

Chapter 3: 2015 Priority List and Schedule

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INTRODUCTION

Water resource protection criteria are contained in Chapters 40E-2 and 40E-20, Florida Administrative Code (F.A.C.), and the Applicant's Handbook for Water Use Permit Applications within the South Florida Water Management District (SFWMD 2014¹; Applicant's Handbook). In addition to these criteria, the South Florida Water Management (SFWMD or District) uses three regulatory mechanisms, which are adopted by rule, to protect water supplies for natural systems; minimum flows and levels (MFLs), water reservations, and restricted allocation areas (RAAs). This chapter summarizes District MFL, water reservation, and RAA rulemaking completed through 2014 and outlines priorities for developing new rules during the 2015–2017 timeframe.

In accordance with Section 373.042, Florida Statutes (F.S.), and Chapter 40E-8, F.A.C., the District develops annually a Priority List and Schedule (Priority List) that identifies water resources (surface watercourses, water bodies, and aquifers) for which MFLs and water reservations need to be established. The Priority List is submitted to the Florida Department of Environmental Protection (FDEP) by November 15 each year which contains the water resources prioritized for MFL or water reservation establishment or reevaluation, along with a schedule for completion. Water resources are placed on the list based on their importance to the state or region, and the existence of or potential for harm from existing or expected consumptive use impacts. In developing the annual Priority List, the District's focus has been on regionally significant water bodies with large-scale ecosystems.

RULEMAKING

MINIMUM FLOWS AND LEVELS

MFL rules are resource protection tools adopted to establish minimum flows and levels in water resources (Chapter 40E-8, F.A.C.). MFL rules contain specific minimum flow and level criteria below which additional water withdrawals will result in significant harm to the water resource or the ecology of the area. Significant harm is defined in Subsection 40E-8.021(31), F.A.C., as the temporary loss of water resource functions, which results from a change in surface or groundwater hydrology, that takes more than two years to recover. When establishing an MFL rule and its associated criteria, the District considers the effects and constraints of previous changes and structural alterations to the water resource or watershed that might affect how the

¹ SFWMD. 2014. Applicant's Handbook for Water Use Permit Applications within the South Florida Water Management District. South Florida Water Management District, West Palm Beach, FL. Effective July 16, 2014. http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd_repository_pdf/wu_applicants_handbook.pdf.

water resource responds to the MFL (Paragraph 373.0421(1)(a), F.S.). MFL rules and criteria are based on existing best available information and are periodically reviewed and revised as needed based on new information and changing water resource conditions, in accordance with Subsections 373.0421(3), F.S., and 40E-8.011(3), F.A.C.

As part of the MFL establishment process, the current and projected flow or level in a priority water resource is evaluated to determine if it meets the proposed MFL criteria or if it is expected to fall below the criteria within the next 20 years. If so, the District must develop and expeditiously implement a recovery or prevention strategy in accordance with Subsections 373.0421(2), F.S. and 40E-8.421, F.A.C. Recovery strategies are implemented for water resources that are not currently meeting MFL criteria and the strategies are intended to restore them to the established minimum flow or level as soon as practicable. Prevention strategies are implemented when MFL criteria are currently being met, but the flow or level is projected to fall below the MFL criteria within the next 20-year planning horizon. Prevention strategies are intended to maintain the flow or level in the water resource at or above the established minimum. The District develops recovery or prevention strategies for water resources concurrently with MFL rule adoption. A recovery and prevention strategy must include a phasing or timetable which will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including development of additional water supplies and implementation of conservation and other efficiency measures to offset reduction in permitted withdrawals (Subsection 373.0421(2), F.S.). Recovery and prevention strategies that have been implemented for MFL water resources are outlined in the applicable District regional water supply plan (available at www.sfwmd.gov/watersupply).

Since 2001, MFL recovery and prevention strategy rules have been adopted for District surface water bodies and aquifers covering approximately 7.2 million acres (**Table 3-1** and **Figure 3-1**). In 2014, reevaluation of MFL criteria was completed for Florida Bay and is being continued for the Caloosahatchee River in 2015.

