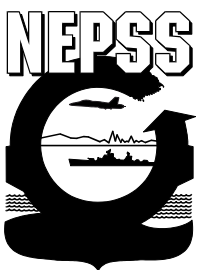




Marine Environmental Update



EPA Issues Dissolved Oxygen, Water Clarity, Chlorophyll α Criteria For Chesapeake Bay, Tidal Tributaries

On May 5, 2003, the Environmental Protection Agency Office of Water and EPA Region III released its final Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity, and Chlorophyll α for Chesapeake Bay and its tributaries. The final guidance is intended to assist Chesapeake Bay states, Maryland, Virginia and Delaware, and the District of Columbia, in adopting revised water quality standards to address nutrient and sediment-based pollution in Chesapeake Bay and its tidal tributaries.

EPA Region III developed the Regional Criteria Guidance in accordance with Section 117(b) of the Clean Water Act using the multi-stakeholder approach to implementing the Chesapeake 2000 agreement, in accordance with the EPA National Strategy for the Development of Regional Nutrient Criteria. In the Regional Criteria Guidance the EPA recommends and expects that the numerical criteria and refined designated uses will be considered by, and appropriately incorporated into the water quality standards of the Chesapeake Bay jurisdictions with tidal waters. Using existing state authority and public process, each jurisdiction is expected to consider and propose criteria and appropriate designated uses, subject to review and approval by the EPA, that are consistent with the requirements of the Clean Water Act. The EPA will consider the Regional Criteria Guidance in reviewing any state submission regarding this issue.

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Read me on-line at: <http://meso.spawar.navy.mil/Newsltr>



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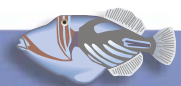
Designated Uses

EPA Region III identified and described five habitats (designated uses) for Chesapeake Bay and its tidal tributaries. Those five uses provided the context in which water quality criteria for dissolved oxygen, water clarity and chlorophyll α , were derived. The five designated uses are:

1. The migratory fish spawning and nursery designated use protects migratory and resident tidal freshwater fish during the late winter to late spring spawning and nursery season in tidal freshwater to low-salinity habitats. Located primarily in the upper reaches of many Bay tidal rivers and creeks and the upper mainstem Chesapeake Bay, this use will benefit several species including striped bass, perch, shad, herring, sturgeon and largemouth bass.
2. The shallow-water bay grass designated use protects underwater bay grasses and the many fish and crab species that depend on the vegetated shallow-water habitat provided by underwater grass beds.
3. The open-water fish and shellfish designated use focuses on surface water habitats in tidal creeks, rivers, embayments and the mainstem Chesapeake Bay, and protects diverse populations of sport fish, including striped bass, bluefish, mackerel and sea trout, as well as important bait fish such as menhaden and silversides.
4. The deep-water seasonal fish and shellfish designated use protects animals inhabiting the deeper transitional water-column and bottom habitats between the well-mixed surface waters and the very deep channels. This use protects many bottom-feeding fish, crabs and oysters, and other important species such as the bay anchovy.
5. The deep-channel seasonal refuge designated use protects bottom sediment dwelling worms and small clams that bottom-feeding fish and crabs consume naturally. Low to occasional no dissolved oxygen conditions occur in this habitat zone during the summer.

Dissolved Oxygen Criteria

Designated Use	Criteria Concentration/ Duration	Protection Provided	Temporal Application
Migratory fish spawning and nursery use	7-day mean ≥ 6 mg/L	Survival/growth of larval/juvenile tidal-fresh resident fish; protective of threatened/endangered species.	February 1 – May 31
	Instantaneous minimum ≥ 5 mg/L	Survival and growth of larval/juvenile migratory fish; protective of threatened/endangered species.	February 1 – May 31
	Open-water fish and shellfish designated use criteria apply.		June 1 – January 31
Shallow-water bay grass use	Open-water fish and shellfish designated use criteria apply.		Year-round



