

Draft

State of Delaware

***2014 Assessment, Listing and Reporting Methodologies
Pursuant to Sections 303(d) and 305(b) of the Clean Water Act***

November 2013

General Provisions

All readily available data and information for the period of September 1, 2008 through August 31, 2013 will be considered for the assessment of most designated uses. For waters of Exceptional Recreational or Ecological Significance (ERES), data from calendar years 1995-2012 will be assessed for trends. Given that adequate water quality data may not be available in all cases, determinations of use attainment will be made with an abundance of caution.

Data Quality and Quantity

Data from the Department of Natural Resources and Environmental Control's (DNREC's) Environmental Laboratory Section (ELS) will be considered for use if it is collected and analyzed in accordance with the DNREC ELS Quality Assurance Project Plan. For data from sources other than the DNREC ELS, the Department will consider the quality controls used in collection and analysis to determine if it will be appropriate for use in this assessment. Data will be considered readily available if it is in an electronic format that can be imported into or exported from a modern spreadsheet or database program like Microsoft Excel, Access or Quattro Pro. Data that is only available on paper will be considered on a case by case basis given the limited resources available to the Department to convert such data to the more usable electronic format.

The Department routinely currently collects water quality samples at about 150 stations throughout the State. For this cycle, data is available from 186 stations. That data makes up the bulk of the data available for use in 305(b) assessments. The Department considers data from the most recent five-year period, thus, at each station, there are usually data from 20 sampling dates or more. Some stations are in place for a more limited time period and have smaller data sets. Other readily available data and reports are requested in advance of each assessment from parties outside of the Department and used when they are made available. In addition to electronic mail requests from specific organizations, a notice will be published in the Delaware State News and the News Journal.

For the 2014 assessment, the Department will consider data and information received on or before December 31, 2013 from the following sources:

- Reports prepared to satisfy Clean Water Act (CWA) Sections 305(b), 303(d) and 314 and any updates;
 - The most recent Section 319(a) nonpoint source assessment;
 - Reports of ambient water quality data including State ambient water quality monitoring programs, citizen volunteer monitoring programs, complaint investigations, and other readily available data sources (e.g., EPA's Storage and Retrieval System (STORET), the United States Geological Survey, and research reports), and data and information provided by the public;
 - Reports relative to dilution calculations or predictive models;
 - Water quality management plans;
 - Superfund Records of Decision; and
 - Safe Drinking Water Act source water assessments.
 - Fish and shellfish advisories
 - Restrictions on water sports or recreational contact

Coordination with Delaware River Basin Commission (DRBC) and Chesapeake Bay Program Assessments

The DRBC prepares 305(b) assessment reports every two years for the Delaware River and Delaware Bay. Delaware will incorporate the most recent use attainment determinations made by DRBC for the shared waters of the Delaware River and Delaware Bay into its 2014 303(d) list. Delaware expects to work cooperatively with the DRBC, member states and stakeholders to develop and implement TMDLs in waters of the Delaware River and Bay that the DRBC determines to be impaired.

The Chesapeake Bay Program (CBP) is doing assessments for waters in the Chesapeake Bay and nearby waters that drain into the bay in co-operation with Maryland, Virginia, Washington D.C. and Delaware. Delaware will incorporate the most recent use attainment determinations for waters of the state that use criteria developed by the CBP for waters that drain to the Chesapeake Bay.

Use of Environmental Protection Agency Integrated Assessment Guidance

On July 29, 2005, the EPA published "Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d) and 305(b) of the Clean Water Act." The guidance is available on the internet at this URL:

<http://www.epa.gov/owow/tmdl/2006IRG/index.html>. The Guidance was reaffirmed in for the 2008 listing process in a memo by Diane Regas of the EPA. That memo is online at this URL: http://www.epa.gov/owow/tmdl/2008_ir_memorandum.html. The Guidance was reaffirmed and expanded upon in a May 5, 2009 memorandum posted online at this URL: <http://www.epa.gov/owow/tmdl/guidance/final52009.html>. No significant changes

were made to the guidance in the March 21, 2011 memo online here:
http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/ir_memo_2012.cfm .

The core recommendation of the guidance is to categorize all waters of the state according to the following five categories:

Category 1: All designated uses are met;

Category 2: Some of the designated uses are met but there is insufficient data to determine if remaining designated uses are met;

Category 3: Insufficient data to determine whether any designated uses are met. Either no data is available or some data is available, but it is insufficient to make a determination

Category 4: Water is impaired or threatened but a TMDL is not needed;

- 4A: All TMDLs for this segment have been completed and EPA approved. Class 4A waters have all necessary TMDLs approved, but one or more impairments exist, despite the approved TMDLs.
- 4B: Other required control measures are expected to result in the attainment of WQSs in a reasonable period of time
- 4C: The impairment or threat is not caused by a pollutant

Category 5: Water is impaired or threatened and a TMDL is needed for at least one pollutant or stressor

Each of Delaware's waterbody segments will be assigned to the appropriate category for each designated use and then 'rolled up' into a final categorization for the segment. For the final categorization, the highest category number from the applicable use determinations will be assigned to each segment. For example, if a hypothetical segment has a Category 1 determination for aquatic life use support based on average dissolved oxygen, a Category 3 determination for primary contact use, and a Category 5 determination for aquatic life use support based on the dissolved oxygen minimum criteria, then the segment would be given an overall categorization of category 5. In this case, DNREC would pursue the collection of additional enterococcus data in order to assess the primary contact use and establish a schedule for developing a TMDL in order to meet the minimum dissolved oxygen criteria.

Dissolved Oxygen (DO) Aquatic Life Use Support (ALUS)

The following types of DO data are potentially available for analysis:

- Field measurements taken by personnel using handheld DO probes; and
- Continuous monitoring data collected using multiparameter monitoring systems that are typically deployed for several days, weeks, or months. In order to get a

more accurate picture of dissolved oxygen dynamics and other water quality parameters, the Department continues to increase its use of continuous monitoring systems.

