

**[PROPOSED] SETTLEMENT AGREEMENT**

WHEREAS, Congress enacted the Clean Water Act (“CWA”) “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). The CWA prohibits the discharge of any pollutant into waters of the United States unless that discharge complies with the CWA’s requirements. *See id.* §§ 1311(a), 1362(12). Those requirements include water quality standards, which consist in part of “designated uses” of a water body and “water quality criteria” based on such designated uses. *Id.* § 1313(c)(2)(A). States, not the United States Environmental Protection Agency (“EPA” or the “Agency”), have primary responsibility for establishing water quality standards, subject to EPA’s approval. *See id.* § 1313(c);

WHEREAS, once state water quality standards are in effect, the CWA requires the state to identify waters that do not meet those standards and establish the “total maximum daily load” (“TMDL”) of pollutants that can be introduced into those waters while still achieving applicable water quality standards. *Id.* § 1313(d)(1)(C). These TMDLs must be submitted to EPA for approval. *Id.* § 1313(d)(2);

WHEREAS, the Maryland Department of the Environment (“MDE”) originally listed the Gunpowder River and the Bird River as impaired by PCBs in fish tissue in 2006 and 2008, respectively, and MDE developed and submitted TMDLs to address those PCB listings. MDE also issues statewide and site-specific fish consumption advisories and recommendations;

WHEREAS, on October 3, 2016, EPA approved the State of Maryland’s submission of the Total Maximum Daily Load of Polychlorinated Biphenyls in the Gunpowder River and Bird River Subsegments of the Gunpowder River Oligohaline Segment, Baltimore County and Harford County, Maryland (the “PCB TMDLs”);

## PROPOSED SETTLEMENT AGREEMENT

WHEREAS, on July 29, 2020, Plaintiff Gunpowder Riverkeeper (“Riverkeeper”) filed a two-count lawsuit against EPA and EPA’s Administrator (with Riverkeeper, the “Parties”) in the United States District Court for the District of Columbia, *Gunpowder Riverkeeper v. EPA*, Case No. 1:20-cv-02063 (“Lawsuit”). In the Lawsuit, Riverkeeper challenges EPA’s approval of the PCB TMDLs;

WHEREAS, on October 5, 2020, EPA filed a motion to dismiss one of Riverkeeper’s two counts, which the Court granted on August 23, 2021, leaving a remaining count alleging that EPA’s approval of the PCB TMDLs constituted agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right” within the meaning of the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A) and (C);

WHEREAS, the Parties thereafter jointly requested the Court hold the case in abeyance so that they could engage in settlement negotiations regarding the remaining count. The Parties have reached an agreement to resolve the remaining claim in the Lawsuit with EPA agreeing to take certain actions, as set forth herein;

WHEREAS, the Parties share a desire for enhanced public participation opportunities for communities with environmental justice concerns and other overburdened communities and enhanced public health and safety measures related to the PCB TMDLs at issue;

WHEREAS, the Parties support effective implementation of the PCB TMDLs to meet water quality standards and to protect human health and the environment;

WHEREAS, EPA has informed Riverkeeper about assessment and future remedial activities at the CP Crane Station and Aberdeen Proving Ground (“APG”), two areas of concerns

## PROPOSED SETTLEMENT AGREEMENT

for Riverkeeper due to their possible contribution of PCB contamination in or near the Gunpowder and Bird River watersheds;

WHEREAS, MDE, a non-party to the Lawsuit and non-signatory to this Agreement, has provided Riverkeeper a letter providing information and MDE's intentions with respect to topics raised by Riverkeeper to EPA ("MDE Letter to Riverkeeper"). While not part of this Agreement, the letter is included here in Appendix B for informational and reference purposes only;

WHEREAS, the Parties understand that MDE intends to re-start in the fall of 2023 its five-year state-wide fish-tissue monitoring program, which includes PCB sampling in and around the Gunpowder River and Bird River watersheds. This monitoring had temporarily been paused from Fall 2020 to Fall 2022 so that the state could focus its resources on sampling for per- and polyfluoroalkyl substances. The Parties understand that, moving forward, MDE intends to conduct PCB fish-tissue sampling in the Gunpowder and/or Bird Rivers approximately once every five years, and to perform such sampling consistent with the state's existing sampling methods and procedures (MDE's Standard Operating Procedures for Fish and Shellfish Collection, Analysis, Data Management, and QA/QC (2021));

WHEREAS, in August 2022, MDE issued its "Guidance for Developing PCB TMDL Stormwater Wasteload Allocation (SW-WLA) Watershed Implementation Plans." The MDE guidance provides that counties with PCB TMDL municipal separate stormwater system ("MS4") wasteload allocations—including Baltimore County in connection with the PCB TMDLs at issue in the Litigation—are to develop a watershed implementation plan and conduct a multi-phase PCB source trackdown investigation. According to the MDE guidance, these investigations are intended to identify sources of PCB contamination that may be controlled or

## PROPOSED SETTLEMENT AGREEMENT

remediated through MDE regulatory actions, such as site assessment and remediation and CWA National Pollutant Discharge Elimination System industrial permits;

NOW, THEREFORE, the Parties agree as follows:

### **I. GENERAL PROVISIONS**

1. The Parties to this Settlement Agreement (“Agreement”) are Plaintiff Gunpowder Riverkeeper and Defendants U.S. Environmental Protection Agency and EPA’s Administrator, in his official capacity. Nothing in this Agreement shall bind, obligate, or otherwise create any rights or duties applicable to or enforceable by, or impose any conditions or limitations upon, any person or entity that has not signed the Agreement, nor shall the Agreement be construed to make any such persons or entity a third-party beneficiary of the Agreement.

2. This Agreement applies to, is binding upon, and inures to the benefits of the Plaintiff (and its successors, assigns, and designees) and EPA.

### **II. EPA COMMITMENTS**

Subject to the terms of this Agreement, EPA agrees to the following:

#### **A. Fish Tissue Sampling**

1. On or before December 1, 2023, EPA (or its contractor(s)) will begin fish tissue sampling (“Sampling”), to take place in the following three areas: 1) Seneca Creek near the CP Crane Site, 2) Saltpeter Creek near the CP Crane site, and 3) the Gunpowder River in the proximity of its confluence with Canal Creek in the APG site. Sampling will consist of two composite samples at each area, with each composite composed of five similarly sized fish of target species (for a total of 10 fish for each area), amounting to 30 fish in total. Sampling will otherwise be consistent, to the extent practicable, with Appendix A – Fish Tissue Sampling Plan.

