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# Habitat Hotline Atlantic

Issues of Concern for Atlantic Marine Fish Habitat

October - December 1995, Issue Nos. 10 & 11

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## Mitigation Banking for Wetlands: *Questionable Investment or 'Money-in-the-Bank' ?*

Mitigation banking for wetlands has been hailed as the policy that will help transform federal wetlands protection into a process with which developers, environmentalists, and managers can all coexist. Frequent concerns have been voiced about this type of policy, especially in the face of limited past success for many wetlands mitigation projects. In 1994, President Clinton formed an interagency team to develop federal guidance that would clarify the manner in which mitigation banks could be used to satisfy mitigation requirements. But before we go further, let's review some of the basic premises incorporated into the concept of mitigation banking.

Depending upon the conditions outlined in the required permit, impacts to wetlands resulting from land development may be offset or 'mitigated' by actions implemented by the developer such as creating new wetlands, expanding existing wetlands, or improving degraded wetlands. As long as mitigation actions are implemented, impacts to wetlands on the developed site are allowed. One of the main complaints developers have about this process is the amount of time it takes for a permit to be approved. The concept of 'mitigation banking' was realized in part to alleviate some of the down time for developers necessitated by the wetland permitting process.

Mitigation banks work like this - by performing wetland creation or improvement projects which are not associated with any required mitigation, developers

are allowed to 'bank' credits for those projects. Examples might include a project which restores a wetland and is totally unassociated with any other mitigation project, or the completion of a mitigation project which exceeds the requirements in the initial agreement. The value of the additional work is exchanged for credits in a mitigation bank. The next time the developer initiates a project with wetland impacts, the credits stored in the mitigation bank may be used instead of implementing a new mitigation project.

Most mitigation banks are much more complex, with credits divided into categories based on wetland functions, but this gives you the general idea. It is anticipated that mitigation banking will encourage large scale wetlands development or restoration projects because of the inherent improvements in cost return for fewer larger projects when compared with many smaller projects. This is expected to benefit wetland functions within the ecosystem as well.

### Mitigation Concerns

Regardless of their association with a mitigation bank, mitigation projects in general have been employed frequently, with variable success. The success rate of mitigation is one of the greatest concerns voiced by both environmentalists and wetland managers, and one of the prime reasons for the President's attention. Recent research in the state of Florida shows that only 27% of constructed mitigation sites were either actually or likely to be



### **Mitigation Banking** (continued from page 1)

ecologically successful. Moreover, 34% of the mitigation required had not been constructed, and 81% of the constructed mitigation projects were not in compliance with designated criteria for topography, vegetation, configuration, acreage and/or soils. Ecological success was much higher for marine or estuarine sites than for freshwater, and it was predicted that with remedial action, 76% of marine or estuarine sites could become ecologically successful.

In the past, mitigation projects were not necessarily focused on maintaining the integrity of wetland functions in an ecosystem; however, more recent agency policies have moved toward the requirement that mitigating activities attempt to replace the actual value and function within the watershed of the lost or degraded wetland. The large, centralized projects which are expected to be favored by mitigation banking operations, may enhance the development of better functioning wetlands in an ecosystem context as well.

Concerns among the regulated public have focused more on general wetlands issues. Recent economic growth has increased land development pressures, which in turn have upped the pressures to more rigorously regulate and protect wetlands. Government regulators have generated a great deal of uncertainty and concern among the regulated community for a number of reasons. Inconsistent agency application of statutes and confusion among regulators in the identification and delineation of wetlands have eroded the confidence of the regulated community as to the accuracy of agency decisions. These conflicts have been further exacerbated by budget shortfalls within agencies which frequently result in extended permitting time frames. Mitigation banking holds promise to shorten permitting time frames, and help make parts of the permitting process more predictable.

### **Federal Guidance**

The purpose of the guidance document developed by the President's Interagency Working Group is to provide the needed direction for federal regulators and their state counterparts on how to establish, use, and operate mitigation banks consistent with the laws currently in effect. The guidance will also provide developers with the necessary information for evaluating the advantages of using mitigation banking. The guidance is not meant to establish binding standards, nor was it intended to address every issue pertinent to mitigation banking. The working group included representatives from the Army Corps of Engineers, Environmental Protection Agency, National Marine Fisheries Service, Natural Resources Conservation Service, and the National Oceanic and Atmospheric Administration. The public comment period for the draft document ended April 20, 1995; the final document was released in Novem-

ber, and appeared in the Federal Register on Nov. 28, 1995.

