Lummi Nation (Victor Johnson)

Good evening. Lummi Nation is commenting on the Draft Nonpoint Plan, the Draft Puget Sound Nutrient Reduction Plan, and the Draft Puget Sound Nutrient General Permit using the same comment letter. I am unsure if the links for comments for these documents are the same, or different. The Nutrient General Permit link would not allow me to submit on behalf of Lummi Nation. This link states, "If you experience technical difficulties submitting your comment please contact the person listed at the bottom of this page." There is no person listed at the bottom of the page, so I am utilizing this space to communicate intentions with the uploaded letter. Please verify the Lummi Nation comment letter will be documented for all three plans by emailing Kristin Lowell, Water Resources Manager Kristinl@lummi.nsn.gov.

LUMMI INDIAN BUSINESS COUNCIL
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DEPARTMENT_____DIRECT NO. _____

August 27, 2025

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

Subject: Comments on Draft Nonpoint Plan, Draft Puget Sound Nutrient Reduction Plan, and Draft Puget Sound Nutrient General Permit

Dear Mr. Sixkiller:

On behalf of the Lummi Nation, we appreciate the opportunity to comment on the Draft 2025 Washington Nonpoint Source Management Plan, the Draft Puget Sound Nutrient Reduction Plan, and the Draft Puget Sound Nutrient General Permit. Protecting the health and resilience of Puget Sound is vital to our community, treaty-protected resources, and future generations. We value this opportunity to provide input and strengthen these important initiatives.

The Lummi Nation is a federally recognized Indian Tribe governed by the Lummi Indian Business Council. Located on the western boundary of Whatcom County, WA. the Lummi Indian Reservation encompasses parts of the Georgia Strait, Lummi Bay, Hale Passage, Bellingham Bay, and the Nooksack and Lummi river watersheds. The Reservation is part of the broader Lummi homeland, which the tribe has inhabited since time immemorial.

Fishing, gathering, hunting, and harvesting natural resources of the Salish Sea and beyond are central to the Lummi way of life, or Schelangen. The Lummi Nation holds federally reserved treaty rights to salmon, shellfish, and other aquatic resources throughout our usual and accustomed fishing areas, as affirmed in United States v. Washington (the Boldt Decision). Water quality is inseparable from the Lummi economy, food security, and culture. When waters are impaired, our rights and way of life are threatened.

Nutrient pollution is one of the most pressing ecological threats to Puget Sound and the broader Salish Sea. Excess nitrogen drives low dissolved oxygen, harmful algal blooms, and acidification, degrading habitats and harvest areas. Failure to effectively manage nutrient pollution imperils salmon recovery,

shellfish harvest, the food web, and the countless ways these resources sustain and enrich human lives. Without effective use of existing Clean Water Act and WA regulatory tools that provide reasonable assurance of meeting water quality standards combined with milestones and appropriate regulatory backstops, ECYs well-meaning efforts will once-again be perceived as kicking the can down the road.

Our comments below highlight LNR's main concerns with Ecology's approach to nutrients management and the draft plans and permit. We also provide recommended steps to improve nutrients management. While the Draft Management Plan, the Draft Puget Sound Nutrient Reduction Plan, and the Draft Puget Sound Nutrient General Permit are attempts at administrative efficiencies, as written, they do not provide assurance that water quality standards will be met with effective milestones Nonpoint Source under an appropriate timeline to protect (and restore) Treaty Resources. In addition, important Clean Water Act tools are grossly under-utilized in WRIA 1 and the Salish Sea providing a fragmented framework for water quality protection.

A. Assessment Gaps

The Draft Nonpoint Source Management Plan, the Draft Puget Sound Nutrient Reduction Plan, and the Draft Puget Sound Nutrient General Permit depend on a foundation of water quality monitoring and water body assessments, that adequately document beneficial use impairment of WA waterbodies. Meaningful nutrient reduction cannot occur without thorough and ecologically relevant water monitoring and assessment. Currently, most marine and estuarine areas of the Salish Sea lack assessment for nutrients, dissolved oxygen, and related impairments. This leaves significant data gaps that obscure the true extent of impairment of beneficial uses. Ecology has relied on small, rectangular assessment units (AUs) that are not ecologically meaningful nor representative. This approach creates an unmanageable number of AUs that are impossible to fully assess within a reasonable time frame. It also prevents a holistic understanding of whole waterbodies and interconnected nearshore systems in a way that reflects how our communities, fish, and shellfish actually use these waters.

EPA guidance under the Clean Water Act requires that waterbody assessments be conducted in a manner that protects all designated uses, including Tribal subsistence harvest and treaty-reserved fishing rights. Without complete, ecologically coherent waterbody assessments, the State cannot fully identify or prioritize impaired waters, nor can it establish the pollutant load allocations necessary to restore those waters.

