

Marine Environmental Update

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DON Policies And Responsibilities For Implementation Of NEPA Revised

On February 23, 2004, the Department of the Navy revised portions of the regulations that establish the responsibilities and procedures within the Navy for complying with the National Environmental Policy Act (NEPA). The revision clarifies when certain Navy actions must be studied to determine the potential for effects on the human environment and what types of activities are excluded from NEPA analysis and documentation requirements.

The final rule revises the Navy's implementing regulations that were originally published on August 20, 1990 (55 FR 33898). Significant changes include: Revision of and additions to the Navy list of approved categories of actions excluded from further analysis and documentation under NEPA; revised criteria for disallowing the application of listed categorical exclusions; and assignment of responsibilities to the Assistant Secretary of the Navy (Research, Development and Acquisition), the General Counsel of the Navy, and the Judge Advocate General of the Navy.

The Navy published the proposed rule on July 9, 1999 (64 FR 37069), and granted a 60-day comment period. The Navy coordinated the proposed rule with the Council on Environmental Quality (CEQ) and carefully considered all comments received. Most comments focused on two general areas: The discussion of policies and responsibilities and the revision of Navy categorical exclusions.

ALSO IN THIS ISSUE:

NMFS Re-Evaluating ESA Status Of Eastern North Pacific Southern Resident Killer Whales	3
FWS To List Southwest Alaska Sea Otters As "Threatened" Under ESA	3
EPA Releases Watershed-Based NPDES Permitting Implementation Guidance	4
EPA Final Aquatic Life Criteria Document For Tributyltin	5
EPA Draft Aquatic Life Criteria Document For Nonylphenol	6
EPA Draft Revised Ambient Water Quality Criteria Document For Chloroform	7
EPA Releases Generic Ecological Assessment Endpoints	8
CalEPA Overview Of Freshwater And Marine Toxicity Tests For Ecological Risk Assessment	9
About the <i>Marine Environmental Update</i>	9

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In response to comments on policies and responsibilities:

1. The rule was modified to more clearly reflect the relationship among internal Navy regulations and between the rule and internal Department of Defense directives;
2. The phrase “environmental analysis” was substituted for the term “NEPA document” where appropriate; and
3. Definitions and other discussions perceived as inconsistent with the regulations promulgated by the CEQ were deleted.

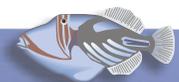
The discussion of categorical exclusions was also modified in response to comments. Based upon a recommendation from the CEQ that routine documentation of categorical exclusions was not necessary, the two-group approach to categorical exclusions contained in the draft rule was eliminated. As a result, the categorical exclusions were placed in a single group and renumbered. The consolidation into a single grouping also reemphasized that, even though a proposed action generally is covered by a listed categorical exclusion, a categorical exclusion will not be used if the proposed action categorical exclusion involved any one of several enumerated conditions.

Several categorical exclusions were modified to reflect that they were intended to apply to routine actions of the nature described in the particular exclusion. Categorical Exclusion XXVII, addressing natural resource management actions covered by an Environmental Assessment (EA) or Environmental Impact Statement (EIS) on the underlying management plan, was eliminated as unnecessary. Categorical Exclusion XXXII, addressing actions similar in type, intensity, and setting to other actions for which it had been determined in an EA or EIS that there were no significant impacts, was revised and is now presented as two separate and more specific categorical exclusions.

The first of these two exclusions applies to routine testing and evaluation of military equipment on existing military reservations, ranges, and operating areas. This exclusion is intended to encompass routine categories of tests conducted in areas designated for or historically used for military operations, training, and testing. Examples of this categorical exclusion are captive-carry tests, weapons stores separation tests, and minor component survivability tests. The second of these two exclusions applies to routine military unit level training or minor training exercises conducted by two or more units. As with all DON categorical exclusions, these two exclusions cannot be used if they involve any of the enumerated conditions set out in Section 775.6(e).

This rule is effective February 23, 2004. For further information contact Mr. Thomas Egeland, Office of the Assistant Secretary of the Navy (Installations and Environment), telephone: (703) 614-5913.