One of the most significant sections of the guidance document deals with the long term management, monitoring and remediation of mitigation sites. Past mitigation projects have suffered from the insufficient measures taken to identify the party or parties responsible for the long term success of the project. The draft guidance clearly provides for assurances that the long term wetland conservation interests of projects be supported legally through deed restrictions, conservation easements, or other means. The document recommends that the type of monitoring and maintenance required be clearly outlined in a Memorandum of Agreement, along with the standards for project success. The guidance also recommends that financial assurances, such as performance bonds or escrow accounts be placed to cover any cost of remedial action and provide for the functional operation of the bank in the event the project is unsuccessful.

In short, proponents argue that the frequent lack of success found for mitigation projects is one of the strongest arguments in support of mitigation banking. Proponents contend that since mitigation has often failed when performed by those less interested in wetland success, the answer is to place that responsibility in the hands of those holding a financial incentive to create successful projects. Wetlands legislation recently passed in the House of Representatives and introduced in the Senate both incorporate the concept of mitigation banking. The Clinton Administration's 1993 comprehensive plan to enhance wetlands protection while making wetland regulations more fair, flexible and effective also endorsed the use of mitigation banks, hailing them as a market-based way for landowners to effectively and efficiently compensate for wetlands losses authorized under federal programs. With the recent development of the Administration's guidance document, and the legislative endorsement, mitigation banking certainly seems to be here for a while, if not to stay.

For a copy of the final guidance, call the Environmental Protection Agency's Wetlands Hotline at 1-800-832-7828, or contact Dianne Stephan at 202/289-6400.

### **References:**

- Lashley, D.L. 1995. Guiding mitigation banking. *National Wetlands Newsletter*, November-December 1995, Environmental Law Institute, Washington, DC. pp 1, 18-21.
- Redmond, A.M. 1995. Florida moves to mitigation banking. *National Wetlands Newsletter*, November-December 1995, pp 14-17.
- Zinn, J.A. and C. Copeland. 1993. *Wetlands Issues in the 103rd Congress*. Congressional Research Service Issue Brief, Order Code IB93025, Library of Congress, Washington, DC. 11 p.

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# Management of Atlantic Coast Marine Fish Habitat: A Workshop for Habitat Managers

Fisheries and management of marine fish habitat are inherently intertwined. Fish habitat is considered synonymous with all the things a fish needs to survive; thus habitat management decisions can severely impact the resources upon which fish depend. A workshop will be held by ASMFC March 11-14 in Philadelphia, Pennsylvania to address fish habitat management.

This workshop is designed specifically for Atlantic coastal Habitat Managers, i.e. those professionals

working for state, local or federal governments who are responsible for reviewing and/or approving the activities that affect marine fish habitat. The primary goals of the workshop are to facilitate cooperation between fishery managers and habitat managers on the management of fish habitat, and heighten the consideration of impacts to fisheries during habitat management deliberations. This will be accomplished by:

1) providing an opportunity for habitat managers to learn about the

fisheries management process, innovative habitat management policy implementation, and the impacts of fish habitat loss, 2) identifying the information needs of habitat managers; and 3) developing recommendations from habitat managers for improving the management of fish habitat.

For further information on the workshop, please fill out the form below.

**Please send me further information about the Habitat Managers Workshop.**

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Phone:** \_\_\_\_\_ **Email:** \_\_\_\_\_

**Please return this form to:**  
**Habitat Coordinator**  
**Atlantic States Marine Fisheries Commission**  
**1444 Eye Street, Sixth Floor, NW**  
**Washington, DC 20005**

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## Fisheries and Pollution Conference

*No easy answers about how pollution impacts marine fish populations.*

A conference on the population level effects of marine contamination, *Fisheries and Pollution* was held October 12-13 in Baltimore, Maryland. Despite long-standing concerns about environmental quality, the link between pollution and fisheries declines has been limited. Environmental managers are in the early steps of evaluating the role of pollution in fish population fluctuations, and the importance of incorporating toxicological information, from biochemical to ecological, into fisheries management. The purpose of the conference was to provide a forum for the discussion of current research, fisheries management relevance, and economic consequences of marine pollution.

