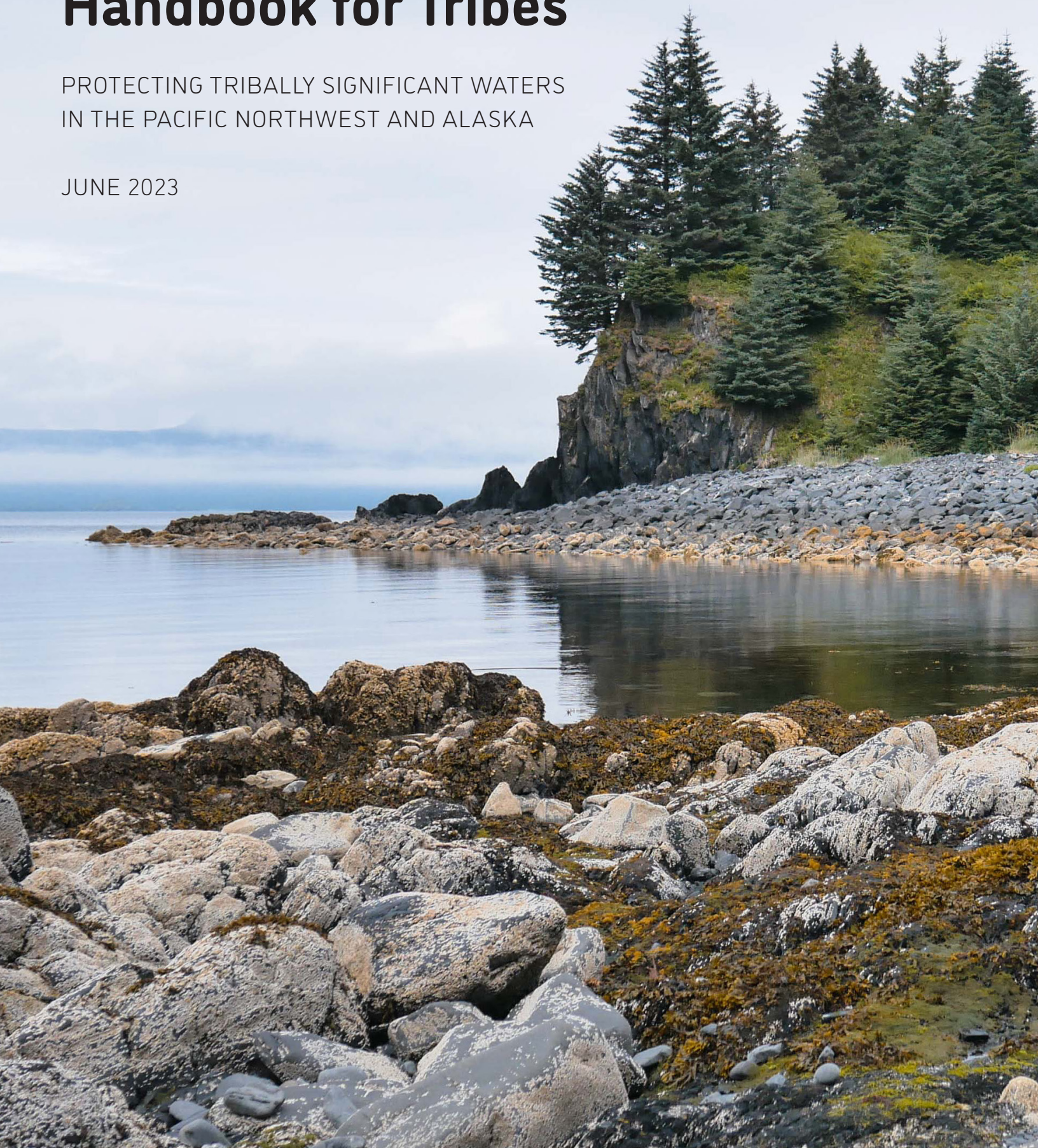


The Clean Water Act Handbook for Tribes

PROTECTING TRIBALLY SIGNIFICANT WATERS
IN THE PACIFIC NORTHWEST AND ALASKA

JUNE 2023



This Handbook is a living document. We welcome feedback on it as we bring it to life in the region.

Please share your thoughts with randi@region10rtoc.net and gayle@waterpolicypathways.com.

Thanks to those who have generously provided their input:

Raymond Paddock III, Willard Hand, Ted Knight, Brian Crossley, CRAG Law Center, and Western Environmental Law Center

Environmental Protection Agency staff: Maya Eberhardt, Jayshika Ramrakha, Catherine Gockel, MaryLou Soscia, Sally Goodman, Kelly McDonald, Adam Baron, Ted Yackulic, and Rachel Renkens

State agency staff from Alaska Department of Environmental Conservation, Idaho Department of Environmental Quality, Washington Department of Ecology, and Oregon Department of Environmental Quality.

Continued support and guidance from Randi Madison, Rick Eichstaedt, and Reanna Hicks.

Design by Alison Kleiman

Written by Gayle Killam, Water Policy Pathways

U.S. EPA Region10 Tribal Operations Committee

The Region 10 Tribal Operations Committee (RTOC) plays an important role in relating varied Tribal interests to EPA. RTOC is a Tribally elected, Tribal advisory committee to EPA Region 10. Eleven Tribal representatives (and eleven alternates) from Alaska, Idaho, Oregon, and Washington sit on the committee with the EPA member counterparts: the Regional Administrator, Regional Deputy Administrator, Director of the Office of the Regional Administrator, and the Manager of the Tribal Trust and Assistance Unit.

The year 2021 marks the 25th Anniversary of the Region 10 RTOC Charter.

This Handbook is funded by [U.S. EPA Indian General Assistance Program](#).

In 1992, Congress passed the Indian Environmental General Assistance Program Act. This act authorized EPA to provide General Assistance Program (GAP) grants to federally-recognized Tribes and Tribal consortia for planning, developing and establishing environmental protection programs in Indian country, and for developing and implementing solid and hazardous waste programs on Tribal lands.

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RTOC Tribal Leadership Message

The Region 10 Tribal Operations Committee (RTOC) plays an important role in relating varied tribal interests to EPA. RTOC is a tribally elected, tribal advisory committee to EPA Region 10. Eleven Tribal representatives (and eleven alternates) from Alaska, Idaho, Oregon, and Washington sit on the committee with the EPA member counterparts: the Regional Administrator, Regional Deputy Administrator, Director of the Office of the Regional Administrator and the Manager of the Tribal Trust and Assistance Unit.

It is with great honor that our Tribal Caucus, the elected tribal leaders of the Region 10 RTOC committee serve the 271 tribes in our Region: Alaska, Idaho, Oregon and Washington States. We have partnered with Water Policy Pathways to compile this handbook to assist tribes and villages in understanding the Clean Water Act. We hope that this handbook provides a means for your tribes and village governments to use the power of the Act to help protect the waters that sustain us. As we all know well, Water Is Life.

The year 2021 marked the 25th Anniversary of the Region 10 RTOC Charter, and 2022 marked the 50th anniversary of the Clean Water Act.

Although the Clean Water Act is not the only way we can protect our waters, it is a substantial tool for Tribes to leverage their sovereignty to protect mother earth and in turn, our own communities. This handbook is designed to be a "working document". As laws and policy change surrounding the Clean Water Act, so will this handbook.

Our committee is here to assist you in your Tribe's journey in stewarding the land, air and waters that connect Tribal people to our environment. We welcome your feedback, and welcome requests for our committee in processing through the information here.

Sincerely,

Raymond Paddock
Region 10 RTOC Tribal Chair

Find out more about us on the web at Region10rtoc.net or follow us on [Facebook](#), [Instagram](#) and [Twitter](#) @region10rtoc.



Why does the Clean Water Act matter to Tribes and Alaska Native Villages

This handbook is geared toward protection of priority water resources, aquatic and terrestrial species, and First Foods to support Indigenous ways of life in Alaska and the Pacific Northwest. The focus of the publication is on Tribal and Alaskan Native Village governments, but it may also be useful to Tribal and Alaskan Native Village non-governmental organizations, regional and village corporations, and Tribal and Alaskan Native Village members.

Subsistence fishing, consumption of traditional amounts of fish and shellfish, healthy wetlands for cultivation of First Foods, water-based ceremonies, safe drinking water, and so many more uses of water resources can and should be protected by the federal Clean Water Act.

The Clean Water Act (CWA) is the primary federal water quality law drafted to address grave industrial and municipal problems in the Nation's waters in 1972. It differs from its predecessors by combining the power of national water quality standards with requirements to use cutting edge technology to meet those standards. The CWA provides opportunities for Tribal governments, Alaskan Native Village governments and corporations, and Indigenous non-governmental organizations and individuals in the Pacific Northwest and Alaska to influence, and in some cases administer, the water quality programs that define and address pollution in rivers, streams, wetlands, lakes, estuaries, and coastal waters.

Tribes in the lower 48 states are increasingly exercising their sovereign authority, as well as the authorities that are recognized by the Clean Water Act, to develop and administer their own water quality programs and to influence programs run by other neighboring entities. Alaska Native Villages have been limited in their abilities to do so, but that is changing.

WHAT ARE THE PROGRAMS THAT CAN BE ADMINISTERED BY TRIBES?

The programs that can be administered by Tribes include those that (a) control pollution discharged into the waters (National Pollutant Discharge Elimination System – NPDES), (b) identify how waters are used and the levels of pollution control necessary to protect them (Water Quality Standards), (c) protect wetlands and other waters from dredging and filling (Dredge and Fill Permits – Section 404), (d) allow review of federal permits and licenses to ensure compliance with water quality standards and requirements, (e) identify and address problems in water bodies (Impaired Waters and Water Quality Restoration – Section 303(d) and Total Maximum Daily Loads (TMDL)), (f) fund pollution control programs (Section 106), (g) fund nonpoint source pollution control (Section 319), and (h) fund clean water infrastructure projects (CWISA).

There are many CWA program resources available to Tribal and Alaskan Native Village governments from the Environmental Protection Agency (EPA), the National Tribal Water Council, Tribal governments and consortia, non-governmental organizations (NGOs), public policy and law centers, state and local governments, and academic institutions. (See *Where to Find Out More*, p.72) There are so many resources available that it may be overwhelming to try to make sense of them all, and to figure out what YOU need to know to engage with the CWA. Because your time is limited, it is important that you are able to assess what level of engagement is the most valuable. Level of engagement refers to where you choose to focus your efforts – e.g., consultation, public comment, review, appeal, compliance monitoring, or enforcement. Such efforts can be directed at the federal law or regulation; Tribal law or standards; state law, regulation, standards, or permits; or local regulations or permits. It is our hope that this handbook will help you navigate through the opportunities and prioritize your efforts.



Perhaps you or your colleagues already know a great deal about the Clean Water Act, but you don't have the time needed to share this knowledge. This handbook can help new staff digest some of the basics and learn where to find more information as needed.

The [50th anniversary](#) of the passage of the CWA was on October 18, 2022. This anniversary has provided an opportunity to revisit ways the CWA has not adequately served Tribal and Alaskan Native Village interests and a jumping off point for heightened levels of engagement and advocacy from those communities.

This handbook may serve as a template for similar work in other regions of the country.

WHAT YOU WILL FIND IN THIS HANDBOOK

The handbook introduces the ways Tribes and Alaskan Native Villages can use the CWA. A brief summary of relevant CWA programs and funding opportunities available to Tribes and Alaskan Native Villages is provided. Information about the implementation of the Act in Alaska, Idaho, Washington, and Oregon is prefaced by examples of engagement by Tribes and Alaska Native Villages.

The handbook also shares examples of CWA application by Tribes in other parts of the country. Links to organizations and resources are included in the back for readers who want to pursue more information.

Executive Summary

Indigenous resources and practices can and should be protected by the federal Clean Water Act (CWA). The CWA provides opportunities for Tribal governments, Alaskan Native Village governments and corporations, and Indigenous non-governmental organizations and individuals in the Pacific Northwest and Alaska to influence, and in some cases administer, the water quality programs that define and address pollution in rivers, streams, wetlands, lakes, estuaries, and coastal waters.

There are many CWA program resources available to Tribal and Alaskan Native Village governments from many sources. There are so many resources available that it may be overwhelming to try to figure out what YOU need to know to engage with the CWA. It is our hope that this handbook will help you navigate through the opportunities and prioritize your efforts.

The handbook focuses on implementation of the Act in Alaska, Idaho, Washington, and Oregon, and each state section is prefaced by examples of engagement by Tribes and Alaska Native Villages. An overview of basic CWA programs is provided as well as additional examples of CWA application by Tribes in other parts of the country. Links to organizations and resources are included in the back for readers who want to pursue more information.

Options for Taking Advantage of the Clean Water Act

There are various ways that Tribes in the lower 48, and Alaska Native Villages, can engage with the Clean Water Act:

1. Administration of CWA programs.
2. Tribal consultation.
3. Required public participation.

To be approved to administer any one of several CWA programs, the Act requires that Tribes are [federally-recognized](#),¹ and they must seek “treatment in a manner similar to states,” otherwise known as [TAS](#). There is a different TAS for each CWA program.² To date, 80 Tribes have gone through this process to administer the [water quality standards program](#).³

The EPA is committed to [Tribal Consultation](#), however, it is impossible for Tribes to engage in every consultation opportunity. When they do engage, having the knowledge about CWA programs can be a useful tool.

Public involvement is required in every one of the CWA programs, and whether or not Tribes have been approved to administer those programs, Tribal input is incredibly important in order for the EPA or any of the states to develop standards and permits that protect Indigenous rights and resources.

Clean Water Act Basics

The Clean Water Act programs summarized in the Handbook are the National Pollutant Discharge Elimination System (NPDES) permits, water quality standards, impaired waters and water quality restoration plans (Section 303(d)/TMDLs), dredge and fill permits (Section 404), and water quality certification (Section 401).

Information about CWA grants and loans include Section 106 (water pollution control), Section 319 (nonpoint source pollution control), Wetland Program Development Grants, and Clean Water State Revolving Funds.

State Overviews

The Handbook touches on the implementation of core CWA programs in each state and how that implementation is relevant to Alaska Native Villages and Tribes.

¹ As of January 2021, the Bureau of Indian Affairs recognizes 574 Tribal entities. The federal government recognizes 229 Tribal entities in Alaska, 29 in Washington, 5 in Idaho, and 9 in Oregon.

² Tribes in the lower 48 states, and potentially now Alaska Native Villages, may apply for administration of water quality standards and water quality certification, discharge permitting, dredge and fill permitting, impaired waters listing, development of water quality restoration plans, and some grant programs.

³ Tribes approved for Treatment Similar to States to operate regulatory programs, perform administrative functions, and receive grants; online at <https://www.epa.gov/Tribal/Tribes-approved-treatment-state-tas>.

ALASKA

Alaska is home to the largest number of federally-recognized Tribes, and yet there are many complications associated with Clean Water Act implementation due to the passage of the Alaska Native Claims Settlement Act in 1971. Some limitations on Alaska Native Villages have been removed, and attempts to exercise opportunities through the [“land into trust process”](#) are both occurring and being legally challenged.

The Matlakatla Indian Community, the only Tribe currently eligible for CWA program authority, received authority for pollution control grants, called Section 106. All Alaska Native Villages have many avenues for CWA involvement through consultation with federal agencies, processes that Alaska has set up in their CWA programs, roles that EPA plays on their behalf, and directly through comment and legal action. Stories about fish consumption rates (which are the assumptions regarding daily fish consumption), advocacy against Alaska taking over the CWA Dredge and Fill program, and EPA's veto of the Pebble Mine Deposit dredge and fill permit touch on ways that Indigenous voices have made a difference.

IDAHO

A lot of work has been done in Idaho recently to study heritage and current fish consumption rates by Indigenous populations, which underlie human health standards. The state of Idaho has increased their fish consumption rate to 66.5 grams per day, but Tribes have expressed that it is not sufficient to capture their consumption and risks. Examples of Tribal engagement with the CWA include prohibitions on the state Suction Dredge Permit, input to the relicensing of the Hells Canyon Complex relicensing, opposition to the Stibnite Gold Project, and comments on the need for “sustenance fishing,” as a protected beneficial use in Idaho's water quality standards.

Two Tribes within Idaho have authority for the water quality standards program, and one of them has approved standards. In addition, three Tribes have authority to receive CWA grant funds.

WASHINGTON

There are more Tribes within the borders of Washington that have approved water quality standards than any other state in the country besides New Mexico. The Tribal water quality standards set up opportunities for more engagement with the

CWA. The Spokane Tribe of Indians have developed a strict PCB standard based on their fish consumption rate of 865 grams per day. Tribes with water quality standards authority have also placed strong, if not prohibitive, conditions on EPA general permits for pesticide application and stormwater pollution control at construction sites and industrial facilities.

Twelve Tribes within Washington state have authority for the water quality standards program, and of those, nine have approved standards. In addition, another 15 have authority to receive funds from one or more CWA grant programs.

OREGON

Following decades of surveys and technical analysis, Oregon adopted the highest state fish consumption rate at 175 grams per day. This rate is now employed in the state's development of many human health water quality criteria. Tribal voices were heavily involved throughout that process.

Other examples of Tribal engagement with the CWA in Oregon relate to the state's denial of a Jordan Cove Energy Project certification, and concerns raised during the Hells Canyon Complex relicensing.

Three Tribes within Oregon have authority for the water quality standards program, and of those two have approved standards. In total, nine Tribes have authority to receive funds from one or more CWA grant programs.

Outside Region 10

Examples from Tribes and Pueblos in Wisconsin, Michigan, New Mexico, Florida, and California are shared to offer additional ideas and strategies for success.

