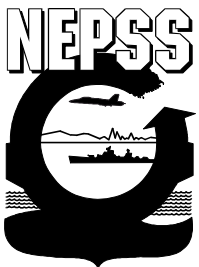




Marine Environmental Update



EPA Releases Draft Strategy for Water Quality Standards and Criteria

In May 2002, the Environmental Protection Agency released for review a draft strategy for water quality standards and criteria. The draft strategy is the product of a wide-ranging review of the existing water quality standards and criteria program within the context of all clean water programs. The review covered clean water goals, mandates and authorities; the EPA's current strategic goals for clean water and other strategic planning efforts; major needs of the current EPA standards and criteria program and key programs linked to it, including total maximum daily loads (TMDLs), National Pollutant Discharge Elimination System (NPDES) permits, and source water protection; and current trends in water quality including emerging environmental problems. The review also considered the results of more than 50 listening sessions conducted for the draft strategy with over 350 people during April-September 2001 and recent recommendations from the National Research Council, the General Accounting Office, the EPA's Inspector General, and the EPA's National Environmental Justice Advisory Committee.

Actions to achieve this vision will need to fill major program gaps, meet important needs of states and authorized tribes, establish key linkages with other programs, address new complexities, make creative use of resources, and most importantly, achieve environmental results. From an analysis of these factors and the listening session results,

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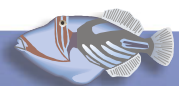
28 strategic actions emerged as most important for the program to accomplish over the next seven years. These strategic actions are organized along five strategic directions:

1. Clarify program requirements where gaps and lack of clarity have led to uncertainty, inconsistency or inaction to enable, through expanded guidance and targeted oversight, the EPA, states, tribes and stakeholders to have the same understanding of how to apply the Clean Water Act's requirements for standards.
2. Enhance implementation guidance and integration with other programs linked to standards. Focused efforts will strengthen key linkages between standards and other programs including assessments, TMDLs, permits, drinking water protection, and protection of endangered and threatened species.
3. Strengthen and maintain the scientific foundation of water quality programs. These actions focus on developing and enhancing criteria for pollutants which cause the major impairments and threats to the nation's water quality, and continue to lead cutting-edge scientific advances in such areas as nutrient criteria, biological criteria and waterborne microbial criteria.
4. Link standards to watershed approaches at the state and local levels to support site-specific efforts to help solve water quality problems, and strengthen ways for watershed stakeholders to understand the program, express community preferences for designated uses, and build support for control actions.
5. Build capacity and share information among the EPA, states and authorized tribes to increase interactions at key points such as triennial reviews, foster more exchanges between standards and criteria professionals and continue to build the capacity of regions, states, tribes and stakeholders to address standards and criteria issues.

The EPA is already implementing some of the key near-term actions. The strategy is closely linked with the needs of programs that rely on standards and criteria, and with other EPA strategic planning efforts and programs. Comments must be received by July 15, 2002, in order to be considered when the EPA finalizes the strategy. Direct comments to: Fred Leutner, Chief, Water Quality Standards Branch, U.S. Environmental Protection Agency (4305T), 1200 Pennsylvania Avenue NW, Washington, DC. 20460; telephone (202)566-0378; facsimile (202) 566-0409; e-mail leutner.fred@epa.gov.

The draft strategy document is [available from MESO](#) (165 KB Adobe™ Acrobat™ file) and at <http://www.epa.gov/waterscience/standards/>

U.S. EPA Office of Water, Draft Strategy for Water Quality Standards and Criteria: Strengthening the Foundation of Programs to Protect and Restore the Nation's Waters, EPA-823-R-02-001, May, 2002.



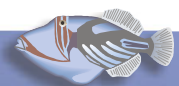
EPA Releases Draft Implementation Guidance for Ambient WQC for Bacteria

The Environmental Protection Agency released for public comment a draft of the *Implementation Guidance for Ambient Water Quality Criteria for Bacteria*. When final, the document will guide state, territory, and authorized tribal water quality programs in adopting and implementing bacteriological water quality criteria into their water quality standards to protect waters designated for recreation. The EPA expects that this document will also serve as a valuable resource for state and local beach program managers and interested citizens.

The document is to provide guidance for the implementation of water quality criteria for bacteria once adopted into state and tribal water quality standards. As part of these recommendations, the EPA is encouraging states and authorized tribes to use *E. coli* or enterococci as the basis of their water quality criteria for bacteria to protect fresh recreational waters. For marine recreational waters, the EPA recommends the use of enterococci as the basis for water quality criteria for bacteria. Further, for coastal recreational waters (*i.e.*, marine waters, coastal estuaries, and the Great Lakes), states are required to adopt bacteriological criteria as protective as the EPA's Clean Water Act Section 304(a) criteria recommendations by April 2004. The EPA believes the use of *E. coli* and/or enterococci are best suited to prevent acute gastrointestinal illness caused by the incidental ingestion of fecally-contaminated recreational waterbodies. The document also provides a summary of the EPA's existing recommended water quality criteria for bacteria that it published in 1986, as well as recommendations on the implementation of bacteriological criteria for the protection of recreation uses once they have been adopted into a state or authorized tribe's water quality standards.

