



Northwest Indian Fisheries Commission

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February 08, 2012

Mr. Gerry O'Keefe, Director
Puget Sound Partnership
PO Box 40900
Olympia, WA 98504

Re: Comments and concerns regarding the update of the Puget Sound Action Agenda.

Dear Director O'Keefe:

On behalf of the Northwest Indian Fisheries Commission (NWIFC), we would like to provide the following comments and recommendations on the update of the Puget Sound Action Agenda. To preface the following comments from the NWIFC, we wish to clearly state that this letter is an effort to communicate commonly held concerns. It does not, however, replace or supersede any comment or communications from individual member tribal governments to the Puget Sound Partnership (PSP).

The NWIFC is composed of representatives of the twenty federally recognized treaty tribes of western Washington. These tribes possess rights reserved by treaty to manage and harvest various natural resources, including fish and shellfish. These rights have been exercised since time immemorial and their protection must be considered when creating a plan to achieve a healthy Puget Sound. Currently, these rights are at risk because salmon habitat is being destroyed faster than it can be restored.

Statutory goals for Puget Sound recovery include a healthy human population supported by a healthy Puget Sound and a quality of life that is supported by a functioning ecosystem. These goals have tremendous meaning to the tribes of the region. Their quality of life and economic livelihood depend on a healthy Puget Sound ecosystem.

Updating the Action Agenda is an important task to help protect our treaty reserved-resources and represents substantial effort from the PSP and its staff. Nonetheless, we do not feel that the Action Agenda adequately reflects the measures necessary to protect salmon and shellfish.

Therefore, we would like to impress upon you the importance of protecting our treaty rights by ensuring that the Action Agenda supports habitat protections consistent with salmon recovery by better protecting salmon habitat, including water quality. To accomplish this we provide the following:

1. The Action Agenda must serve as a living document able to incorporate state and federal responses to the *Treaty Rights at Risk* (TRAR) initiative.
2. The Action Agenda must also serve as an instrument to align state and federal programs to be consistent with protecting treaty rights, salmon recovery and state water quality standards.

Incorporating response to the *Treaty Rights at Risk* initiative

As you are aware, in our *Treaty Rights at Risk* paper we describe a few of the ways that salmon recovery is being undermined by a lack of habitat protection and disparate application of misaligned federal programs. As a result, recovery is failing because we are losing habitat faster than we can restore it. The continued loss of salmon habitat is due to lack of a coordinated effort on the part of federal agencies to meet salmon recovery goals and to addressing their obligation to protect the tribes' treaty rights.

In response to our paper, the federal government has directed its agencies to identify solutions for achieving habitat protection and recovery. Federal agencies have also been directed by the federal Council on Environmental Quality (CEQ) to carry out their authorities in a coordinated fashion, and to create a plan for successful implementation of salmon recovery. The CEQ guided effort is being led by the National Oceanic Atmospheric Administration, the Environmental Protection Agency and the United States Department of Agriculture.

This federal team is working to finalize their response strategy to the *Treaty Rights at Risk* paper during the first quarter of 2012. It is the expectation of the member tribes and Commission that this response will include specific solutions as identified by the tribes in the course of their inventory of deficiencies, misalignments and impediments to salmon recovery. It is also the expectation of the member tribes and Commission that the TRAR response will include a plan to improve habitat protections.

The PSP intends to complete Action Agenda updates during February 2012. This timeline is ahead of the schedule of the response plan to the TRAR initiative. For the Action Agenda to be effective, the PSP must commit to ensure that TRAR responses will be included in corresponding and timely updates shortly after they are finalized. The PSP has stated that, "The Action Agenda is intended to be both a durable plan and a living document- something to build on and adapt as the region works toward achieving our shared vision for a health, vibrant

ecosystem and economy in 2020.”¹ We therefore find it is crucial for the Action Agenda to be aligned with the federal response to the TRAR initiative if it is to meaningfully address the barriers to salmon recovery.

The PSP has proposed creating strategic initiatives to focus attention on specific actions needed to address important pressures on Puget Sound health. We support the use of the strategic initiative concept to prioritize measures that will align state and federal programs with salmon recovery, and support protecting the tribes’ treaty rights. However, to successfully accomplish this alignment, the Action Agenda will need to incorporate the responses to the TRAR initiative into both the corresponding substantive sections of the Action Agenda *and* the strategic initiatives.