WATER RESERVATIONS

Whereas MFLs are established to define thresholds for significant harm to water resources, water reservations protect water for fish and wildlife or public health and safety by reserving it from consumptive use allocation. Specifically, Subsection 373.223(4), F.S. authorizes the District to "...reserve from use by permit applicants, water in such locations and quantities and for such seasons of the year, as may be required for protection of fish and wildlife or the public health and safety." Like MFLs, water reservations are adopted by rule (Chapter 40E-10, F.A.C.). A water reservation rule clearly identifies the water being reserved, and unreserved remaining water can be made available for allocation to consumptive uses. Water reservation rules may be adopted prospectively for water quantities anticipated to be made available (Subsection 62-40.474(3), F.A.C.). In such cases, the District develops the rule based on the evaluation of existing water availability and in consideration of future water that may be made available by Comprehensive Everglades Restoration Plan (CERP) and other restoration projects. Water reservations may also be a component of an existing MFL recovery or prevention strategy to aid in meeting the MFL criteria. A District priority is the establishment of water reservations to facilitate construction and implementation of CERP projects. Federal law requires that water provided by a CERP project be legally protected by rule before a cost-share agreement to construct the project is executed with the United States Army Corps of Engineers. Per Paragraph 373.470(3)(c), F.S., the increased water supply expected to result from the project must be identified in the Project Implementation Report for the project, and this additional water must be allocated or reserved pursuant to Chapter 373, F.S.

Five water reservation rules have been adopted since 2009 for District surface water bodies covering approximately 172,889 acres (**Table 3-1** and **Figure 3-1**). The most recent of these was adopted in 2014 for the Caloosahatchee River (C-43) West Basin Storage Reservoir, which reserves from allocation all water contained within and released from the reservoir to the Caloosahatchee River for the protection of fish and wildlife located downstream of the S-79 Water Control Structure (Franklin Lock and Dam). The reservoir is a component of CERP, and it serves as a recovery strategy for the Caloosahatchee River. The District is currently in the process of developing water reservations for water bodies in the Kissimmee Basin, which includes portions of the Kissimmee River and its floodplain and the Kissimmee Chain of Lakes (Upper Chain and Headwaters Lakes - Lakes Kissimmee, Cypress, and Hatchineha) (**Figure 3-2**).

Table 3-1. MFL and water reservation rules adopted for water resources in the South Florida Water Management District.

