



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Richard A. Eskin, Ph.D.
Director, Technical & Regulatory Services Administration
Maryland Department of the Environment
1800 Washington Boulevard, Suite 540
Baltimore, Maryland 21230-1718

MAR 18 2011

Dear Dr. Eskin:

The Environmental Protection Agency (EPA), Region III, has conducted a complete review of Maryland's 2010 Section 303(d) List, and supporting documentation and information. Based on this review, EPA has determined that Maryland's list of water quality limited segments still requiring Total Maximum Daily Loads (TMDLs), meets the requirements of Section 303(d) of the Clean Water Act and EPA's implementing regulations. Therefore, by this order, EPA hereby approves Maryland's 2010 Section 303(d) List. The statutory and regulatory requirements, and EPA's review of Maryland's compliance with each requirement, are described in the enclosure.

EPA is pleased to approve Maryland's 2010 Section 303(d) List and we commend you and your staff for the thorough work and exemplary effort in establishing the list and in responding to the comments received.

If you have any questions or concerns regarding this decision, please feel free to contact Mr. Larry Merrill, Associate Director, at 215-814-5452, or merrill.larry@epa.gov.

Sincerely,

Catherine A. Libby for
Jon M. Capacasa, Director
Water Protection Division

Enclosure

EPA Region III Approval Rationale of Maryland's 2010 303 (d) List

EPA has conducted a complete review of Maryland's 2010 Section 303(d) list and supporting documentation and information and, based on this review, EPA has determined that Maryland's list of water quality limited segments (WQLSs) still requiring Total Maximum Daily Loads (TMDLs) meets the requirements of Section 303(d) of the Clean Water Act ("CWA" or "the Act") and EPA's implementing regulations. Therefore, by this order, EPA hereby approves Maryland's Section 303(d) list. The statutory and regulatory requirements, and EPA's review of Maryland's compliance with each requirement, are described in detail below.

Statutory and Regulatory Background

Identification of WQLSs for Inclusion on Section 303(d) List

Section 303(d)(1) of the Act directs States to identify those waters within its jurisdiction for which effluent limitations required by Section 301(b)(1)(A) and (B) are not stringent enough to implement any applicable water quality standard, and to establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters. The Section 303(d) listing requirement applies to waters impaired by point and/or non-point sources, pursuant to EPA's long-standing interpretation of Section 303(d).

EPA regulations provide that States do not need to list waters where the following controls are adequate to implement applicable standards: (1) technology-based effluent limitations required by the Act; (2) more stringent effluent limitations required by State, local, or federal authority. See 40 CFR 130.7(b)(1). The EPA review and action on Maryland's 2010 list is consistent with *Guidance for 2010 Assessment, Listing, and Reporting Requirements Pursuant to Sections 303(d), 305(b), and 314 of the Clean Water Act* (July 29, 2005) as supplemented by the memorandum titled *Information Concerning 2008 Clean Water Act Section 303(d), 305(b) and 314 Integrated Reporting and Listing Decisions*.

Consideration of Existing and Readily Available Water Quality-Related Data and Information

In developing Section 303(d) lists, States are required to assemble and evaluate all existing and readily available water quality-related data and information, including, at a minimum, consideration of existing and readily available data and information about the following categories of waters: (1) waters identified as partially meeting or not meeting designated uses, or as threatened, in the State's most recent Section 305(b) report; (2) waters for which dilution calculations or predictive modeling indicate non-attainment of applicable standards; (3) waters for which water quality problems have been reported by governmental agencies, members of the public, or academic institutions; and (4) waters identified as impaired or threatened in any Section 319 non-point assessment submitted to EPA. See 40 CFR 130.7(b)(5). In addition to these minimum categories, States are required to consider any other data and information that is existing and readily available. EPA's 1991 *Guidance for Water Quality-Based Decisions* describes categories of water quality-related data and information that may be existing and readily available. See *Guidance for Water Quality-Based Decisions*: The

TMDL Process, EPA Office of Water, 1991, Appendix C ("EPA's 1991 Guidance").

While States are required to evaluate all existing and readily available water quality-related data and information, States may decide to rely or not rely on particular data or information in determining whether to list particular waters.