This Handbook provides information and resources for Alaska Native Villages and Tribes in Region 10 to engage with the CWA at a time when Indigenous voices are rising up and being heard due to strategic leadership representation, highly visible legal successes, and a broader receptivity by the general public to learning about Indigenous rights that have been lost. We hope this tool delivers valuable and actionable direction in your work to protect Indigenous ways of life.

Introduction

In collaboration with EPA's Region 10 Tribal Operations Committee, Water Policy Pathways developed the following summary of opportunities for Alaska Native Villages and Pacific Northwest Tribes to take full advantage of the Clean Water Act and its intersection with their own values, practices, standards and laws. When we refer to Tribes, we are referring to all Tribes, not only to those who are federally-recognized.

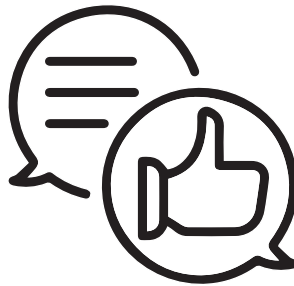
OPTIONS FOR TAKING ADVANTAGE OF THE CLEAN WATER ACT

As sovereign nations, Tribes have authority to manage the natural resources that support Indigenous culture and way of life.



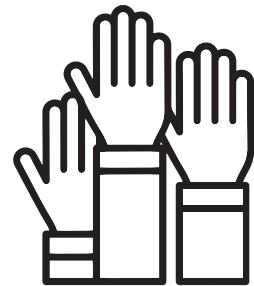
ADMINISTRATION OF CWA PROGRAMS

Eligible Tribes can apply for and be approved to administer one or more CWA program (water quality standards and certification, discharge permits, dredge and fill permits, impaired waters listing, water quality restoration plans, and administering grants; for more info, see Clean Water Act Basics, p.17



TRIBAL CONSULTATION

Federally-recognized Tribes and Alaska Native Villages can request Tribal Consultation to provide opinions, feedback, science, monitoring data, and Tribal requirements associated with proposed permits and water quality standards. Bringing knowledge of the CWA to the table during consultation on any federal action can be a powerful too.



REQUIRED PUBLIC PARTICIPATION

Any Tribal or Alaska Native Village entity or individual can provide opinions, feedback, science, monitoring data, and Tribal requirements to authorities implementing any CWA program through the required public involvement, comment, appeal, and citizen suit processes afforded all U.S. residents.

Each of these options is briefly explained below. In addition, Program Authority and Public Participation are explained in more detail in the CWA Basics and state overviews.

ADMINISTRATION OF CWA PROGRAMS

There are various ways that Tribes in the lower 48 and Alaska Native Villages can engage with the Clean Water Act:

To be approved to administer any one of several CWA programs, the Act requires that Tribes are [federally-recognized](#),⁴ and they must seek “treatment in a manner similar to states,” otherwise known as [TAS](#). There is a different TAS for each CWA program.⁵ To date, 80 Tribes have gone through this process to administer the [water quality standards program](#).⁶ The required elements⁷ for water quality standards TAS are:

1. Federally-recognized by Secretary of the Interior;⁸
2. Governing body carries out duties and powers;
3. Water resources subject to the program are within borders of reservation; and
4. Capable of carrying out functions of the program.⁹

Along with the authorization to administer the water quality standards program comes the authority for water quality certification (CWA Section 401) of all federal permits and licenses within the jurisdiction.

Tribes can also apply for administration of the discharge permit program (National Pollutant Discharge Elimination System Program, NPDES)¹⁰ and the program to assess waters, determine impairments, and develop water quality restoration plans (CWA Section 303(d), Total Maximum Daily Loads (TMDLs)).¹¹ See CWA Basics starting on p.17 for more detail on these program areas.

The Spokane Tribe of Indians has identified their cultural uses of the Spokane River, which include the right to safely eat large quantities of salmon. In order to protect the health of the members of the Tribe who consume traditionally-high amounts of salmon, the Tribal government adopted a stringent standard for PCBs (polychlorinated biphenyls) in Tribal waters. PCBs are a group of chemicals that linger in the environment and have been shown to cause cancer and non-cancer effects, such as impacts to the immune and reproductive systems. The Tribe was able to do that because they applied for and received “treatment in a similar manner as a state” and then developed their own water quality standards in 2003. The strict PCB standard was adopted in 2010.

⁴ As of January 2021, the Bureau of Indian Affairs recognizes 574 Tribal entities. The federal government recognizes 229 Tribal entities in Alaska, 29 in Washington, 5 in Idaho, and 10 at least partially in Oregon.
⁵ Tribes in the lower 48 states, and potentially now Alaska Native Villages, may apply for administration of water quality standards and water quality certification, discharge permitting, dredge and fill permitting, impaired waters listing, development of water quality restoration plans, and some grant programs.
⁶ Tribes approved for Treatment Similar to States to operate regulatory programs, perform administrative functions, and receive grants; online at <https://www.epa.gov/Tribal/Tribes-approved-treatment-state-tas>.
⁷ 40 C.F.R. § 131.8

In addition to the CWA, Tribes can apply for TAS for the Clean Air Act and the Safe Drinking Water Act.¹² EPA has interpreted the Toxic Substances Control Act (TSCA) and the Emergency Planning and Community Right to Know Act (EPCRA) to also authorize Tribal roles.

EPA described the TAS process as “burdensome, time-consuming, and offensive to Tribes” in the preamble to a 1994 rulemaking entitled “[Indian Tribes; Eligibility for Program Authorization](#)” and otherwise known as the “TAS simplification Rule.”¹³ The TAS process is detailed and likely to be very challenging for smaller Tribes with fewer employees. To address that concern, EPA has worked on a set of Baseline National Tribal Water Quality Standards on and off for almost 20 years. These Baseline Tribal Standards are now in [rulemaking](#) (p. 23).

In 2016, EPA revised their interpretation of the fourth requirement for TAS approval - “Capable of carrying out functions of the program” - based on clearer understanding of Congress’ original delegation of authority to Tribes to administer regulatory programs over their entire reservations. This reinterpretation “eliminates the need for applicant Tribes to demonstrate inherent authority to regulate under the CWA,” and it brings the process in line with Clean Air Act.¹⁴

⁸ Federally-recognized Tribes by state, online at <https://www.bia.gov/service/Tribal-leaders-directory/federally-recognized-Tribes>.

⁹ This component has been relaxed in a [2016 reinterpretation of CWA Section 518](#) that recognized Congressional delegation of authority to Tribes to administer regulatory programs.
¹⁰ 40 C.F.R. § 123.31

¹¹ 40 C.F.R. § 130.16

¹² [Tribal Assumption of Federal Laws](#)

¹³ Federal Register Volume 59, Number 239 (December 14, 1994)

¹⁴ [Revised Interpretation of Clean Water Act Tribal Provision 2016](#)

TRIBAL CONSULTATION

Tribes are often afforded the opportunity to review and discuss Federal proposals through the consultation process *before* an agency makes final decisions. This process may be invoked by the EPA for CWA administrative and regulatory proposals, however, there are generally more requests for consultation than Tribes have time or resources to engage. EPA has policies on Tribal consultation and coordination, addressing Tribal treaty rights during consultation, and principles for consulting with Alaska Native Claims Settlement Act Corporations.¹⁵

Tribes involved in pre-proposal consultation for the draft CWA Water Quality Certification (Section 401) regulations, called out concerns about federal agency review and veto authority over Tribal conditions or denials to a permit when performing water quality certification. During the same process, Tribes expressed concern about the scope and process of determining impacts from a proposed permit that may affect a neighboring jurisdiction, such as limiting that evaluation to “authorized” Tribes rather than all Tribal lands.¹⁶

Consultation and Coordination with Indian Tribal Governments Executive Order 13175 of November 6, 2000¹⁷

This Executive Order was issued by President Clinton in the waning days of his administration.

“The United States continues to work with Indian Tribes on a government-to-government basis to address issues concerning **Indian Tribal self-government, Tribal trust resources, and Indian Tribal treaty and other rights**. The United States recognizes the right of Indian Tribes **to self-government and supports Tribal sovereignty and self-determination**. With respect to Federal statutes and regulations administered by Indian Tribal governments, the Federal Government shall **grant Indian Tribal governments the maximum administrative discretion possible**. When undertaking to formulate and implement policies that have Tribal implications, agencies shall:

(1) encourage Indian Tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian Tribes to establish standards... *(bold added)*

In November 2009, President Obama penned a Presidential Memorandum that “requires each agency to prepare and periodically update a detailed plan of action to implement the policies and directives of Executive Order 13175.” In January 2021, the Biden administration reaffirmed the Obama memo.¹⁸

¹⁵ [EPA Consultation and Coordination with Tribes](#)

¹⁶ [Summary Report of Tribal Consultation and Engagement for the Clean Water Act Section 401 Water Quality Certification Improvement Rule, May 2022.](#)

¹⁷ [Executive Order 13175, November 6, 2000](#)

¹⁸ Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, January 21, 2021.

REQUIRED PUBLIC PARTICIPATION

The CWA requires public involvement as part of the implementation of every program (see below).¹⁹

Opportunities to weigh in on Clean Water Act programs include, but are not limited to, commenting on:

- a. Draft permits that allow discharge of pollutants upstream or near Indigenous uses of water or habitat for culturally important species.
- b. Inclusion of all Indigenous uses of water in water quality standards – e.g., subsistence fishing, cultural and ceremonial uses, and species important to Indigenous populations.
- c. Adequate levels of protection for public health and species health – e.g., whether the criteria are stringent enough to support healthy salmon populations and Indigenous levels of fish consumption.
- d. Whether existing water quality is being degraded and/or existing uses are being harmed (called antidegradation).
- e. Draft permits that allow discharge of dredged or fill material from construction or any alteration near waterways upstream or near Indigenous uses of water or habitat for culturally-important species.
- f. Required assessment of water quality monitoring around and within Tribally-significant areas – e.g., providing information to determine when waters are impaired.
- g. Draft water quality restoration plans called Total Maximum Daily Loads – e.g., urging inclusion of all known sources of pollution and creative pollution reduction strategies.

This means that Tribal and Alaska Native Village governments, Native Regional and Village corporations, Tribal nonprofits, and Tribal members are all encouraged to review and offer input to these programs related to traditional ways of life and impacts on them that can improve the implementation of the CWA.

Public Participation in CWA

(e) Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this Act shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.¹⁹

Many Tribes across the country exercised their right to review and certify the national permits that are required for industrial pollution carried to waters within Tribal lands by stormwater. In several cases, the Tribes denied coverage of this permit on their lands, which means that no industrial stormwater is allowed at all, or it requires a permit for each individual source. Several Tribes in Region 10 added conditions to the permit for industrial stormwater discharges to their waters.²⁰

¹⁹ CWA Section 101(e)
²⁰ 2021 National Multi-Sector General Permit; conditions from R10 Tribes in [section 9.10](#), p. 233.





CWA amended to allow recognition of Tribal water programs for funding and regulatory authority

1987

“Core” Tribal Water Quality Standards first discussed²¹

1998-2000

1991

Water quality standards regulations were amended to include [procedures for Tribal program authorization](#)

2014-16

Repeal of “Alaska Exemption” in Department of Interior (DOI) rules allows federal government to take land in Alaska into trust for Alaska Native Villages. When land is held in trust, funding and authority to administer CWA programs are accessible.

²¹ Paper presented, Tribal comments received (included goals for surface waters, measurements for assessment (state or Tribal), circulation of NPDES limits (EPA, upstream state waters), basis for 401 on 404/NPDES).
²² Clarified Congressional intent granting Tribal authority to administer CWA programs.





Draft Rule released for Tribal
Reserved Rights in State Water
Quality Standards

2022

2016

Draft Tribal Baseline Water Quality
Standards are released in pre-
rulemaking form

EPA Revises Interpretation of Clean
Water Act Tribal Provision in CWA²²
which removes requirement for
Tribes

Tribal administration of Section
303d/TMDL programs affirmed
in rulemaking

2023

Draft Rule released for Tribal Baseline
Water Quality Standards.





CLEAN WATER ACT BASICS



CLEAN WATER ACT BASICS

Before diving in to the specific ways that Tribes and Alaska Native Villages experience in each state, we offer more information that is not state-specific. In the Resources section, you will find links to several documents that explain Clean Water Act programs in much more detail. One, in particular, [River Network's CWA Owner's Manual](#) offers a plain language explanation of the Act's programs. Links to EPA's website and pages to relevant sections in the Owner's Manual are provided in footnotes throughout.

Tribal waters

It is important to start with a discussion about which waters are protected by the Clean Water Act. Such waters are considered "jurisdictional waters." The CWA refers to the "Nation's waters" in its very first section.²³ The term Waters of the U.S., otherwise known as "WOTUS," was coined to capture the concept of the Nation's Waters. [Waters of the U.S. \(WOTUS\)](#)²⁴ are currently in legal limbo. The "Revised Definition of 'Waters of the United States'" went into effect on March 20, 2023, and we await the U.S. Supreme Court decision in *Sackett v. EPA*. This Idaho case²⁵ was heard in October 2022, and it is expected to have an impact on which waters are subject to Clean Water Act requirements. Many states also have their own broader list of "waters of the state" that are relevant for the CWA programs that the states administer.

Some Tribal water quality standards have used different terms to represent the waters that are subject to their regulations. For example, the Santa Ana Pueblo Water Quality Standards defined the "surface waters of the Pueblo of Santa Ana" as "surface waters situated wholly or partly within or bordering upon the Pueblo of Santa Ana."²⁶ In addition, several individuals who participated in consultation with the EPA during their rulemaking on the Waters of the U.S. urged them to develop a category for "Waters of the Tribe" (WOTT).²⁷

So, what does or could that category include? How can it be more inclusive than Waters of the U.S.? In some cases, for Tribes and for states, groundwater is included. In other cases, broader coverage of wetlands, ephemeral waters, and closed basins are captured in phrases such as "all waters within the reservation."

EPA defines the following categories of "Indian Country" for the purposes of environmental protection programs:²⁸

- Reservations, including Tribal trust lands outside reservation boundaries.
- Dependent Indian communities set aside by the federal government.
- Indian allotments, where a title has not been extinguished.

Tribal reserved rights are also identified in waters outside reservation or allotment boundaries. These reserved rights are the focus of ongoing [EPA rulemaking](#) for inclusion in state water quality standards described on page 19.

²³ [CWA Section 101\(a\)](#)

²⁴ [Waters of the U.S.](#)

²⁵ [Sackett v. EPA](#)

²⁶ [Pueblo of Santa Ana Water Quality Standards](#), p.34., 1st Revision Dec 2020.

²⁷ [Consultation Report on WOTUS](#), Dec21

²⁸ [EPA Definition of Indian Country](#)

National Pollutant Discharge Elimination System (NPDES) program²⁹

The CWA prohibits pollution discharges without a permit. The program that was set up to write and monitor discharge permits is called the National Pollutant Discharge Elimination System with the intention set out in the CWA to eliminate pollution discharges.³⁰

EPA administers this program throughout Tribal lands and at federal and offshore facilities. Although Tribes are eligible to apply for administration,³¹ none have done so to date. All four Region 10 states have been delegated the authority to administer the NPDES program everywhere else in the region.

Activities covered by NPDES, whether administered by EPA or states, are point sources of pollution³², and they include domestic and industrial wastewater treatment and stormwater pollution management. Industrial wastewater can include manufacturing, mining, concentrated animal feeding operations, oil and gas exploration, pesticides, or hydroelectric facilities. Stormwater can include municipal pollutants running off roads and parking lots, construction pollutants running off development sites, and industrial pollutants running off facilities that use toxic substances.

NPDES permits can be focused on one facility, called an individual permit, or applicable to many similar activities, called a general permit.

Tribes are afforded the opportunities to influence and impose their water quality requirements on NPDES permits discharging to or upstream of their waters in several ways depending on whether EPA or states are issuing the permits.

	EPA ISSUING PERMIT	STATE ISSUING PERMIT
Polution Discharge to Tribal waters	<ul style="list-style-type: none"> • Government-to-government consultation or informal coordination. • Tribal water quality certification if they have authority. • Water quality certification through EPA if they do not have authority. • Public comments on permit. • Public comments on state water quality certification. 	
Polution Discharge to waters upstream and around Tribal waters	<ul style="list-style-type: none"> • Government-to-government consultation. • Comment on state water quality certification as an affected neighbor if EPA makes that determination. • Public comments on permit. • Public comments on state water quality certification. 	<p>Type of consultation (varies)</p> <p>Public comments on permit</p>

Examples of powerful Region 10 Tribal influence can be found in the conditions placed through Tribal water quality certifications on EPA NPDES general permits for [Industrial Stormwater](#) (called the Multi-Sector General Permit, section 9.10, p.233) and [Construction Stormwater](#) (section 9.10, p.87).

²⁹ CWA Owner's Manual, p. 75

³⁰ [CWA Section 101\(a\)\(1\)](#)

³¹ [40 C.F.R. §123.31](#)

³² Point source pollution is any discernible, confined, and discrete conveyance of pollutants to a water body, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. [40 C.F.R. §122.2](#)

Acknowledging that water is the giver of life, food, and the spirit and upon recommendation of the Tribal Water Committee, the Board of Trustees adopts the water quality standards to provide a mechanism for managing and regulating the quality and uses of waters of the Reservation by establishing water quality goals for specific waterbodies, and providing a legal basis for regulatory controls. The exercise of this governmental function is critical to the Tribes' self-governing principles.

