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## **Lead NEPA Story: EPA report urges more focus on pollution's cumulative impacts**

**(Greenwire, 10/7/2022), Sean Reilly, E&E News Reporter**

On a point key to the Biden administration's emphasis on environmental justice, a new EPA report is calling for more work to weave exploration of the cumulative impacts of pollution exposure into the agency's existing research agenda.

"Cumulative impact assessment should be developed and applied with a bias for action, which entails finding solutions that improve the health and well-being of a community," an EPA work group wrote in the report, quietly posted in recent days on an Office of Research and Development website.

Among five broad recommendations, the report calls for closer collaboration with communities, more management support and empowering "local decisions and actions through science."

Already, that advice is "informing actions within ORD to advance the state of the science, and we are prepared to do more as we implement cumulative impacts research in the years to come," Chris Frey, the research office's assistant administrator, wrote in the introduction.

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## **Native American Graves Protection and Repatriation Act: Feds rework rules to return human remains to tribes**

**(Greenwire, 10/14/2022) Michael Doyle, E&E News Reporter**

Tribes could have an easier time reclaiming skeletal remains and sacred objects under revised federal rules proposed this week by the National Park Service.

The highly anticipated rule changes governing the Native American Graves Protection and Repatriation Act are supposed to streamline requirements for museums and federal agencies to inventory, identify and return human remains and cultural items.

"The Native American Graves Protection and Repatriation Act is an important law that helps us heal from some of the more painful times in our past by empowering Tribes to protect what is sacred to them," Bryan Newland, the Interior

Department's assistant secretary for Indian affairs, said in a statement.

Newland added that the changes are "long overdue and will strengthen our ability to enforce the law and help Tribes in the return of ancestors and sacred cultural objects."

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The proposals and associated commentary (Editor’s Note: published at *Federal Register* 87:63202-63260; Tuesday, October 18, 2022) follow what the Interior Department described as consultations with 71 tribes and Native Hawaiian organizations.

The department summed up the changes as, among other improvements, “strengthening the authority and role of Tribes and Native Hawaiian organizations in the repatriation process,” as well as “increasing transparency and reporting of holdings or collections.

“We hope these changes will make it easier for proper repatriation and reburial of Indigenous ancestors and cultural items,” National Park Service Director Chuck Sams said.

The National Park Service earlier this year appointed its first full-time investigator to oversee compliance with the Native American Graves Protection and Repatriation Act. In his new role, David Barland-Liles was assigned to explore any allegations that museums or other institutions are not complying with the federal law.

The federal law, passed in 1990, requires museums and federal agencies to identify and, generally, return Native American human remains, funerary items and objects of cultural significance in their collections.

At the time the law was passed, an Interior Department review committee estimated to Congress that repatriation “would be complete, or nearly so, within five years.”

Instead, federal officials have encountered what the review committee called “vast numbers of human remains and cultural items.” More than 116,000 “Native American individuals” are currently in collections, according to Interior.

Last month, for instance, the University of Kansas revealed that it held the remains of several hundred Native Americans.

“While some efforts have been made in the past to repatriate items, the process was never completed,” the university said in a statement. “The continued possession of these human remains causes great pain for many in the Native community and beyond.”

Nationwide, more than 788,000 “funerary objects” likewise await possible repatriation action.

Several weeks ago, for instance, Chicago's Field Museum of Natural History reported plans to repatriate nine cultural items that had been removed in 1901 from Table Mountain in Fresno County, California.

"The nine sacred objects are one medicine pot, one batch of tobacco emetic, two oak mortars, one batch of limestone emetic, one bunch of chamomile leaves, one basket, one wild cucumber seed necklace, and one wooden pipe," the museum stated.

Interior said that since 2012, the department has “heard repeatedly” from tribes, museums and federal agencies on the implementation of the law, and that at committee meetings, people have “highlighted concerns” with the regulations and procedures.

The rules dig into some nitty-gritty details.

Currently, for instance, federal agencies are required to publish two notices in “newspapers of general circulation” when they plan on removing human remains or cultural items from federal lands. The new proposal calls for a single notice in the *Federal Register*.

The new rules would impose stricter inventory reporting requirements on museums.

And in a technical-sounding change that could have a significant practical impact, the proposal includes a new term, “affiliation,” to replace the existing terms of “cultural affiliation” and “culturally unidentifiable.” This is supposed to ease repatriation decisions.

“Identifying ‘cultural affiliation’ has been a significant barrier to disposition and repatriation under the Act, despite the clear intent of

Congress that it be used for no other purpose than to ensure a reasonable connection between the human remains and cultural items and an

Indian Tribe or [Native Hawaiian organization],” Interior reported.