The use of water quality standards to protect recreational waters encompasses a broad spectrum of waterbody types, from heavily-used ocean front beach areas, to remote mountain streams. This document attempts to acknowledge these different types of recreational uses and the different management choices that are available to states and tribes in managing these water resources. In addition to providing recommendations on the adoption of recreational uses and protective water quality criteria into water quality standards, the document also provides explanations of how states' and authorized tribes' recreational water quality standards should be used to form the basis for water quality-based National Pollutant Discharge Elimination System permits, assess and determine attainment of water quality standards, and develop subsequent Total Maximum Daily Loads and wasteload allocations. While this document is focused primarily on the adoption and implementation of water quality criteria for bacteria as part of a states' or tribes' recreational water quality standards, there are some natural relationships between this topic and drinking water programs, shellfishing programs, and beach management activities. This document provides brief discussions of these relationships and, where appropriate, provides the reader with references where more information may be obtained.

Comments must be received by August 2, 2002. The EPA expects to publish the final document by December 2002. For more information, contact Elizabeth Southerland, Director of the Standards and Health Protection Division or William Morrow, Assistant Branch Chief in the Water Quality Standards Branch at (202) 566-0400.





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The draft implementation guidance is [available from MESO](#) (546 KB Adobe™ Acrobat™ file) and at <http://www.epa.gov/waterscience/standards/bacteria>.

U.S. Environmental Protection Agency Office of Water, Implementation Guidance for Ambient Water Quality Criteria for Bacteria May 2002 Draft, EPA-823-B-02-003.



FWS Publishes Updated List of Candidates for Endangered Species Listing

On June 13, 2002, the U.S. Fish and Wildlife Service published an updated list of candidates for endangered species listing. The revised list consists of 260 species of plants and animals that may warrant protection under the Endangered Species Act, including 16 new candidate species added since the Candidate Notice of Review was last published in 2001 (see *Marine Environmental Update, Vol. FY02, No. 1*). The FWS has removed eight species from the candidate list since it was last revised in 2001. Six species removed by this Notice were given protection under the Endangered Species Act as threatened or endangered species, one species was removed due to lack of pertinent biological information, and one species was removed since it was mistakenly included in the previous candidate list. Also in the Notice, the FWS reassessed its “warranted but precluded” findings for 30 candidate species that citizens petitioned the Service to list, as provided for in the Endangered Species Act.

For further information, contact the Endangered Species Coordinator(s) in the appropriate Regional Office(s) or Chris Nolin, Chief, Division of Conservation and Classification, telephone: (703) 358-2171; or see <http://endangered.fws.gov/candidates/index.html>.

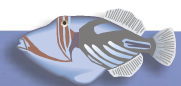
Federal Register, Volume 67, Number 114, Thursday, June 13, 2002, pp. 40657-40679 (12.4 KB [text file](#) or 165 KB [Adobe™ Acrobat™ file](#)).



FWS Proposes Critical Habitat For Gulf Sturgeon

On June 6, 2002, the U.S. Fish and Wildlife Service proposed designation of critical habitat for the Gulf Sturgeon (*Acipenser oxyrinchus desotoi*) along portions of rivers, estuaries, and marine coastline in Florida, Alabama, Mississippi and Louisiana in response to an order by the U.S. District Court for the Eastern District Court of Louisiana to submit for publication a proposed critical habitat determination by May 23, 2002, and a final critical habitat determination by February 28, 2003.

The proposed critical habitat includes portions of the following estuarine and marine areas: Lake Pontchartrain (east of the Lake Pontchartrain Causeway), Lake Catherine, Little Lake, The Rigolets, Lake Borgne, Pascagoula Bay and Mississippi Sound systems in Louisiana and Mississippi (just south of Pensacola Naval Air Station), and sections of the adjacent state waters within the Gulf of Mexico;





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Pensacola Bay system in Florida; Santa Rosa Sound in Florida; nearshore Gulf of Mexico in Florida; Choctawhatchee Bay system in Florida; Apalachicola Bay system in Florida; and Suwannee Sound and adjacent state waters within the Gulf of Mexico in Florida.