To determine ALUS with regard to Dissolved Oxygen (DO), the following methodology will be used to compare measured DO concentrations to two different standards, the minimum at all times and daily average concentrations. Average DO concentrations are considered to be met if the 10th percentile of available data is above the applicable criteria of 5.0 mg/l for marine waters and 5.5 mg/l for fresh waters. The statewide minimum DO concentration for surface waters is 4.0 mg/l at any time. Stations are judged to be in compliance with this criterion if the minimum is not violated by more than 1% of continuous monitoring data and no more than two field samples are below the minimum.

Assessments of Average DO Criteria Attainment:

If sampling events occurred on at least ten different days during the assessment period for each station, attainment of the DO average criteria will be assessed using the method that follows. Stations with fewer than ten different sampling days will be considered to have insufficient data and be placed in Category 3 for this assessment cycle.

For purposes of DO compliance with the daily average criteria in a segment, continuous monitoring data, if available, will be averaged on a daily basis for each station. If no continuous data is available, then the field measurements (as available) will be considered to be representative of the daily average for that day. Any type of sample (continuous or field measurement) will be considered to be representative for that station at the time of collection. Once the daily average for each station (station daily average, SDA) has been determined, the SDAs for each station will be pooled and the upper confidence limit (UCL) of the nonparametric 10th percentile confidence interval will be determined using methods described in Section 3.7 of Helsel and Hirsch . That UCL will be compared to the applicable standard. If the UCL is above the applicable average criteria for all stations in a segment, the segment will be considered to be fully supporting (Category 1) for the DO average portion of ALUS. If the UCL from any station in a segment is below the applicable average, the segment will be considered not fully supportive of the aquatic life use (Category 5)

Formally stated, the following hypotheses will be tested:

H_0 : at the 90% Confidence level, $X_{10} \geq \text{Standard}$

H_1 : at the 90% Confidence level, $X_{10} < \text{Standard}$

Where X_{10} = Non parametric estimate of the 10th percentile of available data.

Assessments of Minimum DO Criteria Attainment:

Attainment of the minimum DO criteria will be assessed based on all available data (note that ten samples in 5 years are not needed for the comparison to the minimum). For stations for which no continuous DO monitoring data are available, two or more SDAs in five years below the applicable minimum will be sufficient evidence to show that the aquatic life use is not supported (Category 5).

For stations with continuous monitoring data, available continuous monitoring data will be pooled on an annual basis for each station. The UCL of the first percentile of the data will be calculated and compared to the minimum criteria in the same manner as the average comparison above for each year of the applicable five previous years. One or more years in which the upper confidence limit of the first percentile is below the minimum will be sufficient to determine that aquatic life use is not fully supported in the segment (Category 5). See the flow chart below for a graphical depiction of the dissolved oxygen assessment process.

Nutrient Enrichment Assessment

From a state-wide perspective, nutrient overenrichment is one of the leading causes of water quality impairment in Delaware. While nutrients are essential to the health of aquatic ecosystems, excessive nutrient loadings to surface waters can lead to an undesirable proliferation of aquatic weeds and algae, which in turn can result in oxygen depletion and associated impacts to fish and macroinvertebrate populations. Excessive aquatic plant growth can also preclude or seriously curtail water dependent activities such as fishing and boating when plant densities become so great that uses are not physically possible.

For tidal portions of the Indian River, Rehoboth Bay and Little Assawoman Bay watersheds, the water quality criterion for dissolved inorganic nitrogen is a seasonal average of 0.14 mg/l as N, and for dissolved inorganic phosphorus a seasonal average of 0.01 mg/l. For those stations where sampling events occurred on at least ten different days during the assessment period, the available data for the months of March to October from each station will be averaged. The averages will be compared to the above values to assess attainment of desired nutrient levels in these waters. Stations with fewer than ten different sampling days will be considered to have insufficient data and be placed in Category 3 for this assessment cycle. Segments with one or more stations whose seasonal average is above the criteria will be considered to be not fully supporting the aquatic life use (Category 5).

For the remaining waters of the State, the Department has been developing and implementing nutrient and dissolved oxygen TMDLs using target values for total nitrogen of 2-3 mg/l and total phosphorus levels of 0.1 to 0.2 mg/l. These target values were developed in order to implement the narrative provisions in the Surface Water Quality Standards. For those stations with sampling events on at least ten different days during the five-year assessment period the data will be averaged and compared to the maximum values above. Stations whose 5 year average total nitrogen or total phosphorus levels are above those levels will be considered to be not fully supporting the aquatic life use (Category 5). Stations with fewer than ten different sampling days will be considered to have insufficient data and be placed in Category 3 for this assessment cycle. Segments with one or more stations whose average nutrient concentrations are above the target values will be considered to be not fully supporting the aquatic life use (Category 5).

The following conditions will also result in segments being listed in Category 5:

1. There were documented cases of nuisance algal blooms or excessive macrophyte growth. These cases violate Section 4.1.1.3 of Delaware's Standards which require waters of the State to be free from substances that may result in a dominance of nuisance species;
2. Detailed, site-specific monitoring studies indicated a strong linkage between nutrient levels and indicators of eutrophication such as high chlorophyll-a concentrations, extreme daily variation in dissolved oxygen levels, and high sediment oxygen demand; or

3. For ERES waters, a long-term trend analysis indicates a statistically significant increase in nutrient levels over time. Such increases are inconsistent with the short-term goal of “holding the line” on water quality in ERES waters. Such increases are also inconsistent with the long-term goal of restoring those waters, to the extent feasible, to their natural state.