## PROPOSED SETTLEMENT AGREEMENT

2. EPA will make the results of the Sampling available on its website and provide notice to Riverkeeper's counsel in the manner provided in Section VII below. EPA will also submit the Sampling results to MDE for evaluation in the state's ensuing CWA section 305(b)/303(d) integrated reporting and for consideration in fish consumption advisories.

### **B. PCB TMDL Implementation Public Meeting**

1. EPA will encourage MDE or Baltimore County (both non-parties to the Lawsuit and non-signatories to this Agreement) to hold a public meeting on PCB TMDL implementation, and EPA agrees to provide support for such a meeting, including, to the extent available and practicable, funding to MDE to support the holding of such a meeting. EPA will participate at any such public meeting held by MDE or Baltimore County.

2. In the alternative, if neither MDE nor Baltimore County hold a public meeting on PCB TMDL implementation as provided in § II.B.1 on or before September 30, 2025, EPA will schedule and hold such a public meeting by March 30, 2026 at a time and location near the Gunpowder and Bird River watersheds, that, in EPA's sole discretion, allows for the greatest number of participants and is geographically accessible. EPA will provide notice of any such meeting at least 30 days prior to any meeting on EPA's website and to Riverkeeper's counsel as required by Section VII. Any such meetings hosted by EPA will allow an option for virtual attendance among participants.

### **III. STIPULATION OF DISMISSAL**

1. Within fourteen (14) days after the Agreement is signed by the Parties (the "Effective Date of this Agreement"), the Parties shall jointly file a notice of voluntary dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(ii) in the Lawsuit. Riverkeeper shall be barred

## PROPOSED SETTLEMENT AGREEMENT

from reinstating the Lawsuit except pursuant to the terms and on the conditions specified in Paragraphs V.3 and 4, below.

### **IV. MODIFICATION AND TERMINATION**

1. Any term set forth in this Agreement may be modified only by written agreement of the Parties.
2. This Agreement will terminate upon the completion of EPA's obligations under Section II of this Agreement.

### **V. RELEASES, DISMISSAL AND REMEDIES**

1. This Agreement shall constitute a complete and final settlement of all claims which were asserted, or could have been asserted, by Riverkeeper against the United States in the Lawsuit.
2. In exchange for EPA's commitments in Section II of this Agreement, Riverkeeper hereby releases, discharges, and covenants not to assert (by way of the commencement of an action, the joinder of the Administrator and/or EPA in an existing action, or in any other fashion) any and all claims, causes of action, suits or demands of any kind whatsoever in law or in equity against the United States based upon matters which were asserted, or could have been asserted through the filing date of this Lawsuit.
3. In the event of a disagreement between the Parties concerning the interpretation or performance of any aspect of this Agreement, the dissatisfied Party shall provide the other Party with written notice of the dispute and a request for negotiations. The Parties shall meet and confer in order to attempt to resolve the dispute within thirty (30) days after the written notice, or such time thereafter as is mutually agreed.

## PROPOSED SETTLEMENT AGREEMENT

4. If the Parties are unable to resolve the dispute within sixty (60) days after such meeting, Riverkeeper's sole remedy is to reinstitute the Lawsuit. EPA does not waive or limit any defense relating to such litigation. The Parties agree that contempt of court is not an available remedy under this Agreement.

5. Riverkeeper's sole remedy concerning any action taken by EPA pursuant to this Agreement is to seek judicial or administrative review of such action. Nothing in this Agreement shall be construed to limit any defense EPA may have to any future challenge or to confer jurisdiction on any court to review such action where it would otherwise be lacking.

### **VI. SAVINGS PROVISIONS**

1. Nothing in this Agreement shall constitute an admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of the United States, its officers or agencies, or any person affiliated with it. This Agreement shall not be used or admitted in any proceeding against a Party.

2. Nothing in this Agreement shall be construed to limit or modify the discretion accorded to EPA by the Clean Water Act or by general principles of administrative law, nor shall it in any way be deemed to limit EPA's discretion in taking any final agency action or adopting any rule, policy, or guidance.

3. Nothing in this Agreement shall be construed to limit or modify EPA's discretion to alter, amend, or revise any regulations, guidance, policy, or interpretation EPA may issue in accordance with, or on matters related to, this Agreement from time to time or to promulgate or issue superseding regulations, guidance, or interpretations, or to limit any right that Riverkeeper may have to seek judicial or administrative review in a subsequent case of any such action by EPA.

## PROPOSED SETTLEMENT AGREEMENT

4. To the extent this Agreement provides that EPA will request, recommend, or otherwise encourage any jurisdiction or agency (other than EPA) to take any action, or provide any information, the Parties agree that the jurisdiction's or agency's failure to comply with EPA's request, recommendation, or encouragement shall not constitute a breach of this Agreement by EPA.

5. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or take actions in contravention of the Administrative Procedure Act, 5 U.S.C. §§ 551–559, 701–706, the Clean Water Act, or any other law or regulation, either substantive or procedural. The Parties recognize and acknowledge that the obligations imposed upon EPA under this Agreement can only be undertaken using appropriated funds legally available for such purpose.

6. The possibility exists that circumstances outside the reasonable control of EPA could delay compliance with deadlines stated in this Agreement. Such situations include, but are not limited to, a government shutdown and a major environmental event requiring immediate and/or time-consuming response by EPA. EPA shall use its best efforts to anticipate any such event or circumstances and shall use its best efforts to address the effects of any such event or circumstances to prevent or minimize delayed compliance with deadlines stated in this Agreement. Should a delay occur due to such circumstances, any resulting failure to meet the deadlines set forth herein shall not constitute a failure to comply with the terms of this Agreement, and any deadlines shall be extended one day for each day of the delay. EPA will provide Riverkeeper with notice as soon as is reasonably possible under the circumstances, but in no event longer than seven (7) days thereafter, in the event that EPA invokes this term of the



## PROPOSED SETTLEMENT AGREEMENT

Agreement and will provide Riverkeeper with an explanation of EPA's basis for invoking the provisions of this Paragraph and the anticipated duration of the delay.

