

***Delaware Riverkeeper Network
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**U.S. Environmental Protection Agency Announces New Water
Quality Standards for Delaware River Estuary**

Good But Not Good Enough, Science Says

Philadelphia, PA – Environmental leaders welcome the U.S. Environmental Protection Agency's (EPA) announcement today of new dissolved oxygen requirements as part of its proposal to upgrade the water quality protections for the tidal Delaware River. The EPA had committed to a regulatory proposal to be made this month when it granted a formal petition filed by a coalition of environmental organizations pursuant to the federal Clean Water Act in December of 2022.

The regulatory proposal announced by EPA Region 3, "if finalized, would apply to Zone 3, Zone 4, and the upper portion of Zone 5 of the Delaware River . . . for the states of Delaware, New Jersey, and Pennsylvania". The regulatory proposal sets meaningfully higher oxygen standards for the Delaware Estuary from Philadelphia to Wilmington in order to better protect aquatic life in the River, including the oxygen sensitive Atlantic Sturgeon and Shortnose Sturgeon. The new standards seek to ensure higher oxygen levels in order to protect spawning, larval development and juvenile development from March through October of every year. The proposal builds in an opportunity for oxygen levels to go below the standard set 10% of time during key months of the year. The standard proposed does not match the oxygen levels essential to fully protect the spawning, larval and juvenile development of the Delaware River's genetically unique population of Atlantic Sturgeon known to be on the brink of extinction.

“Today we thank the U.S. EPA and the Biden Administration for giving priority to the rule of law, the importance of data-driven science, the needs of our communities and River, and the need to take urgent action to help protect the Atlantic Sturgeon of the Delaware River from extinction. Unfortunately, while the EPA took an important step forward, they did not set the numbers as high as the science dictates and the Sturgeon of the Delaware River need,” **said Maya van Rossum, the Delaware Riverkeeper and Leader of the Delaware Riverkeeper Network.** “The current oxygen standards were written over 55 years ago and while the 3.5 mg/l dissolved oxygen standard helped spur needed river protection progress when it was passed way back in 1967, for decades this standard has been recognized as outdated and un-protective.”

Adds van Rossum, “With today’s announcement, EPA has taken an important first step to intervene where the states and, most critically, the Delaware River Basin Commission (DRBC) have failed to act by requiring essential pollution reductions. Rather than require protective and achievable pollution reduction, the DRBC and its member states succumbed to industry pressure and maintained the outdated dissolved oxygen standard, hoping for river dilution as the solution to pollution rather than cost-effective implementation of known treatment technologies. Today, with the leadership of the EPA, we begin the process of considering meaningful oxygen restoration for the Delaware River. It is essential that over the course of the next 2 months, during the public comment period, the EPA take full stock of the science and lifts their standards to the degree necessary to ensure future generations are able to enjoy witnessing a live, healthy and free-swimming Delaware River Atlantic Sturgeon.”

“This is a huge step by the EPA to use the full power of the Clean Water Act to protect the water quality of the lower Delaware River and the vulnerable ecosystems it harbors. But there is more work that needs to be done to protect our River and Sturgeon, and to meet the mandates of the science. The Delaware River is facing unprecedented and growing pollution challenges, which led to the necessary but rare move by EPA to intervene and work to set standards that are more protective than the status quo. This is the action that the public on both sides of the Delaware River have been demanding and we are deeply appreciative that EPA is following the best available science to protect the natural treasure that is the lower Delaware River,” **said Doug O’Malley, Director of Environment New Jersey.**

“We are pleased that the US EPA promulgated these new, more protective standards to safeguard sensitive aquatic wildlife in the Delaware Estuary, such as the endangered Atlantic sturgeon,” **said Emma Bast, Staff Attorney for petitioner PennFuture.** “This is an extraordinary move by the federal agency to step in where regional and state agencies have failed. We are hopeful that during the public comment period the EPA will be open to strengthening these standards in order to fully reflect the science.”

“The Delaware River is arguably the region’s best known, most beloved natural resource. Local residents and visitors to the Delaware River want it to be clean and safe for swimming, fishing and the animals that call the river home,” added **David Masur, Executive Director for the statewide**

environmental group PennEnvironment. "Today's announcement from the EPA is an important first step towards making that vision a reality."

