



Northwest Indian Fisheries Commission

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June 20, 2017

Karen Gude
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code: 4101M
Washington, DC 20460

SUBMITTED VIA EMAIL cwawotus@epa.gov
gude.karen@epa.gov

RE: Notice of Intent to Review and Rescind or Revise the Clean Water Rule, 82 Fed. Reg. 12532
(Mar. 6, 2017)

Dear Ms. Gude:

Please accept this letter on behalf of the Northwest Indian Fisheries Commission (NWIFC).¹ The 20 treaty tribes of NWIFC have constitutionally protected, treaty-reserved rights to harvest, consume, and manage fish and shellfish in their usual and accustomed areas. This letter is submitted in view of the need to ensure protection of these reserved rights and resources, and to protect the health, livelihoods, and well-being of tribal members. This letter responds to the invitation for tribal “consultation and coordination” with the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (the Corps) on the above-referenced Notice, which contemplates a two-part rulemaking effort by these agencies. NWIFC notes that EPA and the Corps have suggested that the “anticipated timeline for the consultation and coordination period is expected to extend from April 20, 2017, to June 20, 2017” and that, “[i]n addition, the coordination may extend through the end of the public comment on the second rulemaking.” However, NWIFC takes issue with this limited understanding of the nature and scope of government-to-government consultation. It is inaccurate and inappropriate, given tribes’ sovereign status and given the relationship between the United States and federally recognized tribal nations. This letter should not be taken, therefore, to suggest that NWIFC agrees with the EPA and the Corps on this understanding. To the contrary, NWIFC understands its member tribes to have rights to more robust consultation on this rulemaking effort. NWIFC therefore requests that EPA and the Corps extend the period for tribal “consultation and coordination” beyond the short window provided to date, in order to afford adequate time for meaningful consultation with individual tribes.

NWIFC is likely to oppose any rulemaking by EPA and the Corps that would decrease the reach of the Clean Water Act’s (CWA) protections by narrowing the definition of “waters of the United States

¹ The NWIFC member tribes are the Lummi, Nooksack, Swinomish, Upper Skagit, Sauk-Suiattle, Stillaguamish, Tulalip, Muckleshoot, Puyallup, Nisqually, Squaxin Island, Skokomish, Suquamish, Port Gamble S’Klallam, Jamestown S’Klallam, Lower Elwha Klallam, Makah, Quileute, Quinault, and Hoh nations.

(WOTUS);” NWIFC’s member tribes require more meaningful consultation, however, in order for them to assess the scope of this action by EPA and the Corps. If the definition of WOTUS is contracted by EPA and the Corps, this would likely adversely affect numerous CWA programs within and upstream of tribal waters and could undermine protections for the resources on which NWIFC’s member tribes depend and to which they have treaty-secured rights, including rights to fish, hunt, and gather.

Sincerely,

A handwritten signature in black ink that reads "Lorraine Loomis". The signature is written in a cursive, flowing style.

Lorraine Loomis
Chairperson