

for the water body as a whole for all CWA purposes. A WQS variance is designed to lead to improved water quality over the duration of the WQS variance and, in some cases, full attainment of designated uses due to advances in treatment technologies, control practices, or other changes in circumstances, thereby furthering the objectives of the CWA. For more information on WQS variances, please refer to EPA's final rulemaking to update the national WQS regulation.³⁰

EPA's current regulation allows for adoption of a WQS variance, consistent with 40 CFR 131.14, as part of a state or authorized tribe's WQS. EPA would consider establishing WQS variances to EPA's promulgated federal baseline designated uses and criteria on a case-by-case basis in consultation with tribes. Recognizing such tribes may have limited resources and minimal to no expertise with WQS development and administration, EPA could work in consultation with the affected tribal government(s) to assemble documentation to justify a WQS variance and meet the requirements of 40 CFR 131.14, as appropriate.

EPA invites comments on the inclusion of a WQS variance authorizing provision as outlined in this section, any additional options to consider when establishing a WQS variance provision for any potential federal baseline WQS rule, and on the implementation of the WQS variance provision.

H. Can tribes adopt WQS of their own?

In any final federal baseline WQS rule, EPA could include an explicit section to make clear that a tribe approved for TAS eligibility under CWA section 518 would continue to be able to adopt WQS of its own and submit them to EPA for approval, even after baseline WQS became effective. The tribe would need to apply to EPA for TAS to administer the WQS program. If EPA determines the tribe is eligible to administer the program, using the eligibility criteria and procedures in 40 CFR 131.8, then EPA would review the WQS adopted and submitted by the tribe to EPA. At that point, EPA reviews the submission under the process it regularly uses for tribes and states to ensure they are consistent with the requirements of the CWA and EPA's implementing regulation at 40 CFR part 131, and can approve in whole or in part.³¹ For any such WQS that are

approved, the corresponding federal baseline WQS rule would no longer apply to such tribe's reservation waters because such waters would fall within the categories of waters excluded from any federal baseline WQS rule, namely reservation waters with CWA-effective WQS. Therefore, the federal baseline WQS would not affect a tribe's ability to apply to administer its own WQS program and adopt WQS under 40 CFR 131.8.

EPA invites comments on the inclusion of a section making clear that tribes, at any time, may seek TAS and, if approved by EPA, submit their own WQS for CWA purposes as outlined in this section.

IV. Statutory and Executive Order Review

A. Statutory and Executive Order Reviews

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this is a "significant regulatory action" because the action raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action. Because this action does not propose or impose any requirements, and instead seeks comments and suggestions for the Agency to consider in possibly developing a subsequent proposed rule, the various statutes and Executive Orders that normally apply to rulemaking do not apply in this case. Should EPA subsequently determine to pursue a rulemaking, EPA will address the statutes and Executive Orders as applicable to that rulemaking.

B. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This ANPRM seeks input on key issues related to whether and how to fill the gap of WQS coverage in Indian reservation waters. In preparation for this ANPRM effort, EPA consulted and coordinated with tribal officials, consistent with EPA's Policy on Consultation and Coordination with Indian tribes. EPA initiated consultation in the Fall of 2015, from August through November, and then continued consultation in the Summer of 2016,

approve or disapprove the WQS pursuant to CWA section 303(c)(3). EPA's goal is to work closely and collaboratively with states and authorized tribes throughout the WQS development and revision process.

from June to August. During that time, EPA received considerable input from tribal officials, most of it supportive of this effort. The types of questions posed by tribal officials are reflected in this ANPRM for further discussion and public comment. EPA will continue to consult, coordinate, and engage tribes, to permit them to have meaningful and timely input into development of any potential federal baseline WQS rulemaking.

EPA invites comment from tribes on whether establishing federal baseline WQS is an appropriate step in advancing the federal trust responsibility to federally recognized tribes, and enhancing tribal government sovereignty through protection of reservation water quality. EPA is interested in any input regarding whether there are any concerns that would warrant not including a tribe in any final federal baseline WQS rule. While EPA is considering proposing to apply these WQS to all Indian reservations without CWA-effective WQS, in order to meet the goals of the CWA and better protect Indian reservation waters, EPA invites comment on other options.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: September 19, 2016.

Gina McCarthy,
Administrator.

[FR Doc. 2016-23432 Filed 9-28-16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 150818735-6236-01]

RIN 0648-BF28 and 0648-BF32

Endangered and Threatened Species; Designation of Critical Habitat for Five Distinct Population Segments of Atlantic Sturgeon; Reopening of Public Comment Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, reopening of public comment period.