Assessments of Aquatic Life Use Support Using Site-Specific Data That Results from Environmental Assessments and Other Programs

In the normal course of business, the Department requests, receives and evaluates water quality data for various environmental programs. Similar data may also come from other parties (e.g., State, Federal, or local agencies). The Department will use those site-specific studies to compare water quality data to the applicable water quality standard(s) and make assessment and listing decisions for the affected segments. If the data show no water quality criteria are exceeded and no uses are impaired, no further listing action will be taken. If the data are ambiguous or inconclusive, the segment will be listed in Category 3. If water quality criteria are exceeded or uses are impaired as a result of a contaminated site, and the owners of the site are making substantial progress (as determined by the Department) toward correcting the pollution problem, the segment will be listed in Category 4. If it appears that there is a water quality problem related to a contaminated site, and that substantial progress is not likely in the near future, the segment will be listed in Category 5.

Assessments of Waters of Exceptional Recreational or Ecological Significance

ERES is a special use designation in Delaware's Surface Water Quality Standards that applies to waters deemed to be of Exceptional Recreational or Ecological Significance. The short-term goal for ERES waters is to "hold the line" on pollution and the long-term goal is to restore ERES waters, to the maximum extent practicable, to their natural condition.

The ERES designated use will be assessed using data from the period January 1, 1995 through December 2010 for total nitrogen and total phosphorous concentrations to assess trends for those parameters. Seasonality for each parameter at each station will be determined using the Kruskal-Wallis test at the 5% significance level. Parameters showing no seasonality will be assessed using Sen's slope estimator with an Alpha of .05. Parameters showing seasonality will be evaluated using seasonal Kendall slope estimations at the 95% confidence level. Segments with one or more stations that show statistically significant increases in total nitrogen or total phosphorus levels will be considered to not be in attainment of the ERES designated use.

Primary Contact Recreation Use Assessments

Generally, total enterococcus bacteria water quality samples are collected several times each year at each monitoring station. In addition, for all guarded beaches and many unguarded beaches, samples are collected much more frequently from mid-May through mid-September as part of beach monitoring activities pursuant to the Beaches Environmental Assessment and Coastal Health (BEACH) Act. Assessment of the above two situations for primary contact recreation use support will be as follows.

For segments with no beach monitoring, if sampling events occurred on at least ten different days during the assessment period, the geometric mean of the available enterococcus (colonies/100 ml) data for each station will be compared to the geometric mean values shown in the table below. Stations with fewer than ten different sampling days will be considered to have insufficient data (Category 3) to make a determination if the geometric mean criterion is met. Segments with one or more station geometric means above the values in the table will be considered to not be in support of the Primary Contact Recreation designated use (Category 5).

Water Type	Geometric Mean (Enterococcus colonies/100 ml) Criteria for Primary Contact Use
Fresh	100
Marine	35

Segments with beaches that are closed as a result of poor bacterial water quality data two or more times in a single calendar year will be considered not to support the primary contact designated use (Category 5). Some beaches are routinely closed after rain events without using water quality data to make the decision. These rainfall-based management plans are developed by statistically analyzing the relationship between rainfall amounts and Enterococcus levels. Regression analyses are used to determine the amount of rainfall that will cause exceedances of criteria. However, since the existing management plans are based upon outdated criteria, rainfall-based closures will not be considered for making designated use support decisions.

Listing Criteria for Waters with Fish Consumption Advisories

For purposes of developing Delaware's Integrated 305(b) Report and 303(d) List, the issuance of a "no consumption" or "limited consumption" fish advisory will be interpreted as a violation of Section 4.6.3.2.3 and Section 4.1.1.3 of Delaware's Surface Water Quality Standards. Those two narrative provisions provide, respectively, that 1) waters of the State shall be maintained to prevent adverse toxic effects on human health resulting from ingestion of chemically contaminated aquatic organisms; and 2) waters of the State shall be free from pollutants that may endanger public health. Any segment for which fish consumption advisories are in place as of December 2011 will be placed in Category 5 for each of the chemicals of concern included in each advisory. In the event that fish consumption advisories have been lifted, or any chemical of concern has been removed from an advisory, any requirements to develop a TMDL for that chemical in that segment will be removed if the fish tissue data was originally the sole cause for placement of the segment on the 303(d) list.

Ammonia assessments

In fresh waters, ammonia's toxicity is known to be controlled by both the temperature and pH of the water. EPA recommended criteria are based on the presence or absence of early life stages of fish and specify that the criterion should not be exceeded more than one time in a three-year period. The applicable criterion is calculated for each sampling event.

For stations whose average salinity during the assessment period is below 5 ppt, total ammonia as nitrogen, temperature and pH data will be used to compare the total ammonia data to the criterion calculated according to the following formulas:

When fish early life stages are present:

$$\text{Criterion} = \frac{0.0577}{1 + 10^{7.688 - \text{pH}}} + \frac{2.487}{1 + 10^{\text{pH} - 7.688}} * \text{MIN} (2.85, 1.45 * 10^{0.028 * (25 - T)})$$

When fish early life stages are absent:

$$\text{Criterion} = \frac{0.0577}{1 + 10^{7.688 - \text{pH}}} + \frac{2.487}{1 + 10^{\text{pH} - 7.688}} * [1.45 * 10^{0.028 * (25 - \text{MAX}(T, 7))}]$$

If two or more sampling events from the same station result in exceedances of the calculated criteria, the station will be deemed not supported for aquatic life use support based on ammonia toxicity.

Temperature Assessments

Delaware surface water quality criteria indicate that, in freshwaters, no human induced increase of the daily maximum temperature above 86°F (30.0 °C) shall be allowed and in marine waters the maximum human induced temperature is 87 °F (30.6 °C). Stations for which two or more sampling events are above the criteria and whose segments receive thermal discharges will be deemed not in support of the aquatic life use.

