



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017) (Implements RCW 34.05.310)

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DATE: September 27, 2022

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WSR 22-20-039

Agency: Department of Ecology AO #22-05

Subject of possible rule making: The Washington State Department of Ecology is considering revising Chapter 173-201A WAC, Water Quality Standards for Surface Waters of the State of Washington. We are considering amendments to:

- WAC 173-201A-200(1)(c), Aquatic life temperature criteria, including, but not limited to, subsection (i).
- WAC 173-201A-200(1)(d), Aquatic life dissolved oxygen (D.O.) criteria including, but not limited to, subsection (i)
- WAC 173-201A-210(1)(c), Aquatic life temperature criteria including, but not limited to, subsection (i).
- WAC 173-201A-210(1)(d), Aquatic life dissolved oxygen (D.O.) including, but not limited to, criteria subsection (i).
- WAC 173-201A-260(1), Natural and irreversible human conditions.
- WAC 173-201A-310(3), Tier I – Protection and maintenance of existing and designed uses.

We may amend other sections of Chapter 173-201A WAC as necessary to be consistent with or provide support to any revisions to the sections noted above.

We are considering revisions to several natural conditions provisions in our surface water quality standards. Natural conditions provisions recognize that conditions in some surface waters during some seasons and in some areas naturally do not meet water quality criteria. For example, a naturally low-flowing stream in a natural prairie without any human alteration may have seasonally higher temperatures than the limit set to protect fish. These inconsistencies may be due to natural processes or seasonal conditions that prevent a waterbody from meeting the applicable aquatic life criteria. Our goal is to refine the natural conditions criteria to protect characteristics inherent and unique to a specific water.

We will evaluate the latest scientific data, methods, modeling tools, and approaches to update natural conditions provisions necessary for refining aquatic life protection in Washington's surface waters. As part of this process, we will consider the Environmental Protection Agency's (EPA) recommended approaches for natural conditions in water quality standards. One example is a performance-based approach, which would adopt into rule a sufficiently detailed process that ensures predictable, repeatable outcomes that could be used to develop criteria that would protect the designated uses for a specific waterbody.

Statutes authorizing the agency to adopt rules on this subject: RCW 90.48.035 Water Pollution Control - Rule-making authority; and 40 CFR 131.20 Water Quality Standards - State review and revision of water quality standards, requires states and tribes (with primacy for clean water actions) to periodically review and update the water quality standards.

Reasons why rules on this subject may be needed and what they might accomplish:

A. Reason for Rulemaking

We are considering these revisions to address EPA's 2021 disapproval of previously-approved natural condition provisions in our standards, including for fresh and marine dissolved oxygen and temperature (excluding lakes).

It is important that we have a provision in the water quality standards recognizing that conditions in some surface waters naturally do not meet water quality criteria at all times throughout the year. Nearly all states have some provision of this kind. Washington needs natural conditions provisions to effectively implement our Clean Water Act programs.

We identified a natural conditions rulemaking as a priority in our most recent triennial review, which was submitted to EPA in April 2022.

B. Approach to Rulemaking

We plan to conduct a single rulemaking to revise our natural conditions criteria. We will engage with stakeholders, tribes, and other interested parties as we develop the full scope of procedures for natural conditions provisions. These may include general provisions, procedures for determining what conditions are natural to surface waters, and some parameter specific considerations (such as temperature) or surface water type (such as rivers or streams).

In this rulemaking, we will consider all the latest scientific data, methods, modeling tools, and natural condition criteria approaches. Further, we will evaluate previous natural conditions criteria approaches in Washington and other states, as well as previous EPA policies and decisions regarding natural conditions (such as a performance-based approach). We plan to work with EPA and other federal agencies responsible for reviewing biological impacts of a rule to anticipate whether proposed rule language will meet Endangered Species Act (ESA) protection requirements.

C. Rulemaking Scope

The scope of this rulemaking includes the natural conditions provisions and parameter-specific natural condition criteria in all surface water types.

This work is specific to the aquatic life criteria and how native aquatic species have acclimated or adapted to their environment, even if that environment does not naturally meet our state's aquatic life criteria. The natural conditions provisions are not related to any of the human health criteria in our state.

We will evaluate EPA recommendations during this rulemaking and determine whether to adopt them.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: We will work with tribes to discuss, and seek input on, rulemaking activities. Other coordinating federal and state agencies include the United States Environmental Protection Agency, National Oceanic and Atmospheric Administration, and the United States Fish and Wildlife Service.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Ecology will follow the standard process for the adoption of rules under the Administrative Procedure Act (Chapter 34.05 RCW).

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

	(If necessary)
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Web site: https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-201A-Natural-Conditions	Web site:
Other: Sign up to receive email notices: https://public.govdelivery.com/accounts/WAECY/subscriber/new?topic_id=WAECY_61	Other:

Additional comments: Interested parties can stay informed about the rulemaking and public involvement opportunities as described above. Ecology will extend an offer for government-to-government consultation with tribal governments during each phase of rule development.

Date: September 27, 2022	Signature: 
Name: Vincent McGowan, PE	
Title: Water Quality Program Manager	