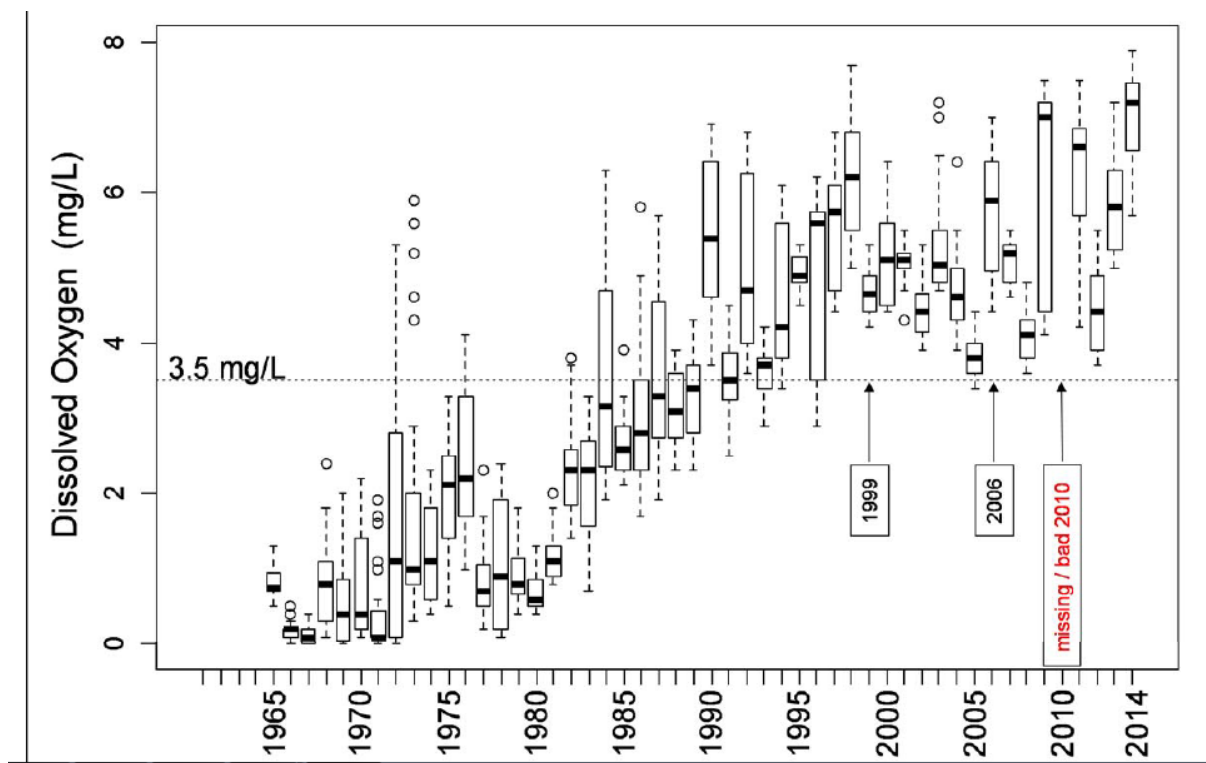


Presentation to DRBC, October 30, 2015

Perspective on Delaware River Designated Uses

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From DRBC's Existing Use Evaluation for Zones 3, 4, & 5 of the Delaware Estuary Based on Spawning and Rearing of Resident and Anadromous Fishes, September 2015 (Figure 2)

What are Designated Uses?

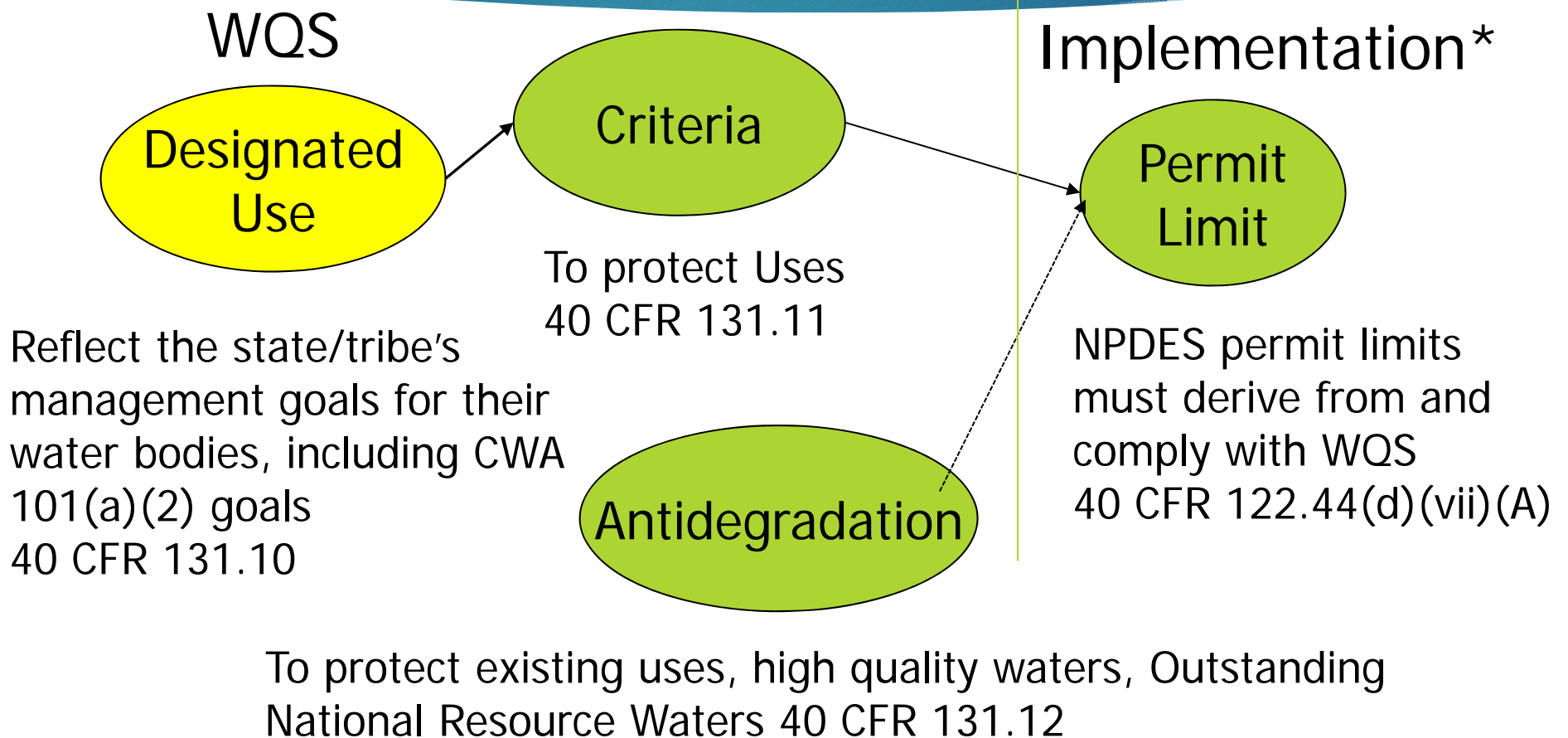
- Designated uses are “those uses specified in state or tribal water quality standards regulations for each water body or segment **whether or not they are being attained.**”
- Designated uses may be thought of as:
 - Goals
 - Objectives
 - Communication tools
 - Function of, or activity in, a water that is supported by level of water quality

