



# MAKAH TRIBAL COUNCIL

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*The Makah Tribe is an equal opportunity employer.*



Federal Register, 82 FR 17793

Docket Number No. EPA-HQ-OA-2017-0190:

The Makah Tribal Council would reply to the **Executive Order 13777, “Enforcing the Regulatory Reform Agenda”**, in which the Environmental Protection Agency is seeking input on regulations that may be appropriate for repeal, replacement, or modification for the Makah Tribal Members.

The Makah Indian Tribe, a federally recognized Treaty Tribe of Neah Bay, Washington, submits these comments in response to Executive Order (EO) 13777 with a profound sovereign interest in the outcome. In general, we find the regulations of the Environmental Protection Agency to positively affect our Nation and to be absolutely necessary for the health and wellbeing of our people and all Americans. The language in the EO and associated press releases emphasize the perspective that these regulations are onerous and an abuse of federal authority. We disagree. We believe any “regulatory burdens” associated with these rules are fundamentally necessary for the protection of our most basic needs of clean air and clean water. These are essential to support our treaty reserved rights to resources and the protection and utilization of those resources. We believe any changes to these regulations must be vetted via comprehensive government-to-government consultation with Indian Tribal Governments.

Unfortunately, we have extensive experience with threats to the protection our natural resources and our treaty rights to utilize those resources. We recognize that while the existing regulations are complicated, they are the positive result of public processes that utilize a combination of the best available science, public participation, and legal input. Turning over responsibility of these matters to states and local jurisdictions, as you suggest, would be ineffective and not only contrary, but damaging to the ability of the federal government to meet its Trust Responsibility to protect tribal resources. Pollution does not recognize or stop at state borders, and the budget cuts that this administration has proposed for the EPA would negatively impact the funding for states, local environmental agencies, and tribal governments, rendering them with inadequate ability to monitor and enforce said regulations. The idea that these regulations hinder job creation is contrary to our experience; the EPA and its programs have been job creators in Neah Bay supporting tribal members in our Environmental and Fisheries departments. These regulations and programs allow us to provide clean water to our residents, protect our environment, our culture, and our way of life. Included below are specific details of how several regulations positively impact the Makah Indian Tribe, and why we believe that deferring to industry interests and weakening these regulations would be a violation of the Federal Trust Responsibility between the United States and the Makah Tribe. We also support and echo the comments submitted by the Northwest Indian Fish Commission which highlight the procedures

that must be followed if any EPA rules are changed as a result of this action.

The ancestral homeland of the Makah Tribe, the “People of the Cape,” is located at the Northwest point of the Olympic Peninsula in Washington State. The current reservation is 30,067 acres and our treaty protected area includes Usual and Accustomed Hunting and Fishing Stations (U&A) in waters of the United States that extend off the outer coastline north from 48° 02’15” N latitude and east of 125° 44’00” W longitude, and in the western end of the Strait of Juan de Fuca east to 123° 41’56” W. Cape Flattery.

The existence and well-being of the Makah people have always been closely tied to our relationship with the environment, especially the ocean. The Makah hold a spiritual reverence and have inexorable ties to the ocean and its bountiful natural resources. Current tribal members are charged by tradition with ensuring the continuation of our culture through the preservation of, and continued access to, our natural resources. The 1855 Treaty of Neah Bay reserves the Makah’s right to retain and exercise inherent sovereign authority over our treaty protected area and ownership of the resources therein. The Makah Tribe’s view of environmental health is all encompassing, with foresight that includes planning for all future generations.

The 1855 Treaty of Neah Bay also created the special relationship that exists between the federal government and the Makah Tribe called “Trust Responsibility.” Federal Indian Trust Responsibility is a legal obligation under which the United States meets its moral and fiduciary obligations to uphold the highest responsibility and trust toward American Indian tribes. The Federal Indian Trust Responsibility holds the United States legally responsible for the protection of tribal lands, assets, resources, and treaty rights for the benefit of the Tribe. The Supreme Court of the United States has reaffirmed in numerous decisions that the Federal Indian Trust Responsibility entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of dealings between the U.S. and the tribes.<sup>1</sup>