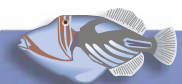


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Designated Use	Criteria Concentration/ Duration	Protection Provided	Temporal Application
Open-water fish and shellfish use	30-day mean \geq 5.5 mg/L (tidal habitats with 0-0.5 ppt salinity)	Growth of tidal-fresh juvenile and adult fish; protective of threatened/endangered species.	Year-round
	30-day mean \geq 5 mg/L (tidal habitats with $>$ 0.5 ppt salinity)	Growth of larva, juvenile and adult fish and shellfish; protective of threatened/endangered species.	
	7-day mean \geq 4 mg/L	Survival of open water fish larvae	
	Instantaneous minimum \geq 3.2 mg/L	Survival of threatened/endangered sturgeon species.	
Deep-water seasonal fish and shellfish use	30-day mean \geq 3 mg/L	Survival and recruitment of bay anchovy eggs and larvae	June 1 – September 30
	1-day mean \geq 2.3mg/L	Survival of open-water juvenile and adult fish	
	Instantaneous minimum \geq 1.7 mg/L	Survival of bay anchovy eggs and larvae	October 1 – May 31
	Open-water fish and shellfish designated use criteria apply		
Deep-channel seasonal refuge use	Instantaneous minimum \geq 1 mg/L	Survival of bottom-dwelling worms and clams.	June 1 – September 30
	Open-water fish and shellfish designated use criteria apply		October 1 – May 31

Water Clarity Criteria

Salinity Range	Water Clarity as Percent Light-through-Water	Water Clarity as Secchi Depth								Temporal Application
		Water Clarity Criteria Application Depths								
		0.25	0.5	0.75	1.0	1.25	1.5	1.75	2.0	
Secchi Depth (meters) for above Criteria Application Depth										
Tidal-fresh	13%	0.2	0.4	0.5	0.7	0.9	1.1	1.2	1.4	April 1 – October 31
Oligohaline	13%	0.2	0.4	0.5	0.7	0.9	1.1	1.2	1.4	April 1 – October 31
Mesohaline	22%	0.2	0.5	0.7	1.0	1.2	1.4	1.7	1.9	April 1 – October 31
Polyhaline	22%	0.2	0.5	0.7	1.0	1.2	1.4	1.7	1.9	March 1 – May 31, September 1 – November 30





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Chlorophyll α Criteria

The EPA provided a narrative chlorophyll α criteria applicable to all Chesapeake Bay and tidal tributary waters. Concentrations of chlorophyll α in free-floating microscopic aquatic plants (algae) shall not exceed levels that result in ecologically undesirable consequences—such as reduced water clarity, low dissolved oxygen, food supply imbalances, proliferation of species deemed potentially harmful to aquatic life or humans or aesthetically objectionable conditions—or otherwise render tidal waters unsuitable for designated uses. The technical information supporting states' quantitative interpretation of the narrative chlorophyll α criteria is published in the body of the Chesapeake Bay water quality criteria document.

EPA Region III is also presenting Chesapeake Bay criteria implementation procedures as additional regional guidance in accordance with Section 117(b)(2) of the Clean Water Act to Chesapeake Bay watershed states and other agencies, institutions, groups or individuals considering how to apply the criteria to determine the degree of attainment. The EPA expects that these procedures will promote consistent, bay-wide application of the criteria across jurisdictional boundaries.

For more information see: <http://www.epa.gov/chesapeake/baycriteria.htm>.

U.S. EPA. 2003. Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll α for the Chesapeake Bay and Its Tidal Tributaries; April, 2003 (4.30 MB [Adobe™ Acrobat™ file](#)).



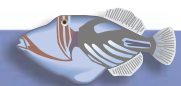
EPA Issues Pacific Northwest Water Temperature Criteria

The Environmental Protection Agency issued a final guidance to assist States and Tribes within Region 10 (Washington, Oregon, Idaho, and Alaska) to adopt temperature water quality standards that the EPA can approve consistent with its obligations under the Clean Water Act and the Endangered Species Act. The CWA requires States and authorized Tribes to adopt water quality standards and requires the EPA to approve or disapprove those standards. The ESA requires the EPA, in consultation with the federal fisheries agencies, to insure its approval of a State or Tribe's water quality standards does not jeopardize the continued existence of endangered or threatened species.

Recommended Temperature Criteria to Protect Salmon and Trout

Summer Maximum Temperature

- < 12°C (55°F) for Bull Trout Rearing – generally in the upper portion of river basins
- < 16°C (61°F) for Salmon and Trout “Core” Juvenile Rearing – generally in the mid to upper part of river basins
- < 18°C (64°F) for Salmon and Trout Migration plus Non-Core Juvenile Rearing – generally in the lower part of river basins
- < 20°C (68°F) plus cold water refugia protection for Salmon and Trout Migration – generally in the lower part of a few river basins that likely reach this temperature naturally





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Where and When Fish Use a River (generally during the fall-winter-spring period)

- < 9°C (48°F) for Bull Trout Spawning
- < 13°C (55°F) for Salmon and Trout Spawning, Egg Incubation, and Fry Emergence
- < 14°C (57°F) for Steelhead Smoltification

(Note: the above criteria are based on the 7 day average of the daily maximum values.)

