
Summary

The purpose of this document is to describe the U.S. Environmental Protection Agency’s rationale for approving in part and disapproving in part Washington’s combined 2014-2018 Clean Water Act (CWA) section 303(d) list of water quality limited segments (WQLS), identified in the Washington’s 2014-2018 Integrated Report (IR). For this reporting cycle, the Washington Department of Ecology (Ecology) has assessed data and information collected during a 10-year period, from January 1, 2008, through December 31, 2017.

The following sections identify those elements required to be included in the list submittal based on the CWA and EPA regulations (see 40 CFR § 130.7). EPA reviewed the methodology used by the State in developing its list and the description of the data and information it considered. EPA’s review of Washington’s 303(d) list is based on EPA’s analysis of whether the State reasonably considered existing and readily available water quality data and information and reasonably identified waters required to be listed. This review describes the basis for EPA’s decision to partially approve and partially disapprove the State’s listings of WQLS requiring a Total Maximum Daily Load (TMDL).

Section 305(b) of the CWA requires that each state report every two years on the health of all its waters. EPA recommends that states combine the 303(d) list with the 305(b) report to create an IR. Each state’s section 303(d) list is due on April 1st of even-numbered years. EPA is required to approve or disapprove the 303(d) list (33 USC § 1313(d)(2); 40 CFR § 130.7(d)(2)).

Ecology released the draft IR for public review from April 8, 2021, through June 4, 2021. Ecology submitted the IR to EPA on August 31, 2021, for CWA review and action on the section 303(d) list. On September 3, 2021, Ecology noted an error and requested that the IR be returned for correction by the State. Ecology resubmitted the IR to EPA on September 9, 2021.

Pursuant to EPA’s authorities under section 303(d) of the CWA, 33 U.S.C. Section 1313(d), and the implementing regulations at 40 CFR Part 130, EPA is partially approving and partially disapproving Washington’s 2014-2018 303(d) list. EPA has determined that 115 waters should be added to the State’s list and is accepting public comment on the additions. A complete list of these waters can be found in accompanying Enclosure 2: Additions to Washington’s 2014-2018 303(d) List. Comments can be submitted through July 15, 2022 to Jill Fullagar at R10IntegratedReport@epa.gov and should include the subject line “WA 2014-2018 comment period.”

EPA is taking no action at this time on assessment determinations potentially implicated by EPA’s November 19, 2021 disapproval, pursuant to section 303(c)(3) of the CWA, of certain sections of...
Enclosure 1: EPA’s Decision Rationale for Washington’s 2014-2018 303(d) List, June 8, 2022

Washington’s water quality standards at WAC Chapter 173-201A pertaining to natural and irreversible human conditions. A complete list of these waters can be found in Enclosure 3: Waters Potentially Impacted by EPA Disapproval of Natural Conditions Provisions.

The remainder of this document presents EPA’s rationale in support of this decision. The decision documents and supporting information can be found on EPA’s website at: https://www.epa.gov/tmdl/partial-approval-and-partial-disapproval-washington-2014-2018-303d-list.

I. EPA’s Review Process

EPA reviewed Washington’s pre-public draft, public draft, and the 2014-2018 303(d) combined list submittal, including the priority ranking of impaired waters, the data solicitation process, and the public participation process. In its review of the 2014-2018 303(d) list, EPA evaluated whether the State satisfied the regulatory requirement to assemble and evaluate all existing and readily available water quality-related data and information and reasonably identified waters required to be listed. Ecology published the latest version of its assessment methodology in Water Quality Program Policy I-11, Chapter 1. Ecology’s credible data policies are available in Water Quality Policy I-11, Chapter 2. While EPA doesn’t approve assessment methodologies or credible data policies, it reviewed and provided comments during development of the draft Policy I-11. EPA’s approval of a state’s section 303(d) list should not be construed as agreement with or approval of the listing methodology. In reviewing the 303(d) list, EPA took into account Policy I-11 as supporting documentation, but the goal of EPA’s review was ultimately to determine whether the State reasonably made its listing determinations consistent with the applicable regulatory requirements under federal law.

EPA must take action to approve or disapprove the State’s submitted 303(d) list (40 CFR § 130.7(d)(2)). Because the 303(d) list is submitted as a component of the IR, EPA also reviewed the IR to ensure documentation to support the State’s 303(d) list submittal, described at 40 C.F.R. 130.7(b)(6), is included.