Assessment of Harvestable Shellfish Waters Use Support

Delaware is a member of the Interstate Shellfish Sanitation Conference (ISSC), the administrative body of the National Shellfish Sanitation Program (NSSP). Delaware's Shellfish Sanitation Regulations are administered as per ISSC / NSSP standards and practices. Section 3.2.1.3 of said Regulations specifies data collection / closure criteria for Delaware shellfish waters, which include parameters constituting administrative closure of shellfish waters. Parameters that would trigger administrative closures in compliance with ISSC/NSSP standards may include theoretical pollution loading, sanitary shoreline survey information, and numerical total coliform data. No Delaware waters are closed to shellfish harvesting as a result of actual total fecal coliform data. All Delaware shellfish waters designated as other-than-Approved, which may include Prohibited, Seasonally Approved, Conditionally Approved, or restricted, are so designated on the basis of administrative decisions. Specifically, these criteria include: 1) theoretical pollution loading, which is determined to be the potential for intermittent pollution discharges, making detection of said theoretical releases non-detectable via conventional sampling methodology; 2) sanitary shoreline survey findings which indicate potential for theoretical pollution loading, also non-detectable via conventional sampling methodology; and 3) may include dilution of theoretical virus discharges from point sources; however, not corresponding to increases in total coliform levels. In order to comply with ISSC / NSSP requirements, Delaware samples all shellfish waters not administratively closed for other reasons for fecal coliform bacteria. Delaware's Shellfish Program is assessed under the auspices of the U.S. Food and Drug Administration, as per ISSC/NSSP standards and practices, and submits bacteriological water quality data to the U.S. Food and Drug Administration to demonstrate compliance.

To assess the harvestable shellfish designated use, the Department will consider the data and reports to FDA for waters that are not administratively closed. Waters that have been administratively closed for shellfish harvesting as a result of fecal coliform exceedances during the assessment period will be assessed as category-5.

Aquatic Life Use Assessments for Metals

Metals are present in surface water from natural and anthropogenic sources. Among the most commonly detected trace metals in surface water are copper, lead, and zinc. The Department is actively sampling for these metals in surface waters of the state. This section describes how the Department interprets data collected for these metals.

Existing water quality criteria for copper, lead, and zinc are expressed in terms of magnitude (total dissolved concentration), duration (how long the dissolved concentration persists), and frequency (how often an exceedance occurs). For fresh waters, the magnitude portion of the criteria is calculated from the equations below. Each of these equations varies as a function of water hardness. Because hardness is variable in space and time, criteria are calculated for each sampling event at each location prior to comparison to measured dissolved metal concentrations. The duration portion of the criteria depends on whether the acute or chronic criterion is being considered. The word acute means “short term”, while the word “chronic” means longer term. Acute criteria assume an exposure duration of one hour. Chronic criteria assume an exposure duration of four days. The frequency portion of both the acute and chronic criteria assume that aquatic life use is protected as long as the criteria are not exceeded more than one time in a 3 year period. Thus, exceeding the calculated criteria twice in 36 months may not be protective of the aquatic life use.

Parameter	Fresh Acute Criterion	Fresh Chronic Criterion
Copper	$0.96 * \text{EXP}^{(0.9422 * \text{LN}(\text{hardness}) - 1.7)}$	$0.96 * \text{EXP}^{(0.8545 * \text{LN}(\text{hardness}) - 1.702)}$
Lead	$(1.46203 - \text{LN}(\text{hardness}) * 0.145712) * \text{EXP}(1.273 * \text{LN}(\text{hardness}) - 1.460)$	$(1.46203 - \text{LN}(\text{hardness}) * 0.145712) * \text{EXP}(1.273 * \text{LN}(\text{hardness}) - 4.705)$
Zinc	$0.978 * \text{EXP}(0.8473 * \text{LN}(\text{hardness}) + 0.884)$	$0.986 * \text{EXP}(0.8473 * \text{LN}(\text{hardness}) + 0.884)$

In interpreting metals data, it is important to assess whether all three dimensions of the criteria (magnitude, duration, and frequency) are exceeded. Although it is straightforward to determine whether the magnitude and frequency of exceedance has been exceeded for a metal at a particular location, professional judgment is needed to assess whether the duration portion of the criteria has been exceeded. Judgment is needed because ambient data for metals is typically based upon a single instantaneous grab sample at a location during any particular month while acute criteria are one-hour average concentrations and chronic criteria are four-day average concentrations. As a practical matter, the results of instantaneous grab samples are reasonably compared to one-hour acute criteria and therefore Delaware takes this approach. It is not reasonable however to automatically assume that the results of an instantaneous grab sample is representative of a four-day period, especially if the grab sample was collected during or after a rainfall event which produced runoff. Water quality during and immediately after runoff events is highly variable. Water quality during steady (non-storm) flow conditions

tends to be less variable and so the results from a grab sample may well represent a four-day average. Based on the above, the Department reviews rainfall and streamflow data prior to concluding that chronic aquatic life criteria have been exceeded.

Additional factors are also important to consider when interpreting metals data. Key among them is the overall quality of the analytical data and the proximity of the reported concentration relative to analytical detection and reporting limits. Metals data generated by the Department's laboratory follows standard quality assurance/quality control (QA/QC) procedures. Despite this, or as a consequence of this, data may be reported with certain data qualifiers that need to be recognized and understood. For instance, "J-qualified" results indicated that the analyte is present but that the reported value falls somewhere between the method detection limit and the reporting limit. Such results carry greater uncertainty than non-qualified data. Hence, careful review is required, especially when the J-qualified result is close to the criterion. It is important to note that the number of these cases is likely to decrease in the future (post-July 1, 2013) because the Department purchased a new analytical instrument (ICP/MS) which will lower detection levels by an order of magnitude. The improved analytical sensitivity is also being accompanied by improvements in sample collection techniques to prevent inadvertent introduction of contamination into samples. These improvements are a major step forward which should significantly improve confidence in metals assessments. The fact remains however that metals data collected prior to July 1, 2013 needs to be viewed carefully.

Another important development in the assessment of metals data is the so-called Biotic Ligand Model (BLM). Aquatic toxicologists have been developing the Biotic Ligand Model (BLM) to more accurately predict toxicity of divalent metals (such as copper, lead, and zinc). Use of the BLM requires sampling for a number of other parameters that affect the chemistry and bioavailability of metals. The Department has recently (beginning July 1, 2013) started collecting those parameters in the waters where copper, lead and zinc samples are collected.

