Northwest Indian Fisheries Commission
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August 29, 2025

Casey Sixkiller, Director
Washington Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Re: Comments on Draft Washington State Nonpoint Source Pollution Management Plan

Dear Mr. Sixkiller:

The Northwest Indian Fisheries Commission (NWIFC) would like to offer the following comments on the proposed Plan to Control Nonpoint Sources of Pollution for Washington. These comments are provided to be additive to individual tribal comments. Non-point sources of pollution are a priority for the NWIFC member tribes and it is paramount that the Department of Ecology's Plan reflects these concerns into the overall strategy for restoring water quality necessary to protect tribal treaty-reserved resources, the health of tribal citizens and for all citizens in Washington.

The NWIFC is comprised of the 20 treaty Indian tribes in western Washington,[1] each of which retain constitutionally protected, treaty-reserved rights to harvest, consume, and otherwise manage fish, shellfish, and other treaty-reserved resources within their usual and accustomed areas. As natural resource co-managers, tribes have a vested interest and role in all policies that affect treaty-reserved resources, such as fish and shellfish, and the protection and restoration of habitat critical to their recovery and long-term sustainability.

Healthy water is the foundation of salmon and shellfish recovery. Cold, clean, well-shaded streams are essential for spawning, rearing, and migration.[2] When water is too warm, too shallow, or too polluted, salmon cannot survive. The same is true for shellfish, which are highly sensitive to bacterial contamination, warmer water temperatures, and toxic runoff. For tribal communities, the loss of access to these resources is not just an environmental concern – it is a violation of our rights, our cultures, and our economies. Protecting and restoring water quality is central to upholding treaty obligations and rebuilding the ecosystems we all depend on.

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[1] The NWIFC member tribes are the Hoh, Jamestown S'Klallam, Lower Elwha Klallam, Lummi, Makah, Muckleshoot, Nisqually, Nooksack, Port Gamble S'Klallam, Puyallup, Quileute, Quinault, Sauk-Suiattle, Skokomish, Squaxin Island, Stillaguamish, Suquamish, Swinomish, Tulalip, and Upper Skagit.

[2] Christopher Dunagan, *Understanding the Cold-Water Needs of Salmon and Helping Them to Survive*, Puget Sound Inst. (Feb. 1, 2021), https://www.pugetsoundinstitute.org/understanding-the-cold-water-needs-of-salmon-and-helping-them-to-survive/.

While the causes of salmon decline are many, one of the most persistent and unaddressed is nonpoint source (NPS) pollution. Its impacts – elevated temperatures, sediment runoff, bacterial contamination, and toxic chemicals – are felt acutely in the streams, rivers, estuaries, and shellfish beds that tribal communities depend on. Although the Department of Ecology's proposed plan to Control Nonpoint Sources of Pollution for Washington (NPS Plan) makes important strides, key gaps remain, particularly in its failure to prioritize tribal watersheds and critical coastal areas. Too often, the area's most vital to treaty-reserved resources like salmon-bearing streams, shellfish beds, and culturally significant estuaries, remain impaired despite decades of recovery efforts. When non-tribal entities seek to establish a shellfish farm, they are able to select from the best locations in Puget Sound. Tribes, however, are limited by their Usual and Accustomed (U&A) areas and beaches. For example, on the eastern shore of Puget Sound from Everett down to the Tacoma Narrows Bridge, waters are considered too polluted to harvest the oysters and clams there. Climate change only deepens these threats, bringing warmer waters, lower summer flows, and destabilized stream systems.

Meeting these challenges requires more than broad intentions – it demands concrete, accountable commitments. One critical step is adopting enforceable riparian protections to keep water cool, filter pollutants, and rebuild habitat. It also requires more meaningful coordination with the tribes, who have managed and monitored these waters for generations. Any serious effort to protect water quality and restore salmon populations must center tribal governments as full partners – not after the fact, but from the beginning.

A. Background

In 2011, our member tribes launched the Treaty Rights at Risk initiative to call attention to the chronic under-implementation of federal statutes and respondent environmental programs that affect tribal rights. Many of the tools needed to protect salmon habitat, such as non-point source pollution control, already exist in state and federal law. However, these tools are often inconsistently enforced or applied without adequate consideration of treaty obligations.

