



Agency Request Legislation Dredge and Fill Permit Program

**An Environmental Justice Assessment (per RCW
70A.02.060)**

Shorelands and Environmental Assistance Program

Washington State Department of Ecology
Olympia, Washington

November 2023, Publication 23-06-018

Contact Information

Shorelands and Environmental Assistance Program

Washington State Department of Ecology

P.O. Box 47600

Olympia, WA 98504-7600

Phone: 360-407-6000

Website¹: [Washington State Department of Ecology](http://www.ecology.wa.gov)

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¹ www.ecology.wa.gov/contact

Language Access

Under the state Environmental Justice law (RCW 70A.02), Ecology is required to conduct Environmental Justice Assessments during development of certain significant actions. This Assessment provides information about the potential impacts to overburdened communities and vulnerable populations, and strategies to mitigate identified harms and fairly distribute known benefits. For translation, interpretation, or accessibility assistance, please contact Courtney Cecale at courtney.cecale@ecy.wa.gov or (360) 480-6270.

Bajo la ley estatal de Justicia Medioambiental (RCW 70A.02), Ecología está obligada a realizar Evaluaciones de Justicia Medioambiental durante el desarrollo de ciertas medidas importantes. Esta evaluación proporciona información sobre los posibles impactos en las comunidades sobrecargadas y las poblaciones vulnerables, y las estrategias para mitigar los daños identificados y distribuir justamente los beneficios conocidos. Para asistencia de traducción, interpretación o accesibilidad, por favor póngase en contacto con Courtney Cecale escribiendo a courtney.cecale@ecy.wa.gov o llamando al (360) 480-6270.

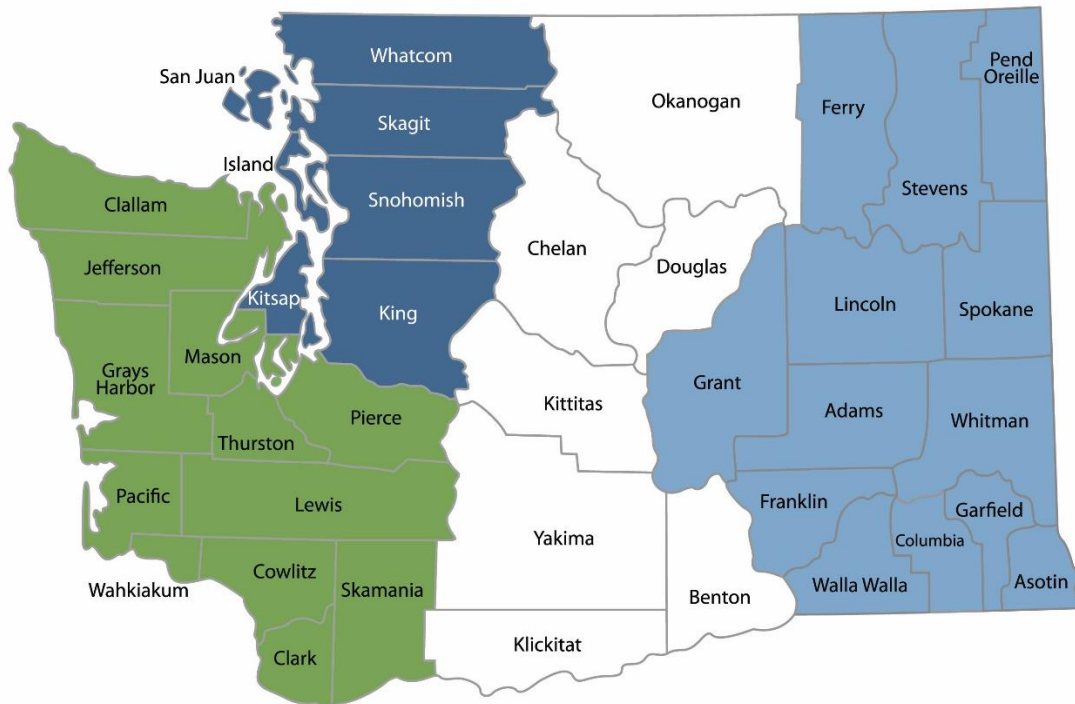
根据华盛顿州环境正义法([RCW 70A.02](#))，生态管理署在制定某些重大行动时必须进行环境正义评估。该评估需提供对负担过重社区和弱势群体潜在影响的信息，以及减轻已明确的危害和公平分配已知利益的策略。如需笔译、口译或无障碍协助，请联系 Courtney Cecale，电子邮件：courtney.cecale@ecy.wa.gov或电话 (360) 480-6270。

Theo luật Công Bằng Môi Trường của tiểu bang (RCW 70A.02), Bộ Môi Sinh được yêu cầu tiến hành Đánh Giá Công Bằng Môi Trường trong quá trình triển khai một số hành động quan trọng. Đánh giá này cung cấp thông tin về các tác động tiềm ẩn đối với các cộng đồng đang chịu tổn hại và các nhóm dân cư dễ bị tổn hại cũng như các chiến lược nhằm giảm thiểu tác hại đã xác định và phân chia công bằng các lợi ích đã biết. Để được hỗ trợ về thông dịch, giải thích hoặc sự giúp đỡ cho người khuyết tật, vui lòng liên hệ với Courtney Cecale theo địa chỉ courtney.cecale@ecy.wa.gov hoặc (360) 480-6270.

주 환경부는 중요한 조치를 계획할 때 환경 정의 평가를 수행해야 합니다. 이 평가는 취약계층 지역사회와 취약인구에 대한 잠재적 영향 관련 정보와, 확인된 피해를 완화하고 알려진 혜택을 공정하게 분배하기 위한 전략을 제공합니다. 번역, 통역, 또는 장애인 서비스 지원은 담당자 (Courtney Cecale)에게 이메일 courtney.cecale@ecy.wa.gov 또는 전화 (360) 480-6270으로 문의하십시오.

