



# OUTSTANDING FLORIDA WATERS QUESTIONS AND ANSWERS

This document provides answers to some of the common questions about Outstanding Florida Waters (OFW). For more information, please contact Daryll Joyner at (850) 245-8431 or Janet Klemm at (850) 245-8427, or view the website at: <https://floridadep.gov/dear/water-quality-standards>

## 1. What is an Outstanding Florida Water?

An Outstanding Florida Water (OFW) is a waterbody deemed worthy of special protection because of its natural attributes (*e.g.*, excellent water quality, or exceptional ecological, social, educational, or recreational value).

Many areas managed by the state or federal government, including parks, wildlife refuges, marine sanctuaries, state or national forests, scenic and wild rivers, and state aquatic preserves, are designated as OFWs. Generally, the waters within these managed areas have OFW designations because the managing agencies have requested this special protection. However, managed areas are NOT automatically designated as OFWs. These areas must be formally designated through rulemaking.

In addition, a waterbody demonstrated to be of exceptional significance may be designated as a “Special Waters” OFW regardless of whether it is within an area managed by the state or federal government.

## 2. What is the basic intent of an OFW designation?

Waters are designated OFW to prevent the lowering of existing water quality due to permitted activities and to preserve the exceptional ecological and recreational significance of the waterbody.

### 3. How is an OFW protected?

In general, OFWs are protected through more stringent requirements for activities requiring a surface water discharge permit from the Department of Environmental Protection (DEP) or a Water Management District (WMD), such as dredge and fill (Environmental Resource Permit, ERP) or wastewater discharge permits. For example, new discharges of stormwater would require additional treatment prior to discharging to an OFW, and new direct wastewater discharges to an OFW are generally not authorized unless they do not lower existing ambient water quality. The ambient water quality for OFW purposes is defined as the water quality at the time of OFW designation or the year before applying for a permit, whichever water quality is better.

### 4. How does a waterbody become designated as an OFW?

There are two main ways to designate an OFW. DEP may propose the designation of waters within State and Federal managed areas as OFWs or, for waters that are not within the state or federal parks system, a substantially interested person may request an OFW designation through a petition that DEP designate a waterbody to be a “special waters” OFW. The OFW designation process is highly public and includes substantial opportunity for public input. DEP must follow Chapter 120 rulemaking procedures throughout the process and must also adhere to the “special waters” rulemaking procedures in Rule 62-302.700, F.A.C., to designate “Special Water” OFWs. The authority to approve or deny a new OFW designation lies with the Environmental Regulation Commission (ERC).

If DEP chooses to initiate rulemaking in response to a petition for a “special waters” OFW designation, DEP holds at least one public workshop in the affected area to both inform and solicit comments from the public on the proposal. DEP must also inform all local county or municipal governments and state legislators whose districts or jurisdictions include all or part of the watershed about the potential OFW.

After gathering sufficient information, DEP prepares a recommendation for consideration by the ERC. This seven-member citizens' body then votes on each proposal at a public hearing that is usually held in the affected area. The ERC must find that:

- a. The waters are of exceptional recreational or ecological significance, and
- b. The environmental, social, and economic benefits of the designation

outweigh the environmental, social, and economic costs.

## 5. Who can propose an OFW?

Any substantially interested person who wishes to propose waters for an OFW designation may submit a petition to DEP in accordance with Chapter 120 of the Florida Statutes.

## 6. Is an OFW designation a different surface water classification and designated use?

No. An OFW designation is not a separate surface water classification or designated use. The surface water classification (Class I, II, or III,) and associated designated use of those classes (Potable Water Supply; Shellfish Propagation or Harvesting; or Fish Consumption, Recreation and Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife, for example) do not change if a waterbody is designated as an OFW.

## 7. Doesn't the existing surface water classification prevent a discharger from lowering water quality, even without a waterbody being designated as an OFW?

No. For existing water quality classifications, such as Class II (Shellfish Propagation or Harvesting) and Class III (Fish Consumption, Recreation and Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife), DEP or a WMD may issue permits that allow increased loadings of some substances to the water, as long as the discharge does not cause or contribute to a violation of water quality criteria applicable to the specific classification, the discharge is clearly in the public interest, and if all other Department requirements are met.

The surface water quality criteria are intended to protect designated uses, but they may not be sufficient to maintain conditions typical of particularly diverse or ecologically exceptional water bodies. Permitted activities in an OFW are not allowed to decrease water quality in the OFW (beyond natural variability) from the existing background levels for the year of OFW designation or the year prior to permit application, whichever is better water quality.

## 8. Would an OFW designation extend DEP's jurisdiction further into tributaries and wetlands?

No. An OFW designation does not change the jurisdictional status of any waters.

## 9. Is an additional or separate application needed to obtain a permit for an activity in an OFW?

Designation as an OFW does not create the need for a separate "OFW" permit. An OFW designation affects only the criteria used in permitting decisions.