Rule Type	Rule References (F.A.C.)	Water Resource Name (and Compliance Point)	Strategy	Type	Total MFLs and WRs
MFLs	40E-8.231 and 40E-8.421(3)	Biscayne Aquifer - C-13 (S-36)	Prevention	Aquifer	17
		Biscayne Aquifer - C-14 (S-37B)	Prevention	Aquifer	
		Biscayne Aquifer - C-15 (S-40)	Prevention	Aquifer	
		Biscayne Aquifer - C-16 (S-41)	Prevention	Aquifer	
		Biscayne Aquifer - C-2 (S-22)	Prevention	Aquifer	
		Biscayne Aquifer - C-4 (S-25B)	Prevention	Aquifer	
		Biscayne Aquifer - C-51 (S-155)	Prevention	Aquifer	
		Biscayne Aquifer - C-6 (S-26)	Prevention	Aquifer	
		Biscayne Aquifer - C-9 (S-29)	Prevention	Aquifer	
		Biscayne Aquifer - Hillsboro Canal (G-56)	Prevention	Aquifer	
		Biscayne Aquifer - North New River (G-54)	Prevention	Aquifer	
	40E-8.331 and 40E-8.421(4)	Lower Tamiami Aquifer	Prevention	Aquifer	
		Mid-Hawthorn Aquifer	Prevention	Aquifer	
		Sandstone Aquifer	Prevention	Aquifer	
	40E-8.341 and 40E-8.421(5)	St. Lucie Estuary	Prevention	Estuary	
	40E-8.221(5) and 40E-8.421(8)	Florida Bay	Prevention	Estuary	
	40E-8.351 and 40E-8.421(7)	Lake Istokpoga	Prevention	Lake	
	40E-8.221(4) and 40E-8.421(6)	Northwest Fork of the Loxahatchee River	Recovery	River	23
	40E-8.221(1) and 40E-8.421(2)	Lake Okeechobee	Recovery	Lake	
	40E-8.221(3) and 40E-8.421(2)	Everglades: Central Shark Slough (NP-33)	Recovery	Wetland	
		Everglades: Central Shark Slough (NP-36)	Recovery	Wetland	
		Everglades: Holeyland WMA (HoleyG)	Recovery	Wetland	
		Everglades: Marl wetlands east of Shark Slough (NP-38)	Recovery	Wetland	
		Everglades: Marl wetlands west of Shark Slough (G-620)	Recovery	Wetland	
		Everglades: Marl wetlands west of Shark Slough (NP-201)	Recovery	Wetland	
		Everglades: NE Shark Slough (NESRS-2)	Recovery	Wetland	
		Everglades: Rockland marl marsh (G-3273)	Recovery	Wetland	
		Everglades: Rotenberger WMA (Rotts)	Recovery	Wetland	
		Everglades: Taylor Slough (NP-67)	Recovery	Wetland	
		Everglades: WCA-1 (1-7)	Recovery	Wetland	
		Everglades: WCA-2A (2A-17)	Recovery	Wetland	
		Everglades: WCA-2B (SITE_99)	Recovery	Wetland	
		Everglades: WCA-3A Central (3A-4)	Recovery	Wetland	
Everglades: WCA-3A North (3A-2)		Recovery	Wetland		
Everglades: WCA-3A North (3A-3)		Recovery	Wetland		
Everglades: WCA-3A North (3A-NE)		Recovery	Wetland		
Everglades: WCA-3A North (3A-NW)		Recovery	Wetland		
Everglades: WCA-3A South (3A-28)	Recovery	Wetland			
Everglades: WCA-3B (3BS1W1)	Recovery	Wetland			
40E-8.221(2) and 40E-8.421(2)	Caloosahatchee River	Recovery	Estuary		
Water Reservations	40E-10.041(1)	Picayune Strand		Wetland	5
	40E-10.041(2)	Fakahatchee Estuary		Estuary	
	40E-10.041(3)	Caloosahatchee River (C-43) West Basin Storage Reservoir		Estuary	
	40E-10.051	North Fork of the St. Lucie River		River	
	40E-10.061	Nearshore Central Biscayne Bay		Estuary	
Total					45