Department of Ecology's Regional Offices

Map of Counties Served



Southwest Region 360-407-6300	Northwest Region 206-594-0000	Central Region 509-575-2490	Eastern Region 509-329-3400
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Region	Counties served	Mailing Address	Phone
Southwest	Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum	P.O. Box 47775 Olympia, WA 98504	360-407-6300
Northwest	Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom	P.O. Box 330316 Shoreline, WA 98133	206-594-0000
Central	Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima	1250 West Alder Street Union Gap, WA 98903	509-575-2490
Eastern	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman	4601 North Monroe Spokane, WA 99205	509-329-3400
Headquarters	Statewide	P.O. Box 46700 Olympia, WA 98504	360-407-6000

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DEPARTMENT OF
ECOLOGY
State of Washington

² <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02&full=true#70A.02.010>

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Executive Summary

This agency action is agency request legislation to implement a dredge and fill permit program and develop a fee structure. The legislation responds to a May 25, 2023, Supreme Court decision in *Sackett v. EPA*. That decision resulted in many of Washington's wetlands and streams losing federal protection. The timing of the *Sackett* decision left little time to do long-term planning to protect from downstream effects of wetland loss. The agency request legislation responds to the effects of the *Sackett* decision in Washington and intends to protect all waters of the state. Due to the tight timeline, we have not had the opportunity to engage as much as we would like to before legislative session. To ensure we provide adequate time to interact with all parties Ecology will conduct a multi-phased environmental justice assessment. What we do not learn from this initial assessment, we hope to uncover in our next phase of work, when we conduct the assessment during rule making. The decision to pursue this agency request legislation is responsive to the emergent need for protections as quickly as possible.

Impacts to overburdened communities and vulnerable populations that were identified during the initial phase will be addressed further during rulemaking, as will impacts to Tribes. Outreach and consultation specifically with Tribes, overburdened communities and vulnerable populations will continue to occur throughout the rule making process.

To inform this assessment, Ecology held a Tribal listening session on September 26, 2023, and two public listening sessions on October 5th, all over Zoom. At the Tribal session we heard general support for a permit program especially because of its ability to protect salmon habitat. Tribes expressed that measures to protect wetlands protect tribal treaty rights and cultural resources, including salmon and other first foods.

At the public listening sessions, it was clear that more dialogue will be beneficial, and that more targeted outreach is needed. As noted, Ecology will pursue development of alternative materials and means for increasing opportunities to share information, answer questions and address concerns. Notification of the hearings on Ecology and OFM websites resulted in a preponderance of participation from Industry and local government, though the hearings were designed to specifically target overburdened communities. While local government may also be based in overburdened communities, we have not yet had success engaging with community-based organizations representing individuals living in those communities. Ecology will continue to reach out and seek engagement from impacted communities up to and through rulemaking.

This response to the *Sackett* decision is a multi-phased project starting with Agency request legislation, proceeding to rulemaking if adopted. The environmental justice assessment for the rulemaking will address and explore issues of impacts from our more specific plans to overburdened communities and vulnerable populations more thoroughly than this initial assessment.

Environmental Justice Assessment

Purpose of the Environmental Justice Assessment

The Environmental Justice (EJ) Assessment process helps assess the environmental justice impacts of Significant Agency Actions (SAAs). The assessment informs and supports consideration of overburdened communities and vulnerable populations when making decisions. This information assists with the equitable distribution of environmental benefits, the reduction of environmental harms, and the identification and reduction of health disparities.

The EJ assessment process aligns with Washington’s Environmental Justice law called the Healthy Environment for All (HEAL) Act ([RCW 70A.02](#)³), as well as federal commitments in the [Performance Partnership Agreement](#)⁴ with the EPA. The assessment process draws on best practices established in [Technical Guidance for Assessing Environmental Justice in Regulatory Analysis](#)⁵ and [Promising Practices for EJ Methodologies in NEPA Reviews](#)⁶.

Environmental justice assessments are to be completed for the following actions:

- The development and adoption of significant legislative rules as defined in RCW.05.328⁷
- The development and adoption of any new grant or loan program that a covered agency is explicitly authorized or required by statute to carry out
- A capital project, grant, or loan award of at least \$12,000,000 or a transportation project, grant, or loan of at least \$15,000,000
- The submission of agency request legislation to the office of the governor or the office of financial management for approval
- (Covered actions are expected to expand in 2025)

This assessment is not required to be a comprehensive or an exhaustive examination of all potential impacts of a significant agency action and does not require novel quantitative or economic analysis of the proposed significant agency action.

The time and resource investment, and depth of assessment, will be influenced by the reasonable applicability of the questions to the agency action.

Ecology plans to update this document and incorporate what we learn through practice, community engagement, Tribal consultation, and any guidance we may receive from the Environmental Justice Council.

This Environmental Justice Assessment is adapted for publication and does not include internal agency process instructions.

³ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02&full=true>

⁴ <https://ecology.wa.gov/About-us/Accountability-transparency/Government-coordination/Partnering-with-the-EPA>

⁵ <https://www.epa.gov/environmentaljustice/technical-guidance-assessing-environmental-justice-regulatory-analysis>

⁶ https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf

⁷ <http://app.leg.wa.gov/RCW/default.aspx?cite=34.05.328>

Section 1: Background

The information in this section is provided for the Office of Financial Management's [dashboard](#)⁸ which includes all covered agency's Environmental Justice Assessment notices.

Background Information

1. Descriptive title of project/action:

Agency request legislation for authority to adopt a dredge and fill permit program with fee rule.

2. Date EJ Assessment initiated:

September 13, 2023

3. Ecology Program/Office:

Shorelands and Environmental Assistance

4. Point of contact for EJ Assessment:

Lauren Driscoll, 360-584-5107; Lauren.Driscoll@ecy.wa.gov

5. Significant Agency Action type, select one or more:

Rulemaking

New grant or loan program

New capital project, grant, or loan of \$12 million or more

Request legislation

Other, explain:

⁸ <https://ofm.wa.gov/budget/budget-related-information/agency-activities/environmental-justice-assessment-notices>

6. Write a short summary of the action.

In May 2023, the U.S. Supreme Court issued a ruling that narrowed the federal definition of waters to be protected under the federal Clean Water Act. As a result, the Department of Ecology has determined that more than 50% of wetlands and 14% of streams in Washington no longer receive federal protection. These waterbodies, however, are still protected by the state Water Pollution Control Act but we do not have a permitting program for these non-federally protected waters of the state. As a result, Ecology is proposing legislation to develop and implement a dredge and fill permit program, including establishing a permit fee. The permit program will provide a streamlined process for state review and regulation of proposals with the potential to impact non-federally regulated waters of the state. Ecology is obligated to review and, where appropriate, provide an authorization for projects proposing to work in wetlands and other waters of the state.

This is an authorization request to implement a permit program and collect fees to support it. The permit program is designed to protect the functions and values of state waters while providing an efficient regulatory pathway for authorizing certain types of actions or projects impacting state wetlands and streams. A dredge and fill permit program for waters of the state would give the development community transparency and predictability in state decision-making processes.