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## **Endangered Species Act: NOAA calls Snake River dam breaching ‘centerpiece’ of salmon rescue**

**(Greenwire, 10/3/2022) Michael Doyle, E&E News reporter**

Breaching four Snake River dams in Washington state should be considered “the centerpiece action” in a campaign to restore certain Columbia River basin salmon and steelhead populations, NOAA Fisheries said in a report issued Friday.

While stressing that “no single action is enough,” the federal agency pinpointed the oft-discussed dam breaching as among the measures that would “provide the greatest potential” for achieving the long-term goal of species restoration in the Pacific Northwest waterways.

“Breaching of the lower Snake River mainstem dams would transform the [man-made] reservoir habitats back into a river with more functional connected floodplains, naturalized water velocity, and favorable river-channel morphological conditions,” the study states.

More emphatically still, the study declares that healthy river habitat restoration “requires dam breaching.” NOAA Fisheries reported that this would decrease travel time for water and juvenile fish, reduce powerhouse encounters, cut stress on juvenile fish and provide better habitat.

The federal government for years has sought to boost the struggling salmon and steelhead populations in the Columbia basin, but fish populations have overall continued to decline. In response, environmentalists and Native American tribes have urged removal of the Snake River's hydroelectric dams, which make it harder for migrating juvenile fish to survive.

Opponents, however, point to the dams' electricity production, which would be expensive to replace.

Beyond breaching the dams, the NOAA report notes that increasing habitat restoration,

reintroducing salmon into blocked areas, managing predators, reforming fish hatcheries and reconnecting floodplain habitat would also be required.

The report focuses on the science and does not include cost estimates. Past estimates for breaching the dams and addressing the impacts to energy production, transportation and irrigation determined the cost to be in the tens of billions of dollars.

“This is a crucial time for the Columbia basin’s salmon and steelhead. They face increasing pressure from climate change and other long-standing stressors including water quality and fish blockages caused by dams,” said Janet Coit, assistant administrator for NOAA Fisheries.

Coit added that the recovery of salmon and steelhead “will require a sustained commitment over many decades.”

The report is not a regulatory document but is, NOAA Fisheries said, “intended to inform and contribute to regional conversations and funding decisions.” It follows a draft version made public last July, and its conclusions have stirred opposition.

Idaho Sen. James Risch (R), who has opposed breaching the dams that produce power for the region, criticized the report.

“The Biden administration has released yet another ‘report’ with cherry-picked facts and selective stakeholder engagement that does nothing but serve its political agenda and undermine the comprehensive and public process that determined dam removal is not necessary,” Risch said. “What dam breaching does guarantee, however, are substantial losses in reliable, clean energy generation, significantly

reduced markets for farmers and extreme cost increases for consumers."

An earlier version of the report likewise recommended the breaching of the Ice Harbor, Lower Monumental, Little Goose and Lower Granite dams. In a statement touting that draft's release in July, the White House Council on Environmental Quality emphasized that "the administration has not endorsed the Columbia Basin Partnership Task Force's goals at this time or the particular actions identified in [the] draft science report."

The Columbia Basin Partnership Task Force was chartered by NOAA Fisheries' Marine Fisheries Advisory Committee in 2017 to "develop a common vision and goals for the Columbia River basin's salmon and steelhead." The members represented many interests.

The task force set "mid-range goals" for adult salmon and steelhead abundance by 2050. These midrange goals "look beyond recovering species from the brink of extinction" and include, for instance, the idea of returning species stocks to areas from which they were previously extirpated.

In August, Washington Gov. Jay Inslee (D) and Sen. Patty Murray (D) published the final draft of their own analysis on the future of the Lower Snake River, including the same dams and locks.

"We must recognize that breaching the dams does in fact offer us the best chance at protecting endangered salmon and other iconic species that run through these waters," Inslee said in a statement at the time. "But the hydropower and economic benefits of the dams are significant, and breaching them before we have other systems in place to replace those benefits would be disastrous."

Noting the potential complications and the high stakes, advocates say the new report should be considered a spur to getting started.

"It makes the case for dam removal even stronger," Robert Masonis, Trout Unlimited's vice president for Western conservation, told E&E News today, adding that the study "provides a clear road map" for future actions.

The Bonneville Power Administration commissioned a study that was presented in July to the Northwest Power and Conservation Council, which has not taken a position on dam breaching. The study found that "replacing the four lower Snake River dams while meeting clean energy goals and system reliability is possible, but comes at a substantial cost." The study also cautioned that "the reliability of the regional power system could depend on technologies such as hydrogen-fueled combustion turbines that are not yet readily available."

Dams in the Columbia River and its tributaries have altered flow regimes that have "dramatically degraded water quantity and quality, reduced fish passage success, decreased sediment movement, and created conditions for native and non-native predator and competitor to thrive," according to NOAA Fisheries.