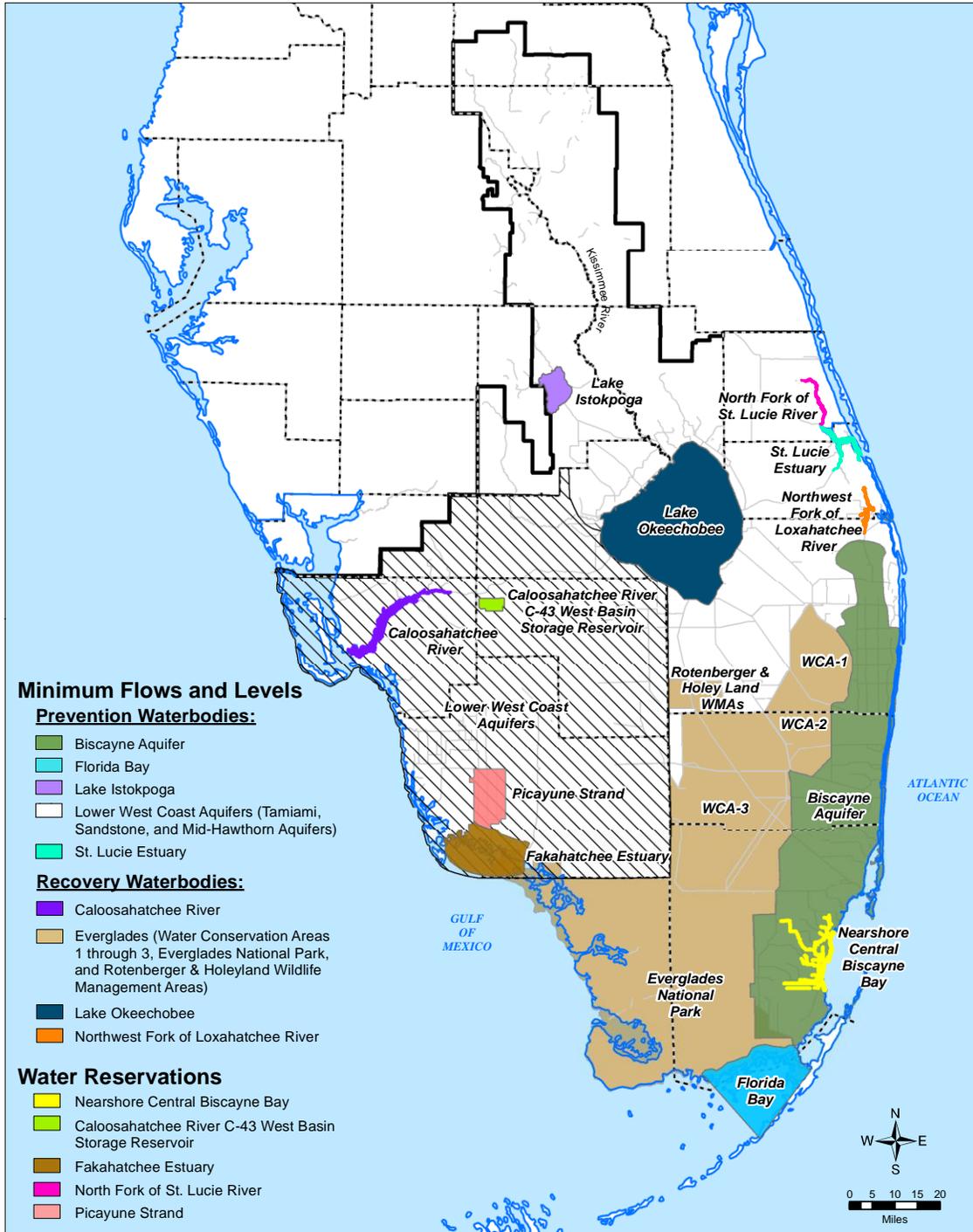


Figure 3-1. MFLs and water reservations in the South Florida Water Management District.