Of particular note during the conference were the presentations of John Stein, Jeff Levinton, and Judith Weiss. Dr. Stein reviewed work in the Puget

Sound area of Washington State in which impaired reproduction of English sole was quantified using population modeling to determine population level effects. Both Dr. Weiss and Dr. Levinton reported genotypic changes to organisms as a result of chronic exposure to pollution. Dr. Weiss reported that killifish (*Fundulus heteroclitus*) could adapt to the presence of methylmercury in their environment, however, as a result they appeared to become less effective predators.

A proceedings of the conference will be published in *Transactions of the American Fisheries Society*. The conference was cohosted by NOAA's Coastal Service's Center and National Marine Fisheries Service, the University of Maryland Biotechnology Institute, the Center for Marine Conservation, and consultants Rifkin and Associates.

## Legislative Update: Clean Water Act, Coastal Zone Management Act, Magnuson Act, and EPA Appropriations

**Clean Water Act** - The Clean Water Act Reauthorization Bill (H.R. 961) passed the House in May. An omnibus reauthorization bill has not yet been introduced in the Senate, although the Senate Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety has concluded hearings on S.851, a bill to amend the wetland provisions of the Clean Water Act. The first Senate hearing on the Clean Water Act is scheduled for December 13, 1995. The debate will continue into 1996, during the second session of the 104th Congress.

**Magnuson Act** - The Magnuson Act authorizes the process for the management of marine fisheries in federal waters.

H.R. 39, a bill to reauthorize this act, passed the House on October 18th by a resounding vote of 388-37. The bill contains a number of provisions designed to strengthen habitat protection for federally managed fish species (see *Habitat Hotline Atlantic* No. 9). S. 39, the Senate reauthorization bill, was introduced in early January by Senator Stevens (R-AK), Chair of the Senate Subcommittee on Oceans and Fisheries. The bill has been debated at numerous field hearings, but committee action has yet to be seen.

**Coastal Zone Management Act** - The House version of the Coastal Zone Management Act (CZMA) reauthorization, H.R. 1965, was passed out of the Sub-

committee on Fisheries, Wildlife and Oceans on October 18. A Senate version has yet to be introduced.

**EPA Budget** - The budget bill for Veterans Affairs, Housing and Urban Development, and Independent Agencies (including the Environmental Protection Agency) is on its way back to Congress after a Presidential veto on December 18th. The vetoed bill cut EPA's budget by 21%. President Clinton signed the veto while surrounded by a group of school-aged children, citing the negative impacts to the environment and health of future generations. In addition to budget cuts, some of the riders attached to the bill would have restricted EPA from enforcing Clean Water Act provisions.

## Three Atlantic Estuaries Added to National Estuary Program

*Maryland, New Hampshire, and New Jersey estuaries to be protected under cooperative program.*

This summer, a total of seven estuaries in eight states were added to the National Estuary Program of the Environmental Protection Agency. The three Atlantic estuaries joining the twenty-one estuaries already included in the program are: Maryland Coastal Bays, New Hampshire Estuaries, and Barnegat Bay, New Jersey. A total of 28 estuaries are now included in this cooperative program.

Each of the selected areas

was nominated by the governor of the respective state, who also committed a 25% match of all federal funds provided to the individual programs. Participation in the National Estuary Program (NEP) makes each estuary eligible for \$300 thousand to \$500 thousand a year in federal funds for three years. These funds are used to bring representatives from government agencies, local residents, business leaders, educators and

scientists together to develop a comprehensive plan to protect and revitalize the estuary. The funding also supports the development of new technologies and innovative programs.

After completion of management plans, the estuary programs will be eligible for additional funding to help support activities related to plan implementation. The existing estuary programs have addressed a wide (continued on p. 6)

### *The New Atlantic Members of the National Estuary Program*

#### **Maryland Coastal Bays**

**Setting:** Maryland's Coastal Bays consist of a group of embayments along the Atlantic shore of the state, separated from the Atlantic Ocean by barrier beaches. These include the Assawoman, Isle of Wight, Sinepuxent and Chincoteague Bays. Collectively, these shallow embayments cover an area of about 125 square miles. The terrain of adjacent land is relatively flat, and the watershed draining to the bays is approximately 185 square miles.

