UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
WASHINGTON HABITAT BRANCH OFFICE
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RECEIVED
MAY - 7 2007
OWW-135

May 4, 2007

Mr. Mike Gearheard
Director, Office of Water and Watersheds
U.S. Environmental Protection Agency, Region 10
(OWW130)
1200 Sixth Avenue
Seattle, WA 98101

Dear Mr. ~~Gearheard~~: Mike

The State of Washington Department of Ecology (Ecology) has recently issued a Public Notice Draft National Pollution Discharge Elimination System (NPDES) Industrial Stormwater General Permit for public review and comment. The National Marine Fisheries Service (NMFS) offers the following brief comments on the proposed permit pursuant to our role as providers of biological and technical assistance under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (ESA), and the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*). We are sending these comments to you because of the Environmental Protection Agency's (EPA) acknowledged oversight role in objecting to or approving the issuance of this permit under Section 402(d) of the Clean Water Act (CWA), and acknowledged responsibility to comply with Section 7(a)(2) of the Endangered Species Act (ESA) (as stated in the National Association of Home Builders v. Defenders of Wildlife, et al. and EPA v. Defenders of Wildlife, et al. argument before the Supreme Court). In addition, these comments are provided per the processes outlined in the Memorandum of Agreement between the EPA and the NMFS regarding enhanced coordination under the CWA and ESA (hereafter "MOA") (May 22, 2001, 66FR 11202-11217).

With the CWA authority delegated from the EPA, Ecology proposes to reissue the Industrial Stormwater General Permit to over 1,100 industrial facilities in Washington State, revoking and replacing the current permit. The permit relies heavily on the Permittees' diligent implementation of the permit requirements to result in compliance with state water quality standards. In addition the permit retains the concept of benchmarks and action levels (levels of industrial contaminants that will require the permittee to take further actions).

The geographic area covered by the permit overlaps the range of 14 federally listed threatened or endangered salmon, as well as designated critical habitat for 13 of these populations. The permit area overlaps areas addressed by the Puget Sound Shared Strategy Recovery Plans, Lower Columbia River Fish Recovery Board, the Upper and Mid-Columbia Fish Recovery Boards, the Governor's Salmon Plan, and the Puget Sound Partnership. Most of these plans have identified stormwater runoff as a significant factor in reaching salmon recovery. In addition, the Puget Sound Partnership has developed

recommendations for addressing stormwater effects with the goal of achieving a healthy Puget Sound by the year 2020.

We support Ecology's objectives in permitting this large number of industrial facilities, which will reduce the discharge of contaminated stormwater from industrial activities into receiving waters, and help protect fish and wildlife resources including threatened and endangered species. However, we believe that the Draft Industrial Stormwater General Permit, as currently proposed, will authorize stormwater discharges that have more than a minor detrimental effect on federally listed salmon and their critical habitat.

NMFS bases this conclusion on the body of scientific evidence which identifies that these discharges are likely to produce water quality conditions that result in negative behavioral and physiological consequences for these species, leading to reduced viability of populations exposed to those conditions. This point is illustrated in a previous comment letter that NMFS Headquarters provided to the EPA Headquarters regarding the issuance of the national multi-sector general permit (MSGP) for stormwater discharges associated with industrial activities (attached). Especially relevant to Ecology's permit is the section in the NMFS letter describing the likely consequences on Pacific salmon of issuing the MSGP for industrial activities. This section examines the effects of metals, chemical mixtures, turbidity, water quantity, etc., on salmon, and NMFS concludes that more than minor detrimental effects on salmon and their prey base will occur.

Also in this section of the NMFS comment letter, some metals including dissolved copper are identified as being particularly problematic for salmon. Further support for this conclusion is provided by a recent NMFS paper entitled "Technical White Paper on Dissolved Copper's Effects on Juvenile Salmonid Sensory Systems" (attached). The paper concludes that benchmark concentrations (calculated using EPA methodology) ranging from 0.18 to 2.1 $\mu g/L$ of dissolved copper in fresh water result in reductions of 8 to 57 percent in predator avoidance by juvenile salmon. Since the proportion of dissolved copper in stormwater discharges may be quite high relative to total copper concentrations, we do not believe that the proposed benchmark value of 11.9 $\mu g/L$ total copper and an action level of 23.8 $\mu g/L$ total copper are adequate to protect salmon in fresh waters.

Adverse impacts to the estuarine, riverine and marine waters resulting from inadequate regulatory protection will lead to direct and indirect adverse impacts to salmon and their habitats including spawning and rearing areas. Over the 5 years the proposed permit will be in effect, the proposed permit standards are likely to contribute to a direct loss of salmon and their habitat and exacerbate water quality problems in adjacent waters. We do not believe that this proposed permit will do enough to achieve the goal of the Puget Sound Partnership for a healthy Puget Sound by the year 2020. Similarly, while it represents an improvement over the status quo, it does not go far enough towards the goal of salmon recovery for the 14 listed populations as described in various salmon recovery plans in the State.

Because we fully support development of an effective permit, we look forward to working further with EPA to minimize the effects of the industrial stormwater permit and the discharges authorized under the permit to waters that contain listed species and their designated critical habitat.

Sincerely,

Steven W. Landino
Washington State Director
for Habitat Conservation

Attachments: (2)

cc: Dave Peeler, Ecology
Ken Berg, USFWS