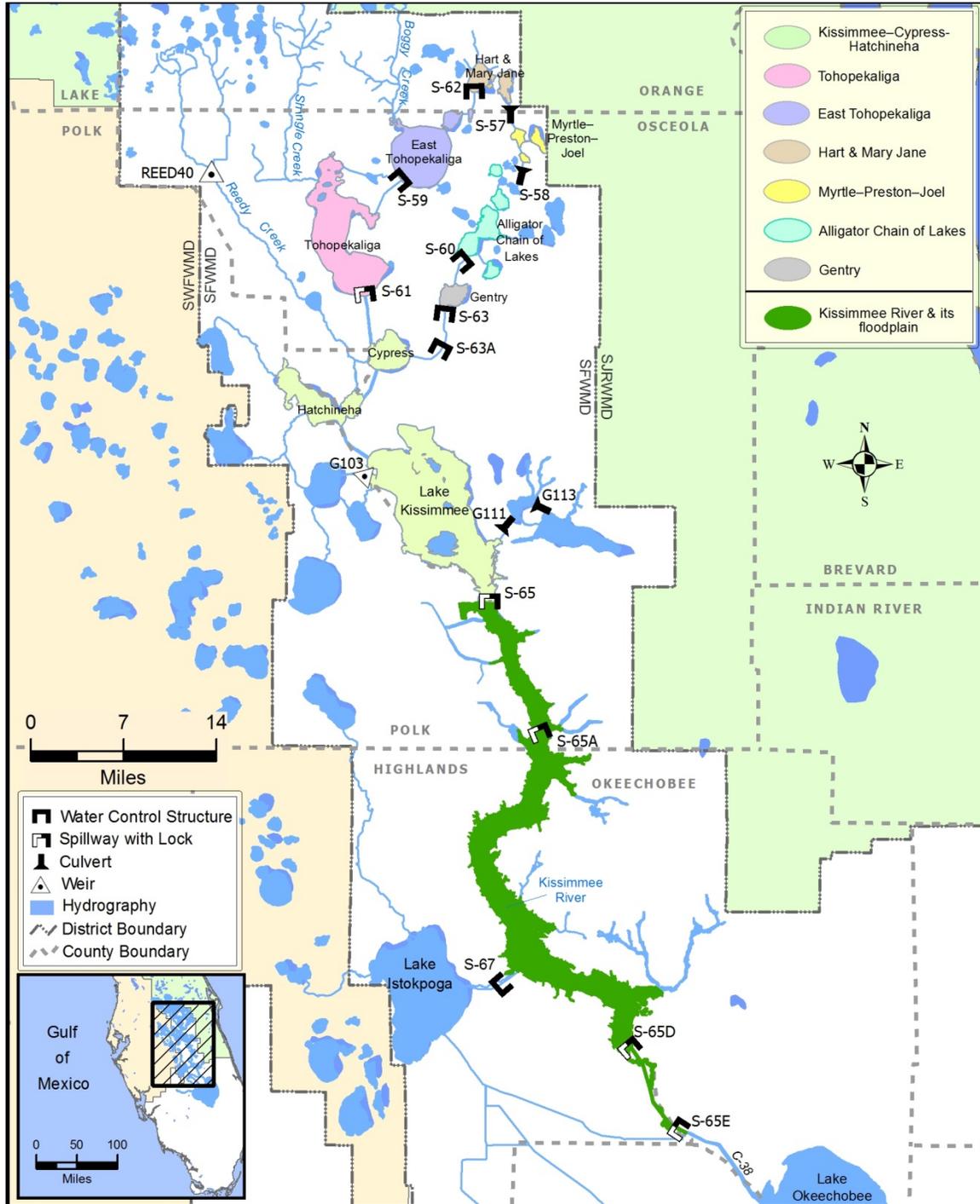


Figure 3-2. Proposed Kissimmee Basin Water Reservation water bodies in the South Florida Water Management District.

RESTRICTED ALLOCATION AREAS

Similar to water reservations, RAA criteria are established to protect natural systems from consumptive use impacts. RAA criteria are based on Subsection 373.223(1), F.S., which specifies a three-prong test used for issuing consumptive use permits. RAA criteria may also be designated as part of MFL recovery or prevention strategies required in Subsection 373.0421(2), F.S. RAA criteria adopted for specific areas of the District are listed in Section 3.2.1 of the Applicant's Handbook, which is incorporated by reference into subsection Rule 40E-2.091, F.A.C. RAA criteria have been adopted for over 5.2 million acres in the District (**Figure 3-3**). RAA criteria were adopted in 2007 for large areas of the Loxahatchee River watershed and the Everglades that limit the allocation of water from these areas to base condition water use as described in the Applicant's Handbook. In 2008, the District adopted RAA criteria by rule for the Lake Okeechobee Service Area, including Lake Okeechobee, a portion of the C-43 Canal (Caloosahatchee River), and the C-44 Canal (St. Lucie River), which are integrated conveyance systems that are hydraulically connected to Lake Okeechobee. The RAA criteria for these waters limit allocations to historical condition water uses that occurred from April 1, 2001 to January 1, 2008.

