



Skokomish Indian Tribe

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Susan Braley, Policy Lead
Water Quality Program
Washington State Department of Ecology
PO Box 47600, Olympia, WA 98504

Subject: Skokomish Comments on Washington State Ecology (ECY) revisions to Policy 1-11, Chapter 1: Assessment of Water Quality for the Clean Water Act Sections 303(d) and 305(b) Integrated Report.

Dear Ms. Braley,

The Skokomish Tribe appreciates the opportunity to comment on Policy 1-11 Chapter 1 revisions for bacteriological monitoring criteria for the assessment of water quality under the Clean Water Act (CWA). We also thank you for early engagement in this process and the conference call meetings that you have facilitated with the tribes and the NWIFC.

Pursuant to EPA changes in water quality monitoring criteria under the CWA, revisions to this policy effectively changes the bacteriological water quality monitoring criteria for ECY from fecal coliform to e-coli (enterococci for marine waters) This standard has been set based on the recreational use of both fresh and marine waters, not on shellfish growing.

The Skokomish Reservation is located primarily within the Skokomish River Basin. The basin is part of the Tribe's much larger treaty "usual and accustomed area" (U&A) within the Hood Canal Watershed, which is tributary to the waters of Puget Sound here in Washington. The Tribe is one of the largest shellfish harvesting tribes in the state of Washington, and is heavily dependent on shell-fish gathering within our U&A, not only for cultural and subsistence use, but also for commercial purposes. The Tribe can legally harvest shellfish on a majority of beaches within the Hood Canal Watershed. It is vitally important that the water quality within this watershed is fiercely protected for this use. Good water quality is at the very core of the habitat paradigm that shellfish need in order to thrive, be harvestable, edible, and marketable. The Tribe has a long tradition and history in efforts to restore, enhance, and protect our water and the shellfish that it supports.

Under the Clean Water Act and pursuant to EPA's changes in water quality monitoring for bacteria relevant to contact recreation, Ecology is replacing fecal coliform criteria with e-coli/enterococci criteria for both freshwater and marine waters, respectively, after 12/31/20⁽¹⁾. Both the FDA and the Washington Department of Health (DOH) will continue to use fecal coliform criteria under the National Shellfish Sanitation Program (NSSP) for shellfish growing areas.

⁽¹⁾ ECY Policy 1-11, Chapter 1: WAC 173-201A-200/Freshwater designated uses and criteria and WAC 173-201A-210/Marine designated uses and criteria.

Formerly, these agencies all used fecal coliform as the water quality assessment criteria. This criterion meets the higher standard for shellfish consumption. Replacing fecal coliform with e-coli for freshwater will now create a disparity between bacteriological monitoring and assessment paradigms as they relate to designated water uses, and may inadvertently lead to a degradation of upstream water quality that could contribute to closure of downstream marine shellfish beds by the DOH.

Although Ecology states that standards in marine waters will remain to protect the shellfish harvesting industry, our concerns focus on freshwater rivers and streams that empty into marine waters where shellfish uses occur. WAC 173-201A-200 for fresh water designated uses and criteria states the following on Page 8.

(iii) As determined necessary by the department, more stringent bacteria criteria may be established for rivers and streams that cause, or significantly contribute to, the decertification or conditional certification of commercial or recreational shellfish harvest areas, even when the preassigned bacteria criteria for the river or stream are being met.

(iv) Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis as described in WAC 173-201A-430.

The Tribe takes the position that this is not proactive, pre-emptive, or timely in the protection of our downstream treaty protected marine resources within our U&A. By the time fecal pollution in river or stream causes a downgrade in a DOH shellfish bed classification or may “*cause, or significantly contribute to, the decertification or conditional certification of commercial or recreational shellfish harvest areas*” it is too late for mitigation. Additionally, in order to ECY to take action, the waterbody must be declared “impaired” under CWA 303(d). While the DOH can close a shellfish bed in a very short time, the development of new water quality standards under CWA 303(c) or a new TMDL is a time-consuming process. In the meantime we cannot access our treaty protected shellfish beds. Other stakeholders will also be effected.

