

WORKING DRAFT - PROTECTION FAQs

These working draft FAQs are being developed by EPA's Section 303(d) program staff to help clarify key concepts underlying the Clean Water Act (CWA) Section 303(d) Vision's protection goal for states, territories and tribes. These FAQs are consistent with the 303(d) [Vision](#), which noted that:

“This new, long-term Vision and associated Goals are not regulation, policy, or new mandates. They do, however, provide focus for EPA and State efforts to better manage the CWA 303(d) Program activities to achieve water quality goals for the Nation’s aquatic resources such as streams, rivers, lakes, estuaries and wetlands. States and EPA retain their flexibility in how they implement their CWA 303(d) Program responsibilities . . .”

In December 2013, the 303(d) Vision was finalized after more than two years of joint planning among state and EPA program managers. Protection was among the objectives addressed in the Vision Statement:

“The Clean Water Act Section 303(d) Program provides for effective integration of implementation efforts to restore and protect the nation’s aquatic resources, where the nation’s waters are assessed, restoration and protection objectives are systematically prioritized, and Total Maximum Daily Loads and alternative approaches are adaptively implemented to achieve water quality goals with the collaboration of States, Federal agencies, tribes, stakeholders, and the public.”

One of the 303(d) Vision's six goals specifically addressed Protection, as follows:

“For the 2016 reporting cycle and beyond, in addition to the traditional TMDL development priorities and schedules for waters in need of restoration, States identify protection planning priorities and approaches along with schedules to help prevent impairments in healthy waters, in a manner consistent with each State’s systematic prioritization.”

The Vision noted that the “intent of the Protection Goal is to encourage a more systematic consideration of management actions to prevent impairments in healthy waters (i.e., unimpaired waters) in order to maintain water quality or protect existing uses or high quality waters.” The Vision used several terms such as “protection,” “high quality waters,” “priority waters [for] protection,” “watershed protection,” “protection activities,” and protection “approaches” and “plans.” The 2013 Vision document provided basic details for states on how to plan and implement each of its six goals but did not seek to anticipate all information needs for all goals. As 303(d) Vision planning and implementation has progressed in the states, many have requested clarification and more detail about central tenets, expectations and terms of the Protection Goal and examples of model approaches or efforts. The following FAQs were developed to address some of this need.

1. Who is the intended audience for these protection FAQs?

The surface water quality programs in states, territories and authorized tribes are the primary audience for this protection information. These FAQs were developed by EPA's CWA Section 303(d) impaired waters listing and TMDLs program to clarify key concepts underlying the CWA and specifically the 303(d) Vision's protection goal. The integrative nature of the 303(d) Vision promotes cross-program partnering with, for example, CWA Section 319 Nonpoint Source Control programs and others. State and Federal

fish and wildlife agencies often are active in protecting aquatic resources and are another key audience. These federal, state, territorial and tribal water programs are EPA's partners in implementing the CWA and share responsibility for restoring and maintaining waters, including healthy waters potentially targeted for protection efforts.

2. What is meant by "protection" in the context of the Vision?

The CWA's primary objective reads, "...to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." "Protection," in the context of the CWA, is action taken to maintain the integrity of the Nation's waters, to retain their environmental and societal benefits. For a specific water body, protection under the Vision is *the sustained minimization or avoidance of water quality degradation due to stressors and/or watershed alterations that would present threats to its current condition*. Under the Vision, protection is oriented toward currently healthy waters, whether of high quality, simply unimpaired, or with limited impairments (to uses other than those for which protection is being sought).

3. Why is the Vision promoting protection?

EPA's 303(d) Vision promotes protection of healthy waters and their watersheds for numerous reasons. First, protection is consistent with the central tenet of the CWA – its *restore and maintain* goal – complementing the CWA's historically greater emphasis on restoring waters that are impaired (i.e., not attaining Water Quality Standards). Furthermore, protection can be a critical component of successful restoration, particularly where upstream protection improves impaired waters downstream by providing cleaner upstream waters. Second, many state water quality programs are protecting healthy waters or have an interest in doing so. Third, protected healthy waters convey multiple highly valued benefits to the American people and environment. Finally, but importantly, it is more cost effective to protect waterways from degradation than it is to pay for restoration once damage is done.

4. What does the 303(d) Vision mean by *priority waters for protection*?

With reference to the 303(d) Vision, states may "...review, systematically prioritize, and report priority watersheds or waters for restoration and protection in their biennial Integrated Reports to facilitate State strategic planning for achieving water quality goals" throughout a multi-year time frame. Prioritization identifies specific waters or watersheds of elevated importance. Waters may be selected as priorities individually or because they are a recognized type of priority water body. A state may prioritize a water body for protection to build its resilience against its primary threats and maintain its beneficial, healthy conditions. Examples of priority waters targeted for protection might include:

- Outstanding National Resource Waters or other state-defined category of high quality waters;
- Waters with unique, valuable or threatened species or their habitats;
- Waters and watersheds that constitute a public drinking water supply;
- Healthy segments in watersheds mixed with other impaired segments;
- Healthy waters near rapid land use change areas;
- Headwaters above downstream waters impaired by nutrients, sediments or other cumulative impacts; and
- Other healthy waters facing elevated risks of degradation.

