
Habitat Hotline Atlantic

Issues of Concern for Atlantic Marine Fish Habitat

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Promoting Citizen's Participation in Habitat Conservation

by

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Everyday some type of action is proposed or undertaken that affects wild places and the wildlife that utilize them. One of the most frequent impacts in coastal marine areas is the dredging of channels to allow passage of boats and ships. Material dredged from channels may be deposited on shore, discharged offshore or used for beach replenishment projects. The discharge of dredge or fill materials into U.S. waters are some of the many habitat affecting actions which are regulated under the Clean Water Act (CWA). The public has an important role to play in conserving fish and wildlife and their associated habitats. Although sometimes difficult to understand or seemingly complicated, public participation opportunities are factored into the permitting process for many marine habitat impacts. This article will unscramble the public participation opportunities available for activities regulated by Section 404 of the CWA, and provide information to help make your voice heard in the debated future of the nation's natural resources.

Monitoring Federal Clean Water Act Permits and Public Notices

Section 404 of the CWA established a program designed to regulate the discharge of dredged and fill materials into the waters of the United States. This is accomplished through a permit process. The U.S. Army Corps of Engineers (COE) handles the day to day administration of the 404 permit applications, whereas the Environmental Protection Agency (EPA) handles the development and interpretation of environmental criteria used in evaluating the permit applications. Other federal agencies, such as the U.S. Fish & Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS), advise and consult on these permits, however, only EPA has veto power over a COE decision if a project is deemed to have an unacceptable adverse impact on the aquatic or wetland ecosystem.

The public's access to this regulatory process begins in the form of the Public Notice (PN) comment period. A PN conveys

pertinent information on a proposed action for the purpose of soliciting comments from the public. A PN must describe the proposed action and identify its purpose and need. Furthermore, a PN must include an evaluation of the action's probable impact (including its cumulative impacts) on the public interest based on specific factors and must reflect the national concern for both protection and utilization of important resources. Such factors are: conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and welfare of the people. The PN must also take into account whether the proposed project's impact will affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act and whether the impacts are shown to be in accordance with the Coastal Zone Management Act, Section 401 (water quality) of the CWA and the National Historic Preservation Act. Consideration of essential fish habitat under the Magnuson-Stevens Act may soon be added to this list.

Sequence of Events for a Federal Clean Water Act Public Notice

1. COE Issues Public Notice

Within 15 days of receiving all permit information the COE issues the PN.

2. Comment Period

Comment period for the public, including all federal and state agencies, organizations and individuals, ranges from 15 to 30 days. The necessity to gather information and

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prepare an Environmental Impact Statement under the guidelines of the National Environmental Policy Act may further extend the period. The public may offer written comments during this public comment period, or verbal comments at a public hearing (below).

3. Public Hearing

If a hearing is held, the COE will use the testimony in its permit review.

4. COE Evaluation

The COE evaluates the permit application along with public and agency comments based on its regulations (the Public Interest Review), and the 404(b)(1) Guidelines of the CWA.

5. Environmental Assessment and Statement of Finding

The COE prepares a statement of finding that explains how the permit decision was made. This document is public information and can provide data to assist in monitoring permit compliance or reevaluating a permit.

6. Permit Issued/Permit Denied

Federal Contacts for Clean Water Act

U.S. Army Corps of Engineers

Anyone can request to receive public notices for permit applications under section 404 of the CWA (and/or Section 10 of the Rivers and Harbors Act which governs the placement of structures in navigable waters) by simply writing to the COE District and asking to be put on the mailing list. Public notices can be requested for a specific watershed, one or more counties or states, or the entire District of the COE office. Comments can be made on any permit of interest. When calling a COE District, ask for the branch that issues public notices.

U.S. Army Corps of Engineers District Offices for the Atlantic Seaboard

New England District (CENAE-OD-P)
696 Virginia Road
Concord, Massachusetts 01742-2751
978-318-8220

New York District (CENAN-PL-E)
Jacob K. Javits Federal Office Bldg.
26 Federal Plaza, Rm 2109
New York, New York 10278-0090
212-264-0100

Philadelphia District (CENAP-OP-N)
Wanamaker Building
100 Penn Square East
Philadelphia, Pennsylvania 19107-3390
215-656-6501

Baltimore District (CENAB-OP-PN)
P.O. Box 1715
Baltimore, Maryland 21203-1715
410-962-4545

Norfolk District (CENAO-OP-N)
Waterfield Building
803 Front Street
Norfolk, Virginia 23510-1096
757-441-7601

