

September 26, 2019

Susan Braley
Department of Ecology

RE: Comments re proposed changes to description of marine designated uses in WAC 173-201A.


The City of Everett is pleased that Ecology is correcting the designated uses to take away the “salmon spawning” use for Extraordinary and Excellent marine waters.

The City recommends that Ecology not include the new wording for levels of protection above or beyond what is needed for all the different species, as that is overkill.¹ What is the basis for having such protection in our standards, especially when, for marine dissolved oxygen, the numeric criteria for the extraordinary and excellent uses are unattainable naturally? The additional wording just illustrates that the dissolved oxygen criteria are aspirational, yet the Clean Water Act does not work well with aspirational criteria. (Note: The Safe Drinking Water Act does make a distinction, with Maximum Contaminant Levels (MCLs) that are required to be met, and Maximum Contaminant Level Goals (MCLGs) that are aspirational, but not regulatory.)

To say the wording is needed because it existed in earlier versions of our standards and was inadvertently left out in the last revisions to the water quality standards is not a sufficient reason to put it back in. Perhaps it would be

PUBLIC WORKS

 3200 Cedar Street
Everett, WA 98201

 425.257.8800
425.257.8882 fax

 everettpw@everettwa.gov
everettwa.gov/pw

¹ For Good Quality, Ecology is adding the wording in underline to the aquatic life uses as follows: Water quality of this use class shall meet or exceed the requirements for most uses including, but not limited to salmonid migration and rearing; other fish migration, rearing and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning. For Excellent Quality, the wording is essentially the same as for Good except that instead of saying “for most uses” it says, “for all uses.” Having deleted the salmonid spawning use, the list of uses that follows is now identical to the uses for Good Quality. For Extraordinary Quality, the wording now says that Water quality of this use class shall markedly and uniformly exceed the requirements for all uses. The list of uses is the same as for Good and Excellent.

if the justification for originally including that wording 51 years ago was available for review. It wasn't.² So, the onus is on Ecology to provide a scientific basis supporting this requirement now, especially since it links to specific marine dissolved oxygen criteria that in turn have no identifiable technical, scientific basis. Their basis should be subject to public review and comment.

The city notes that 40 CFR 131.11a requires states to adopt water quality criteria based on sound scientific rational. 40 CFR 131.11b says that criteria should be established based on 304(a) guidance; or 304(a) guidance modified to reflect site-specific conditions; or other scientifically defensible methods. The marine designated uses are integral components of the state's marine dissolved oxygen criteria.

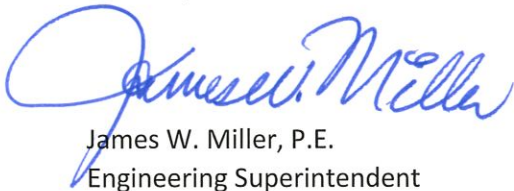
The reality is that at least as far as dissolved oxygen is concerned, criteria associated with only two of the uses are relevant, Good and Fair. The other uses for marine dissolved oxygen should be deleted and the specific designations for marine waters in WAC 173-201A- be changed, replacing Excellent and Extraordinary with Good in all cases. Alternatively, the specific designations could remain, as long as the dissolved oxygen criteria for the Excellent and Extraordinary designations are set equal to the 5 mg/L criterion for the Good designation, since the wording in the rule is clear that is protective of all imaginable species.

The City accepts that there is a sound scientific basis for eliminating salmonid spawning from marine waters, since that agrees well with salmonid behavior.

The City notes that on page 10 of the Preliminary Regulatory Analysis DOE states that the changes to the marine designated uses "more clearly differentiates between uses." Yet, the uses protected are identical and all-encompassing for Extraordinary, Excellent and Good. The wording presents many questions as to how to differentiate between the designations or uses, and why. The wording provides no clarity at all as to why 3 different classes are needed to support identical biota.

The City of Everett concludes that the proposed additional wording to the different designated uses lacks any scientific-technical basis and should not be adopted. The City agrees that removing salmonid spawning from the designated uses for marine water is scientifically correct. The City notes that Ecology should be more productively working to develop new marine dissolved oxygen criteria that meet the requirements of 40 CFR 131.11.

Sincerely,



James W. Miller, P.E.
Engineering Superintendent
Everett Public Works Department

² In 1998, Mark Hicks, Water Quality Standards Coordinator for DOE responded to an inquiry from Lincoln Loehr wondering about the technical basis behind our DO criteria. Mark responded that the criteria go back to 1967 and were adopted by the predecessor agency (before there was a DOE). He said that the state archives from that action provided no information as to the technical/scientific basis.