**Priority Issues:** Six priority issues for management have been identified: eutrophication, habitat modification and losses, decline in finfish populations, uncertainty about movements and effects of toxics in the system, pathogen contamination leading to closures of shellfish beds, and suggestions of adverse impacts from water-based human activities.

#### **New Hampshire Estuaries**

**Setting:** The New Hampshire Estuaries, including Great Bay and Hampton Harbor, make up most of the 150 miles of tidal shoreline in the state. Great Bay has inflow from seven major rivers while Hampton

Harbor is a tidally-dominated, bar-built estuary.

**Priority Issues:** Shellfish resources are a major interest in both Great Bay and Hampton Harbor. The project will focus on four aspects of shellfish resources: bed closure or restriction because of pathogen contamination, effects of non-point pollution, shellfish aquaculture, and institutional barriers.

#### **Barnegat Bay, NJ**

**Setting:** Barnegat Bay and Little Egg Harbor, contiguous water bodies which make up this component, are located in Ocean County, north of Atlantic City, New Jersey. The 105 square miles of the combined areas include a portion of the Intracoastal Waterway. The area draining to the bay and harbor consists of 555 square miles of land varying in stages of development and protection.

**Priority Issues:** Prior reviews of the environmental health of the bay and harbor led to the definition of two major priority areas for management: balancing various user needs and the needs of wildlife ecosystem health, and managing ecosystem health and sustainability by controlling nonpoint source pollution and open space/habitat loss and degradation. *Adapted from Coastlines, 1995, Vol. 5, No. 3.*



## Three Atlantic Estuaries

(continued from p. 5)

range of issues in their planning efforts, including the reduction of contamination from runoff, prevention of shoreline erosion, creation of new marshlands, reduction of hazardous wastes generated by industrial activities, improvement of habitat for economically important species and other wildlife, and improvement of local economies. In areas where the resultant plans have gone into implementation, EPA and the estuary programs have identified numerous successes.

The NEP was established in 1978 by the US Congress to identify and protect nationally significant estuaries. EPA selected the new additions based on the nature and scope of environmental threats, consensus on likely corrective actions, demonstration of strong working relationships among state and local environmental programs and local residents, as well as demonstration of strong support for the effort. The seven areas incorporated into the program this year comprise the fifth, and largest group to join since the Program's inception. For further information, contact Steve Taylor at 202/260-6578. *Adapted from Coastlines, 1995, Vol. 5, No. 3.*



## Resources

***Contaminated Sediments News*** is a newsletter produced by the Environmental Protection Agency to facilitate information exchange among parties interested in contaminated sediment issues. To be added to the mailing list, FAX your request to Melissa Bowen at 703/385-6007.

***National Listing of Fish Consumption Advisories*** - A new database which includes all available information describing State-issued fish consumption advisories in the U.S. is now available from the Environmental Protection Agency. The National Listing of Fish Consumption Advisories (NLFCA) contains all advisories provided to the EPA as of September, 1994.

Consumption advisories are recommendations to limit consumption of certain species of fish taken from waters where chemical contaminants are present. The database includes information such as the type of advisory (restricted consumption, fishing ban, etc.), the species of fish, the chemical contaminants, segments of the population, the geographic location of each advisory, and dates of issue.

The database is PC compatible and requires a Microsoft Windows environment to run. To obtain the five 3.5" diskette set free of charge request document no. EPA-823-C-95-001 from the USEPA, National Center for Environmental Publications and Information, 11029 Kenwood Rd., Cincinnati, Ohio, 45242, phone 513/489-8190. For further information on the database, contact Jeff Bigler at EPA's Fish Contamination Project, 202/260-1305.

***Handle with Care: Your Guide to Preventing Water Pollution*** - This citizen's guide to protecting water quality explains how to pollution proof your home and take personal responsibility for pollution prevention. Topics include yard runoff, septic tanks, household chemicals, car care, pet waste, erosion, and yard maintenance. A national source list for further information is included. Available for \$9.95 from the Terrene Institute, 1717 K Street NW, Washington, DC 20006, phone 202/833-8317.

