



DEPARTMENT OF
ECOLOGY
State of Washington

Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution

Response to Comments

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Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution

Response to Comments

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Environmental Protection Agency Comments

EPA-The EPA and NOAA jointly administer the Coastal Nonpoint Pollution Control Program (CNPCP) under Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA). In April 2013, EPA and NOAA sent a letter to Ecology notifying the state that the agencies were not prepared to approve Washington's CNPCP given the broader federal tribal discussions that were underway in response to the western Washington Tribe's July 2011 "Treaty Rights at Risk" white paper that raised concerns about the federal government's ability to protect water quality and salmon habitat in Washington. That letter notes, among other things, the need to ensure the "state's update to its nonpoint source management program includes necessary protections for salmon and salmon habitat, with recognition that CNPCPs are required by statute to be implemented through updates to a state's nonpoint source management program, as well as through a state's Coastal Zone Management Program." Ecology's current draft plan does not address a final strategy for satisfying CZARA requirements; however, EPA commends Ecology's leadership in taking specific actions such as successfully implementing its Section 319 and Puget Sound funding guidelines requiring the use of the National Marine Fisheries Service recommended guidelines for riparian management. The implementation of scientifically-based performance standards for riparian management is an important request from the Tribes' Treaty Rights at Risk initiative and is a significant action to help protect salmon and salmon habitat. We encourage Ecology to continue to ensure this funding supports the implementation of these riparian management practices. In addition, in your final Water Quality Management Plan to Control Nonpoint Sources of Pollution, it would be especially valuable for you to capture any other specific actions or efforts that you have taken or plan to take to protect salmon and salmon habitat.

The EPA and NOAA believe Washington is making progress toward meeting CZARA requirements. We will continue to work with the state to provide further clarity on what is still needed to achieve full approval of its coastal nonpoint program, including, as appropriate, consideration of Treaty Rights. We expect to work closely with Ecology on a specific strategy, including meaningful outcomes and milestones, for developing an approvable Coastal Nonpoint Program for Washington. We look forward to receiving a final version of Washington's Nonpoint Source Management Plan incorporating changes that address the attached comments. Should you need further clarity on what is required for adequate responses to these comments, please do not hesitate to contact me.

Response: Comment noted. We understand that this plan does not satisfy all the requirements of CZARA. However, we are confident that the path laid out in the plan will address identified gaps. We are committed to working with EPA, NOAA and stakeholders to ensure that we secure approval for our CZARA program, and continue to make progress in addressing nonpoint sources of pollution by implementing this plan.

1. EPA-The state program contains explicit short- and long-term goals, objectives and strategies to restore and protect surface water and ground water, as appropriate.

The state's long-term goals should reflect a strategically focused state NPS management program designed to achieve and maintain water quality standards and to maximize water quality benefits. The shorter-term objectives consist of activities, with annual milestones, designed to demonstrate reasonable progress toward accomplishing long-term goals as expeditiously as possible. Since the NPS management program is a longer-term planning document, the annual milestones may be more general than are expected in an annual section 319 grant workplan, but are specific enough for the state to track progress and for EPA to determine satisfactory progress in accordance with section 319(h)(8). Annual milestones in a state's NPS management program describe outcomes and key actions expected each year, e.g., delivering a certain number of WQ-10 success stories or implementing projects in a certain number of high priority impaired watersheds. The state program includes objectives that address nonpoint sources of surface water and ground water pollution as appropriate (including sources of drinking water) in alignment with the goals of the Clean Water Act. The objectives include both implementation steps and how results will be tracked (e.g., water quality improvements or load reductions).

Comments: This draft plan is much improved from previous versions incorporating several very important measurable milestones, e.g., numeric targets for reductions in phosphorous, sediment and nitrogen, TMDL completion targets, and pollution identification and correction program targets. Section 319 of the CWA requires that state NPS plans contain annual milestones for the implementation of BMPs and program implementation methods. The statute further stipulates that milestones should be broken out by categories and subcategories of NPS. While the draft NPS plan does contain commitments such as the development of an implementation tracking database and eventual development of BMPs, these commitments are not accompanied by specific timelines. Greater specificity of these actions is needed. Many of the actions included in the draft plan are very generalized (e.g., support education and outreach and support for voluntary programs; support implementation of the Dairy Nutrient Management Program and the forest practices rules; align the nonpoint program with CZARA and other programs). While EPA recognizes that general support and some flexibility to take advantage of opportunities that occur is vital, Ecology should be as explicit as possible regarding the specific issues/programs/efforts you plan to focus on over the next five years in this plan. Please include measurable milestones and targets for all strategies/outputs to gauge whether or not you have successfully achieved your objectives. These achievements serve as a requirement under Section 319(h)(8) for a determination of satisfactory progress, necessary to be eligible for a 319 grant award.

While additional work may be needed to more thoroughly identify gaps in the state's ability to manage nonpoint source pollution, EPA believes some of those gaps are known and the state should describe a process for engaging stakeholders to develop the appropriate BMPs. This is especially true for the agricultural sector as discussed in Chapters 2 and 3. The draft plan needs greater specificity regarding BMP requirements/recommendations currently in-place for Agricultural sources and greater specificity on the plan and schedule for developing additional Ag-source BMPs. EPA requires the following elements be included in the final plan to advance Washington's work as it relates to the agricultural sector:

- Clearly describe the process Ecology will use to identify BMPs. (e.g. Who does Ecology expect to engage, in what fora, with what frequency?) The process should result in BMPs that result in compliance with the state's water quality standards at the site level.

- Identify mechanisms the state will use to implement those BMPs. For example, after the BMPs are identified, will there be training or technical assistance programs for various user communities? Will incentive programs be created to encourage the use of those BMPs? How will enforceable regulatory programs and voluntary approaches implement the identified BMPs?
- Describe the adaptive process for the implementation and continued revision of management measures over time to achieve and maintain applicable water quality standards and protect designate uses.
- Clearly describe the timeline for this process

Response: We have edited the plan to address these comments. This includes a commitment to start work on guidance for the agricultural sector by developing, with stakeholders, a process to fill that gap, and a more detailed timeline for the next year. We have clarified that the process will result in BMPs that achieve compliance with the water quality standards at the site level. We have also included a commitment to update our plan based on work completed under this Chapter. This includes updating our funding guidelines and Chapter 3 based on this work. Finally, we edited the plan to clarify that we will have an adaptive process in place to further refine BMP guidance when necessary.

Additionally, see our response to the following comments related to Recommended Management Measures.

2. EPA-The state strengthens its working partnerships and linkages to appropriate state, interstate, tribal, regional, and local entities (including conservation districts), private sector groups, citizens groups, and federal agencies.

The state uses a variety of formal and informal mechanisms to form and sustain these partnerships such as memoranda of agreement, letters of support, cooperative projects, sharing and combining of funds, and meetings to share information and ideas.

The state NPS lead agency works collaboratively with other key state and local NPS entities in the coordinated implementation of NPS control measures in high priority watersheds. Interagency collaborative teams, NPS task forces, and representative advisory groups can be effective mechanisms for accomplishing these linkages, as can more informal but ongoing program coordination and outreach efforts. The state works to ensure that its local partners and grantees have the capacity to effectively carry out watershed implementation projects funded to support its NPS management program.

Further, the state seeks public involvement from local, regional, state, interstate, tribal and federal agencies, and public interest groups, industries, academic institutions, private landowners and producers, concerned citizens and others as appropriate, to comment on significant proposed program changes. This involvement helps ensure that environmental objectives are well integrated with those for economic stability and other social and cultural goals.

Comments: It is clear that Ecology recognizes the importance of partnerships and stakeholder involvement to coordinate the implementation of nonpoint source pollution control measures. It is especially reassuring to see several stakeholder groups, which include tribal representatives, to provide advice and guidance on nonpoint source pollution issues. Ecology has also outlined additional stakeholder engagement opportunities in its draft plan to identify additional actions, including best management practices, to address nonpoint source pollution issues over the next five years. These groups can provide important forums to consider stakeholder concerns. We encourage Ecology to ensure its processes for addressing polluted runoff seek and respond to stakeholder input, including from tribes.

Outreach and education: EPA commends Ecology for taking the lead role in coordinating interagency efforts related to this nonpoint source plan. We appreciate that Ecology understands its responsibility to reach out to its partner organizations, support them in their efforts related to nonpoint source pollution, and coordinate with them to ensure that mutual goals are met. In Washington, numerous state agencies offer varying messages on the implementation of nonpoint source pollution control measures to landowners, potentially creating conflict and incongruent information. To avoid this, EPA suggests Ecology commit to developing standardized recommendations, to ensure that agencies are consistent with messages to all landowners and managers.

Response: Comment noted. We agree with EPA's comment and will work to ensure consistent messages are provided to landowners and managers. The plan has been edited to include this commitment to consistent messages.

3. EPA-The state uses a combination of statewide programs and on-the-ground projects to achieve water quality benefits; efforts are well-integrated with other relevant state and federal programs.

The state has the flexibility to design its NPS management program in a manner that is best suited to achieve and maintain water quality standards. The state may achieve water quality results through a combination of watershed approaches and statewide programs, including regulatory authorities, as appropriate. The state NPS management program emphasizes a watershed management approach and includes an explanation of the state's approach to prioritizing waters and watersheds to achieve water quality restoration and protection.

The state NPS management program is well integrated with other relevant programs to restore and protect water quality, aligning priority setting processes and resources to increase efficiency and environmental results.

Comments: The state Nonpoint Management Program is well integrated with other relevant programs to restore and protect water quality. Although there have been many attempts to coordinate with USDA NRCS, on the National Water Quality Initiative a state-NRCS partnership, EPA recommends Ecology continue efforts and pursue further cooperation up to the highest levels of management to coordinate and leverage agency funds.

Response: Comment noted. We will continue to coordinate with NRCS on the NWQI.

4. EPA-The state program describes how resources will be allocated between (a) abating known water quality impairments from NPS pollution and (b) protecting threatened and high quality waters from significant threats caused by present and future NPS impacts.

The program describes its approach to addressing the twin demands of remedying waters that the state has identified as impaired by NPS pollution and preventing new water quality problems from present and reasonably foreseeable future NPS impacts, especially for waters which currently meet water quality standards.

With limited resources, the state will likely need to make choices about the relative emphasis on restoring impaired waters and protecting high quality waters. The state's program describes how it will approach setting priorities and aligning resources between these two areas of emphasis based on their water quality challenges and circumstances.

Comments: Recognizing limited resources, Ecology's first priority is to correct known water quality impairments from nonpoint source pollution. Their second priority is to support projects that protect threatened and high quality waters from present, and future nonpoint source pollution impacts. Ecology follows the WQ Standards' antidegradation policy when supporting projects that protect threatened and high quality waters.

Response: Comment noted.

5. EPA-The state program identifies waters and watersheds impaired by NPS pollution as well as priority unimpaired waters for protection. The state establishes a process to assign priority and to progressively address identified watersheds by conducting more detailed watershed assessments, developing watershed-based plans and implementing the plans.

No Comment.

Response: N/A

6. EPA-The state implements all program components required by section 319(b) of the Clean Water Act, and establishes strategic approaches and adaptive management to achieve and maintain water quality standards as expeditiously as practicable. The state reviews and upgrades program components as appropriate. The state program includes a mix of regulatory, non-regulatory, financial and technical assistance, as needed.

The state identifies waters impaired by nonpoint source pollution based on currently available information (e.g., in reports under sections 305(b), 319(a), 303(d), 314(a), and 320), and revises its list periodically as more up-to-date assessment information becomes available. As feasible, the state also identifies important unimpaired waters that are threatened or otherwise at risk from nonpoint source pollution.

In addition the state identifies the primary categories and subcategories causing the water quality impairments, threats, and risks across the state. At regular intervals the state updates the identification of waters impaired or threatened by NPS pollution preferably as part of a single comprehensive state water quality assessment which integrates reports required by the Clean Water Act. The state establishes a process to assign priority and to progressively address identified waters and watersheds by conducting more detailed watershed assessments, developing watershed-based plans, and implementing the plans. Factors used by the state to assign priority to waters and watersheds may include a variety of considerations.

Comments: The NPS draft plan includes a commitment for the development of an implementation database for tracking goals, strategies, and accomplishments. EPA commends this commitment. Please provide greater specificity describing this work, including measureable milestones, goals and targets.

Response: We have added additional specificity to Table 8, found in Chapter 9. See our response to the following comments related to Goals//Strategies/Outputs/Milestones.

7. EPA-The state manages and implements its NPS management program efficiently and effectively, including necessary financial management.

To help assure that priority water quality problems are addressed cost-effectively and in a timely manner, the state includes in its program a process for identifying priority problems and/or watersheds, and deploys resources in a timely fashion to address priorities, including any critical areas requiring treatment and protection within watersheds.

The state employs appropriate programmatic and financial systems that ensure section 319 dollars are used efficiently and consistent with its legal obligations, and generally manages all section 319 funds to maximize water quality benefits. The state ensures that section 319 funds complement and leverage funds available for technical and financial assistance from other federal sources and agencies.

Comments: Ecology's Water Quality Program administers four major funding programs that provide grants and low-interest loans (The Centennial Clean Water Fund, The State Revolving Fund, Section 319 grants, and Stormwater Financial Assistance Program) for projects to protect and improve water quality in Washington State. Applicants use one integrated financial assistance application to apply for funds to address both point and nonpoint source water pollution. Ecology reviews, rates and ranks applications and then distributes funds to the highest priority projects.

Response: Comment noted.

8. EPA-The state reviews and evaluates its NPS management program using environmental and functional measures of success, and revises its NPS management program at least every five years.

The state establishes appropriate measures of progress in meeting programmatic and water quality goals and objectives identified in key component #1 above. The state also describes a monitoring/evaluation strategy and a schedule to measure success in meeting those goals and objectives. The state integrates monitoring and evaluation strategies with ongoing federal natural resource inventories and monitoring programs.

The state NPS management program is reviewed and revised every five years. The revision is not necessarily a comprehensive update unless significant program changes warrant a revision; instead, an update targets the parts of the program that are out-of-date. At a minimum, this includes updating annual milestones and the schedule for program implementation, so that they remain current and oriented toward achieving water quality goals.

Comment: Ecology has committed to updating the plan as necessary but at least once every five years. Given ongoing work related to achieving CZARA approval and its relationship to the state's overall NPS management program, EPA expects that Ecology will revise its NPS plan as soon as practicable to reflect outcomes of those CZARA-oriented efforts.

Response: Comment noted.

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Chapter 1: Nonpoint Source Pollution in Washington State

1. Don Russell- The focus of this document is on pollution sources that impact surface water bodies as a result of surface water runoff and atmospheric dry and wet deposition. Missing is the pollution source impact that discharging nutrient laden groundwater and nutrient rich bottom sediments have on water quality and salmon habitat in the streams, wetlands and lakes in the Puget Sound Basin. Nutrient rich groundwater discharging into streams, wetlands and lakes fosters excessive algae and aquatic plant growth which upon their death and bacterial decomposition result in nutrient rich sediment buildup on once clean salmon spawning gravel stream and lake beds. The effect of sediment buildup on stream beds is to deny salmon and macroinvertebrates the habitat that they require to survive. Many Puget Sound Basin streams are now devoid of salmon as a result of nutrient laden groundwater/biotic response induced sedimentation. At some point in the nutrient laden groundwater induced eutrophication of lakes the accreted sediment itself becomes a nonpoint source of nutrient pollution as a result of nutrient releases (internal loading) into the overlying water column. This phenomenon has resulted in 80% of the lakes in Pierce County experiencing recurring toxic cyanobacteria blooms.

Response: Ecology agrees that polluted groundwater and sediment can both negatively affect surface water quality and salmon habitat. Chapter 1 of the plan highlights sediment as a primary pollutant that emanates from multiple sources including agriculture, forestry, hydromodification and urban and residential areas. Aquatic life uses are listed as one of the uses impacted by sediment pollution. In Chapter 8 of the plan, groundwater and the potential for groundwater to negatively affect surface water are discussed. However, based on the comment, additional emphasis was added to highlight nutrient inputs to surface waters via groundwater.

2. Western Environmental Law Center- First, your assumption that the state has “made important progress in cleaning up our rivers, lakes and coastal waters, largely by controlling pollution from factories, sewage plants, and other ‘point’ sources of pollution” is significantly flawed. According to Ecology, “[a]pproximately 3,170 stream and river segments (with a cumulative length of about 5,000 miles) have one or more pollutants not meeting water quality standards at some point along the segment.” “[T]here are more than 148 lakes in which one or more pollutants do not meet water quality standards” “For two large rivers in the state, the Snake and Columbia Rivers, 61 of the 133 segments have one or more pollutants that do not meet water quality standards at some point along the segment.” While we are advocates of positive thinking, I hope you revisit your assessment regarding the “important progress” that has been made.

Furthermore, the current state of our fish, shellfish, and wildlife that depend upon cold, clean water similarly paints a dismal picture. According to the Northwest Indian Fisheries Commission’s (“NWIFC’s”) State of Our Watersheds Report, “the quality and quantity of habitat in [Washington] waters are the primary limiting factors to salmon recovery.” The principal findings of this report are that: (1) degradation of habitat outpaces estuary restoration; (2) degraded nearshore habitat is unable to support forage fish; (3) freshwater shoreline armoring continues unabated; (4) forest cover is disappearing; (5) streams lack large woody debris; (6) riparian forests are not recovering; (7) there are an alarming number of roads crossing streams

and increasing road densities; (8) fish barriers cut off vast amounts of habitat; (9) agricultural lands remain degraded; (10) sensitive floodplains are being overdeveloped; (11) rapidly increasing permit-exempt wells threaten instream flows for fish. As you revise this Plan, please take into account the NWIFC's admonition:

The report also serves as a bellwether – both an indicator and warning – that the tide of habitat loss and degradation must be turned if we are to restore the salmon resource. If we do not, we will continue down the path we are now on, which leads to the extinction of salmon and the loss of tribal treaty-reserved rights, economies and cultures. This vision of the future is unacceptable to the treaty Indian tribes in western Washington.

This vision is similarly unacceptable to the Commenters and it should be unacceptable to the Washington Department of Ecology. The plight of the shellfish in Puget Sound should also serve as a call to trigger regulatory approaches to nonpoint source pollution. Currently, 36,000 acres of shellfish beds are closed in Puget Sound. While much of the fecal coliform pollution that is causing the shellfish beds closures comes from point sources such as Dairy Concentrated Animal Feeding Operations (“CAFOs”), some of the pollution comes from nonpoint source pollution in the form of runoff from non-CAFO agricultural fields and that must be stopped.

Response: Clarification made based on comment. Ecology agrees with the commenter that the quality and quantity of habitat is of primary importance to salmon recovery. Ecology also agrees that CAFOs can be major sources of fecal coliform pollution affecting shellfish growing areas. Other comments noted.

3. State Conservation Commission- The Draft Nonpoint Plan should include quantifiable data as to the scope and extent of the sources of nonpoint pollution in Washington. The 2005 non point plan included a significant amount of data identifying the sources of nonpoint pollution. In that plan, considerable attention was paid to land use changes and the resulting water quality impacts. It's through clear identification of the sources and location of nonpoint pollution contributors that multi-entity, and multi-program, solutions can be developed. The proposed draft Nonpoint Plan does not include specific data. Chapter 1 lists the categories and sources of nonpoint pollution, and lists the impacts of land use practices in a summary format. But the information is not presented in a way that provides information as to what percentage each source is a problem. Recommendation #2: The Chapter 1 description and identification of sources of nonpoint pollution should include more specificity as to the percentage of non point sources and locations of specific problems. Given the short timeframe to complete the state Nonpoint Plan, there may not be sufficient time to develop the data for this recommendation. But much of the data already exists in TMDLs, salmon recovery plans, watershed plans, 303(d) listings, and other existing data sets. By identifying the specific sources of nonpoint pollution in various regions of the state, the state Nonpoint Plan can then describe how the variety of nonpoint programs and activities will address the issues identified by the data.

Response: Appendix A of the nonpoint plan is an assessment of nonpoint pollution in Washington State. This report contains much of the information recommended in the comment and is referenced in the plan. Additionally, as the commenter notes, more detailed analysis of nonpoint contributions is found in TMDLs.

4. Northwest Environmental Advocates- Because this plan identifies agriculture as the single greatest problem for Ecology, the plan must devote proportionally more space to identifying how Ecology will overcome the barriers to controlling nonpoint source pollution from that sector. Ecology must make crystal clear—not just through vague threats but through plans—that if the state does not get serious about controlling agricultural pollution, municipal and industrial dischargers will have to pick up the slack, no matter how costly, how unfair, and how fundamentally misguided that may be. Likewise, Ecology must explain clearly how often it will pick up the stick instead of the carrot. Both are important but Ecology is vague on how it intends to use its enforcement authorities.

Response: In the plan Ecology discusses the importance of meeting TMDL load allocations and how the slow pace of implementation for nonpoint source pollutant reductions will shift the burden to point sources regulated via NPDES permits.

Reducing pollution from agricultural sources is a vexing problem, given the range and scope of the issue. As highlighted in the nonpoint plan, Ecology intends to use a variety of approaches, including regulatory enforcement, education and outreach, incentive programs and TMDLs. Examples of these approaches and programs include Straight to Implementation (STI) and Watershed Evaluations, TMDLs, 319 grant and Centennial Clean Water incentive funds, and Ecology's complaint response and tracking program. We also highlight the importance of local and state partners. These partners implement regulatory and incentive programs that can address nonpoint sources of pollution. Examples of these programs include Pollution Identification and Correction (PIC) programs, shellfish protection districts, and the Dairy Nutrient Management Act, which is implemented by the state Department of Agriculture. Additionally, a variety of incentive programs are implemented by local entities and partner agencies. We believe it will take a variety of approaches to address agricultural pollution sources at both the state and local level, and will use various approaches and partnerships based on what is best suited for each situation.

Ecology generally works to encourage the use of incentives to promote the adoption of practices to eliminate pollution sources. We use regulatory enforcement as a last resort. Because each situation is unique, Ecology does not have set criteria for when formal regulatory enforcement will be used.

5. Board of Stevens County Commissioners- 1) Page vii, fifth paragraph, Executive Summary – What about contributions from wildlife. Although not consider pollution under the State Water Pollution Control Act, they do contribute to water quality degradation and can create human health concerns and over water quality issues. Please added this components to this executive summary and to the plan.

Response: Wildlife has not been identified as a pervasive or persistent source of nonpoint source pollution in Washington State. Ecology acknowledges that it is possible for wildlife to contribute a pollutant such as fecal coliform bacteria to surface waters, but does not consider wildlife as a major contributor of nonpoint source pollution.

6. Board of Stevens County Commissioners- 2) Page 1, Land Use and Nonpoint Source Pollution, Categories and Associated Land Uses Table – Please add Transportation as an element of this plan. Vehicle deposits on roadways, i.e. – oil, antifreeze, etc.; trains; airplanes all add to NPS pollution and this is never addressed.

Response: Pollution from transportation is identified in the Urban and Residential Areas section as “road runoff” and includes pollutants such as sediment, toxic chemicals, nutrients, and petroleum hydrocarbons.

7. Board of Stevens County Commissioners-3) Page 2, Water Quality Assessment, third paragraph, fourth line – Please replace the word “problems” with “concerns.” The current wording makes it sound like we are in crisis and doing nothing, which it simply not true.

Response: Comment noted.

8. Board of Stevens County Commissioners-4) Page 3, Agricultural, paragraph 1, first sentence – Please delete or reword this statement. We will challenge the validity of this statement that agricultural areas have consistently been cited as “significant” sources of impairment in freshwaters nation-wide. This is simply not a fact. Or if they have been “cited” as significant, this was done so in error – either way it paints an incorrect picture of agriculture being the worse actor. No other industry or contributor is demonized.

Response: Both nationally and at the state level, it has been documented that agricultural areas are significant sources of water quality impairments.

9. Board of Stevens County Commissioners-5) Page 3, Table 1, Fecal coliform bacteria and Nutrients/Dissolved Oxygen/pH - Direct animal access to streams is listed as a typical source. Simple access to the stream does not immediately lead to fecal coliform contributions or nutrients, and certainly does not change the pH or dissolved oxygen levels. Prolonged or uncontrolled access can be a contributor, if it is typical on a specific piece of land. Please add words to be describe this prolonged activity.

6) Page 3, Table 1, Shade/Temperature – Loss of riparian shade due to animal access is only true if you are counting grasses as providing shade. Only when “excess” animal activity occurs with a lack of food do tree and shrub degradation occur.

Response: Direct animal access can contribute fecal coliform bacteria and sediment to surface waters, and can affect other water quality parameters such as pH, temperature and dissolved oxygen. The degree of the impacts to water quality can vary depending on a number of factors, including the length of time animals have access to surface waters and the adjacent riparian area. The suggested language change of “prolonged or uncontrolled” only addresses one factor related to animal access impacts to surface waters, and are subjective terms. The time spent in riparian areas is only one factor that needs to be considered. Ecology is stating that animal access to streams is a source of fecal bacteria and sediment, and that animal access impacts to the stream and riparian areas can also affect pH, dissolved oxygen and temperature. The degree

of that impact is influenced by multiple factors. The section was not designed to enumerate those factors, and was only meant to identify sources of various pollutants.

9. Board of Stevens County Commissioners-7) Page 3, Table 2, Mercury – Depositions from foreign countries (China) needs to be added.

Response: Atmospheric deposition is identified as a pollutant delivery pathway for mercury.

10. Board of Stevens County Commissioners-8) Page 4, Table 3 – Loss of riparian vegetation is mentioned in all three categories as a typical source. How is this possible if state law prohibits logging in the riparian zone? It would seem that under our current structure, only by fire or wind storm or by breaking the law would we lose riparian vegetation. Please add by “natural disaster” to loss of riparian vegetation for clarification.

Response: The focus of the nonpoint plan is anthropogenic sources. We acknowledge natural disasters may affect riparian vegetation.

11. Board of Stevens County Commissioners-9) Page 4, second paragraph, first sentence, 1) – “Leaf litter and wood debris” is mention as a negative to water quality due to loss at harvest. The natural contribution of needle, leaf, and down wood also contributes negatively to water quality in regards to dissolved oxygen, pH, and nutrients. Please add this factor.

Response: The paragraph outlines in general terms how timber harvest impacts water quality.

12. Board of Stevens County Commissioners-10) Page 4, third paragraph, second sentence – This sentence refers to logging roads as impervious surfaces. Dirt road with very low traffic are not “impervious surfaces.” Yes, there would be some soil compaction, but these roads still soak in water. Please change to “compacted road surfaces have increased runoff.”

Response: Clarification made based on comment.

13. Board of Stevens County Commissioners-11) Page 4, fourth paragraph – This paragraph, although correct in theory, does not apply to current practices within Washington and should be deleted.

Response: The loss of shade through removal of streamside canopy and degradation of riparian functions still occurs in Washington.

14. Board of Stevens County Commissioners-12) Page 5, bullet 2 – Hydromodification can also include natural activities, such as stream alteration by beaver activity and other animals. Please add natural animal activities to your bullet or list here.

Response: The focus of the nonpoint plan is anthropogenic sources. Ecology acknowledges that beavers can and do modify streams; however, this is a natural occurrence.

15. Board of Stevens County Commissioners-13) Page 5, Table 4, Suspended sediment/Turbidity – All natural system has some erosion, alteration and disposition of sediment. It is unfair to characterize these activities as human cause NPS pollution. Please correct this to address natural causes and activity of dynamic hydro systems.

Response: The focus of the nonpoint plan is anthropogenic sources of pollution including hydro-modification. Ecology understands that geomorphic processes are natural and can alter streams; however, these occurrences are natural.

16. Board of Stevens County Commissioners-14) Page 5, Recreation, first paragraph – Please add “lakes.” Marinas and recreational boating activities and the NPS related to these activities occurs in most lakes in the state. Further, human defecation and urination associated with swimming can contribute to NPS with recreation and needs to be addressed.

Response: The recreation section does refer to lakes.

17. Board of Stevens County Commissioners-15) Page 6, Table 6, Fecal coliform bacteria – “Urban wildlife” is mentioned. Wildlife in all areas contribute. Further, this should be added in multiple areas of this table, as wildlife causes suspended sediment/turbidity, nutrients/dissolved oxygen/pH, and temperature issues with loss of stream side vegetation from beaver, deer and other activities. This wildlife activity is a source of NPS and should be accounted for. Please address wildlife.

Response: See previous comment related to wildlife.

18. Stevens County Conservation District- Wildlife In many areas of the state wildlife impact water quality and are just as much a source of non point pollution as the other categories listed in Chapter 1. This is a strong belief of many landowners and agricultural producers. Further justification of inclusion as a source of non point pollution is that the State owns, manages and generates revenue from the wildlife. It is a recommendation that the category of wildlife be recognized in the plan as a source of pollution even if there is no intent to reduce its impacts. Urban wildlife is considered and should be expanded to all wildlife.

Response: The focus of the nonpoint plan is anthropogenic related sources of pollution. Wildlife has not been identified as a pervasive or persistent source of nonpoint source pollution in Washington State. Ecology acknowledges that it is possible for wildlife to contribute a pollutant such as fecal coliform bacteria to surface waters, but does not consider wildlife as a major contributor of nonpoint source pollution. In some watersheds wildlife contributions may be a significant source of pollutants. Our individual TMDLs do account for wildlife contributions.

19. Don Russell- Revise current State Surface and Groundwater Quality Standards to embrace more indicators of polluted waters that need clean up. For example establish Water Quality Standards for: Alkalinity, Aluminum, Calcium ion concentration or Calcium Hardness, Cyanobacteria toxins (e.g., microcystin, anatoxin), and Iron.

Response: This comment is a request to change the state's water quality standards. The nonpoint plan is not a forum or process to adopt new water quality standards. Comment noted and forwarded to Ecology staff who work on the water quality standards.

20. Northwest Environmental Advocates- Ecology states that it relies on its Integrated Assessment to report on the status of water quality in the state. It fails to discuss the following: (1) how its water quality standards are out-of-date and therefore are not adequate measuring sticks by which to evaluate data and information; (2) the inadequacies of its 303(d) methodology; and (3) Ecology's failure to use all available data and information. Moreover, given the vast number of waters that are identified as impaired, it is not immediately clear how the assessment helps Ecology "prioritize the use of state resources more efficiently."

We commend Ecology for conducting the study of existing research and information on the extent of nonpoint source pollution. It would be helpful if Ecology also considered the relative contribution of these sources if its water quality standards were updated, e.g., they used current EPA-recommended criteria for aquatic life. In particular we suspect that heavy metals contained in fertilizers might show up as a concern.

See comment regarding air deposition and agriculture above.

Response: Ecology believes the current standards are sufficient to develop strategies to address nonpoint source pollution. Review and/or revision of the state water quality standards is not within the scope or purpose of the nonpoint plan.

Ecology uses all available credible data to develop the state's 303d list. While the 303d list does not assess all state waters, it does provide important information about where standards are met and where water quality does not meet standards or is in jeopardy of not meeting standards. Currently, Ecology is updating the state's 303(d) list, and will have assessed data from over 6,000 locations (segments of streams, lakes, parts of lakes). This information provides a reasonable overview of which areas are of greatest concern, and allows Ecology to perform a variety of prioritization exercises such as identifying specific areas for further monitoring, deciding where future TMDLs will be developed, focusing compliance staff and financial incentives, and conducting effectiveness monitoring.

21. John DeMeyer- Pg. 6 Urban & Residential Uses, Table 6- Pollutant categories associated with nonpoint pollution from Pollutant Category; urban areas; Nutrients/DO/pH Typical Sources; Suggest adding on-site septic systems. Even a perfectly functioning septic system will discharge to underlying groundwater significant amounts of DIN.

Response: Clarification made based on comment.

22. Lummi Nation- Chapter 1: Nonpoint Source Pollution in Washington State

Overall Comment: The presentation of non point source pollution in Washington State in Chapter 1 would be clearer and more comprehensive if it was aligned with the 1997 EPA guidance on nonpoint source (NPS) pollution management. The EPA guidance divides NPS

pollution into NPS Pollution Categories, NPS Pollution Subcategories, and Types of NPS Pollution. As currently written, a few of the NPS pollution categories {e.g., Agriculture, Atmospheric Deposition, Silviculture, Hydromodification/Habitat Modification, Marinas and Recreational Boating, and Urban Runoff/Storm Sewers) are addressed to some extent while other NPS pollution categories (e.g., Construction, Resource Extraction, Land Disposal, Waste Storage/Storage Tank Leaks, Highway Maintenance and Runoff, Spills, Natural Sources, Recreation Activities [e.g., golf courses], and Ground Water Withdrawals) are not addressed.

For the NPS pollution categories that are addressed, the types of NPS pollution associated with a NPS pollution category or subcategory are identified/labeled as a NPS pollutant category rather than as a NPS pollutant type. As written, because a number of the NPS pollution categories are not identified, a reader could assume that they are not concerns in Washington State when they very clearly are. It is noted that the current version of the draft NPS Pollution Management Plan does not address or even mention hydromodifications associated with illegal water diversions. In summary, aligning the content of Chapter 1 with the EPA guidance would better define NPS pollution for the general audience and result in a more accurate and comprehensive description of the numerous and widespread non point pollution sources in Washington.

Page 1. In the table that appears on page 1, please include the word "aquaculture" as an associated land use in the Agriculture Category. The Lummi Nation Nonpoint Source Pollution Management Plan: 2015-2020 explicitly identifies aquaculture in this category to address creosote pilings that may exist around aquaculture operations. Similar or other potential NPS pollution also likely exist or are associated with other aquaculture operations that occur in Washington. Also please correct the spelling of hydromodification. Page 3, Table 1. Please add "Habitat Alteration/Hydromodification" as a nonpoint source pollutant category associated with agricultural land uses. Typical sources or non point source subcategories could include flow modification due to irrigation diversions and drainage activities, alteration of riparian areas including removal of riparian vegetation, stream channelization, stream bank modification or destabilization, draining and filling of wetlands, and dams. The impacts listed should include at least aquatic life uses.

Page 4, Table 3. Please add "Habitat Alteration/Hydromodification" as a non point source pollutant category associated with forestry land uses. Typical sources or non point source subcategories could include flow modification due to timber harvest activities, alteration of riparian areas including removal of riparian vegetation, stream bank modification or destabilization, and draining and filling of wetlands. The impacts listed should include at least aquatic life uses.

Response: Ecology understands there are a number of approaches to grouping and organizing pollutants and nonpoint sources of pollutants. We chose to organize them by the major land use categories and then by associated pollutants and sources. We did this because nonpoint pollution is primarily influenced by land use.

Clarifications made based on comments.

In Chapter 1 of the plan we acknowledge that hydromodification overlaps with other categories such as agriculture and forestry.

23. Northwest Environmental Advocates-The discussions of atmospheric deposition should note what happens after the pollutants are deposited on the land. An example of how significant the input can be is demonstrated by Oregon's Willamette Basin mercury TMDL (which is not a real TMDL but does contain some important analysis). The contribution of atmospheric deposition through erosion of agricultural lands should not be ignored. Figure 9 of the mercury TMDL illustrates the point, showing a minimum runoff of mercury deposited from air emissions from agricultural lands at 17.5 percent of the total contributions of mercury. That is in addition to a minimum of 30 percent from simple erosion from agricultural uses, meaning a minimum of 47 percent contribution from agricultural activities

Response: Clarification made based on comment.

24. Northwest Environmental Advocates- Although the title "Forested Practices" is likely a typo, we would suggest that this category be called "logging." Forests do not naturally generate what we consider to be pollution; what humans do to them does. The second paragraph refers to "timber harvest" whereas a later paragraph refers to "forestry." It would be better to identify the different categories of nonpoint source pollution that are associated with the extraction of resources from forested lands and then discuss each one individually, e.g., harvest, roads, fertilization/pesticides, etc.

The discussion of habitat alteration/hydromodification should include culverts. The pollution of invasive species should be added to Table 5 as related to nonpoint source pollution from marine/boating areas. See letter cited in footnote no. 2 for a full explanation.

Response: Comments noted. Clarification made based on comments.

25. Stevens County Conservation District- Chapter 1 discussion on Recreation- comment that it is "generally less pervasive issue compared to agricultural" is a true statement state wide. Marine and boating is covered. There is a portion of the state where camping, hunting and motorized recreation have a large impact to water quality - garbage, human wastes and vandalism both in the riparian area and uplands impact the environment which contributes nonpoint pollution.

There are areas where motorized vehicles damage wetlands on a regular basis. These sources are not mentioned in the plan.

Response: Clarification made based on comment.

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Chapter 2: Washington State's Regulatory Framework

1. Western Environmental Law Center-You underestimate Ecology's authority to regulate nonpoint source pollution. In your description of Washington State's Regulatory Framework (Chapter 2), you neglect to acknowledge that it has been illegal to cause nonpoint source pollution since at least 1899. Under the Refuse Act (Rivers and Harbors Act of 1899):

"It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing there from in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; and it shall not be lawful to deposit, or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water, or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed"

33 U.S.C. § 407 (emphasis added). This statute, still good law today, makes it clear that Congress intended not only to prevent direct discharges of pollution into waterways, but also pollution that is "washed into" navigable waters "either by ordinary or high tides, or by storms or floods, or otherwise," which can constitute nonpoint source pollution under certain circumstances. *Id.* Notably, the Refuse Act imposes criminal liability on those that pollute navigable waters.

In Chapter 2 you neglect to acknowledge the Public Trust Doctrine, an ancient legal doctrine that reflects an inherent attribute of state sovereignty—recognized in Washington's Constitution statutes, and common law—which operates to secure fundamental rights to essential public trust resources. The Public Trust Doctrine is an expression of the inherent natural right retained by the People to sustain the public trust reserved for themselves and future generations. Wash. Const. art I, §§ 1 ("All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights"), (the enumeration of certain rights does not deny others retained by the People); see *Robinson Twp. v. Commonwealth*, 83 A3d 901, 947 (Pa. 2013) (explaining that such natural rights are inherent and inalienable).

The doctrine has been expanded to protect interests such as "navigation, commerce, fisheries, recreation, and environmental quality." The Doctrine applies to all commonly shared, essential natural resources, including those resources that are substantially impaired by the rampant nonpoint source pollution happening today (e.g. shorelands, tidelands, navigable waters, and shellfish). See *Caminiti*, 107 Wn.2d at 668-69 (recognizing that the Public Trust Doctrine dates to the Code of Justinian and English Common law and thus inferring that the scope of the Doctrine is circumscribed by those sources of law). "The Institutes of Justinian, a compilation

and restatement of the Roman law first published in 533 A.D., states: “[T]he following things are by natural law common to all – the air, running water, the sea and consequently the sea-shore.” Rettkowski, 122 Wn.2d at 240 (Guy, J., dissenting).

When implementing its delegated statutory authority, agencies to whom the Legislature delegates authority, as trustees, have a legal obligation to manage and prevent substantial impairment to public trust resources under their regulatory jurisdiction pursuant to the Public Trust Doctrine. Legal precedent makes it clear that agencies with statutory authority to manage public trust resources, whether shellfish or water resources, “ha[ve] a continuing obligation under the public trust doctrine to manage the use of the resources on the land for the public interest.” Therefore, when developing a plan to address nonpoint source pollution, Ecology must comply with, and carry out, the mandates of the public trust doctrine.

The agency has described the scope of the doctrine in previous filings with the Washington Supreme Court:

Ecology recognizes that the public trust [doctrine] has always existed in this state and that, as the managers of the waters within the state, Ecology’s duties relating to decisions on the use and regulation of water will be defined by the trust principles inherent in this publicly owned resource. RCW 90.03.010, 90.44.040; *Caminiti v. Boyle*, 107 Wn.2d 662, 732 P.2d 989 (1987).

Therefore, the Plan must be designed, in part, to implement the agency’s public trust obligations and to prevent substantial impairment to the state’s essential water-dependent natural resources.

Response: Chapter 2 is intended to provide a general picture of the regulatory framework that is in place to support our state’s nonpoint program. It is not intended to be comprehensive and does not preclude the use of additional authorities.

2. Western Environmental Law Center-In Chapter 2 you also omitted reference to the WA Board of Health’s statutory obligation to protect the public from pollution caused by the keeping of animal manure. The Washington legislature has explicitly directed the Washington State Board of Health to regulate the storage of animal waste to protect human health:

In order to protect public health, the state board of health shall: Adopt rules and standards for prevention, control, and abatement of health hazards and nuisances related to the disposal of human and animal excreta and animal remains. RCW § 43.20.050(2)(c) (2013). The Board’s statutory obligation to protect public health from pollutants caused by the keeping of animals is an affirmative delegation of state police power to protect the public health to the Board of Health. The legislature has directed all local boards of health and health officers, among other state and local officials, to enforce the regulations promulgated by the Board of Health to carry out this duty. RCW§ 43.20.050(5).

WAC § 246-203-130 is the only Board of Health rule that fulfills the statutory duty to protect the public from health hazards associated with the keeping of animals: (1) Any person, firm or corporation is prohibited from keeping or sheltering animals in such a manner that a condition

resulting from same shall constitute a nuisance. (2) In populous districts, stable manure must be kept in a covered watertight pit or chamber and shall be removed at least once a week during the period from April 1st to October 1st and, during the other months, at intervals sufficiently frequent to maintain a sanitary condition satisfactory to the health officer. Manure on farms or isolated premises other than dairy farms need not be so protected and removed unless ordered by the health officer. (3) Manure shall not be allowed to accumulate in any place where it can prejudicially affect any source of drinking water. WAC 246-203-130. This statutory and regulatory authority should be referenced and included in Chapter 2 because it can serve as one means to address nonpoint source pollution caused by the keeping of animals, but is not being enforced in any meaningful way. Moreover, Ecology must coordinate and encourage the Board of Health to start using their statutory authority to control animal manure because it is a significant contributing nonpoint source pollution factor. RCW 43.70.320 (“Where feasible, the department [of health] and the state board of health shall consult with the department of ecology in order that, to the fullest extent possible, agencies concerned with the preservation of life and health and agencies concerned with protection of the environment may integrate their efforts and endorse policies in common.”).

Response: Chapter 2 is intended to provide a general picture of the regulatory framework that is in place to support our state's nonpoint program. It is not intended to be comprehensive and does not preclude the use of additional authorities. We will look to coordinate with the State Board of Health on how WAC § 246-203-130 could support the implementation of the plan.

3. Lummi Nation- Overall Comment: Although Chapter 2 identifies a number of state and federal regulatory programs that exist in Washington, the effectiveness of these various programs in controlling nonpoint source pollution as the programs are currently implemented in Washington State is not described or otherwise addressed. As a consequence, the general public could misinterpret this information and conclude that with the various regulatory layers, nonpoint source pollution in Washington is under control when it clearly is not. Two examples where additional information should be provided are in the sections on Hydraulic Project Approval (HPA) and Section 319- Nonpoint Source Management Programs.

Response: Comment noted. We agree that there is a difference between having laws and rules on the books, and having an effective program that implements those authorities. While there is some risk that the public might misinterpret the information provided in Chapter 2, we believe there is value in having an outline of existing authorities that can be used to implement our program. It provides transparency, and anchors our program in the legal authorities that could be used to implement the program. Other chapters connect back to the regulatory authorities and discuss how we implement them. Finally, clearly outlining available regulatory and non-regulatory authorities allows people to understand the limits of available authorities and ask critical questions about how effectively they are being implemented,

4. Lummi Nation- Page 15, Hydraulic Project Approval (HPA). The Washington Department of Fish and Wildlife's (WDFW) HPA program has not been reviewed for consistency with achieving state water quality standards. In fact, WDFW concedes that its HPA program causes incremental degradation of fish habitat. As a result, the HPA program is unlikely to protect or

improve water quality to the extent needed to ensure compliance with state water quality standards and full protection of beneficial uses, including salmon and shellfish.

Response: We agree that state programs should be reviewed for consistency with the water quality standards and if possible action should be taken if water quality standards are being violated. We have forwarded your concerns to WDFW. Additionally, we will look to support WDFW in improving the HPA program.

5. Northwest Indian Fisheries Commission-We support state efforts to take action to prevent pollution from occurring in the first place. It is good that WDOE is highlighting this important authority. We hope that Washington remembers that many of the Commission's member tribes filed an amicus curiae brief in the Lemire litigation in support of WDOE's authority to take action against polluters based upon visible degradation of stream banks and riparian areas.

Response: Comment noted.

6. Northwest Indian Fisheries Commission-As demonstrated by the bacterial impacts to the Lummi Nation's shellfish beds in Portage Bay, manure management practices in the Nooksack basin are grossly inadequate. Similarly, the Cow Palace litigation in the Yakima valley involving contaminated drinking water aquifers clearly demonstrates that the current Dairy Nutrient Management Program in Washington is broken. In addition, the Cow Palace case pointed out that manure lagoons designed to meet current NRCS requirements resulted in substantial leakage of nutrients into underlying aquifers that provide drinking water. We know of no testing or verification indicating that manure management guidance provided by either NRCS or Conservation Districts is adequate to assure either protection of drinking water supplies or compliance with state water quality standards or protection of treaty-secured resources.

Response: We agree that current practices from a variety of land uses, including agricultural uses, have contributed to shellfish bed closures and drinking water impacts. We will support WSDA as it works with stakeholders to address and identify gaps in the Dairy Nutrient Management Program (DNMP). Additionally, we recognize our role in making sure that nonpoint sources of pollution, including agricultural sources, have clear BMP guidance that ensures compliance with state water quality standards. We will work with stakeholders and partner agencies, such as WSDA, to address gaps in current practices.

The DNMP takes opportunities to provide regulatory technical assistance to all agricultural producers (what the laws and rules require) and refers those who would benefit from technical assistance to the experts, such as local conservation districts or private consultants and engineers. According to WSDA's reviews, the DNMP's authority is limited to actual water quality standard violations and recordkeeping violations. This is an issue that will require statutory changes through the legislative process to cover the gaps in authority that exist for both WSDA and Ecology. The DNMP continues to look for additional financial resources to increase the number of inspectors in the field, and has been somewhat successful since 2012. However, when funding is identified, it has come in the form of grant funds and has been short term in nature. WSDA has used the funds to focus in the north Puget Sound counties, but the program has additional needs east of the Cascades as well. (WSDA assisted with this response).

7. Northwest Indian Fisheries Commission- When it comes to managing human waste, the state has adopted rules providing for minimum requirements, design, and performance of the systems used to prevent pollution. In dramatic contrast, Washington has identified no similar rules to address the very significant problem of animal waste. There is something wrong when cattle waste becomes more sacred or somehow less amenable to management than human waste.

Response: Comment noted. We agree that animal waste can be a significant problem if not managed to prevent pollution. We also recognize the differing approach that the state has taken to regulating human waste as compared to animal waste. There is generally more oversight of human waste. We are looking at ways to utilize our existing authorities to better address impacts from agricultural sources.

8. Northwest Indian Fisheries Commission-While the GMA requires that cities and counties adopt regulations that “protect” critical areas, the Washington Supreme Court has determined that the term “protect,” as used in the GMA, only requires local governments to maintain existing critical area conditions – regardless of how degraded they may be. Moreover, many counties have exempted current agriculture from the requirement to protect critical areas. Of those that have not, several have decided to implement the Voluntary Stewardship Program (discussed below) which is intended to facilitate funding to farmers to allow them to voluntarily protect or improve critical areas to the extent that they wish to.

Response: We agree that the critical areas regulations will not necessarily address past degradation or ensure compliance with state water quality standards. Our intent in including a reference to the GMA is to recognize and support the use of multiple tools (regulatory and non-regulatory) to help achieve the goals of the nonpoint plan.

To that end we encourage counties to utilize their authorities to help address water quality issues when possible. However, the limitations of the GMA, critical areas ordinances, and voluntary stewardship programs to specifically meet water quality standards highlights the need for a strong water quality-based regulatory backstop and program to address pollution issues that impact downstream users and resources. Even when supporting the implementation of a wide range of authorities that have a nexus with water quality, we need to recognize that the goal of the nonpoint program is to meet water quality standards, and our responsibility is to act if standards are not being met. This can be accomplished by encouraging other programs to better align themselves with meeting the water quality standards and utilizing our water quality authorities concurrently with the implementation of other laws.

9. Northwest Indian Fisheries Commission-The VSP provides for a very convoluted process to identify voluntary actions. While the bill was pending before the Legislature, the tribes lobbied actively to have the bill include a requirement that practices must be adequate to meet water quality standards and support salmon recovery. The agricultural interests sponsoring the bill did not support having such requirements and so the Legislature declined to include any. There is no requirement that the VSP link up with or support or be accountable for implementing either salmon recovery or compliance with water quality standards. Consequently, the VSP cannot be

considered part of a program to meet federal requirements for protecting ESA-listed species, meeting water quality standards or consistency with the tribes' treaty-reserved rights.

Response: Comment noted. The VSP was passed in 2011 as an amendment to the Growth Management Act (GMA). Its goals are to protect and enhance critical areas, maintain and improve the long-term viability of agriculture, and reduce the conversion of farmland to other uses. To accomplish these goals, the VSP relies primarily on incentives and voluntary stewardship practices. Counties that opt into the VSP are responsible for designating a local watershed group to develop a watershed plan that describes how critical areas on agricultural lands will be protected and enhanced.

The VSP sets broad goals and requirements that the watershed group must follow. However, it intentionally provides a great deal of flexibility to the local watershed groups in developing their work plans.

VSP is not required or designed to meet water quality standards. As a critical areas program there is a nexus with water quality. To the extent possible we will encourage counties to implement projects that not only protect critical areas but also promote compliance with water quality laws. Therefore, while recognizing the limits of the VSP, we believe that it is appropriate to reference VSP in the nonpoint plan. To clarify the relationship between VSP and clean water laws, we have included a publication that we released in 2013 in an appendix that explains the differing authorities and the need for a strong water quality regulatory backstop.

10. Northwest Indian Fisheries Commission- We know of no requirement making conservation districts accountable for providing information and technical assistance that support consistency with meeting state water quality standards, consistency with treaty-reserved rights, or recovering ESA-listed species. It is not known what information they provide to agricultural producers because there is no agreed upon "curriculum" or set of outreach materials intended to result in compliance with water quality standards and supporting salmon recovery. At the request of the NWIFC and Swinomish Tribe, NMFS identified interim riparian buffer recommendations intended to help address this gap. These recommendations are opposed by virtually all state conservation districts. Not one CD has been willing to go on the record in support of the NMFS recommendations for protecting ESA-listed salmon.

Response: Comment noted. Ecology agrees that having more consistent messages and outreach materials is important. We support outreach that is consistent with the objectives of the nonpoint plan, including compliance with the water quality standards. Additionally, as BMP guidance is developed we will encourage partners to provide information on those BMPs. It does not benefit the public to hear inconsistent messages from different governmental agencies. We will work with districts and the WSCC to promote more consistency in our outreach, technical and financial assistance programs.

We are disappointed that more partners have not embraced NMFS's recommendations, and that some conservation districts have decided not to apply for grants from Ecology because of minimum buffer requirements for project eligibility. Some conservation districts had refused to apply for Ecology grants even before implementation of the NMFS recommendations. However,

after seeing a small decrease in applications in the year following the incorporation of the NMFS recommendations into our funding guidelines, we have seen grant applications rebound to previous levels. Grant recipients, including conservation districts, are working to implement riparian projects that are consistent with the NMFS buffer recommendations. We will continue to work with districts and other partners to get protective practices in place that ensure compliance with the water quality standards and utilize best available science.

11. Northwest Indian Fisheries Commission-The NWIFC has provided extensive comments on WDFW's proposed HPA rule revisions. These proposed HPA rules fail to protect fish life. Even WDFW concedes that the new rules will allow continued incremental degradation of salmon habitat at an unknown rate. Additionally, the new rules fail to require mitigation reasonably related to and proportional to the impacts permitted by the rules. See NWIFC Comments on HPA Rule Revision and Supplemental Programmatic Environmental Impact Statement, September 15, 2014, SEPA No. 14049. See also Letter from Mike Grayum, NWIFC, to Randi Thurston, WDFW (December 13, 2013) (Comments on HPA Rule Revision and Programmatic Environmental Impact Statement). Both sets of comments are available upon request.

Response: Comment noted.

12. Northwest Indian Fisheries Commission-For years, the NWIFC has been calling for the State of Washington to identify and adopt agricultural BMPs that are designed to meet the state's water quality standards – all of the state's water quality standards. For example, when Governor Gregoire adopted her Shellfish Initiative in December 2011, one of the conditions of Billy Frank, Jr.'s participation in that process was that the State of Washington commit to adopting a set of BMPs for agriculture adequate to address not only fecal coliform affecting shellfish, but all water quality standards:

i. Increase local government understanding and application of practices for controlling pathogens, consistent with Chapter 173-201 WAC. Ecology will provide guidance on nonpoint source BMPs consistent with state water quality standards as well as training to local governments to ensure that PIC programs and federal funding implement these standards.

Despite the State's promise and EPA's clear guidance, the State still has not adopted agricultural BMPs adequate to meet state water quality standards. EPA needs to set clear boundaries and deadlines requiring WDOE to identify BMPs adequate to meet all water quality standards as required by §319 of the CWA and §1455b of the Coastal Zone Management Act (aka §6217 of the Coastal Zone Act Reauthorization Amendments [CZARA]).

Response: We agree with the need to have clear BMP guidance for all categories of nonpoint pollution sources, including agriculture. We understand the commenter's frustration with our agency in not providing guidance on BMPs for PIC programs. As detailed in Chapter 6, we intend to work to fill gaps in our current program. Edits have been made to the plan based on EPA comments that provide clearer timelines and deadlines for working on agricultural BMP guidance.

13. Northwest Indian Fisheries Commission-The state's regulatory program for nonpoint sources barely exists. As noted by Governor Gregoire in a July 5, 2011 letter responding to concerns raised by the WA Cattlemen's Assn', "During 2010, Ecology issued four penalties statewide related to water quality violations and agriculture. Only one of those was for livestock grazing, and it was since suspended." Governor Gregoire notes further that she supports "a more active enforcement approach in areas with significant pollution concerns, such as the Samish." However, it is not clear to what extent WDOE has stepped up enforcement in the Samish since 2011. It has been four years since the Governor wrote that letter and excess fecal coliform levels still result in closure of the Samish Bay shellfish beds – apparently the state's highest priority nonpoint source enforcement area, based on the state's allocation of resources.

Response: We understand the commenter's concern. Since issuing the four penalties in 2010, Ecology has issued five additional penalties statewide for nonpoint-related violations. We recognize the need to work on finding the right balance between incentives, education and outreach, and enforcement. While the plan does not outline an increase in enforcement actions, we will work with partners and stakeholders to find the right balance in watersheds where we work.

Our experience over the last two decades is that reliance only on non-regulatory tools is not sufficient to achieve compliance with the water quality standards. Regulatory tools and enforcement are needed if we are to actually meet water quality standards. While we will continue to support education and outreach, technical assistance and financial assistance to secure implementation of BMPs, we are committed to working with stakeholders to find a better balance between the use of regulatory and non-regulatory tools.

14. Northwest Indian Fisheries Commission-Regarding technical assistance, education, and training, the State lacks an agreed upon curriculum or set of education/outreach materials to give to landowners who want to address any nonpoint source problems on their property. For example, after months of efforts by staff from NWIFC and the Suquamish, Squaxin Island, Skokomish, Puyallup, and Nisqually tribes, to work with the NEP-funded outreach project sponsored by the WA State Conservation Commission and WSU Extension, we still do not know what landowners are being told by the project sponsors regarding what riparian buffers should be implemented to prevent fecal coliform and nutrient pollution from reaching South Sound shellfish beds.*(provide citations to emails). It is impossible to have a viable nonpoint source program if the agencies charged with implementing it cannot even agree on what landowners should be told to prevent nonpoint source pollution.

Response: We agree with the need to have consistent education and outreach materials. We have edited the plan to emphasize that we will work to provide consistent guidance that promotes compliance with the water quality standards. Additionally, we will forward your concerns with the NEP funded outreach project to EPA.

15. Northwest Indian Fisheries Commission-There is no effective process to coordinate or integrate the various programs used to implement NPS pollution controls in Washington. The current Compliance Memorandum of Agreement was signed in 1989. In response to an attempt by WDOE to seek substantive comments regarding draft proposed grazing BMPs, the WA

Association of Conservation Districts recommended to all Conservation Districts that they withdraw from the Compliance MOA. See Letter from WACD to WDOE (Feb. 11, 2011). See also Response from WDOE (March 4, 2011). Conservation Districts that did in fact withdraw include Whatcom CD (Letter from Whatcom CD to WDOE (July 20, 2011) and Whitman CD (Letter from Whitman CD to WDOE (March 2, 2011)). Since then, state agencies including WDOE, WSCC, and WSDA have identified key problems in their current nonpoint source programs that remain unresolved. These include:

- 1) Lack of common monitoring protocols;
- 2) Clear and coordinated inspection protocols;
- 3) Coordination and implementation of the dairy program;
- 4) Improved nutrient management;
- 5) Articulation of BMPs to protect water quality;
- 6) Revision of the 1989 Compliance MOA;
- 7) Improved understanding of returns on investments related to water quality; and
- 8) Clear definition of water quality problems on agricultural lands.

These issues were all identified as goals of the “Three Directors’ Process”. See email from Bernadette Tavernor to Billy Frank, Jr. (August 25, 2011). This process ended in deadlock with the key issues unresolved. The issues listed above by the state agencies are foundational to an operative nonpoint source pollution control program and they remain unresolved.

Response: Comment noted. While we have worked to better coordinate our state programs, we recognize that there is still significant work to be completed over the upcoming years. As noted by the commenter, several conservation districts withdrew from the previous MOA. Additionally, the 3 Directors’ recommendations, which were intended to better align state agency work, were never finalized. Instead, the recommendations were kept in draft form.

While we can continue to implement the nonpoint program without a formalized set of recommendations, our program would benefit from better alignment between regulatory and non-regulatory agencies.