Breaching the four Lower Snake River dams specifically refers to removing the earthen portion of each dam and allowing a naturalized river channel to be established around the concrete spillway and powerhouse structures.

The report notes that dam breaching will "likely negatively impact" native sedentary species such as freshwater mussels or lamprey ammocoetes in the short term due to changes in water elevations and sediment distribution.

"While there will likely be negative impacts on freshwater mussel habitat and other non-migratory species associated with the release of accumulated sediment, these impacts will also be short-term given the sediment transport capacity of the Lower Snake River," the report predicts.

The report adds that "over the long-term," dam breaching would promote island habitat and side channel habitat formation that "supports many aquatic species and multiple life history strategies."

Editor's Note: The report by National Marine Fisheries Service, *Rebuilding Interior Columbia Basin Salmon and Steelhead*, may be viewed at <https://media.fisheries.noaa.gov/2022-09/rebuilding-interior-columbia-basin-salmon-steelhead.pdf>.

## **NEPA: Interior advances plans for offshore and onshore lease sales**

**(Greenwire, 10/6/2022) Scott Streater, E&E News reporter**

The Biden administration is advancing plans for two large offshore oil and natural gas lease sales in the Gulf of Mexico set for early next year, as mandated by the recently passed climate law.

The Interior Department also announced on Thursday that the Bureau of Land Management would hold onshore oil and gas lease sales in Wyoming and New Mexico, likely next spring, on 254 parcels covering more than 260,000 acres.

The Wyoming lease sale — by far the largest in size and scope of the two — would be held sometime between April and June, and comprise 209 parcels covering 251,087 acres. The New Mexico lease sale, set for May, would include 45 parcels covering 10,123 acres.

The planned offshore lease sales overseen by Interior's Bureau of Ocean Energy Management were analyzed in a new draft supplemental environmental impact statement (SEIS) released Thursday.

Lease Sales 259 and 261 were required in the Inflation Reduction Act approved in August. The sweeping climate law included concessions on fossil fuel development championed by Senate Energy and Natural Resources Chair Joe Manchin (D-W.Va.) that tie ongoing renewable energy project leasing and permitting to continued onshore and offshore oil and gas leasing for the next 10 years.

Specifically as it relates to Thursday's actions, the law mandated that Interior revive three offshore oil auctions — the two lease sales in the Gulf of Mexico, and one in Alaska's Cook Inlet — that were abandoned in May.

BOEM has already made moves to hold the offshore oil and gas lease sale in the Cook Inlet by December 31.

As for the two Gulf lease sales, the law directs that Lease Sale 259 be held by March 31, 2023,

and Lease Sale 261 be held by September 30, 2023.

The American Petroleum Institute, which has been critical of Biden administration oil and gas policies that for a time included a moratorium on new leasing, could not be reached for comment on Thursday's lease sale announcement.

Environmental groups and some Democrats in Congress have been critical of the fossil fuel mandates in the new law.

House Democrats last month introduced a bill that would prohibit federal agencies from issuing new oil permits or leases on public lands if the resulting greenhouse gas emissions would be inconsistent with the Biden administration's climate targets.

Sponsored by Natural Resources Chair Rep. Raúl Grijalva (D-Ariz.), the "Public Lands and Waters Climate Leadership Act" would block new leasing or permitting by Interior or the Forest Service until those agencies first produce a public report showing that new fossil fuel approvals would be in line with Biden administration goals to reduce carbon dioxide and methane pollution by midcentury.

Industry proponents counter that while BLM has reported that it will exceed Biden administration goals to permit 25,000 megawatts of renewable energy projects on federal lands by 2025, fossil fuels will still be needed in some capacity.

The draft SEIS for the two Gulf lease sales states that petroleum from offshore areas "contributes to meeting domestic demand and enhances national economic security." What's more, it says, "Since the U.S. is expected to continue to rely on oil and natural gas to meet its energy needs, this proposed action would contribute to meeting domestic demand and to reducing the need for imports of these resources."

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## **Clean Air Act: EPA seeks to scrap Bush-era permitting policy**

**(Greenwire, 10/11/2022) Sean Reilly, E&E News reporter**

EPA is angling to formally scrap a George W. Bush-era change to a key industrial air permitting policy as well as end some self-created confusion over the scope of the policy's treatment of pollution leaks, dust and other "fugitive emissions."

At issue is a 2008 policy that was a parting deregulatory nod from the Bush administration but only briefly went into effect.

In a proposed rule signed Friday by agency Administrator Michael Regan, EPA specifies that all large industrial pollution sources must account for fugitive emissions when assessing whether an expansion or other upgrade qualifies as a "major modification" requiring a pre-construction permit under the New Source Review program. The 2008 rule, put in place following a mining company's petition, said that only certain sources needed to comply; the newly released proposal would repeal that rule.

