Northwest Indian Fisheries Commission
6730 Martin Way E., Olympia, Washington 98516-5540
Phone (360) 438-1180 www.nwifc.org FAX # 753-8659

December 22, 2022

Laura Watson, Director
Washington State Department of Ecology
P.O. Box 47696
Olympia, WA 98504-7696

Re: Ecology's 2022 Draft Voluntary Clean Water Guidance for Agriculture Chapter 12, Riparian Areas & Surface Water Protection as part of Washington's Water Quality Management Plan to Control Nonpoint Source Pollution.

Dear Director Watson:

The Northwest Indian Fisheries Commission (NWIFC) would like to offer the following comments on the proposed revisions to "Washington's Water Quality Management Plan to Control Nonpoint Source Pollution." Due to the short timeframe for review we have limited our comments to concerns on the guidance provided to riparian areas and surface water protection as part of Ecology's voluntary agricultural best management practices (BMPs) recommendations for protecting water quality. These comments are provided to be additive to individual tribal comments. Decreasing pollution from agricultural lands is a focused and urgent priority for the NWIFC member tribes and it is paramount that Ecology's guidance reflects the best available science, including the recommendations within the Washington Department of Fish and Wildlife Priority Habitats and Species Document.[1]

The NWIFC is comprised of the 20 treaty Indian tribes in western Washington, 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 to play 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.

The state's efforts at addressing nonpoint sources of pollution under the Coastal Zone Act Reauthorization Amendments (CZARA) are important to protecting and restoring tribal treaty resources. That awareness, and related threshold of expectation is documented in the April 23, 2013, letter from the federal approving agencies to Ecology (attached herein). This letter highlights the need for Ecology to ensure revisions to its Nonpoint Source Pollution Program

[1] Quinn, T., G.F. Wilhere, and K.L. Krueger, technical editors. 2020. Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications. Habitat Program, Washington Department of Fish and Wildlife, Olympia.

includes the necessary protections for salmon and salmon habitat to better protect treaty-reserved fish populations.

The NWIFC considers Ecology's guidance on riparian areas and surface water protection an important opportunity to advance protection and restoration of water quality and help producers in Washington meet their obligations under the Clean Water Act (CWA). Importantly, the publication of this guidance will provide an initial expression of Governor Inslee's commitment to protect riparian areas based on site potential tree height comprehensively across state agencies and land uses. As such, it is critical that the guidance honors both the intent and substance of the governor's commitment. While there are elements in the current draft that mark progress, the current guidance is not protective enough and should be revised in several key ways. These revisions are important if the guidance is to be meaningful towards the protection of tribal treaty resources and begin reversing decades of damage done to water quality and treaty-reserved fish in streams adjacent to agricultural lands.

Ecology's recommendation to extend the Riparian Management Zone (RMZ) to 215' on the westside and 150' on the eastside is a good start at developing management strategies that will protect and restore water quality in the state. We also support Ecology's recommendation to restore the forested landscape to the full RMZ and retain forest cover in places where an existing RMZ already consists of forest. Finally, we support Ecology's recommendation to adhere to WDFW's guidance regarding controlling or limiting activities that may occur in a RMZ. However, we recognize the WDFW guidance was written to cover a range of land uses, including the developed landscape, so tailoring and refining this guidance specifically to activities that occur on a farm would make the guidance more applicable and useful to agricultural land-uses. Critically, we think it is important to emphasize activities that may hinder or prevent the eventual full reforestation of a site potential RMZ not be allowed and should be avoided.

Specific Recommendations

We have identified three key issues that need to be addressed to ensure the guidance is consistent with the governor's policy direction to establish a uniform protection standard for riparian areas across Washington.

1. Clearly state that one site potential tree height buffers consisting of "minimally-managed" "site potential plant communities" are the protection standard Ecology has adopted to determine the adequacy of RMZs to protect water quality, provide sufficient shading for thermal protection, protect streambanks from accelerated erosion, provide an ongoing source of large wood to streams (i.e., where applicable) and provide maintenance of at least the strongest portion of stream/riparian microclimate gradient.

The draft guidance states that fully forested RMZs is Ecology's recommendation, but given the inclusion of alternative RMZ configurations as part of the guidance, it is unclear whether Ecology actually supports this RMZ configuration as the protection standard. Instead, the guidance only states that Ecology's preferred management option of fully forested RMZs is consistent with the recommendations made by WDFW.[2] Significantly, in forested regions the draft guidance allows agricultural practitioners to adopt RMZ configurations that require vegetated buffers that are considerably less than a fully forested RMZ. The guidance allows any practitioner under any circumstance (other than in riparian areas that are already currently forested) to select those alternative RMZ configurations. Realistically, farmers will adopt RMZs with the narrowest possible buffer requirement, which can be as small as 65' wide along fish bearing streams. As such, inclusion of these alternative RMZ options with no guidance on when and where it is acceptable to install them, represent a substantial exemption to the one site potential tree height resource protection standard committed to by the governor and tribal leadership. Instead of moving toward supporting a riparian protection framework that is consistent across Washington, these alternative RMZ configurations, as currently structured, reinforce the status quo of riparian protection standards varying by jurisdiction, land use and agency prerogative, resulting in continued inconsistent protection of water quality and fish and wildlife habitat across Washington.

