No. 55	Resource Policy Committee	Jesse Trushenski

TO: **John Boreman** , President
FROM: Jesse Trushenski, Resource Policy Committee (RPC)
DATE: August 11, 2013

I. Motion Report

(A) Recommended Motion: Move that the Governing Board approve to present the draft revised "Policy Statement on Mining and Fossil Fuel Extraction" to the American Fisheries Society membership for review as part of the routine 60-day public comment period involved in policy statement development. [See Appendix I for full text.]

(B) Minority Report: After reviewing the document, the RPC have no objections to the recommended motion or initiating the public comment period for the draft revised mining policy. However, in the course of reviewing and revising existing policies, there was some discussion of whether revisions of existing policies should be subject to the same process as new policies. The possibility of a streamlined review process (for example, review by the RPC and Governing Board only, not the entire membership) for revised policies was considered, but there was general agreement that this type of approach would only be appropriate for minor, largely non-substantive revisions. Although the draft revised mining policy is consistent with the current mining policy, it is greatly expanded in scope and should be reviewed by the membership according to standard procedures for policy development.

(C) Background for Motion: The position paper and draft revised policy was prepared by subject experts Robert M. Hughes, Felipe Amezcua, Wesley M. Daniel, James S. Franks, William Franzin, Donald MacDonald, Eric Merriam, Paulo do Santos Pompeu, Lou Reynolds, Leanne Roulson, and Carol Ann Woody, with some editorial guidance from the Resource Policy Committee.

The draft revised policy was written to supersede the current AFS Policy Statement #13, "Effects of Surface Mining on Aquatic Resources in North America". The existing policy is out-of-date and focuses on coal strip mining in the eastern U.S. The draft revised policy has been expanded to address fossil fuel mining extraction (including coal, oil, and gas), hard rock (metals) mining, and aggregate (sand and gravel) mining in a more comprehensive, North American context, and has been updated to include contemporary information and references related to these issues. Mining and fossil fuel extraction remain economically and socially important land uses in North America, but these activities can have substantial negative impacts on surface and ground water, hydromorphology, water quality, and aquatic biota, and aquatic-dependent wildlife. Accordingly, it is appropriate that the American Fisheries Society continue to address these conflicting demands with a current, thoughtful policy statement on the subject.

II. Activity Report

(A) Summary of Outcomes and Accomplishments Organized by Focus Area in Strategic Plan:

Major accomplishments include development of the draft revised “Policy Statement on Mining and Fossil Fuel Extraction”, completion of the review of the “By-catch Reduction Devices as a Conservation Measure” policy, progress regarding revision of the “Commercial Aquaculture” policy, and development of draft standard operating procedures for RPC preparation and review of existing policies.

The RPC"s efforts reflect its commitment to support AFS by providing:

- "global fisheries leadership" (AFS Strategic Plan, Goal #1 – distilling best available science to develop two AFS policy statements and review existing policies), and
- "value of membership" (AFS Strategic Plan, Goal #3 – encouraging members to participate in this AFS committee and assume important roles, e.g., lead review/revision of existing AFS policies).

Development of draft revised "Policy Statement on Mining and Fossil Fuel Extraction"

See Motion Report above and attached draft policy. The RPC commends the authors for their diligence in preparing this document.

Review of "By-catch Reduction Devices as a Conservation Measure" Policy

The by-catch policy was identified as a priority for review to determine whether revision or rescission was recommended. Review by the RPC was led by member Gary Matlock. The RPC concluded that the policy was out-of-date, and may no longer be relevant given the subsequent development of legislation/regulation on this issue. More specifically, it was suggested that the policy may have been overtaken by events including the 1996 and 2006 reauthorizations of the Magnuson-Stevens Fishery Conservation and Management Act), implementing regulations and subsequent Fishery Management Plan amendments. Further, rules implemented under the Endangered Species Act and the Marine Mammal Protection Act also seemed to reduce the need for an AFS policy on this topic. Following consultation with the Marine Fisheries and Bioengineering Sections, however, it was determined that a current policy on the subject is still valuable and consistent with the AFS mission. John Johnson (Bioengineering Section President) has agreed to create an ad-hoc committee to provide suggested updates and revisions to the by-catch policy in time for consideration during the 2014 mid-year AFS Governing Board meeting.

Revision of "Commercial Aquaculture" policy

Chair Trushenski and RPC members, Diane Windham, Jim Bowker, Jeff Hill, and Jonathan Leiman, along with ad-hoc contributors Randy MacMillan (representing the National Aquaculture Association) and Gary Fornshell (representing the U.S. Aquaculture Society) are in the midst of drafting language for the revised draft "Commercial Aquaculture" policy. Trushenski is currently assembling the authors' contributions into a single document. Although our hope was to complete the revision process in 2013, the group is on-target to have a complete revised draft policy to present to the Governing Board for their consideration before or during the 2014 mid-year meeting.

Development of Standard Operating Procedures for the RPC

RPC member and previous Chair, Tom Bigford, has nearly completed his recommended SOPs for the RPC. In the course of this process, he has identified a number of elements in the AFS Procedures Manual which could be modified slightly to improve the efficiency of RPC operation. The RPC has been in touch with AFS Constitutional Consultant, Jessica Mistak, regarding these proposed changes.

III. Appendix

Position Paper and Proposed AFS Policy Statement on Mining and Oil and Gas Extraction

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EXECUTIVE SUMMARY

Mining and oil and gas extraction have the potential to cause substantial negative impacts on water quality, hydromorphology (physical habitat structure), aquatic biota, and fisheries, including destruction and contamination of receiving waters; significantly altered algal, macroinvertebrate, and fish assemblages; and impairments of aquatic-dependent wildlife. Even at low concentrations, mining-associated contaminants, such as copper, can impair salmonid olfactory function, making salmon more susceptible to predation, altering salmon migratory behavior, increasing disease susceptibility, and

reducing productivity. Despite predicted compliance in permit conditions, most operating metal mines have violated water quality criteria multiple times. In the United States, federal law transfers metal wealth from the U.S. public to mining companies, and shifts clean-up liability from those companies to U.S taxpayers. The half million abandoned hard-rock mines in the U.S. have an estimated $72-240 billion of clean-up costs, with the majority of those costs falling on taxpayers. Surface mining temporarily eliminates surface vegetation and can permanently change the topography, as with mountain-top-removal-valley-fill (MTRVF) coal mines. The reclaimed surface mine site creates a leach bed for ions producing toxic conductivity concentrations and the altered hydrology produces flashy peak flows similar to urban areas. Shaft and long-wall coal mines produce acid mine drainage that can eliminate most aquatic life across extensive regions or alkaline mine drainage that alters the ionic balance of freshwater ecosystems. Oil and gas wells and transportation of their products have resulted in devastating spills in freshwater and marine ecosystems. Hydraulic fracturing undertaken to extract residual oil and gas can contaminate groundwater and alter surface water ecosystems. Instream and gravel bar aggregate mining alter channel morphology and increase bed and bank erosion, which also can reduce riparian vegetation and impair downstream aquatic habitats. Catastrophic failures of mine dams have killed thousands of fish and hundreds of people, and contaminated tens to thousands of river kilometers. Oil and gas wells are exempted from regulation by several USA environmental protection laws despite growing evidence of their detrimental effects on surface and ground water. Mines and wells should only be developed where, after weighing multiple costs, benefits, beneficiaries and liabilities, they are considered the most appropriate use of land and water by the affected publics, can be developed in an environmentally responsible manner, benefit workers and the affected communities, and are appropriately regulated. Because of the substantial and widespread effects of mining and wells on hydromorphology, water quality, fisheries, and regional socioeconomics; the effects of fossil fuel combustion on global climate change; and the enormous unfunded costs of abandoned extraction site reclamation; the American Fisheries Society (AFS) recommends immediate and substantive changes in the ways in which North American governments conduct environmental assessments and permit, monitor, and regulate those metal, aggregate, and fossil fuel mines and wells that are considered appropriate for development. In particular, AFS recommends that:

1. The affected public should be involved in deciding whether a mine or well is the most appropriate use of land and water, particularly the need to preserve ecologically and culturally significant areas.

2. Mine or well development should be environmentally responsible with regulation, treatment, monitoring, and bonds sufficient for protecting the environment in perpetuity.

3. Baseline ecological and environmental research and monitoring should be conducted in areas slated for mining and oil and gas drilling before, during, and after development so that the effects of those industries can be assessed in an ecologically and statistically rigorous manner.