State water quality programs are encouraged to coordinate their selection of protection priorities and actions with other programs and partners.

5. What kinds of waters or watersheds are the focus of protection efforts?

Protection focuses on surface waters (inland or coastal) that are healthy, with interacting land, water and biological components that are largely functional and intact, although not necessarily pristine. A water body may still be a suitable candidate for protection even if it has reported impairments, if the other attributes/parameters of the water body are largely functional and intact. For example, a remote waterway with its only impairment from airborne mercury may be in otherwise good condition and have high quality attributes (e.g., diverse biotic communities, aesthetics, recreational use support) worth protecting. Waters selected for protection may be extensive (e.g., entire river systems) or localized (e.g., healthy segments or tributaries in a mixed-quality watershed). The term *watershed protection* in the Vision refers to activities taken in the surrounding watershed of healthy waters that directly contribute to the maintenance of their condition. Successful protection efforts are rarely limited to activities exclusively within the water body with no watershed activities.

6. What are protection activities?

Any of a wide variety of land or water management practices, policies or other actions that contribute directly or indirectly to minimizing or avoiding degradation in healthy waters may be considered a *protection activity* under the Vision. Some examples of protection activities may include:

- Regulatory requirements (e.g., permits, local buffer ordinances);
- Non-regulatory voluntary actions (e.g., landowner agreements and easements, land acquisition); and
- Active (e.g., runoff control structures) and passive (e.g., local zoning, forest preservation) management practices.

Such activities may have direct or indirect effects on maintaining the environmental and societal benefits of protected waters. State water quality programs are encouraged to coordinate their selection of protection activities with other programs and partners.

7. What are protection approaches, as mentioned in the 303(d) Vision and related measures?

A *protection approach* constitutes a strategic set of steps followed over many years by a water quality program and its partners, intended to provide a basis for protecting healthy waters and their associated ecosystem structure, functions and underlying uses, and the implementation of protection activities. There are numerous variations of protection approaches. Such approaches may be comprehensive (e.g., statewide) or focused on individually targeted areas. Over the long term, protection approaches may pass through some or all of the following four stages:

- (1) Assessment of potential areas for protection;
 - The assessment stage identifies potential priority waters, and usually takes place either as a holistic, statewide evaluation of condition (e.g., a healthy watersheds assessment) or incremental identification of good candidates for protection on a place-to-place basis.
- (2) Prioritizing selected waters;
 - The prioritizing stage involves sharpening the focus on selected priority waters.
- (3) Planning for action on the selected priority areas; and
 - The planning stage involves studying the specific risks to targeted waters, determining protection techniques to address them, and developing water body-specific protection plans (see also “What is a protection plan?”).

- (4) Implementing protection actions to minimize/avoid degradation or to improve water quality.
- The protection implementation stage involves acting on those techniques in the protection plan and watching for changes in emerging risks or condition.

For full protection credit under the WQ-27 measure, a *protection plan* must be in place.

8. What is a protection plan?

In its most basic form, a *protection plan* includes documentation of steps to be taken and activities to be implemented that are reasonably expected to result in a specified level of protection of one or more water bodies for a specified amount of time. Some types of CWA-related plans, such as protection TMDLs and nine-element watershed plans developed under CWA section 319, may be considered protection plans if they include elements germane to the 303(d) Vision's protection key concepts:

- Identification of specific waters to be protected and risks to their condition;
- Activities proposed and/or implemented that are expected to resist degradation or impairment of these waters, or improve water quality (e.g., quantification of loading or assimilative capacity);
- Time frames over which a protection target condition is expected to be attained, maintained, or improved; and
- Quantitative and qualitative measures of expected success and planned responses to observed changes in risks or condition.

9. When is a water body considered *protected*?

Realistically, protection efforts can't ensure protection for all time from all foreseeable risks. Nevertheless, protection approaches should work toward an endpoint that legitimately embodies a definable "protected" status over the long term (e.g., years to decades). To reiterate from FAQ #3, "... protection is the sustained minimization or avoidance of water quality degradation in a water body due to specific stressors and/or watershed alterations that would present threats to its condition." High quality or unimpaired condition alone, without actions intended to maintain or improve this condition, may be "healthy" but is not "protected." When asserting that a water body is protected, one should address:

- The specific protection activities in place that are expected to maintain its environmental and societal benefits;
- Significant risks of degradation and whether these are all addressed by protection activities; and
- A plausible estimate of the expected duration of the protection activities and their impacts.

10. How can protection success be evaluated?

The effectiveness of a water body protection effort is the degree to which it avoids/minimizes water quality degradation or improves water quality over time. Protection success may be estimated using condition-related measurements that may address the expected duration of protection, the anticipated protective effect, and the breadth of protection (e.g., against all or just some of the known threats). Evaluating effectiveness is water body-specific because protection success can vary in different places and among different activities, and the same activity may vary in effectiveness from place to place.