

Process for amending Chapter 40E-61, F.A.C., Works of the District

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Overview

- Rulemaking Process
- Northern Everglades Statutory History
- Legislative Purpose of NEEPP
- Statutory Activities for Coordinating Agencies
- 40E-61 and Works of the District
- Statutory Requirements for Revising 40E-61
- Comparison of the EFA & NEEPP
- Proposed Timeline
- Next Steps

Rulemaking Process

Chapter 120, Florida Statute (F.S.), dictates the rulemaking process:

- Publish Notice of Rule Development 120.54(2)(a), F.S.
- Conduct Public Workshops 120.54(2)(c), F.S.
 - Each workshop requires at least 14 days-notice.
- Publish Notice of Proposed Rule 120.54(3)(a)1., F.S.
 - If applicable, include Statement of Estimated Regulatory Costs 120.541, F.S.
- Opportunity for rule challenge
- Adopt the proposed rule 120.54(3)(e)6., F.S. (could occur at the same time as the Notice of Proposed Rule)
- Rule goes into effect 20 days after filing for adoption 120.54(3)(e)6., F.S.
 - EXCEPT: Legislative ratification required under certain circumstances before rule is effective 120.541(3), F.S.

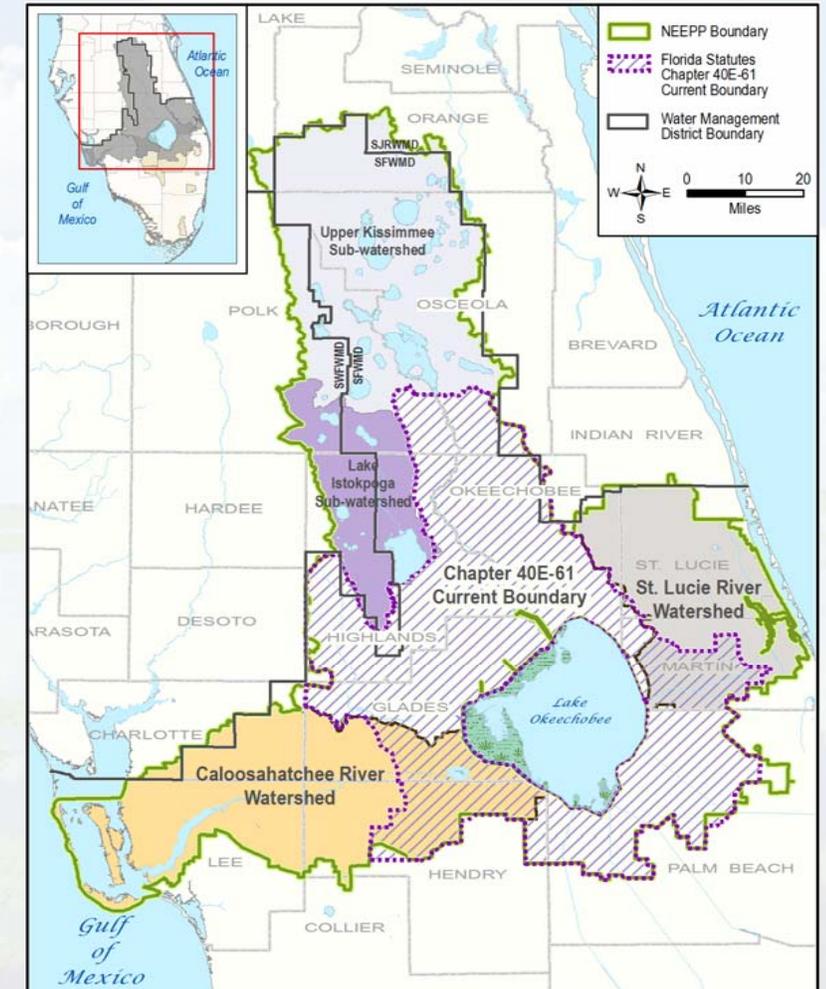
Northern Everglades Statutory History

- **1987** – 373.4595 Florida Statutes (F.S.) Originally enacted as the Surface Water Improvement and Management (SWIM) Act
- **2000** – SWIM Act revised to become the Lake Okeechobee Protection Act (LOPA)
- **2005** – LOPA amended, including expanded boundaries for Lake Okeechobee Watershed
 - Total Maximum Daily Load (TMDL) statute (403.067 F.S.) amended to include statewide Basin Management Action Plans (BMAP) by FDEP
- **2007** – LOPA became the Northern Everglades and Estuaries Protection Program (NEEPP)
 - Further expanded to include the St. Lucie and Caloosahatchee River Watersheds
- **2012** – FDEP adopts Caloosahatchee River Watershed BMAP
- **2013** – FDEP adopts St. Lucie River Watershed BMAP
- **2014** – FDEP adopts Lake Okeechobee Watershed BMAP
- **2016** – NEEPP amended: BMAPs are the “watershed phosphorus control component for Lake Okeechobee” and the “pollutant control program” for the estuaries; directs SFWMD to revise 40E-61

Opportunities to Amend 40E-61

To Include:

- 2005 LOPA amendment expanding Lake Okeechobee Watershed boundaries.
- 2007 LOPA conversion to NEEPP with expansion to include Caloosahatchee River and St. Lucie River Watersheds.
- 2016 NEEPP directives to amend 40E-61 to be consistent with amended NEEPP and 403.067, F.S.



2016 Northern Everglades & Estuaries Protection Program

Legislative Purpose

“... to improve the quality, quantity, timing, and distribution of water in the northern Everglades ecosystem ...” and “... provide a reasonable means of achieving the total maximum daily load requirements and achieving and maintaining compliance with state water quality standards.”

(373.4595(1)(h), F.S.)

Shared Responsibility

