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WestFAST News

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Chair – Patrick Lambert; Federal Liaison Officer – Heather Hofman

U.S. Fish and Wildlife Service and NOAA Fisheries to Propose Regulatory Revisions to Endangered Species Act

FWS 6/4/21.



Threatened spectacled eider male (*Somateria fischeri*), Alaska SeaLife Center Seward, Alaska.

Photo credit: Laura L. Whitehouse/USFWS

The U.S. Fish and Wildlife Service and the National Marine Fisheries Service (together the “Services”) have released a plan to improve and strengthen implementation of the Endangered Species Act (ESA). The set of proposed actions follows [Executive Order 13990](#), which directed all federal agencies to review and address agency actions during the last four years that conflict with

Biden-Harris administration objectives, such as addressing climate change.

“The U.S. Fish and Wildlife Service is committed to working with diverse federal, Tribal, state and industry partners to not only protect and recover America’s imperiled wildlife but to ensure cornerstone laws like the Endangered Species Act are helping us meet 21st century challenges,” **said Fish and Wildlife Service Principal Deputy Director Martha Williams**. “We look forward to continuing these conservation collaborations and to ensuring our efforts are fully transparent and inclusive.”

As a result of this review, the Services will initiate rulemaking in the coming months to revise, rescind, or reinstate five ESA regulations finalized by the prior administration. These are:

- **Rescind regulations that revised Fish and Wildlife Service’s (FWS’) process for considering exclusions from critical habitat designations:** On December 17, 2020, the FWS revised the process they would follow when considering whether to exclude areas from critical habitat designation under section 4(b)(2) of the ESA. FWS will propose to rescind this regulation ([85 FR 82376](#)) in its entirety and revert to implementation of the joint FWS/NMFS regulations at 50 CFR 424.19 and the joint 2016 policy on 4(b)(2) exclusions.
- **Rescind regulatory definition of habitat:** The Services will propose to rescind the final rule that defined the term “habitat” for the

purposes of critical habitat designation ([85 FR 81411](#); December 16, 2020). A regulatory definition is not required for the Services to designate critical habitat in compliance with a 2018 Supreme Court decision.

- **Revise regulations for listing species and designating critical habitat :** The Services will propose revising the final rule ([84 FR 45020](#); August 27, 2019) to reinstate prior language affirming that listing determinations are made “without reference to possible economic or other impacts of such determination,” along with other potential revisions also under discussion.
- **Revise regulations for interagency cooperation:** The Services will propose revisions to the final rule ([84 FR 44976](#); August 27, 2019) which revised the regulations governing section 7 consultation. The Services will propose to revise the definition of “effects of the action” and associated provisions to that portion of the rule, with other potential revisions also under discussion.
- **Reinstate protections for species listed as threatened under ESA:** FWS will propose to reinstate its “blanket 4(d) rule,” which was withdrawn by the previous administration ([84 Fed. Reg. 44753](#); August 27, 2019). The blanket 4(d) rule establishes the default of automatically extending protections provided to endangered species to those listed as threatened, unless the Service adopts a species-specific 4(d) rule.

“NOAA Fisheries is committed to the protection, conservation, and recovery of endangered and threatened marine species,” **said Paul Doremus, Acting Assistant Administrator for NOAA Fisheries.** “We are proud to work with a range of federal, Tribal, state and community partners to achieve conservation successes, and look forward to continuing these shared efforts through clear and transparent Endangered Species Act regulations.” Each of these recommended actions will undergo a rigorous and transparent rulemaking process, including publication of a proposed rule in the *Federal Register*, a public comment period and coordination with federally recognized Tribes before being finalized.

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[EPA, Army Announce Intent to Revise Definition of WOTUS](#)

EPA 6/9/21.



WASHINGTON – Today, the U.S. Environmental Protection Agency (EPA) and Department of the Army (the agencies) are announcing their intent to revise the definition of “waters of the United States” (WOTUS) to better protect our nation’s vital water resources that support public health, environmental protection, agricultural activity, and economic growth. As described in an EPA declaration requesting remand of the 2020 Navigable Waters Protection Rule, a broad array of stakeholders—including states, Tribes, local governments, scientists, and non-governmental organizations—are seeing destructive impacts to critical water bodies under the 2020 rule.

