

Karen Allston

Please find attached comment letter submitted on behalf of the Quinault Indian Nation.



Quinault Indian Nation

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October 23, 2024

Submitted via online public comment form

Marla Koberstein
Washington Department of Ecology
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Olympia, WA 98504-7696
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Re: Quinault Indian Nation's Comments in Support of Ecology's Proposed Updates to the Water Quality Standards for Human Health Criteria

Dear Ms. Koberstein:

The Quinault Indian Nation ("Nation") is a federally-recognized Indian tribe and sovereign tribal government. The Nation is a signatory to the 1856 Treaty of Olympia whereby it reserved, among other things, the right of "taking fish, at all usual and accustomed fishing grounds and stations," and the privilege of hunting and gathering on open and unclaimed lands, among other rights, in exchange for ceding lands it historically roamed freely. The Nation submits this comment letter in support of the Washington State Department of Ecology's ("Ecology") proposed rule to adopt the existing federal water pollution limits for human health criteria ("HHC") into state rule.

A. Nature of the Nation's Interest

The Nation is a federally-recognized Indian tribe located on the west coast of Washington and a signatory to the Treaty of Olympia of 1856, ratified by Congress in 1859 (12 Stat. 971). The Nation is responsible for the health and welfare of tribal members and the protection of their ability to continue exercising rights reserved under the Treaty of Olympia, including the right to fish for subsistence.

In 1974, Judge Boldt declared the Nation's right to take fish under the Treaty and the Nation's usual and accustomed fishing areas encompassed therein as follows: "The waters adjacent to their territory" and "Grays Harbor and those streams which empty into Grays Harbor." *United States v. Washington*, 384 F. Supp. 312, 374-75 (W.D. Wash. 1974); *see also, United States v. Washington*, 459 F.Supp. 1020, 1097 (W.D. Wash. 1978), *aff'd* 645 F.2d 749 (9th Cir.1981). In a later compilation of key court findings, the Court concluded: "The Quinault Tribe has usual and

accustomed fishing places in Grays Harbor and its watershed, including the Humptulips River.” *United States v. Washington*, 459 F.Supp. 1020, 1038 (W.D. Wash. 1978) aff’d, 645 F.2d 749 (9th Cir. 1981). The Nation’s U&A extends into the Pacific Ocean. *United States v. Washington*, 2:09-sp-00001-RSM (W.D. Wash. March 5, 2018) (Order Regarding Boundaries of Quinault and Quileute U&As) This federally-adjudicated treaty fishing right applies to all fish, including finfish, shellfish and marine mammals. *United States v. Washington*, 873 F. Supp. 1422, 1430 (W.D. Wash. 1994) (“Fish is a word which fairly encompasses every form of aquatic animal life.”).

As Judge Boldt determined in 1974, “The Indian cultural identification with fishing is primarily dietary, related to the subsistence fishery, and secondarily associated with religious ceremonies and commercial fishing.” *U.S. v. Washington*, 384 F.Supp. at 355-58 (internal citations omitted). Subsequent cases have confirmed that reserved rights encompass waters of sufficient quality to maintain the fishery. *See, e.g., Colville Confederated Tribes v. Walton*, 647 F.2d 42, 48 (9th Cir. 1981). Today, fish and shellfish remain a primary food source for Nation tribal members’ diets and are central to the preservation of the Nation’s cultural vitality and spirituality. As a result, the Nation’s tribal members face an elevated health risk through lifetime exposure to pollutants through the consumption of fish and shellfish and would be harmed by any change to the applicable water quality standards that would weaken environmental protections.

Accordingly, the Nation has a unique interest in the provisions of the Clean Water Act, Washington State’s Water Quality Standards, and the enforcement thereof. The Nation’s deep cultural and historical ties to the waters of Washington, and the fact that our members harvest and consume large amounts of fish and shellfish, comes at great personal health risk to our members. Because of toxic contamination, Washington’s waters are blanketed by fish advisories warning the public not to eat—or to severely reduce consumption of—fish from the State’s waters to reduce the risk of cancer and other diseases.

