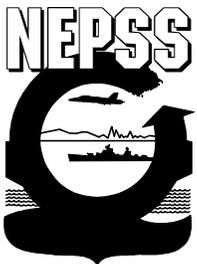




Marine Environmental Update



EPA Proposes Revisions To NPDES Program/ Antidegradation Policy

On August 23, 1999, the Environmental Protection Agency proposed regulation amendments to clarify and strengthen the National Pollutant Discharge Elimination System (NPDES) Program and Water Quality Standards (WQS) Regulation under the Federal Water Pollution Control Act (Clean Water Act). The proposal describes EPA policy regarding discharges into impaired waterbodies in the absence of an EPA-approved or established total maximum daily load (TMDL) under the authorization of State-issued permits which have expired and are being administratively-continued.

The EPA is also proposing to set forth requirements and procedures for a new discharger (or an existing discharger undergoing a significant expansion) to follow when proposing to discharge to a waterbody which does not currently meet water quality standards. These requirements, governing the discharge of the pollutant(s) causing the nonattainment, are to mitigate any increase in pollutant mass loadings in the target waterbody, so as to achieve reasonable progress toward attaining water quality standards in said waterbody.

Proposed Requirements for New and Significantly Expanding Dischargers Located on Impaired Waters

The EPA also proposed to modify the definitions of a “new discharger” and an “existing source” under 40 CFR 122.2 and 122.29. New requirements are located in 40 CFR 122.4(j) and 131.12(a)(1)(ii). Section 122.4(j) applying to all new dischargers and existing dischargers undergoing a significant expansion proposing to add new pollutant loads to a waterbody. Section 131.12(a)(1)(ii) applies to large new, and significantly

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expanding, dischargers proposing to add new pollutant loads to an impaired waterbody for which the EPA has not approved or established a TMDL.

These new requirements are intended to apply only to those dischargers who are proposing to add new loads of pollutants to a waterbody. Because the current definition of a new discharger can be read to include some dischargers who are not adding new loads to a waterbody, the EPA proposed to modify the existing definitions of both a new discharger and an existing source. The definition of a new discharger is currently found at 40 CFR 122.2 and the definition of an existing source is currently found at 40 CFR 122.29. The EPA also defined the term “significant expansion.”

A “new discharger,” as currently defined in 40 CFR 122.2, means any building, structure, facility, or installation from which there is (1) a discharge of pollutants which commenced after August 13, 1979; which is not a new source; and (2) has never received a finally effective NPDES permit.

An existing source, as defined in 40 CFR 122.29, is any source which is not a new source or a new discharger. The plain reading of the current definition of a new discharger would subject certain sources to today’s proposed sections (122.4(j) and 131.12(a)(1)(ii), including the proposed offset requirements explained below). Under the current definition, these sources would be subject to the EPA’s proposal even though they would not discharge new pollutant loads to a waterbody. Sources include those that are currently discharging pollutants and are not subject to the NPDES program, but may in the future become subject to the NPDES program. These sources would be subject to the requirements of the NPDES program once designated.

Proposed Changes to the Federal Antidegradation Policy

This requirement, in addition to otherwise applicable requirements of the CWA, would apply where there is no EPA-approved or established total maximum daily load (TMDL). When the EPA has approved or established a TMDL, a new discharger proposing to discharge the pollutant(s) for which the TMDL was established, may discharge only in accordance with that TMDL or a revised, approved TMDL. It would apply only to new dischargers and existing dischargers undergoing a significant expansion that are not a small business or entity as defined in 5 U.S.C. 601(6).

Therefore, a new discharger or existing discharger undergoing a significant expansion which is not a small business or entity, would need to comply with a permit limit that derives from and complies with water quality standards and this new requirement for reasonable further progress. With this proposed change, EPA intends to ensure reasonable further progress toward restoring water quality standards in impaired waters prior to the completion of TMDLs. The EPA emphasizes that this is an interim approach to attaining water quality standards; these requirements apply only until the TMDL is approved or established by the EPA, and the TMDL is implemented with respect to the discharger subject to these requirements.

Comments on the proposed rule must be received, postmarked or delivered by hand on or before December 22, 1999. Send written comments on the proposed rule to W-99-04, NPDES/WQS, Comment



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Clerk, Water Docket, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.
Comments can also be submitted electronically to OW-Docket@epa.gov.