7. This Agreement shall be governed and construed under the laws of the United States.

8. After the Effective Date of this Agreement, if any term, condition, or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction or rendered by the adoption of a statute by the United States invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

### VII. NOTICES

1. Any notices required or provided for by this Agreement shall be made in writing, via electronic mail, or if electronic mail is infeasible for whatever reason, by U.S. mail. In addition, to be effective, any such notice must be sent to the following:

For EPA:

Alec Mullee  
Attorney-Adviser  
Water Law Office  
Environmental Protection Agency  
WJC Building North, Room 1448K  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
Email: mullee.alec@epa.gov

Catherine Chong  
Assistant Regional Counsel  
US Environmental Protection Agency, Region 3  
Four Penn Center  
Philadelphia, PA 19103  
Email: R3\_ORC\_Mailbox@epa.gov

## PROPOSED SETTLEMENT AGREEMENT

For DOJ:

Bryan J. Harrison  
Trial Attorney  
U.S. Department of Justice  
Environment and Natural Resources Division  
P.O. Box 7611  
Washington, D.C. 20044  
Email: bryan.harrison@usdoj.gov

For Gunpowder Riverkeeper:

Sara A. Colangelo  
Director, Environmental Law & Justice Clinic  
Visiting Professor of Law  
Georgetown University Law Center  
600 New Jersey Ave., NW  
Washington, DC 20001  
Sara.Colangelo@law.georgetown.edu  
202.661.6543 (office)

2. Notice provided pursuant to Section VII shall be deemed effective (1) upon the date sent if sent by email or (2) upon receipt if sent by U.S. mail.

### VIII. MISCELLANEOUS PROVISIONS

1. Each undersigned representative of the Parties to this Agreement certifies that he or she is fully authorized by the Party to enter into and execute the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

2. This Agreement is the entire agreement between Riverkeeper and EPA in this case. To the extent this Agreement references other documents, including but not limited to the MDE Letter to Riverkeeper (Appendix B), those documents (except for Appendix A) are referenced for informational purposes only and are not thereby incorporated by reference into, and do not constitute a part of, this Agreement. All prior conversations, meetings, discussions, drafts, and writings of any kind are specifically superseded by this Agreement.

PROPOSED SETTLEMENT AGREEMENT


3. It is hereby expressly understood and agreed that this Agreement was jointly drafted by Riverkeeper and EPA. Accordingly, the Parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting Party shall be inapplicable in any dispute concerning the terms, meaning, or interpretations of this Agreement.

4. The Parties shall bear their own costs of this action, including attorneys' fees.

5. This Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any Party shall have the same force and effect as if that Party had signed all other counterparts.

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For Riverkeeper:



Sara A. Colangelo  
Director, Environmental Law & Justice Clinic  
Visiting Professor of Law  
Georgetown University Law Center  
600 New Jersey Ave., NW  
Washington, DC 20001

For EPA:

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Bryan J. Harrison  
Trial Attorney  
U.S. Department of Justice  
Environment and Natural Resources Division  
P.O. Box 7611  
Washington, D.C. 20044

**APPENDIX A**

PROPOSED SETTLEMENT AGREEMENT  
**APPENDIX A**

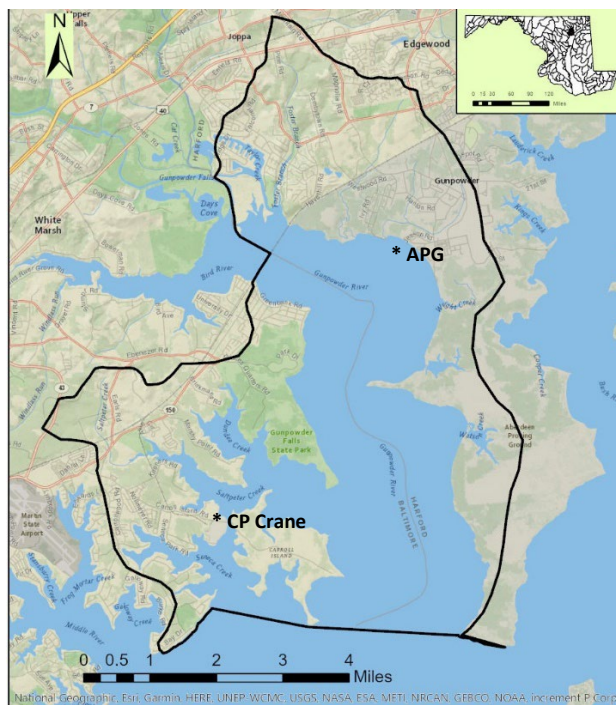
**Fish Tissue Sampling Proposal at CP Crane and APG Sites**

In response to Gunpowder Riverkeeper's requests for PCB sampling, EPA proposes to conduct fish tissue sampling (using MDE's fish tissue sampling methodology) in the areas of Seneca and Saltpeter Creeks surrounding the CP Crane site, as well as in the Gunpowder River in the proximity of its confluence with Canal Creek in the APG site (proposed sampling locations are marked in the maps below). EPA field staff (or an EPA contractor) would utilize electrofishing for sampling. Sampling would tentatively be conducted in the Fall of 2023 (dependent on timing of a final Settlement Agreement). This additional fish tissue sampling in Seneca and Saltpeter Creeks is in addition to MDE's current fish tissue sampling program, as MDE sampling is typically only conducted in the mainstem of the Gunpowder River.

To monitor and evaluate levels of polychlorinated biphenyls (PCBs) in fish, specifically in the edible portions (fish fillet) of resident species, fish tissue sampling is typically conducted. Such monitoring enables MDE to determine whether the PCB levels in these species are within acceptable limits for human consumption. The results of such sampling are typically used to issue consumption advisories for recreationally caught fish in Maryland and to list waters as impaired in Maryland's Integrated Report. MDE routinely monitors watersheds within the state on a 5-year rotating basis.

In most cases, electrofishing, using a boat-mounted electrofisher, is the primary means of fish collection (otter trawl, baited trot lines, traps, hook and line, or gillnets may also be used). At each sampling location, the boat is maneuvered over structures where fish tend to concentrate, generally covering a considerable distance within the immediate area (can be thought of as a transect rather than an individual point on a map). Since fish are mobile and can be found across a wide home range, a single sampling location in each waterbody is sufficient in determining applicable consumption advisories. MDE uses this data to assess water quality within the area from which the sample was collected. Fish tissue data collected during this sampling would be submitted to MDE for MDE's use to support Clean Water Act Section 305(b) and 303(d) assessments at the Maryland 8-digit watershed scale, as identified in figure 1, below.