B. Longstanding Impairments

Many areas of the Salish Sea, including parts of Bellingham Bay, have been listed as impaired under CWA §303(d) for decades. Despite this, Ecology has not developed comprehensive Total Maximum Daily Loads (TMDLs) for many of these waters. Instead, the state proposes an Advance Restoration Plan (ARP) framework and a weakened permit system that delays most enforceable nutrient limits until 2048–2055. There are also efforts to revise Washington's dissolved oxygen standards and possibly attribute these impairments to natural conditions. These deferrals conflict with §303(d) and §319(b) of the Clean Water Act, which require timely TMDLs and measurable, enforceable actions to assure water quality standards will be met. The Clean Water Act does not authorize indefinite reliance on voluntary programs in place of TMDLs. The proposed approach with the Draft NPS Management Plan, Draft Puget Sound

Nutrient Reduction Plan, and Draft Puget Sound Nutrient General Permit should provide assurances that water quality standards will be met.

C. Impacts on the Lummi Nation

Salmon and shellfish are central to Lummi nutrition, economy, and culture. They ensure food security, support meaningful employment through fisheries, and offer recreational and educational opportunities. For the Lummi Nation, these resources are the foundation of community, cultural identity, and intergenerational knowledge. For the Lummi Nation, ineffective nutrient management with unnecessary delays are not abstract. They represent:

i. Erosion of Treaty Rights: The right to harvest salmon and shellfish is directly tied to water quality and ecological productivity. Nutrient pollution is undermining these resources, effectively diminishing our rights.

ii. Cultural Harm: Salmon and shellfish are central to Lummi culture. Impaired waters break cultural continuity.

iii. Economic Impacts: Tribal economies dependent on fisheries and shellfish harvests suffer from closures, fish declines, and degraded habitat.

iv. Disproportionate Harm: For Tribal communities already burdened by the historical loss of resources, further decades of delay for enforceable nutrient controls is inequitable and unacceptable.

Several examples highlight the importance of these concerns for the Lummi people. Nutrient-driven hypoxia in Bellingham Bay is an urgent issue because time is running out for local salmon stocks, and they face so many challenges to their survival. In WRIA 1, high rates of pre-spawn mortality now occur frequently. These deaths are linked to poor water quality, which includes elevated temperatures, low dissolved oxygen, and are likely also linked to nutrient-related algal blooms, and toxic substances. Such problems have a long history in Bellingham Bay and the broader Salish Sea.

Excessive nutrients also contribute to harmful algal blooms like those that cause paralytic shellfish poisoning (PSP). In July and August 2025, the Washington Department of Health closed shellfish harvesting across all of Whatcom County's marine waters, including Bellingham Bay, Drayton Harbor, and Birch Bay, due to unsafe levels of PSP toxins. These closures are a direct loss of the "shellfish harvest" designated beneficial use under Washington's water quality standards. The repeated toxin closures in Whatcom County, driven by harmful algal blooms (Alexandrium spp.), are caused and worsened by nutrient over-enrichment from human activities. Nutrient-fueled harmful algal blooms are anthropogenically worsened and should be managed as a regulatory impairment under the CWA. They also constitute a loss of Lummi Nation's ability to harvest shellfish despite treaty rights in our usual and accustomed grounds and stations.

D. Gaps in the Draft Plans and Permit

The three draft documents contain important elements, but fall short in fundamental ways:

i. Failure to Develop Timely TMDLs: Neither the Draft NPS Plan nor the Draft Nutrient Reduction Plan includes nutrient TMDLs, despite decades of §303(d) listings. The Draft Nutrient Reduction Plan is not intended as a formal Category 4b Alternative to TMDLs in the WA Water Quality Assessment Report and defers TMDLs development for 20+ years. This means impaired waters will likely remain 303(d)-listed for decades to come without a clear and timely path to meeting water quality standards.

ii. Overreliance on Voluntary Frameworks: The Draft Nutrient Reduction Plan and General Permit rely on "action levels," optimization, and planning exercises instead of enforceable effluent limits and pollutant load allocations. The Pollution Control Hearings Board's February 2025 ruling invalidating mandatory application of the first draftPuget Sound Nutrient General Permit demonstrates the fragility of this approach.

iii. Delayed Accountability: Proposing enforceable allocations only after 2048 amounts to another generation of delay. This perpetuates the harm to communities and ecology, some of which could be irreversible.

iv. Omitted Sources: The approach leaves out many key nutrient sources. The General Permit only applies to municipal WWTPs discharging directly to marine waters, while inland WWTPs, industrial dischargers, stormwater, and agricultural/nonpoint sources remain largely unregulated for nutrients. The Draft Nutrient Reduction Plan acknowledges these significant sources but does not impose binding requirements. Nutrient loads from point source dischargers in tributary watersheds are also not addressed by the draft permit.

v. Lack of Tribal Emphasis: While the documents mention Tribal coordination and recovery for salmon and shellfish, they do not explicitly include treaty rights and trust responsibilities as key drivers of nutrient management priorities.