Recommendations to Protect Existing Cold Waters

Keeping cold waters cold is important to protect the last remaining high quality fish habitat and help cool downstream river reaches. The guidance, therefore, recommends that State and Tribes adopt mechanisms in their standards that protect waters that are currently colder than the summer maximum numeric criteria.

Recommendations to Protect Fish in the Vicinity of Point-Source Discharges

In some situations, water temperatures in the immediate vicinity of an industrial or municipal discharge may exceed the recommended temperature criteria as long as fish are not harmed from short-term exposure. The guidance recommends that States and Tribes adopt measures to protect fish from temperatures that would be lethal, cause thermal shock, block migration, or harm fish eggs.

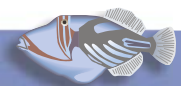
The guidance represents one approach for water temperature standards that a State or Tribe could adopt that would likely pass the complex approval process. The guidance, however, is optional and States and Tribes can adopt alternative standards as long as the EPA determines they meet CWA and ESA requirements. Further information can be found at: www.epa.gov/r10earth/temperature.htm.

U.S. EPA. 2003. *EPA Region 10 Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards*. EPA 910-B-03-002. Region 10 Office of Water, Seattle, WA (293 KB [Adobe™ Acrobat™ file](#)).



EPA Releases Framework For Cumulative Risk Assessment

On May 27, 2003, the Environmental Protection Agency announced the release of its *Framework for Cumulative Risk Assessment*. The *Framework for Cumulative Risk Assessment* is the first step in a long-term effort to develop cumulative risk assessment guidance. The framework is intended to foster consistent approaches to cumulative risk assessment in the EPA, identify key issues, and define terms used in these assessments. The framework identifies the basic elements of the cumulative risk assessment process and provides a flexible structure for conducting and evaluating cumulative risk assessment, and for addressing scientific issues related to cumulative risk. Although the framework report will serve as a foundation for developing future guidance, it is neither a procedural guide nor a regulatory requirement within the EPA, and it is expected to evolve with experience. The framework is not an attempt to lay out protocols to address all the risks or considerations that are needed to adequately inform community





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decisions. Rather, it is an information document, focused on describing various aspects of cumulative risk.

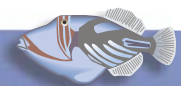
The framework itself is conceptually similar to the approach used in both human health and ecological assessments, but it is distinctive in several areas. First, its focus on the combined effects of more than one agent or stressor makes it different from many assessments conducted today, in which, if multiple stressors are evaluated, they are usually evaluated individually and presented as if the others were not present. Second, because multiple stressors are affecting the same population, there is increased focus on the specific populations potentially affected rather than on hypothetical receptors. Third, consideration of cumulative risk may generate interest in a wider variety of nonchemical stressors than do traditional risk assessments. The framework describes three main phases to a cumulative risk assessment: (1) planning, scoping, and problem formulation; (2) analysis; and (3) risk characterization.

In the first phase, a team of risk managers, risk assessors, and other stakeholders establishes the goals, breadth, depth, and focus of the assessment. The end products of this phase are a conceptual model and an analysis plan. The conceptual model establishes the stressors to be evaluated, the health or environmental effects to be evaluated, and the relationships among various stressor exposures and potential effects. The analysis plan lays out the data needed, the approach to be taken, and the types of results expected during the analysis phase. The analysis phase includes developing profiles of exposure, considering interactions (if any) among stressors, and predicting risks to the population or populations assessed. It is in this phase that difficult technical issues such as the toxicity of mixtures, the vulnerability of populations, or the interactions among stressors that may be chemical or nonchemical are addressed and, hopefully resolved. The end product of this phase is an analysis of the risks associated with the multiple stressors to which the study population or populations are exposed. The third phase, risk characterization (interpretation), puts the risk estimates into perspective in terms of their significance, the reliability of the estimates, and the overall confidence in the assessment. It is also in this phase that an evaluation is made of whether the assessment met the objectives and goals set forth in phase one.

The document can be found at: <http://cfpub.epa.gov/ncea/raf/recordisplay.cfm?deid=54944> (1.57 MB Adobe™ Acrobat™ file). It is also [available from MESO](#).

Federal Register, Volume 68, Number 101, Tuesday, May 27, 2003, p. 28825 (3.81 KB [text file](#) or 33.3 KB [Adobe™ Acrobat™ file](#)).

U.S. EPA. 2003. Framework For Cumulative Risk Assessment. EPA/600/P-02/001F. 01 Jan 2003. U.S. Environmental Protection Agency, Office of Research and Development, National Center for Environmental Assessment, Washington Office, Washington, DC, 129 pp.





