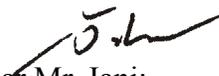




UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

APR 23 2003

Mr. John Iani
Regional Administrator
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, WA 98101


Dear Mr. Iani:

I want to thank you and your staff for the Environmental Protection Agency's (EPA's) strong and productive efforts to develop guidance for state and tribal water temperature standards in EPA Region 10. We appreciate the opportunity to be a part of this effort, due to the importance of protecting and restoring thermal regimes in watersheds inhabited by Pacific salmon and steelhead.

The guidance provides a good general overview of water temperatures supporting salmon and steelhead, and outlines useful approaches to help ensure that biological requirements are accommodated in state and tribal water temperature standards. As you note in the guidance, NOAA Fisheries cannot reach a conclusion with respect to the Endangered Species Act (ESA) or Essential Fish Habitat (EFH) Consultations until it reviews the specifics of a proposed action. Because we cannot pre-judge the effects of various features or combinations of features that states and tribes may apply in their standards, EPA and NOAA Fisheries will need to consult on each set of standards that EPA proposes to approve under the Clean Water Act (CWA). Nevertheless, state and tribal water temperature standards consistent with this guidance are likely to be able to satisfy the requirements of both the ESA and the EFH, since most of the potential consultation issues have been addressed to the extent possible in the guidance. Because of this, application of the guidance by states and tribes in modifying their water temperature standards would facilitate more efficient and timely completion of ESA and EFH consultations.

Salmon and steelhead populations show considerable adaptation to special circumstances, and some fish may be able to occupy habitat that might otherwise be unsuitable by locating thermal refuges within a stream that might otherwise be too warm. While we believe this guidance represents an excellent description of the general water temperature requirements for these fish and should be applicable to most habitats where those fish are present, we also recognize that, in some instances, local fish populations may be supported by criteria different (either warmer or cooler) than the criteria in the guidance, or natural water temperatures may be warmer than the recommended criteria.



We therefore support provisions, of the kind contained in the guidance (Section VI), that allow for the consideration of unique local circumstances. The options that EPA has included in the guidance that describe how states and tribes can develop alternative criteria where the general numeric criteria are unattainable or inappropriate are good examples of such adaptive provisions. These options include: 1) site-specific numeric criteria that support the use, 2) numeric criteria based on estimates of natural background temperatures (with an allowance for human use), and 3) alternative numeric criteria in conjunction with a use attainability analysis. We support inclusion of these options in the guidance because there likely will be situations that warrant different criteria than those recommended in the guidance.

Large Federal dams and large Federally-licensed dams require special consideration. Most of these hydro projects are already subject to extensive regulation and consultation under the authority of the ESA or in conjunction with FERC license proceedings. Typically, these consultations take into account all of the effects of the project on salmon and steelhead, not just water temperature, and the consultations attempt to review the temperature effects for a variety of juvenile and adult fish and the passage routes taken by each. In addition, these consultations normally look at the effects of the project as part of a multi-project storage system, and not as stand-alone activities.

In this context, meeting these general temperature guidelines at all times at a particular project may be desirable, but may not reflect the highest system-wide priority for the available water or for the funding available for capital improvements to benefit salmon and steelhead. For this reason, NOAA Fisheries believes that the temperature effects of large Federal and Federally-licensed dams should be considered in combination with other project effects, as part of a comprehensive consultation. While these guidelines should be used as a starting point for a part of that discussion, they are not intended to determine how to best strike a balance among all of the factors involved in these unique circumstances. This is an example where it may be appropriate for states and tribes to develop alternate temperature criteria using provisions of the CWA, summarized in Section VI of the guidance.

Sections of the guidance that are particularly likely to help expedite consultations include (1) considerations for designation of beneficial uses, (2) numeric criteria to protect the beneficial uses, and (3) the recommendation to adopt strong provisions to protect existing waters inhabited by ESA-listed salmonid fishes that have summer temperatures colder than the EPA-recommended numeric criteria. Ideally, states and tribes also would apply measure 3 in waters designated as EFH that are colder than the criteria, in order to help support salmon and steelhead fisheries not listed under the ESA. Based on the extent of current listings of water bodies as impaired for water temperature under section 303 (d) of the CWA, relatively few streams would be at issue in measure number 3.

EPA also has identified crucial aspects of thermal plume effects from point sources of heat pollution in the guidance. The guidance's recommendations that are intended to minimize potential adverse effects of instantaneous lethal temperatures, and to minimize degradation of spawning, egg incubation, and fry emergence areas, are specific, well-developed and scientifically supported. Adoption of these recommendations by states and tribes likely would expedite consultations involving thermal plume effects. The guidance's recommendations pertaining to other potential effects of thermal plumes (i.e. loss of localized cold water refugia, thermal shock, and migration blockage) may give a good starting point for more detailed discussions in subsequent consultations dealing with these effects.

Our views of the guidance are offered with the qualification that the guidance includes both specific and general guidelines regarding the development of water temperature standards, and necessarily allows for subjective interpretation of some measures. For example, while values for the numeric temperature criteria generally would be supportive of the thermal requirements of salmon and steelhead where the criteria are adopted and attained, this is only true if the state or tribe designates beneficial uses in a manner that protects the full diversity of life history strategies (e.g. timing of migrations) demonstrated by local fish populations.

Although water temperature improvements alone cannot restore native fish populations, protection and restoration of stream temperature patterns is necessary to provide freshwater habitat that will support the long-term survival and recovery of Pacific salmon and steelhead. This guidance represents an important step in that direction. We look forward to working with EPA, and with Pacific Northwest states and tribes, in any future consultations on water temperature standards reflecting recommendations in the guidance. If you have any questions regarding these comments, please contact me at 503-231-2337.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Robert Lohn".

D. Robert Lohn
Regional Administrator

cc: David Allen, USFWS
John Palmer, EPA Region 10
Randy Smith, EPA Region 10