In addition to requiring States to assemble and evaluate all existing and readily available water quality-related data and information, EPA regulations at 40 CFR 130.7(b)(6) require States to include as part of their submissions to EPA, documentation to support decisions to rely or not rely on particular data, information and decisions to list or not list waters. Such documentation needs to include, at a minimum, the following information: (1) a description of the methodology used to develop the list; (2) a description of the data and information used to identify waters; and (3) any other reasonable information requested by the Region.

Priority Ranking

EPA regulations also codify and interpret the requirement in Section 303(d)(1)(A) of the Act that States establish a priority ranking for listed waters. The regulations at 40 CFR 130.7(b)(4) require States to prioritize waters on their Section 303(d) lists for TMDL development, and also to identify those WQLSs targeted for TMDL development activities in the next two years. In prioritizing and targeting waters, States must, at a minimum, take into account the severity of the pollution and the uses to be made of such waters. See Section 303(d)(1)(A). As long as these factors are taken into account, the Act provides that States establish priorities. States may consider other factors relevant to prioritizing waters for TMDL development, including immediate programmatic needs, vulnerability of particular waters as aquatic habitats, recreational, economic, and aesthetic importance of particular waters, degree of public interest and support, and State or national policies and priorities. See 57 FR 33040, 33045 (July 24, 1992), and EPA's 1991 Guidance.

Analysis of Maryland's Submission

Identification of Waters and Consideration of Existing and Readily Available Water Quality-Related Data and Information

EPA has approved Section 303(d) lists submitted by Maryland including, but not limited to, Section 303(d) lists, for the years 1996, 1998, 2002, 2004, 2006 and 2008. To the extent that these prior lists have been incorporated into the 2010 Section 303(d) list, EPA's rationale for approving those lists remains operative. EPA's review of the 2010 303(d) list focused on changes from the prior lists.

On February 12, 2010, Maryland Department of the Environment (MDE) public noticed the draft 2010 303(d) list for a comment period of 30 business days, from February 12, 2010 through March 26, 2010. The draft list was posted on MDE's internet world-wide-web page and also advertised in the Maryland Register. Copies were also available at some branches of county libraries, and the list could be requested by writing to MDE. MDE held three informational public meetings at Easton, Williamsport, and Baltimore, Maryland to receive comments on the

draft document.

EPA received MDE's draft final 2010 303(d) list package on April 2, 2010. Revised versions were sent by MDE on July 15, 2010 and February 22, 2011 to incorporate changes based on EPA's comments. The 2010 303(d) package included: (1) an overview of the process for development of the 2010 303(d) list; (2) surface water monitoring strategy, assessment units, the listing methodologies for the following kinds of data: bacteria, toxics, and biological-these methodologies have undergone public review; (3) assessment results associated with biological impairments, toxics, bacteria, and solids from rivers/streams, lakes/ponds, estuarine and ocean waters; (4) the public process related to the 303(d) list; and (5) the integrated Section 305(b) Report and Section 303(d) list, consisting of parts 2,3,4, and 5. MDE also provided a list of TMDLs approved (Table 16) and anticipated for completion for Fiscal Year 2010 and 2011 (Table 17 and 18, respectively). Tables 17 and 18 also indicate which of these TMDLs are part of the *Memorandum of Understanding between the State of Maryland and the United States Environmental Protection Agency Region III regarding Sections 303(d) and 303(e) of the Clean Water Act*. The package also included a responsiveness summary of comments received during the public review.

EPA has reviewed Maryland's description of the data and information it considered, its methodology for identifying waters, and additional information provided in response to comments raised by EPA and other parties. EPA concludes that the State properly assembled and evaluated all existing and readily available data and information, including data and information relating to the categories of waters specified in 40 CFR 130.7(b)(5).

In addition, the State provided its rationale for not relying on particular existing and readily available water quality-related data and information as a basis for listing waters.

A. Description of the methodology used to develop this list, Section 130.7(b)(6)(i)

For this 2010 reporting cycle MDE has included a few changes. MDE has included additional database reformatting to aid in querying function as well as better integration of the CWA sections 305(b) and 303(d). The 2010 report includes revised methodologies for biological, bacterial, and toxics. A brief summary of the changes in listing and assessment methodologies is described below.