One success has been the update to the MOU between Ecology and WSDA. This updated MOU has clarified lead roles related to the dairy program and the nonpoint program, and improved communication between our two agencies.

16. Northwest Indian Fisheries Commission- The BMP discussion fails to note that the AKART requirement applies to nonpoint source BMPs. See the definition below, found at WAC 173-201A-020:

"AKART" is an acronym for "all known, available, and reasonable methods of prevention, control, and treatment." AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution. The term "best management practices," typically applied to nonpoint source pollution controls is considered a subset of the AKART requirement.

The draft NPS Plan language implies that so long as a BMP incrementally reduces pollution and has been approved by WDOE, then it complies with water quality standards. The language should be revised so that it is very clear to everyone that nonpoint source BMPs must be designed, using all known, available, and reasonable technology [AKART], to meet the state's water quality standards.

Response: The intent of the plan was not to imply that so long as a BMP incrementally reduces pollution and has been approved by Ecology that it complies with the water quality standards. We have revised the plan to reflect that the concept of AKART applies to nonpoint sources of pollution.

17. Northwest Indian Fisheries Commission- The same political problems that prevent the state from: (a) identifying agricultural BMPs and; (b) having a workable means of integrating voluntary programs with its regulatory backstop; also prevent the state from being able to provide reasonable assurances that nonpoint source reductions will meet TMDL load allocations. See generally NWIFC comments on pages 13-19 of the draft NPS plan, above.

In the realm of forest practices, there are not reasonable assurances that water quality standards are being met. Recent CMER studies show that current buffer requirements do not protect stream temperature, particularly tributary non-fish-bearing streams. Also, it's important that climate change be factored into development and implementation of TMDLs. There is a strong need for an assessment of the cumulative effects of climate change and implementation of the NPS program on attainment of water quality standards and full protection of beneficial uses.

Response: Comment noted. We recognize the importance of identifying agricultural BMPs and having a workable means of integrating regulatory and non-regulatory tools and programs. We also recognize the commenter's concern with the state's ability to provide reasonable assurances. We understand the concern with the effectiveness of the state forest practices rules, and Ecology will continue to play a leadership role in the forest practices adaptive management program so that the rules are adjusted when scientific evidence shows that they are not effective. We will continue to engage stakeholders to improve our process and our ability to secure the implementation of BMPs that meet water quality standards to meet the reasonable assurance requirement.

18. Northwest Indian Fisheries Commission-Also, EPA and Ecology can use the natural conditions exception (WAC 173-201A) to change water quality standards (without undertaking a rulemaking) resulting in an impaired waterbody meeting new less protective standards based on the evaluation of natural conditions. This further undermines reasonable assurances of achieving standards. Natural conditions in the context of the CWA are the conditions that existed prior to the pollution problem. EPA and Ecology make assumptions about natural conditions that do not necessarily correlate with local expert knowledge of natural conditions thereby resulting in inaccurate characterization of natural conditions and, consequently, inappropriate changes to the water quality standards. This comment is related to involvement in and review of the South Fork Nooksack River temperature TMDL that primarily addresses non-point sources of heat loading.

See also Squaxin Island tribes comments related to concerns over reasonable assurances with the Deschutes River TMDL.

Response: Water quality standards cannot be changed without rulemaking. When a TMDL estimates natural conditions, that estimate is simply a prediction based on modeling. It does not change the standard. Ecology will not consider a standards change until all feasible BMPs have been implemented, at which time we would determine whether or not the water body had achieved compliance with the existing standard. We have yet to encounter a situation in which all feasible BMPs have been implemented.

19. Northwest Indian Fisheries Commission-We note that this funding source [CWSRF] is subject to federal approval and that it is intended to help address compliance with water quality standards and federal laws, including the ESA and, presumably, the tribes' treaty-secured rights. We do not currently see the evidence that this program is in fact managed consistently with protection of treaty rights and avoidance of jeopardy to ESA- listed species.

Response: Comment noted. We agree that funding sources should support compliance with the water quality standards.

20. Northwest Indian Fisheries Commission-The existence, effectiveness, and commitment to enforce ordinances and development regulations vary widely, by jurisdiction, throughout the state. The draft NPS plan claims that critical area ordinances can protect critical areas affecting water quality. Unfortunately, the state Supreme Court has reviewed the Growth Management Act mandate to protect critical areas and has interpreted that mandate to be limited to maintaining the existing condition of critical areas, regardless of how degraded they may be. Consequently, critical area ordinances do not require achievement of water quality standards (or salmon habitat conditions) that haven't already been attained.

Response: We agree that the enforcement of ordinances and development regulations vary throughout the state. The plan does state that critical area ordinances can help address water quality pollution sources. While we understand and agree with the commenter's concern that critical areas regulations may not address previous degradation, the fact that critical areas regulations may not adequately address water quality issues in every case does not mean they cannot be used by proactive counties to help address water quality impacts. To the contrary, the GMA and critical areas ordinances can help support water quality improvements.

Our intent in including a reference to the GMA and CAOs is to recognize and support the use of multiple tools (regulatory and non-regulatory) to help achieve the goals of the nonpoint plan. To that end we encourage counties to utilize their authorities to help address water quality issues when possible. However, the limitations of the critical areas ordinances and how they are implemented highlights the need for a strong water quality-based regulatory backstop and program to address pollution issues that impact downstream users and resources.

Even when supporting the implementation CAOs, we recognize that the goal of the nonpoint program is to meet water quality standards, and it is our responsibility to act if standards are not being met. This can be accomplished by encouraging other programs to better align

themselves with meeting the water quality standards, and utilizing our water quality authorities as a regulatory backstop, even in places where we are supporting counties' use of CAOs.

21. Northwest Indian Fisheries Commission-The draft NPS quotes Kitsap County's solid waste ordinance as a source of authority for regulation of NPS pollution. We note that none of the cited provisions provide authority to address temperature, nor is dissolved oxygen addressed. Additionally, we note that Kitsap County has several streams that are 303(d) listed for temperature, dissolved oxygen, and fecal coliform. Finally, we note that the County's solid waste ordinance bars deposits or accumulations of manure that can pollute water. Unfortunately, it appears that the County's Public Health District interprets that legal obligation to prevent pollution to be limited to those actions that landowners are willing to do – as opposed to those actions that are actually necessary to address the pollution problem. The Public Health District's interpretation is reflected in the letter it wrote to Billy Frank, Jr., Will Stelle, and Maia Bellon on October 15, 2013. There the District stated:

National Estuary Program funding has been difficult to utilize in our region due to unclear policy, delays in decision-making, and the 35' buffer requirement. We have repeated [sic] expressed our concerns that these administrative buffer requirements do not work on the ground in our region. They remove a large percentage of productive farmland that we have demonstrated can be managed without relying exclusively on buffers.

As evidence for its position that 35' riparian buffers are counter-productive, the District cited to its success in improving water quality for shellfish beds in Burley Lagoon without the use of 35' buffers. We're not sure how the District defines "success." In a 2014 report prioritizing Burley Lagoon for increased NEP-funded outreach to address fecal coliform contamination of shellfish beds, the Kitsap and Pierce CDs stated:

Vaughn Bay and Burley Lagoon ranked in the top 10 watersheds in terms of most impact from fecal coliform pollution in the June 2012 "Status and Trends in Fecal Coliform Pollution in Shellfish Growing Areas of Puget Sound" produced by the Washington State Department of Health.

The bottom line is that the local ordinances and state statutes (GMA) cited in the draft NPS Plan are not necessarily effective at achieving water quality standards. Moreover, the available evidence indicates that the local governments and special districts do not have a consistent understanding of the goals of NPS pollution management or of the means necessary to achieve those goals. These local entities are, at most, willing to support some BMPs to address fecal coliform. There appears to be inadequate commitment to address other water quality standards and protection of salmon habitat needed to support exercise of treaty rights.

Response: We share the commenter's concern that the implementation of inadequate BMPs can be counterproductive to achieving the goal of complying with the water quality standards. We will continue to work with stakeholders to use best available science to support updates to our funding guidelines to avoid situations like the one described by the commenter.

22. Northwest Indian Fisheries Commission- The draft NPS plan cites to Kitsap County's PIC/water quality efforts as an example of how local efforts can support state NPS enforcement efforts, but fails to note that Kitsap County's programs only address some water quality parameters and/or pollution sources. There is no evidence that Kitsap County (or any other state or local agency) enforces the state's temperature standard. To the contrary, the letter from the Kitsap Public Health District makes clear that this local body views requirements for even 35 foot riparian buffers as being unreasonable, even though riparian buffers three or more times that size are needed to address temperature and other salmonid habitat requirements. Other counties lack authorities and/or the willingness to enforce ordinances that address NPS pollution. The draft NPS plan fails to address how this "patchwork quilt" of enforcement authorities would work even in Puget Sound, let alone the rest of the state.

Response: We recognize that the Kitsap County PIC program focuses on a limited set of pollutant parameters based on county authority and prioritized work on shellfish issues. While we understand and agree with the commenter's concern, we also support Kitsap and other counties utilizing their existing authorities to the extent possible. Additionally, we recognize that not all counties have the authorities and/or political authorizing environment to enforce ordinances that address NPS pollution.

23. Board of Stevens County Commissioners-Page 8, fourth paragraph, first sentence – This sentence refers to Ecology's authority to implement "specific" best management practices. First, this is based on an informal AG opinion from the department. This language differs from the actual wording in the opinion letter that states: "specific management measures." This would be a suite of options for the land owner/producer to choose from. It is not Ecology's job to dictate a specific practice to prevent pollution at all cost. This is inconsistent with the CWA and state law and Ecology's authority. An individual must have the right to correct a situation without be told how. Technical assistance should be provided to allow for other consideration, such as economics, custom & culture, etc. and allow for the NPS pollution to be addressed. Please change this language and further clarify your intent in this section. Ecology is heading for a major challenge or law change if the intent is to dictate a specific practice to any entity.

Response: Ecology's authority to issue orders with specific best management practices to address nonpoint source pollution discharges is well established. This authority was affirmed by the Washington State Supreme Court in Lemire v Ecology, 309 P.3d 395 (2013). In the Lemire case we only moved to formal enforcement after we spent more than six years attempting to resolve the issue through technical assistance.

24 Board of Stevens County Commissioners-Page 12, Land use planning, third paragraph, fifth sentence – This sentence states: "Ecology also 'provides' funding in the form of grants." The taxpayers "provide" funding. Ecology administers and manages grants. Please correct this statement.

Page 14, Salmon Recovery Act, first paragraph, third sentence – This is the same as above. The SRF Board "administers" grants, not "provides" grant. Please change.

Response: Comment noted.

25. Board of Stevens County Commissioners- Page 14, Biosolids – This section needs to be expanded to provide more detail on the steps that are taken to prevent runoff and how this application is regulated. There is a huge potential if application is done incorrectly. As much emphasis needs to be placed on this as the DNMP and or manure and fertilizer application due to the potential for groundwater contamination and runoff.

Response: We agree that biosolids can be a source of nonpoint pollution if applied incorrectly. We have included a link to our website in the plan to provide more information on biosolids and the statewide general permit that regulates this activity, and have added additional information on biosolids regulation in our state.

26. Board of Stevens County Commissioners-Page 15, Toxic Cleanup... - What about programs administered by other agencies, such as DNR, DOA, etc. that prevent NPS pollution. The VSP process outline hundreds of programs that are in effect in the agriculture industry that protects water quality. Please look at the Ruckelshaus process and add these items to your list.

Response: The plan does list programs administered by Department of Natural Resources and the Department of Agriculture. Additionally, there are programs administered by the Washington State Department of Fish and Wildlife, the Department of Health, the Salmon Recovery Office, and the State Conservation Commission. Chapter 2 is intended to provide a general picture of the regulatory framework that is in place to support our state's nonpoint program. It is not intended to be comprehensive. The most relevant state programs have been outlined in the chapter.

27. Board of Stevens County Commissioners-Page 17, first paragraph, third sentence – This sentence talks about the CWA providing a basis for addressing nonpoint pollution sources. It should be added that this is through voluntary measures.

Response: While the federal Clean Water Act does not provide regulatory authority to EPA to address nonpoint pollution sources, it does not restrict EPA to only supporting voluntary measures. In fact, EPA guidance recognizes that states should design their nonpoint source programs in a manner that is best suited to achieve and maintain water quality standards. See EPA's guidance "Key Components of an Effective State Nonpoint Source Management Program": "The state has the flexibility to design its NPS management program in a manner that is best suited to achieve and maintain water quality standards. The state may achieve water quality results through a combination of watershed approaches and statewide programs, including regulatory authorities, as appropriate."

28. Board of Stevens County Commissioners-Page 17, Section 319-Nonpoint Source Management Programs – If emphasis was added in this section to include the VSP then dollars could go to help voluntary actions of agriculture to solve NPS concerns with specific water shed outcomes based on individual plan development. Please add this voluntary stewardship program to this section.

Response: A reference to VSP is not necessary in this section. Simply having such a reference would not make VSP area projects eligible to receive CWA Section 319 funding. To be eligible,

projects must be implemented in support of a watershed-based plan (see Appendix C) and meet the eligibility criteria in the state's funding guidelines. We anticipate that VSP implementation projects will use a wide variety of funding sources, including those administered by Ecology such as CWA Section 319 grants.

29. Board of Stevens County Commissioners-Page 19, second paragraph, last sentence – “...the standards express compliance with the law by implementing Ecology approved BMP’s.” NRCS creates BMP’s and Ecology approves them. Please add NRCS reference.

Response: Ecology does not approve NRCS practice standards.

30. Board of Stevens County Commissioners-Page 19, third paragraph – TMDL WLA’s should allow for some measure of NPS along the entire system. This does not seem to be happening but should be stated in this plan to allow for some contribution. Further, wildlife should be included in the WLA.

Response: Wasteload allocations apply only to point sources. Load allocations apply to nonpoint sources. Load allocations include allocations to wildlife sources when appropriate.

31. Board of Stevens County Commissioners-Page 20, top sentence – A perfect example of “the solution to pollution is dilution”, not prevention is contained in the fact that raw sewage can be dumped from boats in the open ocean. What would happen if we stored all land based sewage and disposed of it three miles offshore? The issue of dumping raw sewage in to the ocean should be addressed in this plan.

Response: The No Discharge Zone designation process that we are going through recognizes that even a small number of discharges can cause pollution that is a problem. In the designated zone being proposed, discharges would be prohibited. While some vessels will wait to discharge outside of the designated zone and beyond 3 miles, the goal is to prevent discharges in large part by ensuring both recreational boaters and commercial vessels have holding tanks that can be pumped out at appropriate locations. The commenter also suggests that the plan should address the open ocean and raw sewage being dumped into it. While we understand the commenter’s concern, our state jurisdiction only extends three miles off our coastline.

32. Board of Stevens County Commissioners-Page 21, Sole Source Aquifer Protection Program – Please provide a list of the Washington SSA’s.

Response: We agree that having information on the location of sole source aquifers is important. We have edited the plan to include a link to currently designated sole source aquifers.

33. Board of Stevens County Commissioners-Page 23, Local Ordinances and Regulations, first paragraph, last sentence – There is a reference to critical area ordinances. These are probably the most comprehensive local measures adopted to protect water quality. CAO’s should be expanded and described in this section.

Response: We agree with the importance of CAOs. While CAOs focus on critical areas protection, the strong nexus between critical areas and water quality means that CAOs can be a valuable tool that local governments have to support water quality goals. We have included a link that provides more information on the GMA, CAOs and local planning.

34. Board of Stevens County Commissioners-Pages 23 & 24, Local Ordinances and Regulations – Please delete the Kitsap County Public Health examples. It is not necessary and counterproductive to include these examples in this plan. While they might fit one specific area, it could be construed that Ecology is supportive of this rule being expanded across the State and we are not supportive of that direction, especially from a local health jurisdiction rather than a county.

Response: Comment noted. The Kitsap PIC program is an example of a successful local program that identifies pollution problems and cleans them up. We support this work and believe other counties can glean lessons learned from this program.

35. Northwest Environmental Advocates- The use of the word “nutrients” in the context of the Daily Nutrient Management Program could be confusing to some members of the public and should be made clear with the parenthetical “(animal wastes).” This discussion should also state whether or not Ecology has the authority to take enforcement action (to mirror the forest practices section). Likewise, it should mirror that previous section by stating whether Ecology must concur with proposed rules on dairy practices.

Response: Dairy nutrients, as defined by the act, can encompass more than just animal waste. Dairy nutrient is defined as any organic waste produced by dairy cows or a dairy farm operation. Additionally, the plan's description of the things that must be considered when developing a dairy nutrient management plan includes manure.

We agree that the plan should discuss Ecology's enforcement authority on dairies. Edits have been made to clarify this section.

Ecology does not have to concur with proposed rules on dairy practices.

36. Northwest Environmental Advocates-This section should explain what aspects of logging, if any, require the submission of individual plans.

Response: Applications for authorization to conduct forest practices cover a broad range of practices from establishing roads to harvesting timber and replanting the forest. Each Forest Practices Application (FPA) creates an individualized plan in which a landowner explains what they want to do within the bounds of the established regulatory limits. These FPAs are reviewed by DNR foresters as well as by field staff in Ecology, Fish and Wildlife, and many of the state's Tribal governments before they are approved.

37. Northwest Environmental Advocates-This description of TMDLs states that “[i]mplementation plans are developed to implement TMDLs,” but it fails to explain precisely

how a TMDL results in the use of an adequate BMP on the ground or in the water sufficient to result in nonpoint sources' meeting load allocations.

Response: Comment noted. The adequacy of TMDL implementation plans and whether there is reasonable assurance that the nonpoint load allocations will be implemented is determined on a case by case basis for each TMDL. There is variation between TMDLs, and therefore a precise explanation is beyond the scope of this plan.

However, we understand the commenter's concern. Historically, the implementation of TMDL load allocations has been poor. Many nonpoint sources have not implemented the BMPs necessary to comply with the water quality standards.

To improve TMDL implementation we are working to provide more detailed BMP recommendations in TMDLs. Additionally, we recognize the need to explain the tools (both regulatory and non-regulatory) that we use to implement the BMPs and a more complete timeline to show we are making progress. We will continue to evaluate the need for changes to our TMDL implementation plans and seek feedback from stakeholders on how we can better implement TMDLs.

38. Northwest Environmental Advocates- There is no reference to the Washington Department of Fish and Wildlife programs to prevent or limit invasive species transfer in Washington waters. See, e.g., WDFW, Aquatic Invasive Species at <http://wdfw.wa.gov/ais/>.

Response: Chapter 2 has been edited to include a reference to the Aquatic Invasive Species program.

39. Northwest Environmental Advocates- This section on the CWA does not mention water quality standards explicitly other than to say that they are required. It should be made clear how standards play a role in the other programs mentioned (e.g., 303(d)) as well as the discussion at the opening of this letter with regard to standards and nonpoint sources.

The 319 section of this discussion should have subsection citations for the public.

The section on standards and TMDLs is entitled "Section 303(d)" but should also include section 303(c). The phrase "antidegradation requirements" should be a parenthetical at the end of the first sentence, which describes standards. It might be helpful for some readers to have a citation to 40 C.F.R. § 130.2(i) with regard to the tradeoffs between point and nonpoint sources in the discussion on reasonable assurance.

The word "Act" should be inserted into the title of the CZARA section. The "CZMA" in the first sentence should be spelled out. This section fails to mention the role of water quality standards, including designated uses, in the requirements contained in CZARA.

Stating that the SDWA "includes WQ Standards" suggests these are the same as the CWA water quality standards. As you know, they are not, and this should be revised so that it does not confuse the public.

Response: The goal of Chapter 2 is to outline the legal authorities that support and provide a framework for our nonpoint program. We agree with the commenter that the standards play an important role in our administration of the program. BMPs that we implement must be designed to meet the standards. Additionally, we prioritize clean-up work based on where we are not meeting the standards, and our effectiveness monitoring and adaptive management activities are keyed to the standards. Throughout the plan, references to the standards are included to reiterate the connection between the activities and the strategies we deploy to address nonpoint pollution and meeting the standards. Edits have been made to the plan to address the other comments.

40. Washington Association of Conservation Districts-Chapter 2/Additional State Authorities/Conservation Districts/p 14 – The documents refers to WSCC as the coordinating state agency for conservation districts, but does not then describe how Ecology will coordinate with WSCC in the state NPS program. The NPS Plan should specifically note that Ecology is a member (by statute) of WSCC, and is charged to coordinate with others represented on WSCC. The NPS Plan should describe how WSCC (e.g., at commissioner public meetings) should serve as an effective venue for NPS pollution issue discussion, resolution and tracking.

Response: Comment noted. The plan discusses how we coordinate with the WSCC and other partner agencies in Chapter 4.

41. Washington Association of Conservation Districts- Same section - Conservation districts are not limited to services only for agriculture; the document should include forestry and stormwater areas also as part of the conservation district portfolio. Districts should also be noted as providers of financial assistance. Section omits several programs and services of conservation districts that should be considered critical to the NPS Plan: resource assessment, conservation planning, soil health and productivity, and wildlife management. (I'm sure WSCC staff can provide an updated description.)

Response: The plan does discuss conservation districts' work with stormwater and forestry, as well as the other services that districts can provide to people. Based on comments from the WSCC we are removing the conservation district section from Chapter 2. The section on conservation districts found in Chapter 4 has been expanded to include additional programs and services that are administered by conservation districts. We also edited Chapter 4 to provide a link to the WSCC website to connect people with more information on the additional district services.

42. Washington Association of Conservation Districts-Same section (p 18) notes the need to describe “the process used to coordinate...and integrate various programs.” This process is not outlined in the document. Particularly when one considers the role of WSCC and conservation districts as described earlier.

Response: This section is quoting the EPA guidance, not describing how each element is fulfilled. The plan as a whole fulfills the requirements. However, we agree that closer alignment of various programs (regulatory and non-regulatory) is an important goal. Too often programs

are working on similar issues but not providing consistent messages. Further, some programs may not support compliance with the water quality standards. As outlined elsewhere in the plan, we will work to better align programs and work with partners to evaluate whether their programs support compliance with the water quality standards. If they are not designed to meet the water quality standards, we will work with those partners to better align programs with the actions needed to meet the standards.

43. Washington Association of Conservation Districts-Chapter 2/Federal Laws/Federal Farm Bill Programs/p 22 – A general reference should be included here to specific titles of the Farm Bill, such as the Conservation Title, and the Forestry Title, and how these fit into a NPS strategy. Also, the NPS Plan should note that the 2014 Farm Bill includes a new linkage between conservation compliance and crop insurance premium subsidies – a connection that should increase incentives for many in agriculture to undertake additional conservation measures (i.e., for highly erodible land) which will help to prevent or reduce NPS pollution, and which can be an important contributor to the NPS Plan.

Response: We have provided a link to the U.S. Department of Agriculture's website for additional information on the 2014 Farm Bill. Additionally, we included information on highly erodible lands conservation and wetlands conservation links to crop insurance premiums.

44. Washington State Conservation Commission-Conservation districts should not be included in Chapter 2, a description of regulatory programs. Chapter 2 is titled 'Washington State's Regulatory Framework'. Conservation districts are non-regulatory.

Recommendation #3: Delete the reference to conservation districts in Chapter 2 and retain the reference to them in Chapter 4. Chapter 4 describes various partners and partnerships. If the Non point Plan is not redrafted consistent with our Recommendation #1, then conservation districts should be more thoroughly described in Chapter 4 of the plan in which incentive based programs are discussed.

Response: We deleted the reference to conservation districts in Chapter 2 and the section in Chapter 4 was expanded. Additionally, we provided a link to the State Conservation Commission website to provide readers with a complete picture of district services and incentive programs they administer.

45. Stevens County Conservation District-Chapter 2 Regulatory Framework Conservation districts Pg 14 should be taken out of that chapter because they are nonregulatory and they are described in Chapter 4 Water Quality Partnerships. Also question the inclusion of Farm Bill programs on p22 and VSP on p 13 under regulatory framework they should be discussed in Chapter 3 strategies for addressing nonpoint source pollution.

Response: We deleted the reference to conservation districts in Chapter 2. Additionally, we changed the section heading found in Chapter 2 to reflect that both regulatory and non-regulatory programs are outlined in the additional state authorities and federal law sections.

46. Judy Crowder-I would like to point out that the U.S. Constitution at Article I Section 8 does not list federal control of water as one of the 18 enumerated powers the States have allowed the Federal government to control. The Bill of Rights which was necessary to obtain ratification of the U.S. Constitution makes it very clear the central government action or power is limited to the 18 enumerated power listed at Article 1 Section 8 and emphasized that point in the following Amendments:

10th Amendment “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

9th Amendment: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people”.

Certainly an agency can be enticed to submit to demands of a central government in order to obtain funds, the carrot is effective. However, I submit your agency or the State legislator’s do not have the power to place the citizens of Washington under the power of the EPA rules. EPA is an unconstitutional Federal Agency. Your agency should not give up citizen and local control and management of water on their lands to meet Section 319 of EPA’s Federal Nonpoint Source Program.

Response: Comment noted.

Chapter 3: Strategies for Addressing Nonpoint Source Pollution

1. Puget SoundKeeper- Clearly, one of the most pressing problems that we face in the nonpoint arena is the lack of funding to implement existing and future programs. Nonpoint programs are notoriously underfunded. DOH conducted a two year study, which concluded in 2014, on funding necessary to fully implement onsite septic programs at the local level. The final report of the Puget Sound Septic Financing Advisory Committee identified huge shortfalls that make it difficult or impossible for local programs to comply with existing laws. Compliance programs, water quality monitoring, data systems, and other critical program elements were grossly underfunded in most jurisdictions. We see similar problems in other nonpoint programs. While there is some funding for education and grant / loan programs for landowners, compliance work and monitoring are generally underfunded. Without funding for compliance, educational programs often have limited impact. Section 319(b)(v) requires that the NPS plan identify sources of funding (other than 319 funds) to carry out this work. While there is discussion on how the state provides grants and loans for landowners, there is no discussion of funding for program staff. We urge you to include a section on this topic.

Response: We agree with the commenter that compliance work is underfunded. Currently, most of our compliance staff are in project positions supported by grants. They do not have a permanent funding source. We will work with stakeholders to evaluate the need for additional funds to support the nonpoint program and implementation of the plan. Specifically, we will look at how we can increase funding for compliance and monitoring work.

2. Puget SoundKeeper- We also believe that, currently, the state is not doing enough to ensure that temperature standards are met. Voluntary TMDLs are insufficient. We need regulatory mechanisms established through TMDLs. We also need to better integrate land use decision with water quality objectives. Ecology can start by better aligning their Shorelines Program with the objectives of the Clean Water Act.

Response: We agree that more should be done to achieve compliance with the state's temperature standards. However, TMDLs do not create any additional regulatory tool that would help to accomplish this. Rather, TMDLs state clearly what will be required to achieve compliance with standards, and then the state must use what tools it has—in Washington, NPDES permit authority for point sources, and state nonpoint authority for nonpoint sources. Additionally, we agree with the commenter that we should look to other potentially enforceable mechanisms, like local Shoreline Master Programs to meet the objectives of the CWA.

3. Puget SoundKeeper- Finally, In addition to the comments in this letter, we agree with the concerns raised by Andrea Rogers in her comment letter on behalf of the Western Environmental Law Center. In addition to improvements in the nonpoint program, Ecology should take advantage of opportunities to expand coverage of these activities under NPDES general permits including the CAFO permit. NPDES permits provide a better framework to control these sources.

Response: Comment noted.

4. Puget SoundKeeper- We would like to caution you on reliance on pollution trading as a solution to these problems. As you know, since it is illegal to discharge any pollutants under state law, point sources cannot technically claim a “credit” in relation to their discharge by reducing or eliminating an already illegal source of nonpoint pollution.

Response: Ecology agrees with this comment. Water quality trading can only be used to achieve improvements above and beyond what is required by the law.

5. NOAA- Supporting Robust Riparian Protections through Federal Funding: NOAA commends Ecology’s leadership in directing that riparian protection projects supported by federal Section 319 and Puget Sound funds need to follow the NMFS recommended buffer guidance. We applaud Ecology for working with NMFS staff to craft an implementation approach for the grant programs that is designed to both support agricultural activities and protect salmon habitat. Adopting the recommended buffer widths enhances protection of water quality and important salmon habitat. We encourage Ecology to continue to ensure this funding supports the implementation of these riparian management practices.

Response: Comment noted.

6. NOAA-Dairy Nutrient Management Program. What specific actions can be taken on over the next five years to address those weaknesses? The tribes have also raised concerns about the adequacy of riparian buffers, including for agriculture activities. What can the state do to improve riparian management? Please let us know how NOAA can work with Ecology to move concrete actions forward to strengthen the state’s nonpoint source management and better address the concerns the tribes have raised.

Response: Comments noted. Ecology looks forward to working with NOAA on these important issues.

7. Chelan County PUD- Compliance is costly, and even with anticipated financial assistance from Ecology, residential rates near \$80 per month will be required to fund our wastewater utility. This represents over 3% of the \$32,000 median household income of our 200 residential customers in Peshastin and Dryden, far exceeding Ecology’s 2% financial hardship criterion. We are aware of several privately owned onsite sewage disposal systems in close proximity to the Wenatchee River that are almost certainly contributing phosphorus loads to the watershed. We find it essential that Ecology be willing to exercise its enforcement authority under the Water Pollution Control Act to compel cleanup of these private systems in the event voluntary implementation is unsuccessful. Shifting these reduction requirements to point source dischargers on the Wenatchee River as allowed by federal law will not achieve compliance with water quality standards because (1) the wasteload allocations developed in the TMDL require the point dischargers operate at the limits of technology (i.e. no technology exists to reduce discharges further), and (2) the amount of non-point pollution that must be removed to meet water quality criterion far exceeds the 1% remaining in the point dischargers wasteloads.

Response: Ecology agrees with this comment. Many point sources in Washington have reached the limits of existing technology to remove pollutants from their discharges, yet pollution problems remain. If we cannot control nonpoint pollution, then the state is unlikely ever to be able to achieve compliance with state water quality standards.

8. Chelan County PUD- Page 28, Section TMDLs and Nonpoint Source Pollution, first paragraph – Please ADD ecology’s authority to take enforcement action under the Water Pollution Control Act as a means to accomplish reductions needed from nonpoint pollution sources 34. We believe this reference to enforcement authority is already in the paragraph, in the following sentence: *However, enforcement authority under state law provides a regulatory backstop.*

Response: Comment noted.

9. Washington State Department of Transportation- While the draft NPS plan is an improvement over the previous plan, much of the added detail is informational rather than strategic. While the informational narrative is important, the strategic planning aspects should be the central focus of the NPS plan (see comment #7 for example). This will help ensure the NPS plan will lead to the "implementation of proven suites of best management practices to prevent pollution" (NPS plan, p. vii). To ensure the NPS plan is implemented effectively, WSDOT believes Ecology must clarify the strategic planning aspects of the NPS plan including; roles, responsibilities, and applicable timelines particularly related to coordination, implementation actions, and enforcement. In the interest of a more targeted document, it may also be helpful to move the informational narrative to appendices so the body of the NPS plan can focus on the strategic planning aspects

Response: We agree that the strategies to be used to solve nonpoint problems should be as specific as possible. However, we have found that defining strategies for using coordination, implementation actions, and enforcement is most effective at the watershed level. At that point, the pollution problems are known, sources identified, potential partners and solutions identified, and a strategy to work together and solve the problems can be developed.

10. Washington State Department of Transportation- WSDOT thinks the NPS plan should identify barriers to implementation (unwilling landowners, funding, etc.,) and provide some strategies for addressing them.

Response: We agree that it is important to identify barriers to implementation and to develop strategies to address those barriers. In the case of nonpoint pollution, there are so many barriers—some statewide and some watershed or pollutant specific, that it did not seem helpful or even possible to list them all.

However, we have identified two barriers that are important to address if we are to make significant progress in controlling nonpoint pollution and meeting water quality standards. First, we recognize the need for clear BMP guidance that complies with the water quality standards. Citizens should have access to clear guidance on what BMPs they can implement to prevent nonpoint discharges and ensure that they comply with the water quality standards.

Chapter 6 is intended to address this barrier. Second, inconsistent education and outreach messages and materials can lead to confusion about how to identify pollution problems and how to address those problems when identified. The plan highlights the need to better align education and outreach to focus on the goal of meeting the water quality standards. Additionally, we will work with partners to increase the consistency of messages we are conveying to citizens. This will be a long-term process that will require continual communication between Ecology, partners and stakeholders.

Finally, we have discovered that it takes a variety of strategies, all used at the same time, to overcome the array of additional barriers we face in addressing nonpoint pollution. That is why the plan includes such a broad array of programs and partners. Not all of those programs or all of those partners are working to achieve compliance with state water quality law, but all of them have proponents who believe that they are breaking down at least part of the resistance to addressing nonpoint pollution.

11. Northwest Environmental Advocates-The description of shellfish protection districts is thin. Not all readers will know what biosolids are so it should be defined. A direct link should be provided to the biosolids general permit, not just to the authorizing statute.

Response: A description of shellfish protection districts has been added. Definition of biosolids added. Link to general permit added.

12. Northwest Environmental Advocates-We strongly disagree with Ecology's assertion that "The NPS [plan] aims to protect public health and restore our state's waters by setting clear goals and objectives." The only way to set clear objectives for nonpoint sources is to establish clear BMPs for all sources. There are no BMPs for agricultural sources. Therefore, Ecology should either delete this assertion or—preferably—establish the BMPs. Moreover, Ecology states that it is its strategy to focus on cleaning up impaired watersheds but this creates two problems. First, are there any watersheds in Washington that are not impaired and if they are few and far between, how does Ecology "focus"?

Second, although NWEA strongly supports cleaning up impaired watersheds, does it not also make sense to ensure that more watersheds do not become impaired? We support the key principles to implement the strategy, even as we do not believe they reflect reality. We also strongly support the notion of using suites of BMPs because rarely does one BMP serve as the silver bullet to a problem.

Response: We agree that it is important to have BMP guidance in place for all categories of nonpoint source pollution. Without clear BMP guidance in place it will be difficult to make progress in addressing nonpoint sources of pollution. People need to know what actions they need to take to address problems and meet the water quality standards. Without clear BMP recommendations in place it is difficult to implement other parts of the plan.

EPA and NOAA have also identified agriculture BMP guidance as a gap. We have edited the plan accordingly and provided a timeline for the next year that covers the start of this work.

Finally, we agree that there is a need to focus work in important watersheds and not simply commit to prioritizing work in “impaired waters.” As outlined in the plan, we intend to focus on watersheds with TMDLs and STI projects. Additionally, we recognize the importance of protecting watersheds from being degraded by nonpoint sources of pollution. The section that the commenter cites is in response to EPA guidance that requires us to prioritize those two activities (i.e. addressing impaired waters vs. protecting unimpaired waters). With limited resources we decided to prioritize our implementation actions in impaired watersheds.

13. Northwest Environmental Advocates- Referring to the antidegradation policy here whilst having not taken the opportunity in early discussions to explain what it is, is an error because it assumes too much on the part of the casual reader

Response: Antidegradation policy inserted.

14. Northwest Environmental Advocates- Ecology should identify the use of resources needed to address some types of problems and situations versus others. For example, having statewide forest practices in place does not ensure that all logging operations are conducted pursuant to the practices but it does increase the likelihood. Approaches that rely upon cash infusions, on the other hand, are inherently limited and therefore require decisions to be made about priorities. It is not particularly strategic for Ecology to merely observe that it has a first priority (to correct known impairments) and a second priority (to protect against future impairments) since using that scheme, it will never get to the second priority. Yet in the forest practices rules it has an example of how it can get to the second priority even given limited resources.

Response: We agree with the commenter that it is important to develop programs that address protection as well as correct impairments. The section referred to by the commenter is in direct response to EPA guidance that requires us to describe “how resources will be allocated between (a) abating known water quality impairments from NPS pollution and (b) protect threatened and high quality waters from significant threats caused by present and future NPS impacts.” With limited resources our decision is to prioritize abating known water quality impairments.

Additionally, we also recognize the success of the Forest Practices Rules. It is an example of how we can create a program for a category of nonpoint pollution that provides oversight, clear standards, enforcement, incentives, and an adaptive management program that is keyed to meeting water quality standards. This has resulted in better water quality results as compared to categories of nonpoint source pollution that have relied primarily on incentives. One of our goals for the TMDL program and STI projects is to provide a more focused implementation effort targeting specific watersheds. While not having the statewide reach of the forest practices rules or the required proactive implementation of BMPs, we think this strategy can draw on some of the things that make the Forest Practices Rules successful (e.g. outlined recommended BMPs that meet the water quality standards, use of incentives to help implement those BMPs, more predictable and consistent use of our enforcement authority, and an adaptive management process that evaluates the effectiveness of the TMDL/STI project).

15. Northwest Environmental Advocates- Ecology needs to add information about the ways in which its statutes and regulations require maintenance of BMPs, particularly those funded with public monies. To what extent may landowners remove riparian vegetation that was planted as a

BMP, for example? In fact, given the importance of riparian vegetation, a section of this plan should include a comparison between the requirements associated with different land uses, as well as the use of public money, and assessments of these requirements with regard to their ability to meet water quality standards.

Response: We agree that this is an important issue. Without long-term protection of riparian buffers once they are established, their public benefit is seriously diminished. Ecology has no regulations that require maintenance of a riparian buffer. We do require landowner agreements for a minimum of ten years when we use public funds to exclude animals from a riparian area. Those agreements require the landowner to maintain fences for the life of the agreement.

We hope to do the analysis of the buffer requirements for different types of land uses as part of the development of specific suites of BMPs necessary to achieve compliance with state water quality law.

16. Northwest Environmental Advocates- A reference to “Lean effort” without explanation is not helpful.

Response: Description of Lean process inserted in document.

17. Northwest Environmental Advocates- The problem with this description of complaint responses and inspectors is that there is no way to evaluate how effective this program has been or will be in the future. The entire program could have one person or 50 people and the reader would not know. In addition, Ecology does not explain what mechanism, if any, it has in place to inform the public that it may make such complaints and how. Given the widespread nature of nonpoint source pollution and sources, using the public as Ecology’s eyes and ears is a good idea but only if they know they can report and what rises to the level of something that Ecology wants to know about. Outreach to the general public about what constitutes poor land practices that pollute public waters can double as outreach to landowners who may not be fully aware of the effects of their activities.

Ecology’s website is organized to quickly take the public to a reporting form. Once there, however, the options are limited. For example, the “cause” section of the on-line reporting form does not include such activities as “livestock,” “plowing,” “manure spraying.” These are agricultural activities that one frequently sees that cause water quality problems. For example, seeing cows in streams is a serious problem yet it would not easily be reported. Given that Ecology has pointed out the significant role of agriculture and urban contributions of nonpoint source pollution, it would also help if the reporting page, explained what should be reported. Instead, it just says “[i]f you see a spill or other environmental problem, we encourage you to report it.” WDOE, Report an Environmental Problem at <http://www.ecy.wa.gov/reportenviroproblem.html>.

Response: At this time, Ecology has only seven full time nonpoint inspectors, all of who perform complaint response as well as non-complaint driven nonpoint work. Currently, most of our compliance staff are in project positions supported by grants. They do not have a permanent funding source. This is not nearly enough people to deal with the volume of nonpoint pollution

problems. Our enforcement is very effective at the individual complaint level, but our state would need many more enforcement staff to be truly effective statewide.

The points about how easy it is for the public to make complaints are well taken. Ecology needs to do more to educate the general public about nonpoint pollution issues so that they can recognize problems when they see them, and so that they know how to report those observations to Ecology. As part of our efforts to establish BMPs for various land uses, we will also need to implement a wide-scale public outreach and education program.

18. Northwest Environmental Advocates—The following statement is far too ambiguous, particularly given Ecology’s observation that there is no statewide regulatory program for agricultural pollution: “Ecology will continue to work on better defining what compliance with state water quality law means and to provide that feedback to landowners so they can make informed decisions.”

Response: We agree that the statement attempts to capture a couple of related issues, and therefore, lacks the precision the commenter is looking for. Compliance with state water quality law has two primary prongs. The first prong is whether a land use is causing or has the risk of causing a discharge of a pollutant. Any land use can cause a discharge of pollution if not managed appropriately. At the present time, we have just completed a document for livestock owners to use to assess the risk of causing a violation because of conditions on their property. This document, “Clean Water and Livestock Operations: Assessing Risks to Water Quality”, was created with the help of the director’s Agriculture and Water Quality Committee, and took several months to develop. This document is primarily concerned with the first prong: What is the risk of nonpoint source pollution coming from a site? We recognize that we can continue to provide additional guidance like this for other land uses and further refine this document

The second prong is better defining what BMPs will achieve compliance once a discharge is identified, or if a person wants to proactively act to get into compliance with water quality laws. This second prong is the task that EPA is directing us to do, which is to develop suites of BMPs for land uses that can potentially discharge nonpoint pollution. Our first steps after this state nonpoint plan is approved will be to design the process we will use to develop BMPs and guidance documents for land uses, starting with agricultural land uses. We hope the newly-designed process will streamline the work and help us develop suites of BMPs more quickly.

19. Northwest Environmental Advocates—There seem to be some potentially effective programs but detail only seems to be provided on matters related to animal waste—such as PIC, OSS, and even the details of what is not working in the Dairy Nutrient Management Program. There is nothing equivalent in this document related to riparian vegetation; what is working and what is not working and the details of what, why, and how. It would also be helpful if Ecology has any monitoring data on the successes or failures of the dairy program to set those out here and to suggest ways in which Ecology might address them.

Response: Right now, Ecology has no systematic way to track implementation and effectiveness of riparian restorations, although we are trying to find funds to develop an implementation tracking mapping system/database that could help us track the implementation and effectiveness

of all BMPs. Our focus has been on animal waste issues because these are generally the most egregious pollution problems, and are ones the public can readily see and understand.

WSDA is in the best position to provide information on the effectiveness of the DNMP. We have forwarded your comment to staff at the WSDA.

20. Northwest Environmental Advocates- Overall we are struck by the fact that Ecology is clearly hampered in its efforts but also hampers itself. There are far too many groups of people meeting and offering up their priorities and strategies and too little emphasis on identifying clearly what needs to be done and getting around to doing it. This is not all Ecology's fault but it is the hand the agency has been dealt. Ecology needs to be more creative in some of its approaches and it needs to be more inclined towards the tough love of enforcement actions and reasonable assurance to support its permitting program.

If, instead, it relies solely on dribbling out financial inducements and placating polluters, it will never succeed. The biggest problem with this plan is that it avoids responding directly to the requirements set out in the statute and explained by EPA in its guidance. There is too much discussion of committees and not enough discussion of BMPs and their actual use. If Ecology cannot manage to set out a plan—required to meet Section 319, it surely cannot assert that it has a program—as required by CZARA.

Response: We understand the commenter's frustration. We agree that it is important to have clear BMP guidance. The plan lays out a path to reach that goal. While we realize that the pace is slower than some stakeholders would prefer, we believe that taking extra time to engage stakeholders at every step of the process will make for better guidance.

We also agree with the commenter that we can do a better job of coordinating programs that address nonpoint pollution. It is important that governmental agencies provide consistent messages. We are committed to working with partner agencies to better align our work with the goal of meeting the water quality standards.

Finally, finding the right balance between regulatory and non-regulatory tools is a difficult task. Several commenters have highlighted the need for additional enforcement. We will look to work with stakeholders to find a better balance between regulatory and non-regulatory tools. We agree that incentives alone are not enough to achieve compliance with the water quality standards. Enforcement is also needed.

21. Northwest Environmental Advocates- We strongly disagree with Ecology's assertion that "The NPS [plan] aims to protect public health and restore our state's waters by setting clear goals and objectives." The only way to set clear objectives for nonpoint sources is to establish clear BMPs for all sources. There are no BMPs for agricultural sources. Therefore, Ecology should either delete this assertion or—preferably—establish the BMPs.

Moreover, Ecology states that it is its strategy to focus on cleaning up impaired watersheds but this creates two problems. First, are there any watersheds in Washington that are not impaired and if they are few and far between, how does Ecology "focus"? Second, although NWEA

strongly supports cleaning up impaired watersheds, does it not also make sense to ensure that more watersheds do not become impaired?

We support the key principles to implement the strategy, even as we do not believe they reflect reality. We also strongly support the notion of using suites of BMPs because rarely does one BMP serve as the silver bullet to a problem.

Item no. 1 on the primary tools list should probably include the Clean Lakes Program and needs better punctuation, as well as an explanation of the STI program. Ideally, the STI would be placed as a separate category because STI is not a plan, it's an implementation project. In contrast, a TMDL is a plan and as such requires a great deal more explanation of how it will be implemented.

This discussion does not explain whether Ecology evaluates BMPs that it uses or recommends or that other agencies use or recommend to ensure that they are adequate to meet water quality standards, including meeting the load allocations established by any applicable TMDLs. In addition, there does not appear to be any discussion of the role of NRCS Field Office Technical Guides (FOTOG). Nor is there any discussion of the NMFS buffer recommendations for Western Washington until page 76. If Ecology has been prevented from establishing the “clear . . . objectives” that it believes are key to a successful nonpoint program, it should state that here.

Response: The federal Clean Lakes Program is not listed as a primary tool because Ecology does not treat lakes differently than other impaired waters. We did separate TMDLs and STI in the list and provided brief explanations of each.

In listing the tools Ecology uses, it has not been our intent in this iteration of the nonpoint plan to be specific about which BMPs will achieve compliance with state water quality law. However, any BMPs that are developed in the future will be thoroughly evaluated as to their effectiveness in different situations, so that Ecology can determine whether or not their use will achieve compliance. We have been quite clear that use of NRCS field office technical guides and the NRCS planning process is not sufficient to ensure compliance with state water quality law and the water quality standards. We have also been implementing the NMFS buffers, which are the best available science for the protection of threatened and endangered fish, in our grant and loan program for the past three funding cycles.

22. Northwest Environmental Advocates-The reference to TMDLs' not exceeding applicable criteria is an incorrect description of a TMDL. A TMDL is required to meet water quality standards, including designated uses, not just criteria. See, e.g., 40 C.F.R. 130.7(c)(1) (“TMDLs shall be established at levels necessary to attain and maintain the applicable narrative and numerical WQS[.]”); 40 C.F.R. 130.2(d) (“Provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses.”). Likewise the goal is not just that “pollution is reduced or eliminated” but that it is lowered to the point that meets water quality standards.

We are not aware of any TMDLs that Ecology develops that “designate[] suites of BMPs for various land-use categories.” We would, however, strongly support such an approach.

Why is the goal of a TMDL to be “acceptable to the public.” Where is that stated as a requirement of TMDLs? If that’s one of Ecology’s goals, who is the public? If the public is all polluters, how does Ecology square that goal with the goal of meeting water quality standards?

The settlement agreement did not “expire” in 2013. Its terms were not met by the date established in the agreement. Ecology needs to address the lack of logic in the following discussion: “Additionally, implementing the load allocations in TMDLs has been an increasing challenge.

Compared to the technology and investments required of point source industries to meet wasteload allocations, the remedial measures necessary to meet load allocations are usually simple, straight forward, practical, low-tech and inexpensive.” Yes, we agree with the description of the remedial measures for nonpoint source pollution but this, then, does not explain the preceding observation that implementing these measures is an increasingly challenge. NWEA supports Ecology’s being plainspoken in this document.

Explain the barriers to success; don’t pussyfoot around them. Why is attempting to get landowners to implement pollution controls to protect public waters an “increasing challenge”?

We agree with Ecology’s discussion of reasonable assurance and the fact that point sources will not be able to continue with wasteload allocations if nonpoint sources are not meeting load allocations. Ecology should set out the steps that it will have to take under its NPDES permitting authority over time, as TMDLs age and pollution levels remain the same or increase. Ecology should then explain what its strategy for nonpoint source pollution will be. If it will not be able to increase nonpoint source controls, and will be forced to restrict water quality-based effluent limits below wasteload allocations, it should state this. If, instead, Ecology intends to take further actions to restrict nonpoint sources instead of reducing point sources below wasteload allocations, it should state how it plans to do that. It will be one or the other or it will be continuing inaction during which time Ecology will begin issuing NPDES permits that are contrary to law. We are heartened by the suggestion that this latter option is not the one that Ecology will be choosing but it will then have to have another approach set out. It is not adequate to threaten something that should happen without explaining how it will happen.

If Ecology is going to make promises it needs to explain in plain English what it intends to do. This is not adequate: “Ecology will utilize watershed evaluations to identify sites with nonpoint pollution issues and secure the implementation of BMPs that ensure compliance with the WQ Standards and state law.” If anything, that’s a statement of what the entire document is discussing. In the single sentence that follows, Ecology states it will use education/outreach, technical/funding assistance, and enforcement. How is this different or more strategic than its current approach, which contains these same elements? How does Ecology determine when using enforcement tools is “necessary and appropriate”?

We support Ecology’s approach of moving directly to control nonpoint sources with BMPs when those BMPs are already known and will not be affected by the development of a TMDL. The document does not really articulate how the STI differs from the TMDL, other than its not

involving a TMDL. In other words, how does Ecology identify which watersheds where STIs are appropriate? Nor does this discuss any similarities or differences in the geographic scope of typical TMDLs versus STI projects. In addition, although there are hints that monitoring will be a part of an STI (e.g., the waters will be moved to Category 1, Ecology will develop a TMDL if the STI is not successful), there is no discussion of how any kind of monitoring is conducted during an STI, including BMP implementation and water quality. Finally, although STIs are built on a foundation of known BMPs, there is no mention of how those BMPs are made known to the landowners in the watershed.

Ecology accurately notes that there is no statewide regulatory oversight/permit program designed to meet water quality standards for agriculture. This would be a good location for Ecology to describe the state's efforts, if any, to do so, as well as to describe how the lack of a statewide program hampers and slows the cleaning up of nonpoint source pollution from that sector. Specifically, it would seem that there is an additional cost associated with the inefficiencies of conducting watershed evaluations in lieu of a statewide program. Are the results of watershed evaluations demonstrating that the outcomes are sufficiently varied to warrant this additional cost (monetary and delay)?

Ecology does not explain how watershed evaluations fit into TMDLs and STIs. It does a good job explaining the use of visual site conditions but not how such evaluations are connected to TMDLs or STIs, which are presumably different. Here, however, they are lumped together making it seem that the nonpoint source approach is not affected by the development of a TMDL. If that's true, the document should say so. If not, it should explain how a TMDL changes the equation.

It is helpful for this report to explain how little substance has been provided by the Agriculture and Water Quality Advisory Committee in that it all seems to be about relationships, which are important but not really the central issue. What is unclear is to what degree Ecology is implementing the education, outreach, and communications described in this section. There is no description of how much land is being addressed, which pollutants are a focus of this approach, how many land owners, etc. This also omits what happens and on what timeline if a landowner/producer/lessee fails to respond to all Ecology communications. Is a failure to communicate back to Ecology, or other demonstration of recalcitrance, the same as when "technical and financial assistance tools fail" Ecology uses enforcement tools?

Response: Revised the description of a TMDL. Ecology has not yet written a TMDL implementation plan that contains the full suite of BMPs necessary to achieve compliance with water quality standards. However, we have begun to do so and this is our eventual goal for all TMDLs. It is not a goal of a TMDL to be acceptable to the public, if what is meant by that is that the TMDL tells a happy story about water quality that the public is happy to hear. Rather, Ecology intends that TMDLs will be acceptable because they will have adequate technical credibility to help drive implementation, even when that implementation will be difficult to achieve. Language describing the TMDL settlement agreement has been corrected. Language has been inserted describing why it has been difficult to implement TMDL load allocations. The discussion of reasonable assurance has been clarified. Revised the narrative describing

watershed evaluation. More information has been added to the description of STI. The remaining comments are noted.

23. Northwest Environmental Advocates- The discussion of the Interagency Project Team’s having recommended that TMDLs include consistent implementation expectations lacks a response by Ecology. These recommendations were sent some time in 2014; surely Ecology can respond to the four bullets. We would respectfully suggest that these points are not useful to nonpoint source control except the first one that appears to be related to stormwater (BMPs and “wasteload allocations”). Load allocations do not allow for “flexibility” although we would recommend to Ecology the approach of staged TMDLs, in which increments of load reductions are planned for different stages of years (e.g., every five years).³ We would further recommend that if nonpoint source reductions do not occur as planned in such staged TMDLs, point source wasteload allocations must be further and automatically reduced at each stage. The remainder of the recommendations appear to have more to do with concepts of “fairness” than they do with actual pollution reductions.

Response: Comments noted. Revised the section about recommendations from the Interagency Project Team.

24. Northwest Environmental Advocates- Ecology states that “[t]o ensure that effective BMPs are implemented, Ecology has developed specific criteria that provide minimum standards for BMPs in the program funding guidelines.” It would be helpful if Ecology were to provide a reference for these BMPs and discuss their connection to water quality standards and TMDLs other than they are “updated annually.” How does Ecology update them and are they applicable statewide, to certain regions, to specific watersheds?

Response: Description of BMPs eligible for funding has been revised.

25. Northwest Environmental Advocates- The description of the PIC programs is far more detailed than anything written in this document up to this page. That level of detail provides greater assurance that something is actually happening on the ground. Equally, it raises questions as to why the other programs are not as clear. And if PIC programs are effective, it would be useful for Ecology to evaluate why they are or if they just sound as if they might be.

Of concern, in the detail, is what happens if a farmer with an animal waste source rejects a voluntary compliance process to address a documented water quality problem. The document is silent as to what, if anything, happens next. With Kitsap County agencies apparently being diligent about encouraging controls on multiple sources, would this not be an obvious place for Ecology to commit to coming in with regulatory support if needed? This is, after all, a place where Ecology is stating there is a “documented water quality problem.” If that is not the plan, Ecology should explain what, if anything, happens after a land owner refuses to act voluntarily, and why it does or does not take enforcement action in this circumstance.

Response: Most PIC programs do indeed rely on Ecology to use its enforcement authority if the local government encounters a landowner who is unwilling to implement BMPs. As part of the

NEP funding for these PIC programs, Ecology added an inspector position responsible for following up in these situations.

26. Northwest Environmental Advocates-It is unclear how water quality trading addresses nonpoint source pollution since it's in lieu of addressing point source pollution. It is unclear what Ecology means by referring to the possibility of "certification/certainty programs."

Response: The only way water quality trading affects nonpoint pollution is that a landowner might be motivated to implement required nonpoint source controls if there were also additional benefits above those that the property could also provide and there was a buyer willing to pay for those additional benefits. A trading program that simply allowed point sources to purchase nonpoint reductions in lieu of doing their own, in essence trading point source reductions for nonpoint ones, would accomplish nothing to improve water quality, and would not be allowed.

One incentive that Ecology can offer, which no other agency in Washington can do, is to provide presumed compliance with state water quality law if an Ecology-approved suite of BMPs is implemented, operated, and maintained properly on a site. This is one concept we have used to explain the advantage of developing Ecology-approved suites of BMPs for various land uses. If a landowner was using the suite of BMPs for his/her use, Ecology would presume the property was in compliance with state law unless monitoring showed that the BMPs were not working, or a subsequent site inspection showed that the BMPs were not being operated and maintained properly. We previously attempted to create a certainty program - the Water Quality Livestock Manual.

27. Northwest Environmental Advocates- If Ecology believes that the Farmed Smart certification process offers multiple environmental benefits, including nonpoint source control, it should explain how it ensures that BMPs are sufficient to meet water quality standards and why there is nothing in this description of certification programs about Ecology's promoting them in its outreach and education.

Response: At this time, Ecology has not certified that the Farmed Smart program will in fact achieve compliance with state water quality law. This is the first time that an organization like this has approached Ecology about trying to design a certification program together, so while we think this approach may have promise, we are not ready to promote it as an approach until we see how it works.

28. Northwest Environmental Advocates- Both the forestry and dairy section should state what the role is, if any, of water quality standards in the design and operation of the program. Both should be clear on Ecology's role, if any. Both should state whether various plans applicable to that nonpoint source sector are available to the public and/or other agencies.

Response: The state Forest Practices Rules were designed to achieve compliance with the state water quality standards, and the forest practices adaptive management program is designed to test whether or not the rules are achieving compliance. Added language in the plan noting that the Forest Practices Board may not adopt or amend any rule that affects water quality without

the agreement of Ecology's director. Added a link to the forest practices adaptive management web page.

The dairy program is intended to meet water quality standards. Ecology has an MOU with the WSDA that identifies the areas that are the responsibility of each agency and in cases where the two agencies share responsibilities, specifies how we coordinate and work together as it relates to livestock and dairy operations. The plan has been updated to include more detail on the MOU and Ecology's role. As compared to the Forest Practices Rules, Ecology does not have a formal concurrence role for Dairy Program rules that related to water quality. Finally, we added a link to Department of Agriculture's Dairy Nutrient Management Program web page.

29. Northwest Environmental Advocates-The opening description about forest practices should state that the Clean Water Act Assurances suspend the development of TMDLs. In addition, it should not assume that the reader understands what an "adaptive management" approach does. Therefore, the opening paragraph should state that essentially there is a quid pro quo: science research in exchange for TMDLs.

The plan should make some observations about the original plan for completing CMER studies and whether it is on track or not, including which issues remain unaddressed.

Response: Comments noted. We believe these issues have been addressed in the existing document.

30. Northwest Environmental Advocates-Pages 50-51 We welcome Ecology's openness on what it terms "challenges and gaps."

Response: Comment noted.

31. Northwest Environmental Advocates- This is the second reference to a "Lean" initiative, without any explanation.

The reference to implemented BMPs for agriculture in shellfish areas appears to make all three of the Results Washington objectives related to keeping animal wastes from shellfish. While important, this utterly ignores the relationship of nonpoint sources to other clean water needs, such as protection of threatened and endangered species. It would be helpful if this plan would explain Washington's focus on bacteria to the exclusion of so many other important pollutants, such as temperature and toxics. It would also be helpful if this discussion of Results Washington would explain whether these measures are to be attained through additional enforcement work by Ecology or simply more funding inducements, as well as whether these focus areas will remove Ecology attention from other areas.