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## Using Biomarkers to Detect Marine Contamination

Some of the greatest challenges concerning marine pollution include the detection and measurement of contaminants in the environment, and the quantification of their effects on living organisms. However, some tests for detection of contaminants are very expensive, for example, measurement of chlorinated dioxins can cost more than \$1000 per sample. In many cases, scientists are not only interested in the amount of a contaminant present in an organism or the environment, but its effects on the organism as well. For these and other reasons, scientists are turning to biomarkers for use in research on the presence or effect of marine contaminants.

The term 'biomarker' refers to the general category of indicators that can be found in an organism after exposure to foreign chemicals. Examples of these indicators include changes in the functioning of certain enzymes, changes in the amount of certain proteins present, or the chemical products resulting from the metabolism of certain contaminants. Because biomarkers are usually intimately linked with an organism's biochemical processes, a complete understanding of the organism's physiology is desirable.

In order to obtain a clearer understanding let's look at one example. A biomarker that has been well characterized and used extensively as an indicator of

environmental contamination is an enzyme known as cytochrome P4501A (for now, we'll simply call it CYP). This enzyme is important to vertebrates such as fish and mammals because it helps metabolize foreign compounds and synthesize and breakdown hormones. CYP is normally found in liver cells and the cells lining blood vessels. If vertebrates are exposed to dioxins, PCBs, or PAHs (all members of the family of environmental contaminants known as polychlorinated aromatic hydrocarbons), synthesis of CYP is increased. The increase in production of CYP can be used as an indicator that the organism has been exposed to one or more of these contaminants.

So far the application of biomarkers to real-world environmental problems has been limited. The development of simple and standardized methods to determine the presence of biomarkers is needed. Through a combination of basic laboratory research and validation in the field, biomarkers could come to play an increasingly important role in monitoring the health of the marine environment.

*Adapted from "Using Biomarkers to Detect Contamination of the Marine Environment" by Mark E. Hahn, Nor'easter, Volume 6, Number 1, Spring/Summer 1994.*

## Chesapeake Bay Continues to Improve

### *Record year for juvenile striped bass, bay grasses still rebounding*

According to the 1995 "State of the Bay" report, the nation's largest estuary is improving steadily in many areas, though land based environmental pressures continue. Most dramatic is the 75% increase in underwater grasses since 1976 and a record breaking year for juvenile striped bass.

According to the Director of the Environmental Protection Agency's Chesapeake Bay Program Office Bill Matuszeski, 12 years of effort by government, farmers, developers, watermen, and private citizens have really paid off. "What we don't know yet," said Matuszeski, "is whether this is a weak rally from a sick patient, or the beginning of a healthy recovery."

Other findings reported in the document include a

decline in both nitrogen and phosphorus levels in the bay. Lowered nitrogen levels are the result of new technologies being used by municipal wastewater treatment plants and industry. Phosphorus loading has decreased because of bans on detergents containing phosphorus and increases in wastewater treatment.

Concerns covered in the document include the long term decline in abundance of native waterfowl, and the shift to urban/suburban land use that is taking place in the watershed. For a copy of the report, contact the Chesapeake Bay Program Communications Office, 410/267-5758.

*Adapted from Coastlines, 1995, Vol. 5, No. 3.*

## Along the Coast

**New York** - Contaminated sediments dredged from Howland Hook by the Port Authority of New York and New Jersey were deemed too toxic for ocean disposal. At a cost of approximately \$18 million the sediments were shipped to Utah where they will serve as cover for a landfill. Sediment transportation was not without incident, however. The dewatered sediments were loaded onto barges which were towed to Corpus Christi, Texas. The sediments were then transported by rail to Utah. While offshore Charleston, SC, one of the barges became unstable and spilled some of its cargo. (See South Carolina, below).

**New Jersey** - a study has been implemented by the New Jersey Department of Environmental Protection to determine the effects of recreational piers on shellfish beds. Completion of the study is slated for the end of 1996. For further information, contact Jeff Norman at 607/748-2040.

**Delaware** - This summer Delaware Governor Thomas Carper signed a bill into law that will provide the mechanism for the establishment of a new automobile license plate, the sale of which will provide funding for the Delaware Estuary and Delaware Inland Bays Estuary Programs. The plates will sell for \$35, of which \$20 will go to the estuary programs.