Federal Register, Volume 69, Number 35, Monday, February 23, 2004, pp. 8108-8112 (29.6 KB [text file](#) or 49.5 KB [Adobe™ Acrobat™ file](#)).





NMFS Re-Evaluating ESA Status Of Eastern North Pacific Southern Resident Population Of Killer Whales

On March 2, 2004, the National Marine Fisheries Service issued a request for information concerning the Eastern North Pacific Resident killer whale population. Following receipt of a petition to list of the Eastern North Pacific Southern Resident stock of killer whales (*Orcinus orca*) as threatened or endangered under the Endangered Species Act, NMFS conducted a status review and determined that the petitioned action was not warranted because Southern Resident killer whales did not constitute a species, subspecies, or distinct population segment (DPS) under the ESA (see *Marine Environmental Update*, [Vol. FY03, No. 3](#)). However, a court subsequently set aside NMFS' finding and remanded the matter back to NMFS for re-evaluation as to whether the Southern Resident killer whales should be listed under the ESA.

The National Marine Fisheries Service has reconvened a Biological Review Team (BRT) to consider the most recent scientific and commercial information available on Southern Resident killer whales for this re-evaluation. NMFS is requesting that interested parties submit pertinent information to assist NMFS with updating its status review. To ensure that the current status review update is comprehensive and based on the best available data, NMFS is soliciting information obtained since October 2001 on resident, transient and offshore killer whale: (1) behavior; (2) communication; (3) reproductive biology and dispersal patterns; (4) genetics; (5) skeletal and color pattern morphology; (6) potential impacts of additional human-related activities (e.g., marine noise, oil spills); and (7) cetacean taxonomy, as they relate to the status of killer whales in the North Pacific and in a global context.

Information on this action must be received by May 3, 2004 and should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232. Information may also be submitted electronically by sending an e-mail message to SRKWstatus.nwr@noaa.gov. For further information contact Garth Griffin, Northwest Regional Office, NMFS, Portland, OR, telephone: (503) 231-2005; or Dr. Thomas Eagle; Office of Protected Resources, NMFS, Silver Spring, MD, telephone: (301) 713-2322, ext. 105.

Federal Register, Volume 69, Number 41, Tuesday, March 2, 2004, pp. 9809-9810 (10.3 KB [text file](#) or 37.4 KB [Adobe™ Acrobat™ file](#)).



FWS To List Southwest Alaska Sea Otters As “Threatened” Under ESA

On February 5, 2004, the Fish and Wildlife Service proposed to list the southwest Alaska Distinct Population Segment (DPS) of the northern sea otter (*Enhydra lutris kenyoni*) as threatened under the Endangered Species Act. A DPS is a portion of a vertebrate species or subspecies that is discrete from the remainder of its taxon and also is significant to that taxon. The proposed rule describes the southwest Alaska DPS of the northern sea otter as occurring in near shore waters from the Aleutian Islands to Cook





Inlet, including waters adjacent to the Aleutians, the Alaska Peninsula, and the Kodiak archipelago. This corresponds to the range of the southwest stock of sea otters recognized in 2002 by the FWS in accordance with provisions of the Marine Mammal Protection Act. Two other stocks of sea otters in Alaska that also were recognized in 2002, the south-central and southeast stocks, are believed to be stable or increasing and are not included in the proposed rule.

A substantial decline in the southwest Alaska otter population appears to have begun in the mid- to late 1980s. In the Aleutians, there were approximately 55,000 to 74,000 sea otters in the mid-1980s, representing almost half of the world's estimated population of sea otters at that time. Aerial surveys since that time, however, indicate a progressive decline in the number of otters in the Aleutians, where the current population is estimated to be less than 9,000 animals. Survey results also show substantial declines have occurred in the Alaska Peninsula, where the counts of otters have declined by more than 65 percent since the mid 1980s. In the Kodiak Archipelago, surveys indicate the number of otters has declined more than 55 percent since the late 1980s. Overall, the DPS has declined an estimated 56 to 68 percent over the past 10 to 15 years, and recent surveys indicate the decline is continuing.

