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Interpretation of the Term "Existing Uses"
Under the Antidegradation Policy

Patrick M. Tobin, Director
Criteria & Standards Division

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James S. Kutzman, Region IV
Water Quality Standards Coordinator

Under a proper interpretation of the term, an "existing use" can be established by demonstrating that fishing, swimming, or other uses have actually occurred since November 28, 1975, or that the water quality is suitable to allow the use to be attained (unless of course there are physical problems, such as substrate or flow, which prevent the use regardless of water quality). In your specific example, shellfish apparently are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting. Such facts clearly establish that shellfish harvesting is an "existing" use, not one dependent on improvements in water quality. To argue otherwise would be to say that the only time an aquatic protection use "exists" is if someone succeeds in catching fish, and that has never been EPA's position.

Section 101(a)(2) of the Clean Water Act calls for that level of water quality which "... provides for the protection and propagation of fish, shellfish,...". To say that the shellfish use exists, and that the water quality must be maintained, only if the shellfish are literally being "harvested" undercuts the objective of the Act to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.

cc: Regional WQS Coordinators
Cathy Winer (LF-132W)
Ed Johnson