The proposed permit program will also protect wetlands and other state waters. Wetlands provide critical environmental and economic benefits including flood attenuation, safe, clean drinking water, shellfish production, recreational opportunities, harvest of plant and animal species important to Tribes and indigenous communities, and fish and wildlife habitat supporting commercially important species and endangered salmon.

Since this is a proposed statewide program, the fee would potentially affect all people who propose impacts to wetlands and other waters of the state not otherwise regulated by the federal government. Fees may indirectly prevent impacts to wetlands since economic costs may prompt the development community to avoid dredge and fill actions. This outcome would preserve the benefits wetlands provide everyone.

7. Identify the method(s) for the public to comment on this proposed action for this assessment.

The public may comment at any time on the agency webpage located [Agency Request Legislation: Dredge and Fill Permit Fees \(commentinput.com\)](https://sea.ecology.commentinput.com/?id=kcdjrjAVKg)⁹

Ecology hosted public listening sessions about the agency request legislation on October 5, 2023, at 3 p.m. and 5:30 p.m.

⁹ <https://sea.ecology.commentinput.com/?id=kcdjrjAVKg>

The public is also commenting through direct conversations with Ecology staff.

8. Create/provide an Ecology webpage with information about this proposed action.

Provide link here:

[EJ Assessments - Washington State Department of Ecology](#)¹⁰

[Dredge & fill permit request legislation - Washington State Department of Ecology](#)¹¹

Section 2: Notification that an Environmental Justice Assessment has been Initiated

This section instructs Ecology staff to notify OFM about the initiation of the action.

Section 3: Identify Affected Tribes

This section summarizes preliminary planning for Tribal Consultation. Ecology must offer consultation with Tribes on significant agency actions that affect federally recognized Tribes' rights and interest in their tribal lands.

Preparing for Tribal Consultation

1. Is the proposed action likely to have any local or regional impacts to federally reserved Tribal rights and resources, including but not limited to, those protected by treaty, executive order, or federal law? Choose one of the following:

Yes

No

Unsure

¹⁰ <https://ecology.wa.gov/about-us/who-we-are/environmental-justice/heal/ej-assessments>

¹¹ <https://ecology.wa.gov/about-us/budget-legislative-priorities/2024-legislative-priorities/dredge-fill-permit-request-legislation>

2. List any federally recognized Tribes that are expected to be affected by the proposed action. If it is determined during consultation that Tribes do not wish to be included, then do not include them.

All federally recognized Tribes in Washington and all federally recognized Tribes outside of Washington State who have a treaty reserved right within the state of Washington may be affected by the proposed permit program.

3. Describe plans to offer consultation to identified Tribes.

A letter offering government to government consultation was sent to all federally recognized Tribes in Washington and all federally recognized tribes outside of Washington State who have a treaty reserved right within the state of Washington. The letter included an invitation and link to the September 26, 2023, Tribal listening session.

The letter also invited Tribes to participate, if they wished, in two additional public listening sessions for the proposed permit rule legislation held on October 5, 2023.

In addition, one-on-one conversations have occurred with several tribal representatives, and we have broadly shared the z-draft of the proposed legislation as well as an accompanying two-page fact sheet.

Section 4: Offer Consultation:

This section directs Ecology staff to offer consultation with Tribes on significant agency actions that affect federally recognized Tribes' rights and interest in their tribal lands.

Ecology sent a letter on September 13, 2023, offering government to government consultation on the proposed agency request legislation to affected federally recognized Tribes. The letter went to Tribal leaders, natural resource directors, cultural resource directors, Tribal organizations, and Tribal lobbyists. The letter invited recipients to a Tribes-only listening session on September 26, 2023. A follow up email was sent on September 25, 2023, to remind Tribes of the September 26 listening session. Ecology has had ongoing communications with affected Tribes and shared information regarding our response to the U.S. Supreme Court decision in May 2023. The proposed permit program was supported by several of the Tribes at the recent Centennial Accord.

The list of Tribes communicated with include:

Confederated Tribes of the Chehalis Reservation
Confederated Tribes of the Colville Reservation
Cowlitz Indian Tribe
Hoh Indian Tribe
Jamestown S’Klallam Tribe
Kalispel Tribe of Indians
Lower Elwha Klallam Tribe
Lummi Nation
Makah Tribe
Muckleshoot Indian Tribe
Nez Perce Tribe
Nisqually Indian Tribe
Nooksack Indian Tribe
Port Gamble S’Klallam Tribe
Puyallup Tribe
Confederated Tribes of the Umatilla Indian Reservation
Upper Skagit Indian Tribe
Tulalip Tribes
Quileute Tribe
Quinault Indian Nation
Samish Indian Nation
Sauk-Suiattle Indian Tribe
Shoalwater Bay Indian Tribe
Skokomish Indian Tribe
Snoqualmie Indian Tribe
Spokane Tribe of Indians
Squaxin Island Tribe
Stillaguamish Tribe of Indians
Suquamish Tribe

Swinomish Indian Tribal Community
Confederated Tribes of Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the Yakama Nation

The letter was sent to Tribal chairs, Tribal natural resource directors, Tribal cultural resource directors, and Tribal lobbyists.

In addition to Tribes, Ecology also included the following Tribal organizations in its communications:

- Northwest Indian Fisheries Commission
- Columbia River Inter-Tribal Fish Commission
- Upper Columbia United Tribes

Due to a technical issue, we did not capture every single participant in the Tribal and public briefings we offered. We can confirm participation with 18 Tribal sovereigns through briefings, individual phone calls, meetings, and email communication. In addition, there was a presentation and briefing at the latest Centennial Accord, with questions and comments from additional tribes.

Section 5: Summary of Tribal Consultation & Engagement

Tribal consultation is intended to inform the answers to all questions in this section.

Summary of Tribal Consultation

1. Describe potential impacts (including harms and benefits) to federally recognized Tribal rights and interests in their Tribal lands.

Tribes may be beneficially affected by the proposed permit program because it will protect wetlands that contain cultural sites, provide subsistence and cultural resources, and offer other wetland functions and services. Wetland losses result in higher flood risk, reduced water quality improvements, loss of cultural uses, and loss of fish and wildlife habitat.

Tribes, however, may be adversely affected if they must pay permit fees for their habitat restoration projects.

