



November 27, 2012

Timothy Rach
Bureau Chief, Submerged Lands and Environmental Resources
Florida Department of Environmental Protection
2600 Blair Stone Road, MS 2500
Tallahassee, FL 32399-2400

RE: Audubon recommendations for SWERP Rulemaking

Dear Mr. Rach:

Audubon Florida and Collier County Audubon Society (Audubon) have reviewed the October 5 - 8, 2012 drafts of statewide Environmental Resource Permit (ERP) rule revision proposals for Rule 62-330 F.A.C., and the Applicants Handbooks, Volumes I and II, and appendices incorporated there by reference. Audubon Florida is owner of the 13,000 acre Corkscrew Swamp Sanctuary and a mitigation banker experienced in restoration of wetlands and habitats. These roles have spawned considerable research and analysis of wetland status and regulatory effectiveness in Southwest Florida. These data and analyses show significant ongoing trends of wetland functional losses under the ERP Program, especially in the short hydroperiod wetland classes, which have now become disproportionately scarce. Collier County Audubon Society and Audubon Florida have used these findings to identify opportunities for improvements and revisions in 62-330, the ERP rules, in 62-345, the Uniform Mitigation Assessment Method (UMAM), and 62-342, Mitigation Banking rules, all within the F.A.C. This letter contains only our recommendations for rule clarifications and procedural improvements in the ERP Program, 62-330, focusing on the Applicants Handbook, Volume I, Environmental Criteria for Issuance (section 10).

Audubon emphasizes that the accompanying recommended revisions to Applicants Handbook, Vol. I are primarily clarifications and procedural improvements and not substantive rule changes. They are intended to clarify the criteria and procedures outlined in order to better achieve the overall ERP program goal of “no net loss of wetland functions”, as identified in section 10.1:

“It is the intent of the Agency that the criteria in **sections 10.2 through 10.3.8, below**, be implemented in a manner that achieves a programmatic goal, and a project permitting goal, of no net loss in wetland or other surface water functions.”

In addition, Audubon’s revisions are intended to clarify ways to provide the most publicly transparent reasonable assurances the overall program and permit goals of no impacts to fish, wildlife and their habitats, and water quantity functions, are being met. With that understanding,

Audubon offers a set of accompanying recommended ERP rule edits, all highlighted in purple, that fall into the following categories:

- **Public transparency and clarity of evaluation:** [see edits at 10.2; 10.2.8] Applicant, staff and public permit review documents must provide the simplest, most direct and timely data and analysis which are sufficient to assess the permitability of the proposed project. The documents should be online and include a wetland function tracking tool that summarizes impacts and offsetting mitigation clearly, using a couple representative or surrogate specific function categories. As DEP enhances its online permitting system for the ERP Program statewide, that online “permit clearinghouse” would be the logical target for housing a clear tracking tool, agency UMAM scores for a project, and other facets of public transparency. Audubon has developed a spreadsheet-based wetland functional tracking tool, which we would gladly offer under separate cover, for consideration.

- **Reminder that all mitigation must offset the specific and full suite of wetland functions lost to impacts:** [see edits at 10.2.1.2(c); 10.3; 10.3.1.9 and 10.3.3.1(c – f)] In order to achieve no net loss of wetland functions, proposed ERP permit reviews must consider *all* the functions that are scientifically documented on impacted wetlands and habitat, and their mitigation, including those listed under 62-345(200) F.A.C. and 373.414(18) F.S. However, measuring and accounting for all individual functions is time consuming and complex and not practicable in a meaningful comprehensive sense. Audubon has developed a subset of functional categories which can serve as a surrogate for suites of wetland functions, that if adequately measured, accounted for and tracked, will provide reasonable assurance that the full suite of functions lost will be offset. Those include: hydroperiod classes of wetlands (which also includes “natural water storage”), and wetland-upland heterogeneity measured by linear interface distances. Additionally, assuring preservation, enhancement and uplands mitigation are only used to offset secondary impacts and not direct impacts is critical to assuring no net losses of wetland functions. Also, the scarcity of a habitat must be considered.

- **Wetland-Upland Heterogeneity is a surrogate for many vital wetland functions:** [see edits at 10.2.2.3(d) and 10.3.3.2(o’)] A diverse mosaic of uplands and wetlands hosts a spectrum of inherent wetland ecological values to fish and wildlife that are not present when it is lessened after the project is built. To reasonably assure these ecological functions are retained or replaced, they must be tracked using the surrogate of total linear distance of such interfaces within the project area, easily accomplished with GIS measurement applications.