“After reviewing the Navigable Waters Protection Rule as directed by President Biden, the EPA and Department of the Army have determined that this rule is leading to significant environmental degradation,” **said EPA Administrator Michael S. Regan.** “We are committed to establishing a durable definition of ‘waters of the United States’ based on Supreme Court precedent and drawing from the lessons learned from the current and previous regulations, as well as input from a wide array of stakeholders, so we can better protect our nation’s waters, foster economic growth, and support thriving communities.”

“Communities deserve to have our nation’s waters protected. However, the Navigable Waters Protection Rule has resulted in a 25 percentage point reduction in determinations of waters that would otherwise be afforded protection,” **said Acting Assistant Secretary of the Army for Civil Works Jaime A. Pinkham**. “Together, the Department of the Army and EPA will develop a rule that is informed by our technical expertise, is straightforward to implement by our agencies and our state and Tribal co-regulators, and is shaped by the lived experience of local communities.”

Upon review of the Navigable Waters Protection Rule, the agencies have determined that the rule is significantly reducing clean water protections. The lack of protections is particularly significant in arid states, like New Mexico and Arizona, where nearly every one of over 1,500 streams assessed has been found to be non-jurisdictional. The agencies are also aware of 333 projects that would have required Section 404 permitting prior to the Navigable Waters Protection Rule, but no longer do.

As a result of these findings, today, the Department of Justice is filing a motion requesting remand of the rule. Today’s action reflects the agencies’ intent to initiate a new rulemaking process that restores the protections in place prior to the 2015 WOTUS implementation, and anticipates developing a new rule that defines WOTUS and is informed by a robust engagement process as well as the experience of implementing the pre-2015 rule, the Obama-era Clean Water Rule, and the Trump-era Navigable Waters Protection Rule.

The agencies’ new regulatory effort will be guided by the following considerations:

- Protecting water resources and our communities consistent with the Clean Water Act.
- The latest science and the effects of climate change on our waters.
- Emphasizing a rule with a practical implementation approach for state and Tribal partners.
- Reflecting the experience of and input received from landowners, the agricultural community that fuels and feeds the world, states, Tribes, local governments, community organizations, environmental

groups, and disadvantaged communities with environmental justice concerns.

The agencies are committed to meaningful stakeholder engagement to ensure that a revised definition of WOTUS considers essential clean water protections, as well as how the use of water supports key economic sectors. Further details of the agencies’ plans, including opportunity for public participation, will be conveyed in a forthcoming action. To learn more about the definition of waters of the United States, visit: <https://www.epa.gov/wotus>.

Background

The Clean Water Act prohibits the discharge of pollutants from a point source to navigable waters unless otherwise authorized under the Act. Navigable waters are defined in the Act as “the waters of the United States, including the territorial seas.” Thus, “waters of the United States” (WOTUS) is a threshold term establishing the geographic scope of federal jurisdiction under the Clean Water Act. The term “waters of the United States” is not defined by the Act but has been defined by EPA and the Army in regulations since the 1970s and jointly implemented in the agencies’ respective programmatic activities.

The 2020 Navigable Waters Protection Rule was identified in President Biden’s Executive Order 13990, which directs federal agencies to review all existing regulations, orders, guidance documents, policies, and any other similar agency actions promulgated, issued, or adopted between January 20, 2017, and January 20, 2021.

See Fact Sheet: List of Agency Actions for Review, available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>.

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Greater Yellowstone Area Expected to Become Warmer, Drier

USGS 6/23/21.

New Report Highlights Climate Change Effects on Greater Yellowstone Ecosystem

Temperature significantly increased and snowfall decreased in the iconic Greater Yellowstone Area since 1950 because of climate change, and these trends will likely continue through the rest of the century, according to a [climate report published today](#).



