



September 24, 2014

John Humphreys
Submerged Lands & Environmental Resources Coordination
Florida Department of Environmental Protection

Subject: Proposed UMAM rule revisions

Dear Mr. Humphreys,

Please consider the following comments regarding the proposed revisions to the UMAM rule in advance of the next webinar scheduled for September 26, 2014.

1. The proposed revisions to the UMAM rule may be an invalid exercise of delegated legislative authority pursuant to subsection 120.52(8)(c), F.S. These revisions appear to contravene certain provisions of law implemented under subsection 373.414(18), F.S. as excerpted below:
 - It shall be a goal of the department and water management districts that the uniform mitigation assessment method developed be practicable for use within the timeframes provided in the permitting process...
 - It shall be recognized that any such method shall require the application of reasonable scientific judgment.
 - The uniform mitigation assessment method must determine the value of functions provided by wetlands and other surface waters considering the current conditions of these areas, utilization by fish and wildlife, location, uniqueness, and hydrologic connection.
 - The uniform mitigation assessment method shall account for different ecological communities in different areas of the state.

Field tests have shown that the proposed revised method takes substantially longer to implement compared to the current method, potentially jeopardizing the efficiency of permit application evaluation and processing. The current method requires the user to apply reasonable scientific judgment in determining the value of functions to fish and wildlife on the basis of site observations whereas the proposed method uses an algorithm to calculate a score based on those site observations. The scoring algorithm operates independent of the suite of fish and wildlife utilizing a wetland, differences in ecological communities or geographic differences across the state.

2. The proposed revisions to the UMAM rule may be an invalid exercise of delegated legislative authority pursuant to subsection 120.52(8)(e), F.S. due to the use of hidden, arbitrary weighting factors applied to various metrics in the worksheets.
3. The proposed revisions to the UMAM rule constitute an invalid exercise of delegated legislative authority pursuant to subsection 120.52(8)(f), F.S. if the rule imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly

alternatives that substantially accomplish the statutory objectives. ***The Department has not produced a convincing argument that the current UMAM rule fails to accomplish statutory objectives. The comments following field testing and during the last webinar indicate that the proposed method is more time intensive, and thus more costly, to implement. Therefore, it appears that staying with the unrevised existing rule would represent a less costly alternative that substantially accomplishes statutory objectives.***

4. In the last UMAM webinar, the proposed revisions to the UMAM rule described as being equivalent to the level of effort required to implement the wetland delineation method. This characterization is inaccurate in that it fails to recognize that the implementation of detailed quantitative methods are intended only as a last resort when determining the extent of wetlands and surface waters. Rule intent, clearly stated in Rule 62-340.100, F.A.C., is to first attempt to delineate the wetland according to definition in subsection 373.019(25) without quantitative sampling. Only when this is not possible are quantitative methods to be used. ***Unlike the existing delineation rule or the existing UMAM rule, the proposed UMAM rule jumps directly into a lengthy quantitative procedure, precluding any opportunity for an expedited determination based on site observations and reasonable scientific judgment.***
5. The proposed revisions to the UMAM rule, consisting entirely of revisions to the Part 1 and Part 2 worksheets, appear to be unrelated and unresponsive to the results of the DEP public survey dated January 14, 2014:
 - 66% of the respondents found the existing rule to be scientifically reasonable and 89% of the respondents found the existing method to be either mostly appropriate for its purpose or adequate for its purpose. ***Given that an overwhelming majority of respondents responded positively to the science and appropriateness/adequacy of the existing rule, it is unclear why the Department has focused the rule revision effort on strengthening the scientific basis for the scoring protocol.***
 - 79% of the respondents found the UMAM forms to be either useful and effective or moderately useful and effective. ***Given that an overwhelming majority of the respondents responded positively regarding the usefulness and effectiveness of the existing UMAM forms, it is unclear why the Department has focused this rule revision effort solely on changes to the Part 1 and Part 2 forms.***
 - 87% of the respondents found the existing UMAM procedures to be either efficient or reasonable efficient considering the resources typically required for field-based environmental work. ***In spite of the overwhelmingly positive response regarding the efficiency of the existing procedures, the Department has proceeded to propose revisions to the method that will most certainly reduce the efficiency of its use.***
 - The greatest need identified by a majority (54%) of respondents was rule interpretation (“How to interpret and apply the provisions of 62-345, F.A.C.”) Far fewer respondents identified scoring related issues as a priority need. ***The public response clearly indicates that additional guidance and training are needed regarding interpretation and application of the rule. Despite this clear feedback from the user community, the proposed revisions include absolutely no additional guidance or rule interpretation.***



Based on the issues discussed above, I believe the current proposed revisions to the UMAM rule are incomplete, misdirected and clearly not ready for rule adoption. I suggest that the following be considered to remedy this situation:

1. Re-package the revised and expanded worksheets as guidance tools that provide a framework to assist with scoring.
2. Eliminate the fixed and arbitrary weighting factors hidden in the scoring algorithms and instead provide guidance regarding the relationship between various scoring considerations and the value of functions of wetlands to fish and wildlife.
3. Solicit public feedback regarding specific issues requiring additional guidance and rule interpretation and then strengthen the rule narrative in appropriate areas to address these shortcomings.
4. Allow for flexibility in the complexity of the scoring protocol analogous to the wetland delineation method. Avoid requiring a laborious field and desktop procedure for small impacts, simple wetlands, etc. Consider a "short-form" and "long-form" approach like the IRS uses on income taxes. Invoke the detailed scoring protocol only when reasonable scientists representing the agency and applicant, using reasonable scientific judgment, cannot agree on a UMAM score.

Thank you for considering my comments on the proposed UMAM rule revisions. I look forward to continued participation in the process.

Sincerely,

Clark Hull

Clark Hull and Associates