

Modifications to Proposed TALU rule amendments being considered by the MPCA in response to comments received in the dual-notice comment period

Revisor's #4237; OAH Docket # 5-9003-33998

Introduced by the MPCA at the rule hearing on February 16, 2017

Guide to tracking modifications in this document: The proposed rule amendments as published in the State Register on December 19, 2016 are shown in black text and black underline or black strike out. Modifications to the proposed rule amendments that MPCA is considering are in red text, red underline, or red strike out. Red text without underlining indicates text that was indicated for removal in the rule amendments as published, but which are now suggested to not be removed. Red underline indicates new text suggested for addition that was not in the rule amendment as published. Red strike out text indicates text from the rule amendment as published that is suggested for removal.

7050.0150 Subp. 4.

S. "Lotic water" means a flowing or moving water body such as a stream, river, or ditch.

7050.0220, Subpart 1.

A. cold water ~~sport fish (trout waters)~~ aquatic life and habitat, also protected for drinking water: Classes 1B; ~~2A;~~ 2Ae or 2Ag; 3A or 3B; 4A and 4B; and 5 (subpart 3a);

B. cool and warm water ~~sport fish~~ aquatic life and habitat, also protected for drinking water: Classes 1B or 1C; ~~2Bd;~~ 2Bde, 2Bdg, or 2Bdm; 3A or 3B; 4A and 4B; and 5 (subpart 4a);

C. cool and warm water ~~sport fish, indigenous aquatic life, and wetlands~~ aquatic life and habitat and wetlands: Classes ~~2B, 2C, 2Be, 2Bg, 2Bm,~~ or 2D; 3A, 3B, 3C, or 3D; 4A and 4B or 4C; and 5 (subpart 5a); and

7050.0220, Subpart 3a.

Subp. 3a. ~~Cold water sport fish~~ aquatic life and habitat, drinking water, and associated use classes. Water quality standards applicable to use Classes 1B, ~~2A;~~ 2Ae or 2Ag; 3A or 3B; 4A and 4B; and 5 surface waters. The water quality standards in 7050.0222, subp. 2 that apply to Class 2A also apply to Classes 2Ae and 2Ag. In addition to the water quality standards in 7050.0222, subp. 2, the biological criteria defined in 7050.0222, subp. 2d. apply to Classes 2Ae and 2Ag.

7050.0220, Subpart 4a.

Subp. 4a. ~~Cool and warm water sport fish~~ aquatic life and habitat, drinking water, and associated use classes. Water quality standards applicable to use Classes 1B or 1C, ~~2Bd;~~ 2Bde, 2Bdg, or 2Bdm; 3A or 3B; 4A and 4B; and 5 surface waters. The water quality standards in 7050.0222, subp. 3 that apply to Class 2Bd also apply to Classes 2Bde, 2Bdg, and 2Bdm. In addition to the water quality standards in 7050.0222, subp. 3, the biological criteria defined in 7050.0222, Subp. 3d. apply to Classes 2Bde, 2Bdg, and 2Bdm.

7050.0220, Subpart 5a.

Subp. 5a. ~~Cool and warm water sport fish~~ aquatic life and habitat and associated use classes. Water quality standards applicable to use Classes ~~2B, 2Be, 2Bg, 2Bm, 2C,~~ or 2D; 3A, 3B, or 3C; 4A and 4B; and 5 surface waters. See parts 7050.0223, subpart 5; 7050.0224, subpart 4; and 7050.0225, subpart 2, for Class 3D, 4C, and 5 standards applicable to wetlands, respectively. The water quality standards in 7050.0222, subp. 4 that apply to Class 2B also apply to Classes 2Be, 2Bg, and 2Bm. In addition to the water quality standards in 7050.0222, subp. 4, the biological criteria defined in 7050.0222, Subp. 4d. apply to Classes 2Be, 2Bg, and 2Bm.

L.5.

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7050.0222, Subp. 2c., Item A

A. Subitems (1) to ~~(4)~~(5) apply to the beneficial uses in items B and C:

(5) The beneficial use subclass designators "e" and "g" are added to the Class 2A designator as specific additional designators. The additional subclass designators do not replace the Class 2A designator. All requirements for Class 2A cold water stream and river habitats in 7050.0222 and 7052.0100 continue to apply in addition to requirements for Class 2Ae or Class 2Ag cold water stream and river habitats in 7050.0222. These subclass designators are only applied to lotic waters.