We believe there is a clearly established and shared federal and tribal understanding that the resources encompassed by this Trust Responsibility for Makah include: 1.) Real Estate; 2.) Forested Lands; and 3.) All other natural resources. These resources are identified by the Makah Tribal Council as “Treaty Trust Protected Resources.” Therefore, as an agency of the federal government with a mission to protect the environment, the Environmental Protection Agency must meet their Trust Responsibility to assist the Makah Tribal Council in protecting the Tribe’s environmental resources. The weakening of EPA regulations would hinder their ability to fulfill their Trust Responsibility. Washington and the other states do not have the same relationship with the Makah and the other federally recognized Tribes across the country; there is no guarantee of the trust obligations of the federal government being fulfilled by the states despite the desires of this administration to transfer environmental regulatory power the states.

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<sup>1</sup> Seminole Nation v. United States 1942

Furthermore, as a “Resource Trustee,” the Makah Tribal Council fully recognizes the environment and its resources to be at the foundation of our cultural and economic way of life, and accepts the protection and sustainability of the both the marine and terrestrial environments and their resources as an essential priority within our Tribal Trust Responsibility. Weakening of EPA regulations and programs would negatively impact our ability to carry out this internal responsibility, affecting our ability to act in a self-determined manner. Given this responsibility, we are especially concerned with the repeal, modification and, or replacement of a number of EPA regulations.

*Clean Power Plan, or Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (RIN 2060-AR33)*

The Makah Tribal Council **opposes** the repeal of the Clean Power Plan. As per Executive Order 13777, “Enforcing the Regulatory Reform Agenda”, the EPA, along with other regulatory agencies, are establishing Task Forces that will evaluate existing regulations and “make recommendations to the agency head regarding their repeal, replacement, or modification” of any unnecessary regulations that would:

- 1) Eliminate jobs or inhibit job creation;
- 2) Are outdated, unnecessary, or ineffective; or
- 3) Impose costs that exceed benefits.

In reference to the Clean Power Plan, the Makah Tribal Council believes that this regulation does not meet any of the above three criteria. Firstly, we believe that the Clean Power Plan will add jobs to the economy through energy diversification, which will also diversify the energy market in Washington State.<sup>2</sup> The Clean Power Plan is not a war on coal, and by many analyses coal will still be part of our nation’s energy portfolio by 2030.<sup>3</sup> The Clean Power Plan will help sustain historical industries reliant on fossil fuels while supporting exploration and usage of other alternative energy sources. For the Makah Tribe, the Clean Power Plan is also a step towards energy independence, which will greatly benefit our remote community.

Secondly, carbon emissions are at an unprecedented level, just recently surpassing 410 parts per million<sup>4</sup>, and will only continue to grow without serious dedication to the development of renewable energy. There is clear causal link between anthropogenic carbon emissions and many of the environmental changes that we are experiencing (i.e. warmer waters, ocean acidification, warmer air temperatures, increased droughts and forest fires, stronger weather systems and storms, etc...). Mitigating these impacts at a national and global level are now crucial and

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<sup>2</sup> <https://energy.gov/downloads/2017-us-energy-and-employment-report>

<sup>3</sup> <http://www.ucsusa.org/clean-energy/increase-renewable-energy/clean-power-plan-national-opportunity#.WRSOBOV0a00>

<sup>4</sup> <https://scripps.ucsd.edu/programs/keelingcurve/>

necessary, especially for communities like the Makah Tribe whose livelihood and culture are completely dependent on the natural environment and its resources. The Clean Power Plan creates ways of reducing carbon emissions while benefitting and modernizing the U.S. economy. States such as New Mexico<sup>5</sup>, Illinois<sup>6</sup>, Minnesota<sup>7</sup>, Pennsylvania<sup>8</sup>, and Virginia<sup>9</sup> have conducted health and economic cost-benefit analyses and concluded that the Clean Power Plan will benefit their state's economies and the health of their citizens.

