

NO JUSTICE ON THE PLATE

**TRANSNATIONAL COMPANIES AND THE RIGHT OPPOSE FISH
CONSUMPTION JUSTICE AND TRIBAL TREATY RIGHTS**

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Borderlands Research and Education is dedicated to analyzing, exposing and opposing threats to the right of indigenous nations to exercise full political, economic and cultural self-determination. Borderlands is dedicated to the struggles for civil rights and environmental and economic justice. Through strategic research, Borderlands aims to support organizing and movements that stand up to racial, economic and gender inequality and seek a just world and healthy planet.

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SUMMARY

In the coming weeks, the Washington State Department of Ecology is expected to propose new default fish consumption rates (FCRs) used to calculate allowable levels of pollution discharged into state waters by industries and local governments. The issue of fish consumption rates is frequently obscured behind a veil of survey methods, averages, and percentiles. Behind the numbers, however, opponents of higher fish consumption rates in Washington State - including transnational companies and a spectrum of right-wing groups - are mobilizing against tribal treaty rights and core principles of environmental justice. As this report documents, some opponents of FCR justice have supported anti-Indian ideas and policies and allied their cause with the organized anti-Indian movement.

No Justice on the Plate describes that:

- Higher fish consumption rates are implicated in the struggle for tribal treaty rights, environmental justice and the restoration of tribal and non-tribal fisheries.
- Tribal, Asian and Pacific Islander communities and some recreational fishers are disproportionately impacted by low fish consumption rates and degraded water quality.
- Transnational and regional industries opposing higher fish consumption rates dump pollutants into state waters under National Pollution Discharge Elimination System (NPDES) permits. Some of these companies have multiple permit violations and exceedances.
- Many companies opposing higher FCRs reject the core environmental justice idea that public policies should not disproportionately harm historically marginalized communities of color. The principles of environmental justice are embodied in the struggles of the civil rights movement and the Civil Rights Act of 1964.
- Conservative, libertarian and far right groups have joined major companies in opposing higher default fish consumption rates. This includes groups that promote anti-labor, anti-environmental and anti-tribal policies.
- Former Washington State Attorney General Rob McKenna opposes higher FCRs. As AG, McKenna's office defended state opposition to treaty rights in the *culverts case* (*U.S. v. Washington*). McKenna also allied his AG's office with an organized anti-Indian movement dedicated to ending tribal sovereignty and treaty rights.
- The Washington Policy Center opposes higher fish consumption rates and has supported extending state taxation powers further into Indian Country. The WPC promotes anti-labor policies and so-called "free market environmentalism."

- The Olympia-based Freedom Foundation opposes higher FCRs, casts environmental regulations as socialist and would undermine tribal sovereignty by supporting county taxation of tribes. The foundation also promotes anti-labor and anti-environmental policies. Freedom Foundation leader Glen Morgan attended a conference hosted by the anti-Indian Citizens Equal Right Alliance in 2013 and the group hosted anti-Indian leader John Fleming in 2007.
- The Enumclaw, Washington-based Citizens Alliance for Property Rights opposes raising FCRs and promotes far right conspiracy theories. The group characterizes environmental regulation as socialism and its San Francisco Bay Area Chapter describes environmental justice as a "cancer."

FISH CONSUMPTION RATES, TREATY RIGHTS AND ENVIRONMENTAL JUSTICE

In the coming weeks, the Washington State Department of Ecology is expected to propose new default fish consumption rates (FCRs). Fish consumption rates are estimates of the quantity of fish consumed by different communities. The Washington State Department of Ecology (DOE) uses FCRs to calculate the level of contamination allowed in surface waters under the Clean Water Act. The Environmental Protection Agency (EPA) is responsible for approving, or rejecting, state-created standards. DOE also uses FCRs to establish sediment management and clean-up standards under the Model Toxic Control Act (MTCA). MTCA-related policies impact water quality when pollution enters lakes, streams and marine shorelines from surface run-off.¹

While debate on fish consumption rates takes place in the language of statistics, the idea is simple. Higher FCRs assume that people eat more fish, requiring lower pollution levels in water and sediments to protect human health; lower FCRs assume less fish consumption, allowing more contamination. If some communities consume more fish than agencies estimate, human health is put at risk.

