



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
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NEW YORK, NY 10007-1866

Bruce Friedman, Director
Water Monitoring and Standards
New Jersey Department of Environmental Protection
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Dear Mr. Friedman:

The New Jersey Department of Environmental Protection (NJDEP) conducted a special review of the New Jersey Surface Water Quality Standards (NJSWQS) and, as a result, on April 6, 2020, adopted revised water quality standards, at N.J.A.C. 7:9B-1.4 and N.J.A.C. 7:9B-1.15. On June 4, 2020, pursuant to Section 303(c) of the Clean Water Act (CWA), 33 U.S.C. § 1313(c), and the EPA's implementing regulations, at 40 CFR Part 131, New Jersey submitted these revised water quality standards to EPA for review. The submission was accompanied by a letter, dated May 19, 2020, from the New Jersey Deputy Attorney General Dave A. Tuason, certifying that the revisions were adopted in accordance with New Jersey law. The EPA completed its review of these revisions and considered the following documents in its review:

1. A letter, dated May 19, 2020, from the New Jersey Deputy Attorney General Dave A. Tuason, certifying that the standards were duly adopted pursuant to New Jersey law;
2. The notice of proposed rulemaking, published on March 4, 2019, in the New Jersey Register. This notice included a notification of the public hearing; and,
3. The notice of adoption of final rulemaking, published on April 6, 2020, in the New Jersey Register. This notice included New Jersey's responses to public comments received on the proposed rulemaking.

The revisions to the NJSWQS enhance and improve the NJSWQS program, and include:

1) The upgrade of 600 river miles to the Category One (C1) antidegradation designation (N.J.A.C. 7:9B-1.15). Of these, 547 river miles were upgraded to C1 based on exceptional ecological significance due to an exceptional aquatic community and/or supporting endangered and threatened species, and 53 river miles were upgraded to C1 based on exceptional fisheries resources. A map of the C1 waters can be found at: <https://www.state.nj.us/dep/wms/bears/2020C1upgrade.html>

C1 waters, defined at N.J.A.C. 7:9B-1.14, are waters designated for protection from measurable changes in water quality based on exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resource(s) to protect their aesthetic value (color, clarity, scenic setting) and ecological integrity (habitat, water quality, and biological functions).

For this rulemaking, NJDEP evaluated data collected on all Category Two (C2) waters in the State and focused on upgrading waterbodies to C1 designation when waterbodies met the criteria for exceptional ecological significance and/or exceptional fisheries resources. In accordance with the definition of “exceptional ecological significance,” at N.J.A.C. 7:9B-1.4, a waterbody is considered to be of exceptional ecological significance, and, thus, appropriately designated for C1 protection, if it satisfies one of two identified criteria. The first is based on the presence of suitable habitat for one or more of seven identified endangered or threatened species and a documented occurrence of at least one of the species. The second is based on the presence of an exceptional aquatic community, which is a waterbody with a nonimpaired benthic macroinvertebrate community and two of the following: (1) optimal habitat; (2) excellent fish community; (3) water quality data that demonstrates compliance with aquatic life criteria; or (4) a maximum percentage of impervious surface. In accordance with the definition of “exceptional fisheries resource(s),” at N.J.A.C. 7:9B-1.4, streams classified as trout production (TP) waters are exceptional fisheries resources, and thus, appropriately designated for C1 protection. Through stream sampling (fish surveys), 53 river miles were found to have naturally reproduced trout in their first year of life (young of the year or YOY), were classified as TP waters and therefore, were upgraded to C1 protection.

2) The reclassification of 32 waterbodies (N.J.A.C. 7:9B-1.15(d); N.J.A.C. 7:9B-1.15(f); N.J.A.C. 7:9B-1.15(g); N.J.A.C. 7:9B-1.15(i)):

- 9 waterbodies revised from FW2-TM(C1) to FW2-TP(C1);
- 7 waterbodies revised from FW2-TM- FW2-TP(C1);
- 3 waterbodies revised from FW2-NT(C1) to FW2-TM(C1);
- 4 waterbodies revised from FW2-NT to FW2-TP(C1);
- 5 waterbodies revised from FW2-NT(C1) to FW2-TP(C1);
- 1 waterbody revised from FW2-TP to FW2-TP(C1);
- 1 waterbody revised from FW2-TM to FW2-NT(C1);
- 1 waterbody revised from FW2-TP(C1) to FW2-TM(C1); and,
- 1 waterbody revised from FW2-NT to FW2-TM.

