

IX. Proposed Action on the Redesignation Request and Maintenance Plan SIP Revision Including Proposed Approval of the 2006 and 2021 State NO_x and VOC MVEBs for Crittenden County, Arkansas

EPA is proposing to make the determination that Crittenden County, Arkansas has met the criteria for redesignation from nonattainment to attainment for the 1997 8-hour ozone NAAQS. Further, EPA is proposing to approve Arkansas' February 24, 2009, SIP submittal including the redesignation request for Crittenden County, Arkansas (as part of the Memphis TN-AR 1997 8-hour ozone area). EPA's action with respect to the redesignation request for the Shelby County portion of the 1997 8-hour ozone area was proposed in a separate rulemaking (74 FR 59943). EPA believes that the redesignation request and complete quality-assured monitoring data demonstrate that the Memphis TN-AR area has attained, and will continue to maintain, the 1997 8-hour ozone standard, and that the Crittenden County portion of the area has met the other requirements for redesignation to attainment under CAA sections 107(d)(3)(E) and 175A.

EPA is also proposing to approve the maintenance plan for Crittenden County included as part of the February 24, 2009, SIP revision, including state NO_x and VOC MVEBs for 2006 and 2021. EPA has already made a finding of adequacy for the MVEBs included in this 8-hour ozone maintenance plan (74 FR 21356). EPA believes that the redesignation request and maintenance plan meet the requirements of CAA sections 107(d)(3)(E) and 175A.

X. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a

geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources, or allow a state to avoid adopting or implementing other requirements and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997); because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Redesignation is an action that

affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 5, 2010.

Al Armendariz,

Regional Administrator, Region 6.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R6-ES-2009-0027; 92220-1113-0000; ABC Code: C3]

RIN 1018-AW27

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Shovelnose Sturgeon as Threatened Due to Similarity of Appearance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), announce the reopening of the comment period for our September 22, 2009, proposed rule to treat the shovelnose sturgeon (*Scaphirhynchus platyrhynchus*) as threatened under the "Similarity of Appearance" provisions of the Endangered Species Act of 1973, as amended (Act). We also announce the location and time of a public hearing to receive public comments on the proposal. If you have previously submitted comments, please do not resubmit them because we have already

incorporated them in the public record and will fully consider them in our final decision.

DATES: During this reopened comment period, we will consider comments received or postmarked on or before February 4, 2010. We may not consider any comments we receive after the closing date. We will hold a public hearing on the proposed rule on January 28, 2010. For more information, see the "Public Hearing" section below.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R6-ES-2009-0027.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R6-ES-2009-0027; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

- *At the public hearing.* For more information, see the "Public Hearing" section below.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Pallid Sturgeon Recovery Coordinator, Billings Field Office, 2900 4th Avenue North, Room 301, Billings, MT 59101 (telephone 406/247-7365; facsimile 406/247-7364). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877-8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 2009, we published a proposed rule (74 FR 48215) to treat the shovelnose sturgeon (*Scaphirhynchus platyrhynchus*) as threatened under the "Similarity of Appearance" provisions of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). The shovelnose sturgeon (*Scaphirhynchus platyrhynchus*) and the endangered pallid sturgeon (*Scaphirhynchus albus*) are difficult to differentiate in the wild and inhabit overlapping portions of the Missouri and Mississippi River basins. Four States where the two species commonly coexist allow for commercial fishing of shovelnose sturgeon, which is in demand for its roe (eggs sold as caviar). The close resemblance in appearance between the two species creates

substantial difficulty for fishermen, State regulators, and law enforcement personnel in differentiating between shovelnose and pallid sturgeon, both whole specimens and parts (including flesh and roe). This similarity of appearance has resulted in the documented take of pallid sturgeon and is a threat to the species. The determination that the shovelnose sturgeon should be treated as threatened due to similarity of appearance will substantially facilitate law enforcement actions to protect and conserve pallid sturgeon.

Listing the shovelnose sturgeon as threatened under the "similarity of appearance" provisions of the Act will extend take prohibitions to shovelnose sturgeon, shovelnose-pallid sturgeon hybrids, or their roe when associated with a commercial fishing activity. All otherwise legal activities within the identified areas that may involve shovelnose sturgeon and shovelnose-pallid sturgeon hybrids and which are conducted in accordance with applicable State, Federal, Tribal, and local laws and regulations will not be considered take under this proposed regulation.

Under the special 4(d) rule, take would only be prohibited where shovelnose and pallid sturgeons' range commonly overlap. Specifically, this includes the portion of the Missouri River in Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, and South Dakota; the portion of the Mississippi River in Arkansas, Illinois (downstream from Melvin Price Locks and Dam), Kentucky, Louisiana, Mississippi, Missouri (downstream from Melvin Price Locks and Dam), and Tennessee; the Platte River downstream of Elkhorn River confluence in Nebraska; the portion of the Kansas River downstream from Bowersock Dam in Kansas; the Yellowstone River downstream of the Bighorn River confluence in North Dakota and Montana; and the Atchafalaya River in Louisiana.

The proposed designation of similarity of appearance under section 4(e) of the Act would not extend any other protections of the Act, such as the requirements to designate critical habitat, the recovery planning provisions under section 4(f), or consultation requirements for Federal agencies under section 7, to shovelnose sturgeon. Therefore, should the proposal become final, Federal agencies would not be required to consult with us on activities they authorize, fund, or carry out that may affect shovelnose sturgeon.

Additional information on the pallid sturgeon and the proposal, including a

copy of the **Federal Register** notice, can be found at: http://www.fws.gov/mountain-prairie/missouririver/moriver_pallidsturgeon.htm.

Public Comments

You may submit your comments and materials concerning the proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. If you submit a comment via <http://www.regulations.gov>, your entire comment—including your personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

We will take into consideration all comments and any additional information we received during this reopened comment period on the proposed rule during the preparation of a final rulemaking. Accordingly, the final decision may differ from the proposal.

Public Hearing

Section 4(b)(5)(E) of the Act requires that we hold one public hearing on the proposal, if requested. Our September 22, 2009 proposal required written requests for a public hearing to be submitted by November 6, 2009 (74 FR 48215). Prior to this deadline, we received several requests to hold or inform the public about informational meetings or public hearings.

Accordingly, we have scheduled an informational meeting (a brief presentation about the proposed rule with a question-and-answer period) from 4:30 p.m. to 6 p.m., and a public hearing from 6:30 p.m. to 8:30 p.m., on January 28, 2010, on the 3rd floor of the University Center, Southeast Missouri State University, One University Plaza, Cape Girardeau, MO 65307 (573-651-2282).

Anyone wishing to make an oral statement at the public hearing for the record is encouraged to provide a written copy of their statement to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Speakers can sign up only at the informational meeting and hearing. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us. If you have any questions concerning the

public hearing or need reasonable accommodations to attend and participate in the public hearing, please contact Jane Ledwin at (573) 234-2132, extension 109, as soon as possible, but no later than 1 week before the hearing date, to allow sufficient time to process

requests. Information regarding the proposal is available in alternative formats upon request.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 29, 2009.

Jane Lyder,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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