One example of this trend is the Coastal Nonpoint Pollution Control Program, created under the Coastal Zone Act Reauthorization Amendments (CZARA). In 1998, Washington's program was conditionally approved by the National Oceanic and Atmospheric Administration (NOAA) and Environmental Protection Agency (EPA), contingent on meeting specific conditions related to agriculture, forestry, urban development, and critical coastal areas. For more than two decades, those conditions remained unmet.

In 2013, NOAA and EPA formally urged the state, through the Department of Ecology (Ecology) to complete the program in a way that would uphold protections for treaty-reserved resources. After years of work and internal coordination, Washington submitted a final proposal in late 2019. When the federal agencies approved the Washington State CZARA program, they

acknowledged that many outstanding concerns — especially those raised by tribes — were expected to be addressed through Washington's updated NPS Plan.

This plan we are commenting on – is not just a policy document – it represents a long-overdue opportunity to align state efforts with federal trust responsibilities, tribal priorities, and the ecological realities facing salmon and shellfish today.

B. Essential Actions to Uphold Treaty Rights and Water Quality

Treaty rights are not aspirational policy goals – they are binding federal law. The member tribes of the NWIFC expect a final, enforceable Nonpoint Source Pollution Management Plan that protects water quality and upholds treaty-reserved rights to fish and shellfish in our U&A areas. We appreciate the work to date, but Ecology must go further. The state's NPS Plan to control nonpoint sources of pollution must center treaty rights, salmon recovery, and shellfish protection as foundational requirements that drive priorities, funding and enforcement.

Accordingly, we expect the final NPS Plan to:

- Make riparian protection non-negotiable across land-uses, with enforceable buffers that sustain temperature control, filtration, bank stability, and large-wood recruitment, consistent with the best available science (e.g., WDFW's Priority Habitat and Species Guidance).
- Use enforcement authority when voluntary measures fail, with clear triggers, timelines, penalties, and a public dashboard – paired site-specific implementation options with co-manager and tribal data integration.
- Prioritize and resource tribal watersheds and coastal areas for monitoring, funding, and restoration, with treaty resource protection as a core prioritization criterion.
- Track and publish results including: BMP locations, costs, maintenance status, and water-quality outcomes for state and federally funded projects.

These commitments are the minimum necessary to meet state and federal obligations. The future of our waters, communities, and treaty rights depends on decisive action now. We are ready to work with Ecology to implement this direction.

C. Major Areas of Concern and Recommendations

In the following sections, we outline key issues with the proposed NPS Plan as well as specific, actionable recommendations for improvement. Many of the concerns we raise are not new — they have been highlighted in previous planning processes, formal comment letters, and through the Treaty Rights at Risk initiative. These areas represent both long-standing structural challenges and urgent opportunities for Ecology to align its work with treaty rights and ecological realities.

We offer these comments in the spirit of partnership and progress. The tribes remain committed to working with Ecology to strengthen the NPS Plan and to ensure that it delivers lasting benefits for the environment and for the protection of tribal treaty rights.

1. Positive Elements of the Plan

We acknowledge Ecology's integration of climate change into the NPS Plan, improved interagency coordination, and opportunities for tribal engagement throughout plan development. The watershed-scale approach, coupled with tools like TMDLs, Shellfish Protection Districts, and NPS effectiveness monitoring, has potential – if directed to watersheds critical to treaty-reserved resources. The NPS Plan's recognition of disproportionate impacts on tribal communities is an important first step toward aligning implementation with treaty obligations.

2. Missed Opportunity: Weak Riparian Protections where They're Needed Most

One of the most critical gaps in the draft NPS Plan is the lack of a clear, enforceable approach to protecting riparian habitat across all land use types. While the NPS Plan emphasizes voluntary and incentive-based programs, these measures alone have failed to deliver the scale of restoration needed—particularly in agricultural areas, where riparian loss continues and restoration rates remain unacceptably low.

In contrast, riparian areas within forested landscapes are subject to a more defined regulatory framework. Through the Forest and Fish Report and associated Habitat Conservation Plan, the state has established riparian buffer requirements to protect water quality on private and state forestlands. Ecology has taken a notable leadership role in recent years by advancing stronger protections for Type Np (non-fish bearing) streams—despite intense opposition from some of the regulated community. Ecology's willingness to stand firm in that context deserves recognition.

