



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2018-0378; FRL-9979-73-OGC]

### Proposed Stipulated Order of Partial Dismissal, Endangered Species Act Claims

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Proposed Stipulated Order of Partial Dismissal; Request for Public Comment.

**SUMMARY:** In accordance with the Environmental Protection Agency (EPA) Administrator's October 16, 2017, Directive Promoting Transparency and Public Participation in Consent Decrees and Settlement Agreements, notice is hereby given of a proposed stipulated order of partial dismissal to address several claims in a lawsuit filed by the Northwest Environmental Advocates ("Plaintiff") in the United States District Court for the Western District of Washington: *Northwest Environmental Advocates v. United States Environmental Protection Agency*, No. 2:14-cv-0196. On September 1, 2015, Plaintiff filed an amended complaint alleging, inter alia, that the United States Environmental Protection Agency ("EPA") failed to perform duties mandated by the Endangered Species Act ("ESA") to consult with the Fish & Wildlife Service and the National Marine Fisheries Service (collectively "the Services") regarding water quality standards adopted by Washington and approved by the EPA. The proposed stipulated order of partial dismissal would set a deadline for EPA to complete an ESA effects determination for its February 11, 2008, approval of Washington's revisions to the State's ammonia criteria and, as appropriate, request initiation of any necessary ESA consultation with the Services.

**DATES:** Written comments on the proposed stipulated order of partial dismissal must be received by **INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION**.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-HQ-OGC-2018-0378, online at [www.regulations.gov](http://www.regulations.gov) (EPA’s preferred method). For comments submitted at [www.regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](http://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA generally will not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Thomas Glazer, Water Law Office (7426N), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564-0908; email address: [Glazer.Thomas@epa.gov](mailto:Glazer.Thomas@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Additional Information About the Proposed Stipulated Dismissal**

On February 10, 2014, Plaintiff filed suit in the federal district court for the Western District of Washington. Plaintiff's original Complaint brought five claims alleging violations of ESA section 7, CWA section 303(c), and the Administrative Procedures Act ("APA"). Following EPA's motion to partially dismiss on statute of limitations grounds, NWEA filed an Amended Complaint on September 1, 2015, which alleges four broad sets of claims. Plaintiff's first claim alleges that, on February 11, 2008, EPA approved revised State of Washington Department of Ecology (Washington) water quality standards involving metals conversion factors and ammonia criteria without initiating consultation under ESA section 7(a)(2) in contravention of the ESA. Plaintiffs' second claim alleges that the listing of new species, designation of new critical habit, and Washington's completion of a 2009 study regarding dissolved oxygen all triggered an obligation for EPA to reinitiate consultation on various natural conditions criteria provisions pertaining to temperature and dissolved oxygen that EPA approved on February 11, 2008.

The proposed stipulated order of partial dismissal would resolve these ESA claims. As described in paragraph three of the proposed stipulated order of dismissal, within three years, EPA will complete an ESA effects determination pursuant to 50 CFR 402.14(a) for its February 11, 2008 approval of Washington's revisions to the State's ammonia criteria and, as appropriate, request initiation of any necessary ESA consultation with the Services. If during that time, Washington submits revisions to the ammonia criteria and EPA intends to approve, EPA will complete an effects determination and, if appropriate, request initiation of any necessary ESA consultation with the Services within one year of submission or three years of the Court's approval of the stipulated order of dismissal, whichever is later. Portions of claims three and

four would also be dismissed in exchange for commitments by Washington, but EPA is not taking comment on those aspects of the proposed stipulated order of partial dismissal. See the proposed stipulated order of partial dismissal for specific details.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the resolution of the ESA claims contained in the proposed stipulated order of partial dismissal from persons who are not named as parties or intervenors to the litigation in question. If so requested, EPA will also consider holding a public hearing on whether to enter into the proposed stipulated order of partial dismissal. EPA or the Department of Justice may withdraw or withhold consent to the proposed stipulated order of partial dismissal if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this proposed stipulated order of partial dismissal should be withdrawn, the terms of the proposed stipulated order of partial dismissal will be affirmed and entered with the Court.

## **II. Additional Information About Commenting on the Proposed Stipulated Order of Partial Dismissal.**

### *A. How can I get a copy of the proposed stipulated order of partial dismissal?*

The official public docket for this action (identified by EPA-HQ-OGC-2018-0378) contains a copy of the proposed stipulated order of partial dismissal. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday

through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available on EPA’s website at [Insert URL] and also through [www.regulations.gov](http://www.regulations.gov). You may use [www.regulations.gov](http://www.regulations.gov) to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.” It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at [www.regulations.gov](http://www.regulations.gov) without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket.

EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

*B. How and to whom do I submit comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment

and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the [www.regulations.gov](http://www.regulations.gov) website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: June 11, 2018.

Steven Neugeboren,  
Associate General Counsel.  
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