Wilmington District (CESAW-CO-R)
P.O. Box 1890
Wilmington, North Carolina 28402-1890
910-251-4501

Charleston District (CESAC-CO-M)
P.O. Box 919
Charleston, South Carolina 29402-0919
803-724-4344

Savannah District (CESAS-OP-R)
P.O. Box 889
Savannah, Georgia 31402-0889
912-652-5226

Jacksonville District (CESAJ-CO-OR)
P.O. Box 4970
Jacksonville, Florida 32232-0019
904-232-2241

U.S. Army Corps of Engineers Division Offices along the Atlantic Seaboard

North Atlantic Division (CENAD-CO-OP)
90 Church Street
New York, New York 10007-2979
212-264-7101

South Atlantic Division (CESAD-CO-R)
Room 322
77 Forsythe Street, SW
Atlanta, Georgia 30303-3490
404-331-6711

(Contact information for COE Divisions and Districts is available at the COE web site <http://www.hq.uwace.army.mil/activities/pubactv.html>.)

U.S. Army Corps of Engineers Headquarters:

Office of the Assistant Secretary of Army (CW-Civil Works)
Room 2E596, The Pentagon
Washington, D.C. 20310-0108
703-695-1376
703-697-3366 (Fax)

Regulatory Branch (CECW-OR)
20 Massachusetts Avenue, NW
Washington, D.C. 20314-1000
202-272-0199
202-504-5069 (Fax)

U.S. Environmental Protection Agency, Region III Wetlands Protection Section

EPA is ultimately responsible for administering the CWA, including section 404 and the section 404(b)(1) guidelines, so the COE must consider EPA's comments regarding compliance with the guidelines and recommendations for a permit denial or modification. In addition, EPA can prohibit or restrict the use of a disposal site for any discharge or fill material if the discharge will have an unacceptable adverse effect on municipal water supplies, shellfish beds, fishery areas, wildlife habitat or recreational areas.

The USEPA Wetlands Hotline (toll free number is 1-800-832-7828 for Region III) is a valuable source for up-to-date information about EPA wetland activities (regulatory and non-regulatory) and publications.

Environmental Protection Agency Regional Offices along the Atlantic Seaboard

U.S. EPA, Region I
One Congress Street
John F. Kennedy Federal Building
Boston, Massachusetts 02203-0001
MA, ME, NH, RI, VT, CT
617-565-3420

U.S. EPA, Region II
290 Broadway
New York, New York 10007-1866
NY, NJ, PR, VI
212-637-3000

U.S. EPA, Region III
1650 Arch St.
Philadelphia, Pennsylvania 19103
DE, MD, PA, VA, WV
800-438-2474 (toll free)
215-566-5000

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U.S. EPA, Region IV
40 Alabama St., SW
Atlanta, Georgia 30303
NC, SC, GA, FL, KY, AL, MS, TN
800-421-1754 (toll free)
404-562-9900

U.S. EPA Headquarters
401 M Street, S.W.
Washington, D.C. 20460
202-260-2090

(Additional information for EPA regional offices is available at EPA's web site <http://www.epa.gov/epahome/postal.htm>)

U.S. Department of the Interior Fish and Wildlife Service

The Fish and Wildlife Coordination Act requires that fish and wildlife resources are given consideration equal to any other factor in the COE's evaluation of section 404 permits. Anyone can request a copy of the USFWS "Fish and Wildlife Coordination Act Report" for a proposed project, which may provide extensive technical information, including recommendations for reducing a project's adverse impacts. Although the USFWS and NMFS recommendations are only advisory e.g.,

the COE is not required to implement them), public support and sharing of information can help to make these natural resource agencies' expertise more influential in shaping permit decisions.

U.S. Fish and Wildlife Service Regional Offices

U.S. Fish and Wildlife Service Region 5
300 Westgate Center Drive
Hadley, MA 01035-9589
ME, VT, NH, MA, RI, CT, NY, PA, NJ, DE,
MD, VA, WV, DC
413-253-8200

U.S. Fish and Wildlife Service Region 4
1875 Century Boulevard
Room 240
Atlanta, GA 30345
NC, SC, GA, FL, KY, AL, MS, TN, LA, AR, PR, USVI
404-679-4157

USFWS Headquarters Office:

U.S. Department of Interior
U.S. Fish and Wildlife Service
Ecological Services
Washington, DC 20240
(for local offices, consult your telephone directory under US Dept. of Interior Fish & Wildlife Service Ecological Services Office)

U.S. Department of Commerce National Marine Fisheries Service

Particularly for permits in tidal areas, NMFS can be contacted since they are especially concerned about maintaining the habitat on which commercial and recreational marine fisheries depend for spawning, feeding, and as a nursery.

