

James R. Karr, University of Washington
Jan Hasselman, National Wildlife Federation
Randy Smith, EPA Region 10

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December 17, 2004

Department of Ecology
Water Quality Program

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Ken Koch, Water Quality Assessment Coordinator
Ron McBride, Water Quality Program
Washington Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

RE: 2002/2004 Water Quality Assessment and 303(d) List for Washington State

To Ken Koch:

We are writing to comment on the current “2004” draft of the proposed Water Quality Assessment and 303(d) list for Washington State. The 303(d) list is an important component of Clean Water Act implementation in Washington and we appreciate the effort that the Department of Ecology has undertaken to get a “2004” list submitted.

People for Puget Sound is a citizens’ organization whose mission is to protect and restore Puget Sound and the Northwest Straits. We focus on water quality and habitat, advocating that the State of Washington devote more resources to the protection and restoration of the Sound.

Our specific comments follow:

1. Public Review. There are a number of concerns about the public review process for the draft “2002” and “2004” Water Quality Assessments:

- a. Difficult to determine what changes were made between the “2002” (January 2004) and “2004” (November 2004) drafts.
 - i. The responsiveness summaries that were posted to the web site show only some of the waterbody-specific comments.
Changes made based on People For Puget Sound’s comments related to the Duwamish River are not shown in the WRIA specific or listing-specific documents. Thus, we were only able to determine what changes had been made by

comparing listings on a case-by-case basis. No documentation was provided to show what changes were made to the sediment listings for the state other than the general statement that changes were made.

MAIN OFFICE	NORTH SOUND	SOUTH SOUND
911 Western Avenue, Suite 580 Seattle, WA 98104 (206) 382-7007 fax (206) 382-7006 people@pugetsound.org	407 Main Street, Suite 201 Mount Vernon, WA 98273 (360) 336-1931 fax (360) 336-5422 northsound@pugetsound.org	1063 Capitol Way South, Suite 206 Olympia, WA 98501 (360) 754-9177 fax (360) 534-9371 southsound@pugetsound.org

- ii. Furthermore, the January “2002” draft was removed from the web site and so we had to rely on paper copies that we saved from January (which was only a portion of the entire list).
 - iii. A marked up draft list should have been provided to the public which showed changes in strikeout or bold. This would have made it easier for the public to review additions, category changes, deletions, and delistings.
 - iv. All waterbodies that are being proposed to be delisted from the 3 03(d) list should be highlighted and shown in a separate document for public review.
2. Unclear language in the “call for data” for the 2004 list. It was not clear in the written documents or the web page for the 3 03(d) list and Water Quality Assessment that the “2004 call for data” was folded into the comment period for the “2002” list. To state “during this review, Ecology will also accept new data that were not submitted during the 2002 call for data” does not clearly indicate that a new call for data was in place for the “2004” list. For a list of this importance, the Department of Ecology should put a broad “call for data” into place with an adequate period for public involvement.
3. **Difficult to track data.** The list of data sources (published studies) used for the Water Quality Assessment on the web site (as of December 2004) is dated “January 2004.” Were no new published studies included in the “2004” draft? Also, the web site does not include a list of datasets that were used for the

assessment.

4. **Lack of federal data.** People For Puget Sound believes that the Washington Department of Ecology should make a more pro-active effort to secure data from other agencies, especially federal agencies. This federal data is top quality data and involves the use taxpayer funds to study the effect of poor water quality on beneficial uses. In the list of published studies used, there is only one study by United States Geological Survey (USGS) which is dated post-1996. USGS data appears to have been used infrequently in the assessment –most listings using USGS data are from USGS data submitted by a Whatcom County person during the comment period. USGS has an active program to assess organic chemicals and other toxic substances in national waters, including Washington State. Based on a published 1999 USGS study (for which People For Puget Sound provided a reference in our March 15, 2004, comment letter), Thornton Creek should have additional contaminants included in the assessment: Dieldrin and p,p'-DDE. There are numerous other waterbodies that should be included in the assessment based on USGS, and possibly other federal agencies, data.
5. **Few assessments based on narrative standards.** It appears that the Department of Ecology did not conduct many assessments based on narrative standards or best professional judgement. This limits the overall Water Quality Assessment to only established technology. Therefore, cumulative impacts of contaminants, impairments that are observed but not understood completely, and emerging chemicals, and other impairment-related problems are not addressed. One example of a waterbody that should be listed in this manner under Category 5 is Longfellow Creek. In the draft “2004” 303(d) list, Longfellow is included only for dissolved oxygen and fecal coliform. Coho salmon, however, have exhibited pre-spawning mortality and have been the subject of intensive study (NOAA Ecotoxicology and Environmental Fish

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Health Program) for the past three years. At this point researchers can only point to the possibility of the cumulative impact of toxic contaminants or a toxicant at a concentration below established “standards” but is in fact lethal. It is clear that a significant impairment exists and this waterbody should be listed.