The cause of the population decline is not clear. Production of young does not appear to be reduced, nor is there evidence that starvation, disease, or contaminants are involved. There also is no evidence that entanglement in commercial fishing gear or competition with fishermen for prey species is playing a significant role in the decline, and annual subsistence harvest by Alaska Natives is believed to be too low to contribute significantly to the decline. Some evidence points to predation by killer whales as a possible cause of the decline in the Aleutian Island chain; however, additional research will be needed before the FWS can confidently identify the cause of the decline.

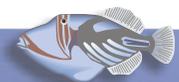
The FWS will consider comments on the proposed rule received until the close of business on June 10, 2004. For further information contact Douglas Burn, telephone: (907) 786-3800; facsimile: (907) 786-3816).

Federal Register, Volume 69, Number 28, Tuesday, February 11, 2004, pp. 6600-6621 (109 KB [text file](#) or 445 KB [Adobe™ Acrobat™ file](#)).



EPA Releases Watershed-Based NPDES Permitting Implementation Guidance

On December 17, 2003, the Environmental Protection Agency's Office of Water released its *Watershed-Based National Pollutant Discharge Elimination System (NPDES) Permitting Implementation Guidance*. The guidance describes the concept of and the process for watershed-based permitting under the National Pollutant Discharge Elimination System (NPDES) permit program. Watershed-based NPDES permitting is an approach to developing NPDES permits for multiple point sources located within a defined geographic area (watershed boundaries) to meet water quality standards.





This approach provides a process for considering all stressors within a hydrologically defined drainage basin or other geographic area, rather than addressing individual pollutant sources on a discharge-by-discharge basis. The guidance focuses on defining both the general approach and the process for watershed-based NPDES permitting. The guidance addresses issues related to program implementation, but it does not provide detailed technical information or address procedural and administrative actions related to permit issuance (these are to be covered in future guidance documents). An overview of each section is provided below.

- Section One provides background information on the concept of watershed-based NPDES permitting and why the Environmental Protection Agency (EPA) is encouraging the approach.
- Section Two describes the EPA's recommended process for watershed-based NPDES permitting. The process is presented in six steps.
- Section Three describes the anticipated benefits and challenges associated with taking a watershed-based approach to NPDES permitting. Where related case study information is available, the EPA included it to illustrate the potential benefits and challenges of watershed-based NPDES permitting.
- Section Four looks ahead to the future of watershed-based permitting and provides a series of resources and references.

The document can be downloaded at: <http://cfpub.epa.gov/npdes/wqbasedpermitting/wspemitting.cfm> or at http://www.epa.gov/npdes/pubs/watershedpermitting_finalguidance.pdf (1.65 MB Adobe™ Acrobat™ file).

U.S. EPA. 2003. Watershed-Based National Pollutant Discharge Elimination System (NPDES) Permitting Implementation Guidance. EPA 833-B-03-004. 93 pp.

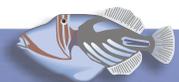


EPA Releases Final Aquatic Life Criteria Document For Tributyltin

On January 5, 2004, the U.S. EPA issued its Final Aquatic Life Criteria for Tributyltin (TBT). The EPA developed acute and chronic criteria recommendations for TBT designed to protect aquatic life in both fresh and saltwater. These criteria can form the basis for state and tribal water quality standards. The final TBT criteria concentrations are:

Freshwater Aquatic Life

Except possibly where a locally important species is very sensitive, freshwater aquatic life and their uses should not be affected unacceptably if the one-hour average concentration of TBT does not exceed 0.46 µg/L more than once every three years on the average (acute criterion) and if the four-day average concentration of TBT does not exceed 0.072 µg/l more than once every three years on the average (chronic criterion).





Saltwater Aquatic Life

Except possibly where a locally important species is very sensitive, saltwater aquatic life and their uses should not be affected unacceptably if the one-hour average concentration of TBT does not exceed 0.42 µg/L more than once every three years on the average (acute criterion) and if the four-day average concentration of TBT does not exceed 0.0074 µg/L more than once every three years on the average (chronic criterion).

For further information see: <http://www.epa.gov/waterscience/criteria/tributyltin/>. The document is available at: <http://www.epa.gov/waterscience/criteria/tributyltin/tbt-final.pdf> (366 KB Adobe™ Acrobat™ file).

