EPA's Water Quality Standards regulations at 40 CFR part 131 specify the requirements for designated uses. "Designated Uses" are those uses specified in water quality standards for each water body or segment whether or not they are being attained. 40 CFR 131.3(f). Examples of designated uses are listed in section 303(c)(2)(A) of the CWA. They include: public water supplies, protection and propagation of fish, shellfish, and wildlife, recreation, agricultural and industrial, and navigation. Other uses have been adopted as well (e.g. aquifer protection, coral reef preservation).

Under certain circumstances, States may remove a designated use which is not an existing use. 40 CFR 131.10(g). "Existing Uses" are those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards. 40 CFR 131.3(f). Generally, existing uses, whether or not they are "designated uses," may not be removed. 40 CFR 131.3(g) and (h). A state must conduct a "use attainability analysis" as defined in 40 CFR 131.3(g) whenever (1) the State designates uses that do not include the uses specified in section 101(a)(2) of the CWA, or (2) the State wishes to remove a designated use that is specified in section 101(a)(2) of the CWA or to adopt subcategories of uses which require less stringent criteria. 40 CFR 131.3(j). The state may take economics into account when it designates uses, as, for example, in a use attainability analysis. 40 CFR 131.3(g)(6).

EPA's Water Quality Standards regulations at 40 CFR part 131 specify the requirements for water quality criteria.

States must adopt those water quality criteria that protect the designated use. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use. 40 CFR 131.11(a).

Thus, once designated uses are established, the water quality criteria are based on what is necessary scientifically to protect the most sensitive designated use.

In addition, a state's criteria must be consistent with the state's antidegradation policy. The federal regulations provide that, at a minimum, the state must have an antidegradation policy that maintains "[e]xisting instream water uses [those existing in the waterbody at any time on or after November 28, 1975] and the level of water quality necessary to protect the

existing uses. \* \* \* " 40 CFR 131.12(a)(1).

In order to approve a state's water quality criteria, EPA must determine that the state has adopted "water quality criteria [that are] sufficient to protect the designated uses." 40 CFR 131.6(c).

Section 303(c)(4) of the Act provides that the Administrator shall promptly prepare and publish proposed regulations establishing a new or revised standard in either of two situations: first, when the Administrator has disapproved a state standard under section 303(c)(3) and the state has not taken corrective action within 90 days; and, second, in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of the Act. Once promulgated, the federal regulations are applicable to the state's waters, and, if they are more stringent, have the effect of supplanting and supplementing the state's standards for all purposes under the CWA. However, it is EPA's longstanding policy that the federal water quality standards will be withdrawn if a state adopts and submits standards that in the Agency's judgment meet the requirements of the Act.

The chronology of State and EPA actions under the CWA in the Bay/Delta estuary over the past two decades were described in more detail in the preamble to the Proposed Rule, and in paragraph A.1.c. herein. Briefly stated, the State Board's adoption of the 1978 Delta Plan, and of the revised Bay/Delta Plan in 1991, were intended to meet the State's obligations to establish water quality standards under the CWA. Pursuant to its mandate under section 303(c)(3) of the Act, on September 3, 1991, EPA disapproved several of the criteria contained in the State Board's plan. EPA's letter found that "[t]he record \* \* \* does not support the conclusion that the State has adopted criteria sufficient to protect the designated uses" of the estuary. The designated uses at risk, as defined by the State Board, include Estuarine Habitat, and also Cold and Warm Water Habitat, Fish Migration, Fish Spawning, Ocean Commercial and Sport Fishing, Preservation of Rare and Endangered Species, Shellfish Harvesting, and Wildlife Habitat. In addition to its general finding that the 1991 Bay/Delta Plan did not contain sufficient criteria to protect the designated uses, EPA also disapproved the absence of salinity criteria to protect fish and wildlife uses in the Suisun, San Pablo, and San Francisco Bays and Suisun Marsh, the absence of scientifically supportable salinity criteria (measured by electrical conductivity) to protect the Fish

Spawning uses of the lower San Joaquin River, and the absence of scientifically supportable temperature standards on the San Joaquin and Sacramento Rivers to protect the Fish Migration and Cold Fresh Water Habitat Uses.

For the reasons outlined herein, in the Proposed Rule, and in EPA's letter of September 3, 1991, the Agency finds that the water quality criteria adopted by the State fail to protect the designated uses and that the criteria below meet the requirements of the Act. Accordingly, pursuant to sections 303(c)(3) and 303(c)(4) of the Act, the Administrator is promulgating the following water quality criteria applicable to the Bay/Delta's waters.

## C. Description of the Final Rule and Changes From Proposal

- 1. Estuarine Habitat Criteria
- a. Overview

(1) Importance of the Estuarine Habitat Designated Use. The State's 1991 Bay/Delta Plan included "Estuarine Habitat" as a designated use for the Bay/Delta estuary. This Estuarine Habitat designated use is intended to provide "an essential and unique habitat that serves to acclimate anadromous fishes (salmon, striped bass) migrating into fresh or marine conditions. This habitat also provides for the propagation and sustenance of a variety of fish and shellfish, numerous waterfowl and shore birds, and marine mammals." See Water Quality Control Plan, San Francisco Bay Basin [2], December 1986, at II-4.

EPA considers protection of the Estuarine Habitat designated use to be important for a number of important reasons. As described in detail in the Preamble to the Proposed Rule, conditions in the estuary are of critical importance because the estuary's particular characteristics provide a unique food source, spawning habitat or nursery habitat for a whole range of aquatic and aquatic-dependent species. The Estuarine Habitat designated use protects this vital ecosystem, an ecosystem that has a crucial role in restoring and protecting the fish and wildlife populations of the Bay/Delta. EPA and the other Federal agencies are committed to multispecies or ecosystem protection approaches, rather than focusing on the peculiar needs of individual species. In addition, the resource values benefitting from the protection of the Estuarine Habitat use include resources described in other state-designated uses, including Ocean Commercial and Sport Fishing, Preservation of Rare and Endangered Species, Fish Migration, and Wildlife