

State's action may be pivotal in testing EPA authority on oceans

January 21 2015, by Chris Adams, McClatchy Washington Bureau

A lawsuit winding its way through federal court in Seattle will test whether the federal government is doing enough to combat the emerging problem of ocean acidification.

And the case contains some unusual bedfellows: Coming to defend the U.S. Environmental Protection Agency are two energy trade groups, the kind of organizations often at loggerheads with the EPA.

Filed in U.S. District Court for the Western District of Washington in 2013, the case could be argued this year.

It was filed by the Center for Biological Diversity, an environmental advocacy group, and criticizes the EPA for not finding marine waters imperiled under the Clean Water Act.

Ocean acidification refers to the increase in the ocean's acidity, which already has impacted the Pacific Northwest shellfish industry.

As the lawsuit declared: "While the most catastrophic impacts of ocean acidification have yet to be felt, ocean acidification has arrived in the Pacific Northwest and is an imminent water quality problem that requires immediate action by the EPA."

But Washington state and Oregon didn't include their marine waters on lists of imperiled waters, a finding that could have led to restrictions on the uses of and discharges into those waters. The EPA, acting in its

oversight role, approved the lists. The Center for Biological Diversity sued.

The EPA said it takes the threat of ocean acidification seriously. But in a 2014 legal filing from its Department of Justice attorneys, it said not enough about the threat was known when Oregon and Washington made their decisions on which waters to list as imperiled.

Ocean acidification "may have significant adverse impacts on aquatic life in the coastal waters of Washington and Oregon, and elsewhere," the EPA told the court. "However, the science is complex - and experts agree that more research and analyses are needed to fully understand the sources, causes and impacts."

Agreeing with the EPA was the Washington State Department of Ecology, which said in its legal filing that the EPA had handled the issue properly, and that "the record does not contain any data showing that Washington's water quality standards are violated for [ocean acidification](#)."

Also agreeing with the EPA were the Western States Petroleum Association and the American Petroleum Institute. Some of their members discharge treated wastewater into Washington state's marine waters and could be affected if the EPA loses.

The two industry groups agree the science is unsettled. In a 2014 legal filing on the case, they said it's not known how much of acidification in the Pacific Northwest's marine waters is from carbon dioxide pumped into the atmosphere and how much is from local pollution and runoff. Acidification today often comes from carbon "that was emitted decades, if not centuries, ago," the filing said.

The petroleum groups are represented by a Seattle attorney, Ryan Steen

of Stoel Rives LLP, who would not comment on pending litigation. Through spokesman Robert Daguillard, the EPA said it wouldn't comment on pending litigation.

Emily Jeffers, an attorney for the Center for Biological Diversity, said, "It's clear to people and to the shellfish industry that something big is happening out there - and that the EPA seems to be turning a blind eye to it."

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