That makes the lack of comparable action in the agricultural landscape all the more concerning. Despite having clear authority under the Clean Water Act, Ecology has not yet established or enforced baseline expectations for riparian protection in many agricultural areas—effectively relying on voluntary measures that have not delivered meaningful progress.

Although the NPS Plan is not a regulatory document, it plays a key role in setting statewide priorities and guiding how funding, programs, and partnerships are deployed. The absence of a strong commitment to riparian protection—especially in landscapes where state authority is underutilized—sends the wrong signal at a time when degraded streamside habitat remains one of the top limiting factors for salmon recovery.

Riparian buffers are foundational to water quality and watershed function. They keep water cool, stabilize banks, filter pollutants, and support the vegetation and woody debris that salmon and other species depend on. If the state is serious about addressing nonpoint source pollution and meeting water quality standards, it must treat riparian restoration as a core strategy—not an optional best practice.

We recommend the final NPS Plan:

- Include a clear policy commitment to only support riparian buffer configurations that sustain all key riparian functions, including providing ongoing sources of large wood to streams, consistent with WDFW's Priority Habitat and Species (PHS) Guidelines.
- Strengthen the outcomes of the Governor's Riparian Roundtable, while also prioritizing immediate restoration actions in impaired tribal U&A fishing areas.

Riparian restoration is essential for achieving temperature standards, reducing nonpoint pollution, and upholding the state's obligations to protect treaty-reserved resources. The final NPS Plan must reflect that urgency and obligation.

3. Over-Reliance on Voluntary Measures and Weak Enforcement

The draft NPS Plan continues to rely heavily on voluntary Best Management Practices (BMPs). While voluntary programs have value, they are insufficient in watersheds where pollution persists, restoration lags, and compliance depends on landowner willingness. Without clear accountability and credible enforcement, the state will not meet water quality standards or restore salmon habitat at the scale and pace required.

Ecology has clear authority under RCW 90.48[3] but fails to define when or how it will be used. This uncertainty undermines public trust and allows chronic impairments—especially in tribal U&A areas—to persist. Enforcement is further weakened by barriers to property access, inconsistent agency practices, and a patchwork of jurisdictions with different rules and priorities.

Transparency is also lacking. Ecology's Environmental Reporting and Tracking System (ERTS) is cumbersome and incomplete, leaving tribes and the public unable to reliably track complaints, enforcement actions, or compliance. Likewise, there is no public record of where BMPs have been installed with state or federal funds, their cost, or whether they meet performance goals. Public dollars should not support ineffective or undocumented projects.

[3] Wash. Rev. Code § 90.48 (2023) (authorizing the Washington State Department of Ecology to control and prevent water pollution, including the power to issue permits, enforce water quality standards, and take corrective action against noncompliant dischargers).

We recommend that the final NPS Plan:

- Commit to using RCW 90.48 enforcement when voluntary measures fail, with clear triggers and timelines.
- Create a public enforcement dashboard showing complaints, resolution times, and actions taken.
- Standardize enforcement expectations across agencies and jurisdictions.
- Require outcome reporting for publicly funded BMPs, including location, cost, and water quality results.

Greater transparency, consistent enforcement, and follow-up are essential to meet state and federal obligations and to protect treaty-reserved resources.

4. Inadequate Monitoring and BMP Tracking

Nonpoint source pollution control requires not just installing BMPs, but knowing where they are, how they're maintained, and whether they work. The Draft NPS Plan lacks a clear, enforceable framework for tracking BMPs or evaluating effectiveness. Without this, the state cannot measure progress, identify gaps, or hold programs accountable.

Ecology's commitments to improve BMP monitoring are still aspirational—there's no mechanism for follow-through, mandatory reporting, or clear federal/state coordination. The absence of a transparent, statewide tracking system is especially concerning in tribal U&A areas, where watersheds face rapid change. Tribes often collect detailed monitoring data, but it remains siloed because there are no sovereignty-respecting pathways for integration. This exclusion weakens state planning and delays action where treaty-reserved resources are at risk.