7050.0222, Subp. 2c (HEADING)

Subp. 2c. Beneficial use definitions for lotic cold water aquatic life and ~~stream and river~~ habitats (Class 2A)

7050.0222, Subp. 2d (HEADING)

Subp. 2d. Biological criteria for lotic cold water aquatic life and ~~stream and river~~ habitats (Class 2A).

7050.0222, Subp. 2d

A. The biological criteria for cold water aquatic life and habitat (Class 2A) are applicable to perennial and intermittent waters with that allow for colonization of fish and macroinvertebrates.

7050.0222, Subp. 3c., Item A

A. Subitems (1) to ~~(4)~~(5) apply to the beneficial uses in items B and C:

(5) The beneficial use subclass designators "e", "g", and "m" are added to the Class 2Bd designator as specific additional designators. The additional subclass designators do not replace the Class 2Bd designator. All requirements for Class 2Bd warm or cool water stream and river habitats in 7050.0222 and 7052.0100 continue to apply in addition to requirements for Class 2Bde, Class 2Bdg, or Class 2Bdm warm or cool water stream and river habitats in 7050.0222. These subclass designators are only applied to lotic waters.

7050.0222, Subp. 3c., Item D

(1) To meet the definition in this item, waters must have been the subject of a use attainability analysis where it is determined that attainment of ~~and must have been found to be incapable of supporting and maintaining~~ the Class 2Bq beneficial use is not feasible because of human-induced modifications of the physical habitat ~~that preclude the potential for recovery of the fauna~~. These modifications must be the result of direct alteration to the channel, such as drainageway maintenance, bank stabilization, and impoundments.

7050.0222, Subp. 3c (HEADING)

Subp. 3c. Beneficial use definitions for lotic warm or cool water aquatic life and ~~stream and river~~ habitats (Class 2Bd)

7050.0222, Subp. 3d (HEADING)

Subp. 3d. Biological criteria for lotic warm or cool water aquatic life and ~~stream and river~~ habitats (Class 2Bd).

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7050.0222, Subp. 3d

A. The biological criteria for warm or cool water stream and river habitats (Class 2Bd) are applicable to perennial and intermittent waters that allow for colonization of fish and macroinvertebrates.

7050.0222, Subp. 4c., Item A

A. Subitems (1) to ~~(4)~~(5) apply to the beneficial uses in items B and C:

(5) The beneficial use subclass designators "e", "g", and "m" are added to the Class 2B designator as specific additional designators. The additional subclass designators do not replace the Class 2B designator. All requirements for Class 2B warm or cool water stream and river habitats in 7050.0222 and 7052.0100 continue to apply in addition to requirements for Class 2Be, Class 2Bg, or Class 2Bm warm or cool water stream and river habitats in 7050.0222. These subclass designators are only applied to lotic waters.

7050.0222, Subp. 4c., Item D

(1) To meet the definition in this item, waters must have been the subject of a use attainability analysis where it is determined that attainment of ~~and must have been found to be incapable of supporting and maintaining~~ the Class 2Bg beneficial use is not feasible because of human-induced modifications of the physical habitat ~~that preclude the potential for recovery of the fauna.~~ These modifications must be the result of direct alteration to the channel, such as drainageway maintenance, bank stabilization, and impoundments.

7050.0222, Subp. 4c (HEADING)

Subp. 4c. Beneficial use definitions for lotic warm or cool water aquatic life and ~~stream and river~~ habitats (Class 2B)

7050.0222, Subp. 4d (HEADING)

Subp. 4d. Biological criteria for lotic warm or cool water aquatic life and ~~stream and river~~ habitats (Class 2B).

7050.0222, Subp. 4d

A. The biological criteria for warm or cool water stream and river habitats (Class 2B) are applicable to perennial and intermittent waters that allow for colonization of fish and macroinvertebrates.

7050.0430 UNLISTED WATERS

Subpart 1. Statewide surface waters. Except as provided in subparts 2 and 3, all surface waters of the state that are not listed in part 7050.0470 and that are not wetlands as defined in part 7050.0186, subpart 1a, are hereby classified as Class ~~2B 2Bg~~, 3C, 4A, 4B, 5, and 6 waters. Unlisted lotic waters are also assigned the beneficial use subclass designator "g" to the Class 2B designator.