For further information contact Kim Kramer, Office of Wastewater Management, 401 M St., SW, Washington, DC 20640, Mail Code 4203, e-mail: Kramer.Kim@epa.gov, telephone: (202) 260-9541 for information regarding the NPDES provisions, or Susan Gilbertson, Office of Science and Technology, 401 M St., SW, Washington, DC 20460, Mail Code 4305, e-mail: Gilbertson.Sue@epa.gov, telephone: (202) 260-7301 for information regarding the water quality standards provisions.

The full text of the proposed rule is [available from MESO](#) (224 KB Adobe™ Acrobat™ file).

Federal Register, Volume 64, Number 162, August 23, 1999, pp. 46057-46089.

Federal Register, Volume 64, Number 190, October 1, 1999, p. 53304.

EPA Proposes Revisions To Water Quality Planning And Management Regulation

On August 23, 1999, the Environmental Protection Agency proposed to amend regulations in 40 CFR part 130 to revise provisions governing total maximum daily loads (TMDLs). The proposal would set forth criteria for States, Territories and authorized Tribes to identify impaired waterbodies and establish TMDLs. Below is a summary of the key changes to the existing regulatory requirements that were proposed by the EPA:

- Revised definitions of TMDL, wasteload allocation, and load allocation;
- Definitions of impaired waterbody, threatened waterbody, pollution, pollutant, reasonable assurance and waterbody that clarify EPA's existing interpretation of these terms;
- A new requirement for a more comprehensive list and a new format for the list;
- A new requirement that States, Territories and authorized Tribes establish and submit schedules for establishing TMDLs for all waterbodies impaired or threatened by pollutants;
- A new requirement that the listing methodologies developed by States, Territories and authorized Tribes be more specific, subject to public review, and submitted to EPA on January 31 of every second, fourth or fifth year;
- A possible change in the listing cycle so that States, Territories and authorized Tribes submit lists to EPA on October 1 of every second, fourth or fifth year beginning in the year 2000;
- Clarification that TMDLs include 10 specific elements;
- A new requirement for an implementation plan as a required element of a TMDL; and
- New public participation requirements.



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The proposed rule language encompasses all of 40 CFR part 130 even though the EPA is not proposing to revise most of the existing sections in this Part. The EPA is proposing to reformat the part to include subparts and to extensively renumber the sections in part 130. The EPA is also proposing to delete Sec. 130.3, which sets out the same definition of "water quality standard" that is found in the water quality standards regulations at 40 CFR part 131 and, as a result, is duplicative and unnecessary. The proposal also would delete Sec. 130.10(d), which is obsolete and no longer relevant since it provided for a one-time deadline of February 4, 1989, for State submission of certain water quality information.

Comments on the proposal must be submitted on or before October 22, 1999. Comments provided electronically must be submitted by 11:59 P.M. (Eastern time) October 22, 1999. Send written comments on the proposed rule to the Comment Clerk for the TMDL Program Rule, Water Docket (W-98-31), Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. An electronic version of this proposal is available via the Internet at: <http://www.epa.gov/OWOW/tmdl/index.html>. For further information contact: Hazel Groman, U.S. EPA, Office of Wetlands, Oceans and Watersheds (4503F), 401 M St., S.W., Washington, D.C. 20640, telephone: (202) 401-4078.

The full text of the proposed rule is [available from MESO](#) (312 KB Adobe™ Acrobat™ file).

Federal Register, Volume 64, Number 162, August 23, 1999, pp. 46011-46055.

EPA Drafting New TMDL Rule

The Environmental Protection Agency is proposing that waterbodies impaired solely by nonpoint sources of pollution have to be listed for development of Total Maximum Daily Loads (TMDLs). The draft rule is currently under review by the White House Office of Management and Budget. The draft rule reflects recommendations made by the federal advisory committee (see *Marine Environmental Update*, Vol. FY98, No. 4, "[EPA Releases TMDL Committee Final Report](#)") that met for two years on how to improve the TMDL program.