For the 2014 assessment cycle, sample results will be compared to the calculated criteria (both acute and chronic) as a percentage of the criteria on a station by station basis. If fewer than 2 samples in the 5 year period are reported above the criteria the station will be reported as Category 1. If 2 or more are reported above the criteria, it will be determined if they are within 36 months of each other. If samples above the criteria are more than 36 months apart, then the station will be category 1 for that metal. Where 2 or more samples are reported above the criteria within 36 months the station will be conditionally placed in category 3 for that metal. The Department may consider data quality, flow conditions, site specific conditions, BLM modeling results, the presence of known sources, bio assays and biological surveys and other appropriate information, alone or in combination with each other to determine if aquatic life use impairments are occurring. Where there is a clear weight-of-evidence of an aquatic life use impairment after the category 3 evaluation, the station will be placed in category 5. If the evaluation shows that another category is most appropriate, that category will be used. The

Department will make it a priority to move category 3 metals listings to other categories in as few listing cycles as possible.

Setting Priorities for Water Quality Limited Segments Still Needing TMDLs

Because there are more water quality issues and impacts than there are public and private resources to address those impacts, it is necessary to set priorities for water quality limited segments. This is true for Delaware as well as the country as a whole. With this in mind, and recognizing the need to provide a logical, deliberate, and reasonable path forward, it becomes necessary to organize and order the work at hand into different priorities based upon a number of factors.

In the past, the timetable for developing TMDLs for newly listed waters in Delaware was based on the Department's Whole Basin Management Program rotating basin schedule shown below.

Basin	Year for TMDL Development
Piedmont	2009
Chesapeake Bay	2010
Delaware Bay	2012
Delaware Estuary	2013
Inland Bays/Atlantic Ocean	2011

EPA guidance recommends up to 13 years from the date of initial listing to propose TMDLs for those waters. The Department will generally use that guideline for newly listed waters where resources and conditions allow.

Rationale Used to Designate a Lower Category for Segments Previously Designated for TMDL Development

The Department may move segments from prior 303(d) Lists (equivalent to Category 5) to another category based on any of the following factors, and will document the reasons for doing so on a case-by-case basis.

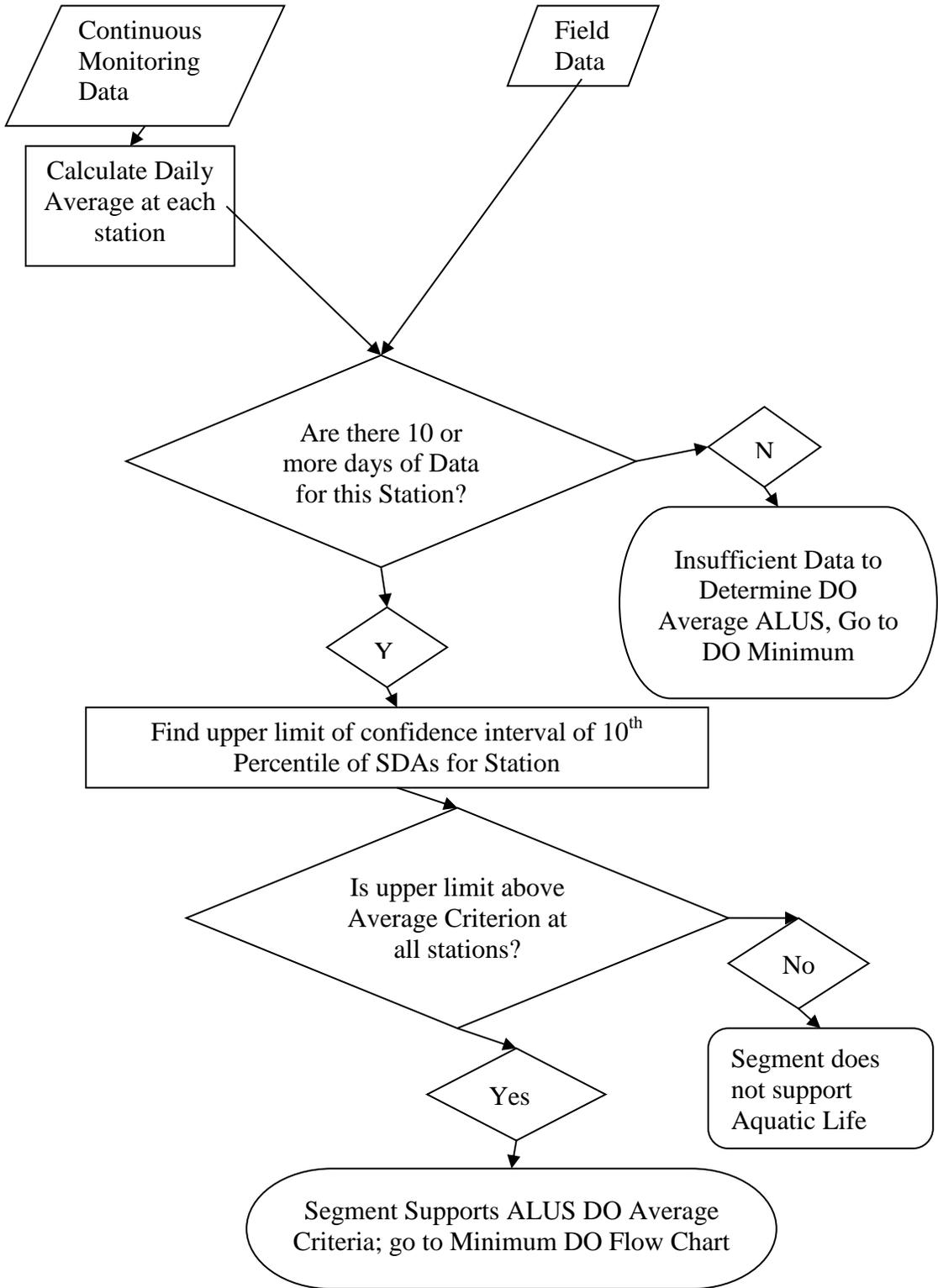
- The assessment and interpretation of more recent or more accurate data demonstrate that the applicable WQS(s) is being met. (Move to category 1)
- The results of more sophisticated water quality modeling demonstrate that the applicable WQS(s) is being met. (Move to category 1)
- Demonstration that flaws in the original analysis of data and information led to the water being incorrectly listed. (Move to category 1)