The Action Agenda must serve to align programs with salmon recovery

We have consistently reiterated through the TRAR initiative and subsequent follow up that state and federal programs must be aligned with salmon recovery. One way the Action Agenda can support such alignment is to ensure that funding associated with the Action Agenda is conditioned to achieve consistency with protecting treaty rights, salmon recovery plan habitat objectives and state water quality standards. While we realize that PSP is still developing a funding strategy for the Action Agenda, it is unclear how the current document will guide achievement of these principles. Therefore, we believe that PSP must amend the document accordingly to reflect a funding strategy which accomplishes these goals, including a monitoring plan and response timelines.

As you are aware, the Action Agenda serves as the Comprehensive Conservation and Management Plan (CCMP) in accordance with § 320 of the federal Clean Water Act.² As a matter of law, Funds granted under this act are solely appropriated for the purpose of the development and implementation of the CCMP.³ Therefore, the Action Agenda, i.e. CCMP, serves as the guiding document to determine eligibility for the expenditure of federal National Estuary Protection Funds (NEP) – a primary funding source for Puget Sound activities.

To ensure that the Action Agenda can serve to guide alignment of programs with salmon recovery, it must explicitly provide that funding be conditioned such that publicly funded

¹ Puget Sound Partnership (2012) Draft Puget Sound Action Agenda at 2.

² 33 USC § 1330

³ § 1330(g)(2)

projects will deliver results that are consistent with state water quality standards and individual watershed recovery plan objectives. NEP funds which support the implementation of best management practices must ensure that the practices implemented are consistent with state standards⁴ and the objectives of individual recovery plans.

It is the job of the PSP and the Action Agenda to ensure that public money expended for on the ground projects are salmon friendly by providing adequate shade, habitat, and reduction of *multiple* pollutant parameters.⁵ Expenditures on pollution programs should also incorporate these principles to avoid piecemeal approaches which only serve to exacerbate the kind of programmatic inconsistencies and misalignments that undermine habitat protection, instead of supporting it. Funding programs and practices which solely target a single pollution parameter often do not result in the kind of full spectrum habitat protections needed to support recovery. The regulatory function of the Action Agenda can serve to rectify this, but it needs to be made explicit in the CCMP document.

To ensure alignment with salmon recovery efforts, the Action Agenda must also set goals and recovery targets that are consistent with the salmon recovery plans. For example, the Action Agenda establishes a target of creating an additional 268 miles of riparian forest cover, while allowing 1,000 acres per year of non-federal lands to be converted from vegetated to non-vegetated.⁶ While we strongly encourage riparian reforestation efforts, it is essential that those efforts result in fully functioning riparian areas that can provide adequate thermal regulation and habitat function to protect salmon. Riparian reforestation efforts that do not provide this quality of habitat, may serve to meet PSPs riparian reforestation targets, but will not be consistent with objectives for salmon recovery. To ensure consistency, targets should accurately reflect goals consistent with salmon recovery, and also be specific enough to prescribe effective widths and composition. This guidance should also be consistent with the aforementioned funding conditions.

The Puget Sound Partnership has been tasked with an incredibly difficult job in leading the effort to create a healthy Puget Sound by 2020. Success will not be achieved without the recovery of salmon and the protection of treaty rights. We urge the PSP to work toward these goals by

⁴ See RCW 90.48.020 and WAC 173-201A-510

⁵ For detailed information on this specific subject matter please see the NWIFC Letter from Billy Frank to Ted Sturdevant, Mark Clark, and Dan Newhouse, Re: the three directors talks, July 12, 2011. PSP received a courtesy copy of this letter upon original mailing.

⁶ Puget Sound Partnership (2012) Draft Puget Sound Action Agenda at 58.

incorporating the federal response to the *Treaty Rights at Risk* paper and to condition funding to achieve water quality standards and to meet salmon recovery objectives. We also encourage the PSP to provide leadership to loudly and boldly inform Washington State that salmon recovery is currently failing, and new directions are needed to achieve recovery.

The Commission appreciates the opportunity to comment on the Action Agenda update. Should you have any questions regarding these comments, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Grayum". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Grayum
Executive Director

cc: NWIFC Commissioners
Martha Kongsgaard
PSP Leadership Council