Waters impaired or threatened by point sources, nonpoint sources, including air deposition, and a combination of sources would be listed under Section 303(d) of the Federal Water Pollution Control Act. The rule also would require that each TMDL have reasonable assurances that the pollutant allocations would be implemented to attain water quality standards. Reasonable assurances may include State or local ordinances requiring certain practices to curb runoff and conservation easements. The proposal also seeks to allow waters to be listed if they are impaired or threatened by either pollutants or pollution (see *Marine Environmental Update*, Vol. FY99, No. 3, "[EPA To Expand Impaired Waters Definition Beyond Pollutants](#)").

The proposal would not require a TMDL to be done for waters impaired by pollution. The draft proposal would define threatened waters as "one that currently meets water quality standards, but for which adverse declining trends indicate that the standards will be exceeded by the next existing cycle." Such bodies of water would have to be put on a list for focused attention with the goal of keeping them from



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becoming impaired. The draft also codifies that States must list waters impaired by atmospheric deposition.

The EPA draft rule proposes a four-part format for listing waterbodies:

- Part I: Water threatened or impaired by one or more pollutants or unknown cause for which a TMDL must be done;
- Part II: Water threatened or impaired by pollution, but not by one or more pollutants, and no TMDL is required;
- Part III: Waterbodies for which the EPA has approved or developed a TMDL, and water quality standards have not been attained; and
- Part IV: Impaired waters for which implementation of pollution controls is expected to result in attainment of water quality standards.

The draft rule would also:

1. Change the definition of TMDL to clarify that load allocations may be set to ensure that water quality standards are attained and then maintained “in the event of reasonably foreseeable increases” in pollutant loads;
2. Allow allocations to categories or subcategories of point sources subject to permits, including storm water, combined sewer overflows, abandoned mines, and concentrated feedlot operations;
3. Require states to document their methods for determining impairment and appropriate decision rules based on whether they are looking at physical/chemical, biological, radiological, or aquatic and riparian habitat data and information;
4. Require the results of source water assessments done under the Safe Drinking Water Act to be included as “existing and readily available data” that states must consider when deciding whether or not to list a waterbody as threatened or impaired; and
5. Require states to submit the methodology they used to document their approach for considering and evaluating data used for listing and prioritizing impaired waters.

More information can be found at: <http://www.epa.gov/owow/tmdl/tmdlguid.pdf> and <http://www.epa.gov/owow/tmdl/tmdlfs.html>.

Getting Started with TMDLs

Today, total maximum daily loads (TMDLs) are essentially driving the watershed approach to water quality management, the perspective that all point and nonpoint sources of pollution in a watershed – as well as the physical characteristics of the waterbody itself – are inextricably linked. A document produced by a University of Wisconsin researcher at the Oregon Graduate Institute provides an overall



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understanding of the program while integrating experiences organizations have had while implementing TMDLs. It is a good start for people who are not familiar with the TMDL process.

TMDLs are the implementation of rules included in Section 303(d) of the Clean Water Act of 1972. TMDLs have not been aggressively and broadly pursued until a series of lawsuits against the EPA began about 10 years ago, compelling the EPA and the states to focus on the TMDL provisions of the Clean Water Act (for more information on the quantity and status of the lawsuits, visit the EPA's web site on TMDL lawsuit information at: <http://www.epa.gov/OWOW/tmdl/lawsuit1.html>).

Jarrell, W.M, [Getting Started With TMDLs](#), YSI Environmental Products Group, April 1999 (2.13 MB Adobe™ Acrobat™ file).

FWS Adds Nine Salmon And Steelhead ESUs To Endangered Species List

On August, 2, 1999, the Fish and Wildlife Service finalized the rule (see *Marine Environmental Update*, Vol. FY99, No3, for details) adding several Evolutionarily Significant Units (ESUs) of chinook salmon (*Oncorhynchus tshawytscha*), chum salmon (*Oncorhynchus keta*), sockeye salmon (*Oncorhynchus nerka*), and steelhead (*Oncorhynchus mykiss*) to the List of Endangered and Threatened Wildlife in accordance with the Endangered Species Act of 1973, as amended.

The Puget Sound chinook salmon ESU in Washington, the Lower Columbia River chinook salmon ESU in Washington and Oregon, and the Upper Willamette spring-run chinook salmon ESU in Oregon are added as threatened; the Upper Columbia River spring-run chinook salmon ESU in Washington is added as endangered; the Hood Canal summer-run chum salmon ESU in Washington and the Columbia River chum salmon ESU in Washington and Oregon are added as threatened; the Ozette Lake sockeye salmon ESU in Washington is added as threatened; and the Middle Columbia River steelhead ESU in Washington and Oregon and the Upper Willamette River steelhead ESU in Oregon are added as threatened.

