

EPA National Numeric Nutrient Criteria Program Update

OCLWA

Edmond, OK

April 12-13 2012

National History

1998 – EPA initiates Numeric Nutrient Criteria effort

- Original 1998 guidance included EPA promulgation by December 2004
- Slower than expected progress nationwide
- EPA funding assistance ended 2003
- National status at epa.gov/nutrients
- New EPA nutrient microsite at epa.gov/nutrientpollution – see display

Framework

- All states have narrative nutrient criteria
- General agreement that numeric criteria have advantages – TMDLs, permitting, enforcement
- Numeric criteria development is VOLUNTARY
- EPA role is support (technical, financial) and guidance at National level....and encouragement (aka pushing a rope??)
- Nutrient Criteria Development Plans - being revised at this time

Framework, cont.

EPA **prefers** States to develop numeric **TN and TP criteria** for 4 water body types: streams/rivers, lakes/res., wetlands, near coastal waters

Ecoregion TN/TP values published 2002-2005

March 2011 Stoner memo

8 recommended elements for state actions

Goal – develop TN and TP criteria for at least one class of waters within 3 -5 years

Framework, cont.

EPA PAMs, 2012 National Water Program
Guidance

- EPA performance measures (OMB)

WQ-01a: # of numeric WQ stds for N and P
adopted by states and approved by EPA

WQ-01b: same as above, but criteria are draft

WQ-01c: # of states w/ milestones for
development, proposal, adoption of numeric
WQS for N and P for each water body type

Florida – A (very) Brief History

EPA “Phase 1” – Freshwaters

- 2009: EPA Determination
- 2010: EPA published Proposed and Final Rules for inland freshwaters
- 2011: Legal challenges to Determination, Final Rule
- 2012: U.S. District Court ruling
- 2012: Final Rule codified, two parts remanded

EPA “Phase 2” – Estuarine/Coastal

- 2010-2011: EPA SAB Review
- 2012: EPA Proposed and Final Rules to be published

Florida Dept. of Env. Protection

- 2009: FDEP draft rule
- 2011: FDEP resumes rulemaking
- 2012: FL Legislature passes rule
- 2012: Legal challenge to FDEP’s rule in state court; court decision and EPA 303(c) review is pending

Phase 1 Rule – U.S. District Court Ruling

- 13 lawsuits filed, 32 parties to the litigation
- Briefs and motions filed in 2011, oral arguments in Jan. 2012, decision in Feb. 2012
- Standard of review – “arbitrary or capricious”
 - “make a searching and careful review of EPA’s action but to be ‘exceedingly deferential’, especially on matters calling for scientific judgment”
- Over 20 different challenges to EPA’s Determination, regulatory authority, and science

Phase 1 Rule – U.S. District Court Ruling

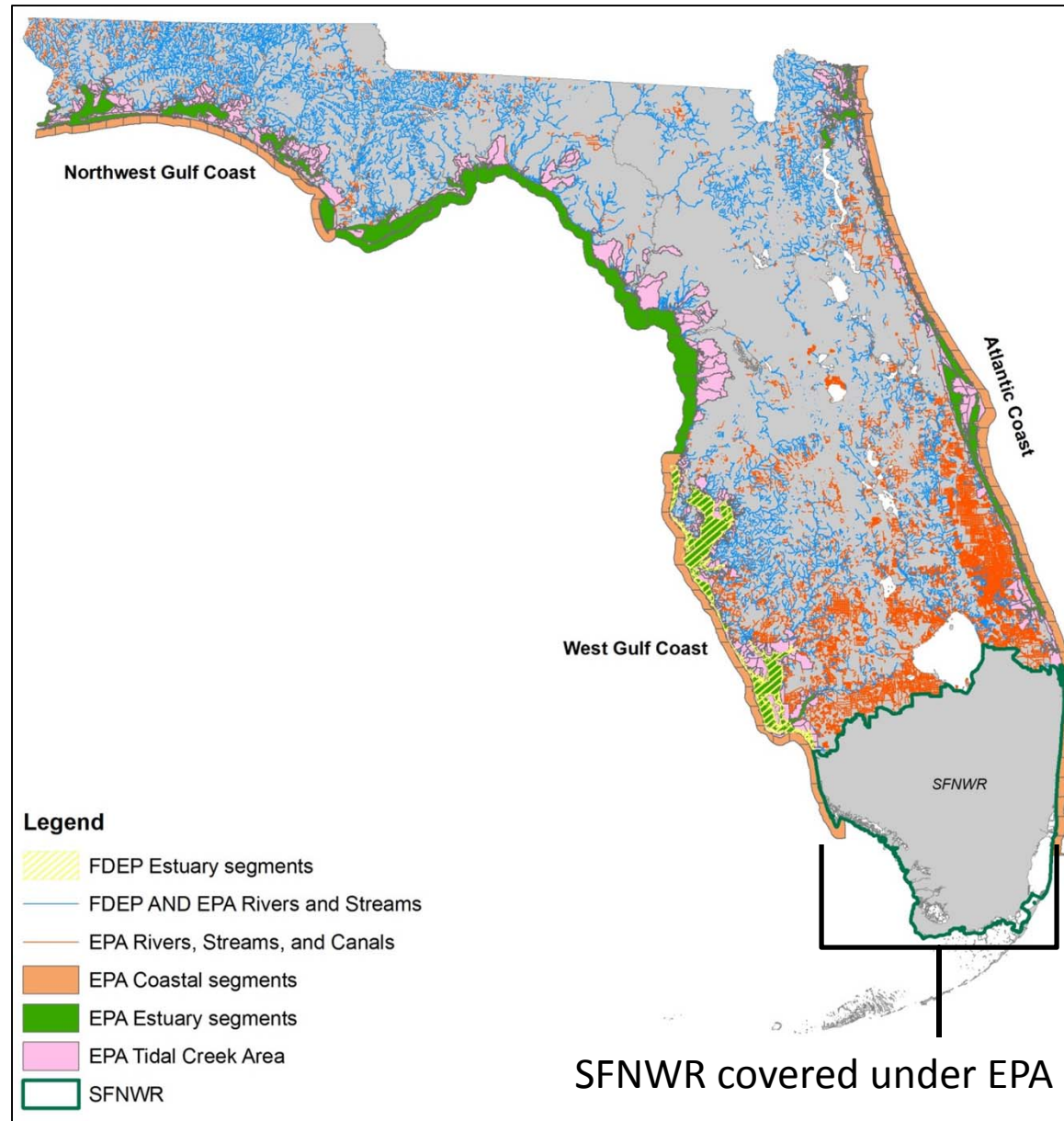
- Court upheld EPA on majority of challenges
 - Determination and CWA authority
 - EPA's response to comments
 - Lake criteria (modification provision and IA)
 - Springs criteria
 - Stream criteria methodology
 - Downstream protection
- Court ordered lakes and springs criteria codified at 40 CFR 131.43
- Court remanded two parts of the Final Rule
 - Stream criteria and downstream protection for unimpaired lakes
 - EPA must propose or go final by May 21, 2012

Phase 2 Rule

Estuaries/Coastal Waters/South FL Flowing Waters

- EPA Proposed Rule – May 21, 2012
- EPA Final Rule – January 7, 2013
- Scope:
 - All estuaries
 - All coastal waters extending to 3 nm
 - South FL inland flowing (canals) and marine waters (e.g., Florida Bay, Biscayne Bay, Florida Keys)

Geographic Scope of EPA and FDEP Numeric Nutrient Criteria



QUESTIONS ??

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