The coordinating agencies shall be jointly responsible for implementing the River Watershed Protection Plans and the Lake Okeechobee Watershed Protection Program, consistent with the statutory authority and responsibility of each agency.

(373.4595(3)(e) & (4)(e), F.S.)

2016 Northern Everglades & Estuaries Protection Program

Lake Okeechobee Watershed Basin Management Action Plan

“The coordinating agencies shall develop an interagency agreement . . . consistent with”

- “the department taking the lead on water quality protection measures through the Lake Okeechobee Basin Management Action Plan;
- the district taking the lead on hydrologic improvements pursuant to the [Lake Okeechobee Watershed Protection Plan]; and
- the Department of Agriculture and Consumer Services taking the lead on agricultural interim measures, best management practices, and other measures adopted pursuant to s. 403.067.”

(373.4595(3)(b), F.S.)

Post-2016 Coordinating Agency Activities

Northern Everglades and Estuaries Protection Program (F.S. 373.4595)

Lake Okeechobee (LO) Watershed Protection Program

Caloosahatchee River Estuary and St. Lucie River Watershed Protection Programs

LO Internal Phosphorus Management Program (SFWMD)

Watershed Protection Plans (SFWMD)

BMAPS (FDEP)

Exotic Species Control Program (Coordinating Agencies)

Research & Monitoring Program (LO: Coordinating Agencies) (Rivers: SFWMD)

Watershed Construction Projects (SFWMD)

- Water storage projects
- Water treatment projects
- Wetland restoration
- Hydrologic restoration
- Works of the District Rule

Chapter 40E-61

Where we are today:

- “The rules establish criteria to ensure that use of or connection to the named works or lands are compatible with the District’s ability to carry out the objectives of the legislative declarations of policy ...” to “minimize degradation of water resources caused by the discharge of stormwater.” 40E-61.011, F.A.C. and 373.016(3)(f), F.S.
- Only applies to Lake Okeechobee
- No substantive changes since 1989

Relevant Legislative Authorities for Original 40E-61

- 373.4595 - 1987 SWIM Act
- 373.016 - Declarations of Policy (Florida’s water resources)
- 373.085 - Use of District Works
- 373.086 - Providing for District Works

Works of the District

373.085, F.S.

“The governing board has authority to prescribe the manner in which local works provided by other districts or by private persons will connect with and make use of the works or land of the district, to issue permits therefor, and to cancel the permits for noncompliance with the conditions thereof or for other cause.”

373.086, F.S.

“... the governing board is authorized to ... hold and have full control over the works and rights-of-way of the district.”



Structure S-191

Works of the District Defined

373.019(28), F.S.

“ . . . those projects and works, including, but not limited to, structures, impoundments, wells, streams, and other watercourses, together with the appurtenant facilities and accompanying lands, which have been officially adopted by the governing board of the district as works of the district.”

40E-61.021(15), F.A.C.