SUMMARY: NMFS hereby reopens the comment period on the proposed

³⁰ 80 FR 51019, August 21, 2015. <https://www.gpo.gov/fdsys/pkg/FR-2015-08-21/pdf/2015-19821.pdf>.

³¹ CWA section 303(c)(2) requires states and authorized tribes to submit new and revised WQS to EPA for review. EPA is required to review and

designation of critical habitat for five distinct population segments (DPSs) of Atlantic sturgeon. Critical habitat for the five DPSs was proposed in two separate proposed rules, published on June 3, 2016, with a 90-day comment period.

DATES: The comment period for the proposed rules that published on June 3, 2016 (81 FR 35701 and 81 FR 36078) are reopened. Comments must be submitted via the Federal eRulemaking Portal or received at the appropriate address (see **ADDRESSES**) by October 14, 2016.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2015–0107 for the proposed rule for the Gulf of Maine, New York Bight, and Chesapeake Bay DPSs and identified by NOAA–NMFS–2015–0157 for the Carolina and South Atlantic DPSs, by either of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0107 or www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0157, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* For docket NOAA–NMFS–2015–0107, submit comments to Assistant Regional Administrator, Protected Resources Division, NMFS, Greater Atlantic Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. For docket NOAA–NMFS–2015–0157, submit comments to Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by us. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Andrew Herndon, NMFS, SERO at 727–824–5312; Lynn Lankshear, NMFS, GARFO at 978–282–8473; or Lisa Manning, NMFS, Office of Protected Resources at 301–427–8466.

SUPPLEMENTARY INFORMATION:

Reopening

On June 3, 2016, we, NMFS, published two proposed rules (81 FR 35701 and 81 FR 36078) to designate critical habitat for the Gulf of Maine, New York Bight, Chesapeake Bay, Carolina, and South Atlantic DPSs of Atlantic sturgeon under the Endangered Species Act of 1973 (ESA), as amended. A 90-day public comment period was provided. Public comments were due by September 1, 2016. NMFS received multiple requests for extension of the comment period. Based on the requests, the comment period for each of these proposed rules is reopened for an additional 15 days to provide further opportunity for public comment.

We are soliciting comments from the public on all aspects of the proposal, including information on the economic, national security, and other relevant impacts. Comments already received during the 90-day comment period and additional comments received during the reopened 15-day comment period will be considered prior to making the final designations.

Background

We propose to designate critical habitat for the Gulf of Maine, New York Bight, Chesapeake Bay, Carolina, and South Atlantic Distinct Population Segments (DPSs) of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*). The specific areas proposed for designation include approximately 244 kilometers (152 miles) of aquatic habitat for the Gulf of Maine DPS, 547 kilometers (340 miles) of aquatic habitat for the New York Bight DPS, and 729 kilometers (453 miles) of aquatic habitat for the Chesapeake Bay DPS. Our proposed determinations for the Gulf of Maine, New York Bight, and Chesapeake Bay DPSs are described in the document identified by NOAA–NMFS–2015–0107. We also propose to designate approximately 1,997 kilometers (1,241 miles) of occupied aquatic habitat and 383 kilometers (238 miles) of unoccupied aquatic habitat for the Carolina DPS, and approximately 2,911 kilometers (1,809 miles) of occupied aquatic habitat and 33 kilometers (21 miles) of unoccupied aquatic habitat for the South Atlantic DPS. Our proposed determinations for the Carolina and South Atlantic DPSs are described in the document identified by NOAA–NMFS–2015–0157. We do not propose to exclude any particular areas from the proposed critical habitat designations.

Authority: 16 U.S.C. 1533.

Dated: September 26, 2016.

Samuel D Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–23530 Filed 9–28–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160815740–6740–01]

RIN 0648–BG28

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Revision of Bycatch Reduction Device Testing Manual

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Gulf FMP), NMFS proposes to make administrative revisions to the Bycatch Reduction Device Testing Manual (BRD Manual). The BRD Manual contains procedures for the testing and certification of BRDs for use in shrimp trawls in the exclusive economic zone (EEZ) in the Gulf of Mexico (Gulf) and South Atlantic. The proposed changes to the BRD Manual remove outdated or obsolete data collection forms currently appended to the BRD Manual and revise the text to make several procedural steps outlined in the BRD Manual clearer and easier to understand. The intended effect of these revisions is to increase understanding of the BRD certification protocols.

DATES: Comments must be received by October 14, 2016.

ADDRESSES: You may submit comments on the proposed rule, identified by NOAA–NMFS–2016–0109, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0109, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.