The changes in the biological listing methodology consisted of the incorporation of the biological stressor identification analysis (BSID) and the changing of the impairment 'cause' from "Combination Benthic/Fishes Biosassessments" to "Cause Unknown". The BSID process links potential causes/stressors identified by the analysis with general causal scenarios and concludes with a review of ecological plausibility by State scientists. Once the BSID process is completed, one or several stressors (pollutants) may be identified as probable causes of the poor biological conditions within the Maryland 8-digit watershed. MDE will use identified stressor(s) (e.g., sediment, chlorides, and nutrients) to support current pollutant listings, add new pollutant listings, and/or change the category listing for a pollutant on the Integrated Report. As a result, when stressor(s)/pollutant(s) are identified for a biologically-impaired watershed, the biological listing will be removed from Category 5 and will be replaced by the appropriate pollutant-specific listing(s) (Category 5).

The impairment cause was changed to better reflect the actual cause/pollutant impairing the watershed. Those watersheds that do not have the stressor identification process completed will remain as "Cause Unknown" until stressors are identified. As a result, a watershed may be listed in Category 5 (impaired) with an unknown cause of impairment. However, it will be shown for such listing, that the indicator of impairment was benthic and fish Index of Biotic Integrity (IBI).

The second methodology that has been revised is Maryland's bacterial Listing Methodology as it pertains to how impaired listings are made for recreational waters. When recreational waters are listed in Category 3 of the Integrated Report, a sanitary survey must be conducted. One of the changes in the bacterial methodology is adding a clarification that Category 3 waters will be moved to Category 5 if a sanitary survey is not conducted before the end of the next listing cycle. The other change is specifying that local health departments have been delegated the authority for the designation of beaches in addition to the authority for monitoring and notifying the public regarding beach water quality conditions.

Lastly, the final methodology is the toxics methodology. The changes made to the toxics methodology were minor. The most significant changes involved slight refinements/clarifications in the fish tissue portion of the methodology. Specific language was added to more clearly define what size of fish and what parts of the fish are to be used in the analysis.

B. Description of the data and information used to identify waters, including a description of the data and information used by Maryland as required by Section 130.7(b)(5).

1. Section 130.7(b)(5)(i), Waters identified by Maryland in its most recent Section 305(b) report as "partially meeting" or not meeting designated uses or as threatened."

Maryland's 303(d) list is mostly defined by the data collection and assessment contained in the 305(b) report of the State's water quality. In Maryland, responsibility for collection and compilation of this information is shared between the Maryland Department of Natural Resources (MDNR) and MDE. MDNR compiles Maryland's Inventory of the Water Quality, the 305(b) Report, every two years pursuant to Section 305(b) of the Clean Water Act (CWA). MDE sets water quality standards, regulates discharges to Maryland waters through environmental permitting, enforcement and compliance activities, identifies waters for inclusion on the Section 303(d) list, and develops TMDLs. Since 2002 and consistent with EPA guidance, Maryland has submitted an integrated report combining the Section 303(d) list and the Section 305(b) report (Integrated Report"). The following categories are used to describe water quality in Maryland's Integrated Report. Category 1 of the Integrated Report identifies waters that meet all water quality standards and no use is threatened. Category 2 identifies waters meeting some water quality standards, but with insufficient information to determine if other water quality standards are being met. Category 3 identifies waters where there is insufficient information to determine if any water quality standard is being attained, and includes subcategories for insufficient data quantity and insufficient data quality. Category 4 identifies waters where one or more water quality standards are impaired or threatened, but for which a TMDL is not required because a TMDL has already been approved or established by EPA (Subcategory 4a), other

pollution control requirements are expected to attain water quality standards (Subcategory 4b), or the impairment is not caused by a pollutant (Subcategory 4c). Categories 1-4 comprise the Section 305(b) portion of the integrated report. Category 5 is the Section 303(d) list and identifies waters that are not attaining water quality standards and for which a TMDL may be necessary.

Maryland considers a waterbody as “impaired” (and therefore subject to listing pursuant to Section 303(d)) when it does not attain its designated use pursuant to Maryland’s water quality standards. Maryland has developed numerous methodologies for assessing whether waters are achieving their designated uses. MDE generally has provided the public with notice and an opportunity to comment on its assessment methodologies as they are developed and/or amended.

In September 2004, Maryland updated its Comprehensive Water Quality Monitoring Strategy for all State waters consistent with current EPA guidance (see “Elements of a Water Monitoring and Assessment Program,” EPA document 841-B-03-003). This Strategy describes Maryland’s water quality monitoring framework and covers all State waters, including rivers and streams, lakes, tidal waters, ground water and wetlands. These water quality monitoring programs support the assessment of Maryland’s designated uses as well as integrated reporting activities under Sections 303(d) and 305(b) of the CWA.