Federal Register, Volume 69, Number 2, Monday, January 5, 2004, pp. 342-343 (9.14 KB [text file](#) or 37.8 KB [Adobe™ Acrobat™ file](#)).

U.S. EPA Office of Water. Ambient Aquatic Life Water Quality Criteria for Tributyltin (TBT) – Final. EPA 822-R-03-031, December 2003.



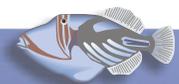
EPA Releases Draft Aquatic Life Criteria Document For Nonylphenol

On January 5, 2004, the Environmental Protection Agency released its draft aquatic life criteria document for nonylphenol. Nonylphenol is an organic chemical produced in large quantities in the United States. It is soluble in water and moderately resistant to natural degradation in water. Because of its chemical properties and widespread use as a chemical intermediate, concerns have been raised over the risks it poses to both freshwater and saltwater organisms.

The draft ambient water quality criteria document for nonylphenol contains draft ambient water quality criteria designed to protect aquatic organisms and their uses. Once final, these criteria are guidance for states and tribes and, in themselves, have no binding legal effect. However, they may form the basis for state water quality standards and become enforceable through NPDES permits or other environmental programs. These new draft nonylphenol water quality criteria are published pursuant to Section 304(a) of the Clean Water Act. The draft nonylphenol criteria concentrations are:

Freshwater Aquatic Life

Except possibly where a locally important species is very sensitive, freshwater aquatic life and their uses should not be affected unacceptably if the one-hour average concentration of nonylphenol does not exceed 27.9 µg/L more than once every three years on the average (acute criterion) and if the four-day average concentration of nonylphenol does not exceed 5.9 µg/l more than once every three years on the average (chronic criterion).





Saltwater Aquatic Life

Except possibly where a locally important species is very sensitive, saltwater aquatic life and their uses should not be affected unacceptably if the one-hour average concentration of nonylphenol does not exceed 6.7 µg/L more than once every three years on the average (acute criterion) and if the four-day average concentration of nonylphenol does not exceed 1.4 µg/L more than once every three years on the average (chronic criterion).

For further information, contact Frank Gostomski, Health and Ecological Criteria Division (4304T), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone: (202) 566-1105; e-mail: gostomski.frank@epa.gov.

Further information can be found at: <http://www.epa.gov/waterscience/criteria/nonylphenol/>. The document is available at: <http://www.epa.gov/waterscience/criteria/nonylphenol/draft-nonylphenol.pdf> (815 KB Adobe™ Acrobat™ file).

Federal Register, Volume 69, Number 2, Monday, January 5, 2004, pp. 340-342 (16.8 KB [text file](#) or 43.3 KB [Adobe™ Acrobat™ file](#)).

U.S. EPA Office of Water. Ambient Aquatic Life Water Quality Criteria for Nonylphenol – Draft. EPA 822-R-03-029, December 2003.

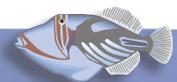


EPA Announces Draft Revised Ambient Water Quality Criteria Document For Chloroform

On Tuesday, January 21, 2004, the Environmental Protection Agency announced the availability of its draft revised ambient water quality criteria document for chloroform for scientific review. The EPA derived the revised criteria according to the procedures and methods in the EPA's *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (2000). The draft revised criteria reflect changes in several of the values used to derive the criteria, including the Reference Dose (RfD), the Relative Source Contribution (RSC) and Bioaccumulation Factors. All scientific information must be submitted to the EPA on or before March 22, 2004. For further information, contact: Dr. Tala Henry, Health and Ecological Criteria Division (4304T), U.S. EPA, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone: (202) 566-1323; e-mail: henry.tala@epa.gov.

The document can be downloaded from <http://www.epa.gov/waterscience/humanhealth/docs/>.

Federal Register, Volume 69, Number 12, Tuesday, January 21, 2004, pp. 2712-2715 (22.1 KB [text file](#) or 49.4 KB [Adobe™ Acrobat™ file](#)).





