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# SUQUAMISH INDIAN TRIBE

PO Box 498 Suquamish, WA 98392-0498

April 7, 2024

Marla Koberstein  
Department of Ecology  
Water Quality Program  
PO Box 47696  
Olympia, WA 98504-7696

**RE      Comments on Proposed Aquatic Life Toxics Criteria**

Dear Ms. Koberstein:

The Suquamish Indian Tribe of the Port Madison Reservation ("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 an enduring commitment to future generations to preserve, restore, and protect treaty rights and resources that have been degraded or put at risk due to environmental contamination. The Tribe devotes significant effort to co-manage Washington's finfish and shellfish harvests for conservation and human health concerns, and to support the development of environmental rules and standards that are protective of tribal people and resources. As a co-manager of Washington's natural resources, the Tribe is providing comment regarding the proposed rulemaking for Aquatic Life Toxics Criteria (ALTC).

**Proposed Aquatic Life Toxics Criteria Rulemaking**

Section 303 of the Clean Water Act (CWA) mandates that states adopt water quality standards (WQS) to restore and maintain the chemical, physical, and biological integrity of the nation's waters, subject to review and approval by the Environmental Protection Agency (EPA). Washington State is required to meet the provisions of the CWA and has adopted water quality standards to preserve the beneficial uses of surface waters, including aquatic life habitat and fishing. However, most of Washington's aquatic life toxics criteria have not been updated since 1992 or prior and have not incorporated additions and changes recommended by EPA

The Department of Ecology (Ecology) is now proposing to amend WAC 173-201A-240 to provide greater protection to aquatic organisms based on increased understanding of the toxicity of certain chemicals. Revisions to water quality standards (WQS) also require consultation under the Endangered Species Act (ESA). Ecology determined that waiting until ESA consultations and subsequent EPA approvals were completed for Idaho and Oregon for similar contaminants and species of concern in Washington would help ensure compliance and consistency with the ESA and approval by EPA.

### **Sugamish Tribe Comments**

1. Where there are no known ESA concerns, the Tribe supports Ecology's proposal to maintain state criteria that already meet current EPA recommendations and to adopt EPA recommendations where state criteria differ. This includes EPA recommendations since the last state update. This approach will result in criteria protective of non-ESA species.
2. Where ESA concerns exist and there has been a likely to adversely affect or jeopardy determination for state species, the Tribe strongly supports adoption of more protective criteria, based on new data or a more conservative derivation process that will ensure greater overall protection of all aquatic species including susceptible populations of endangered species.
3. For emerging contaminants where new data or evaluation tools are available, the Tribe supports adopting new protective criteria. Specifically, the Tribe supports adopting criteria for 6PPD-quinone based on coho salmon sensitivity.
4. The Tribe supports Ecology's proposal to adopt EPA's draft recommendations for freshwater acute and chronic criteria and saltwater acute benchmarks for PFOA and PFOS upon finalization of these criteria. However, the Tribe recommends Ecology prioritize development of state-specific criteria and continue to evaluate new information as it becomes available, including alternative criteria developed by other states.
5. The Tribe concurs with detailed comments submitted by the Northwest Indian Fish Commission (NWIFC) regarding criteria for iron, hydrogen sulfide and heptachlor epoxide and incorporates NWIFC comments by reference (letter submitted by NWIFC May 7, 2024).
6. The Tribe is encouraged to hear Ecology is working to implement the timely reissuance of existing NPDES permits (every 5 years) to ensure new or revised criteria are incorporated as soon as feasible. In addition, while compliance schedules are an accepted permitting tool, they should be used as necessary rather than by default.
7. The Tribe requests Ecology to include outreach to tribal and NWIFC staff regarding implementation of new or revised WQS. As detailed in Ecology's ALTC rule implementation plan, outreach should include informational briefings and training for tribal staff involved in reviewing or implementing water quality regulations, including review of NPDES permits and 401 certifications, toxics impairment listings under Water Quality Program Policy 1-11, and development and implementation of Total Maximum Daily Loads (TMDLs).

The Tribe will continue to engage with Ecology on a government-to-government basis to provide additional input as this rule is finalized. It is the Tribe's expectation that Ecology will give meaningful consideration to these concerns, as well as to comments submitted by NWIFC and other tribes.

Please contact Denice Taylor ([dtaylor@suquamish.nsn.us](mailto:dtaylor@suquamish.nsn.us); 360-536-8984) to clarify comments or schedule follow up discussions.

Sincerely,

A handwritten signature in black ink that reads "Alison O'Sullivan". The signature is written in a cursive style with a loop for the letter 'O'.

Alison O'Sullivan  
Ecosystems Recovery Program Manager  
Department of Natural Resources  
Suquamish Tribe  
[aosullivan@suquamish.nsn.us](mailto:aosullivan@suquamish.nsn.us)

cc: MaryAnn Mohan, Tribal Attorney  
Kendra Martinez, Tribal Attorney