

Jamestown S'Klallam Tribe

Please accept the attached comments on the Natural Conditions Provisions, Chapter 173-201A WAC from the Jamestown S'Klallam Tribe.



July 11, 2024

Marla Koberstein
Washington Department of Ecology
PO Box 47696
Olympia, Washington 98504

Dear Marla Koberstein,

On behalf of the Jamestown S'Klallam Tribe, I am responding to the request for comment on the Department of Ecology's revisions to WAC 173-201A on updating natural conditions provisions for Washington's water quality standards.

The Tribe has strong interest in the preservation of its treaty rights to fish and gather in their Usual and Accustomed areas. These reserved rights are fundamental to the Tribe's culture and survival and are intricately linked to the health of ecosystems that support these treaty resources. Any rule revision adopted by the State of Washington that affects these interdependent ecosystems should at a minimum, avoid, minimize and mitigate impacts to the Tribe's ability to pursue traditional practices on their traditional lands, and wherever possible, enhance the resiliency of these resources. Poor water quality limits Tribal members from exercising their Treaty rights and damages Treaty resources.

I have reviewed the rulemaking documents and wish to provide the following comments. We appreciate the opportunity to participate in this process and we thank you for carefully reviewing our comments.

Sincerely,

Alex Scagliotti

Alex Scagliotti
Environmental Planner
Jamestown S'Klallam Tribe
1033 Old Blyn Highway
Sequim, Washington 98382

1. The performance-based approach for the natural conditions provision in WAC 173-201A seems appropriate and sufficiently robust to encourage accurate modeling and criteria derivation. The model development requirements listed in the publication 24-10-017, *A Performance-Based Approach for Developing Site-Specific Natural Conditions Criteria for Aquatic Life in Washington* provide replicable and scientifically defensible parameters to determine natural conditions before human activities.
2. We agree with the NMFS and FWS Biological Opinions that the human allowances for temperature of 0.3 degrees Celsius and dissolved oxygen of 0.2 mg/l (or 10% of natural conditions < 2mg/l) of dissolved oxygen are sufficiently protective of not only ESA-listed species but Tribal treaty resources as well. We agree that not including any allowances for waters with natural conditions criteria below Washington's is impractical. **We strongly recommend maintaining the proposed allowances and not weakening them** to allow for greater impacts to water quality which may cause a jeopardy finding by the Services and unacceptable impacts to tribal treaty resources.
3. While accounting for impacts largely outside of the State's control (i.e. climate change and shared international waters) may be difficult to model effectively, it is imperative that Ecology assess the best available science and include climate impacts into the natural conditions criteria derivation process as best as possible. Failure to account for climate-related changes to water bodies will result in erroneously derived natural conditions criteria for temperature, dissolved oxygen and pH. This will impact the waters of the State beyond the intention of the natural conditions provision and allow additional disturbances to ecosystems that are already at risk of irreversibly crossing ecological impact thresholds.
4. While the above points are already proposed in Ecology's draft rule revision, we want to emphasize that the Tribe will oppose any effort to create less stringent protections or slower, site-specific processes for natural conditions derivations. Any such changes will lead to greater harm of biota and Treaty Resources beyond a given project area.