Habitat criteria and the Fish Migration Criteria (Kimmerer 1994b). As discussed above, the summary of the workshops on the Fish Migration criteria and EPA's alternative formulation of the Fish Migration criteria were made available to the public in EPA's Notice of Availability published on August 26, 1994, 59 FR 44095.

The Federal interagency cooperation effort begun before the publication of the Proposed Rule has continued during the past year. The most formal aspects of this cooperation effort have been the consultations under Section 7 of the ESA between EPA and the USFWS and NMFS on the potential effects of EPA's criteria on threatened and endangered species and their critical habitat. 6 EPA and the Services began consulting informally in December 1991. Formal consultations were initiated in August 1993. In recognition of the tentative nature of a proposed rule, the Services deferred preparing a formal biological opinion for the Proposed Rule and instead, on November 24, 1993, submitted formal comments to EPA on the Proposed Rule. These formal comments raised the major concerns of the respective Services about potential effects of the proposed criteria on threatened and endangered species. Since publication of the Proposed Rule, the Services have worked closely with EPA to assure that the final rule complies with the ESA. The Services have been actively involved in reviewing comments received from the public, and participated in the CUWA scientific workshops on EPA's Proposed Rule.

In early November 1994, after discussing the probable final criteria with EPA, NMFS and USFWS concluded their reviews of the final criteria and issued their respective final conclusions as to the anticipated effects of the implementation of these criteria on threatened and endangered species. The USFWS issued a "no jeopardy" biological opinion under Section 7 of the ESA, finding that implementation of these criteria would not likely jeopardize the continued existence of any listed species or result in adverse modification of habitat deemed critical to the survival of listed species. In recognition of the fact that the final EPA criteria may be implemented only when the State Board adopts final implementation plans, the USFWS

biological opinion also called for the reinitiation of consultations when the implementation plans are finalized by the State Board so that any possible problems for endangered or threatened species caused by implementing the criteria can be addressed.

NMFS concluded its review by making a finding that implementation of these criteria would not adversely affect the threatened and endangered species or result in adverse modification of critical habitat of those species (anadromous fishes) under its jurisdiction. The NMFS findings also called for reinitiation of consultation when implementation plans are developed by the State Board, so that any possible problems for threatened or endangered species caused by implementing the criteria can be addressed.

In addition to the formal ESA consultation process, the four Club Fed agencies have again coordinated several of their regulatory and operational duties and are announcing two Federal actions simultaneously. In addition to EPA's final promulgation of water quality criteria under the CWA, the USFWS is making it's final designation of critical habitat for the Delta smelt under the ESA. These coordinated Federal actions serve as the underlying basis for the long-term solution to fish and wildlife protection in the Bay/Delta estuary.

Finally, in an effort to facilitate the long-term resolution of Bay/Delta issues, the Club Fed agencies and their counterpart agencies in the State of California executed, as of July 1994, a Framework Agreement laying out the Federal and State intentions as to how these agencies would work together cooperatively on a range of issues in the estuary. One key element of this Framework Agreement was EPA's agreement to sign a final rule regarding these water quality criteria by the end of 1994. At the same time, the State Board agreed to prepare a draft revision to its water quality plan by the end of 1994, and to finalize that plan in early 1995. The Framework Agreement envisions that, if EPA finds that the revised State plan submitted to EPA meets the requirements of the CWA, EPA will initiate action to withdraw this

Consistent with its commitment in the Framework Agreement, the State Board conducted a series of workshops on Bay/Delta issues throughout the spring, summer and fall of 1994. EPA participated in these workshops, and has continued to work with the State Board to assure that the revisions adopted by the State Board will meet

the requirements of the CWA. It is EPA's hope that the cooperative process outlined in the Framework Agreement will lead to approvable state standards for protecting the designated uses in the Bay/Delta estuary.

EPA is aware of efforts by urban and agricultural users, in cooperation with environmental groups, to identify alternative standards that may meet the requirements of the CWA. EPA encourages affected parties to continue to work with EPA and the State to develop proposals that meet the requirements of the CWA. EPA would welcome the adoption by the State of a revised plan based in whole or in part on such private proposals provided that it complies with the requirements of the CWA.

B. Statutory and Regulatory Background

Section 303(c) of the Act requires that state water quality standards "* * * be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this [Act]. Such standards shall be established taking into consideration their use and value for propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes. * * * " Key concerns of this statutory provision are the enhancement of water quality for the protection of the propagation of fish and other aquatic life. The ultimate purpose of water quality standards, as with the other provisions of the CWA, is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." CWA section 101(a).

Under section 303(c) of the Act, a water quality standard for a specific waterbody consists of two components: designated uses for which a waterbody is to be protected (such as recreation in and on the water, protection and propagation of fish and wildlife, or agricultural uses) and the water quality criteria which support those designated uses.⁷

The Act gives primary responsibility for the adoption of water quality standards to the states. After adopting its initial water quality standards, a state is required, no less than every three years, to review those standards, and, if necessary, modify them. Under section 303(c)(1) of the Act, if a state revises or adopts a new standard, it must submit such a standard to EPA for approval or disapproval.

⁶ As stated above, the species of concern include primarily the winter-run chinook salmon (a listed endangered species under the jurisdiction of NMFS) and the Delta smelt (a listed threatened species under the jurisdiction of the USFWS). The USFWS has also formally proposed that the Sacramento splittail be listed as threatened.

⁷As discussed below, a state's water quality standards must also contain an antidegradation policy.