Due to a technical error, the complete list of Tribal attendees was not captured. We do know that represented Tribes included the Swinomish Indian Community, Sauk Suiattle Tribe, Lummi Nation, Yakama Nation, Puyallup Indian Tribe, and Hoh Indian Tribe. Additional attendee Tribal affiliation was not confirmed, and many attendees represented multiple Tribes. Some Tribes also participated in public listening sessions including representatives from the Lummi Nation, Jamestown S’Klallam Tribe, Nooksack Indian Tribe, Upper Skagit Indian Tribe, and Hoh Indian Tribe. There was not a full capture of attendee affiliation in the public meetings.

While there is no single, unified comment from all Tribal sovereigns, comments heard included:

- o State should help protect ephemeral streams and floodplain wetlands outside of tribal lands, such as the Skagit River basin, that are used by salmonids.
- o The permit program is needed.
- o Critical wetlands are at risk and need protection.
- o Enforcement is necessary to ensure Tribal treaty rights are preserved.
- o Several tribes asked how enforcement and the permit program would apply to fee landowners on reservation. Tribes also expressed a likely need to develop a comparable program on tribal lands. Should the dredge and fill permit bill proceed, tribal representatives indicated an interest in working with the State and Office of the Attorney General to further coordinate.
- o State should consider how the permit program would relate to tribal authorities in such a way that tribal sovereignty is not impinged upon.

We received limited feedback relating to fees; specifically, that fees should not be prohibitive nor applied to tribal restoration work.

Tribes were provided with the focus sheet and the initial z-draft. The z-draft continues to evolve, and the most recent iteration has not been shared.

At the recent Centennial Accord multiple Tribes indicated their support for Ecology implementing a permit program.

2. Describe potential impacts related to Tribal rights and interests that are not in Tribal lands?

Salmon use wetlands to rear, find refuge, and feed. The loss of these habitats can threaten the ability of salmon to spawn and survive. When wetlands are lost, Tribal harvest rights and ceremonial and subsistence use of salmon and wetland plants also can be reduced or lost. If impacts to wetlands and ephemeral streams on off-Tribal lands are not regulated and offset,

treaty protected rights to harvest salmon can be impacted. Tribes indicated they would like to see the state continue to protect wetlands and ephemeral streams, particularly those in floodplains.

Fees for permits may put Tribes at a disadvantage when they pursue permits for salmon recovery projects.

3. Summarize recommendations from Tribes to:
 - a. Mitigate or eliminate potential harms from the action.

The majority of Tribes did not express concerns if a dredge and fill permit program was established; they did express concern at the potential for loss to wetlands if the program was not established. One tribe raised a concern regarding the effects a permit program would potentially have if it impinged on their sovereign authorities.

Multiple Tribes who attended the listening sessions, spoke with staff, and attended the Centennial Accord, indicated support for implementing a dredge and fill permit program to ensure protection of critical habitat.

Concerns related to adverse impacts to salmonoids were raised if there are additional losses of ephemeral streams and wetlands.

If fees for permits for restoration projects are a barrier, the state could either not charge a fee or charge a lower fee for Tribal restoration projects.

- b. Equitably distribute benefits from the action

Benefits of maintaining protection for wetlands and ephemeral streams will accrue statewide and benefit all Tribes.

4. Describe how consultation, engagement, and analyses of impacts to Tribes has informed the development of the action. If it has not, explain why.

The response from Tribes has been positive regarding adopting a permitting program. We will be considering Tribal restoration projects should we get approval to engage in rulemaking.

5. Describe any plans to continue consultation or engagement with Tribes related to this action.

If we move to rulemaking, Ecology will conduct additional outreach to affected federally recognized Tribes to offer consultation and solicit additional input. If the bill passes, Ecology

expects to begin rulemaking in fall 2024. The rule is anticipated to be completed by summer 2026.

Section 6: Identification of Overburdened Communities & Vulnerable Populations

This section identifies overburdened communities and vulnerable populations, as identified in the [definitions of RCW 70A.02](#), who will be affected by the action.

Identify Overburdened Communities and Vulnerable Populations

1. Identify the geographic area(s) anticipated to be affected by the action.

The geographic area for this action is statewide.

Figure 1 below illustrates that all areas near and downstream of wetlands may be affected by the proposal. Overlays of the national wetland inventory layer and overburdened communities' layers resulted in the map.

