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Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476

* 11404 Moorage Way * La Conner, Washington 98257 *

May 1, 2025

Marla Koberstein, Water Quality Program
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
Via email: swqs@ecy.wa.gov

Re: Triennial Review of Surface Water Quality Standards 2025-2027 draft workplan

Dear Ms. Koberstein:

The Swinomish Indian Tribal Community ("Swinomish Tribe" or the "Tribe"), submits these comments and suggested additions to the Washington Department of Ecology ("Ecology") Triennial Review of Surface Water Quality Standards 2025-2027 Draft Workplan.

About the Swinomish Tribe

The Swinomish Indian Tribal Community is a federally recognized Indian tribe and political successor in interest to certain tribes and bands that signed the 1855 Treaty of Point Elliott, which among other things reserved fishing, hunting and gathering rights and established the Swinomish Reservation on Fidalgo Island in Skagit County, Washington. The Swinomish Reservation sits at the mouth of the Skagit River, the largest river system draining to Puget Sound and the only river in the Lower 48 states that still has all species of wild Pacific salmon and steelhead spawning in its waters. Since time immemorial, the Swinomish Tribe and its predecessors have occupied and utilized vast areas of land and water in northern Salish Sea to support the Swinomish way of life. The Swinomish Tribe is a guardian of the Skagit and Samish River basins and surrounding coastal areas. The Swinomish Tribe are also adjudicated co-managers of Washington fisheries along with the Washington Department of Fish and Wildlife (WDFW) and have worked with WDFW and NOAA Fisheries for decades in this capacity to ensure protection and restoration of fishery resources in the Skagit and Samish basins. Past and current degradation of water quality is a significant barrier to recovery of salmon in these basins and therefore is a key factor impacting the Tribe's treaty-reserved resources and cultural lifeways.

General Comments

Ecology's 2025-2027 Draft Workplan for updating water quality standards for the state is incomplete. Given the immense amount of work that Washington state needs in order to adequately protect the state's waters, **the list of actions in Ecology's workplan is wholly insufficient**. Ecology states that among

other things they regularly update the water quality standards to “respond to requests from tribes and the public.” The Tribe submits the below comments on the existing 2025-2027 Draft Workplan and a list of several actions that Ecology should address in the next three years, some of which have been requested of Ecology by the tribes and the public **for years and remain unaddressed**.

Criteria for Cyanotoxins

Currently, Ecology’s 2025-2027 Draft Workplan includes establishing freshwater human health recreational water quality criteria for cyanotoxins *Microcystin* and *Cylindrospermopsin* based on the EPA’s 2019 recommendation, and to investigate criteria for *Saxitoxin* and *Anatoxin-a*. Although EPA recommendations only cover freshwater human health recreational criteria, a body of existing research shows that all of these cyanotoxins are toxic to aquatic life in freshwater *and* marine environments, can bioaccumulate in marine and freshwater organisms¹, and can be transported downstream from freshwater into marine environments². Creating freshwater recreational criteria for these toxins should not be a difficult task, particularly given that Washington State already uses provisional recreational guidance for several of these toxins ([DOH 332-118, October 2011](#)) which can be updated with EPA recommendations and included in water quality criteria.

Recommendation: In addition to establishing freshwater recreational criteria, Ecology should begin working toward establishing aquatic life criteria for these toxins in freshwater and marine environments by gathering information on species-specific toxicity, bioaccumulation, and transport.

Adoption of new PFOA and PFOS Criteria

Ecology’s 2025-2027 Draft Workplan gave no detail about the differences between the EPA’s final recommended Aquatic Life Criteria for PFOA (Perfluorooctanoic acid) and PFOS (Perfluorooctanesulfonic acid)³ and those previously adopted by Ecology. During informational webinars, Ecology staff were also vague on the details, stating “some of the new standards were higher, some were lower.” This is misleading since the EPA’s recommended criteria were in some cases many times *more protective* than those previously adopted by Ecology, and in cases where Ecology’s standards were more protective, it was by relatively minor amounts.

For example, the EPA’s recommended Acute Water Column Criterion Maximum Concentration for PFOS and PFOA in freshwater are 3.1mg/L and 0.071 mg/L, respectively, with a 1-hour average not to be exceeded more than once in three years on average. By contrast, Ecology’s criteria for PFOS and PFOA are 49 mg/L (15 times higher) and 3 mg/L (42 times higher) with a four-day average concentration not to be exceeded more than once in three years on average. High levels of PFOS in shellfish is a human health concern, especially for tribal communities who rely on shellfish as a traditional food source. The ability to harvest shellfish is both culturally and commercially important for tribes and high levels of

¹ Ferrão-Filho, A. D. S., & Kozlowsky-Suzuki, B. (2011). *Cyanotoxins: bioaccumulation and effects on aquatic animals*. *Marine drugs*, 9(12), 2729–2772. <https://doi.org/10.3390/md9122729>

² Howard, M.D.A., et al. (2023). *Integrative monitoring strategy for marine and freshwater harmful algal blooms and toxins across the freshwater-to-marine continuum*. *Integr Environ Assess Manag*, 19: 586-604. <https://doi.org/10.1002/ieam.4651>

³ Environmental Protection Agency. (2004). *Final Recommended Aquatic Life Criteria and Benchmarks for Select PFAS [Fact sheet]*. <https://www.epa.gov/system/files/documents/2024-09/pfoa-pfos-pfas-final-factsheet-2024.pdf>

PFOS contamination is can limit access to important harvest locations in the Tribe's usual and accustomed areas.