This discussion of the Washington Shellfish Initiative is not sufficiently helpful to understand if it has any real implications for nonpoint source control. It should be expanded upon to explain how it adds to Washington's future success or it should be removed.

It is unclear why the Action Agenda's Strategic Initiatives are discussed insofar as the rate of habitat destruction continuing to outpace restoration but there is no explanation here of Ecology's role in protecting these areas through its nonpoint source programs and authorities.

It is equally unclear why the urban stormwater initiative is mentioned since it adds nothing to understanding what, if anything, will improve in the years to come. It is rather irrelevant that a body comments on a problem if there is no intent to work on remedying the problem.

Overall, it is unclear what, if anything, the Puget Sound Partnership adds to the future of nonpoint source control in Washington. If there is something, this document has not articulated it. In addition, the discussion does not explain how these initiatives affect Ecology's nonpoint source priorities, if they do. It is unclear that they should.

It is unclear how the Marine Resources Advisory Council's being informed by the Washington Blue Ribbon Panel on Ocean Acidification will change Ecology's nonpoint program. If so, please explain. There are a lot of priorities, but no indication that Ecology can manage all of them as the agency's priorities nor that it will be addressing the multiple problems in any different, or more efficacious, manner than it has in the past.

This is a pathetic explanation of how the state is addressing—or failing to address—the recovery of threatened and endangered species. Does Ecology establish any priorities in the state nonpoint source program based on the needs of these species? If so, how? Does Ecology assert itself more when evaluating the need for enforcement actions when these species are at stake? Is there anything that is done differently in Ecology's nonpoint program because pollution from nonpoint sources is part of the reason why these species are threatened with extinction? If so, please explain. If not, please explain.

This document does not explain why “CAPs can serve as a list of Best Management Practices for our TMDLs in identifying actions to get particular toxic out of the water.” If a CAP is a “comprehensive plan,” how can it also be a list of BMPs? Are CAPs being used as BMPs? If so, how is Ecology doing that and can it be replicated?

Of the completed CAPs that pertain directly to nonpoint source control, the following appears to be true:

- The lead CAP excludes recommendations to seriously address lead ammunition.
- The mercury CAP (is there one?) requires management of dental waste (an indirect discharge) but otherwise does not address water quality (note discussion of Oregon Willamette mercury TMDL above).
- The PBDE CAP led to a legislative restriction on the use of PBDE in products sold in state.
- The PAH CAP concluded that current programs are adequate and/but more effective strategies are needed for stormwater, an inconsistent finding.
- The PCBs CAP recommends identifying locations of PCBs but there is no discussion in this plan about whether, when, or how Ecology will do so.

To the extent that these pollutants enter stormwater, it is unclear that any changes have been made and to the extent that these pollutants enter through runoff from land activities, no apparent

changes have been made. One comes away from a quick review of these completed CAPs with the impression that they are long documents that have had relatively little impact and that they are not lists of BMPs that Ecology is seeking to implement. They certainly are not oriented towards keeping the toxic contaminants out of Washington's waters but do seem oriented towards protecting public health, a worthy goal but not the point of this document.

Response: We have added information about Lean to the plan. Other comments noted. This set of comments points out that Washington has a variety of programs designed to address some pollution problem, but that for the most part, these are uncoordinated, focus on only small geographic areas or on one kind of problem, and are not joined together into a coherent state program designed to address nonpoint pollution statewide and to protect threatened and endangered species as well as public health. Ecology agrees that this is indeed the situation in Washington, and we admit that Ecology has been unable to create a coherent program because all of the disparate programs have their own separate goals and interest groups that have so far been unwilling to work cooperatively together. As we have said earlier in these comments, as long as this situation continues, there is little hope that Washington will be able to successfully solve nonpoint pollution problems.

32. Northwest Indian Fisheries Commission- NPS plan needs to address lack of implementation of temperature standards.

Washington's water quality standards establish standards for how warm certain waters can become before water temperature begins to exert both lethal and sublethal effects on salmonids. Poor land use management practices have left many streams without shade, over-withdrawn, and hydrologically modified such that streams are too shallow, lacking in cold water refugia, and highly susceptible to thermal loading. In Washington, there are approximately 1,187 stream segments listed as impaired (polluted) for temperature. According to Washington's newest proposed 303(d) list, the pollution problem is not getting better. The newest list shows a striking 31% increase in temperature listings for category 5 impaired waters.

This marked increase in temperature listings is, in part, symptomatic of a lack of progress in implementing Total Maximum Daily Loads (TMDLs) for temperature.

Although many temperature TMDLs have been completed, they fail to specify the changes necessary to achieve standards, the precise practices which will result in compliance, and a means to ensure that actions will be required. These deficiencies pervade many TMDLs and their load allocations- a concern recently corroborated by the report from the Government Accountability Office, which called attention to the lack of specificity in TMDLs and the requisite follow-through necessary to achieve water quality standards.

To implement TMDLs, Ecology needs to provide more effective technical and policy support in land use (e.g., SEPA), flood control, and shoreline planning decisions that will ensure outcomes that provide the requisite shade to achieve compliance with standards. Additionally, grant funding (and permitting) for flood control, shoreline planning, and non point source pollution control should be contingent upon implementing the load allocations in TMDLs.

Ultimately, if temperature TMDLs are to be more than a paper exercise, both Ecology and EPA must be held accountable for implementation of TMDLs. It should be required that responsible jurisdictions achieve load allocations, and implementation tracking must transparently evaluate their progress. Ecology should utilize their authority (e.g., administrative orders) or other legal mechanisms to ensure that both public and private landowners implement the appropriate practices.

The current approach of relying upon voluntary riparian planting programs has proven to be too slow and largely inadequate to provide reasonable assurances that temperature TMDLs will be implemented, and thus approvable by EPA. The NPS plan provides an opportunity to develop new methods and strategies to overcome the existing deficiencies in developing and implementing load allocations and retool the TMDL program.

Response: Ecology agrees that implementation of temperature TMDLs has not been successful. This is partially because our early TMDLs expressed temperature load allocations in terms of effective shade instead of specific riparian buffer widths, but it is also because in the past few years organized groups have made concerted efforts to oppose the implementation of riparian buffers large enough to address temperature problems in non-forested areas. Given the resistance being exerted over this issue, this will continue to be a challenge. However, Ecology will continue to advocate for the implementation of buffers through our grant program, which follows the NMFS guidance on the buffer size needed to meet water quality standards and protect ESA listed salmon.

33. Northwest Indian Fisheries Commission- While the draft NPS plan has failed to formally adopt BMPs, as mentioned above, it is important to mention that Ecology has taken a vital step forward by successfully implementing its §319 funding guidelines requiring the use of NMFS recommended guidelines for riparian management. We have appreciated working with Ecology's staff in the course of implementing federal agency direction and their scientifically-derived guidelines for funding programs. The implementation of scientifically-based performance standards for riparian management is an important request from the Tribes' Treaty Rights at Risk initiative and a major step forward in the state's management of NPS pollution. We strongly support Ecology's continued implementation of these guidelines, which thus far have implemented robust, scientifically sound riparian protections with public funding. That said, Washington still needs to formally adopt the NMFS recommended or similar guidelines into its NPS plan.

Response: Comment noted.

34. Northwest Indian Fisheries Commission-Consistent outreach and education. Washington's NPS control program lacks a means to provide consistent and aligned education and outreach. The current approach has numerous state agencies sending different, often conflicting messages to landowners. All agencies addressing NPS pollution should be speaking from the same curriculum. The NPS plan should provide that curriculum, or at a minimum commit to the timely development of standardized recommendations, to ensure that agencies are speaking of one

mind, and not presenting public and private landowners and managers with incongruent information.

Response: Ecology agrees with this comment. As part of our work to develop suites of BMPs for various land uses, we will also develop educational materials that other agencies can use.

35. Northwest Indian Fisheries Commission- This is an excellent list of principles that WDOE declares that it will do. Unfortunately, this is also an excellent list of principles and actions that the State has been unable to accomplish.

- 1) The state continues to be unable to communicate clear standards and compliance expectations because not even the state agencies (WSDA, WDOE, and WSCC) can agree on what water quality standards are to be managed for.
- 2) The agencies cannot agree on a set of BMPs that ensure compliance with state water quality standards. For example, there was a significant political kerfuffle when WDOE prepared and released for interagency comment a draft set of grazing BMPs intended to meet the water quality standard for bacteria. *See e.g.*, Letter from Joseph Heller, Whatcom Conservation District, to Ted Sturdevant, WDOE (July 20, 2011) at 1-2.
- 3) Some entities, including some CDs and NRCS, claim that implementation of the NRCS Field Office Technical Guide (FOTG) should be the preferred agricultural BMPs for the state of Washington. Unfortunately, these BMPs are not adequate to meet state water quality standards.
- 4) Given that there is no common understanding of what the goals are and what BMPs are needed to achieve those goals, it is thus not surprising that there is no agreement on what outreach/education should be provided to landowners to enable them to voluntarily meet water quality standards and support salmon recovery.
- 5) There is currently no agreed upon approach to collecting data regarding BMP implementation or effectiveness. WDOE's BMP Approval Form for 319 and Centennial Fund Grants is a good step forward, but the information is not being collected into a usable database that is accessible by other agencies, tribes, and the public. Other state agencies are not collecting the same data nor are they making whatever data they are collecting available for adaptive management. This is a critical problem that the State of Washington has been struggling with for years and has been unable to address.

Without data on current conditions, practices subsequently implemented, and the results of those practices, it is impossible to conduct adaptive management. The capacity to be able to conduct adaptive management is required by state law. It is noteworthy that the Thurston County Superior Court found that reliance on NRCS practices fails to meet the requirements of the Growth Management Act because: (1) Farm plans developed by individual landowners do not provide a benchmark or baseline on existing conditions; and (2) There is no assurance that allowing landowners to pick and choose and modify agricultural practices with minimal oversight will result in protecting critical areas. The Judge was also concerned about Island County's failure to fund adequate oversight of the program along with inadequate monitoring (only water quality parameters were monitored, not vegetation). While the Judge was focused on GMA compliance, the management failures noted above would also prevent compliance with water quality standards and supporting salmon recovery. This is because the GMA only requires maintenance of existing conditions, whereas in many cases, meeting water quality standards and supporting salmon recovery require habitat improvement.

Response: Comment noted. We understand your concerns with the state's ability to meet the principles we outline in the plan. Ecology agrees that the issues raised in this comment are an accurate description of the problems we face in addressing nonpoint pollution problems in Washington. We also agree with the comment about collecting data on current conditions, practices subsequently implemented and the results of those practices.

36. Northwest Indian Fisheries Commission- As evidenced by the *CARE v. Cow Palace* litigation in the Yakima valley and the long-term problems with the impacts of fecal coliform on Portage Bay shellfish beds, the Dairy Nutrient Management Act is an example of failure that has been crying out to be adaptively managed.

Response: Comment noted.

37. Northwest Indian Fisheries Commission- The “Clean Samish Initiative” has been the centerpiece of the Governor’s Shellfish Initiative. This has also been a priority of the PSP Action Agenda. Even so, Samish Bay shellfish beds remain conditionally open, and bacterially-triggered closures still occur all too often. Data on BMP implementation and effectiveness has either not been collected or is not being reviewed. We have not seen evidence of adaptive management nor is there evidence that BMPs are designed to meet all water quality standards. Whatcom County shellfish beds have also been identified as being important to the Shellfish Initiative, but the resulting land management has not been sufficient to protect these treaty-reserved resources.

Response: Comment noted.

38. Northwest Indian Fisheries Commission- As already discussed, there is no agreed upon set of BMPs. Nor do all state agencies and CDs subscribe to the idea that BMPs must be designed to meet water quality standards. Nor is there commitment to a shared understanding of what constitutes good land stewardship. Finally, meaningful enforcement of state water quality standards is lacking. The number of actions taken to enforce the state’s temperature standard could be counted on one hand. High stream temperatures are not limited to eastern Washington. High stream temperatures are a problem in western Washington, including the Nooksack, Deschutes, Green and many other rivers. Also, there is a general perception that there needs to be much more enforcement actions against activities that result in fecal coliform pollution. Enforcement actions need to lead to accountable responses that result in implementation of BMPs that are designed to achieve the water quality standard in question. A referral to a CD is not an accountable result because farm planning does not result in solutions that are either transparent or amenable to adaptive management. Meaningful enforcement is an essential component of a state’s obligation to provide reasonable assurances that its voluntary and regulatory programs are adequate to result in compliance with water quality standards.

In order for there to be reasonable assurances for temperature TMDLs where there are commercial forest lands, forest practices regulations should be modified in watersheds with impaired water bodies subject to TMDLs related to non-point sources from forest practices eg: South Fork Nooksack River.

Further issues associated with TMDL development include that EPA and Ecology cite the application of best available science or best science to describe their methods in TMDLs; however, not all relevant information is taken into consideration and the technical people doing the analysis (in the case of the South Fork Nooksack River) do not verify their assumptions used in modeling with a site visit. No fieldwork was conducted for the South Fork Nooksack River temperature TMDL.

Response: Comment noted.

39. Northwest Indian Fisheries Commission- We agree with this general direction, however, currently TMDLs, and temperature TMDLs specifically, generally lack prescriptions for compliance with standards.

Temperature impairments are of serious concern for salmon rearing, migration, holding, spawning and incubation in many mainstem river reaches and tributaries in Washington State. Several river reaches with temperature impairments have approved TMDLs with implementation plans for lowering water temperatures. Yet, the improvements identified in these implementation plans are not occurring. Therefore, in many rivers, high water temperatures continue for extended periods that are well above levels known to threaten the health and survival of salmon. Load allocations for temperature impairments will remain ineffective and only on paper until they are incorporated into land-use actions, programs, plans and decisions made by state and municipal governments. To implement TMDLs, Ecology needs to provide more effective technical and policy support in land use (e.g SEPA), flood control, and shoreline planning decisions that will ensure resultant outcomes will provide the requisite shade to achieve compliance with standards. Additionally, grant funding for flood control, shoreline planning, and nonpoint source control should be contingent upon implementing the load allocations in TMDLs.

Voluntary riparian management programs have proven to be too slow and largely inadequate to achieve the needed forest cover, regardless of the growing time needed for trees. For example, the CREP program has only addressed a small portion of the river miles needing treatment. Additionally, there is no integration (or staff support to ensure integration) of important land use decision that effect implementation of load allocations. Prescriptions for compliance should be included in the load allocation, not just the implementation plan, and Ecology needs to leverage enforceable mechanisms in order to implement the load allocations.

An important question regarding implementation of load allocations is to consider what partners Ecology intends to rely on for implementing ? As discussed above, many of the CDs have indicated that they are not bound by the MOU with Ecology. Additionally, there is no common understanding of BMPs or stewardship standards. Ecology has only applied enforcement authority in limited circumstances, and has yet to fully utilize in the context of temperature. Consequently, it is difficult to see how load allocations can be implemented or water quality standards met.

Ecology should consider administrative orders for landowners and managers to accomplish LA implementation.

Ecology needs to provide specific annual milestones for achieving the commitments described.

Response: Comment noted. Moving forward we are including more specific prescriptions in our TMDLs. This includes temperature TMDLs. We agree with the need to make sure that TMDLs are being implemented and are not just paper that sits on the shelf. We are committed to utilizing all available regulatory and non-regulatory tools to secure implementation. Finally, we agree with the importance of having a common understanding about which BMPs and suites of BMPs will achieve compliance with state water quality law, and working with partners that are willing to communicate those BMPs when working with landowners to address nonpoint pollution problems.

40. Northwest Indian Fisheries Commission- We agree that there is no specific statewide regulatory oversight/permit program designed to meet WQ Standards for agricultural nonpoint source pollution. The state continues to present its NPS plan as something that functions to protect water quality standards. As demonstrated by the *CARE v. Cow Palace* litigation, the downgrade of Portage Bay, nutrient pollution in Whatcom County aquifers, and continuation of the long-running effort in the Samish, the existing NPS program is not getting the job done. Nor is the state gathering together the information needed to assess how current programs need to be adaptively managed. EPA recognizes the deteriorating water quality in the lower Nooksack River and the Drayton Harbor watersheds. Fecal bacteria counts are rising in general, and at alarming rates at specific locations. Portage Bay has recently been closed to shellfish gathering by the WA Dept. of Health due to the deteriorating conditions. Similarly, most of Drayton Harbor remains closed to shellfish gathering due to deteriorating conditions. The state agencies' regulatory actions are hampered by blocked private property access and/or by the difficulty in gathering site specific water quality data relative to a potential discharge point or area because of this lack of private land access. The County has more effective private land access through their Conservation Program on Ag Lands (CPAL) and health regulations, but has lacked the political resolve to identify and prosecute polluters. Because of these circumstances, EPA and cooperators have initiated an advanced monitoring program involving real time fecal coliform counts, which may enable discharges to be more readily identified with follow up investigations.

Response: Comment noted. We disagree that we are not gathering information and assessing how we can improve our programs related to water quality. Our director's Agriculture and Water Quality Committee is dedicated to doing exactly that. Additionally, we have recognized the need for better BMP guidance as a key step in meeting the requirements of CZARA. Finally, we recognize the need to better collect BMP implementation data to support effectiveness monitoring. We are working to make sure that we collect consistent data associated with the grant programs we administer and are looking for ways to access other BMP implementation data. We are committed to working with stakeholders, including tribes, to better evaluate and adaptively manage our programs.

41. Northwest Indian Fisheries Commission- This is a very lengthy and cumbersome process. The NPS plan does not address either the effectiveness of this process or the feasibility of

implementing it in all the watersheds that are subject to federal treaty-reserved rights. An adequate NPS plan cannot focus on some watersheds and de-prioritize or ignore other watersheds – particularly those that support salmon and shellfish that comprise a portion of the tribes’ treaty-reserved harvest rights. Despite the fact that this process has not been working in some key watersheds, including the Nooksack and the Samish, Ecology enforcement efforts remain rare. We do not see how implementing some pollution control measures in a fraction of the watersheds in Puget Sound constitutes an adequate, state-wide program. Such a program also ignores treaty-reserved rights in watersheds that the state chooses not to prioritize. Rather than continuing to implement the state’s current, failed approach, we support following the recommendations from the Lummi Nation for increasing enforcement and incentivizing landowners to do better:

“Ecology should learn how to enforce long-standing existing state laws from professional law enforcement personnel within state government (e.g., Washington State Patrol) and model their approach after the proven methods developed by these other professionals. Depending on the severity of the violation, the overall approach taken by professional law enforcement agencies is to issue a civil penalty first. Typically the offender, at least for first time violators, is then provided an opportunity to reduce or eliminate the penalty. If the offender takes timely corrective action and participates in an education program or obtains technical assistance within an established timeline, the civil penalty is reduced or eliminated. If the offender does not take corrective action in a timely manner or does not participate in education programs or does not pay the fine, the penalties escalate. Repeat offenders receive higher penalties....If the Washington State Patrol and local police departments made a choice to not exercise their authority to enforce existing state laws there would likely be substantially more people driving faster than posted speed limits, driving without seatbelts, talking on their cell phones and likely a corresponding substantial increase in the number of injuries to life and personal property. An analogous situation currently exists with nonpoint source control in Washington. Ecology, the agency with the authority to enforce existing state laws related to nonpoint source pollution (see Appendix B of the Plan) has apparently chosen not to exercise this authority. As a result, BMPs for agriculture have not been adopted and required to be effectively implemented, water quality standards are frequently exceeded, and downstream users of the public resource are unable to enjoy the beneficial uses that the water quality standards are intended to protect.” See Letter to Maia Bellon, WDOE, from Merle Jefferson, Lummi Nation (June 4, 2015) at 6.

Response: Comment noted.

42. Northwest Indian Fisheries Commission- Given the difficulty of correcting damaged land and vegetation, it seems like these time frames would allow recalcitrant landowners to perpetuate harm for an unreasonable amount of time. These time frames allow 3 months to pass before even a site visit occurs, let alone amelioration of the problem. This allows significant harm to shellfish growers whose crops are rendered at least temporarily unharvestable.

Response: Comment noted. We understand your concern with the pace we use to address nonpoint issues. We will continue to work with stakeholders to evaluate how we engage with landowners and producers.

43. Northwest Indian Fisheries Commission- We strongly support this approach. We encourage EPA to support this approach as WDOE attempts to convince its partners to collect and share data, consistent with WDOE's approach.

Response: Comment noted.

44. Northwest Indian Fisheries Commission- To the best of our knowledge, the state has never consulted with tribes regarding water quality trading. We also note that most of the basic elements identified below are not currently available for quantifying or managing nonpoint sources of pollution. There is no public participation mechanism, including a tribal consultation process, in place. There are no clearly defined units of trade. There are no mechanisms to monitor progress, evaluate program effectiveness, or to adaptively manage the program. Consequently, it is premature to include this in the state's NPS plan.

Response: Comment noted. To date, there has been no water quality trading in Washington. Trading programs are set up to operate in specific watersheds and to address specific pollutants. As part of setting up any trading program, Ecology would invite participation from all interested stakeholders, including tribes, to help design the program. That design would include setting baselines that must be met before any credits to trade could be generated, defining the units of trade, deciding who is eligible to participate in trading, etc.

Trading is briefly discussed in the plan because it is possible that a landowner might be motivated to implement required nonpoint source controls if there were also additional benefits above those that the property could also provide, and there was a buyer willing to pay for those additional benefits. A trading program that simply allowed point sources to purchase nonpoint reductions in lieu of doing their own, in essence trading point source reductions for nonpoint ones, would accomplish nothing to improve water quality, and would not be allowed.

45. Northwest Indian Fisheries Commission- With its 3.5 FTEs, the Dairy Nutrient Management Program only inspects dairies about once every two years and only does a wet weather inspection once every 5 years. Given the level of precipitation and fecal coliform pollution problems in west side counties, this level of oversight is clearly inadequate. Also, given the documented problems in the Yakima valley, Portage Bay, Drayton Harbor, Nooksack watershed aquifers, and the Samish basin, continued implementation of the existing program seems like an inappropriate response. The program cries out for adaptive management. The letters from the Lummi Nation, cited above, make that point very well. Additionally, correspondence from the Western Environmental Law Center also detail numerous problems.

Response: Comment noted. We agree that there is a need to evaluate whether the current levels of FTEs are sufficient to provide oversight of dairies and agricultural operations. We disagree with the characterization that the plan is only supporting the status quo. We have outlined how Ecology will look to use its tools to address water quality issues. Additionally, WSDA has identified gaps in its program and is looking to work with stakeholders to address those gaps.

46. Northwest Indian Fisheries Commission- Page 50 of the draft NPS plan contains a long list of flaws that WDOE and WSDA have identified in the state's programs for managing dairy

pollution. Although this list of problems that need solving is long, it is likely not all inclusive. However, we think it provides a good start. The state needs to provide milestones and a timeline for completing the changes and tasks identified. Protecting shellfish beds and salmon habitat from nonpoint source pollution is not optional.

Response: Comment noted. Attempts to address the gaps have been made in the last three years.

47. Northwest Indian Fisheries Commission- The Results Washington goal of doubling the number of BMPs implemented relative to 2008 levels is not helpful unless the BMPs implemented are designed to meet a relevant goal and are effective. We have been unsuccessful in our efforts to discover what these BMPs are and how they are quantified and how well they are predicted to function. The NWIFC called attention to these issues in its comments on the Shellfish Initiative's Phase 2 Draft Work Plan.

Response: Comment noted.

48. Northwest Indian Fisheries Commission- The discussion of the Governor's Shellfish Initiative deserves greater emphasis than it has received. There, WDOE committed to "provide guidance on nonpoint source BMPs consistent with state water quality standards as well as training to local governments to ensure that PIC programs and federal funding implement these standards." WDOE made this commitment in December 2011. Now, over four years later, the current draft implementation plan (Phase 2) for the Shellfish Initiative states:

Identify an agreed upon approach to develop PIC guidance on nonpoint source BMPs that prevent pollution, achieve water quality standards, and maximize landowner participation. Washington State needs agreed upon agricultural BMPs that are designed and implemented to achieve compliance with the state water quality standards. Since 2009 the state agencies and stakeholders have worked to reach agreement on a set of BMPs that if implemented will be presumed to meet state Water Quality Standards. It is important for shellfish resources in this state that the state's natural resource agencies, in coordination with stakeholders, resolve this issue. This should happen through other appropriate venues contemporaneously with the Shellfish Initiative.

The NPS Plan needs to make sure that these BMPs are identified and adopted and that other programs, such as the Governor's Shellfish Initiative and any related processes adopted by the Puget Sound Partnership, also employ these same BMPs.

Response: We agree with the importance of the Governor's Shellfish Initiative. We will continue to support the Initiative. Additionally, we agree with the importance of developing BMP guidance. Chapter 6 outlines the process we intend to use to fill this gap.

49. Northwest Indian Fisheries Commission- Chemical Actions Plans contain no enforceable mechanisms to ensure reductions consistent with water quality standards. Ecology should rely upon the TMDL program to address toxics listings, and apportion clean up responsibilities within a watershed.

The tribes have provided specific comments on how to utilize TMDLs for toxic clean up in recent correspondence to Ecology. These recommendations should be reviewed and incorporated into the plan.

Response: Comment noted. We understand your concerns with CAPs but we believe that they provide a logical way to address toxics in the environment. Additionally, the plan also highlights the TMDL program as a tool for addressing toxics. The CAPS should help identify specific BMPs in areas with TMDLs addressing toxic pollutants.

50. Washington Farm Bureau- PLAN SHOULD RECOGNIZE THAT PROTECTING AG VIABILITY ALSO PROTECTS WATER QUALITY-This would be consistent with the Puget Sound Partnership Action Agenda's conclusion that agriculture is an environmentally preferred land use: "The continued loss of farms in the region and conversion to non-farm uses is not only detrimental to individual farmers and to the regional farm economy; but is detrimental to the recovery of Puget Sound." This conclusion is driven largely by the Partnership's assessment of relative water quality outcomes: "Analyses indicate that 1 acre converted from agricultural to urban development produces 10 to 15 times the runoff and runoff-borne pollutants, including far higher concentrations of heavy metals, petroleum and other key pollutants." Protecting Ag viability protects water quality. Maintaining Ag viability, in and of itself, is therefore a necessary prerequisite to preserving open space farm and ranch lands, which is a necessary prerequisite to maintaining healthy watersheds and water quality.

Preserving Ag viability also preserves other environmental values: "Farmland also provides habitat and food resources for migratory bird species, promotes aquifer recharge. ... (and) provides greater flood plain function than developed areas." Ag profitability is thus a necessary prerequisite to keep farms and ranches, especially those at the tipping point of viability, from getting converted to profitable non-agricultural uses, like subdivisions. Conversions generally make water quality and other environmental outcomes much worse. This is why the PSP Action Agenda concludes that "maintaining the vibrancy of agriculture is crucial to recovering Puget Sound and instrumental in providing a high quality of life in the region" (3A: 18-19).

Response: We agree that protecting agriculture viability is important and can be beneficial to water quality if those lands are managed to prevent discharges of pollutants. Simply protecting agriculture viability does not necessarily protect water quality and lead to compliance with the water quality standards. Again, as with any other land use, agriculture operations that are poorly managed can contribute significant amounts of pollutants to state waters. Agricultural operations in the state have contributed to groundwater pollution, resulting in nitrate levels that make the water unsafe to drink. Livestock operations have discharged pollutants to surface waters, which has contributed to shellfish bed closures on the west side of the state. We agree with the commenter that agriculture is an important beneficial use in Washington. Ecology's director has emphasized that agriculture viability, along with clean water, is essential to how we administer our programs. Agricultural lands can be operated to avoid polluting surface and groundwater while also flourishing. Many agricultural landowners have implemented BMPs that accomplish just this, and they have done so while remaining profitable. The problem is that the desire to have both profitable agriculture and clean water has generally been characterized as an either/or proposition. Ecology does not believe that this is so. We are committed to

working with agriculture stakeholders to make sure that we achieve both goals, agricultural viability and clean water.

51. Washington Farm Bureau- PLAN SHOULD PROMOTE COMMUNITY

COOPERATION TO TACKLE COMPLEX INTERRELATED ISSUES-Because protecting Ag viability inherently protects water quality, the PSP Action Agenda rejects false choices, refusing to choose between environmental values (water quality) and agricultural values (food security). This more effective approach focuses on the need for shared community solutions to shared community problems. But, as the PSP Action Agenda notes, maintaining Ag viability isn't easy: "Low profit margins have forced many farmers out of business and farmland is being converted to other uses at an alarming rate ... Since 1950 we have lost more than half of the farmland in the Puget Sound region. Effectively preserving agricultural land and Ag viability will thus "involve tackling a complex set of interrelated issues including real work to ensure that agriculture continues to be a viable, and vibrant, industry ..." (3A: 18-22).

Response: Comment noted. See response to the previous question. Additionally, we are committed to a strategy of working through issues at a local watershed level. For example, our TMDL program and STI projects promote local community cooperation to clean-up impaired watersheds.

52. Washington Farm Bureau- PLAN SHOULD RISE ABOVE THE BIG BUFFER AND AG PRACTICE MANUAL BATTLES OF THE PAST

As you know, the full agricultural community opposes the buffer preconditions imposed by NMFS and EPA on Ecology's National Estuary Program and Clean Water Act 319 funds. These unreasonable conditions are not compatible with Director Bellon's Ag and Water Quality Advisory Committee vision "to improve working relationships, and ensure both water quality protection and a healthy agricultural industry." NMFS buffer conditions impair Ag viability and the relationships needed to promote water quality. Please ask NMFS and EPA to reconsider. WFB is also concerned about Ecology's stated intent to "fill in the gaps where Ecology does not have current 'manuals or compendiums' for categories or subcategories of nonpoint pollution" (78). The Plan states: "Outside of the information provided in our funding guidelines, Ecology recognizes our state lacks freestanding manuals, compendiums or other guidance that identify BMPs for agriculture that ensure compliance with the WQ Standards" (76). WFB appreciates that Ecology will seek the input of the Ag and Water Quality Advisory Committee on any proposed Ag practice manuals. But the Plan's reference to the funding guidelines raises the specter of a "compendium" equivalent to an Ag Practices Act. This is because both the Plan and Ecology's funding guidelines remain high-centered on the NMFS buffer funding conditions.

PLAN SHOULD ADMIT UNINTENDED CONSEQUENCES OF NMFS BUFFERS—THEY AREN'T WORKING

Washington is second only to California in the number of commodities grown, and each commodity presents complex economic and production challenges. NMFS' one-size-fits-all buffers are too rigid to adapt to the diversity of agricultural operations in our state. They presumptively take too much land out of production, with no compensation to producers for land

or food production capacity lost. And they ignore the constitutional requirement of a roughly proportional nexus between burdens imposed and the actual water quality conditions on a particular farm or ranch. Thus, NMFS buffers, and Ecology's funding guidelines that incorporate them, merely ensure that producers won't participate, and that Ecology funds won't be used to improve Ag stewardship. The NMFS buffers aren't working for Ag.

The NMFS buffers aren't working for the environment either. As Eli Asher, Restoration Ecologist for the Cowlitz Tribes, explains "local and regional processes are already working" while the NMFS buffer policy "alienates willing landowners" because it "ignores natural site processes" and "promotes perfection at the expense of the good" (April 30, 2014 letter to Salmon Recovery Funding Board). Terry Williams of the Tulalip Tribes cautions that the NMFS policy reduces producer participation and "may result in the Snohomish Basin (and other basins) falling further behind in implementation targets" for salmon recovery (May 1, 2014 letter to Salmon Recovery Funding Board). Washington needs a better legacy. To that end, WFB respectfully asks for your help to promote a spirit of cooperation—so real producers can partner with real tribal and environmental leaders to implement real stewardship projects and actions.

Response: The federal requirements for the 319 program include a directive for states to produce suites of BMPs that will achieve compliance with state water quality standards. To be effective, those BMPs must be based on sound technical work that shows they will be effective at protecting water quality. The first step in this process is to establish those actions that scientific studies show to be necessary. The second step is to fine tune those actions to fit into the existing landscape. The NMFS buffers are the best available science about what is needed to achieve cool, clean water for fish. They are a condition for taking federal grants.

53. Washington Farm Bureau-Voluntary stewardship has worked well in many Washington watersheds for one reason: Trust. Producers trust conservation program providers and science-based NRCS standards that can flex to address complex agricultural needs, while also delivering good environmental outcomes. And producers can always volunteer to go further. This farm-friendly approach broadens producer participation and spreads good water quality outcomes across the landscape. It also promotes Ag viability, preserves working agricultural landscapes, and helps prevent avoidable conversions. Ag lands typically deliver much better water quality and habitat outcomes than converted non-agricultural landscapes. This is why Ag nonpoint programs should rely on trusted NRCS incentives, standards and tools to determine what is reasonable and needed.

Response: We are committed to supporting voluntary programs. The plan is clear that we rely on voluntary efforts as a piece of the nonpoint puzzle. However, the plan also recognizes that it is important to use all available tools. Both regulatory and non-regulatory tools are needed if we are to achieve the goals of state and federal clean water laws. We also recognize that both sets of tools have room for improvement.

The commenter states that voluntary conservation "works", and it does work if the measure of its success is the number of people who implement some sort of conservation practice. The problem is that a significant amount of people don't implement the suites of BMPs necessary to achieve compliance with state water quality standards. NRCS programs, for instance, which are

entirely voluntary, allow landowners to implement only those practices they wish to implement. There is no stated goal that the practices will ensure compliance with state water quality laws. In fact, NRCS has been very clear that its planning process is not designed to meet regulatory requirements. A more successful system would have all technical and financial assistance providers working toward the same goal of achieving both clean water and profitable agriculture, and delivering consistent messages about the practices necessary to achieve water quality standards. Once the clean water outcome is adopted by everyone, then the practices could be adapted to specific sites to achieve both goals.

54. Washington Cattlemen's Association- Chapter 3: Strategies for Addressing Nonpoint Source Pollution Introduction (pg. 25). Ecology lists as a "key principle" in implementation of their nonpoint source (NPS) strategy the communication of clear standards and compliance expectations. WCA agrees that clear expectations are essential, while maintaining flexibility for the regulated community to implement BMPs suitable to their operations, and which are economically achievable. WCA appreciates Ecology's ongoing emphasis on providing education, outreach, and technical assistance.

Response: We agree that clear expectations are critical as well as the flexibility to use different approaches as long as those approaches will achieve the same clean water result. We intend to continue working closely with stakeholders, including agricultural producer groups like the Cattlemen's Association, as we work on how we can better communicate clear standards and compliance expectations.

55. Washington Cattlemen's Association- Straight to Implementation (STI) (pg. 30). WCA fully supports the collaborative approach Ecology advocates for in the execution of the STI strategies. To the extent that Ecology creates BMPs for the agricultural sector, WCA requests a collaborative approach, which will result in clear and attainable outcomes.

Response: We are committed to a collaborative process that includes the involvement of agriculture producer groups, including the Cattlemen's Association. We believe that any guidance document that we produce benefits from producer engagement.

56. Washington Cattlemen's Association-Focus on Implementation -TMDLs and STIs; Watershed Evaluations (pg. 31). The Draft NPS Plan points out that Ecology, while conducting watershed evaluations, relies on visual site conditions as the primary evidence for identifying water quality problems. Ecology states that it primarily relies on site conditions as indicators of NPS pollution problems, and that this approach is supported by the results of numerous scientific studies. WCA requests that Ecology make these studies available to the public and include citation to the studies in the final 2015 NPS plan as well as explore other options such as species specific testing.

Additionally, WCA would like to better understand Ecology's methodology for selecting sites to evaluate to ensure that these evaluations are not inadvertently biased. As cattle are easy to identify and Ecology has identified cattle as a source of pollution, Ecology should continue to update the scientific research used to make sure that all studies that are being conducted to clarify pollution sources, such as DNA testing, are being considered when evaluating watersheds

to make sure that cattle are the actual source of pollution. As Ecology states in the Draft NPS Plan, watershed evaluations are primarily used to address agricultural NPS pollution sources; the subjective nature of a visual inspection from a public right of way is a concern to WCA's members. There is a concern that agricultural operations that have cattle may be subject to increased scrutiny on the part of Ecology because these operations are easy to identify.

After a site is identified, Ecology promotes the use of technical and financial assistance to correct the problem. If such assistance measures fail, Ecology can then use enforcement tools. WCA appreciates this interim step, providing the landowner with tools and time to correct any NPS problem that may exist. However, WCA requests that Ecology clarify what actions qualify as "promoting," and, to what extent these actions must take place. Ecology should have a transparent process with defined goals that are clear to all landowners allowing said landowners to understand the Ecology process. WCA fears that, without a clear set of expectations and guidelines with regard to an implementation timeline of assistance measures, WCA members may unwittingly be subject to enforcement.

The Draft NPS Plan is broad and will apply to the actions of a number of state agencies, WCA would like to know if the Washington State Department of Agriculture might be involved at some point in the Watershed Evaluations. The WCA believes that the WSDA might have an easier time connecting with landowners to solve water quality issues. The proposed plan points out that Watershed Evaluations are primarily used to identify agricultural sources of NPS pollution. The WCA understands this would take funding from the Legislature, but believes agricultural operations would be supportive of such a request.

Finally, recommendations that resulted from the Water Quality Advisory Committee included setting a timeline for producers to contact Ecology once a producer has been notified of the pollution problem. WCA encourages Ecology to make these timelines meaningful and to be sensitive to the seasonal nature and time restraints inherent in operating an agricultural operation in Washington State

Response: There are numerous studies supporting the use of site conditions to identify pollution problems. We agree that the public should have access to them, and would propose that Ecology's nonpoint web site is a more appropriate location than the nonpoint plan. In addition, new studies are being added every day, so it would be more useful if the studies were all located in an easy to update location.

It is true that Ecology's watershed evaluations have focused on agricultural lands with livestock. However, we have also identified sites delivering pollution from growing crops. Ecology's evaluations are not cursory, but instead are careful evaluations of an array of site conditions. We do not proceed to contact a landowner unless we are certain that a problem exists.

Ecology has stated before that DNA testing is not necessary when site conditions indicate a problem. It is a tool that is very expensive and not always accurate. Site inspection is much more reliable.

Ecology has laid out the process it uses to implement BMPs, and has made it clear that it will use incentives and technical assistance before it would use enforcement. No landowner would ever “unwittingly” be subject to enforcement because there would have been many contacts from Ecology and many efforts to gain compliance before Ecology would start an enforcement action.

Ecology cannot comment on the likelihood that the Department of Agriculture would participate in watershed evaluations. At the present time, it administers only the dairy program and does not participate in addressing water quality issues related to other kinds of agriculture.

57. Washington Cattlemen's Association-Other Tools to Promote Implementation; Draft Water Quality Trading Framework (pg. 41). WCA supports the water quality trading framework as a useful tool for attaining Water Quality Standards (WQSs.) Ecology lists several pollutants for which trading has been identified as logical; however, it raises some concern about trades involving temperature. WCA would like to encourage Ecology to more fully explore ways in which trades involving temperature could be used. While we agree with Ecology's concern about the time lag associated with the production of shade, given that this can be beneficial in the long-term, WCA thinks temperature trading deserves more consideration and the science behind it a more thorough review prior to its inclusion in the WQSs. The WCA believes that channel size and its impacts on flow also need to be considered when considering temperature impacts on water quality standards.

Response: Comment noted.

58. Washington Cattlemen's Association-Agricultural; Dairy Nutrient Management Program – Washington State Department of Agriculture (WSDA) (pgs. 49-50). The DNMP partners with other agencies to identify and correct actual or potential violations at certain dairy operations. WCA applauds interagency effort to help these operations prevent violation of any pollution laws, but to the extent a violation is only “potential,” WCA wants to ensure that this aid in prevention does not become a basis for enforcement action.

WCA appreciates that additional training to livestock producers is among the strategies being considered; however, Ecology should be careful to maintain distinct approaches for evaluating and working with dairies and livestock operations. The nature of the operations are distinct, warranting distinct NPS management approaches. Thus, any gaps identified in relation to livestock operations should be addressed through the general Water Quality Standard guidelines, rather than the DNMP rubric.

Response: Comments noted.

59. Stevens County Conservation District- Chapter 3 Strategies for Addressing Nonpoint Source Pollution: Commend Ecology's key principals in the implementation of this nonpoint strategy, particularly the statement "Communicate clear standards and compliance expectations". Suggest change "Implement" in the second two bullets to support or promote because it is the Landowner, Businesses and Agricultural Producer who implements the projects on the ground.

Response: We agree that clear standards and compliance expectations are critical to addressing nonpoint pollution sources. While we agree that landowners implement practices on the ground, Ecology also has implementation responsibilities under the nonpoint plan by establishing those clear expectations, using our nonpoint authority to drive toward those practices, and using our funding programs to pay for them.

60. Stevens County Conservation District- Pg 30 and 31 discussion on STI and Watershed evaluations- appreciate the comment that Ecology's emphasis is on a collaborative approach and the prioritization of partnerships, education programs, outreach.

Pg 31 Watershed Evaluations first paragraph "Ecology relies on visual site conditions as the primary evidence for identifying nonpoint source pollution problems". This is one of the major issues with the Landowner and Ag Producer. Ecology needs to communicate the scientific reasoning for this policy to the operations (people) impacted by this type of evaluation.

Response: See response to comment 56 regarding the use of site conditions and the studies that support their use.

61. Spokane RiverKeeper-The Riverkeeper is keenly aware of the challenges facing cleaning up nonpoint source pollution, particularly from agricultural operations. In much of Washington, agricultural operations are now the largest polluters of our surface and ground waters. Specifically, the Spokane Watershed is adversely affected by two tributaries that are listed as impaired on the CWA Section 303(d) list, the Little Spokane River and Hangman Creek. Both are impaired for temperature, fecal coliform and turbidity. All of these contribute to dissolved oxygen problems in the Spokane River and both tributaries struggle meeting standards as a result of agricultural operations in the watershed.

To improve water quality in all three rivers, it is essential to address non-point source (NPS) pollution from agriculture generated by agriculture and agricultural practices.

Equally essential is a Washington State NPS plan that is specific and action oriented on addressing the steps to clean up NPS pollution. To that end, timelines, specific benchmarks or standards, mechanisms to determine efficacy and accountability are all essential. Further, it can be argued that the lack of these features is why the TMDL process is struggling to make any measurable progress with NPS pollution inside the Spokane River Watershed.

That said, Ecology's NPS Plan as written, is too vague, and lacks specifics concerning programmatic details. It does not have benchmarks, and lacks timelines in several critical areas all of which threaten to render the plan ineffective.

Response: We agree with these comments, and plan to address them as we move forward to develop BMPs as part of the requirements that the state must meet to comply with the CWA and Coastal Zone Act Reauthorization Amendments of 1990 (CZARA).

62. Spokane RiverKeeper -East Side Attention

Finally, we are concerned that the NPS plan prioritizes cleanup efforts on waters that drain directly to shellfish beds or contain existing runs of salmon, reducing the effectiveness of NPS control in much of Eastern Washington. For example, of the six State Initiatives mentioned in the NPS plan, only one covers the non-salmon bearing watersheds of Eastern Washington.

Further examples:

- Programs such as “Results Washington” spell out goals like the “2.1.b Increase the number of implemented agricultural BMPs to improve water quality in shellfish areas in Puget Sound, Grays Harbor and Pacific counties from 345 in 2008 to 750 by 2016.” However, the Governors program remains silent on the need for implementing these same BMPs on the impaired rivers in our East side watershed.
- While our watershed does not have salmon or steelhead, it does have populations of native trout and is being considered for salmon re-introduction . If this initiative is to be successful, NPS pollution (turbidity, low dissolved oxygen, high temps and nutrients, etc.) will have to be addressed and solved.
- Additionally, on page 65 under “Washington Tribes” there are bullets that deal with “transparency and Accountability” (Bullet 4) and issues that address “hydro modification and sedimentation” (Bullet 7) that currently address shellfish water quality but should be exported to East side situations where practices and processes need to be implemented and addressed within our watersheds.

Response: The state nonpoint plan is a statewide plan, so all of the measures described apply on both the east and west sides of the state. However, we understand the commenter’s concern and will work to make sure that we allocate resources and priorities to both sides of the state. We agree that water quality is as important an issue for the eastside of our state as the west side. We are committed to working with stakeholders, like the Spokane RiverKeeper, to understand and address water quality issues on the eastside of the state.

63. Spokane RiverKeeper-The need for timelines:

Timelines are needed to activate this plan and make real improvements in water quality. In general, the NPS Plan should anchor almost all of its recommendations, strategies and plans to timelines.

- For example, on Page 49 under Agricultural section of “Continued Implementation of key Regulatory Programs, the plan states, “Ecology will work on better defining what compliance with state water quality law means...”. This process should be anchored with temporal goals so that the public understands when this will take place along with details of how it will happen.
- Additionally in the Effectiveness Monitoring section the plan states that program evaluations are tied to four fundamental questions about the program implementation. Unfortunately, what is lacking is the timelines that would assure timely progress in cleaning up NPS pollution.

Response: We have added timelines related to BMP guidance development. We recognize the need to do a better job of effectiveness monitoring and will work with stakeholders to develop a better path forward to evaluate program implementation.

64. Spokane RiverKeeper- Aligning Ecology’s NPS program and the TMDLs currently in process.

We feel this is a critical step in the right direction. However the NPS plan is without concrete details about how this intersection and alignment will occur.

In terms of the TMDL process, we feel that dealing with certain forms of NPS pollution is critical to making progress in water quality in our watershed, specifically Hangman Creek. The plan states on page 25 that “Ecology will focus on connections between the nonpoint and TMDL programs, and the regulation of storm water and confined animal feed lots”. We would like to see concrete plans for holding accountable smaller agencies like County Public Works and Road Departments. At this moment we have multiple active complaints against County departments for routing agricultural return flow into directly into rivers impaired for turbidity. Is there a mechanism in the plan to begin discussions regarding these activities?

Response: Ecology agrees that addressing nonpoint pollution is necessary if we are to achieve statewide compliance with Washington’s water quality standards. There is no clear mechanism for dealing with local governments routing agricultural return flow into rivers impaired by turbidity. This will continue to be a problem until, either through expanded coverage by municipal stormwater permits or some other mechanism, we can craft a solution.

65. King County-Water and Land Resources Division-The Draft Water Quality Trading Framework (page 40 and 41) may be a functional tool. Given our experience with various mitigation activities and programs, King County would appreciate the opportunity to collaborate with you, if the framework moves towards implementation. As part of our “Local Food Initiative,” we at King County are working to increase active farmland. As a result, we are interested in opportunities that achieve substantial water quality improvements, and also minimize or, if possible, eliminate impacts to working farm and forest lands in the process. We strongly advocate a collaborative process with local jurisdictions and property owners in the development and implementation of this program.

Response: Comment noted. We are happy to see local jurisdictions interested in engaging on trading issues. We agree that programs benefit from a collaborative process with local jurisdictions and property owners. To that end, we will look to engage with local stakeholders if a watershed is identified as having the potential for a trading program. To date, trading programs have not moved forward because of the lack of interested buyers.

66. King County-Water and Land Resources Division-We strongly support programs that ensure the proper functioning and control of both onsite septic systems and sewer systems. State and local programs that support inspections, inventory development, enforcement, and provided low-interest loans are critical to the region. Funding and broadening the Pollution Identification and Control (PIC) program to support programs in counties that are effectively reducing and eliminating bacterial pollution sources throughout the Puget Sound basin is necessary to improve water quality.

Response: We agree with these comments. We will continue to look for ways to better support both state and local programs, including PIC programs.

67. Thurston County- Many of the comments noted in the narrative of this letter relate to the overall policy associated with addressing NPS pollution throughout the state. Furthermore, many of the total maximum daily loads (TMDLs) that have been developed or are in development, rely heavily on the implementation of voluntary NPS controls to achieve water quality standards. This makes adequately addressing NPS pollution a critical path to protecting and restoring our waterbodies. Thurston County recognizes these challenges and has been participating on an Interagency Project Team (Team) aimed at improving policy and implementation of NPS measures in a more systematic, comprehensive, and effective way. The Team consists of staff from the surface water departments of Clark, King, Kitsap, Pierce, Snohomish and Thurston Counties, as well as staff from the Washington State Department of Transportation. The Team aims to work with Ecology and EPA to improve implementation of the Clean Water Act and TMDL programs in the state. In 2014, the Team hired a consultant to compare water quality assessment (WQA) and TMDL programs in Washington State against five other states in order to identify potential improvements. This resulted in a report describing nine key recommendations (many of which address NPS issues) for improving water quality related implementation efforts which include the following:

1. Establish a multi-stakeholder standing committee to improve coordination and engagement with the regulated community;
2. Implement existing regulatory authority related to unpermitted and nonpoint sources;
3. Refine water quality standards and water quality assessment methodologies;
4. Improve and employ consistent processes for collecting, assessing, and utilizing credible data in WQA and TMDL development;
5. Refine water quality assessment categories to improve clarity and aid in defining priority water bodies;
6. Update the current biological assessment and listing methodology;
7. Define TMDL prioritization methodology, timelines, and process for public involvement;
8. Define TMDL development methodology; and
9. Develop consistent TMDL implementation expectations.

Recommendation 2 (Implement existing regulatory authority related to unpermitted and nonpoint sources) aims to address NPS issues in the state's TMDL program by identifying barriers to controlling NPS pollution and recommending approaches that may mitigate these barriers. Potential approaches include utilizing existing legal authority (WAC 173-201-510 and RCW

90.48.080) to control unpermitted and nonpoint sources and ensuring that Load Allocations and Waste Load Allocations are equitable. Chapter 3 of the draft Nonpoint Plan, Stakeholder Involvement, is also aligned with the Team's Recommendation 1 (Establish a multi-stakeholder Standing Committee to improve coordination and engagement between Ecology and the regulated community), and encourages stakeholder involvement in the development and implementation of regional water quality programs and initiatives. Implementation of this recommendation will help institutionalize buy-in and will provide more local expertise and knowledge that is key to designing effective NPS pollution control programs.

The Interagency Team, with Ecology and EPA, has already started to look at the recommendations listed above. If implemented, these recommendations will help to address many of the challenges of addressing NPS pollution identified in this comment submittal. Thurston County looks forward to working with the Team and Ecology to further refine and implement the recommendations noted above, as a way to address many of the policy and technical-related limitations identified in our review of Washington's Draft Water Quality Management Plan to Control Nonpoint Sources of Pollution.

Response: Comment noted. We agree that the implementation of existing authorities is an important step in better controlling nonpoint sources and achieving a more equitable balance between point and nonpoint source responsibilities to prevent pollution. We look forward to working closely with the Interagency Team as we move forward and improve our programs.

68. Squaxin Island Tribe- In Washington the primary means of addressing temperature-impaired waters (developing and implementing BMPs) is through the Total Maximum Daily Loads (TMDLs). Washington's Nonpoint Plan features TMDLs as a central strategy for addressing temperature. However, in our experience TMDLs, particularly those developed to address temperature impairments, are neither designed nor implemented in a manner that will protect our treaty-reserved resources. Therefore, EPA in their capacity of providing oversight to the § 319 program as federal trustee to treaty Tribes, should require Washington's Plan to address these shortcomings. We will use the Deschutes River Total Maximum Daily Load Water Quality Improvement Plan as an example.

Ecology's improvement plan for the Deschutes is based on temperature modeling that indicates that restoring mature riparian forest to the river's edge is the key to lowering the temperature of the river. This is because the blocking of direct solar radiation and creation of a cooler riparian microclimate will allow the river to cool by over four degrees as it flows downstream (even though certain reaches will still not meet state standards for temperature and dissolved oxygen). The water quality improvement plan therefore hinges upon restoration of mature forest in a 75 foot riparian buffer along either side of the river. To achieve this goal, Ecology/Thurston County/Thurston Conservation District must convince a significant number of private landowners, including small and large farm owners, residential property owners, and forest landowners to voluntarily step back 75 feet from the river and replant trees. To that end:

"This water cleanup plan must show "reasonable assurance" that nonpoint sources will be reduced to their allocated amount. Examples of actions to ensure the goals of this WQIR/IP are

met include: education and outreach; technical and financial assistance; permit administration; and enforcement when necessary.

Ecology believes the implementation actions identified in this WQIR/IP already support this water cleanup plan and add to the assurance that the identified pollutants and parameters in the Deschutes River, Percival Creek, and Budd Inlet tributaries will meet conditions provided by Washington State water quality standards. This assumes the following activities are continued and maintained" Deschutes Water Quality Improvement Plan p. 89.

This is echoed in the State of Washington's nonpoint plan:

"Our goal is to secure the load reductions required of non point sources through voluntary implementation and the use of education and outreach, technical assistance, and financial assistance. However, enforcement authority under state law provides a regulatory backstop. This regulatory backstop is necessary because there must be reasonable assurance that the abatement strategies for non point sources will actually take place. If nonpoint sources are not addressed, federal law shifts reduction requirements to point source dischargers." WA nonpoint plan p. 28.

There is a significant agricultural lobby and a contingent of other private landowners who will not voluntarily restore a 75 foot buffer adjacent to the river. The effort to bring them into voluntary compliance may take decades, if it is possible. The Deschutes will not be on a trajectory towards cooling for many years, if ever. Furthermore, Ecology identified the 75 foot buffer as "reasonable and achievable", however it is not adequate for a mainstem river like the Deschutes. The main channel of the Deschutes would naturally migrate well beyond 75 feet across its floodplain, as much as 500 feet in recent decades. A 75 foot buffer is fragile edge for providing shade, microclimate, and wood input to this river. Though there are currently some restoration projects on the Deschutes River, the restoration goal for the Deschutes River and expected voluntary actions needed to achieve that restoration do not represent reasonable assurance that the river will meet water quality standards for temperature and dissolved oxygen by 2025.

This is just one example of deficiencies in the TMDL process, which is a central strategy of State of Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution.

Therefore we request that the EPA require that Washington Department of Ecology use stronger enforcement of TMDL implementation actions and at a minimum, tie them to NMFS 2008 Biological Opinion on riparian buffers widths.

Response: This comment points out many of the difficulties Ecology faces when attempting to implement the load allocations in TMDLs, whether they are for temperature or another pollutant. Ecology working alone cannot overcome the resistance to establishing the riparian buffers necessary to achieve compliance with state temperature standards. What is required is consistent statewide support from citizens and point sources for allowing Ecology to require implementation of BMPs necessary to achieve compliance with TMDL load allocations and state water quality law.

69. Eleanor Mattice-Thank you for speaking at the public meeting in Colville, WA. I haven't had a chance to read the draft plan yet as I don't have the internet. I do think riparian areas in northeast Washington are, for the most part, in terrible shape due to logging and grazing. I drive all over Stevens County and have seen miles of tree-less stream banks eaten down to no foliage at all because of grazing. The county planning commission does not enforce any riparian protections and if you want to turn in an infraction you have to sign your name and nobody wants to tattle on their neighbors.

That needs to be changed so infractions can be reported anonymously. I believe education of people about stream health and clean water is the first step-people along streams and rivers and even school kids! After a land owner has received the instruction/info on riparian area best practices they should be offered help/grants to put those practices in place. I would like to see my tax money spent that way. If a land owner refuses to cooperate their income tax should be docked with a fine (their income tax returns) or their land taxes should go up. First and best is education and cooperation. And if we educate the children they will lead the way in the future.

Response: Comment noted. Thank you for taking time to comment on the plan. We understand your frustration and know that work needs to be done in northeastern Washington watersheds to protect water quality. We agree with your suggestion of using education and outreach first and then escalating if that does not secure the implementation of effective BMPs. The plan outlines that as our strategy to address sources of nonpoint pollution and secure the implementation of BMPs. Finally, we agree that the complaint system is an important tool for people to have when they are being impacted by others' actions. Complaints can be made to Ecology anonymously.

70. Board of Stevens County Commissioners-We felt that a lot of focus was spent on agriculture and forestry, but very little on recreation, and urban/suburban NPS. The document states that the urban/suburban is by far the largest contributor, yet there is no focus outside of the Puget Sound Area and very little focus on specific contributions and strategies to address this concern. There was also a notable lack of recreation NPS contributions to inland lakes. Lastly, there was very little added about wildlife. Although not counted as a pollution, wildlife is a significant contributor to pollutants, fecal coliform, phosphorus, nitrogen, etc., and these contributions must be accounted for on the over quality of the water. There needs to be focus added for wildlife, especially in the rural, agricultural, and forestry lands. Please add and strengthen these areas to make efficient use of the dollars and receive the most clean up benefits.

Response: The nonpoint plan does not state that pollution from urban and suburban areas is the largest source of pollutants. It does state that this land use can be a significant source, as is agriculture. Much pollution generated from urban and suburban sources is covered by the Phase 1 and Phase 2 Municipal Stormwater Permits, although many small towns are not covered by permits. The plan does mention pollution caused by recreation, but we have not identified recreation as one of the primary causes of impairments in Washington waters. The plan focuses on categories of nonpoint sources of pollution that we have identified as more prevalent in watersheds that we have studied. Pollutants such as fecal coliform contributed by wild animals are not considered pollution, as the commenter notes, unless there is an unnaturally large concentration of these pollutants. This is usually caused by some human activity that has encouraged wild animals to congregate in unnaturally large groups. Our

TMDLs do account for wildlife contributions, although that generally means that humans can contribute less.

71. Board of Stevens County Commissioners-4) Impairment and pollution seem to be used throughout the document interchangeably. These two words have very different meanings and should not be used interchangeably. Please go through the entire document and edit for consistency, the proper use of these terms. It would also be helpful if a definition of these two terms were included in the document, especially as it relates to the CWA and State law.

Response: Comment noted.

72. Board of Stevens County Commissioners-The bullets listed on this page affect land uses and should be coordinated with local governments per RCW 36.70A.103 and RCW 43.21H. Page 30, Straight to Implementation – Please add coordination with local governments and tribes and public notification input and review/comment period to this section. It is important that local governments and the public have input in the STI process. Ecology has promised in the past and it should be made part of this plan.