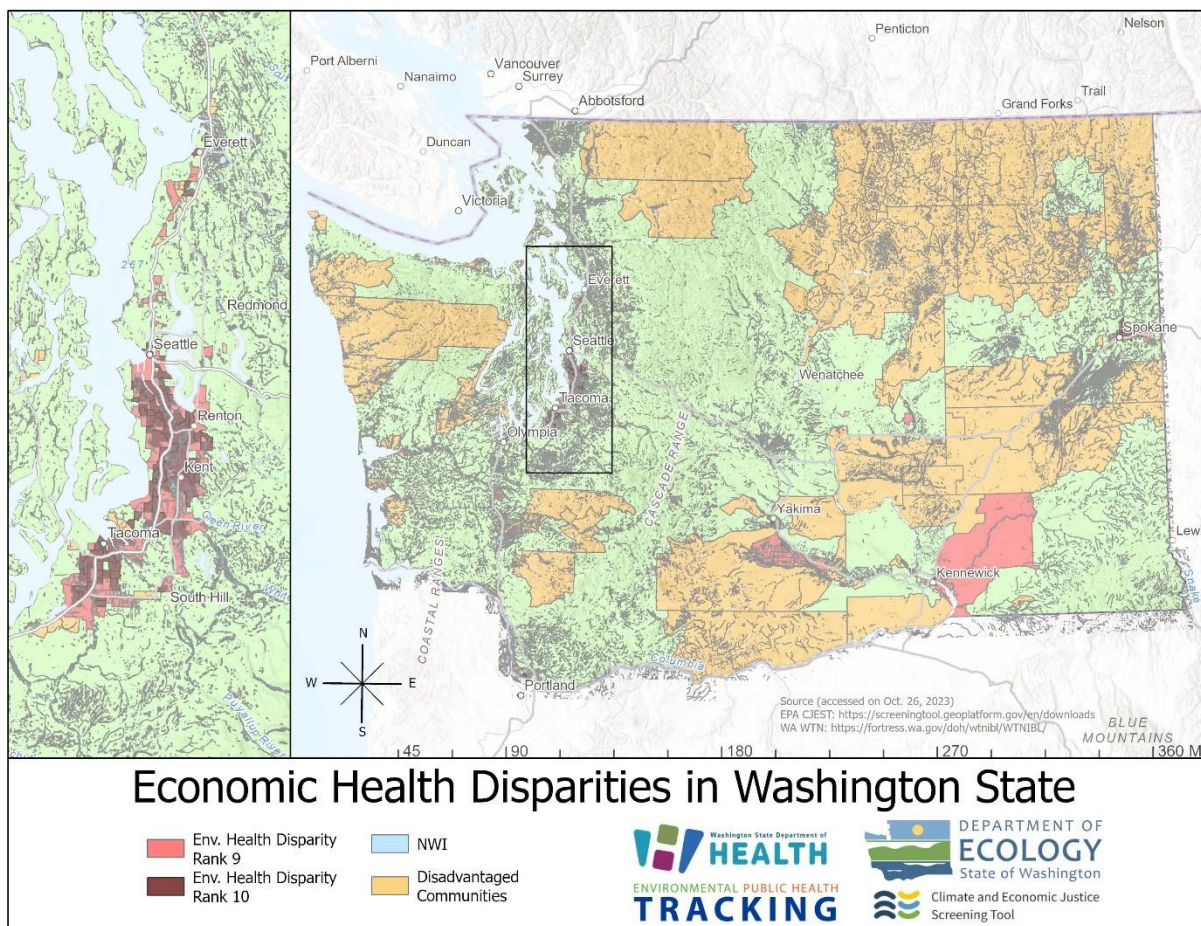


Figure 1: National Wetland Inventory data and high disparity rankings from the Environmental Health Disparities data.

The map demonstrates that wetlands are widespread across the state. Communities with high health disparities in the Puget Sound are particularly vulnerable to wetland loss resulting in high risk of water pollution, loss of greenspace and flooding.

Note: At the statewide scale, many wetlands do not appear on the map.

For the purposes of additional analysis, we took information from the environmental health disparities map and overlaid it with flood risk since one of the benefits of protecting wetlands is reducing flood risk. The inverse also is true: wetland losses can lead to greater flood risk and severity.

Communities with high environmental health disparities and high flood risk were identified through a mapping exercise shown in Figure 2. It is anticipated that communities at risk from flooding will benefit from sustained protection of wetlands and streams.

- When applicable, using the [Washington State Department of Health’s Environmental Health Disparities Map \(EHD Map\)](#), identify the EHD Map rankings for all census tracts likely to be impacted by the action.

This project is statewide.

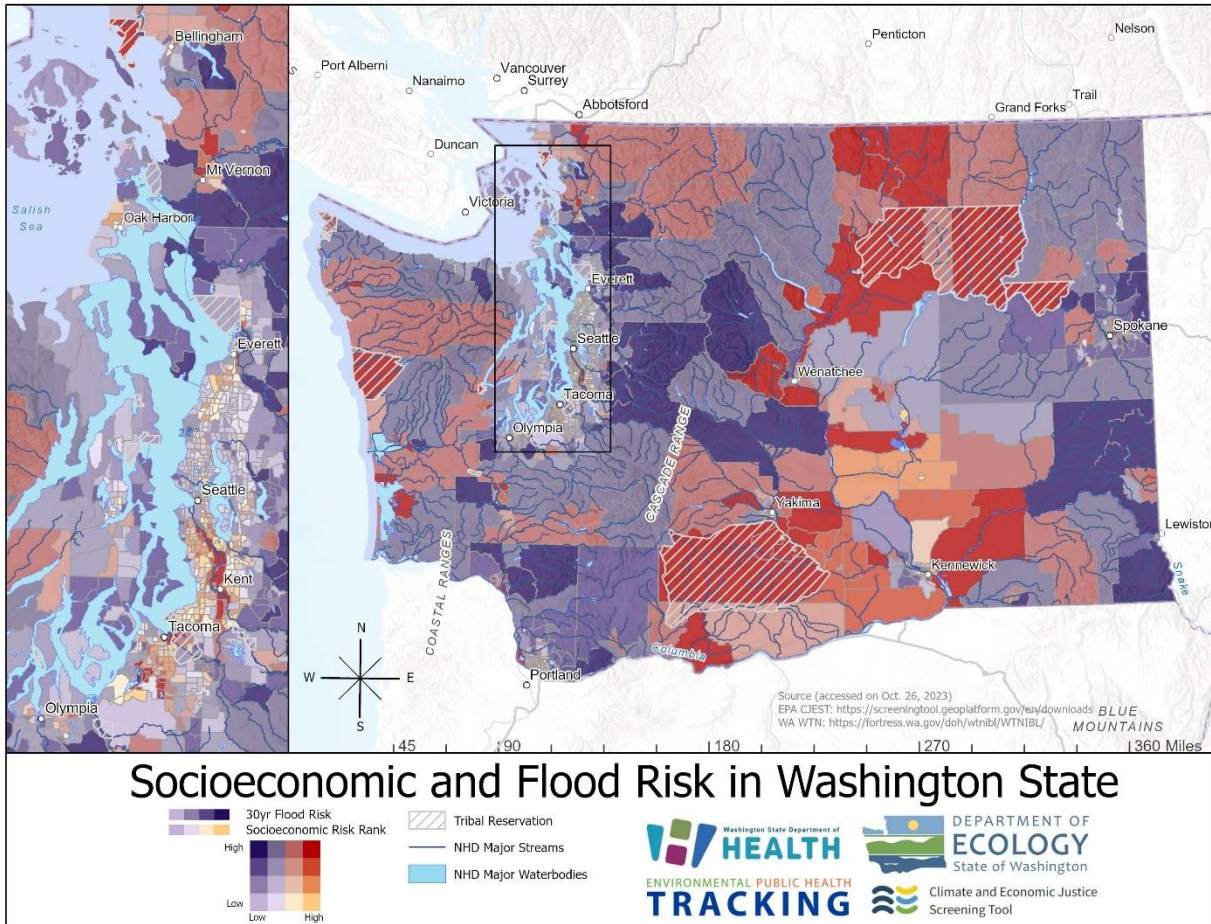


Figure 2: Socioeconomic and Flood Risk in Washington State.

For this map, areas shown in red and pink indicate areas where there is both a high flood risk and high rankings for socioeconomic factors. These are areas where we will target outreach during the rulemaking process.

- From the rankings identified in question 2, are there any census tracts ranked 9 and 10?

Yes

No

If yes, describe.