PROPOSED SETTLEMENT AGREEMENT  
**APPENDIX A**



**Figure 1:** The Gunpowder River Watershed (MD 8-Digit code: 02130801).

The types of fish to be sampled under this proposal include important predatory game species (e.g., smallmouth bass and striped bass), common recreational panfish species (e.g., white perch, bluegill, and crappie) as well as bottom-dwelling, accumulator species with relatively high fat content (e.g., carp, catfish, and American eel). For composite sample analysis, five or more fish fillets (of the same species) are ground and blended together to create a single composite sample for contaminant content analysis. An estimate of central tendency, i.e., the median value, is used in the analysis of fish data. The median value represents the measured concentration of the contaminant in the edible portion of the fish tissue. A single exceedance of contaminant limits by one sample (i.e., a composite sample of 5 fish) is sufficient to issue a fish consumption advisory. Further information regarding analysis methods can be found in MDE’s “Technical Support Document for Establishing Fish and Shellfish Consumption Advisories in Maryland,” available at

[https://mde.maryland.gov/programs/Marylander/fishandshellfish/Documents/MDE\\_Fish\\_Consumption\\_Advisory\\_Technical\\_Support\\_Document.pdf](https://mde.maryland.gov/programs/Marylander/fishandshellfish/Documents/MDE_Fish_Consumption_Advisory_Technical_Support_Document.pdf), which is provided at MDE’s fish consumption advisory webpage, available at

<https://mde.maryland.gov/programs/marylander/fishandshellfish/pages/fishconsumptionadvisory.aspx>.

EPA proposes to collect two composite samples at each sampling point identified in Figures 2 and 3, each composed of five similarly sized fish of target species (for a total of 10 fish) at each site (CP Crane and APG), amounting to 30 fish in total. One sample would target game species (e.g., largemouth bass or white perch) (both fillets of five fish), while the other would be comprised of fillets from a bottom-dwelling species (e.g., carp or catfish). When neither targeted species is available, substitutions with related species are appropriate. A composite sample is to consist of five fish of the same species and within a specific size class. The composite size class is determined by first identifying the largest fish and then selecting additional fish of the same species that are within 75% of its length. (MDE SOP, 2020).

PROPOSED SETTLEMENT AGREEMENT  
**APPENDIX A**



**Figure 2:** Proposed fish tissue sampling sites in the Seneca and Saltpeter Creeks at CP Crane (20 fish total).



**Figure 3:** Proposed fish tissue sampling sites in Gunpowder River at APG (10 fish total).

Fish PCB analysis would be performed using an approved EPA Method (8082 or 1668). The laboratory responsible for performing the PCB analysis will be determined upon completion of a formal sampling plan. The results of this sampling would be submitted to MDE for consideration in fish consumption advisories, as well as MDE's Integrated Report of Surface Water Quality. EPA would also provide GRK with the results of the fish tissue sampling as soon as they become available.

**APPENDIX B**





**Maryland**  
Department of  
the Environment

Wes Moore, Governor  
Aruna Miller, Lt. Governor

Serena McIlwain, Secretary  
Suzanne E. Dorsey, Deputy Secretary

February 23, 2023

VIA CERTIFIED MAIL

Mr. Theaux M. Le Gardeur  
Gunpowder Riverkeeper  
P.O. Box 156  
Monkton, MD 21111

Dear Mr. Le Gardeur,

MDE is aware of ongoing settlement negotiations between the Gunpowder Riverkeeper and the United States Environmental Protection Agency (EPA) regarding Polychlorinated Biphenyls (PCBs) Total Maximum Daily Loads for the Gunpowder and Bird Rivers. EPA has relayed to MDE several concerns you have raised during your negotiations regarding TMDL implementation, and MDE is sending this letter to provide you with additional background and information to address your concerns. Specifically, the Department understands that the Riverkeeper has concerns/comments on various processes within MDE. The Department understands that the Riverkeeper has made settlement requests related to enhanced public participation in the TMDL implementation process with a focus on overburdened and marginalized communities, TMDL implementation with a focus on public health and safety, and broader MDE regulatory action. Outlined below is what the Department understands the requests to be and Departmental responses as well as background information related to those requests.

**Enhanced public participation with a focus on overburdened and marginalized communities:**

1. Annual meeting between EPA, MDE and PCB TMDL stakeholders to discuss implementation.

*Response:* Baltimore County is primarily responsible for implementing these PCB TMDLs through its MS4 permit. The county has previously hosted public meetings on its TMDL implementation efforts to address several pollutants, including PCBs. In September 2022, MDE finalized and released its source trackdown guidance for PCB TMDLs, available at:

[https://mde.maryland.gov/programs/water/TMDL/DataCenter/Documents/PCB\\_guidance/PCB\\_TMDL\\_Implementation\\_Guidance\\_SW-WLA\\_08302022.pdf](https://mde.maryland.gov/programs/water/TMDL/DataCenter/Documents/PCB_guidance/PCB_TMDL_Implementation_Guidance_SW-WLA_08302022.pdf). Counties with PCB TMDL MS4-WLA reductions will be required to develop a watershed implementation plan and conduct a multi-phase PCB source trackdown investigation. Within two years of publication of the guidance, Baltimore County will need to complete the watershed implementation plan and create a monitoring plan for Phase I of the multi-phase PCB source trackdown investigation. Further details are provided in the “Permit Term Deliverables” section on page 6 of the guidance document. MDE will reach out to Baltimore County to host a public meeting with stakeholders to discuss their plan for source trackdown.

2. Public announcements for all NPDES permits issued or renewed related to the TMDL in local papers such as the Aegis in addition to regional papers such as the Baltimore Sun, with Spanish language translation, and with a 60-day comment period.

*Response:* Public notice occurs for all NPDES permits. Announcements are currently made only in English. Consistent with your request, MDE intends to provide Spanish language translation for public

## **APPENDIX B**

### PROPOSED SETTLEMENT AGREEMENT

Mr. Theaux Le Gardeur

Page 2

notices of NPDES permits related to the Gunpowder PCB TMDL. However, the Department is unlikely to be able to provide “blanket” and automatic 60-day comment period for all related NPDES permits given the 30-day public comment window is provided for by statute and implementing regulations. The Department can extend public comment periods for specific permits upon request, as is the standard practice, and the Department is happy to work with the Gunpowder Riverkeeper on a permit by permit basis to do so, as appropriate.

Typically, if a project is within one county MDE uses the closest local paper for publication of the legal notice in addition to publication on MDE’s website. If a project covers multiple counties, MDE uses a larger newspaper to reach as many citizens as possible. Consistent with your request, MDE intends to continue to publish notices in local papers for localized projects. MDE also maintains an interested parties list for both TMDL documents and permits with direct notification of public comment periods of which you are included.

3. Public meetings held in locations geographically accessible to users of the rivers such as the Joppatowne library or Essex library and held at a time that facilitates participation by and an inclusive dialogue with those working and/or caring for children.

*Response:* Consistent with your request, informational meetings in local, publicly accessible locations are a part of the permitting public comment process and held after work hours.

