



Upper Skagit Indian Tribe



SQUAXIN ISLAND TRIBE

December 1, 2020

Kelly Susewind, WDFW Director
Larry Carpenter, WFWC Chair
1111 Washington St. SE
Olympia, WA 98501

RE: Continued Tribal Objection to WDFW Hatchery Reform Policy C-3169

Dear Kelly and Larry:

The Lummi, Tulalip, Upper Skagit, and Squaxin Island Tribes continue to be deeply concerned about the unilateral process that the State initiated and continues to pursue regarding the revision and further implementation of hatchery reform policy C-3169. We have collectively, and repeatedly, communicated in person and in writing our deep concerns regarding the absence of Co-Management in this matter and to remind the State of its legal obligation to follow the law per *US v. Washington* and subsequent legal proceedings such as the court-ordered Puget Sound Salmon Management Plan (PSSMP). Over the past year, tribes collectively have written close to 10 policy letters to the Washington Department of Fish and Wildlife (WDFW), Fish and Wildlife Commission (WFWC), State Legislature, and Governor's Office regarding this policy. We provided a dozen more going back to when the policy was initially developed, which included letters to NOAA Fisheries and other parties regarding related conflicts caused by this policy. To date, we have not received any responses.

The WDFW and WFWC have repeatedly voiced the intent to work with us on development of a joint State-Tribal hatchery policy; however, inaction over the course of the last two years, and particularly over this past year, has consistently demonstrated unwillingness to include tribal input or to work with us despite our repeated offers and attempts to engage. This belies your stated institutional goal and mandate to do so. For example, not distributing the draft policy to the Tribes until the evening before our last Co-Manager meeting, which was specifically called for the purpose of reviewing the policy revisions, is just one of numerous examples that demonstrate a lack of good faith effort by the State to ensure Tribes are well informed and engaged "early and often" per the principles of Co-Management. Worse, at the last Co-Manager meeting on November 17th, we raised fundamental concerns that none of our comments had even been reviewed, which is a precursor to incorporating our concerns that continue to be ignored, and that it was apparent that WFWC members' input toward the policy lacked basic understanding of the requirements of *US v. Washington* and the Puget Sound Salmon Management Plan that the Commission is lawfully required to follow. In fact, most recently the WDFW and WFWC has suggested that they would like to finalize this policy revision first (meeting their artificial and self-imposed deadline) and then revisit it with the tribes as co-managers. There is no shortage of legal references available to WDFW and the WDFW Commission to outline the 35+ years of court rulings

and related court- affirmed settlements that *mandate agreement between the parties* for matters that relate to hatchery management. The Tribes encourage you revisit and recommit to your agency responsibilities with respect to co-management of hatcheries.

Despite these continued challenges, we reiterate our commitment to continue to make a good faith effort to work with our State Co-Managers to develop a hatchery policy that is compliant with applicable laws and based on sound, unbiased science. It was always clear and mutually understood between the WFWC and the Tribes over this past year, that to get agreement on hatchery management policies, we will need a jointly-developed state-tribal policy and that we would not be able to agree to this “state-only” policy, especially given that tribal input and concerns continue to be discounted and ignored. While we have new concerns regarding additional conflicts in co-management that are created by the revised policy, simply reverting back to the original version of the fatally-flawed policy before undergoing the proposed revisions over the past year would be a step even further backward, which the tribes do not consider as an option. Our comments below provide some specific examples of how the draft policy does not follow court orders or the PSSMP, and continues to harm our Treaty Rights. Under the PSSMP, tribes must consent to policies and actions that affect our shared resources, and we do not consent to current or proposed stipulations under the C-3169 policy.

Currently, hatcheries support four basic values Treaty-reserved fishing rights recognized by Federal courts: (1) conservation of the resource, (2) ceremonial, religious, and spiritual values, (3) subsistence values, and (4) commercial values. We reiterate the utmost importance of hatcheries to Puget Sound tribes. Per the Boldt Decision and subsequent court rulings, hatchery fish are treaty fish at ALL life stages and we must work together as Co-Managers to ensure that, until such time as adequate levels of natural production are restored, hatcheries continue to provide fish available for harvest to tribal and non-tribal fishers. They serve a critical function by partially mitigating not only for lost fishing opportunity but other ecosystem services deficiencies caused by the lack of natural production, such as sufficient prey for Southern Resident Killer Whales needed to avoid their extinction.

Tribes are not stakeholders, we are Co-Managers of the resource, and working together to develop joint fishery and hatchery management policies, we are confident we can develop strategies toward ensuring survival of our culturally important resources while providing sustainable fishing opportunities and the critical economic and cultural benefits that salmon fisheries provide for all Washington State citizens and tribal communities alike.

It is imperative that an all H (Habitat, Harvest, Hatcheries, Hydro) approach is taken in the development and implementation of salmon management policies if they are to be successful. Specifically the hatchery policy fails to acknowledge the undeniable fact that the major loss of functional productive salmon habitat from the ever-increasing effects of human development and worsening environmental conditions from climate change remain the principal Limiting Factors for recovery of natural, self-sustaining salmon production. These are by far the primary Factors for Decline affecting freshwater and marine ecosystems alike and in concert. All hatchery programs provide mitigation for the lost production and treaty fishing opportunity that was meant to provide for a moderate living per Boldt and reaffirmed by Martinez. A hatchery policy that fails to acknowledge this issue is deeply flawed and risks causing continued irreparable harm to the resource and all that depend upon it.