- The development of a new listing methodology, consistent with State WQSs and federal listing requirements, and a reassessment of the data that led to the prior listing, concluding that WQSs are now attained. (Move to appropriate category)
- A demonstration pursuant to 40 CFR 130.7(b)(1)(ii) that there are effluent limitations required by State or local authorities that are more stringent than technology-based effluent limitations required by the CWA and that these more stringent effluent limitations will result in the attainment of WQSs for the pollutant causing the impairment. (Move to category 4A or 4B until data and analysis support move to Category 1)
- A demonstration pursuant to 40 CFR 130.7(b)(1)(iii) that there are other pollution control requirements required by State, local, or federal authority that will result in attainment of WQSs for a specific pollutant(s) within a reasonable time. (Move to category 4A or 4B until data and analysis support move to Category 1)
- Documentation that the State included on a previous Section 303(d) List an impaired water that was not required to be listed by EPA regulations; e.g., waters where there is no pollutant associated with the impairment. (Move to category 1 or 4C as appropriate)
- Approval or establishment by EPA of a TMDL since the last Section 303(d) List. (Move to category 4A or 4B until data and analysis support move to Category 1)

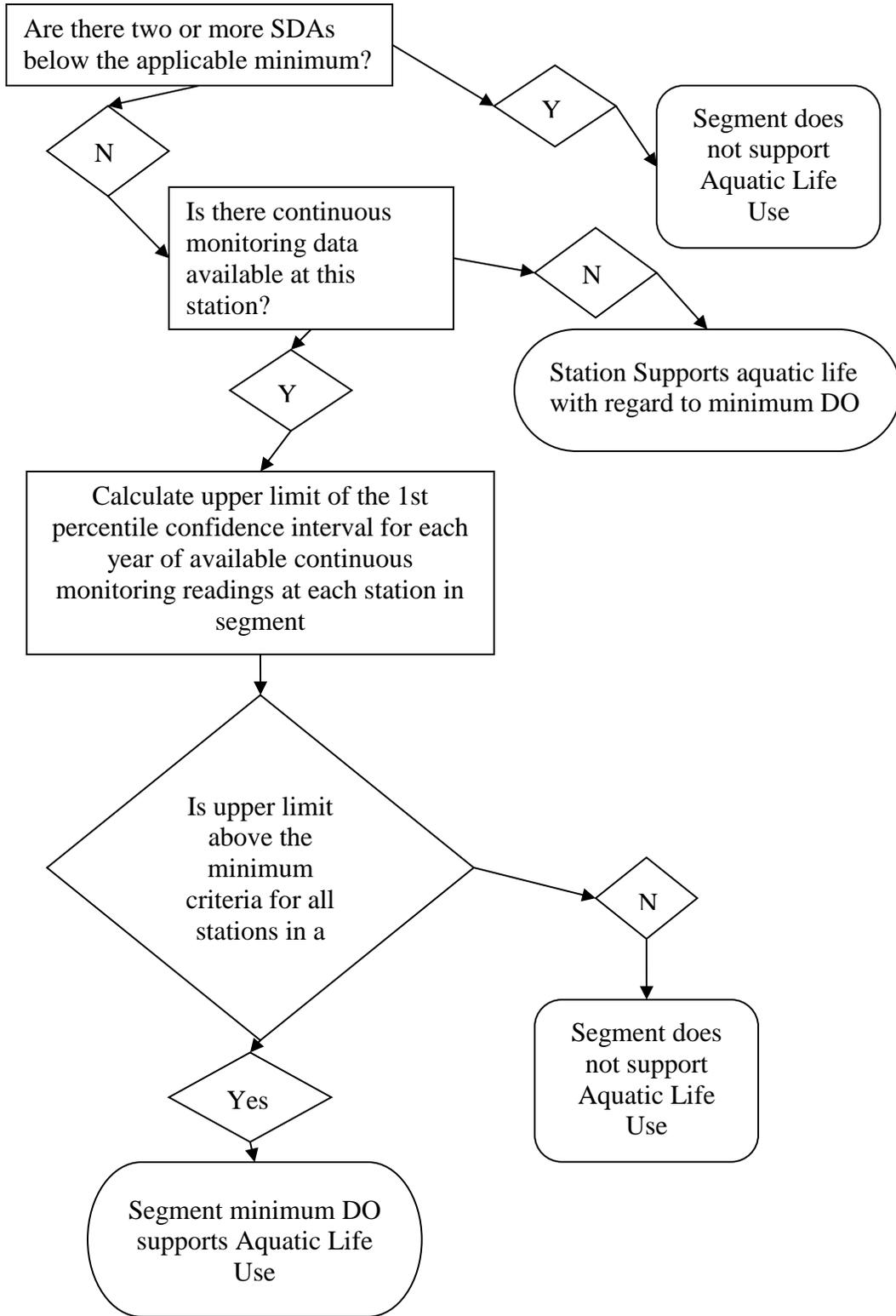
Other factors may also be used to change categories on a case by case basis, subject to EPA approval and appropriate stakeholder involvement.