With further regard to your expressed interest in environmental justice (EJ) and inclusion, the Department, in early July, released an [EJ screening and mapping tool](https://mdewin64.mde.state.md.us/EJ/) which was posted on MDE’s website at <https://mdewin64.mde.state.md.us/EJ/>. The tool is being used by MDE staff, permit applicants, and the general public to facilitate engagement during the permitting process. It incorporates demographic and socioeconomic data with MDE elements like industrial facilities, wastewater treatment plants and proximity to dams to prioritize EJ concerns. The overall socioeconomic score will be used by MDE and permit applicants to inform their decisions on siting, permitting, enforcement and infrastructure improvements. This tool gives all Marylanders equal access to information about potential environmental hazards in their communities and to participate in the decision-making process of environmental permits and supplemental environmental projects. MDE will also encourage Baltimore County to use this tool to provide stakeholder engagement meetings in underserved communities.

#### **TMDL Implementation with a Focus on Public Health and Safety**

1. Publication of additional fish consumption advisories, including Notices published in the State Fishing regulations book and distributed to every licensed fisherman in Maryland and physical sign posts in English and Spanish around popular fishing locations for bank fisherman and at boat ramps for commercial fisherman.

*Response:* A fisherperson receives a state fishing regulations book when they obtain their license. At this time, the book is an electronic pdf file and DNR no longer prints the books. The book is available at <https://www.eregulations.com/maryland/fishing/>. Previously, the book had listed specific restrictions and health advisories, but because these advisories change over time, the electronic pdf now provides a website link to online health advisories. Also, the website link and QR code are provided on the physical sign posts, which are further described below. Licenses are renewed annually and a link to the pdf book is provided in the confirmation email. As noted below, consistent with your expressed interest in signposts that visually convey information, the physical signposts with infographics are a way for individuals with limited English proficiency to obtain information on fishing restrictions and health advisories.

## **APPENDIX B**

### **PROPOSED SETTLEMENT AGREEMENT**

Mr. Theaux Le Gardeur

Page 3

2. Physical sign posts in English and Spanish around popular fishing locations for bank fisherman and at boat ramps for commercial fisherman.

*Response:* Signs are provided to Baltimore County at their request as the County determines the need and locations of the signs and is responsible for their maintenance. MDE provides the signs in English and Spanish. Maryland's advisory signs need to be neutral for two reasons 1) the advisories span the gamut from "eat all of these kind of fish" and "avoid these fish" to somewhere in between and 2) the signs are designed not to be attractive to vandalism and theft, which has occurred. The Department wants to ensure that the public knows that MDE is sampling for these legacy pollutants and is providing up-to-date consumption guidance based upon that information. If the County wants additional Spanish-language signs, the County can ask MDE for them since the County posts, maintains and monitors the signs once in place.

While the signs need to remain neutral, all new signs moving forward will contain an MDE approved infographic, enclosed, which MDE believes is responsive to Riverkeeper's concerns. A map of the current sign locations within the Gunpowder Falls watershed is attached, which EPA previously provided with its May 6, 2022 letter. In addition to the sign posts, consistent with your interest in outreach to subsistence - level fisherpersons, the Department sends the electronic version of the brochures to county health departments to send to the Special Supplemental Nutrition Program for Women, Infants, and Children (the WIC program) participants (so that the brochures may be printed and distributed in participating locations) in an effort to ensure notification of fisherpersons engaged in subsistence fishing.

3. Annual fish tissue, water column, and core sampling in the same locations listed on MDE's TMDL maps.

*Response:* MDE understands that EPA has been in discussions with you regarding your sampling requests and is addressing them in a settlement agreement. However, the following information is how MDE conducts fish tissue monitoring. MDE is focused on PFAS sampling until fall 2022. The following fall (2023), MDE expects to re-start its 5-year monitoring cycle strategy, which includes PCB fish tissue sampling. The strategy includes "bottom fish", about which MDE understands GRK has particular concerns. MDE considers the 5-year cycling strategy, established for fish consumption advisories, to be sufficient because a 5-year time period for sampling is best for observing trends in the fish tissue data (i.e., 5 years provides a reasonable timespan to observe depuration of PCBs in fish tissue concentrations). The decline in PCB fish tissue concentrations will not be a short-term process, as the depuration of contaminants from fish with high levels of PCBs will occur slowly over time following implementation of PCB remediation and control measures within the watershed. Thus, annual sampling is unlikely to show a significant change in fish tissue PCB concentrations. MDE also believes that water quality monitoring should focus on fish tissue sampling instead of ambient water column and sediment sampling within the Bird and Gunpowder River. The listing basis for PCBs in these waters is fish tissue. Sampling efforts focused on fish tissue monitoring will be more representative in demonstrating declining trends in PCB concentrations as a result of implementation. Fish tissue concentrations provide an integrated sample over time and space as fish move throughout the entire estuary accumulating PCBs through feeding, respiration, and dermal absorption. In order for water column and sediment sampling to be equally comprehensive, a survey at numerous stations throughout the Bird and Gunpowder Rivers with several field collections per year would be required to accurately characterize declining trends in PCB concentrations. This would be far too costly and resource intensive when fish tissue monitoring can provide an equally representative

## APPENDIX B

### PROPOSED SETTLEMENT AGREEMENT

Mr. Theaux Le Gardeur  
Page 4

result. It is MDE's understanding that Baltimore County is considering conducting its own fish tissue monitoring. In addition, described below in #4 are other PCB sampling efforts that are taking place.

4. Sampling at one year from settlement and three years from settlement at the Aberdeen Proving Grounds; CP Crane facility (Seneca and Salt Peter Creeks); and upstream NPDES dischargers such as landfills and larger WWTPs to characterize their potential PCB contributions.

*Response:* MDE understands that EPA has been in discussions with GRK regarding your sampling requests and is addressing them in a settlement agreement. However, the following information is how MDE shares water quality data.

In general, water quality data can be acquired in various ways: including EPA's Water Quality Portal (available here: <https://www.waterqualitydata.us/>, Public Information Act (PIA) request or through "Open MDE" a new data sharing portal for MDE data at <https://mde.maryland.gov/Pages/Open-MDE.aspx>" <https://mde.maryland.gov/Pages/Open-MDE.aspx>.

MDE understands that EPA is sharing sampling data for Aberdeen Proving Grounds, from superfund remedial investigation/feasibility studies.

