



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

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IN REPLY REFER TO:

APR 21 2003

Mr. John Iani  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 10  
1200 6<sup>th</sup> Avenue  
Seattle, Washington 98101

Dear Mr. Iani:

The U.S. Fish and Wildlife Service (Service) is pleased to provide comments on the final version of the Environmental Protection Agency (EPA) Region 10 Guidance for State and Tribal Temperature Water Quality Standards (April 2003). We have participated in the development of this document as a member of the workgroup over the last three years and we are supportive of the process and the outcomes. The EPA is to be commended for addressing this large scale and difficult issue as it is a critical factor in the recovery of both threatened and endangered species. We support the processes, approaches and methods recommended in the guidance.

The Service has been asked to define the level of assurances that we can provide to States and Tribes if they follow the EPA guidance in the development of their water quality temperature standards. More specifically, if the States and Tribes follow the guidance, to what degree will they meet the requirements of the Endangered Species Act (ESA).

The Service will eventually be consulting with the EPA on the approval of new or revised State and Tribal water quality standards. We support the temperature guidance document recommendations and believe that if the States and Tribes follow the EPA guidance in the development of their water quality standards the consultation process will be expedited.

The law does not allow for the Service to provide *a priori* ESA approval for any action without a review and impact assessment, or in this case consultation pursuant to section 7 of the ESA. The EPA guidance document provides some specific and some general guidelines regarding the development of temperature water quality standards, and thus allows for subjective interpretation in some areas. Moreover, the guidance is not mandatory, so States and Tribes may adopt or ignore any part of the guidance. Therefore, the Service must review and analyze each water quality standard revision that may affect listed species or critical habitat. If States and Tribes develop alternative approaches that do not follow the guidance or interpret the guidance differently than the Service it will likely result in additional information and analysis being required in the consultation process.

To expedite the consultation process, we encourage States and Tribes to work closely with the Service and EPA throughout the development of their temperature standards, under an informal consultation process. To further clarify our position on specific items in support of the overall implementation of the guidance document additional comments are provided below.

In Section V.1.1, the EPA guidance recommends that States or Tribes use "other information" such as recovery plans and critical habitat designations when defining the spatial extent of bull trout rearing areas. The Service strongly encourages the use of recovery plans and critical habitat designations when delineating rearing, foraging, and migration areas, unless new scientific data that has been reviewed by the Service indicates otherwise.

The guidance recommends a 12° C (55° F) 7-Day Average Daily Maximum (7DADM) criterion to address bull trout juvenile rearing. The Service believes adequate protection will be provided by a 12° C criterion if the use designation and the existing cold water protection recommendations in the guidance are also incorporated into State and Tribal standards. For example, existing coldwater protection recommendations include States and Tribes adopting "strong regulatory provisions to protect existing waterbodies that currently have summer maximum temperatures colder than the State's or Tribe's numeric criteria," which will help ensure that temperatures will likely not exceed 12° C in most of the rearing areas.

The guidance recommends a 16° C (61° F) 7DADM for salmon "core" juvenile rearing and links bull trout foraging and migration uses to this protection. The Service believes adequate protection may be provided by a 16° C criterion if the use designation and the existing cold water protection recommendations in the guidance are also incorporated into State and Tribal standards. For example, because bull trout likely require cold water refugia in migration and foraging areas during the summer maximum temperatures, those areas may be protected if the States or Tribes adopt the guidance's recommendation for "strong regulatory provisions to protect existing waterbodies that currently have summer maximum temperatures colder than the State's or Tribe's numeric criteria." There are a number of research projects currently underway that will help to more precisely determine protective stream temperatures for adult and subadult bull trout; therefore, we suggest that 16° C be an interim recommended criterion and that this recommendation be revisited within five years or as information from research becomes available.

In Section V.1.3, the guidance recommends a 9° C (48° F) 7DADM criterion to address bull trout spawning needs. The Service strongly supports this number and believes this temperature is required to initiate spawning.

In Section V.2, the guidance recommends adoption of "strong regulatory provisions to protect waterbodies that have summer maximum temperatures colder than the States and Tribes numeric criteria." As stated above, we feel that this provision will help to ensure that numeric criteria being recommended in the guidance will likely be protective of the bull trout.

In Section V.3, the guidance recommends several approaches to developing provisions that will address potential impacts associated with thermal plumes. The Service supports the approaches provided in the guidance and encourages the States and Tribes to consider all of the impacts that may adversely effect salmonids, especially the loss of thermal refugia.

In EPA's guidance, a single temperature criterion is being recommended for certain species-specific life stages (e.g., salmon migration, bull trout rearing, etc.). We recognize that a species may infrequently use waters with temperatures higher than the numeric criteria recommended in EPA's guidance due to various ecological and landscape differences, and because rivers and streams are inherently diverse and dynamic. Section VI of the guidance suggests several approaches to address circumstances where the criteria either cannot be attained or the criteria are inappropriate. We believe this flexibility in the development of temperature criteria reflects the diversity found in the aquatic landscape and is an important component of the guidance that allows States to move beyond the "one size fits all" temperature standard. The Service supports these approaches and encourages innovative options, but due to the potential variability of site-specific circumstances, we will be evaluating each proposal independently on a case-by-case basis.

In summary, we strongly encourage States and Tribes in the Pacific Northwest to adopt the recommendations in EPA's guidance to protect and aid in the recovery of the bull trout and other threatened and endangered salmonids

The Service appreciates the opportunity to have participated in this multi-agency workgroup process to develop the guidance document. If you have any questions regarding our comments, please contact Wendi Weber (503)-231-6158 or Don Steffeck (503) 231-6223.

Sincerely,

  
Acting Regional Director