The full text of the final rule is [available from MESO](#) (33.8 KB Adobe™ Acrobat™ file).

Federal Register, Volume 64, Number 147, August 2, 1999, pp. 41835-41839.

FWS Proposes Critical Habitat For The Tidewater Goby

On August 3, 1999, the Fish and Wildlife Service proposed the designation of critical habitat for the tidewater goby (*Eucyclogobius newberryi*) in southern California. The species is now classified as



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endangered throughout its entire range. The primary constituent habitats for the tidewater goby include habitat components that are essential to the biological needs of foraging, nest construction, spawning, sheltering, and dispersal. San Onofre Creek, Las Flores Creek, Hidden Creek, Aliso Creek, French Creek, and Cocklebur Creek (all of which are on the Camp Pendleton Marine Corps Base) are proposed for designation as critical habitat. Also proposed as critical habitat are areas currently not occupied by gobies, but meet the definition of critical habitat. Such areas include Aliso Creek, Orange County, and four estuaries in San Diego County: San Mateo Creek, the Santa Margarita River, Buena Vista Lagoon, and Agua Hedionda Lagoon.

The FWS is also proposing the removal of northern populations of tidewater goby from protection under the Endangered Species Act. This is due to the fact that it was recently determined that, north of Orange County, more populations exist than at the time of the listing and that the threats to those populations are less severe than previously believed.

Lastly, the FWS is proposing that the Orange County and San Diego distinct population segment (DPS) of the tidewater goby remain on the List of Endangered and Threatened Species. These DPSs are genetically distinct and they continue to be threatened by habitat loss and degradation, predation by non-native species, and extreme weather and stream flow conditions.

For further information contact Glen Knowles, Carlsbad Fish and Wildlife Service Office, 2730 Loker Avenue West, Carlsbad, California 92008; telephone: (760) 431-9440; facsimile: (760) 431-5902.

The full text of the proposal is [available from MESO](#) (203 KB Adobe™ Acrobat™ file).

Federal Register, Volume 64, Number 148, August 3, 1999, pp. 42249-42263.

NMFS Revises Candidate Species List Under Endangered Species Act

On June 23, 1999, the National Marine Fisheries Service identified several marine and anadromous species as candidates for possible addition to the List of Endangered and Threatened Species. The NMFS is soliciting information concerning the status of these species. The NMFS is not proposing these species for listing, and the involved species do not receive substantive or procedural protection under the Endangered Species Act of 1973 (ESA).

The candidate species list serves to notify the public that the NMFS has concerns regarding these species/vertebrate populations that may warrant listing in the future, and it facilitates voluntary conservation efforts. The NMFS encourages Federal agencies and other appropriate parties to take these species into account in project planning.

The full text of the revised candidate species list is [available from MESO](#) (291 KB PDF file).