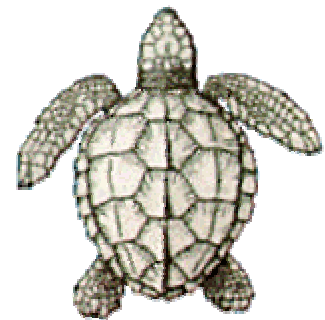
The FWS will accept comments until September 23, 2002. Written comments should be submitted to the Panama City Field Office, addressed to Patty Kelly, Panama City Field Office, U.S. Fish and Wildlife Service, 1601 Balboa Avenue, Panama City, FL 32405. Comments may also be transmitted by facsimile to (850) 763-2177, or sent by e-mail to gulfsturgeon@fws.gov.

Federal Register, Volume 67, Number 109, Thursday, June 6, 2002, pp. 39105-39199 (214 KB [text file](#) or 3.80 MB [Adobe™ Acrobat™ file](#)).



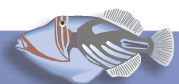
NMFS Considers Petition to Reclassify Florida Subpopulations of Loggerhead Turtle as “Endangered” and Designate Critical Habitat

On June 4, 2002, the National Marine Fisheries Service announced the 90-day finding for a petition to reclassify the Northern and Florida Panhandle subpopulations of the loggerhead turtle (*Caretta caretta*), now listed as threatened throughout their range, as distinct population segments with endangered status and designate critical habitat under the Endangered Species Act of 1973, as amended. The NMFS found that the petition presented substantial scientific information indicating that the petitioned action may be warranted and is initiating a review of the status of the species to determine whether the petitioned action is warranted. To ensure a comprehensive review, the NMFS is soliciting information and comments pertaining to this species from any interested party.



On January 14, 2002, NMFS received a petition requesting that the Northern and Florida Panhandle subpopulations of the loggerhead be reclassified as distinct population segments with endangered status throughout their range and that critical habitat be designated. In addition, the petition requested an emergency rule be issued for the same. The petition contained a detailed description of the species legal status, life history parameters, geographic range, population status and trends, and factors contributing to the decline in several subpopulations. The petition cited key documents recognizing the identification of genetically different loggerhead subpopulations. At least five different subpopulations in the Western North Atlantic and Gulf of Mexico have been identified and are divided geographically as follows:

1. A Northern nesting subpopulation, occurring from North Carolina to northeast Florida at about 29° N (approximately 7,500 nests in 1998);
2. A South Florida nesting subpopulation, occurring from 29° N on the east coast to Sarasota on the west coast (approximately 83,400 nests in 1998);





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3. A Florida Panhandle nesting subpopulation, occurring at Eglin Air Force Base and the beaches near Panama City, FL (approximately 1,200 nests in 1998);
4. A Yucatan nesting subpopulation, occurring on the eastern Yucatan Peninsula, Mexico (approximately 1,000 nests in 1998); and
5. A Dry Tortugas nesting subpopulation, occurring in the islands of the Dry Tortugas, near Key West, FL (approximately 200 nests per year).

The petition maintained that recent fine-scale mitochondrial deoxyribonucleic acid (mtDNA) analysis from Florida rookeries indicate that population separations begin to appear between nesting beaches separated by more than 100 kilometers (62 miles) of coastline that do not host nesting. Tagging studies of nesting females corroborated these findings and affirm loggerhead nest site fidelity, with rare exceptions. The petition asserted that the Northern and Florida Panhandle subpopulations are endangered because they are in imminent danger of extirpation from their ranges and identified several threats, including commercial fishing, coastal development, and pollution. The petition discussed the significance of the Northern and Florida Panhandle subpopulations and states that if either were extirpated, re-establishment would be unlikely and the loss of genetic contribution to the species would be permanent. The petition also stated that the Northern subpopulation produces a higher percentage of male hatchlings and the extirpation of this nesting assemblage would seriously hamper male-mediated gene flow.

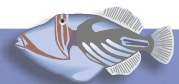
The NMFS is soliciting information and comments on whether the Northern and Florida Panhandle loggerhead subpopulations qualify as distinct population segments and, if so, whether they should be reclassified from threatened to endangered based on the above listing factors. Specifically, they are soliciting information in the following areas: (1) historical and current abundance for these nesting assemblages; (2) current distribution and movement; (3) population status and trends; (4) genetic stock identification; (5) current or planned activities that may adversely impact these subpopulations; and (6) ongoing efforts to protect the Northern and Florida Panhandle subpopulations and their habitat. Written comments and information related to this petition finding must be received by August 5, 2002. For further information, contact Barbara Schroeder, telephone (301) 713-1401, facsimile (301) 713-0376, e-mail: barbara.schroeder@noaa.gov.

Federal Register, Volume 67, Number 107, Tuesday, June 4, 2002, pp. 38459-38461 (17.3 KB [text file](#) or 47.4 KB [Adobe™ Acrobat™ file](#)).