Finally, the benefits from the Clean Power Plan far exceed the costs. The better air quality across the nation due to decreases in soot and smog will lead to health benefits worth up to \$34 billion. The co-benefits of reduction in premature deaths, heart attacks, asthma attacks, and other environmentally related illnesses (many of which affect the Makah Tribe), will collectively decrease health insurance costs by \$4 for every \$1 invested into the Clean Power Plan. In addition, the Clean Power Plan will help reduce other air toxins, such as mercury and sulfur among others, which will also lead to a wide-ranging health benefits.<sup>10</sup>

There are also countless economic opportunities. At a family level, households can save up to \$17/month in energy bills by 2030. At the national level, this will amount to about \$30.5 billion in savings by 2030. The diversification of the nation's energy portfolio will stimulate more than \$216 billion in capital investments into the U.S. economy.<sup>11</sup> Furthermore, the carbon allowances and the carbon trading program under the Clean Power Plan will be able to generate millions of dollars at the state level, with the biggest beneficiaries being Texas (\$2,102 million), Florida (\$1,130 million), Pennsylvania (\$988 million), Indiana (\$849 million), and Ohio (\$819 million).<sup>12,13</sup> The net revenue from these carbon allowances and the carbon trading program will be worth \$17.8 billion.

*Clean Water Rule (40 CFR Parts 110, 112, 116, 117, 122, 230, 232, 300, 302, and 401)*

Our economy and culture are dependent upon clean water and the Makah Tribe does **not** support the repeal, modification, or replacement of this rule. We do not find that this rule meets any of the aforementioned criteria from the EO and we support the recent definition of the scope of

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<sup>5</sup> <http://www.ucsusa.org/clean-energy/increase-renewable-energy/clean-power-plan-new-mexico#.WRNdfOV0bIU>

<sup>6</sup> <http://www.ucsusa.org/clean-energy/increase-renewable-energy/clean-power-plan-illinois#.WRSOCOV0a00>

<sup>7</sup> <http://www.ucsusa.org/clean-energy/increase-renewable-energy/clean-power-plan-minnesota#.WRSOCOV0a00>

<sup>8</sup> <http://www.ucsusa.org/clean-energy/increase-renewable-energy/clean-power-plan-pennsylvania#.WRSOB-V0a00>

<sup>9</sup> <http://www.ucsusa.org/clean-energy/increase-renewable-energy/meeting-and-exceeding-clean-power-plan-virginia#.WRSOAeV0a00>

<sup>10</sup> [http://blog.ucsusa.org/john-rogers/cost-of-epa-climate-plan-836?\\_ga=2.21167933.785551318.1494436819-2023635938.1494436819](http://blog.ucsusa.org/john-rogers/cost-of-epa-climate-plan-836?_ga=2.21167933.785551318.1494436819-2023635938.1494436819)

<sup>11</sup> <http://www.ucsusa.org/clean-energy/increase-renewable-energy/accelerating-toward-clean-energy-economy#.WRSN8uV0a00>

<sup>12</sup> <http://www.ucsusa.org/clean-energy/increase-renewable-energy/clean-power-plan-national-opportunity#.WRSOBOV0a00>

<sup>13</sup> <http://www.c2es.org/newsroom/articles/carbon-trading-under-clean-power-plan>

waters covered under the Clean Water Act. This rule does not eliminate or inhibit jobs, it actually creates and supports them.

Fishing is the primary source of employment and the driver of our tribal economy; subsistence fishing is also commonplace and vital in Neah Bay. The quality of the waters throughout regional watersheds affect our fish, and these impacts originate in areas well beyond our own regulatory scope. The anadromous nature of salmon, an iconic species for the entire Pacific Northwest, necessitates a well-coordinated and broad approach to improving water quality. The Clean Waters Rule acknowledges that there are downstream impacts of pollution and protects those who are vulnerable from that pollution.

Tourism, another driver of the local economy, also relies on clean water. In Washington State alone, there are 60,250 jobs and \$4.5 billion in annual economic activity connected to hunting, sport fishing, wildlife watching, and commercial fishing, all activities reliant on clean water.<sup>14</sup> In 2014, Washington residents took an estimated 4.1 million trips to the Washington coast, translating to \$481 million in tourism related expenditures that benefited coastal communities.<sup>15</sup> These industries and associated jobs, which benefit from the Clean Water Rule, must be weighed with the same value as the industries that claim it is burdensome.