Why are Designated Uses Important?

- ▶ Establish water quality goals for a specific water body and communicate these goals to the public.
- ▶ Identifying water quality goals helps to identify the right criteria necessary to meet those goals.
 - ▶ Designated Uses and Criteria are the regulatory basis for attainment decisions, TMDLs, NPDES permit limits, etc.

Water Quality Standards Schematic

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** NPDES is just one example of implementation*

CWA 101(a)(2): Critical CWA Reference for Uses

- ▶ CWA 101(a)(2) sets a national goal that, wherever attainable, water quality provides for the protection and propagation of fish, shellfish and wildlife, and recreation in and on the water.

There is a Designated Use “Rebuttable Presumption”

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- ▶ The WQS regulations at 40 CFR Part 131 require that WQS provide for 101(a)(2) uses unless those uses have been shown to be unattainable, effectively creating a rebuttable presumption of attainability.
- ▶ A state or authorized tribe can rebut the presumption by conducting a Use Attainability Analysis (UAA).
- ▶ States and authorized tribes have the primary role in establishing uses and in weighing evidence regarding their attainability.

Highest Attainable Use (HAU)

- ▶ Concept explicitly added in 2015 rule revision to clearly establish the goal for a replacement use following a UAA:
 - ▶ The modified aquatic life, wildlife, or recreation use that is both closest to the uses specified in section 101(a)(2) of the Act and attainable
 - ▶ Based on the evaluation of the factors that precludes attainment of the use and any other information or analyses that were used to evaluate attainability

Improving Conditions

- ▶ There is a requirement to upgrade designated uses when a better use is attained (40 CFR 131.10(i)):
 - ▶ “Where existing water quality standards specify designated uses less than those which are presently being attained, the State shall revise its standards to reflect the uses actually being attained.”

Periodic Review and Update

- ▶ There is also a requirement to periodically examine waters without “101(a)(2) uses” and upgrade if a “101(a)(2)” use is attainable (40 CFR 131.20(a)):
 - ▶ “Any water body segment with water quality standards that do not include the uses specified in section 101(a)(2) of the Act shall be re-examined every three years to determine if any new information has become available.”
 - ▶ “If such new information indicates that the uses specified in section 101(a)(2) of the Act are attainable, the State shall revise its standards accordingly.”

Key Questions

- ▶ What uses are presently attained?
 - ▶ *Does the information available indicate a higher use is being attained than the use currently designated?*
- ▶ What uses are ultimately attainable?
 - ▶ *Is there information that indicates propagation is ultimately attainable?*
- ▶ What are the corresponding water quality requirements? (e.g., DO, ammonia, nutrients?)

Key Questions, continued

- ▶ What will be the process for WQS revision?
 - ▶ *Are there concerns/obstacles to revising the WQS in the current rule-making cycle?*
- ▶ What is the expectation for timing?
 - ▶ *What actions are contemplated for the short-term and what are contemplated over a longer period of time, and what is the anticipated sequence?*

Potential Pathway

- ▶ Determine that propagation is the appropriate designated use given the compelling evidence
- ▶ Identify the associated water quality criteria to protect present and expected species for survival and propagation
- ▶ Adopt revised WQS
- ▶ Remain open to conducting a UAA/utilizing variances in the future if needed to address feasibility issues that may arise

Alternative Pathway

- ▶ Determine that propagation is the appropriate designated use given the compelling evidence
- ▶ Identify the associated water quality criteria to protect present and expected species for survival and propagation
- ▶ Conduct analysis to determine the highest attainable use (HAU)
- ▶ Adopt revised WQS