Flow Charts for Designated Use Attainment

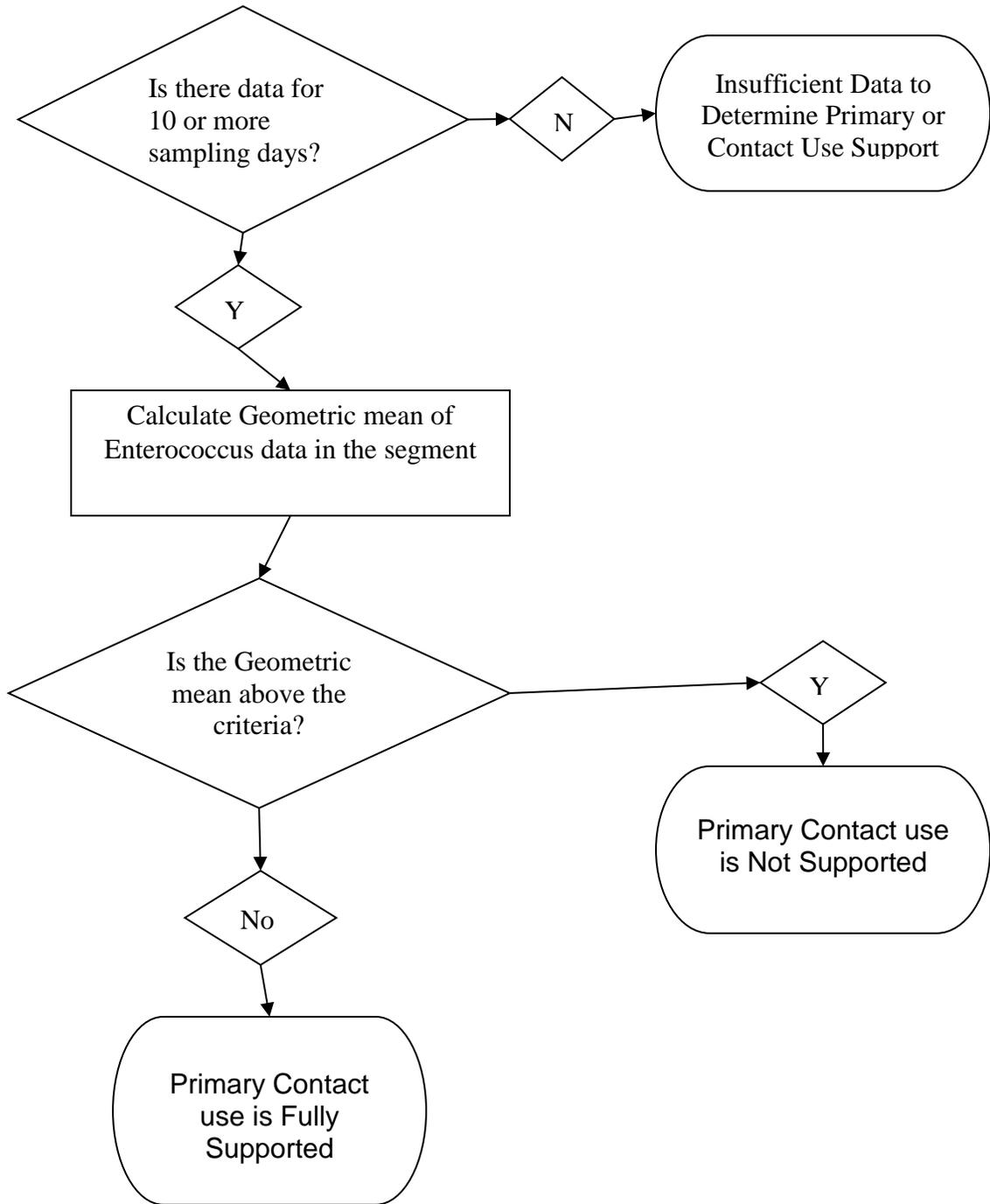
Assessment of Aquatic Life Use Support Using Average Dissolved Oxygen Criteria



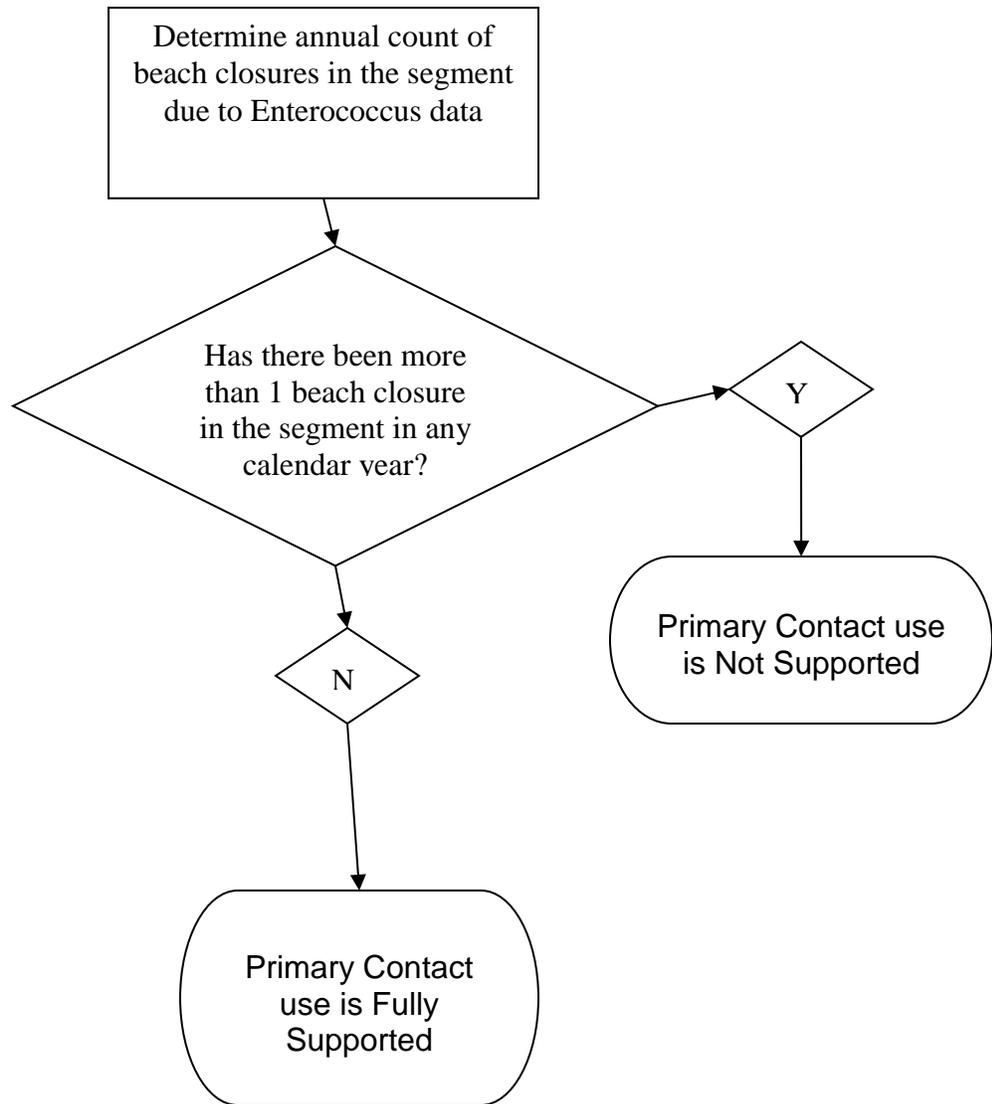
Assessment of Aquatic Life Use Support Using Minimum Dissolved Oxygen Criteria