Recommendation: Ecology should adopt any and all of the new EPA recommended criteria which are more protective of aquatic life and therefore treaty-reserved and culturally important aquatic resources

Recommended Additions to the 2025-2027 Workplan:

1) Incorporate climate change forecasts into calculations for assimilative capacity and human use allowances.

Temperature is currently the most ubiquitous and harmful non-point pollution source in Washington's streams and rivers. Higher stream temperatures is one of the greatest threats to Washington's salmonid species including critical Treaty resources and ESA-listed stocks, especially in the Skagit watershed, home to all five Pacific Salmon species, including ESA-listed Chinook salmon, Steelhead and Bull trout. Ecology has abjectly failed to achieve - or even make meaningful progress towards - the riparian planting actions outlined in the 2004 Lower Skagit Temperature TMDL to address harmfully warm salmon stream temperatures.

In 2023, 14 out of 15 total sampling locations in the Skagit River watershed failed to meet state water quality temperature standards based on 7-day average daily maximums⁴. Climate change is already impacting stream temperatures, with exacerbated effects due to inadequate riparian habitat buffers, through increased ambient temperatures, drought, more sporadic rain events, and reduced snowpack to list a few. These impacts are expected to increase and accelerate in severity in the near future⁵. Currently, Ecology's regulations do not account for how future climate will impact designated use criteria, including when calculating assimilative capacity and human use allowances. It is critical that future impacts from climate change are accounted for when establishing designated use criteria, developing antidegradation policies and implementation methods, establishing water-quality based effluent limits, and issuing National Pollution Discharge Elimination System (NPDES) permits.

Recommendations: The Tribe urges Ecology to revise the 2025-2027 Draft Workplan to include investigation and implementation of ways to account for future conditions under climate change in all water quality regulations, and particularly when it applies to the Skagit River watershed, where stream and river temperatures are already negatively impacting Treaty-reserved resources and ESA-listed salmon. This includes in developing antidegradation policies and implementation methods, establishing water-quality based effluent limits, and issuing National Pollution Discharge Elimination System (NPDES) permits. In addition, Ecology should be using its regulatory authority to require the restoration of riparian areas along already temperature impaired streams to help ameliorate worsening conditions.

⁴ Skagit County Public Works. (2024) *Skagit County monitoring program annual report, water year 2023*. Natural Resource Division. <https://www.skagitcounty.net/PublicWorksSurfaceWaterManagement/Documents/2023%20Annual%20Report/SCMP%20Annual%20Report%202023.pdf>

⁵ Lee, S-Y., Hamlet, A.F. (2011). *Skagit River Basin Climate Science Report*. A summary report prepared for Skagit County and the Envision Skagit Project by the Department of Civil and Environmental Engineering and the Climate Impacts Group, University of Washington, Seattle. September, 2011.

2) Protection of instream flows for salmonid species

Low instream flows continue to impact the ability of Washington's salmon populations to recover, including Treaty-reserved resources and ESA-listed stocks. Low summer flows result in increased water temperatures, lowered dissolved oxygen, increased susceptibility to disease, and reduced spawning and rearing habitat, all of which contribute to lower survival and productivity of salmonids in our streams and rivers. In 2021, low flows and higher temperatures led to the death of 80% or ~2,500 returning Chinook Salmon in the South Fork of the Nooksack River. Despite this, Skagit County recently included in their [Draft Comprehensive Plan](#) a goal to secure additional water withdrawals for agriculture in the lower Skagit River basin. This goal would directly undermine the requirements of the Skagit Instream Flow Rule (WAC 173-503) that protects essential stream functions and federally reserved tribal senior water rights.

Recommendations: The Tribe strongly requests that Ecology include in the 2025-2027 Workplan additional protections for Skagit River and other regulatory instream flows as well as related water quality conditions for salmon. Climate warming impacts will continue to intensify, and all land uses, including agriculture, can and should be required to adapt where simple solutions, such as planting riparian habitat, exist. Salmon populations however, cannot adapt to these human-induced changes, and will simply continue to decline toward extinction unless Ecology prioritizes protections to instream flows and restoration of critical riparian areas.

3) Adhering to federally-mandated timelines for Water Quality Analyses

The Clean Water Act requires that Washington Department of Ecology produce a Water Quality Assessment (WQA), including a list of impaired water bodies (303(d) list) every two years. Since 2012, Ecology has only produced three such WQAs, including the most recent 2022 assessment (rather than the required 6 during this period). Lack of up-to-date information impairs the ability of tribal nations like Swinomish to understand whether waterbodies are meeting water quality standards, whether state water quality policies are preventing degradation, and whether either is causing impairment to Treaty-reserved resources. Unnecessary and preventable delays in water quality assessments degrade public trust, impede the ability of entities to make decisions and prioritize water quality projects, and prevents the state from enforcing water quality standards in a timely manner.

Recommendation: The Tribe urges Ecology to follow the recommendations in the November 2023 report from the U.S. Government Accountability Office ([GAO-24-105687](#)) to work with the EPA to develop a plan to address this issue and add it to the 2025-2027 Workplan.

Thank you for your consideration of your comments.



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