ABBREVIATIONS AND ACRONYMS

ACOE: U.S. Army Corps of Engineers
AFS: American Fisheries Society
AMD: Acid mine drainage
CERCLA: Comprehensive Environmental Response, Compensation, and Liability Act of 1980
CWA: Clean Water Act of 1972
EA: Environmental Assessments
EIS: Environmental Impact Statement
IBI: Index of Biotic Integrity
ICOLD: International Commission on Large Dams
IUCN: International Union for the Conservation of Nature
MTRVF: mountain-top-removal-valley-fill mining
NEB: National Energy Board
NRC: National Response Center
OSM: Office of Surface Mining

RCRA: Resource Conservation and Recovery Act

SDWA: Safe Drinking Water Act

SMCRA: Surface Mining Control and Reclamation Act of 1977

TRI: Toxics Release Inventory

USEPA: United State Environmental Protection Agency

USFS: United States Forest Service

WISE: World Information Service on Energy

INTRODUCTION

This policy is written to supersede American Fisheries Society (AFS) Policy Statement #13: Effects of Surface Mining on Aquatic Resources in North America (Starnes and Gasper 1995). That policy was focused on coal strip mining in the eastern U.S. The policy developed herein includes fossil fuel extraction (including coal, oil, and gas), hard rock (metals) mining, and aggregate (sand and gravel) mining. Mining or extraction of metals, fossil fuels, and aggregate has been, and remains, an economically and socially important land use in the United States (Figure 1) and elsewhere in North America, and North American mining and drilling companies exploit minerals and fuels globally. However, they can, and do, have substantial negative impacts on surface and ground water, hydromorphology, water quality, and aquatic biota (Figure 2), aquatic-dependent wildlife, and human health. Thornton (1996) considered soil pollution by potentially toxic metals and metalloids from abandoned mines an environmental hazard in countries with historic mining industries. Because many North American firms mine and drill globally and because strengthened regulations in North America may only worsen mining and drilling conditions on other continents, we take a global perspective but focus on the USA and North America in this policy. In the issue definition section, we outline major environmental and socioeconomic concerns with mining. In the technical background section, we first discuss metals mining and then fossil fuel extraction and aggregate mining, including the major existing federal law regulating each type of activity. The background materials are followed by suggested AFS policy intended to support mining in a context that: 1) is the most appropriate use of land and water, 2) is environmentally responsible, and 3) is appropriately regulated.

ISSUES DEFINITION

Mining and fossil fuel extraction practices are diverse, and have varied potential to affect aquatic ecosystems and resources. Aggregate is the most commonly mined resource. Aggregate mining that occurs within river floodplains alters channel morphology, increases channel erosion and turbidity, reduces riparian vegetation, and impairs downstream water and habitat quality, all of which can stress fish and other aquatic assemblages (Hartfield 1993; Meador and Layher 1998). Certain types of coal mining can lead to releases of acidic materials into waterways, causing acute and chronic effects. Kim et al. (1982) estimated that over 7,000 stream kilometers in the eastern U.S. are contaminated by acid drainage from coal mines. Failures of coal slurry ponds have occurred worldwide, killing hundreds of thousands of fish and hundreds of people (Wise 2011). Mountain-top-removal-valley-fill mining (MTRVF), also used for coal extraction, can markedly increase stream conductivity (USEPA 2009b) and eliminate waterways altogether. Oil and gas drilling, extraction, and transport increase the probability of direct water pollution, sometimes resulting in acute fish mortality and persistent chronic toxic effects on aquatic and marine biota (Rice et al. 1996; Upton 2011). The relatively new techniques of hydraulic fracturing ("fracking") create the potential for serious persistent contamination of ground water as a result of intentional rock fracturing, the introduction of toxic fracking fluids, and the inability to permanently seal abandoned well casings (Weltman-Faha and Taylor 2013). Nordstrom and Alpers (1999) estimated that perhaps billions of fish were killed by mining activities in the U.S. during the past century.

These risks to aquatic biota are created and compounded, in part, by inadequate protective measures and regulation. There are approximately 500,000 abandoned hard-rock mines in the United States, with associated clean-up costs estimated at up to $72 billion (USEPA 2000). Many of those abandoned mines will require perpetual water treatment to address water quality concerns (USEPA 2004). Although accurate estimates of remediation costs are unavailable, The U.S. Environmental Protection Agency (USEPA) has identifed 156 mine sites with $24 billion of potential clean-up costs, of which 30% lacked a viable payer (USEPA 2004). Acid mine drainage (AMD) and mine failures have the potential to increase those estimates by 1000% (NRC 2005). Most of these expenses, including all of those associated with abandoned mines, will fall to taxpayers because of bonding (security) shortfalls and underfunding of the federal "Superfund Program" for toxic waste site clean-up under the Comprehensive

Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)[1] (Woody et al. 2010; Chambers et al. 2012). For example, Montana taxpayers face estimated reclamation costs of tens to hundreds of millions of dollars (Levit and Kuipers 2000). The World Information Service on Energy (WISE) listed 85 major mine tailings dam failures between 1960 and 2006, most at operating mines (WISE 2011). Existing U.S. law allows coal mining in potentially acidic coal seams if the coal company agrees to treat the acid to meet water quality standards for as long as necessary. However, this has resulted in a growing liability, with large river systems now depending on perpetual treatment to maintain pH within acceptable limits. In the Appalachian coal fields, existing law has failed to adequately regulate, with permitted MTRVF eliminating over 2,000 stream km in the region in a 10-year period (USEPA 2000).

TECHNICAL BACKGROUND

Metal Mining & Processing

Physical and Chemical Effects on Aquatic Habitat

The exploration and development of metal mines follows a standard sequence of events. If necessary, roads or trails are built to access an area to conduct drilling surveys needed to assess the metal content, deposit size, and chemical characteristics of the rock. In remote areas, candidate locations are accessed by helicopter. We also note here that in many USA states the mineral, coal, agreggate, oil, and gas rights are not necessarily owned by those who own the surface rights—and those subsurface rights have legal primacy. If the deposit is large and rich enough to be economically viable, shafts or open pits are developed. The subsequent metal mining and processing produce large volumes of waste because only about 0.2-0.6% of the ore is recoverable metal (Dudka and Adriano 1997). Major types of disturbance associated with mining include roads; utility lines; housing; pipelines; massive displacement of earth and rock; waste rock piles; ore tailings (fine sediments) left over after ore crushing, chemical

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[1] The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) authorized the Environmental Protection Agency (EPA) to identify sites contaminated with hazardous materials, and to identify and compel those responsible to clean up the sites. Failing identification of a responsible party, USEPA is authorized to use resources in a special trust fund, known as the Superfund, to clean up the site.

treatments, concentration, and metal removal; dumple and heap leach piles (crushed rock) treated with acid or cyanide; toxic dust; toxic processing chemicals (e.g., cyanide, sulfuric acid, xanthates); radionucleides; acid mine drainage (AMD); contaminated water, air, and soil; altered stream flows and ground water levels; increased stream sedimentation; water that seeps into mines that must be pumped out to facilitate mining; and tailings ponds (and potential tailings pond failures) (Woody et al. 2010). In addition, smelting produces atmospheric gaseous and particulate emissions, wastewater, and slag (melted and rehardened rock). All releases of these waste products can be toxic to aquatic biota to varying degrees. When mine water is removed to facilitate mining, the pumping lowers the immediate water table, dewaters adjacent headwaters and hyporheic zones (ground water immediately under stream beds), and introduces mine-contaminated waters elsewhere (Dudka and Adriano 1997; Hancock 2002). As a result, mine contaminants threaten fisheries and aquatic ecosystems, wildlife, agriculture, recreation, tourism, drinking water supplies, human health, and industries that rely on clean water.

Acid mine drainage is a serious and common toxic problem associated with sulfide ore mining (USFS 1993; USEPA 1994; Sherlock et al.1995; Chambers et al. 2012), typically requiring perpetual treatment or isolation (similar to the need to isolate radionucleides). Often headwater receiving streams are extremely acid sensitive (acid neutralizing capacity, ANC < 50 μeq/L) or acidification sensitive (ANC <200 μeq/L; Kaufmann et al. 1991), and great volumes or distances are required to neutralize even small mine flows that may carry 1,000 mg/L or 2,000 mg/L of acid. Acid introduction causes direct harm by decreasing water pH and buffering capacity, and also causes metals such as arsenic, cadmium, copper, silver, and zinc to leach from mine wastes, causing more environmental damage than the acid alone. Literature and field observations indicate that mining sulfide ores creates a substantial, unquantifiable risk to fisheries (Jennings et al. 2008), both through direct toxicity to fish and toxicity to their prey. The United States Forest Service (USFS) (1993) estimated that 8000 to 16,000 km of western U.S. streams are compromised by AMD (USFS 1993). Flow and channel alterations reduce fish spawning and rearing habitats and biotic diversity at the watershed scale (Frissell 1993; Smith and Jones 2005; Schindler et al. 2010). Increased fine sediment levels alter fish and macroinvertebrate assemblages and affect sensitive species (Crouse et al. 1981; Waters 1995; Birtwell et al. 1999; Berry et al. 2003; Bryce et al. 2008; 2010). Iron hydroxide precipitates coat streambeds, eliminating benthic macroinvertebrates and degrading spawning substrates (Castro et al. In Review). A comprehensive study of 25 modern U.S. mines indicated that 76% exceeded water quality criteria despite 100% predicted compliance (Maest et al. 2005; Kuipers et al. 2006). The cumulative effects of such landscape-scale changes have a negative feedback effect on long-term fish genetic diversity, production, and fisheries (Nehlsen et al. 1991; Frissell 1993; Spence et al. 1996; Gresh et al. 2000; Hilborn et al. 2003; Schindler et al. 2010).