NMFS Issues Range Extension for Endangered Steelhead in Southern California

On May 1, 2002, the National Marine Fisheries Service issued a final rule under the Endangered Species Act that redefines the geographic range of the listed anadromous *Oncorhynchus mykiss* population to include all steelhead and their progeny that occur in coastal river basins from the Santa Maria River (inclusive) to the U.S.-Mexico Border. In August 1997, the NMFS published a final rule listing this ESU as an endangered species (62 FR 43937). In the 1997 final rule, NMFS listed only the anadromous life





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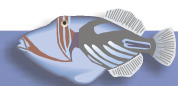
form of *O. mykiss*, and, therefore, defined the listed Southern California steelhead population to include all naturally spawned populations of steelhead (and their progeny) in streams from the Santa Maria River in San Luis Obispo County (inclusive) to and including Malibu Creek in Los Angeles County. At the time of listing, NMFS believed Malibu Creek represented the southernmost extent of the range of anadromous *O. mykiss* in southern California.



On February 5, 1999, the NMFS published a proposed critical habitat designation for 19 ESUs of threatened and endangered salmon and steelhead distributed throughout Washington, Oregon, Idaho, and California, including the endangered Southern California steelhead ESU (64 FR 5740). A final rule designating critical habitat for these 19 ESUs, including the Southern California steelhead ESU, was published on February 16, 2000 (65 FR 7764, see *Marine Environmental Update*, [Vol. FY00, No. 2](#)). Although the critical habitat designation for Southern California steelhead is presently in effect, the NMFS has recently sought approval from the U.S. District Court in the District of Columbia for a consent decree that would vacate critical habitat designations for Southern California steelhead and 18 other salmon/steelhead ESUs as a result of litigation filed against the agency by the National Association of Homebuilders.

In 1999 and 2000, new information became available which indicated that the anadromous life form of *O. mykiss* (*i.e.*, steelhead) or their progeny occurred in at least two coastal streams south of Malibu Creek (Topanga Creek and San Mateo Creek). This new information included observations of juvenile *O. mykiss* in Topanga Creek by a NMFS biologist and field and laboratory investigations conducted by the California Department of Fish and Game (DFG) which demonstrated the presence and spawning of anadromous *O. mykiss* in San Mateo Creek. Based on this new information, the NMFS published a Federal Register notice in December 2000 proposing to formally recognize that anadromous *O. mykiss* (or steelhead) ranged further southward in Southern California than was previously believed to be the case by extending the range of the listed population to San Mateo Creek (65 FR 79328, see *Marine Environmental Update Bulletin*, [December 19, 2000](#)).

Since the range extension was proposed, the NMFS has obtained some additional new information on *O. mykiss* in San Mateo Creek which was considered in this final determination. Additional microsatellite and mitochondrial DNA (mtDNA) analyses were on tissue samples taken from 16 *O. mykiss* collected in San Mateo Creek in 1999 and 2000. All 16 fish that were analyzed shared the MYS5 haplotype that is found throughout the range of *O. mykiss* in California, but which is most commonly found in Southern California populations. This finding was consistent with previous genetic analysis reported for *O. mykiss* in San Mateo Creek and cited in the NMFS' proposed range extension (65 FR 79328). Secondly, the DFG has undertaken periodic field surveys in upper San Mateo Creek and Devil's Canyon since May 2000 which have documented the continued presence of *O. mykiss* in the watershed. In many instances, these surveys were carried out in conjunction with efforts to remove exotic species that might prey upon





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or compete with *O. mykiss*. Although these surveys were limited in scope and methodology, they documented the presence of *O. mykiss* through at least August 2001 in Devil's Canyon.

The San Mateo Creek watershed arises in the Cleveland National Forest and flows in a southwesterly direction to the Pacific Ocean just south of San Clemente in northern San Diego County. Much of the lower portion of San Mateo Creek flows through the Camp Pendleton Marine Corps Base.

This rule is effective July 1, 2002. For further information contact Craig Wingert, (562) 980-4021, or Chris Mobley, (301) 713-1401.

Federal Register, Volume 67, Number 84, May 1, 2002, pp. 21586-21598 (91.0 KB [text file](#) or 90.0 KB [Adobe™ Acrobat™ file](#)).



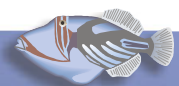
Critical Habitat Update for the Islands of Hawaii

On January 28, 2002, the U.S. Fish and Wildlife Service proposed designation of critical habitat for 76 plants from the islands of Kauai and Niihau on November 7, 2000. The rule identified 16 critical habitat units, mostly in northwestern Kauai. Smaller units are scattered in other parts of the island, and one small unit was proposed on the privately owned island of Niihau. Much of the proposed critical habitat is in the Alakai Wilderness Preserve, portions of Kokee State Park and Waimea Canyon State Park, and several state natural areas and forest reserves. A smaller unit includes lands owned or leased by the Department of Defense.