Revised List of Candidate Species

Common Name	Scientific Name	Family	Area of Concern ³
<u>Marine Mammals</u>			
Beluga Whale	<i>Delphinapterus leucas</i>	Monodontidae	AK (Cook Inlet population)
Harbor Porpoise	<i>Phocoena phocoena</i>	Phocoenidae	ME - NC (Gulf of Maine population)
<u>Fishes</u>			
Dusky Shark	<i>Carcharhinus obscurus</i>	Carcharhinidae	Atlantic; Gulf of Mexico; Pacific
Sand Tiger Shark	<i>Odontaspis taurus</i>	Odontaspidae	Atlantic; Gulf of Mexico
Night Shark	<i>Carcharhinus signatus</i>	Carcharhinidae	Atlantic; Gulf of Mexico
Smalltooth Sawfish*	<i>Pristis pectinata</i>	Pristidae	Atlantic; NC to Gulf of Mexico
Largetooth Sawfish*	<i>Pristis pristis</i>	Pristidae	Atlantic; TX, FL
Barndoor Skate*	<i>Raja laevis</i>	Rajidae	Hatteras, NC to Atlantic; Cape Newfoundland, Canada
Atlantic Sturgeon	<i>Acipenser oxyrinchus oxyrinchus</i>	Acipenseridae	Atlantic, anadromous
Pacific Herring	<i>Clupea pallasii</i>	Clupeidae	Puget Sound
Alabama Shad	<i>Alosa alabamae</i>	Clupeidae	AL, FL, anadromous
Searun Cutthroat Trout	<i>Oncorhynchus clarki clarki</i>	Salmonidae	Pacific, anadromous; Oregon Coastal ESU
Coho Salmon	<i>Oncorhynchus kisutch</i>	Salmonidae	Pacific, anadromous; Puget Sound/Strait of Georgia and Southwest WA/Lower; Columbia River ESUs ¹
Steelhead Trout	<i>Oncorhynchus mykiss</i>	Salmonidae	Pacific, anadromous; Northern CA, Klamath Mountains Province, and OR Coast ESUs
Atlantic Salmon	<i>Salmo salar</i>	Salmonidae	Atlantic, anadromous Gulf of Maine DPS ²
Pacific Cod*	<i>Gadus macrocephalus</i>	Gadidae	Puget Sound
Pacific Hake*	<i>Merluccius productus</i>	Gadidae	Puget Sound
Walleye Pollock*	<i>Theragra chalcogramma</i>	Gadidae	Puget Sound



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Common Name	Scientific Name	Family	Area of Concern ³
Mangrove Rivulus	<i>Rivulus marmoratus</i>	Aplocheilidae	FL, estuarine
Saltmarsh Topminnow	<i>Fundulus jenkinsi</i>	Cyprinodontidae	TX, LA, MS, AL, FL
Key Silverside	<i>Menidia conchorum</i>	Atherinidae	Florida Keys
Opossum Pipefish	<i>Microphis brachyurus lineatus</i>	Syngnathidae	FL, Indian River Lagoon
Brown Rockfish	<i>Sebastes auriculatus</i>	Scorpaenidae	Puget Sound
Copper Rockfish*	<i>Sebastes caurinus</i>	Scorpaenidae	Puget Sound
Quillback Rockfish*	<i>Sebastes maliger</i>	Scorpaenidae	Puget Sound
Bocaccio*	<i>Sebastes paucispinis</i>	Scorpaenidae	Pacific, CA to OR
Speckled Hind	<i>Epinephelus drummondhayi</i>	Serranidae	NC to Gulf of Mexico
Jewfish	<i>Ephinephelus itijara</i>	Serranidae	NC southward to Gulf of Mexico
Warsaw Grouper	<i>Epinephelus nigritus</i>	Serranidae	MA southward to Gulf of Mexico
Nassau Grouper	<i>Epinephelus striatus</i>	Serranidae	NC southward to Gulf of Mexico
<u>Molluscs</u>			
White Abalone	<i>Haliotes sorenseni</i>	Haliotidae	CA, Baja CA
Black Abalone*	<i>Haliotis cracherodii</i>	Haliotidae	OR, CA, Baja CA
<u>Anthozoans (Corals)</u>			
Elkhorn Coral*	<i>Acropora palmata</i>	Acroporidae	western Atlantic; Caribbean
Staghorn Coral*	<i>Acropora cervicornis</i>	Acroporidae	western Atlantic; Caribbean

NOTES:

* New addition to list.

¹ Evolutionarily Significant Unit. Pacific salmon populations can only be listed under the ESA if they are “evolutionarily significant,” per NMFS policy (56 FR 58612).

² Distinct Population Segment.

³ The general geographic area or populations of concern for the species.

Federal Register, Volume 64, Number 120, June 23, 1999, pp. 33466-33467.

EPA Proposes Streamlined General Pretreatment Regulations For Existing And New Pollutant Sources

The Environmental Protection Agency is proposing to revise several provisions of the General Pretreatment Regulations that address restrictions on and oversight of industrial users of publicly owned treatment works (POTWs). The EPA is also proposing changes to certain program requirements to be consistent with National Pollutant Discharge Elimination System (NPDES) requirements. The proposed revisions would reduce the regulatory burden on both industrial users and State and POTW Control Authorities without affecting environmental protection.