EPA concludes the State reasonably assembled and reasonably evaluated all existing and readily available data and information in compliance with the applicable regulatory requirements, including data and information relating to the categories of waters specified in 40 CFR § 130.7(b)(5). However, EPA found that Washington failed to provide sufficient information to demonstrate that a total of 115 WQLS placed in Category 4a were included in an EPA-approved TMDL and is therefore adding those WQLS to Category 5, i.e., the 303(d) list. See Enclosure 2. This conclusion is supported by the information discussed in Sections II and III of this document.

II. Review of 303(d) List Required Elements and Integrated Report

1 Available at https://www.epa.gov/wqs-tech/water-quality-standards-regulations-washington
A. Status of Waters in the State

EPA’s 2002 Integrated Water Quality Monitoring and Assessment Report Guidance suggests a categorization strategy where waterbodies are placed into at least one of five different categories, based on attainment of water quality standards (WQS) and designated use support. Washington uses similar categories for its IR and has developed definitions of each category. The full descriptions of each category can be found in Water Quality Program Policy 1-11, Chapter 1. The categorization of Washington’s waters can be found in Ecology’s Water Quality Assessment Review Tool or Water Quality Atlas at: https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-improvement/Assessment-of-state-waters-303d or on EPA’s How’s My Waterway website at: https://mywaterway.epa.gov/. Washington defines its categories as follows:

- **Category 1**: Meets Tested Criteria; when recent data are of sufficient quality and quantity to show attainment of the water quality criteria for a parameter within an assessment unit (AU).
- **Category 2**: Water of Concern; Category 2 applies when credible data indicate concerns of possible impact to designated uses but falls short of demonstrating the non-attainment of standards.
- **Category 3**: Insufficient Data to make a Determination; when there are insufficient data available to evaluate the attainment of a water quality parameter.
- **Category 4**: Impaired but Does Not Require a TMDL
  - **Category 4a**: EPA has approved the respective TMDL for a given pollutant.
  - **Category 4b**: A pollution control program other than a TMDL designed to meet water quality standards is being implemented.
  - **Category 4c**: A non-pollutant is causing an impairment to a designated use, and a TMDL is not the appropriate tool for addressing the identified cause of impairment.
- **Category 5**: The 303(d) List; data indicates that water quality criteria are not persistently attained, or when well-documented narrative evidence indicates impairment of a designated use by a pollutant.

Based on this categorization scheme, the term “303(d) list” refers only to waters in Category 5, which is the list of impaired and threatened waters (stream/river segments and lakes) requiring a TMDL. The State identifies these waters where required pollution controls are not sufficient to attain or maintain applicable WQS. The listing requirement applies to waters impaired by point and/or nonpoint sources, pursuant to EPA’s long-standing interpretation of CWA section 303(d).

The CWA and EPA regulations require states to include the following information as part of their 303(d) list submittal:

- A list of water quality-limited (impaired and threatened) waters still requiring TMDL(s) [waters assigned to Category 5], pollutants causing the impairment, and priority ranking for TMDL development (including waters targeted for TMDL development within the next two years).

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• Any other reasonable information requested by EPA, such as demonstrating good cause for not including a water or waters on the list.

EPA regulations provide that states must list waters where the following controls are not adequate to implement applicable WQS: (1) technology-based effluent limitations required by the CWA, (2) more stringent effluent limitations required by state or local authority, and (3) other pollution control requirements required by state, local, or federal authority. See 40 CFR § 130.7(b)(1).

Pursuant to section 303(d) and EPA’s implementing regulations, states may remove waterbody segments from the 303(d) list, or delist them, after they have developed, and EPA has approved, a TMDL or after other changes to correct water quality problems have been made. If a state uses EPA’s recommended system of categorization, that may entail moving a waterbody from Category 5 into a different assessment category. For example, once a TMDL has been approved, the state may move a WQLS from Category 5 to Category 4a. Sometimes, “other pollution control requirements” are stringent enough to implement WQS (see 40 CFR § 130.7(b)(1)). In these cases, the state can develop a plan that meets the elements outlined in EPA’s Information Concerning 2008 Clean Water Act Sections 303(d), 305(b) and 314 Integrated Reporting and Listing Decisions. Once the plan has been developed and accepted by EPA, the state may move the WQLS into Category 4b. If WQS are attained and designated uses are supported, the state may move the waters to Category 1. Occasionally, a waterbody can be taken off the 303(d) list as a result of a change in water quality standards; however, any new or revised water quality standards must first be submitted to EPA and approved pursuant to section 303(c) of the CWA.