On March 4, 2002, the U.S. FWS proposed critical habitat for 32 of the 37 species listed under the Endangered Species Act, known historically from the island of Lanai within 8 critical habitat units totaling approximately 7,853 hectares (19,405 acres) on the island of Lanai.

On April 3, 2002 the FWS proposed critical habitat for 61 of the 70 species known historically from the islands of Maui and Kahoolawe that are listed under the Endangered Species Act of 1973, as amended. Critical habitat designations were proposed for 61 species within 13 critical habitat units totaling approximately 51,208 hectares (126,531 acres) on the island of Maui, and within two critical habitat units totaling approximately 714 hectares (1,763 acres) on the island of Kahoolawe. Of the lands proposed for critical habitat protection, 45 percent are administered by the State of Hawaii, 17 percent are under federal ownership, and 37 percent are privately owned. More than 77 percent of the lands on Maui and all of the lands on Kahoolawe are within the State Conservation District.

On April 5, 2002, the FWS proposed critical habitat for 46 of the 51 listed plant species known historically from the island of Molokai that are listed under the Endangered Species Act of 1973, as amended. Critical habitat was not proposed for four species as they no longer occur on the island of Molokai. The FWS proposed critical habitat designations for 46 species within 10 critical habitat units totaling approximately 17,614 hectares (43,532 acres) on the island of Molokai. Of the lands proposed





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for critical habitat protection, 45 percent are administered by the State of Hawaii, 17 percent are under federal ownership, and 37 percent are privately owned. The units are concentrated in the East Maui watershed, the West Maui Mountains, and the coastal areas of Kahoolawe.

On May 28, 2002, the FWS proposed critical habitat for 47 of the 58 plant species known historically from the island of Hawaii that are listed under the Endangered Species Act of 1973, as amended. Of the lands proposed for critical habitat protection, 51 percent are owned by the State of Hawaii, 16 percent are privately owned, and 33 percent are under federal ownership or jurisdiction. Eighty-four percent of the lands within the proposed critical habitat units on the island of Hawaii are within the State Conservation District. Sixteen percent are in agricultural zones, and less than 1 percent are in urban areas.

On May 28, 2002, the FWS proposed critical habitat for 99 of the 101 plant species known historically from the island of Oahu that are listed under the Endangered Species Act of 1973, as amended. Of the lands proposed for critical habitat protection, 35 percent are administered by the State of Hawaii, 6 percent are under federal ownership, and 59 percent are privately owned. Critical habitat designation only affects activities that are conducted on federal lands, funded by the federal government, or need some type of federal authorization. Few activities on state or private lands would be affected. More than 90 percent of the proposed critical habitat units on Oahu are within the State Conservation District. Ten percent are in agricultural zones, and less than 1 percent are in urban areas. Of the lands proposed for critical habitat protection, 35 percent are administered by the State of Hawaii, 6 percent are under federal ownership, and 59 percent are privately owned. Several military installations are included within the proposed critical habitat because they provide the best remaining habitat for these species.

Federal Register, Volume 67, Number 18, Monday, January 28, 2002, pp. 3939-3988 (352 KB [Adobe™ Acrobat™ file](#)).

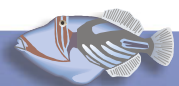
Federal Register, Volume 67, Number 42, Monday, March 4, 2002, pp. 9805-9871 (1.05 MB [Adobe™ Acrobat™ file](#)).

Federal Register, Volume 67, Number 64, Wednesday, April 3, 2002, pp. 15855-15904 (340 KB [Adobe™ Acrobat™ file](#)).

Federal Register, Volume 67, Number 66, Friday, April 5, 2002, 16491-16579 (1.48 MB [Adobe™ Acrobat™ file](#)).

Federal Register, Volume 67, Number 102, Tuesday, May 28, 2002, pp. 36967-37106 (2.66 MB [Adobe™ Acrobat™ file](#)).

Federal Register, Volume 67, Number 102, Tuesday, May 28, 2002, pp. 37107-37272 (3.43 MB [Adobe™ Acrobat™ file](#)).



Congressional Hearings Held on Impact of Environmental Laws on Military Readiness and National Security

On March 14, 2002, the House Armed Services Committee heard testimony from the Department of Defense and several federal environmental agencies to address concerns regarding the impact on military readiness and national security caused by compliance with various federal environmental laws. Such federal laws include, but are not limited to, the Endangered Species Act, the Marine Mammal Protection Act, the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act, and the Noise Control Act. The ever increasing limitations and restrictions on lands and waters, which are currently set aside for training exercises, as well as restrictions on the times and conditions under which military training exercises can be conducted, are some examples of environmental encroachment.

