



**EPA Region 10 Tribal Consortium (RTOC)**  
**P.O. Box 689 Spokane, Washington 99210**  
**[www.region10rtoc.net](http://www.region10rtoc.net)**

August 13, 2021

Mary Lou Soscia  
EPA Oregon Operations Office  
805 SW Broadway, Suite 500  
Portland, OR 97205

**SENT VIA EMAIL ([soscia.marylou@epa.gov](mailto:soscia.marylou@epa.gov))**

**RE: Proposed Federal Promulgation: Federal Baseline Water Quality Standards for Reservations**

Dear Madam or Sir:

These comments are submitted on behalf of the Region 10 Tribal Operations Committee (“RTOC” or “Committee”) on the proposed promulgation of federal baseline water quality standards for Reservations. This letter is not sent on behalf of EPA Region 10 or any employees of EPA, but solely tribal government representatives of the RTOC. The following comments and the meetings that occurred during the rulemaking process does not replace or fulfill the EPA’s obligation to consult with the Tribes of EPA Region 10.

The RTOC strongly supports this effort and believes it is an important step forward to assist Tribes who face jurisdictional and/or capacity challenges to protect and restore clean water within their jurisdictional lands and provide effective regulations are critical to efficient water management, healthy ecosystems, and healthy communities. Many Tribes in Region 10 face challenges to full implementation of the Clean Water Act (“CWA”) through the Treatment-in-the-Same-Manner-as-State (“TAS”) process due to a legacy of checkerboarded ownership and challenges by local and state governments to Tribal jurisdiction. This effort presents a reasonable solution to that problem. Moreover, there is a serious question as to whether EPA’s current approach of imply utilizing an adjacent state’s water quality standards is legal without action to promulgate those standards for Tribal lands. This effort resolves that problem.

While the RTOC supports this effort, we do have the following comments for consideration as EPA proceeds in the development of these standards:

**1. The promulgation of baseline water quality standards must be region specific.**

The Committee believes the EPA should promulgate baseline water quality standards for Reservations for each region to reflect each Tribe’s environmental and public health demands. In Alaska, Idaho, Washington, and Oregon, many Tribes depend upon rivers, streams, and waterways that support salmon species that have unique temperature requirements, toxic pollutants, and dissolved oxygen that waterways elsewhere in the United States do not have.

**2. Proposed water quality standards for EPA Region 10 must include designated uses for fish, shellfish, and other cultural resources.**

The Committee believes the EPA should promulgate designated uses for rivers and other waterways to protect Tribal cultural resources such as fish, shellfish, and plants under 33 U.S.C. § 1313 of the CWA. The Committee believes the Tribes of EPA Region 10 are entitled to designated uses that protect fish, plants, and cultural resources under the federal government’s trust responsibility to tribes and treaty rights.

The Committee strongly believes Tribal fishing rights and practices in EPA Region 10 are substantial and critical to the Indigenous way of life. Thus, the Committee believes the EPA should classify tribal fishing as a designated use and should issue the following regulations pursuant to the CWA:

- Water quality standards that protect fish habitat, shellfish, and the riparian ecosystems they depend upon.
- Water quality standards that ensure appropriate water temperatures necessary for fish spawning and ecosystem health.
- Water quality standards such as minimum flows that facilitate fish movement and migration and prohibit of projects that restrict fish movement and migration.

**3. Proposed water quality standards for EPA Region 10 must include fish consumption rates.**

Tribes and communities of EPA Region 10 harvest and consume fish and other aquatic resources more than the average population in the United States and are therefore potentially exposed to contaminated fish and shellfish. Thus, EPA Region 10 requires fish consumption rates that reflect Indigenous fishing and subsistence traditions and to adequately protect the health of Indigenous communities.

In Oregon and Washington, water quality standards established the average fish consumption rate as 175-grams per day and in Alaska studies indicate that the average fish consumption rate is 149-grams per day.<sup>1</sup>

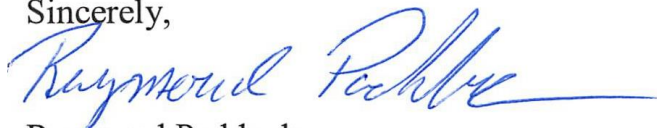
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<sup>1</sup> Michael A. Bussell, “EPA’s Approval of New and Revised Human Health Water Quality Criteria and Implementation Provisions in Oregon’s Water Quality Standards Submitted on July 12 and 21, 2011.” (Environmental Protection Agency, October 17, 2011), <https://www3.epa.gov/region10/pdf/water/or-tds-hhwqs-transmittal-ltr-2011.pdf>.; Nayak Polissar and Moni Neradilek, “Alaska Statewide and Regional Estimates of

The Committee believes Washington's and Oregon's current EPA approved fish consumption rate of 175-grams per day is an appropriate rate as it falls within the statistical range of fish consumption rates in Alaska, Idaho, Washington, and Oregon. However, the Committee also recommends the EPA consider implementing higher fish consumption rates that are appropriate for Indigenous communities as Indigenous subsistence on finfish, shellfish, and aquatic resources are significantly higher than the general public and thus face higher risks of exposure.

The RTOC appreciates your consideration of these comments.

Sincerely,



Raymond Paddock  
Region 10 RTOC, Tribal Caucus Co-chair

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Consumption Rates in Rural Communities for Salmon, Halibut, Herring, Non-Marine Fish, and Marine Invertebrates  
”(The Mountain-Whisper-Light Statistics , 2019), pp. 1-36.