



## *Policy Guidance: Water Quality Standards and the Endangered Species Act*

### Summary

The U.S. Environmental Protection Agency, Fish and Wildlife Service, and National Marine Fisheries Service published in the Federal Register a Memorandum of Agreement (MOA) describing procedures for enhancing coordination regarding the protection of endangered and threatened species under section 7 of the Endangered Species Act and the Clean Water Act's Water Quality Standards and National Pollution Discharge Elimination System programs.

The agreement has been made because EPA and the Services believe that a national statement detailing how these programs protect an important component of the aquatic environment, i.e., endangered and threatened species, will help achieve the complimentary goals of the Clean Water Act (CWA) and the Endangered Species Act (ESA). In recent years, EPA and the Services have increased their efforts to achieve greater integration of CWA and ESA programs. A coordinated national approach to these efforts would help ensure protection for listed species, provide greater regulatory predictability, and make ESA consultations more timely and efficient.

The MOA is a procedural document that discusses how EPA and the Services intend to exercise our existing statutory and regulatory authorities in a coordinated manner. It does not propose to alter, expand or substitute for any applicable legal requirements.

### Federal Authority

The MOA describes how EPA and the Services intend to exercise existing statutory and regulatory authority in Section 7 of the Endangered Species Act, and in Sections 303 and 402 of the Clean Water Act.

### Background

On January 15, 1999, EPA and the Services published a draft MOA to enhance coordination between the agencies (See 64 Fed. Reg. 2742). In this final MOA, EPA and the Services have considered the public comments submitted on the draft MOA, and made appropriate revisions. Today's *Federal Register* notice addresses the major themes and concerns raised by the public comments, summarizes the changes we have made, and publishes the final MOA.

### Summary of the MOA

The MOA contains four basic parts:

1. National procedures for inter-agency coordination and elevation of issues to speed decisions;
2. National consultation on existing water quality criteria for aquatic species, and a national research and data gathering plan;
3. Improved consultation procedures for EPA approval of State and Tribal water quality standards; and
4. Procedures for coordination with regard to State and Tribal NPDES permits.

These four parts are discussed below.

The MOA directs EPA and the Services to establish local/regional review teams that identify upcoming priorities and workload requirements and generally ensure close coordination on the full range of activities involving water quality and endangered/threatened species protection, and includes a procedure for elevating issues that may arise among regional and field offices, including

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formal or informal consultations and EPA oversight of State/Tribal NPDES permits.

The MOA also provides for national consultations on the water quality criteria EPA has published under section 304(a) of the CWA for the protection of aquatic life and a joint national research and data gathering plan for prioritizing and funding research on the effect of water pollution on listed species.

In addition, the MOA provides guidance to regional and field offices regarding section 7 consultations on EPA's approval of new or revised water quality standards and addresses the procedures that EPA and the Services will follow in overseeing the operation of State/Tribal NPDES permits to ensure that listed species and critical habitats are protected. Further, the MOA establishes a framework for coordinating actions by EPA and the Services for EPA review of permits issued by States or Tribes with approved permitting programs as well as EPA issuance of permits under section 402 of the CWA. The final MOA does not contain the national programmatic NPDES consultation that was in the 1999 draft MOA.

### **Additional Information**

EPA is issuing a Federal Register notice of availability for the final MOA, which further discusses the content of the MOA and summarizes changes from the 1999 draft MOA. See the full text of the *Federal Register* notice. For additional information, contact [Brian Thompson](#), Office of Science and Technology, U.S. EPA, 1200 Pennsylvania Avenue NW, Washington DC, 20460 (telephone: 202-566-0382); Margaret Lorenz, Endangered Species Division, National Marine Fisheries Services (telephone 301-713-1401); or Mary Henry, Division of Environmental Contaminants, Fish and Wildlife Service (telephone 703-358-2148).

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