Biological Effects

In many areas, mining-related activities have resulted in changes of the trophic status of receiving waters as a result of increased nutrient concentrations (Carpenter et al. 1998). Use of nitrogen-based explosives can result in releases of ammonia, nitrite, and nitrate into surface waters. These substances can be directly toxic to fish and/or result in eutrophication. Mining in phosphorus-rich areas (e.g., apatite deposits) can result in releases of phosphate, an essential plant nutrient. Such releases can also result in eutrophication or other changes in primary productivity thatcan adversely affect fish.The algal food bases of lakes and streams are also highly sensitive to metals (Hollibaugh et al. 1980; Thomas et al. 1980; French and Evans 1988; Enserink et al. 1991; Balczon and Pratt 1994; Blanck 2002; Nayar et al. 2004; Morin et al. 2008; Lavoie et al. 2012). In addition, the increased incidence of deformed diatoms indicate detrimental genetic effects (Lavoie et al. 2012; Morin et al. 2012). However, algal assemblages may persist as sensitive taxa are replaced by tolerant taxa (Blanck 2002; Lavoie et al. 2012; Morin et al. 2012). For example, discharge from metal mines led to increased percentages of very tolerant and polysaprobic (capable of photosynthesis and consumption of dissolved organics) species and reduced percentages of sensitive species of diatoms in large Idaho rivers (Fore and Grafe 2002).

Toxic chemicals from mines have fundamentally negative effects on aquatic macroinvertebrates. Mine chemicals altered the assemblage structure of benthic macroinvertebrates in streams in Idaho (Hoiland et al. 1994; Maret et al. 2003), Colorado (Beltman et al. 1999; Clements et al. 2000; Griffith et al. 2004), Washington streams (Johnson et al. 1997), and Bolivia, including complete eradication of invertebrates as a result of AMD (Moya et al. 2011). Invertebrate and fish assemblages of western Montana streams were severely altered by copper and gold mines, two of which had been abandoned (Hughes 1985). Twenty-eight kilometers of Middle Creek, downstream of the Formosa Mine, Oregon, have been destroyed by AMD, eliminating once productive salmon spawning habitat and reducing macroinvertebrate abundance by more than 96% (USEPA 2009a). In the aforementioned cases, mines were not necessarily operating within relevant regulations, however, negative effects on aquatic macroinvertebrate assemblages have even been observed at cadmium, copper, and zinc concentrations below water quality criteria (Griffith et al. 2004; Buchwalter et al. 2008; Schmidt et al. 2010). Recent studies have shown that freshwater mussels may be among the most sensitive taxa to ammonia and certain metals (such as copper) that are released by metal mines (Besser et al 2009). Possible reasons that the criteria were non-protective include the absence of sensitive species or life stages, less-than-life-cycle exposures, failure to assess behaviors and species interactions, and the absence of dietary exposures from standard toxicity tests (USEPA 2010).

Fish assemblages can also be altered directly and indirectly by mining activities. In the early 1990s, zinc levels in streams draining the Red Dog Mine, Alaska, killed fish for 40 km in the Wulik River and few fish remain in Ikalukrok Creek (Ott 2004). Fish assemblages were also altered by AMD and metals from mines in Idaho (Maret and MacCoy 2002) and Quebec (Dube et al. 2005). Farag et al. (2003) reported that Boulder River tributaries in Montana were devoid of all fish near abandoned mine sources of AMD. Significantly fewer Chum Salmon *Oncorhynchus keta* fry were observed in waters located downstream of an abandoned copper mine in British Columbia (pH <6 and dissolved copper >1 mg/L) than in the reference area. Caged

Chinook Salmon *O. tshawytscha* smolts exposed to this water were all dead within two days (Barry et al. 2000). The Ok Tedi mine, Papua New Guinea, released waste rock, tailings, and an average of 16-20 μg/L dissolved copper to the upper Fly River, resulting in fish biomass reductions of 65% to 96% in the upper and middle river reaches and decimation of fish species in the upper river (Swales et al. 2000). Castro et al. (In Review) reported significantly lower fish Index of Biotic Integrity (IBI) scores in Brazilian streams receiving iron mine effluent than in a neighboring reference stream. Esselman et al. (in Chambers et al. 2012) reported <15% intolerant fish in an assemblage, once catchment mine density exceeded one mine per 5 km^2.

Low copper concentrations can have far-reaching behavioral and pathological effects on fish. Dilute copper concentrations (5 μg/L) impair salmonid olfactory function (Giattina et al. 1982; Hansen et al. 1999a; b; Baldwin et al. 2003; Sandahl et al. 2006; Hecht et al. 2007; McIntyre et al. 2008), making salmon more susceptible to predation (McIntyre et al. 2012). In laboratory studies, Hansen et al. (1999c) found that Rainbow Trout *O. mykiss* and Brown Trout *Salmo trutta* actively avoided metal concentrations characteristic of those in the Clark Fork River, Montana. Similarly, Woodward et al. (1997) reported that Cutthroat Trout *O. clarki* avoided metal concentrations simulating those found in the Coeur d'Alene River basin, Idaho. The migratory behavior of Atlantic Salmon *S. salar* was altered by releases from a New Brunswick copper-zinc mine (Elton 1974). DeCicco (1990) found that Dolly Varden *Salvelinus malma* migrations were altered by an Alaskan copper mine and Goldstein et al. (1999) observed altered Chinook Salmon migration associated with Idaho metal mines. Wang et al. (In prep) reported adverse effects on the survival and growth of White Sturgeon *Acipenser transmontanus* at copper concentrations below ambient water quality criteria and that sturgeon were substantially more sensitive than rainbow trout.

Toxic metals also bioaccumulate in fish tissues (Swales et al. 1998; Peterson et al. 2007; Harper 2009) causing increased disease susceptibility (Hetrick et al. 1979; Baker et al. 1983; Arkoosh et al. 1998a; b), reduced growth and population size (Mebane and

Arthaud 2010), or death (National Academy of Sciences 1999). Hansen et al. (2002) observed increased mortality in Bull Trout *S. confluentus* juveniles at copper concentrations of 179 μg/L. In Mexico, tailings are deposited in creeks and accumulate in areas close to mines (Soto-Jiménez et al., 2001), and several species of commercially exploited fish and crustaceans have been found to contain elevated concentrations of cadmium, chromium, mercury, and lead as a result of exposure to mining waste (Ruelas-Inzunza et al 2011). Thus there are potential impacts not only to the fish and crustacean populations, but also to human consumers of those aquatic products.

Mining Districts

Mining districts are especially problematic to rehabilitate because they are defined by the presence of multiple mines, covarying natural and anthropogenic disturbances, and tangled liabilities. For example, the Coeur d'Alene Area (CDA), Idaho, covers over 70 mi^2 with millions of tons of metals-contaminated sediment and soils. The area was mined by American Smelting and Refining Company (ASARCO), a subsidiary of ASARCO Incorporated, a subsidiary of Americas Mining Corporation, a subsidiary of Grupo Mexico. Sterlite, a subsidiary of Vedanta Resources, India, purchased ASARCO in 2009. The CDA was listed as a Superfund site in 1983, and USEPA sought $2.3 billion for clean-up costs but only received a $436 million bankruptcy settlement for the Bunker Hill complex (multiple sites and sources) in 2009. Partly because of the funding shortfall, NRC (2005) reported that the USEPA clean-up 1) failed to adequately address metal contamination of groundwater (the major source of surface water contamination; 2) failed to rehabilitate physical habitat structure (precluding fishery recovery); 3) failed to locate adequate repositories for contaminated sediments and soil; 4) developed treatment models based on mean flows (despite flood flows that periodically re-contaminate reclaimed areas); and 5) inadequately assessed rehabilitation effectiveness on fish and macroinvertebrate assemblage structure (NRC 2005).

Another mining district, Clark Fork Basin (CFB), Montana, has impaired 116 miles of the Clark Fork River. The floodplain contains nearly 5 million cubic yards of contaminated tailings, covering an area of over 2 square miles, and produced the largest Superfund site in the USA. It was deemed technically impossible to treat all contaminated ground water in the area, some of which contaminates surface waters. The mine pit (542 feet deep, 4000 feet wide) contains about 250 million gallons of AMD and metals and continues to fill with ground and surface water seepage, requiring perpetual water treatment via an 8 million gallon per day plant costing $75 million to build and $10 million per year to maintain and operate (NRC 2005; Chambers et al. 2012). Treatment of the ground water at the city of Butte requires a $20 million plant and annual operating and maintenance costs of $500,000. Capping the tailings pile and transporting the dusts are additional costs. The USEPA sued the mining company, Atlantic Richfield Company (ARCO), a subsidiary of British Petroleum, for $680 million for water treatment, culminating in a $187 million settlement for Clark Fork River cleanup after 5 years of litigation.

Mine Spills

Fish kills resulting from hard rock mine spills have occurred worldwide. ICOLD (2001) listed 72 tailings dam failures in the U.S. and 11 in Canada between 1960 and 2000. WISE (2011) listed 33 major mine tailings dam failures between 1960 and 2006 in the U.S. and USEPA (1995) described 66 such incidents. Davies (2002) considered these as underestimates because of the number of unreported failures, and calculated an annual failure rate of 0.06-0.1%. Nordstrom et al. (1977) reported that since 1963, California’s Sacramento River experienced more than 20 fish kills as a result of AMD spills; in a 1967 spill, at least 47,000 fish died. In 1989, 5,000 salmonids died in Montana’s Clark Fork River when AMD and copper tailings were flushed into the river during a thunderstorm (Munshower et al. 1997). The Brewer Mine, South Carolina, tailings dam failed in 1990, spilling 38 million liters of sodium cyanide solution and killing all fish in the Lynches River for 80 km (USEPA 2005a). AMD from a small British Columbia copper mine destroyed 29 km of the Tsolum River, eliminating a once productive salmon river (BCME 2011). In 1998, a tailings dam failure at the Los Frailes Mine, Spain, released over 6 million m^3 of acidic tailings that traveled 40 km and covered an area of 2.6 million ha (ICOLD 2001). A 1985 failure of two tailings dams in Italy released 190,000 m^3 of tailings, which traveled to a village 4 km downriver in 6 minutes killing 269 people (ICOLD 2001). The tailings dam at the Aurul S.A. Mine, Romania, failed in 2000, releasing 100,000 m^3 of cyanide and heavy metal contaminated water into the Somes, Tisza, and Danube Rivers, eventually reaching the Black Sea and destroying aquatic biota for 1,900 km (ICOLD 2001).