The current system forces tribes and the public to navigate multiple agencies with inconsistent standards. Ecology's ERTS is cumbersome, opaque, and insufficient for timely follow-up. Without consistent criteria for what constitutes a violation or when cases escalate to enforcement, BMP compliance remains voluntary and unverified.

State and federal dollars fund many BMPs, yet the public has no reliable way to see where funds are spent or what results they produce.

We recommend that the final NPS Plan:

- Develop a GIS-based, public BMP tracking system showing location, type, status, and outcomes of state and federally funded projects.
- Establish tribal data-sharing agreements that integrate monitoring results while protecting sovereignty.
- Define clear enforcement thresholds and escalation criteria.

- Regularly evaluate BMP performance to guide funding and strategy.
- Improve coordination across state, local, and tribal entities to reduce duplication and close gaps.

Transparency is a prerequisite for trust. If BMPs remain a cornerstone of Washington's NPS strategy, the state must invest in tools to measure their effectiveness and act when they fail.

5. Insufficient Protection for Tribal Watersheds and Coastal Areas

The draft NPS Plan does not clearly prioritize or coordinate protection of tribal watersheds and critical coastal areas—places essential for salmon, shellfish, and treaty-reserved resources. While some watersheds are listed as impaired under the Clean Water Act, those designations represent only a fraction of the real need. Major monitoring gaps—data exists for just 13% of rivers, 10% of lakes, and 21% of marine waters—limit the State's ability to target restoration, especially in tribal usual and accustomed areas.[4]

Tribes often lead consistent, place-based monitoring, but without reliable state data integration, their work is underutilized and critical problems remain unaddressed. Shoreline communities along the Tulalip Reservation illustrate the consequences despite the importance to treaty harvest, they continue to face shellfish closures and impaired water quality without adequate state action or resources.[5]

From a tribal perspective, few—if any—watersheds are expendable. Each is tied to culture, food security, and treaty rights. "Leaving some behind" is incompatible with legal obligations and stewardship values.

Ecology can strengthen prioritization by aligning the NPS Plan with existing Watershed Recovery Plans under RCW 90.82 and 90.94, which already incorporate tribal science, consultation, and habitat priorities. Leveraging these vetted frameworks avoids duplication and accelerates action.

We recommend that the final NPS Plan:

- Acknowledge that most tribal watersheds require long-term protection, while identifying areas needing urgent action due to acute impairments or treaty access impacts.

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[4] Washington State Department of Ecology, *Washington Water Quality Assessment: Rivers, Lakes, and Marine Waters Monitoring Coverage* (2021) (showing monitoring data coverage of approximately 13 % of stream miles, 10 % of lakes, and 21 % of marine waters), https://www.pugetsoundinstitute.org/washingtons-water-quality-assessment-offers-insights-into-status-of-pollution/; Northwest Indian Fisheries Commission SSHIAP Program, *2020 State of Our Watersheds: A Report by the Treaty Tribes in Western Washington* 10 (Oct. 2021).

[5] WA DoH Tool: https://fortress.wa.gov/doh/biotoxin/biotoxin.html

- Develop clear, transparent prioritization criteria grounded in both scientific and tribal knowledge, guiding enforcement, monitoring, and funding.
- Make treaty resource protection a core criterion, reflecting the irreplaceable role of these watersheds in sustaining salmon and shellfish populations.

A clear, public commitment—paired with transparent processes and follow-through—is essential to ensure tribal watersheds are not left behind in an under-resourced, uncoordinated system. Failure to act not only jeopardizes ecosystem health but violates the state's enforceable obligations under federal law to protect treaty-reserved resources.

D. Conclusion

We stand ready to work with Ecology to fulfill these commitments and protect the waters, salmon, and shellfish that our treaty rights guarantee. Strong, enforceable action is essential – and overdue.

Should you have any questions about this correspondence, please do not hesitate to contact Nick Tealer, NWIFC Environmental Protection Policy Analyst at ntealer@nwifc.org or (360) 438-1180 ext. 333.

Sincerely,

Ed Johnstone
Chairman

cc: Emma Pokon, Regional Administrator, EPA Region 10
Jennifer Quan, Regional Administrator, NOAA West Coast Region

Attachments (4)