



Water Quality Standards and EPA's Approval Process

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Purpose of presentation

- To describe what is in the State's water quality standards (WQS) and why it is important for surface water protection
- To explain how Alaska's WQS are developed, and how EPA reviews and takes action on them
- To discuss how Tribes may be engaged and provide input during Alaska's WQS development and EPA's review and action



Presentation overview

- **Clean Water Act (CWA) framework**
- **Key points and elements of “water quality standards” (WQS)**
- **WQS development and approval process**



Clean Water Act (CWA) Framework



Background of Clean Water Act (CWA)

- Original Federal Water Pollution Control Act (FWPCA) passed in 1948
- “Clean Water Act” (CWA) amendments to FWPCA passed in 1972
- CWA establishes the legal authority for many key surface water quality protection programs



Objective and goals of Clean Water Act (CWA)

- Objective is to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters”
- CWA has several interim goals
- An interim goal important to understanding water quality standards (WQS) is:
 - “water quality which provides for the protection and propagation of fish, shellfish and wildlife and provides for recreation in and on the water,” wherever attainable



CWA establishes important surface water quality protection programs, including:

- Water quality standards (WQS)
- Threatened and impaired waters list (“303(d) List”)
- Total maximum daily loads (TMDLs)
- National Pollutant Discharge Elimination System (NPDES) permit system
- Others (e.g., effluent limitation guidelines)



Key Points and Elements of Water Quality Standards (WQS)



Federal requirements for State WQS include that:

- WQS must specify, in regulation
 - the designated uses that are to be protected in each waterbody
 - the criteria that will protect each use in each waterbody
- WQS must also include an antidegradation policy to maintain and protect existing water quality



WQS must specify the designated uses to be protected in each waterbody

- Designated uses reflect the “goals” of a waterbody
- Where attainable, designated uses must include
 - protection and propagation of fish, shellfish, and wildlife and
 - recreation in and on the water
- Other uses may be designated (e.g., agriculture, industrial)



States must adopt in WQS criteria that protect the designated uses

- May be “narrative” or numeric
- Criteria must be based on sound scientific rationale
 - EPA national “304(a)” guidance
 - guidance modified to reflect site-specific conditions, or
 - other scientifically defensible methods



WQS must also include an antidegradation policy, which

- Specifies how decisions to allow reductions in water quality (e.g., through discharges authorized under a new NPDES permit) are made
- The intent of an antidegradation policy is:
 - to ensure that in all cases, water quality necessary to support “existing uses” is maintained and protected



The intent of an antidegradation policy is (cont'd):

- to ensure that where water quality is better than the minimum level necessary to support the “fishable/swimmable” uses, that water quality is also maintained and protected
UNLESS
 - through a public process, some lowering of water quality is deemed to be necessary to allow important economic or social development to occur
- to ensure that water quality in water bodies of exceptional recreational or ecological significance is maintained and protected



WQS may also include general policies

- General policies affect how WQS are applied and implemented
 - examples include mixing zone and variance policies
- These general policies are also subject to EPA review and approval