Federal Laws and Regulations for Hard Rock Mining

The primary U.S. law governing hard rock mining, the General Mining Law of 1872, makes mining a priority use on most federal lands and was originally intended to encourage economic growth. Despite deleterious impacts on other resources applications to mine public lands usually cannot be denied unless there is clear potential for the degradation of nationally important waters. Even if millions of dollars worth of minerals are extracted from federal lands, no royalties are required in return (Bakken 2008), resulting in an estimated annual loss of $160 million to the U.S. government (Pew Foundation 2009). The law remains in effect despite serious environmental and economic issues caused by hard rock mining practices (Woody et al. 2010). For example, the law does not require companies to provide adequate insurance for the billions of dollars needed to clean up and reclaim federal lands following completion of mining activities or in the event or catastrophes. In other words, the 1872 law shifts mineral wealth from the U.S. public to mining companies, and shifts clean-up liability from those companies to U.S and State taxpayers (USEPA 2004).

In Canada, the deposit of tailings and other mining wastes into fish-bearing water bodies is regulated by the Metal Mining Effluent Regulations (MMER), which were developed under the Fisheries Act. If a natural fish-bearing water body will be used to store mining waste, an equivalent amount of fish habitat must be created elsewhere as compensation. For impacts from mines other than tailings storage, the Fisheries Act applies. The Fisheries Act was updated in 2012, with the following prohibitions: "No person shall carry on any work, undertaking or activity that results in serious harm to fish that are part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery." In the Fisheries Act, "serious harm to fish" is defined as "the death of fish or any permanent alteration to, or destruction of, fish habitat" (Section 2). If a mining project will result in serious harm to fish, the proponents must apply for an authorization under section 35 (2) to proceed with the project, and must state how they will mitigate and offset the serious harm to fish that are part of, or support, a commercial, recreational or Aboriginal fishery. While such regulations may appear to be adequate, they apply only to waters that support a fishery. Therefore, waters that are not frequented by fish or that do not support a fishery are not covered under the Act and will not be protected.

In Mexico, there is no explicit mining law; however, the Norma Oficial Mexicana Nom. 001 Ecol of 1996 (Mexican Official Norm Number 001 Ecology) extends to mining. This law specifies maximum permissible limits of pollutants that can be incorporated into federal waters (lakes, rivers, reservoirs, coastal lagoons, swamps, creeks, marshes, flood plains, sea, etc.) and national assets (forests, deserts, lands in general). If a water body must be used to store waste of any kind, the entity must contact the Comisión Nacional del Agua (National Commission for Water Bodies) to assess the case and to establish conditions under which the activity could be permitted. The regulations do not consider fishing activity per se, but establish that all water bodies must be preserved. Although this regulation seems to be adequate, it is rarely followed or enforced.

Fossil Fuel Extraction

Physical and Chemical Effects on Aquatic Habitat

Coal mining follows a predictable sequence of events, whether it involves shaft mines or surface mines. Roads or railroads are built to access areas of known deposits, and to move the coal to processing facilities and distribution centers. Sometimes pipelines are used for transporting coal slurry. Typically these activities are conducted in or around water, and can negatively affect fish and fish habitat with different degrees of severity. Mountain-top-removal-valley-fill mining involves removing all or part of a mountaintop to mine for fossil fuels (e.g., coal) and disposing of the overburden in small valleys near the mine. This process leads to: (1) the permanent loss of springs and headwater streams, (2) persistently altered water chemistry downstream, (3) chemical concentrations that are acutely lethal to test organisms, and (4) significantly degraded macroinvertebrate and fish assemblages (USEPA 2009b).

Although the effects are at a much smaller scale, surface mining temporarily eliminates surface vegetation and can permanently change topography in a manner similar to MTRVF mining. It also permanently and drastically alters soil and subsurface geologic structure and disrupts surface and subsurface hydrologic regimes thereby altering stream processes (Fritz et al. 2010). Altered patterns and rhythms of water delivery can be expected, as well as changes in water quality. The backfilled, reclaimed surface mine site constitutes a manmade, porous geological recharge area, where water percolates through the fill to emerge as a seep or a spring. The SO_4 concentrations (>250 µeq/L; Kaufmann et al. 1991) and conductivities (>1000 µS/cm; Pond et al. 2008) of these leach waters can be an order of magnitude above background (Green et al. 2000; Pond et al. 2008; USEPA 2009b), and they will flow even when drought conditions dry up natural waters. Messinger and Paybins (2003) and Wiley and Brogan (2003) found that peak stream discharges after intense rains were markedly greater downstream of valley fills than in un-mined watersheds. USEPA (2005) and Ferrari et al. (2009) found that MTRVF storm flows were similar to those of urban areas with large areas of impervious surface; infiltration rates in reclaimed sites were 1-2 orders of magnitude less than those of the original forest (Negley and Eshleman 2006). Green et al. (2000) and Wiley et al. (2001) reported elevated percentages of sands and fines in stream sites downstream from MTRVF compared to unmined streams.

The surface subsidence following longwall mining (where multiple parallel shafts are drilled into mountainsides) can dewater stream reaches and divert flows into different surface stream channels that are not adjusted to such increased flows. Most longwall mines in the eastern USA produce alkaline mine drainage and greatly increase chlorides and dissolved salts in the streams receiving mine effluent.

Biological Effects

High selenium and ion concentrations (HCO_3−, Ca^{2+}, $SO_4$2−, Mg2+, K+, Na+, Cl−), especially as measured by conductivity below MTRVF sites, have strong negative correlations with macroinvertebrate metrics (Stauffer and Ferreri 2002; Palace et al. 2004; Pond et al. 2008; USEPA 2009b; 2010). Coal mining via MTRVF had subtle to extreme effects on stream macroinvertebrate assemblages, including the loss of most or all Ephemeroptera, depending on the degree of mining disturbance in Kentucky (Howard et al. 2001; Daniel et al. In Review), and West Virginia streams (Fulk et al. 2003; Merricks et al. 2007; Pond et al. 2008; Pond 2010). Acid mine drainage contaminated streams often containing elevated metals, and can be devoid of most life (Cooper and Wagner 1973; Kimmel 1983). Warner (1971) and Menendez (1978) found fewer macroinvertebrate taxa and individuals in West Virginia streams polluted by AMD from coal mines. All benthic macroinvertebrates were eliminated by AMD for 10 km below a coal mine on a Virginia stream (Hoehn and Sizemore 1977). Soucek et al. (2000) reported significant decreases in Ephemeroptera-Plecoptera-Trichoptera taxa richness and percent Ephemeroptera individuals in a Virginia stream receiving continuous AMD from coal mines. Using water from Ohio surface and underground coal mines and the mayfly *Isonychia bicolor* (rather than standard toxicity test organisms) in 7-day toxicity tests, Kennedy et al. (2004) found that mayfly survival significantly decreased relative to controls at conductivities of 1,562, 966, and 987 µS/cm. Pond et al. (2008) recorded an average of 10 µg/L selenium at stream sites below valley fills, which exceed the 5 µg/L chronic criterion. In streams draining Canadian coal mines, DeBruyn and Chapman (2007) found >50% abundance declines in some invertebrate taxa at selenium concentrations of 5–100 µg/L.

Despite standard MTRVF reclamation practices (slope stabilization, flood control, rehabilitation of soils/vegetation), the deleterious effects on aquatic biota of dissolved ions associated with MTMVF effluent remain. In addition, the thousands of kilometers of buried headwater streams have not been mitigated (Palmer et al. 2010). Consequently, USEPA (2010) set a conductivity criterion of 300 μS/cm, which was intended to prevent extirpation of 95% of the aquatic macroinvertebrate genera in the central Appalachians. The effectiveness of that criterion has not yet been fully assessed.