As a Nation whose members rely heavily on clean water for traditional subsistence, including fishing and shellfish gathering, the protection of our water resources is vital. Indeed, the 1855 Treaty signed by the Nation and the United States permanently guarantees our members’ right to fish; however, that right is compromised when the available fish are not safe to eat. The adoption of the federal water pollution limits will help to safeguard the health of our Nation’s members and ensures that the waters continue to support our traditional lifeways.

B. Comments in Support

The Nation believes that formally adopting the federal HHC into state rule is important for several reasons. First, the federal HHC are designed to protect human health, particularly for those who consume fish and shellfish, from the harmful effects of toxic substances in the State’s waters. Due to toxic contamination, Washington’s waters are blanketed by fish advisories warning the public not to eat—or to severely reduce consumption of—fish from the State’s waters in order to avoid cancer and other diseases. For there to be any hope of improving the condition of these waters and mitigating the risk of harm to Washington’s fish-eating residents, it is critical that state rule set strict parameters with respect to the water pollution limits. For example, the Polychlorinated Biphenyls (PCB) criteria set forth in the federal HHC proposed for adoption into state rule are significantly more protective of people who eat large quantities of fish and shellfish, such as the

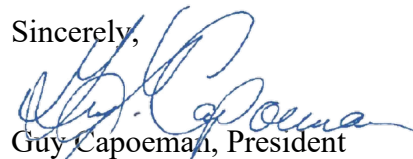
Nation's Members, than the previous state rule criteria. PCBs are toxic chemicals known to cause cancer and have serious health consequences for human immune, reproductive, nervous and endocrine systems. PCBs are found throughout Puget Sound, and fish consumption is the major pathway for human exposure to PCBs, which bioaccumulate in fish tissue. For example, Puget Sound Chinook salmon fillets have been found to be almost three times more contaminated with PCBs than fillets of Chinook salmon from other Pacific west coast areas. Adopting the federal water pollution limits into state law will help to ensure that the Nation's Members—and all other people consuming fish from Washington's waters—remain able to safely consume fish and shellfish.

Another reason the State should adopt the federal HHC into state rule is that aligning the state and federal standards will streamline regulatory processes and provide greater clarity for permitted dischargers. Over the last approximately eight years, there have been a number of shifts in the application of federal water pollution laws to Washington State. In 2016, EPA published the final rule for HHC applicable to Washington, which EPA indicated was to ensure that the criteria were set at levels adequate to protect Washington residents, including tribes, from exposure to toxic pollutants. The final rule both approved certain HHC submitted by the State and disapproved certain HHC submitted by the State, thereby promulgating federal replacement criteria for the disapproved HHC. In 2019, upon petition by certain industry actors, the EPA agreed to reconsider the rule and entirely reversed course—approving all but two of Washington's original criteria. Then again, in April 2022, EPA again changed positions, determining that revised HHC were necessary for Washington and proposing new standards for Washington waters to replace the criteria submitted by Washington in 2016 and approved by EPA in 2019. In short, these changes have been confusing, based on inconsistent logic, and subject to a number of challenges. Aligning the federal and state HHC by adopting the federal water pollution criteria into state rule will help promote more effective implementation of water quality protections and reduce the potential for confusion and conflicting requirements. It will also provide long-term stability and regulatory certainty for these critical health protections and will help ensure that the Nation's waters are protected from the adverse impacts of pollution for years to come.

Finally, the Nation wishes to note its appreciation for Ecology's commitment to conduct an Environmental Justice Assessment as part of this rulemaking process. Ensuring that all communities, including tribal nations, have access to clean and healthy water is a fundamental principle of environmental justice.

Ultimately, the Nation's desire to protect water quality is more than an environmental issue; it is a matter of preserving our cultural heritage and ensuring the well-being of present and future generations of the Nation's members. The Nation appreciates the opportunity to provide comments and to share our support for Ecology's proposed rule to adopt the existing federal water pollution limits for HHC.

Sincerely,



Guy Capoen, President
Quinault Indian Nation