WQS Development and Approval Process

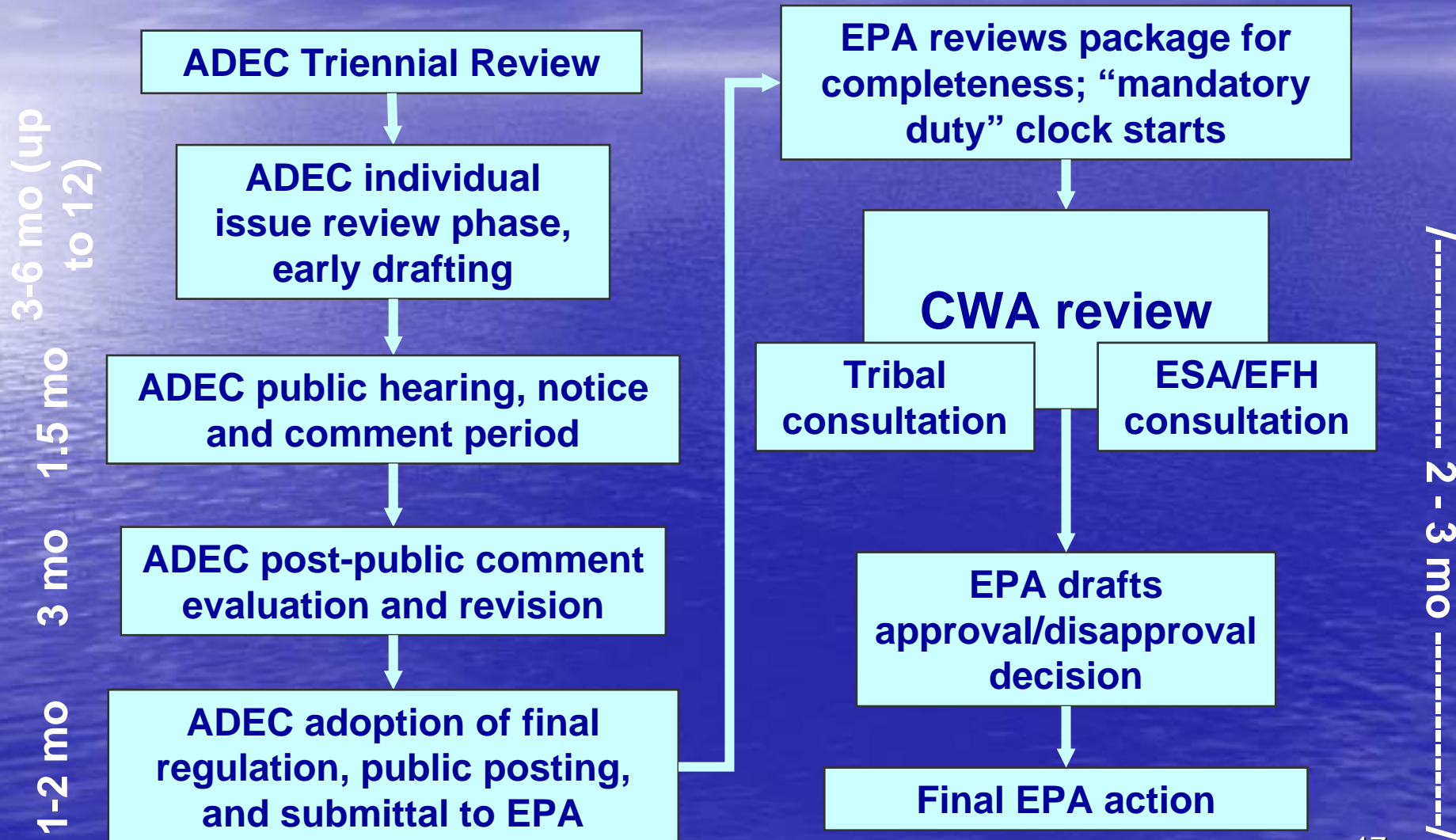


Development and approval of AK WQS includes several steps:

- ADEC must review WQS at least once every 3 years (“Triennial Review”)
- ADEC develops, adopts, and submits new or revised elements of their WQS to EPA
- EPA reviews and takes action on WQS revisions under its CWA authority
- EPA conducts consultations on its action
 - Tribal consultation
 - Endangered Species Act (ESA) consultation
 - Essential Fish Habitat (EFH) consultation