EPA Releases Generic Ecological Assessment Endpoints Document

On February 25, 2004, the Environmental Protection Agency announced the availability of its final *Generic Ecological Assessment Endpoints (GAEs) for Ecological Risk Assessment* (EPA/630/P-02-004F), prepared by the EPA Risk Assessment Forum Technical Panel (see also *Marine Environmental Update*, [Vol. FY03, No. 1](#)). Ecological risk assessment is a process for evaluating the likelihood that adverse ecological effects may occur or are occurring as a result of exposure to one or more stressors. A critical early step in conducting an ecological risk assessment is deciding which aspects of the environment will be selected for evaluation. This step is often challenging because of the remarkable diversity of species, ecological communities, and ecological functions from which to choose and because of statutory ambiguity regarding what is to be protected.

The document was prepared by a technical panel under the auspices of the EPA's Risk Assessment Forum, and reflects the Forum's long-standing commitment to advancing ecological risk assessment and is intended to supplement the use of the Forum's *Guidelines for Ecological Risk Assessment* (U.S. EPA, 1998a). The primary goal of the document is to enhance the application of ecological risk assessment at the EPA, thereby improving the scientific basis for ecological risk management decisions. It is not a regulation, nor is it intended as a substitute for federal regulations. It describes general principles and is not prescriptive. It is intended to be a useful starting point that is flexible enough to be applied to many different types of ecological risk assessments. Risk assessors and risk managers at the EPA are the primary audience, although the document may also be useful to others outside the EPA.

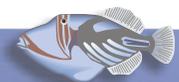
Federal Register, Volume 69, Number 37, Wednesday, February 25, 2004, pp. 8656-8657 (3.65 KB [text file](#) or 40.2 KB [Adobe™ Acrobat™ file](#)).

U.S. EPA Risk Assessment Forum. *Generic Ecological Assessment Endpoints (GAEs) for Ecological Risk Assessment*. EPA/630/P-02/004F, October 2003 (459 KB [Adobe™ Acrobat™ file](#)).



CalEPA Overview Of Freshwater And Marine Toxicity Tests For Ecological Risk Assessment

On February 11, 2004, the State of California Environmental Protection Agency (CalEPA) released its *Overview of Freshwater and Marine Toxicity Tests: A Technical Tool for Ecological Risk Assessment*. This document is intended to provide an overview of the various standardized aquatic toxicity test protocols available for hazard assessment. Methods for evaluating the toxicity of water and sediment samples from marine and freshwater environments are described in Part I and Part II. Relative sensitivities of the various protocols are discussed in terms of their responses to single chemicals in reference toxicant exposures, and are also compared using studies of ambient water and sediment samples. Methods for assessing bioconcentration and bioaccumulation of chemicals in water column and sediment test matrices are also described.





In addition, the strengths and limitations of the various protocols are discussed using examples from the scientific literature, and factors that may influence or confound interpretation of toxicity test results are described. Guidance for applying water column and sediment toxicity tests in environmental assessments is also provided; this guidance emphasizes considerations for selecting the different test protocols for use in Ecological Risk Assessments, but is also applicable for hazardous waste site evaluations, Natural Resource Damage Assessments, and other situations requiring toxicity evaluations.

This document is intended to familiarize environmental managers with one of the tools used by ecotoxicologists for environmental assessments, but is not intended to be a comprehensive review of aquatic toxicity testing methods. Although it is recognized that a variety of other non-standardized toxicity test methods are used in ecotoxicologic research, emphasis is placed on standardized protocols provided by the U.S. EPA and ASTM, because these are the tests most commonly used in regulatory applications. In addition, species and protocols relevant for California waters are emphasized. Part III of this document gives recommendations for using aquatic toxicity tests as part of a weight-of-evidence approach in integrated ecotoxicologic studies.

For further information see: <http://www.oehha.ca.gov/ecotox/documents/marinetox.html>.

Anderson, B., P. Nicely, K. Gilbert, R. Kosaka, J. Hunt, and B. Phillips. Overview of Freshwater and Marine Toxicity Tests: A Technical Tool for Ecological Risk Assessment. California Environmental Protection Agency Office of Environmental Health Hazard Assessment Reproductive and Cancer Hazard Assessment Section Ecotoxicology Unit, November, 2003. 154 pp. (472 KB [Adobe™ Acrobat™ file](#)).



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