NMFS Regional Offices:
NMFS, NE Regional Office
Habitat Conservation Division
1 Blackburn Drive
Gloucester, MA 01930
978-281-9102

NMFS, SE Regional Office
Habitat Conservation Division
9721 Executive Center Drive, North
St. Petersburg, FL 33702
727-570-5317

NMFS Headquarters Office:
U.S. Department of Commerce
National Marine Fisheries Service
Office of Habitat Conservation
1315 East West Highway
Silver Spring, Maryland 20910
301-713-2325

*For more information contact:
Mike D'Amico (see contact information listed below)*

Sierra Club's Water Watch Project

The Sierra Club Atlantic Coast Ecoregion has launched a project entitled *Water Watch* to help citizens get started using the many processes available to them for conservation. By using water as the common denominator, activists can focus on their local waterways to assess direct impacts, and also consider the broader picture of secondary impacts on the watershed and cumulative impacts on the ecosystem.

The following ten suggestions were developed by the Sierra Club's *Water Watch* Workshop to assist citizens in getting involved in the protection of wild places and wildlife in their areas.

1. Prepare your comments ahead of time by keeping daily logbooks. From recording the fish you catch to recording the clarity of your local waters.

2. Monitor permits and public notices before and after they are issued.
3. Follow the money. It's all economics!
4. Back to Basics.
A) Letter writing
B) Hearings
C) Rallies
D) Political accountability
5. Use the best scientific data available to protect your watershed.
6. Prepare to litigate: Tools for the layperson include FOIA, Freedom of Information Act (FOIA) requests, and Standing
7. Outreach and network building.
8. Conservation outings as conservation tools. Getting key decisionmakers out to the resources in question.
9. Media work. Who, what, when, where, and why!
10. Committee and Conference selection. Attending meetings of or participating as a member of the different bodies that are involved in making decisions regarding our natural resources.

*For more information contact:
Mike D'Amico, Director of Special Projects, Sierra Club Atlantic Coast Ecoregion, PO Box 160, Nassau, Delaware 19969, phone 302-644-0627, fax 302-644-9172, (Email)mike.damico@sierraclub.org*

EPA Releases Plans and Strategy for Cleaner Water

The U.S. Environmental Protection Agency (EPA) just released a **Water Quality Criteria and Standards Plan** that includes seven new program initiatives for EPA, states, and tribes to work together to improve water quality standards over the next decade. The seven new initiatives include:

- maintain and strengthen existing criteria;
- develop nutrient criteria;
- develop criteria for microbiological pathogens;
- complete development of biocriteria;
- improve methods for TMDL modeling;
- evaluate development of criteria for sedimentation, flow and wildlife; and
- assist states in implementing criteria as part of water quality standards.

The Water Quality Criteria and Standards Plan is available at <http://www.epa.gov/OST/standards/quality.html> or from Bill Swietlick at 202/260-9569.

EPA also released a **Nutrient Strategy** to meet the Clean Water Action Plan's goal of developing water quality criteria for nutrients by the year 2000. The strategy outlines the process and

approach for developing numeric criteria for nutrients and for adopting nutrient provisions of state water quality standards.

Over the next several years, EPA will develop nutrient guidance documents for various waterbody types (lakes, rivers, wetlands, coastal waters) for use by the states while numeric criteria for nutrients are developed as part of state water quality standards. To guide the process for developing nutrient criteria, EPA has formed a National Nutrient Team and is forming Regional Nutrient Teams. The Nutrient Strategy is available at <http://www.epa.gov/OST> or from Bob Cantilli at 202/260-5546.

EPA's **National Water Program Agenda** was also recently released describing how the Clean Water Action Plan (CWAP) and the new Safe Drinking Water Act (SDWA) Amendments will be incorporated into planning activities to achieve clean and safe water. Over the next year, EPA will finalize a multi-year plan to integrate CWAP and SDWA Amendments with the Office of Water's tribal strategy and other long-term agency activities. The National Water Program Agenda is available at <http://www.epa.gov/OW/ownews/agenfin.html>. *Adapted from EPA's WaterNews for June 25, 1998.*

Proposed Wetlands Nationwide Permits

On July 1, 1998, the U.S. Army Corps of Engineers (COE) published its proposal for new Nationwide Permits to replace the controversial NWP 26—an expedited permitting system for impacts to wetlands and streams. Environmental groups are criticizing the six newly proposed nationwide permits (NWPs) and modifications to six existing permits for being less protective of streams and wetlands than the current NWP 26. For example, the existing permit allows destruction of isolated and headwater wetlands in small streams. The new permit would include all non-tidal wetlands. Under the new proposal, developers would be allowed to construct strip malls and office parks up to ten acres in size with no public comment as long as they say their constructions are 'master planned.'

