

3. *By Hand Delivery or Courier:* Deliver your comments to the address identified in I.C.2, Attention Docket ID No. OW-2003-0068. Such deliveries are only accepted between 8 a.m. and 4 p.m.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Are the Statutory and Regulatory Requirements Relevant to This Action?

The purpose of the Clean Water Act (CWA) is to restore and maintain the chemical, physical and biological integrity of the Nation's waters. Section 101(a)(2) of the CWA establishes as an interim goal "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and * * * recreation in and on the water," wherever attainable. This national goal is commonly referred to as the "fishable/swimmable" goal of the CWA. (Hereafter, the fishable/swimmable goals are referred to as CWA section 101(a) goal uses.) Section 303(c)(2)(A) requires State and Tribal water quality standards to "protect the public health and welfare, enhance the quality of water, and serve the purposes of this Act." Further, States and authorized Tribes are required to take into consideration the waters' use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also take into consideration their use and value for navigation. 33 U.S.C.

1313(c)(2)(A). EPA's regulations at 40 CFR 131.10 describe the process States and authorized Tribes must follow and the analyses States must conduct prior to designating any uses that do not contain the CWA section 101(a) goal uses.

Section 303(c) of the CWA, 33 U.S.C. 1313(c), requires States and authorized Tribes to adopt water quality standards for waters of the United States within their applicable jurisdictions. Section 303(c) and EPA's implementing regulations at 40 CFR part 131 require State and Tribal water quality standards to include the designated use or uses to be made of the water, the criteria necessary to protect those uses, and an antidegradation policy. States and authorized Tribes may also include in their standards policies generally affecting the standards' application and implementation. See 40 CFR 131.13. These policies are subject to EPA review and approval. States and authorized Tribes are also required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. 33 U.S.C. 1313(c)(1). States and authorized Tribes are required to submit new or revised water quality standards to EPA for review and approval or disapproval. 33 U.S.C. 1313(c)(2)(A). If EPA approves a new or revised water quality standard submitted by a State or Tribe, it takes effect for CWA purposes. 40 CFR 131.21. If EPA disapproves a new or revised water quality standard submitted by a State or Tribe, EPA must promulgate its own water quality standard for the State or Tribe, when necessary to replace the disapproved water quality standards.

Finally, section 303(c)(4)(B) of the CWA authorizes the Administrator to determine, even in the absence of a State or Tribal submission, that a new or revised standard is needed to meet the CWA's requirements. The authority to make a determination under CWA section 303(c)(4)(B) resides exclusively with the Administrator; it has not been delegated.

Section 7 of the Endangered Species Act (ESA) requires Federal agencies, in consultation with the U.S. Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) (collectively, "the Services"), to ensure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of habitat of such species which have been designated as critical. Consultation is designed to assist Federal agencies in

complying with the requirements of section 7 by supplying a process within which FWS and NOAA Fisheries provide such agencies with advice and guidance on whether an action complies with the substantive requirements of the ESA. Approval of State or Tribal water quality standards and Federal promulgation of water quality standards are considered Federal actions, and hence EPA is required to comply with the requirements of ESA section 7 prior to taking final action on this proposed rule.

As a result of EPA's responsibilities and duties under section 7 of the ESA, EPA has initiated informal consultation with FWS and NOAA Fisheries on this rulemaking. As part of this process, EPA is preparing a biological assessment document that it will transmit to FWS and NOAA Fisheries and include in the record if this rule is finalized.

B. What Actions Have Oregon and EPA Taken Leading to Today's Action?

On July 23, 1996, the State of Oregon submitted revisions to its water quality standards to EPA for review, and approval or disapproval, pursuant to CWA section 303(c)(2)(A). Certain of these revisions identified specific numeric temperature criteria to protect critical life stages of fish in the family *Salmonidae*, commonly known as "salmonids." The *Salmonidae* family includes the genus *Oncorhynchus*, which consists of Pacific salmon and trout. There are seven species of Pacific salmon within the genus *Oncorhynchus*, five of which are found in North America: pink (*O. gorbuscha*), chum (*O. keta*), sockeye (*O. nerka*), coho (*O. kisutch*), and chinook (*O. tshawytscha*). Pacific trout within the genus *Oncorhynchus* include the anadromous steelhead, *O. mkiss*, and coastal cutthroat, *O. clarki. clarki*; and the non-anadromous rainbow trout, *O. mkiss*. Also in the family *Salmonidae* is the genus *Salvelinus*, which includes the bull trout species, *confluentus*.

Oregon's 1996 revised temperature criteria were intended to protect salmon rearing (17.8°C/64°F), salmon spawning (12.8°C/55°F), and bull trout (10°C/50°F). This included a revised temperature criterion for salmonid rearing in the Lower Willamette River from 21°C/70°F to 20°C/68°F. Oregon also submitted an IGDO criterion of 6.0 milligrams per liter (mg/L) for the protection of salmonid spawning. In addition, Oregon adopted new or revised narrative criteria and other provisions establishing a process for adopting site-specific numeric criteria or temporary revisions to its standards.