Assessment of Primary Contact Use Support in Segments that do not have Beach Monitoring Programs



Assessment of Primary Contact Use Support in Segments with Beach Monitoring Programs



Assessment of ERES Designated Use Attainment

Do Kruskal-Wallis seasonality test on available data for each parameter

Is there seasonality in the

N

Y

Use Sen's Slope estimator to assess trend

Use Seasonal Kendall Slope indicator to assess trend

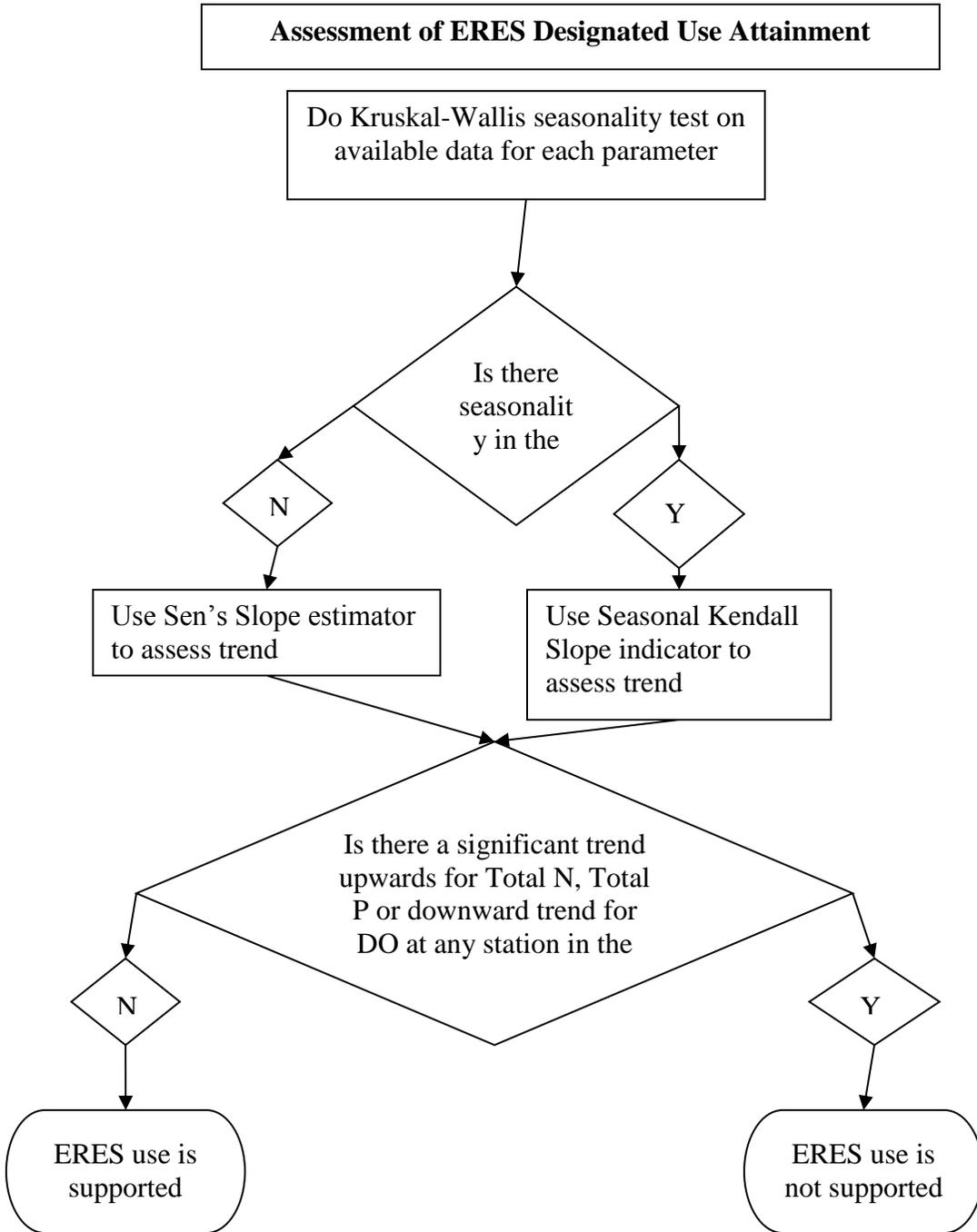
Is there a significant trend upwards for Total N, Total P or downward trend for DO at any station in the

N

Y

ERES use is supported

ERES use is not supported



References:

Helsel D.R. and R.M. Hirsch, 2002, Statistical Methods in Water Resources

Publication available at: <http://water.usgs.gov/pubs/twri/twri4a3/>

Conover, W.J., 1980, Practical Nonparametric Statistics, 2 ed., John Wiley and Sons