Further details on MFLs, Water Reservations, and RAAs are available on the District's website at www.sfwmd.gov/reservations, as well as Chapters 40E-8 and 40E-10, F.A.C., and Section 3.2.1 of the Applicant's Handbook. Related rule development and peer-review activities are presented on the District's website at www.sfwmd.gov/webboards, under the *MFLs and Water Reservations Technical Document Peer Review for Rule Development* link.

RULE DEVELOPMENT PROCEDURES

Rulemaking is conducted in accordance with the provisions of Section 120.54, F.S., and is supported by technical information, which is sometimes documented in a report that might undergo an independent scientific peer review. This ensures that the basis of the rule is scientifically sound. Major activities of rulemaking include the following:

- Research or technical evaluations are conducted to characterize the water resources involved, link their functions to water needs, and establish scientifically based criteria for meeting the intent of the rule.
- If appropriate, the scientific approach utilized and conclusions reached are documented in a report that supports the rule.
- Stakeholders are engaged through a series of workshops, dedicated web pages, and notifications.
- The draft rule is presented to the District's Water Resources Advisory Commission for discussion and additional stakeholder input.
- The draft rule is brought before the District's Governing Board to request authorization to publish a Notice of Proposed Rule and to transmit the proposed rule to the Joint Administrative Procedures Committee (JAPC) and the Office of Fiscal Accountability and Regulatory Reform (OFARR).
- If a Statement of Estimated Regulatory Costs (SERC) is developed, then it is made available to the public when the Notice of Proposed Rule is published. A SERC evaluates the economic impacts of the proposed rule. If economic impacts of rule implementation are expected to exceed certain thresholds of impact to small businesses, then the proposed rule must be ratified by the state legislature.