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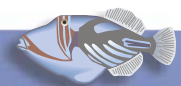
EPA Issues Final Guidelines For Metal Products And Machinery Category Wastewater Effluent

On May 13, 2003, the Environmental Protection Agency published its final guidance on wastewater controls for the Metal Products and Machinery (MP&M) industrial category. In addition to some government facilities, the final rule sets performance standards for facilities in the following industrial sectors:

- Aerospace
- Aircraft
- Bus and Truck
- Electronic Equipment
- Hardware
- Household Equipment
- Instruments
- Mobile Industrial Equipment
- Motor Vehicle
- Office Machine
- Ordnance
- Precious Metals and Jewelry
- Railroad
- Ships and Boats
- Stationary Industrial Equipment
- Miscellaneous Metal Products

The EPA established limitations and standards only for facilities that directly discharge wastewaters from oily operations in the Oily Wastes subcategory. The EPA established daily maximum limits for two pollutants, oil and grease (as hexane-extractable material) and total suspended solids, based on the best practicable control technology: (1) in-process flow control and pollution prevention; and (2) oil-water separation by chemical emulsion breaking and skimming. The limitations will be incorporated into industrial water pollution control permits for facilities in the Oily Wastes subcategory when they are issued or re-issued. The final rule revises the proposed definition of “oily operations” by including additional operations (see 67 FR 38765). The EPA is incorporating the following unit operations and any associated rinses into the definition of “oily operations” (see section V.B of the final rule for the complete list of oily operations subject to regulation):

- Abrasive blasting;
- Adhesive bonding;
- Alkaline treatment without cyanide;
- Assembly/disassembly;





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- Burnishing;
- Calibration;
- Electrical discharge machining;
- Iron phosphate conversion coating;
- Painting-spray or brush (including water curtains);
- Polishing;
- Thermal cutting;
- Tumbling/barrel finishing/mass finishing/vibratory finishing;
- Washing (finished products);
- Welding; and
- Wet air pollution control for organic constituents.

Further information may be found at: <http://www.epa.gov/waterscience/guide/mpm/rule.html>.

Federal Register, Volume 68, Number 92, Tuesday, May 13, 2003, pp. 25685-25745 (433 KB [text file](#) or 366 KB [Adobe™ Acrobat™ file](#)).



EPA Approves Prohibitions Of Mixing Zones For BCCs In Great Lakes

On May 16, 2003, Environmental Protection Agency Region 5 approved the prohibition of mixing zones for bioaccumulative chemicals of concern (BCCs) pursuant to Section 118 of the Clean Water Act and the Water Quality Guidance for the Great Lakes System for the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin. The EPA's approval is effective as of May 16, 2003.

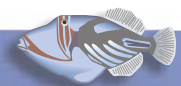
For further information contact Mery Jackson-Willis, U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, IL 60604; telephone: (312) 353-3717.

Federal Register, Volume 68, Number 95, Friday, May 16, 2003, pp. 26616-26618 (13.5 KB [text file](#) or 42.1 KB [Adobe™ Acrobat™ file](#)).



FY2002 CNO Environmental Award Winners

On April 30, 2003, the winners of the Chief of Naval Operations (CNO) Environmental Awards for FY2002 were announced. The Environmental Awards recognize ships, installations, and individuals or teams, for their exceptional environmental stewardship. A total of 52 winners and three honorable mentions were recognized this year. The FY2002 CNO Environmental Award winners are:





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Natural Resources Conservation

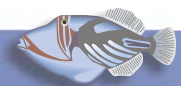
- Large Installation
 - [Crane Division, Naval Surface Warfare Center](#) (398 KB Adobe™ Acrobat™ file)
 - [Naval Air Weapons Station China Lake](#) (2.06 MB Adobe™ Acrobat™ file)
 - [Naval Submarine Base Kings Bay](#) (730 KB Adobe™ Acrobat™ file)

Cultural Resources Management

- Installation
 - [Commander, Fleet Activities, Yokosuka, Japan](#) (733 KB Adobe™ Acrobat™ file)
 - [Commander, U.S. Naval Forces Marianas, Guam M.I.](#) (2.99 MB Adobe™ Acrobat™ file)
 - [Naval Air Station Patuxent River](#) (45.2 MB Adobe™ Acrobat™ file)
- Individual or Team
 - [Commander, U.S. Naval Forces Marianas, Guam M.I./Jennings Bunn, Jr.](#) (2.30 MB Adobe™ Acrobat™ file)
 - [Crane Division, Naval Surface Warfare Center/Team](#) (Jim Hunsicker, Nancy Albertson, Dave Poynter, Anita Netherland, Scott Matthews, Melody Pope, Andrew White, George Mankowski, Christopher Andres) (212 KB Adobe™ Acrobat™ file)