EPA "believes this approach fully accommodates congressional intent and the practical and policy considerations surrounding this issue," the proposal says. Any impact on affected industries is expected to be "manageable," it adds.

When published in the *Federal Register*, the draft rule will carry a 60-day deadline for written public comment. EPA's latest rulemaking rundown does not provide a timetable for issuing the final version.

If nothing else, the episode testifies to the decades of jousting over the expanse of the New Source Review program, which requires factories, refineries and other industries to get permits and beef up air pollution controls when undertaking projects that would lead to

significant emission increases. Environmental groups view the program as a bedrock safeguard for air quality. Business organizations contend that it's complicated to the point of discouraging efforts to improve plant efficiency.

A perennial point of contention is the process for determining whether expected emission increases from a particular project are sizable enough to trigger the need for a New Source Review permit. Following a 2002 set of changes to the program, Colorado-based Newmont Mining Corp. had petitioned EPA to end the "blanket requirement" of requiring dust and other fugitive emissions to count toward those increases.

Those dust releases from surface mines are estimated to amount to thousands of tons annually but are "generally harmless," Newmont attorneys wrote in the 2003 petition. Instead, EPA should limit the fugitive emissions requirement to only the industries spelled out in another section of the Clean Air Act, they said.

More than five years later, in the final full month of the Bush administration, the agency incorporated Newmont's reading into the 2008 rule. Two months after that, the Natural Resources Defense Council countered with its own reconsideration petition that labeled EPA's action "incredible" and urged the agency to return to its "longstanding, lawful and more protective approach." Under then-President Barack Obama, EPA soon agreed to reconsider the rule and froze its implementation, a stay that has remained in place ever since.

A Newmont spokesperson did not reply to a request for comment emailed Monday on EPA's decision to now repeal the 2008 rule entirely.

John Walke, the author of the 2009 NRDC petition, could not be reached for comment.

In the newly proposed rule, EPA also acknowledges spawning "significant confusion" for both industry and regulators by failing to get a 1980 exemption off the books that allowed some pollution sources to avoid NSR requirements "if a modification would be considered major solely due to the inclusion of fugitive emissions." By at last seeking to drop

that exemption, the proposal would "further eliminate uncertainty," according to the text.

Editor's Note: The EPA document, *Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Reconsideration of Fugitive Emissions Rule*, was published at Federal Register 87:62323-62337 (October 14, 2022).

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## Lead NEPA Story (continued from page 1)

The report marks another step in a broader effort to integrate environmental justice considerations into EPA's day-to-day work. This spring, for example, the Office of General Counsel released an updated rundown of the agency's statutory authority under various environmental and civil rights laws to advance that goal.

But taking stock of the pile-on effects of exposure to pollution of all types has long been a thorny challenge. Even defining the concept can be difficult; the report describes cumulative impacts as "the totality of exposures to combinations of chemical and non-chemical stressors and their effects on health, well-being, and quality of life outcomes."

"This is new territory for many of us," EPA Deputy Administrator Janet McCabe told a group of science advisers earlier this year at a meeting held in part to evaluate a draft version of the newly released report. While regulators are used to taking a facility-by-facility approach, McCabe said, that doesn't correspond to people's "lived experience" of "all the things they are exposed to in their neighborhoods and their cumulative and synergistic effects."

Cumulative impacts assessment is also implicitly at odds with a framework rooted in federal law that separately regulates pollutant discharges to water, land and the air. Regulators also typically look at permit applications in isolation of each other, without accounting for the potential effect on communities — often made up of people of color or low-income

neighborhoods already disproportionately exposed to pollution.

"Environmental decisions are rarely made in a vacuum," the report said. "A new emissions permit, for example, can be issued in the same community in which another new emissions permit was recently issued, thus producing two new stressor sources in quick succession." Cumulative impact assessments "ought to capture" the effects of those decisions both individually and on a combined basis, the authors wrote.

They also noted other obstacles, including data gaps and the current mix of expertise within the Office of Research and Development's own workforce.

"The workgroup identified insufficient skill sets and expertise in areas such as chemical mixtures, social sciences, and translational science," the report says. While those shortcomings are being addressed through additional hiring and efforts to better connect EPA's social scientists, "actions such as these will only be effective if implemented under the auspices of a workforce strategy that is aligned with ORD's cumulative impact assessment research agenda."

**Editor's Note:** the document, EPA/600/R-22/0149, *Cumulative Impacts Research: Recommendations for EPA's Office of Research and Development*, 9/30/2022, may be viewed at <https://www.epa.gov/healthresearch/cumulative-impacts-research>.

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