The reclassifications were based on trout sampling data provided by the NJDEP Bureau of Freshwater Fisheries and used by the NJDEP to determine whether a waterbody should be classified as a trout production (TP), trout maintenance (TM) or non-trout (NT) water. When waterbodies are surveyed and found to have naturally reproduced trout in their first year of life (young of the year or YOY), they are classified as TP waters. When a waterbody supports adult trout and YOY trout are absent, they are classified as TM or non-trout NT waters, depending upon the stream’s total fish population, including trout-associated species.

3) An amendment to the definition of "Exceptional ecological significance" (N.J.A.C. 7:9B-1.4). The NJDEP updated the definition of exceptional ecological significance to reflect that the Department’s Endangered and Nongame Species Program utilizes the Biotics database to verify the occurrence of endangered and threatened species. The NJDEP also amended the definition to clarify that the two percent or less impervious surface standard is applicable to HUC 14’s that are less than five square miles in size, with the 10 percent limit applicable to HUC 14’s that are five square miles in size or greater.

The definition was amended as follows, adding the language in bold:

Exceptional Ecological significance means:

1. Waterbodies with suitable habitat verified by the Department to support Bog Turtle, Brook Floater, Dwarf Wedgemussel, Eastern Pondmussel, Eastern Lampmussel, Green Floater, and/or Triangle Floater and documented occurrence(s) of at least one of these species verified by the Department for inclusion in the **Biotics database**; or
2. A waterbody supporting an exceptional aquatic community as demonstrated by a nonimpaired benthic macroinvertebrate community as measured by the Department's Rapid Bioassessment Protocol (see <http://www.state.nj.us/dep/wms/bfbm/rbinfo.html>) and at least two of the following factors:
 - i. Optimal habitat as measured by the Department's Stream Habitat Assessment (see <http://www.state.nj.us/dep/wms/bfbm/rbinfo.html>);
 - ii. Excellent fish community as measured by the Fish Index of Biotic Integrity (see <http://www.state.nj.us/dep/wms/bfbm/fishibi.html>);
 - iii. Water quality data that demonstrates compliance with aquatic life criteria pursuant to N.J.A.C. 7:9B-1.14(d) for dissolved oxygen, temperature, total phosphorus, and total suspended solids; or
 - iv. Impervious surface that is:
 1. Less than two percent for a HUC 14 of **less than** five square miles; or
 2. Less than or equal to 10 percent for a HUC 14 of greater than or equal to five square miles.

4) The following revisions to New Jersey's surface water classifications (N.J.A.C. 7:9B-1.15). The classifications of New Jersey's waters are organized by major drainage basin with the waters within each basin listed alphabetically and segment descriptions of those waters beginning from the headwaters and proceeding downstream:

- Under the Atlantic Coastal Basin, NJDEP updated the name Marmora Wildlife Management Area to Cape May Coastal Wetlands Wildlife Management Area, to reflect the current name of the area, in the segment descriptions of segments of the following waters: Big Elder Creek, Edward Creek, Go Through Creep, Little Scotch Bonnet and Taugh Creek. (N.J.A.C. 7:9B-1.15(c));
- Under the Atlantic Coastal Basin, NJDEP deleted "mapped as C1 waters by the department" from the segment descriptions for segments of the Atlantic Ocean. Waters "mapped as C1 waters by the Department" refers to the USGS quadrangle maps that the NJDEP no longer uses. (N.J.A.C. 7:9B-1.15(c));
- Under the Atlantic Coastal Basin, NJDEP consolidated the classifications of tributaries to Shark River Brook with the classifications of the segment of the mainstem of Shark River Brook into which they flow, where the classification and antidegradation of the tributaries and the segment into which they flow are the same. As a result, NJDEP deleted the following classifications for tributaries to Shark River Brook: Robins Swamp Brook (Neptune), Sarah Green Brook (Neptune), South Brook (Wall) and Webllys Brook (wall). (N.J.A.C. 7:9B-1.15(c));
- Under the Upper Raritan River and Raritan Bay Basin, NJDEP corrected the segment description for the Plainfield segment of Green Brook to "Route 22 Bridge to Bound Brook." (N.J.A.C. 7:9B-1.15(g));
- Under the Atlantic Coastal Basin, NJDEP added the water Old Robins Branch and deleted that water from the Lower Delaware River Basin, to reflect its correct location (N.J.A.C. 7:9B-1.15(c));
- Under the Upper Delaware River Basin, NJDEP corrected the spelling of "Manunka Chunk," in the segment description for the following segment of Beaver Brook: (Hope) - Confluence with Honey Run to Pequest River, including all unnamed tributaries, except tributary East of Manunka Chunk. (N.J.A.C. 7:9B 1.15(d));