Environmental Quality

- Industrial Installation
 - [Indian Head Division, Naval Surface Warfare Center](#) (1.39 MB Adobe™ Acrobat™ file)
 - [Naval Air Depot North Island](#) (1.47 MB Adobe™ Acrobat™ file)
 - [Naval Air Station Jacksonville](#) (144 KB Adobe™ Acrobat™ file)
- Overseas Installation
 - [U.S. Naval Air Facility Misawa, Japan](#) (592 KB Adobe™ Acrobat™ file)
 - [U.S. Naval Station Guantanamo Bay, Cuba](#) (353 KB Adobe™ Acrobat™ file)
 - [U.S. Naval Station Rota, Spain](#) (390 KB Adobe™ Acrobat™ file)
- Small Ship
 - [USS AVENGER \(MCM 1\)](#) (67.0 KB Adobe™ Acrobat™ file)
 - [USS CAPE ST. GEORGE \(CG 71\)](#) (17.0 KB Adobe™ Acrobat™ file)
 - [USS WINSTON S. CHURCHILL \(DDG 81\)](#) (39.0 KB Adobe™ Acrobat™ file)





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Pollution Prevention

- Non-Industrial Installation
 - [Commander Navy Region Mid-Atlantic](#) (511 KB Adobe™ Acrobat™ file)
 - [Naval Air Station Whidbey Island](#) (315 KB Adobe™ Acrobat™ file)
 - [Naval Undersea Warfare Center Division Newport](#) (321 KB Adobe™ Acrobat™ file)
- Individual or Team
 - [Naval Air Facility Key West/Pollution Prevention Team](#) (Ron Demes, Darrel Dye, Billy Adkins) (183 KB Adobe™ Acrobat™ file)
 - [Naval Training Center Great Lakes/Pollution Prevention Team](#) (Maria Sus, Luigi Abbate, Chris Bartku, Donna Williams, Judy Honold, Barbara Reed) (175 KB Adobe™ Acrobat™ file)
 - [Navy Public Works Center Norfolk/James J. Hoyt](#) (225 KB Adobe™ Acrobat™ file)

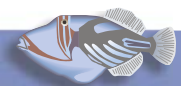
Environmental Restoration

- Installation
 - [Mare Island Naval Shipyard](#) (578 KB Adobe™ Acrobat™ file)
 - [Moffett Federal Airfield](#) (1.17 MB Adobe™ Acrobat™ file)
 - [Naval Air Station Brunswick](#) (427 KB Adobe™ Acrobat™ file)

Environmental Planning

- Team
 - [Naval Air Engineering Station Lakehurst, Model Installation Focus Group](#) (Captain Mark Bathrick, Martin Borosko, Donnamarie Grieco, Tom Szallai, Frank Hampton, Fran Huffnell, Robert Kirkbright, Dorothy Peterson, Frank Crowe, Judy Kapp, Beat Niederoest, Fran Donovan, Greg Heller, Kim Reymann, Tom Leahy, Carl Carew) (2.13 MB Adobe™ Acrobat™ file)
 - [Naval Air Station Patuxent River, Operational Environmental Planning \(OEP\) Team](#) (Don Shaver, Mary Samuels, Steve Shiell, Torun Willits, Brian Dean, Gina Coelho, Rebecca Walker, Laura Walko, Brandi Simpson, Heather LeRoy, Andrew Martinez, Russell Piovesan, Mike Zickel, Mike Hitchings, Sam Perkins, Andy Rogers, Ray Sabella, Lisa Tennyson, Richard Gallant, Dan Travers) (336 KB Adobe™ Acrobat™ file)

For further information see: <http://web.dandp.com/2002awards.html>.



Establishment Of Marine Reserves In Channel Islands National Marine Sanctuary To Be Considered

On May 22, 2003, the National Oceanographic and Atmospheric Administration announced that it is considering the establishment of a network of marine reserves within the Channel Islands National Marine Sanctuary off the coast of California to maintain the natural biological communities, and to protect, and restore and enhance natural habitats, populations, and ecological processes. The National Marine Sanctuary program (NMSP) will prepare an environmental impact statement which will examine a range of management and regulatory alternatives associated with consideration of marine reserves within the Sanctuary. The NMSP will conduct three public scoping meetings during the scoping period to gather information and other comments from individuals, organizations, and government agencies on the scope, types and significance of issues related to consideration of marine reserves in the Sanctuary.