- Confederated Tribes of the Umatilla Indian Reservation Water Quality Standards, Beneficial Uses, and Treatment Criteria, August 2009.³³

Water Quality Standards³⁴

Water quality standards drive the level of control that is set for NPDES permits, and they are usually the guide for compliance when states and Tribes review federal permits and licenses such as the Dredge and Fill Permits (see p. 26).

Tribes are eligible for administering water quality standards³⁵ once granted TAS as discussed above (p. 10). At this time [84 Tribes](#) have been approved to administer their water quality standards program. Far fewer, only 47, have both developed water quality standards and gone through the EPA approval process as well. There are different ways that Tribes and Alaska Native Villages can engage with the water quality standards program and the CWA as a whole even without TAS or approved water quality standards.

The three components of water quality standards are designated uses, water quality criteria, and the antidegradation policy and methods for its implementation. At times, the fourth component of water quality standards is considered the general policies that allow for exceptions or variations to the standards such as [variances](#) and [mixing zones](#).

Water quality standards variances are time-limited designated uses and criteria for specific pollutants or water quality parameters that reflect the highest attainable condition during the term of the variance.³⁶ Mixing zones are areas where pollution discharge is diluted in a water body and water quality criteria can be exceeded as long as acutely toxic conditions are prevented.³⁷

³³ [Confederated Tribes of the Umatilla Indian Reservation, Water Quality Standards, Beneficial Uses, and Treatment Criteria, August 4, 2009, p.1](#)

³⁴ CWA Owner's Manual, p. 47

³⁵ [40 C.F.R. §131.8\(b\)](#)

³⁶ 40C.F.R. §131.3(a), 40C.F.R. §131.14

³⁷ [Compilation of EPA Mixing Zone Documents, July 2006](#)



DESIGNATED USES

Designated uses are the existing and attainable uses of all waters. The CWA requires, and in general, states and Tribes include aquatic life, wildlife, and recreation. Oftentimes, aesthetic uses, industrial uses, agricultural uses, and navigation uses are also included. Tribal standards almost always include some form of ceremonial or cultural uses, and sometimes call out subsistence seafood harvesting. Each one of the above uses is also frequently divided into subcategories that capture various types of each use that require different levels of water quality controls. For example, salmonid spawning, primary contact recreation, cultural use, and public water supply may be the most sensitive uses which drive the level of pollution controls in a particular water body.³⁸

WATER QUALITY CRITERIA

Water quality criteria are science-based descriptions of the conditions considered necessary to achieve and protect each designated use.³⁹ These criteria are established in narrative and numeric forms. For example, to ensure safe swimming, also known as primary contact recreation, maximum bacteria levels may be set at 406 *E. coli* organisms per 100 ml that may only be exceeded once in ten samples during a month before a violation has occurred. This type of criterion and others that require geometric means of at least five samples in a month are difficult to accomplish for many agency monitoring programs.

Most water quality standards also include general narrative conditions that describe what waters must always be “free from,” such as floating debris, scum, and oil residues. When setting these criteria, states and Tribes must consider the exposure of the most sensitive subpopulations, especially for toxic contaminants. That is why the attention to subsistence and heritage levels of fish and seafood consumption are so important, and the work involved in setting the Spokane Tribe of Indian’s level of 865 g/day (p. 50) and Oregon’s level of 175 g/day (p. 60) is so important.

³⁸ [40 C.F.R. §131.11\(a\)](#)

³⁹ CWA Owner’s Manual, River Network, 2022, p.47

ANTIDEGRADATION POLICY AND METHODS

One part of the water quality standards that needs considerably more attention is the Antidegradation Policy and its implementing methods.⁴⁰ This component is meant to fulfil the CWA Objective:

“To restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” CWA Section 101(a)

In effect, the Antidegradation Policy is intended to prevent erosion of the quality of water that currently exists.

The implementation of the policy occurs in three parts, or tiers, as they are called. Starting with **Tier 3**, the CWA calls for protection of Outstanding National Resource Waters. All states in the region, except Alaska, and many Tribes call these waters Outstanding Resource Waters. Some Tribes instead define Outstanding Tribal Waters. These waters are considered to be the best of the best, but not necessarily regarding water quality. These waters include those that are ecologically and recreationally significant, as well as those that are already protected as national or state parks or wildlife refuges. They may be protected by Tribes as culturally significant. The Confederated Tribes of the Umatilla Indian Reservation’s Outstanding Tribal Waters include “where special water quality protection is needed to maintain critical habitat areas.”⁴¹ These Tier 3 waters are generally supposed to be strictly protected from any new or expanded discharge, which could happen through prohibition, but more often is implemented by only allowing temporary or very small additional discharges. These restrictions can often be subject to economic and political pressures.

The next most protective tier, **Tier 2**, is for all high quality waters. This layer is also intended to prevent erosion of high quality waters in the face of new and expanding pollution discharges. Such discharges can be allowed, however, if robust alternatives have been fully considered, and then, only if social and economic considerations warrant the erosion of water quality in the particular area. When additional pollution discharge is allowed, it must have the best treatment possible, and it cannot harm any existing uses of the waters. This analysis of alternatives and balancing of social and economic considerations can almost always be improved through public input, and even more so through Tribal input in the early stages.

The baseline tier of the policy, **Tier 1**, prohibits any harm to existing uses from new or expanded pollution discharges. Existing uses are “those uses actually attained in the water body on or after November 28, 1975 whether or not they are being attained.”⁴²

The CWA envisioned that these tiers would ensure that water quality across the country would only get better from its starting point in 1972. Each state and authorized Tribe in Region 10 approaches this program differently.

⁴⁰ 40 C.F.R. §131.12

⁴¹ Confederated Tribes of the Umatilla Indian Reservation, *Water Quality Standards, Beneficial Uses, and Treatment Criteria*, August 4, 2009.

⁴² 40C.F.R. §131.3(e)

RECENT TRIBAL WATER QUALITY STANDARDS DEVELOPMENTS

[Reserved Rights Included in State Water Quality Standards](#)

In December 2022, EPA released a draft rule for public comment that would require recognition of “Tribal reserved rights” in state water quality standards. This rulemaking is intended to guide states in the process of recognizing and including Tribal reserved rights called out in treaties, such as subsistence fishing rights or ceremonial rights. Consultation with Tribes and public comment are completed.

[Tribal Baseline Water Quality Standards](#)

In the last two years, EPA revived their efforts to develop a set of water quality standards that can apply to all federally-recognized Tribal entities.

These Tribal “baseline” water quality standards were developed to declare and recognize Tribal vision and goals regarding water resources under Tribal jurisdiction. The EPA has released a draft rule, and comments are due by August 3, 2023.

This effort was initiated more than a decade ago to provide tools and authority to the more than eighty percent of federally-recognized Tribes that currently do not have water quality standards in effect for CWA purposes. There are still many Tribes that are not federally-recognized and would not be able to take advantage of them, however.

PROTECTING AGAINST REMOVAL OF DESIGNATED USES: USE ATTAINABILITY ANALYSES

There are often pressures to weaken, downgrade, or remove designated uses when proposed or current pollution discharges are unable to be adequately treated to ensure there is no harm to protected uses. When uses are existing, there is no weakening allowed under any circumstances.⁴³

When the designated use is not “existing,” however, weakening or removing designated uses must go through a scientific process called Use Attainability Analysis.

⁴³ 40C.F.R. §131.10(h)(1)

TRIENNIAL REVIEW

The CWA requires that states and authorized Tribes review and update their water quality standards at least every three years. This process of review usually involves public outreach to solicit areas of the standards that need revision.

The following chart details priority topic areas listed for each Region 10 state in their current review of water quality standards.

STATUS OF STATE TRIENNIAL REVIEW

STATE	Triennial Review Year	Last Completed Triennial Review	Topics of note	Links for information
Alaska	2021-23 in progress	February 2021	Fish consumption rate (currently 6.5g/day), mixing zones, Tier 3	SEACC State DEC
Idaho	Completed 2020	November 2020	Sustenance fishing, aquatic life mercury criteria, opposition to performance-based temperature criteria, salmonid spawning use	2020 Report
Washington	2022-24	April 2022	Freshwater dissolved oxygen and sediment criteria, aquatic life criteria for toxics, natural conditions provision, Antidegradation Outstanding Resource Waters nominations	2022 Report
Oregon	Completed 2021	July 2021	Fish and aquatic life use designations and clarifications, aquatic life toxics criteria including narrative application, variance procedures and requests, biocriteria, ocean acidification	2021 Report

Impaired Waters and Water Quality Restoration Planning (303(d)/TMDL programs)⁴⁴

States are required to assess their waters against their water quality standards to determine whether the waters are supporting their uses and which waters are impaired. The list that summarizes those impairments is named after the section of the CWA, Section 303(d), that calls for that compilation.

Once the Impaired Waters/303(d) List is compiled, states must prioritize development of plans to address the problems and set a schedule for their development. Those plans to restore water quality are called Total Maximum Daily Loads or TMDLs.

These plans must:

- a. determine the allowable amount of pollutant, or pollutant cap, based on what the water body can take in without violating water quality standards,
- b. identify all sources of pollution, and
- c. divide up the pollutant cap among the sources.

These plans need to consider background levels of pollution, and include a “margin of safety” to account for the uncertainty in several stages of the plan development. Including a buffer for future development and sources is also prudent, but not required. It is recommended that an implementation plan be included in the development of every TMDL.

Tribes are eligible to apply for the administration of the program,⁴⁵ however, none have done so to date. Many Tribes already assess the quality of their waters, and those who have water quality standards are likely to compare those assessments to the standards. The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) provided information to that point during consultation for the development of rules to codify the Tribal authority for Section 303(d).

The CTUIR already has in place an extensive and comprehensive management program for on-reservation water resources, including impaired waters. We currently devote substantial time, effort and resources to restoring, maintaining, and protecting waters both on- and off- reservation. We are fully capable of analyzing our monitoring data to assess Tribal waters over which we have jurisdiction and to develop impaired waters lists, to establish priority rankings, to develop TMDLs for EPA review, and to oversee implementation of EPA-approved TMDL cleanup plans.⁴⁶

⁴⁴ CWA Owner's Manual, p. 124

⁴⁵ [40 C.F.R. §130.16](#)

⁴⁶ Letter to EPA from Confederated Tribes of the Umatilla Indian Reservation, May 22, 2014.



[Dredge and Fill program \(Section 404\)](#)⁴⁷

The Dredge and Fill Permitting program was set up to address the pollution, both mud and pollutants attached to the mud, that end up in waters of all kinds during dredging and filling. The program is referred to as the wetlands program, but it protects more than just wetlands. Typical activities that require these permits are residential and commercial development, road building and maintenance, natural resource extraction, and dam building and maintenance. For the most part, the Corps is the permitting authority, and EPA has oversight and veto authority over the Corps' decisions.⁴⁸ The most recent example of EPA veto is for the Pebble Deposit Area in Bristol Bay, Alaska.⁴⁹ When the Corps is issuing a Section 404 permit within a Tribal jurisdiction, water quality certification must be sought from Tribes with water quality standards authority in the area where the project is occurring or from EPA if the Tribe doesn't have that authority. If a permit is proposed in a neighboring jurisdiction, Tribes may inform EPA of the likely impact on their waters, even if they don't have water quality standards authority.⁵⁰

The Tribal Wetland Program Development Grant (WPDG) program is an annual component of the [WPDG](#) directed to Tribes and intertribal consortia. In 2023, an estimated \$3.6 million will be awarded for projects 1-4 years in length.

The CWA allows states and Tribes to [assume the responsibility for the Dredge and Fill Permitting](#) program for certain waters in their jurisdiction.⁵¹ To date, three states (Michigan, New Jersey, and Florida) have each assumed some portion of their programs. The CWA calls for the Corps to retain jurisdiction in certain tidal waters and other waters related to transport of interstate or foreign commerce. Many other states have expressed interest or been actively working on this process for decades, including Oregon and Alaska. EPA is seeking to clarify requirements and reduce barriers for assumption of the Section 404 program in a [rulemaking that is planned for 2023-24](#).

⁴⁷ CWA Owner's Manual, p.112

⁴⁸ [CWA Section 404\(c\)](#)

⁴⁹ [Chronology of EPA Section 404 vetos](#)

⁵⁰ CWA Section 401(a)(2)

⁵¹ CWA Section 404(g)

Water Quality Certification (Section 401)⁵²

Water quality certification, otherwise known as Section 401 certification, is an authority given to all states and eligible Tribes to review all federal permits and licenses proposed for issuance in their jurisdiction and certify, condition, or deny them. Authorities can also waive the right to review. All applicants for a federal permit or license must seek this certification as part of their application process. The most common federal permits and licenses that this review applies to are (a) Dredge and Fill Permits (Section 404), (b) licenses from the Federal Regulatory Energy Commission (FERC) which are required for hydroelectric projects and oil and gas facilities, among others, and (c) NPDES permits written by EPA.

This review is intended to allow the state or Tribe to examine whether the permit or license will violate water quality standards or other water quality requirements. Tribal authority, TAS (see p.10), for water quality certification is granted in conjunction with that for water quality standards administration. When Tribes do not have TAS for water quality standards and a federal permit or license is proposed on Tribal lands or into Tribal waters, EPA performs the water quality certification for the Tribe. In doing so, EPA applies existing Tribal water quality requirements and water quality standards of the closest neighboring state. In the case of NPDES permits that EPA is writing, they will work with Tribes to incorporate the water quality certification into their permit.

The visual below may help the reader understand the details of this process. There is some case-by-case decision-making by EPA, but this represents a majority of cases.

On Tribal land and into Tribal waters, the following processes apply:

TAS = Tribal authority for water quality standards | WQS = water quality standards | 401 = CWA Section 401 Water Quality Certification

If **TAS IS APPROVED**
and **TRIBAL WQS ARE APPROVED**
THEN
the Tribe performs 401 with their
own standards and water
quality requirements

If **TAS IS APPROVED**
but **NO TRIBAL WQS** are in place
THEN
the Tribe performs 401 with their own
water quality requirements and, in some
cases, EPA will perform 401 on their
behalf with closest state WQS

If **TAS IS NOT IN PLACE**
THEN
EPA performs 401 on Tribe's
behalf with Tribal water quality
requirements and closest state WQS

New regulations for the Water Quality Certification program are expected in 2023.

Grants and loans

Many [grants and loans](#) are expressly available to Tribes in Region 10 through programs and set-asides. The following resources may be helpful in understanding and pursuing these funds.

[CWA SECTION 106 FUNDS FOR TRIBES](#)

CWA Section 106 provides funding to support a broad range of water pollution control programs. [EPA's Tribal Grants under Section 106](#) website explains eligibility and allowed uses of the funds. Tribes must first seek TAS to apply for these funds. A [Draft 2022 Guidance for Section 106 Tribal Grants](#) and a [2009 Status Report on Tribal Water Quality Programs](#) using Section 106 funding will also be very helpful.

[TRIBAL NONPOINT SOURCE POLLUTION CONTROL GRANTS – CWA SECTION 319](#)⁵³

CWA Section 319 addresses a pervasive challenge: the pollution from diffuse sources that is carried by precipitation and snowmelt into our waters, otherwise known as nonpoint source pollution. This section of the CWA is more than just a grant program, but the funding is a vital part of its value and success. The program requires nonpoint source assessment and management plans from every state and eligible Tribe in order to receive funding. Tribes must also seek TAS before applying for these funds. EPA compiled [a list of Tribes eligible](#) for Section 319 funding in 2023.

[WETLAND PROGRAM DEVELOPMENT GRANTS \(WPDGS\)](#)

Wetland Program Development Grants provide funding to build programs to protect, manage, and restore wetlands. Individual Tribes and interTribal consortia can apply for Regional WPDGs, and interTribal consortia can also apply for National WPDGs. In [2017-18 Region 10 WPDG cycle](#), six of 14 successful applicants were Tribal entities.

[CLEAN WATER STATE REVOLVING FUNDS](#)⁵⁴

The CWA authorized the Clean Water State Revolving Funds (CWSRF) to fund wastewater, nonpoint source pollution and stormwater pollution infrastructure improvements through low-interest loans. Within the program, the Clean Water Indian Set-Aside (CWISA) was established to focus on these infrastructure needs of Tribes and Alaska Native Villages, and it is implemented in cooperation with the Indian Health Service. EPA selects projects from the priority needs reported to IHS. In fiscal year 2022, long-overdue federal funding of \$154 million was appropriated to CWISA⁵⁵ to address public health crises caused by Tribal and Native Village infrastructure problems. [The Clean Water Indian Set-Aside Grant Program: Answers to Frequent Questions](#) provides an overview of the program, including project eligibility, funding, and project administration. [The Clean Water Indian Set-Aside Program Guidance](#) offers more detail.

⁵³ River Network's CWA Owner's Manual, p.140.

⁵⁴ River Network's CWA Owner's Manual, p.144.

⁵⁵ Infrastructure Investments and Jobs Act



HOW DOES IT WORK IN EACH STATE?

The ins and the outs of the Clean Water Act can perhaps be best understood through specific examples of Tribal engagement and success. The following pages explain the CWA as experienced by the Tribes and Alaska Native Villages within each Region 10 state.

ALASKA



NATIVE VILLAGES WITHIN ALASKA

Alaska is the starting point because it is unique in so many ways – the sheer numbers of Indigenous people who reside there, the largest number of federally-recognized Tribes, the complications associated with Clean Water Act implementation and Tribal authorities due to the passage of the Alaska Native Claims Settlement Act in 1971, and the complicated relationship between Indigenous people and the state of Alaska.

The following stories illustrate some ways that Alaska Native Villages have engaged with the Clean Water Act.



