

Aquatic Life Designated Use

Water Quality Standards for Delaware River Estuary

Status of WQS-ALU Co-Regulator Workgroup

Water Quality Advisory Committee

March 23, 2023

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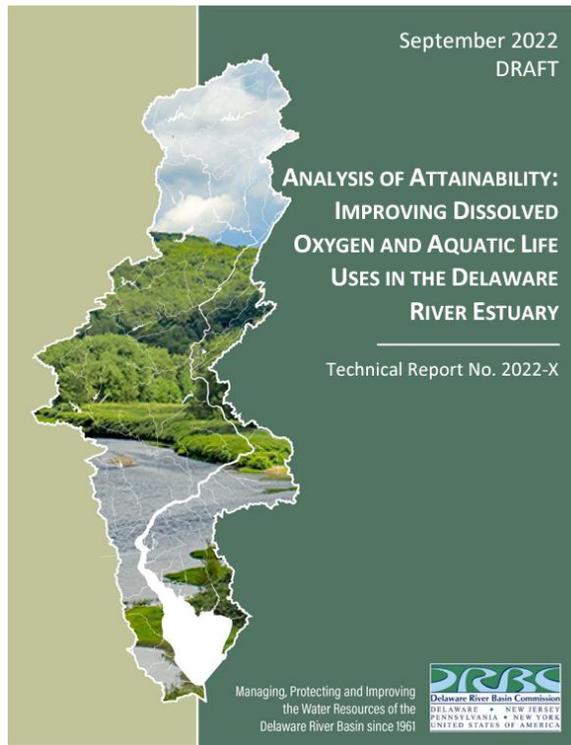
DRBC Findings

☐ Resolution No. 2017-4:

- Directed the Executive Director to initiate DRBC rulemaking to revise the designated aquatic life uses consistent with the results of the identified studies and the objectives and goals of the federal Clean Water Act.
- Published draft analysis of attainability (AA) and other identified studies in 2022.

☐ Findings in draft AA Report:

- “[...] water quality supporting the aquatic life use of *fish propagation* is attainable throughout the Estuary, including in the FMA.”
- “The Commission should proceed with rulemaking to add fish propagation as a designated use within the reach of the Estuary currently designated for fish maintenance, and that it should adopt revised DO water quality criteria that support the new use.”



EPA Findings in AD Letter

- Because propagation is attainable, WQS must be revised
 - Designated use must recognize propagation
 - “40 CFR 131.20(a) requires that states revise their WQS if new information indicates that CWA Section 101(a)(2) uses that were previously not included in the WQS are attainable.”
 - “the CWA Section 101(a)(2) use of “propagation” is attainable in the specified zones.”
 - Criteria to support propagation must be established
 - “aquatic life designated uses and corresponding DO criterion ... must be revised to protect the propagation of resident and migratory fish species.”
- USEPA providing a backstop role
 - “In the event that DRBC adopts [...] and then EPA approves revised WQS [...], EPA would no longer be obligated to propose or promulgate those federal WQS.”



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF WATER

December 1, 2022

Steven J. Tambini, Executive Director
Delaware River Basin Commission
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Shawn M. Garvin, Secretary
Delaware Department of Natural Resources and Environmental Control
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89 Kings Highway SW
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Shawn M. LaTourette, Commissioner
New Jersey Department of Environmental Protection
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Ramez Ziadeh, Acting Secretary
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
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Harrisburg, PA 17105-2063

Dear Messrs. Tambini, Garvin, LaTourette, and Ziadeh,

This letter constitutes the U.S. Environmental Protection Agency's (EPA's) Administrator's Determination (Determination), pursuant to Clean Water Act (CWA) Section 303(c)(4)(B), that revised water quality standards (WQS) to protect aquatic life in zones 3, 4, and upper 5 (in total, river miles 108.4 to 70.0, hereafter, "specified zones") of the Delaware River Estuary in New Jersey, Delaware, and Pennsylvania are necessary to satisfy the requirements of the CWA.¹ The currently applicable WQS for the specified zones include aquatic life designated uses of "maintenance of resident fish and other aquatic life" and "passage of anadromous fish," and an associated dissolved oxygen criterion of 3.5 mg/L as a daily average. These currently applicable WQS do not include protections specified in CWA Section 101(a)(2) to provide for the "propagation of fish."²

¹ 33 U.S.C. 1313(c); see 40 CFR 131.22(b).

² Zones upstream and downstream of the specified zones include the "propagation of fish" use specified in CWA Section 101(a)(2) and are therefore not the subject of this Determination.

Mutual Findings by DRBC and EPA

- ❑ Propagation is attainable, WQS must be revised
 - Designated use must recognize propagation
 - Criteria to support propagation must be established

- ❑ Technical staff work together
 - Co-regulators work group to develop revised aquatic life use and dissolved oxygen criteria to protect the use

Aquatic Life Use (ALU)

Co-Regulator Workgroup Participants

☐ DRBC

- Thomas Amidon, Sarah Beganskas, Jake Bransky, Namsoo Suk, John Yagecic
- Opt: Kristen Bowman Kavanagh

☐ EPA Region 2

- Brent Gaylord, Wayne Jackson

☐ EPA Region 3

- Frank Borsuk, Denise Hakowski, Dana Hales, Louis Reynolds, Greg Voigt
- Opt: John Epps, Raffaella Marano

☐ EPA HQ

- Jim Hagy, Hannah Lesch, Erica Fleisig

☐ PADEP

- Josh Lookenbill, Kristen Schlauderaff, Pravin Patel, Sue Weaver
- Opt: Megan Boothe

☐ NJDEP

- Marco Alebus, Roop Guha, Frank Klapinski, Stephen Seeberger
- Opt: Sue Rosenwinkel, Ryan Knapick

☐ DNREC

- Anthony Hummel, George Mwangi, Bhanu Paudel, Gordon Woodrow

Workgroup Charge

- ❑ DRBC to work together with USEPA in collaboration with Estuary States
- ❑ Develop Estuary-specific WQS
 - Upgrade Aquatic Life Use to include propagation
 - Develop DO criteria to support propagation of DO-sensitive fish
 - “promulgatable” and approvable
- ❑ Rule proposals to be developed concurrently by DRBC and EPA

Rulemaking Schedules

DRBC

- ❑ Technical process in 2023
 - Draft Basis & Background and supplemental documents by summer 2023
 - Commissioner review
 - Finalize B&B and Preamble by 11/30

- ❑ Administrative process
 - Initiate rulemaking by 12/01/2023
 - Notice (publication) on DRBC website on 12/01/2023
 - Filing (Notice) in Federal and states Registers ~12/2023
 - Public process: December 2023 – March 2024
 - CRD and promulgation by 3/6/2025

EPA

- ❑ Technical process in 2023
 - Draft Rule and Economic Analysis by summer 2023
 - OMB review
 - Internal EPA finalization by 11/30

- ❑ Administrative process
 - Administrator signs proposed rule by 12/01/2023
 - Public Process: December 2023-February 2024
 - CRD and promulgation TBD
 - Consistent with backstop role