



United States Department of the Interior

U.S. Fish and Wildlife Service



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Paula Wilson
Idaho Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

MAY 13 2014

Re: Comments for the Preliminary Draft Rule Language for the Mixing Zone Policy (FWS Ref: 01EIFW00-2014-TA-0467)

Dear Ms. Wilson:

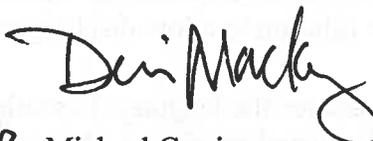
The Fish and Wildlife Service (FWS) has reviewed the draft rule language for the mixing zone policy and appreciates efforts by the Idaho Department of Environmental Quality (IDEQ) to strengthen the existing rule language regarding authorization of mixing zones. We understand that flexibility in the use of mixing zones is very important to NPDES dischargers, but this creates a very difficult set of rules for FWS to analyze in consultation. To be specific, FWS is supportive of the following additions to the rule language: (1) requirement for mixing zones to be appropriately sized (i.e., no larger than is necessary); and (2) clarification of the "unreasonable interference with, or danger to, beneficial uses" concept. However, more details regarding implementation of these provisions will be helpful in completing consultations. Some of the details we are concerned with are summarized below.

1. The language at 060.01.c states that the IDEQ "shall not authorize a mixing zone that is determined to be larger than is necessary." We encourage you to be more specific in stating that mixing zones are only allowed to be as large as necessary after all available and practical treatment methods have been used. Mixing zones should not be used as dilution to allow dischargers to avoid or minimize wastewater treatment.
2. FWS appreciates the language in section 060.d.ii prohibiting mixing zones from jeopardizing listed species or adversely modifying critical habitat. However, taking action prior to reaching jeopardy or adverse modification is desirable for all parties and we suggest you add a new subpart under 060.01 that says, "Mixing zones shall be designed to avoid or to minimize adverse effects to species and critical habitat listed under the Endangered Species Act."

3. The rule language at 060.01.h needs to take into account not just that larger mixing zones can be granted, but that 060.01.c also may limit a mixing zone to less than 25% of the critical flow volume for all discharges that are unable to meet criteria at the end of the pipe.
4. The provision at 060.01.h.ii requires that mixing zones be located away from the edge of the stream. This may be a problem in situations where it is advantageous to have a side-of-bank discharge (e.g., to keep higher concentrations of pollutants away from the primary fish migratory corridor in a stream) and times when it is not advantageous (e.g., when the discharge is located where there is high quality habitat along the bank for juvenile fish rearing). This provision may be unnecessary provided maximum discharge is limited to 25% of critical flow volume or identifying that the mixing zone location is to be determined after biologic and hydrologic site assessment.
5. The provision at 060.01.i specifies that the restrictions identified in 060.01.h may be exceeded if needed by a discharger. Therefore, mixing zones using more than 25% of the critical flow volume or extending more than 25% of the stream width could be authorized. This will make completing consultation difficult on this rule. FWS will not be able to successfully analyze the effect of mixing zones larger than 25% on listed species without knowing how many, where, or how large they will be. There are two possible solutions to this problem. The first is to make larger mixing zone authorizations subject to EPA approval. Such an approval would require ESA consultation, deferring the analysis to a future action. The second alternative is to provide performance standards that are protective of listed species and that can be considered during consultation for this rule.

Thank you for the opportunity to comment and your consideration in conserving endangered, threatened, and proposed species. If you have questions regarding these comments please contact Russ Holder of this office at 208-378-5384.

Sincerely,


for Michael Carrier
State Supervisor