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Endangered Species Act: Center for Biological Diversity Notice of Intent to Sue U.S. Environmental Protection Agency Regarding Approval of Water Quality Standards in New Hampshire/Vermont/Maine/Connecticut

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The Center for Biological Diversity and Northwest Environmental Advocates (Collectively “CBD”) sent an October 26th Notice of Intent to Sue (“Notice”) to the United States Environmental Protection Agency (“EPA”) pursuant to Section 11(g) of the Endangered Species Act (“ESA”) for alleged violations of the statute.

CBD alleges that EPA violated the ESA’s Section 7(a)(2) consultation requirement regarding its discretionary decisions to approve substantive changes to the water quality standards for aquatic life for various pollutants in Vermont, New Hampshire, Maine, and Connecticut.

CBD argues that EPA’s actions cross the “may affect” threshold and could negatively impact species listed under the ESA. As a result, it is argued that EPA’s failure to initiate consultations with the United States Fish and Wildlife Service and the National Marine Fisheries Service violated the ESA.

CBD further alleges that:

...the substantive changes to water quality standards, approved by EPA, could jeopardize federally-listed species and adversely modify the critical habitat of listed species, but most certainly “may affect” ESA protected species and habitat. Although some of the changes have made the standards more stringent, the purpose of consultations is not only to avoid jeopardy and adverse modification of critical habitat, but to also minimize take of listed species and move them towards recovery.

CBD states EPA failed to consider the needs of salmon and sturgeon. Revisions to water quality standards for certain heavy-metal pollutants and organophosphate pesticides are referenced as an impediment to the survival and recovery of Atlantic salmon, Atlantic sturgeon and shortnose sturgeon. The EPA is therefore alleged to have failed to consult under the ESA as to whether the states should implement additional conservation measures to minimize harm from the exposures of these pollutants.

Section 303 of the Clean Water Act requires that each state develop water quality standards for jurisdictional waters of the United States within their borders. They establish the water quality goals for a specific body of water and also serve as the regulatory basis for the development of water-quality based effluent limits and strategies for individual points of discharges. A water-quality standard consists of three parts:

1. The designated uses of a water body
2. The water quality criteria that are necessary to protect existing uses and to obtain the beneficial uses designated by the state
3. An anti-degradation statement or policy to protect existing uses in high water quality

Section 303(c) specifies the adoption of water quality standards is primarily the responsibility of the states. However, the state must adopt uses consistent with the Clean Water Act objectives and water quality criteria sufficient to protect the chosen uses. Further, EPA is required to ensure that water quality standards, along with any changes, must meet minimum requirements of the Clean Water Act. The federal agency will assess whether the water quality standards protect state criteria and/or designated uses have taken into account the water's use and value for public water supplies, population of fish and wildlife, recreational uses, and agricultural, industrial, navigation and other purposes. The Clean Water Act regulations therefore provide for EPA review of any state water quality standard changes.

[A copy of the Petition can be downloaded here.](#)