EPA has reviewed Ecology’s 2014-2018 combined 303(d) list and supporting documentation and information. Based on this review, EPA is partially approving and partially disapproving Ecology’s 303(d) list, with further action pending, as described in detail below.

B. Priority Ranking

EPA regulations codify and interpret the requirement in section 303(d)(1)(A) of the CWA that states establish a priority ranking for listed waters. The regulations at 40 CFR § 130.7(b)(4) require states to “include a priority ranking for all listed water quality limited segments still requiring TMDLs.” States must also identify those WQLS targeted for TMDL development within the next two years. The CWA does not prescribe a particular method of expressing a priority ranking and states have flexibility in how they define and describe their priorities. In prioritizing and targeting waters, states must, at a minimum, consider the severity of the pollution and the uses to be made of such waters. States may consider other factors relevant to prioritizing waters for TMDL development, including immediate programmatic needs; vulnerability of particular waters as aquatic habitats; recreational, economic, and aesthetic importance of particular waters; degree of public interest and support; and state or national policies and priorities.

EPA reviewed the State's priority ranking of listed waters for TMDL development and concludes that the State satisfied the requirement to take into account the severity of pollution and the uses to be made of such waters. 33 USC 1313(d)(1)(A). EPA also concludes that the State satisfied the

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requirement to “specifically include the identification of waters targeted for TMDL development in the next two years.” 40 CFR 130.7(b)(4). The priority ranking of waters for TMDL development can be found beginning on page 142 of Ecology’s Supporting Information for 2018 Water Quality Assessment, August 2021.

C. Consideration of Data and Listing Methodology

In developing 303(d) lists, states are required to assemble and evaluate all existing and readily available water quality-related data and information (40 CFR § 130.7(b)(5)). This includes, at a minimum, consideration of data and information regarding the following categories of waters: (1) waters identified as partially meeting or not meeting designated uses, or as threatened, in the state's most recent section 305(b) report; (2) waters for which dilution calculations or predictive modeling indicate nonattainment of applicable standards; (3) waters for which water quality problems have been reported by governmental agencies, members of the public, or academic institutions; and (4) waters identified as impaired or threatened in any section 319 nonpoint assessment submitted to EPA. In addition to these minimum categories, states must take reasonable steps to assemble and evaluate any other water quality-related data and information that is existing and readily available. States may decide whether or not to rely on particular data or information in determining whether to list the applicable waters.

In addition to requiring states to assemble and evaluate all existing and readily available water quality-related data and information, EPA regulations at 40 CFR § 130.7(b)(6) require states to include, as part of their list submittals to EPA, documentation to support the decisions on whether or not to rely on particular data and information, as well as the decisions on whether or not to list waters. Such documentation must include, at a minimum, the following information: (1) a description of the methodology used to develop the 303(d) list (i.e., the ‘listing methodology’); (2) a description of the data and information used to identify waters; (3) a rationale for any decision not to use existing and readily available data and information; and (4) any other reasonable information requested by EPA.

Ecology actively sought data and information collected by federal agencies, other state agencies, tribes, local governments, and private and public organizations and individuals. Ecology published two notices of data solicitation. A 60-day call for data was conducted from January 20, 2016 to March 16, 2016, which sought data and information collected through December 31, 2015. Due to the lapse in time from the initial call for data, Ecology issued a second 45-day call for data and information from February 12, 2018 to March 28, 2018, which requested data and information.

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8 In addition to the statutory language at section 303(d)(1)(a) and the regulatory language at 40 C.F.R. § 130.7(b)(4) addressing priority rankings for TMDL development, the statute at section 303(d)(2) provides for submission of TMDLs to the Administrator “from time to time,” and EPA’s implementing regulations at 40 C.F.R. § 130.7(d)(1) state that: “Schedules for submission of TMDLs shall be determined by the Regional Administrator and the State.” EPA notes that these provisions address distinct points—priorities for TMDL development and the timing for TMDL submission. Although states may choose to include their submission schedules in their integrated reports, EPA’s regulations do not require them to do so.