Tribal reservations came out with a high ranking. Other high-ranking areas include the Yakima and Walla Walla areas, the Okanogan, and eastern Whatcom County. These areas are shaded in pink and red in the map above.

4. Please describe additional cumulative health considerations relevant to this action.

Many of the highlighted areas are also listed as disadvantaged communities in the Climate and Economic Justice Screening Tool (CEJST).

5. When applicable, using the EPA's Environmental Justice Screening and Mapping Tool (EJScreen), identify areas likely to be impacted by the action that are at or above the 80th percentile (in state) for the "People of color" and "Low income" socioeconomic indicators.

Figure 2 includes high ranking for socioeconomic indicators. Since the action is statewide, we did not create a list of all census tracts with "People of color" and "Low income" above the 80th percentile.

6. Identify other EJScreen "Socioeconomic" and "Health Disparities" indicators at or above 80th percentile (in state) that are most relevant to this action.

Figure 2 shows the results of screening for socioeconomic factors. Heart disease, low income, asthma and diabetes are all over 80th percentile in many of the disadvantaged census tracts. Low income would be the most relevant indicator for this legislation.

7. Using EJScreen, identify additional anticipated impacts from climate change in the impacted area, if relevant.

Areas in eastern Washington identified as disadvantaged are susceptible to agricultural loss, increased wildfire risk, and flooding risk. Areas in western Washington are also subject to flooding impacts, sea level rise and population loss. See Figure 3 for disadvantaged communities.

8. Using the federal [Climate and Economic Justice Screening Tool \(CEJST\)](#), identify if the potentially affected area is considered disadvantaged for climate risks for additional indicators (as relevant).

As shown in Figure 3, many areas identified as disadvantaged aligned with the flood risk and health disparities map.

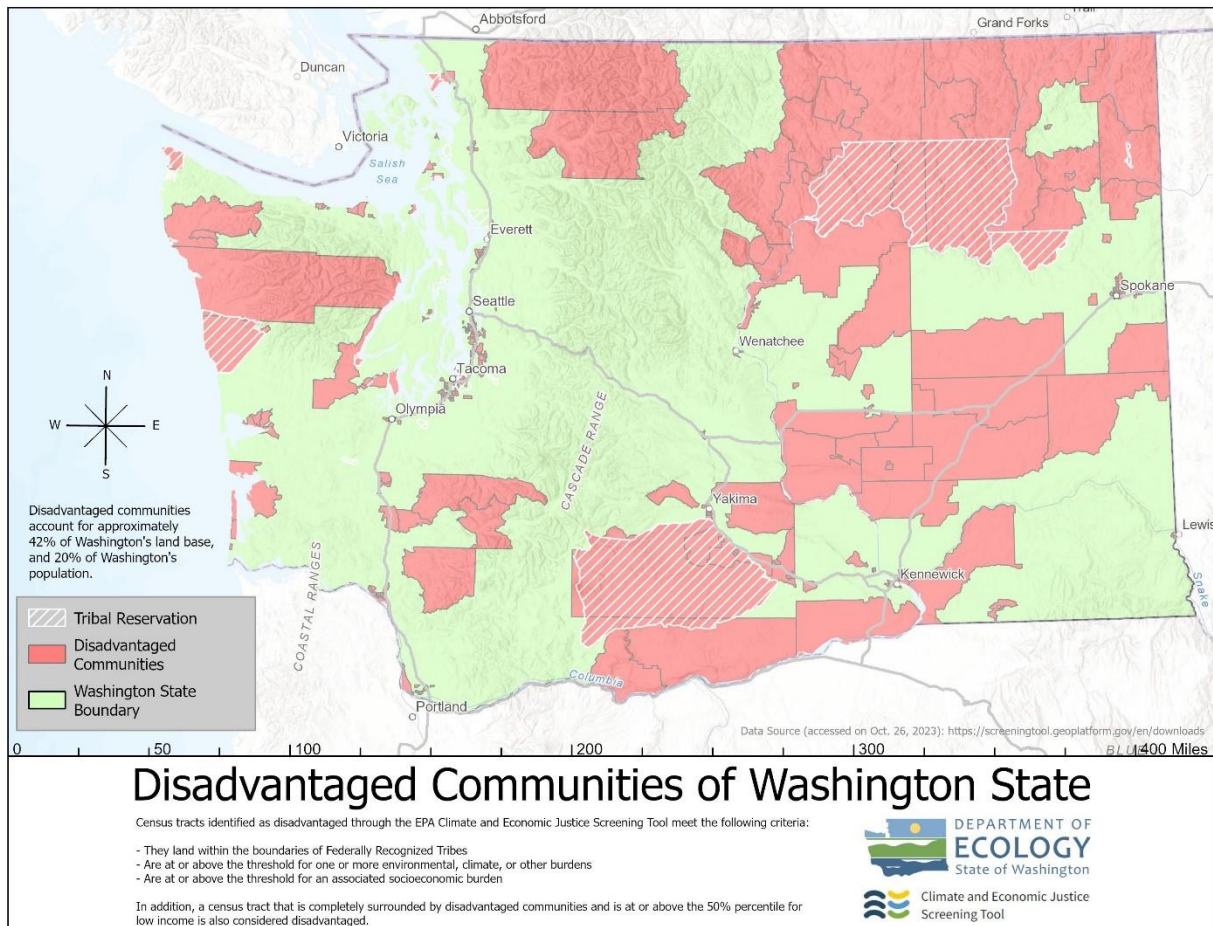


Figure 3: Disadvantaged Communities of Washington State

- Identify additional overburdened communities and vulnerable populations that are likely to be affected by the action. As this action has statewide impact, all communities on the identified map will be affected.

This action is statewide, and all overburdened communities may be affected through protection of wetlands and the benefits they provide. For example, people who use wetlands and streams for sustenance benefit from protection of wetlands. Wetlands in disadvantaged communities may be used by out of area recreators who spend money in the communities, investing in their success. Protection of these wetlands and the recreation they provide can support economically disadvantaged communities dependent on tourism.

- Through community engagement, were additional overburdened communities and vulnerable populations identified who are likely to be affected by the action? Describe

additional communities or populations identified, and the reasons they would be considered overburdened and vulnerable.

We are conducting outreach to the areas identified in red on the map outside of tribal reservations through emails and contact with organizations in the area serving the community.

11. Through Tribal Consultation, were additional overburdened communities and vulnerable populations identified who are likely to be affected by the action? Describe additional communities or populations identified, and the reasons they would be considered overburdened and vulnerable.