**Maryland** - The Maryland Department of Natural Resources and National Marine Fisheries Service are working together to restore herring and shad spawning runs to Dorsey Run, a tributary of the Little Patuxent River. Removal of a private dam will open up 15 miles of stream. Because of suburban and urban impacts, water quality improvements

may be necessary prior to reintroduction of fish species.

**South Carolina** - Contaminated sediments from the Howland Hook dredging project in New York (see above) were spilled in nearshore coastal waters in mid-October. While enroute to Corpus Christi, a barge filled with these sediments became unstable off Charleston. The condition of the barge worsened while the vessel master attempted to bring it into port. To avoid sinking of the barge, the master grounded it in shallow water just outside of Charleston Harbor. A significant portion of the barge's contents (1500 tons) spilled into South Carolina waters. Testing has determined that the spilled sediments are relatively high in heavy metals. Results of dioxin testing will be available in mid-December.

**Georgia** - In Glynn County, public health advisories continue to be in effect for the consumption of fish, crabs, and bait shrimp caught in portions of the Turtle River and Pervis Creek. The area is contaminated with mercury and PCBs and is designated an EPA Superfund site.

**Florida** - The Office of Ecosystem Management of the Florida Department of Environmental Protection is actively working with the water management districts to promote and implement ecosystem planning and management. *Ecosystem Management News* is a newsletter facilitating this effort. To get on the mailing list, contact Jim Lewis at Florida Department of Environmental Protection, 3900 Commonwealth Blvd., MS 30, Tallahassee, FL, 32399-3000.





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## **Fishing Closure and Fish Kills Plague the Troubled Neuse River**

### *Council Formed to Plan the Road to Recovery*

The first meeting of the 54 member Neuse River Council took place on November 27 at the confluence of the Neuse and Trent Rivers in New Bern, North Carolina. The council was initiated to develop recommendations for improvements in Neuse River water quality, specifically addressing the nutrient enrichment that has resulted in recent algal blooms and fish kills.

This summer and fall, over 10 million fish died in the river because of low dissolved oxygen and the presence of the fish-killing dinoflagellate *Pfiesteria*. Nutrient inflows from agriculture, forestry, urban development, and other sources have resulted in algal blooms, which cause oxygen depletion upon decay. High nutrient concentration is thought to be conducive to *Pfiesteria* blooms as well. *Pfiesteria* kills fish and has health effects for humans, causing symptoms such as open sores and memory loss.

In response to public outcry during a large fish kill in October, health officials issued a formal warning to citizens, cautioning them to avoid contact with *Pfiesteria* by refraining from consuming or collecting fish with sores or other indications of disease, and advising them to physically stay away from fish kill locations. Moreover, a ten mile stretch of the Neuse was temporarily closed to commercial fishing in order to quell general concerns about the safety of North Carolina seafood. The river has since been reopened without further incident.

The North Carolina State Legislature is also working toward the Neuse's recovery. The newly developed North Carolina Senate Select Committee on River Water Quality and Fish Kills met earlier in November and requested that Governor Jim Hunt transfer \$500 thousand in reserve funds to the state's Department of Environment,

Health, and Natural Resources to improve water quality monitoring in the Neuse basin. An additional \$525 thousand was requested for the development of computer modeling efforts to determine the causes of the Neuse's problems.

The Neuse River Council, which is the first of its kind in the state, was formed based on recommendations from the Albemarle-Pamlico Estuarine Study, a six year, multi-million federal, state and local effort to identify and pose solutions to problems in the state's major coastal rivers and sounds. The Council is comprised of private citizens and municipal and county government representatives from the 17 counties that border the 200 mile long river. Governor Hunt and numerous state legislators have pledged support to this multi-faceted effort to identify and solve the water quality problems plaguing the Neuse River.

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## **Washington State Voters Nix Property Rights Legislation**

What has been considered the most radical property-rights law in the country was rejected by a citizen referendum last month in Washington State. Lawmakers passed the radical law last spring in response to what they perceived as a grass-roots movement. However, when the law was subjected to a citizen referendum in November, it gathered only 40% of the popular vote.

The law began as a citizen's initiative to the state legislature. After it was passed by lawmakers, a

second petition drive by opponents placed it on November's ballot.

The law was designed to require that the government pay landowners for losses incurred from regulations restricting development on private lands for the purpose of protecting the common good.