9 https://fortress.wa.gov/ecy/ezshare/wq/WQAssessment/SupportingInformation.pdf

10 EPA has provided further guidance regarding states’ obligations to assemble water quality data and information under section 303(d) and 40 CFR 130.7(b) of its 2006 Integrated Reporting Guidance at p. 30-32. https://www.epa.gov/sites/default/files/2015-10/documents/2006irg-report.pdf
collected from January 1, 2008 through December 31, 2017. After the calls for data and information, Ecology evaluated the data and information and prepared a statewide assessment.

The listing methodology Ecology used to develop the 2014-2018 303(d) list is discussed in the Water Quality Program Policy 1-11, Chapter 1.\(^\text{11}\) Policy 1-11 contains a standardized approach for developing the 303(d) list and was subject to two public revision processes, which occurred from February to April 2018 and April 2020. Although EPA has no formal role in approving or otherwise acting on states’ assessment methods, EPA reviewed Policy 1-11 during Ecology’s public processes and considered Policy 1-11 in the context of its review of the State’s 303(d) list. Ecology used the assessment category decision factors identified Policy 1-11 as the basis for the 2014-2018 listing decisions. EPA has reviewed these decisions and concludes, with the exception of those waters subject to EPA’s partial disapproval action and those waters for which further action is pending, the State’s assessments are consistent with the federal listing requirements at 40 CFR 130.7(b) and applicable WQS.

D. Public Participation Process

The draft 2014-2018 IR and list of WQLS were presented for public comment from April 8, 2021 to June 4, 2021, in addition to a tribal preview comment period held from February 16 to March 16, 2021. Ecology received comments from 34 parties and provided responses in Response to Public Comments, 2018 Water Quality Assessment, August 2021.\(^\text{12}\) Additional information was also provided in Ecology’s Supporting Information for 2018 Water Quality Assessment, August 2021.\(^\text{13}\) EPA has considered Ecology’s public participation process for the 2014-2018 IR and 303(d) list as part of its review of the State’s section 303(d) list.

EPA notes that Ecology received a large volume of highly generalized comments whose subject matter pertained to the State’s assessment methodology without identifying any specific waterbody assessment determinations of concern to the commenter. As noted above, while EPA may provide feedback and technical support in the development of each state’s assessment methodology, the Agency takes no formal action on those methodologies. EPA’s statutory duty under section 303(d) focuses on the identification of specific waterbodies that are not meeting the applicable standards. When EPA disapproves a section 303(d) list, its sole statutory remedy is to identify waterbody segments that the state should have included on its list. Given EPA’s short statutory review period under section 303(d) and the scale of the waterbody assessment process—for example, here Ecology utilized more than 66 million datapoints to assess 9,279 miles of streams, 434 lakes and 619 square miles of marine water—EPA necessarily operates in an oversight role reviewing “[a] description of the methodology used to develop the list” and “[a] description of the data and information used to identify waters.” 40 CFR 130.7(b)(6)(i) & (ii).\(^\text{14}\) Therefore, when commenters are concerned that a waterbody has been improperly excluded from the list, the state should encourage them to identify with as much specificity as possible the particular waterbody they believe should have been included on the 303(d) list and any supporting information leading them to that conclusion.

\(^{11}\) Available at https://apps.ecology.wa.gov/publications/documents/1810035.pdf
\(^{12}\) Available at https://fortress.wa.gov/ecy/ezshare/wq/WQAssessment/ResponseToComments.pdf
\(^{13}\) Available at https://fortress.wa.gov/ecy/ezshare/wq/WQAssessment/SupportingInformation.pdf with Appendix A at https://fortress.wa.gov/ecy/ezshare/wq/WQAssessment/AppendixA.pdf
III. Changes from Previous IR Cycle

The table below provides a summary of EPA’s decisions on the State’s 303(d) list submittal as discussed in further detail below.