“‘Works of the District Within The Lake Okeechobee Drainage Basin’ means those projects and works, including, but not limited to, structures, remnant oxbows and sloughs, floodways and all tributaries, lakes, canals, channels, levees, structures, impoundments, reservoirs, wells, streams, and other water courses, together with the appurtenant facilities and accompanying lands and wetlands which have been officially adopted by the Governing Board...”

NEEPP Direction to Revise 40E-61

2016 NEEPP: 373.4595 (3)(b)21 Lake Okeechobee Watershed

“The district shall revise chapter 40E-61, Florida Administrative Code to:

- be consistent with this section and s. 403.067;
- provide for a monitoring program for nonpoint source dischargers required to monitor water quality by s. 403.067; and
- provide for the results of such monitoring to be reported to the coordinating agencies”

NEEP Direction to Revise 40E-61

2016 NEEPP: 373.4595 (4)(b)8 and (4)(d)8

Caloosahatchee and St. Lucie River Watersheds

“The district shall initiate rulemaking to provide for

- a monitoring program for nonpoint source dischargers required to monitor water quality pursuant to 403.067(7)(b)2.g. or (c)3.
- [t]he results of such monitoring must be reported to the coordinating agencies.”

Everglades Protection Area v. Northern Everglades & Estuaries

| Everglades Forever Act | 2016 NEEPP |
|---|---|
| <p>“The Legislature finds that . . . [a] combined program of agricultural BMPs, STAs, and requirements of this section is a reasonable method of achieving total phosphorus discharge reductions. The Everglades Program is an appropriate foundation on which to build a long-term program to ultimately achieve restoration and protection of the Everglades Protection Area.” 373.4592(1)(g), F.S.</p> | <p>“The Legislature finds that, in addition to phosphorus, other pollutants are contributing to water quality problems in the [Northern Everglades Watersheds] and that the total maximum daily load requirements of s. 403.067 provide a means of identifying and addressing these problems.”</p> <p>“The Legislature finds that expeditious implementation of [the Watershed Protection Programs] is needed to improve the quality, quantity, timing, and distribution of water in the Northern Everglades ecosystem.” 373.4594(1)(g) and (h), F.S.</p> |

Everglades Protection Area v. Northern Everglades & Estuaries

| Everglades Forever Act | 2016 NEEPP |
|---|--|
| <ul style="list-style-type: none"> • District primarily implements • Everglades Long-Term Plan • Everglades Program <ul style="list-style-type: none"> • Everglades Construction Project (STAs) • Water Supply & Hydroperiod Improvement • Everglades Research & Monitoring Program • Evaluation of Water Quality Standards • EAA Best Management Practices (BMPs) • Exotic species control | <ul style="list-style-type: none"> • Coordinating Agencies share responsibility • Lake O Watershed Protection Program <ul style="list-style-type: none"> • Watershed Protection Plan <ul style="list-style-type: none"> • Construction Project • Research & Water Quality Monitoring Program • Basin Management Action Plan (BMAP) <ul style="list-style-type: none"> • BMPs • Exotic Species Control Program • Phosphorous Management Program • River Watersheds Protection Programs <ul style="list-style-type: none"> • Watershed Protection Plans <ul style="list-style-type: none"> • Construction Projects • Research & Water Quality Monitoring Programs • BMAPs <ul style="list-style-type: none"> • BMPs |

Everglades Protection Area v. Northern Everglades & Estuaries

Everglades Forever Act BMPs

- BMPs are a practice or combination of practices determined by the District 373.4592(2)(b).
- **EAA BMPs** under 373.4592(4)(f):
 - “The Legislature finds that through the implementation of the Everglades BMP program, reasonable progress will be made towards addressing water quality requirements . . .”
 - “The District, in cooperation with DEP, shall develop and implement a water quality monitoring program to evaluate the effectiveness of the BMPs . . .”
 - “The District shall continue to require and enforce the BMP and other requirements of chapters 40E-61 and 40E-63, Florida Administrative Code . . .”

2016 NEEPP BMPs

- BMPs are a practice or combination of practices determined by the coordinating agencies. 373.4595(2)(a)
- **Lake O Watershed BMAP** 373.4595(3)(b):
 - “As provided in 403.067, the Department, in consultation the District . . . shall develop nonagricultural nonpoint source . . . BMPs.”
 - “As provided in 403.067, the Florida Department of Agriculture and Consumer Services . . . shall initiate rule development for [agricultural nonpoint source] BMPs.”
- **River Watersheds BMAPs** 373.4595(4)(b) & (d):
 - “Nonpoint source BMPs consistent with 403.067 . . . shall be implemented on an expedited basis.”

