



SQUAXIN ISLAND TRIBE

Submitted to <https://wq.ecology.commentinput.com/?id=gHacGx2j4E>.

July 12, 2024

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

RE Ecology's Natural Conditions Proposed Rule

Dear Ms. Koberstein:

Thank you for the opportunity to comment on Ecology's Natural Conditions Proposed Rule under Chapter 173-201A WAC, Water Quality Standards for Surface Waters of the State of Washington. Ecology is proposing a new method to determine when fresh and marine waters of the State naturally are warmer than the numerical standards and/or naturally lower oxygen than the numerical standards. This resulted from EPA's 2021 Reconsideration of its prior approval of Ecology's 2003/2006 water quality standards regarding natural conditions.

The Squaxin Island Tribe is a federally recognized Indian tribe located in Southern Puget Sound in Mason County, Washington with treaty rights to harvest fish and shellfish, "at their usual and accustomed fishing places in the shallow bays, estuaries, inlets and open Sound of Southern Puget Sound and in the freshwater streams and creeks draining into those inlets."¹ The Tribe's cultural and economic well-being depend upon clean water to support abundant and sustainable fisheries. Thus, the Tribe has vital interests in ensuring that laws and regulations intended to protect water quality, and related aquatic habitat, are implemented and enforced, so that it can continue to exercise its federal treaty rights.

The Squaxin Island Tribe is uniquely positioned to offer a perspective on water quality. The Tribe is located at the south end of Puget Sound. Pollutants discharged from all parts of Puget Sound affect the quality of waters especially in those shallow bays, estuaries, and inlets of South Puget Sound, so there is a disproportionate impact of Sound-wide pollution on the Squaxin Island Tribe's fisheries and the water quality in its "Usual and Accustomed" (U&A) places. That is why water quality standards in all of Puget Sound are critical to the Squaxin Island Tribe.

First and foremost, we remind Ecology that under Chapter 90.48 of the Revised Code of Washington, "...*it is the public policy of the state of Washington to maintain the highest possible standards to insure the purity of all waters of the state consistent with public health and public*

¹ See generally *United States v. Washington*, 384 F.Supp. 312, 378 (W.D. Wash. 1974); *United States v. Washington*, 459 F.Supp. 1020 (W.D. Wash. 1978)

enjoyment thereof, the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state....” Under no circumstances should Ecology weaken the state water quality standards for dissolved oxygen or temperature, which are both critical to the survival and future of salmon and other aquatic life. Ecology has been managing waters of the state using the human allowances of 0.2 mg/L dissolved oxygen and 0.3°C temperature using known and reasonable technologies for decades. Any increase in the allowance would be inconsistent with Chapter 90.48 RCW.

Second, we do support Ecology’s proposal for waters with very low oxygen levels naturally, that human allowances must be no more than 10% of the natural conditions when those natural conditions are at or below 2.0 mg/L. For example, if the natural condition is 1.0 mg/L, then the total of all human activities could not worsen oxygen levels by more than 0.1 mg/L. This proposal would lead to a more protective water quality standard, which we support as a reasonable clarification to de minimis impacts.

Third, Ecology should not risk a jeopardy finding under the Endangered Species Act. In 2008, both the National Marine Fisheries Service and US Fish and Wildlife Service found that human allowances of 0.2 mg/L of oxygen or 0.3°C for temperature when natural conditions are worse than the numerical standards would be insignificant and unlikely to harm endangered species. Any process that deviates beyond those values would require additional Biological Opinions. A jeopardy finding would cause significant delays in the adoption of these water quality standards. The most efficient path that still protects species is to maintain the current levels of 0.2 mg/L dissolved oxygen (or 10% of natural background conditions, whichever is smaller) and 0.3°C when natural conditions are worse than the numeric values in the water quality standards.

Fourth, Ecology must factor climate change into the human allowances. Climate change will warm waters through a variety of processes, and warmer water holds less oxygen. This means there is less capacity for impacts from current human activities, which will result in more stringent regulatory requirements.

Finally, we urge Ecology to streamline the process to ensure that the state’s waters are protected efficiently. EPA included options for Ecology, including the performance-based process proposed by Ecology for developing site-specific dissolved oxygen and temperature criteria a priori through extensive modeling of the state’s waters. Ecology has completed this modeling on only a small fraction of the waters on the Clean Water Act Section 303(d) list to date, and it would require decades to develop models of the rest. We cannot wait – Ecology needs strong approaches for temperature and dissolved oxygen now. We urge you to reject any efforts that would delay implementation of stringent water quality standards across the state.

Sincerely,



Erica Marbet
Water Resources Biologist
Squaxin Island Tribe