The COE has also proposed a regional conditioning process whereby district offices of the COE are developing local restrictions on the use of new permits. Suggestions for regional conditions that would protect wetlands include restricting the types of waters where the NWPs may be used or prohibiting the use of some or all of the NWPs in certain types of waters—for example, watersheds with significant public investment in water quality improvement or habitat restoration, watersheds feeding critical natural areas (Important Bird Areas or Fish Spawning Areas or waters of endangered species concern), and source areas for drinking water.

The COE districts are developing their proposals for regional conditions which are expected to be available for public comment in early October. *For more information contact Jodi Theut of the Clean Water Network (CWN) at 202-289-2421 or see CWN's web site at www.cwn.org/docs/faq_f.htm. Adapted from the CWN's September 1998 Status Report.*

Rhode Island Department of Transportation Ordered to Stop Dredging

The Rhode Island Department of Transportation (RIDOT) has received several onetime only waivers from both the State Department of Environmental Management and the U.S. Army Corps of Engineers (COE) to complete channel dredging in the upper-Providence River. Despite a permit modification that allowed RIDOT to dredge through June 30, 1998, RIDOT was unable to complete the work in the extended timeframe and requested an additional extension to finish the project. Several resource monitoring stations in the area showed that from July through September, the dredging area acted as a significant retention zone for planktonic larval life-stages of fish. As a result, the National Marine Fisheries Service (NMFS) recommended that authorization of an additional extension be denied. However, RIDOT was granted a 3-day continuation to finish the project.

During a routine compliance visit, it was found that RIDOT did not stop dredging at the end of June as was required in their permit. RIDOT was ordered by the COE to stop dredging until the specific issues pertaining to the project could be resolved. After review by the COE, RIDOT was granted an 8-day period to complete the project. NMFS intends to pursue remedial action in response to the unauthorized dredging during a restricted period without a permit.

Adapted from NMFS's Northeast Region Habitat Conservation Division's July newsletter, Monthly Highlights.



Resources

The three-volume Environmental Protection Agency report, **Incidence and Severity of Sediment Contamination in Surface Waters of the United States** (EPA 823-R-97-006, 007, and 008), presents the results of EPA's first national survey of sediment quality in our nation's waterbodies. The survey identified 96 watersheds that contain contaminated sediments posing potential risks to humans, wildlife and fish. Sediment contamination was found in every state, with the worst sites being found near large urban areas, industrial centers, and regions impacted by agricultural and urban runoff. The most frequently found contaminants at the problem sites are PCBs, mercury, and DDT. Copies of the report are available from the EPA's National Center for Environmental Publication and Information (1-800-490-9198). A fact sheet and list of 96 areas of probable concern are available on the Internet at <http://www.epa.gov/OST/Events/consed.html>. For information on local contamination, see EPA's Index of Watershed Indicators on the Internet at <http://www.epa.gov/surf/iwi>.

The First Year in the Life of Estuarine Fishes in the Middle Atlantic Bight — This book by Kenneth Able and Michael Fahay summarizes the results of decades of research on the first year of life of these fishes. The Middle Atlantic Bight provides nursery habitat for fishes that occur over a much larger region. This is the least understood phase of the fish life cycle: the time when they undergo great changes in morphology, diet and habitat and when they are particularly vulnerable to predation and environmental hazards. The natural history of the eggs, larvae and juveniles of seventy species are described. To aid in identification of these young stages, field character keys and line drawings are provided. Also analyzed are the patterns and subtle variations in the ecology and life history strategies of these species: how they grow, where they find refuge from predators, how they survive their first winter, how they share the estuarine habitat with so many other species. The \$67 book is available from Rutgers University Press, Livingston Campus, P.O. Box 5062, New Brunswick, NJ 08903-5062, 800/446-9323.