## 10. Are regulatory activities of all state and federal agencies affected by OFW designation?

No. Only DEP, WMD, or DEP-delegated permitting activities are affected. These activities include National Pollutant Discharge Elimination System (NPDES) permits for point source dischargers (domestic and industrial wastewater facilities, and Municipal Separate Storm Sewer System permittees), Environmental Resource Permits (ERP), such as for dredging and filling of channels and marinas, and stormwater permits issued by the Department or WMD.

## 11. What activities are affected by an OFW designation?

An OFW designation only affects new permitted activities that have the potential to degrade water quality. Activities that are not regulated by DEP or a WMD for water quality protection purposes are not affected.

## 12. What activities are not affected by an OFW designation?

Activities not affected by OFW designation are those that do not need a permit from DEP or the WMD. These include, but are not limited to:

- Fishing rules or harvesting limits (these are regulated by the Florida Fish and Wildlife Conservation Commission);
- Boating rules such as speed limits, no wake zones, and restrictions

on non-motorized vessels (these are generally under the purview of local governments); and

- Ordinances requiring a minimum setback from a waterbody (also a local government issue).

### 13. Would an OFW designation constrain real estate development in the area?

No. In fact, an OFW designation may increase property values due to the recognized exceptional attributes of the OFW. However, in order to minimize adverse effects of an activity on a water body, an OFW designation can impose higher costs for pollution abatement (*e.g.*, increased stormwater treatment pond capacity) for new developments. These potential increased costs must be estimated by DEP as part of the economic analysis that accompanies an OFW proposal to the ERC.

### 14. Does an OFW designation affect existing point source discharges that currently have a DEP or WMD permit?

No. Existing permitted discharges, including those with a complete application at the time of designation, are “grandfathered” and may continue to discharge without any new OFW requirements, provided the permitted discharge does not increase either its permitted flow or pollutant loading.

### 15. Does an OFW designation restrict the repair of existing private docks or seawalls?

No. The repair or replacement of a private dock or seawall would not be restricted by an OFW designation; however, regulatory authorization may be required for activities not exempted under Section 403.813(1), F.S., or Rule 62-330.051, F.A.C. (see the statute and rule for details).

### 16. Would an OFW designation prohibit a property owner from building a dock?

No. However, the size limit for the exemption for single-family docks decreases from 1,000 square feet in non-OFWs to 500 square feet in

OFWs. The size limit for using a general permit for dock construction does not change for OFWs (an applicant can construct a dock up to 2,000 square feet in size provided they submit an application to the Department documenting the dock meets the criteria found in Rule 62-330.475, F.A.C.). Any dock that is unable to meet the exemption or general permit criteria would require an individual permit, and as part of the ERP review, DEP staff would evaluate whether the proposed activity is “clearly in the public interest.”

### 17. Are there exemptions that apply within OFWs?

Yes. Rule 62-4.242(2)(b), F.A.C., allows specific activities within OFWs that a) allow for or enhance public use, b) maintain facilities that existed before OFW designation, c) are in the public interest and only lower water quality on a temporary basis during construction (applies to new facilities permitted after OFW designation), d) beach nourishment projects that meet specific turbidity requirements, or e) meet special safeguards if they are the only alternative due to unreasonably higher costs. Also, activities that are exempt from permitting generally are exempt from OFW requirements.

### 18. What requirements apply to new discharges to an OFW or activities proposed within an OFW?

Separate requirements must be met for direct and indirect discharges subject to DEP or WMD permitting programs:

- New direct point source discharges must not lower existing ambient water quality;
- New indirect pollutant discharges (discharges to waters that influence OFWs) must not significantly degrade adjacent Outstanding Florida Waters; and
- Activities or discharges in an OFW that receive a DEP or WMD permit must be “clearly in the public interest.”

The applicable permitting program rules should be consulted to determine the specific programmatic requirements related to discharges into an OFW.

## 19. Are there stricter stormwater controls for OFW designated areas?

Yes. Activities that require an ERP for Stormwater generally must undergo additional treatment when discharging to an OFW. To accommodate this, treatment systems are designed to achieve a 95% reduction in pollutant loads compared to stormwater discharged to non-OFW waters, where an 80% reduction is generally required.

## 20. Do OFW requirements apply to agriculture or silviculture activities?

Many agricultural stormwater activities are exempt from ERP permitting requirements by statute or rule. Since OFW requirements are implemented through DEP and WMD permitting programs, OFW requirements would not apply as long as the exemption is maintained.

For instance, Rule 62-330.551, F.A.C., exempts from ERP permitting certain Silvicultural activities that operate in accordance with the Silviculture BMP Manual. However, it should be noted that the silviculture BMPs require that the width of the Special Management Zone adjacent to an OFW be increased compared to non-OFW lakes and streams. Within the Special Management Zone of an OFW, the prohibition of clear-cut harvesting is increased from 35 feet in most non-OFW waters to 50 feet in OFWs, and the prohibition of mechanical site preparation, road construction, and fertilization is increased from 70 feet to 200 feet from the OFW.