

November 13, 2020

Office of Agricultural Water Policy
Bill Bartnick, Environmental Administrator
Bill.Bartnick@FDACS.gov

Dear Mr. Bartnick:

These comments concern the Florida Department of Agriculture's (DACS) rulemaking on the 5M-1 rule regarding Agricultural Best Management Practices (BMPs) implementation and verification. BMPs are an essential component of Florida's water quality restoration plans and Audubon is very strongly supportive of DACS efforts to strengthen implementation and compliance with agricultural BMPs.

In current practice, a producer merely signs a Notice of Intent (NOI) to implement BMPs to gain full benefits and protections of the program, without having a plan for what they will be, or even a timeline for when they may be implemented. BMP benefits and protections for producers include a presumption of compliance with water quality standards and a "release from the provisions of section 376.307(5), F.S., (fines for damages) for pollutants addressed by the BMPs." These are very valuable protections for producers, especially as cyanobacteria and red tide are increasingly common public health threats. It is in the public interest that producers have fully implemented the BMPs committed to in the NOI before being awarded these valuable benefits.

Audubon strongly supports the proposed rule changes that will require a site visit by DACS representatives to work out the producer's site specific BMPs before granting the benefits and protections provided by the rule. We note that a "site visit" remains undefined and urge DACS to develop a definition of what constitutes an adequate site visit. We recommend use of images no more than two years old, defining types of aerial images required, along with resolution scale. In addition, we recommend having the DACS representative actually inspect a certain percentage of the property during the site visit. The definition could have the form:

Standards of a site visit: During the implementation verification site visit, the Department and producer will review aerial imagery of the property of no less than a 1: N scale, that is no more than X years old, and the DACS representative travel within 1/Yth mile of all parts of the property, with a GPS track map generated for verification.

We support collecting data on phosphorus (P2O5, "TP") and nitrogen (N) application on properties and think more data are needed. To understand nutrient dynamics one also must have an estimate of exports. If a property has high nutrient import and low nutrient export, the parcel has the potential to be overloaded with nutrients and extra control measures would be necessary. Conversely, if a property has high import and high export, its loading and runoff will not be of as much concern. Although the legislation did not require reporting exports, we recommend DACS require it in this rule. Collecting these data are in DACS and producers interests because if Floridians only see the import side of the ledger, it could create an inflated and undesirable perception of agricultural nutrient budgets. Using book values of exports would be a convenient and adequate means of estimating exports.

The timelines for corrective measures are too slow. As we read the proposed rule, it appears that once DACS and the producer agree to BMPs, DACS returns 2 years later for a verification visit. If the producer has failed to adequately implement the BMPs, 5M-1.009 BMP Implementation Assistance (1)(a) states that DACS will "identify corrective measures to be taken..." The next scheduled visit would be 2 years later and if the producer still hasn't adequately implemented BMPs, (potentially 4 years of non-compliance

at this stage), 5M-1.009 (2)(b) says DACS then will “identify remedial measures to be taken...” The next visit would be 2 years later and if there remains inadequate implementation, the producer would have 6 years of non-compliance and no clear path to compliance. This is much too slow considering Florida’s waters are not getting any cleaner.

Audubon recommends changing 5M-1.009 (1)(a) to, “...identify remedial measures....and schedule a remedial site visit no more than one year from this site visit.” If remedial measures remain insufficient at the one-year visit, the producer shall be subjected to Section (2) (referral to DEP). This change would give producers 3 years to gain compliance.

Lastly, because this draft rule specifically applies to “*enrolled* Producers or Landowners” [emphasis ours], we urge DACS to make it a priority to get all producers or landowners enrolled within 2 years of rule adoption to ensure maximum benefits and coverage of the BMP program.

Thank you for the opportunity to comment on this draft rule, we consider this a step in the right direction.

Sincerely

A handwritten signature in cursive script, appearing to read 'Beth Alvi', written in dark ink.

Beth Alvi
Director of Policy
Audubon Florida