Streams contaminated with AMD have low fish taxa richness and abundance (Kimmel 1983). Cooper and Wagner (1973) reported fish severely affected at pH 4.5 to 5.5; 68 species were found only at pH levels greater than 6.4. Baldigo and Lawrence (2000) observed reduced fish species richness and densities at a highly acidified site in the Neversink River Basin of New York. Kaeser and Sharpe (2001) found that Slimy Sculpin *Cottus cognatus* mortality increased, and normal spring spawning did not occur in a Pennsylvania stream receiving episodically acidified spring flows. Holm et al. (2003) found increased incidences of edema and spinal deformities in Rainbow Trout fry and increased frequency of craniofacial deformities in Brook Trout *S. fontinalis* fry at sites downstream of a coal mine with elevated selenium concentrations. Palace et al. (2004) found that Bull Trout captured downstream from the same area had selenium concentrations that would be expected to impair recruitment. In the upper Kentucky River watershed, Kentucky, various habitat-specialist fish species had restricted distribution patterns associated with MTRVF compared to their historical distributions (Hopkins and Roush 2013). Total and benthic fish species richness were reduced by MTRVF in Kentucky and West Virginia streams (Stauffer and Ferreri 2002; Fulk et al. 2003). As with macroinvertebrates, high conductivities can be directly or indirectly toxic to fish. For example, a longwall mine on the Pennsylvania-West Virginia border altered Dunkard Creek total dissolved solids (TDS) producing a golden algae bloom that killed fish, salamanders, mussels, and other invertebrates for 25 miles (Reynolds 2009).

Fish kills from coal mine infrastructure failures occur worldwide. The Black Mesa, Arizona, coal slurry pipeline ruptured seven times between 1997 and 1999 and eight times in 2001–2002, including a 500-ton spill covering Willow Creek with 20 cm of sludge (Shafer 2002). In 2005, over 1.1 million liters of coal sludge spilled from the Century Mine, Ohio, pipeline, killing most fish in Captina Creek (OEPA 2010, OEC 2011). In 2000, the Martin County Coal Corporation's tailings dam failed, releasing over 118,000 m^3 of coal waste, turning 120 km of rivers and streams black, killing at least 395,000 fish, and forcing towns along the Tug River, Kentucky to turn off their drinking water intakes (WISE 2008). In 1972, a coal waste impoundment above Buffalo Creek, West Virginia, failed, killing 125 people, destroying 500 homes, and degrading water quality (ASDO No Date).

Federal Laws and Regulations for Fossil Fuel Extraction

The Surface Mining Control and Reclamation Act of 1977 (SMCRA, 25 U.S.C. § 1201), which is administered by the Office of Surface Mining (OSM), governs coal mining in the U.S. In addition, the Clean Water Act (CWA), administered by the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers (ACOE), regulates fill or pollutants that enter surface and ground waters. SMCRA sets national standards regulating surface coal mining and exploration activities and regulates surface impacts of underground mining and required land reclamation. The Act's goals are to ensure prompt and adequate reclamation of coal-mined lands and to provide a means of prohibiting surface mining where it would cause irreparable damage to the environment. The CWA sets national standards for water quality with the objective of restoring the physical, chemical and biological integrity of the Nation's waters. However, each state may acquire primacy and administer its own programs, which must be no less stringent in environmental protection than the federal programs. States with reclamation plans approved by the OSM may also administer their own reclamation funds to ameliorate the health, safety, and environmental impacts from coal mines abandoned prior to 1977.

Most mining in the eastern U.S. occurs on private lands and is regulated by state and local laws. In the western U.S., where there is proportionately more public land, much mining is administered by federal agencies. The Clean Water Act Section 404 directs the USEPA to set environmental standards for mining permits issued by the ACOE, and, gives the USEPA the right to veto a permit. In 2011, the USEPA used this authority and vetoed a permit for a mountain top mine that would bury >11 km of streams and degrade water quality further downstream, citing "unacceptable adverse impacts to wildlife and fishery resources" (Copeland 2013). That veto was overturned in a federal district court but supported in a federal appeals court; similarly, various bills in the U.S. congress have sought recently to either strengthen or weaken USEPA regulation of MTRVF.

As with metal mining in Canada, the deposit of coal mining wastes into fish-bearing water bodies is regulated under the Fisheries Act Section 2 and Section 35 (2) and apply only to waters that support a fishery; those that are not will not be protected.

Similarly in Mexico, the Norma Oficial Mexicana Nom. 001 Ecol of 1996 (Mexican Official Norm Number 001 Ecology) extends to coal mining. The regulations do not consider fishing activity per se, and the law is rarely followed or enforced.

Oil and Gas Exploration and Development

Physical and Chemical Effects on Aquatic Habitat

Traditional oil and gas exploration and development generally follows a predictable sequence of events. First, roads or trails are built to access the exploration area in order to conduct the seismic surveys that are required to locate the oil and gas reserves. After a reserve is located, an exploration well is drilled to evaluate the quality and quantity of the oil or gas deposit. If the oil or gas deposit is large enough to be economically viable, then production wells are drilled (INAC 2007). Pipelines are then constructed to move the hydrocarbons to processing facilities and distribution centers (Bott 1999). As these activities are often conducted in or around water, they have the potential to negatively affect fish and fish habitat with different degrees of severity. One of the main stressors resulting from oil and gas development activities is sedimentation. The effects of suspended sediment on fish include clogging and abrasion of gills (Goldes et al. 1988; Reynolds et al. 1989), impaired feeding and growth (Sigler et al. 1984; McLeay1984), altered blood chemistry (Servizi and Martens 1987), reduced resistance to disease (Singleton 1985), altered territorial and foraging behavior (Berg and Northcote 1985), and decreased survival and/or reproduction (CCME 2002). Suspended sediments can indirectly affect fish by reducing plant photosynthesis and primary productivity (due to decreased light penetration; Robertson et al. 2006). Excess fine sediments on streambeds smother some benthic invertebrates (Singleton 1985) and reduce macroinvertebrate assemblage condition (Bryce et al. 2010), leading to a reduced food supply for fish.

There are several other effects of oil and gas development on fish and fish habitat. One is the restriction of fish passage by building roads and stream crossings. If fish cannot reach their normal spawning grounds, they may spawn in inappropriate areas, re-absorb their eggs (Auer 1996), or suffer from increased predation while waiting to reach their spawning grounds (Brown et al. 2003). In addition, instantaneous pressure changes (IPCs) caused by seismic surveys can kill fish or injure internal organs, such as the swimbladder, liver, kidney, and pancreas (Govoni et al. 2003). Furthermore, equipment leaks, pipeline ruptures, and fuel truck spills can all result in hydrocarbons contaminating the environment.

Horizontal drilling with hydraulic fracturing (“fracking”) is increasingly employed to extract oil and gas from rock throughout the USA. Major gas deposits occur and are being fracked in the northern Appalachians, North Dakota, and in a wide band from the western Gulf of Mexico Coast to Wyoming. As with the injection of hot water into the Alberta tar sands, this technique for extracting oil and gas in the USA is relatively new, and under-studied, but minimally regulated in the USA. However, as with any large-scale, under-regulated industrial enterprise, fracking for oil and gas is likely to lead to increased stream sediment loads, reduced water quality from toxics and salts, increased water temperatures, increased migration barriers at road-stream crossings, and reduced stream flows (Entrekin et al. 2011; Weltman-Fahs and Taylor 2013). Shipment of oil and gas by pipeline, barge, tanker, and truck mean increased probability of small, large, and catastrophic spills. For example, recent flooding along the Yellowstone River led to a pipeline failure that spilled over 60,000 gallons of oil, calling attention to the network of pipelines buried under rivers and streams across the USA (AP 2012). Because of the enormous pressures of underground oil and gas deposits, 'blow-outs' are part of the industry. As with abandoned metal and coal mines, the casings of abandoned oil and gas wells are likely to eventually leak and contaminate surface and ground water (Dusseault et al. 2000). In parts of the Appalachians, hydraulic fracturing for gas coincides with longwall coal mining, increasing the risk of casing failure as the longwall advances through the gas field (Soraghan 2011).

Biological Effects

Small oil-spills occur frequently (García-Cuellar et al. 2004). When early life stages of fish have been exposed to oil, and the polycyclic aromatic hydrocarbons (PAHs) within it, mortality and blue-sac disease (craniofacial and spinal deformities, hemorrhaging, pericardial and yolk sac edema, and induction of P450 [CYP1A] enzymes) have resulted (Hose et al. 1996; Carls et al. 1999; Colavecchia et al. 2004; Schein et al. 2009). PAH reduce salmon growth rates (Meador et al. 2006) and are carcinogenic and immunotoxic to fish (Reynaud and Deschaux 2006). Sublethal PAH exposure can lead to fish lesions (Myers et al. 2003); abnormal larval development and reduced spawing success (Incardona et al. 2011); and reproductive impairment, altered respiratory and heart rates, eroded fins, enlarged livers, and reduced growth (NOAA 2012). The dispersants used in oil spills also facilitate dispersal of PAH across membranes, thereby increasing exposure (Wolfe et al. 1997; 2001). In total, PAH exposure leads to reduced fish health and fish populations (Di Giuilo and Hinton 2008).

The Ixtoc I spill in the Gulf of Mexico had adverse effects on marine organisms (Blumer and Sass 1972a, 1972b; Mironov 1972; Anderson et al. 1978; Anderson et al. 1979). Different studies in the region demonstrated that this spill adversely affected zooplankton (Teal and Howarth 1984; Guzmán del Próo et al. 1986), benthos and infauna (Teal and Howarth 1984), shrimps and crabs (Jernelöv and Linden 1981), and turtles and birds (Garmon 1980; Teal and Howarth 1984). Oil spills also effect fish larvae and eggs (Teal and Howarth 1984), which can affect or disrupt the recruitment, and therefore have long-term impacts on the fisheries and the ecosystem in general (Teal and Howarth 1984; Hjermann et al. 2007). In fact, this spill affected fish landings in the State of Campeche, where the accident occurred, 3 years after the incident: a decrease of 30 tons/per boat was observed, and the catch composition also changed from before to after the spill, reflecting an increase in more tolerant taxa and smaller and shorter-lived individuals. These diminished returns affected the economy, especially of Campeche (Amezcua-Linares et al, 2013). Also the diversity, biomass and abundance of finfish species decreased drastically immediately after the spill in the area surrounding the oil well (Amezcua Linares et al., 2013).