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<th>EPA Decision</th>
<th>New Listings</th>
<th>Total Delisted</th>
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<th>Moved to 4a – TMDLs Approved by EPA</th>
<th>Moved to 4b – Other Controls</th>
<th>Other Reasons for Delisting (804 total)</th>
<th>Previously Unlisted – Placed in 4a</th>
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A. Waters Ecology Added to Category 5

According to Ecology’s Water Quality Assessment Review Tool, a total of 589 new Category 5 listings were added in 2014-2018. EPA reviewed the basis table, basis statement and remarks found in each record in the Water Quality Assessment Review Tool, which describes the rationale and data sources for these additions to 303(d) list, and is approving them as consistent with the CWA section 303(d) and EPA’s implementing regulations.

B. Waters Removed from Category 5

According to Ecology’s submittal, a total of 1,285 Category 5 listings from 2012 were removed (“delisted”) in 2014-2018. Based on EPA’s review, EPA is partially approving and partially disapproving these delistings. EPA finds that Ecology has provided an adequate basis consistent with 40 CFR § 130.7(b)(6)(iv), for not including 1,183 of the previously listed waterbody segment/pollutant pairs on its 2014-2018 303(d) list. Ecology has provided sufficient justification and documentation for each of these 1,183 delistings in the IR submittal to EPA, which is contained in each of the individual AU records in both Ecology’s Water Quality Assessment Review Tool and the submittal in ATTAINS.

EPA finds that Ecology improperly excluded 16 previously listed waterbody segment/pollutant pairs on the 303(d) list and is disapproving the delistings. EPA is taking no action at this time on 86 of these waterbody segment/pollutant pairs delisted by the State. EPA’s determinations are described further below.

i. WQS Attainment

Ecology removed 51 waterbody segment/pollutant pairs from Category 5 (i.e., the 303(d) list) because data indicates they are meeting WQS. EPA concludes that for 29 of these waterbody segment/pollutant pairs, Ecology reasonably identified waterbody segments to be removed from the list in light of the existing and readily available data and information showing WQS were being met. EPA has determined the removal of these 29 waterbody segment/pollutant pairs is consistent with 40 CFR § 130.7.
EPA is taking no action at this time on the delisting of the remaining 22 waterbody segment/pollutant pairs as they are potentially impacted by EPA’s November 19, 2021, disapproval of Ecology’s natural conditions provisions. Further details regarding this decision are provided in Section V of this document and a complete list of all waterbody segment/pollutant pairs for which EPA is taking no action at this time can be found in Enclosure 3: Waters Potentially Impacted by EPA Disapproval of Natural Conditions Provisions.

ii. TMDLs Approved by EPA

Ecology removed 332 waterbody segment/pollutant pairs from Category 5 based on EPA approval of TMDLs for these waterbody/pollutant combinations. These 332 waterbody/pollutant pairs were placed in Category 4a of the 2014-2018 IR. Under EPA regulations at 40 CFR § 130.7, the 303(d) list is an inventory of waterbodies that are impaired by a pollutant and require a TMDL. EPA concludes that Ecology’s removal of 316 of these waterbody segment/pollutant pairs from the 303(d) list for which there is an EPA approved TMDL is consistent with the requirements at 40 CFR § 130.7.

However, based on EPA’s review of Ecology’s supporting documentation, EPA has determined there is insufficient information to support the removal of 16 of these WQLS from Category 5 because there is not an EPA approved TMDL in place. With this disapproval, EPA is adding the 16 WQLS to the 303(d) list, i.e., placing them in Category 5, and accepting public comments on the additions. The details regarding EPA’s review and basis for making this determination can be found in Enclosure 2: Additions to Washington’s 2014-2018 303(d) list.

iii. Waters Moved to Category 4b

Ecology moved 98 WQLS from Category 5 to Category 4b because other pollution control requirements are in place, as described in Appendix A of Ecology’s Supporting Information for 2018 Water Quality Assessment, Supplemental methods, citations and data sources.\(^{15}\)

Under 40 CFR 130.7(b)(1), states are not required to identify WQLS still requiring TMDLs where technology-based effluent limitations required by the CWA, more stringent effluent limitations required by either a state or local authority, or other pollution control requirements required by state, local, or federal authority, are stringent enough to implement applicable WQS. EPA’s guidance states that waterbodies with other appropriate pollution control requirements may be placed in Category 4b. EPA’s memo dated October 12, 2006, Information Concerning 2008 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions, describes the requirements for a Category 4b demonstration as basis for excluding an impaired waterbody from the 303(d) list.\(^{16}\)

EPA reviewed the information and progress updates of waters previously placed in Category 4b and determined that there are sufficient requirements in place for these 98 waterbody

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\(^{15}\) Available at [https://fortress.wa.gov/ecy/ezshare/wq/WQAssessment/SupportingInformation.pdf](https://fortress.wa.gov/ecy/ezshare/wq/WQAssessment/SupportingInformation.pdf)

iv. Other Reasons for Delisting

Ecology removed 804 waterbody segment/pollutant pairs from Category 5 for other reasons. These removed waters are separate and distinct from the waters no longer on the 303(d) list due to WQS attainment.

