



PHONE (360) 598-3311
Fax (360) 598-6295
<http://www.suquamish.nsn.us>

THE SUQUAMISH TRIBE

PO Box 498 Suquamish, WA 98392-0498

April 4, 2018

Kelly Susewind
Special Assistant – Water Policy
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Re: Suquamish Tribe Comments, Water Quality Assessment: Policy 1-11 Update

Dear Mr. Susewind:

The Suquamish Tribe (Tribe) appreciates the opportunity to continue to provide input to the Department of Ecology (Ecology) regarding proposed revisions to Policy 1-11, the State's water quality assessment methodology for listing impaired or threatened water bodies. The following comments consider tribal comments submitted during the pre-public review, as well as Ecology's responses and additional information provided by Ecology staff.

General Comments

The Suquamish Tribe has reserved treaty rights and resources under the 1855 Treaty of Point Elliott that protect the right to safely access and harvest treaty and natural resources throughout the Tribe's federally adjudicated Usual and Accustomed fishing area. Because tribal health and well-being are inextricably linked to the land, air, water and all forms of life within the natural system, the Tribe has a commitment to preserve, restore, and protect treaty rights and resources for future generations. Those efforts include addressing resources that have been degraded or put at risk due to environmental contamination. The Tribe devotes significant effort to co-managing Washington's finfish and shellfish harvests for conservation and human health concerns, and to supporting the development of environmental rules, standards and policies that are protective of tribal people and resources.

Washington State is required to meet the provisions of the Federal Clean Water Act (CWA) and to adopt water quality standards (WQS) that preserve the beneficial uses of surface waters, including aquatic life habitat, fishing and other designated uses. Under the CWA, states are also required to submit to the US EPA a list of waters under its jurisdiction that do not meet applicable WQS.

Ecology's proposed revisions to the water quality assessment and listing methodology clarify the assessment process, including how Ecology intends to use bioassessment data and incorporate revisions to Washington Sediment Management Standards. The proposed revisions also focus on ensuring that all data meet credible data requirements and describe how fish tissue data will be used for listing purposes.

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General Comments (cont'd)

As previously commented, the Tribe believes that it is crucial that Ecology's Policy 1-11 accurately identify impaired waterbodies, defined as any waterbody which does not attain WQS, including known and designated uses of fishing and fish consumption. The public health issues and response actions that are determined by this policy affect everyone in Washington who eats fish. However, because tribal health and well-being rely on traditional lifeways that include the harvest and consumption of large quantities of fish and shellfish, the failure to adopt adequately protective policies disproportionately and involuntarily harms tribal communities.

The Tribe remains concerned that some revisions may serve to undermine elements of existing water quality standards by creating false hierarchies and/or off ramps within the assessment process. For example, numeric criteria should not be designated as the only "direct" measurement of water quality as it implies that this is the preferred or primary assessment tool. Similarly, evaluation of harvest use that considers fish tissue data cannot be considered a "supplemental" or "alternative" approach. Water quality standards include both numeric criteria **and** protection of designated uses.

In addition, some of the revised policy language seems to unnecessarily delay a determination of impairment by requiring a demonstration of "persistence". By definition, many of the contaminants of concern are persistent and bioaccumulative. If credible data indicate an exceedance of numeric criteria, or Tissue Exposure Concentrations (TECs) derived from the numeric criteria, the waterbody should be designated as impaired, in most cases. Regulated entities now have an enlarged menu of implementation tools to assist them in achieving compliance over time if a waterbody is listed as impaired. There is no need to further delay listing or action.

Given these ongoing concerns, the Tribe anticipates the need for early and meaningful consultation with Ecology and EPA as Ecology moves forward to finalize the revised policy and update the 303(d) listings for Washington.

Specific Comments

- The Tribe continues to support Ecology's use of fish tissue data as a measure of whether the harvest use is being supported. Fish tissue data provide the most credible information regarding harvest and are particularly relevant for bioaccumulative contaminants as they indicate an integrated measure of uptake from contaminants in water, sediments and diet over time.

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Specific Comments (cont'd)

- In response to previous comments regarding TECs, Ecology has stressed that TECs are not water quality standards. The Tribe agrees that this is a technically accurate statement, but notes that TECs cannot be considered to be totally separate from human health criteria (HHC). TECs are derived from HHC promulgated for Washington, which are based on an approved set of exposure parameters and health protective endpoints. As derived, TECs reflect the parameters and endpoints that underlay the HHC and may be used as a way of evaluating fish tissue to determine if the harvest use is supported.
- The Tribe objects to Ecology's proposed revision incorporating exceedance factors to reduce the inherent variability in tissue as a matrix, as well as the uncertainty associated with analytical detection limits, when comparing fish tissue data to TECs. Exceedance factors do not identify or account for the impact on health protective endpoints. The Tribe appreciates that higher exceedances allow greater confidence in the role that professional judgement plays when determining impairment based on limited data sets. However, incorporating exceedance factors effectively alters the HHC endpoints of a 10^{-6} risk level for carcinogens and a hazard quotient (HQ) of 1 for non-carcinogens, rendering the endpoints less protective.
- It is recommended that the policy be clarified to state that, for toxics, waters placed in Category 1 should meet criteria for all potential contaminants and support designated uses. Waterbodies should not be listed in or moved to Category 1 if listed in other categories.
- It is recommended that the policy be clarified to state that approved clean up plans must address all the contaminants of concern for listing in Category 4B. For example, if there is a cleanup plan for PCBs, but there are exceedances of PCBs and mercury, the waterbody should be listed in Category 5 rather than 4B, as mercury would not be addressed under the clean up plan.

The Tribe also supports comments submitted by the NWIFC related to the proposed policy revisions and incorporates those comments by this reference. It is the Tribe's expectation that Ecology will give meaningful consideration to the concerns articulated in this letter, as well as to comments submitted by NWIFC and other tribes.

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The Suquamish Tribe appreciates Ecology's commitment to work closely with tribes under the Centennial Accord and will continue to engage with Ecology on a government-to-government basis to provide additional input and review as this policy is finalized and implemented.

Sincerely,

Denice Taylor

Denice Taylor
Environmental Scientist
Fisheries Department
Suquamish Tribe