Fish consumption rates and water quality affect everyone in the state. However, these policies disproportionately impact those communities that eat the most fish. In Washington State, this includes Indian Nations, Asian and Pacific Islander communities, and some recreational fishers. Studies conducted since the 1990s indicate that some tribal members consume from 10 to more than 40 times more fish than the EPA's current national default rate of 17.5 grams per day. One King County study found such impacts on the Asian and Pacific Islander communities, including members of Cambodian, Chinese, Filipino, Hmong, Japanese, Korean, Laotian, Mien, Samoan, and Vietnamese ethnic groups. Some recreational fishers in the state may consume as much as 14 times the EPA default rate. The National Environmental Justice Advisory Council (NEJAC) reports that low income communities—including Hmong, Laotian, Native American, African-American and some Euro-American fishers in other areas in the U.S.—have been particularly impacted by fisheries pollution.²

Fish consumption rates are directly implicated in the struggles for tribal treaty rights and environmental justice. Treaties signed in the 1850s between the United States and Indian Nations in the Northwest generally contained a clause stating that, “The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians, in common with all citizens of the United States.” While the Western District Court's 1974 decision in *U.S. v Washington* (often known as the Boldt decision) addressed tribal allocation and co-management rights, subsequent

struggles have focused on the impact of habitat degradation and declining fisheries on treaty rights - in essence, addressing whether the "right of taking fish" in the treaties reserved an actual "right of taking fish." The late Billy Frank Jr. (Nisqually) summed up that,

"Through the treaties we reserved that which is most important to us as a people: The right to harvest salmon in our traditional fishing areas. But today the salmon is disappearing because the federal government is failing to protect salmon habitat. Without the salmon there is no treaty right. We kept our word when we ceded all of western Washington to the United States, and we expect the United States to keep its word."³

Fish consumption rates affect fisheries habitat because of the importance of water quality to ecological health. A number of ongoing land use practices negatively impact water quality, including continued U.S. Army Corps of Engineers permitting of shoreline armoring, deforestation of riparian (near water) areas, the increase in impervious surface near water bodies (facilitating contaminated runoff), industrial and municipal dumping under the National Pollution Discharge and Elimination System (NPDES), the loss of estuarine and intertidal wetlands, and the continued development of shoreline areas allowed under the state's Shoreline Management Act.

The National Oceanic and Atmospheric Administration (NOAA) has called protecting existing habitat "the most important action needed in the short run to increase the certainty of achieving [Puget South Chinook Recovery] plan outcomes." Describing habitat decline, Treaty Indian Tribes in Western Washington warn that "Not since the darkest days of the fishing rights struggle before Judge Boldt's decision in *U.S. v. Washington* have we feared so deeply for the future of our treaty rights."⁴

Declining fish consumption in high-consuming communities due to habitat destruction is directly implicated in the struggle for environmental justice. Environmental justice refers to the social movement and public policies addressing persistent patterns of racial and class inequality in environmental impacts. While the term is most commonly applied to mobilizations and policies since the 1980s, people of color have struggled for environmental justice since Europeans arrived, imposing colonialism, militarism, capitalism and white supremacy across the landscape. As the invasion ensued, tribal nations struggled to maintain control over their lands to protect buffalo herds, salmon runs, traditional foods, forests, and water quality, among other resources. Today the struggle for environmental justice stretches from the banks of the toxic southern Mississippi River, to hazardous dump sites in black and Latino communities Los Angeles, to Indian reservations pocked with mines, hazardous waste dumps and nuclear colonialism.⁵