Ecology removed 347 waterbody segment/pollutant pairs from Category 5 and placed them in Category 2 because “credible data indicate[s] concerns of possible impact to designated uses but falls short of demonstrating the non-attainment of standards.”\(^{17}\) EPA has reviewed and finds that the State has reasonably concluded that 284 of these waterbody segment/pollution pairs are currently meeting standards for a variety of reasons, including new data, changes to water quality standards, or due to errors in the original listing. EPA has determined the removal of these 284 waterbody segment/pollutant pairs is consistent with 40 CFR § 130.7(b). EPA is taking no action at this time on the delisting of the remaining 63 waterbody segment/pollutant pairs as they are potentially impacted by EPA’s November 19, 2021, disapproval of Ecology’s natural conditions provisions. Further details regarding this decision are provided in Section V of this document and a complete list of all waterbody segment/pollutant pairs for which EPA is taking no action can be found in Enclosure 3: Waters Potentially Impacted by EPA Disapproval of Natural Conditions Provisions.

Ecology delisted an additional 25 waterbody segment/pollutant pairs and placed them in Category 3, “Insufficient Data to make a Determination; when there are insufficient data available to evaluate the attainment of a water quality parameter.”\(^{18}\) EPA has reviewed and finds that the State has reasonably concluded that 24 of these waterbody segment/pollution pairs need not be listed because there is insufficient data to make a water quality assessment determination for a variety of reasons, including new data, changes to WQS, or due to an error in the original listing. Consistent with 40 CFR § 130.7(b)(6)(iv), EPA has determined the removal of these 24 waterbody segment/pollutant pairs is consistent with 40 CFR § 130.7.

EPA is taking no action at this time on the delisting of the one remaining waterbody segment/pollutant pair as it is potentially impacted by EPA’s November 19, 2021, disapproval of Ecology’s natural conditions provisions. Further details regarding this decision are provided in Section V of this document and a complete list of all waterbody segment/pollutant pairs for which EPA is taking no action can be found in Enclosure 3: Waters Potentially Impacted by EPA Disapproval of Natural Conditions Provisions.

An additional 432 waterbody segment/pollutant pairs were removed from Category 5 due to a variety of reasons including resegmentations and database cleanup activities resulting in deactivations of those waterbody segment/pollutant pairs. In many cases the segments were combined with other existing assessment units or into a new assessment unit and thus the water quality information was rolled up into a separate record. Ecology provided EPA with a cross-

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walk document detailing the history from the old to new assessment units and the resulting deactivation of the former assessment unit record. Consistent with 40 CFR § 130.7(b)(6)(iv), EPA concludes Ecology has adequately supported the removal of these 432 waterbody segment/pollutant pairs from Category 5.

IV. Basis for EPA’s Decision to Add Waters to Washington’s 2014-2018 303(d) List

EPA is disapproving a portion of Washington’s 2014-2018 303(d) list with respect to a total of 115 waterbody segment/pollutant pairs that Ecology has indicated are impaired (by placing them into Category 4a), but which lack sufficient documentation that the waterbody segment/pollutant pairs were included in an EPA-approved TMDL. Ecology defines Category 4a as “Impaired but Does Not Require a TMDL; EPA has approved the respective TMDL for a given pollutant.”19 As required at 40 CFR 130.7(d)(2), EPA is adding the waters that the State failed to include to Washington’s 2014-2018 list and is accepting public comment on the listings.

As mentioned in Section III.B.ii of this document, EPA is disapproving the delisting of 16 WQLS that the State included on its 2012 303(d) list and moved from Category 5 to Category 4a in the 2014-2018 IR.