- Under the Upper Delaware River Basin, NJDEP added “downstream boundary of” to the segment description for the Hardwick segment of Blair Creek. (N.J.A.C. 7:9B-1.15(d));
- Under the Upper Delaware River Basin, NJDEP revised the segment descriptions of the following two segments of Mountain Lake Brook: (White) - Mountain Lake dam to Lake Bog Preserve and (White) - Lake Bog Preserve Boundary to Pequest River. These segments descriptions are now described as: (White) – Mountain Lake dam to Lake Bog Preserve Lower Boundary and (White) – Lake Bog Preserve lower Boundary to Pequest River (N.J.A.C. 7:9B-1.15(d));
- Under the Upper Delaware River Basin, NJDEP deleted “below” from the description of the Paulins Kill Lake segment of the Main Stem of Paulins Kill. (N.J.A.C. 7:9B-1.15(d));
- Under the Upper Delaware River Basin, NJDEP corrected the classification for Swartwood Creek to reflect its FW2-NT(C1) classification. (N.J.A.C. 7:9B-1.15(d));
- Under the Lower Delaware River Basin, NJDEP corrected the spelling of “Finley” in the segment descriptions for the Beals Mill and Upper Deerfield segments of the Cohansey River. (N.J.A.C. 7:9B-1.15(e));
- Under the Lower Delaware River Basin, NJDEP deleted the reference to Union Lake Wildlife Management Area from the segment description for the Willow Grove segment of the Main Stem of the Maurice River. (N.J.A.C. 7:9B-1.15(e));
- Under the Lower Delaware River Basin, NJDEP corrected the spelling of Menantico Creek and listed Menantico Creek after Maurice River since waterbodies are listed alphabetically. (N.J.A.C. 7:9B-1.15(e)); and,
- Under the Lower Delaware River Basin, NJDEP capitalized SCOTLAND RUN. (N.J.A.C. 7:9B-1.15(e)).

In its notice of proposed rulemaking, published on March 4, 2019, in the New Jersey Register, NJDEP provided notification of a public hearing to receive public input and comment on the proposed rulemaking. The public hearing was held on April 8, 2019. Based on the EPA’s review of NJDEP’s revised water quality standards, the revised water quality standards and NJDEP’s procedures to adopt the revised water quality standards are consistent with the CWA and EPA’s implementing regulations, and are approved by EPA, pursuant to Section 303(c) of the CWA and 40 CFR Part 131.

Section 7(a)(2) of the Endangered Species Act, 16 U.S.C. § 1536(a)(2), requires that federal agencies, in consultation with the U.S. Fish and Wildlife Service (FWS) and/or the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS), ensure that their actions are not likely to jeopardize the existence of federally-listed species or result in the adverse modification of designated critical habitat of such species. In a letter, dated February 11, 2020, the FWS provided written concurrence that the above revisions to the NJSWQS are not likely to adversely affect threatened/endangered species (Enclosure). Consultation with NMFS is not required for this action because the only revised WQS for waterbodies under NOAA’s jurisdiction are revisions to antidegradation designations, and the Agency lacks relevant discretion to implement measures that would benefit listed species in connection with antidegradation policy approvals¹.

¹ Antidegradation Policy Approvals and Endangered Species Act Consultations, Memorandum from Geoffrey Grubbs (1/27/05)
<https://www.epa.gov/wqs-tech/reference-library-water-quality-standards-policy-and-guidance-documents>

The EPA Region 2 looks forward to continuing to work with NJDEP to further improve the NJSWQS. If you have any questions, please call me at (212) 637-4125 or have your staff contact Alyssa Arcaya, Chief, Clean Water Regulatory Branch at (212) 637-3730.

Sincerely,

Javier E. Laureano
7/29/2020 9:36am NY, NY

Javier Laureano, M.P.A., Ph.D.
Director
Water Division

Enclosure