FISH CONSUMPTION RATE IS A PRIORITY DURING THE 2021-23 TRIENNIAL REVIEW

Alaska Native Village and EPA comments urged Alaska Department of Environmental Conservation (DEC) to increase the statewide assumption about how much fish is consumed (fish consumption rate) because it is used to set protective human health water quality standards. DEC has called out this issue as a [high priority for rulemaking](#) in the current review.

ADVOCACY AGAINST ALASKA ASSUMPTION OF DREDGE AND FILL PERMIT PROGRAM (CWA SECTION 404)

During the spring of 2022, Tribes, together with local fishing and conservation groups, advocated against Alaska Department of Environmental Conservation's almost \$5 million budget request to take over the CWA Section 404 program. Letters sent to state legislators explained that DEC had not done the feasibility study or statutory review necessary to take over the program. The legislature approved only \$1 million for a feasibility study which is ongoing.⁵⁶

PEBBLE MINE AND EPA OVERSIGHT (CWA SECTION 404(c))

The proposed Pebble Mine has been threatening Bristol Bay for decades. The CWA provides a veto power to the EPA under the Dredge and Fill Permit program (Section 404). Several years ago, Tribes and Tribal organizations requested that EPA initiate a [watershed assessment](#) in Bristol Bay to identify the impacts of potential large-scale mining. At the time, no permit application for mining had been submitted. EPA's work on that watershed assessment has been a very important driver in the [agency's veto of the proposed Section 404 permit](#) for the Pebble Deposit Area in Bristol Bay.

CLEAN WATER ACT CONTEXT IN ALASKA

How the CWA is implemented in each state varies. This section provides a brief summary of some of the elements of core CWA programs in Alaska.

The land within the borders of the state of Alaska is home to more than 730,000 Alaska Natives, approximately 15 percent of the total population of Alaska.⁵⁷ The battles for land, sovereignty, and authority over the resources needed for their subsistence lifestyle have shaped the way the Indigenous residents intersect with U.S. laws including the Clean Water Act.

In 1971, the passage of the Alaska Native Claims Settlement Act (ANCSA) gave Alaska Native leaders high hopes that the result would be better than the trust relationship between the U.S. government and the reservations in the lower 48 states. Unfortunately, ANCSA extinguished aboriginal hunting and fishing rights even though the Congressional record shows the intention to protect them.⁵⁸ [The Alaska National Interest Lands Conservation Act \(ANILCA\) of 1980](#) followed with language to protect subsistence rights, but it addressed rural subsistence more broadly, not only on Indigenous subsistence rights.⁵⁹

The authority afforded to Tribal entities to administer several Clean Water Act programs is tied to the requirement stated above to obtain “treatment in a similar manner to a state” (TAS, see p.10). Federal recognition is one of the requirements of TAS, and there are approximately 229 federally-recognized Tribes within the borders of Alaska. There also are many Alaska Native Villages and Alaska Natives who are not federally-recognized.

Another requirement of TAS, as explained earlier, requires that the Tribal authority must have jurisdiction over the waters to which the programs would apply. This requirement refers to the waters within reservation boundaries, held in trust by the Department of the Interior, or allotted to or owned by Tribes in the lower 48 states. Without such Indigenous land area ownership in Alaska, except for the Matlakatla Indian Community, TAS has not been considered possible. The Matlakatla Indian Community has only received TAS for CWA Section 106 funding.

In 2014, a rule adopted by the Department of the Interior repealed the so-called “Alaska Exemption” which had prohibited the Department of Interior (DOI) from putting lands into trust for Tribes.⁶⁰ This development technically allows Alaska Native Villages to put lands into trust with DOI, which would acknowledge the rights of Alaska Native Villages to be treated the same as other federally-recognized Tribes with regard to funding opportunities and the pursuit of authorities to manage water resources. Since then, several Native Villages have submitted lands-into-trust applications, however, in 2017, the Trump administration wrote a memo that halted the process and again prevented Alaska Native Villages from pursuing TAS options.⁶¹ The Biden administration withdrew that memo with another memo in April 2021.⁶²

In November 2022, the DOI approved the application of the Tlingit and Haida Indian Tribes of Alaska to put land into trust.⁶³ However, the state of Alaska filed a lawsuit on January 17, 2023 to prevent the transaction. The legal wranglings will continue before a clear path is laid for Alaska Native Villages to apply for TAS and administration of CWA programs.

⁵⁶ [Alaska CWA Section 404 Program Development](#).

⁵⁷ 2020 Census – American Indian and Native American (alone) 14.8% AK; understated because it doesn't include individuals who are partially American Indian and Native American.

⁵⁸ Rosita, Worl, *Reconstructing Sovereignty in Alaska*, Cultural Survival, 4/2/2010; online at <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/reconstructing-sovereignty-alaska>

⁵⁹ *Ibid.* and <https://www.doi.gov/subsistence/library/anilca>

⁶⁰ The prohibition of acquisition of Alaska Native land in trust, interpreted from ANCSA and promulgated in 25 C.F.R. § 151.1, was initially litigated in 2006 when Akiachak Native Community, Chalkyitsik Village, Chilkoot Indian Association, Tuluksak Native Community (IRA), and Alice Kavairlook brought suit against the Department of the Interior. The court found in favor of the Tribes in 2013. Initially the DOI and Alaska appealed, but the DOI reversed their opinion and published the rule to remove what was called the “Alaska Exemption” in 2014. [Alaska decided not to pursue further litigation in 2016](#).

⁶¹ [M-37064](#)

⁶² [M-37069](#)

⁶³ Indian Affairs to accept land into trust for Tlingit and Haida Indian Tribes of Alaska; online at <https://www.bia.gov/news/indian-affairs-accept-land-trust-tlingit-and-haida-indian-tribes-alaska>

Discharge Permits (National and Alaska Pollutant Discharge Elimination Systems, NPDES/APDES)

All pollution discharges from a pipe or a “discrete conveyance” require a permit. The state of Alaska was delegated authority for the NPDES discharge program by EPA in a phased process between 2008-11. NPDES permits for several municipal wastewater treatment plants with special conditions, Matlakatla Indian Community, federal facilities in Denali National Park, and offshore facilities⁶⁴ are still administered by EPA.

Alaska Department of Environmental Conservation (DEC) encourages early Tribal Review of APDES Permits before draft permits are released to the public⁶⁵ through outreach to interested and neighboring Alaska Native Villages and corporations. [DEC's guidance for Local and Tribal Governments](#) explains that this outreach is intended “to identify local and Tribal governments that have the potential to be affected by an APDES permitting decision and [provide] an opportunity to meaningfully participate.”⁶⁶ The guidance considers a Tribe affected if:

- there is a real possibility that cultural and natural resources of importance to the Tribe [or local government] may be affected by an action;
- actions are proposed that will significantly or uniquely affect the local or Tribal government’s access to or use of fish, wildlife, or habitat; or
- any action is proposed that will have a substantial, direct effect on Tribes [or local government].⁶⁷

Activities covered by APDES include domestic and industrial wastewater treatment and stormwater pollution management. Industrial wastewater can include manufacturing, mining, and oil and gas exploration. Stormwater can include pollutants running off roofs, roads and parking lots, construction pollutants running off development sites, and industrial pollutants running off facilities that use toxic substances.

Alaska Native Village governments may wish to be notified about any APDES permit issued or renewed upstream from waters of current and historic importance. EPA retains oversight of the program and authority for discharges from activities on all Tribal lands which include wastewater treatment facilities, Tamgas Creek Hatchery, and offshore facilities.

Opportunities for engagement in NPDES/APDES permits:

- Comment early on APDES and EPA NPDES permits.
- Engage in DEC water quality certification (CWA Section 401, p. 36) on EPA NPDES permits.
- Focus on unique Alaska Native messages such as protection of first foods, habitat, and cultural practices.

For more information, go to NPDES in CWA Basics (p. 19).

⁶⁴ [EPA NPDES permits in Alaska](#)

⁶⁵ [APDES Information for Tribes: Flowchart of Tribal Involvement in the Permitting Process](#)

⁶⁶ [APDES Guidance for Local and Tribal Governments, p. 2.](#)

⁶⁷ Ibid.

Water Quality Standards

Pursuit of authority to administer water quality standards for Tribal waters may be of interest to Alaska Native Villages in order to designate and protect Indigenous uses of water resources for drinking water, ceremonial and cultural uses, salmon habitat, wetlands, and seafood consumption. It is also important for Alaska Native Village governments, organizations, and individuals to advocate for such uses within Alaska's regulatory context.

DESIGNATED USES

The state of Alaska currently recognizes and is required to protect the following designated uses:

- Water supply.
- Recreation.
- Growth and propagation of fish, shellfish, other aquatic life and wildlife.
- Harvesting for consumption.

Alaska Native Village governments may wish to advocate for the inclusion of additional water uses as mentioned above that reflect their relationship to water.

FISH CONSUMPTION RATE IN WATER QUALITY CRITERIA

At this time, Alaska DEC's assumption regarding daily fish consumption (which underlies human health standards) is only 6.5 g. In 2000, EPA recommended a subsistence level of 142.4g per day, and in 2015, a broader national level of 22 grams per day. A state-level Human Health Criteria Workgroup produced a [Report](#) in 2018⁶⁸ that addressed target populations, aquatic species, and cancer risk levels, among other topics. DEC lists this topic as a priority issue in its triennial review of water quality standards (p.24).

ANTIDegradation POLICY

Water quality standards also include provisions to identify and protect waters of higher quality as well as those of ecologically and recreational significance. This part of the CWA is called the Antidegradation Policy and Methods (p.22). There are many waters in Alaska that warrant these protections and the state has recently updated its procedures and materials to ensure these protections. Alaska Native Village governments would

benefit from understanding how the DEC administers [Antidegradation](#), including the requirement of alternative analyses during the permitting process, and the process for nominating [Outstanding National Resource Waters \(Tier 3\)](#) for protection, which includes legislative approval. No Tier 3 waters have yet been approved.

TRIENNIAL REVIEW

The CWA requires states and Tribes with water quality standards to perform a Triennial Review of water quality standards to ensure they are regularly reviewed, improved, and updated to reflect EPA guidance and new scientific and technical information. This process must be open to the public for information and review. Alaska DEC is in the midst of its 2021-23 Triennial Review.

Tribal input to this review process over several years has raised concerns about both the fish consumption rates and cancer risk levels. In 2015, a [petition](#) to increase the rate to an amount that reflects actual Indigenous consumption levels was sent from nongovernmental organizations to Region 10.

The CWA also allows for uses to be removed from protection if they are not existing uses, however, the state or Tribe proposing to remove a use must complete a Use Attainability Analysis (UAA). [Alaska performed a UAA for Red Dog Creek in 1997.](#)

Opportunities for engagement in water quality standards development and revision:

- Comment on proposed changes coming out of [Alaska Triennial review 2021-23.](#)
- Comment on regular Antidegradation Review for APDES permits.
- Consider nominating Outstanding National Resource Waters (Tier 3) through legislative process.

For more information, go to Water Quality Standards in CWA Basics (p.20-24).

⁶⁸ [Evaluation of Key Elements and Options for Development of Human Health Criteria, Technical Workgroup Report](#), November 13, 2018.

Dredge and Fill Permits (Section 404)

This program requires permits for moving land that might result in dirt or pollution going back into waters. The Corps of Engineers (Corps) administers the Dredge and Fill Permits in Alaska. EPA has oversight and veto authority over the decisions of the Corps. The state of Alaska has begun the process to study and fund the assumption of the program from the Corps.

Alaska Native Village governments would be interested in this program because the permits may be required for activities such as construction, logging, oil and gas extraction and dam building and maintenance. In addition to offering comments to the Corps permitting process, Alaska Native Village governments may wish to comment on DEC's review of these permits to ensure they meet the state's water quality standards, including Antidegradation, through the water quality certification process (CWA Section 401, see below).

The Tribal Wetland Program Development Grant (WPDG, p.28) program is an annual component of the WPDG directed to Tribes and intertribal consortia. This year, an estimated \$3.6 million will be awarded for projects 1-4 years in length.

Opportunities for engagement in Dredge and Fill Permits:

- Review and comment on draft Corps permits; potential early consultation opportunities; focus on unique Alaska Native messages such as protection of first foods, habitat, and cultural practices.
- Comment on the potential impacts on Alaska Native Villages if Alaska assumes the program from the Corps.
- Apply for Wetland Program Development Grant.

For more information, go to Dredge and Fill Permits in CWA Basics (p.26).

Water Quality Certification (Section 401)

Water quality certification is a regulatory process that requires all applicants of a federal permit or license to seek certification from the state or Tribe with jurisdiction regarding whether the activity meets applicable water quality standards or requirements. Federal permits include any EPA NPDES permits or any Corps Dredge and Fill permits mentioned above, and licenses include those required by the Federal Energy Regulatory Commission (FERC) for hydroelectric projects and oil and gas extraction.

Alaska Native Village governments can comment on any draft water quality certifications that [DEC](#) puts out for public comment, especially those in their area. In addition, Alaska Native Villages can raise concerns about neighboring federal permits and licenses that Alaska certifies that may be harmful to nearby waters or violate Tribal laws.

New federal [CWA Section 401 regulations](#) are due in 2023, and the process is likely to change.

Opportunities for engagement in Water Quality Certification:

- Comment on DEC water quality certifications granted or conditioned in waters within Alaska Native Villages.
- Examine DEC certifications in neighboring areas. Inform EPA and DEC of any potential harm to waters or species or violations of Tribal laws.

For more information, go to Water Quality Certification in CWA Basics (p.27).



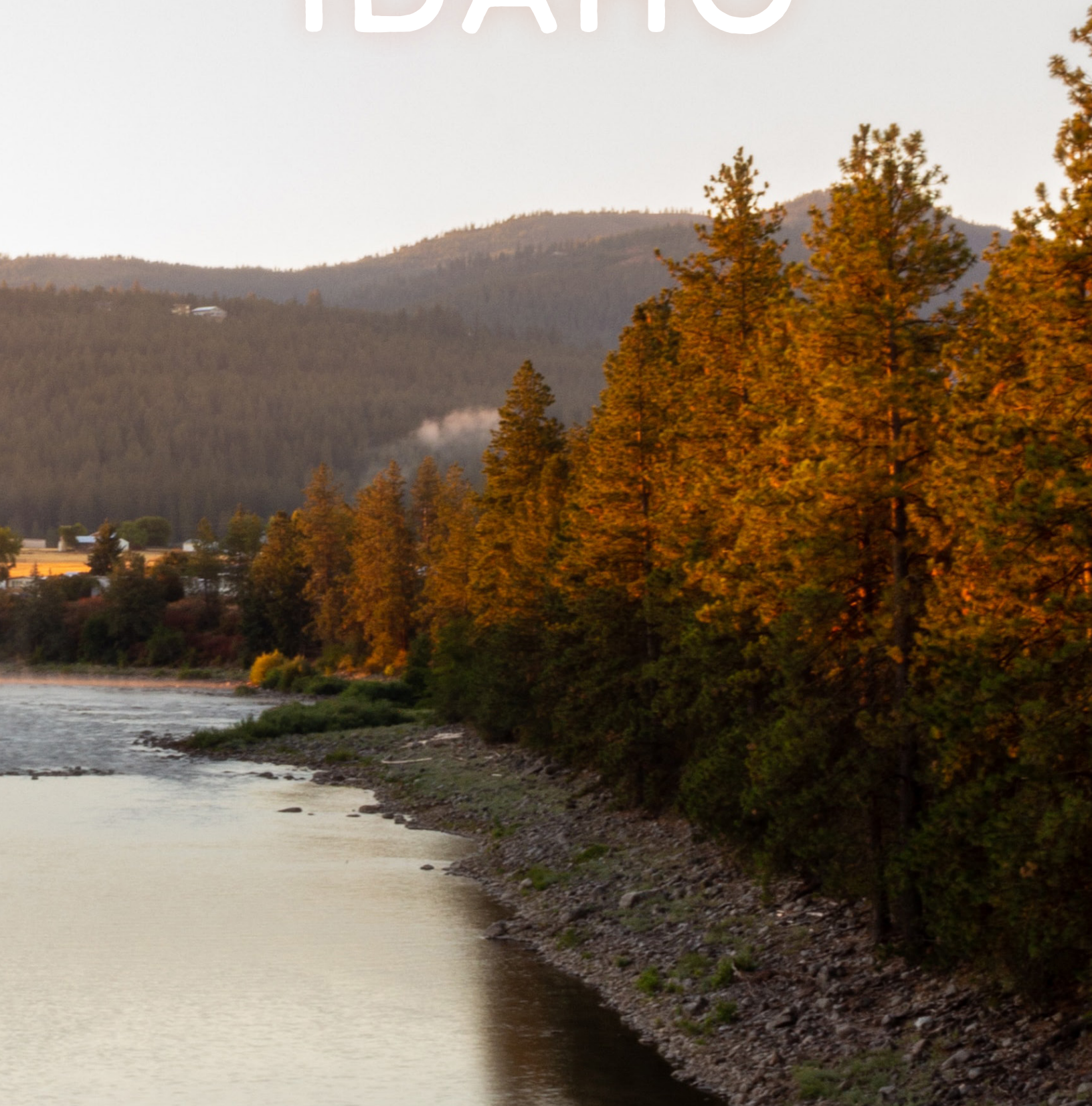
Photo by Darrin Heinein on Unsplash

Sitka Tribe of Alaska awarded funds in 2017 for Wetlands Program Plan Development

The Sitka Tribe of Alaska (STA) planned to develop a Tribal Wetland Program Plan. STA includes 4,520 Tribal citizens and encompasses approximately 6,500 square miles, including the western coast of Baranof Island, the southern half of western Chichagof Island, and many smaller islands. The territory extends into Peril Strait, which separates Baranof and Chichagof Islands. Wetlands in the area are both tidal and non-tidal and are relatively intact. STA currently has no coordinated strategy or plan to manage wetlands. The grant focuses on monitoring, assessment, and voluntary restoration and protection of wetlands. Activities include planning, capacity building, partnership building, and validation. The information collected from the activities will provide STA with the knowledge and capacity to supply Tribal Council and Tribal Citizens with the data needed to make informed decisions about advocacy, conservation, and management of wetlands.⁶⁹

⁶⁹ 2017-18 Wetland Program Development Grants

IDAHO



TRIBES WITHIN IDAHO BORDERS

The stories below illustrate examples of Tribes within Idaho exerting their authority through the Clean Water Act on proposed projects that are likely to impact the quality of waters flowing through or near Tribal lands.



