



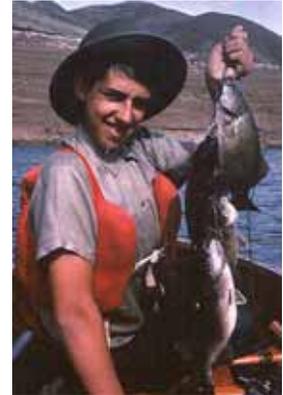
Questions and Answers about Use Attainability Analysis

From DEQ's Surface Water Program

General Information

Q: What is a Use Attainability Analysis (UAA)?

A: A use attainability analysis (UAA) is “a structured scientific assessment of the factors affecting the attainment of the use of a water body, such as swimming, fishing, and drinking. Waterbody uses are designated for protection in the state’s water quality standards. A UAA is the tool used to evaluate the potential to remove nonexisting and non-attainable designated uses, or to establish subcategories of uses. Federal regulations guide UAAs; the results must be adopted into the water quality standards and be approved by the U.S. Environmental Protection Agency (EPA) as meeting the federal Clean Water Act (CWA) and the Endangered Species Act (ESA).



Fishing

Q: What steps must be taken in order to remove or modify a designated use?

A: The following steps must occur before a use can be modified or removed:

1. An acceptable UAA must be prepared, either by the Department of Environmental Quality (DEQ), or by others and submitted to DEQ.
2. The UAA must contain sufficient information to demonstrate to DEQ and EPA that the designated use is not existing and not attainable.
3. The UAA must identify the highest attainable replacement use for any water body being evaluated.
4. DEQ must remove or modify the use in the state water quality standards through the formal rulemaking process.
5. DEQ must submit the revised rule to the EPA for approval.
6. EPA must approve the rule (after appropriate consultation with federal agencies and tribes).



Q: Can a use be removed or modified based solely on water quality criteria not being met?

A: No. Failure to meet a water quality criterion already established to protect a use is not by itself sufficient evidence to show the use is not attainable.

Stream Bank Restoration

Q: What uses can be removed?

A: States can remove non-existing and non-attainable designated uses. Section 131.10(g) of the federal regulations (40 CFR) contains the rules governing the circumstances under which a state can remove a use:

*“States may remove a **designated** use which is not an **existing** use, or establish **subcategories** of a use requiring less stringent criteria if the state can demonstrate that attaining the designated use is not feasible (not an **attainable** use) because one or more of the following six conditions exist:*

- 1. Naturally occurring pollution concentrations prevent the attainment of the use; or*
- 2. Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or*
- 3. Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or*
- 4. Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or*
- 5. Physical conditions related to the natural features of the water body, such as lack of proper substrate, cover, flow; depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or*
- 6. Controls more stringent than those required by § 301 (b) and 306 of the Act would result in substantial and widespread economic and social hardship.”*



Wildlife

Q: What are Designated, Existing, and Attainable uses?

A: *Designated uses* are the uses specifically assigned (designated) to a water body for protection under the water quality standards. Designated uses are sometimes referred to as “beneficial uses.” A designated use might or might not be an existing use.

- Once a use is designated in a state’s standards, it receives special regulatory protection.
- A UAA can be used to remove or modify designated uses, but only if they are not existing and not attainable uses.

Existing uses are those uses in existence after November 28, 1975, whether or not they have been designated in state water quality standards.

- An existing use cannot be removed, even with a UAA.
 - An existing use may not be optimally supported. (The use may be affected by current conditions, but is still present in the water body.)
 - All existing uses must be protected whether or not designated.
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Attainable uses may not be existing uses or the designated uses, but can be attained by applying technology-based effluent limits to point sources and cost-effective best management practices to non-point sources. The attainable level of water quality needs to be determined, taking into account the capability of the natural system, as well as the technical and economic limitations of human sources, throughout the basin affecting the water body.

When conducting a UAA study, the focus should be on objectively determining the attainable uses and attainable water quality, irrespective of designated uses.



Boating

Q: Can a water quality criterion be made less stringent?

A: Yes. Criteria can sometimes be revised to represent the attainable level of water quality without changing the designated use. This can be based on a determination of natural conditions in areas where the natural conditions are of a lower quality than the numeric criteria. In some cases, the water body has special physical or chemical characteristics modifying or interfering with the toxicity of a chemical, or the plants and animals in the water body are not adequately represented by those used in the development of the existing water quality criterion. In such cases, it might be possible to develop a site-specific criterion for the water body. Site-specific criteria development is generally a very costly process, and should be undertaken only after thorough discussion with DEQ and EPA.

Q: Can a UAA be used to change a water quality criterion?

A: Yes. If a less sensitive use is established, then the criteria will also change to less stringent, yet still fully protective criteria.

If a more accurate subcategory of use can be specified in the water quality standards, then setting criteria that would fully protect the subcategory is also an option. If designating a water body as modified aquatic life use, site-specific criteria must also be established.

Q: What other considerations affect UAA results?

- A:** Other considerations affecting UAAs are:
- *Downstream uses and standards.* Approvable UAAs must not interfere with downstream uses and criteria.
 - *Revisions must be based on sound science.* UAAs are not limited to using available information. Additional data collection and research are likely to be needed.
 - *Attainable use protection.* The UAA must identify the highest use attainable.



Swimming

Q: Who may submit a UAA?

A: Any entity desiring to modify a use may submit a UAA to DEQ. However, a UAA must be acceptable to both DEQ and the EPA before it can be used as the basis for removal or modification of a use designation. This means the applicant should work with the approval agencies to determine the data needs. Developing UAAs can be very expensive. Moving forward with a UAA that does not adequately address the federal requirements and state guidance can result in large costs and little or no benefit for the applicant.

Q: Can DEQ conduct UAAs?

A: Yes. However, because of the potentially high costs of producing acceptable UAAs, DEQ is more likely to focus resources on discussions with applicants prior to beginning a UAA, and in reviewing UAAs after they are submitted. In the few cases where DEQ conducts a UAA, DEQ will likely focus on project areas where natural conditions prevent attainment of a use, or on projects where existing scientific and historical information is already available to help answer use questions.



To examine the designated uses and use categories in Idaho's water quality standards, go to <http://www2.state.id.us/adm/adminrules/rules/idapa58.0102.pdf>, Surface Water Quality Standards – IDAPA 58.01.02.

For more information, please contact Don Essig (208-373-0119) or Cyndi Grafe (208-373-0113).

If you require this information in an alternate format, please contact us at 208-373-0163.