The Subcommittee on Military Readiness previously conducted an open hearing on May 22, 2001, to consider the constraints and challenges facing military test and training ranges. During the hearing, the DoD highlighted numerous examples throughout the services where its compliance with environmental laws is severely impeding its ability to adequately prepare for combat and national defense. In the State of California, the environmental restrictions have hindered training at Camp Pendleton, Miramar Marine Corps Air Station, in addition to San Clemente Island, where the Navy alone spends \$2.4 million each year to protect a bird called the loggerhead shrike and closes its bombing range four days a week during the shrike's breeding season. The hearings were also held to find out why the Department of Defense has never exercised the exemption authorities that exist under current law.

House Armed Services Committee, [Opening Statement of Chairman Joel Hefley \(R-Co\)](#), Subcommittee on Military Readiness, March 14, 2002.

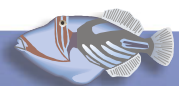
[Statement of Deputy Under Secretary of Defense \(Installations and Environment\) Raymond F. Dubois, Jr.](#), before the House Armed Services Committee, Subcommittee on Military Readiness, U.S. House of Representatives, March 14, 2002.

[Statement of Deputy Under Secretary of Defense \(Readiness\) Dr. Paul W. Mayberry](#) before the House Armed Services Committee, Subcommittee on Military Readiness, U.S. House of Representatives, March 14, 2002.

[Statement by Honorable Mario P. Fiori, Assistant Secretary of the Army \(Installations and Environment\)](#), before the House Armed Services Committee, Subcommittee on Military Readiness, U.S. House of Representatives, March 14, 2002.

[Statement of H. T. Johnson, Assistant Secretary of the Navy \(Installations and Environment\)](#), before the House Armed Services Committee, Subcommittee on Military Readiness, U.S. House of Representatives, March 14, 2002.

[Statement of the Honorable Mr. Nelson F. Gibbs, Assistant Secretary of the Air Force \(Installations, Environment & Logistics\)](#), before the House Armed Services Committee, Subcommittee on Military Readiness, U.S. House of Representatives, March 14, 2002.





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Statement of Steven J. Shimberg, Associate Assistant Administrator, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, before the House Armed Services Committee, Subcommittee on Military Readiness, U.S. House of Representatives, March 14, 2002.

Statement of Craig Manson, Associate Secretary for Fish and Wildlife and Parks, Department of the Interior, before the House Armed Services Committee, Subcommittee on Military Readiness, U.S. House of Representatives, March 14, 2002.

Statement of Dr. William T. Hogarth, Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, before the House Armed Services Committee, Subcommittee on Military Readiness, U.S. House of Representatives, March 14, 2002.

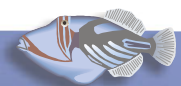


ACOE Issues Final Revisions to CWA Regulatory Definitions of “Fill Material” and “Discharge Of Fill Material”

On May 9, 2002, the U.S. Army Corps of Engineers issued their final revisions to the Clean Water Act Regulatory Definitions of “fill material” and “discharge of fill material.” The final rule completed the rulemaking process initiated by the April 20, 2000, proposal (see *Marine Environmental Update*, [Vol. FY00, No. 3](#)) in which the ACOE and the EPA jointly proposed to amend our respective regulations so that both agencies would have identical definitions of these key terms. The proposal was intended to clarify the Section 404 regulatory framework and generally to be consistent with existing regulatory practice. The final rule defines “fill material” in both the Corps’ and the EPA’s regulations as material placed in waters of the U.S. where the material has the effect of either replacing any portion of a water of the United States with dry land or changing the bottom elevation of any portion of a water. The examples of “fill material” identified in the rule include rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in waters of the U.S. It specifically excludes trash or garbage. The rule retains the effects-based approach of the April 2000 proposal and reflects the approach in the EPA’s longstanding regulations.

The final rule, however, includes an explicit exclusion from the definition of “fill material” for trash or garbage. It includes several clarifying changes to the term “discharge of fill material.” Specifically, the term “infrastructure” has been added in several places following the term “structure” to further define the situations where the placement of fill material is considered a “discharge of fill material.” In addition, the phrases “placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills” and “placement of overburden, slurry, or tailings or similar mining-related materials” have been added to the definition of “discharge of fill material” to provide further clarification of the types of activities regulated under Section 404.

As indicated in the proposal, as a general matter, the final rule will not modify existing regulatory practice. It establishes uniform language for the Corps’ and the EPA’s definitions of “fill material” and





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“discharge of fill material,” and is expected to enhance the agencies’ ability to protect aquatic resources by ensuring more consistent and effective implementation of CWA requirements.

