

Water Quality Standards Triennial Review— Issue Paper #1

Modified Aquatic Life Use for Undesignated Waters

Current Rules

Modified Aquatic Life Use (IDAPA 58.01.02.100.01.e)

Modified (MOD): water quality appropriate for an aquatic life community that is limited due to one (1) or more conditions set forth in 40 CFR 131.10(g) which preclude attainment of reference streams or conditions.

Nondesignated Surface Waters (IDAPA 58.01.02.101)

01. Undesignated Surface Waters. Surface waters not designated in Sections 110 through 160 shall be designated according to Section 39-3604, Idaho Code, taking into consideration the use of the surface water and such physical, geological, chemical, and biological measures as may affect the surface water. Prior to designation, undesignated waters shall be protected for beneficial uses, which includes all recreational use in and on the water and the protection and propagation of fish, shellfish, and wildlife, wherever attainable.

- a. Because the Department presumes most waters in the state will support cold water aquatic life and primary or secondary contact recreation beneficial uses, the Department will apply cold water aquatic life and primary or secondary contact recreation criteria to undesignated waters unless Sections 101.01.b and 101.01.c. are followed.*
- b. During the review of any new or existing activity on an undesignated water, the Department may examine all relevant data or may require the gathering of relevant data on beneficial uses; pending determination in Section 101.01.c. existing activities will be allowed to continue.*
- c. If, after review and public notice of relevant data, it is determined that beneficial uses in addition to or other than cold water aquatic life and primary or secondary contact recreation are appropriate, then the Department will:
 - i. Complete the review and compliance determination of the activity in context with the new information on beneficial uses, and**

ii. Initiate rulemaking necessary to designate the undesignated water, including providing all necessary data and information to support the proposed designation.

Man-made waterways (IDAPA 58.01.02.101.02)

Man-Made Waterways. Unless designated in Sections 110 through 160, man-made waterways are to be protected for the use for which they were developed.

Surface Water Quality Criteria for Modified Aquatic Life Use Designations (IDAPA 58.01.02.250.05)

Modified. Water quality criteria for modified aquatic life will be determined on a case-by-case basis reflecting the chemical, physical, and biological levels necessary to attain the existing aquatic life community. These criteria, when determined, will be adopted into these rules.

Overview

For purposes of considering beneficial uses, waters of the state may be divided into two categories: non-designated waters and designated waters. This paper briefly describes these different categories while focusing on man-made waterways and how DEQ can use existing tools within the Idaho water quality standards to provide a more appropriate designated beneficial use for these unique water bodies.

Idaho's rules provide that man-made waterways are to be protected for the use for which they were developed, while private waters are not protected specifically or generally for any beneficial use. Non-designated waters differ from designated waters in that they have not yet been assigned an aquatic life or recreation beneficial use. Designated waters are specifically identified in IDAPA 58.01.02.110–160 with an aquatic life use and/or a recreation use assigned, as required by Clean Water Act §101(a)(2). The following description of beneficial uses describes what uses may be designated for a water body.

Designated waters are those that have been specifically assigned a beneficial use within Idaho Administrative Code (i.e., rules). A designated use is considered a goal for the water body; it need not be an existing use. Existing uses are defined as:

those beneficial uses actually attained in waters on or after November 28, 1975, whether or not they are designated for those waters in Idaho Department of Environmental Quality Rules. (IDAPA 58.01.02)

Attainment generally means that not only is the use evident, but associated criteria are met as well.

Water bodies are to be protected for both designated and existing uses. Designating a beneficial use for a water body does not imply any rights to access or ability to conduct any activity related to the use designation, nor does it imply that an activity is safe. For example, waters may be

designated for primary or secondary contact recreation in areas where it is unsafe to enter the water due to water flows, depth, or other hazardous conditions. Another example is that aquatic life uses may be designated in areas that are closed to fishing.

Currently recognized beneficial uses in Idaho include five categories of aquatic life (cold water, warm water, seasonal cold, salmonid spawning, and modified); two categories of recreation (primary contact and secondary contact); three categories of water supply (domestic, industrial, and agricultural); wildlife habitat; and aesthetics. Under IDAPA 58.01.02.100, all waters of the state, with the exception of private waters and man-made waterways, are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics. These “blanket designations” do not appear in the specific use designation tables in sections 110 to 160 of the water quality standards but are designations all the same. Two other special use designations are contained in the water quality standards: Bull Trout in section 250.02.g and Kootenai River Sturgeon in section 250.02.h. Currently, these uses also do not appear in the specific use designations tables.

Undesignated waters are those that have not yet been assigned an aquatic life or recreation beneficial use. Except for man-made waterways and private waters, until a specific aquatic life and recreation beneficial use are assigned to these waters, they are *presumed* to support both cold water aquatic life (CWAL) and contact recreation and are protected for both. The presumed use protection is a place-holder that provides protection until the appropriate use designation can be determined and promulgated into the use designation tables. Under certain circumstances, this means a designation of a use that is different from the presumed use will not require a use attainability analysis.

Man-Made Waterways

Man-made waterways are defined in the Idaho Water Quality Standards (IDAPA 58.01.02.010.58) as:

Canals, flumes, ditches, wasteways, drains, laterals, and/or associated features, constructed for the purpose of water conveyance. This may include channels modified for such purposes prior to November 28, 1975. These waterways may have uniform and rectangular cross-sections, straight channels, follow rather than cross topographic contours, be lined to reduce water loss, and be operated or maintained to promote water conveyance.

While Idaho protects these man-made waterways for “the use for which they were developed,” man-made waterways may also carry existing uses per the definition above. For some man-made waterways, beneficial uses are specifically designated to such waterways in IDAPA 58.01.02.101.02. Nonetheless, the primary use of a man-made waterway is for the conveyance of water to and from agricultural or residential lands.

Idaho realizes that man-made waterways are distinctly different from traditional, natural water bodies. Man-made waterways were constructed, sometimes modifying an existing perennial, intermittent, or ephemeral stream channel. They were developed to move irrigation water and

were not built with the intention of providing for aquatic life or recreation use, though these uses may still occur. Protection of these unintended uses is a point of contention.

To resolve the contention, DEQ is considering designating certain jurisdictional man-made waterways for modified aquatic life use on a case-by-case basis and developing site-specific criteria to protect existing and incidental aquatic life uses.

Summary

The practice of applying presumed use protections for cold water aquatic life to man-made waterways is contrary to Idaho's interpretation of Idaho Water Quality Standards. Our intent is to use existing tools within the Idaho water quality standards to provide a more appropriate designated beneficial use for these unique water bodies while still meeting the requirements of the CWA. Clarification of man-made waterways should also help promote consistency in NPDES permits.