Despite 30 years of tar sands mining near Fort McMurray, Alberta, little measureable impact has been observed on biota or water quality. However, there is evidence of increased concentrations of PAH in river water (Gosselin et al. 2010) and lake sediments (Kurek et al. 2013) coincident with oil sands development. Nonetheless *Daphnia* have not been affected by increased PAH deposition. Kelly et al. (2010) found that 13 priority pollutants were higher near oil sands development than they were upwind or upstream. Ross (2012) demonstrated that toxic naphthenic acids originate from oil sands process water, but also occur naturally in regional ground waters and may enter surface waters from anthropogenic or natural sources. Analyzing data for 24-31 years, Evans and Talbot (2012) reported reduced, or no change in, fish tissue mercury concentrations in oil sands area fish when analyses were calibrated by fish weight and sample type (whole body versus filet; Peterson et al. 2005). However, the aquatic biological monitoring programs may be insufficiently rigorous to detect other than substantial effects (Gosselin et al. 2010).

Major Spills

Although the total amount of PAHs released into the environment from daily transporting and use of oil and gas exceeds that of major spills, those spills help us see the effects of PAHs on aquatic life. The Deepwater Horizon explosion and spill in 2010 was the largest in US history, spilling an estimated 670,000 tons of oil into the Gulf of Mexico. Its effects are still being studied, but fish deformities and fisheries closures cost the industry an estimated $2.5 billion. Although still in court, British Petroleum (BP) is facing civil settlements totaling $17.6 billion (Williams 2013) in addition to its $4 billion in criminal fines (USDJ 2012). The Exxon Valdez ran aground on a reef in Prince William Sound, Alaska, in 1989 and spilled 38,500 tons; despite clean up efforts fisheries were markedly reduced and much of the oil remains. Exxon settled for $1.03 billion in criminal and civil penalties, but is still in court regarding additional penalties (USGAO 1993). The PEMEX IXTOC 1 well off the coast of Mexico exploded and spilled 480,000 tons of oil in 1979. Fisheries were closed and estuarine and lagoon species were reduced dramatically (see *Biological Effects* above). As a national company PEMEX declared immunity and paid no fines because governments do not fine themselves. A blowout on Union Oil Platform A in 1969 spilled 14,000 tons of oil in the Santa Barbara Channel, California. Although fish populations showed initial declines, the long-term effects were likely minimized by microbial decomposition of the oil. Union Oil paid a total of $21.3 million in damages (Wikipedia 2013). In most spills the lack of a statistically and scientifically rigorous pre- and post-spill monitoring program with standard methods and indicators hinder quantitative assessment of fishery effects.

Federal Laws & Regulations

The U.S. Energy Policy Act of 2005 exempts oil and gas production from regulation under the CWA, Safe Drinking Water Act (SDWA)[2], the Resource Conservation and Recovery Act (RCRA)[3], CERCLA, and the Toxic Release Inventory (TRI)[4].

In Canada, the federal government is responsible for control of oil and gas exploration in Nunavut, and Sable Island, as well as offshore. Using the Canada Oil and Gas Operations Act, the federal government attempts to promote safety, environmental protection, conservation of oil and gas resources, joint production arrangements, and economically efficient infrastructure during the oil and gas exploration and development process. Elsewhere, each province, as well as Yukon territory, has jurisdiction, except where federal lands and First Nations are involved. Therefore, primary responsibility for regulating surface mining development and associated impacts lies with the provinces, which, as with U.S. states, tend to be more lenient than the federal government.

The National Energy Board (NEB), an independent Canadian federal agency, regulates oil and gas exploration, development, and production in Frontier lands and offshore areas that are not covered by provincial or federal management agreements. In addition, the NEB must approve all interprovincial and international oil and gas pipelines before they are built. The NEB takes economic, technical, and financial feasibility, as well as the environmental and socio-economic impact of the project, into account when

2 The Safe Drinking Water Act (SDWA), enacted in 1974, is the principal federal law in the United States intended to ensure safe drinking water for the public.

3 The Resource Conservation and Recovery Act (RCRA), enacted in 1976, is the principal federal law in the United States governing the disposal of solid waste and hazardous waste.

4 The Toxics Release Inventory (TRI) is a publicly available database containing information on toxic chemical releases and other waste management activities in the United States.

deciding whether a pipeline project should be allowed. If a pipeline lies entirely within one province then it is regulated by the appropriate provincial regulatory agency.

As with mining, the pollution of water bodies by oil and gas in Mexico is also regulated by the Mexican Official Norm Number 001 Ecology.

Aggregate Mining

Aggregate is used in the construction and transportation industries. Aggregate is the most commonly mined resource,and is also the least regulated form of mining. In the U.S., 80% of aggregate is extracted under the jurisdiction of state and local laws only (Swanson 1982). The most important sources of sand and gravel are river channels, floodplains, and previously glaciated terrain.

Physical Effects on Aquatic Habitat

Instream mining alters local channel morphology (gradient, width-to-depth ratios) and gravel bar mining effectively straightens the river during bank-full flows. The resulting increase in stream power can incise beds upstream or downstream from a mine (Kondolf 1994; Meador and Layher 1998; NOAA-Fisheries 2004). Although prohibited in much of Canada, dredging is widely employed in U.S. rivers and can increase fine-sediment bed load through resuspension, alter channel morphology, physically eliminate benthic organisms, and destroy fish spawning and nursery areas, all of which change aquatic community composition (OWRRI 1995; IMST 2002; NOAA-Fisheries 2004). Dry bar scalping in the Fraser River, British Columbia, reduced high-flow fish habitat by 25% (Rempel and Church 2009). Instream aggregate mining also ignores natural bed load requirements for channel maintenance (Meador and Layher 1998). Where potential bedload is lost upstream to mined gravel bars, rivers erode gravel downstream from river banks, beds, gravel bars, and bridge pilings (Dunne et al. 1981; Kondolf 1997). Gravel extraction rates have exceeded replenishment rates by more than 10 fold in Washington (Collins and Dunne 1989) and 50 fold in California (Kondolf and Swanson 1993) rivers, causing bed incision and lateral migration in the mined reaches and downstream. Channel incision, bank erosion, and altered channel stability can reduce riparian vegetation (Kondolf 1994). Floodplain aggregate mines become part of the active channel when viewed on a multi-decadal time scale (Kondolf 1994). Aquatic habitats may be lost during floods when mine pits in flood plains capture the river channel (Kondolf 1997; Dunne and Leopold 1978; Woodward-Clyde Consultants 1980; USFWS 2006).

Biological Effects

The biological effects of aggregate mining have been little studied. Gravel dredging in the Allegheny River, Pennsylvania, USA, decreased benthic fish abundance and altered food webs (Freedman et al. 2013). However, Bayley and Baker (2002) demonstrated how proper rehabilitation projects can convert gravel mines into regularly inundated floodplains and appropriately graded floodplain lakes with restored riverine connectivity and habitats that are highly productive for fish (DOGAMI 2001).

PROPOSED AFS POLICY

(Adapted from ICMM 2003; International Labor Organization Convention 169 1989; Miranda et al. 2005; NMFS 1996; Nushagak-Mulchatna Watershed Council 2011; O’Neal and Hughes 2012; Woody et al. 2010)

Increasingly, many businesses and governments have begun to recognize the social and environmental costs of irresponsible behavior and the inability of current state/provincial and national laws and regulations to protect vulnerable environments and human societies, especially in regards to extractive industries. International agreements have led to common principles for development: precautionary principle, sustainable economies, equity, participatory decision making, accountability, and transparency, efficiency, and polluter pays. Additional human rights principles include: existence as self-determining societies with territorial control, cultural integrity, a healthy and productive environment, political organization and expression, and prior and informed consent to development activities that affect territories and livelihoods. Thus, AFS recommends that four overarching issues should be considered:

The affected public should be involved in deciding whether a mine or well is the most appropriate use of land and water, particularly the need to preserve ecologically and culturally significant areas. The International Union for the Conservation of Nature (IUCN) and the Convention of Wetlands (Ramsar) provides an internationally accepted means of prioritizing environments for protection. Mining and oil/gas drilling should not occur in or bordering IUCN I–IV protected areas, marine protected areas (categories I–VI), Ramsar sites that are categorized as IUCN I–IV protected areas, national parks, monuments or wilderness areas, areas of high conservation value (scenic, drinking water, productive agricultural, fisheries & wildlife areas, aquatic diversity areas, sensitive, threatened & endangered species habitats, regionally important wetlands and estuaries), or where projects imperil the ecological resources on which local communities depend. For an example of the potential effects of a proposed copper mining district on aboriginal, sport, and commercial fisheries see USEPA (2012). No mine should be permitted that will require mixing zones or perpetual active management to avoid environmental contamination or to maintain flows in receiving waters. No mine should be permitted that could result in acid mine drainage during operation or post-closure unless the risk of such drainage can be eliminated by methods proven to be effective at mines of comparable size and location. There should be no presumption in favor of mineral exploration or development as the most appropriate land use. Where there is scientific uncertainty regarding the impacts of proposed mineral exploration or a mine or oil/gas field on the water quality and subsistence resources of the community, such activities should not proceed until there is clear and convincing scientific evidence they they can be conducted in a safe manner. In other words, the burden of proof of no impact should be on the company versus the local citizens as is true for the pharmaceutical and biocide industries that purposely produce or release toxic compounds (for a mining example, see USEPA 2012).