Opponents of the bill agreed that changes in state land use laws were needed; however, the law did not address other concerns, including the unknown costs of paying landowners and the perceived threat to zoning laws.



## ASMFC Takes Strong Positions on Federal Habitat Legislation

On November 2, 1995, the Atlantic States Marine Fisheries Commission adopted a number of positions to protect and sustain Atlantic coastal fisheries and habitat at its 54th Annual Meeting in Charleston, South Carolina. Adoption of these positions followed the recommendations of the Commission's Legislative Committee which convened three days earlier. A brief summary of the most significant actions taken follows.

**Clean Water Act** - In its first action, the Commission strongly opposed two congressional attempts to weaken water quality protections currently under the Federal Water Pollution Control Act, commonly known as the Clean Water Act (CWA). Earlier this year the House passed its version of H.R. 961, legislation which would reverse protections for water quality and fisheries habitat currently afforded under the Act by: (1) replacing some conservation provisions of current law with provisions allowing more flexibility in waste disposal; (2) mandating the performance of cost/benefit analyses in conjunction with new regulatory proposals; (3) transferring all authority over wetlands management (including wetlands designation) to the Secretary of the Army (Army Corps of Engineers), including those responsibilities formerly shared with the Environmental Protection Agency; (4) requiring the designation of wetlands into three categories (critical, important, and not necessary for conserving crucial habitat); (5) allowing landowners to be compensated by federal government for taking critically-designated habitat; and (6) requiring federal agencies to use the least expensive method of dredge disposal.

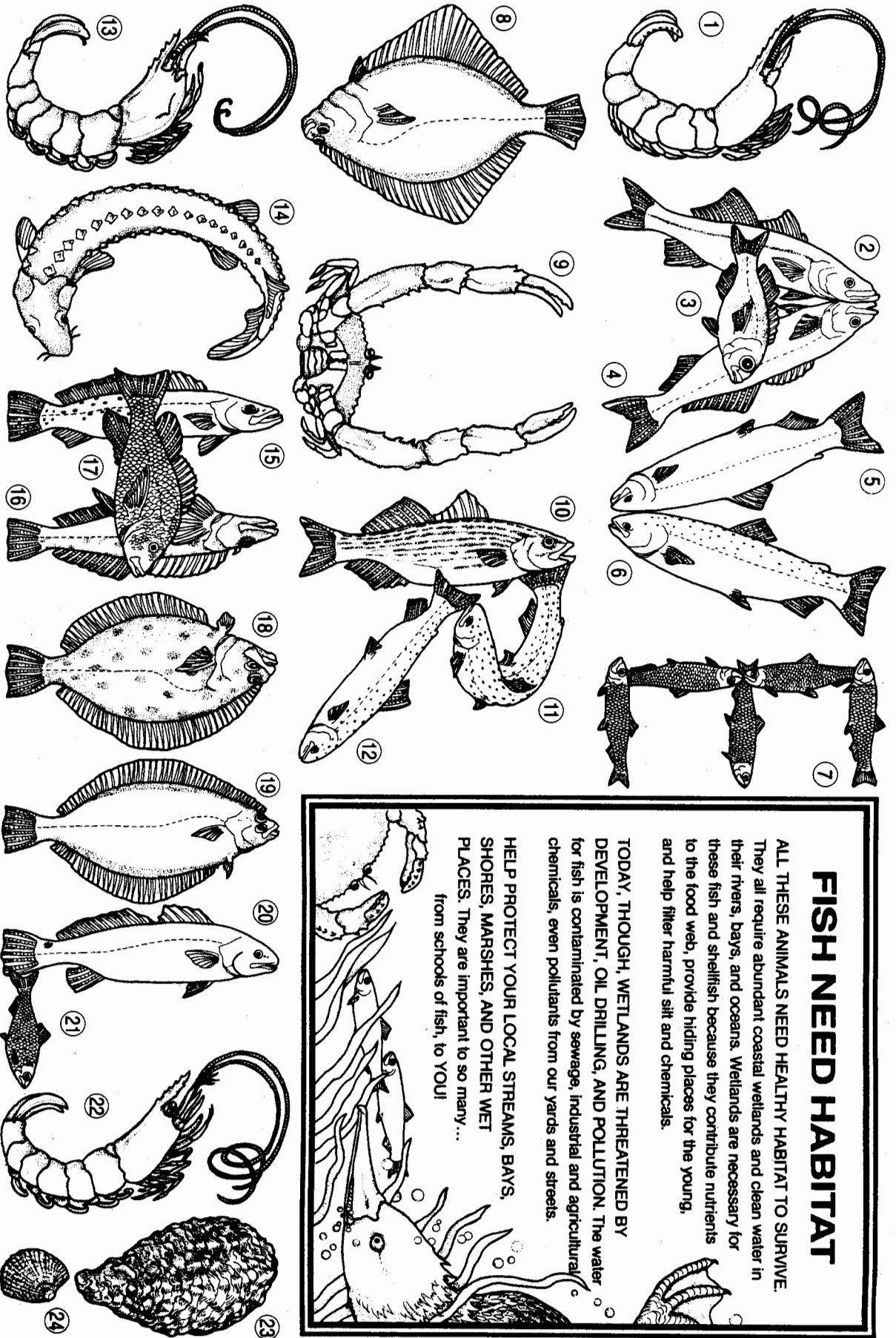
The Senate version of the bill, S. 851, which is currently in committee, would reauthorize and amend only Section 404, the wetlands portions of the CWA. The bill is similar to the wetlands provisions of H.R. 961 in that it would categorize wetlands into three types