Page 31, first paragraph, third sentence – Please add the word “probable” prior to “pollutant discharges” at the end of the sentence. Further, as an appendix, please cite all of the scientific studies used to support this statement. We believe that this is not a comprehensive list, was hand-picked, and that many of the studies are not comparable with our land and weather types.

Response: First comment noted. Straight to Implementation is a strategy using Ecology’s nonpoint authority to implement BMPs. There is no document to review as with a TMDL, although we are always willing to talk to citizens about how we are doing our work. For an explanation of the use of site conditions to identify pollution problems, see response to comment #56.

73. Board of Stevens County Commissioners-Page 35, second paragraph, last sentence – There should be work done on what is eligible for funding with regard to BMP’s. The current Ecology prioritization is not working since we cannot get many agricultural producers to accept all of the stringent and over burdensome requirements.

Response: Ecology’s funding guidelines are set up to ensure that only those BMPs that meet water quality standards are funded. We must also meet all state and federal requirements for financial management. Every year, Ecology receives more requests for funding than it can fulfill, so we have not found that applicants are unwilling to accept the conditions on use of Ecology funds.

74. Board of Stevens County Commissioners-Please concentrate on spending our State dollars on programs that will allow more flexibility in BMP’s that are economical and will achieve large strides towards water quality improvements, rather than strict rules that few people consider, i.e. – off channel watering for livestock without exclusionary fencing and large unmanaged buffers, or voluntary reporting and support for owner implemented BMP’s without other requirements, or stream plantings (trees and shrubs) without a buffer or both sides of stream requirement. 80%

success on 80% of the land is heads and shoulders above 100% compliance on 5% of the land. Perhaps taking less federal money with the strings attached will allow you the flexibility to improve our water quality faster.

Response: Ecology is responsible for spending public money to buy the best water quality improvements we can on a project-by-project basis. We do this by making sure that the BMPs we fund will actually solve the water quality problems at a site. This provides two important advantages:

- We will have spent the money to buy what the public expects, which is clean water;*
- We will not have to go back to that same landowner and ask for more work to be done later because we did not solve all the problems at the site. This would be more expensive and more burdensome to the landowner in the long run.*

75. Board of Stevens County Commissioners-Page 37, first paragraph – Please add the need to recognize and record actions being taken on a voluntary basis without any funding or technical assistance. This can be accomplished through the Conservation District or CD/Ecology level.

Response: Ecology would be very interested in documenting all of the BMPs that have been implemented on agricultural lands whether or not financial assistance was used. However, to our knowledge this information is not systematically collected by any agency. We would be interested in working with stakeholders to find ways to collect and share this type of information.

76. Board of Stevens County Commissioners-Page 38 – Please delete Kitsap County’s Clean Water Kitsap Program example. Examples should not be included in this plan as they are site specific.

Response: Ecology disagrees. Kitsap County’s PIC program is an excellent example of a local government addressing a nonpoint pollution problem, and is a model that other local governments may want to follow.

77. Board of Stevens County Commissioners-Forest roads are very important to counties and all activities regarding moving or proposed closure of roads needs to be coordinated with the counties. These roads are used for public safety, fire prevention and response, recreation and many other purposes and these uses need to be preserved or appropriate alternatives provided. Please add language into the plan to state this need.

Response: Comment noted. This issue is beyond the scope of the nonpoint plan.

78. Washington Association of Conservation Districts-Chapter 3/Strategies for Addressing NPS Pollution/Complaint Response and Inspectors/p 36 – This section should acknowledge the distinction between water quality evaluations and complaints received as instruments to direct NPS program responses. Complaints are a different animal – they are singular, largely undocumented, often neighbor against neighbor – and they demand a different, more formal, interaction with NPS programs. Complaints are also less effective in identifying real NPS water quality impacts and problems. ... Same section describes referral (if need be) to conservation districts or other resources for additional (technical) support. “If need be” phrase implies that

Ecology inspection personnel serve as a primary source of technical assistance. WACD believes that this is not the case. What training do Ecology inspectors receive on resource assessment, conservation planning, practice installation, etc.? How do Ecology inspectors decide when they “need be” refer a landowner to another technical services source? How should the NPS Plan outline support for technical assistance referrals via NPS funding?

Response: There is a difference between a pollution problem identified through an Ecology watershed evaluation and a complaint received from a citizen. In the first situation, Ecology has assessed site-specific conditions to determine whether or not a pollution problem exists. In the second situation, a citizen has reported an alleged pollution problem.

In the case of the complaint, Ecology then performs the same site-specific assessment that it uses in its watershed evaluations to determine whether or not the complaint has correctly identified a pollution problem. If Ecology determines that no problem exists, the complaint is closed. If Ecology determines that a pollution problem does exist, then it works with the landowner to address the problem.

We agree with the commenter that performing systematic watershed evaluations is a more logical and cost-effective way to identify and address nonpoint pollution problems. It focuses work in impaired watersheds where there are known problems and utilizes a watershed-based approach. However, citizen complaints have identified significant problems. It is also important that citizens are able to appeal to Ecology about issues that may affect their health, their property, and their quality of life. Downstream users should have an avenue to address water quality problems that are affecting their use of the water.

Ecology’s nonpoint agricultural staff are trained professionals at identifying water quality problems and offering technical assistance to address those problems. Ecology is not just an enforcement agency, but an agency that helps citizens comply with Washington’s laws and regulations. Whenever possible, Ecology works with partners to implement nonpoint best management practices, and many conservation districts have been helpful partners. In fact, the majority of our most successful implementation is the result of Ecology working with conservation districts cooperatively. However, some conservation districts have declined to work with Ecology under any circumstances and others have declined to work with us based on work load restraints. In those cases Ecology must still work with citizens to address pollution problems that have been identified.

79. Washington Association of Conservation Districts-The program described in Washington’s Water Quality Management Plan to Control Nonpoint Sources of Pollution (NPS Plan), with its various program affiliates and partners, is not simply a Department of Ecology (Ecology) program. It is a balance of regulatory and non-regulatory approaches, delivered by multiple agencies and partners. Therefore, any plan developed to achieve such goals and objectives must be developed with input from all participants. As stated by Ecology’s Kelly Susewind, at a recent Washington State Conservation Commission meeting, “No agency or organization can do this (protect natural resources) by themselves.” This certainly applies to preparation of the NPS Plan. The draft was developed apparently without participation by a number of important agencies and partners upon whom Ecology relies. Stronger participation by

everyone would result in a more robust and measurable plan to manage NPS pollution in Washington State. WACD appreciates Ecology's receptiveness, to that end, to inviting conservation districts to submit input prior to the public comment period.

Response: The plan incorporates the work done by various partners. The plan states that it takes partnerships and the work of many agencies to address nonpoint pollution. Further, the plan recognizes the need for multiple tools (both regulatory and non-regulatory). We are committed to coordinating with partners and supporting their work. As the commenter recognizes, we reached out multiple times to both his organization and to conservation districts to receive input on drafting this update. We did the same with other partner agencies and requested input from a wide range of stakeholders. In fact, several agencies helped with writing draft language and reviewing portions of the plan before the draft was released. As outlined in the plan we are committed to engaging with all stakeholders. We will continue with this commitment to coordination as we implement the plan.

80. Washington Association of Conservation Districts- Chapter 3/Strategies for Addressing NPS Pollution/TMDLs/pp 28-30 - Section should include a description of how enforcement will play a role to provide the required "regulatory backstop", and provide reasonable assurance that NPS sources are addressed (as part of TMDL efforts). How does the NPS Plan activate enforcement in TMDL watersheds to fulfill this role?

Response: The nonpoint plan itself does not "activate" enforcement in watersheds in which a TMDL has established load allocations for nonpoint sources. Rather, the plan lays out Ecology's strategy of using technical assistance first to get implementation on the ground, and of moving to enforcement only when all other strategies have failed.

81. Washington Association of Conservation Districts- Chapter 3/Strategies for Addressing NPS Pollution/STI/p 30 – The document should include at least one example of where and how an STI project was funded by section 319 grants and successfully addressed a NPS pollution problem.

Response: We decided to limit the number of examples included in the nonpoint plan. As the commenter suggests, STI has been a successful approach that resulted in the implementation of effective BMPs. This work has benefited greatly from the work of several conservation districts that have partnered and worked closely with Ecology regional staff. More information can be found at <http://www.ecy.wa.gov/programs/wq/tmdl/stistrategy.html>.

82. Washington Association of Conservation Districts- Chapter 3/Strategies for Addressing NPS Pollution/Focus on Implementation/pp 30-31 – Watershed evaluations are noted as being targeted toward agriculture (because no specific statewide regulatory program applies), and are used to prioritize sites for assistance. Here, Ecology relies on visual site conditions (rather than water quality samples) as evidence for identifying NPS pollution problems (i.e., where water quality standards are not being met). The document states that evaluating site conditions (stream bank erosion, riparian plant community viability, adjacent pollution source materials, etc.) "provides a more constant and reliable tool for identifying NPS pollution issues" (i.e., again, where and when water quality standards are not being met). While this approach has definite

advantages in applying technical and financial assistance to apply specific practice(s) to address the observed site condition, how does Ecology then determine – from follow-up visual site conditions – that the practice has worked to achieve a water quality standard? The site condition may have been addressed, but what procedure does Ecology use to determine that the required reasonable assurance has been met? This (like the later referred to Farmed Smart program) appears to be a trade-off. If the site condition determination (not based on water quality samples) is adequate upon which to base a problem identification, then it should be adequate to determine effectiveness of practices employed. Site condition analysis means that Ecology need not go to unreasonable extremes to document a practice's strict compliance with a numeric standard. Site condition (or resource assessment) is, after all, the basis for design of such practices. The NPS Plan appears to have a disconnect between this applied approach for agriculture, targeted in watershed evaluations, and Ecology's monitoring strategy and process used to determine "Ecology-approved BMPs."

Response: Ecology uses site conditions to determine whether a nonpoint discharge has occurred and is likely to occur again in the future and to identify sites with a significant potential to pollute. The use of site conditions to identify existing and potential problems is supported in the scientific literature. A risk document for livestock owners to use to assess risk on their own properties, "Clean Water and Livestock Operations: Assessing Risks to Water Quality," has been developed with the assistance of the director's Agriculture and Livestock Committee. The management practices Ecology uses to address poor site conditions are ones that we know are effective. Once those have been implemented, a landowner or Ecology can review the site conditions and use them to verify that actual discharges have stopped and that situations that create a substantial potential to pollute have been addressed. At that point, Ecology considers that the site is in compliance unless the site conditions deteriorate or subsequent water quality monitoring indicates that there is still a water quality problem. We do not agree that this approach implies a disconnect between the use of monitoring and site conditions. Rather, it uses both approaches to ensure that nonpoint pollution problems are addressed.

83. Washington Association of Conservation Districts- Same section - Suggest edit the document to reference "communicating with all conservation districts"; the term "willing" implies that some districts are unwilling to address NPS pollution by following up through conservation programs, and is unfair and misleading. (Many do wish to avoid entanglement in regulatory proceedings.) Also, suggest add: "...engaging with producer groups when...watersheds, and when planning watershed evaluations." Same section should further reference to committee's requested follow-up outreach to landowners and producer groups upon completion of watershed evaluations, to explain general findings and discuss potential remedies to problems identified.

Response: As the commenter notes, not all conservation districts are willing to work with Ecology in a regulatory context. The recommendation from the Agriculture and Water Quality Advisory Committee was that Ecology should work with those that were willing and not try to force others to work with us if they prefer not to do so. The section specifically lists follow-up outreach as part of the watershed evaluation process.

84. Washington Association of Conservation Districts- General NPS priorities - The NPS Plan does not contain a clear priority listing or ranking of the types of activities (e.g., practice application, effectiveness monitoring, planning) that will be funded by state and federal NPS funding through Ecology. In fact, no priorities are established in the plan. Priorities should be allocated to the various aspects of the plan to describe how NPS funding will be spent. There should be a set of prioritized actions that would support Ecology's "presumption" that water quality standards are or are not being met, and that the plan will perform as advertised. Priorities should outline how Ecology will allocate funding within Ecology and with partners (e.g., in support of partners' activities) to achieve stated goals. What will the NPS funding buy during the course of the NPS Plan?

Response: The nonpoint plan provides a high-level overview of nonpoint pollution problems in Washington and of the efforts on-going in the state to address those problems. It is not the appropriate place to lay out all of Ecology's funding priorities. Those need to be flexible so we can respond to new situations and new issues in a timely way. We utilize a score sheet to rank applications that we receive, and our funding guidelines provide information on what BMPs are eligible for funding. It is not possible to decide now exactly what will be "bought" with grant money during the five years that this plan will be in place. Each year we solicit grant applications during the fall.

*As outlined in the plan, Ecology administers an integrated funding program for projects that improve and protect water quality throughout the state. The program combines grants and loans from state and federal funding sources with technical assistance to program applicants. Ecology manages water quality grant and loan applications under one process. Ecology has one combined funding cycle, one application, one competitive rating process, and one funding offer list. Applicants submit just one application for all of the possible funding sources. In an effort to maximize the use of all available funds, Ecology develops a statewide priority list of proposed water quality projects by evaluating the project proposals based on a set of rating criteria. The principal rating and ranking criteria and relative scoring weights are detailed in the current funding guidelines on the Water Quality Grants and Loans website:
www.ecy.wa.gov/programs/wq/funding/funding.html.*

Again, this funding cycle happens every year.

The nonpoint plan identifies TMDL development and implementation as a key for addressing nonpoint pollution. Those actions identified as necessary to address nonpoint pollution in individual TMDLs will then be a priority to fund in our grant program.

85. Washington Association of Conservation Districts- Chapter 2/Federal Laws/CWA/Section 319/p 17 – The text references Ecology's responsibility to identify and establish priorities for NPS (program). Yet, the NPS Plan contains no hard priorities upon which to determine which activities will receive support and NPS funding.....Same section includes "identification of measures (i.e., systems or practices)" which "the state believes" will be "most effective in achieving and maintaining water quality standards." WACD believes that this reference to the state indicates that the "state agency family" perhaps is the proper place to develop this determination. Where Ecology relies to such a great extent on the work and achievements of

partnering agencies, it is hard to imagine how Ecology would wish to exclude such partners (with the noted exception of NOAA) from a process critical to determining how success will be measured.

Response: Ecology has the responsibility to identify water quality problems in Washington and to determine priorities to address them. It is clear from the description of programs in the plan that addressing nonpoint pollution from agricultural sources, using programs designed to achieve compliance with state water quality laws, must be a priority. Additionally, please see the previous response for information on how we prioritize which activities receive NPS funding.

86. Washington Association of Conservation Districts- Same section notes importance of targeting effectiveness monitoring where BMP implementation has occurred. Yet where is the stated priority for supporting (i.e., funding) this?

Response: Ecology presently has inadequate funding for effectiveness monitoring. We prioritize funding for BMP implementation to address nonpoint sources of pollution. With limited resources we believe that BMP implementation is more important. However, because we prioritize BMP implementation over effectiveness monitoring, it doesn't mean that we do not recognize the importance of effectiveness monitoring. We do and will work with partners to identify opportunities and resources to support effectiveness monitoring.

87. Washington Association of Conservation Districts- Chapter 3/Strategies for Addressing NPS Pollution/Ecology Grant and Loan Programs/p 35 – Here, the NPS Plan lists one funding priority for funds for NPS pollution – “implementation of one or more of a limited set of effective BMPs, and education, monitoring, and watershed planning.” Again, the document does not provide details of how Ecology determines this limited set of effective BMPs, and how Ecology sets “minimum standards for BMPs” in absence of partnering agencies and organizations who establish standards for practices, and upon whom Ecology relies for practice implementation with private landowners.

Response: It is Ecology's responsibility to review and analyze suites of BMPs to determine whether they will be adequate to comply with state water quality law. Ecology reviews BMP effectiveness studies to determine whether or not BMPs will be effective. Although we do rely on partners to help us implement BMPs, we do not agree that choices of BMPs to implement can be made solely by other agencies if the objective is compliance. Ecology has been very clear, for instance, that the use of NRCS field office technical guides and the NRCS planning process does not ensure compliance with state water quality law and the water quality standards. However, we recognize the need to engage partners and stakeholders in any process to develop BMPs. We will look to draw on others' experience and expertise.

88. Washington Association of Conservation Districts- Chapter 3/Strategies for Addressing NPS Pollution/Education and Outreach, Voluntary Programs/p 36 – The NPS Plan should include details about how Ecology will prioritize NPS program funding and support to “maximize participation” and “increase stakeholder adoption of practices”. Again, what details are included about how Ecology will support locally-led voluntary programs that achieve stakeholder adoption of practices? What funding priorities will be applied as part of the plan to

achieve this? How can Ecology help make practices more appealing, more affordable and less restrictive to landowners? Same section includes education and public outreach. Same comments apply. Please also note that one promising role for conservation districts in the stormwater management area is the potential for districts to offer strong local stormwater education programs for permitted jurisdictions and others wishing to educate the public.

Response: It is not the purpose of the nonpoint plan to lay out all of Ecology's nonpoint funding priorities. See response to comment #84.

89. Washington Association of Conservation Districts- Same section – The plan should not tout EPA and Ecology's application (or mandate) of interim NMFS buffer guidance as either a success story or a satisfactory level of coordination or partnership. This was a poor example of partnership across the state and federal agency family (and involving other organizations active in NPS incentive-based programs), and similar action should be avoided in the future. This independent and controversial decision resulted in substantially-reduced levels of landowner participation where this requirement applied, demonstrating the danger of upsetting the balanced system, and leaning too stringently on an unproven regulatory approach to misdirect incentive-based programs.

Response: Ecology disagrees with this comment. The agricultural industry has repeatedly requested that Ecology's actions be based on science. The NMFS buffers are an example of the best available science for the protection of threatened and endangered fish. As such, it is not something that can be negotiated away or negotiated to make it more palatable. It simply says what the fish need. People may not like the message, but it is a scientifically-supported message. Ecology decided that using its funding programs to pay for the NMFS buffers was appropriate because those buffers are necessary to protect fish, which Washington's water quality standards are also designed to do. We have seen no evidence that this decision led to reduced levels of landowner participation. We have been able to expend our grant funds on projects that implement the NMFS buffers.

90. Washington Association of Conservation Districts-The NPS Plan does not contain an outline of the Technical Assistance requirements or capabilities associated with the types of activities Ecology seeks to include to address NPS management issues. Each partner agency and organization (including Ecology) has limits on the capacity of technical assistance offered. The NPS Plan should describe what technical assistance is required and what source it might be expected to come from to address agriculture, forestry, business and residential (stormwater) sources of NPS pollution. The NPS Plan states that Ecology will support these programs, but does not outline efforts to coordinate or to best deliver technical assistance to landowners who must make operational changes to reduce NPS pollution. Will Ecology (a regulatory agency) seek to deliver technical assistance (non-regulatory) services directly to private landowners? Will Ecology work with partners to help target and maximize technical assistance? Will NPS funding be applied to provide needed technical assistance and education?

Response: It is outside the scope of this plan to address all of the technical assistance issues raised in this comment. Ecology does and will continue to offer technical assistance to landowners to help them comply with state water quality law. It is true that there is an array of

technical assistance providers in the state. However, Ecology is the only one that focuses on achieving compliance with state water quality law.

91. Washington Association of Conservation Districts- Same section notes Ecology's support for locally-led programs. But the document does not contain details (e.g., funding priorities) for how Ecology will support locally-led programs, or how Ecology and partners will work together to determine that locally led programs are designed properly to address NPS pollution.

Response: This level of detail is outside the scope of the nonpoint plan. Each locally-led process is different and has different objectives, so it is not possible to state in the plan exactly how Ecology will work with each one.

Our strategy of implementing TMDLs and STI projects will support local projects that are designed to meet water quality standards.

See response to comment #84 for response to the question on funding priorities.

92-Northwest Environmental Advocates-Linked to the comment immediately above, Ecology's education and outreach programs would be most effective if they used clear explanations and photographs of what activities cause nonpoint source pollution. The same material can be used to reach land owners and polluters as can be used for the general public, which should be encouraged to report. Photographs of what constitutes potential to pollute and why would help everybody understand what must change to restore and protect water quality. Everything else is just maintaining the status quo. But why not make this widely available instead of just to people who are purportedly working on the issue?

Response: Ecology agrees that posting photographs on our web site would be a good way to educate people about how to identify pollution problems.

93. Washington Association of Conservation Districts-Chapter 3/Strategies for Addressing NPS Pollution/Other Tools/Water Quality Trading/p 41 – The NPS Plan should include greater detail about how the plan proposes to take advantage of 2014 legislation establishing a study by the WSCC on trading. How will Ecology work, as a member of WSCC, to help develop a workable trading approach to support NPS goals?

Response: Ecology is ready to participate fully in the State Conservation Commission's assignment from the legislature to assess whether or not there are entities willing to participate in water quality trading as purchasers. At this time, Ecology has not been informed that the Commission has begun this work, although the bill required that Ecology concur with any findings made by the Commission.

94. Washington Association of Conservation Districts- Chapter 3/Strategies for Addressing NPS Pollution/Certification and Certainty Programs/p 41 – Ecology's endorsement of the Farmed Smart Certification program highlights an apparent inconsistency in the NPS Plan in how Ecology defines acceptable BMPs. Here, Ecology has endorsed a suite of practices that includes practices that Ecology staff has determined do not meet water quality standards. Yet

this program is offered as a model of acceptability. This reinforces previous comments under “Ecology-approved BMPs”, in that these are both Ecology-approved BMPs and not Ecology-approved BMPs. This suggests an inconsistency in how the department determines what is acceptable and what isn’t. This inconsistency does not facilitate clear understanding and good partnership with agencies and organizations upon which Ecology relies for the NPS Plan.

Response: In working cooperatively with the Direct Seed Association on the Farmed Smart Certification, Ecology’s intent was to help the Association craft a program that could achieve compliance with state water quality law and offer an incentive to landowners who implement it, namely a certification they could use in marketing their product. This work is on-going, and Ecology has not endorsed the program as meeting state water quality law, and may not be able to do so in the end. However, PNDSA has worked cooperatively with us during the process and we anticipate reaching a place that we can support. Rather than not facilitating good results, we believe that our experience with PNDSA and the other partners involved (including conservation districts) has been beneficial and demonstrated a willingness of all sides to listen, be flexible and work together to put together a program that we can all support and which gets good conservation on the ground. It is Ecology’s intention to work with any group that comes forward with the intention of trying to put together a program that could achieve compliance with state law.

95. Western Environmental Law Center- THE AGRICULTURAL POLLUTION PROBLEM: THE FAILURE OF THE DAIRY WASTE [NUTRIENT] MANAGEMENT PROGRAM

We agree that agricultural activities significantly contribute pollution into the waters of this state, from both point and nonpoint agricultural sources. Ecology’s plan significantly mischaracterizes the Dairy Nutrient Management Program, a largely unsuccessful program that has not only allowed, but actively facilitated water pollution by industrial dairy operations in the state of Washington. One need only look at the data to gauge the ineffectiveness of this program. In 1998, the Washington Legislature passed the Dairy Nutrient Management Act (“DNMA”): to establish a clear and understandable process that provides for the proper and effective management of dairy nutrients that affect the quality of surface or ground waters in the state of Washington It is also the intent of this chapter to establish an inspection and technical assistance program for dairy farms to address the discharge of pollution to surface and ground waters of the state that will lead to water quality compliance by the industry.¹⁵

While the DNMA retained Ecology’s authority to designate any dairy AFO as a CAFO “upon determining that it is a significant contributor of pollution to the surface or ground waters of the state,”¹⁶ the Legislature amended the Dairy Nutrient Management Act in 2003 and transferred the dairy water quality inspection program to the Washington State Department of Agriculture. The inspections are intended to find evidence of violations, to “identify corrective actions for actual or imminent discharges that violate or could violate the state’s water quality standards; [m]onitor the development and implementation of dairy nutrient management plans;” and to provide “technical assistance” to dairies in need.¹⁸ The Legislature directed WSDA to prioritize inspecting those dairy farms based upon its “proximity to impaired waters of the state; and proximity to all other waters of the state.” The Act requires all dairy farms in the state to prepare a Nutrient Management Plan, which must be updated each and every time it “fails to prevent the

discharge of pollutants to waters of the state.” The Conservation Commission was directed to “develop a document clearly describing the elements that a dairy nutrient management plan must contain to gain local conservation district approval.”

Even though in 2003 the WA Dairy Nutrient Management Act transferred to WSDA Ecology’s inspection authority over dairy farms for water quality violations, a duty Ecology had when EPA approved the state’s NPDES program, there has been no federal approval of any delegation of NPDES authority to the Washington Department of Agriculture.²² At this time, Ecology retains the exclusive state authority and obligation to issue the WA CAFO General/State Discharge Permit (which should be required for all CAFOs that are discharging into waters of the state), but WSDA conducts the inspections and makes enforcement recommendations.

Perhaps the greatest illustration of the failure of the Dairy Nutrient Management Program to protect water quality happened on January 14, 2015, when Judge Rice in the Eastern District of Washington issued a landmark opinion finding that a large CAFO in Eastern Washington (Cow Palace Dairy) is liable for groundwater contamination under the Resource Conservation and Recovery Act (“RCRA”), “a comprehensive statute that governs the treatment, storage, and disposal of solid and hazardous waste” Specifically, “this Court finds no genuine issue of material fact that Defendants’ application, storage, and management of manure at Cow Palace Dairy violated RCRA’s substantial and imminent endangerment and open dumping provisions and that all Defendants are responsible under RCRA.”

The Court recognized that “although the parties dispute the magnitude of leakage, the fact that the lagoons leak is not genuinely in dispute.” *Id.* at 27; 29 (“Although Defendants dispute the rate of seepage and nitrate accumulation around and beneath the lagoons, the parties do not genuinely dispute that both events are occurring.”); 29 (Defendants’ own expert testified “that he has never seen a study showing ‘there is no seepage from a lagoon.’”); 94 (“Plaintiffs have presented indisputable evidence that such leaking is leading to dangerous accumulations of nitrates in the deep soil between the lagoons that eventually will reach the underlying aquifer there can be no dispute that the lagoons are leaking and thus allowing nitrate to accumulate in the soil at rates possibly higher than three million gallons per year.”). The Court also acknowledged “even assuming the lagoons were constructed pursuant to NRCS standards, these standards specifically allow for permeability and thus, the lagoons are designed to leak.” Not only are the lagoons leaking, but “potentially at the rate of millions of gallons annually” The Court unequivocally held that “[Cow Palace Dairy’s] activities are contributing to the contamination of the groundwater” and thus there was clear evidence that the Dairy was discharging to the waters of this state. The Court found “there is no triable issue that when Defendants excessively over-apply manure to their agricultural fields – application that is untethered to the DNMP and made without regard to the fertilization needs of their crops – they are discarding the manure and thus transforming it to a solid waste under RCRA,” let alone discharging pollutants into the waters of the state.²⁸ The Court went on to find that the nitrate from the manure generated by the “Dairy’s operations are contributing to the high nitrate levels in the groundwater.”²⁹ Notably, Cow Palace Dairy is not and was not covered by the CAFO General Permit in spite of the overwhelming evidence that it is actively discharging into and polluting the groundwater in the Lower Yakima Valley. Nor was Cow Palace required to

implement any kind of BMPs or AKART that would have served to prevent this massive, illegal, and unacceptable groundwater contamination.

Judge Rice's ruling in the CARE, et al v. Cow Palace, LLC, et al. case not only confirms the widespread nature of discharges coming from CAFOs in Washington, but it also serves as an illustration of regulatory failure of the Dairy Nutrient Management Program to address the rampant pollution caused by industrial dairies. The Washington Department of Agriculture's Dairy Nutrient Management Program was charged "to address the discharge of pollution to surface and ground waters of the state [to] lead to water quality compliance by the industry."

On June 21, 2007, WSDA completed an inspection report regarding the same Cow Palace Dairy that caused and contributed to the significant groundwater contamination described in Judge Rice's decision. In that report, the WSDA inspector said: "Nice clean well run facility. Collection and storage is in great shape." Amazingly, the inspector went on to say: "Thanks for your attention to Nutrients!"³³ Needless to say, the citizens around the facility who have had to drink nitrate-contaminated drinking water for years are not so grateful. There are hundreds of similarly designed and constructed manure lagoons in close proximity to the impaired surface and ground waters that feed Puget Sound: ((picture)... Even though these manure lagoons are directly discharging vast amounts of pollutants into the waters of the state, virtually none of the facilities that constructed and manage the lagoons are required to have discharge permits. This is a problem that Ecology needs to correct.

Another example of the failure of the Dairy Nutrient Management Program came in December 2014 when the EPA issued an Update to its Administrative Order on Consent ("AOC") with several dairies, including Cow Palace, in the Lower Yakima Valley. This update "provide[s] further support for th[e] conclusion" "that the Dairies are a source of the nitrate measured in downgradient monitoring wells and residential drinking water wells." The EPA found that "[c]omparison of the nitrate levels in the upgradient monitoring wells with those along the downgradient edge of the Dairies properties indicate that there is heavy nitrate loading of the drinking water aquifer occurring within the Dairies' footprint."³⁶ The EPA recognized that "[i]t is unlikely that the effect of these Dairies on the groundwater is unique in the Lower Yakima Valley. EPA suspects that there are other dairies that similarly contribute significant amounts of nitrate to groundwater."³⁷ That is correct as illustrated by the data collected in the Sumas Blaine Aquifer in Whatcom County. Again, none of these dairy CAFOs in the Lower

Yakima Valley (or those in Whatcom County for that matter), that EPA has unequivocally found to be discharging and polluting the groundwater of this state, are covered by the CAFO General Permit and all were "regulated" by the Dairy Nutrient Management Program. In July 2014, Ecology issued a new report that "presents three spreadsheet computer models that can be used to quantitatively predict the impact of residual or excess farm-field soil nitrate on the concentration of nitrate in underlying shallow aquifer." This report similarly recognizes that "[g]roundwater quality characterization studies have identified significant regional-scale problems with nitrate contamination across Washington State. This contamination is often found in close association with nonpoint applications of nitrogen-bearing fertilizers or animal manure to agricultural lands. Due to the risk that nitrate poses to state drinking water supplies, determining the proper balance between nutrient application rates, crop uptake and nitrate loss to

groundwater is a growing priority in Washington.”³⁹ If that is the case, Ecology’s Nonpoint Source Pollution Prevention Plan must identify specific regulatory strategies to mandate appropriate nutrient application rates that can be enforced. In light of this information, Ecology needs to acknowledge that the Dairy Nutrient Management Program is not a regulatory program that is working to address pollution into the waters of the state and develop alternative strategies to address nonpoint source pollution from agricultural sources. On page 26 of the Plan it says, “Ecology will continue to support the implementation of the following key regulatory programs . . . Dairy Nutrient Management Program” Please don’t. Ecology’s support of this failed program will only serve to exacerbate the massive water pollution caused by industrial dairy operations. Starting on page 50 of the Plan, you identify “challenges and gaps in the current” Dairy Nutrient Management Program. We are befuddled by your statement that the “[r]egulatory agency does not control specific program requirements so can’t directly respond to evolving water quality or industry issues.” Plan at p. 50. The 2003 Dairy Nutrient Management Act amendments did not repeal any of the provisions of RCW 90.48 or any of Ecology’s statutory enforcement authority to prevent potential and actual water pollution. While the Conservation Commission is charged with establishing the minimum elements for a Dairy Nutrient Management Plan based upon NRCS standards, these plans still need to comply with state water quality laws and Ecology must take enforcement actions against those dairies that are polluting state waters, whether or not the facility is complying with its dairy nutrient management plan.

What has Ecology done to ensure that Nutrient Management Plans comply with water quality standards? Again, nothing in the Dairy Nutrient Management Act takes away Ecology’s authority to enforce water quality laws. If WSDA chooses to thwart the intent of the legislature and not take action to prevent pollution from industrial dairies, then Ecology needs to step in and enforce the water quality laws. Fortunately there is an easy solution to all of the “challenges and gaps” you have identified in the current Dairy Nutrient Management Program: all medium and large Dairy CAFOs must be required to be covered by the new WA CAFO General Permit that Ecology is currently developing. The CWA unequivocally states that “agricultural waste discharged into water” is a pollutant. A “point source” is “any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.” EPA regulations make it clear that “[o]nce an animal feeding operation is defined or designated as a CAFO for at least one type of animal, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.”⁴² Therefore, in order to trigger the permit requirement, the operation must first qualify as a CAFO facility. A facility is “any NPDES ‘point source’ or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.”

The EPA currently defines a CAFO as “an [animal feeding operation] AFO that is defined as a Large CAFO or as a Medium CAFO by the terms of this paragraph [based upon the type and number of animals confined], or that is designated as a CAFO in accordance with paragraph (c) of this section.”⁴⁴ Ecology, as the state agency with delegated authority from the EPA to issue NPDES permits to CAFOs, has the authority to “designate any AFO as a CAFO upon

determining that it is a significant contributor of pollutants to waters of the United States.” Even though Ecology has delegated authority, the Regional Administrator of the EPA retains its authority to make CAFO designations, but only if he/she determines “that one or more pollutants in the AFO’s discharge contributes to an impairment in a downstream or adjacent State or Indian country water that is impaired for that pollutant.”

In making a CAFO designation, after an on-site inspection is conducted, Ecology or the Regional Administrator considers the following factors:

- (i) The size of the AFO and the amount of wastes reaching waters of the United States;
- (ii) The location of the AFO relative to waters of the United States;
- (iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;
- (iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste waters into waters of the United States; and
- (v) Other relevant factors

In order to trigger EPA’s or Ecology’s authority to designate an AFO as a CAFO, there must be an actual discharge of pollutants into waters of the state or the facility must be an “otherwise significant contributor of pollution.” The Clean Water Act defines “discharge of pollutants” as “any addition of any pollutant to navigable waters by any point source.” The EPA’s definition of a “discharge” includes “surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.” EPA has specified what kind of CAFO-specific discharges are subject to the NPDES permit requirement:

The discharge of manure, litter or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C. § 1362(14).⁵²

There have been countless discharges from medium and large dairy CAFOs in the state of Washington, yet none of these facilities have been required to get coverage under the WA CAFO General Permit.⁵³ This is a significant problem that can and must be addressed by Ecology and will serve to resolve the “challenges and gaps” that currently exist in the Dairy Nutrient Management Program.

On page 76 of the Plan, it states that “Ecology will generally defer to the implementation of those [existing regulatory] programs, and not develop independent guidance.” The Dairy

Nutrient Management Programs is one of the “regulatory programs” to which Ecology will give deference. This is a mistake. As outlined in detail above, this program has proved to be an example of regulatory failure and thus deferring to this program will not lead to compliance with Ecology’s Clean Water Act obligations. Only approximately 1% of CAFOs in the state are covered by a discharge permit, even though there have been hundreds of documented discharges from these facilities over the last several years. Moreover, the vast majority of these facilities store their manure waste in unlined manure lagoons that are known to leak vast amounts of waste into the groundwater and hydrologically connected surface water. It is preposterous for Ecology to defer to a program that allows this continuous discharge of manure into the waters of the state.

Response: Comments noted. Ecology agrees that there is ample evidence that manure lagoons leak and that there are continuing problems with facilities that should be designated as CAFOs. Ecology’s Water Quality Program is presently developing an updated CAFO general permit. Many of your comments relate to that general permit. We have forwarded these comments to the staff working on that permit.

96. Western Environmental Law Center- Fortunately there is an easy solution to all of the “challenges and gaps” you have identified in the current Dairy Nutrient Management Program: all medium and large Dairy CAFOs must be required to be covered by the new WA CAFO General Permit that Ecology is currently developing. The CWA unequivocally states that “agricultural waste discharged into water” is a pollutant.⁴⁰ A “point source” is “any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.” EPA regulations make it clear that “[o]nce an animal feeding operation is defined or designated as a CAFO for at least one type of animal, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.” Therefore, in order to trigger the permit requirement, the operation must first qualify as a CAFO facility. A facility is “any NPDES ‘point source’ or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.”

The EPA currently defines a CAFO as “an [animal feeding operation] AFO that is defined as a Large CAFO or as a Medium CAFO by the terms of this paragraph [based upon the type and number of animals confined], or that is designated as a CAFO in accordance with paragraph (c) of this section.”⁴⁴ Ecology, as the state agency with delegated authority from the EPA to issue NPDES permits to CAFOs, has the authority to “designate any AFO as a CAFO upon determining that it is a significant contributor of pollutants to waters of the United States.” Even though Ecology has delegated authority, the Regional Administrator of the EPA retains its authority to make CAFO designations, but only if he/she determines “that one or more pollutants in the AFO’s discharge contributes to an impairment in a downstream or adjacent State or Indian country water that is impaired for that pollutant.”

In making a CAFO designation, after an on-site inspection is conducted, Ecology or the Regional Administrator considers the following factors:

- (i) The size of the AFO and the amount of wastes reaching waters of the United States;
- (ii) The location of the AFO relative to waters of the United States;
- (iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;
- (iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste waters into waters of the United States; and
- (v) Other relevant factors.

In order to trigger EPA's or Ecology's authority to designate an AFO as a CAFO, there must be an actual discharge of pollutants into waters of the state or the facility must be an "otherwise significant contributor[] of pollution."⁴⁸ The Clean Water Act defines "discharge of pollutants" as "any addition of any pollutant to navigable waters by any point source."⁴⁹ The EPA's definition of a "discharge" includes "surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works." EPA has specified what kind of CAFO-specific discharges are subject to the NPDES permit requirement:

The discharge of manure, litter or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C. § 1362(14).

There have been countless discharges from medium and large dairy CAFOs in the state of Washington, yet none of these facilities have been required to get coverage under the WA CAFO General Permit.⁵³ This is a significant problem that can and must be addressed by Ecology and will serve to resolve the "challenges and gaps" that currently exist in the Dairy Nutrient Management Program.

On page 76 of the Plan, it states that "Ecology will generally defer to the implementation of those [existing regulatory] programs, and not develop independent guidance." The Dairy Nutrient Management Programs is one of the "regulatory programs" to which Ecology will give deference. This is a mistake. As outlined in detail above, this program has proved to be an example of regulatory failure and thus deferring to this program will not lead to compliance with 48 RCW 90.64.005.

Ecology's Clean Water Act obligations. Only approximately 1% of CAFOs in the state are covered by a discharge permit, even though there have been hundreds of documented discharges from these facilities over the last several years. Moreover, the vast majority of these facilities

store their manure waste in unlined manure lagoons that are known to leak vast amounts of waste into the groundwater and hydrologically connected surface water. It is preposterous for Ecology to defer to a program that allows this continuous discharge of manure into the waters of the state.

Response: Comments noted. Many of these comments relate to the CAFO permit. We have forwarded these comments to the staff working on that permit.

97. Lummi Nation- Chapter 3: Strategies for Addressing Non point Source Pollution

Overall Comment: As demonstrated by the non point source management actions that have occurred in the Nooksack River watershed since the mid-1990s, the approach taken by Ecology to address polluters has varied over time. In the early and mid-1990s there was essentially no compliance enforcement presence by Ecology in the Nooksack River watershed and violations of the state water code for both water diversions and water quality were rampant and widespread. There was no enforcement at all to prevent or stop individuals from diverting water without a water right and the sole Ecology water quality inspector was based out of Bellevue, Washington and only responded to water quality violations when they were reported by others- that is, on a complaint basis. The result of this lack of a credible enforcement program for hydromodifications and water quality overall is reflected in the continuing widespread illegal water use in the watershed and in the water quality over the Lummi shellfish growing area in Portage Bay. As shown in Figure 1, the National Shellfish Sanitation Program (NSSP) standards were not even close to being met in the Portage Bay shellfish growing area during the early and mid-1990s period at several of the Washington Department of Health water quality sampling sites¹ Pursuant to the Shellfish Consent Decree (Order Regarding Shellfish Sanitation, United States v. Washington [Shellfish], Civil Number 9213, Subproceeding 89-3, Western District of Washington, 1994), the Washington DOH in consultation with the Lummi Nation is responsible to the federal Food and Drug Administration to ensure that the National Shellfish Sanitation Program (NSSP) standards for certification of shellfish growing waters are met for tribal harvest areas including on-Reservation areas.

Following the voluntary closure of these shellfish beds by the Lummi Nation in November 1996 and the subsequent action by the EPA starting in January 1997 to conduct compliance enforcement inspections of dairies to "level the economic playing field" for the dairy industry, there was a substantial improvement in water quality. In 1998 the Dairy Nutrient Management Act was passed and Ecology assigned two NPS pollution inspectors to the Bellingham Field Office. Although there were still exceedences of the NSSP water quality standard, the overall water quality improvement trend that resulted from having a credible compliance enforcement program implemented by the EPA and Ecology is obvious in Figure 1. When the dairy element of the Ecology Livestock Program was transferred to the Washington State Department of Agriculture (WSDA) in July 2003, and there was a lack of compliance enforcement presence because Ecology staff stopped conducting inspections and the WSDA needed time to staff and train for their new responsibilities, there was a noticeable degradation of water quality. Once the WSDA program stabilized, water quality trends again improved.

As shown in Figure 1, the improvements in water quality again reversed starting in 2007 and the trend continued through 2014, which again led to the closure of Lummi shellfish growing areas in Portage Bay. The exact causes of this renewed water quality degradation are not fully

understood but some have speculated that the agriculture industry became aware of a state policy position that "the state lacks the enforcement authority and penalties for dairies that do not get plans updated or properly implement their plans, which limits water quality enforcement effectiveness" (see Page 50 of the May 2015 Draft NPS Pollution Management Plan).

Washington State apparently adopted this policy despite a July 14, 2004 Assistant Attorney General opinion that Ecology has the authority to prevent NPS pollution and to require implementation of specific management measures to address NPS pollution (see Appendix B of the May 2015 Draft NPS Pollution Management Plan). It appears that Ecology has the authority but has chosen not to exercise this authority despite the impacts of pollution on downstream users of the public water resources.

The marked and widespread downward trend in Nooksack River water quality, in particular fecal coliform bacteria levels, that has occurred over the last 5-10 years clearly shows that the current water quality management approach adopted by Ecology is not effective. One result of the current ineffective NPS pollution management practices of Ecology are closed shellfish growing areas on the Lummi Reservation. These shellfish growing areas have been relied on since time immemorial by Lummi tribal members for commercial, ceremonial, and subsistence purposes. This closure has a substantial economic impact on individual tribal members that make their living and support their families through the harvesting of shellfish. The closure also has an unquantifiable but substantial impact on the Lummi Schelangen ("way of life"). It is hard not to argue that the actions and/or inactions of parties in the Nooksack River watershed to control non point source pollution have contributed to this closure.

As described on Page 35 of the May 2015 Draft NPS Pollution Management Plan, the current approach adopted by Ecology to address reported non point source pollution problems is to provide technical assistance, education, referrals [to other agencies for technical assistance], or in limited circumstances, escalating enforcement. In essence, rather than enforce long-standing existing laws that prohibit pollution of water resources and that are intended to protect downstream beneficial uses and users, as a first line of response Ecology offers assistance and education and only if a corrective action does not occur after repeated attempts to gain compliance is an enforcement action initiated. This approach is backwards, and as the degradation of the Nooksack River has demonstrated, is both not effective and harms people downstream.

Ecology should learn how to enforce long-standing existing state laws from professional law enforcement personnel within state government (e.g., Washington State Patrol) and model their approach after the proven methods developed by these other professionals. Depending on the severity of the violation, the overall approach taken by professional law enforcement agencies is to issue a civil penalty first. Typically the offender, at least for first time violators, is then provided an opportunity to reduce or eliminate the penalty. If the offender takes timely corrective action and participates in an education program or obtains technical assistance within an established timeline, the civil penalty is reduced or eliminated. If the offender does not take corrective action in a timely manner or does not participate in an education program or does not pay the fine, the penalties escalate. Repeat offenders receive higher penalties.

Imagine what would happen on our roadways if there were not a credible compliance enforcement program for speeding and other "rules of the road". If the Washington State Patrol and local police departments made a choice to not exercise their authority to enforce existing state laws there would likely be substantially more people driving faster than posted speed limits, driving without seatbelts, talking on their cell phones and likely a corresponding substantial increase in the number of injuries to life and personal property. An analogous situation currently exists with nonpoint source pollution control in Washington. Ecology, the agency with the authority to enforce existing state laws related to non point source pollution (see Appendix B of the Plan) has apparently chosen not to exercise this authority. As a result, BMPs for agriculture have not been adopted and required to be effectively implemented, water quality standards are frequently exceeded, and downstream users of the public resource are unable to enjoy the beneficial uses that the water quality standards are intended to protect.

In summary, Ecology appears to have the authority to prevent NPS pollution and to require implementation of specific management measures to address NPS pollution (see Appendix B of the Plan) but apparently has chosen not to exercise this authority. As a consequence of this choice, polluters continue to pollute and downstream property owners and/or users of the water resources continue to have their property rights, and in some cases federally protected treaty rights, violated. It is not clear how this approach can be interpreted as responsible, fair, or protective of the general public health and welfare. Ecology should realign the current approach to polluters so that it is modeled after the enforcement approach taken by professional law enforcement personnel. Polluters should be issued a monetary fine first, provided an opportunity to take corrective actions and participate in an education program, and then the fine reduced or eliminated if effective corrective action is taken in a timely manner. If no corrective actions are taken, the fine should increase until it becomes enough of an economic incentive for the polluter to take corrective action and to avoid future penalties.

Response: Comments noted.

98. Washington State Conservation Commission- The state Nonpoint Program plan is a state program encompassing all state and local activities. The revision of the state Nonpoint Plan presents an opportunity to create a true comprehensive state nonpoint program plan. Such a state program goes beyond just the activities at Ecology. Several state, local, and tribal governments engage in activities addressing nonpoint water quality inputs. Although these programs and activities are captured in the draft Nonpoint Plan, they are not described or linked together to show how these various programs will collaboratively address non point water quality.

Ecology has used this approach recently in the 2015 State Wetlands Program Plan. We suggest the Wetlands Plan be reviewed to see how it links various wetlands programs and activities, and identifies how these programs will improve wetland conditions in the state.

WSCC Comments on Draft State Water Quality Nonpoint Program Plan

Recommendation #1: The draft Non point Plan be re-crafted to be a more comprehensive description of a "state program" by not only describing the activities of all entities, but also showing how these activities will address specific nonpoint concerns, and how these programs

are connected or will work together to address nonpoint pollution concerns. This approach is supported by both the federal Clean Water Act and the various EPA guidance documents. The EPA document "Section 319 Program Guidance: Key Components of an Effective State Nonpoint Source Management Program-November 2012" is cited by Ecology as a guide for developing the draft Nonpoint Plan.¹ In the guidance EPA distinguishes between a state nonpoint "program" and the state "lead agency". This guidance document describes the requirement to update the state nonpoint source management program every 5 years. This requirement is noted by Ecology in their briefings on the draft Nonpoint Plan.² As such, the draft Nonpoint Plan should focus on an overall state program and how the various pieces of the state program, implemented by a variety of federal, state, local, and tribal entities will work together for water quality results.

The EPA guidance document identifies one of the key elements of a nonpoint management program as: "The state uses a combination of statewide programs and on-the-ground projects to achieve water quality benefits; efforts are well-integrated with other relevant state and federal programs." The guidance provides the following description for this key element:

The state has the flexibility to design its NPS management program in a manner that is best suited to achieve and maintain water quality standards. The state may achieve water quality results through a combination of watershed approaches and statewide programs, including regulatory authorities, as appropriate. EPA Section 319 Program Guidance, November 2012, pg 2 [emphasis added].

This underlined phrase indicates a variety of approaches may be used. The important factor is the state program plan describes how the various programs and activities will address aspects of the nonpoint pollution issues.

Response: We agree with the commenter that programs should be better connected, work together to address nonpoint pollution, meet the water quality standards, and be committed to working with all partners, including the SCC, to reach that goal. When programs are better aligned and connected, we will reflect that in updates to the plan.

However, it is impossible to write a plan so comprehensive that it lists every action being taken by every group and agency to address some aspect of nonpoint pollution. This is why we rely on strategies like implementing TMDLs, and STI projects in the nonpoint plan. TMDLs and STI projects help local watershed clean-up efforts make the connections that work for them.

Second, and more importantly, the nonpoint plan does not link all the activities and programs in the state to show that they are working collaboratively to address nonpoint pollution problems because they are largely not doing so. As an example, since this comment came from the state Conservation Commission (WSCC), Ecology has been clear that we are concerned that some programs administered by the WSCC are not designed to meet the requirements of state water quality law. There have been a series of talks between our two agencies about how to work together to achieve compliance and better coordinate our programs. These talks have not been successful in producing an agreement between our agencies. As long as the objectives of the agencies funding conservation work are not aligned to achieve compliance, we will have difficulty creating and implementing a comprehensive and cooperative nonpoint program.

Again, we are committed to working with partners, including the WSCC, to better connect our programs and work together to address nonpoint pollution and meet the water quality standards. Better aligned programs that are designed to meet the water quality standards would be a significant step forward for our state.

99. Washington State Conservation Commission- Overall the draft plan could describe how various entities and programs can be used together to achieve Washington's non point water quality goals. Chapter 3 describes strategies to address nonpoint source pollution, but the chapter includes a catalogue of programs rather than a clear description of how the programs will be implemented in coordination with each other to address specific nonpoint water quality concerns.

Recommendation #4: Chapter 3 be redrafted consistent with describing how the various nonpoint programs and activities will work together to address the specific nonpoint pollution inputs identified in Chapter 1 (with changes to Chapter 1 as recommended in Recommendation #2 above).

Merely listing the various nonpoint programs and activities is a first step in the crafting of a state Nonpoint Plan. The next step is to describe how these programs and activities will be implemented to address the nonpoint pollution sources. This draft Nonpoint Plan presents an opportunity to better connect the various federal, state, local, and tribal activities and describe how they will "move the dials" to improve state water quality.

Response: See response to previous question.

100. Washington Dairy Federation- Thank you for the opportunity to comment on the draft water quality management plan and concepts that are important to dairy farmers in our state. As you note in your related documents, dairy farmers are likely the most regulated sector of agriculture in Washington State. The Dairy Nutrient Management Program is described in your document and below.

Dairy Nutrient Management Program (DNMP)

The Dairy Nutrient Management Act is administered by the Washington State Department of Agriculture (WSDA). Chapter 90.64 RCW requires a grade "A" li-censed dairies to:

- Register with the DNMP:
- Develop a nutrient management plan (NMP), the NMP must be approved within six months of licensing, and certified –Tith in twenty-four months of licensing by their local conservation district:
- Prevent discharges to waters of the state and
- Maintain land applications records demonstrating agronomic use of all nutrients.

The nutrient management plan (NMP) development process is completed by the dairy producer, in consultation with a local conservation district, the Natural Resources Conservation Service (NRCS), or a private planner. The NMP process includes an assessment of animal and nutrient inventory, surface and ground water risk(s), nutrient, and process waste water collection, conveyance and storage needs, crop production history, and land application acreage needs. The NMP process identifies the producer's goals, resource risk(s), and the selection of best management practices to be implemented, to protect the resource. DNMP specifies requirements of recordkeeping, and a penalty matrix for violations, in Chapter 16-611 WAC. The program is managed in conformance with a Memorandum of Understanding between WSDA and Ecology. Chapter 90.64 RCW requires DNMP to implement an inspection program to monitor dairy operations for NMP implementation, recordkeeping violations, and water quality violations (actual or potential). In addition, Chapter 43.05 RCW (Technical Assistance) requires DNMP to identify dairies that could benefit from additional technical assistance. DNMP inspection program also includes non-dairy facilities covered under a NPDES CAFO permit.

A very high percentage of dairy farms are found compliant with the DNMP through regular inspections by the staff at the program. When additional resources are offered, such as recent workshops on nutrient application rates and weather, dairy farmers participate.

Many farms hire agronomists to assist them with farm plans, soil and water samples, and nutrient management plans that allow them to make the most beneficial use of the dairy nutrients.

Our dairy farmers are proud of their work, take great care with their resources, and are good stewards of the environment shared by their farms, their neighbors and their families.

Many producers have invested hundreds of thousands of dollars into technology that will improve the management of dairy nutrients.

In almost all cases, it is a combination of incentives, market forces, and regulations that make for a good and balanced system that protects our farms and our environment.

In light of that, the Washington State Dairy Federation offers the following general framework as Ecology contemplates criteria and mandates for a new permit:

1. The permit requirements must be based on sound science.
 - a. You have undoubtedly received recommendations that the permit be based upon a recent federal court case. Related to that case, some of the plaintiffs said at unrelated public meetings that they want all dairy farms to be gone from their county. That motivation is based on emotion, not science. Environmental issues in that particular area predated the presence of dairy farms. It is important that any requirements be based upon correlations between an activity and a result of that activity. Simply blaming a sector of agriculture for a problem, because you can see and smell the cows, is not a scientific process.
2. The permit process must be affordable, in terms of finances and time to participate.

a. If the permit requires conditions similar to those negotiated to settle the recent lawsuit, many farms will simply go out of business. b. In a recent survey of dairy producers, more than 47% of producers said they would go out of business if new regulatory costs exceeded \$250 per cow. At \$500 per cow, 77% said they would be out of business, and almost 99% said they would be out of business if costs reached \$1000 per cow.

c. Many individual comments were submitted with the surveys. We will share these, when appropriate, at a later date. Survey participants represented large and small operations, conventional & organic, eastern and western Washington counties.

d. Extreme regulations and costs will devastate the dairy industry in our state. Given that dairy is the most-regulated sector of agriculture, it stands to reason that even in the best-case scenarios is that dairy would be replaced with less-regulated agriculture. Often, when a farm of any kind goes out of business, the result is sprawl of large-lot estates with septic systems. Local governments also experience greater costs to serve and protect neighborhoods and homes in this kind of sprawl.

3. The permit must demonstrate value.

a. The first question that should be asked is "will new permit requirements accomplish anything not already accomplished by existing DNMP regulations?"

b. The second question relates to procedural values that the permit might offer. If an operator is compliant with both the DNMP and new permit, can he/she still be sued? If the answer is yes, then producers want to know why? If the DNMP and/or permit is the remedy to an alleged violation, then why would we leave our dairy producers subject to the costs of an unfounded or duplicative permit? The proposed plan is lengthy and has the capacity to draw very lengthy and detailed comments. We do not believe point-by-point comments and debates are helpful to you. Instead, we offer the framework comments above, anticipating further conversation as we all work to ensure that Washington State has both a healthy agricultural economy and healthy environment.

Response: Comments noted. These comments relate to the CAFO permit presently being developed. We have forwarded them to the staff working on the CAFO permit.

101. Snohomish County Department of Public Works- Chapter 2. Regulatory Framework: Pg. 9. – 11. On-Site Sewage Systems – Currently, there is a regulatory gap in the appropriate design, treatment and maintenance of dog kennel waste discharged to onsite septic systems. In Snohomish County there are over 300 licensed dog kennels, a great percentage of which discharge chemical cleaning agents to onsite septic systems. Many of these systems are in rural areas where groundwater is the dominant source of drinking water. Ecology's Eastern Regional office has a protocol for dog kennel waste, which includes design approval and permitting from Ecology, which could be used to implement similar requirements statewide.

Response: Comment noted. This is a good idea. We will look to work on this gap and review the protocol for dog kennel waste.

102. Snohomish County Department of Public Works-Chapter 3. Strategies for Addressing Non-point: The inclusion of presumptive programmatic or structural BMPs such as vegetation maintenance around stormwater facilities to reduce fecal coliform in Total Maximum Daily Load Plans (TMDLs) and Municipal NPDES Permits results in limited resources spent on efforts with an un-proven certainty of success. This appears in conflict with the aim of the NPP. Ecology is encouraged to engage interested parties, including TMDL and Municipal stormwater permit writers in an effort to research, study and approve a set of scientifically proven programmatic and structural stormwater BMPs from which Municipal stormwater permittees can choose from based upon local knowledge.

Response: The BMPs that Ecology develops for use to comply with municipal stormwater permits are developed through a process that combines scientific analysis with stakeholder input. Snohomish County is specifically mentioned in the latest version of the Stormwater Management Manual for Western Washington as having contributed comments and expertise to its development.

103. Don Russell- The word “Control” implies that the Department of Ecology (DOE) will exercise restraint or direction over, i.e., regulate, nonpoint sources of pollution. The Clean Water Act prescribed TMDL approach to addressing surface water pollution sources does not give DOE authority to regulate nonpoint sources of pollution. The first sentence of the Executive Summary section states that the document outlines Washington State’s approach to addressing water quality impacts from nonpoint sources (NPS) of pollution. This would be a more appropriate title for this document.

Response: Comment noted. As outlined in the plan we utilize a process that relies on education and outreach, technical assistance, and financial assistance before we escalate to enforcement.

104. Don Russell- One has only to examine Ecology’s management of the Clarks Creek TMDL study and water quality improvement implementation plan to realize that this is an unfulfilled charter. The US GOA has declared that the TMDL approach to restoring nonpoint polluted waters of the United States has not been effective. Furthermore that which has impaired Clarks Creek’s water quality and salmon habitat is ongoing iron (from groundwater) and alkalinity (from surface water runoff) pollution. In spite of the existence of US EPA water quality guidelines for iron and alkalinity the State of Washington’s Water Quality Standards do not list either iron or alkalinity as pollutants of concern in regard to protecting aquatic life forms (in particular salmon). Adaptive Management has not been evident in Ecology’s approach to the development of a Clarks Creek TMDL water quality and salmon enhancement action plan. The assumption (hypothesis) that the impaired water quality and salmon habitat condition of Clarks Creek was due to surface water runoff induced sedimentation that occurs in the upper steep gradient reach of Clarks Creek was never validated by examination of the chemical composition of the silt that blankets the alluvial plain reach of Clarks Creek. Had such an analysis been made it would have indicated that the sedimentation of the alluvial plain reach of Clarks Creek was due to the impact of iron laden groundwater commingled with low alkalinity storm water runoff discharges from the City of Puyallup’s groundwater inundated storm water drainage system, which includes Meeker Ditch. Validation of assumptions (hypotheses) is a fundamental tenet of Adaptive Management, as is the collaborative involvement of all stakeholders. Whereas the

Puget Sound Partnership has emphasized the prevention of pollution from urban stormwater runoff with its legacy of sedimented salmon spawning stream beds and restore salmon habitat it has done nothing to address the regulatory disincentives to achieving these two Strategic Initiatives.