IDAHO SUCTION DREDGE PERMIT

In 2018, before Idaho Department of Environmental Quality took control of the discharge permitting program, EPA issued a general discharge permit to allow small suction dredge mining activity in Idaho. A general permit authorizes a category of discharges and establishes a process for each individual permittee to obtain “coverage” under the permit provisions. Because the permit was issued by EPA, all Tribes in Idaho with water quality certification authority were allowed to review the permit to determine whether it met Tribal water quality standards and laws. Several Tribes denied the certification, and therefore, the final permit allows dredging throughout the state, but not on those reservations.

From the permit: “Tribal Reservations: This [general permit] does not apply to the Nez Perce Reservation, the Coeur d’Alene Reservation, the Kootenai Reservation, the Shoshone Bannock Tribe, or the Duck Valley Reservation.”⁷⁰

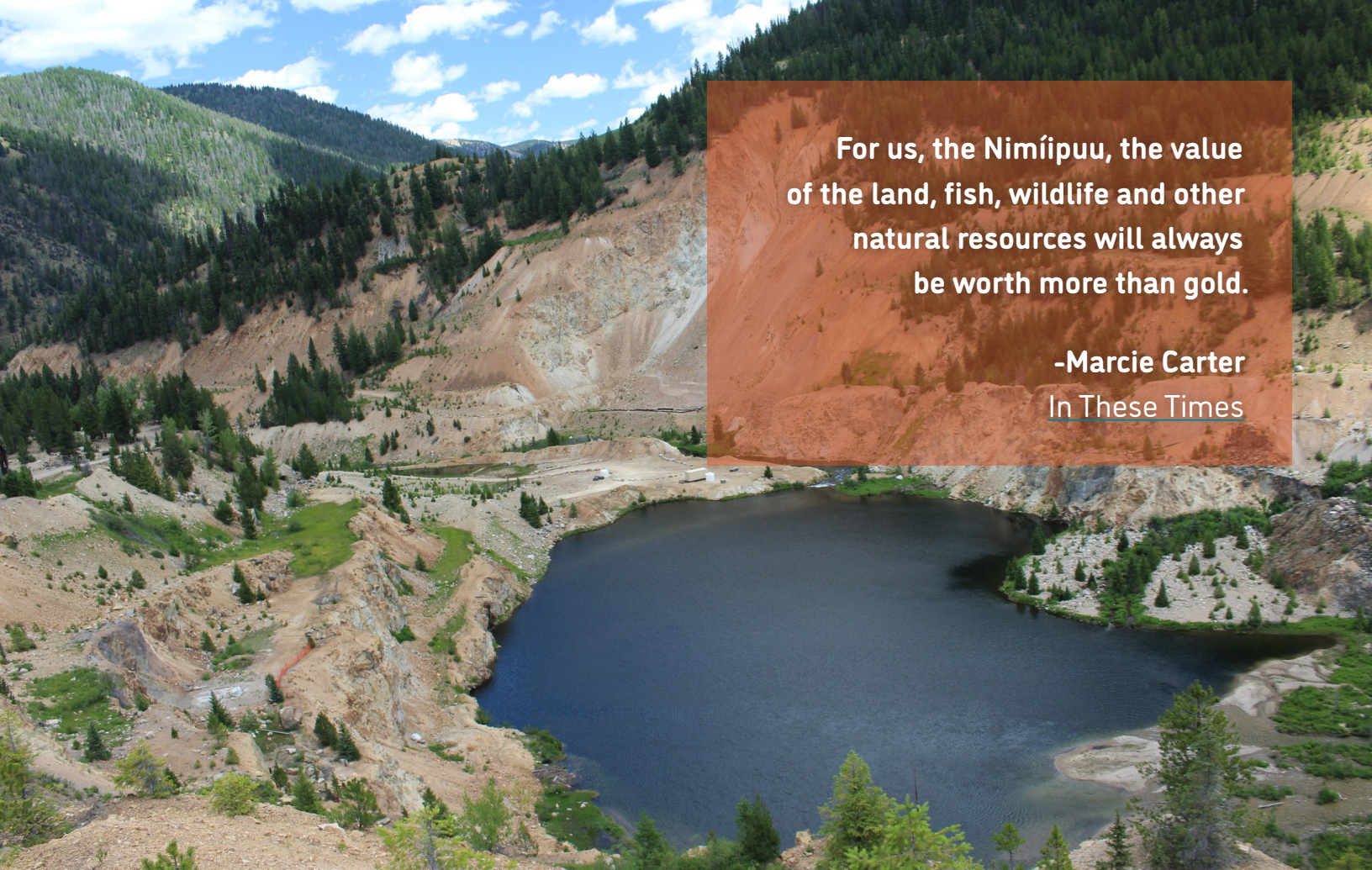
HELLS CANYON RELICENSING

The Federal Energy Regulatory Commission (FERC) relicensing process for the Hells Canyon Complex (HCC) requires a water quality certification from both Idaho and Oregon since the HCC straddles the border between the states. Several Tribes in Idaho commented on the Idaho Department of Environmental Quality’s water quality certification of the proposed relicensing by FERC.

Issues raised by Shoshone-Bannock Tribes of the Fort Hall Reservation, Upper Snake River Tribes, Nez Perce Tribe, include:⁷¹

- anadromous fish blocked from historic spawning grounds upstream
- concerns about the length of time that water quality standard violations have been and will be allowed
- concerns about proposed downstream temperature regimes and pollution trading
- concerns about total phosphorus inflow levels and algal blooms and dissolved oxygen, and
- payment for failure to increase production of Chinook smolts.

These comments may improve the final license.



For us, the Nimíipuu, the value of the land, fish, wildlife and other natural resources will always be worth more than gold.

-Marcie Carter
In These Times

STIBNITE SUPERFUND SITE, PERPETUA RESOURCES PROPOSED GOLD PROJECT

A gold mine is proposed on National Forest System and private lands in the headwaters of the East Fork South Fork Salmon River within the Mine would be within the Nez Perce Tribe's aboriginal homeland where the Tribe has treaty-reserved rights and natural resources, cultural resources, and sacred sites. In 2022, the Tribe, together with the Idaho Conservation League and Save the South Fork Salmon, filed a petition with the Idaho Board of Environmental Quality challenging the Idaho Department of Environmental Quality's issuance of an Air Quality Permit to Construct to Perpetua Resources Idaho, Inc. for its proposed gold mine, the Stibnite Gold Project.⁷²

The Nez Perce Tribe included CWA-related concerns in their comments on the Draft Environmental Impact Statement (DEIS) required by the National Environmental Policy Act (NEPA).⁷³ Those CWA concerns included the following:

- Idaho Pollutant Discharge Elimination System (IPDES) discharge permits (draft, if not final) need to be part of the DEIS in order to fully consider any surface water discharges or groundwater discharges which may have surface water interconnections and be regulated.⁷⁴
- Water quality criteria applied are inadequate.
- The Forest Service and the Corps included in the DEIS a Section 404(b)(1) analysis (which is part of a Section 404 Dredge and Fill Permit) without receiving an application for that permit or providing required public notice. The comments expressed concern that this Section 404 permit cannot be based on a flawed DEIS.

⁷⁰ [Small Suction Dredge Miners in Idaho NPDES General Permit No: IDG300000, p.6.](#)

⁷¹ [Response to Comments on the Draft Clean Water Act § 401 Certification, Draft Stipulation and Implementation Agreement, and Proposal to Grant Temperature Waiver for the Hells Canyon Complex Hydroelectric Project](#), Idaho DEQ, May 2019.

⁷² <https://nezperce.org/wildlife-environment/nez-perce-tribe-challenges-idaho-department-of-environmental-qualitys-air-quality-permit-issued-to-perpetua-resources-for-the-stibnite-gold-mining-project/>

⁷³ [Nez Perce Tribes comments on Stibnite Gold Project DEIS](#), October 27, 2020.

⁷⁴ Based on US Supreme Court decision [City of Maui, Hawaii v. Hawaii Wildlife Fund](#), 140 S. Ct. 1462 (2020).

REQUEST COMMITMENT TO "SUSTENANCE FISHING" AS A BENEFICIAL USE

In the 2020 Triennial Review of Idaho's water quality standards, the Nez Perce Tribe requested that DEQ develop an issue paper committed to designating "sustenance fishing" as a beneficial use to support Nez Perce treaty fishing co-extensive with the Tribe's treaty-reserved fishing right in waters within Idaho.⁷⁵

FISH CONSUMPTION RATE ADVOCACY IN IDAHO

In 2016, several Tribes worked with EPA to compile heritage and current fish consumption information to support the development of Tribal water quality standards and inform federal and state decisions that may affect Tribal fish consumption in Idaho.⁷⁶



2015 National Congress of American Indians' resolution against Idaho's inadequate fish consumption rate embedded in the water quality standards:

WHEREAS, the proposed human health criteria standards include a trivial, minor increase in the Idaho FCR from the current 6.5 grams per day to only 16.1 grams per day, which utterly fails to reflect true Tribal fish consumption rates and does not protect the health, lifeways, treaty rights, and trust resources of Tribes in Idaho; and

WHEREAS, the proposed Idaho FCR of 16.1 grams per day is substantially less than the EPA's subsistence default FCR of 142 grams per day.⁷⁷

⁷⁵ [Nez Perce Tribe's Request for Issue Paper During the State of Idaho's 2020 Triennial Review](#), June 30, 2020

⁷⁶ [Idaho Fish Consumption Survey](#), 2016

⁷⁷ [2015 National Congress of American Indians' resolution](#)

CLEAN WATER ACT CONTEXT IN IDAHO

How the CWA is implemented in each state varies. This section provides a brief summary of some of the elements of core CWA programs in Idaho and Tribal relevance.

Starting with the requirements for the TAS process discussed above (p.10) that authorize Tribes to administer any one of several CWA programs, there are five federally-recognized Tribes in Idaho, two of whom have obtained TAS and one for whom water quality standards have been approved. There also are Tribes and Native Americans within Idaho who are not federally-recognized.

Tribal CWA program authority

The following Tribes have obtained TAS and authority for the water quality standards program and grant programs.

TRIBE	WATER QUALITY STANDARDS		GRANTS	
	TAS	WQS Approved	§106	§319
Coeur d'Alene Tribe	2005	2014 partial; 2019 full	X	X
Shoshone-Bannock Tribes of the Fort Hall Reservation	2008 (WQS and 401)		X	
Nez Perce Tribe			X	X

At this time, no Tribe has applied for authority for any other CWA program.

Water quality standards

Pursuit of authority to administer water quality standards may be of interest to Tribes within Idaho's borders in order to designate and protect Indigenous uses of water resources such as water supply, ceremonial and cultural uses, salmon habitat, wetlands, and seafood consumption.

Understanding and participating in the public input into the development of Idaho water quality standards is in the best interest of the Tribes because they apply upstream and around the waters on reservations, and in areas historically important to Tribes. In fact, where no Tribal water quality standards have been approved, EPA uses Idaho standards for CWA programs on the reservations.

DESIGNATED USES

The state of Idaho currently recognizes and is required to protect the following [designated uses](#) in the water quality standards. The table explains how the broader use is split up into subcategories.

Designated Use	Subcategories
Aquatic life	Cold water, salmonid spawning, seasonal cold water, warm water, modified
Recreation	Primary and secondary contact
Water supply	Domestic, agricultural, industrial
Wildlife habitats	
Aesthetics	

Within these designated uses, neither primary contact recreation, which relates to activities that are likely to involve immersion or ingestion of water, nor secondary contact recreation, which relates to activities that may occasionally ingest water, mention ceremonial or cultural uses.

FISH CONSUMPTION RATES IN WATER QUALITY CRITERIA

The CWA requires that water quality standards include water quality criteria that establish levels of protection for the beneficial uses. Idaho's fish consumption rate that drives the calculation of some human health criteria was increased to 66.5 grams per day⁷⁸ in 2019. This rate is in contrast with Oregon's rate of 175 grams per day and EPA's subsistence rate of 142 grams per day.

ANTIDegradation POLICY

Water quality standards also include provisions to identify and protect waters of higher quality as well as those of ecological and recreational significance. [Idaho's 2019 Antidegradation Implementation Procedures](#) detail how the program works. Idaho employs a waterbody approach to antidegradation which means that when there are impairments, the whole water body is considered not to be high quality even if some parts may be high quality.

The highest level of protection (Tier 3), called **Outstanding Resource Waters** in Idaho, requires legislative approval. Several waters have been nominated, but none have yet been designated.

The Antidegradation section of the Coeur d'Alene Tribe's 2019 water quality standards establishes that Outstanding Resources Waters can be any one of the following:

- (a) Outstanding national or Tribal resource;
- (b) Documented critical habitat for populations of threatened or endangered species;
- (c) Waters of exceptional recreational, ceremonial, cultural, or ecological significance; or
- (d) Waters supporting priority species as determined by the Tribe.⁷⁹

Pollutants that will reduce existing quality are prohibited in these waters through "water quality controls, maintenance of natural flow regimes, protection of instream habitats, and pursuit of land use practices protective of the watershed."

TRIENNIAL REVIEW

The CWA requires states and Tribes with water quality standards to perform a Triennial Review of water quality standards to ensure they are regularly reviewed, improved, and updated to reflect EPA guidance and new scientific and technical information. This process must be open to the public for information and review. Idaho DEQ completed their last Triennial Review in 2020.⁸⁰

The CWA also allows for uses to be removed from protection if they are not existing uses, however, the state or Tribe proposing to remove a use must complete a scientific assessment called a Use Attainability Analysis (UAA). [Idaho's UAA process](#) is explained in detail in its [2019 Guidance](#). Two UAAs were developed in Idaho for Panther Creek tributaries heavily impacted by the Blackbird cobalt and copper mine: "[Bucktail Creek](#)" in 2002 and [Blackbird Creek](#) in 2015.

Opportunities for engagement in Idaho and Tribal water quality standards:

- Propose Cultural Water Uses (as in Coeur d'Alene Tribe's water quality standards) and Sustenance Fishing (as requested by the Nez Perce Tribe) as additional designated uses during the next Idaho Triennial Review.
- Continue to advocate to DEQ for a Tribally-appropriate fish consumption rate.
- Develop Outstanding Resource Waters nominations for high quality Tribal waters or ecologically or recreationally significant Tribal waters.
- Get on the email list for any UAAs under development to guard against removal of existing uses.

For more information, go to Water Quality Standards in CWA Basics (pp.20-24).

⁷⁸ 2019 EPA approval of IDEQ HH criteria

⁷⁹ Water Quality Standards for Approved Surface Waters of the Coeur D'Alene Tribe, March 29, 2019.

⁸⁰ 2020 Triennial Review of Idaho Water Quality Standards

Discharge Permit Programs (National and Idaho Pollutant Discharge Elimination Systems, NPDES/IPDES)

All pollution discharges from a pipe or a “discrete conveyance” require a permit. The state of Idaho took over the NPDES discharge program on non-Tribal land in a phased process between 2018-2021.⁸¹ DEQ reportedly negotiated with all five Tribes before and during the transition. The state updates a [Permit Issuance Plan](#) annually that lists the scheduled IPDES permits in priority order for the year.

EPA retains oversight of the program and authority on all Tribal lands and into

Tribal waters. Permits issued by EPA and Idaho DEQ include municipal sewage, industrial wastewater, and stormwater pollution management. Many of these permits are statewide general permits that cover categories of activities (e.g., construction stormwater or gravel mining). These permits may authorize discharges to waters upstream from or neighboring to reservations or ceded lands.

Tribal governments may request to be on a list to be notified about any EPA NPDES or IPDES permit issued or renewed upstream from waters of current and historic importance.

Federally-recognized Tribes can engage in consultation on EPA NPDES permits. Any Tribe can participate in the public comment process for EPA NPDES or IPDES. The Coeur d’Alene Tribe and the Shoshone-Bannock Tribes of the Fort Hall Reservation have the authority to add conditions to or deny the EPA NPDES permits through the water quality certification process (see Section 401, p.47). All other Tribes can also offer comments to the DEQ water quality certification process of the EPA permits, if Idaho chooses to exercise their water quality certification authority.

Opportunities for engagement in the NPDES/IPDES programs:

- Comment on EPA NPDES and IPDES permits.
- Engage with EPA on NPDES permits in Tribal waters to ensure all Tribal water quality requirements are met.
- Both Tribes with water quality standards authority can condition or deny EPA NPDES permits through water quality certification for compliance with their water quality standards and/or other water quality requirements.
- When reviewing NPDES and IPDES permits, examine whether EPA and DEQ are properly implementing the antidegradation policy for high quality waterbodies (Tier 2) in their issuance of new or expanding NPDES and IPDES discharges.
- Examine whether EPA or DEQ is issuing permits that might contribute to impairments in waters, which is not allowed.
- Raise attention to impacts on first foods and cultural practices.