For a history of the Channel Islands Marine Reserves Process and the environmental documentation, see www.dfg.ca.gov/mrd/channel_islands or www.cinms.nos.noaa.gov/marineres/main.html. The Sanctuary is also revising its 1983 Management Plan. A Final Environmental Impact Statement and Management Plan are expected by the end of 2003. See www.cinms.nos.noaa.gov/marineres/manplan.html for more information.

Written comments must be received on or before July 23, 2003. Written comments may be sent to the Channel Islands National Marine Sanctuary, ATTN Sean Hastings, 113 Harbor Way, Suite 150, Santa Barbara, California 93109, by facsimile to (805) 568-1582, or by e-mail to reservesprocess@noaa.gov. Comments will be available for public review at the same address. For further information contact Sean Hastings, (805) 966-7107, ext. 472.

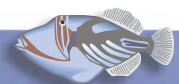
Federal Register, Volume 68, Number 99, Thursday, May 22, 2003, pp. 27989-27990 (3.95 KB [text file](#) or 33.4 KB [Adobe™ Acrobat™ file](#)).



New Regulations Governing Eastern North Pacific Southern Resident Stock Of Killer Whales Issued

On May 29, 2003, the National Marine Fisheries Service determined that the eastern North Pacific Southern Resident stock of killer whales (*Orcinus orca*) is depleted as defined in the Marine Mammal Protection Act. This action was a step in the process to address the decline in the number of Southern Resident killer whales. NMFS also announced the preparation of a Conservation Plan to reverse the decline and to promote recovery of the stock to its optimal sustainable population (OSP).

On May 2, 2001, NMFS received a petition from the Center for Biological Diversity and 11 co-petitioners to list Southern Resident killer whales under the Endangered Species Act (see *Marine Environmental Update, Vol. FY01, No. 4*). After conducting a status review to consider the information in the petition and other information related to the status of Southern Resident killer whales, NMFS determined that





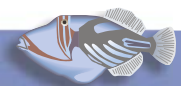
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listing these killer whales as a threatened or endangered species was not warranted at this time because Southern Resident killer whales did not constitute a species as defined by the ESA. Scientific information evaluated during the status review, however, indicated that the population stock may be depleted under the MMPA.

As required by the MMPA, NMFS initiated consultation with the Marine Mammal Commission in a letter dated June 25, 2002, and began the process for determining if the stock was depleted. The MMC responded to NMFS in a letter dated November 18, 2002, with recommendations to: (1) prepare research plans for killer whales in the North Pacific, particularly to collect specific information needed to reevaluate the status of Southern Resident killer whales within four years; (2) to proceed with the depletion determination; and (3) to identify and implement needed actions to protect important habitat as a conservation plan is developed for the Southern Resident killer whale stock. In a subsequent letter, dated March 31, 2003, the MMC: (1) reiterated its recommendation to designate the stock as depleted; (2) recommended that NMFS should thoroughly review information related to historical abundance and other information to establish recovery goals during conservation planning; and (3) recommended that NMFS prepare a conservation plan as soon as possible and, in the interim, initiate any conservation measures identified to date.

Pursuant to Section 115 of the MMPA (16 U.S.C. 1383b), NMFS published an Advance Notice of Proposed Rulemaking (ANPR) (67 FR 44132, July 1, 2002) which included a request for scientific information. Specifically, the ANPR requested information, comments, and supporting documents on stock status, areas of significance to the stock, and any factors that may be causing the decline or impeding the recovery of the stock. After considering comments received in response to the ANPR and the recommendations of the Commission, NMFS published a proposed rule to designate the Southern Resident stock as depleted (see *Marine Environmental Update*, [Vol. FY03, No. 2](#)) and solicited comments on the proposal and on potential conservation measures that may benefit these whales. The 60-day comment period on the proposed rule closed on March 31, 2003. The 2002 abundance of 80 Southern Resident killer whales (Center for Whale Research, 2002 Orca Survey) is below the lower bound of the estimated maximum net productivity level (MNPL) range (84) for the stock. The current population size meets the statutory definition of a depleted stock. NMFS recognizes that the current populations size is very near the estimated lower bound of MNPL for this stock but is taking this risk averse approach in light of recent declines. Therefore, based on the best scientific information available and consultation with the Commission, NMFS determines that the Southern Resident stock of killer whales is depleted under the MMPA.