No additional communities were identified.

We are conducting outreach to the areas identified in red on the map outside of tribal reservations through emails and contact with organizations in the area serving the community.

Section 7: Summary of Community Engagement

This section summarizes community engagement activities. Community Engagement should be tailored to specifically reach overburdened communities and vulnerable populations. Community engagement is required for all significant agency actions, but the engagement methods will vary depending on the size, scope, and topic of the project. The level, type, and form of engagement is based on the likelihood that the actions may cause environmental harm or may affect the equitable distribution of environmental benefits to an overburdened community or a vulnerable population.

Summarizing Community Engagement

1. Describe the engagement activities with identified overburdened communities and vulnerable populations.

Open public listening sessions were held on October 5, 2023. We do not know if representatives from overburdened communities attended because no one self-identified as such, and due to an error we did not retain a full list of attendees. We will continue outreach to organizations representing identified, potentially affected overburdened communities and vulnerable populations through emails to community organizations, utilization of media outlets who serve local communities and information flyers translated into the community's primary, native language. Organizations include but will not be limited to: El Centro de la Raza, Washington Black Lives Matter, Front and Centered, Progreso: Latino Progress, Puget Sound Sage, Washington Build Back Black Alliance, Community to Community, and Got Green, Food Justice, and A Water Garden.

2. What actions were taken to help address barriers to meaningful engagement?

Future actions related to this larger project will include outreach to media supporting affected communities and will include language appropriate for the affected community.

3. Identify overburdened communities or vulnerable populations potentially affected by the action who were not engaged and explain why not.

As this is a statewide action, we were unable to engage with all affected communities. We conducted outreach through representative groups. While outreach was initiated to representative groups, no individuals self-identified as belonging to affected communities who attended public meetings. Outreach is continuing.

4. Summarize recommendations from members of overburdened communities and vulnerable populations to mitigate or eliminate potential harms from the action and/or equitably distribute benefits from the action.

. The only comments received to date from overburdened communities were from their local government representatives, not from community members themselves. They expressed that they did not want additional barriers to economic development. Ecology outreach continues to overburdened communities, to include email, phone calls, utilization of local media and development of resources in multiple languages. While Tribal sovereigns and their staff are generally well versed in the benefits and impacts of a dredge and fill program, and the value of wetlands, all individuals in overburdened communities may not be.

5. Describe any plans for ongoing engagement with overburdened communities and vulnerable populations related to this action.

Throughout the rulemaking process, which would be subsequent to this legislation passing, we plan to continue to expand our understanding of the overburdened communities who will be impacted, and to continue our engagement activities. This assessment is part of a larger process of activities that will require an additional environmental justice assessment, and continued engagement activities to influence the development of this work.

Section 8: Potential Environmental Benefits & Harms from Action

Identify Potential Environmental Benefits & Harms from Action

1. Describe the anticipated benefits (direct and/or indirect) from this action.

Wetlands provide critical habitat for fish and wildlife and are an important source of first foods. Besides offering opportunities for recreation, wetlands also help sequester carbon, slow down surface runoff from storms, filter air and water pollutants, and stem erosion. A permit program will help ensure adverse impacts to wetlands are minimized and adequately offset through compensatory mitigation. Maintaining critical wetlands ensures these ongoing benefits.

2. Who will primarily benefit from this action?

If there is no benefit, identify potential barriers to benefitting from the action.

All state residents will benefit from protection of wetlands and streams.

Populations that rely on surface water for drinking will benefit from protection from pollution of their water source through wetland and stream protection, restoration, and mitigation. Populations that rely on subsistence harvesting of fish, shellfish and wildlife may benefit from protection of surface waters and wetland habitats.

Roughly 40% of Washington's residents rely on surface water for their drinking water source. As shown in Figure 4, ephemeral and intermittent streams are a dominant source for surface waters that supply drinking water in many areas of the state. These waters would continue to be protected under the dredge and fill permit program ensuring clean drinking water.