In the Fall of 2007, MDE initiated monitoring strategy discussion with MDNR in anticipation of a revised strategy for 2009-2010. This 2009 Strategy has been completed and submitted to EPA.

2. Section 130.7(b)(5)(ii), Waters for which dilution calculations or predictive models indicate non-attainment of applicable water quality standards.

Maryland supports the use of computer models and other innovative approaches to water quality monitoring and assessment. Maryland has relied heavily on the Chesapeake Bay model to develop loading allocations, assess the effectiveness of best management practices, and guide implementation of water quality programs. Several different modeling approaches have also been used in TMDL development. With the growing number of biological impairments in Category 5 of the List, Maryland is currently and will be relying on land use analyses, Geographic Information System (GIS) modeling, data mining, and other non-traditional approaches to identify stressors, define ecological processes, and develop TMDLs. Maryland considered the results of a predictive model for the Chesapeake Bay where applicable.

3. Section 130.7(b)(5)(iii), Waters for which water quality problems have been reported by local, state, or federal agencies; members of the public; or academic institutions.

A joint MDE/MDNR data request letter was widely advertised for the solicitation of data for the 2010 list. With the integration of Sections 305(b) and 303(d) of the CWA and the adoption of a multi-category reporting structure, Maryland has developed a two-tiered approach to data quality. Tier 1 data is used to determine impaired waters (e.g., Category 5 waters or the traditional 303(d) List) and is subject to the highest data quality standards. Maryland waters identified as impaired using Tier 1 data may require a TMDL or other regulatory actions on the part of the State. These data should be accompanied by a Quality Assurance Project Plan

(QAPP) consistent with EPA data guidance specified in Guidance for Quality Assurance Project Plans (Dec 2002. EPA/240/R-02/009 is available at <http://www.epa.gov/quality/qs-docs/g5-final.fdf>). Tier 1 data interpretation must also be consistent with Maryland's Listing Methodologies.

Tier 2 data are used to assess the general condition of surface waters in Maryland and may include volunteer monitoring, land use data, visual observations of water quality condition, or data not consistent with the Maryland's Listing Methodologies. Such data may not have a Quality Assurance Project Plan (QAPP) or may have one that is not consistent with EPA guidance. Tier 2 data alone are not used to make impairment decisions (i.e., category 5 listings requiring a TMDL) because the data are of insufficient quantity and/or quality.

Maryland has increased its efforts to make Integrated Reporting data available to the public in a real time environment. The Integrated Report database is now available online at http://www.mde.state.md.us/Programs/WaterPrograms/TMDL/Maryland%20303%20dlit/303d_s_earch/. References to and summaries of the data used for impairment determinations are also included to give the public a better understanding of why specific decisions were made.

4. Section 130.7(b)(5)(iv), Waters identified by Maryland as impaired or threatened in a non-point assessment submitted to EPA under section 319 of the CWA or in any updates of the assessment.

MDE considered waters identified in a Section 319 assessment during the development of the 1996 Section 303(d) list, and all such water segments were included in the watersheds on that list which is incorporated into all subsequent lists, including the 2010 list. The Clean Water Action Plan of 1998 required a statewide Unified Watershed Assessment which set priorities for Section 319 activities. Maryland's Unified Watershed Assessment, Category I assignments were based on the 1998 303(d) list.

5. Other data and information used to identify waters (besides items 1-4 discussed above).

In addition to waters identified as impaired on the 2010 Section 303(d) List that have not been delisted, the 2010 Section 303(d) list thirty-eight impaired waters in addition to those listed on the 2008 303(d) list. Fourteen of these new listings resulted from MDE's Biological Stressor Identification Analyses. The purpose of these analyses is to identify the primary pollutants that are responsible for impairing watershed biological integrity. Of these 14 new 'biostressor' listings, eight are for chlorides, five are for sulfates, and one is listed for ammonia. There are seven new total suspended solids listings as the result of Chesapeake Bay submerged aquatic vegetation assessments. In addition, there are six fecal coliform listings in shellfish harvesting waters, five Chesapeake Bay segment listings as a result of bioassessments, two new mercury listings for fish

tissue, two listings for zinc, one listing for lead, and one listing for enterococcus in the Baltimore Harbor area.