This image shows a research raft on Spider Lake, Wind River Indian Reservation, Wind River Range, Wyoming. (Credit: Bryan Schuman, University of Wyoming)

Scientists with the U.S. Geological Survey, Montana State University and the University of Wyoming studied climate change in the Greater Yellowstone Area (GYA) from 1950-2018. They evaluated how these changes could progress by 2100 based on various greenhouse gas emission scenarios and found that average GYA temperatures increased by 2.3 degrees Fahrenheit and could increase an additional 5-10 degrees Fahrenheit by 2100.

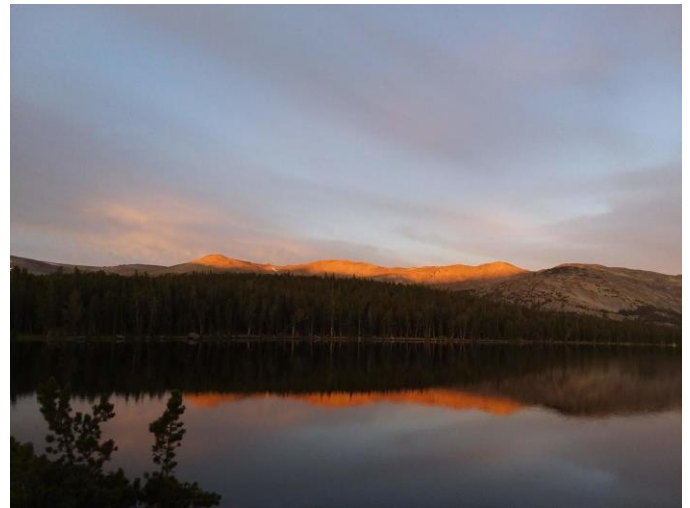
“Greater Yellowstone is valued for its forests, rivers, fish and wildlife,” said Steve Hostetler, a USGS scientist and co-lead author of the report. “The trend towards a warmer, drier climate described in this study will likely affect ecosystems in the region and the communities that depend on them.”

The report also found that by the end of the century, the GYA could see:

- annual precipitation increase by 9-15%, but the combination of elevated temperatures and higher evaporation rates will likely make future conditions drier in summer;

- reduced soil moisture in the summer months, which will be an additional stress on plant communities that could make drought and wildfires more common;
- 40-60 more days per year exceeding 90 degrees Fahrenheit in Bozeman, Montana, and in Jackson, Pinedale and Cody, Wyoming, if there is little to no mitigation of future emissions.

“The assessment is intended to provide the best available science on past, present and future conditions in the GYA so that stakeholders have needed information to plan ahead,” said Cathy Whitlock, Regents Professor Emerita of Earth Sciences at Montana State University and report co-lead author.



The USGS and partners study the effects of climate change on the Greater Yellowstone Ecosystem. This sunset image was taken from Steamboat Lake, Wind River Indian Reservation, Wind River Range, Wyoming. (Credit: Bryan Schuman, University of Wyoming)

The report also documents the effects of climate change on the GYA over recent decades, including:

- average temperature was as high or higher than any period in the last 20,000 years and likely the warmest of the last 800,000 years, according to geologic studies;
- the growing season increased by nearly two weeks since 1950;
- average annual snowfall decreased by 23 inches since 1950 and measurable snow has become rare in June and September.

“The decrease in snow is due to the increase in temperature over time, which caused more precipitation to fall as rain instead of snow,” said

report co-author Bryan Shuman, Wyoming Excellence Chair in Geology and Geophysics at the University of Wyoming.

The report also found that earlier snowmelt shifted the peak streamflow eight days earlier since 1925 and reduced water supplies in summer, causing drier summer conditions that contributed to wildfires.

These ecosystem changes can impact people in the region in numerous ways, according to the scientists, including elevated temperatures and summer water shortages that affect agriculture and increased wildfires.

“Based on nearly 50 interviews with community leaders, city officials, agencies, businesses, citizens, ranchers and Tribal leaders, water and the need for more climate information are top concerns for folks in the GYA,” said co-author Charles Wolf Drimal from the [Greater Yellowstone Coalition](#).