Proposed Timeline

| Process | Conceptual Schedule |
|--|---|
| Governing Board approves of Regulatory Plan | September 2019 |
| Governing Board approves of Notice of Rule Development | October 2019 |
| Publish Notice of Rule Development | October 2019 |
| Public participation through workshops | Without text: November 2019 – February 2020 With text: April 2020 – September 2020 |
| Staff updates to Governing Board on workshop progress | March 2020 October 2020 |
| Governing Board approves Notice of Proposed Rule | November 2020 |
| Publish Notice of Proposed Rule (opportunity for rule challenge) | November 2020 |
| File proposed rule with JAPC | November 2020 |
| File proposed rule with the Legislature for Ratification | December 2020 |
| Legislative Ratification | April 2021 |

All dates are estimates and subject to change

Next Steps for 2019

➤ **September 2019**

- Staff will request Governing Board approval of the District's annual Regulatory Plan

➤ **October 2019**

- Staff will request Governing Board approval to publish a Notice of Rule Development

➤ **November 2019**

- Staff will begin conducting public workshops

Public Participation

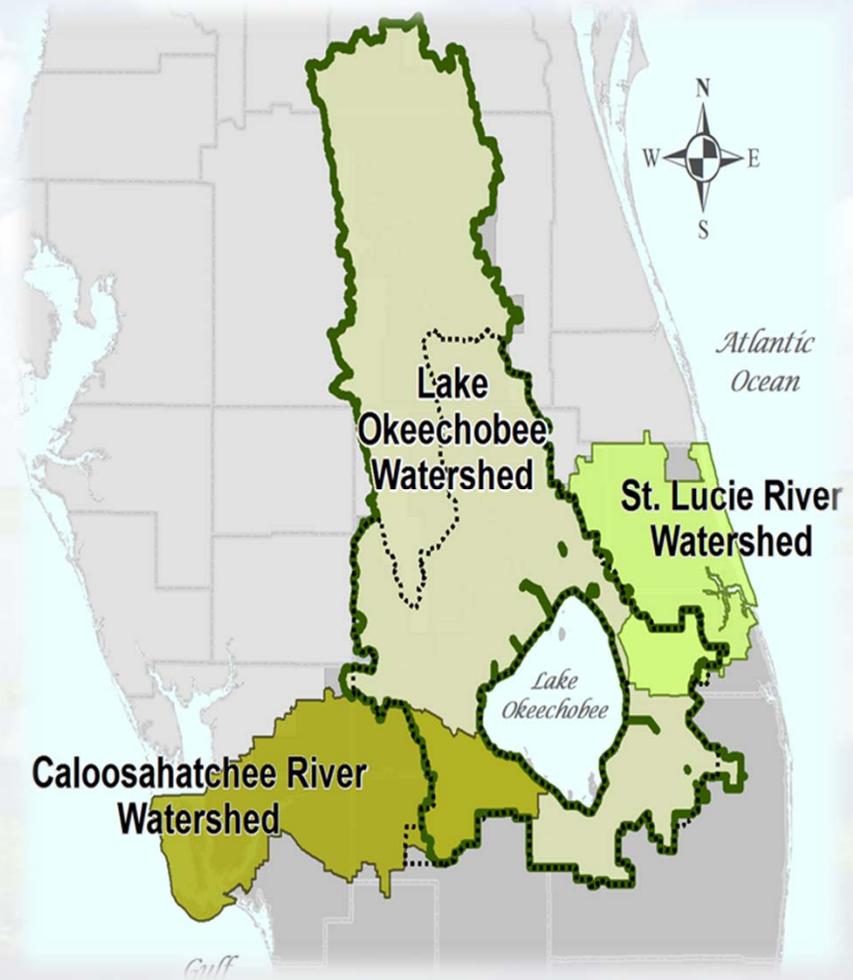
➤ **Workshops in all 3 Watersheds (~5 million acres)**

➤ **Locations**

- Okeechobee
- Stuart
- Ft. Myers
- Kissimmee
- West Palm Beach

➤ **at least 1 at each location for Rule Development**

➤ **at least 1 at each location with Draft Rule Text**



Jaycee Park on
north shore of
Lake Okeechobee

Questions