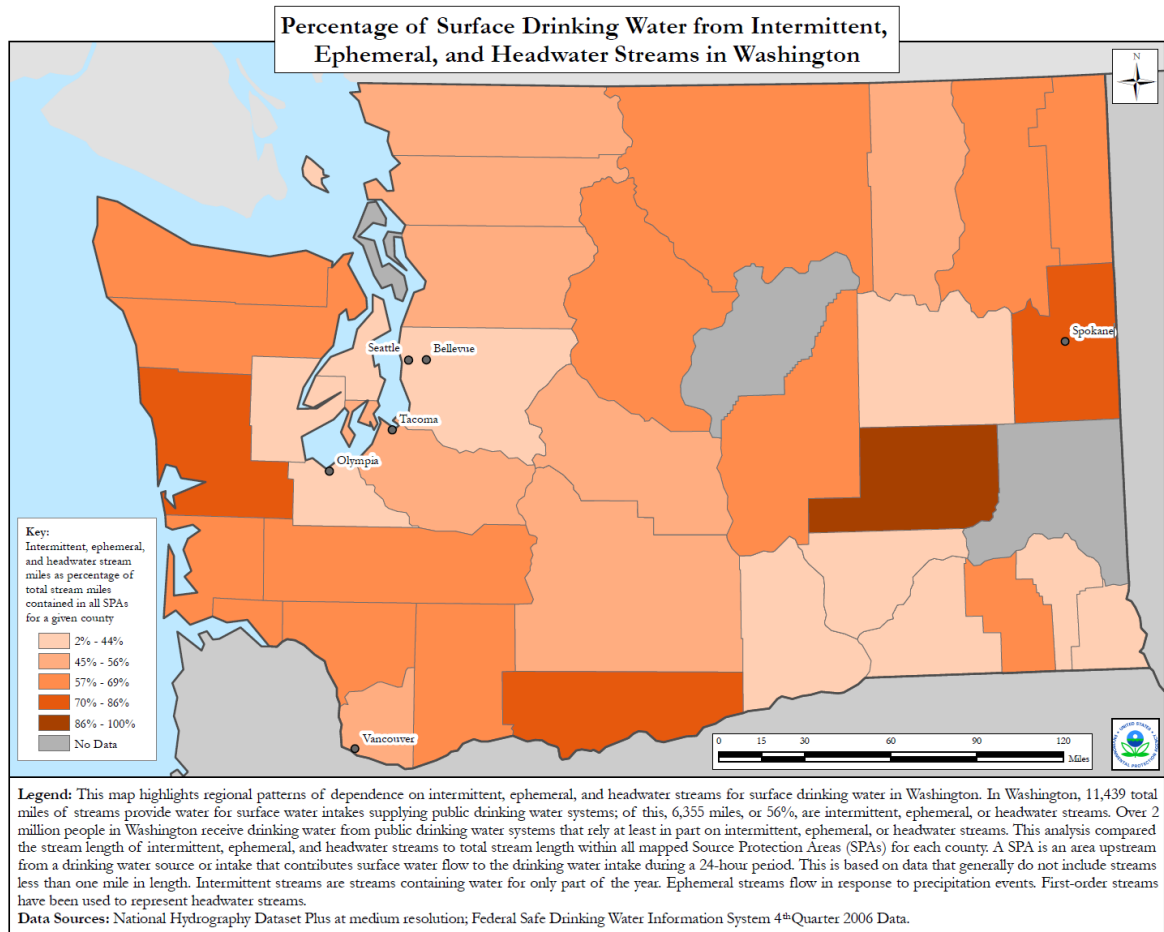


Figure 4. Percentage of Surface Drinking Water from Intermittent, Ephemeral, and Headwater Streams.

3. How is the action expected to benefit specifically overburdened communities or vulnerable populations? If there is no benefit, identify potential barriers to benefitting from the action.

All overburdened communities and vulnerable populations will likely benefit from implementation of a permit program to minimize and compensate for impacts to wetlands and other waters of the state.

4. Describe anticipated harms (direct and/or indirect) from this action.

The cost of fees for a dredge and fill permit could be an impediment to overburdened communities.

5. Who will primarily experience the harms?

Anyone wishing to obtain a dredge and fill permit may be required to pay a fee.

6. Describe how the action may harm overburdened communities or vulnerable populations? Be as specific as possible.

The cost of fees for a dredge and fill permit may increase with downstream economic effects. This is unlikely to disproportionately impact already overburdened communities and vulnerable populations.

7. Describe how the action would address environmental and health disparities.

The proposed permit program should maintain protections for wetlands ensuring that they continue to provide beneficial services to the community. When mitigation is required through a permit program to offset wetland losses, the adverse impacts of a project are minimized. Protection of wetlands helps moderate flood events and alternatively, losses of wetlands can exacerbate flood impacts. Protection of wetlands helps ensure that its water cleansing functions continue to protect surface sourced drinking water.

Section 9: Options to Eliminate, Reduce, or Mitigate Harms and Equitably Distribute Benefits

This section summarizes options identified for eliminating, reducing, or mitigating harms, as well as options for equitably distributing anticipated benefits. The answers in this section should be informed by engagement, answers from the previous subsections, and any legislative or regulatory boundaries that limit possible decision making.

Identify Options to Eliminate, Reduce, or Mitigate Harms & Equitably Distribute Benefits

1. Describe options to reduce, mitigate, or eliminate the identified probable harms to overburdened communities and vulnerable populations; and options to equitably distribute the benefits.
 - Ecology could consider income as a factor in determining the fee resulting in low to no fee applications.

- Ecology could consider charging a low to no fee for environmental restoration projects in overburdened communities.
- Ecology could require additional mitigation measures as identified by the overburdened communities to be high value.
- Ecology could prohibit reduction of wetlands in overburdened communities.

2. Describe methods chosen for this action to reduce, mitigate, or eliminate the identified probable harms to overburdened communities and vulnerable populations; and methods chosen to equitably distribute the benefits.

We will address the mitigating measures above as we begin rulemaking on the permit program and fees. The mitigating measure of low fees for restoration projects and income-based rates will be discussed and could be included in the final permit fee rule. Other mitigating measures could include requiring compensation for losses to be compensated in or near disadvantaged communities.

Consistent implementation of a permit program will accrue benefits to all communities in Washington.

3. If the agency determines it does not have the ability or authority to eliminate, reduce, or mitigate environmental harms caused by the action, or address the equitable distribution of environmental benefits, explain why that determination was made.

There are great benefits anticipated through passing dredge and fill permit legislation including preserving the benefits that wetlands provide and offering an opportunity to more efficiently process applications. Potentially, a fee may generate additional economic and administrative burdens to already overburdened communities. These harms can be mitigated for as described above. If wetlands are not protected, overburdened communities are at increased risk as described.

Section 10: Executive Summary

Summary:

This agency action is agency request legislation to implement a dredge and fill permit program and develop a fee structure. The legislation responds to a May 25, 2023, Supreme Court decision in *Sackett v. EPA*. That decision resulted in many of Washington’s wetlands and streams losing federal protection. The timing of the *Sackett* decision left little time to do long-term planning to protect from downstream effects of wetland loss. The agency request legislation responds to the effects of the *Sackett* decision in Washington and protects all waters of the state. Due to the tight timeline, we have not had the opportunity to engage extensively.

To ensure we provide adequate time to interact with all parties, Ecology will conduct a multi-phased environmental justice assessment. What we do not learn from this initial assessment, we hope to uncover when we conduct the assessment during rule making. The decision to pursue this agency request legislation is responsive to the emergent need for protections as quickly as possible.

Any impacts identified during the initial phase would be addressed further through rulemaking. Outreach and consultation with tribes, overburdened communities and vulnerable populations will occur throughout the rule making process.

Ecology held a tribal listening session on September 26, 2023, and two public listening sessions on October 5th. At the Tribal session we heard general support for a permit program especially because of its ability to protect salmon habitat. Tribes expressed that measures to protect wetlands protect tribal treaty rights and cultural resources, including salmon and other first foods.

At the public listening sessions, it was clear that more dialogue will be beneficial, and that more targeted outreach is needed. As noted, Ecology will pursue development of alternative materials and means for increasing opportunities to share information, answer questions and address concerns. Notification of the hearings on Ecology and OFM websites resulted in a preponderance of participation from Industry and local government, though the hearings were designed to specifically target overburdened communities. While local government is based in overburdened communities, we did not get participation from community-based organizations representing individuals living in those communities, such as Front and Centered. Ecology will continue to reach out and seek engagement from impacted communities up to and through rulemaking.

This response to the Sackett decision is a multi-phased project starting with Agency request legislation, proceeding to rulemaking if adopted. The environmental justice assessment for the rulemaking will address and explore issues of impacts to overburdened communities and vulnerable populations more thoroughly than this initial assessment.