In addition, the CP Crane facility was acquired by Bowley Quarters Investments, LLC a subsidiary of Forsite Development, Inc. in October 2021 and enrolled in MDE's Voluntary Cleanup Program (VCP). The property is undergoing decommissioning and redevelopment by Forsite with oversight conducted by the MDE Land Restoration and Oil Control Programs. Multimedia environmental characterization on the property and in the nearshore environment is underway. Characterization includes sampling for PCBs on the property and along preferential discharge pathways in the near shore environment. Historical records have not identified any known releases of PCBs on or discharging from the property to date. Consistent with your request, MDE will provide the Riverkeeper results of the environmental characterization when it becomes available.

The site can be found in MDE's Land Restoration Program (LRP) map and Brownfield Master Inventory (BMI) under "CP Crane Power Plant - Redevelopment Project and Coal Yard". The LRP map is located at: <https://mdewin64.mde.state.md.us/LRP/index.html> and the BMI List is located at: [https://mde.maryland.gov/programs/land/MarylandBrownfieldVCP/SiteAssets/Pages/BrownfieldMasterInventory/BMI\\_Active\\_Jan%202022.pdf](https://mde.maryland.gov/programs/land/MarylandBrownfieldVCP/SiteAssets/Pages/BrownfieldMasterInventory/BMI_Active_Jan%202022.pdf) "

As stated above, counties with PCB TMDLs will need to create their source trackdown plan(s) within two years of publication of the guidance. As a part of MS4 permit implementation efforts by Baltimore County, source track-down efforts will lead to the identification of areas of concern, which may potentially identify other NPDES dischargers that significantly contribute to PCB water quality impairments. If so, MDE may require these dischargers to implement additional PCB controls through their NPDES permits.

## **APPENDIX B**

### PROPOSED SETTLEMENT AGREEMENT

Mr. Theaux Le Gardeur  
Page 5

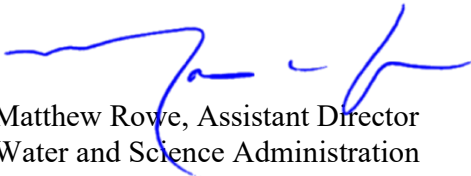
#### **Broader Regulatory Action**

1. Issuance of updated PCB TMDL guidance. The guidance to include a mandate that State agencies consider dredging contaminated sediment and consider use of emerging technologies and remediation mechanisms that immobilize PCBs within sediment to render them biologically unavailable.

*Response:* MDE's PCB source trackdown guidance was released in Fall 2022. Highlights of this document include 1) a PCB source assessment to identify potential sources within each TMDL watershed based on a desktop analysis of GIS resources, 2) a TMDL subwatershed prioritization strategy to identify and prioritize which subwatersheds will require source trackdown investigations, and 3) a multi-phase source trackdown investigation to identify discrete sources of PCBs that includes (a) a Phase I subwatershed screening utilizing passive samplers in the water column, (b) a Phase II comprehensive in-stream PCB characterization including passive samplers in the water column and sediment sampling, and (c) a Phase III PCB characterization within the area covered under the MS4 to identify PCB sources within the storm sewershed through outfall and stormwater BMP monitoring and sewer trackback monitoring.

We appreciate your interest in Maryland's water resources and for providing the Department an opportunity to review its processes. If you have any questions, please contact Dinorah Dalmasy of my staff by phone at 410-537-3699 or e-mail at [Dinorah.Dalmasy@Maryland.gov](mailto:Dinorah.Dalmasy@Maryland.gov).

Sincerely,

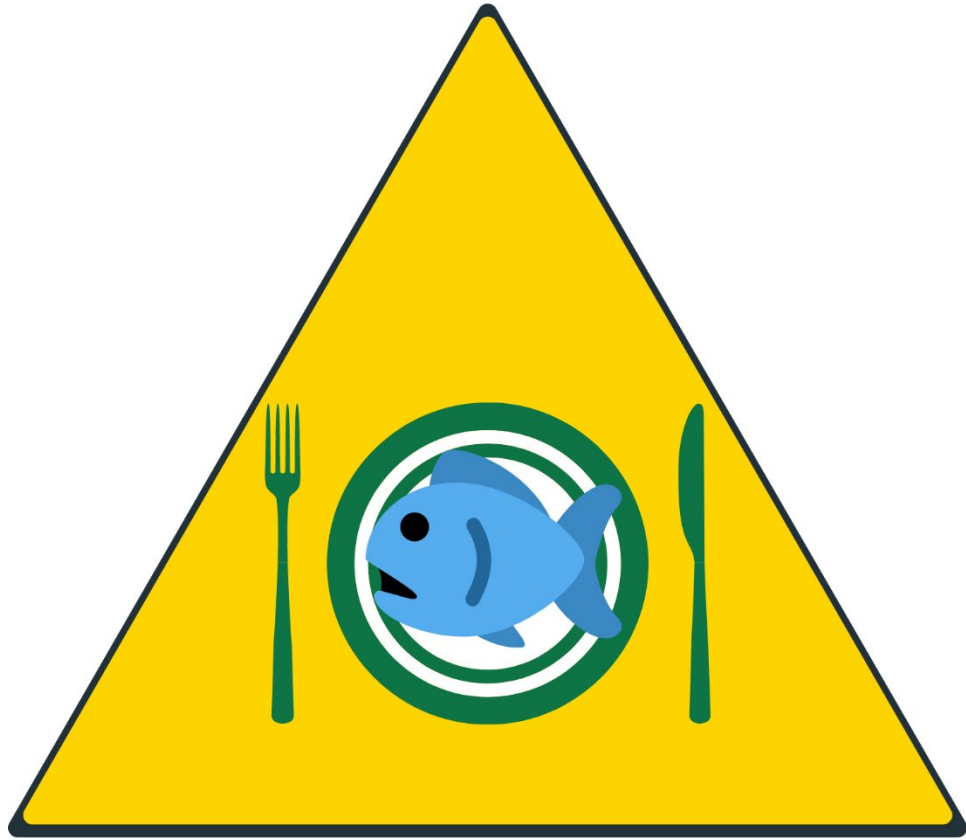


Matthew Rowe, Assistant Director  
Water and Science Administration

Enclosures

cc: Dinorah Dalmasy, MDE WSA WPRPP  
Jonathan May, Office of the Attorney General  
Catherine Chong, US EPA  
Greg Voight, US EPA  
Dave Lykens, Baltimore County Department of  
Environmental Protection and Sustainability

