

**Alaska Department of Environmental Conservation (ADEC)
Division of Water**

Outstanding National Resource Water (Tier 3 water)

Fact Sheet

What is an Outstanding National Resource Water (ONRW), or Tier 3 water?

ONRWs or Tier 3 waters are provided the highest level of protection under the antidegradation policy of the State of Alaska. The purpose of a Tier 3 designation is to offer special protection for waters of "exceptional recreational or ecological significance." Tier 3 waters are often regarded as the highest quality waters of a State. In some instances, however, these waters may not be of particularly high quality for traditional parameters such as dissolved oxygen, temperature, or pH as compared to state water quality criteria, because of the waterbody's unique characteristics (e.g., wetlands, hot springs). The key criteria for Tier 3 designation is that the water must be exceptional, important, unique, or sensitive ecologically or offer unique or important recreational uses.

What do the existing regulations say about Outstanding National Resource Waters (ONRWs), or "Tier 3" waters?

The meaning of an ONRW is clearly established in Federal [40 CFR 131.12(a)(3)] and state [18 AAC 70.015(a)(3)] regulations. The associated protection level requires Tier 3 water quality to be maintained and protected. As such, if a water were to be designated by the state as a Tier 3 water, new or increased discharges that would lower or degrade the existing water quality would not be allowable unless they were temporary or limited.

What are the effects of a Tier 3 designation?

No new or increased discharges to a designated Tier 3 water or its tributaries are permitted, if the discharges would result in lowering of water quality in the water (i.e., cause degradation). However, there is an exception to allow activities that result only in a temporary, short-term, and limited change in the water quality of a Tier 3 water; for example, for construction activities.

What is currently under discussion in regards to Tier 3 Waters?

What is being discussed currently by the Department is the implementation process (including criteria, submittal information and vetting process) and final designating authority for determining whether a water should be designated as a Tier 3 water.

Does Tier 3 water designation set higher water quality standards than those currently in regulation for the protection of aquatic life and human health?

Once designated, the water quality of a Tier 3 water must be maintained and protected. The protection level is based on the ambient water quality at the time of designation, which may be better or worse than the regulatory water quality standards for the protection of aquatic life and human health. Water quality standards are not changed in a Tier 3 designated water, it is just that any further degradation of existing

**STATE
OF
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Department of
Environmental Conservation
(DEC or Department)

Division of Water (DOW)
555 Cordova Street
Anchorage, Alaska 99501
Phone: (907) 269-7681
Fax: (907) 269-7509

DOW Website:
<http://dec.alaska.gov/water>

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water quality is not allowed. Even if the degradation did not exceed water quality criteria, it would not be allowed unless it were temporary or limited.

When does Tier 3 water protection take effect?

The maintenance and protection of Tier 3 water quality is only effective upon actual designation. Until such time, the water is evaluated and managed as a Tier 1 or Tier 2 water, as applicable. Under the current Department procedure, antidegradation reviews are initiated when a potential discharger submits a permit application for a new point-source discharge or to expand a current point-source discharge. The permitting procedure, including antidegradation analysis, would consider the Tier 3 water only when there is a final designation in place.

Does a Tier 3 designation apply upstream and/or to all tributaries of the water?

No, the designation and protection level applies only to the designated Tier 3 water itself. However, any proposed discharge upstream or to a tributary to a designated Tier 3 water that would degrade the water quality of the Tier 3 would not be allowed. Proposed discharges upstream of or to a tributary to a designated Tier 3 water would be evaluated during the Department's permit development and antidegradation review procedures to determine if Tier 3 water quality was protected.

Can a Tier 3 designation be removed or un-designated?

Currently, there is no precedent for removing an ONRW once in place; neither is there federal regulation or policy prohibiting such an action. There is also no method for un-designating a water in federal law. However, in practice once a water has been determined to be of exceptional significance warranting Tier 3 protection, it would be presumed to be extremely difficult to show at some time in the future that it is no longer exceptional and justify removal of the Tier 3 designation and protection level.

Are discharges permitted to Tier 3 water?

The federal and state antidegradation policies require water quality to be maintained and protected in a Tier 3 water. The interpretation of this provision typically is that new or increased discharges to a Tier 3 water or its tributaries are not permitted if the discharges would result in a lowering of water quality (i.e., cause degradation). The only exception to this prohibition is to allow activities that result only in a temporary, short-term and limited change in the water quality of a Tier 3 water; for example, construction activities that only impact water quality during construction. Such activities must not permanently degrade water quality.