Ensure environmentally responsible mine development. The proposed mineral exploration project and its potential impacts should be made publicly available to area residents in an appropriate language and format at least 6 months before exploration begins. Companies should be required to provide adequate financial guarantees to pay for prompt cleanup, reclamation, and long-term monitoring and maintenance of exploratory wells, borings or excavations. Stakeholders should be given adequate notification, time, financial support for independent technical resources, and access to supporting information, to ensure effective environmental impact assessment (EIA) review. Companies should be required to collect adequate baseline data before the EIA and make it publicly available on easily accessible computer databases. Potential resource impacts of the mining or oil/gas facility (including the sizes and types of mines and tailings storage facilities, oil/gas field extent, surface and ground water, hydromorphological changes, fugitive dust, fish and wildlife, power, road and pipeline access, worker infrastructure, and expansion potentials) should be fully evaluated in the EIA. Companies should be required to conduct adequate pre-mining and operational mine sampling and analysis for acid-producing minerals, based on accepted practices and appropriately documented, site-specific professional judgment. Sampling and analysis should be conducted in accordance with the best available practices and techniques by professionally certified geologists. Companies should be required to evaluate environmental costs (including regulatory oversight, reclamation and mitigation, closure, post-closure monitoring and maintenance, and spills and catastrophic failures) in the EIA. The assessment should include worst-case scenarios, analyses and plans for potential off-site social and environmental impacts, including those resulting from cyanide transport, storage and use; emergency spill responses and facilities; tailings dam and pipeline failures, and river channel erosion. Importantly, affected communities must be provided with opportunities to meaningfully participate in the reviews of Environmental Impact Statement (EIS)/Environmental Assessments (EA). Companies should be required to work with potentially affected communities to identify potential worst-case emergency scenarios and develop appropriate response strategies. Companies proposing developments should consider any affected First

Nations and tribal treaty rights and respect First Nation and tribal traditional use areas whether on or off reserve lands.

Regarding air and water contamination and use, companies should make reports of fracking chemicals and contaminant discharges to surface and ground waters publicly available as collected. Companies also should be required to monitor and publicly report atmospheric emissions (particularly toxics, metals and sulphates). A professionally certified expert should certify that water treatment, or groundwater pumping, will not be required in perpetuity to meet surface or groundwater quality standards beyond the boundary of the mine. Water and power usage and mine dewatering should be minimized to reduce undesirable impacts on ground and surface waters, including seeps and springs. When permit violations occur, companies should rapidly implement corrective actions to limit damages and fines. The environmental performance of mines and oil/gas companies and the effectiveness of the regulatory agencies responsible for regulating mines and oil/gas fields should be audited annually, and the results made publicly available. Communities should have the right to independent monitoring and oversight of the environmental performance of a mine or well field. Tailings impoundments and waste rock dumps should be constructed to minimize threats to public and worker safety, and to decrease the costs of long-term maintenance. If groundwater contamination is possible, liners should be installed and facilities should have adequate monitoring and seepage collection systems to detect, collect, and treat any contaminants released in the immediate vicinity. Acid-generating and radioactive material should be isolated in waste facilities and hazardous material minimization, disposal, and emergency response plans should be made publicly available. Rivers, floodplains, lakes, estuarine, and marine systems should not be used for disposing of oil/gas, mining or mine waste. Mines, wells, pipelines, roads, and disposal areas should be distant from surface and ground waters to avoid their contamination. Mine operators should adopt the International Cyanide Management Code, and third-party certification should be used to ensure safe cyanide management is implemented.

Companies should be required to develop a reclamation plan before operations begin that includes detailed cost estimates. The plan should be periodically revised to update changes in mining and reclamation practices and costs. All disturbed areas should be rehabilitated consistent with desirable future uses, including re-contouring, stabilizing, and re-vegetating disturbed areas. This should include the salvage, storage, and replacement of topsoil or other acceptable growth media. Aggregate mines should be designed to improve and increase off-channel and wetland habitat along rivers. Quantitative standards should be established for re-vegetation in the reclamation plan, and clear mitigation measures should be defined and implemented if the standards are not met. Where acid-generating or radioactive materials are exposed in the mine wall, companies should backfill the mine pit if it would minimize the likelihood and environmental impact of acid generation or radiation. Backfilling options must include reclamation practices and design to ensure that contaminated or acid-generating materials are not disposed of in a manner that will degrade surface or groundwater. Companies should be required to backfill underground mines where subsidence is likely and to minimize the size of waste and tailings disposal facilities. Reclamation plans should include plans and funding for post-closure monitoring and maintenance of all mine facilities, including surface and underground mine workings, tailings, and waste disposal facilities.

Adaptive management plans at the basin scale should exist and be followed rigorously for mines (e.g., ISP 2000, NMFS 2004; NRC 2004; Goodman et al. 2011). Those plans should include clear goals, objectives, expectations, research questions, alternatives, conceptual models, and simulation models. The plans should include appropriate study designs (BACI, probability) and standard sets of quantitative and socially and ecologically informative indicators that are monitored through the use of standard methods to assess the ecological effectiveness of management practices (i.e., performance-based standards; e.g., Roni 2005; Hughes and Peck 2008; Roni et al. 2008). Monitoring indicators should include ground and surface water quality, and sediment quality, tissue chemistry, flow regime, physical habitat structure, and biological assemblages (fish, benthic macroinvertebrates, algae, riparian vegetation). For many indicators both intensive (e.g., five water samples in a 30-d period during high- and low-flow periods) and extensive (e.g., monthly water samples) monitoring is required to evaluate mining-related effects. Fish sampling should be conducted during base flows and during major migratory periods; for other variables (e.g., benthic macroinvertebrate and algal assemblage structure), annual base flow sampling is required. Environmental monitoring must be included as a condition of the mine permit and paid for by the company. All data, including quality assurance/quality control data, should be collected by an independent entity, and stored in a computer database that is easily accessible by the public. Funding for the monitoring should be stable before, during, and after the term of the mine. There should be a single lead agency with a single lead scientist responsible for implementing the monitoring, research, data management and analyses, and reporting of the monitoring team. The data analyses should lead to defensible, science-based decisions regarding management alternatives, and those decisions should be fully documented and defensible with data and underlying rationale. Regarding aggregate mines, the lead agency should develop a sediment budget, including removal and transport rates, at a basin scale Monitoring of reference and altered sites needs to be conducted to support effects assessment and management decisions.

Financial sureties (bonds) should be reviewed and upgraded on a regular basis by the permitting agency, and the results of the review should be publicly disclosed. The public should have the right to comment on the adequacy of the reclamation and closure plan, the adequacy of the financial surety, and completion of reclamation activities prior to release of the financial surety. Financial surety instruments should be independently guaranteed, reliable, and readily liquid to cover all possible costs of mine, oil/gas field, and post-closure failures—including litigation. Sureties should be regularly evaluated by independent analysts using accepted accounting methods. Self-bonding or corporate guarantees should be prohibited. Financial sureties should not be released until reclamation and closure are complete, all impacts have been mitigated, and cleanup and rehabilitation have been shown to be effective for decades after mine or oil/gas field closure.

Ensure that appropriate governance structures are in place. Corporate governance policies should be made public, implemented, and independently evaluated. Companies should report their progress toward achieving concrete stated environmental and social goals through specific and measurable biological and environmental indicators that can be independently monitored and verified. That information should be disaggregated to site-specific levels. Companies should report money paid to political parties, central governments, state or regional governments, and local governments. These payments should be compared against revenues governments receive and government budgets.

To ensure the above rights and practices, strong and honest central and local governments must exist, including laws, regulations, monitoring funds and staff, and the will and capacity to enforce the laws and regulations. In that regard, several weaknesses of the U.S. General Mining Law of 1872 need strengthening. Necessary fiscal reforms include: ending patenting (which extends ownership for far less than land values), establishing royalty fees (similar to the 8%--12.5% paid by the fossil fuel industry for use in land and water rehabilitation), ensuring adequate reclamation bonding, establishing regulatory fees (to cover permitting, effectiveness monitoring, enforcement infrastructure, and research), and creating funds to clean up abandoned mines (currently estimated at $32–72 billion) (Woody et al. 2010). Likewise, the regulatory exemptions for the oil and gas industry (Halliburton loopholes) in the U.S. Energy Policy Act of 2005 should be rescinded. Needed mine and oil and gas field oversight improvements include independent peer review from exploration to closure, and rigorous effectiveness monitoring and reporting by independent consultants. The peer review and monitoring results should be released directly to the public and oversight agencies for review (Woody et al. 2010). Unannounced inspections should be mandatory. Failure to successfully address mining and drilling violations should result in the cessation of operations until they are appropriately corrected. New or renewed permits by the company should not be considered until reclamation at other sites has been deemed successful by the regulatory agencies and stakeholders involved. Mining and oil and gas companies and persons with a history of serious violations nationally or internationally should be ineligible for new or renewed permits and liable for criminal proceedings. Citizens should have the right to sue in federal and state courts when companies or agencies fail to implement best management practices. Mine permitting and reclamation insurance should include the risks of tailings dam failures resulting from human error, meteorological events, landslides, and earthquakes. An aggressive and coordinated research program regarding mining and oil and gas fracking practices and the environmental impacts of mining and oil and gas fracking are needed (National Academy of Sciences 1999; USEPA 2004; Entrekin et al. 2011; Weltman-Fahs and Taylor 2013).