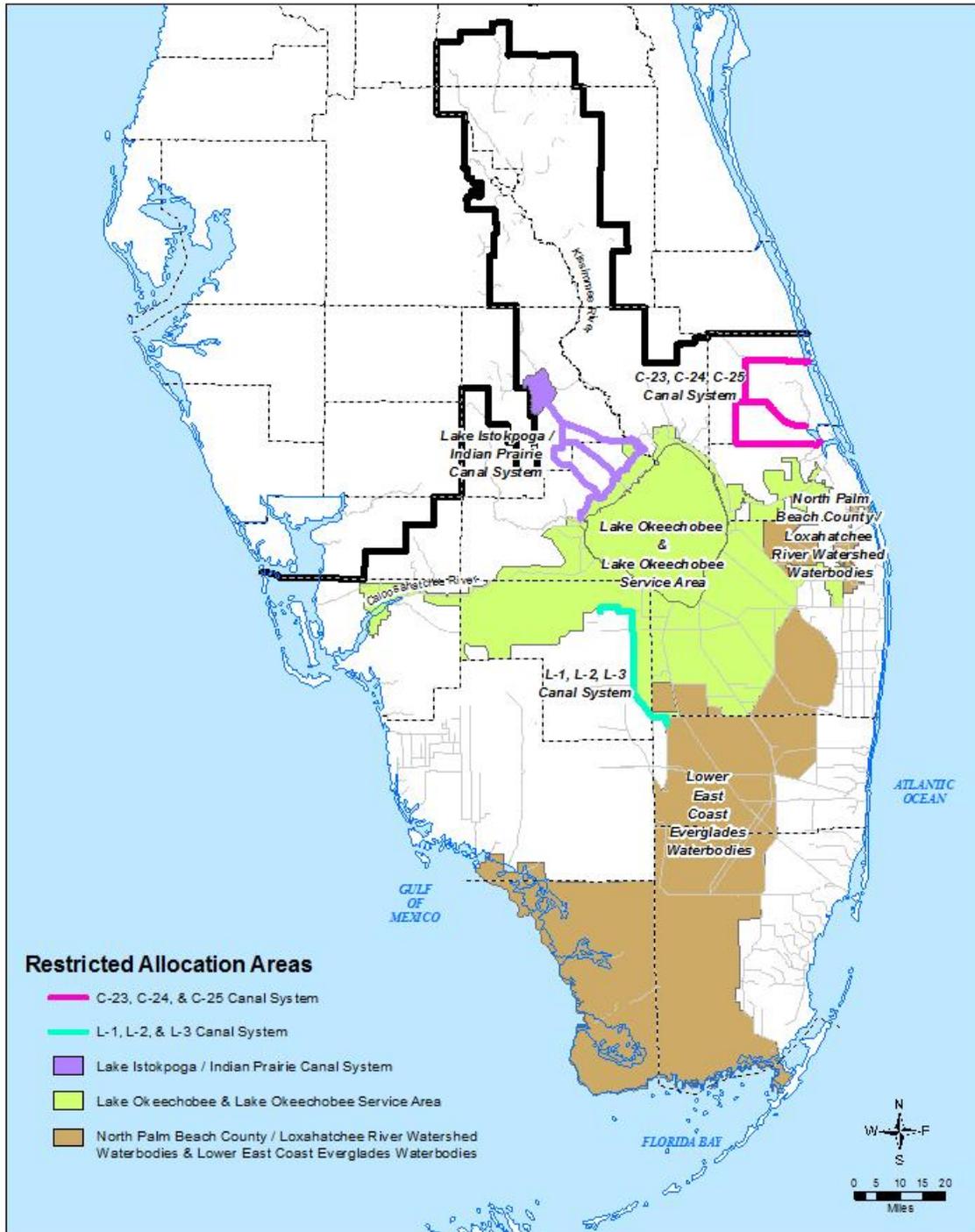


Figure 3-3. Water resources in the South Florida Water Management District with adopted restricted allocation area criteria.

- At least 28 days after publication of the Notice of Proposed Rule, a public hearing is held where the District's Governing Board considers any additional comments from stakeholders and representatives of the JAPC and OFARR. If no changes are made to the rule at the public hearing, it is then adopted by the Governing Board.
- The District forwards the adopted rule to the Department of State and it becomes effective 20 days later.

2015 PRIORITY LIST AND SCHEDULE

The District's 2015 Priority List is shown below, which includes both MFLs and Water Reservations, in accordance with Subsection 373.042(2), F.S. The 2015 Priority List was adopted by the District's Governing Board on November 13, 2014, and then submitted to the FDEP on November 18, 2014, for their review and approval.

Scheduled activities in 2015 include continued progress on the reevaluation of Caloosahatchee River MFL criteria, which will include data collection, analysis, and model application; ecological investigations; and development of MFL violation return frequencies. Also planned during 2015 is the continued development of Water Reservations for water bodies in the Kissimmee Basin, including completion of a technical supporting document, and rule adoption by the year's end.

MINIMUM FLOWS AND LEVELS

Caloosahatchee River – MFL Reevaluation

- Continue data collection and analysis for the Tidal Basin, including its tributaries; develop a model and apply it to understand the sources and their contribution to the Caloosahatchee Estuary through 2014.
- Investigate effects of MFL flows on oysters, benthic macrofauna, zooplankton, and ichthyoplankton through 2015.
- Apply hydrodynamic/salinity/ecological models and hydrologic information to develop a return frequency to improve the existing MFL criteria for the Caloosahatchee River through 2015.
- Complete the technical analysis and its documentation in 2016.
- Complete peer review in 2016.
- Incorporate new technical information into the rulemaking process in 2017.
- Hold public workshops.

WATER RESERVATIONS

Kissimmee Basin

- Water bodies include:
 - Kissimmee River and its floodplain
 - Lakes Kissimmee, Cypress and Hatchineha
 - Lake Tohopekaliga
 - East Lake Tohopekaliga, Fell's Cove, Lake Ajay
 - Lakes Hart, and Mary Jane
 - Lakes Myrtle, Joel, and Preston

Alligator Chain of Lakes (Alligator, Brick, Lizzie, Coon, Center, and Trout)
Lake Gentry

- Peer review completed in 2009.
- Complete revised draft technical document.
- Hold public workshops.
- Adopt rule in December 2015.