After consultation with the MMC, NMFS has determined that a Conservation Plan will assist in the conservation of the stock and is expediting the preparation of such a plan concurrent with the publication of this action. NMFS, as part of the proposed rule, requested public comment on: areas of ecological significance (mating, rearing, resting, feeding) to the eastern North Pacific Southern Resident stock; impacts that may be causing the decline or impeding the recovery of the stock; and potential conservation measures that may be useful in alleviating those impacts. Information was also solicited on the potential economic impacts and the potential biological benefits of alternative conservation measures. NMFS will use the information collected in response to the proposed rule for the development of conservation measures and in the preparation of the Conservation Plan.





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For further information see <http://www.nwr.noaa.gov/mmammals/whales/proposal.htm>, or contact Mr. Garth Griffin, Northwest Regional Office, NMFS, Portland, OR (503) 231-2005, or Dr. Thomas Eagle, Office of Protected Resources, NMFS, Silver Spring, MD (301) 713-2322, ext. 105.

This rule is effective June 30, 2003.

Federal Register, Volume 68, Number 103, Thursday, May 29, 2003, pp. 31980-31983 (20.5 KB [text file](#) or 46.1 KB [Adobe™ Acrobat™ file](#)).



Gulf Sturgeon Critical Habitat Designated

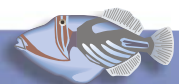
On March 19, 2003 the U.S. Fish and Wildlife Service designated critical habitat for the threatened Gulf sturgeon (*Acipenser oxyrinchus desotoi*) along portions of rivers, estuaries, and marine coastline in Florida, Alabama, Mississippi and Louisiana (see *Marine Environmental Update, Volume FY03, No. 3*). The following portions of Gulf of Mexico rivers and tributaries are designated as critical habitat for the Gulf sturgeon: Pearl and Bogue Chitto Rivers in Louisiana and Mississippi; Pascagoula, Leaf, Bouie (also referred to as Bowie), Big Black Creek and Chickasawhay Rivers in Mississippi; Escambia, Conecuh, and Sepulga Rivers in Alabama and Florida; Yellow, Blackwater, and Shoal Rivers in Alabama and Florida; Choctawhatchee and Pea Rivers in Florida and Alabama; Apalachicola and Brothers Rivers in Florida; and Suwannee and Withlacoochee River in Florida.

The designation also 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, and sections of the adjacent state waters within the Gulf of Mexico; 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. These geographic areas encompass approximately 1,730 river miles and 2,333 square miles of estuarine and marine habitat.

For further information see: <http://alabama.fws.gov/gs/>.

Federal Register, Volume 68, Number 53, Wednesday, March 19, 2003, pp. 13369-13495 (172 KB [text file](#) or 18.7 MB [Adobe™ Acrobat™ file](#)).

[U.S. Fish & Wildlife News Release, March 19, 2003.](#)





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FWS Says Critical Habitat Litigation Undermining Endangered Species Conservation

In a press release issued on May 28, 2003, the Fish and Wildlife Service announced that, after being faced with mounting numbers of court orders from six years of litigation, it will soon run out of funds to designate critical habitat for threatened and endangered species. More importantly, the flood of court orders requiring critical habitat designations is undermining endangered species conservation by compromising the FWS's ability to protect new species and to work with states, tribes, landowners and others to recover those already listed under the Endangered Species Act. Critical habitat designations impact species listings because both activities are funded from the same part of the FWS's budget, and critical habitat designations are far more time consuming and costly.

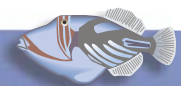
The FWS says it will exhaust the funds required to meet its obligations to designate critical habitat under court orders and settlements for FY 2003 in July. The administration has requested authority from Congress to shift money from other endangered species programs to cover the shortfall. These include programs to work with landowners on conservation projects to keep imperiled species from needing listing under the ESA, consultation with other federal agencies to protect species, and recovery work for species already threatened or endangered. The FWS will also approach plaintiffs and courts to seek extensions to deadlines in affecting 32 species.

The President's FY 2004 budget request for listing totals nearly \$12.3 million, an amount that is almost double the \$6.2 million appropriated in FY 2000 and a 35 percent increase over FY 2003. Two-thirds of the endangered species listing budget is being consumed by court orders and settlement agreements requiring designation of critical habitat for species already on the endangered species list.

In most instances, designation of critical habitat provides little additional protection for endangered species. Designating an area as critical habitat means that federal agencies are required to consult with FWS on the impacts of actions they authorize, fund, or carry out, on designated critical habitat. However, these requirements provide little additional protection for most species due to the fact that, as soon as a species is listed, federal agencies are already required to consult on the impacts of their activities on the species, whether or not critical habitat is officially designated.