C. A rationale for any decision to not use any existing and readily available data and information for any one of the categories of waters as described in Sections 130.7(b)(5) and 130.7(b)(6)(iii).

Starting in 2002, Maryland developed and published for public review of the Listing Methodologies to document the State's interpretation of its water quality standards (WQS) and establish scientifically defensible approaches for determining water body impairment. Listing Methodologies are not considered rules, but rather provide a means to provide consistency and transparency in Integrated Reporting so that the public and other interested stakeholders understand why listing decisions are made and can independently verify listing decisions. The methodologies are living documents that are revised as new statistical approaches, technologies, or other improved methods are adopted by the State. When changes are proposed to the Listing Methodologies, Maryland advertises the revised methodologies for public review via the biennial Integrated Report.

In Maryland's 305(b) Report, certain water bodies are conditionally approved shellfish areas. A sub-set of these water bodies are restricted because they are closed for administrative reason under guidance of the National Shellfish Sanitation Program. Typically, these waters are restricted due to their vicinity to wastewater treatment plants and the restriction is precautionary against the potential treatment system failure, rather than an expression of failure to meet water quality standards. In accordance with MDE's listing methodology, both administratively restricted and conditionally approved shellfish waters are not listed on the Section 303(d) list.

D. Rationale for delisting of waterbodies from the previous 303(d) list.

Maryland has indicated, in the Integrated Report (Table 14), that thirty seven (37) delistings have occurred during this cycle, primarily on the basis of new assessments/data or water quality analyses (WQA). Eight biological listings without a specified impairing substance have been replaced by specific pollutant listings enumerated by the Biological Stressor Identification analyses. Four delistings occurred because of changes in beach designation. Another six have been delisted as a result of mercury or PCB levels that are now supporting the fishing designated use. The remaining nineteen delistings are a combination of waters that meet aquatic life standards for metals (six delistings), total phosphorus (nine delistings), and sediment-related parameters (four delistings).

Of the delistings that now meet the use designation, the Middle Chester River PCB listing has been removed from Category 5 after an error was found in the data used for assessment. In this case the Lower Chester River data was inadvertently used for the Middle Chester River assessment. Also, the Choptank was erroneously listed as impaired, having been based on fish ovary concentration, something that does not satisfy the fish tissue listing methodology. And finally, the PCB listing for Jennings Randolph Lake was incorrectly computed and after recalculation is shown to be supporting the fishing designated use.

Maryland has demonstrated, to EPA's satisfaction, its rationale for these de-listings.

E. Rationale for Maryland's decision not to list waters pursuant to 40 CFR 130.7(b)(1) because they are expected to meet water quality standards.

Maryland's decision not to include waters on its 2010 Section 303(d) list due to other required pollution controls is consistent with EPA regulations at 40 CFR 130.7(b)(1). These waters were identified in Category 4b of the Integrated Report. Under 40 CFR 130.7(b)(1), states are not required to list WQLSs still requiring TMDLs where effluent limitations required by the CWA, more stringent effluent limitations required by state or local authority, or other pollution control requirements required by state, local, or federal authority, are stringent enough to implement applicable water quality standards. The regulation does not specify the time frame in which these various requirements must implement applicable water quality standards to support a state's decision not to list particular waters. EPA expects that required controls will result in attainment in a reasonable time, based on the nature of the pollutant and actions that need to be taken to achieve attainment.

Monitoring should be scheduled for these waters to verify that the water quality standard is attained as expected in a reasonable time frame. Where standards will not be attained through implementation of the requirements listed in 40 CFR 130.7(b)(1) in a reasonable time, it is appropriate for the water to be placed on the Section 303(d) list to ensure that implementation of the required controls, and progress towards compliance with applicable standards, is tracked. If it is determined that the water is, in fact, meeting applicable standards when the next Section 303(d) list is developed, it would be appropriate for the state to remove the water from the list at that time. It is EPA's understanding that, as part of the 2012 Integrated Report, MDE intends to review waters identified in Category 4b to determine whether the water quality standard is expected to be attained in a reasonable time or whether the waters need to be moved to Part 5.

Priority Ranking and Targeting

MDE carried over its priority ranking methodology from its 2008 list. Within the Section 303(d) list, Maryland has provided both a priority ranking of high, medium, or low, and a separate indication for waters targeted for TMDL development in the next two years. In general, criteria that affect human health or have an extreme effect on natural resources are ranked high, criteria that indicated a continuing downward trend in the loss of a significant resource, create a serious nuisance, or constitute a significant loss of a natural resources are ranked as medium, and the remaining cases rank low.