For more information, go to NPDES in CWA Basics (p. 55).

⁸¹ [Idaho NPDES Program Authorization](#)

Dredge and Fill Permits (Section 404)

This program requires permits for moving land that might result in dirt or pollution going back into waters.

The Corps of Engineers (Corps) administers the Dredge and Fill Permits in Idaho. As with every state action under the CWA, EPA has oversight and veto authority over the decisions of the Corps. Idaho and Tribes with TAS for water quality standards have authority to condition or deny these permits. In addition to offering comments directly to the Corps permitting process, Tribes may wish to comment on DEQ's water quality certification of these permits to ensure they meet the state's water quality standards, including Antidegradation.

Tribes would be interested in the Dredge and Fill Permit Program because the permits are required for activities such as construction, logging, oil and gas extraction, dam building and maintenance.

Several Tribes in Idaho have developed components of a Wetland Program (see below) and are working within the regional [Tribal Wetlands Working Group \(TWIG\)](#) for coordination and support. The Tribal Wetland Program Development Grant (WPDG, p.28) program is an annual component of the WPDG directed to Tribes and intertribal consortia. This year, an estimated \$3.6 million will be awarded for projects 1-4 years in length.

Opportunities for engagement in Dredge and Fill Permits:

- Review and comment on draft Corps permits; potential early consultation opportunities.
- Review and comment on any DEQ water quality certifications of Corps permits.
- All Tribes with water quality standards authority can condition or deny Corps permits through water quality certification for compliance with their water quality standards and/or other water quality requirements.
- Pay attention to impacts on reservation lands, trust land, cultural resources, traditional cultural properties, and Tribal "usual and accustomed" areas beyond reservation boundaries.
- Focus on unique Tribal messages such as protection of first foods, habitat, and cultural practices.
- Apply for a Wetland Program Development Grant.

For more information, go to Dredge and Fill Permits in CWA Basics (p.26).

NEZ PERCE TRIBE WETLAND PROGRAM PLAN DEVELOPMENT AND ADAPTING A FUNCTIONAL ASSESSMENT TOOL FOR REGIONAL AND TRIBAL USE

The 770,470 acre Nez Perce Reservation is in the Columbia-Snake River Plateau east of Lewiston, Idaho. Even though the land is mostly semi-arid, over 250 wetlands are found on the Reservation in the headwaters and riparian zones of streams and rivers and in depressions in farmland. Most wetlands on the Reservation are degraded to some degree. The Nez Perce Tribe intends to replace its existing wetland program plan. They also plan to carry out monitoring and assessment actions from the [Core Element Framework](#) and refine an existing functional assessment tool to include cultural values and tailor it to the Tribe's wetlands.

COEUR D'ALENE TRIBE WETLAND PROGRAM DEVELOPMENT: ASSESSMENT AND CONSERVATION PLANNING

The Coeur d'Alene Tribe plans to develop their wetland program over a 2-year period. The Tribe plans to conduct Intra-Tribal Wetland Workgroup meetings for coordination and collaboration; inventory and assess a subset of Coeur d'Alene Reservation wetlands; identify and potentially enroll Coeur d'Alene Reservation lands eligible for wetlands conservation programs; and develop a wetlands outreach plan for the Reservation.⁸²

⁸² 2017-18 Wetland Program Development Grants

Water Quality Certification (Section 401)

Water quality certification is a regulatory process that requires all applicants of a federal permit or license to seek certification from the state or Tribe with jurisdiction regarding whether the activity meets Idaho or Tribal water quality standards or requirements. Federal permits include any EPA NPDES permits or any Corps Dredge and Fill permits, and licenses include those issued by the Federal Energy Regulatory Commission (FERC).

In Idaho, Tribes with TAS to administer water quality standards have authority to condition or deny federal permits and licenses to ensure compliance with their water quality standards and requirements. Those same Tribes with program authority can object to or make recommendations for neighboring federal permits and licenses that DEQ certifies if they may violate Tribal water quality standards or requirements. EPA will perform the water quality certification of Corps permits for discharges to Tribal waters when a Tribe does not have their own authority, and Tribes are encouraged to participate in that process. All Tribes can comment on draft DEQ water quality certifications anywhere in the state.

New federal [CWA Section 401 regulations](#) are due in 2023, and the process may change.

Opportunities for engagement in Water Quality Certification:

- Engage with EPA to exercise water quality certification for Corps permits and FERC licenses in Tribal waters when the Tribe doesn't have program authority.
- Comment on DEQ water quality certifications on projects that impact Tribal waters.
- All Tribes with water quality TAS can condition or deny EPA or Corps permits to prevent activities in their waters or neighboring waters that may violate their water quality standards or requirements.

For more information, go to Water Quality Certification in CWA Basics (p.27).

WASHINGTON



TRIBES WITHIN WASHINGTON BORDERS

There are more Tribes within the borders of Washington that completed the TAS and water quality standards approval process than within any other state, except New Mexico.

The following examples shed light on the value of developing Tribal water quality standards and pursuing the approval process.



APPLICATION OF MORE STRINGENT STANDARDS THAN WASHINGTON STATE

The Spokane Tribe of Indians is one of nine Tribes in Washington to obtain authority to administer the water quality standards and water quality certification programs.

The Tribe's water quality standards were approved initially in 2003. In 2010, based on a subsistence level of fish consumption of 865 g/day and a stringent cancer risk level, the Tribe adopted a water quality standard for a group of "forever chemicals," polychlorinated biphenyls (PCBs). Those chemicals linger in the environment and have been shown to cause cancer and non-cancer effects, such as impacts to the immune and reproductive systems. A protective standard of 1.3 pg/L, in contrast to the current Washington state standard of 7 pg/L that was recently restored. There are eight upstream discharges of PCBs in Washington and Idaho that contribute to decades of documented PCB problems. The CWA answer to problems like that is developing a water quality restoration plan called a Total Maximum Daily Load or TMDL. The Tribe intervened as plaintiff in a lawsuit brought by Sierra Club and the Center for Environmental Law and Policy to require EPA to develop and adopt a PCB TMDL for the Spokane River. Their efforts brought action through a Consent Decree in February of 2022 which set a December 29, 2024 deadline for a plan that must reduce the ongoing sources to meet the Tribe's downstream water quality standards.



CONDITIONS REQUIRED BY TRIBES ON EPA'S PESTICIDE APPLICATION GENERAL PERMIT

Through CWA water quality certification (see p.57), the Port Gamble S'Klallam Tribe and the Tulalip Tribes imposed conditions on the EPA general permit for pesticide use as it applies to discharge into their waters. For example, Port Gamble S'Klallam Tribe prohibits discharges that will degrade Tribal waters, change designated uses, affect resident aquatic communities or resident or migratory wildlife species, or cause any exceedances of narrative or numeric criteria. The Tulalip Tribes require compliance with their water quality standards, Tidelands Management Policy, and Environmental Infractions.

CONDITIONS REQUIRED BY TRIBES ON EPA MULTI-SECTOR INDUSTRIAL GENERAL PERMIT (MSGP)

Several Tribes exercised their water quality certification authority and imposed [conditions on EPA's 2021 MSGP](#), which controls pollution carried by rain and snowmelt off many kinds of industrial sites. Many of the Tribes in Washington added the following requirements: notice when a new activity is applying for coverage, copies of stormwater management plans and monitoring data, and compliance with Tribal water quality standards. In addition, the Tulalip Tribes require authority to inspect the facilities, Endangered Species consultation, and immediate notice and action in the event of an emergency that results in a violation of the permit, such as a chemical spill.

CONDITIONS REQUIRED BY TRIBES ON EPA CONSTRUCTION STORMWATER GENERAL PERMIT

Several Tribes imposed [conditions on the 2022 EPA Construction Stormwater General Permit](#) such as notice of applications for new construction sites, stormwater pollution prevention plans, compliance with Tribal Water Quality standards, and notice of completion of the construction. The Puyallup Tribe of Indians also requires maintenance of undisturbed natural buffers to the maximum extent possible within 100 feet of Tribal waters, and the Port Gamble S'Klallam Tribe requires that the Tribe be (a) notified immediately of any exceedance of narrative or numeric Tribal water quality standards, and (b) provided with a draft of the proposed corrective action within a reasonable timeframe.

CLEAN WATER ACT CONTEXT IN WASHINGTON

How the CWA is implemented in each state varies. This section provides a brief summary of some of the elements of core CWA programs in Washington and Tribal relevance.

Starting with the requirements for the TAS process discussed above (p.10), there are 29 federally-recognized Tribes in Washington, twelve of whom have obtained TAS and nine for whom water quality standards have been approved. That leaves 20 recognized Tribes that are without Tribal water quality standards at this point, however, the Quinalt Indian Nation is in the process. There also are Tribes and Native Americans within Washington who are not federally-recognized such as the Duwamish Tribe, Wanapum, and Chinook Indian Nation.

Tribal CWA program authority

The following Tribes have obtained TAS and authority for the water quality standards and grant programs.

TRIBE	WATER QUALITY STANDARDS		GRANTS	
	TAS	WQS Approved	§106	§319
Confederated Tribes of the Chehalis Reservation	1995	1997	X	
Confederated Tribes of the Colville Reservation	2018	Federal 1989	X	X
Jamestown S'Klallam Tribe	2022		X	X
Kalispel Tribe of Indians	2002	2004	X	X
Lummi Nation	2007	2008	X	X
Makah Tribe	2003	2006	X	X
Puyallup Tribe of Indians	1994	1994	X	X
Quinalt Indian Nation	2018	By 2023	X	X
Spokane Tribe	2002	2003	X	X
Port Gamble S'Klallam Tribe	2003	2005	X	
Squaxin Island Tribe	2023		X	X
Swinomish Indian Tribal Community	2008	2017	X	X
Tulalip Tribes	1996		X	X

The following Tribes have also received authority for CWA Section 106 and 319 grants (p.28):

- Nooksack Indian Tribe
- Quileute Tribe
- Samish Indian Nation
- Sauk-Suiattle Indian Tribe
- Shoalwater Bay Indian Tribe
- Skokomish Indian Tribe
- Snoqualmie Indian Tribe
- Stillaguamish Tribe of Indians
- Suquamish Tribe
- Upper Skagit Indian Tribe
- Confederated Tribes and Bands of the Yakama Nation

The following Tribes have received authority for CWA Section 106 grants only:

- Hoh Indian Tribe
- Lower Elwha Klallam Tribe
- Muckleshoot Indian Tribe

At this time, no Tribe has applied for authority for any other CWA program.

Water Quality Standards

Pursuit of authority to administer water quality standards may be of interest to Tribes within Washington's borders in order to designate and protect Indigenous uses of water resources such as water supply, ceremonial and cultural uses, salmon habitat, wetlands, and seafood consumption. Even though Washington water quality standards plainly state that they do not apply to waters that are on Indian reservations, except for surface waters overlying fee lands on the Puyallup reservation consistent with the Puyallup Tribe Land Claims Settlement of 1989,⁸³ understanding and participating in the public input into the development of these standards is in the best interest of the Tribes because they apply upstream and around the waters on the reservations, and in areas historically important to Tribes. In fact, where Tribal water quality standards do not exist, EPA uses Washington standards for CWA programs on the reservations.

DESIGNATED USES

The state of Washington currently recognizes and is required by the water quality standards to protect the following [designated uses](#). The table explains the use subcategories.

	FRESHWATER	MARINE
Aquatic life	char spawning and rearing, core summer salmonid habitat, salmonid spawning, rearing, and migration, salmonid rearing and migration only, non-anadromous interior redband trout, Indigenous warm water species	Quality level: extraordinary, excellent, good, fair
Primary contact recreation	YES	YES
Water supply	domestic, industrial, agricultural, and stock watering	
Wildlife habitat	YES	YES
Harvesting	Fish	Salmonid and other fish, crustaceans, and other shellfish (crabs, shrimp, scallops, etc.)
Shellfish harvesting		Clam, oyster and mussel
Commerce/navigation	YES	YES
Boating	YES	YES
Aesthetic values	YES	YES
Clam, oyster, mussel harvesting		YES
Fish, crustaceans, and other shellfish harvesting		YES

⁸³ <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A-600>

The uses designated by Washington do not identify ceremonial or cultural uses, yet Tribal water quality standards usually include some version of that use. For example, the Swinomish Indian Tribal Community's Water Quality code which has been approved by EPA includes spiritual and cultural use for protection:

“Spiritual and cultural use” means the use of water which is demonstrated to support and maintain the traditional way of life of the Tribe or its members including, but not limited to: contact uses; maintenance of sufficient instream flows to preserve, protect, and enhance fish populations significant to the values and culture of the Tribe or upon which the Tribe’s Treaty fisheries depend; preservation and/or restoration of habitat for fish, shellfish, and wildlife significant to the values and culture of the Tribe; preservation of habitat for berries, roots, medicines and other vegetation significant to the values and culture of the Tribe; and preservation of the natural and traditional aesthetic quality and character of the Reservation⁸⁴

FISH CONSUMPTION RATES IN WATER QUALITY CRITERIA

The CWA requires that water quality standards include water quality criteria that establish levels of protection for the uses. Washington’s fish consumption rate that drives the calculation of some human health criteria is 6.5 g/day, among the lowest in the country. In 2000, EPA recommended a subsistence level of fish consumption at 142.4g per day, and, in 2015, a broader national level of 17.5 grams per day.⁸⁵ Washington Department of Ecology (DOE) has recently reinstated a higher level of 175 g/day, originally adopted in 2016.

ANTIDegradation Policy

Water quality standards also include provisions to identify and protect waters of higher quality as well as those of ecological and recreational significance. [Washington’s Antidegradation program](#) protects existing and designated waters (Tier 1) and [high quality waters](#) (Tier 2) and establishes [criteria and a process](#) for designation of outstanding resource waters (Tier 3). These waters must meet eligibility criteria such as pristine condition, unique aquatic habitat type, regionally unique recreational value, or cold water refuge, and they can be designated through a public nomination or by the state. A

pending [nomination for Soap Lake](#) in Grant County was submitted in 2021 by the Confederated Tribes of the Colville Reservation and Soap Lake Conservancy.

Triennial Review

The CWA requires states and Tribes with water quality standards to perform a Triennial Review of water quality standards to ensure they are regularly reviewed, improved, and updated to reflect EPA guidance and new scientific and technical information. This process must be open to the public for information and review. Washington Department of Ecology (DOE) completed the last Triennial Review in 2020⁸⁶ after public solicitation and review and is working on topics included in their [April 2022 report to EPA for 2022-2024 updates](#).

The CWA also allows for uses to be removed from protection if they are not existing uses, however, the state or Tribe proposing to remove a use must complete a scientific assessment called a Use Attainability Analysis (UAA). [Washington’s UAA process](#) is explained in its [regulations](#). DOE recently adopted reduced protections for aquatic life in the Chelan River based on its first ever [UAA](#) which was initiated by Chelan PUD.

Opportunities for engagement in Washington and Tribal water quality standards:

- Propose spiritual or cultural water uses (as in Swinomish Indian Tribal Community’s water quality standards) and subsistence fishing as additional designated uses to DOE during the next Washington Triennial Review.
- Continue to advocate to DOE for a Tribally-appropriate fish consumption rate.
- Develop Outstanding Resource Waters nominations for Tribal waters that meet the criteria.
- Get on the email list for any future UAAs to guard against removal of existing uses.

For more information, go to Water Quality Standards in CWA Basics (pp.20-24).

⁸⁴ [Swinomish Tribe Water Quality Code](#), 19-06.080(46)

⁸⁵ [EPA Guidance for Assessing Chemical Contaminant Data for Use in Fish Advisories](#), November 2000

⁸⁶ [2020 Triennial Review of Idaho Water Quality Standards](#).

Discharge Permit Programs (National Pollutant Discharge Elimination System, NPDES, administered by EPA and Washington)

All pollution discharges from a pipe or a “discrete conveyance” require a NPDES permit. [Washington](#) administers the program throughout the state except in Tribal jurisdictions, at federal facilities, and in federal waters off the coast where [EPA issues permits](#).

NPDES permits issued by EPA and DOE include municipal sewage, industrial wastewater, stormwater pollution management, offshore seafood processors, hydroelectric projects, federal fish hatcheries, and military facilities. Many of these permits are statewide general permits that cover categories of activities (e.g., construction stormwater or gravel mining). These permits may authorize discharges to waters upstream from or neighboring reservations or ceded lands.

Tribal governments may request to be on a list to be notified about any EPA or DOE NPDES permit issued or renewed upstream from waters of current and historic importance to them.

Federally-recognized Tribes can engage in consultation on EPA NPDES permits. Any Tribe can participate in the public comment process for EPA or DOE NPDES. All nine Tribes who administer the water quality standards program also have authority to add conditions to or deny the EPA NPDES permits through the water quality certification process (see Section 401, p.57). All other Tribes can also offer comments to DOE’s water quality certification of EPA permits, if Washington chooses to exercise their water quality certification authority.

Opportunities for engagement in the NPDES programs:

- Comment on EPA and DOE NPDES permits. Engage with EPA on NPDES permits in Tribal waters to ensure all Tribal water quality requirements are met.
- All Tribes with water quality standards authority can condition or deny EPA NPDES permits through water quality certification for compliance with their water quality standards and/or other water quality requirements.
- Comment on DOE water quality certification of EPA NPDES permits.
- When reviewing NPDES permits, examine whether EPA and DOE are properly implementing the antidegradation policy for high quality waterbodies (Tier 2) in their issuance of new or expanding NPDES discharges.
- Examine whether EPA or DOE is issuing permits that might contribute to impairments in waters, which is not allowed.
- Raise attention to impacts on first foods and cultural practices.