Ecology also placed an additional 99 previously unlisted waterbody segment/pollutant pairs in Category 4a. Given that Ecology has not provided sufficient information to document that these 99 unlisted but impaired WQLS are included in an EPA-approved TMDL, EPA is also adding these WQLS to Washington’s 2014-2018 303(d) list. A complete list of these WQLS as well as additional information about each can be found in Enclosure 2: Additions to Washington’s 2014-2018 303(d) list.

V. Basis for EPA’s Decision to Take No Action at this Time on Waterbody Segment/Pollutant Pair Determinations

Certain assessment conclusions made by Ecology in the 2014-2018 IR were based on natural conditions provisions that were the CWA-effective standards at the time of the listing action. On February 10, 2014, the Northwest Environmental Advocates filed a complaint in U.S. District Court for the Western District of Washington (Case No. 2:14-cv-0196-RSM) challenging, in part, EPA’s February 11, 2008 CWA section 303(c) approval of the natural conditions provisions. On October 17, 2018, the Court issued an Order Granting a Stay (Dkt. 95) pending EPA’s reconsideration of its prior determinations. The Order noted that EPA may complete its reconsideration by October 17, 2021, by making approval or disapproval decisions, or a final determination that such provisions are not water quality standards. The Court subsequently granted an extension for EPA to complete its reconsideration by November 19, 2021.

As detailed in EPA’s Technical Support Document, EPA’s Clean Water Act Action on Revisions to the Washington State Department of Ecology’s Surface Water Quality Standards for Natural Conditions

19 Available at: https://apps.ecology.wa.gov/publications/documents/1810035.pdf
Provisions, on November 19, 2021, EPA disapproved revisions to the following sections of WAC 173-201A pursuant to its authority under section 303(c)(3) of the CWA, 33 U.S.C. § 1313(c)(3), and 40 CFR Part 131:

- WAC 173-201A-260(1)(a): Natural and irreversible human conditions
- WAC 173-201A-200(1)(c)(i) and WAC 173-201A-210(1)(c)(i): Allowable human contribution to natural conditions provisions for aquatic life temperature (fresh water and marine water, respectively)
- WAC 173-201A-200(1)(d)(i) and WAC 173-201A-210(1)(d)(i): Allowable human contribution to natural conditions provisions for aquatic life dissolved oxygen (fresh water and marine water, respectively)

The assessment conclusions made by Ecology in the 2014-2018 IR were based on the previously approved natural condition provisions, which were the CWA-effective water quality standards when the list was developed and at the time of submittal to EPA. Following Ecology’s submittal in September 2021, EPA disapproved the natural conditions criteria thereby making the provisions not effective for CWA purposes, including listing determinations. There are potentially 2,100 water quality status determinations made based on the previously effective and subsequently disapproved natural conditions provisions, which includes both assessment determinations that were new in the 2014-2018 assessment as well as historic determinations previously approved by EPA.

In light of EPA’s November 19, 2021, disapproval of the State’s natural conditions criteria provisions, each of these determinations will need to be revisited by Ecology, including reviewing all existing and readily available water quality data and information, and reassessing the assessment determinations made using the subsequently disapproved water quality standards. EPA is taking no action at this time on any of the 2,100 assessment determinations potentially impacted by the natural condition provisions to allow time for Ecology to reassess and update the status of these waters. A complete list of all waterbody segment/pollutant pairs for which EPA is taking no action can be found in Enclosure 3: Waters Potentially Impacted by EPA’s Disapproval of the Natural Conditions Provisions.

VI. Additional Information Requested by EPA

During the review of Ecology’s submitted 2014-2018 combined list, pursuant to its authority under 40 CFR 130.7(b)(6)(iv), EPA requested additional information from Ecology clarifying its response to a comment regarding the use of data and information from the “Eyes over Puget Sound” program. EPA received Ecology’s response to EPA’s request on March 21, 2022. EPA’s review of the additional information is summarized below.