*Oil Pollution Prevention (40 CFR, Chapter I, Subchapter D, Part 112)*

We vigorously oppose any repeal, replacement, or modification of the Oil Pollution Prevention regulations unless they are revised with the intention of making more stringent, improving spill response capacity, or increasing the size of the Oil Spill Liability Trust Fund. Oil spills, like all major threats of pollution and that we are protected from because of EPA regulations, pose a great risk to our way of life. Our previous experience with oil spills has demonstrated that even though the probability of an oil spill is small, the potential consequences to our precious ocean resources are very high. Over 1.5 million gallons of oil has been spilled in our treaty area since the early 1970s, and the Makah have witnessed firsthand the devastating effects of oil spilled by the *General Mieggs*, the *Nesstucca* barge and the *Tenyo Maru*. These regulations are effective, are beneficial to the communities that are at risk from spills, and protect jobs. They are not outdated; some have been updated with lessons learned from recent spills. We strongly oppose the undoing of any safety regulations that were created in the wake of the Deepwater Horizons event.<sup>16</sup> It would be particularly illogical to relax regulations while simultaneously calling for more drilling. An oil spill would have a major negative impact our local economy and jobs and

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<sup>14</sup> Washington Department of Fish and Wildlife. Fish, wildlife, and Washington's Economy. [http://wdfw.wa.gov/publications/01145/wdfw\\_01145.pdf](http://wdfw.wa.gov/publications/01145/wdfw_01145.pdf)

<sup>15</sup> Surfrider. Non-consumptive recreation along the Washington Coast. [http://surfridercdn.surfrider.org/images/uploads/publications/FNL\\_Surfrider\\_WA\\_Report.pdf](http://surfridercdn.surfrider.org/images/uploads/publications/FNL_Surfrider_WA_Report.pdf)

<sup>16</sup> <https://www.nytimes.com/2017/04/27/us/politics/trump-offshore-drilling.html>



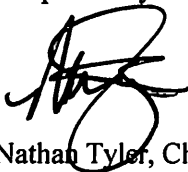
have broad, negative impacts on the economy across the region. The consequences of Deepwater Horizons clearly show that the costs of spills far outweigh the costs of being properly prepared under the mandates of current regulations. Just a few estimates of lost revenue following Deepwater Horizons include:

- \$22.7 billion projected lost in Gulf Coast tourism dollars through 2013.
- \$247 million lost in the initial closures of Gulf of Mexico fisheries with a projected total loss of \$8.7 billion and a potential loss of 22,000 jobs by 2020.<sup>17</sup>

The Tribal fisheries throughout the state, plus the other jobs and multi-billion dollar economy in Washington associated with marine resources mandate the highest level of protection from oil spills.

The Makah Tribe interprets that the federal government is fulfilling its Trust Responsibility to the Makah people through environmental regulations that protect the Tribe's economy, culture, and livelihood for now and for future generations. This includes, but is not limited to, the Clean Power Plan, The Clean Water Rule, and Oil Spill Prevention regulations. The Clean Power Plan will: create jobs and opportunities across the nation and for the Makah Tribe by creating opportunities to diversify our energy portfolio; mitigate the effects of carbon emissions at a crucial time where carbon just reached unprecedented levels; and result in multiple economic and health benefits that far outweigh the near-term costs. The Clean Water Rule and Oil Spill Prevention regulations protect our waters, culture, and economy. Therefore, the Makah Tribe does **not** support the repeal of any of the aforementioned regulations or the host of other EPA regulations that protect the environment. We also reiterate that if, despite the widespread oppositions to these changes by us and the majority of Americans,<sup>18</sup> any regulatory changes occur, we must be consulted on a government-to government level. Please allow the EPA to continue to do the necessary work of providing fundamental protections for our health and the health of our future generations.

Respectfully submitted,



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<sup>17</sup> NRDC, 2015. Summary of Information concerning the Ecological and Economic Impacts of the BP Deepwater Horizon Oil Spill Disaster. <https://www.nrdc.org/sites/default/files/gulfspill-impacts-summary-IP.pdf>

<sup>18</sup> <http://www.reuters.com/article/us-usa-trump-environment-idUSKBN1511DU>