The new report is a collaborative effort by scientists, resource managers, non-profit organizations and Tribal communities from Montana, Wyoming and Idaho. For more information on research in the GYA, please visit the [USGS Northern Rocky Mountain Science Center](#), [Montana State University](#) and [University of Wyoming](#) websites.

Upcoming Meetings

[Forest Resilience Bond Webinar](#)
WestFAST 7/22/21 10:00 am – 11:00 am MDT

[Western Drought Crisis Webinar](#)
NOAA/NIDIS 7/20/21 11:00 am - 1:00 pm MDT
[Register Here](#)

[2021 Symposium on the Settlement of Indian Reserved Water Rights Claims](#)
WSWC/NARF 8/24-25/21
[Zoom Webinar Registration](#)

[WSWC Fall 2021 \(197th\) Meetings](#)
WSWC 9/14-16/21

Other Federal News

DOI 6/1/21. [Interior Department Suspends Oil and Gas Leases in Arctic National Wildlife Refuge](#)

FWS 6/2/21. [USGS, FWS Report Highlights Impacts of Sediment Management on Barrier Islands, Wildlife and Ecosystems](#)

USFS 6/9/21. [Forest Products Laboratory Announce Grants with U.S. Endowment for Forests and Communities](#)

NPS 6/9/21. [New NPS guidance will help prepare historic buildings for flooding hazards](#)

NRCS 6/10/21. [USDA to Invest \\$41.8 Million in Conservation Assistance for Producers in Drought-Impacted States](#)

EPA 6/11/21. [EPA Announces \\$6 Million for Tribes to Support Wetlands and Healthy Watersheds](#)

NOAA 6/14/21. [May 2021 tied for 6th-warmest May on record for the globe](#)

BOR 6/15/21. [Reclamation awards \\$2.6 million for Western communities to establish or expand watershed groups](#)

EPA 6/16/21. [EPA Announces \\$11 Million for Farm-Focused Projects to Improve Water Quality and Environmental Education](#)

NRCS 6/16/21. [USDA to Invest \\$5 Million in Wetland Mitigation Banks](#)

FWS 6/16/21. [Service Completes Initial Reviews on Endangered Species Act Petitions for Two Species](#)

USGS 6/17/21. [Jun 17, 2021 - Next Generation of USGS Water Data for the Nation](#)

NRCS 6/24/21. [USDA to Invest \\$10 Million to Support Climate-Smart Agriculture and Forestry through Voluntary Conservation](#)

BLM 6/28/21. [BLM Acquires Land to Improve Recreation and Conservation on the Colorado River](#)

NOAA 6/29/21. [Secretary of Commerce approves disaster declarations in 4 U.S. commercial fisheries](#)

NRCS 6/30/21. [USDA Seeks New Partnerships to Safeguard, Restore Wetland Ecosystems](#)

People

USFS 6/3/21. [Forest Service Mourns the Death of Firefighter](#)

USFS 6/8/21. [USDA Forest Service Chief Christiansen Announces Retirement](#)

BOR 6/16/21. [Reclamation names Carly Jerla to lead effort for updated Colorado River operating guidelines](#)

DOI 6/21/21. [White House Announces Additional Nominations to Interior Leadership](#)

NOAA 6/22/21. [Richard W. Spinrad sworn in as NOAA administrator](#)

DOI 6/23/21. [Tanya Trujillo Sworn In as Interior Department Assistant Secretary for Water and Science](#)

USDA 6/23/21. [Statement by Agriculture Secretary Tom Vilsack on the Intent to Nominate Homer Wilkes, Ph.D. to Serve as Under Secretary for Natural Resources and Environment](#)

USFS 6/28/21. [Agriculture Secretary Tom Vilsack Announces Randy Moore as New Forest Service Chief](#)

The Western States Federal Agency Support Team (WestFAST) is a collaboration between 12 Federal agencies with water management responsibilities in the West. WestFAST was established to support the Western States Water Council (WSWC), and the Western Governors Association in coordinating Federal efforts regarding water resources.