Today's proposal was prompted by a call for this needed action from environmental organizations concerned that the DRBC and the four watershed states were dragging their feet and failing to put in place essential new water quality standards despite years of advocacy and scientific data urging needed upgrades. In early December of 2022, the U.S. EPA took the rarely seen action of granting a legal petition filed by the Delaware Riverkeeper Network, Environment New Jersey, PennFuture and PennEnvironment, requesting the federal agency exercise its legal authority to develop science-driven water quality standards to ensure essential oxygen levels and other protections vital for the Delaware River Estuary and its aquatic life. Most notably, the environmental organization petition emphasized the need for higher oxygen standards to protect the Delaware River's genetically unique population of Atlantic Sturgeon from extinction. Our coalition of organizations submitted this formal, legal petition to the U.S. EPA after a decade of urging the DRBC to undertake this needed rulemaking and the DRBC's failure to do so in a science-driven or timely fashion.

"The science has been clear since 1967: excess ammonia dumped into the Delaware River causes severe reductions in dissolved oxygen," **said Erik L Silldorff, PhD, the Restoration Director at the Delaware Riverkeeper Network.** "Despite renewed efforts in the 1980s and 1990s to reduce these ammonia inputs, it has taken decades to convince politicians and government agencies to require the conventional wastewater treatment process called 'nitrification' at the major wastewater facilities in the Delaware Estuary. Today, the EPA finally ends making excuses for industry and commits to greater environmental protection for our River and our communities."

According to the Delaware Riverkeeper Network, who first filed a petition with the DRBC urging this action as far back as 2010, the EPA has taken the important first step to try to save our Delaware River Atlantic Sturgeon from extinction, as well as provide critical protection to other species, by proposing higher standards for the Delaware River, which include D.O. requirements as high as 74% saturation or 6.0 mg/L. Delaware Riverkeeper Network has consistently argued that EPA and other state, federal, and interstate agencies must follow the scientific evidence that Atlantic Sturgeon need dissolved oxygen consistently in the range of 6.0 to 7.0 mg/L for their early stages of growth from June through September. Without these consistently high oxygen conditions, the water quality in the Delaware River can actually kill young sturgeon rather than support them in their first months of life.

"Today's action by the EPA reaffirms the goal of the federal Clean Water Act to *restore* and maintain the chemical, physical, and biological integrity of the Nation's waters. By proposing these criteria, a course has been charted for a healthier Delaware River, increasing support for a signature species, the Atlantic sturgeon, which has been decimated by human activity. Now we just need EPA to go all the way to ensure full protection of our unique sturgeon." **said Kacy Manahan, Senior Attorney for Delaware Riverkeeper Network.**

Background

In April, 2022, the Delaware Riverkeeper Network, joined by Environment New Jersey, PennFuture, Clean Air Council and PennEnvironment, filed a legal petition pursuant to the Federal Clean Water Act urging the federal government to promptly initiate rulemaking necessary to protect aquatic life in the Delaware Estuary. According to the petition and multiple supporting letters and documents, the DRBC and the four watershed states have failed to recognize that the Delaware Estuary, from Trenton to the top of the Delaware Bay, is supporting maintenance and propagation of resident fish and other aquatic life, as well as spawning and nursery habitat for migratory fish, including the federally endangered Delaware River Atlantic sturgeon. Similarly, according to the petition and supporting documentation, the DRBC has failed to take action to institute water quality criteria essential for protecting existing uses by critical species such as the Atlantic sturgeon. The DRBC and the four watershed states have been repeatedly and formally urged to recognize these aquatic life uses and upgrade associated water quality protections, particularly dissolved oxygen standards.

Until now, these requests have failed to spark the necessary protective actions required under the Clean Water Act to preserve the health of the Estuary.

To learn more about dissolved oxygen, the failures of DRBC, and the petition to EPA:

<https://delawariverkeeper.org/ongoing-issues/dissolved-oxygen-criteria>

To learn more about ongoing efforts to protect the Atlantic Sturgeon:

<https://delawariverkeeper.org/ongoing-issues/atlantic-sturgeon>

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