There are thirteen proposed changes:

1. To authorize POTWs to allow non-domestic dischargers to briefly discharge wastes with a pH below 5.0.
2. To allow Control Authorities to set equivalent mass limits as an alternative to concentration limits to meet concentration-based categorical Pretreatment Standards in cases where an industrial user has installed the best available technology (BAT) treatment or a treatment technology that yields removal efficiencies that are equivalent to BAT, and the Industrial User is employing water conservation methods and technologies that substantially reduce water use.
3. To allow Control Authorities to set equivalent concentration limits in cases where Pretreatment Standards currently require the limits to be expressed in terms of mass, based on the facility's flow.
4. To change the definition of a "Significant Industrial User" (SIU) to be 1) facilities that never discharge untreated concentrated wastes that are subject to the categorical Pretreatment Standard as identified in the development document for that standard, and never discharge more than 100 gallons per day of other process wastewater ; and 2) industrial users subject only to certification requirements after having met baseline monitoring report requirements.
5. To allow Control Authorities to exempt "non-significant" categorical industrial users from the definition of Significant Industrial User. EPA is also proposing to not establish any minimum inspection and sampling requirements for non-significant categorical industrial users.
6. To eliminate the requirement that POTWs evaluate the need for sludge control plan for each SIU every two years.
7. To authorize the Controlling Authorities to allow an industrial user subject to categorical Pretreatment Standards to not sample for a pollutant if the pollutant is not expected to be present in its wastewater stream in a quantity greater than its background level present in the water supply, with no increase in the pollutant due to the regulated process.
8. To specifically allow compositing of certain types of grab samples prior to their analysis and to allow Control Authorities to authorize time-proportional grab sampling in lieu of flow-proportional sampling as long as the samples are representative of the discharge.
9. To not allow removal credits, but rather, to petition the EPA to establish a standard for the pollutant along with an analysis of the impact of the pollutant on the use or disposal of its sewage sludge.



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10. To establish criteria or requirements to achieve reliable and secure transmission and storage of electronic data in the NPDES and pretreatment programs.
11. To allow the use of general permits to regulate significant industrial users (SIUs) that are covered by concentration-based standards or best management practices.
12. To clarify the reporting requirements that apply when best management practices (BMPs) are used as Pretreatment Standards., and to clarify that BMPs developed by POTWs may serve as local limits required by the Code of Federal Regulations.
13. To change signatory requirements for industrial users as well as for POTW reports.

The full text proposed revisions is [available from MESO](#) (233 KB Adobe™ Acrobat™ file).

Federal Register, Volume 64, Number 140, July 22, 1999, pp. 39563-39605.

Dredged Material Assessment and Management Seminar

The Environmental Protection Agency and Army Corps of Engineers announce the *Dredged Material Assessment and Management Seminar* at the Westin Horton Plaza Hotel in San Diego, California, from January 11-13, 2000. The seminar will focus on assessment and testing for waters regulated under the Marine Protection, Research, and Sanctuaries and the Clean Water Acts. Presentations and discussions will include the following:

- Regulations and Policies
- Inland, Ocean, and Upland Testing Manuals
- Sediment Quality Guidelines
- Corps/EPA Technical Framework
- DOTS-Technology Transfer
- Bioaccumulation Testing and Interpretation
- Chronic Sublethal Testing and Interpretation
- Dredged Material Management Software - DMSMART
- Dredged Material Management Models - ADDAMS
- Beneficial Uses
- Risk Assessment Application
- Research
- Design and Management of CDFs
- Innovative Technologies
- Contaminated Sediment Testing and Management



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Pre-registration for the seminar is required by November 18, 1999. Hotel reservations must be made by December 31, 1999. Further information is available at: <http://www.wes.army.mil/el/dots/training.html> and <http://www.wes.army.mil/el/dots/training/register.html>.

About the *Marine Environmental Update*

This newsletter is produced quarterly by the Marine Environmental Support Office (MESO), and is dedicated specifically to inform the Navy about marine environmental issues that may influence how the Navy conducts its operations. MESO is located at the Space and Naval Warfare Systems Center, San Diego, California. The mission of MESO is to provide Navy-wide technical and scientific support on marine environmental science, protection and compliance issues. This support covers a broad spectrum of activities, including routine requests for data and information, technical review and consultation, laboratory and field studies, comprehensive environmental assessments, and technology transfer. Significant developments in marine environmental law, policy, and scientific advancements will be included in the newsletter, along with references and points of contact for further information.

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