Dredge and Fill Permits (Section 404)

This program requires permits for moving land that might result in dirt or pollution going back into waters. Tribes may be interested in the Dredge and Fill Program because the permits are required for activities such as construction, logging, oil and gas extraction, and dam building and maintenance.

The Corps administers the Dredge and Fill Permits in Washington. As with every state action under the CWA, EPA has oversight and veto authority over the decisions of the Corps. Washington and all Tribes with water quality standards TAS can condition or deny these permits. In addition to offering comments directly to the Corps permitting process, all Tribes may wish to comment on DOE’s water quality certification of these permits to ensure they meet Washington’s water quality standards, including Antidegradation.

DOE also has authority to regulate impacts to wetlands under the state [Water Pollution Control Act](#), the [Shoreline Management Act](#), the State Environmental Policy Act (SEPA), and the [Coastal Zone Management Act](#).

Several Tribes in Washington have developed components of a Wetland Program (see below) and are also working within the regional [Tribal Wetlands Working Group](#) (TWIG) for coordination and support.

Opportunities for engagement in Dredge and Fill Permits:

- Review and comment on draft permits; potential early consultation opportunities.
- Review and comment on any DOE water quality certification of Corps permits.
- All Tribes with water quality standards authority can condition or deny Corps permits through water quality certification of compliance with their water quality standards and/or other water quality requirements.
- Pay attention to impacts on reservation lands, trust land, cultural resources, traditional cultural properties, and Tribal “usual and accustomed” areas beyond reservation boundaries
- Focus on unique Tribal messages such as protection of first foods, habitat, and cultural practices.
- Apply for Wetland Program Development Grant.

For more information, go to Dredge and Fill Permits in CWA Basics (p. 26).



Tribal Wetland Program Development

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION – WETLAND PROGRAM PLAN DEVELOPMENT

Project activities and goals were developed from information gathered during previous WPDG grants and prioritized to address specific wetland issues. The Confederated Tribes of the Colville Reservation plan to implement a variety of activities identified in their wetland program plan including monitoring and assessment work, identifying priority parameters for future monitoring, identifying “wetlands of exceptional value”, tracking restoration opportunities, and providing outreach events. Educational outreach via in-school programming will assist in increasing wetland knowledge among youth and families. Additional outreach with communities on the four Districts of the Reservation will assist in building a strong wetlands protection ethic.

Water Quality Certification (Section 401)

Water quality certification is a regulatory process that requires all applicants of a federal permit or license to seek review and certification from the state or Tribe with jurisdiction regarding whether the activity meets Washington or Tribal water quality standards or requirements. Federal permits include any EPA NPDES permits or any Corps Dredge and Fill permits, and licenses include those issued by FERC.

In Washington, all Tribes with TAS to administer water quality standards have authority to condition or deny federal permits and licenses to ensure compliance with their standards and water quality requirements. Those same Tribes with program authority can object to or make recommendations when neighboring federal permits and licenses that DOE certifies if they may violate Tribal standards or water quality requirements. EPA will perform the water quality certification of Corps permits for discharges to Tribal waters when a Tribe does not have their own authority, and Tribes are encouraged to participate in that process. All Tribes can comment on draft DOE water quality certifications anywhere in the state.

New federal [CWA Section 401 regulations](#) are due in 2023 so the process may change.

Opportunities for engagement in Water Quality Certification:

- Engage with EPA to exercise water quality certification for Corps permits in Tribal waters when the Tribe does not have water quality standards program authority.
- Comment on DOE water quality certifications on projects that impact Tribal waters.
- All Tribes with water quality standards authority can condition or deny EPA or Corps permits and FERC licenses to prevent violation of their water quality standards or requirements.

For more information, go to Water Quality Certification in CWA Basics (p.27).

TULALIP TRIBES OF WASHINGTON – 2013 – 2019 TULALIP WETLAND PROGRAM PLAN UPDATE, AND DEVELOPMENT OF WETLAND AND RIPARIAN REHABILITATION STANDARDS

This project continues to build on the science-based foundation of the Tulalip Tribes' wetland program through the development of standards, recommendations, and best management practices for wetland and riparian rehabilitation and enhancement activities. The grant will help to enhance the Tribes' capabilities and expertise in providing detailed site plans and information sheets to those who are required to rehabilitate wetlands as part of permit conditions. At the end of the grant period (FY18), the Tulalip Tribes' WPP will need to be updated and approved to insure continuity in their wetland program. The updated plan will span the FY 2020-2026 time frame.

SNOQUALMIE INDIAN TRIBE – R10 TRIBAL WETLAND WORKING GROUP (TWIG) – SEGUES AND PROGRESS

The Snoqualmie Indian Tribe plans to continue supporting Tribal wetland programs in EPA Region 10 through the TWIG. They plan to continue hosting workshops of the EPA Region 10 TWIG throughout the Pacific Northwest, provide training opportunities for staff on wetlands and aquatic resources and expand documentation and support of Tribal Values in the core elements framework. In addition, they will maintain the TWIG website, review the governance and representation in the TWIG, use the knowledge gained to inform a new strategic plan, and continue to implement the leadership transition plan for the TWIG ⁸⁷

⁸⁷ [2017-18 Wetland Program Development Grants](#)

OREGON



OREGON

Oregon Tribes have been engaged in the process of developing Tribal water quality standards for over 20 years. In 2001, Oregon was the first state to pass a state-Tribal government-to-government relations law⁸⁸ which codified a 1996 Executive Order committing staff, training, and high level oversight to “resolv[e] potential conflicts, maximize key inter-governmental relations and enhance an exchange of ideas and resources for the greater good of all of Oregon’s citizens, whether Tribal members or not.”⁸⁹

The following examples demonstrate the impact Tribal voices have when they engage in Clean Water Act programs.



OREGON FISH CONSUMPTION RATE INCREASED TO 175 G/DAY

In 2004, Confederated Tribes of the Umatilla Indian Reservation expressed concerns that Oregon’s fish consumption rate of 17.5 g/day didn’t take into account Indigenous levels of consumption. The Tribes [reached an agreement](#) with the EPA and the Oregon Department of Environmental Quality (DEQ) to revise the rate to a more accurate level.⁹⁰ In 2018, more than 20 years after a landmark study by the [Columbia River InterTribal Fish Commission](#), Oregon Environmental Quality Commission approved rules that employed the rate of 175 g/day.

DENIAL OF JORDAN COVE ENERGY PROJECT WATER QUALITY CERTIFICATION

Tribes intervened in numerous permitting processes during the several years that the Jordan Cove Energy Project (liquified natural gas terminal) and the PacificCoast Pipeline were in the works. One of those processes that Tribes influenced was DEQ’s denial of water quality certification. Tribes, including the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians and the Klamath Tribes, were among those who used their voice to highlight the likely impacts to many streams and water bodies and the impact on the fisheries and numerous endangered species. [DEQ’s denial of one initial water quality certification](#) was one of the critical approval processes that stopped the project.

⁸⁸ [Senate Bill 770](#)

⁸⁹ [Executive Order 96-30](#)

⁹⁰ <https://ictnews.org/archive/oregon-sets-highest-fish-consumption-rate-in-us-based-on-native-peoples-higher-rate-of-consumption>; <https://www.oregon.gov/deq/wq/Documents/2008EQCRreport.pdf>



HELLS CANYON COMPLEX RELICENSING

The Federal Energy Regulatory Commission (FERC) relicensing process for the Hells Canyon Complex requires a water quality certification from both Idaho and Oregon since the HCC straddles the border between the states. Several Tribes in Oregon commented on DEQ's water quality certification (CWA Section 401, just below). For example, the Confederated Tribes of the Umatilla Indian Reservation urged DEQ to condition the FERC license to require water quality standards to be met "sooner rather than later," referring to the 30 years that Idaho Power has to attain "thermal benefits" from the Snake River Stewardship Program.⁹¹ Following the finalization of the certification, the Nez Perce Tribe and the Burns Paiute Tribe appealed the Oregon certificate in Oregon state court. A settlement was reached to address some of the Tribal concerns.

⁹¹ [Evaluation and Findings Report: Clean Water Act Section 401 Water Quality Certification Hells Canyon Complex](#), May 2019, p. 121-2.

CLEAN WATER ACT CONTEXT IN OREGON

How the CWA is implemented in each state varies. This section provides a brief summary of some of the elements of core CWA programs in Oregon and Tribal relevance.

Starting with the requirements for the TAS process discussed above (p.10), there are ten federally-recognized Tribes entirely or partially within the borders of Oregon, three of whom have obtained TAS and two for whom water quality standards have been approved. The Fort McDermitt Paiute and Shoshone Tribes live on the border of Oregon and Nevada and are not included in Oregon's list of federally-recognized Tribes. That leaves nine recognized Tribes that are without Tribal water quality standards at this point, however the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians are in the approval process. There also are Tribes and Native Americans within Oregon who are not federally-recognized such as the Clatsop-Nehalem Confederated Tribes of Oregon and the Chinook Indian Nation.

Tribal CWA program authority

The following Tribes have obtained TAS and authority for the water quality standards and grant programs.

TRIBE	WATER QUALITY STANDARDS		GRANTS	
	TAS	WQS	§106	§319
Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians	2021	By 2023	X	X
Confederated Tribes of the Umatilla Indian Reservation	2001	2001	X	X
Confederated Tribes of the Warm Springs Reservation	1999	2001	X	X
Confederated Tribes of the Grand Ronde			X	X
Confederated Tribes of the Siletz Indians			X	X
Coquille Indian Tribe			X	X
Cow Creek Band of Umpqua Tribe of Indians			X	X
Klamath Tribes			X	X
Burns Paiute Tribe			X	

At this time, no Tribe has applied for authority for any other CWA program.

Water Quality Standards

Pursuit of authority to administer water quality standards may be of interest to Tribes within Oregon's borders in order to designate and protect Indigenous uses of water resources such as water supply, ceremonial and cultural uses, salmon habitat, wetlands, and seafood consumption. Understanding and participating in the public input into Oregon's water quality standards is in the best interest of the Tribes because they apply upstream and around the waters of the reservations as well as in off-reservation areas historically important to Tribes. In fact, where Tribal water quality standards do not exist, EPA uses Oregon standards for CWA programs on the reservations.

DESIGNATED USES

The state of Oregon currently recognizes and is required by the water quality standards to protect the following designated [uses](#). The table explains the use subcategories.

Designated use	Subcategories
Fish and aquatic life	
Recreation	Water contact recreation, boating
Fishing	
Water supply	Domestic, industrial, irrigation, livestock watering
Aesthetic quality	
Wildlife and hunting	
Commercial navigation and transportation	

The uses designated by Oregon do not explicitly identify ceremonial or cultural uses or subsistence fishing. In the 2010 water quality standards of the Confederated Tribes of the Umatilla Indian Reservation, the Tribes designate Cultural Water Use for all waters and define such uses as

“[W]aters which are used to support and maintain the way of life and traditional activities involving the people of the Reservation. These activities include, but are not limited to, spiritual practices which involve, among other things, primary or (direct) contact with water; uses of a water body to fulfill cultural, traditional, spiritual or religious uses; and preservation of habitat for berries, roots, medicines and other vegetation significant to the values and treaty rights of the Tribes. Water quality standards for this purpose will be numerically identical to water contact recreation standards.”⁹²

FISH CONSUMPTION RATE IN WATER QUALITY CRITERIA

The CWA requires that water quality standards include water quality criteria that establish levels of protection for the beneficial uses. Oregon's fish consumption rate that drives the calculation of many state human health criteria is 175 g/day, the highest in the country, to reflect the higher levels of fish consumption of Tribal and coastal populations. As mentioned above, this important regulatory development came in 2018 after decades of work by many parties, and it had a significant impact on the state's development of more stringent human health criteria for many toxic pollutants. In 2000, EPA recommended a subsistence level of fish consumption at 142.4g per day, and, in 2015, a broader national level of 22 grams per day.⁹³

⁹² Confederated Tribes of the Umatilla Indian Reservation, [Water Quality Standards, Beneficial Uses, and Treatment Criteria, August 4, 2009, p.4.](#)

⁹³ EPA Guidance for Assessing Chemical Contaminant Data for Use in Fish Advisories, November 2000.

ANTIDEGRADATION POLICY

Water quality standards also include provisions to identify and protect waters of higher quality as well as those of ecological and recreational significance. [Oregon's Antidegradation program](#) protects existing and designated waters (Tier 1) and high quality waters (Tier 2) and establishes criteria and a process for designation of outstanding resource waters (Tier 3). These waters constitute an outstanding state resource due to their extraordinary water quality or ecological value, or the need to protect critical habitat, and can be designated through a public nomination or by the state. A petition for the designation of the [Metolius River as an ORW](#) was denied by the Environmental Quality Commission in September 2022. This decision was, at least in part, due to the [letter received from the Confederated Tribes of the Warm Springs](#) during government-to-government consultation, questioning Oregon's constitutional authority, and opposing the designation because the river forms the southern boundary of their Reservation and is entirely within their ceded lands that have substantial off-reservation treaty-reserved rights, interests, and management authority.

TRIENNIAL REVIEW

The CWA requires states and Tribes with water quality standards to perform a Triennial Review of water quality standards to ensure they are regularly reviewed, improved, and updated to reflect EPA guidance and new scientific and technical information. This process must be open to the public for information and review. DEQ completed the last Triennial Review in 2021 after public solicitation and review and developed a [workplan of high-priority projects for 2021-2024](#).

The CWA also allows for uses to be removed from protection if they are not existing uses, however, the state or Tribe proposing to remove a use must complete a scientific assessment called a Use Attainability Analysis (UAA). Oregon exercised the UAA process to revise water quality standards for [West Division Main Canal near Hermiston](#).

Opportunities for engagement in Oregon and Tribal water quality standards:

- Propose cultural water uses (as in Confederated Tribes of the Umatilla Indian Reservation's water quality standards) as additional designated uses during the next Oregon Triennial Review.
- Develop Outstanding Resource Waters petitions for Tribal waters that are ecologically significant. Ask questions about recreationally significant waters as well.
- Get on the mailing list for any future UAAs to guard against removal of existing uses.

For more information, go to Water Quality Standards in CWA Basics (pp.20-24).

Discharge Permit Programs (National Pollutant Discharge Elimination System, NPDES, administered by EPA and Oregon)

All pollution discharges from a pipe or a “discrete conveyance” require a permit. [Oregon](#) administers the program throughout the state except in Tribal jurisdictions, federal facilities, and in federal waters off the coast where [EPA issues permits](#).

NPDES Permits issued by EPA and DEQ include municipal sewage, industrial wastewater, stormwater pollution management, federal hydroelectric projects, and offshore seafood processors. Many of these permits are statewide general permits that cover categories of activities (e.g., construction stormwater or gravel mining). These permits may authorize discharges to waters upstream from or neighboring to reservations or ceded lands.

Tribal governments may request to be on a list to be notified about any EPA or DEQ NPDES permit issued or renewed upstream from waters of current and historic importance to them.

Federally-recognized Tribes can engage in consultation on EPA NPDES permits. Any Tribe can participate in the public comment process for EPA or DEQ NPDES. All three Tribes in Oregon who have authority to administer the water quality standards program also have authority to add conditions to or deny the EPA NPDES permits through the water quality certification process (see Section 401, p.67). All other Tribes can also offer comments to the DEQ water quality certification process of the EPA permits, if Oregon chooses to exercise their water quality certification authority.

Opportunities for engagement in the NPDES programs:

- Comment on EPA and DEQ NPDES permits. Engage with EPA on NPDES permits in Tribal waters to ensure all Tribal water quality requirements are met.
- All Tribes with water quality standards authority can condition or deny EPA NPDES permits through water quality certification for compliance with their water quality standards and/or other water quality requirements.
- Comment on DEQ water quality certification of EPA NPDES permits.
- When reviewing NPDES permits, examine whether EPA and DEQ are properly implementing the antidegradation policy for high quality waterbodies (Tier 2) in their issuance of new or expanding NPDES discharges.
- Examine whether EPA or DEQ is issuing permits that might contribute to impairments in waters, which is not allowed.
- Raise attention to impacts on first foods and cultural practices.

For more information, go to NPDES in CWA Basics (p.19).

Dredge and Fill Permits (Section 404)

This program requires permits for moving land that might result in dirt or pollution going back into waters. Tribes may be interested in the Dredge and Fill Program because the permits are required for activities such as construction, logging, oil and gas extraction, and dam building and maintenance.

The Corps administers the CWA Dredge and Fill Permits in Oregon. As with every state action under the CWA, EPA has oversight and veto authority over the decisions of the Corps. Oregon and all Tribes with water quality standards TAS can condition or deny these permits. In addition to offering comments directly to the Corps permitting process, all Tribes may wish to comment on DOE's water quality certification of these permits to ensure they meet Oregon's water quality standards, including Antidegradation.

The [Oregon Department of State Lands](#) regulates additional dredging and filling beyond what the Section 404 permits regulate.

Several Tribes in Oregon have developed components of a Wetland Program and are also working within the regional [Tribal Wetlands Working Group](#) (TWIG) for coordination and support.

Opportunities for engagement in Dredge and Fill Permits:

- Review and comment on draft permits; potential early consultation opportunities.
- Review and comment on any DEQ water quality certification of Corps permits.
- All Tribes with water quality standards authority can condition or deny Corps permits through water quality certification of compliance with their water quality standards and/or other water quality requirements.
- Pay attention to impacts on reservation lands, trust land, cultural resources, traditional cultural properties, and Tribal "usual and accustomed" areas beyond reservation boundaries.
- Focus on unique Tribal messages such as protection of first foods, habitat, and cultural practices.
- Apply for Wetland Program Development Grant.