2. Describe under what specific conditions it is acceptable for minimally managed vegetated buffers not to meet the full site potential tree height protection width standard.

Allowing practitioners to adopt buffer configurations that are significantly less than the full site potential tree height standard without any meaningful guidance on when and where that is acceptable or appropriate undercuts accomplishing a consistent SPTH standard. We recognize that as a practical matter, voluntary guidance protecting natural resources needs to be flexible in how it is implemented. Specific site conditions can and do influence how buffers can be designed and the level of protection they provide. To maintain the integrity of the site potential tree height standard, the conditions and circumstances in which it is acceptable to adopt an RMZ configuration with vegetated buffers less than that standard need to be carefully described. As written, the current draft guidance defers to the landowner to determine the feasibility of meeting the full buffer protection standard, except in circumstances when the RMZ is currently already fully vegetated. The guidance should emphasize that the buffer widths (core zones) in the alternative RMZs are absolute minimums and that these widths are only acceptable under clearly identified conditions and circumstances and only with approval by Ecology. Examples of such conditions that Ecology could provide include:

[2] WDFW's Riparian Ecosystems, Volume I: Science Synthesis and Management Implications and Riparian Ecosystems, Volume 2: Management Recommendations (Quinn et al, 2020; Windrope et al, 2020)

- The presence of a structure
- Property lines
- Infrastructure (e.g., roads, railways, pipelines, powerlines or other utilities)
- Topography that impedes the ability to meet or achieve the preferred option
- The property is a small parcel in which a vegetated buffer would cover more than 50 percent of the parcel

There may be others, but the point is that without clear guidance on where and when it is not feasible to meet the recommended fully forested RMZ, the likely outcome is that practitioners will install the smallest buffers possible without any justification and the SPTH standard loses its meaning.

3. Where site-specific limitations exist (as described above), require a minimum 100' buffer width along fish-bearing streams on the alternative RMZ configuration options.

In 2013 the National Marine Fisheries Service (NMFS) advanced to the Environmental Protection Agency (EPA) and Natural Resources Conservation Service a minimum buffer width of 100' along fish bearing streams for conservation programs those agencies funded.[3] While not published science, this minimum buffer guidance was developed to support transition to guidance developed by WDFW. The minimum buffer widths in the draft guidance do not meet this minimum standard. By recommending buffers as narrow as 65' along fish bearing streams, the current draft guidance represents a step backwards from the NMFS 2013 guidance. As currently written, the riparian area protection guidance does not distinguish between fish vs non-fish streams when making buffer recommendations. This guidance framework reflects Ecology's reluctance to develop riparian buffer BMPs that fully recognize that protection and restoration of fish habitat is a critical element of the SPTH standard. The 2013 letter from the EPA and National Oceanic and Atmospheric Administration cited above emphasizes the state's responsibility includes protecting salmon and steelhead habitat. In site-specific situations where installing SPTH buffers along fish streams is not feasible, 100' minimally managed vegetated buffers represent an absolute minimum interim width until the standard of full SPTH buffers can be installed. Given projections of global warming and the continued decline of treaty-protected fish stocks, we cannot afford a step backwards.

We appreciate Ecology's hard work and persistence in developing agricultural BMP recommendations to help protect and restore water quality in Washington. Because EPA has final approval of the Nonpoint Plan, it is imperative that Ecology develop riparian protection

[3] Interim Riparian Buffer Recommendations for Streams in Puget Sound Agricultural Landscapes (Originally proposed as federal Option 3 for the Agriculture Fish and Water (AFW) Process, March 2002) Guidance, October 28, 2013 Final

guidance that does not conflict with EPA's trust responsibility to the tribes to protect and restore treaty-reserved resources and their habitats.

The most consequential practice we can adopt to begin reversing decades of destructive riparian management practices is also one of the most difficult - installing healthy and functioning riparian buffers. Successful adoption of site potential tree height as a workable riparian buffer standard is a vital first step to that goal. Recognizing the many challenges to implementing such a standard, it is critical we maintain SPTH as both a long and short-term goal, even as we allow flexibility through site-specific implementation. Where we no longer have flexibility is in protecting salmon and other treaty-protected resources. There is no more compromise to give when protecting our region's dwindling salmon population. Predicted global warming and population growth patterns will only exacerbate the issue, and the need for bold leadership in riparian protection is more important today than it has ever been.

We appreciate Ecology's continued leadership in protecting water resources in Washington and look forward to continuing to work with the agency when addressing many of the issues affecting our shared natural resources. If you have any questions, please contact Ash Roorbach, Forest Practices Coordinator, at (360) 754-3792 or aroorbach@nwific.org; or Jim Peters, Habitat Policy Coordinator at (360) 485-2352 or jpeters@nwifc.org.

Sincerely,

Justin R. Parker
Executive Director

cc: Heather Bartlett, Deputy Director, Washington State Department of Ecology
Ben Rau, Watershed Planning Unit Supervisor, Washington State Department of Ecology
Tyson Oreiro, Executive Advisor for Tribal Affairs, Washington State Department of Ecology

Attachment