Dock Design With the Environment in Mind: Minimizing Dock Impacts to Eelgrass Habitats — A CD-ROM was created by David Burdick and Frederick Short to encourage the public and resource managers to understand the values of eelgrass habitats, the impacts of docks on eelgrass, and the potential ways to reduce dock impacts to eelgrass habitats. Eelgrass is a rooted, flowering plant with long grass-like blades that grows in subtidal estuarine and nearshore waters and forms a complex and valuable habitat. The direct impacts of docks on eelgrass beds in two Massachusetts estuaries were investigated. Dimensions and structural characteristics of docks, physical characteristics, and eel grass population characteristics were examined to interpret the shading effects of docks. In the main activity of the CD-ROM, the user is given the task of designing a dock that will minimize impacts to eelgrass. For more information, contact Dr. David Burdick, Jackson Estuarine Lab, UNH, 85 Adams Point Rd., Durham, NH 03824, 603/862-2175.

Deposition of Air Pollutants to the Great Waters, Second Report to Congress (EPA-453/R-97-011) is available from the U.S. Environmental Protection Agency. This report describes monitoring and modeling studies pertinent to atmospheric deposition occurring in the Great Waters. Great Waters include the Great Lakes, Lake Champlain, Chesapeake Bay, and coastal waters designated through the National Estuary Program and the National Estuarine Research Reserve System. Fifteen pollutants of concern are identified, including pesticides, metal compounds, chlorinated organic compounds, and nitrogen compounds. For more information, see EPA's internet address at <http://www.epa.gov/oar/gr8water/>.

The Environmental Defense Fund has a new **Chemical Scorecard Web site** (www.scorecard.org) that provides information about local manufacturers, including location of facilities, emitted chemicals, pollution rankings, and health effects. The Web site is set up to let you search by zip code. In addition, the Web site allows you to send faxes to top-ranking polluters, lists local environmental organizations and connects you to sources for pollution prevention.

The U.S. Environmental Protection Agency has a Web page (www.epa.gov/oeca/sfi) that provides information on **environmental performances** of over 600 facilities in five major industries, including petroleum refining, iron and steel production, primary nonferrous metal refining and smelting, pulp manufacturing, and auto assembly plants. Data on compliance and inspection history, chemical releases, spills, and demographics of the nearby population are included.

New Web sites provide information on **beach and fish advisories**. The U.S. Environmental Protection Agency has a new Internet site (<http://www.epa.gov/ost/beaches>) for citizens wanting to check their favorite beach to see if it is monitored for microbial pollution and if any advisories or closings have been issued. Currently, information for more than 1,000 beaches is included, although information is limited to those beaches that have responded to EPA's survey. Another Web site has been developed to provide access to state fish advisories at <http://www.epa.gov/ost/fish/>.

Scientist Links Nutrient Runoff with Forest Defoliation

As efforts to preserve and create forested buffers along the Chesapeake Bay get underway, data supporting the water quality benefit of forests continue to accrue. Hydrologist Keith Eshleman of the University of Maryland Center for Environmental Science has received a \$698,000 federal grant to further study his findings that nitrogen runoff from forest land in the Chesapeake Bay watershed increased as much as 50 times greater than normal after heavy defoliation by gypsy moth caterpillars.

Forests normally retain nitrogen in plants and soil layers, so only a few pounds per acre reach the bay. However, in 1990, dissolved nitrogen levels were unusually high in some forest streams, similar to levels usually associated with agricultural areas, which are often high in nutrients from fertilizers. Eshleman believes the heavy nitrogen discharge from defoliated forests in western Maryland is linked to caterpillar droppings, which are high in nutrients like all animal waste. Gypsy moth caterpillars defoliated an estimated 12 percent of the watershed's forest during the late 1980s and early 1990s. Other forest

disturbances, such as overbrowsing by deer and clear-cutting may also increase nitrogen runoff.

Eshleman's project is aimed at quantifying the overall effect of various kinds of forest disturbances, including insect defoliation, on the nitrogen load to receiving rivers, streams, and the Chesapeake Bay. Eshleman will try to estimate how much of the 230 million pounds of nitrogen believed to enter the bay annually comes from forest land and how much that amount changes when forests are disturbed. A GIS-linked model of the effects of defoliation on nitrogen runoff will be developed, tested, calibrated, and applied to regional data sets.

For more information, contact Keith Eshleman, University of Maryland Center for Environmental Science, Appalachian Laboratory, Gunter Hall, Frostburg, MD 21532, e-mail: 34Sleman@al.umces.edu.

Adapted from EPA Nonpoint Source News-Notes, April/May 1998, Issue #5

Atlantic States Marine Fisheries Commission
1444 Eye Street, N.W., 6th Floor
Washington D.C. 20005

Address Correction Requested

Habitat Hotline Atlantic

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