Response: The Clark's Creek TMDL was designed to address a dissolved oxygen problem. Clarks Creek is an impaired water body due to low dissolved oxygen and sediment. Low dissolved oxygen levels, excess fine sediment and sand, and the overgrowth of elodea (Elodea nuttallii) create conditions in Clarks Creek that harm fish and their supporting habitat.

During development of the TMDL, Ecology responded to similar comments from this commenter. An excerpt from the responses is repeated here. "The oxidation of ferrous iron consumes oxygen and can contribute to the depletion of DO in streams. We thank the commenter for providing detailed information and agree that there is plentiful visual and qualitative information on the presence of excess iron in Clarks Creek. Unfortunately, sufficient quantitative data were not available to develop an estimate of the extent to which iron oxidation contributes to the overall DO deficit in Clarks Creek, nor does the QUAL2Kw model contain routines to address iron oxidation. Therefore, DO depletion by iron oxidation is lumped in with the various other processes, including decomposition of organic matter, that contribute to the overall DO deficit in Clarks Creek."

105. Cattle Producers of Washington- In addition, DOE seems eager to apply certain portions of the law, including its enforcement authority, to non-point situations while ignoring others. For instance, RCW 90.48.450 states, "Prior to issuing a notice of violation related to discharges from agricultural activity on agricultural land, the department shall consider whether an enforcement action would contribute to the conversion of agricultural land to nonagricultural uses. Any enforcement action shall attempt to minimize the possibility of such conversion." However, DOE's enforcement actions on non-point pollution often cause agricultural operations to go out of business. A notable example is the case of Dayton rancher Joe Lemire who was put out of the cattle business, largely due to unproven allegations that his cattle caused contamination of an intermittent creek running through his property. While DOE never tested the water on the Lemire ranch to confirm the pollution, DOE's allegation that conditions on the Lemire ranch had the "substantial potential to pollute" Pataha Creek were enough to force Lemire to change how his ranch was managed. Other potential sources of the alleged pollution were never eliminated.

Response: Comment noted. We disagree that Ecology ignores parts of the law. Specifically, we apply the section cited by the commenter when we take enforcement action. Additionally, our intent is to meet the goals of having both clean water and thriving businesses. We work hard to make sure that producers have access to financial assistance. Many producers report that the BMPs they have installed have improved their operation.

Regarding the comments about the Lemire ranch, we did have downstream water quality samples, even though the primary evidence Ecology relied upon to make its case was based on site inspections. It is not necessary to identify every other potential source of pollution when it is clear from site conditions that a particular property is discharging nonpoint pollution. As far as Ecology knows, Mr. Lemire has not been put out of business, and the commenter provided no

evidence to back up this assertion. Before escalating to a formal enforcement action we spent over six years attempting to work with Mr. Lemire to address the pollution issues at his property through technical and financial assistance. We only moved to formal enforcement as a last resort. The order issued in this case was appealed to the state Supreme Court. The court found that the evidence supported Ecology's decision to issue an order and agreed with Ecology that Mr. Lemire needed to protect water quality and prevent discharges, see Lemire v Ecology, 309 P.3d 395 (2013).

106. Peter Haase- I live in Skagit County and have read much of the draft plan. Certainly it covers probably every topic that might involve cleaner waters in Washington – particularly as regards the Department of Ecology – charged with upholding the Federal Clean Water Act here in our state. It also has nice, brief, descriptions of all/most of the various laws and ordinances and such that can affect our waters. Very helpful. I saw almost nothing that represented broad, bold, new, inspired ideas for getting a handle on non-point pollution. Aside from some very biased ideas from Agricultural Advisory interests - aimed at making the job of Ecology much harder – there was nothing new at all regarding agricultural runoff – which is the major problem here where I live. I would like to see a major effort to expand and modernize the approach to polluted agricultural runoff. In the plan and on the ground. Every single pertinent idea in that document has been tried on the Samish River via the 7 years of the Clean Samish Initiative and the massive 1995 Watershed planning before that. The Department of Ecology, the Puget Sound Partnership and the EPA all have either lead or financed major efforts and none have worked – the river is still full of manure and the shellfish beds in the Bay are regularly closed. The job is dumped back into the laps of the county. The latest science applied relates to poop sniffing dogs and unreliable DNA work. And no new science for detecting/measuring pollution from agriculture is prescribed in the plan. And yet hundreds of large pastured animals stand by the fence next to the stream or ditch day in and day out. It seems no one will want to upset a farmer. The TMDL completed many years ago for the Samish prescribed buffers along many stretches of the river and its tributaries – buffers of varying sizes depending on slope, soils, and amount of pollution load. None have been implemented because neither the Non-point Pollution plan, nor our regulations require them. The record of cleaning up streams and getting them off the 303 d list is dismal. Here in our county there are many, many sampling records for streams that never even get into the system – most of which would add streams, not take them off. Many, many of the examples on the 303 d list are from samples taken years ago! There is not even an effort to accurately determine the current pollution state of our waterways. Seems like that ought to be sort of front and center in this plan. How can you purport to fix what you don't even understand? Lastly, the Plan, over and over, puts enforcement at the end of the list for a tool to use. Yet it is known by everyone that pollution law after pollution law is regularly broken and not enforced – which is why so many of us do not want more laws, we want results! Years ago I heard a “joke” about a fellow who was just graduated from Michigan State College and was a new Agricultural Extension agent. He was nailing a flyer for a talk on Modern Pasture Management onto a phone pole and the farmer in the field came over and read it. “So.” said the new fellow. “Will you come and listen?” “No, I expect not.” said the farmer. “I already know how to farm better than I do.” That is how I feel about this endless mantra for more outreach and education to farmers.

Response: Comment noted. We understand the commenter's frustration. We agree that often times pollutant sources are evident from simply looking at what is happening at the site. While we understand the value of new technology, we should move forward to address obvious sources of pollutants when they are observed and documented. Finally, we agree that enforcement must be a tool that is used to address nonpoint sources if non-regulatory tools fail to address pollution sources. We are trying to find the right balance between enforcement and tools such as education and outreach, technical assistance, and financial assistance. We will continue to work with stakeholders to find a better balance.

107. Joe Domon- Tax payer dollars should not be wasted in "cost share" programs that promote a "solution" without identifying the source of presumed water pollution.

Response: Comment noted.

108. Joe Domon- *Ruining lives and operations due to the "potential to pollute" is not an acceptable standard of enforcement.

Response: Comment noted.

109. Spokane County Cattlemen- While the non-point plan may secure up to \$3 million in EPA dollars for the agency, it will do far more economic and community damage than that if implemented. This document does not present a logical, science-based method for ensuring that there are actually non-point water quality problems to fix and endangers Washington's farm and ranch families in an unconscionable way.

Response: Comment noted.

110. Columbia Conservation District- The Columbia Conservation District Board of Supervisors appreciates the opportunity the Department of Ecology has provided to comment on and provide input on the draft Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution, May 2015. We have reviewed and discussed the "Plan" and have directed staff to provide a response in total support of the response provided by Dave Vogel, WACD.

The NPS Plan will be an important guiding tool to state and local agencies, public and private organizations that provide technical and financial assistance to private landowners who work to manage and reduce nonpoint sources (NPS) of pollution while enhancing agriculture and natural resources.

The Columbia Conservation District endorses and supports the responses provided by Washington Association of Conservation Districts, Dave Vogel. These concerns and comments represent our position(s) on the importance and success of voluntary, nonregulatory programs and services. Conservation districts across the state are key and trusted providers of agricultural and natural resource technical and financial assistance to private landowners and property managers.

WACD has laid out a detailed recommendation list, identifying areas of concern that go directly to the concerns of district personnel, landowners and property managers. Identifying key areas that better defined criteria, various agency/entity roles and acceptance of BMP's that will solidify the "partnership" approach of implementation thru non-regulatory, incentive-based programs and services as the preferred management technique.

We believe there is no reason to supply an additional laundry list of comments, WACD has presented a very complete professional response, in this case quality does exceed quantity in our view.

Response: Comment noted.

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Chapter 4: Water Quality Partnerships

Summary response: The comments for this section focus on how Ecology works with partners to achieve compliance with state water quality law. Some commenters believe that Ecology should give more credit to other agencies and groups whose work addresses some aspect of nonpoint pollution. Others believe that Ecology should be coordinating the activities of the variety of agencies and groups so that their efforts will be more effective.

All of these comments have some merit. It is true that many groups in Washington do work that helps address nonpoint pollution problems. It is also true that despite the millions of dollars in grant and loan funds from the Farm Bill, the National Estuary Program, Clean Water Act Section 319 funds, and state funds that have been spent in Washington on BMPs, nonpoint pollution remains one of the state's largest and most serious water pollution problems.

There is a wide variety of groups and agencies in Washington, all of whom are doing work that has the potential to address some portion of the nonpoint pollution problem. As just an incomplete sample, these include—

- Local governments implementing PIC programs—some of these are more comprehensive than others. Kitsap's program addresses bacteria from septic systems and livestock/animal keeping practices. Many PIC programs address septic systems only.*
- Conservation districts (CDs) offering farm planning and technical assistance to landowners. Some CDs work cooperatively with Ecology to help landowners achieve compliance with state water quality law.*
- Local governments implementing critical area ordinances—these may include use of the Voluntary Stewardship Program (VSP), which is designed to protect and enhance critical areas and maintain the viability of agriculture. While it is logical to assume that VSP and clean water programs have mutually reinforcing actions and outcomes, they do not work to achieve compliance with the same laws, and will not necessarily have the same environmental outcomes.*
- Washington State Department of Health (DOH) works to protect and improve the health of people in Washington State. Its programs and services help prevent illness and injury, promote healthy places to live and work, provide education to help people make good health decisions and ensure the state is prepared for emergencies. DOH and local health districts regulate on-site sewage systems.*
- Washington State Department of Agriculture (WSDA) staff carry out a broad spectrum of activities that support the producers, distributors, and consumers of Washington's food and agricultural products. WSDA manages the Dairy Nutrient Management program.*
- Washington State Department of Natural Resources is the primary implementer of the state Forest Practices Rules.*

As can be seen from this small sample, each of the programs has the potential to address, at least partially, some aspect of the state's nonpoint pollution problem. However, each has a slightly different objective, and except for the state Forest Practices Rules, not one of the programs has compliance with state water quality law as one of its required goals. Without that unifying goal, it is difficult to see how compliance will be achieved through the use of these different programs.

Through the years, there have been numerous efforts by many of the agencies to coordinate their programs. In the 1980s, Ecology entered into an agreement with the state Conservation Commission and most of the CDs. This agreement remained in place for many years. In the early 2000s, the agencies attempted multiple times to write a new agreement, but those efforts were unsuccessful.

Ecology presently has an agreement with the Department of Agriculture about how the two agencies share duties relating to the Dairy Nutrient Management Act and the Confined Animal Feeding Operation permit, which is issued by Ecology.

This nonpoint plan cannot be expected to unify all these state programs into a single coherent whole designed to achieve compliance with state water quality law. However, it is Ecology's intent to keep working toward that goal. Between all of the state programs doing a small part of the work, millions of dollars and thousands of staff hours are expended each year. If all of this effort was united into a coordinated effort to achieve the single goal of clean water, we would have a real chance of getting there.

Our intent is to work with all stakeholders during the term of this plan on how we better coordinate our programs and provide consistent messages to the public. We hope that all those that commented on the plan will continue to engage in our future work. This includes work on BMP guidance, and how we can better align programs.

1. Don Russell- So far there appears to be no one agency that is capable of bringing local partners together to focus on "...getting implementation on the ground" Whereas it would be desirable that Ecology function in this capacity its track record of successful outreach to citizens (tribes and other agencies) is poor.

Response: See summary response for this section.

2. Don Russell- Ecology's focus is on partnering with tribes and other governmental agencies to the exclusion of developing more effective partnerships with and supporting on the ground work of local watershed councils, volunteer citizen stream, wetland and lake stewards and private property owners. This comment also applies to the activities of the Puget Sound Partnership. Prevention of nonpoint pollution requires more attention being paid by both Ecology and PSP forming more effective partnerships with, and supporting the activities of, citizen stream, wetland, and lake stewards.

Response: See summary response for this section.

3. Washington Association of Conservation Districts-Overall, the NPS Plan could be more robust on details about how Ecology will support the listed partners' efforts in NPS management, and on how groups will work together. These document sections should be strengthened through input by partner agencies and organizations. (Please see related specific comments by section below.)

Response: See summary response for this section.

4. Washington Association of Conservation Districts- Ecology must “secure implementation” of practices that achieve water quality protection. Ecology must rely, to a large degree, on other agencies and organizations to accomplish this – especially dealing with delivery of programs and services to private landowners and land managers in agriculture and forestry. Yet the NPS Plan does not describe how Ecology will act to support and coordinate with these partner agencies and organizations to promote, fund, and incentivize such partners’ programs and services. The importance of partnerships is noted, but the document leaves one asking, “What follows?” What steps does the plan include in support of these partners upon whom Ecology relies? How does this relate to establishing funding priorities for NPS?

Response: As noted in the summary response for this section, while Ecology recognizes the efforts of other groups and agencies to address parts of the nonpoint problem, Ecology cannot simply rely on all of them to work toward the goal of achieving compliance with state water quality laws. There needs to be coordination and communication between Ecology and partners, especially those that can deliver financial and technical assistance to landowners. There are several examples of this coordination taking place with a focus on achieving compliance. The common thread with these examples is that open communication and close working relationships exist between Ecology, the landowner, and the local entity providing support. Approaches in which Ecology simply refers landowners to other entities with no coordination or agreement on what needs to be implemented do not work. It is not an appropriate use of resources for Ecology to promote or provide financial support for programs that do not have the goal of achieving compliance.

5. Washington Association of Conservation Districts- Chapter 4/Water Quality Partnerships/Working with Local, State, Tribal and Federal Agencies/p 59 – In Ecology taking a lead role in coordinating interagency efforts (through partnerships) related to the NPS Plan, exactly what does that role entail? Does Ecology envision a special role, as a regulatory agency, or the state’s lead water quality monitoring agency? How does or should Ecology coordinate implementation of NPS control measures across partners and agencies (local, state and federal)?

Response: See summary response for this section.

6. Northwest Environmental Advocates- If Ecology truly believes that garnering the support and participation of landowners “provides one of the best ways to make direct changes to protect water quality,” then it must elaborate and not submit to EPA one sentence on how this is true: “Ecology will continue to look for ways to better communicate and partner directly with landowners, businesses and producers.” If it is true, one sentence does not a plan make. If it is not true, don’t say it. The same is true of the reference to future efforts with the producer groups.

The discussion of grant recipients is superficial. There is no evidence presented here that giving grants has resulted in increased nonpoint source control. There is no discussion of how grants will be issued in the future to achieve this level or better control.

Response: Plan revised to be for clarity.

7. Washington Farm Bureau- PLAN SHOULD GIVE MORE RESPECT AND RECOGNITION TO PARTNER AUTHORITIES AND EFFORTS Ecology's partner agencies help producers protect water quality and Ag viability. They deserve stronger recognition in the Plan. The Plan should also reflect the billions invested to implement local Watershed Plans, Salmon Recovery Plans, the PSP Action Agenda, Farm Bill Conservation Compliance Programs, and other conservation programs administered by NRCS, the Conservation Commission, Conservation Districts, the Department of Agriculture, and WSU Extension. Please work with these partners to more accurately recognize the multitude of stewardship actions installed, on Ag lands and by Ag producers, to improve water quality. This is, after all, the Washington State Nonpoint Plan. It is not just an Ecology Plan. Voluntary stewardship has worked well in many Washington watersheds for one reason: Trust. Producers trust conservation program providers and science-based NRCS standards that can flex to address complex agricultural needs, while also delivering good environmental outcomes. And producers can always volunteer to go further. This farm-friendly approach broadens producer participation and spreads good water quality outcomes across the landscape. It also promotes Ag viability, preserves working agricultural landscapes, and helps prevent avoidable conversions. Ag lands typically deliver much better water quality and habitat outcomes than converted non-agricultural landscapes. This is why Ag nonpoint programs should rely on trusted NRCS incentives, standards and tools to determine what is reasonable and needed.

Response: See summary response for this section.

8. Snohomish County Department of Public Works-Chapter 4. Water Quality Partnerships: Pg. 64. Interagency Team - Continue working with the Interagency Project Team to discuss recommendations, and implement agreed upon strategies supportive of the NPP.

Response: Comment noted.

9. King County-Water and Land Resources Division-We appreciate the inclusion of the work done by the Interagency Task Force and feel the recommendations made in the report will aid the state in advancing and integrating the various programs. Recommendation 2 (Implement existing regulatory authority related to unpermitted and nonpoint sources) specifically speaks to the nonpoint source issue in the Total Maximum Daily Load (TMDL) program, recommending that Ecology use existing legal authority (WAC 173-201-501 and RCW 90.48.080) to control unpermitted nonpoint sources and ensure that Load Allocations and Waste Load Allocations are equitable. We strongly support the other eight recommendations listed in the report that speak to actions that will increase the effectiveness and ability of the State's TMDL program to return impaired Waters of the State to beneficial use.

Response: Comment noted. We appreciate the Interagency Task Force's input and will continue to work on the issues raised by this group.

10. King County-Water and Land Resources Division-Local jurisdictions, regional committees, and other agencies have expertise and are seeking opportunities to collaborate with the State. Any agricultural work should include the Agriculture and Water Quality Advisory

Committee (page 59), additional producer groups, conservation districts, the National Resources Conservation Service and other affected stakeholders. Any work on agricultural water quality BMPs should take into account the diversity of farmers, crops, communities and geography. In the forestry arena, Washington Department of Natural Resources, the Washington Forest Protection Associations and the Washington Farm Forest Association must be consulted. Stormwater programs should involve regional groups such as STORM, RoadMap, and permit stakeholder groups such as the various Permit Coordinators' groups located throughout the state.

Response: Comment noted. We agree with the commenter about the need for robust stakeholder involvement when addressing agricultural issues and BMP guidance. The plan envisions the kind of stakeholder involvement suggested by the commenter.

11. Stevens County Conservation District- Chapter 4 Water Quality Partnerships: Page 67 first paragraph under Federal Agencies - Second sentence refers to the diversity and complexity of Washington's natural environment. This is a very relevant and important statement which should be expanded and stated in the executive summary and/or Chapter 1. Washington State is very diverse in ecosystems, land use and citizens' beliefs, attitudes and environmental knowledge. It is one of the most diversified in agricultural production states in the nation with over 400 crops produced. National and international sales have a tremendous impact to the state's economy. With this in mind Chapter 1 descriptions of Agriculture and Table 1 impacts of land use are inadequate to explain agriculture's nonpoint impacts. Livestock appears to be the major focus within the plan. With such diversity, management of nonpoint pollution from agriculture is very complex. This should be highlighted in the plan as to recognize the need for site specific activities, adaptive management and different regions of the state needing different programs and methods to address the issues.

Response: Comment noted.

12. Stevens County Conservation District- Chapter 4 Water Quality Partnerships: Appreciate that Landowner, Businesses, and Agricultural Producers are recognized as the most important partners in protecting water quality on Pg 61 ; recommend move statement to the start of the chapter then work the chapter from the local level, follow with ag producer groups, local government, conservation districts then coordination, state agencies, tribes then federal agencies.

P 113 in table goal 3 strengthen relationships with producer groups and ag producers, as the most important partners the statement needs to be more than "explain nonpoint issues". Ecology needs to work with and listen to issues and gain the producers trust to be effective in reducing nonpoint pollution. Like in the block above "will invite tribes to provide input on nonpoint policy development early in the process". Why not involve the producers instead of explain issues?

Response: Comment noted.

13. Cattle Producers of Washington-Lastly, while Cattle Producers of Washington is listed on page 60 of the DOE Non-Point Pollution Plan as a member of the Agriculture and Water Quality Advisory Committee, our representative on the committee has shared that the committee is essentially directed to tell DOE how best to enforce their regulations, not how to improve the

quality of the approach. By failing to pursue site-based, source-specific testing and actively fighting legislation that would call for such an approach, DOE is not sincerely pursuing the goal of clean water for Washingtonians.

Response: The commenter misidentifies the purpose of the Agriculture and Water Quality Committee. The goal of the group is to provide feedback and input on how we administer our water quality programs in agricultural areas. Additionally, Ecology has explained many times why using site conditions is the best way to evaluate a site to identify pollution problems, and the committee has worked with Ecology on guidance that recognizes the value and validity of this approach. Additionally, Ecology embraces the use of new technologies and methods for improving our work. However, we also recognize the limits of sampling techniques that are currently available. Sampling is only one tool in the tool box. When identifying pollution problems we use all available tools.

14. Washington Association of Conservation Districts-Chapter 3/Strategies for Addressing NPS Pollution/p 25 – Again, see general comments. This state NPS program is not one agency’s program. Stronger reference to co-delivery and partnership reliance should be made here.

Response: See summary response for this section.

15. Washington Association of Conservation Districts- Same section (p 32) describes the ongoing work of Ecology’s Agriculture and Water Quality Advisory Committee. This is a good inclusion in the NPS Plan, as significant progress has begun in Ecology procedures for watershed evaluations, and in communication between Ecology and sectors of the agricultural community.

Response: Comment noted.

16. Washington Association of Conservation Districts- Chapter 4/Water Quality Partnerships/Working with Local, State, Tribal and Federal Agencies/Agriculture and Water Quality Advisory Committee/p 59 – This committee also includes a broad array of environmental, tribal and other interests. It is not a one-sided agricultural source of input to Ecology Director Bellon. Suggest also edit to include, “The goal of the committee is to improve communications, outreach and working relationships...” Also suggest edit to include, “provides advice and guidance associated with the work Ecology does to prevent and respond to agricultural pollution, including issues...”

Response: Comment noted. Membership of the committee is detailed in the plan.

17. Northwest Environmental Advocates-Descriptions of groups that meet to sound off but do nothing should be deleted from this document as they are not relevant to controlling nonpoint source pollution. This includes the Agriculture and Water Quality Advisory Committee, Water Quality Partnership, and Water Quality Financial Assistance Council. We are not saying that these groups serve no purpose, just that they have no relationship to improving Ecology’s nonpoint source control program. If Ecology disagrees, it should explain how these groups do, in fact, enhance programs.

Response: See summary response for this section.

18. Washington Farm Bureau-PLAN SHOULD BETTER REFLECT THE DIRECTOR'S POSITIVE NEW "HEALTHY AG" VISION WFB appreciates your recent launch of the Ag and Water Quality Advisory Committee and the shared goal "to improve working relationships, and ensure both water quality protection and a healthy agricultural industry" . WFB also wants to thank you for agreeing to implement key Committee recommendations to improve Ecology's watershed evaluation process on Ag lands.

Response: Comment noted.

19. Washington Association of Conservation Districts-Chapter 4/Water Quality Partnerships/Local Governments/p 62 – The plan's listing of pre-1960 special districts (including conservation districts) includes entities that were put in place to deal with environmental protection prior to the "regulatory" period. The plan should not sound like environmental protection is too exclusive a club for these districts to belong to. Conservation law, for example, was environmentalism before we had environmentalists telling us what it means....Same section includes a list of special district primary authority or major implementation efforts. Suggest include, "Agricultural natural resources conservation."Same section states that many current and planned actions in the plan are designed to assist local governments and special purpose districts in their implementation efforts. Which actions specifically? How? Monitoring is mentioned; what actions are to be taken (i.e., NPS funding priority) to assist local governments and special purpose districts with monitoring?

Response: Comment noted.

20. Northwest Environmental Advocates-The discussion of local governments is not a plan; it's a basic civics course, which is useful background for an actual plan.

Response: Comment noted.

21. Washington Association of Conservation Districts- Chapter 4/Water Quality Partnerships/Local Governments/Conservation Districts/p 63 – Suggested edits include: There are 45 conservation districts in Washington State, which provide both technical and financial assistance to citizens of the state. Districts traditionally, but not exclusively, provide critical services to agricultural producers. (Please see earlier comments on this topic.) Services omitted from this section include: wind and water erosion control, water conservation, wildlife habitat and wildlife management, plant health and productivity, soil health and productivity, chemical input management, and managed riparian areas. Districts are the primary, trusted delivery system for technical and financial assistance to private landowners and producers, and help create local support and landowner action for water quality efforts in their communities. ... Same section includes a good reference to conservation districts becoming more active in stormwater management, including implementing stormwater BMPs and providing education on stormwater management and practices. (WACD thanks Ecology for this acknowledgement of an expanding program and service area for conservation districts, which should assist further in achieving NPS goals relating to stormwater and landowner action.)... Same section refers to conservation

districts' role in watershed evaluation process. Suggest include, "Across all districts Ecology will work, in conjunction with partners including WSCC, on increasing communication about evaluation results and about how to consistently apply a system of practices to help landowners protect water quality, based on programs and services offered by conservation districts.....Next paragraph, suggest delete first two sentences, and replace with, "Ecology will continue to respond to feedback from conservation districts and others that highlights the need to provide clarity on practices employed by conservation districts, NRCS, WSCC, Ecology and EPA programs that protect and enhance water quality." Continue, "In addition, conservation districts have expressed their and their customers' desire that Ecology recognize the need to provide flexibility..."

Response: Comments noted. Ecology has edited this section based on feedback from WACD and the WSCC.

22. Northwest Environmental Advocates- The discussion of Conservation Districts is thin. It is useful to explain what they are but it would be far more useful if Ecology took the plainspoken approach it did in discussing the dairy nutrient management program. Are these districts actually ensuring the implementation of BMPs that are sufficient to meet water quality standards and TMDLs... or not? If not, what are the gaps and challenges? To what degree do the districts pay attention to Ecology's science-based advice on what BMPs are necessary to meet water quality standards? What specifically are the districts doing about riparian vegetation?

The districts are the "major recipients of federal 319 grant funds" for which this plan is being developed; how well are they doing? What is Ecology's role in enforcement with regard to when districts fail to make progress? The discussion about the future is vague and appears to be given no thought. Either this is an area where Ecology thinks investment of its time will be fruitful, in which case it should lay out some real plans, or it has concluded that it is not fruitful, in which case it should lay out what it will do instead of investing time into districts that disregard the goals established by Washington's water quality standards. Either way, it needs to be stated clearly.

Response: Clarified language in the plan.

23. King Conservation District- I appreciated the comments throughout your draft regarding Ecology's partnership with conservation districts to reduce nonpoint pollution. Moreover, I agree and support those comments and suggestions made by our fellow CDs and the WACD. The mission of conservation districts is to assist private landowners with achieving their natural resource stewardship goals. For that reason I strongly endorse the statement on page 61, "Private landowners in both urban and rural areas, business owners, and agricultural producers are the most important partners in protecting water quality."

I also applaud Director Bellon's leadership in forming the Water Quality and Advisory Committee to engage farmers and ranchers in issues related to clean water. Like other conservation districts across the state, KCD has historically focused on farmers and rural landowners, so we've appreciated Ecology's partnership on issues such as soil erosion and rural

habitat protection. However, hopefully, the committee will soon have representation from private urban landowners and communities.

However, recently our constituency here in King CD has broadened significantly to include urban communities and landowners. Thus, the one specific change I recommend for your draft would be to the opening of the Conservation Districts section at the top of page 63. The second sentence describes conservation districts as "providers of technical assistance primarily to agricultural producers". This is no longer accurate for CDs, such as King, with growing metropolitan areas.

The remainder of the Conservation Districts section on page 63 enumerates the ways Ecology and conservation districts work with private landowners to enhance water quality, and we would like to see that reflected in the opening description. Below is suggested replacement language for your consideration:

"Conservation districts are independent, non-regulatory public agencies established to assist private landowners, both urban and rural, with stewarding natural resources. Conservation districts in each of Washington's 39 counties provide programs and services tailored to the needs of all of their local communities."

Other districts may have additional suggestions, but broadening the definition to specifically include urban landowners is my recommendation to strengthen your otherwise comprehensive and well-written water quality plan and your Advisory Committee.

Response: Comments noted. We edited the conservation district section based on this feedback as well as feedback from WSCC and WACD.

24. Board of Stevens County Commissioners- Page 63, paragraph two, second sentence – Conservation districts do not primarily serve agricultural producers. They exist to assist all landowners within their boundaries, agriculture and forestry just being two of many.

38) Page 63, paragraph six, first sentence – Please add the words “prevention of” prior to “soil erosion”. Conservation districts do not encourage soil erosion. They work to prevent it.

Response: Comments noted. Proposed edit is not necessary.

25. Washington Association of Conservation Districts- Chapter 4/Water Quality

Partnerships/Washington Tribes/p 65 – Aside from tribes being recipients of grant funding, and Ecology applying a host of regulatory programs relating to shellfish and finfish, how does or will Ecology include tribes – individually and via various tribal associations – as a partner in the NPS Plan? Is this participation of a consultation nature, or is it an early invitation to participate, together with other entities? Tribes possess strong natural resource data sets, including monitoring data, and undertake substantial water quality and habitat restoration projects. Some very effective local partnerships have emerged from WACD’s initiative to outreach to tribes and form partnerships between conservation districts and tribes. How might the NPS program enhance tribal participation, and how can partners assist in that effort?

Response: The nonpoint plan does not go into this level of detail about how Ecology will work with tribes, primarily because not all tribes desire the same kind of interaction. Rather, it is Ecology's intent to work productively with all tribes in whatever manner is most useful to the tribes.

26. Lummi Nation- Chapter 4: Water Quality Partnerships

Overall Comment: On Page 65 of the draft plan, Ecology commits to work collaboratively with tribal governments to address improper manure management and manure application. Ecology then proceeds to list a number of issues related to manure management that it will work on with tribal governments to address. This commitment to work with tribal governments on the listed issues is misplaced and suggests that there are substantial manure management challenges on Indian Reservations. Although there may be some manure management issues on an Indian Reservation somewhere in Washington, at least in the Nooksack River watershed the manure management challenges are not located on the Lummi Indian Reservation. The same bulleted list of issues related to manure management that Ecology commits to work on with tribal governments should appear on Page 61 for the following Ecology partners:

Landowners, Businesses, and Agricultural Producers; Agricultural Producer Groups; Grant Recipients; and local Governments. Please revise the draft document so that the bulleted list regarding manure management that currently exists under the Washington Tribes section of Ecology partners also appears for the other Ecology partners.

Response: The section of the plan referred to in the comment was not intended to imply that the problems to be addressed are on tribal lands. Rather, it was describing issues that must be addressed to protect tribal fishing rights. Language has been inserted into the plan to make this clear.

27. Board of Stevens County Commissioners- Page 65, first paragraph, first sentence – First, add the words “in several, not all areas”. Second, all salmon are salmonids, but not all salmonids are salmon. This is unclear since you state salmonid in this sentence but go on to talk about nothing but salmon in the entire section. For example, trout is a salmonid. Please correct this issue.

Response: Comment noted.

28. Board of Stevens County Commissioners-Page 68, Federal Lands-Forestry, first paragraph, second sentence – Please add that all federal agencies are directed to coordinate and cooperate with state and local governments in implementing or planning activities.

Page 71, first paragraph, first sentence – Is funding available for non-profits and forestry owners? If so, please add these.

Response: Comment noted. The proposed edit does not affect how federal agencies are treated in the nonpoint plan. Eligible grant applicants are listed in Chapter 5.

29. Washington Association of Conservation Districts-Chapter 4/Water Quality Partnerships/Federal Agencies and Responsibilities/p 68 – In the list of federal agencies and responsibilities, the plan should not omit reference to NRCS’ responsibilities related to conservation technical standards. Suggest include, “NRCS develops and publishes technical practice standards that protect and enhance water quality and other natural resources.”

Response: Comment noted. The sentence describing NRCS has been edited.

30. NOAA- Pg. 68: Since CZARA has been discussed elsewhere in the plan, we recommend including NOAA and EPA’s responsibility for CZARA in this list of Federal Agencies and Responsibilities. This could be done by revising the NOAA Fisheries listing to encompass all NOAA. For example, NOAA’s listing could read something like: “NOAA—The National Marine Fisheries Service oversees the status of endangered species and the National Ocean Service partners with EPA to administer the Coastal Nonpoint Program under CZARA. Consider adding CZARA to EPA’s responsibilities too.

Response: Edits inserted into plan.

31. Northwest Environmental Advocates-This discussion of federal agencies is basic. How are federal agencies helping—and hindering—in Ecology’s efforts to control nonpoint sources?

Thank you for a candid description of the failings of the federal program to address deteriorating, unmaintained, and poorly located forest roads.

The document states that “[s]imilar to the USDA Forest Service, the BLM may establish roads and harvest timber so long as the prescriptions applied result in compliance with the state WQ Standards.” How does Ecology ensure this outcome? We note that for the BLM’s Western Oregon Plan Revisions (WOPR), the Oregon Department of Environmental Quality (DEQ) evaluated logging alternatives used models from a TMDL to evaluate their temperature effects. In doing so, Oregon DEQ was able to demonstrate that some federal alternatives would not meet water quality standards for temperature.

Response: Although Ecology attempts to work with federal agencies to address nonpoint pollution problems, this is not always successful. In many cases, federal activities are chosen and implemented with no notice to state agencies except perhaps through a NEPA notice, which state agencies may not see. We work with federal agencies to try and address issues as we become aware of them.

32. Northwest Indian Fisheries Commission-First of all, this Ecology-managed group failed to reach out, let alone communicate, with interested tribes that have demonstrated intense interest in these issues. Tribes have sought to work cooperatively with Ecology on addressing nonpoint source pollution, as evidenced by the multi-tribal amicus brief filed in support of Ecology’s position in the Lemire litigation. The agricultural industry dominated nature of this group ensures that Ecology has not been receiving complete or balanced input from all interested parties, including the tribal fishery co-managers.

Given the lack of balance in this group, we have significant concerns about what sort of education and outreach it might sponsor. Outreach materials need to be developed in full consultation with tribes and fisheries management agencies to assure that the needs of treaty-reserved fish, including shellfish, are accurately reflected and that the management practices are designed to address those needs. In using the word “design,” the intent is to convey that any BMPs chosen must be documented as capable of providing good habitat and water quality in the situations where they are proposed to be used. There is ample information available indicating what BMPs are necessary. It is our hope that producer groups will at least be willing to provide this information to their members so that they will have the option of voluntarily managing their lands with the stewardship necessary to protect and restore treaty-reserved resources.

Response: Comments noted. It is Ecology’s intent that any materials developed to help implement nonpoint BMPs would have the input of all interested parties.

33. Northwest Indian Fisheries Commission- We support the need for WDOE to be clear on what BMPs are needed to protect water quality – that is, to meet water quality standards and fully protect the shellfish and salmonid beneficial uses. We also think it makes sense to give clear guidance to landowners regarding what they can do to make sure they are adequately protecting shellfish and salmon. On the other hand, it is our experience that when CDs and others start talking about “flexibility,” that is code for being able to take shortcuts with water quality and habitat protection. Often this call for “flexibility” is to attempt practices that have already been shown via prior research to not provide adequate water quality and/or salmon habitat protection. We note that it is the salmon and shellfish who generally end up bearing the risk of practice failure. Given the impacts that the Lummi Nation has already suffered from past and current practice failure, and given the status of ESA-listed salmon populations in Puget Sound, salmon and shellfish, and the tribes’ whose economies and culture depend upon them, should not have to bear the risk of “flexible” BMPs. Any BMPs chosen should already have demonstrated effectiveness, as discussed above. If there is a desire to conduct an experiment using alternative BMPs (that haven’t already been assessed by the technical literature) and the tribe(s) in the watershed support it, then it may make sense to structure the experiment so that is carefully designed, implemented, and monitored to assess BMP effectiveness and the results made available for public review and use.

Response: Comment noted. Ecology agrees that BMPs used should be designed to achieve the desired outcomes. Follow-up site inspections should be used to ensure the BMPs are being operated and maintained correctly, and that the desired site conditions are being achieved.

34. Northwest Indian Fisheries Commission- We appreciate WDOE’s recognition of the importance of salmon and shellfish to the tribes. We also generally support the approach outlined in the quoted section of the NPS plan. Unfortunately, it’s a very ambitious list and it is likely that not everyone in the “state family” currently supports this approach. We suggest that Ecology identify a timeline and milestones associated with these objectives so that the tribes, other agencies, and the public are able to assess the state’s progress towards achieving these important objectives.

We also note that hydro-modification produces nonpoint source pollution. Washington's HPA program is intended to address many forms of hydro-modification. However, to the best of our knowledge, it has never been reviewed for its effectiveness at addressing nonpoint source pollution. Instead, it is largely a result of a negotiation process with stakeholders that allows continued incremental degradation of fish habitat, regardless of existing water quality conditions.

Response: Comments noted.

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Chapter 5: Financial Incentive Programs

1. Don Russell-It is unlikely that state and federal funding programs can or will be available to landowners, businesses and agricultural producers (other than subsidies). Therefore there has to be other incentives for these groups to act; namely, encouragement, instructions, simplified permitting, and rewards (e.g., favorable publicity, mitigation credits) for their voluntarily undertaking water quality improvement and salmon habitat enhancement projects.

Response: Comment noted.

2. Washington Association of Conservation Districts- Chapter 5/Financial Incentive Programs/Coordinated Investment/p 71 – Some general reference should be added here to outline the role and benefits of financial incentives to gaining participation by landowners. Also, if the NPS Plan links implementation data to effectiveness (as it should), the document should also describe how effectiveness monitoring is tied to implementation data (as discussed throughout these comments). ...Same section - Coordinated Investment, as a policy, is relatively poorly defined at present, and is not yet an accepted policy by the involved federal and state level agencies. While the idea to coordinate programs is understood and appreciated, it may be premature to include this term, as a policy feature, in the NPS Plan, as changes may result in further federal and state family negotiations. Ecology's referenced and newly-formed Coordinated Strategic Investment Group is made up of Ecology managers only. Is the coordination, then, limited to Ecology programs, or should wider participation by partners be the case? ...Chapter 5/Financial Incentive Programs/Coordinated Investment/Financial Assistance Services/pp 71-73 – The NPS Plan should make a distinction between financial assistance sources that are delivered directly to landowners and producers as incentives, and those that grant funds to subordinate levels of government or other organizations (pass through) that may be used for incentive payments or for other activities that do not provide direct services to landowners. These should be listed separately. This is important, as the plan should realistically demonstrate just how much (or how little) NPS funding is allocated directly to landowners who are the ones actually responsible for implementing NPS solutions....Same section – Farm Bill incentive programs should be listed together under a general heading as Farm Bill Conservation Title programs – CREP, CRP, CSP, EQIP, RCPP - rather than a random catalogue or order of programs. These should be described under the general heading within a Farm Bill context, outlining the roles for USDA Natural Resources Conservation Service, Farm Services Agency, conservation districts and WSCC in their delivery to landowners, using NRCS technical practice standards....Same section – Suggest seek a more detailed description of WSCC financial assistance programs and scope from WSCC, outlining type of financial assistance available (e.g., technical assistance operations versus capital implementation projects). Suggest include WSCC and conservation districts' connection to Farm Bill programs (e.g., CREP); and follow logically behind Farm Bill program description...Same section – Likewise group Ecology financial assistance programs, subject to distinction requested above.

Response: The nonpoint plan contains an entire chapter about financial incentives because Ecology recognizes their importance. For projects funded by Ecology, we require recipients to provide detailed information about the implemented BMPs so we will have adequate information

for subsequent effectiveness monitoring. Ecology disagrees that it is too early to talk about using coordinated investment strategies to address nonpoint pollution problems. Millions of dollars from multiple sources are spent in Washington each year to implement projects that address, more or less effectively, some aspect of nonpoint pollution. Yet, nonpoint pollution continues to be a problem. Coordinating investment programs to ensure that all have the same objective, and only buy projects that will achieve that objective, would be a huge step forward.

Comments about Farm Bill programs noted. It is outside the scope of the plan to describe federal funding programs at the level of detail that is proposed. Likewise, it is not the purpose of this plan to provide details on how much of each fund source goes directly to landowners.

3. Washington State Conservation Commission- The role of incentive programs could be better described as equal in value and importance to regulatory approaches. Voluntary and incentive programs are mentioned in one paragraph on page 36 of the draft report. Recommendation #5: Include a new chapter to the Nonpoint Plan that describes the scope of incentive programs and how these programs are implemented in conjunction with other programs to achieve water quality improvements. The federal Clean Water Act describes the specific contents of a state nonpoint source management program to include "an identification of programs (including, as appropriate, non regulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under subparagraph (A)[of the Clean Water Act]." Section 319(b)(2)(8) [emphasis added]. A new chapter on incentive programs could also include the elements of technical assistance, education, and training and describe how these will be implemented by various entities across the state.

Response: The nonpoint plan does not imply that voluntary programs have less value than regulatory ones. We are clear that we rely on voluntary efforts as a piece of the nonpoint puzzle. However, participation in voluntary programs tends to be enhanced, to some degree, by the possibility of regulation. Voluntary programs tend to measure success by number of participants, not by number of properties that have implemented all of the practices necessary to achieve compliance with state water quality law. In fact, the voluntary programs administered by NRCS are specifically designed so that landowners addresses only those problems they choose, and that they implement only those practices they want to implement.

The commenter also suggests a new chapter on incentive programs. We have included a lot of information on these programs. Chapter 5, Financial Incentive Programs, is already included in the plan. A detailed discussion of every possible incentive program is beyond the scope of the plan. Additionally, information on various entities across the state is included in Chapter 4. See also summary response for the Partners and Coordination section.

4. Thurston County- While the draft Nonpoint Plan documents potential available resources, it is not operational in nature, making its application limited. Further consideration of barriers to implementing voluntary projects on private lands and solutions for addressing these barriers, would make the plan more valuable to local governments who seek to use this document as a resource in planning their NPS pollution reduction initiatives. In addition, it seems that the plan

should include more discussion about the benefits of conservation to prevent further degradation. This will help drive resources and funding to local land trusts and other entities who work regularly to protect lands through voluntary conservation easements or purchases. The plan should also give some consideration to collaborative arrangements and projects that meet multiple objectives such as riparian and channel preservation and restoration, fish recovery, and flood control.

Lastly, many of the technical and financial resources presented in the plan are competitive grant programs and/or programs that rely on the legislature to appropriate funding. It would be helpful if Ecology identified programmatic priorities that could be linked to increasing scores for competitive grants or that could be used to illustrate the importance and need for legislative funding. This would help raise awareness about NPS pollution, and would drive resources to the tools and programs Ecology and other stakeholders see as having the most potential to assist in implementation of NPS pollution reduction measures. In addition, this would likely increase implementation of Ecology's priority action items.

Response: Comments noted. The nonpoint plan does not contain a detailed analysis of barriers to implementation of nonpoint BMPs because these tend to vary by watershed and land use.

5. Northwest Environmental Advocates-Chapter 5: A plan that is written with the repeated phrase “we will look to support” suggests that it is not yet a plan but just a generalized set of ideas. The creation of the Coordinated Strategic Investment Group sounds like a good idea but having just been put together it seems there is no clarity on how it will accomplish its task. And, as with other aspects of this plan, there is a lack of clarity on how Ecology will establish the BMPs that it can confirm are sufficient to meet water quality standards.

Descriptions of government-provided funding should include the time period of the funding and what restrictions exist after agreements/funding is terminated. For example, are farmers free to cut down trees the public paid for to create long-term shade? Does it matter which program paid or are there statewide policies in place to protect restored areas? Which programs require the use of BMPs that are intended to meet water quality standards and TMDLs?

Response: Ecology agrees that certain parts of the plan, one being the section on coordinated investment strategy, are more sets of ideas than actual plans about how to move forward. In some cases, this is because a process has just started and we are in the process of designing the path forward. In other cases, we have actually found that it is better to proceed with only a set of possible approaches because that enables us to rapidly change strategies if one avenue becomes closed to us.

It is Ecology's intent to use the year following plan approval to put the process in place that we will use to develop BMPs designed to meet state water quality law for the areas where we have gaps.

Ecology's funding guidelines require a landowner agreement to keep BMPs in place for 10 years. In Washington, only Ecology's funding programs require the use of BMPs designed and implemented to meet water quality standards and TMDL requirements.

6. Northwest Indian Fisheries Commission-We strongly support Ecology’s decision to adopt loan funding guidelines regarding BMPs eligible for funding with §319 grant funds. We also support the use of the NMFS-recommended riparian buffers intended to meet water quality standards and support salmon recovery. The opposition from agricultural interest groups and conservation districts highlights the lack of support from these groups for BMPs that are adequate to support salmon recovery and meet water quality standards. This is why it is essential that Ecology adopt technically sound BMPs – approved by EPA and NMFS/NOAA OCM – in consultation with the tribes.

Response: Comment noted.

7. Snohomish County Department of Public Works- Chapter 5. Funding Incentive Programs: We encourage Ecology to work with the Legislature and federal government to broaden the scope of current 319 funding opportunities. There are some projects, like decommissioning old manure lagoons, that are not eligible for funding but would make a disproportionately large contribution to cleaning up state waters. We encourage Ecology to review 33 U.S.C 1329 and consider amending WAC 173-95A-120 to allow 319 funding for abandonment or demolition of existing structures or other activities that can greatly reduce sources of nonpoint pollution.

Response: Comment noted. We will continue to engage stakeholders to improve our funding guidelines. Please also consider our SRF opportunities as a resource that can fund large projects such as lagoon decommissioning.

8. Stevens County Conservation District- Chapter 5 Financial Incentive Programs Recommend group programs by funding sources, Farm Bill (NRCS/FSA), Ecology and expand list to include CSP and Easement programs such as Wetland Reserve.

Suggest Ecology and partners work together to provide a list of landowner financial programs available including other resources. For example can RCO 3F2P fish barrier replacement help nonpoint pollution and is there other funding from Ecology or other to expand that project upstream or uplands to achieve greater benefits?

Comment - financial programs are important to implement BMPs which are cost prohibitive to the landowner and agricultural producer but benefit the greater good and therefore are important for voluntary actions.

Response: Comments noted. It is outside the scope of this plan to enumerate every possible source of funds that might be used to address some aspect of nonpoint pollution.

9. Washington Association of Conservation Districts-Same section implies that, beyond Ecology’s funding program – which is of limited usefulness to landowners who refuse to accept Ecology’s funding conditions or limited practices – other funding programs are merely “helpful”. The NPS Plan should acknowledge that it is the partners’ programs and services that deliver the bulk of implementation. And it should be the partners’ programs that receive priority under NPS

funding. It is the Ecology program that “helps” where it is flexible enough to secure participation by property owners.

Response: Ecology disagrees with this assessment of Ecology and other funding sources. Programs other than Ecology’s provide millions of dollars each year for projects in Washington, but those programs are not designed to fund projects that will achieve compliance with state water quality law. They may provide some benefit, but as long as they are designed with the primary objective being to fund only those practices that a landowner wishes to do, they will not be truly effective in addressing Washington’s nonpoint pollution problems. Ecology’s limited funds under the Clean Water Act need to be focused on meeting water quality standards.

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Chapter 6: Recommended Management Measures

Summary response: The comments in this section focus on the requirement for Ecology to identify suites of recommended best management practices (BMPs) that will be used to control nonpoint sources of pollution. This requirement is found in the federal CWA and CZARA, and is reinforced by EPA guidance and our state water quality standards. BMP guidance is required for each category of nonpoint pollution.

Ecology recognizes the importance of having clear BMP guidance and understands the frustration of many commenters that this requirement still has not been adequately addressed by our state. The intent of Chapter 6 is to reinforce our commitment to ensuring we are meeting the federal requirements (CWA and CZARA). At the same time we are committed to making sure that we have robust stakeholder involvement at every stage of this process. That means our pace in developing BMP guidance may be slower than what many commenters would prefer.

Edits to this chapter were made based on EPA's comments. This includes a commitment to start work on guidance for the agricultural sector by developing with stakeholders and tribes a process to fill that gap, and a more detailed timeline for the next year. We have also included a commitment to update our plan based on work completed under this chapter. This includes updating our funding guidelines and Chapter 3 based on this work. Finally, we edited the plan to clarify that we will have an adaptive process in place to further refine BMP guidance when necessary.

1. Environmental Protection Agency (EPA)-This draft plan is much improved from previous versions incorporating several very important measurable milestones, e.g., numeric targets for reductions in phosphorous, sediment and nitrogen, TMDL completion targets, and pollution identification and correction program targets. Section 319 of the CWA requires that state NPS plans contain annual milestones for the implementation of BMPs and program implementation methods. The statute further stipulates that milestones should be broken out by categories and subcategories of NPS. While the draft NPS plan does contain commitments such as the development of an implementation tracking database and eventual development of BMPs, these commitments are not accompanied by specific timelines. Greater specificity of these actions is needed. Many of the actions included in the draft plan are very generalized (e.g., support education and outreach and support for voluntary programs; support implementation of the Dairy Nutrient Management Program and the forest practices rules; align the nonpoint program with CZARA and other programs). While EPA recognizes that general support and some flexibility to take advantage of opportunities that occur is vital, Ecology should be as explicit as possible regarding the specific issues/programs/efforts you plan to focus on over the next five years in this plan. Please include measurable milestones and targets for all strategies/outputs to gauge whether or not you have successfully achieved your objectives. These achievements serve as a requirement under Section 319(h)(8) for a determination of satisfactory progress, necessary to be eligible for a 319 grant award.

While additional work may be needed to more thoroughly identify gaps in the state's ability to manage nonpoint source pollution, EPA believes some of those gaps are known and the state should describe a process for engaging stakeholders to develop the appropriate BMPs. This is especially true for the agricultural sector as discussed in Chapters 2 and 3. The draft plan needs greater specificity regarding BMP requirements/recommendations currently in-place for Agricultural sources and greater specificity on the plan and schedule for developing additional Ag-source BMPs. EPA requires the following elements be included in the final plan to advance Washington's work as it relates to the agricultural sector:

- Clearly describe the process Ecology will use to identify BMPs. (e.g. Who does Ecology expect to engage, in what fora, with what frequency?) The process should result in BMPs that result in compliance with the state's water quality standards at the site level.
- Identify mechanisms the state will use to implement those BMPs. For example, after the BMPs are identified, will there be training or technical assistance programs for various user communities? Will incentive programs be created to encourage the use of those BMPs? How will enforceable regulatory programs and voluntary approaches implement the identified BMPs?
- Describe the adaptive process for the implementation and continued revision of management measures over time to achieve and maintain applicable water quality standards and protect designate uses.
- Clearly describe the timeline for this process

Response: See summary response for this section. Edits made to Chapter 3 to respond to required changes.

2. NOAA- Emphasis on Implementation Needed: The draft plan currently includes general references to working with stakeholders to identify additional BMPs to improve nonpoint source pollution management. Developing new, effective BMPs is good but the plan should also focus on identifying mechanisms the state will use to implement those BMPs. For example, after the BMPs are identified, will there be training or technical assistance programs for various user communities? Will incentive programs be created to encourage the use of those BMPs?

Response: See summary response for this section. We agree that it is not enough to simply identify recommended BMPs. It is also necessary to have mechanisms that are used to implement effective BMPs. Chapters 2, 3, 4 and 5 cover the state mechanisms that we have in place to implement BMPs. Those chapters cover a mix of regulatory and non-regulatory tools that can be used in combination to achieve the implementation of effective BMPs. Our expectation is that we will update the plan to support the implementation of the suites of BMPs developed by the process laid out in Chapter 6. For example, our funding guidelines will be updated based on any work that comes out of the process outlined in Chapter 6. We will also update our education and outreach programs based on outputs from that work. Furthermore, we will work with partners to more closely align our programs as we move forward to support implementation of effective BMPs.

3. NOAA- Pg. 75-78: Chapter 6 is titled "Recommended Management Measures" but includes very little as far as actual management measures that are planned to be developed or carried out

over the next five years through this plan. Rather it appears to provide further descriptions of the 319 and CZARA programs and lists existing regulatory programs. This type of information seems more suited for earlier Chapters in the plan (see Chapter 2). We recommend Ecology consider moving and revising much of the text in Chapter 6 to Chapter 2 so that Chapter 6 can be dedicated to a fuller discussion of what specific management measures the state plans to focus on implementing and developing through this plan.

Response: Chapter 6 does not include specific management measures. Our intent with Chapter 6 is to outline the general process we will use to adopt or identify specific management measures. We did list examples of existing guidance and regulatory programs that we believe will meet the CWA Section 319 and CZARA requirements. Our intent with including these examples was to make it clear we are not starting from scratch.

One good example is the state Forest Practices Rules which include detailed BMP prescriptions for an array of forest practices. Another good example is our stormwater manuals. At the same time we know that there are existing gaps and categories of nonpoint pollution that need more detailed guidance to meet the requirements of CWA Section 319, CZARA, and the guidance from EPA and NOAA. We have edited the plan to include a more specific timeline for the next year.

We agree that in updates to the plan the current description of the CWA 319 and CZARA requirements should be moved to Chapter 2. Chapter 6 will then be dedicated to information on the management measures that have been adopted or identified to comply with the requirements of CWA 319 and CZARA.

4. NOAA- Pg. 77-78: “Next Steps”. As discussed in the general comments above, this section should discuss some concrete actions that will be taken to address known gaps. Ecology can identify areas that need improvement now rather than waiting to conduct a gap analysis until the end of 2016.

Response: See summary response for this section. We have edited the table to include a shorter timeline to start the development of BMP guidance. The development process will begin at the soonest point feasible.

5. NOAA- Strengthened Stakeholder Processes: It is helpful to see that Washington has several stakeholder groups which include tribal representatives, to provide advice and guidance on nonpoint source pollution issues. These stakeholder groups include the forestry adaptive management program committees, the Water Quality Partnership, and the recently established Agriculture and Water Quality Advisory Committee. Ecology has also outlined additional stakeholder engagement opportunities in its draft plan to identify additional actions, including best management practices, to address nonpoint source pollution issues over the next five years. These groups can provide important forums to consider stakeholder concerns. We encourage Ecology to ensure its processes for addressing polluted runoff seek and respond to stakeholder input, including from tribes.

Response: Comment noted.

6. NOAA- Stronger Connection to CZARA Needed: NOAA understands the challenges Ecology faces in updating its draft Nonpoint Source Management Plan. However, given that CZARA clearly states that a state's coastal nonpoint program shall be implemented through updates to its nonpoint source management and coastal zone management programs and that EPA's Section 319 guidance calls for a portion of Section 319 funds to be set aside to support development of a state's coastal nonpoint program, we are disappointed that this draft plan does not include a stronger connection to Washington's Coastal Nonpoint Program. For example, Chapter 6 (Recommended Management Measures) and Chapter 9 (Goals and Strategies) do not include specific management measures or actions the state plans to take to further develop and implement its coastal nonpoint program that are consistent with the 6217(g) guidance. Ecology should include specific actions and milestones in the plan that clearly state which management measures/best management practices and/or programs and processes will be used to address known gaps.

Response: Comment noted. Our goal is to ensure that our nonpoint plan and program incorporate BMP guidance that also achieves compliance with the requirements of CZARA. We have edited the plan to include more specific timelines connected to actions that will deliver the necessary BMP guidance. Additionally, when we develop BMPs we will include those as updates to our nonpoint plan.

7. Northwest Environmental Advocates- In addition to identifying those BMPs, Washington is required to identify the programs it will use to implement these BMPs, CWA § 319(b)(2)(B), and to set out:

A schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (B), and (ii) implementation of the best management practices identified in subparagraph (A) by the categories, subcategories, or particular nonpoint sources designated under paragraph (1)(B). Such schedule shall provide for utilization of the best management practices at the earliest practicable date.CWA § 319(b)(2)(C).

Response: See summary response for this section. We agree that it is not enough to simply identify recommended BMPs. It is also necessary to have mechanisms that are used to implement effective BMPs. Chapters 2, 3, 4 and 5 cover the state mechanisms that we have in place to implement BMPs. Those chapters cover a mix of regulatory and non-regulatory tools that can be used in combination to achieve the implementation of effective BMPs. Our expectation is that we will update the plan to support the implementation of the suites of BMPs developed by the process laid out in Chapter 6. For example, our funding guidelines will be updated based on any work that comes out of the process outlined in Chapter 6. We will also update our education and outreach programs based on outputs from this work. Furthermore, we will work with partners to more closely align our programs.

8. Northwest Environmental Advocates- This plan should state clearly what Ecology sees as the barriers to success. It should also clearly articulate what best management practices (BMP) are necessary to reduce pollutant loadings from key categories of nonpoint sources to meet water quality standards, with and without TMDLs. It should establish a schedule with annual

milestones for implementing these BMPs that reflects the earliest practicable date. Until Ecology can clearly set out these BMPs, how it will achieve them, and when it will achieve them, the rest is just paper. As a consequence of producing paper without a meaningful plan, not only will Washington's waters remain polluted and likely worsen, particularly with the effects of climate change, but much of the regulatory program—standards, assessments, TMDLs, permits—will be for naught and largely a waste of taxpayers' money.

The key then, is the BMPs. We recognize that there is political pressure to not establish clear BMPs, let alone BMPs that are sufficient to meet water quality standards and TMDLs. To the extent that that political pressure or other similar barriers exist, Ecology must use this document to clearly articulate what those barriers are and what it is doing to go around them, over them, or be defeated by them. What it cannot do in a nonpoint source plan that requires a statement of BMPs is to ignore the requirement. And it must have vehicles in which to state the BMPs; if not manuals then TMDLs, but something. And these BMPs must address all pollutants, many of which are intimately connected, such as temperature, sedimentation, dissolved oxygen, and nutrients.