6. **Waterbodies delisted with inadequate justification.**
 - a. Example of a waterbody that was listed for a number of toxic contaminants in sediment in the January “2002” draft under category 5 and is not found in the “2004” draft.
 - i. Duwamish River 23N 04E 04.
 - b. Example of a waterbody that was listed for sediment bioassays in January “2002” draft under category 5 and not found in “2004” draft.

- i. Duwamish River 23N 04E 18.
- ii. Duwamish River 23N 04E 04.

7. Delisted from 1998 Category 5 with inadequate justification. The following are just a few examples of the many delisted waterbodies with inadequate justification provided under “basis”:
- a. Duwamish River (Listing ID #: 13152) is now placed under Category I for Fecal Coliform with the following justification: “King County unpublished data from station 309 (Green River RM 7.0) show standards were met in all samples collected between 1998 and 2002.” There is no indication of the total number of samples taken.
 - b. Dakota (Rebel) Creek (Listing ID #: 6632) is now placed under Category 1 for Fecal Coliform with the following justification: “Dickes, 1992. 3 excursions beyond the upper criterion at station Dli in 1992.” Is there new data, and if so how many samples, that show this waterbody is no longer impaired?
 - c. Indian (Big) Slough (Listing ID #: 7148) is now placed under Category 1 for Temperature with the following justification: “Bulthius and Shellenberger, 1995. multiple excursion beyond the criterion during 1995. Cassidy and McKeen, 1986. 6 excursions beyond the criterion out of 11 samples measured in 1985.”
 - d. Stillaguamish River (Listing ID #: 7973) is now placed under Category 1 for Nickel with the following justification: “Glenn, 1996: The nickel criterion is has a reasonable potential of exceedance at the chronic mixing zone boundary of the Stanwood Discharge.” People For Puget Sound disagrees that a waterbody should be delisted. Is there an exceedance? What monitoring is occurring at this location to show that the waterbody is not impaired?
8. Unexplained 4A listings. Many of the waterbodies listed under Category 4A – which should be placed in this category because a Total Maximum Daily Load (TMDL) is being implemented or has been completed, have no comments in the “basis” column that justify their placement. There is no mention of a TMDL. One example is:
- Duwamish (Listing ID #: 13774 and 13732) are listed for ammonia under Category 4A. No TMDLs are mentioned in the justification.

9. **Category 2 assessments should be included on the 303(d) list.** Waterbodies included in Category 2 for sediment contamination have multiple exceedences of Sediment Management Standards SQS standards (e.g., Duwamish River 24N-03E013) and therefore are, at a minimum, threatened. According to the Clean Water Act, threatened or potentially impaired waterbodies should be included on the 303(d) list.
10. **Category 4 assessments should be included on 303(d) list.** Waterbodies that have been moved to Category 4 are still impaired. No sampling data has been provided to show that contamination is removed or that the water column is clean of pollutants or stressors. Therefore, National Pollutant Discharge Elimination System (NPDES) permits and other regulatory actions should be equally protective of both Category 5 and Category 4 waterbodies. People For Puget Sound requests that both Category 4 and Category 5 waterbodies be included on Washington's 303(d) list.
11. **Invasive species.** In our March 15, 2004, comment letter on the "2002" draft assessment, we noted that *Spartina* should be listed as an invasive exotic species (Category 4C) for areas of Puget Sound. We provided a reference that mapped impaired areas. *Spartina* is a serious problem in Puget Sound and People For Puget Sound has been involved in a statewide eradication effort. *Spartina* covers more than 8,500 acres, spread out across 20,000 acres in marine intertidal areas of Puget Sound. The Water Quality Assessment lacks listings for this pollutant/stressor. These areas have not been included in the "2004" draft. The assessment includes numerous listings for such species as Eurasian water-milfoil, Brazilian elodea, hydrilla, parrotfeather, swollen bladderwort, and Green Crab. People For Puget Sound believes that *Spartina* is as important an impairment as these other species and warrants inclusion in the assessment.
12. **Forest Practices rules.** People For Puget Sound supports the Department of Ecology's opinion that it is premature to move forest waterbodies to Category 4B. It is not until after 2009, that the contaminants and stressors may be addressed.
13. Previous comments from People For Puget Sound which apply to the "2004" assessment and the future "2006" assessment.
 - a. **Puget Sound Listed Separately.** Puget Sound should be listed as its own category within the Water Quality Assessment and 303(d) List, along the lines of a "Puget Sound Watershed Management Area." We make this request because of several reasons:
 - i. It is difficult to identify Puget Sound water quality and sediment problems in the current structure of the 303(d) list. The Sound is divided into WRIA chunks and it is necessary to page through many pages to get a complete view of the Sound and its bays.
 - ii. Many of the Puget Sound issues are not easily broken into WRIA boundaries. Elliott Bay, for example, is categorized under two WRIs (informally, however, the two WRIs have agreed to put it under WRIA 9). Many TMIDLs that are needed for Puget Sound would not

be limited to just one WRIA. The Sound-wide problems get lost in the shuffle when categorized by WRIA.

