

State clean water programs and endangered species

Two key statutes that affect the National Park Service's efforts to protect fish and wildlife are the Clean Water Act and the Endangered Species Act. The goals of both laws refer to the protection and viability of organisms. The Clean Water Act called for eliminating the discharge of pollutants by 1985, attaining fishable and swimmable water by 1983, and prohibiting the discharge of toxic pollutants in any amount. The act contains statements about necessary improvements to conserve waters for the protection and propagation of aquatic life and wildlife. It established qualitative water standards that favor the propagation of fish and wildlife and set quantitative discharge limits that must meet these water quality standards. The Endangered Species Act called for the conservation of endangered and threatened species until they recover sufficiently to no longer need the protection of the statute. Various sections of the act define the roles and responsibilities of governments and private parties.

The protection and recovery of threatened and endangered aquatic species would benefit from a concerted application of both acts (E. Rosan. 2000. EPA's approach to endangered species protection in state Clean Water Act programs. *Environmental Law* 30(2):447-85). An impediment has been the role of states under the Clean Water Act. The act authorizes states to administer their own clean water programs and to issue their own permits for point source discharges into waters (National Pollutant Discharge Elimination System [NPDES]). Such programs must comply with minimum requirements of the Clean Water Act, but because discharges under state clean water programs are not federal actions, they do not trigger compliance with the federal Endangered Species Act. (However, in cases where the Environmental Protection Agency (EPA) retains approval authority over state programs or final permit actions [e.g., NPDES permits], the EPA is required to determine what effect a permit may have on threatened and endangered species.)

The EPA, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service spent almost a decade developing an interagency memorandum of agreement and national coordination procedures to protect endangered species from adverse effects of the state-administered clean water programs. Under the 1999

draft memorandum of agreement (that was subsequently implemented on 22 February 2001), the EPA agreed to consult with the Fish and Wildlife Service (and the National Marine Fisheries Service when appropriate) in the review of state discharge permits and water quality standards to protect listed species.

Although some issues still need to be resolved, the memorandum of agreement is expected to help improve communications between the agencies, help the conservation and recovery of threatened and endangered species, and generally improve water quality in the country.