The effective date of this rule is June 10, 2002. For further information, contact either Mr. Thaddeus J. Rugiel, U.S. Army Corps of Engineers, ATTN Washington, DC 20314-1000, telephone: (202) 761-4595, e-mail: thaddeus.j.rugiel@hq02.usace.army.mil, or Ms. Brenda Mallory, U.S. Environmental Protection Agency, Office of Wetlands, Oceans and Watersheds (4502T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone: (202) 566-1368, e-mail: mallory.brenda@epa.gov.

Federal Register, Volume 67, Number 90, Thursday, May 9, 2002, pp. 31129-31143 (100 KB [text file](#) or 107 KB [Adobe™ Acrobat™ file](#)).

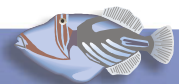


EPA Releases Proposed Water Quality Trading Policy

On February 15, 2002 the Environmental Protection Agency issued a proposed Water Quality Trading Policy. This purpose of the policy is to enable States and Tribes to develop and implement water quality trading programs that provide greater regulatory flexibility and reduce the cost of improving and maintaining the quality of the nation’s waters. The policy is intended to facilitate implementation of TMDLs, establish incentives for voluntary reductions and promote watershed-based initiatives that result in greater water quality and environmental benefits than would otherwise be achieved under the Clean Water Act (CWA).

The EPA supports water quality trading programs that include the following provisions to be consistent with the CWA:

- All water quality trading must occur within a watershed for which a trading program has been established or a defined area for which a TMDL has been approved.
- Sources and activities that are required to obtain a federal permit pursuant to Sections 402 and 404 of the CWA must do so before they may participate in a trading program.
- Notice, comment and opportunity for hearing must be provided for all NPDES permits.
- Methods and procedures specified by federal regulations or in NPDES permits must be used to determine compliance for point sources that engage in trading.
- Trading to comply with existing technology-based effluent limitations cannot be allowed.
- The EPA will not consider backsliding triggered where a source makes surplus reductions and later decided to discontinue generating credits as long as the actual discharge level does not exceed the discharge level previously authorized by the permit, or the actual discharge level achieved in practice prior to generating credits, whichever is lower.
- The baselines for trading to occur must be derived from and consistent with numeric or narrative water quality standards.





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- All water quality trading program should require contemporaneous upstream reductions to compensate for downstream increases between sources that are located at or above the site for which water quality standards are being applied.
- Any use of pollutant reduction credits or allowances that would cause a detectable localized degradation of water quality cannot be allowed.
- State or Tribal antidegradation policy should include provisions for trading to be consistent with water quality standards.
- Trading programs in impaired waters for which a TMDL that has been approved by a State or Tribe and the EPA must be consistent with the TMDL.
- Provisions for water quality trading should be included in the continuing planning process under 40 CFR 130.50.

This policy does not establish or affect any legal rights or obligations nor is it a final determination on the issues addressed in this policy. This draft policy supercedes the EPA's 1996 Effluent Trading in Watersheds Policy. For further information, contact: David Batchelor, EPA, Office of Water, (202) 564-5764, batchelor.david@epa.gov, or Lynda Hall Wynn, EPA, Office of Water, (202) 564-0472, wynn.lynda@epa.gov.

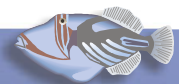
U.S. EPA Office of Water, Proposed Water Quality Trading Policy (29.8 KB [Adobe™ Acrobat™ file](#)).

Federal Register, Volume 67, Number 94, Wednesday, May 15, 2002, pp. 34709-34710 (4.32 KB [text file](#) or 43.2 KB [Adobe™ Acrobat™ file](#)).



New EPA Electronic Public Docket and Comment System Available

On May 31, 2002, the Environmental Protection Agency announced the availability of a new electronic public document and comment system. designed to greatly expand access to the EPA's public dockets, and facilitate the submission of public comments to the EPA, providing an unprecedented level of online access to the EPA's programs and rulemaking processes. EPA DOCKETS is an online system will allow users to search the EPA's major public dockets online, view the index listing of the contents for the dockets included in the system, and access those materials that are available online. Users will be able to submit their comments online when a particular public docket available in EPA Dockets is open for public comments, and users will be able to view public comments online for that docket. EPA DOCKETS is being phased-in across the EPA, starting with the following four offices: The Office of Solid Waste and Emergency Response (OSWER), the Office of Air and Radiation (OAR), the Office of Water (OW), and the Office of Prevention, Pesticides, and Toxic Substances (OPPTS). Participation is expected to be expanded to include other EPA offices, with the Office of Environmental Information (OEI), and the Office of Enforcement and Compliance Assurance (OECA) slated to implement the system for their dockets in the Fall of 2002.