- **Assessing and mitigating for impacts to distinct hydroperiod classes of wetlands, assures a full suite of wetland functions are maintained:** [see edits at 10.2.2.4(d); 10.3.1.9; 10.3.3.2(o’)] Natural water storage is a measure of the acreage of wetlands which hold surface water at various depths and have inherent natural habitat functions. There are strong ecological functions tied to water depth and duration of inundation. Depth and duration influence the community dynamics of aquatic fauna, which in turn influence the foraging and nesting aspects of wetland dependent species. A purely volumetric measure of surface water storage is divorced from the important role of natural water storage and the wetland functions associated with the various hydroperiod classes.

- **Use a tracking tool to summarize categorized impacts and mitigation clearly, and for public transparency:** [see edits at 10.2; 10.2.2.4(d); 10.2.8; 10.3.1.9] Audubon, from extensive experience with ERP permitting, recognizes the need to use a publicly transparent, clear tracking

tool that accounts for the distinct functional categories (or indices) and not simply a single value comparison reflecting the sum total of impact against the sum total of offsetting mitigation.. Such a tool provides assurance of appropriate and sufficient mitigation for all impacts to wetland functions, as summarized through a couple surrogate functions or indices categorized by hydroperiod class. Those surrogates include wetlands categorized by hydroperiod class, and wetland-upland heterogeneity. As mentioned above, Audubon has developed a wetland functional tracking tool for ERP permit reviews, which we offer for your consideration, under separate cover.

- **Use current melaleuca science:** [see edits at 10.2.3.7] Current research has shown melaleuca is now contracting in areal extent in south Florida, and that several introduced and natural biocontrol agents have been so effective that melaleuca no longer spreads in most locations due to high sapling mortality rates and reduced seed production. Assumptions, for assessment purposes, of decreasing wetland and habitat functions without intervention can no longer be made, which raises the assessment value for impact wetlands with melaleuca present and lowers the assessment value for mitigation wetlands cleared of melaleuca.

- **Preserve at least the same if not greater extent of scarce or rare wetland habitats:** [see edits at 10.3.1.1; 10.3.3.1(d)] Unique or scarce wetland habitats should receive special review for retention and possible increase through mitigation. This is a vital objective in maintaining functional habitat landscapes surrounding a project permit area.

- **Preservation or enhancement of wetlands and uplands are mitigation only for secondary impacts:** [see edits at 10.3.1; 10.3.1.9(b)] Preservation, exotics removal as enhancement, and uplands preservation or enhancement, all without any hydrologic restoration, do not replace any areal extent of impacted wetlands, and cannot compensate for a large portion of the functions of wetlands permitted for destruction. However, these mitigation types offer some specific ecological benefits, and are currently allowed for mitigation. 62-330 should clarify that such mitigation types are only appropriate for compensating for indirect, secondary wetland impacts and not direct impacts.

- **Degraded wetlands to be impacted shall be assessed as the ecological community the impacted wetland most closely resembles in function:** [see edits at 10.3.1.1] The regulatory objective of the ERP Program is to reduce wetland impacts to the maximum extent, and to fully compensate for the functions of wetlands being impacted by a permit. When the impacted wetlands are degraded to begin with and its wetland type ambiguous due to altered hydrology or remnant vegetation, the maximum wetland functions would be recognized by assessing it as the wetland type it most closely resembles now from a functional perspective, regardless of historic status. Function is more important than remnant vegetation for making that assessment. This is similar to how mitigation is recommended for artificial systems of wetlands and water, also described in 10.3.1.1. In addition, impacts to significantly degraded wetlands (almost all wetlands are impacted to some degree – this part of the rule should address only *significantly* degraded wetlands) should be offset *usually* by the type of wetland historically there, as determined on a case by case basis. Mitigation wetlands for significantly degraded impact wetlands should be always be what is most ecologically needed in that regional landscape – that is, the most disproportionately absent or scarce wetland types. While that is usually the historic wetland type, it is not always.

• **Unmatched wetland type mitigation conditions:** [see edits at 10.3.1.1] Mitigation involving other ecological communities from that being impacted is not permissible unless, 1) all impacts can be documented fully offset, 2) the impacted wetland is not unique or rare, 3) the mitigation wetland is unique or rare, and 4) greater ecological value can be documented to result.

Audubon recommends these revisions and edits to the proposed rule amendments to the ERP Program under Chapter 62-330 F.A.C., Applicants' Handbook I, the Environmental Criteria for Issuance of an ERP Permit. All are intended as clarifications and procedural improvements which support the programmatic and permitting overall goal of no net loss of wetland and other waters functions. We especially wish to advance public transparency as part of this rulemaking process for a Statewide ERP. In addition to these amendments, we do have substantive rule changes for consideration at a later time with regard to wetland mitigation banking, the Uniform Mitigation Assessment Method, and related rules. We look forward to working with the Department of Environmental Protection and the Water Management Districts on improving the implementation of the wetland resources protection programs for the State of Florida. Please contact us with any questions.

Sincerely,

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