In order to be pre-emptive and timely in responding to this issue, the Tribe takes the position that Washington’s Water Quality Assessment “Integrated Report” address **freshwater rivers and streams that may directly affect shellfish harvesting beds** be completed every two years as per CWA SEC. 305 [33 U.S.C. 1315] Water Quality Inventory; paragraph (b)(1):

Each State shall prepare and submit to the Administrator by April 1, 1975, and shall bring up to date by April 1, 1976, and biennially thereafter, an (assessment) report with shall include:

Paragraph (B)

an analysis of the extent to which all navigable waters of such State provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water;

Paragraph (C)

an analysis of the extent to which the elimination of the discharge of pollutants and a level of water quality which provides for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allows recreational activities in and on the water, have been or will be achieved by the requirements of this Act, together with recommendations as to additional action necessary to achieve such objectives and for what waters such additional action is necessary;

The Tribe takes the position that assessments of these rivers and streams that are done at intervals greater than two years, will not be timely given these policy changes. If assessments are done reliably every two years, as per law, there will be more time to take pre-emptive mitigation actions to prevent downgrades in DOH classifications, and at the very least, ECY will be able to prevent conditional certifications or decertification of

shellfish beds. In order for this to effectively happen, ECY assessments must utilize all available water quality monitoring data sources, including EPA Water Quality Data (WQX), Ecology's Environmental Information Management (EIM) database, and the DOH database. Vigilant, timely, and informed assessments will allow the state, local agencies, tribes, and other shellfish harvesting stake-holders time needed to determine what mechanisms and tools can be used in order to take corrective action. The simplest and most direct tool is to monitor for both fecal coliform and e-coli. As ECY's Policy 1-11⁽²⁾ states:

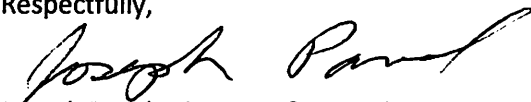
"For purposes of delisting waters, freshwater AUs that drain directly to marine waters within a TMDL boundary may require monitoring of both fecal coliform and E. coli bacterial indicators to determine attainment of both recreation and shellfish harvesting uses."

Ecology must continue fecal coliform monitoring and assessments of freshwaters that have the potential to deliver fecal coliform loads to adjacent marine waters designated for shellfish uses. Pursuant to this the Tribe asks that language in Policy 1-11 be revised so that it will require monitoring for both fecal coliform and e-coli to take place applicable to the subset of rivers and streams that affect shellfish beds.

Additionally, Ecology should commence the process to establish water quality standards under CWA 303(c) for freshwaters with the potential to deliver fecal coliform loads to adjacent marine waters designated for shellfish uses. Pollutants in streams and rivers in the Skokomish U&A within Hood Canal come primarily from non-point sources. New TMDLs, while including point source waste load allocations (WLA), would be required to establish nonpoint sources load allocations (LA) for these pollutants. Pollution Identification and Correction (PIC) funds and projects could be helpful in maintaining these standards.

The Skokomish Tribe expects that Ecology will implement policies to advance a net gain in shellfish habitat and harvest in Hood Canal through water quality improvements pursuant to its authorities, thereby helping to restore treaty rights that have been diminished over recent decades because of water pollution and habitat loss. The Tribe looks forward to continuing to work with ECY on this issue. Thank you for the opportunity to comment. If you have any questions or concerns regarding these comments please contact Dana Sarff, Environmental Planner, at 360-877-5213 Ext 2201 or at dsarff@skokomish.org

Respectfully,



Joseph Pavel; Director of Natural Resources
Skokomish Tribe.

⁽²⁾ ECY Policy 1-11 "Easy to Read" Version 2A.1. Bacteria – Shellfish Harvesting/ Analysis of Fecal Coliform Data in Fresh Water for Shellfish; Page 2.