For more information, go to Dredge and Fill Permits in CWA Basics (p.26).



Water Quality Certification (Section 401)

Water quality certification is a regulatory process that requires all applicants of a federal permit or license to seek review and certification from the state or Tribe with jurisdiction regarding whether the activity meets Oregon or Tribal water quality standards or requirements. Federal permits include any EPA NPDES permits or any Corps Dredge and Fill permits, and licenses include those issued by FERC.

In Oregon, all Tribes with TAS to administer water quality standards have authority to condition or deny federal permits and licenses to ensure compliance with their standards and water quality requirements. Those same Tribes with program authority can object to or make recommendations for neighboring federal permits and licenses that DEQ certifies if they may violate Tribal standards or water quality requirements. EPA will perform the water quality certification of Corps permits for discharges to Tribal waters when a Tribe does not have their own authority, and Tribes are encouraged to participate in that process. All Tribes can comment on draft DEQ water quality certifications anywhere in the state.

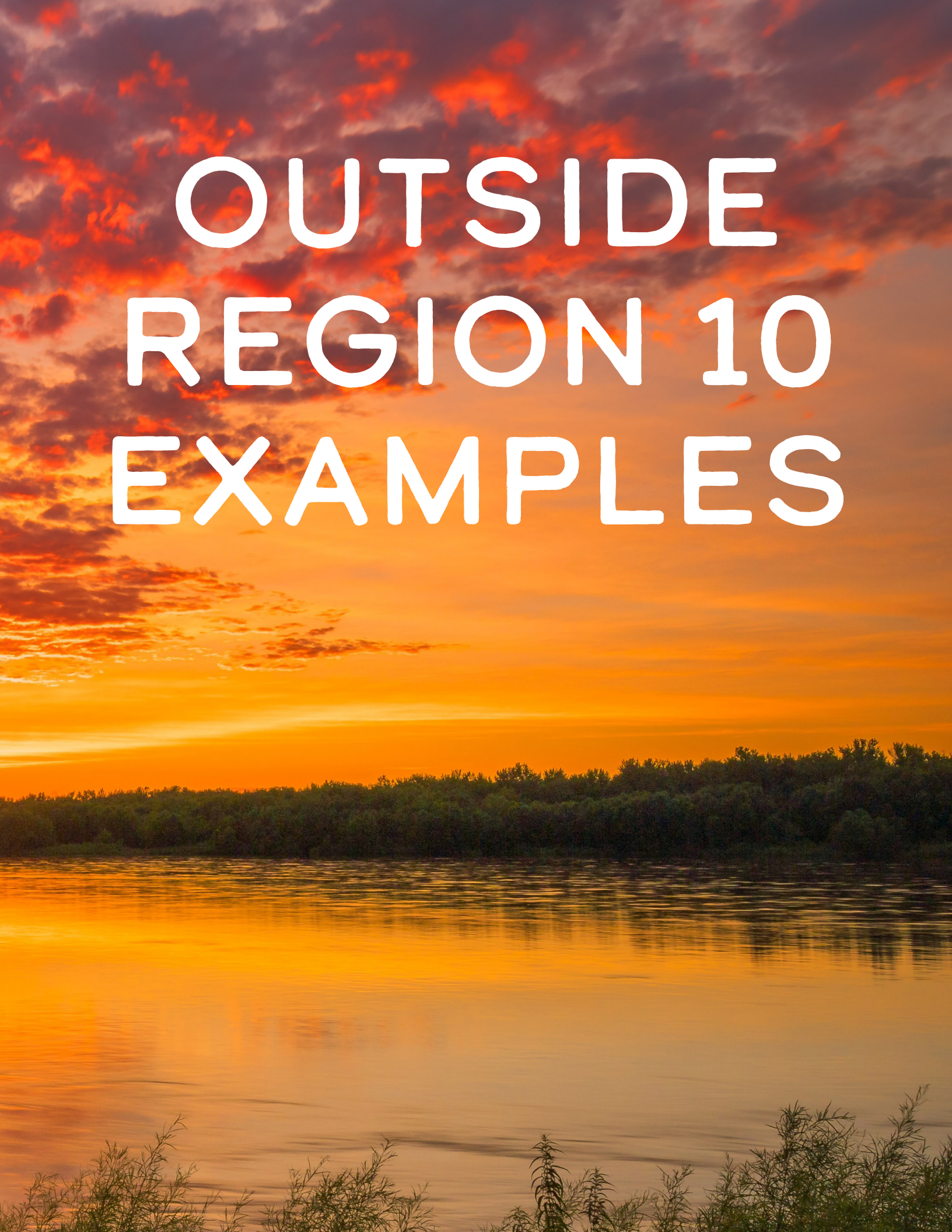
New federal [CWA Section 401 regulations](#) are due in 2023 so the process may change.

Opportunities for engagement in Water Quality Certification:

- Engage with EPA to exercise water quality certification for Corps permits in Tribal waters when the Tribe doesn't have water quality standards program authority.
- Comment on DEQ water quality certifications on projects that impact Tribal waters.
- All Tribes with water quality standards authority can condition or deny EPA or Corps permits and FERC licenses to prevent violation of their water quality standards or requirements.

For more information, go to Water Quality Certification in CWA Basics (p.27).





OUTSIDE REGION 10 EXAMPLES

OUTSIDE REGION 10 EXAMPLES

There are many examples of how Tribes outside of Region 10 have used the CWA. Below are just a few of those examples to demonstrate additional opportunities.

Fond du Lac Band of Lake Superior Chippewa

The Fond du Lac, whose historical lands span over the states of Minnesota, Wisconsin, and Michigan, gained TAS for water quality standards within their reservation in northeast Minnesota, near Lake Superior in 1996. Their water quality standards were first approved in 2001. The [2020 update](#) to the standards includes “subsistence fishing (netting)” and cultural uses including “wild rice area” and “aesthetic waters.” Aesthetic waters include the preservation of wetlands for the maintenance of traditional medicinal plants.⁹⁴

[Wild rice](#), known as manoomin, holds cultural significance to the Fond du Lac and other Ojibwe bands. The Fond du Lac set a standard of 10 mg/L to protect wild rice from sulfate pollution in the area. Decades ago, in 1973, Minnesota first adopted the standard of 10 mg/L to protect wild rice from sulfate contamination and industrial dischargers, namely sulfide mining facilities, the owners of which have worked to limit the waters that are protected for wild rice harvest. Legal action to (a) block enforcement of the sulfate standard has failed, and (b) prevent additional sulfide pollution has succeeded thanks to decades of work by the Fond du Lac Band, [WaterLegacy](#) (a Minnesota-based nonprofit organization), and many others.

Pueblo of Isleta

The Pueblo of Isleta, situated in the Rio Grande Valley six miles downstream from Albuquerque, NM, received TAS for water quality standards in 1992, the first pueblo or Tribe to do so and to have standards approved. The Pueblo’s [water quality standards](#) set a criterion for arsenic in the Rio Grande of 17 ppb, more stringent than New Mexico’s water quality standards.⁹⁵ EPA administers NPDES permits for New Mexico (one of only three states). In drafting the permit for Albuquerque’s wastewater treatment plant, the agency applied the Pueblo of Isleta’s downstream standards which required more treatment of the sewage. The city unsuccessfully sued EPA for approving the Pueblo’s water quality standards, as the case traveled from District Court to the 10th Circuit Court of Appeals and was ultimately denied hearing by the Supreme Court.⁹⁶

Sokaogon Chippewa Community – Mole Lake Band of Lake Superior Chippewa

The Sokaogon Chippewa Community, situated in the eastern part of the Northern Highlands of Wisconsin, received TAS for water quality standards in 1995 and approval of [water quality standards](#) in 1996. To protect the traditional ways of the Tribe, they classified all of the water bodies as Outstanding National Resource Waters (ONRW), Tier 3 of Antidegradation. That classification carries with it the prohibition of new or increased discharges to the water body, or to tributaries if such discharges would lower the water quality in the ONRW on anything but a temporary basis. These protections contributed to successful efforts to prevent a mining operation just one mile upstream of the Reservation that would have impaired Tribal waters with cyanide, acid mine drainage, soil erosion, and groundwater drawdown. The Chippewa also had to modify its own plans to reconstruct a service station and remodel a gaming facility due to the ONRW classifications.⁹⁷

⁹⁴ [Fond du Lac Water Quality Standards, 2020.](#)

⁹⁵ It is now 4.2 ppb. [Pueblo of Isleta Surface Water Quality Standards, 2002.](#)

⁹⁶ [High Country News, Feb 2, 1998.](#)

⁹⁷ [Sokaogon Chippewa Community, EPA Case Studies in Tribal Water Quality Standards Programs, July 2006.](#)



Fond du Lac Band of Lake Superior Chippewa natural resources manager Thomas Howes stands at the canoe landing at Deadfish Lake.

Miccosukee Tribe of Indians

The Miccosukee Tribe of Indians migrated to Florida before it became a state. Most of the Miccosukee were removed to the West during the Indian Wars of the 1800s, but some who never surrendered hid in the Everglades. The Reservation, established in 1962, is in south Florida. The Tribe was approved for water quality standards TAS originally in 1994, and received approval for the [standards](#) themselves first in 1999.

The state of Florida received authority to administer part of the Dredge and Fill Permitting program (CWA Section 404) in 2020. The Miccosukee filed a lawsuit in 2022 claiming that the approval of Florida's "assumption" of the Section 404 permitting program "impermissibly disregarded and diminished the Miccosukee's Tribal Sovereignty by subjecting more than 200,000 acres of Indian lands to the State's regulatory jurisdiction."⁹⁸

Hoopa Valley Tribe

The Hoopa Valley Tribe has lived in the Trinity River in northwest California for over 10,000 years. The Tribe received TAS for water quality standards in 1996, and approval of their [standards](#) in 2002. Within those standards the Tribe designated ceremonial and cultural water use for the water bodies within their jurisdiction, including the Trinity River. Every other year, the Hoopa hold a 10-day ceremony that includes a Boat Dance on the Trinity River in late August when streamflows are low. To ensure there is enough water for this ceremony, the Hoopa contact the U.S. Bureau of Reclamation to schedule the release of water from an upstream reservoir a few days ahead of time.

⁹⁸ [Miccosukee Tribe of Indians of Florida v. U.S.EPA and U.S.A.](#), August 4, 2022.

WHERE TO FIND OUT MORE

Organizations (that weigh in on water related-sovereignty issues)

[National Tribal Water Council](#) (NTWC)

[Institute for Tribal Environmental Professionals](#) (ITEP)

[Tribal Wetland Working Group](#) (TWIG) – Region 10

[National Congress of American Indians](#) (NCAI) (2015 [ID WQS and FCR](#)) – est 1944

Resources

[River Network CWA Owner's Manual](#) 2022

[Treatment Similar to State](#)

[Tribal Consultation Resources](#) - EPA

[Water Quality Standards](#) - EPA

- [Water Quality Standards Tools for Tribes](#) – EPA
- [EPA Actions on Tribal WQS](#) – existing TAS and approved TAS
- [Tribal water quality standards](#) – EPA
- [Tribal Reserved Rights in WQS](#) – EPA, draft
- [Tribal Baseline WQS](#) – EPA, in progress

Fish consumption

- [EPA Idaho Tribal Fish Consumption Survey](#)
- [A Fish Consumption Survey of the Nez Perce Tribe](#), December 2016
- [A Fish Consumption Survey of the Shoshone-Bannock Tribes](#), December 2016
- [Heritage Fish Consumption Rates of the Nez Perce Tribe \(pdf\)](#) (2.27 MB, December 31, 2016)
- [Heritage Fish Consumption Rates of the Shoshone-Bannock Tribes \(pdf\)](#) (2.15 MB, December 31, 2016)
- [Heritage Fish Consumption Rates of the Coeur d'Alene Tribe \(pdf\)](#) (3.61 MB, December 16, 2016)
- [Heritage Fish Consumption Rates of the Kootenai Tribe of Idaho \(pdf\)](#) (3.41 MB, December 16, 2016)

[NPDES](#) - EPA

[Dredge and Fill Permitting](#) - EPA

- [EPA Guide to Developing Tribal Wetland Management Programs](#), Dec 2022
- Brown, Alex, [More States Want Power to Approve Wetlands Development](#), Pew Stateline Magazine, May 11, 2022

[Water Quality Certification](#)

- [Clean Water Act Section 401 Water Quality Certification: A Water Quality Protection Tool for States and Tribes, EPA, 2010.](#)
[Impaired Waters and Total Maximum Daily Loads](#)

- [TAS for CWA Section 303\(d\) Rule](#)

CWA Section 106 Funding

- [EPA Guidance for Clean Water Act Section 106 Tribal Grants, 2022 DRAFT.](#)



[Deschutes River Alliance v. Portland General Electric and the Confederated Tribes of the Warm Springs Reservation of Oregon](#)

A 2021 district court decision in Oregon dismissed a lawsuit brought by a nonprofit organization attempting to enforce compliance with Section 401 water quality certification conditions for a hydroelectric project, explaining that Congress did not abrogate the Tribes' sovereign immunity when it passed the CWA.

DEFINITIONS AND ACRONYMS

ALASKA NATIVE VILLAGES

Alaska's indigenous people are jointly called Alaska Natives. For thousands of years Alaska Natives have lived throughout the vast land that became the 49th state. A traditional subsistence lifestyle of hunting, fishing and gathering food has enabled Alaska Natives to thrive in some of the world's harshest and most challenging environments. Alaska Natives are many nations and Tribes, with ancient traditions that continue to be practiced today and adapted for the modern world. Alaska Natives are comprised of widely diverse cultures, languages, life ways, art forms and histories, but they share many core values that have guided them for millennia.

ALLOTMENTS

The Allotment Act, as amended, authorized the Secretary of the Interior to convey up to 160 acres of "vacant, unappropriated, and unreserved non-mineral" land to individual Alaska Natives who could prove as head of household "substantially continuous use and occupancy of that land for a period of five years." More than 10,000 Alaska Natives filed allotment applications before 1971, when Alaska Native Claims Settlement Act repealed it, but allowed pending allotment claims to be finalized. That process took additional laws and decades. The Alaska Native Allotment Program has evolved over time as new legislation amended the eligibility of Alaska Native groups and application time frames since the initial law.

ANTIDegradation POLICY

Water quality standards include provisions to identify and protect waters of higher quality as well as those of ecological and recreational significance. This part of the CWA is called the Antidegradation Policy and Methods, and it is intended to fulfill the objective of the CWA to maintain integrity of the Nation's waters by preventing degradation where water quality is good. (p.22)

CWSRF

Clean Water State Revolving Loan Funds - The CWA authorized the Clean Water State Revolving Funds to fund wastewater, nonpoint source pollution and stormwater pollution infrastructure improvements through low-interest loans. Within the program, the Clean Water Indian Set-Aside (CWISA) was established to focus on these infrastructure needs of Tribes and Alaska Native Villages, and it is implemented in cooperation with the Indian Health Service.

FEDERALLY-RECOGNIZED

Recognition" is a legal term meaning that the United States recognizes a government-to-government relationship with a Tribe and that a Tribe exists politically in a "domestic dependent nation" status. Federally-recognized Tribes possess certain inherent powers of self-government and entitlement to certain federal benefits, services, and protections because of the special trust relationship.

FEE LANDS

Means land, originally tribal reservation land, which is owned by a tribe, Indian or non-Indian and is not held in federal trust, The state and local governments have jurisdiction on fee lands but sometimes a tribe may exert jurisdiction when fee lands are inside a tribal reservation boundary.

FCR

Fish consumption rates, assumption about how much fish is consumed for different populations, It is used to set protective human health water quality standards.

NPDES

National Pollutant Discharge Elimination System, permit system for point source pollution. (p.19)

RESERVED RIGHTS

As used in the current Proposed Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights, aquatic and aquatic-dependent resources reserved to tribes through treaties, statutes, executive orders, or other sources of federal law.

SECTION 106

Section 106 of the Clean Water Act establishes a grant program that supports state, interstate, and Tribal water pollution control programs. Section 106 funds can be used for water quality monitoring and assessment, water quality standards and Total Maximum Daily Load development and implementation, National Pollutant Discharge Elimination System permitting and enforcement, source water protection, and ground water protection.

SECTION 303(D)

Section of the Clean Water Act that calls for assessment of waters, development of a list of impaired waters, and development of water quality restoration plans called Total Maximum Daily Loads (TMDLs) for those impaired waters. (p.25)

SECTION 319

Section of Clean Water Act that addresses nonpoint source pollution assessment and management, including the administration of a grant program.

SECTION 401

Section of Clean Water Act that authorizes states and Tribes to review all federal permits and licenses in their jurisdiction and certify, condition, or deny the permit or license or waive the right to do so. (p.27)

SECTION 404

Section of Clean Water Act that establishes the permit authorities and procedures for discharge of dredge and fill material into waters of the U.S. (p.26)

TAS

Treatment similar to that of a state, some would substitute Treatment as Sovereign, process for applying to EPA for authority to administer environmental programs including several under the Clean Water Act

TMDLS

Total Maximum Daily Loads which are both a pollutant cap and a water quality restoration plan for impaired waters (p.25).

TRIBES

The use of this term in the Handbook is intended to be broad and inclusive of those Tribes that are federally- and state-recognized as well as those that are not.

TRIENNIAL REVIEW

The periodic review of state and Tribal water quality standards required by the CWA at least every three years.

WQS

Water quality standards, the Clean Water Act program comprised of designating uses, developing protective water quality criteria, and adopting antidegradation policies and methods that will ensure the protection of existing quality, high quality, and outstanding waters.