and rescind all authority over wetlands protection from the EPA. The Legislative Committee met jointly with the Commission's Habitat Committee to develop draft positions on these issues.

In addition to opposing H.R. 961 and S. 851, the Commission opposes blanket requirements for compensation to property owners and rigid wetlands classification proposals which do not provide the latitude for states to develop and implement a classification protocol based on watershed conditions and needs or facilitate permit review and administration. The Commission recommends congressional adoption of the following amendments to strengthen CWA protections: (1) further joint investigation (which may include conducting a pilot project by state-federal agencies) of the design feasibility and merits of a classification protocol; (2) legislative identification of the use of rebuttable presumptions (regarding function, value, jurisdictional responsibility, etc.) on a case-by-case basis as an alternative to a rigid classification protocol; (3) create administrative and judicial appeals procedures for landowners; and, (4) delineation of wetlands for small landowners and farmers.

**EPA Authority** - The Commission opposed a number of legislative riders attached to H.R. 2099, legislation to fund the EPA and certain other federal agencies for fiscal year 1996. Though the Commission opposed legislative riders attached to the House bill and the seven riders attached to the Senate version which would limit or strip EPA's authority to fulfill its mandate and implement provisions of the CWA, the House recently, in a motion to go to conference on H.R. 2099, decided to cut the seventeen riders from its version of the bill by a 227 to 194 vote. House and Senate conferees retained the seven riders attached to the Senate version of the bill during conference.

- 1 Pink shrimp
- 2 Snook
- 3 Surperch
- 4 Bluefish
- 5 Sockeye salmon
- 6 Chinook salmon
- 7 Herring
- 8 Flounder
- 9 Blue crab
- 10 Striped bass
- 11 Steelhead
- 12 Atlantic salmon
- 13 Brown shrimp
- 14 Sturgeon
- 15 Seatrout
- 16 Lingcod
- 17 Red snapper
- 18 Fluke
- 19 Sole
- 20 Red drum
- 21 Shad
- 22 White shrimp
- 23 Oyster
- 24 Clam



## FISH NEED HABITAT

ALL THESE ANIMALS NEED HEALTHY HABITAT TO SURVIVE. They all require abundant coastal wetlands and clean water in their rivers, bays, and oceans. Wetlands are necessary for these fish and shellfish because they contribute nutrients to the food web, provide hiding places for the young, and help filter harmful silt and chemicals.

TODAY, THOUGH, WETLANDS ARE THREATENED BY DEVELOPMENT, OIL DRILLING, AND POLLUTION. The water for fish is contaminated by sewage, industrial and agricultural chemicals, even pollutants from our yards and streets.

HELP PROTECT YOUR LOCAL STREAMS, BAYS, SHORES, MARSHES, AND OTHER WET PLACES. They are important to so many... from schools of fish, to YOU!

*Atlantic States Marine Fisheries Commission  
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