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As of May 31, 2002, the following docket facilities will use EPA DOCKETS to establish the public docket, index the docket contents, and, to the extent feasible, provide the electronic version of publicly available docket materials:

- Air Docket
- Pesticide Docket
- RCRA Docket
- Superfund Docket
- Toxics Dockets
- UST Docket
- Water Docket

EPA has determined that the following material will not be included in EPA DOCKETS:

- Material subject to copyright protection.
- Audio and video materials.
- Oversized printed materials (*e.g.*, greater than 11" x 14").
- Other physical, three dimensional items.

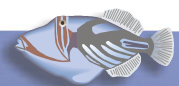
Since the paper docket currently remains the official docket, EPA DOCKETS may not contain electronic copies of all of the materials that are available in the paper public docket. With regard to public comments, the EPA will continue to place all public comments in the public docket as the EPA receives them and without change. For those comments that contain confidential business information (CBI), or other information whose disclosure is restricted by statute, the EPA will continue to ask the commenter to provide a non-CBI version of the comment for inclusion in the public docket. When the EPA identifies a comment containing copyrighted material, the EPA will provide a reference to that material in the version of the comment that is placed in EPA DOCKETS. The entire printed comment, including the copyrighted material, will be available in the paper public docket. EPA DOCKETS can be found at: <http://www.epa.gov/edocket>.

Federal Register, Volume 67, Number 105, Friday, May 31, 2002, pp. 38102-38103 (20.1 KB [text file](#) or 48.3 KB [Adobe™ Acrobat™ file](#)).



California's Living Marine Resources: A Status Report

On February 14, 2002, the California State Department of Fish and Game released the fourth edition in a series of reports that address the status of California's marine and anadromous fisheries and other marine life. The first section of *California's Living Marine Resources: A Status Report* is meant to provide lay people and specialists alike with the best available information on the oceanic, environmental, regulatory, and socioeconomic factors that affect the management affecting California's living marine resources. The second section of the report includes chapters on the three major ecosystems off California: nearshore, offshore, and bays and estuaries. Each of the chapters includes a description of the ecosystem, the major issues facing fisheries managers, and the management framework. The chapters also include evaluations





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of individual fisheries and species of marine wildlife, including a historical description of each fishery, the status of biological knowledge, and the status of the population. Management considerations submitted by authors for approximately half the individual fisheries are found in an appendix. The report concludes with chapters on Aquaculture, Invasive Species, and Marine Birds and Mammals. *California's Living Marine Resources: A Status Report* can be found at <http://www.dfg.ca.gov/mrd/status/index.html>.

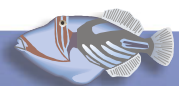


Development of an Autonomous Bioluminescence Buoy for Environmental Measurements

The temporal variability of coastal and oceanic bioluminescence remains largely unknown. Few studies have attempted to measure this phenomenon over any appreciable time scale because of the limitation of the number of available instruments, the platforms from which to measure for an extended period of time, and the cost in terms of time. Similarly, the seasonal and annual characteristics of bioluminescence have been observed in only a handful of studies. Bioluminescence is important because it is a sensitive indicator of marine environmental health. Bioluminescence correlates with toxicity, biomass, and even red tides, an important coastal phenomenon that can be associated with bioluminescent plankton (dinoflagellates). Recently, a buoy-mounted oil spill sensor (see *Marine Environmental Update*, [Vol. FY01, No. 2](#)) was modified to house a bioluminescence sensor and a transmissometer. Bioluminescence is measured by activating a small electric pump that pulls water into a light-tight chamber. The agitation and shear associated with the water flow stimulates the bioluminescent dinoflagellates to emit light. Water clarity is also measured with a red (680 nm) transmissometer. Data is automatically collected six times an hour, 24 hours per day, transmitted by a spread spectrum (900 MHz) RF link to a lab-based computer, and posted to a secure internet browser. The buoy will provide, for the first time, autonomous, real time, long-term bioluminescence measurements.

For more information, [contact MESO](#).

Lapota, D. and G. Anderson, New Development of an Autonomous Bioluminescence Buoy (Biobuoy) for Environmental Measurements, PACON 2001 Proceedings, pp. 56-62.





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The *Marine Environmental Update* is produced quarterly as an information service by the Marine Environmental Support Office (MESO) to inform the Navy environmental community about issues that may influence how the Navy conducts its operations. The contents of this document are the responsibility of the Marine Environmental Support Office and do not represent the views of the United States Navy. References to brand names and trademarks in this document are for information purposes only and do not constitute an endorsement by the United States Navy. All trademarks are the property of their respective holders. Approved for public release; distribution is unlimited.

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