It is difficult to give an exact definition of "temporary" or "short-term" because of the variety of activities that might be considered. In broad terms, the definition of temporary is often considered to be weeks and months rather than years, although in Alaska "temporary" might span more than one year due to the short construction season. If a construction activity is involved, for example, temporary is defined as the length of time necessary to construct the facility and make it operational. During any period of time when the State would allow temporary degradation of a Tier 3 water, all practical means of minimizing such degradation should be implemented. Any proposed permit would have opportunity for public participation prior to ADEC issuing the final permit.

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What about existing discharges to a designated Tier 3 water or tributary?

Discharges currently permitted by the Department, either under individual permits or authorizations under a general permit, would be allowed to continue; i.e., they would not be prohibited or required to cease the discharge activity. Existing permitted discharges would not be restricted in the future by a Tier 3 designation in the receiving water unless the discharger wanted to expand/increase the pollutant load in their discharge. An increase in pollutants would not be allowed.

Tier 3 protection would be based on baseline water quality at the time of designation, not on the timing of any theoretical permit renewal request. As such, if an authorized/permitted discharge existed at the time of the final Tier 3 designation, that discharge would be allowed to continue, including permit renewals. Any proposed increase of pollutant discharge to the Tier 3 water would not be allowable.

What types of discharges would not be allowed in a designated Tier 3 water?

New or expanded discharges that would not be permitted into a designated Tier 3 water include municipal storm water runoff, domestic wastewater (i.e., treated sewage) discharges, and any wastewater discharges from industrial operations such as mining projects.

What about other activities on or near a designated Tier 3 water, e.g. boating, snowmobiling, terrestrial sewage treatment (septic system), road run-off, road salting/sanding, fish camps, fish oil processing, smokehouses, etc.?

In general, activities that do not require an Alaska point source discharge permits (APDES permits) are not affected by a Tier 3 designation. A Tier 3 designation would not impact normal activities not currently regulated by the state, such as incidental boat travel that does not cause significant degradation to the water. Individual septic systems discharging to a leach field are considered a land application that does not require an APDES permit.

Outboard motors, road run-off and road plowing/salting/sanding are considered nonpoint source discharges. Road plowing, salting, and sanding are regulated as part of a Municipal Separate Storm Sewer System (MS4) permits for larger communities such as Anchorage and Fairbanks. Outside of a MS4 permit, DEC currently does not regulate the road plowing, salting, and sanding activities.

Non-point source discharges should implement best management practices (BMPs) to prevent unnecessary pollutant discharge, however. Under current state regulations, a Tier 3 designation would only impact regulated non-point source discharges and/or if the designated Tier 3 water was listed as impaired with an established TMDL which included non-point source restrictions, in the same manner as non-designated water. A Tier 3 designation would directly impact other non-point source discharges only if they are regulated by the state in the future.

Can water quality degradation ever be allowed in a Tier 3 water?

Degradation of Tier 3 water quality is only allowable in cases where the lowering is determined to be temporary, short term, and limited.

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Would an ONRW designation affect highway improvements, bridge construction, or other similar activities?

A Tier 3 designation would not impact activities where the Department has determined the lowering of water quality to be temporary and limited. Projects that result in a long-term or permanent lowering of designated Tier 3 water quality, through a permitted discharge or other activity, would not be allowable.

How would industrial land activities such as logging or mining be impacted by an ONRW designation?

Land uses, such as logging or mining, would not be impacted as long as the ONRW water quality was maintained and protected. Discharges to an ONRW or tributary of an ONRW that would degrade existing ONRW water quality would not be allowed.

Who can nominate or propose a Tier 3 water?

Current, anyone may nominate a water for Tier 3 designation. However, this is one of the criteria currently under discussion by the Department.

Who is or would be responsible for the information necessary to nominate a Tier 3 water?

Will there be baseline (ambient) water quality studies?

Currently, the nominator would be responsible for all information and associated costs of gathering the information to nominate a water for a Tier 3 designation. The information recommended to be submitted in support of a nomination, including ambient water quality data, is also currently under discussion by the Department.

How are designated Tier 3 water boundaries established?

The Tier 3 water extent and/or boundaries should be clearly identified in the submitted nomination.

What Alaska waters are currently designated as Tier 3?