E. Proposed Actions

To protect and restore Salish Sea waters, comply with the Clean Water Act, and honor federal trust responsibilities, a coordinated implementation roadmap is needed that links the Nonpoint Source Management Plan, the Puget Sound Nutrient Reduction Plan, and NPDES permit requirements with key nutrient reduction milestones, using existing Clean Water Act tools that provide assurance that water quality standards will be met. The following actions are proposed:

i. Improve Water Body Assessments: Develop a stronger monitoring and assessment strategy for marine waters of the Salish Sea with a goal to comprehensively assess all water bodies in a meaningful way. This should include larger assessment units that are more ecologically relevant

and administratively manageable. Revisit monitoring data regularly to monitor beneficial use attainment.

ii. Develop Timely TMDLs: Nutrient TMDLs should be developed and submitted for impaired waters. Advanced Restoration Plans with voluntary frameworks cannot substitute for TMDLs.

If not developing TMDLs, Advanced Restoration Plans should be submitted to EPA for approval as a CWA (WA Water Quality Assessment Report) Category 4b Alternative to a TMDL. Either TMDLs or the 4b alternative would provide better assurance of meeting water quality standards and protecting beneficial uses by including pollutant load allocations and enforceable nutrient reduction mechanisms.

iii. Enforceable Load Allocations: The state's nutrient management approach must assign enforceable load and wasteload allocations to all point sources Wastewater Treatment Plants, industrial facilities, stormwater systems) and nonpoint sources (agriculture, septic, forestry), not just planning targets.

iv. Permit-Based Limits: Ecology should include an expedited timeline for enforceable nitrogen effluent limits in NPDES permits. The "action levels" and optimization requirements in the draft general permit are inadequate substitutes.

v. Accountability Across Sectors: Establish enforceable milestones for municipal WWTPs, industrial point sources, stormwater discharges, and nonpoint contributors within a reasonable time, ensuring all major nutrient sources contribute to improved water quality.

vi. Tribal Engagement: Establish a formal Tribal coordination framework as recommended by the Northwest Indian Fisheries Commission to ensure meaningful and effective consultation for nutrient management and water quality protection. This is especially necessary in shared jurisdictional waters. Integrating clearly with existing salmon recovery frameworks would maximize effectiveness. This coordination will help ensure salmon and shellfish recovery, treaty rights, and trust responsibilities inform nutrient management decisions.

vii. NPS Enforcement: The Nonpoint Source Nonpoint Source Management Plan, and/or the Puget Sound Nutrient Reduction Plan need effective systems for tracking and following up on regulatory enforcement when voluntary measures do not work. The Water Pollution Control Act authorizes Ecology to regulate and enforce against nonpoint sources of pollution. Some landowners have been referred to Ecology for enforcement after failing to respond to outreach and other voluntary pollution control efforts. However, it remains difficult to obtain information about the results of these referrals or about Ecology's enforcement actions on nonpoint source pollution. For example, LNR made a PRR in June 2025 seeking this information and received minimal responsive documentation. It's clear that enforcement is lacking or that ERTS is ineffective for meaningful tracking and disclosure.

F. EPA Oversight: EPA Region 10 should approve these plans and permit only if they include mechanisms for monitoring and assessing beneficial use of waterbodies and moving impaired waterbodies from Category 5 to Category 4A or 4B of the WA Water Quality Assessment Report.

G. Conclusion

The Salish Sea is already experiencing the ecological and cultural consequences of decades of delay. The draft Nonpoint Source Management Plan, the Draft Puget Sound Nutrient Reduction Plan, and the Draft Puget Sound Nutrient General Permit are a step forward, but they do not go far enough. Without improved monitoring and assessment frameworks, immediate nutrient TMDLs, and enforceable pollutant load allocations, these draft plans and permit risk extending harm for another generation.

The Clean Water Act requires TMDLs or an EPA-approved 4b alternative for impaired waters, and our treaty rights demand enforceable mechanisms with reasonable timelines and assurances that water quality standards will be met. We call on Ecology and EPA to reject reliance on voluntary frameworks and to adopt nutrient TMDLs or a formal 4b alternative with enforceable load allocations that protect water quality, fulfill trust responsibilities, and honor Tribal treaty rights.

Respectfully submitted,

Victor Johnson

Victor Johnson
Deputy Director II
Lummi Natural Resources