities. The harms from the climate crisis and fossil fuel pollution—including increased flooding and sea level rise—are not felt equally, but instead fall first and worst on Black, Brown, Indigenous, and other communities of color, as well as low-wealth and other frontline communities, worsening the environmental justice crisis.⁴ The vast scientific literature documenting these findings has been set forth in a series of authoritative reports from the Intergovernmental Panel on Climate Change (IPCC), U.S. Global Change Research Program, and other institutions.⁵ The plan can take steps to address this systemic injustice by giving more weight to projects that prevent risk to communities harmed the most by increased flooding and sea level rise. Furthermore, the plan should lower financial and technical barriers to financially disadvantaged communities that may not have the same level of access to technical experts and resources by waiving or offering assistance with project-scoring criteria that require technical expertise or a financial assurances, such as those set forth in **62S-8.003(3)(b)1. & 3.**, **62S-8.003(3)(d)**, and **62S-8.003(5)(a)**.

Miscellaneous

We also note that the National Oceanic and Atmospheric Administration has released updated sea level rise scenarios that are relevant to the Statewide Flooding and Sea Level Rise Resilience Plan and should be used in decisionmaking.⁶

⁴ Donaghy, Tim & Charlie Jiang for Greenpeace, Gulf Coast Center for Law & Policy, Red, Black & Green Movement, and Movement for Black Lives, *Fossil Fuel Racism: How Phasing Out Oil, Gas, and Coal Can Protect Communities* (2021), <https://www.greenpeace.org/usa/wp-content/uploads/2021/04/Fossil-Fuel-Racism.pdf>; U.S. Environmental Protection Agency, *Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts*, EPA 430-R-21-003 (2021), www.epa.gov/cira/social-vulnerability-report.

⁵ U.S. Global Change Research Program, *Climate Science Special Report: Fourth National Climate Assessment, Vol. I* (2017), <https://science2017.globalchange.gov/>; U.S. Global Change Research Program, *Impacts, Risks, and Adaptation in the United States, Fourth National Climate Assessment, Vol. II* (2018), <https://nca2018.globalchange.gov/>; Intergovernmental Panel on Climate Change, *Summary for Policymakers. In: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2021), <https://www.ipcc.ch/report/sixth-assessment-report-working-group-i>.

⁶ Sweet, W.V., B.D. Hamlington, R.E. Kopp, C.P. Weaver, P.L. Barnard, D. Bekaert, W. Brooks, M. Craghan, G. Dusek, T. Frederikse, G. Garner, A.S. Genz, J.P. Krasting, E. Larour, D. Marcy, J.J. Marra, J. Obeysekera, M. Osler, M. Pendleton, D. Roman, L. Schmied, W. Veatch, K.D. White, and C. Zuzak, 2022: *Global and Regional Sea Level Rise Scenarios for the United States: Updated Mean Projections and Extreme Water Level Probabilities Along U.S. Coastlines*. NOAA Technical Report NOS 01. National Oceanic and Atmospheric Administration, National Ocean

Finally, we note that **62S-8.003(2)(b)** twice refers to “regionally significant asset, as defined in paragraph 380.093(2)(d), F.S.,” but the cited subparagraph of the Florida Statutes does not appear to define or even mention the term. Either a revised citation or clarification may be required.

Conclusion

We appreciate this opportunity to provide comments on the revised draft rule. If you have any questions, please do not hesitate to contact me at (727) 755-6950 or ebennett@biologicaldiversity.org.

Sincerely,



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