Response: See summary response for this section. We agree with the commenter's observation that we need to identify BMPs for all sources. Those BMPs should ensure compliance with the state's water quality standards and be implementable in all areas of the state whether a TMDL is in place or not. The commenter also notes the need to have implementation goals with annual milestones. We agree. The commenter also suggests that until the BMPs are set out the rest of the plan is just paper. We disagree. Our funding guidelines have clear eligibility criteria, and along with partners we are achieving implementation of BMPs in watersheds across the state. However, we do recognize the importance of having clear BMP guidance to meet all water quality standards, and recognize that our effectiveness is diminished by not having that guidance in place right now. We recognize the frustration of the commenter over not having this guidance in place but believe that the general process laid out in Chapter 6, along with strong stakeholder involvement, will address gaps in our program and improve the effectiveness of our regulatory and non-regulatory strategies.

9. Northwest Environmental Advocates- Pursuant to Clean Water Act § 319(b)(1), Washington is required to submit a plan to EPA for approval. The contents of this plan are governed by Section 319(b)(2). The plan is required to identify “the best management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category, subcategory, or particular nonpoint source designated under paragraph (1)(B)[.]” CWA § 319(b)(2)(A) (emphasis added). These categories were designated in an initial report that was required to identify “those categories and subcategories of nonpoint sources or, where appropriate, particular nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements.” CWA § 319(a)(1)(B) (emphasis added). Subparagraph (A), in turn, states that this report is to have identified “those navigable waters within the State which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this chapter.” CWA § 319(a)(1)(A) (emphasis added). In other words, the plan—of which this draft is one—required in section 319(b) requires the identification

of BMPs that are sufficient to reduce the pollutant loadings identified in section 319(a) that are contributing to violations of state water quality standards.

Response: See summary response for this section. We agree with the commenter's observation that we need to identify BMPs for all sources.

10. Northwest Environmental Advocates-Item no. 1 on the primary tools list should probably include the Clean Lakes Program and needs better punctuation, as well as an explanation of the STI program. Ideally, the STI would be placed as a separate category because STI is not a plan, it's an implementation project. In contrast, a TMDL is a plan and as such requires a great deal more explanation of how it will be implemented.

This discussion does not explain whether Ecology evaluates BMPs that it uses or recommends or that other agencies use or recommend to ensure that they are adequate to meet water quality standards, including meeting the load allocations established by any applicable TMDLs. In addition, there does not appear to be any discussion of the role of NRCS Field Office Technical Guides (FOTOG). Nor is there any discussion of the NMFS buffer recommendations for Western Washington until page 76. If Ecology has been prevented from establishing the "clear . . . objectives" that it believes are key to a successful nonpoint program, it should state that here.

Response: Comment noted. We currently rely on our funding guidelines, TMDLs and site specific considerations when recommending BMPs. However, as the commenter notes, we need improved guidelines, especially related to agricultural sources. Regarding the FOTGs we recognize the value of this guidance and utilize it in many contexts. However, the practices in the FOTG are not designed specifically to meet the state water quality standards. For example, our funding guidelines cite the FOTGs as technical guidelines for things such as how to construct a fence. However, to ensure that projects support compliance with state water quality law, the funding guidelines are designed to combine BMPs into suites and include minimum eligibility requirements such as the NMFS buffer guidelines for buffers.

11. Northwest Environmental Advocates- Chapter 6 This chapter states that it will lay out the process Ecology will use in the future "to identify management measures and BMPs for each category of nonpoint pollution in compliance with the CWA and CZARA." Important background to that assertion is what Ecology does now to identify those BMPs and to assure they are adequate.

Ecology should include the fact that EPA and NOAA have developed BMP management measures guidance pursuant to 16 U.S.C. § 1455b. We do not understand what Ecology is driving at with the following statement: "While the management measures [under CZARA] must be developed to ensure attainment of WQ Standards, the 'management measure' approach is more akin to a technology-based rather than water-quality-based approach to addressing nonpoint pollution." If Ecology is observing that the management measures are like a technology-based approach and the "additional management measures" are like a water quality-based approach, we agree. If Ecology is attempting to lump management measures required by 16 U.S.C. § 1455b(b), (g), and additional management measures required by 16 U.S.C. § 1455b(b)(3) together and claim that together they are not required to meet water quality

standards, then we disagree because Ecology would be fundamentally misreading CZARA. This paragraph should not start with “[w]hile . . . “ but, rather, it should start with “in addition, CZARA requires the development of additional management measures that are sufficient to meet water quality standards.”

The reference to “National Marine Fisheries Service (NMFS) buffer guidance” could use some improvement, such as a citation, a weblink, and an explanation (e.g., it applies to western Washington and sets out riparian buffers that range from this to that and are intended to address these pollutants). Otherwise, this reference might not be understood by many readers.

Ecology goes on to state that “our state lacks freestanding manuals, compendiums or other guidance that identify BMPs for agriculture that ensure compliance with the WQ Standards. However, we will continue to address agriculture sources of pollution as outlined in Chapter 3.” There is a leap in logic that is not addressed by this statement or by Chapter 3. What are the BMPs and how does Ecology know they are sufficient to meet water quality standards and TMDLs? How does Ecology believe this current situation comports with the CWA and CZARA statutes and EPA Section 319 guidance?

What are the limitations, if any, on Washington’s use of the NMFS riparian buffers? What are the gaps and limitations and how does Ecology intend to address them? Why doesn’t Ecology have manuals? Chapter 3 does not answer the questions. After the earlier discussion of the gaps and challenges associated with the Dairy program, Ecology must explain here what the BMPs are and why they are not adequate to meet water quality standards and what the plan is to get them revised so that they are sufficient.

While we agree that the Forest Practices are complicated, it is not adequate to simply state that they exist. Ecology needs to explain the practices and whether they are sufficient to meet water quality standards and, if not, the steps being taken (and when they are planned to be completed) to implement the adaptive management approach. The fact that some nonpoint sources can be covered by state discharge permits does not address the question: what BMPs are being used to control these sources and are they sufficient to meet water quality standards? These sources remain nonpoint sources and are not exempt from the cited requirements of Section 319 (or CZARA). Ecology must first separate the NPDES from the non-NPDES permits and then address them separately (a list for the NPDES permits is all that would be necessary). The BMPs required for nonpoint sources are among the most important aspects of this plan and are being given extremely short shrift in this chapter and throughout the entire document.

It is unclear that Ecology intends to create any additional BMP manuals or guidelines. Therefore, the section on stakeholder involvement is unclear. Ecology needs to commit to creating the manuals needed for the pollution sources that are not currently covered. A starting point would be to explain what is left over after the list of NPDES, non-NPDES, and statewide programs, including entire sectors as well as deficiencies in BMPs. It is unclear why this effort has not yet taken place; surely Ecology has at least a start on the process of identifying the omissions. Nor it is it clear why it will take until the end of 2016 to complete this process with the help of the federal agencies. This work product does not appear to be any actual manuals but

only a gap analysis. Moreover, it is unclear why Ecology believes that having new guidance by 2020 is a solution to its failure to meet the requirements of Section 319 and CZARA now.

Response: See summary response for this section. We agree with the commenter's observation that we need to identify BMPs for all sources, including agricultural sources and habitat modification. The commenter also notes the need to cite existing EPA and NOAA guidance. That guidance and other guidance will be used as we tailor BMP recommendations to meet our state's water quality standards. Finally, the commenter requested that the section be edited for clarity. We have made those edits.

12. Northwest Environmental Advocates-We are heartened to see that Ecology is promising the tribes “[c]lear guidance related to best management practices (BMPs) necessary for all nonpoint sources to achieve compliance with all WQ Standards,” but what exactly does this mean? Does it mean clear BMPs? Does it mean that Ecology will lay out the suites of BMPs that are necessary to implement TMDLs, to address nonpoint source pollution prior to TMDLs, and to prevent waters from becoming impaired? We certainly hope so. But if that is the case, there is no reason that this document should wait until page 65 to say so, and it should be established how and when this is going to happen. If Ecology would like to do this but does not anticipate actually doing it, it should write this document differently.

Likewise, please provide more information on the important statement: “Enforceable mechanisms in place to ensure compliance with the WQ Standards.”

How will Ecology “work collaboratively to address improper manure management and application”?

How will Ecology mesh its specific objectives listed on this page with the regulatory programs currently in place and the gaps and challenges it identified previously?

How will Ecology implement temperature standards? This requires a discussion of riparian protection and restoration that has been missing from the document.

How will Ecology address sediment loading issues?

If this is a plan, why does Ecology use this document to refer to “a need for a consistent outreach program that can uniformly convey to the public the practices needed to achieve compliance with the WQ Standards” rather than explaining what that outreach program will look like?

Response: The commenter lists a series of questions that Ecology has and will continue to struggle with. This plan does not contain specific solutions to all of the issues raised, either because we do not at this point have an answer or because we believe the answer will vary depending on the issue being addressed.

13. Washington Association of Conservation Districts-Same section – The plan acknowledges that BMPs “adopted” by Ecology do not have regulatory authority and “will not establish new environmental regulatory requirements.” However, Ecology’s unilateral action in approving or

adopting management practices (and even mandating certain practices) creates significant inconsistencies between Ecology-funded NPS programs and others upon which the plan relies, and also influences in a substantially negative manner the level of landowner participation in programs and projects funded by Ecology. The resulting general confusion by landowners further frustrates the effectiveness of incentive-based programs across the board.

Response: The commenter is correct that the BMPs adopted to satisfy the CWA Section 319 requirements will not have independent regulatory authority. Contrary to the commenter's suggestion, we are not proposing to adopt any recommended BMPs unilaterally. As outlined in the plan, we will work closely with all stakeholders in developing and completing a process to arrive at recommended BMPs. Further, most funding programs have different criteria that do produce "inconsistencies" between them. Simply adopting or approving recommended BMPs does not change this. Differences in funding programs already exist, and will likely persist into the future. However, working to have consistent funding programs is a good goal, and making sure that water quality is protected should be the baseline for funding programs. To the extent possible we will work with stakeholders and other agencies to promote consistency and the protection of water quality.

14. Washington Association of Conservation Districts-Same section – This description ignores the rationale for visual inspection of site conditions outlined earlier in the NPS Plan (Chapter 3) as a preferred approach to measuring need for action and success.

Response: The commenter suggests that adopting or approving recommended BMPs to fulfill the requirements of 319 and CZARA is inconsistent with the rationale for visual inspection of site conditions outlined earlier in the NPS Plan. Site conditions can provide information on which sites have pollution problems. However, recommended BMPs serve a different function by telling individuals how to achieve ideal site conditions. The two efforts are related but separate. Having good guidance on both is important to individuals who want to ensure they are in compliance and are protecting water quality, and for entities that provide technical and financial assistance, or conduct education and outreach efforts. Additionally, both are important to Ecology staff who implement the nonpoint program.

15. Washington Association of Conservation Districts-Same section – General permit considerations would result in confusion as to how to comply with a general permit, where there exist inconsistencies in acceptable practices under different component programs and contributing NPS programs and services. General permit is also a regulatory tool, and could complicate voluntary, incentive-based program efforts.

Response: General permits are an option for categories of discharges. The commenter suggests that there is confusion as to how to comply with general permits. While there is often an adjustment period for new general permits, our experience is that compliance expectations are clear with general permits. We have great success at addressing water pollution issues with general permits.

16. Washington Association of Conservation Districts-Same section appears to provide sufficient flexibility to the state to overcome Ecology's often expressed concern over how a

practice or suite of practices' may [absolutely] meet water quality standards. Application of technology-based or water quality-based approaches, in conjunction with partners, should be able to deal with this controversy. The NPS Plan should outline how Ecology and partners will resolve this "presumption" issue.

Response: Comment noted. We agree that the outlined process is intended to address concerns that have been raised in the past. Our goal is to meet the requirements of the CWA and CZARA while building in flexibility. By working with partners and stakeholders we are looking to develop /identify suites of BMPs that help people avoid polluting waters of the state and comply with the state water quality standards. Additionally, any guidance that we develop will have the option for individuals to also implement alternatives that can also be shown to prevent pollution and comply with the state water quality standards at that particular site.

17. Washington Association of Conservation Districts-Chapter 6/Recommended Management Measures/Federal Requirements/p 75 – In addition to listing federal CWA and CZARA requirements, the NPS Plan should also describe the federal NRCS responsibilities for developing and applying technical practice standards that protect and enhance water quality, as delivered through Farm Bill and other agricultural programs. For example, the plan should outline how EPA has accepted NRCS standards under the proposed EPA/ACE Waters of the US rule.

Response: Comment noted. This plan focuses on our responsibilities under the CWA and meeting water quality standards. NRCS practice standards are not specifically designed to meet the water quality standards in Washington State. EPA did not accept NRCS Standards under the Waters of the U.S. rule. Practice standards are not mentioned in the rule.

In 2010 we spent a year in discussions with the WSCC, NWIFC, NRCS, EPA, WSDA and WCDA about whether the NRCS process/standards/FOTGs were designed to meet water quality standards. Through that process we learned the following:

- The NRCS process is a great voluntary process. However, the NRCS process is primarily designed to guide a federal voluntary cost-share program.*
- NRCS technical guidance is designed to address a "resource concern." NRCS has also made it clear that the practice standards treat the resource concern to levels laid out in the quality criteria found in section III of the FOTG. While water quality in the general sense is often identified as a resource concern, the quality criteria do not necessarily provide a level of protection equal to that of Washington State's water quality standards or of the state's Water Pollution Control Act.*
- The practice standards found in section IV of the FOTG do not provide a level of protection needed to ensure that a producer will comply with state water quality regulations, because the FOTG standards are either silent or not detailed enough. In fact, section IV practice standards often contain broad statements to merely consider applicable local, state and federal regulations.*
- The NRCS process is a voluntary process and individual landowners decide what they want to implement or not.*

- *Engaging in the development/revision of NRCS practices is not necessarily productive. Ecology invested in that effort with the NRCS process to update the 590 practice. However, that process did not result in a practice standard that we could concur with as meeting water quality standards.*
- *Many standards provide good information on how to construct a practice. For example, NRCS has good information on how to build a fence. However, the written practices, standards, and specifications are less specific on water quality protections. For example, the Fence Standard (382) and specifications are not written to provide specific information on where to construct the fence to ensure compliance with water quality standards, or whether the standard and specification should be implemented in combination with other standards and specifications to ensure compliance with the state water quality standards.*

18. Washington Association of Conservation Districts- With regard to practices, WACD is concerned about the proposed analysis of practices' effectiveness (gaps analysis); no practice delivery partners are included here, including state and federal agencies that have statutory responsibilities to develop and apply technical standards and practices that protect and enhance water quality..... An example is the US Department of Agriculture, Natural Resources Conservation Service (NRCS). This federal agency is authorized by Congress – and is recognized by US EPA (the authorizing federal entity for Ecology's NPS water quality program under CWA) - as developing and applying technical standards that protect and enhance water quality. Yet the NPS Plan does not invite participation by NRCS, or by the Washington State Conservation Commission (WSCC) who works in concert with NRCS and conservation districts, nor does the plan reference the benefits of applying NRCS technical practice standards.This is a critical partnership issue. It is not consistent with the NPS Plan's stated objectives of relying on assistance provided by partners when Ecology undermines the tools employed by those partners (e.g., practice standards) to change landowner and land manager behaviors to protect water quality. This is an inconsistency in the NPS Plan, and it negatively impacts the effectiveness of partnerships in achieving NPS Plan objectives. Further, Ecology has attempted to duplicate partners' incentive-based technical and financial assistance programs using NPS funding targeted to favored (or even mandatory) practices, rather than supporting effective locally-led incentive-based programs.

Response: The gaps analysis is not intended to be a comprehensive review of the effectiveness of all existing BMPs. Instead, this first step is intended to identify whether Ecology has existing manuals, compendiums, or other guidance that meets the requirements of Section 319 of the CWA and CZARA. Again, both 319 and CZARA require BMP guidance for categories of nonpoint pollution that achieve the water quality standards. The commenter's concern appears to be related to the development of BMP recommendations. We agree that stakeholder involvement will be key to that process, and we will invite the participation of entities like NRCS and the WSCC along with other stakeholders and tribes.

Additionally, the commenter suggests that the process outlined in Chapter 6 will undermine the tools employed by partners, and that providing guidance on recommended BMPs that ensure compliance with the water quality standards is inconsistent with the objectives of the plan. We disagree. The process outlined in Chapter 6 will include extensive outreach to partners. Instead

of undermining the tools employed by partners, having clear BMP guidance related to achieving water quality standards should improve those tools. Further, having clear guidance developed in partnership with stakeholders is consistent with the objectives of the nonpoint source plan.

Finally, this process is not duplicating other efforts. The goal is to have clear BMP guidance to meet the state water quality standards. The NRCS technical standards are not designed to ensure compliance with Washington State's Water Quality Standards. EPA has not recognized NRCS as the entity that develops technical standards for the CWA or CZARA. Again, we anticipate that the process outlined in Chapter 6 will not undermine NRCS guidance. Instead, we see an opportunity to strengthen both our guidance and other types of guidance provided by our partners in the state, including NRCS and conservation districts.

19. Washington Association of Conservation Districts- Same section (p 19) refers to practices “approved by the department.” Rationale is provided that because “much NPS pollution cannot be easily measured” [especially if one does not look, perhaps, at a correct spatial scale and timeframe], “the standards express compliance by implementing Ecology-approved BMPS.” But the document fails to establish a connection between such an approval process, the implementation rate of such practices, and the monitoring that will be used to determine which practices or suites of practices actually “prevent or reduce” NPS pollutant discharges. Upon what scientific basis will Ecology [alone] make such a determination?

Response: Comment noted. We added language from the water quality standards to clarify the regulatory basis for the statement referred to by the commenter.

20. Washington Association of Conservation Districts-Chapter 6/Recommended Management Measures/p 75 – Ecology’s responsibilities under federal acts should not restrict the NPS Plan’s partnership opportunities, to invite participation by partners in efforts to designate management measures and suites of BMPs that comply with water quality standards. As stated in general comments, Ecology relies (for implementation) on partners who deliver technical and financial assistance services to landowners to achieve NPS goals and protect and improve water quality, and certain partners are responsible for developing practices for implementation. Yet these partners (e.g., NRCS, WSCC) are not included in activities to help fulfill Ecology’s responsibilities. Also, Ecology must comply with state law, and certain state programs require the application of NRCS technical practice standards. Again, inadequate reference is made to the importance of effectiveness monitoring related to determination of acceptable BMPs. Same section – No reference is made to technical assistance and the importance of adequate technical assistance expertise and resources to deliver recommended management practices.

Response: See summary response for this section. Ecology recognizes the need for partnerships. Contrary to the commenter's assertion, that commitment to partner involvement is included throughout the plan, including this Chapter and Chapter 6. Finally, we disagree with the commenter's assertion that EPA does not share Ecology's opinion regarding NRCS technical practice standards. We have worked with EPA on understanding their expectations and the requirements of Section 319 and CZARA. We do not dispute the value of NRCS's guidance. However, NRCS's guidance is not designed specifically to meet state WQ Standards. Likewise, WDFW's Riparian Habitat Guidance is not designed specifically to meet the CWA and CZARA.

However, we anticipate reviewing and utilizing both WDFW's and NRCS's guidance when we develop recommended BMPs to satisfy our Section 319 and CZARA requirements.

21. Washington Association of Conservation Districts-This is a serious partnership issue. Ecology cannot achieve partnership goals outlined in the NPS Plan unless and until this issue (as explained in a number of places in these comments) is resolved. (It has been noted earlier that EPA does not share Ecology's opinion regarding NRCS technical practice standards.)

Response: See summary response for this section. Ecology recognizes the need for partnerships. Contrary to the commenter's assertion, that commitment to partner involvement is included throughout the plan, including this chapter and Chapter 6. Finally, we disagree with the commenter's assertion that EPA does not share Ecology's opinion regarding NRCS technical practice standards. We have worked with EPA on understanding their expectations and the requirements of Section 319 and CZARA. We do not dispute the value of NRCS's guidance. However, NRCS's guidance is not designed specifically to meet state WQ Standards. Likewise, WDFW's Riparian Habitat Guidance is not designed specifically to meet the CWA and CZARA. However, we anticipate reviewing and utilizing both WDFW's and NRCS's guidance when we develop recommended BMPs to satisfy our Section 319 and CZARA requirements.

22. Washington Association of Conservation Districts-Chapter 6/Recommended Management Measures/Stakeholder Involvement/p 77 – The NPS Plan's description of stakeholder involvement does not accurately reflect current practice or even preferred practice in terms of stakeholder participation. As noted earlier, there are aspects of the plan where state and federal agencies (and others perhaps) are not included in Ecology activities as partners (e.g., assessing effectiveness of practices through scientific evaluation or via effectiveness monitoring). The plan should require Ecology to achieve concurrence with partners on such matters as practice standards and effectiveness monitoring strategy, particularly where such partner agencies have responsibilities under state and federal law to develop and apply management measures to address water quality.

Response: See summary response for this section. Ecology is committed to working with stakeholders to develop the process for identifying recommended management measures and engaging partners in that process. The commenter refers to the stakeholder involvement outlined in Chapter 6 and questions the adequacy of that process. We agree that robust stakeholder involvement is needed to make this process successful. The suggestion that it will not happen is premature. We did not detail that process in the chapter. Instead, we recognized the need to have stakeholder involvement in the design of that process. Under the CWA Section 319, the state water quality standards and CZARA, Ecology is responsible for designating BMPs that achieve state water quality standards. However, our intent is not to act in a vacuum. Instead our intent is to bring stakeholders into the process from the beginning. Specifically, we will enlist partner support and input on the design of the process and in carrying out the process.

23. Washington Association of Conservation Districts-Chapter 6/Recommended Management Measures/Next Steps/pp 77 – 78 – Gaps analysis – The NPS Plan does not include clear participation by NRCS, WSCC or other NPS partners as needed, and as described in earlier comments. This should be corrected.

Response: Our intent is to get stakeholder input at all points in our process. We have made edits to clarify this section.

24. Washington Association of Conservation Districts- An example is the US Department of Agriculture, Natural Resources Conservation Service (NRCS). This federal agency is authorized by Congress – and is recognized by US EPA (the authorizing federal entity for Ecology’s NPS water quality program under CWA) - as developing and applying technical standards that protect and enhance water quality. Yet the NPS Plan does not invite participation by NRCS, or by the Washington State Conservation Commission (WSCC) who works in concert with NRCS and conservation districts, nor does the plan reference the benefits of applying NRCS technical practice standards.

Response: The commenter suggests that the plan does not intend to have NRCS or WSCC participation in developing or designating BMPs. This is not true. The plan states that we will seek involvement from "local, state, tribal and federal agencies, as well as public interest groups, industries, academic institutions (including the Washington Stormwater Center) private landowners and producers, and concerned citizens." We anticipate participation from both NRCS and WSCC.

25. Northwest Indian Fisheries Commission- Washington's Nonpoint Source (NPS) control plan is a federal requirement under § 319 of the federal Clean Water Act (CWA). The NPS control plan and the Coastal Nonpoint Pollution Control Plan - a related federal requirement under the Coastal Zone Act Reauthorization Amendments - are key authorizations for designing and implementing pollution control strategies for those sources not regulated by a National Pollution Discharge Elimination System (NPDES) permit. The CWA describes a technology-based approach for controlling NPS pollution, where best management practices (BMPs) are developed and implemented with the goal of achieving water quality standard compliance, protection of designated uses (e.g., fishable and swimmable), and restoring the biological integrity of the nation's waters. However, Washington has not fulfilled these requirements, because the state lacks clearly identified BMPs for many NPS pollutant categories, which can be applied through both voluntary and regulatory means, and transparently and objectively evaluated. Ecology needs to identify these BMPs for all of the NPS pollution categories in the NPS control plan, or at a minimum, set up a date certain process that will specifically result in BMPs that comply with all water quality standards. Washington has developed BMPs for storm water management but similar documents need to be developed for the other NPS pollution categories.

Response: See summary response for this section. We agree with this comment.

26. Northwest Indian Fisheries Commission- While the draft NPS plan has failed to formally adopt BMPs, as mentioned above, it is important to mention that Ecology has taken a vital step forward by successfully implementing its §319 funding guidelines requiring the use of NMFS recommended guidelines for riparian management. We have appreciated working with Ecology's staff in the course of implementing federal agency direction and their scientifically-derived guidelines for funding programs. The implementation of scientifically-based performance

standards for riparian management is an important request from the Tribes' Treaty Rights at Risk initiative and a major step forward in the state's management of NPS pollution. We strongly support Ecology's continued implementation of these guidelines, which thus far have implemented robust, scientifically sound riparian protections with public funding. That said, Washington still needs to formally adopt the NMFS recommended or similar guidelines into its NPS plan.

Response: Comment noted. See summary response for this section.

27. Northwest Indian Fisheries Commission- Does not identify Best Management Practices (BMPs) for agriculture. Best Management Practices (BMPs) are a vital tool to any non point source pollution control effort. BMPs describe the means to control and prevent identified sources of pollution. Without BMPs, any NPS pollution control effort- whether it is TMDLs, PIC programs, or agricultural referral programs -will lack specific performance standards necessary to ensure that the program is designed to achieve its intended goal. In this case, the intended goals under the CWA are compliance with water quality standards and full protection of beneficial uses. Without performance standards, program implementation will default to the discretion of the implementing agency, which often seeks to comply with landowner willingness instead of achieving specific outcomes necessary to protect aquatic resources. As the plan calls attention to, Washington State has yet to develop BMPs for agriculture. The plan provides neither a time frame, nor a means to accomplish this important gap in NPS control.

Response: See summary response for this section. We agree with the commenter that several categories of nonpoint pollution sources do not have well-defined BMPs, including agricultural activities. Our approach moving forward is intended to fill those gaps.

28. Northwest Indian Fisheries Commission- We think this accurately sets forth Ecology's authority to identify BMPs and its obligation to make sure that they are adequate to achieve the state's water quality standards. Here, Ecology also recognizes its obligation under CZARA to identify management measures that comply with state water quality standards. This is consistent with the direction that has already been provided to Ecology by EPA and NOAA OCRM. Additionally, it is important to note that Ecology heeded the letter and spirit of the direction provided by EPA and NOAA OCRM by adopting the NMFS-recommended riparian buffers for agricultural lands in their guidance for 319 program funding. We appreciate Ecology's efforts to protect beneficial uses, particularly in the face of opposition from producer groups and conservation districts.

As mentioned above, we suggest that Ecology identify a timeline and milestones associated with these objectives so that the tribes, other agencies, and the public are able to assess the state's progress towards achieving these important objectives.

In addition, with respect forest practices, there needs to be greater focus on stream temperature, sediment loading, fluvio-geomorphic changes that relate to sediment loading, and fish habitat. Given the water quality assurance afforded to forest practices in this state, there is an assumption that forest practices have a neutral impact on water quality. This is an assumption or hypothesis

that is not consistent with reality. Millions of dollars of public funds are spent restoring watersheds and fish habitat degraded by forest practices. The most cost-effective way to address these high costs is avoidance through more effective regulations. Further, buffer requirements on non-fish bearing streams associated with forest practices are not sufficient to protect stream temperatures. The Nooksack Indian Tribe has been studying water temperature impacts in the Nooksack River and it is obvious that inadequate buffering of tributaries contributes to the South Fork Nooksack River not meeting water quality standards as established in a traditional temperature TMDL. The non-point program should address water quality impacts on fish habitat, particularly when fish survival is the primary beneficial or designated use of a water of the state and tribal treaty resources.

Response: See summary response for this section. We have edited the section to include a new timeline to start the BMP development process.

29. Northwest Indian Fisheries Commission-We agree that Sec. 319 requires states to identify BMPs that are effective at achieving water quality standards. Accordingly, federal, state, and local agencies administering activities that affect water quality have an obligation to adopt such BMPs. This is consistent with their obligations to protect and not interfere with the tribes' treaty-secured rights.

Response: Comment noted.

30. Northwest Indian Fisheries Commission-We strongly support Ecology's decision to adopt loan funding guidelines regarding BMPs eligible for funding with §319 grant funds. We also support the use of the NMFS-recommended riparian buffers intended to meet water quality standards and support salmon recovery. The opposition from agricultural interest groups and conservation districts highlights the lack of support from these groups for BMPs that are adequate to support salmon recovery and meet water quality standards. This is why it is essential that Ecology adopt technically sound BMPs – approved by EPA and NMFS/NOAA OCM – in consultation with the tribes.

Response: Comment noted.

31. Northwest Indian Fisheries Commission- This proposed gap analysis due by the end of 2016 is unnecessary. WDOE already knows where the gaps are. As noted above, for over five years, the state has unsuccessfully attempted to identify a recommended set of agricultural BMPs. We note that the state has been able to identify BMPs for both stormwater and even for voluntary processes like shoreline stabilization measures in front of single family residences. Agricultural BMPs already exist and are readily available. At a minimum, the state can continue the decision it made in 2013 to follow the direction of EPA and NMFS/NOAA OCRM to employ the NMFS-recommended riparian buffers for agricultural lands as being the default BMP for grant programs. This can remain in place until an alternative set of BMPs, based on best available science, is identified that more effectively meets water quality standards and salmon habitat protection needs. Additionally, the state needs to adopt a timeline and milestones/objectives to fill any gaps in its 319 and CZARA programs. Given the over 15 year

delay in complying with CZARA and the impacts that have occurred in that period to treaty-protected resources, any further delay is not reasonable.

Response: See summary response for this section. We have edited the section to include a new timeline to start the BMP Development process. Additionally, we are committed to keeping the current funding guidelines in place until they can be replaced by the guidance developed in accordance with Chapter 6.

32. King County-Water and Land Resources Division-We fully support the statement on page 77 of the report: “Ecology recognizes the need for early stakeholder involvement in any process that develops new management measures and BMP guidance, or updates of existing guidelines or manuals.” This commitment to stakeholder involvement prior to Ecology action is something we have experienced and appreciated from Ecology over the years and for us is the most critical component of this plan. This is especially important with agriculture, silviculture and stormwater.

Response: Comment noted.

33. Board of Stevens County Commissioners- Page 63, last paragraph, first sentence – Ecology should not dictate a practice or single BMP. If technical assistance is provided, Ecology should provide the outcome and let the “experts” at the CD provide the technical assistance to help landowners find the correct sweep of BMP’s for their operation or situation. NPS is voluntary and landowners should have the opportunity to utilize that BMP or practice that keeps them financially sound while achieving clean water.

Response: It is not our intent to dictate a practice or single BMP. In general we support the use of suites of BMPs. Additionally, we are committed to providing flexibility. Specifically, in any guidance, manuals, or compendiums with recommended BMPs that we develop, we will recognize the ability to implement alternatives that provide an equal or greater level of protection.

Additionally, with regard to conservation districts, they do not regularly provide technical assistance on every category of nonpoint pollution. Individuals may choose other technical assistance providers to help them or decide to implement BMPs on their own. Regardless, having clear guidance from Ecology is important for ensuring that water quality standards are met.

Finally, conservation district staff will have the ability to be involved and provide input on any BMPs that are developed to meet the requirements of 319 and CZARA. We are deeply committed to working with local stakeholders. Once BMPs are developed, we anticipate that entities, like the conservation districts will utilize the guidelines, manuals, or compendiums. The commenter also states that NPS is voluntary. This sweeping statement is inaccurate. For example, the Forest Practices Rules, Dairy Nutrient Management Program, OSS regulations, and Water Pollution Control Act all apply to nonpoint source pollution. Voluntary and technical assistance tools are generally the preferred tools for many nonpoint sources.

34. Board of Stevens County Commissioners - Page 75, first paragraph, first sentence – After the words “land use” please put “or activity”. This will better describe that BMP’s can be implemented that do not pertain to a specific land use.

Page 75, second bullet – Please add the words “suite of” prior to “BMP’s”. Again, Ecology should give landowners and producers options based on best available science and not dictate a specific practice that may be financially unsound or produce unintended results outside of water quality.

Response: Edits made.

35. Washington Farm Bureau- PLAN SHOULD RISE ABOVE THE BIG BUFFER AND AG PRACTICE MANUAL BATTLES OF THE PAST

As you know, the full agricultural community opposes the buffer preconditions imposed by NMFS and EPA on Ecology’s National Estuary Program and Clean Water Act 319 funds. These unreasonable conditions are not compatible with Director Bellon’s Ag and Water Quality Advisory Committee vision “to improve working relationships, and ensure both water quality protection and a healthy agricultural industry.” NMFS buffer conditions impair Ag viability and the relationships needed to promote water quality. Please ask NMFS and EPA to reconsider. WFB is also concerned about Ecology’s stated intent to “fill in the gaps where Ecology does not have current ‘manuals or compendiums’ for categories or subcategories of nonpoint pollution” (78). The Plan states: “Outside of the information provided in our funding guidelines, Ecology recognizes our state lacks freestanding manuals, compendiums or other guidance that identify BMPs for agriculture that ensure compliance with the WQ Standards” (76). WFB appreciates that Ecology will seek the input of the Ag and Water Quality Advisory Committee on any proposed Ag practice manuals. But the Plan’s reference to the funding guidelines raises the specter of a “compendium” equivalent to an Ag Practices Act. This is because both the Plan and Ecology’s funding guidelines remain high-centered on the NMFS buffer funding conditions.

Response: Comment noted. See summary response for this section. Our intent is to work closely with all stakeholders, including the Farm Bureau, to construct something that does not suffer from the same pitfalls of previous efforts, meets CWA and CZARA requirements, and provides flexibility.

36. Washington Cattlemen's Association- Chapter 6: Recommended Management Measures Introduction (pg. 75). The Introduction to this chapter states that Ecology will use the best available science to identify BMPs and measures. WCA suggests that Ecology work closely with the Washington State Department of Agriculture to identify and design BMPs that use the best available science. Additionally, Ecology should provide additional information regarding how it will communicate with stakeholders, including how it will identify studies relied upon in developing BMPs before any new management measures or BMP guidance documents are finalized. WCA would also like some assurance that there will be an opportunity for public notice and comment during the development of any measures or BMP guidance documents. This will help strengthen the partnerships which will be necessary to accomplish the State’s water quality goals. It is important that every solution is site specific because a “one-size fits all approach” will not work. Flexibility and adaptation will be key in addressing water quality issues.

Federal Requirements (pg. 75-76). Ecology states that federal guidelines define management measures as “economically achievable measures” that reflect the “greatest degree of pollutant reduction achievable” through implementation of “the best available” nonpoint pollution controls. Ecology should provide some understanding of its interpretation of “economically achievable” to ensure that this is a meaningful definition. As Ecology is aware, many livestock operations are economically sensitive. To achieve Ecology’s water quality goals, and to maintain rural livelihoods, this is an important concept that warrants careful consideration and clear guidance.

Existing Regulatory Programs and Permits (pg. 76). The Draft NPS Plan states that Ecology will generally defer to existing regulatory programs that provide specific oversight and enforcement authority related to a specific category of NPS pollution. This language warrants clarification by identifying potential reasons why Ecology might not defer to those programs.

Stakeholder Involvement (pg. 77). WCA commends the methods of stakeholder involvement delineated in the Draft NPS Plan, but suggests that Ecology additionally host town-hall style forums for the public to become engaged in the development of NPS pollution prevention management measures.

Response: See summary response for this section. We agree that the Department of Agriculture should be engaged and involved in identifying BMPs and measures. We will work closely with them when developing BMP guidance. Further, we agree that communications with stakeholders will be important. We will continue to look to the Agriculture and Water Quality Advisory Committee to engage producer groups and get their feedback on how to best communicate with producers. The commenter also points out that the federal guidelines define management measures as "economically achievable measures." Ecology will work with EPA, NOAA, and stakeholders to ensure that this requirement is clearly defined. The commenter asked for clarification on why Ecology might not defer to existing regulatory programs. Ecology anticipates deferring to regulatory programs that have a requirement to meet water quality standards. One example is the Forest Practices Rules, where Ecology has a clear mechanism to review and approve rules affecting water quality. Other programs, like the Onsite Sewer System regulations, do not have that same requirement. We will look to defer to those regulations and their standards. However, if EPA and NOAA determine that the standards do not meet the requirements of CZARA or the CWA, we may not be able to simply defer to those programs. Instead, we will look to work with all parties to achieve conformity with the federal regulations. Finally, the commenter suggests that we host town hall-style forums for the public to become engaged. We agree that past town-hall style forums have been productive and lead to better public engagement. We will utilize those forums as an outreach tool.

37. Washington Cattlemen’s Association- Lastly, because the current NPS plan was promulgated ten years ago in 2005, WCA urges Ecology to take into account the time Cattlemen will require to transition to utilization of new NPS pollution prevention measures. WCA advocates for a flexible window of compliance whereby Cattlemen can make changes to conform to any new BMPs without threatening the economic viability of their businesses.

Response: Comment noted. We will work with stakeholders, including the commenter, to make sure we find the right amount of time for people to make changes to conform to any new BMP guidance. BMPs that are developed will be eligible for our 319 funding.

38. Puget SoundKeeper- Chapter 6 of the draft plan, entitled “Recommended Management Measures,” should be the heart of the plan. Sadly, it is one of the shortest chapters in the entire document and completely fails to meet the requirements of the federal law. Section 319(b)(i) of the Federal Clean Water Act is explicit in terms of requiring state nonpoint management programs to include: “An identification of measures (i.e. systems of practices) that will be used to control NPS pollution, focusing on those measures which the state believes will be most effective in achieving and maintaining water quality standards. These measures may be individually identified or presented in manuals or compendiums, provided they are specific and related the category or subcategory of nonpoint sources.” While we are pleased that Ecology recognizes the need to establish BMPs that achieve water quality standards for full spectrum of nonpoint sources, the plan falls far short of meeting this objective. Not only does the draft plan fail to identify or establish BMPs, it fails to even establish a timeline for addressing sources where we lack such controls. Instead, the Draft Plan simply calls for a “gap analysis by the end of 2016” (p. 77, Draft Plan). This is clearly inconsistent with the terms of 319(b)(i). Given that the Plan update was due in 2010, it is hard to imagine why it would have taken the agency five years to produce an “update” which not only fails to identify appropriate practices but even fails to identify categories of sources that require such practices. At a minimum the draft plan should identify categories of sources that lack best management practices and establish a timeline for the development of formal guidance, manuals, and other materials to define such practices.

Response: See summary response for this section. We agree with the commenter that Chapter 6 is important to the success of the state's nonpoint source plan. Having clear and protective BMP recommendations is a key requirement of CWA Section 319 and CZARA. We also recognize the concern over the lack of guidance and the extended timeline for meeting this requirement. Edits have been made to Chapters 6 and 9 to outline a shorter timeline for fulfilling this requirement.

39. Puget SoundKeeper- Section 319(b)(iv) states that the NPS plan must include “a schedule with goals, objectives, and annual milestones for implementation.” This includes a discussion of “available resources” and “authorities” to accomplish the plan. While the table provided in Chapter 9 of the draft plan provides some direction here, the “strategies” are vague (e.g.- “implement BMPs as necessary”) and the annual milestones are often left blank. There are few, if any, new initiatives here---it’s mostly status quo. Goal 2, which is entitled “Ensure Clear Standards,” is particularly disappointing. It relates to the development of BMPs discussed above. In the first cell of that table, the agency is called on to “continue to work to provide information” on BMPs. There are no real “measurable outputs” or “measureable milestones” identified. The table is largely designed to reflect implementation of existing law that will do little to address growing problems associated with NPS pollution.

Response: Comment noted. We have edited the table to include a shorter timeline to start the development of BMPs.

40. Puget SoundKeeper-While several categories of sources do not have well defined BMPs, the biggest gap is clearly in the area of agricultural activities. NRCS standards are not designed to meet water quality standards. Nor is the emerging guidance document on Ecology water quality enforcement regarding grazing practices a substitute for well defined BMPs. In order to meet the requirements of 319 and the CZMA, the plan must clearly define a process with deadlines for development of BMPs in this area. Moreover, we are concerned with the assumption made in the draft plan in terms of whole categories such as onsite septic systems or stormwater pollution having been addressed simply due to the fact that there are some regulatory programs or permits governing these categories. A close examination of onsite septic system programs, for example, reveals gaps regarding the identification of failing systems as well as operation and maintenance requirements. As you know, municipal stormwater guidance and permits, among other things, fail to address small lots and sheet runoff that is not associated with a conveyance. These are major sources of pollution that deserve attention.

Response: We agree with the commenter that several categories of sources do not have well defined BMPs. We also agree that there are other categories that need to be evaluated for gaps. We note the commenter's concerns over onsite septic system programs, addressing small lots, and runoff from urban areas that is not associated with a conveyance. We will discuss these areas with EPA and NOAA when we do the gap analysis and seek input on that gap analysis.

We also agree with the commenter that NRCS standards are not designed to meet state water quality standards. In 2010, we spent a year in discussions with the WSCC, NWIFC, NRCS, EPA, WSDA and WCDA about whether the NRCS process/standards/FOTGs were designed to meet water quality standards. Through that process we learned the following:

- The NRCS process is a great voluntary process. However, the NRCS process is primarily designed to guide a federal voluntary cost-share program.*
- NRCS technical guidance is designed to address a "resource concern." NRCS has also made it clear that the practice standards treat the resource concern to levels laid out in the quality criteria found in section III of the FOTG. While water quality, in the general sense, is often identified as a resource concern, the quality criteria do not necessarily provide a level of protection equal to that of Washington State's water quality standards or of the state's Water Pollution Control Act.*
- The practice standards found in section IV of the FOTG do not provide a level of protection needed to ensure that a producer will comply with state water quality regulations, because the FOTG standards are either silent or not detailed enough. In fact, section IV practice standards often contain broad statements to merely consider applicable local, state and federal regulations.*
- The NRCS process is a voluntary process and individual landowners decide what they want to implement or not.*
- Engaging in the development/revision of NRCS practices is not necessarily productive. We invested in that effort with the NRCS process to update 590. However, that process did not result in a practice standard that we could concur with as meeting water quality standards.*
- Many standards provide good information on how to construct a practice. For example, NRCS has good information on how to build a fence. However, the written practices,*

standards, and specifications are less specific on water quality protections. For example, the Fence Standard (382) and specifications are not written to provide specific information on where to construct the fence to ensure compliance with water quality standards, or whether the standard and specification should be implemented in combination with other standards and specifications to ensure compliance with the state water quality standards.

41. Spokane RiverKeeper-Best Management Practices

We feel strongly that any effective NPS plan will clearly lay out best management practices (BMP's) for various forms of NPS pollution. This includes agricultural pollution and the persistent problem practices that contribute to poor water quality.

These include:

- Destruction of riparian vegetation along rivers and their tributaries and feeder watercourses.
- Pasturing of livestock on streams or in areas that immediately feed streams
- Tillage practices that encourage water and wind erosion to streams and feeder water courses.

The NPS plan needs to set BMPs that specifically address the above behaviors and reduce pollution from these agricultural practices.

The science shows us that BMPs such as fencing livestock out of riparian areas and water courses, replanting riparian buffers, direct seed agriculture and cover crops all lead to improved water quality. Additionally, clear timelines for compliance, and regulatory actions for continued situations in which these practices contribute the substantial potential to pollute our waters. Delaying the decision on management measures as the NPS plan recommends, allows agricultural polluters to continue to contribute to water quality problems for years to come.

Response: See summary response for this section. Ecology recognizes the effectiveness of excluding livestock from riparian areas and water courses, replanting riparian buffers, direct seed, and cover crops. Our funding guidelines support the implementation of those BMPs. While we are not including specific information on BMPs in this update to the plan, we will continue to implement those funding guidelines and support the implementation of BMPs that meet our funding guidelines in all our work.

42. Lummi Nation- Page 17, Section 319- Nonpoint Source Management Programs. As noted in the draft NPS Pollution Management Plan, the EPA guidance requires inclusion of specific components in a state NPS management program including the identification of measures (i.e., systems of practices) that will be used to control NPS pollution and focusing on those measures which the state believes will be most effective in achieving and maintaining water quality standards. The EPA guidance notes that these measures may be individually identified or presented in manuals or compendiums, provided that they are specific and are related to the category or subcategory of NPS pollution. They may also be identified as part of a watershed approach towards achieving water quality standards, whether locally, within a watershed, or statewide.

This EPA requirement highlights the need for Ecology to identify BMPs for agriculture that are designed to achieve all water quality standards including fully supporting salmon and shellfish habitat. Ecology needs to prioritize development of a guidance document for the agriculture NPS category similar to what it has done for storm water management from construction sites. The guidance document should identify the BMPs which, if effectively implemented, would ensure that the landowner will achieve the applicable water quality standards. Once this guidance document is developed, the implementation of the BMPs and the effectiveness of the identified BMPs should be evaluated and adapted as necessary. Similar to the existing requirements for storm water management, Ecology should adopt a rule that requires the implementation of the BMPs identified in the guidance document for agricultural land uses.

Response: See summary response for this section. We agree with the commenter's observation that we need to identify BMPs for all sources that will be the most effective in achieving and maintaining water quality standards. The commenter suggests that we prioritize the development of a guidance document for the agriculture NPS category similar to the guidance that we have for stormwater and construction sites. We agree that there is a need for additional guidance for agricultural sources, but recognize the need for a full gaps analysis. When gaps are identified, we will work closely with stakeholders to identify the process for developing or adopting suites of BMPs to ensure compliance with the water quality standards. The commenter also highlights the need to evaluate the effectiveness of identified BMPs and utilize adaptive management as necessary. We agree. Edits have been made to the plan to reflect this. Finally, the commenter suggests that we adopt a rule that requires the implementation of BMPs identified in any guidance document developed for agricultural land uses. We do not intend to adopt a rule that requires all agricultural producers to implement the BMPs identified through this process. As stated in the plan, any manuals, compendiums or other guidance that identify BMPs adopted by Ecology to fulfill the requirements of Section 319 will not have independent regulatory authority and we do not intend to establish new environmental regulatory requirements through this process.

43. Lummi Nation-Ecology's current non point source management practices for important NPS Pollution Categories, in particular Agriculture and Hydromodification/Habitat Modification, are not effective. Ecology needs to adopt BMPs for agricultural land uses in particular and require that the BMPs be effectively implemented. Ecology also needs to revisit its approach to polluters and adopt policies that protect downstream beneficial uses and users rather than polluters.

Models for effectively enforcing long-standing existing laws exist within the Washington State government and these effective models should be adapted by Ecology and used to replace the current ineffective approach. The draft NPS Pollution Management Plan should be revised accordingly.

Response: See summary response for this section. We agree with the commenter's observation that we need to identify BMPs for all sources, including agricultural sources and habitat modification. The commenter also notes the need to focus more on the protection of downstream users. We agree. We recognize the impacts that upstream pollution sources have on downstream users, and the frustration those downstream users have over extended timelines that

we often have when addressing upstream pollution sources. Some downstream users continue to be impacted even after pollution sources have been identified and years have passed. Chapters 2, 3, 4 and 5 outline the approaches that we use to address nonpoint pollution sources. Our intent is to utilize both regulatory and non-regulatory tools to address pollution sources and promote the implementation of effective BMPs. We recognize the frustration over the current balance between those two approaches, and will continue to work with stakeholders to find a better balance.

44. Squaxin Island Tribe- The Squaxin Island Tribe would like to convey our concerns about the State of Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution, which must be reviewed and approved by the EPA. Section 319 of the Clean Water Act provides that states must develop Best Management Practices (BMPs) and programs that will implement them in order to address specified non point sources of pollution. In Washington, poor land use practices have led to streams without riparian forests and other habitat forming conditions necessary to support cool, clean waters that salmon need to survive.

Response: See summary response for this section.

45. Western Environmental Law Center- BEST MANAGEMENT PRACTICES FOR AGRICULTURE

Ecology must implement its existing statutory authority to promulgate enforceable regulations that establish best management practices (“BMPs”) for agricultural activities that are polluting the surface and ground waters of this state. Those BMPs should be incorporated as conditions in discharge permits issued to point sources such as CAFOs, and should be mandatory practices that are enforceable for other nonpoint source activities.

Nowhere in the Plan does Ecology identify actual BMPs for agricultural nonpoint sources of pollution. This is a significant omission and renders the Plan out of compliance with applicable legal requirements. The BMPs must be designed to protect water quality standards based on best available science and should incorporate all known, available, and reasonable methods of prevention, control and treatment (“AKART”) as required by state law. The BMPs must put the state on a path towards Clean Water Act compliance: the elimination of water pollution.

A recent consent decree approved by the Eastern District of Washington identifies certain manure management practices that constitute AKART for the dairy CAFO industry that should be mandated as permit conditions in the new CAFO General Permit.⁵⁴ For example, the consent decree requires double-lined manure lagoons, limitations on applications of manure to fields, and re-design of composting systems, among other requirements.

There are other BMPs that similarly have scientific support, such as banning the winter application of manure to fields, testing the nutrient content of the manure before application, and a program that tracks and monitors manure applications so that manure is applied at agronomic rates. Ecology must identify and enforce these BMPs. It is apparent that existing BMPs (whatever they are, since they are not identified in the Plan), must be revisited in light of the fact that they are proving to be ineffective. For example, in the Samish River watershed, the

Washington State Department of Agriculture has recognized: Many BMPs have been implemented yet we continue to see high counts [of fecal coliform]. Dairy producers are responding to regulatory asks and doing more but are getting weary of our presence, they have reported that sometimes it seems like there is always someone there scrutinizing what they do. Does that mean the BMPs need to be reevaluated? Can we do a better job connecting the dots between cause and affect with high fecal coliform counts?

Response: See summary response for this section. We agree with the commenter's observation that we need to identify BMPs for all sources, including agricultural sources. We will work closely with stakeholders to identify those suites of BMPs and evaluate existing scientific support for BMPs such as those outlined by the commenter.

46. Snohomish County Department of Public Works- Chapter 3. Strategies for Addressing Non-point: The inclusion of presumptive programmatic or structural BMPs such as vegetation maintenance around stormwater facilities to reduce fecal coliform in Total Maximum Daily Load Plans (TMDLs) and Municipal NPDES Permits results in limited resources spent on efforts with an un-proven certainty of success. This appears in conflict with the aim of the NPP. Ecology is encouraged to engage interested parties, including TMDL and Municipal stormwater permit writers in an effort to research, study and approve a set of scientifically proven programmatic and structural stormwater BMPs from which Municipal stormwater permittees can choose from based upon local knowledge.

Response: See summary response for this section. We are committed to including a broad array of stakeholders in the process of developing recommended BMPs. Stormwater permittees will be included in this process. We agree that the process must result in effective and scientifically proven BMPs.

47. Snohomish County Department of Public Works- Chapter 6. Recommended Management Measures: Ecology should prioritize the study and ultimate approval of treatment technologies to reduce fecal coliform pollution. The variable nature of non-point sources of fecal coliform bacteria can make source identification and elimination challenging. Ecology's Technology Assessment Protocol contract with the Washington Center for Urban Waters encourages testing and approval of treatment technologies for bacteria. Having approved treatment technologies available for implementation would enhance our toolbox, and directly support the aim of the NPP, through proven use of BMPs. We have included two approaches as examples that Ecology could consider having the Center for Urban Waters evaluate. If effective and implemented these technologies may assist in removing waters from the 303d and/or 305b lists.

The first link is to a study funded by the EPA and Ecology, where Battelle was hired by the Jamestown Tribe to test the effectiveness of using Mycoredmediation for removal of fecal coliform and bacteria. This approach would appear appropriate for a rural setting.
http://dungenessrivercenter.org/documents/FinalMycoremediationReport_000.pdf

Secondly, Filterra TM has developed a more urban technology which they claim is effective at removal of fecal coliform bacteria. This technology has been approved for use by EPA in other regions of the United States <http://www.filterra.com/index.php/product/bacterra/>

Response: Comment noted. We are not currently evaluating individual technologies as part of the nonpoint plan update. However, we do recognize the need to evaluate new approaches and technologies. We will note the two examples provided for future possible efforts.

48. US Forest Service- Pg. 76 Stakeholder Involvement – we support developing and improving BMP and management measure guidance and Next steps “Gap analysis” and offer our involvement and assistance. Consider including reference to FS National BMP program, see comment Pg. 89.

Response: Comment noted. We are working with EPA to ensure that we develop a process that includes stakeholder involvement at every stage of BMP development. At this point we are not looking at specific BMPs and their adequacy in meeting state water quality standards. However, when we start that process we will review the Forest Service BMP program.

49. Stevens County Conservation District- NRCS standards and specifications should be recognized in the plan to be reviewed and utilized for the protection of water quality. This would be more efficient and less time consuming than Ecology writing its own guidelines and manuals, as referred to in Chapter 6 Recommended Management Measures.

Response: See summary response for this section. We do recognize that NRCS standards are an important source of information related to agriculture practices. However, they are not specifically designed to meet water quality standards, and therefore they cannot be solely relied on to conform with the federal water quality related requirements.

50. Don Russell- Washington State’s Surface Water Quality Standards do not have standards for nutrient and iron concentrations in sediments in freshwater bodies (source of internal pollution loading), iron concentration or alkalinity in surface water runoff (external pollution loading). Their omission resulted in failure of the Clarks Creek TMDL study to identify the proximate cause of Clarks Creek’s dissolved oxygen, sedimentation, excessive elodea growth, low macroinvertebrate population, impaired salmon habitat, salmon pre-spawn mortality, riparian tree die off, turbidity and flood prone condition. Since sediment containing nutrients and fine grained iron particles is the proximate cause of water quality impairment, excessive algae and aquatic plant growth, degraded salmon habitat and toxic cyanobacteria blooms removal of sediment should be a DOE recognized best management practice. The removal of sediment from salmon gravel stream bed spawning habitat is recognized as a BMP in WDFW’s Stream Habitat Restoration Guidelines 2012. Yet WDFW’s HPA permitting process discourages this BMP from being applied in water quality clean-up projects. I refer the reader to how both Ecology and WDFW acted in concert to discourage the application of this BMP in a timely and cost effective fashion to enhance sediment degraded salmon habitat in Clarks Creek.

Response: Comment noted.

Chapter 7: Monitoring

1. Washington Cattlemen's Association- Chapter 7: Monitoring:

Effectiveness Monitoring (pg. 94-95). The Draft NPS Plan states that Ecology's effectiveness monitoring program will measure the cumulative effectiveness of all activities in the watershed to evaluate whether management activities have achieved the desired effect. WCA would like a better understanding of how Ecology responds to the results of the effectiveness monitoring beyond the benefits and questions identified in the bullets on page 95. Ecology needs to set goals that are attainable and transparent to allow for landowner involvement in this step of the process.

Response: The water quality monitoring and data analysis conducted as part an effectiveness monitoring study helps Ecology and watershed stakeholders understand if TMDL or other implementation program pollution reduction goals are being met, and identifies where water quality is improving or declining. Effectiveness monitoring also investigates the activities that have led to changes in water quality, and identifies watershed locations where additional nonpoint source pollution reductions are needed. This monitoring and data analysis allow Ecology and watershed partners to understand where success has been made, what led to those successes, and where additional work is needed, which enables partners to adaptively manage future efforts. Effectiveness monitoring project plans and results are coordinated and shared with local and partnering agencies.

2. Washington Association of Conservation Districts - Chapter 7/Monitoring/Ecology's Monitoring Strategy/p 79 – The NPS Plan would be more meaningful and robust if this section did much more than simply describe the current water quality monitoring program, but also included a description of how monitoring is the critical connection between various components of the plan, and is identified as a clear priority in its funding under state and federal CWA NPS program funding. For example, it has been noted in earlier comments that monitoring is important to fulfilling other plan objectives, such as determining the effectiveness of BMPs at the site level, performing the proposed gaps analysis, evaluating implementation data, and supporting implementation partners' efforts and locally-led programs which are often lacking authority or funding for monitoring. Same section – At the same time, it must be acknowledged that EAP, under Dr. Carol Smith's leadership, is reaching out to others to improve measurement of water quality conditions in the state. Thank you to Ecology for this outreach to partners on this very important issue. We need to know what's working and what's not working – and why – and monitoring data are the key to making this determination as a partnership. Chapter 7/Monitoring/Other Monitoring Programs/p 90 – What roles do these other programs play in Ecology's coordination with other organizations' monitoring programs? Are data shared and compared in priority watersheds? Are these data solicited? Chapter 7/Monitoring/Other Monitoring Programs/Tribal Monitoring/p 94 – How should the NPS Plan incorporate tribal water quality and resource assessment data? Tribes are important partners in water quality and habitat protection and restoration projects. The plan should outline just what these data contain, and how these data can contribute to the NPS Plan. How can partners reach out to tribes to improve the level of effectiveness monitoring, for example? Chapter 7/Monitoring/Other Monitoring Programs/Local Government Monitoring/p 94 – The NPS Plan likewise needs greater assessment of how local governments' monitoring data can be of use (e.g., stormwater).

Response: See above comment related to effectiveness monitoring.

Ecology's Water Quality Assessment is the process to solicit, collect, and evaluate data from all partners that conduct water quality monitoring. This process is outlined in the Nonpoint Plan. The Water Quality Assessment evaluates all credible data, and that data is made available to the public, local governments and partners, and state and federal agencies. The Water Quality Assessment provides the opportunity for partners to evaluate the data, assess the need to conduct further studies, and coordinate activities to address pollution sources.

3. Washington Association of Conservation Districts - Water quality monitoring – including effectiveness monitoring – purpose and application sections need added work to demonstrate a better focused and more vigorous monitoring approach, and to establish a high funding priority in the NPS Plan for monitoring. Ecology is the agency in the state charged with ensuring that NPS Plan activities actually achieve the desired goal. Yet the monitoring strategy (especially when combined with sections on the gaps analysis and other aspects of BMP compliance presumption) does not answer the most important question. It rather seeks to measure whole watershed trends, multiple program/project impacts, and activities over a time scale and spatial scale that elude an answer to the question: Do the practices and the implementation rate at which landowners are doing them work? The monitoring does not appear to be correctly connected to the goals of determining whether individual practices, or suites of practices, when implemented in the field, actually reduce NPS pollution at a site. There is no performance emphasis; merely a general, non-specific or non-intensive low level monitoring preference that is insufficient to provide the basis Ecology assumes will be needed to evaluate practices' effectiveness and make adaptive decisions – especially at implied timescales. Please also see specific comments below by section

Response: Water quality monitoring covers a range of activities and studies including ambient monitoring, specific watershed loading analysis (TMDLs), specific studies such as groundwater impact studies, and effectiveness monitoring, to name a few. Each type of study has a specific purpose and use. However, they often inform one another. Ecology conducts a range of these monitoring efforts and studies, and assesses statewide data via the Water Quality Assessment.

