



To: Washington Citizens

From: Megan White, P.E., Manager
Water Quality Program
Department of Ecology

Subject: Proposal to Restructure the Standards to a Use-Based Format
Decision Process for Ecology's Proposed Rule

This memorandum describes the decision-making process that resulted in the Washington Department of Ecology's (Ecology) proposal to restructure the way uses are assigned to a waterbody from a class-based to a use-based format in the state's water quality standards.

Proposed Alternative

Ecology's proposal is to switch from a class-based format to a use-based format for identifying uses of a waterbody in the state.

Background

Ecology administers the state's surface water quality standards regulations (Chapter 173-201A WAC). These regulations establish minimum requirements for the quality of water that must be maintained in lakes, rivers, streams, and marine waters. The water quality standards assure that each river, lake, and marine waterbody will remain clean enough to protect its beneficial uses such as swimming, fishing, aquatic life habitat, and agricultural and domestic water supplies.

In the current rule, each waterbody is currently assigned to one of five classes -- Class AA, Class A, Class B, Class C, and Lake Class. Class AA and Lake Class are considered the highest quality and clean enough to support all uses. Each class has a specific set of beneficial uses that must be protected and a specific set of water quality criteria limiting the amount of pollution allowed. The criteria are set at levels designed to protect all the listed beneficial uses associated with the class. A higher class of protection requires pollutants to be more strictly limited. Class AA protects the most sensitive uses such as swimming and the embryonic development of salmon. Moving from Class AA down to Class C results in sensitive uses being dropped from the list of protected beneficial uses and as a consequence the water quality protection requirements are lowered.

Ecology refers to this approach as a "class-based" format. Each class has a group of uses and there is no flexibility to decide that certain uses are inappropriate for a particular waterbody.

During this rule-making process, Ecology has proposed moving from the class-based format to a use-based format for identifying uses and criteria associated with waterbodies in Washington. The basis for this change is described below.

Basis for Ecology's Proposal

Ecology began this effort in the early 1990's with the aid of an 86-member advisory panel representing a wide range of interest groups. In addition, Ecology established technical work groups to develop discussion papers on key beneficial use issues. The technical discussion papers were intended to help the broad-based advisory panel and the public provide more informed input into the restructuring process. In the spring of 1998 and again in 2001, Ecology conducted a series of public workshops throughout the state to broaden public dialogue and understanding. Ecology then consulted with the standing Water Quality Partnership advisory committee, who provided feedback that helped shape the current proposal.

In Ecology's proposal, all waters protected for a particular use today will be protected for that use initially upon transitioning to the new use-based format. This means that if salmon spawning is a designated use in a waterbody today, then it will be a designated use upon transition to the use-based format. If a waterbody only has salmon rearing as a designated use, then only rearing will be established as the measure of aquatic life protection upon transition to the new format.

How the use-based format will look

The key difference between the class-based format and a use-based format is in the way uses are assigned for protection. Rather than assigning waters to classes having pre-determined sets of beneficial uses (regardless of what the waterbody can actually support) we would assign beneficial uses to waterbodies independently of each other. This would provide greater flexibility to assign the most scientifically defensible combination of beneficial uses. It also allows the assignment of one sensitive beneficial use to a waterbody even though the other beneficial uses may be naturally of lower sensitivity to pollution. For example, the new format would allow a waterbody to be protected as a high quality recreational area without also needing to be protected as a salmon spawning area if it were determined that salmon spawning use was not existing or attainable. This is not currently possible under the existing class-based format because both uses are grouped into the same class.

How Ecology will assure that beneficial uses are protected

Ecology views this proposed switch to the new "use-based" format as allowing for fine tuning in the assignment of beneficial uses with increased choices available when designating uses for protection. Changes in the assignment of beneficial uses and their water quality criteria, however, must adhere to strict protocols established in federal regulations.

How uses can be changed in the future

The federal regulations governing state water quality standards have established the foundation for making changes to our state water quality standards. To satisfy federal regulatory requirements we will need to conduct a formal assessment of the ability of a waterbody to attain a use prior to removing or downgrading its level of use protection in our state standards. Such a formal step is not required for increasing the use-protection designated in state standards, however, the state Administrative Procedures Act requires Ecology to demonstrate a need for

any changes before adopting them into state regulations. A formal evaluation with public involvement opportunities will occur whenever Ecology changes uses designated for protection in the water quality standards. This evaluation, called a Use Attainability Analysis (UAA), is further described in the new tools section of the proposed rule at WAC 173-201A-440.

Refinement of use categories

The proposed changes to the water quality standards include a refinement of some uses that currently do not exist in the water quality standards. Specifically, they are key fish species identified besides salmon for protection: char, redband trout, and indigenous warm water species.

Even though no waters are currently assigned char spawning or rearing as a specific designated use, Ecology is proposing to apply this use refinement to certain waterbodies in the state that are known or suspected to have char (bull trout) spawning and rearing present. This will be the only instance where a new use will be assigned for protection to specific waterbodies as part of the initial transition to the new format. The reason for doing this is that no existing temperature criteria (established to protect salmon spawning, salmon rearing, etc.) is believed to provide reasonable protection for the spawning habitat of this endangered species. Waterbodies will not be initially assigned the uses of redband trout and indigenous warm water species, however.

As a starting point for applying the proposed char spawning criteria, Ecology studied the locations of known char spawning areas documented in a database developed by the Washington Department of Fish and Wildlife and found that their occurrence is largely restricted to a relatively narrow range of elevation and stream order. Ecology used this pattern of elevation and stream order to deduce which streams would reasonably be expected to be potential char habitat. This became the basis for identifying waterbodies to be protected for char. Waterbodies identified will be listed in the draft rule by Waterbody Resource Inventory Area (WRIA), found in WAC 173-201A-602. A further description of identifying streams with char use can be found in the temperature discussion document.

Accompanying Documents

Draft language showing criteria for individual uses can be found in WAC 173-201A-200-210. A table showing waters in the state by Waterbody Resource Inventory Area (WRIA) with uses assigned can be found in WAC 173-201A-602 and 612 for fresh waters and marine waters, respectively.

A discussion of alternatives for restructuring uses assigned to a waterbody from class-based to use-based format can be found in the draft Environmental Impact Statement for the proposed rule on page 25.

Additional questions on the proposed change from the class-based to the use-based format can be directed to Andrew Kolosseus in the Water Quality Program at (360) 407-7543.

Additional information on proposed revisions to the rule, including draft Administrative Procedures Act (APA) materials and the draft Implementation Plan, can be found by visiting our Web site at www.ecy.wa.gov/programs/wq/swqs.

Recommended Criteria

Draft language showing criteria for individual uses can be found in WAC 173-201A-200-210. A new table showing waters in the state by Waterbody Resource Inventory Area (WRIA) with uses assigned can be found in WAC 173-201A-602 and 612 for fresh waters and marine waters, respectively.