- iii. Finally, all of the other waterbodies of the state are designated as a whole waterbodies within single WRIAs, such as a lake, a river, etc. and are then further divided into segments, with the exception of the Columbia River. The Columbia River is divided into easily identifiable WRIA units that can be followed

sequentially across the state. We feel that Puget Sound should be treated as one management area and not designated as an add-on to each of the major watersheds (or WRIAs). At the very least, the assessment should provide a column so that one can sort out Puget Sound waters and bays.

b. Problems in the Guidance Policy.

- i. **Listing waterbodies by township/range.** The listing of waterbodies by township and range is not scientifically based. For assessments done in other states, waterbodies are divided into reaches that reflect hydrogeology, hydromodification such as dams, and other features. To divide a waterbody into township and range “reaches,” creates a skewed picture of the pollution boundaries and does not reflect how a TMDL would ultimately be configured geographically.
- ii. **Exotic species should be listed as a pollutant.** People For Puget Sound disagrees with the Department of Ecology’s stance that exotic species cannot be controlled through a TMDL process. Temperature is a similar type of stressor and is handled by TMDLs, which include vegetation plantings, and Best Management Practices. According to the guidance document (WQP Policy 1-i 1), “Under federal rules, pollution is defined as any impairment of beneficial uses of water. Most pollution is caused by pollutants, which are defined as inputs that are discharged or otherwise introduced into the water, such as toxic chemicals, waste material, nutrients, sediments, and heat.” These criteria are what are used for Category “5” classification. The guidance documents continues: “However, pollution can also be caused by things that are not pollutants, as legally defined.” We would like to see at least one of these “non-pollutants,” exotic species, reinstated as pollutants. Exotic species are nonpoint source pollutants and can be controlled in a similar manner as fecal coliform, temperature, and some of the other “pollutants” that are listed as category “5.” For example, improved municipal stormwater programs will likely be implemented within the next few years and will address issues such as fecal coliform and nutrients that flow from stormdrains into the state’s

waterbodies. Similar programs could be implemented to control exotic species, both those from residential and commercial landscaping and those, like European green crab that are dumped as bilge water.

- iii. **Habitat Impairments should be listed as Category “5.”** Specific listings in the Water Quality Assessment for habitat degradation, where there is a human cause (i.e., nutrient loads), should be listed as Category “5” rather than as category “4c” (“impaired by a non pollutant”). Examples of these listings are: Fish Habitat impairment due to patchy cover of ulvoid macroalage which are impairing aquatic life from identified human causes at north end of Bainbridge Island. (Port Madison); and Fish Habitat impairment because “eelgrass beds at the Port Townsend Ferry Dock are impaired due to inorganic nitrogen loading resulting in human-caused eutrophication (Port Townsend Bay). These listings and others in the Water Quality Assessment are excellent examples of locations where TMDLs would be applicable. These are the same type of issues as temperature, dissolved oxygen and other “pollutants” that *are* included in category “5” in the assessment.

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- iv. **Inclusion of Health Warnings in the Assessment. The WQP Policy 1-11** specifically excludes the category “5” listing of waterbody segments if a Health Department Fish Advisory is triggered by higher levels of contaminants than the national human-health-based water quality criteria. We disagree with this because a waterbody is essentially not “fishable” if a Health Advisory has been issued. Again, this listing would be categorized under a narrative standard. Some of the health warnings are in place because of intermittent health risks, but again, this indicates that the resource is impaired. Our mission is to restore Puget Sound to a healthy ecosystem, and listing these impairments on the TMDL list will help further this goal.

- 14. **TMDL prioritization.** People For Puget Sound believes that the TMDL prioritization and schedule process should give special attention to
 - a. a) toxic contaminants and persistent bioaccumulative toxins that make their way into the Puget Sound food chain and
 - b. impaired waterbodies that effect listed (threatened or endangered) species.With limited funds available for TMDL studies, we feel that more “bang for our

buck” will be realized with this approach. TMDLS should be initiated in the next few years that target toxic waterbodies.

If you have any questions, please feel free to call me at (206) 382-7007 X215. Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Heather Trim", with a stylized flourish extending to the right.

Heather Trim
Urban Bays Coordinator

Dave Peeler, Dept of Ecology, Water Quality Program Manager
Laurie Mann, EPA Region 10, Washington TMDL Program Manager
Lisa Jacobsen, EPA Region 10, Water Quality Standards & Planning Unit