



WEST VIRGINIA RIVERS

March 9, 2021

Good evening, thank you for the opportunity to comment on this revised rule. I appreciate that DEP has attempted to address our concerns by eliminating the perpetual gray zone. However, this methodology is still flawed for several reasons:

1. There is still a gray zone, it may no longer be a perpetual gray zone, but streams receiving scores between 50 and 72, will have to undergo additional analysis before being listed as impaired. Approximately 3,677 or 60% of the stream segments sampled will fall into this indeterminate category that will then go through the stressor ID test, additional sampling and genus level analysis. Does DEP have the resources necessary to perform the additional analysis? Those resources would be spent on improving streams so that they can be removed from the impairment list instead of delaying their listing.
2. The selected impairment thresholds of 50 and 61 have no statistical justification. The attainment threshold of 72 is based on the 5th percentile of reference site values. However, the impairment thresholds of 50 and 61 are arbitrary numbers where DEP is fairly confident that streams won't be listed unnecessarily. With all the high tech modeling capabilities available such as TITAN (Threshold Indicator Taxa Analysis) where we can clearly model benthic populations and determine precisely where population declines are occurring, why is DEP selecting these arbitrary numbers that are based on the staff's common sense. These threshold values are critical in determining the health of the state's streams and they need to be based on statistical analysis and sound science.
3. This method doesn't bring us much closer to protecting and restoring impaired streams. In what is supposed to occur every 2 years, WV hasn't had an impaired stream list since 2016. So we've skipped the impaired stream designation process for the last 2 cycles because of the back and forth on this rule. And now this rule would further delay listing of 60% of the state's streams that have been assessed. The method proposed accepts a single value for attainment but impaired streams face additional scrutiny to make sure they are really impaired. The methodology to assess stream health should be universal across all streams. This method skews the results to heavily favor not listing what would otherwise be considered an impaired stream. DEP must adopt a methodology that is unbiased, statistically significant and based on sound science.

Thank you,
Autumn Crowe, Staff Scientist, WV Rivers Coalition

Conserving and Restoring West Virginia's Exceptional Rivers and Streams

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