CONCLUSIONS

Because of the substantial and widespread effects of mining and oil/gas extraction on hydromorphology, water quality, fisheries, and regional socioeconomics; and the enormous unfunded costs of abandoned mine reclamation; the American Fisheries Society (AFS) recommends that governments develop immediate and substantive changes in permitting, monitoring, and regulating mines and oil/gas fields. In addition, firms that mine and drill in North America should be held to the same mining and drilling standards on other continents to reduce the likelihood of simply shifting their activities to other areas of the ecosphere where regulatory standards are weaker. Companies and governments that follow the recommended AFS mining policy should be actively and openly commended, whereas those that do not should be made open to public scrutiny.

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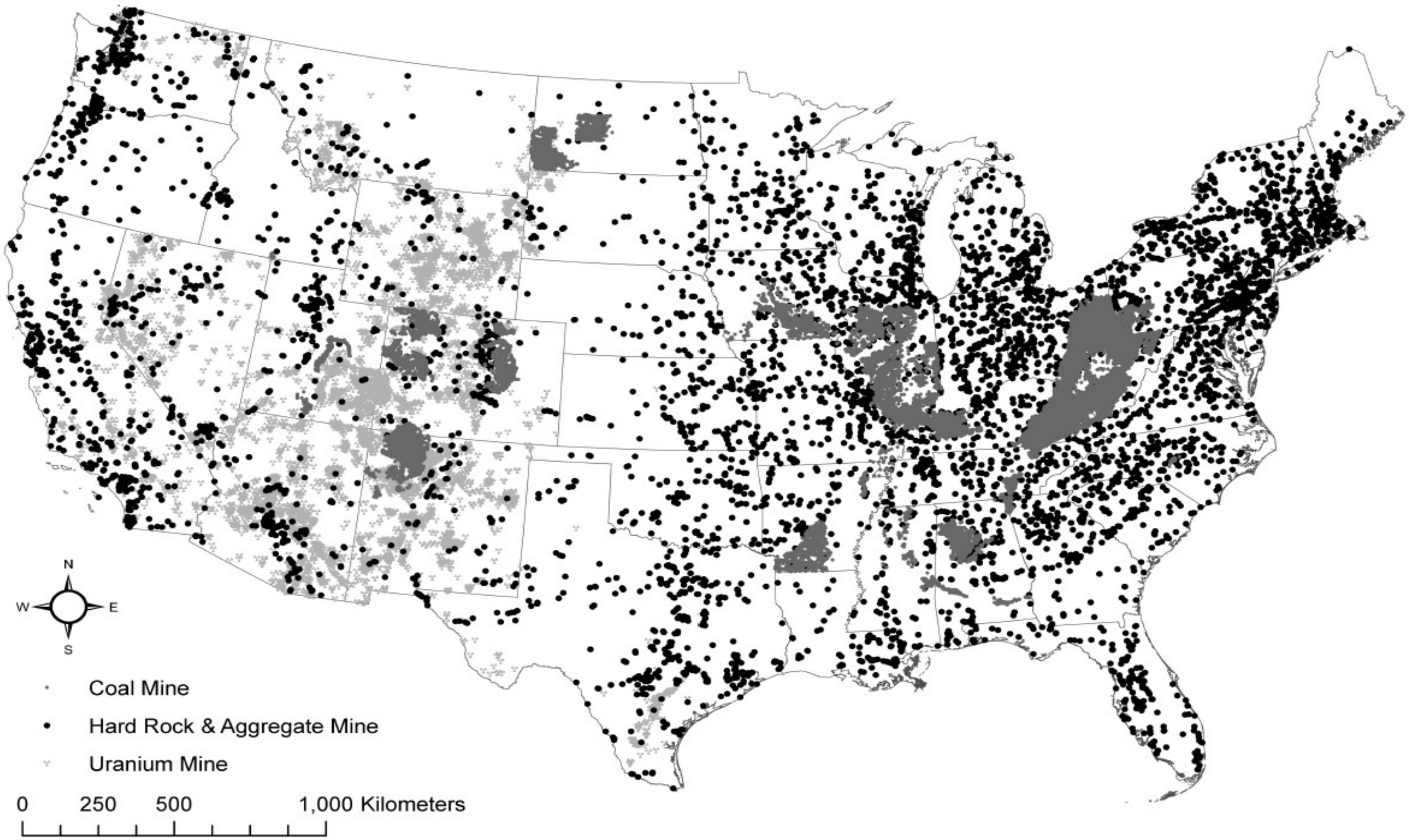
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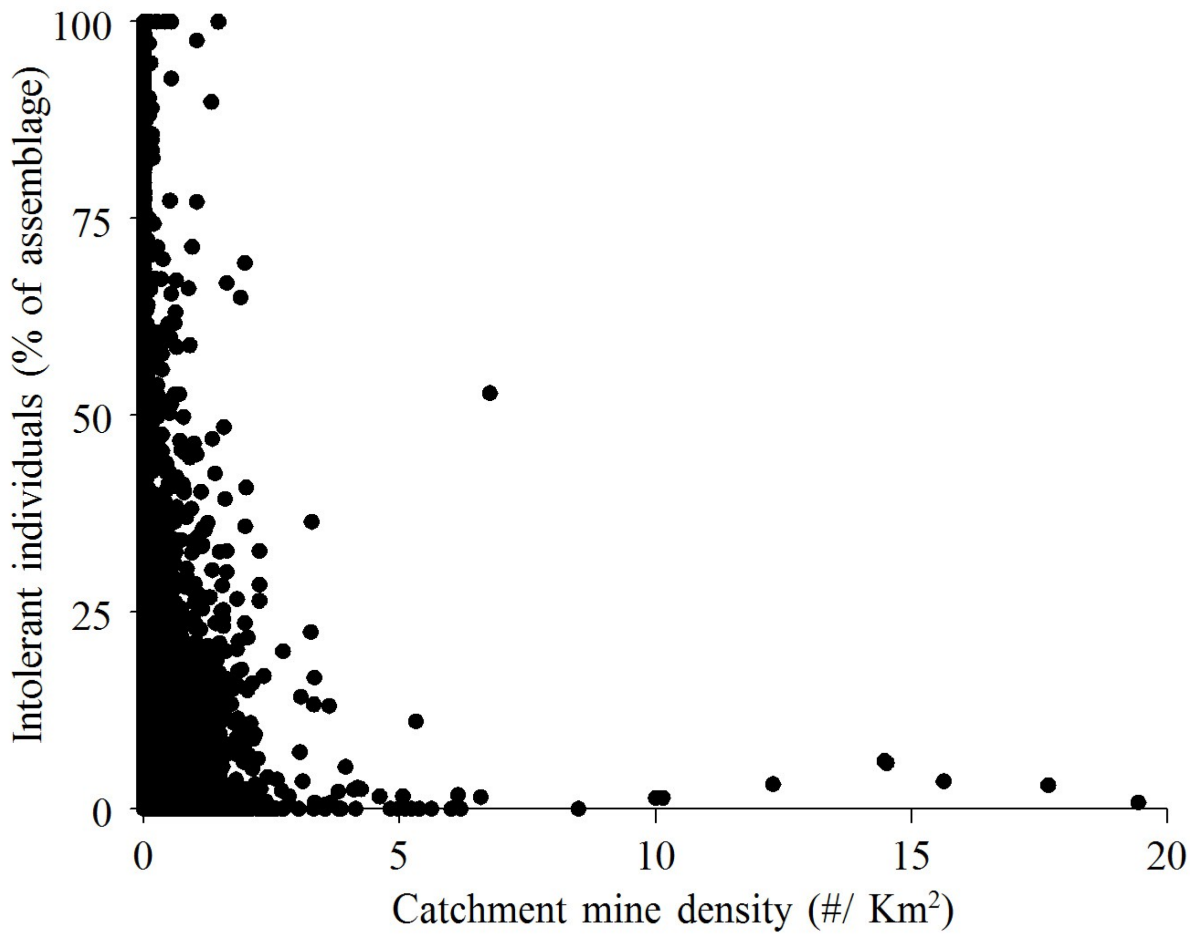

Figure 2. Percent generally intolerant fish individuals as a function of mine density for the conterminous US (n=33,538). Mines include coal mine and support mining activities (USGS 2012), hard rock and aggregate mine data points (USGS 2009), and uranium mines (USEPA 2006). Intolerant fish species are from Whittier et al. (2007) and Grabarkiewicz and Davis (2008). Fish data provided by National Fish Habitat Partnership (W.M. Daniel, D.M., Infante, K., Herreman, D., Wieferich, A. Cooper, P.C., Esselman, and D. Thornbrugh, Michigan State University, unpublished data)