Evaluating watershed health and understanding pollution sources often begins with ambient monitoring and investigatory sampling, similar to some of the monitoring data collected by local partners and submitted for the Water Quality Assessment. This data often leads to detailed studies such as TMDLs and subsequent effectiveness monitoring. The range of monitoring conducted by Ecology, along with the Water Quality Assessment, provides a significant amount of information to understand and investigate pollution concerns, identify reduction goals and locations where reductions are needed, and evaluate progress toward improving water quality.

See response to comment #1 related to effectiveness monitoring.

4. Washington Association of Conservation Districts - An example of a recommended priority application of NPS Plan activities and funding is the Discovery Farms concept. This concept intensively monitors suites of practices applied in the field to demonstrate effectiveness.

Ecology should request that partners provide a description of how such projects can be supported by the NPS Plan, and by NPS funding, to provide data on practice effectiveness upon which to base adaptive decisions or a presumption with water quality standards

Response: Comment noted.

5. Washington Association of Conservation Districts - Same section emphasizes monitoring to determine both short-term and long-term effectiveness. The NPS Plan should outline a monitoring strategy that makes such a distinction, and should add detail and emphasis to short-term effectiveness monitoring associated with sections dealing with water quality assessment, evaluation of practices, and measuring success.

Response: See responses 1 and 2 related to water quality monitoring and effectiveness monitoring.

6. Washington Association of Conservation Districts - Chapter 6/Recommended Management Measures/Federal Requirements/Existing Guidance/p 76 – The NPS Plan describes objectives for grant program funding guidelines as ensuring that BMPs implemented comply with water quality standards at the site level. However, grant funding guidelines do not prioritize funding for site-level monitoring to determine this. What monitoring data support the current funding guidelines as to acceptable practices that have been shown to meet water quality standards at the (implementation) site level?

Response: Ecology grants often include a budget to conduct water quality monitoring. We encourage partners, whether funded by Ecology or not, to coordinate effectiveness monitoring and develop monitoring projects with our Environment Assessment Program (EAP) to ensure study designs meet the desired objectives and result in credible data.

7. Washington Association of Conservation Districts - Same section (p 80) – Figure 2 - Action should be taken to “move” effectiveness monitoring upwards to a fine resolution scale, a more targeted, site-level scale. Course level monitoring – and this at a low funding priority - will not satisfy the goals expressed in the plan, except over very lengthy periods of time at larger scales. Chapter 7/Monitoring/Ecology Monitoring Programs/Intensively Monitored Watersheds/p 89 – For intensively monitored watersheds, what determinations on effectiveness have been made from collected data? Are there some good examples of where such data allowed Ecology to evaluate effectiveness of practices at the site level? Chapter 7/Monitoring/Ecology Monitoring Programs/Water Quality Grants Projects/p 89 – The NPS Plan (and NPS grants program) should give greater emphasis and priority to effectiveness monitoring in grants projects, by either specifically including separate additional NPS funding for effectiveness monitoring projects or project components, or by giving a higher funding priority to projects that include effectiveness monitoring, or perhaps both. Chapter 7/Monitoring/Ecology Monitoring Programs/Stormwater Work Group/pp 89-90 – “Effectiveness study selection” should be a high priority for this group. Chapter 7/Monitoring/Effectiveness Monitoring/pp 94-95 – This is a key aspect of the NPS Plan needing greater emphasis, a more clear linkage discussion, and a high expressed funding priority. The plan states that Ecology’s goal is to measure the cumulative effect of all activities in the watershed. Yet, Ecology intends to make determinations of the effectiveness of individual

practices or suites of practices at the site level, but without adequate site-level monitoring data. These are inconsistent – or are at least separate – objectives. This begs the question: at which scale must progress or success be demonstrated? How will Ecology determine progress (i.e., working practices) at the scale and timeframe needed to judge individual practices in this manner? How long will it take to demonstrate a cumulative effect? How do we judge the practices applied in the field in the meantime? How can Ecology scientifically state, then, whether or not individual practices or suites of practices work in the field? How does one know whether ineffectiveness (if measured) results from the practice itself being inadequate, or from insufficient numbers of landowners (“critical mass”) implementing this and other practices? How can one adapt treatments if one does not know at the project scale why they don’t work? How much time should be provided to determine effectiveness (i.e., trees need time to grow, etc.)? Discovery Farms is a concept that conservation districts and WSCC are looking toward to help provide site-level data following application of conservation practices. The NPS Plan should include a description of the Discovery Farms concept, and should endorse its usefulness in fulfilling the objectives of the NPS Plan. The plan should also indicate a high priority for NPS funding for this and other related effectiveness monitoring tools.

Response: Effectiveness monitoring includes fine resolution monitoring, which identifies where water quality is improving, and identifies specific river reaches and property that are impacted and negatively affecting water quality. We encourage partners to review Ecology’s “Guidance for Effectiveness Monitoring for Total Maximum Daily Loads in Surface Waters” for a detailed understanding of effectiveness monitoring processes and project planning.

Ecology grants often include a budget to conduct water quality monitoring. We encourage partners, whether funded by Ecology or not, to coordinate effectiveness monitoring and develop monitoring projects with our Environment Assessment Program (EAP) to ensure study designs meet the desired objectives and result in credible data.

Monitoring every property within a watershed to determine the level of pollution coming from the property or to estimate the pollution reduction from implemented activities is impractical and cost prohibitive. Effectiveness monitoring is not meant to evaluate individual practices or suites of practices at the site level, but rather to better understand source locations and the effects of efforts in a watershed. The timeframes for evaluating effectiveness varies depending on the specific pollutant being measured and the pace of implementing BMPs in the watershed. However, effectiveness monitoring is generally conducted after significant implementation has occurred.

Ecology may make site-specific determinations about practices needed to prevent pollution, and may provide guidance to reduce pollution sources for various sources. Field-specific determinations and guidance are based on field expertise, sight condition and scientific literature.

8. Washington Association of Conservation Districts - Chapter 7/Data Management/TMDL and NPS Implementation Tracking Database/p 100 – The NPS Plan (correctly) states that a specific description of BMPs implemented at a site is the most important information to track to support effectiveness monitoring efforts. That being said, the plan should add what is being

done with NPS funding to take advantage of implementation data in order to target and fund effectiveness monitoring at the fine scale needed. The plan should emphasize that monitoring data are needed at the same scale as implementation data to make determinations of whether what is being done works, and to document progress and success.

Response: Comment noted.

9. Washington Association of Conservation Districts - The NPS Plan makes repeated reference to tracking more accurately the practices implemented (a needed activity all around), and notes the connection between implementation data and establishing effectiveness monitoring. But, in general, monitoring outlined in the plan does not require any implementation data, as it merely monitors watersheds or water bodies for trends, etc. Specific implementation data could better support more targeted or intensive site monitoring, including critical timing aspects, that actually documents what Ecology is looking for – do the practices actually work, and is there sufficient participation/implementation (critical mass) to achieve a satisfactory water quality improvement result? The NPS Plan needs to include a much more thorough description of the connection between the practices themselves, tracking their degree of implementation by landowners, and the water quality monitoring used to measure their site effectiveness and indicate adaptive management needs over time – if the state is to meet objectives of the plan. See also comments by section below relating to monitoring and to visual determination of site conditions.

Response: Ecology's guidance for effectiveness monitoring is referenced on page 103 of the plan. We encourage partners to review Ecology's "Guidance for Effectiveness Monitoring for Total Maximum Daily Loads in Surface Waters" for a detailed understanding of effectiveness monitoring processes and project planning.

10. Washington Association of Conservation Districts - Chapter 3/Strategies for Addressing NPS Pollution/Data Tracking, Effectiveness Monitoring and Adaptive Management/p 33 – Improved tracking is needed across the board in incentive-based programs for practice implementation by landowners. There needs to be a discussion in the plan about how such data are collected and how data are applied to support effectiveness monitoring. Some practices take effect upon installation; others take time to take effect. Still others may need to be in place (under program requirements) for years. What is the timescale appropriate for implementation tracking and data use? What is "consistent implementation data"? Same section refers to making implementation data public. The document should describe confidentiality laws (federal and state) that relate to disclosure of private information, and how these impact use of public and private funds for installation of practices under landowner implementation. Here, programs have established a balance between accountability and privacy that must be noted and complied with under law.

Response: See previous comments related to monitoring and effectiveness monitoring.

We understand there are some federal laws related to information that can be shared about BMPs implemented with USDA (Farm Bill) funds. We also understand these laws can limit the ability for local, state, and federal partners to understand what was implemented and how

implemented projects may or may not positively affect water quality. This limits Ecology's (and others') ability to conduct effectiveness monitoring studies.

Federal laws related to the Freedom of Information Act and state public disclosure laws do affect some information sharing. However, given the complexity of these laws and regulations, we chose not to include a discussion in the monitoring section of the report.

11. Washington Association of Conservation Districts - Same section, again, speaks to implementation data used to measure the effectiveness of NPS funded projects, but fails to describe how such data are to be applied to designing effectiveness monitoring – or to visual site condition improvement field determinations – to make the connection to this “limited set of effective BMPs.”

Response: See previous responses to comments #1 and #2 on monitoring and effectiveness monitoring.

12. Stevens County Conservation District - Chapter 7 Monitoring

There are a lot of monitoring programs identified in the chapter but do not see how it is coordinated or summarized to be utilized for education and outreach to demonstrate the need for changes in land use or management practices to reduce nonpoint pollution. Recommend plan recognizes citizen monitoring or citizen involvement in monitoring. This will promote more local involvement in implementation and correcting pollution problems. Conservation Districts have a long history of monitoring and developing relationships with local landowners to allow for monitoring on private ground.

Response: On page 88, private citizens and local governments are included as data providers for the state's water quality assessment.

13. Spokane RiverKeeper - Effectiveness monitoring

We feel that a robust plan for “effectiveness monitoring” needs to include timelines and long term, ongoing support. Without timelines and clear details as to how this process will be achieved and how the process will be held accountable to the public. Such monitoring needs to make the following things publically accessible and usable by implementation teams:

- What specific projects are being implemented and why
- What are the successes and/or failures within these projects
- What funds are being spent on these processes and projects?
- What water quality and other measures (invertebrate inventories, fisheries census data, etc.) are being monitored, collected and analyzed that contribute to our understanding of water quality trends and their connections to STI or TMDL projects success or failure.
- And the four points outlined on Page 95.

This type of effectiveness monitoring should be built into every STI project and every TMDL for accountability and ensuring actual success on the ground.

Ecology leads our NPS pollution control efforts in Washington State, providing both guidance and a regulatory backstop. For this reason, the NPS plan must provide clear standards, temporal bench marks, plans for accountability and the application of logical consequences in the endeavor to solve the NPS pollution problems we face.

Response: Ecology agrees that effectiveness monitoring should be part of our STI and TMDL projects. TMDLs have an adaptive management component and effectiveness monitoring is a cornerstone of that process. Further, effectiveness monitoring helps us gauge STI progress and adapt as necessary. With that, we have limited resources and often have to phase in effectiveness monitoring studies as funding and implementation allow.

We agree that good project implementation data tracking and fund source tracking are important. Ecology has identified this as a gap in our nonpoint program and is working to conduct better BMP implementation tracking and coordination with our TMDL and STI programs, and to make this data available to the public and watershed partners. While we are working to improve our BMP implementation tracking, we recognize that many other partners have important BMP implementation information to which Ecology does not have access. This limits our ability to conduct effectiveness monitoring studies. We hope to have better information sharing amount local, state and federal partners in the future.

14. Snohomish County Department of Public Works - TMDL effectiveness monitoring is a fundamental component of showing that implementation strategies have been effective. To date very few effectiveness monitoring studies have been conducted relative to the number of EPA approved TMDLs statewide. To improve Ecology's ability to show effectiveness, Ecology is encouraged to continue development of database tools which analyze existing data both annually and seasonally to show improvements. This automated seasonal analysis would improve consistency and accuracy of Ecology's water quality assessment process, identify gaps in data and assist TMDL leads in making determinations of effectiveness. Such automation may also limit the need to hire additional staff to carry out TMDL effectiveness monitoring. Where Ecology lacks the data to determine effectiveness based upon existing data, funding strategies to support either state or local effectiveness monitoring of impaired waters is encouraged.

Response: We acknowledge that very few effectiveness monitoring studies have been conducted relative to completed TMDLs. With funding constraints we often have to balance multiple monitoring priorities, including TMDLs and effectiveness monitoring. With that, we are hoping to expand our regional effectiveness monitoring efforts in the future and better integrate TMDL implementation and progress, and will work with state or local entities to conduct this important work to the maximum extent possible.

We continue to investigate ways to better automate our water quality data and assessments.

15. Snohomish County Department of Public Works - Pg. 97. Quality Assurance – Like Ecology, Snohomish County considers the credibility of data a cornerstone of state and local studies, the water quality assessment, and resulting TMDLs to partially address Non-point

pollution. While we understand Ecology's funding limitations, we want to emphasize the importance of improving the quality of data used for environmental decision making.

Response: We agree and the comment is noted.

16. Snohomish County Department of Public Works - Chapter 7. Monitoring

Pg. 99. TMDL and Non-point source implementation Tracking database - Re-invigorate development of a database to track BMP implementation at a statewide level. Tracking such improvements as repairs to failing septic systems, miles of livestock exclusion installed, miles of municipal stormwater system maintained, stream miles shaded, acres of shellfish beds open for harvest, etc. would help support de-listing decisions, water quality and environmental assistance program performance measures and provide metrics to EPA showing success of the NPP.

Response: We agree that good project implementation data tracking is critically important and would help with de-listing decisions, funding program decisions, EPA and other progress reporting, and better prioritization, coordination and adaptive management. Ecology identified this as a gap in our nonpoint program, and is working to conduct better BMP implementation tracking. We hope to develop a tracking database in the future, depending on budget availability.

17. Puget SoundKeeper - There is little discussion of adaptive management, performance monitoring, and generally how we can ensure effectiveness of these programs. This is required under 319(b)(vii). It is also critical for long-term success of the plan. Some of this is simply a matter of funding. The draft plan touches on this topic and contains a long description of various existing monitoring programs that may assist decision makers. Aside from a description of the existing Forest Practices adaptive management system, there is little else in the document on this important topic. At a minimum the plan should contain timelines for developing adaptive management techniques and associated monitoring / data systems. BMP effectiveness monitoring is an important element here.

Response: Ecology agrees that adaptive management is needed to ensure nonpoint programs are effective. To better gauge progress in TMDL areas or where Ecology is conducting Straight to Implementation (STI) projects, Ecology relies on effectiveness monitoring studies designed to assess progress and identify key areas for future work or areas where additional work is needed. Ecology is also working to develop a BMP tracking database to better inform funding programs and better prioritize and coordination watershed efforts.

We believe effectiveness monitoring, coupled with BMP tracking, provides the opportunity for good adaptive management. Ecology identified BMP tracking as a major data gap, and hopes to develop a tracking database in the future depending on budget availability.

18. Northwest Indian Fisheries Commission - 2. Plan lacks an evaluation of program effectiveness. Washington needs to undertake a critical analysis of whether the pollution control programs inventoried in the plan, result in actual compliance with water quality standards and protection of designated uses.

Response: See previous comment.

19. Northwest Environmental Advocates- Chapter 7

We will refrain from writing extensive comments on Ecology's description of its 303(d) listing process other than to note that it does not comport with the Clean Water Act, EPA regulations, and EPA guidance. However, this section does not explain how Ecology uses this information to do any of its nonpoint source work.

Response: Comment noted. The goal of this chapter is to identify various Ecology and external monitoring efforts and programs which are or can be used to identify nonpoint sources and assess the impact to water quality from nonpoint sources. These monitoring efforts, both external and internal, inform Ecology's and partners' strategies and approaches.

20. Northwest Environmental Advocates- implement TMDLs," but it fails to explain precisely how a TMDL results in the use of an adequate BMP on the ground or in the water sufficient to result in nonpoint sources' meeting load allocations.

84-90 These sections do not explain how Ecology uses this information to do any of its nonpoint source work.

90-91 A nonpoint source plan would be the appropriate place to provide at least a short description of the outcome of the U.S. Forest Service's "implementation and effectiveness monitoring of best management practices." The same is true of the HCPs. What have the results demonstrated? Is the monitoring sufficient to draw conclusions? What is the plan for the future? 91-92 Shellfish closures due to nonpoint sources lead to shellfish protection districts. What evidence is there that the creation of shellfish protection districts helps improve water quality? Is this an efficacious approach and, if not, what could Ecology do differently in the future? Does the monitoring approach support answering these questions?

92-94 With the exception of the malathion description, these pages do not explain how these data are going to be used to control nonpoint sources.

94-95 The opening discussion on effectiveness monitoring does not read like a plan but, rather, like cheerleading for effectiveness monitoring. We like it too. The questions are: is it being used to improve nonpoint source control?

95-96 We have been wondering whether this material would show up in the plan and suggest that Ecology should add some cross-references into earlier chapters related to Table 7. Also, if there are predicted timelines for the regulatory responses to the studies listed, they should be included here.

Response: TMDL implementation plans outline priority activities, priority locations, and target reduction goals to meet water quality standards. In those implementation plans, Ecology highlights actions and activities needed to address the nonpoint pollution/impairment sources. Ecology's goal is to use the TMDL development and stakeholder process to identify recommendations that, when implemented, will result in meeting water quality standards. With that, Ecology's TMDL implementation plans don't ensure that BMPs implemented to address nonpoint source pollution will result in water quality standards being met. Because the practices implemented to address nonpoint pollution are not subject a permit, BMPs implemented in TMDL areas range in efficacy. This is one of the confounding issues of addressing nonpoint pollution – the BMPs to address sources are often absent or inadequate to

fully address the pollution problem. Without widespread adoption of protective BMPs, the water quality impacts often remain at a level where water quality standards are not met.

Ecology conducts and uses a wide range of water quality monitoring and studies including ambient monitoring, specific watershed loading analysis (TMDLs), specific studies such as groundwater impact studies, and effectiveness monitoring, to name a few. Each type of study has a specific purpose and use. However, they often inform one another. Ecology uses this data to evaluate watershed health and understand pollution sources. This often begins with ambient monitoring and investigatory sampling, similar to some of the monitoring data collected by local partners and submitted for the Water Quality Assessment. This data often leads to detailed studies such as a TMDL and subsequent Effectiveness monitoring. The range of monitoring conducted by Ecology, along with the Water Quality Assessment, provides a significant amount of information to understand and investigate pollution concerns, identify reduction goals, locate where reductions are needed, and evaluate progress toward improving water quality.

Shellfish protection districts are formed in response to shellfish closures or the threat of shellfish closures. Shellfish protection districts provide a mechanism to generate local funds for water quality services to control nonpoint sources of pollution. The district also serves as an educational resource, calling attention to the pollution sources that threaten shellfish growing waters. We believe local focus and attention can help address nonpoint source pollution sources impacting shellfish growing areas.

The water quality monitoring and data analysis conducted as part of an effectiveness monitoring study help Ecology and watershed stakeholders understand whether TMDL or other implementation project pollution reduction goals are being met, and identifies where water quality is improving or declining. Effectiveness monitoring also investigates the activities that have led to changes in water quality, and identifies watershed locations where additional nonpoint source pollution reductions are needed. This monitoring and data analysis allows Ecology and watershed partners to understand where success has been made, what led to those successes, and where additional work is needed, which enables partners to adaptively manage future efforts. Effectiveness monitoring project plans and results are coordinated and shared with local and partnering agencies.

21. Northwest Environmental Advocates- The collection of BMP implementation data and information sounds good; it would be helpful if Ecology would make clear how it will use that data to achieve more accountability.

Response: BMP data, coupled with effectiveness monitoring, allows Ecology to better link and understand on-the-ground efforts with changes to water quality.

22. Northwest Environmental Advocates- 100 We agree that tracking the BMPs is important. Ecology does not indicate that it is doing so now, other than for Ecology grants. Therefore, Ecology should state when it plans on starting this part of its program and when it expects to have a TMDL and Nonpoint database in place.

Response: Comments noted.

23. NOAA- Pg. 94: “Effectiveness Monitoring”. NOAA is very supportive of effectiveness monitoring as it is an important component of CZARA’s adaptive management approach. We strongly encourage Ecology to continue to support these types of monitoring efforts and to make adjustments to its management approaches based on the results. NOAA also recognizes that effectiveness monitoring can be resource intensive. Therefore, Ecology should consider targeting its monitoring efforts for a given year on a specific set of management measures and developing a schedule for rotating through some of the key management measures and NPS sectors over the next few years. Specific actions in Chapter 9 for effectiveness monitoring could reflect what management measures will be targeted during what years. The section, “Effectiveness Monitoring of the Forest Practices Rules” shows how Washington is already employing this targeted approach for the forestry sector. It should consider including similar approaches in the plan for other sectors as well.

Response: Comments noted.

24. NOAA- Pg. 33: Regarding the TMDL and nonpoint database Ecology is working to develop, it would be helpful to include more information on the types of information/data that will be tracked through this database and how it will be used. Are there connections to the “Effectiveness Monitoring” section in Chapter 7 that could be made?

Response: Currently Ecology is working to develop a BMP tracking database. The vision is a geospatial database that links multiple types of data in a single platform. Examples of data that may be included are BMP types and location, water quality monitoring data, and inspection and compliant response actions. The goals would be to include various nonpoint source information and data sources and make them available on a single, map-based platform. Future development is budget dependent, and may need to be phased over time.

25. Don Russell - Ecology’s Policy 1-11 imposes very stringent guidelines in regard to assessing whether or not data submitted is adequate to place an impaired water body on Ecology’s 303(d) list. Yet this same standard was not required of data submitted in support of the Clarks Creek TMDL study and water quality improvement implementation plan. This selective application of Policy 1-11 undermines the public’s confidence that Ecology’s TMDL studies and clean-up plans are based upon credible science.

Response: Ecology requires credible data for both the Water Quality Assessment and TMDL studies.

26. Don Russell - The current QAPP requirements are so stringent that citizen volunteer monitoring of water body physical, chemical and biological parameters under the supervision of Conservation District personnel are ignored as not in compliance with QAPP requirements and therefore of no consequence in assessing the health of and remedial actions required to restore obviously impaired water bodies.

Response: Ecology's goal is to ensure data supplied for the Water Quality Assessment is of the highest quality and meets minimum expectations to be considered credible data. We encourage partners, including conservation districts, to work with Ecology to develop QAPPs that will ensure data is considered credible. Ecology staff often provides assistance and consultation to help partners develop QAPPs, and also train partners to sample according to QAPP/sampling protocols.

27. Board of Stevens County Commissioners - 45) Page 81, last paragraph, last two sentences – These sentences talk about “impairments”. We’re not sure why these are included. Are these NPS’s or something else? Large woody debris, physical barriers, loss of habitat, etc. are not pollutants and, as such, do not belong in a nonpoint source pollution plan. Please delete or clarify this section.

46) Page 83, Category 4c – Is there a requirement to restore all streams to natural conditions? We do not believe this is true so please delete Category 4c. There also seems to be some confusion as related to “impaired” vs. “pollution”. These words are not used consistently and have different meanings. Please correct this.

47) Page 86, Stream Biological Monitoring – If this is an NPS plan that focuses on pollutants, why is this section included? Please delete this section or clarify why it would be in an NPS plan. It could be moved to an appendix showing other types of monitoring activity that occur.

48) Page 87, Invasive Aquatic Plant Monitoring – Same comment as above.

49) Pages 92 and 93, Salmon Recovery Act – This section is not NPS and should be deleted or moved to an appendix. Habitat restoration is not a nonpoint issue. Simply restoring habitat does not, in and of itself, stop, control or prevent NPS. We support habitat programs but this is not pertinent.

50) Page 94, Tribal Monitoring and Local Government Monitoring – Please delete or move to an appendix these other monitoring activities. The information contained here does not really apply to how we are assessing NPS concerns.

Response: Impairment means that the water body is too polluted to meet the uses of the water body. Examples of beneficial uses are aquatic life spawning and rearing, recreation, and drinking water. Most often, impairments are the result of too many pollutants in the water. Impacts to stream structure and habitat can lead to water quality impairments.

Biological monitoring provides a broader evaluation of water quality. It better identifies when sensitive ecosystems have been impacted than traditional chemical or physical monitoring. Invasive aquatic organisms can significantly impact water quality and beneficial uses, and therefore, need to be monitored.

Habitat restoration is a nonpoint source issue. Degradation of habitat (e.g. riparian areas) often leads to impairments such as temperature and dissolved oxygen impairments.

We believe monitoring which results in credible data is valuable regardless of the source entity.

Chapter 8: Groundwater

1. Don Russell- Pollution free groundwater withdrawn as drinking water is not only essential for the health of humans, its continuous discharge (as base flow) into streams, wetlands and lakes is essential to maintain the health and survival of salmon. Discharging unpolluted groundwater has very specific physical and chemical properties that are essential to maintaining the health and survival of salmon. Whereas the State's Surface and Groundwater Water Quality Standards identify and establish limits for most of these physical and chemical properties there are a few that are not included in these Standards. Specifically they are iron (both as a micro nutrient in low concentrations [<0.35 mg/L] and a toxicant above 1.0 mg/L), calcium ion concentration (or calcium hardness) and related alkalinity. The discharge of surface water runoff into groundwater fed streams, wetlands and lakes that contain high concentrations of soluble and particulate iron and/or low concentrations of calcium ions (which are both protective of salmon gill tissue and prevent the passage of soluble heavy metals into body fluids) and low alkalinity (which maintains pH within tolerable limits) are just as harmful to salmon as those pollutants that are currently listed in State water quality standards for the protection of aquatic life forms (particularly salmon). This is a situation that needs to be addressed.

Response: This comment is a request to change the aquatic life use numeric criteria, and has been noted and forwarded to the Water Quality Standards section at Ecology. The nonpoint plan acknowledges the importance of water quality standards and the need to meet these standards. However, the nonpoint plan is not meant to address a specific water quality criterion.

2. US Forest Service- Pg. 100 Groundwater – comment, excellent section addressing groundwater, the FS recognizes its land management role as it affects groundwater, groundwater dependent ecosystems, and sources of drinking water, and the need to improve coordination with State programs for groundwater protection. Groundwater management is an important topic for further discussion through stakeholder involvement, it could be considered in MOA revision, and/or other means of coordination.

Response: Comment noted. Ecology welcomes the opportunity to collaborate with the Forest Service to enhance groundwater protections.

3. Western Environmental Law Center- ECOLOGY'S MONITORING REQUIREMENTS Chapter 7 of the Plan recognizes that "the federal Clean Water Act (CWA) gives states the primary responsibility for implementing programs to protect and restore water quality, including monitoring and assessing the nation's waters and reporting on their quality." "Ecology is also the agency responsible for satisfying the majority of the water quality monitoring and reporting requirements of the CWA." Monitoring is a critical part of Commenters' proposed Two Point Plan. Monitoring is the only way to identify the polluters whose conduct needs to be regulated. In order to fulfill its statutory responsibilities, it is imperative that Ecology mandate groundwater monitoring for all medium and large CAFOs in the state. In addition, Ecology must require groundwater monitoring and soil sampling for all industrial agricultural facilities that store manure in unlined manure storage lagoons and apply manure to farmland. The science is clear

that these activities are causing pollution of the surface and groundwaters of the state and thus Ecology's duty to monitor these activities is triggered.

Ecology's Environmental Assessment Program has done an excellent job of groundwater monitoring in the Sumas Blaine Aquifer in Whatcom County over the last thirty years. This data confirms that dairies are causing and contributing to the nitrate contamination of the groundwater in that area; just like the data EPA and local citizens gathered in the lower Yakima Valley. What is missing is any kind of regulatory enforcement to prevent the pollution from happening in the first place. While Commenters support Ecology's monitoring efforts (that is an imperative part of the first phase of our proposed Two Point Plan), Ecology must undertake the second part, which is meaningful enforcement against identified polluters.

On page 88 of the Plan, you state that "[t]here is currently no state-level program to monitor ambient groundwater quality trends over time in Washington, and no long-term funding source has been identified to date to support such an effort." This can easily be resolved by requiring the entities who are polluting the groundwater to pay for the monitoring and can be required as part of the WA CAFO General Permit. This is routinely done in other contexts and should be done in the industrial agricultural sector as well, given the strong link between leaking manure lagoons, over-application of manure, and groundwater contamination

Response: Ecology understands the value of groundwater monitoring and agrees that it is an effective way of determining if groundwater has been contaminated. We also agree that groundwater monitoring at CAFOs and other facilities that store manure in unlined lagoons and land apply manure would assist in identifying facilities that are discharging to groundwater and required to obtain a permit.

Ecology's Permit Development Section is currently developing a revised CAFO General Permit and State Waste Discharge Permit. Issues such as which facilities are required to obtain a permit, the expectation of permit holders to perform monitoring, and how fees will be utilized will be addressed in the permit development process. The nonpoint plan recognizes the importance of a CAFO permit to address surface and groundwater impacts. However, the nonpoint plan is separate from the NPDES permit development process and cannot dictate specific permit conditions. Suggestions have been noted.

4. Western Environmental Law Center- GROUNDWATER & THE YAKIMA GROUND WATER MANAGEMENT AREA

On page 93 of the Plan you state that "[c]ompletion of this [comprehensive nitrogen loading assessment] will allow members of the GWMA to focus nitrogen management actions on land uses that contribute excess nitrogen most significantly to degradation of groundwater quality in the area." However, there is already a massive amount of scientific information demonstrating that it is the industrial dairies in the area that are the primary contributors of nitrates into the groundwater. In December 2014 the EPA issued an Update to its Administrative Order on Consent ("AOC") with several dairies, including Cow Palace, in the Lower Yakima Valley. This update "provide[s] further support for th[e] conclusion" "that the Dairies are a source of the nitrate measured in downgradient monitoring wells and residential drinking water wells." The

EPA found that “[c]omparison of the nitrate levels in the upgradient monitoring wells with those along the downgradient edge of the Dairies properties indicate that there is heavy nitrate loading of the drinking water aquifer occurring within the Dairies’ footprint.”

Judge Rice agreed in the Cow Palace case. Because this information already exists, it is illegal and unethical for government leaders involved in the GWMA process to wait for yet another nitrogen loading assessment before taking action to address this pollution. In Chapter 8, Groundwater, you do not describe any regulatory strategies Ecology intends to implement to address the massive problem of nitrate-contaminated groundwater in the state of Washington. The map included as Figure 5 (above) illustrates the fact that Ecology needs to take aggressive regulatory action against those agricultural activities that are contaminating the state’s groundwater with nitrates.

On page 102 of the Plan, you have a very brief paragraph identifying the “Causes of Nonpoint Pollution in Groundwater.” You need to be more specific and identify and reference the massive amount of data that Ecology possesses showing that the over-application of manure to farmlands and leaking manure lagoons are significant contributors of nitrates in the groundwater. Based upon the map, you know where the nitrate loading is coming from, but you do not indicate what you plan to do about it. Given the significant health effects associated with drinking water contaminated with nitrates, this failure is unacceptable, immoral and needs to be corrected.

Ecology must require all medium and large CAFOs in the state to be covered by a General CAFO Permit that mandates groundwater monitoring, soil sampling, and installation of liners to manure lagoons to ensure that manure generated at these facilities is not stored or applied to land in a manner that further contaminates groundwater resources. As you can see from the map and the numerous studies linking the over-application of manure and contamination of groundwater, this approach will greatly reduce the amount of nitrogen loading that is happening today.

Response: Ecology agrees that CAFOs can contribute to nitrate contamination of groundwater, and that specific dairies have been found to be sources of nitrate pollution of groundwater. We also acknowledge that the nitrogen loading assessment referenced in the nonpoint plan may help GWMA members focus nitrogen management actions to address regional groundwater contamination. With that, Ecology is not suggesting that efforts to address groundwater contamination wait until a nitrogen loading assessment is completed. Ecology expects existing programs and permits, such as the Dairy Nutrient Management Program (WSDA) and Ecology's Bio-solids Permit, to continue operating while the loading assessment is completed. Ecology also expects the Yakima Valley GWMA team to continue to develop strategies to address nitrate loading from all sources.

Chapter 3 of the Nonpoint Plan outlines strategies, initiatives, and specific programs Ecology will continue to support to address nonpoint sources of pollution, including nitrate pollution of groundwater. For dairy animal feeding operations (AFOs), Ecology will continue to rely on the implementation of the Dairy Nutrient Management Act (RCW 90.64). Additionally, Ecology is developing a revised CAFO General Permit and State Waste Discharge Permit. The plan highlights the CAFO General Permit as a regulatory tool that can be used to address groundwater pollution. Ecology will use the CAFO permit, to the extent possible, to prevent

groundwater pollution and/or address identified CAFOs discharging to ground or surface waters.

We appreciate the concern with potential and identified impacts from medium and large CAFOs. The extent to which CAFOs are required to obtain a permit and the specific requirements of permit holders is currently under development. The nonpoint plan recognizes the importance of a CAFO permit to address surface and groundwater impacts; however, the plan and its development cannot circumvent the permit development process to specify permit conditions. The concerns are noted and have been forward to our Permit Development Section at Ecology.

5. Northwest Environmental Advocates-Chapter 8: 103 Permits should be identified as NPDES or not. If they are not, they cover nonpoint sources and should be discussed further with regard to whether the BMPs required by the permits achieve water quality standards or not, or whether the data exist to draw those conclusions.

This section discusses a very important issue and provides interesting information but it does not constitute a plan that demonstrates how Ecology will address the problem of groundwater contamination, before or after it has occurred.

Response: With the exception of the Concentrated Animal Feeding Operation (CAFO) General Permit, which is a joint NPDES/State Waste Discharge permit, the permits mentioned in this section are State Waste Discharge permits. These non-NPDES permits address surface-applied materials or waste, and are designed to prevent groundwater pollution. The CAFO General Permit is both a NPDES and state waste discharge permit, which means that both surface and ground waters must be addressed and both surface and ground water quality standards must be met. Individual State Waste Discharge Permits also must protect water quality and ensure that water quality standards are met. Individual permits include facility or industry specific practices to ensure compliance with water quality standards that are unique to the facility. The nonpoint plan is not meant to provide an exhaustive discussion of each type of permit or types of BMPs that may be included in each permit.

6. Board of Stevens County Commissioners- Page 102, third paragraph, fourth sentence – Please reword “all of these pollutants”. The items listed above are essential elements. They do not become pollutants until they enter the water body. The idea is to not over apply nutrients that will further run into the water body and become a pollutant. Please make this distinction. Currently, it sounds like all fertilizer, etc., is a pollutant and not a necessity for crops, lawns, and other plant life.

Page 102, third paragraph, last sentence – Please change the wording of “fertilizer and manure land application”. Land application as stated in the comment above is a good thing, but by adding “over application” of these nutrients to this sentence will clarify the point you are trying to make and the water quality issue you are trying to prevent without negatively impacting crop production.

Response: Clarification made based on comment.

Chapter 9: Goals/Strategies/Outputs/Milestones

1. Washington Association of Conservation Districts- Chapter 7/Monitoring/Reporting/pp 82-83 – For purposes of the NPS Plan, de-listing of a water body from the 303(d) list should be described as one clear measure of success, including a commitment to monitoring to demonstrate needed information upon which to base a de-listing procedure. Also, suggest describe how such a de-listing process will work in conjunction with the NPS program, including timelines.

Response: Comment noted. We agree with the commenter that the plan should better identify the long-term goal of de-listing waters as a measure of success. Information on the delisting process (Policy 1-11) has been referred to in the plan.

2. Washington Association of Conservation Districts- Chapter 9/Goals and Strategies/TABLE 8 – Generally, comments provided above should help to revise TABLE 8 so as to correct deficiencies. For example, the table does not prioritize the different goals and outputs relative to NPS funding. The table should express something about how the money will be spent to prove the plan will perform as advertised. Given Ecology’s reliance on partners for delivery and implementation, what should be the highest priority for NPS funding within Ecology? For grants projects for external agencies and entities?

Response: Comment noted. As outlined in our Chapter 3 response, CWA Section 319 grant funds for external entities are prioritized through our scoring sheet and funding guidelines. That prioritization is completed on a year-by-year basis and is dependent on what projects are proposed by external agencies and entities. While we understand that there are some advantages to shifting that prioritization into the plan, we believe there are significant advantages to our current system. It provides flexibility for local entities to develop projects to respond to local needs and priorities. The application evaluation process also puts a priority on supporting implementation of TMDLs, which are a foundational piece of this plan.

3. Washington Association of Conservation Districts- Chapter 9/Goals and Strategies/ TABLE 8 should include measurable outputs for how effectiveness monitoring of practice application will be achieved (e.g., upon which one bases a presumption of compliance or a determination of practice effectiveness at the site level).

Response: Chapter 7 discusses effectiveness monitoring and our effectiveness monitoring guidance. We agree with the importance of effectiveness monitoring and support projects that implement the guidance. The table captures effectiveness monitoring in terms of projects completed.

4. Washington Association of Conservation Districts- Chapter 9/Goals and Strategies/ Same section – TABLE 8 reference to the Agriculture and Water Quality Advisory Committee should add, “Ideas generated by these groups are used by Ecology to improve its work, to improve communication and understanding, and to help Ecology put improved policy and procedural changes into practice.”

Response: Edits made to include suggested language.

5. Washington Association of Conservation Districts-Chapter 9/Goals and Strategies/ Same section – TABLE 8 – Under strengthen relationships, suggest add, “Ecology managers meet with WSCC and conservation district representatives to discuss coordination.” Also suggest add, “Ecology, as an agency member of WSCC, bring NPS concerns to the venue of WSCC commission meetings, in a public and stakeholder-accessible venue.” Same section – TABLE 8 – Under producer groups and agricultural producers, suggest include some measure that indicates whether the message is getting across, such as greater opportunities for producer participation, higher implementation rates, frequent local or watershed producer meetings, etc.

Response: Under the “Strengthen relationships with federal and state agencies, and local governments and special purpose districts” objective the plan already identifies coordinating with state agencies (which includes the WSCC) and conservation districts. Edits made to include a bullet to this section of the table to clarify the scope of our coordination efforts.

6. Washington Association of Conservation Districts- Chapter 9/Goals and Strategies/ Same section – TABLE 8 – Under producer groups and agricultural producers, suggest include some measure that indicates whether the message is getting across, such as greater opportunities for producer participation, higher implementation rates, frequent local or watershed producer meetings, etc.

Response: Comment noted. Edits made to include as an output the increased implementation of BMPs.

7. Washington Association of Conservation Districts- Chapter 9/Goals and Strategies/ Same section – TABLE 8 – Under effectiveness monitoring, suggest add to strategies, “Ensure effectiveness monitoring is conducted at the proper scale supported by implementation data.” Also suggest add, “Increase priority and NPS funding for effectiveness monitoring.” Also, suggest include a much higher milestone than 3 projects in TMDL/STI watersheds. Or suggest link to watershed assessments’ identification of needed action (e.g., follow-up), not necessarily in a TMDL watershed.

Response: Comment noted. Effectiveness monitoring, including information on our guidance, is found in Chapter 7. We agree with the commenter that effectiveness monitoring is important. We continually look for opportunities to support effectiveness monitoring. However, our priority continues to be implementing effective BMPs.

8. Washington Association of Conservation Districts-Chapter 9/Goals and Strategies/ Same section TABLE 8 – Under promote accountability, suggest add link to monitoring data as expressed above. Suggest clarify, “Achieve the following estimated reductions per year:” Monitoring (as currently proposed) cannot in any way document actual reductions.

Response: Links to our data are included in Chapter 7. Commenter’s suggested clarifying edits were made to the table.

9. Washington Association of Conservation Districts- Chapter 9/Goals and Strategies/ Same section Same section – TABLE 8 – When keeping the NPS program up-to-date, suggest clearly state the strategy and outcomes relating to invitation to partners and stakeholders to be a part of that process.

Response: Comment noted. Coordination with stakeholders and partners is covered in Table 8 and Chapter 4.

10. Puget SoundKeeper- Section 319(b)(iv) states that the NPS plan must include “a schedule with goals, objectives, and annual milestones for implementation.” This includes a discussion of “available resources” and “authorities” to accomplish the plan. While the table provided in Chapter 9 of the draft plan provides some direction here, the “strategies” are vague (e.g.- “implement BMPs as necessary”) and the annual milestones are often left blank. There are few, if any, new initiatives here---it’s mostly status quo. Goal 2, which is entitled “Ensure Clear Standards,” is particularly disappointing. It relates to the development of BMPs discussed above. In the first cell of that table, the agency is called on to “continue to work to provide information” on BMPs. There are no real “measurable outputs” or “measureable milestones” identified. The table is largely designed to reflect implementation of existing law that will do little to address growing problems associated with NPS pollution.

Response: Comment noted. Goal 2 has been edited to include a more detailed timeline.

11. NOAA- Include measureable milestones and targets for all strategies/outputs to gauge whether or not you have successfully achieved your target.

Many of the actions included here are very generalized (e.g., support education and outreach and support for voluntary programs; support implementation of the DNMP and the forest practices rules; align the nonpoint program with CZARA and other programs). While NOAA recognizes that general support and some flexibility to take advantage of opportunities that come up is needed, Ecology should be as specific as possible regarding the specific issues/programs/efforts you plan to focus on over the next five years in this plan.

Response: Comment noted. We have added additional timelines.

12. Washington State Conservation Commission- The Nonpoint Plan should link the actions necessary to address non point pollution with the programs being implemented, and include a description of the actions to be taken by whom. Currently, Table 8 in the Nonpoint Plan identifies the goals, objectives, strategies and measurable milestones to address nonpoint source pollution. The draft Table 8 is a significant change from the 2005 NPS Plan. In the 2005 NPS Plan actions were identified with clear connections to "lead entity cooperators". This approach highlighted the importance of the work of entities at all levels to take action to address nonpoint pollution. Currently, the draft Table 8 includes no references to other entities or non-Ecology activities. Recommendation #7: Table 8 should be revised to include input from the variety of entities working to address nonpoint source pollution in the state. Thank you again for the opportunity to review and comment on the draft State Water Quality Nonpoint Pollution Plan. This plan presents a great opportunity to describe, design, and implement a collaborative

approach to improve water quality in our state. We look forward to continuing to work with you and others on this work.

Response: Comment noted. Chapter 9 is intended to capture primarily the actions that Ecology is committing to as the lead implementer of the state nonpoint plan. We recognize that this is a departure from the 2005 plan, which included an extensive list of activities, projects, strategies, initiatives and programs. However, our experience was that many of those proposed actions remained largely unimplemented or partially implemented. Our intent in changing how this chapter was structured was to better meet the objective that EPA set in their guidance. The commenter also suggests that the table includes no references to other entities or non-Ecology activities. This is not true. The table outlines support for many programs implemented by other entities. For example the table outlines support for PIC programs, the Puget Sound Action Agenda, the Farmed Smart certification program, the Washington Shellfish Initiative, Salmon Recovery, WSDA's implementation of the Dairy Nutrient Management Program, DOH and LHJs' implementation of OSS rules, and DNR's implementation of the Forest Practices Rules. In all these cases other entities are the lead for those activities. Additionally, the work of Section 319 grant recipients and local partners in getting BMPs implemented is one of the key metrics outlined in the table. Finally, one of the key measurable milestones is the reduction in sediment, phosphorous, and nitrogen achieved through the implementation of BMPs funded with Section 319 grants. Again, this is implementation completed by external entities. Many of the entities funded by Section 319 grants are conservation districts.

13. Northwest Indian Fisheries Commission- . Plan requires annual milestones. Section 319 of the CWA requires that state NPS plans contain annual milestones for the implementation of BMPs and program implementation methods. The statute further stipulates that milestones should be broken out by categories and subcategories of NPS. While the NPS plan does contain several laudable commitments such as development of an implementation tracking database and eventual development of BMPs, these commitments are not accompanied by specific, date certain timelines. Per federal requirements, we respectfully request that Ecology develop annual milestones for each of the action items, including those requested in this correspondence and by our member tribes.

Response: Comment noted. We have added additional timelines.

14. Snohomish County Department of Public Works-Chapter 9. Goals and Strategies: Pg. 113 Goal 3 – Develop and Strengthen Partnerships. For consistency with chapter 4, it would nice to reference explicitly include a strategy of working with the Interagency Team to improve the Water Quality Assessment and TMDL programs in Washington.

Response: Edits made to include working with the interagency team.

15. Board of Stevens County Commissioners-Page 113, second box under Strategies – Please reword this sentence to read as follows: “Continue using Financial Assistance Council to receive input from stakeholders on grants and loans administered by Ecology.” Again, this is taxpayer money and Ecology administers grants and has no money of its own.

Response: Comment noted. Edits made for clarity.

16. Northwest Environmental Advocates- Chapter 9

Missing from Table 8 appears to be a goal to keep clean waters clean. Also one to address both clean and impaired groundwater. Goal 1 does not have a single milestone that is related to actual BMP implementation or water quality results. Generally, while the table has the potential to set out Washington's plan, it does not. Alternatively, it does an excellent job of setting out Washington's plan but the problem is the plan itself. Goal 1; incentives: There are other strategies that fit under the objective of incentives besides monetary grants and loans. For example, the certification approach discussed earlier may or may not have monetary benefits but is an incentive. Simply giving credit for good work can be an incentive, e.g., awards. Using mentors can provide incentives. Likewise, the opposite—calling out sources that are not doing what should be done—can act as an incentive. So, for example, issuing report cards on TMDL implementation by land owners might have a efficacious, albeit not popular, effect. Likewise, there may be some taxation approaches that would provide incentives for riparian restoration. If cash and human nature are the greatest barriers to nonpoint source controls, address both. In addition, this does not address maintenance of BMPs, which is essential to water quality outcomes and protection of the public investment. Maintenance should show up in the measurable outputs. The milestones should include some way of keeping track of the outputs—the database that Ecology talked about.

Goal 1; TMDLs and STIs: The development of TMDLs should be separate from the implementation of TMDLs and STIs. It is very possible, if not likely, that TMDLs do not lead to implementation. Mixing TMDLs and STIs together is also not helpful. Nor is the lineup of strategies that have as separate entries, for example, “implement TMDLs” and “Implement BMPs.” How are those different? If it's something substantive, don't refer to “implement the key changes to Ecology's Watershed evaluation process as recommended by the Agriculture and Water Quality Advisory Committee.” That simply isn't helpful. What are the key changes and if they are so key why don't they show up here? Don't lump the sectors together. The plan already acknowledges that there is a huge difference between the statewide program for forest practices and the approach used for agriculture. Lumping them together simply creates confusion and allows Ecology to dodge the difficult issues presented in this useful table. Also, frankly, it's not clear what the difference is between a TMDL, STI plan, and a watershed evaluation and their possible relationship. It is unclear what Ecology means by “implement our nonpoint strategy” in “priority watersheds.” Nor is it really clear what it means to “implement 10% of the STI/TMDL per year.” Is that 10 percent of the land covered or the landowners or the source types or the pollutants or the riparian river miles? And how does this fit with the goal established on page 30: STI projects are intended to implement nonpoint source controls as quickly as possible. When we use STI, compliance with the WQ Standards is to be achieved no more than 10 years after the start of STI work in the watershed. The only exception to this time requirement is for parameters such as temperature, which might take longer because of the time it takes for trees to grow and achieve site potential shade. However, even in this case, all implementation actions necessary to achieve compliance must be completed within 10 years.

In addition, are TMDLs and STI projects likely to be of significantly different geographic size? Why is there nothing in measurable outputs or milestones that reflect the “key changes” for

agriculture? What in this objective addresses the question of whether the BMPs being put into place are sufficient or permanent? Why is there no reference to implementation monitoring? Why is there no way to track where enforcement actions may be needed?

Goal 1; complaints: There should be outreach to the public regarding what to complain about. This would seem to have several benefits: (1) reduce non-substantive complaints; (2) double as education to landowners; (3) provide the same information to the public as landowners about what good stewardship looks like; (4) increase the complaints because the public is acting as Ecology's eyes and ears. It is unclear what it means to "resolve" a complaint. A milestone should be that 100 percent of valid complaints result in voluntary or compulsory action. Goal 1; market-based programs: Trading is not necessarily market-based. In fact, it is less likely to be than not. Moreover, if trading is to be a part of Ecology's strategy, it needs to explain how the increment over baseline requirements will be identified and whether—from a nonpoint source control objective—the increment is worth considering as part of this program. In other words, a trade that meets the needs of a point source may be a very small drop in the bucket of the nonpoint source control that Ecology needs to implement.

Goal 1; state initiatives: Since this is a state plan, it makes little sense to throw in a bunch of state plans that purportedly result in nonpoint source controls and then say "see chapter 3." If these are part of Ecology's serious work efforts to control nonpoint sources, then they are worthy of pulling apart into strategies, outputs, and milestones. If they are not, don't put them in the chart. 112 This chart should be used to identify the serious efforts that will result in nonpoint source controls. The number of students reached by Ecology's education programs does not fall entire plan; too much talking and not enough doing. Either there is a direct link between the activities and meetings and committees and whatnot with actual on-the-ground efforts or there is not. If not, don't include it. But as it stands, this table does not have enough in the two right hand columns to add up to a program that will meet the goal of cleaning up impaired waters. That is the primary problem with the table and with the entire document summed up on the table. This is not a problem that a public commenter can solve. Either the table got short shrift and really needs some serious work or whole plan is a charade.

Goal 2: It is not clear what is meant by "clear standards" but if it means clear BMPs or control measures, it would be better to use another word. The strategies are missing agriculture—the biggest problem facing Washington. How do the NMFS riparian buffers fit in here? Are they not clear or not used? In addition, it is not evident that the problem with stormwater is that the BMPs are unclear as much as there may be not enough of them or they are not stringent enough. Ecology seems to have petered out on the outputs and milestones; if this can't be filled in because there are no plans, this whole effort should be withdrawn and reworked.

Goal 3: If the outputs are meetings, the outputs are not changes to nonpoint source controls. If the outputs are not changes to nonpoint source controls, this effort is meaningless.

Goal 4: Again, there is little here to demonstrate that program effectiveness will be measured. Also missing is monitoring for program implementation.

Goal 5: This is meaningless and in no way establishes the accountability that is suggested in its goal language.

There should be a date by which the tracking system is completed. There should be something in this plan that explains the projected reductions as well as some indication of how much of an improvement those annual reductions will mean for water quality and how they will be maintained and how much of them will come from grants/loans versus other approaches. Ecology should also explain why there is no reference to reducing temperature.

Response: Comment noted. Our goal with the table is to meet EPA's guidance and set out key milestones that will allow for an evaluation of our program. The commenter points out a variety of additional specificity that could be added to the table. We understand that there is value in added specificity. However, our goal is to develop more targeted reporting requirements without prioritizing reporting and metric tracking over implementation.

We edited the table to add a more specific timeline related to the BMP guidance development process.

Finally, we believe that more value and accountability are provided by developing a database that tracks the key metric. EPA and stakeholders could then use the information collected in that database to evaluate the effectiveness of the program. Again, our goal is to make sure we have transparency, accountability, and good reporting mechanisms without diverting resources from on-the-ground BMP implementation and watershed clean-up work.

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Comments unrelated to a specific plan chapter

Identifying Pollution Problems and Balancing the use of Regulatory and Voluntary Tools

Summary response: This section responds to comments that focus on two related issues:

- 1. What evidence Ecology uses to determine there is a nonpoint pollution problem at a site.*
- 2. When Ecology uses enforcement.*

Many commenters suggest that Ecology should use DNA evidence to prove that pollution is coming from a landowner's animals and not from wildlife. Ecology has addressed this issue numerous times. It is true that wildlife may contribute fecal coliform bacteria to surface water. However, monitoring data that indicate that a water body is impaired for fecal coliform is not the data used by Ecology to determine that there is a pollution problem at a site.

Ecology assesses site conditions to determine whether a problem exists. Site conditions are recognized as a sound, scientific method to use to identify the presence of pollution problems. When assessing a site, Ecology considers factors such as:

- Whether or not there is a healthy riparian area. Healthy riparian areas generally contain a combination of indigenous trees, shrubs, woody debris, riparian vegetation litter layers, and soils to filter and attenuate incoming sediments and pollutants.*
- Whether animal confinement areas and winter feeding areas are located away from surface water.*
- Whether manure storage areas are properly designed and located away from surface water and stormwater conveyances.*

It is easy to tell from a site inspection whether a nonpoint pollution problem exists, and whether pollution has already been discharged from a site and is likely to be discharged again. Bare ground, manure deposited near streams, the presence of contaminated runoff, evidence of past runoff or foreseeable runoff with precipitation, are all easy to see for both Ecology staff and a landowner.

The site conditions Ecology uses to determine whether a nonpoint pollution problem exists at a site where livestock are kept have recently been published; the document, "Clean Water and Livestock Operations: Assessing Risks to Water Quality", may be found at:

<https://fortress.wa.gov/ecy/publications/documents/1510020.pdf>. This document was written with input from the director's Agriculture and Water Quality Committee.

The suggestions that Ecology should use DNA testing or some other sort of source testing have been made before. The problem with these kinds of tests is that they are extremely expensive and are commonly inaccurate. Site conditions are a much more reliable method to determine whether there is a problem, they are much less expensive to use, and assessing site conditions is something a landowner can do to determine risk on his or her own property. Using a cost-effective, proven technique to identify nonpoint pollution sources is a good use of public money.

It is outside the scope of the nonpoint plan to state definitively when Ecology would use enforcement to address a nonpoint pollution problem. To some extent each situation is different, depending on the severity of the problem, the length of time the problem has existed, whether the problem needs an emergency fix, whether the landowner is willing to address the problem, whether there has been a problem at the site before, etc.

Generally, Ecology uses an escalating enforcement strategy. When we identify a nonpoint pollution problem, we notify the landowner of the problem, offer to meet and explain the problem and the potential solutions, and offer funding if we have it to help implement changes. Many landowners take advantage of this help and implement the necessary BMPs, thus solving the problem. Others prefer to work with their local conservation district or to make changes themselves. As long as the problem is addressed, this is also a good approach. Some landowners, however, decline to do anything to address their pollution problem, and after Ecology has tried numerous times to resolve the problem, we may then issue an order requiring the landowner to fix the problem. If the problem is still not resolved, Ecology may move on to issue a penalty.

Issuing penalties is not Ecology's preferred method to resolve nonpoint pollution issues. However, we also know that the possibility of a penalty can motivate landowners to work cooperatively with Ecology and other technical assistance providers to implement BMPs on their property.

Finding the right balance between enforcement and other tools is a difficult task. We believe that enforcement is necessary if we are to meet the goal of compliance with the water quality standards. While we did not propose changing the current balance, we are committed to discussing with stakeholders how we should change our present practices to be more effective in protecting and cleaning-up state waters. Some commenters believe that Ecology is already using our enforcement authorities too often. Others believe that more enforcement is needed and that our escalation process is too slow or non-existent. We understand both perspectives and will work with all stakeholders to strike a better balance.

1. Peter Haase- The latest science applied relates to poop sniffing dogs and unreliable DNA work. And no new science for detecting/measuring pollution from agriculture is prescribed in the plan. And yet hundreds of large pastured animals stand by the fence next to the stream or ditch day in and day out. It seems no one will want to upset a farmer.

Response: See summary response for this section.

2. Cattle Producers of Washington- Most significantly, DOE presumes to start managing or mitigating non-point pollution without ever expending a word to talk about determining the sources of certain contaminants with certainty. Fecal coliform pollution, for example, while potentially caused by a variety of sources including wildlife, is always considered the fault of a human activity. Working with modern scientific methods, such as DNA testing, to determine if the pollutants are human or animal sourced and, in addition, if that animal is domestic or wild, are not addressed in any capacity in this plan. The lack of any information on this topic prompts

a serious question, “why not?” If one of the goals of the plan is to secure funding from the EPA for water quality related projects, why is this project not listed among them? DOE Staff reports at meetings on this plan reported DOE received as much as \$3 million from EPA in the last grant cycle. Those funds should be spent identifying the source of a problem, not only its symptom. This item proves as only one exemplary of how DOE is willing to continue to use outdated methods and not pursue new tools to answer water quality questions.

Response: See summary response for this section.

3. Cattle Producers of Washington- We would recommend that additional research be expended on how to make site-based, source-specific testing for pollution a priority of this plan. If adequate testing is implemented, fewer tax dollars will be wasted in creating solutions in search of a problem. It will also allow for sane, reasonable benchmarks for items like fecal coliform that account for contribution by wildlife and other uncontrollable factors before calling for corrective actions that may not address the baseline readings.

Response: See summary response for this section.

4. Joe Doman- DOE should be making it a priority to use site-based, source-specific evidence to make their determinations about what is causing water pollution. A cow standing in a creek, or near a creek, is not necessarily a positive identifier of pollution.*DNA testing or other source-testing should be used to determine if the problem is caused by humans, domestic animals, wildlife or other sources. Not knowing the source of a problem but attempting to “fix” the symptom is not acceptable.

Response: See summary response for this section.

5. Spokane County Cattlemen- Despite requests from various groups and legislative bills calling for better science in regards to water quality impairment decisions, DOE has continued to use visual observations as one of their key ways of determining impairment. Water testing to verify assumptions is not always used and when testing is consulted it often fails to be site-based or source-specific.

This lack of concrete evidence by DOE when contacting landowners about perceived violations is a grave concern.

Because the new non-point document does not set new and better goals for DOE regarding site-based, source-specific testing we find the document to be extensively flawed and incomplete. We also disagree with the tenor of the document that is clearly pointing towards some point in the near future when every Washingtonian, no matter their location, will have to have some kind of DOE permit or approval to use their own land.

