

In its most recent letter to EPA,⁵ Florida explained that its efforts to obtain updated State-specific fish consumption data were delayed by the pandemic, and that the State is currently evaluating its options for updating its HHC. Florida indicated that one option would be to reinstate a Florida-specific fish consumption survey, which would be a multi-year effort.⁶ The State did not otherwise provide any timeline for updates to its HHC. EPA recognizes Florida's awareness of the issue and efforts to ensure that its HHC protect the State's residents from toxic pollutants. EPA is taking this step to make clear that new and revised HHC are necessary in Florida to meet CWA requirements.

I. Statutory and Regulatory Background

CWA Section 101(a)(2) establishes a national goal of "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water," wherever attainable. See also 40 CFR 131.2. EPA interprets "fishable" to mean that, at a minimum, the designated uses promote the protection of fish and shellfish communities and that, when caught, these can be safely consumed by humans.⁷

Under the CWA, states have the primary responsibility for reviewing, establishing, and revising WQS applicable to their waters (CWA Section 303(c)). WQS define the desired condition of a water body, in part, by designating the use or uses to be made of the water (40 CFR 131.2 and 131.10) and by setting the numeric or narrative water quality criteria to protect those uses (40 CFR 131.2 and 131.11). There are two primary categories of water quality criteria: human health criteria and aquatic life criteria. Human health criteria protect designated uses targeted toward human health, such as public water supply, recreation, and fish and shellfish consumption. Aquatic life criteria protect designated uses targeted toward aquatic life, such as survival, growth, and reproduction of fish, invertebrates, and other aquatic species. Water quality criteria "must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use" (40 CFR 131.11(a)(1)).

Section 304(a) of the CWA directs EPA to periodically develop and publish recommended water quality criteria "accurately reflecting the latest scientific knowledge" on the effects of pollutants on human health and welfare, including effects on aquatic life, as well as information on those pollutants, including their concentration and dispersal and how pollutants affect receiving waters (CWA Section 304(a)(1)). Those recommendations are available to states for use in developing their own water quality criteria (CWA Section 304(a)(3)). In 2015, EPA updated its CWA Section 304(a) national recommended criteria for human health for 94 pollutants.⁸ When states establish criteria, EPA's regulation at 40 CFR 131.11(b)(1) specifies that they should establish numeric criteria based on: (1) EPA's CWA Section 304(a) recommended criteria, (2) modified 304(a) recommended criteria that reflect site-specific conditions or (3) other scientifically defensible methods.

⁵ Letter from Adam Blalock, Deputy Secretary, Florida Department of Environmental Protection, to Jeanne Gettle, Deputy Regional Administrator, EPA Region 4. (October 10, 2022).

⁶ *Id.*

⁷ U.S. EPA, Office of Water. (2000). Memorandum #WQSP-00-03. http://water.epa.gov/scitech/swguidance/standards/upload/2000_10_31_standards_shellfish.pdf

⁸ U.S. EPA. (June 29, 2015). *Final Updated Ambient Water Quality Criteria for the Protection of Human Health*, 80 FR 36986. See also U.S. EPA. (2015). *Final 2015 Updated National Recommended Human Health Criteria*. <https://www.epa.gov/wqc/national-recommended-water-quality-criteria-human-health-criteria-table>