Currently, the State of Alaska has not designated any Tier 3 waters.

What waters in Alaska have been nominated for Tier 3 designations?

The Chandalar River, the Yakutat Forelands, the Chilkat River, the Koktuli River, and the Draanjik River have been nominated for Tier 3 designation.

Can a Tier 3 nomination be withdrawn from consideration?

Yes, currently there are no restrictions on the nominator withdrawing a submitted Tier 3 nomination.

What are the criteria that makes water eligible for Tier 3 designation?

Unlike other states, a vast majority of Alaska's more than 3 million waterbodies have had little or no impact from direct human development. In a state with so many high quality waters, it makes it difficult to establish criteria for Tier 3 designation that apply statewide. The Tier 3 criteria and designation process has not been established in Alaska and these topics are currently under discussion. Some examples from other states include waters that are part of national or state parks, wildlife refuge or wilderness areas, special

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trout waters, federal Wild and Scenic Rivers or other high quality waters that have not been significantly modified by human activities.

What are the processes used by other states to designate Tier 3 waters?

The process for Tier 3 water designation is left to the states to define. Methods used by other states range from legislative designation to designation by a board or commission, to designation by a state agency. Currently, nominations for Tier 3 water designation in the State of Alaska may be submitted directly to your legislator for consideration.

What are examples of Tier 3 water designations from other states?

Examples from other states include waters that are part of national or state parks, wildlife refuge or wilderness areas, special trout waters, federal Wild and Scenic Rivers or other unique waters. Some States including Washington, Oregon, Idaho, and Nevada have not designated any Tier 3 waters; California has designated two, Lake Tahoe and Mono Lake; Montana has designated all waters in national parks as Tier 3 waters, and Arizona has designated 22 waters as Tier 3.

What should be included as part of a Tier 3 nomination?

This is currently under discussion. However, the Department has proposed a nomination include all available information to support the Tier 3 criteria that the water has “exceptional recreational or ecological significance.” This may include, for example:

- A detailed description of the water
- Water quality data to the extent that it is available. Where applicable, this would include rationale to suggest water quality is equal to or better than the water quality standards
- A detailed description of the recreational and/or ecological values that make the water exceptional, including economic, subsistence, cultural factors, etc.
- Any land use designations in the watershed such as national and state park, wilderness area, state or national wildlife refuge, etc.
- A description of stakeholder and community outreach and support for the nomination
- Any other supporting information

Who is responsible for designating Tier 3 water?

Federal regulations state that “The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy.” This includes the identification and designation of Tier 3 waters. The State’s antidegradation policy is in regulation at 18 AAC 70.015.

Currently, nominations for Tier 3 water designation in the State of Alaska may be submitted directly to your legislator for consideration. The State is in the process of developing more comprehensive nomination and designation implementation methods, and these methods once developed, will specify who will designate Tier 3 waters.

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What water quality standards apply to a Tier 3 water?

No degradation is allowed in Tier 3 waters and the applicable water quality standards are the baseline water quality levels at the time of Tier 3 designation. A temporary discharge can exceed those levels for a short period as long as the water quality returns to the original baseline levels once the discharge ceases.

How are land-use activities affected by a Tier 3 designation?

Land use projects that result in a long term lowering of Tier 3 water quality, through a discharge or other activity, would not be allowable.

Are there other potential land use restrictions in relation to designated Tier 3 waters?

Tier 3 restrictions only apply to water quality. The only land use restriction that would be affected by a Tier 3 designation would be if the activity included a discharge to the designated Tier 3 water or tributary that would degrade the water quality of the designated Tier 3 water. In this case, the land use activity would not be prohibited, however, alternatives to the discharge would need to be in place so that the designated Tier 3 water quality was maintained and protected.

What about accidental discharges, e.g. logging truck “splashing” into the river on a rainy day?

Who would enforce designated Tier 3 water protections?

As explained previously, a Tier 3 water designation would not impact normal activities. Spills of petroleum, hazardous substances, etc. are enforced by the SPAR division of DEC under 18 AAC 75 regulations. Enforcement of designated Tier 3 water quality restrictions would be a coordinated effort between multiple agencies, including DEC, DNR, and others.

For more information on Alaska’s antidegradation policy and Tier 3 water please refer to the Department webpages.

<http://dec.alaska.gov/water/water-quality/antidegradation/>

<http://dec.alaska.gov/water/wqsar/Antidegradation/Tiers123.html>