Ecology explained that “Eyes over Puget Sound is an Ecology-sponsored program that obtains monthly high-resolution aerial photo observations and gathers water data at our monitoring stations and state ferry transects, in order to provide a visual picture of the surface conditions of Puget Sound.” Eyes over

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20 Available at https://www.epa.gov/wqs-tech/water-quality-standards-regulations-washington
21 Available at https://www.epa.gov/wqs-tech/water-quality-standards-regulations-washington
Puget Sound gathers a range of data and information on portions of Puget Sound using a variety of instruments and sampling gear deployed from seaplanes, boats, and passenger ferries, including water quality samples and photographs. This data collection effort includes “more than 2.3 million data points that serve as a basis for the Eyes over Puget Sound Program, incorporating dissolved oxygen, pH, and temperature records spanning 67 locations in Puget Sound,” which were factored into the State’s water quality assessment. Ecology explained that it assesses numeric pollutant data that are collected from marine monitoring stations that are part of the monthly Eyes over Puget Sound program, as well as other monitoring programs that are part of the monitoring and assessment program at Ecology.

In addition to water quality monitoring, Eyes over Puget Sound publishes a report on surface conditions several times a year that is intended for the interested public and provides a high-level summary of water quality and quantity data, climatic and air temperature observations, and precipitation observations. For water quality data and information gathered as part of Eyes over Puget Sound that cannot be compared to numeric standards but are relevant to uses with narrative criteria (e.g., photographs and public interest stories), Ecology states that it applies Assessment Policy 1-11 to determine if there is an impairment of a designated use at a specific location.22

For the submitted 2014-2018 combined list, Ecology did list assessment units as impaired due to water quality monitoring data and information exclusively from the Eyes over Puget Sound program, and as a result of compiling Eyes over Puget Sound data with other data collected in the same assessment units. With respect to the Eyes over Puget Sound summary reports, Ecology explained: “While the commentary and photos shared through the Eyes over Puget Sound surface conditions reports are valuable for providing generalized observations and future predictions on the conditions at the time, they alone are not sufficient for determining persistent impairment to a designated use, which is the purpose of the 303(d) list.” Ecology noted uncertainty regarding the temporal persistence and frequency of conditions observed in photographs, the potential for these conditions to be caused by natural fluctuations, and the absence of evidence whether there has been a deleterious impact to designated uses including aesthetics. EPA finds that it was a reasonable exercise of the State’s technical judgment to conclude that the information contained in the summary reports alone does not provide a reliable basis to determine whether the applicable uses are impaired. Since the applicable narrative criteria hinge on whether those uses are attained, EPA has determined that Ecology has raised plausible concerns about the limited utility of the summary reports for identifying additional waters as impaired for this listing action. The State’s approach is reasonable, particularly given that the reports are supplemental to the robust Eyes over Puget Sound data collection effort for these waters, which is fully accounted for in the State’s water quality assessment. EPA concludes that the State here has provided a reasonable basis for declining to use the summary reports as a basis for listing pursuant to 40 CFR 130.7(b)(6)(iii).

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22 The State’s narrative criteria for toxics and aesthetics are as follows: “(a) Toxic, radioactive, or deleterious material concentrations must be below those which have the potential, either singularly or cumulatively, to adversely affect characteristic water uses, cause acute or chronic conditions to the most sensitive biota dependent upon those waters, or adversely affect public health (see WAC 173-201A-240, toxic substances, and 173-201A-250, radioactive substances). (b) Aesthetic values must not be impaired by the presence of materials or their effects, excluding those of natural origin, which offend the senses of sight, smell, touch, or taste (see WAC 173-201A-230 for guidance on establishing lake nutrient standards to protect aesthetics).”
While EPA concludes that the State’s decision not to list additional waterbody segments on the basis of the Eyes over Puget Sound photographs and summary reports is reasonable for this list action, EPA reiterates here as a general matter that states can and should take steps to assemble and evaluate a wide variety of data and information in compiling their section 303(d) list, including “feedback from the general public and waterbody users about the condition of the waterbody such as photographs or testimonials of abundant algal mats that impede recreation or create unsightly aesthetics in the waterbody.”

VII. Tribal Engagement

EPA Region 10’s policy is to consult on a government-to-government basis with federally recognized tribal governments when EPA actions and decisions may affect tribal interests. On July 27, 2021, EPA sent invitation letters to all the federally recognized tribal governments in Washington to participate in government-to-government consultations with EPA on the pending CWA action. EPA also held an informational conference call for Washington tribes on August 11, 2021 to provide background on the 303(d) list, Integrated Report process and CWA action. EPA did not receive any requests for consultation.

Enclosure 1: EPA’s Decision Rationale for Washington’s 2014-2018 303(d) List, June 8, 2022

References


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