While the non-point plan may secure up to \$3 million in EPA dollars for the agency, it will do far more economic and community damage than that if implemented. This document does not present a logical, science-based method for ensuring that there are actually non-point water

quality problems to fix and endangers Washington's farm and ranch families in an unconscionable way.

Ecology needs to scrap this draft and start over with a plan that requires using provable, test-driven results to determine where problems exist and source-specific testing to ensure landowners are not being targeted for inputs they did not cause.

...

We are especially alarmed about the vagueness of the plan and how it highlights "partnerships" and "cost-share" opportunities but does not elaborate on enforcement actions against private landowners.

In meetings our members attended to learn more about the plan, the message focused on "partnerships" but did not say how the plan that considers land use activities the "leading source of stream pollution in the United States" is going to be enforced.

This item is crucially important as DOE has the power to impose steep fines and even jail time on landowners who are perceived to have polluted a state waterway. RCW 90.48.140 allows DOE to charge the landowner with a gross misdemeanor that carries a fine of up to \$10,000 or 364 days in jail. Each day a landowner fails to work in obedience with DOE is also considered a "separate and additional violation."

While we understand it is not good public relations to tell the public that determinations made by DOE staff carry this kind of weight, it is critically important when the Department has failed to prove credible in making water pollution determinations.

Response: See summary response for this section.

6. Judy Crowder- As with many Federal programs far away from the citizens and the needs of their community, the clean water requirements you are proposing are so vague and general they become a tool used inconsistently and without site specific consideration, often causing much economic impact without improving the water as the sources of contaminants in the water are not identified using science based methods. It is a proven fact wildlife cause a large part of the bacteria in streams. A Virginia Tech study using high-tech methods to determine harmful bacteria in three streams found from 50.3% to 58.8% of bacteria in the streams to be from wildlife. (Source Prof. Charles Hagedorn) I was a member of a water system in Careywood Idaho in which \$1 million of system improvement was mandated and the end results was a slight decrease in the quality of water with each landowner paying \$12,000 to decrease their water quality.

The lack of concrete evidence by DOE when contacting landowners about perceived violations is a grave concern. I am especially alarmed about the vagueness of the plan which does not elaborate on enforcement actions against private landowners. I would like to see DOE start over but with the aim to leave the communities and land owners in charge of their water and to provide reasonable, scientific advice and resources. It appears the DOE's aim was to obtain 3

million dollars of aid by imposing unreasonable, non-science based methods on communities and land owners. The purpose of government is to protect not limit property rights.

Ecology needs to scrap this draft and start over with a plan that requires using provable, test-driven results to determine where problems exist and source-specific testing which includes the identification of a main source of pollutants from wildlife. Target measurements must include wildlife pollutants as a factor. Landowners should not be targeted for inputs they did not cause.

Response: See summary response for this section.

7. Washington Cattlemen's Association- Additionally, WCA would like to better understand Ecology's methodology for selecting sites to evaluate to ensure that these evaluations are not inadvertently biased. As cattle are easy to identify and Ecology has identified cattle as a source of pollution, Ecology should continue to update the scientific research used to make sure that all studies that are being conducted to clarify pollution sources, such as DNA testing, are being considered when evaluating watersheds to make sure that cattle are the actual source of pollution. As Ecology states in the Draft NPS Plan, watershed evaluations are primarily used to address agricultural NPS pollution sources; the subjective nature of a visual inspection from a public right of way is a concern to WCA's members. There is a concern that agricultural operations that have cattle may be subject to increased scrutiny on the part of Ecology because these operations are easy to identify.

Response: See summary response for this section.

8. Don Russell- Washington State's regulatory framework is heavily biased to function to protect and preserve water bodies that are in compliance with State Water Quality Standards, with penalties imposed upon those who cause water quality degradation. Unfortunately too many times regulatory agencies indiscriminately apply these regulations to actions proposed to restore the natural function of impaired freshwater bodies with the result that they are not undertaken. Under the present regulatory framework there are no incentives (i.e., encouragement, instruction, simple permitting processes, or financial or mitigation credit reward) for any local governmental agency, conservation district, volunteer organization or private property owner to voluntarily undertake water quality and salmon habitat enhancement projects.

Response: See summary response for this section.

9. Thurston County- We agree that partnerships, best management practices (e.g., education and outreach efforts), and conservation and protection of riparian corridors can, in theory, be some one of the most cost-effective tools for addressing sources of NPS pollution. However, there are significant implementation challenges associated with these approaches, and the county feels that important aspects of implementation of these tools have not been fully acknowledged or addressed in the draft Nonpoint Plan. In Thurston County, a large extent of our watersheds occur outside of our NPDES municipal stormwater permit boundary. These areas are predominantly characterized by rural residential, agriculture, and long-term forest land uses; all of which are known to potentially contribute to NPS pollution. Thus, successful water quality improvements in Thurston County will rely heavily on the implementation of voluntary measures

and the enforcement of existing local and state regulatory tools. The county's concerned that a failure to account for these considerations in the Nonpoint Plan increases the likelihood that our needs for implementing corrective measures to address water quality impairments will continue to increase with no additional effective recovery of our receiving waters.

For example, it is possible to identify and prioritize riparian projects and even possibly fund their implementation. However, in the end, we cannot force landowners to implement projects on their property. Rather, we can only market, provide incentives, and work to identify common interests and implement projects with willing landowners. Landowner willingness continues to be one of the greatest impediments to implementing NPS pollution measures on private lands.

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Much like the previous section, addressing NPS impairments in the majority of our watersheds will occur outside of our NPDES municipal stormwater permit boundary and will require enforcement of existing local and state regulations. However, the draft Nonpoint Plan provides no meaningful discussion regarding the challenge of enforcement. Ecology has the authority to enforce and regulate NPS pollution on private lands through RCW 90.48, but Ecology rarely exercises this authority. This is not meant to be a criticism, but rather to point out that to make this tool meaningful and effective, we need to be able to acknowledge challenges associated with enforcement and incorporate strategies for overcoming them into the plan. These challenges may be related to a lack of political will, gaps in enforcement mechanisms, and/or lack of resources to perform enforcement activities. A frank discussion on potential challenges raises awareness for stakeholders, and illustrates the need to work in these areas and foster a dialog about how to overcome enforcement issues.

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Many of the comments noted in the narrative of this letter relate to the overall policy associated with addressing NPS pollution throughout the state. Furthermore, many of the total maximum daily loads (TMDLs) that have been developed or are in development, rely heavily on the implementation of voluntary NPS controls to achieve water quality standards. This makes adequately addressing NPS pollution a critical path to protecting and restoring our waterbodies. Thurston County recognizes these challenges and has been participating on an Interagency Project Team (Team) aimed at improving policy and implementation of NPS measures in a more systematic, comprehensive, and effective way. The Team consists of staff from the surface water departments of Clark, King, Kitsap, Pierce, Snohomish and Thurston Counties, as well as staff from the Washington State Department of Transportation. The Team aims to work with Ecology and EPA to improve implementation of the Clean Water Act and TMDL programs in the state. In 2014, the Team hired a consultant to compare water quality assessment (WQA) and TMDL programs in Washington State against five other states in order to identify potential improvements. This resulted in a report describing nine key recommendations (many of which address NPS issues) for improving water quality related implementation efforts which include the following:

1. Establish a multi-stakeholder standing committee to improve coordination and engagement with the regulated community;
2. Implement existing regulatory authority related to unpermitted and nonpoint sources;

3. Refine water quality standards and water quality assessment methodologies;
4. Improve and employ consistent processes for collecting, assessing, and utilizing credible data in WQA and TMDL development;
5. Refine water quality assessment categories to improve clarity and aid in defining priority water bodies;
6. Update the current biological assessment and listing methodology;
7. Define TMDL prioritization methodology, timelines, and process for public involvement;
8. Define TMDL development methodology; and
9. Develop consistent TMDL implementation expectations.

Recommendation 2 (Implement existing regulatory authority related to unpermitted and nonpoint sources) aims to address NPS issues in the state's TMDL program by identifying barriers to controlling NPS pollution and recommending approaches that may mitigate these barriers. Potential approaches include utilizing existing legal authority (WAC 173-201-510 and RCW 90.48.080) to control unpermitted and nonpoint sources and ensuring that Load Allocations and Waste Load Allocations are equitable. Chapter 3 of the draft Nonpoint Plan, Stakeholder Involvement, is also aligned with the Team's Recommendation 1 (Establish a multi-stakeholder Standing Committee to improve coordination and engagement between Ecology and the regulated community), and encourages stakeholder involvement in the development and implementation of regional water quality programs and initiatives. Implementation of this recommendation will help institutionalize buy-in and will provide more local expertise and knowledge that is key to designing effective NPS pollution control programs.

The Interagency Team, with Ecology and EPA, has already started to look at the recommendations listed above. If implemented, these recommendations will help to address many of the challenges of addressing NPS pollution identified in this comment submittal. Thurston County looks forward to working with the Team and Ecology to further refine and implement the recommendations noted above, as a way to address many of the policy and technical-related limitations identified in our review of Washington's Draft Water Quality Management Plan to Control Nonpoint Sources of Pollution.

Response: See summary response for this section.

10. Peter Haase- Lastly, the Plan, over and over, puts enforcement at the end of the list for a tool to use. Yet it is known by everyone that pollution law after pollution law is regularly broken and not enforced – which is why so many of us do not want more laws, we want results! Years ago I heard a “joke” about a fellow who was just graduated from Michigan State College and was a new Agricultural Extension agent. He was nailing a flyer for a talk on Modern Pasture Management onto a phone pole and the farmer in the field came over and read it. “So.” said the new fellow. “Will you come and listen?” “No, I expect not.” said the farmer. “I already know how to farm better than I do.” That is how I feel about this endless mantra for more outreach and education to farmers.

Response: See summary response for this section.

11. Washington Association of Conservation Districts- Some commenters will doubtless want to see greater detail about the role enforcement activities will play in NPS management under the NPS Plan. WACD, likewise, would like to see the plan provide greater detail about how enforcement (and other regulation) will form the required “regulatory backstop” to provide reasonable assurance that water quality standards are being met. Also, details should be included to outline how the regulatory backstop will be activated, and how Ecology (as the regulator) will determine that non-regulatory actions have “failed” to achieve compliance with water quality standards. This is critical in communicating with landowners and land managers about the voluntary steps they may wish (or need) to take to protect water quality. How does the NPS Plan activate enforcement authority to fulfill this purpose where landowner participation or success is not achieved, and on what basis is this lack of success judged?

Same section notes an “identification of the key programs...”, including a system of regulatory and non-regulatory approaches, and critical aspects such as technical assistance, financial assistance and demonstration projects. These aspects are not sufficiently described in the NPS Plan; a simple catalogue of programs does not describe these adequately, nor does such a listing help to answer the question about how Ecology and partners will coordinate these programs to achieve the desired impact.

Same section notes escalation to enforcement when non-regulatory tools “fail”. What follows to outline how the NPS Plan will escalate to enforcement? How does Ecology determine that non-regulatory tools have “failed”?

Response: See summary response for this section.

12. Puget SoundKeeper- While education and incentive programs are useful, we feel that there has been far too much reliance on this approach. We need both regulatory and incentive programs. Far too often, local and state programs rely solely on education and incentives, an approach that has consistently failed to solve these problems throughout the watershed. There is no real evidence to show that a stand alone voluntary approach can work, even after tens of millions of dollars are spent in a given watershed. Both Portage Bay and Sammamish Bay have continued to suffer from poor water quality despite tens of millions of dollars and many years of outreach to upstream landowners. Landowner grants and education are important but insufficient on their own to solve these problems. The plan should recognize this fact and emphasize the need for a regulatory approach. Moreover, even where we have regulatory programs, enforcement of nonpoint water quality laws is inconsistent at best. In addition to financial shortfalls, there are serious problems associated with the inability of agency staff to access properties that are suspected of violating water quality laws. The draft plan should include a section on how nonpoint compliance programs can be enhanced.

Response: See summary response for this section.

13. Western Environmental Law Center- The Executive Summary of the plan states that “[t]his statewide management plan meets U.S. Environmental Protection Agency (EPA) Clean Water Act requirements, and ensures Washington State’s eligibility for Section 319 (federal NPS Program) funding.” Unfortunately, that is not the case. Because this plan simply continues prior,

largely unsuccessful voluntary approaches to addressing nonpoint source pollution and relies upon demonstrably ineffective regulatory programs (e.g. the Dairy Nutrient Management Program), it violates the mandate of the Clean Water Act “that the discharge of pollutants into the navigable waters be eliminated by 1985.” 33 U.S.C. § 1251(a)(1). Furthermore, the Plan frustrates the “interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.” 33 U.S.C. § 1251(a)(2).

We encourage you to go back to the drawing board and start developing and implementing regulatory, not voluntary, programs to prevent nonpoint source discharges of pollution. As recently as December 2013, the General Accountability Office (“GAO”), has stated that “EPA has estimated that at historical funding levels and water body restoration rates, it would take longer than 1,000 years to restore all the water bodies that are now impaired by nonpoint source pollution.”² That is not acceptable.

Addressing nonpoint source pollution is not an insurmountable task and can be done using a Two Point Plan. First, identify the sources of nonpoint source pollution (much of this data already exists) and second, enforce existing water quality laws against the identified polluters to bring them into compliance. We do not need more clean-up plans, implementation projects, grant and loan programs, education and outreach, voluntary programs, partnerships, adaptive management, strategies, technical assistance, evaluations, water quality trading, compliance pathways, financial incentives, certainty programs, initiatives, action agendas, talking circles, workgroups, listening sessions, blue ribbon panels, task forces, round tables, or other such self-aggrandizing, “feel good” strategies that continue to kick the can down the road.

While we support voluntary programs that are based upon best available science and have demonstrable water quality benefits, those programs must be implemented in conjunction with a meaningful and enforceable regulatory approach. Commenters respectfully request that Ecology adopt the proposed Two Point Plan to address nonpoint source pollution in the state of Washington.

Response: See summary response for this section.

14. WSDOT- WSDOT thinks the NPS plan would be more effective at addressing NPS pollution if it included more specific information regarding how and when enforcement action will be taken by Ecology and other authorities referenced in the plan. Ensuring the NPS plan is clear on how it will be implemented and enforced is of specific interest to WSDOT because many Total Maximum Daily Loads (TMDLs) include implementation actions for WSDOT that are directly related to non-point runoff entering our MS4 system. As stated at the bottom of page 28 of the NPS plan, “If nonpoint sources are not addressed, federal law shins reduction requirements to point source discharges,” which include NPDES stormwater permittees such as WSDOT. This is a concern for WSDOT because we have limited enforcement authority over adjacent properties. WSDOT feels that a strong and enforceable NPS plan will greatly improve water quality statewide and help ensure that TMDL implementation actions are reasonable, equitable and effective.

Response: See summary response for this section.

15. Lummi Nation- Chapter 3: Strategies for Addressing Non point Source Pollution

Overall Comment: As demonstrated by the non point source management actions that have occurred in the Nooksack River watershed since the mid-1990s, the approach taken by Ecology to address polluters has varied over time. In the early and mid-1990s there was essentially no compliance enforcement presence by Ecology in the Nooksack River watershed and violations of the state water code for both water diversions and water quality were rampant and widespread. There was no enforcement at all to prevent or stop individuals from diverting water without a water right and the sole Ecology water quality inspector was based out of Bellevue, Washington and only responded to water quality violations when they were reported by others- that is, on a complaint basis. The result of this lack of a credible enforcement program for hydromodifications and water quality overall is reflected in the continuing widespread illegal water use in the watershed and in the water quality over the Lummi shellfish growing area in Portage Bay. As shown in Figure 1, the National Shellfish Sanitation Program (NSSP) standards were not even close to being met in the Portage Bay shellfish growing area during the early and mid-1990s period at several of the Washington Department of Health water quality sampling sites¹ Pursuant to the Shellfish Consent Decree (Order Regarding Shellfish Sanitation, United States v. Washington [Shellfish], Civil Number 9213, Subproceeding 89-3, Western District of Washington, 1994), the Washington DOH in consultation with the Lummi Nation is responsible to the federal Food and Drug Administration to ensure that the National Shellfish Sanitation Program (NSSP) standards for certification of shellfish growing waters are met for tribal harvest areas including on-Reservation areas.

Following the voluntary closure of these shellfish beds by the Lummi Nation in November 1996 and the subsequent action by the EPA starting in January 1997 to conduct compliance enforcement inspections of dairies to "level the economic playing field" for the dairy industry, there was a substantial improvement in water quality. In 1998 the Dairy Nutrient Management Act was passed and Ecology assigned two NPS pollution inspectors to the Bellingham Field Office. Although there were still exceedences of the NSSP water quality standard, the overall water quality improvement trend that resulted from having a credible compliance enforcement program implemented by the EPA and Ecology is obvious in Figure 1. When the dairy element of the Ecology Livestock Program was transferred to the Washington State Department of Agriculture (WSDA) in July 2003, and there was a lack of compliance enforcement presence because Ecology staff stopped conducting inspections and the WSDA needed time to staff and train for their new responsibilities, there was a noticeable degradation of water quality. Once the WSDA program stabilized, water quality trends again improved.

As shown in Figure 1, the improvements in water quality again reversed starting in 2007 and the trend continued through 2014, which again led to the closure of Lummi shellfish growing areas in Portage Bay. The exact causes of this renewed water quality degradation are not fully understood but some have speculated that the agriculture industry became aware of a state policy position that "the state lacks the enforcement authority and penalties for dairies that do not get plans updated or properly implement their plans, which limits water quality enforcement

effectiveness" (see Page 50 of the May 2015 Draft NPS Pollution Management Plan). Washington State apparently adopted this policy despite a July 14, 2004 Assistant Attorney General opinion that Ecology has the authority to prevent NPS pollution and to require implementation of specific management measures to address NPS pollution (see Appendix B of the May 2015 Draft NPS Pollution Management Plan). It appears that Ecology has the authority but has chosen not to exercise this authority despite the impacts of pollution on downstream users of the public water resources.

The marked and widespread downward trend in Nooksack River water quality, in particular fecal coliform bacteria levels, that has occurred over the last 5-10 years clearly shows that the current water quality management approach adopted by Ecology is not effective. One result of the current ineffective NPS pollution management practices of Ecology are closed shellfish growing areas on the Lummi Reservation. These shellfish growing areas have been relied on since time immemorial by lummi tribal members for commercial, ceremonial, and subsistence purposes. This closure has a substantial economic impact on individual tribal members that make their living and support their families through the harvesting of shellfish. The closure also has an unquantifiable but substantial impact on the Lummi Schelangen ("way of life"). It is hard not to argue that the actions and/or inactions of parties in the Nooksack River watershed to control non point source pollution have contributed to this closure.

As described on Page 35 of the May 2015 Draft NPS Pollution Management Plan, the current approach adopted by Ecology to address reported non point source pollution problems is to provide technical assistance, education, referrals [to other agencies for technical assistance], or in limited circumstances, escalating enforcement. In essence, rather than enforce long-standing existing laws that prohibit pollution of water resources and that are intended to protect downstream beneficial uses and users, as a first line of response Ecology offers assistance and education and only if a corrective action does not occur after repeated attempts to gain compliance is an enforcement action initiated. This approach is backwards, and as the degradation of the Nooksack River has demonstrated, is both not effective and harms people downstream.

Ecology should learn how to enforce long-standing existing state laws from professional law enforcement personnel within state government (e.g., Washington State Patrol) and model their approach after the proven methods developed by these other professionals. Depending on the severity of the violation, the overall approach taken by professional law enforcement agencies is to issue a civil penalty first. Typically the offender, at least for first time violators, is then provided an opportunity to reduce or eliminate the penalty. If the offender takes timely corrective action and participates in an education program or obtains technical assistance within an established timeline, the civil penalty is reduced or eliminated. If the offender does not take corrective action in a timely manner or does not participate in an education program or does not pay the fine, the penalties escalate. Repeat offenders receive higher penalties. Imagine what would happen on our roadways if there were not a credible compliance enforcement program for speeding and other "rules of the road". If the Washington State Patrol and local police departments made a choice to not exercise their authority to enforce existing state laws there would likely be substantially more people driving faster than posted speed limits, driving without seatbelts, talking on their cell phones and likely a corresponding substantial increase in the

number of injuries to life and personal property. An analogous situation currently exists with nonpoint source pollution control in Washington. Ecology, the agency with the authority to enforce existing state laws related to non point source pollution (see Appendix B of the Plan) has apparently chosen not to exercise this authority. As a result, BMPs for agriculture have not been adopted and required to be effectively implemented, water quality standards are frequently exceeded, and downstream users of the public resource are unable to enjoy the beneficial uses that the water quality standards are intended to protect.

In summary, Ecology appears to have the authority to prevent NPS pollution and to require implementation of specific management measures to address NPS pollution (see Appendix B of the Plan) but apparently has chosen not to exercise this authority. As a consequence of this choice, polluters continue to pollute and downstream property owners and/or users of the water resources continue to have their property rights, and in some cases federally protected treaty rights, violated. It is not clear how this approach can be interpreted as responsible, fair or protective of the general public health and welfare. Ecology should realign the current approach to polluters so that it is modeled after the enforcement approach taken by professional law enforcement personnel. Polluters should be issued a monetary fine first, provided an opportunity to take corrective actions and participate in an education program, and then the fine reduced or eliminated if effective corrective action is taken in a timely manner. If no corrective actions are taken, the fine should increase until it becomes enough of an economic incentive for the polluter to take corrective action and to avoid future penalties. ...Page 25, fifth bullet. As summarize above, having a credible compliance enforcement program is a proven effective approach to addressing pollution problems. The word "compliance enforcement" should appear in the examples of being proactive in addressing pollution problems.

Page 35-36, Complaint Response and Inspectors. As noted above, this backwards approach to protecting beneficial uses and downstream users from pollution is ineffective and should be modified to align with the approach used by professionals charge with protecting public health and safety. The responsibilities identified for Ecology's dedicated staff (i.e., verifying complaints, conducting field visits or inspections, providing technical assistance, highlighting financial assistance opportunities, and referring landowners [if need be] to local conservation districts or other resources for additional support) should be expanded to include either the words "issue civil penalties" or "recommend civil penalties".

Page 50, Enforcement Authority. As noted above, the statement that "the state lacks the enforcement authority and penalties for dairies that do not get plans updated or properly implement their plans, which limits water quality enforcement effectiveness" is not aligned with the July 14, 2004 Assistant Attorney General opinion that Ecology has the authority to prevent NPS pollution and to require implementation of specific management measures to address NPS pollution (see Appendix B).

Response: See summary response for this section.

16. Northwest Environmental Advocates- It is helpful for this report to explain how little substance has been provided by the Agriculture and Water Quality Advisory Committee in that it all seems to be about relationships, which are important but not really the central issue. What is

unclear is to what degree Ecology is implementing the education, outreach, and communications described in this section. There is no description of how much land is being addressed, which pollutants are a focus of this approach, how many land owners, etc. This also omits what happens and on what timeline if a landowner/producer/lessee fails to respond to all Ecology communications. Is a failure to communicate back to Ecology, or other demonstration of recalcitrance, the same as when “technical and financial assistance tools fail” Ecology uses enforcement tools?

...

Ecology needs to explain its overall approach to nonpoint source control, namely the degree to which it plans on relying on financial inducements, education, and partnerships versus regulatory approaches. If the former, it should explain how it can effect widespread nonpoint source control with limited resources. And, since it will find this explanation impossible, it should go on to explain how it can make such programs more efficacious. In our view, that would likely decrease flexibility and increase clarity of expectations.

Response: See summary response for this section.

17. Northwest Indian Fisheries Commission- Washington needs to utilize regulatory enforcement for NPS pollution. Ecology has well defined statutory authority to regulate NPS pollution, including an ability to require implementation of best management practices. However, despite the state's important victory in *Ecology v Lemire*, Ecology has been far too reluctant to utilize the bargaining incentives provided by the Supreme Court's decision.

Instead of applying the law, clarified by the State Supreme Court, to incentivize landowners to make speedier requests for, and implementation of technical assistance, the NPS plan describes a lengthy technical assistance system (pg. 31), by which multiple state agencies repeatedly attempt to engage landowners who are allowed to continue to pollute without swift repercussions for causing pollution. A better approach would be for Ecology to review and adopt the enforcement recommendations provided by the Lummi Nation. In those recommendations, the Lummi Nation describes using a compliance-based civil penalty system as a first line of response, and providing first time offenders with opportunities to decrease or eliminate penalties through corrective actions. The ubiquity and severity of the NPS pollution problem that threatens treaty-reserved resources, and the generally slow, if not ineffective, voluntary response system, warrant an overhaul of the current enforcement approach.

Response: See summary response for this section.

18. Stevens County Conservation District- The plan needs more clarity in when and how enforcement actions will occur and there needs to be a definite separation of (education, outreach, and technical assistance) and enforcement either in personnel within the Department or coordination with partners to separate (the carrot and stick).

Response: See summary response for this section.

19. Spokane RiverKeeper- For example, the Spokane Riverkeeper firmly believes that enforcement is a necessary component of any program that endeavors to clean up non-point pollution. As stated on page 8, RCW 90.48.120 gives Ecology authority to enforce nonpoint source pollution and the “substantial potential to pollute”.

We feel that the NPS plan must include specific strategies and mechanisms for enforcement of agricultural pollution using these regulations. The following are three examples of vague language in the plan:

- On page 25 the NPS plan lays out principles of using the enforcement tools but remains unclear as to what the triggers are for using the enforcement authority. The 6th bullet reads, “Escalate to enforcement when education, outreach and technical enforcement fail”. Nowhere is it spelled out what the triggers are for escalating into an enforcement mode. Details of this type are critical if the plan is to hold up.
- Inside the same chapter (3) in the TMDL section on page 30, the plan states “if the pollution sources are not addressed, Ecology will utilize enforcement tools as necessary and appropriate”. Clear details for triggering enforcement tools are necessary.
- On page 31 in the Watershed Evaluations section the plan states “If technical and financial assistance fail to address the pollution issue, Ecology may utilize enforcement tools to secure compliance”. The plan needs to be specific about what failure looks like and spell out the triggers for enforcement.

If the triggers around a clear, specific process (which include timelines) are not defined by the plan, the trigger becomes a “personal” decision/judgment on the part of Ecology personnel. If this happens, the incentive is to delay and defer the use of enforcement because Ecology personnel bears the burden of a difficult judgment inside a vague process. If the process is clear, it is then less personal and becomes a function of a mutually understood mechanics. Further, if enforcement is delayed and deferred as is often the current case, then it becomes an ineffective tool and results in process failure, leading to cycles of failure wherein little or no progress is ever made in water quality improvement and poor management is the norm.

The general public and local governments without regulatory authority depend on Ecology for nonpoint enforcement, but the NPS plan avoids a clear strategy for enforcing NPS violations, especially on agricultural lands.

Response: See summary response for this section.

20. Squaxin Island Tribe- In Washington the primary means of addressing temperature-impaired waters (developing and implementing BMPs) is through the Total Maximum Daily Loads (TMDLs). Washington's Nonpoint Plan features TMDLs as a central strategy for addressing temperature

- However, in our experience TMDLs, particularly those developed to address temperature impairments, are neither designed nor implemented in a manner that will protect our treaty-reserved resources. Therefore, EPA in their capacity of providing oversight to the § 319 program as federal trustee to treaty Tribes, should require Washington's Plan to address these

shortcomings. We will use the Deschutes River Total Maximum Daily Load Water Quality Improvement Plan as an example. Ecology's improvement plan for the Deschutes is based on temperature modeling that indicates that restoring mature riparian forest to the river's edge is the key to lowering the temperature of the river.

This is because the blocking of direct solar radiation and creation of a cooler riparian microclimate will allow the river to cool by over four degrees as it flows downstream (even though certain reaches will still not meet state standards for temperature and dissolved oxygen). The water quality improvement plan therefore hinges upon restoration of mature forest in a 75 foot riparian buffer along either side of the river. To achieve this goal, Ecology/Thurston County/Thurston Conservation District must convince a significant number of private landowners, including small and large farm owners, residential property owners, and forest landowners to voluntarily step back 75 feet from the river and replant trees. To that end: "This water cleanup plan must show "reasonable assurance" that nonpoint sources will be reduced to their allocated amount. Examples of actions to ensure the goals of this WQIR/IP are met include: education and outreach; technical and financial assistance; permit administration; and enforcement when necessary. Ecology believes the implementation actions identified in this WQIR/IP already support this water cleanup plan and add to the assurance that the identified pollutants and parameters in the Deschutes River, Percival Creek, and Budd Inlet tributaries will meet conditions provided by Washington State water quality standards. This assumes the following activities are continued and maintained" Deschutes Water Quality Improvement Plan p. 89

This is echoed in the State of Washington's nonpoint plan: "Our goal is to secure the load reductions required of non point sources through voluntary implementation and the use of education and outreach, technical assistance, and financial assistance. However, enforcement authority under state law provides a regulatory backstop. This regulatory backstop is necessary because there must be reasonable assurance that the abatement strategies for non point sources will actually take place. If nonpoint sources are not addressed, federal law shifts reduction requirements to point source dischargers." WA nonpoint plan p. 28

There is a significant agricultural lobby and a contingent of other private landowners who will not voluntarily restore a 75 foot buffer adjacent to the river. The effort to bring them into voluntary compliance may take decades, if it is possible. The Deschutes will not be on a trajectory towards cooling for many years, if ever.

Furthermore, Ecology identified the 75 foot buffer as "reasonable and achievable", however it is not adequate for a mainstem river like the Deschutes. The main channel of the Deschutes would naturally migrate well beyond 75 feet across its floodplain, as much as 500 feet in recent decades. A 75 foot buffer is fragile edge for providing shade, microclimate, and wood input to this river. Though there are currently some restoration projects on the Deschutes River, the restoration goal for the Deschutes River and expected voluntary actions needed to achieve that restoration do not represent reasonable assurance that the river will meet water quality standards for temperature and dissolved oxygen by 2025.

This is just one example of deficiencies in the TMDL process, which is a central strategy of State of Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution. Therefore we request that the EPA require that Washington Department of Ecology use stronger enforcement of TMDL implementation actions and at a minimum, tie them to NMFS 2008 Biological Opinion on riparian buffers widths.

Response: See summary response for this section.

CZARA

Summary Response: This section addresses the connection between CZARA and the nonpoint plan. In the draft plan we recognized the link between these two federal laws. As NOAA has highlighted, the nonpoint plan is one of the ways that states can implement their CZARA program. Conversely, EPA guidance directs states to update their nonpoint plans to incorporate approved CZARA programs. We have edited the plan to further highlight and clarify the connection between the nonpoint plan and CZARA. Additionally, we recognize that our BMP guidance work is intended to meet the requirements of both the CWA and CZARA. We will work closely with EPA and NOAA, as well as stakeholders and tribes, to fill gaps in our BMP guidance and secure CZARA approval. We have added additional timelines to Chapter 6 and Chapter 9 to outline how we will make progress in meeting our BMP guidance requirements.

1. NOAA - Stronger Connection to CZARA Needed: NOAA understands the challenges Ecology faces in updating its draft Nonpoint Source Management Plan. However, given that CZARA clearly states that a state's coastal nonpoint program shall be implemented through updates to its nonpoint source management and coastal zone management programs and that EPA's Section 319 guidance calls for a portion of Section 319 funds to be set aside to support development of a state's coastal nonpoint program, we are disappointed that this draft plan does not include a stronger connection to Washington's Coastal Nonpoint Program. For example, Chapter 6 (Recommended Management Measures) and Chapter 9 (Goals and Strategies) do not include specific management measures or actions the state plans to take to further develop and implement its coastal nonpoint program that are consistent with the 6217(g) guidance. Ecology should include specific actions and milestones in the plan that clearly state which management measures/best management practices and/or programs and processes will be used to address known gaps.

Response: See summary response for this section.

2. NOAA- If final CZARA development and implementation will not be specifically addressed in this 319 plan update, we strongly encourage Ecology to work closely with NOAA and EPA soon after the plan is complete to identify a specific CZARA strategy. NOAA and EPA believe Washington is progressing to meet all CZARA requirements and would like to work with the state to achieve full approval of its coastal nonpoint program in the near future. (See also comment below on Greater Specificity of Actions Needed).

Response: See summary response for this section.

3. NOAA- Greater Specificity of Actions Needed: NOAA recognizes it is important for the state to take time to identify ways to strengthen its 319 and CZARA programs and welcomes the opportunity to continue to work with Ecology and EPA to do so. However, some gaps in the state's ability to manage nonpoint source pollution are already known, such as gaps related to the agricultural sector discussed in Chapters 2 and 3. In addition to further "gap analysis," the plan should include specific actions and milestones Ecology will take to address some of the nonpoint source management gaps that are already known. Delaying implementation of actions to address known gaps until the gap analysis is completed at the end of 2016 is not acceptable. For example, Chapters 2 and 3 describe weaknesses with Washington's Dairy Nutrient Management Program. What specific actions can be taken on over the next five years to address those weaknesses? The tribes have also raised concerns about the adequacy of riparian buffers, including for agriculture activities. What can the state do to improve riparian management? Please let us know how NOAA can work with Ecology to move concrete actions forward to strengthen the state's nonpoint source management and better address the concerns the tribes have raised.

Response: See summary response for this section.

4. NOAA - Pg. 65: 2nd paragraph, 1st bullet. CZARA is a compilation of programs and policies, including the NPS plan, demonstrating that the state has processes in place to ensure implementation of the 6217(g) management measures. Therefore, the NPS Plan helps to implement CZARA, not the other way around as stated on this page. It would be helpful to clarify this.

Response: See summary response for this section.

5. NOAA- Pg. 75: 1st paragraph please note that the goal of CZARA is to "develop and implement management measures for nonpoint source pollution to restore and protect coastal waters..." (Sec. 6217(a)(1)). While Sec. 6217(b)(3) does state that state coastal nonpoint programs need to have processes in place for the "implementation and continuing revision from time to time of additional management measures...that are necessary to achieve and maintain applicable water quality standards...and protect designated uses," CZARA takes an adaptive approach. As the statute states, CZARA management measures are to "reflect the greatest degree of pollutant reduction achievable through the application of best available nonpoint pollution control practices...." NOAA and EPA do not anticipate that even the most rigorous implementation of additional management measures under CZARA will result in immediate attainment of water quality standards in waters and areas adversely affected by land uses over an extended period of time. However, the federal agencies expect that a state has processes in place, such as directly enforceable regulatory programs and voluntary approaches, backed by enforceable mechanisms, coupled with monitoring and tracking, that will enable the state to improve its management measures/BMPs, as needed, to protect and restore coastal areas in the longer term. Therefore, Ecology may wish to restate the 2nd sentence to more accurately reflect the adaptive nature of CZARA: "Under CZARA, Ecology is responsible for having adaptive processes in place for the implementation and continued revision of management measures over time to achieve and maintain applicable water quality standards and protect designated uses." [Note: NOAA recognizes that Ecology's original language included the CWA as well. NOAA's

suggested rewrite only focuses on CZARA since that is the program that NOAA is responsible for. Ecology may still wish to make a similar statement about the CWA but since NOAA does not administer that Act, we did not feel comfortable suggesting language regarding it.]

Response: See summary response for this section. We have added adaptive management language to Chapter 6.

6. NOAA- Pg. 75: 2nd paragraph under “Federal Requirements”, when describing CZARA, Ecology should note that unlike the 319 program, CZARA management measures need to be backed by enforceable policies and mechanisms. The last paragraph in this section alludes to that but does not explicitly state the enforceable policy requirement for CZARA.

Response: See summary response for this section. This is covered in Chapter 2.

7. NOAA- Pg. 76: Last paragraph under “Existing Guidance” states that Ecology will continue to address agriculture sources of pollution as outlined in Chapter 3. However, the only aspect of agriculture nonpoint source management discussed in Chapter 3 is the Dairy Nutrient Management Program. Other agriculture activities also produce polluted runoff. The plan should acknowledge this, the types agricultural activities producing that runoff, and include specific actions that will help prevent and reduce polluted runoff from these other agriculture activities as well. Chapter 3 also describes how TMDLs will be used to address water quality problems. TMDLs can be an effective tool to address nonpoint source pollution but keep in mind that CZARA focuses on pollution prevention. Washington should strive to have best management practices in place to prevent waters from becoming impaired to begin with.

Response: See summary response for this section.

8. Northwest Indian Fisheries Commission- 1. Plan does not fulfill CZARA obligations. The Coastal Zone Act Reauthorization Amendments (CZARA) provides that states must develop and implement enhanced NPS control programs for coastal areas to continue to receive full§ 319 funding. Federal law and guidance provide that§ 319 plans support and implement the CZARA programs. Additionally, in recent correspondence EPA and NOAA have requested that Ecology complete their CZARA program (now approximately 20 years overdue) in a way that addresses treaty rights. As Ecology acknowledges in the document, the NPS plan does not address these obligations.

Response: See summary response for this section.

Forestry

1. Washington Forest Protection Association- Ecology is currently considering comments on the comprehensive plan to deal with nonpoint pollution in Washington. Forestry is a key land use in many watersheds of the state. As the Draft Nonpoint Plan acknowledges, Washington State has a unique and complex forest practices regulatory system. While the Forest Practices Board (Board) and the Department of Natural Resources (DNR) have specific regulatory authority over forest practices, as a statutory member of the Board, Ecology plays a significant role in the

development and approval of forestry regulation. RCW 90.48.420 specifically requires: “Adoption of forest practices rules pertaining to water quality by the forest practices board shall be accomplished after reaching agreement with the director of the department or the director's designee on the board. Adoption shall be accomplished so that compliance with such forest practice[s] rules will achieve compliance with water pollution control laws.”

WFPA is appreciative of the extensive review of the forest practices program in the Draft Nonpoint Plan. Forest landowners have made significant investments and spent considerable effort to ensure the success of the buffering systems and water quality protection embedded in these rules developed by state agencies, federal services, public and private landowners, counties, Tribes, and the environmental community. In fact, NOAA Fisheries (previously NMFS) and the US Fish & Wildlife Services have approved the riparian buffering systems under a federal habitat conservation plan (HCP). As outlined below, WFPA respectfully requests that Ecology update and enhance forestry-specific data and information to incorporate a more thorough description of the current forest practices regulatory program in the final Nonpoint Plan.

Washington State forest landowners have a long history of developing collaborative, science-based programs leading to extremely protective forest practices rules and habitat conservation plans approved under the federal Endangered Species Act. The 1999 Washington Forests & Fish Law (FFR) was developed in collaboration with federal, state, Tribes, county governments, and private forest landowners. In 2001, the Board adopted new permanent forest practice rules to address impacts to aquatic species on all private forest lands not covered under an existing HCP and DNR lands east of the Cascade Crest. Representatives from each collaborating FFR partner worked together for 18 months to make changes to the forest practices rules to protect clean water and riparian habitat on non-federal forestland in Washington.

Regulatory changes were made to improve forest roads and culverts, enlarge buffer zones along stream banks, and identify and protect unstable slopes. An Adaptive Management monitoring program was also put into place to review the effectiveness of the new rules. As one of the most comprehensive pieces of state environmental legislation in the United States, the Forests & Fish Law and accompanying rules are designed to fully comply with both the federal Endangered Species Act (ESA) and the Clean Water Act (CWA) to protect Washington's native fish and aquatic species and assure clean water compliance. In 2006, the Forests & Fish Law was endorsed by the federal government through a statewide Forest Practices Habitat Conservation Plan (FP-HCP). Key components of the state's forest practices rules and the FP-HCP deal with riparian functions, buffering requirements and road enhancements. In particular, the state forest practices rules and the FP-HCP provisions addressing significant potential sources of heat or sediment include:

- Harvest buffers (substantially wider fish stream riparian buffers, expanded perennial stream riparian buffers, new equipment limitation zones on all streams, wider wetland management zones);
- Wider forest chemical application buffers;
- New road construction / stream crossing standards;
- Road Maintenance and Abandonment Plan (RMAP) requirements; and
- Compliance monitoring, including forest practices rule compliance for roads and haul routes.

The Draft Nonpoint Plan contains a detailed description of the 1999 Forests & Fish report (FFR), which should assist the public in better understanding the regulatory processes and the rules that govern forest practices. WFPA believes that additional details could be included in the final Nonpoint Plan describing how the rules that will protect water quality. As noted, the forest practices measures are focused to protect resources at locations where water temperature is a concern for water quality and fish and other aquatic resources. WFPA recommends that Ecology more fully acknowledge the benefits from FFR-based rules in providing for key aquatic habitat functions beyond shade, e.g., LWD recruitment, coarse and fine sediment control, hydrology, and litter fall. In addition to new road construction standards and road maintenance planning, FFR-based rules require considerable improvements to forest practices permitting processes with the goal of preventing forest practices from causing an increased rate of landslide-related sediment delivery. To date, private industrial landowners have spent nearly \$200 million statewide to improve forest roads and correct fish passage blockages. Improved topographic and geologic mapping provide landowners and the DNR with more accurate tools to predict where landslides may occur. Additionally, the buffers and leave-tree areas for riparian management zones and potentially unstable slopes will maintain LWD supplies and substantially reduce sediment entry into streams.

Specific additional provisions that should be included in the final Nonpoint Plan include:

- The Forests & Fish program is a problem-specific plan to limit sediment delivery from forest roads, timber harvest and morphological channel erosion caused by excessive forestry related water runoff and delivery. The program also addresses the problem of insufficient large woody debris (LWD) delivery to stream channels that in the past likely resulted in an increased rate of sediment delivery to downstream fish habitat. The plan is specific to streams, wetlands and other waters and to the protection of their associated riparian areas. Waters covered by the plan are those on state and private forest lands -- those lands regulated under the Washington Forest Practices Act. DNR maintains a GIS database containing the land subject to the Forest Practices Act and a hydro- layer identifying streams and other water bodies covered by the Forest Practices Act.
- The schedule of completion for forest road improvements to address runoff water and sediment delivery is specified in the forest practices rules. Since 2001, large landowners have been required to establish Road Management and Abandonment Plans (RMAP), with individual actions scheduled in each approved RMAP as specified by rule. Riparian forest protection rules addressing stream shading, bank erosion and large woody debris (LWD) were implemented in the Forests and Fish forest practices rules, effective date in 2001. Individual riparian and unstable slope actions are implemented immediately upon initiation of related forest practice activity.
- Statutes and rules governing the Forests & Fish program include a multi-stakeholder monitoring component that systematically evaluates the effectiveness of the forest practices rules. The program includes a full time administrator, a scientific monitoring committee, independent scientific peer review, and a policy committee. To date, the program has completed more than 28 peer reviewed monitoring and effectiveness studies. Seventeen studies are under way and several more are in the process of being scoped. An additional \$5.9 million/biennium for studies and science is currently being considered by the Washington Legislature and supported by all of the Forests & Fish collaborators. DNR established a compliance monitoring program in 2006 that is now in its fifth biennial measurement cycle. The compliance monitoring team includes specialists from

the Department of Ecology and the Department of Fish and Wildlife. Tribes are also invited to participate.

- The Forest Practices Adaptive Management Program (AMP) is established in statute. The AMP functions to produce peer review science that is reported to a policy advisory group and directly to the Forest Practices Board. To date, at least two technical reports have resulted in changes to the riparian rules for timber harvest, resulting in improved effectiveness. The forest road rules and Board Manual have also been strengthened to assure compliance with the road management and unstable slope standards. Adaptive management has included policy recommendations and Board action to address small landowner concerns over road maintenance planning and the complexity of riparian rules. Adaptive management has also dealt with the economic stress in the forest products industry that has delayed completion of some road upgrades while assuring that upgrades on active haul roads are in place.
- Forests & Fish pollution control actions are deemed adequate by the Ecology through the agency's special position on the Forest Practices Board in regard to rules pertaining water quality protection. By law, the Ecology can require DNR to enforce forest practices rules designated for water quality protection. The rules are also monitored by the federal Services and EPA through their participation in the AMP. Forest practices rules are enforced by the DNR through field compliance foresters with civil authority, including on-site authority to protect water quality with notices to comply and stop work orders. Ecology maintains forestry expertise in the field to monitor DNR's field compliance function. Forest practices are monitored by a number of tribal resource specialists supported by state and federal funding, specifically for the purpose of protecting fish habitat through the proper implementation of the Forests & Fish program.
- The Forests & Fish program and forest practices rules have proven to be feasible and enforceable through the 14-year history of the program. The compliance monitoring has reported on riparian protection and road construction and maintenance activities -- the two areas of forest practices most likely to affect water quality. Each time, substantial overall compliance with the rules exceeds 80% or better. The Forests & Fish Program is implemented through the forest practice rules and regulatory procedures. Private and state landowners and managers are required by law to conduct forestry activities in accordance with these rules. Civil enforcement authority is also in place for these activities.
- The program is actively implemented with each forest practices application and approval involving a regulated water or wetland in the state. Through 2014, RMAP for industrial forest landowners alone has resulted in the opening of 4,846 barriers to fish passage and 2,569 miles of fish habitat, as well as 20,025 miles of road with drainage improvements to minimize water and sediment delivery to streams. An AMP study shows that delivery of sediment and water to streams is eliminated or minimized on 89% of industrial forest roads under the plan. Water Quality Assurances articulated by the Department of Ecology provide the benchmarks and oversight for continued progress of the Forests & Fish program monitoring program.

Response: Ecology has been an active participant in the development of the Forests and Fish Report, the state rules and guidance that govern forestry, and the adaptive management program which tests the effectiveness of the rules. We recognize and note in the NPS plan the significant benefits that forests provide to water quality and the protection of in-stream resources targeted

for protection under the state's water quality standards. The NPS plan's primary purpose is to describe our programs. While it is appropriate to let EPA and the reader understand why we have the confidence in the effectiveness of the rules, our focus is primarily on the process-related elements that test and ensure our enthusiasm for the rules is warranted. With little exception, all of the positive features highlighted by the commenter were already in draft NPS plan. There are elements of our forest practices rules which Ecology fully expects will be shown to meet the water quality standards, and there are some elements (such as the rules governing non-fish bearing streams) which we have less confidence in.

When the Forests and Fish Report was developed, these same issues were highlighted as parts of the subsequent rules that should be priorities for examination under the Adaptive Management Program. The Clean Water Act Assurances also recognized that while the rules were developed with the goal that they would meet the water quality standards, scientific evidence demonstrating their success would be crucial to maintaining the Assurances. For these reasons many of the commenter's specific suggestions were not used as provided; however, we have made several changes to the final plan in response to the commenter's suggestions.

The final plan includes a discussion of the fact that the rules were developed to protect five key riparian functions, describes the adaptive management and compliance monitoring programs in the section on effectiveness monitoring, acknowledges the additional benefit of removing fish passage barriers, and notes the financial aid provided to small forest landowners through the Forest Riparian Easement Program and the Family Fish Passage Program. Ecology greatly appreciates the support that WFPA and the major forest landowners provide for protecting Washington's water quality.

2. US Forest Service- I appreciate the opportunity to review and provide comment on the Washington Department of Ecology's Draft NPS Plan. The US Forest Service (USFS) is committed to protecting and restoring Washington's waters, as demonstrated by decades of science-based conservation and management of some of the State's most important watersheds. We are committed to full implementation of the Clean Water Act, including section 319, and recognize our participation as a critical opportunity to meet State and Federal water quality rules and regulations in a proactive and collaborative manner.

General/editorial comments

Pg. vii, Executive Summary last paragraph "The (NPS) aims to..." suggest "The NPS Plan aims to..."

Pg. 3 "Application of best management practices can help..." suggest "Application of best management practices will help..." BMPs are later defined on Pg 18, consider defining here or cross-referencing.

Pg. 4 Impacts of land use practices summary -- the 2005 NPS plan recognized "many land management strategies address the challenges of protecting water quality..." These "multi-state federal forest management plans" are still in place today, and after more than 20 years having demonstrable effects to water quality improvement, yet there is no similar language to acknowledge federal management plans and conservation strategies, and progress over the past 10 years, in the 2015 draft. Recommend including references to federal land and resource conservation plans and strategies either here or Pg. 68, see comment below.

Pg. 25 Chapter 3 (Same comment as Pg. vii) 1st paragraph last sentence “Ecology’s NPS uses...” suggest “Ecology’s NPS Plan uses...” and 2nd paragraph “The NPS aims to...” suggest “The NPS Plan aims to...”

Pg. 26 Balancing Restoration and Protection, consider including and emphasizing BMPs as a protection strategy. As part of watershed clean-up projects TMDLs are presented as the primary strategy for addressing nonpoint source pollution. Prevention and protection through BMPs are also important and cost-effective pollution strategies, consider integrating and strengthening their role with watershed clean-up and TMDLs.

The 2015 draft plan references the WDOE-FS MOA, see specific comments Pg. 69, but does not identify updating or revising as a goal or strategy in the NPS Plan. In any case, we remain committed to continued discussion as the agreement is an important means to cooperation, in identifying roles and responsibilities, and strategies and programs for water quality protection and restoration.

Specific Comments

Pg. 60 Comment on Water Quality Partnership stakeholder group – is there interest in USFS participating? With emphasis on “developing and strengthening partnerships” there may be need and opportunity for USFS involvement.

Pg. 68 “USFS has large holdings in the state” – comment, the USFS manages about 20% of the land area, may be the largest single land manager in the State, and produces about half of the State’s water supply and streamflow. See also comments from Pg. 4 above, this would be a logical place to acknowledge the role of federal land management plans and conservation strategies.

Pg. 69 United States Department of Agriculture Forest Service –Edit 1st paragraph last sentence recommend change from “Approximately five years into the MOA, the Forest Service announced that it would not be able to comply with the road requirement.” to “Approximately five years into the MOA, the Forest Service recognized it would not be able to fully comply with the road requirements at current funding levels.”

Edit 2nd paragraph 4th & 5th sentences recommend change from “Unlike private and state forests, there is no program designed to aggressively identify and correct road problems on federal forest lands...” to “The Legacy Roads and Trails program has been successful in helping to address and correct roads problems on Forest Service land but the work being accomplished has not kept pace considering the large scale of the problem. All National Forests will have updated road analysis plans in place by October 2015 which set the context to identify, prioritize and correct road problems on federal forest lands.”

Pg. 76 Stakeholder Involvement – we support developing and improving BMP and management measure guidance and Next steps “Gap analysis” and offer our involvement and assistance. Consider including reference to FS National BMP program, see comment Pg. 89.

Pg. 89 Monitoring- recommend including reference to USFS national BMP program and monitoring, Legacy Roads and Trails watershed and effectiveness monitoring studies, and 2015 AREMP NWFP monitoring report here and/or Pg 94:

Add “The U.S. Forest Service National BMP Program provides a standard set of core BMPs and a consistent means to track and document the use and effectiveness of BMPs on NFS lands across the State. More information about the national core set of BMPs and monitoring are available at <http://www.fs.fed.us/biology/watershed/BMP.html>”

Add “To assess the effectiveness of the Legacy Roads and Trails Program in decreasing the potential risk of forest roads impacting water quality, the US Forest Service – Rocky Mountain Research Station is monitoring 47 sites across the western United States. This monitoring program has shown that road treatments have been effective in reducing road-stream hydrologic connectivity; fine sediment production and delivery; mass wasting; and stream crossing failure risk (USDA – RMRS, 2012). Detailed reports, including those sites monitored in Washington can be reviewed at (http://www.fs.fed.us/GRAIP/case_studies.shtml).”

Add “The goal of the Regional monitoring program is to evaluate the effectiveness of the Northwest Forest Plan (NWFP) in achieving management objectives which include restoring and maintaining the ecological integrity of watersheds and aquatic ecosystems
<http://www.reo.gov/monitoring/reports/watershed-reports-publications.shtml>”

Pg. 100 Groundwater – comment, excellent section addressing groundwater, the FS recognizes its land management role as it affects groundwater, groundwater dependent ecosystems, and sources of drinking water, and the need to improve coordination with State programs for groundwater protection. Groundwater management is an important topic for further discussion through stakeholder involvement, it could be considered in MOA revision, and/or other means of coordination.

Pg. 111 Goal 3 Strengthen relationships – 1st objective -- continue using the Water Quality Partnerships – USFS involvement may be one avenue to strengthen relationships and improve coordination on NPS programs. 2nd objective – coordinate with federal agencies, measurable output “continue to meet with other resource agencies...” we fully support, and will also be the place to discuss MOA revision.

Finally, we share common goals for water quality protection and restoration through NPS control programs, though our agencies have some different mandates, roles, responsibilities and rules. I look forward to continuing to work on coordination with Washington State water quality programs and find positive and productive ways to communicate, and to strengthen and improve our programs for NPS management. Again, we appreciate the opportunity to review and comment on the Draft NPS Plan. Please contact me if you have questions or would like clarification on our comments, phone 503-808-2696, or email: cclifton@fs.fed.us.

Response: Comments noted. We have strengthened the discussion of the role of the federal forest managers in protecting water quality and the value of building stronger partnerships with the Forest Service. Additionally, several of the other comments were used to help shape the final document. Some of the key changes included noting the importance of the federal forests in Washington; the forthcoming updated forest road analysis; the Legacy Roads and Trails program and its associated monitoring element; the dual role that BMPs serve in both prevention and clean up; and the fact that federal lands are managed under strategies which include protecting water quality as a goal. Some suggestions that were not included pertain to highlighting the national Core BMPs and the AREMP monitoring program. These programs are established and operated at higher conceptual and landscape scales than Ecology would assert as demonstrating effectiveness for meeting water quality standards. Ecology greatly appreciates the expressed willingness on the part of the Forest Service to continue coordination with the state’s water quality programs on NPS pollution management.

Voluntary Stewardship Program (VSP)

Summary Response: This section responds to comments related to the Voluntary Stewardship Program (VSP). The VSP was passed in 2011 as an amendment to the Growth Management Act (GMA). Its goals are to protect and enhance critical areas, maintain and improve the long-term viability of agriculture, and reduce the conversion of farmland to other uses. To accomplish these goals, the VSP relies primarily on incentives and voluntary stewardship practices.

The VSP sets broad goals and requirements that the watershed group must follow. It intentionally provides a great deal of flexibility to the local watershed groups in developing their work plans. One question that has arisen, as people have thought more about the VSP and the watershed work plans, is how the VSP will intersect with the clean water laws and programs administered by Ecology.

As a starting point, improved compliance with state and federal clean water law was a critical part of the Ruckelshaus agreement that led to the creation of the VSP. While this “regulatory backstop”—which was to take the form of better enforcement of clean water law separate from the VSP—was not included in the VSP statutory language, it was seen as a critical element by those involved with the Ruckelshaus process. The expectation that state and federal clean water laws would serve as a regulatory backstop is documented in correspondence to legislative leadership, the implementation budget for the law, and other sources.

We anticipate that the VSP will have a positive impact on water quality. Even though they have different purposes and standards, both clean water laws and the VSP should provide protection to the riparian corridor. This provides an opportunity for the two programs to take advantage of each other to achieve shared goals and intended outcomes. An effective VSP program could complement the protection and pollution reduction goals of federal and state clean water laws by helping to implement the best management practices needed to meet the water quality standards and clean water laws. Ecology is committed to supporting VSP.

We edited the draft plan to include a new appendix that expands on the relationship between the VSP and clean water laws. Additionally, we have added a section in Chapter 3 under “State Initiatives” that includes more information on VSP.

1. Washington Association of Conservation Districts- Chapter 2/Washington State’s Regulatory Framework/Additional State Authorities/GMA/p 13 – The document should include a more robust description of how Ecology will work with the Washington State Conservation Commission (WSCC) and local governments to coordinate Voluntary Stewardship Program activities where these relate to NPS pollution and water quality. VSP should also be referenced in the section on “local governments”, and in descriptions about how Ecology will support local programs.

Response: See summary response for this section.

2. Washington Association of Conservation Districts- Same section – Suggest add VSP reference to “key state initiatives”, where critical areas concerns include water quality.

Response: See summary response for this section.

3. Washington State Conservation Commission - The Nonpoint Plan should mention the state Voluntary Stewardship Program (VSP). The VSP is focused on addressing agricultural impacts to state critical areas under the Growth Management Act (GMA). Although not directly addressing water quality as a critical area, protection of critical species habitat, with particular focus on salmonid habitat is required. These activities will directly address key water quality parameters including stream temperature and sediment. Recommendation #6: The Nonpoint Plan should describe VSP and include in this description what VSP directly addresses (critical areas under GMA) and the tangential benefits for nonpoint water quality. The VSP represents a significant negotiated agreement between the environmental community, agricultural groups, and counties. Given the contentious nature of these issues, negotiated agreements between parties should be supported and encouraged. Furthermore, the draft Non point Plan includes a description of salmon recovery activities in Washington. VSP, as noted, addresses salmon habitat in the context of local land use planning. For these reasons the Nonpoint Plan should include a description of the VSP.

Response: See summary response for this section.

4. Washington Farm Bureau - Another opportunity to build on this positive momentum is the Voluntary Stewardship Program (VSP), which the draft Plan too-briefly recognizes. In contrast to “one-off” conservation or regulation, VSP calls for coordinated and programmatic watershed efforts that work for producers. The goal is to broaden producer participation in incentives that protect and enhance the functions of critical areas like wetlands, critical fish habitat, and critical aquifer recharge areas while (and by) working to promote the viability of agriculture. More detail in the Plan could show how Ecology plans to help VSP work groups focus technical assistance efforts toward high priority critical areas and related water quality needs and functions.

Response: See summary response for this section.

5. Board of Stevens County Commissioners - 54) Page 114, Goal 5, Strategies – Add a bullet point for VSP.

Response: See summary response for this section.

6. Board of Stevens County Commissioners - 2) There needs to be a greater emphasis on the Voluntary Stewardship Program (VSP) in the plan. If this mechanism which 29 of the 39 counties will be implementing is successful, we will achieve a large step forward. We believe this can and will be good for water quality and agriculture, and creates a working plan forward to address all waters.

Response: See summary response for this section.