

Is an ocean acidification TMDL on the (distant) horizon?

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In January, [Dan posted](#) on the problem of ocean acidification and [Sean noted](#) that a lawsuit by the Center for Biological Diversity had convinced EPA to look into the possible application of the Clean Water Act. Now [EPA has issued a call](#) for interested parties to submit information as it considers whether to tighten its water quality criteria for ocean acidity, that is the pH it considers acceptable for ocean waters. EPA is also asking for help on how best to measure the pH of ocean waters. Because natural variability is relatively high, that's apparently not as simple as sticking pH paper (or even a pH electrode) into water samples.

This is the first step in what is likely to be a lengthy process. EPA is taking comments until June 15. Then it will decide whether it needs to revise its recommended water quality criteria for ocean pH. The current criteria, established in 1976, allow a pH between 6.5 and 8.5, but not more than 0.2 units outside the normal range, for any ocean waters. EPA is looking into whether that range is adequate to protect aquatic life, and whether it should vary with the specific waters and their biota.

If EPA decides to change its criteria, that's still a long way from any regulatory impact. States can establish water quality standards for ocean waters under their jurisdiction, which runs to 3 miles offshore from their coastlines, but (by contrast to inland waters) it is not entirely clear that they must do so. If states do establish standards for coastal waters, they can choose to use EPA's criteria or (with sufficient scientific support) adopt their own. If their coastal waters don't meet the criteria they adopt, the states would be obliged to report those waters as impaired and (eventually) prepare TMDLs. As the Clean Water Act currently stands, EPA is not obligated to establish water quality standards for the ocean waters under federal jurisdiction (from 3 to 200 miles offshore) or to prepare TMDLs for those waters. (For more on application of the CWA's water quality provisions to ocean waters, see Robin Kundis Craig, *Climate Change, Regulatory Fragmentation, and Water Triage*, 79 U. Colo. L. Rev. 825 (2008).)

So the bottom line is that we're not going to see TMDL's for ocean pH any time soon. And there is no doubt that comprehensive climate legislation could address the problem more effectively and more efficiently than any TMDL. But moving, even gradually, toward stronger pH criteria for ocean waters, and eventually toward forcing TMDLs on the states, may be one more way for EPA to push Congress forward. And given Congress's apparent reluctance to adopt a greenhouse gas law, every possible push may be necessary.