



Northwest Indian Fisheries Commission

6730 Martin Way E., Olympia, Washington 98516-5540
Phone (360) 438-1180

www.nwifc.org

FAX # 753-8659

March 23, 2015

Maia Bellon, Director
Washington Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

ATTN: Water Quality Program
swqs@ecy.wa.gov
Cheryl Niemi

RE: Comments on the State's Draft Rule for Human Health Criteria and Implementation Tools in Washington State Water Quality Standards

Dear Director Bellon:

Please find enclosed comments regarding the Department of Ecology's (Ecology) Draft Rule for Human Health Criteria (HHC) and Implementation Tools in Washington State's Water Quality Standards. The attached comments are submitted on behalf, and at the behest of the 20 member tribes that constitute the Northwest Indian Fisheries Commission (NWIFC).¹ The member tribes of the NWIFC have constitutionally protected, treaty-reserved rights to harvest, consume, and manage fish and shellfish in their usual and accustomed areas. In 2011, the tribes initiated Treaty Rights at Risk, in an effort to advance the protection of treaty-reserved rights and resources. Revising human health criteria to be protective of tribal people, their health and culture, is a part of that call. The attached comments are submitted to ensure protection of those reserved rights and tribal communities.

The attached comments and all materials referenced² demonstrate that the state of Washington's proposed rule fails to protect designated uses of water under the federal Clean

¹ Hoh Tribe, Jamestown S'Klallam, Lower Elwha Klallam Tribe, Lummi Nation, Makah Tribe, Muckleshoot Indian Tribe, Nisqually Indian Tribe, Nooksack Indian Tribe, Port Gamble S'Klallam Tribe, Puyallup Tribe of Indians, Sauk-Suiattle Indian Tribe, Skokomish Indian Tribe, Squaxin Island Tribe, Stillaguamish Tribe of Indians, Suquamish Tribe, Swinomish Tribal Community, Tulalip Tribe, Upper Skagit Tribe, Quinault Nation, Quileute Nation.

² All materials cited in the attached comments are hereby incorporated into the rulemaking docket by reference. All materials can be provided to the Department of Ecology by request, and/or will be made available via hand delivered digital file submitted to Ecology on March 23rd, 2015.

Water Act (CWA), a responsibility delegated to the state from the US Environmental Protection Agency.

Tribes have brought many of the same key issues to you and your predecessors many times before, and we will continue to advocate for clean water and safe seafood. Our attached comments focus on both the timing and substance of your proposed rule. We do not address the Governor's proposed legislation on toxics reduction, and we reiterate that we believe that it is inappropriate to link state rule-making with an uncertain political process. Some of the key concerns from the tribes are as follows:

- The state has knowingly delayed revising an under-protective fish consumption rate for Washington for many years, has delayed adoption of a new fish consumption rate at the requests of regulated industry, and has repeatedly failed to meet its own deadlines for rule-making.
- The state proposes a fish consumption rate that is better than the grossly under-representative rate now in effect, but is substantially lower than the rate that has been scientifically documented by some of our member tribes. Furthermore, the state has chosen to negate the level of protection that this change would otherwise gain by reducing the protective level of other human health criteria, including the cancer risk level. These tradeoffs impact the most highly exposed, namely tribes and other high fish consumers, who originally sought to revise the FCR for the purpose of better protecting their communities.
- The NWIFC and member tribes recognize that standards are only as good as the implementation strategy that is used to assure compliance. The implementation tools were originally intended to provide flexibility to dischargers as they faced tougher standards, but now the weaknesses of the proposed human health criteria are likely to be compounded by providing dischargers with additional means of delaying and suspending compliance.

The NWIFC would also like to address two points that you make frequently in your public remarks on the draft rule. First, you have stated repeatedly that many chemical standards will improve under the proposed draft rule, meaning that the permits issued for discharge of these toxic substances will become more stringent. Tribes recognize that some chemicals will improve, but many improve only slightly from 1992 standards, and many will not improve at all. Furthermore, these status quo chemicals are largely carcinogens and highly toxic chemicals that are responsible for many of the fish health advisories in the state of Washington, which jeopardize tribal treaty rights.

Secondly, Governor Inslee and the Department of Ecology have stated that the water quality discharge standards are only a part of the toxic chemical problem in the state of Washington, implying that they are somehow less important than other toxic reduction strategies. However,

we believe that this approach sets up a false choice – tribes need not choose between water quality standards that protect public health, or other toxic reduction efforts, since both are essential. Additionally, standards are used for much more than regulating what comes out of a pipe, since they determine whether water bodies are listed as polluted, form the basis for monitoring programs, and establish targets for watershed clean-up plans.

We believe that the attached comments and recommendations will help the Department of Ecology to improve on the proposed rule, protect tribes and their treaty-reserved rights, and ensure protection of the designated uses of water. Should you have questions regarding this correspondence, please do not hesitate to contact my staff at (360) 430-1180.

In closing, we would like to repeat a passage from a letter from Billy Frank, Jr. to the Ecology Director, on the very same topic, which was sent January 3, 2012

Eating seafood in the Pacific Northwest is a lifestyle choice for most people, but for tribes the consumption of fish and shellfish is their life and legacy. Fish is a first food for tribal children, and the foundation for the healthy hearts of the elders.

--- Billy Frank, Jr.

Sincerely,



Lorraine Loomis
Chairperson

cc:

NWIFC Commissioners

Dennis McLerran, Regional Administrator, EPA Region 10

Angela Chung, EPA, Region 10

Matt Szelag, EPA, Region 10