**APPENDIX B**  
PROPOSED SETTLEMENT AGREEMENT





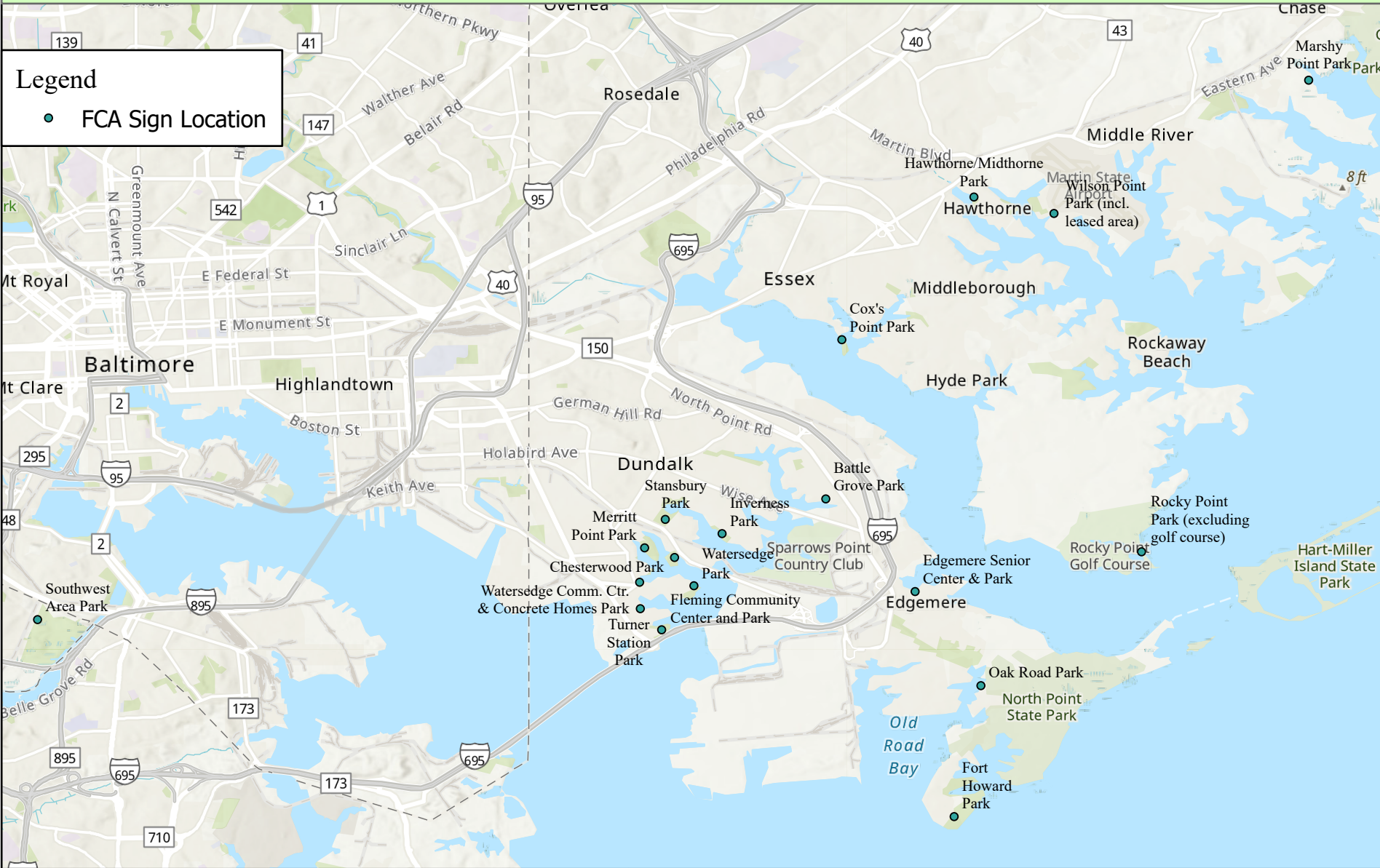
# APPENDIX B

## PROPOSED SETTLEMENT AGREEMENT Baltimore County

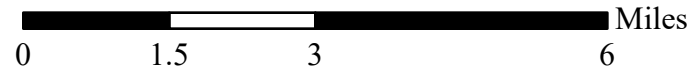
### Fish Consumption Advisory Signs

**Legend**

- FCA Sign Location



Larry Hogan - Governor  
Boyd K. Rutherford - Lt. Governor  
Ben Grumbles - Secretary

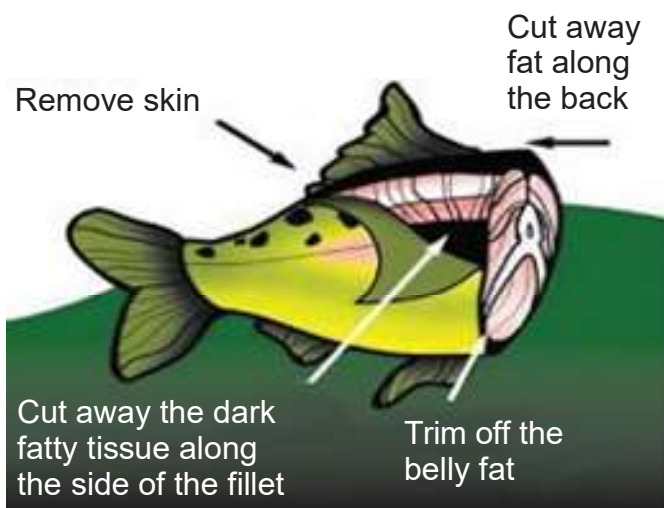


Scale: 1:125,000  
Date: 04/04/2022

## How should fish be cooked?

Mercury cannot be cooked out of fish, but you can cut down on PCBs that are stored in the fat. To cut down on PCBs:

- Eat only fish fillets. Cut off skin, fat along the back and side, and belly flap before cooking or eating.
- Let the fat drip off by baking, grilling or broiling the fish on a rack.
- Do not batter or bread fish before cooking. Batter and breading hold in fat.



## Other tips

- Try not to eat the same type of fish each time. Instead, eat many different types.
- Small fish have less mercury and PCBs than large fish.
- Avoid eating crab “mustard” - most PCBs are stored in this liver-like organ.
- To avoid germs, wash your hands before and after you handle seafood.
- If you have questions, contact one of the agencies below.



MDE

Lawrence J. Hogan, Jr.,  
Governor



Boyd K. Rutherford,  
Lieutenant Governor



## Fish Facts for:

- Pregnant women
- Women who may become pregnant
- Nursing mothers
- Children of age 6 and younger





Fish, crabs, and other seafoods can be an important part of a healthy diet.

- Most are safe to eat, but some have elevated levels of mercury or Polychlorinated biphenyls (PCBs).
- Mercury and PCBs may harm a growing brain or body. The information in this brochure offers suggestions on how to enjoy fish while minimizing health risks from mercury or PCBs.