With respect to the November 5th version of the State's Hatchery Reform Policy and the Tribes' commitment to continued efforts to achieve a Co-Manager hatchery reform policy, we offer the following brief comments. These comments are not to be considered exhaustive and we will not be providing line-by-line review since much specific feedback has already been provided both in verbal and written form. Rather these are high level review comments and recommendations that are focused on assisting our State Co-Manager to successfully meet your legal obligations under US v WA and the PSSMP by providing a way forward until we can develop an agreed-to joint policy, which will alleviate all of these issues.

1) **Add language to the current draft that clarifies the relationship between the State Hatchery Reform Policy and the Boldt Decision, subsequent case law, and the Puget Sound Management Plan (PSSMP). Specify that it is a State-only policy and will not affect the progress of existing regional Co-Manager plans and HGMPs, and will only serve as interim guidance to the State until a Co-Manager agreed policy has been developed.** Sample language: *The State C-3169 hatchery policy is not a Co-Manager-agreed policy per Boldt, subsequent case law, and the PSSMP. The policy only serves as the State's interim guidance until a Co-Manager-agreed policy is developed with the Tribal Co-Managers."*

2) **Add additional language stipulating that the Co-Manager-agreed policy will supersede the State's policy in accordance with US v WA and the Puget Sound Salmon Management Plan.** The WDFW and WFWC agreed in state-tribal policy meetings (e.g., at Muckleshoot earlier this year) to jointly develop a Co-Manager hatchery policy, which we have been consistently advocating, for more than ten years. In the past year, we reached out repeatedly to WDFW and the WFWC, e.g. in above-referenced letters and significant efforts by several tribes' efforts to wordsmith 19 drafts of C-3169 last summer to get consensus on the policy language. We invited you to work with us to find agreement, but this fell on deaf ears all year and we heard nothing back regarding any of our efforts despite our repeated requests. At a bare minimum, language must be added within the current State policy following where it states that WDFW will begin development of a joint policy with the tribes once the revised policy is adopted, which must include clearly-defined timelines. This language must include accountability measures and a timeline to demonstrate the State's commitment to such an effort. Furthermore, the relationship between the State guidance in this policy and the Co-Manager-agreed policy needs to be clear. Sample language: *"The Director shall task the Department to engage tribal Co-Managers in the development of a joint hatchery policy no later than January X, 2021, which will be completed no later than December X, 2021. The joint Co-Manager Hatchery Policy will be developed in accordance with US v WA and the PSSMP and thus will supersede the existing State hatchery policy."*

3) **Preserve the Co-Manager relationship and expertise of Tribal and State Co-Managers in hatchery program development and operations.** We applaud the State's actions to ensure that the policy is in alignment with the State's own joint legislative review and tribal recommendations by removing language regarding 3rd party interference in our Co-Management. A joint legislative task force determined that the Co-Managers legally-mandated hatchery scoping and transparent review process with NMFS, under the ESA and NEPA where each party's competing interests and varied objectives provide a solid base, is sufficiently robust and technically superior to the HSRG review process, which was assessed to be redundant and unwarranted. While HSRG recommendations were initially helpful in revising hatchery programs, Co-Manager hatchery programs are currently managed responsibly and

sustainably. Nearly all reasonable and attainable HSRG recommendations have been implemented by the Co-Managers. The HSRG documents have outlived their usefulness and the HSRG has demonstrated lack of independence, objectivity, accountability, transparency, and numerous instances of over-reach into political, financial, and legal domains. While we do have numerous issues with the current policy, we strongly agree to the removal of language inclusion of unaccountable 3rd parties in the review and participation in Co-Manager hatchery activities and insist that the State ensure that their exclusion be retained, in order to provide a way forward at this time. The policy should avoid any such language requiring review by any other third-party entity; we strongly point out the depth of expertise collectively held amongst the co-managers and NMFS. That said, Co-Managers could jointly agree to request technical advice, or convene certain technical panels comprised of true subject matter experts, in specific instances where questions arise that may benefit from specialized review beyond the capabilities of Co-Manager technical staff, as we have done in the past.

We look forward to our next Co-Manager meeting on December 2nd and your response to our recommendations. We sincerely hope we can have a meaningful discussion of the comments we have submitted over the past several months and hope you seriously consider our recommendations offered to find a way forward.

Sincerely, (Signature Page attached)

Jason Gobin, Fish and Wildlife Director, Tulalip Tribes

Lisa Wilson, Councilwoman, Lummi Indian Business Council

Scott Schuyler, Natural Resources Director, Upper Skagit Indian Tribe

Andy Whitener, Natural Resources Director, Squaxin Island Tribe

(cc):

Ron Warren, Director of Fish Policy, WDFW

WFW Commissioners

JT Austin, Governor's Office

Justin Parker, Director, NWIFC

Brian Blake, Chair, House Rural Development, Agriculture, & Natural Resources Committee

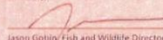
Sharon Shewmake, Vice Chair, House Rural Development, Agriculture, & Natural Resources Committee

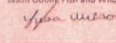
Deb Lekanoff, Member, House Rural Development, Agriculture, & Natural Resources Committee

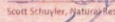
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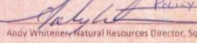
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