The FWS avers that recovery of listed species will come, not through not regulatory measures, but through voluntary cooperative partnership under the ESA such as Habitat Conservation Plans, Safe Harbor Agreements, Candidate Conservation Agreements, and state grant programs. In addition, voluntary partnership programs such as the Service's Private Stewardship Grants and Partners for Fish and Wildlife program also restore habitat. Many national wildlife refuges, managed by the FWS, provide habitat for endangered species, and states also provide for endangered species on their wildlife management areas.

The ESA requires that critical habitat be designated at the time of listing to the maximum extent prudent and determinable. Facing many species in need of protection, a limited budget, and incomplete knowledge about the distribution and needs of species, the administration under President Clinton made designation of critical habitat a lower priority than other listing actions. Moreover, that administration





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found that designation was “not prudent” for the vast majority of species as critical habitat would not provide a benefit to the species.

[U.S. Fish and Wildlife Press Release, May 28, 2003.](#)



EPA 2003 Regulatory Agenda Announced

On May 27, 2003, the Environmental Protection Agency announced its Spring 2003 Semiannual Regulatory Agenda. The announcement contains updates on: (1) regulations and major policies currently under development, (2) reviews of existing regulations and major policies, and (3) regulations and major policies completed or canceled since the last agenda.

Besides the fundamental environmental laws authorizing EPA actions such as the Clean Air Act and Clean Water Act, there are legal requirements that apply to the issuance of regulations that are generally contained in the Administrative Procedure Act, the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act, the Unfunded Mandates Reform Act, the Paperwork Reduction Act, the National Technology Transfer and Advancement Act, and the Congressional Review Act. The EPA must also meet a number of requirements contained in Executive orders. Of particular significance for EPA rulemakings are Executive Orders 12866 (Regulatory Planning and Review; 58 FR 51735; October 4, 1993), 12898 (Environmental Justice; 59 FR 7629; February 16, 1994), 13045 (Children’s Health Protection; 62 FR 19885; April 23, 1997), 13132 (Federalism; 64 FR 43255, August 10, 1999), 13175 (Consultation and Coordination with Indian Tribal Governments; 65 FR 67249, November 9, 2000), and 13211 (Energy; 66 FR 28355, May 22, 2001).

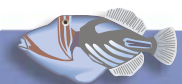
For further information about the agenda contact: Phil Schwartz (1806A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone: (202) 564-6564; email: schwartz.philip@epa.gov.

Federal Register, Volume 68, Number 101, Tuesday, May 27, 2003, pp. 30942-31112 (1.02 MB [text file](#) or 751 KB [Adobe™ Acrobat™ file](#)).



Right Whale Nomenclature, Taxonomy Technical Revisions

On April 10, 2003, the National Marine Fisheries Service issued a final rule concerning the nomenclature and taxonomy of the North Atlantic right whale, North Pacific right whale, and the southern right whale. The first change updates the formerly-used genus *Balaena* to the genus *Eubalaena* to conform to the taxonomy currently accepted by the scientific community and supported by the scientific literature. The second change reflects the genetic distinctiveness now recognized between Pacific and Atlantic right whale populations in the northern hemisphere. Due to recent genetic findings, NMFS is changing the





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species name of the northern right whale as follows: *Eubalaena glacialis*, the North Atlantic right whale, and *Eubalaena japonica*, the North Pacific right whale.

The right whale was initially listed as *Eubalaena glacialis* by the Fish and Wildlife Service in the 1973 Edition of Threatened Wildlife of the United States. Subsequently, however, some authorities have put right and bowhead whales in the same genus, *Balaena*. The current List of Endangered and Threatened Wildlife (50 CFR 17.11) also lists the right whale as *Balaena glacialis* (including *australis*). Despite these differences in listing, the genus *Eubalaena* has been most widely recognized and commonly used in the scientific community as the genus associated with all right whale species. *Eubalaena* is also the name accepted by both the International Whaling Commission and NMFS. The second change reflects new evidence from recent genetic studies regarding the taxonomic classification of right whales. Genetic data now provide unequivocal support to distinguish the three right whale lineages as separate phylogenetic species. The revised designation of these populations allows for consistent scientific practice and management policies in recovering these populations.

These changes are technical revisions only, and will not change the listing status of right whales under the Endangered Species Act. All three species remain classified as “endangered.” This rule is effective May 12, 2003.

Federal Register, Volume 68, Number 69, Thursday, April 10, 2003, pp. 17560-17562 (17.1 KB [text file](#) or 41.2 KB [Adobe™ Acrobat™ file](#)).



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