

While a State-wide fish consumption survey may be informative in the future, sufficient evidence exists currently to determine an appropriate FCR for Florida and derive protective HHC.

With respect to the universe of priority toxic pollutants for which Florida has HHC, Florida has also recognized that more priority toxic pollutants are likely present in State waters than originally understood in 1992. As EPA has explained, “the criteria development and the standards programs are iterative,” and states are expected to adopt “criteria for additional toxic pollutants which new information indicates is appropriate.”⁴⁴ Here, as explained above, available information included in the State’s rulemaking record indicates that Florida needs new HHC for 36 additional priority pollutants, beyond the HHC that the State adopted thirty years ago.

EPA has also determined that Florida needs HHC for the priority toxic pollutant methylmercury. EPA has a CWA Section 304(a) recommendation for methylmercury, but Florida does not have HHC for methylmercury. However, Florida developed a Total Maximum Daily Load (TMDL) for methylmercury in 2013 to address waterbodies that are listed as impaired based on fish consumption advisories for mercury issued by the Florida Department of Health.⁴⁵ Florida’s TMDL notes the Florida-specific sources of mercury that exist, and the fact that numerous waterbodies in the State are listed as impaired for methylmercury in fish that people consume indicates that methylmercury is present in Florida’s waters and can reasonably be expected to interfere with Florida’s designated uses.

IV. Clean Water Act Section 303(c)(4)(B) Determination

EPA has reviewed the available data in Florida’s rulemaking record, including the fish consumption data and information regarding the need for HHC for additional priority pollutants, and has reached the same conclusion that the State did in its supporting documents: many of Florida’s existing HHC are no longer protective of the applicable designated uses in accordance with the CWA and EPA’s regulations at 40 CFR 131.11 and therefore new and revised criteria are needed for Florida. Specifically, Florida’s existing HHC for 40 priority toxic pollutants do not reflect the latest scientific knowledge, including a FCR that is representative of the fish consumption patterns of Florida residents. In addition, Florida has no HHC for 37 priority toxic pollutants where available information indicates that those priority toxic pollutants are discharged or are present in the State’s waters and could reasonably be expected to interfere with applicable designated uses.

Accordingly, EPA is determining, pursuant to CWA Section 303(c)(4)(B) and 40 CFR 131.22(b), that new HHC are needed for 37 priority toxic pollutants and revised HHC are needed for 40 priority toxic pollutants to meet the requirements of the CWA for Florida (see appendix).

V. Next Steps

EPA acknowledges and appreciates Florida’s commitment to updating its HHC. This Determination does not preclude Florida from proceeding with its own rulemaking effort. That said, CWA Section 303(c)(4) requires that the Administrator promptly prepare and publish proposed regulations setting forth a new or revised WQS following a Determination that a new or revised WQS is necessary to meet the requirements of the CWA. In the event that Florida adopts and EPA approves new or revised WQS

⁴⁴ 57 FR at 60873.

⁴⁵ FDEP 2013. Final Report: Mercury TMDL for the State of Florida. October 24, 2013. *See* <https://floridadep.gov/sites/default/files/Mercury-TMDL.pdf>.