EPA concludes that the State properly took into account the severity of pollution and the uses to be made of such waters. Scheduling, however, takes into account additional considerations other than priority designations, such as programmatic consideration (e.g., efficient allocation of resources, basin planning cycles, coordination with other programs or states) and technical considerations (e.g., data availability, problem complexity, availability of technical tools). This is consistent with EPA guidance. In addition, EPA reviewed the State's identification of WQLSs targeted for TMDL development in the next two years (i.e., those targeted as a high priority), and concludes that the targeted waters are appropriate for TMDL development in this timeframe.

Consultation with Other Agencies

EPA initiated informal consultation with the Services through a letter sent on March 26, 2010, EPA. This letter included a hard copy of the draft 2010 Integrated Report as well as the website link. A copy of the final 2010 Integrated Report and a Biological Evaluation (BE) was sent to the Services on August 5, 2010. EPA concluded that approval of the 2010 Maryland Section 303(d) List will result in the identification of impaired waters, which may in turn lead to establishment of TMDLs or other measures to attain and/or maintain applicable water quality standards. Therefore, EPA approval of the Section 303(d) List would benefit, and is not likely to adversely affect, listed species and their critical habitat.

However, EPA encourages MDE to consider the presence of endangered and threatened species when setting priorities for monitoring and/or TMDL development.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

SUBJECT: Endangered Species Act Section 7(d) Determination for
the 2010 Maryland Section 303(d) List

FROM: Larry Merrill, Associate Director
Office of Standards Assessment and TMDLs (3WP30)

TO: Jon M. Capacasa, Director
Water Protection Division

This memorandum documents my determination that EPA's decision to approve the State of Maryland's 2010 Section 303(d) List ("the List") subject to completion of an Endangered Species Act (ESA) consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) is consistent with Section 7(d) of the ESA. I request that you concur with this determination.

Maryland submitted the final List to EPA on July 15, 2010. EPA is under statutory obligation to approve the List in a timely fashion. EPA's approval of this List is the final step of the biannual listing cycle and will provide the most current and accurate inventory of water quality-limited segments for use by EPA, MDE, environmental groups, and the general public. The List is actively used by the Agencies in our water quality planning activities, including Total Maximum Daily Load (TMDL) development. Further, EPA's timely approval of the List will allow EPA to meet its statutory obligations under the Clean Water Act and allow EPA and MDE to proceed with TMDL development and other studies in order to address the impairments contained on the List.

I recommend that EPA approve the List before completion of the final round of ESA consultation with FWS and NMFS regarding this List. Pursuant to Section 7(d) of the ESA, this action would not constitute an irreversible or irretrievable commitment of resources that has the effect of foreclosing the formulation, or implementation, of reasonable and prudent alternatives which would avoid violating Section 7(a)(2) of the ESA. EPA retains the authority to approve water quality analyses submitted by Maryland in order to list or delist specific waterbody-pollutant combinations. Also, additions or deletions to the List can be made between listing cycles, if necessary, or in the subsequent 2-year listing cycle. EPA also retains the authority to work with Maryland to modify Maryland's priorities or TMDL schedule for those waters providing habitat for threatened and endangered species.

Since March 26, 2010, EPA has communicated with the Services to initiate informal consultation. Notice of internet availability of the draft and a copy of the final lists were sent to the Services on March 26, 2010, and August 5, 2010, respectively. The biological evaluation was sent to NMFS and the USFWS on August 5, 2010.

This biological evaluation concludes that approval of the 303(d) List would benefit and is not likely to adversely affect, listed species and their critical habitat in Maryland. Based upon our communications, analysis, and past experience, we anticipate that EPA will be able to resolve any comments that we may receive from the Services and to obtain concurrence with EPA's biological evaluation.

Therefore, for the reasons provided above, I recommend that you concur with this Section 7(d) determination.

_____ I DO NOT CONCUR WITH SECTION 7(d) DETERMINATION

✓ _____ I CONCUR WITH SECTION 7(d) DETERMINATION

3/22/11
DATE

Catherine A. Sebasty for
JON M. CAPACASA, DIRECTOR
WATER PROTECTION DIVISION