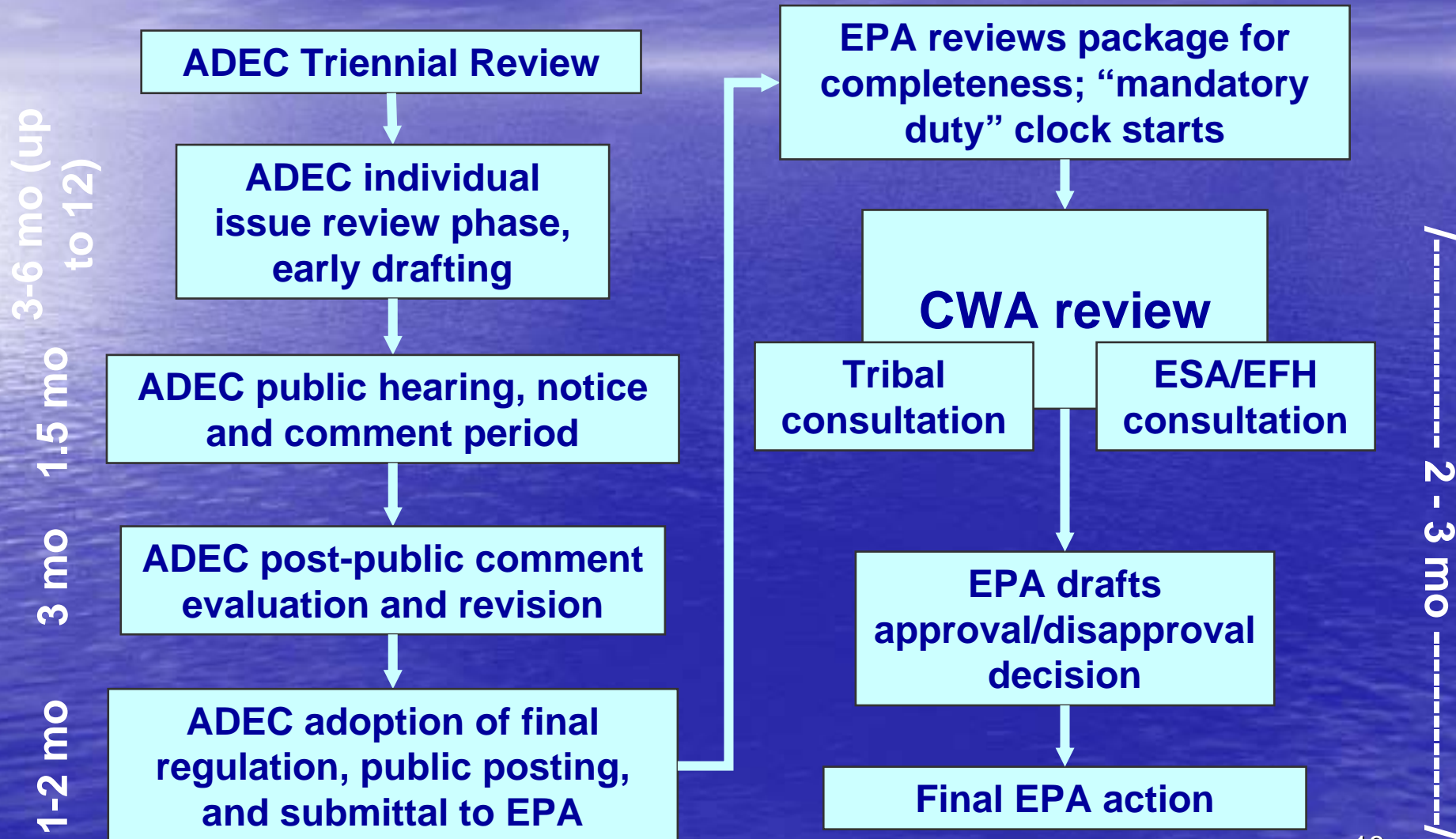


Overall WQS development and approval process





Overall WQS development and approval process



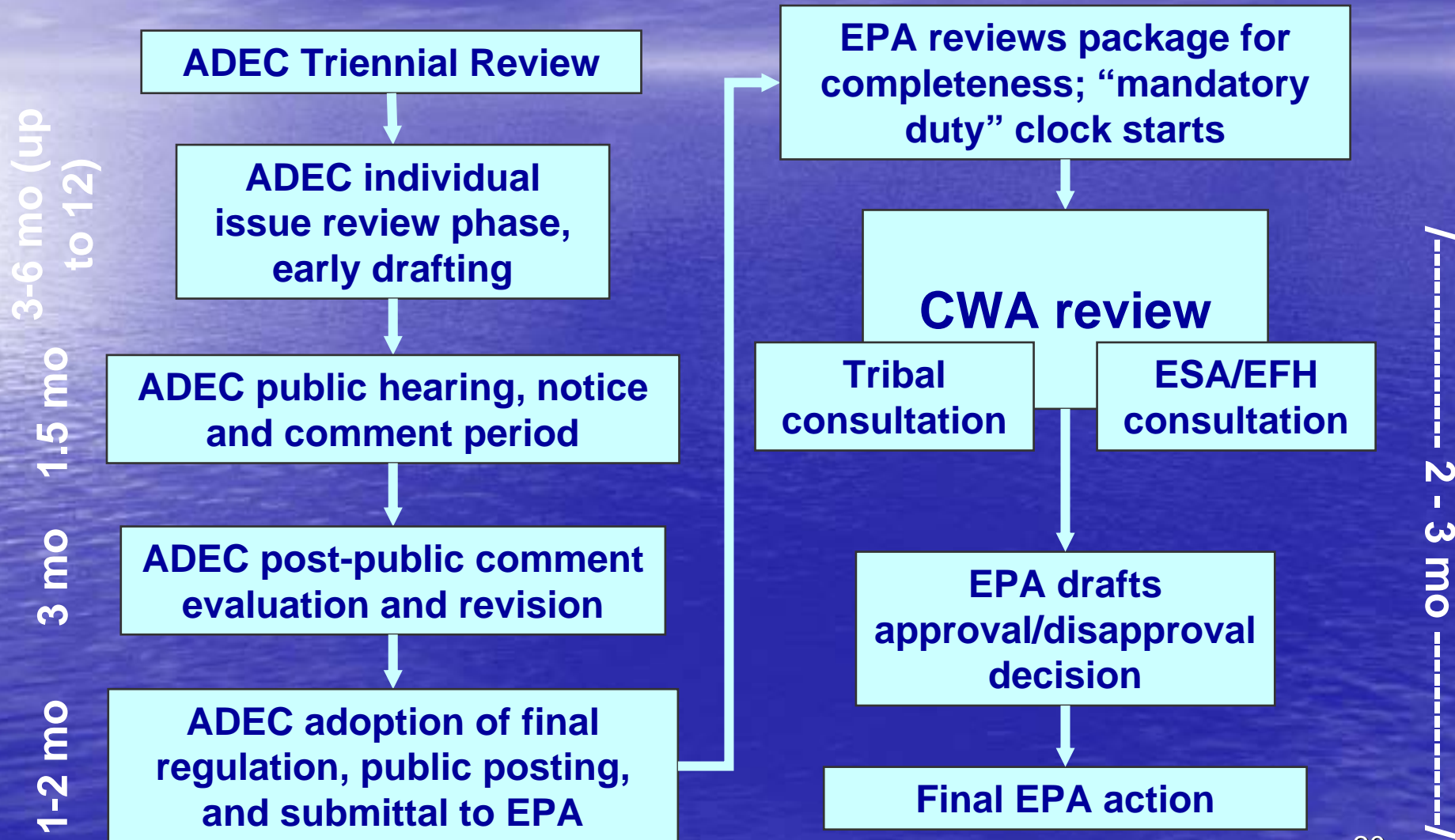


Requirements for EPA's review defined in Federal WQS regulation, and include:

- Use designations consistent with CWA
- Methods used and analyses conducted to support revisions
- Criteria sufficient to protect designated uses
- Antidegradation policy and implementation method consistent with regulations
- Certification by State Attorney General that WQS were duly adopted pursuant to State law
- Other information that will aid EPA in evaluating basis and implementation of WQS



Several key opportunities for Tribes to engage in process





Policies supporting Tribal-EPA consultation on AK WQS

- **Federal Indian Policy** (<http://www.epa.gov/indian/policyintitvs.htm>)
- **EPA Indian Policy** (<http://www.epa.gov/indian/policyintitvs.htm>)
- **EPA Region 10 Tribal Consultation Framework**

“‘Consultation’ means the process of seeking, discussing, and considering the views of federally recognized tribal governments at the earliest time in EPA Region 10’s decision-making. Consultation generally means more than simply providing information about what the agency is planning to do and allowing comment. Rather, consultation means respectful, meaningful, and effective two-way communication that works toward a consensus reflecting the concerns of the affected federally recognized tribe(s) before EPA makes its decision or moves forward with its action.” (<http://yosemite.epa.gov/r10/tribal.NSF>)



Principles supporting Tribal-EPA consultation on AK WQS include:

- EPA recognizes its unique legal relationship with Tribal governments, which includes
 - recognition of the right of Tribes as sovereign governments to self-determination
 - acknowledgement of the Federal government's trust responsibility to Tribes
- EPA works with Tribes on a government-to-government basis to protect the land, air, and water in Indian country



Summary



Summary

- CWA provides the legal authority for many important surface water quality protection programs
- Water quality standards (WQS) are centrally important to CWA programs
- There are several key opportunities for Tribes to engage in and provide input during WQS development and EPA's review and action
- EPA would like to conduct constructive and productive Tribal consultation during development and review of AK WQS