**If you eat seafood often:**

- Eat up to 2 servings a week of fish or seafoods that are lower in mercury & PCBs - the **Green Group**.
- If you eat one serving from the **Yellow Group**, do not eat any other fish or seafood during the same week.
- If you eat one serving from the **Orange Group**, do not eat any other fish or seafood during the same month.

**Women and Children's Guide**

to choosing fish and seafood from fish markets, stores, and restaurants. Source: U.S. Food and Drug Administration.

**Green Group - 2 servings /week**

- Catfish: store bought
- Clams
- Crabs (without “mustard”)
- Cod
- Flounder
- Haddock
- Oysters
- Pollock
- Salmon
- Sardines
- Scallops
- Shrimp
- Tilapia
- Trout
- Tuna (only light tuna)

**Yellow Group - 1 serving / week**

- Tuna (Albacore “White” Tuna)

**Orange Group - 1 serving / month  
(children 1 serving every other month)**

- Striped Bass (28” and greater)  
Source: MDE

**Red Group - Do Not Eat**

- Crab “Mustard”
- King Mackerel
- Shark
- Swordfish
- Tilefish

**How large is one serving?**

**Women:** 9 crabs; 1 can of tuna; 8 ounces of Fish (fillet) - about the size of 2 decks of cards

**Children:** 4 crabs; half a can of tuna; 3 ounces of fish (fillet) - about the size of 1 deck of cards

For more information about seafood from stores or restaurants, contact:  
U.S. Food and Drug Administration ☎ 1-888-SAFEFOOD (723-3366)  
<http://www.fda.gov/Food/ResourcesForYou/Consumers/ucm110591.htm>

For information about fish caught in Maryland waterways, contact:

**Maryland Department of the Environment**

☎ 410-537-3818 [www.mde.state.md.us](http://www.mde.state.md.us)

## Como se debe cocinar el pescado?

El contenido de mercurio en el pescado no disminuye o desaparece por el solo hecho de cocinarlo, pero el contenido de BPCs que se acumula en la grasa del pescado sí se puede disminuir. Para disminuir el contenido de BPCs siga estas instrucciones:

- Coma sólo filete de pescado. Antes de cocinarlo o comerlo, córtelo la piel, la grasa y la parte que cubre el vientre, incluyendo la grasa que lo rodea.
- Cocine al horno, barbacoa, o ase su pescado en una parrilla y deje escurrir la grasa.
- No aplique mantequilla o empanice el pescado antes de cocinarlo. La mantequilla y el empanizado retienen la grasa.

Córtele la grasa o tejido grasoso oscuro a lo largo del filete

Quítele la piel



## Otras sugerencias

- Trate de comer diferentes variedades de pescado. No coma siempre el mismo tipo de pescado, varíe.
- Preferiblemente, coma pescados pequeños. Los pescados pequeños contienen menos mercurio y BPCs que los pescados grandes.
- Evite comer la glándula color verdoso o “mostaza” de los cangrejos. La mayor parte de los BPCs acumulados en el pescado se encuentran en esa glándula.
- Para evitar el contagio con gérmenes, lávese muy bien las manos antes y después de trabajar con pescados y mariscos.
- Si tiene alguna pregunta, comuníquese con una de las agencias del gobierno que se muestran a continuación:



Lawrence J. Hogan, Jr.,  
Governor



Boyd K. Rutherford,  
Lieutenant Governor



## Información sobre consumo de pescado para:

- Mujeres embarazadas
- Mujeres en edad fértil
- Mujeres que están lactando
- Niños de 6 años de edad o menores



PROPOSED SETTLEMENT AGREEMENT

Pescados, cangrejos y otros mariscos forman parte importante de una dieta saludable.

- La mayoría son saludables para comer, pero algunos tienen demasiado mercurio o Bifenilos Policlorinados (BPCs).
- Mercurio y BPCs pueden ser perjudiciales para el desarrollo del cerebro o del cuerpo. Su niño puede tener problemas de aprendizaje o crecimiento por comer alimentos que contengan mucho mercurio o BPCs.

**Si come mariscos a menudo:**

- Coma solo dos porciones a la semana de pescados o mariscos que son bajo en contenido de mercurio - Pescados del **Grupo Verde**.
- Si come una porción de pescado de los del **Grupo Amarillo**, entonces no coma ningún otro pescado o marisco durante esa semana.
- Si come una porción de pescado del **Grupo Naranja**, no coma ningún otro pescado o marisco durante el mes.

Guía sobre como seleccionar pescado o mariscos en mercados, tiendas y restaurantes para el consumo de mujeres y niños. Fuente: U.S. "Food and Drug Administration".

**Grupo Verde - 2 comidas cada semana**

- Catfish (Pez Gato): Comprado en tienda
- Clams (Almejas)
- Cod (Bacalao)
- Flounder (Platija)
- Haddock (Eglefinos)
- Cangrejos (sin la mostaza)
- Oysters (Ostras)
- Pollock (Pez Carbonero)
- Salmon (Salmón)
- Sardines (Sardinias)
- Scallops (Vieiras)
- Shrimp (Camarón)
- Tilapia
- Trout (Trucha)
- Tuna (sólo el Atún Claro)

**Grupo Amarillo - 1 porción de cada semana**

- Atún (Albacora "Blanco" Atún)

**Naranja Grupo - 1 porción de cada mes**

**(niños - 1 porción cada dos meses)**

- Róbalo Rayado (28" o más)
- Fuente: MDE

**Grupo Rojo - No coma nunca**

- Caballa
- Tiburón
- Pez espada
- Blanquillo
- Mostaza del cangrejo

**¿Qué tan grande es una porción?**

**Mujeres:** 9 cangrejos; 1 lata de atún; 8 onzas de pescado (filete - aproximadamente el tamaño de 2 juegos de barajas.

**Niños:** 4 cangrejos; la mitad de una lata de atún; 3 onzas de pescado (filete) - aproximadamente el tamaño de 2 juegos de barajas.

Para más información referente a consumo de pescados y mariscos provenientes de tiendas y restaurantes, comuníquese:

U.S. Food and Drug Administration / ☎ 1-888-SAFEFOOD (7266-3663)

<http://www.fda.gov/Food/ResourcesForYou/Consumers/ucm110591.htm>

Para más información referente a consumo de pescados de las aguas de Maryland, comuníquese:

Departamento del Medioambiente de Maryland (MDE)

☎ 410-537-3818

[www.mde.state.md.us](http://www.mde.state.md.us)