The principles behind environmental justice are embodied in Title VI of the 1964 Civil Rights Act. This historic legislation barred discrimination based on race, color, and national origin by groups

and institutions receiving federal support. In response to the environmental justice movement, in 1994 President Bill Clinton signed Executive Order 12898, directing agencies to examine their practices and ensure that their "programs, policies, and activities" do not discriminate based on "race, color, or national origin." The order specifically addressed fish consumption, directing federal agencies to collect data on high-consuming populations, publish guidance to address associated health risks, and "consider such guidance in developing their policies and rules."⁶

In 2002, the EPA's National Environmental Justice Advisory Council (NEJAC) elaborated on the relationship between fish consumption rates and environmental justice:

"[C]ommunities of color, low-income communities, tribes, and other indigenous peoples *depend* on healthy aquatic ecosystems and the fish, aquatic plants, and wildlife that these ecosystems support...[T]heir members generally depend on the fish, aquatic plants, and wildlife to a greater extent and in different ways than does the general population. These resources are consumed and used to meet nutritional and economic needs. For some groups, they are also consumed and used to meet cultural, traditional and religious purposes."⁷

The NEJAC also described how low fish consumption rates can result in increasingly degraded water quality:

"When environmental agencies employ a FCR that does not capture fully the consumption that is suppressed, they set in motion a sort of downward spiral whereby the resulting environmental standards permit further and further contamination or depletion of the fish and so diminish health and safety of people consuming fish, shellfish, aquatic plants, and wildlife for subsistence, traditional, cultural or religious purposes."⁸

To head off this spiral, NEJAC recommended an,

"Examination into what people *had* consumed as well as aspiration for what people *would* consume were there 'fair access for all to a full range of resources,' or were the conditions fulfilled for full exercise of treaty- and trust-protected rights and purposes. It is recognized that the resulting baseline would surely require EPA to depart from the then-current estimates of actual fish consumption by the relevant group."⁹

In the language of environmental justice decreased consumption due to habitat destruction and health considerations is sometimes called a "suppression effect." Tribes and other communities have clearly experienced such impacts. *Suppression effects can occur due to the depletion of fish stocks or when communities curtail their own fishing due to declining stocks.* The American Fisheries Society has listed more than 200 west coast salmon runs, including over 110 that pass through Washington State, as "depleted;" the National Marine Fisheries Services (NMFS) have listed 15 separate evolutionary

significant units of salmon passing through Washington State waters as endangered or threatened under the Endangered Species Act (ESA).¹⁰

Despite gains in tribal harvest that followed the 1974 *Boldt* decision, habitat decline saw tribal Chinook and Coho take a fall from about 1.5 million to 40,000 fish annually between the late 1970s and 2010.¹¹ Water quality decline led to an average of 23.4 commercial shellfish bio-toxin closures per year between 2008 and 2012, impacting tribal subsistence, cultural and commercial shell fishing.¹²

Tribal and community-based research on fish consumption provides tools for developing default FCRs that respect treaty rights and environmental justice. NEJAC further noted that consumption rates of high-end consumers in high-consuming communities may provide a means of assessing potential consumption under full treaty rights and ecological health. As we will see below, transnational and a ranged of right-wing groups are opposing increased default FCRs and are attacking the principle that environmental impacts should not disproportionately harm historically marginalized communities of color - that is, attacking environmental justice.

THE SLOW ROAD TO FCR JUSTICE

Tribal communities in the Northwest, of course, have long known that Indians eat a lot of fish. Over eons of fisheries management, tribal communities developed a deep knowledge of the landscape, waters, and biota in their homelands. This rich Traditional Ecological Knowledge must be respected if treaty and non-treaty fisheries are to return to a healthy state.

Western science was later to the scene. Again, tribes led the way. A 1999 study by the Columbia River Inter-Tribal Fish Commission (CRITFC) influenced early challenges to federal FCRs. The CRITFC study found that adult members of the Nez Perce, Warm Springs, Yakama and Umatilla tribes consumed an average of 58.7 grams per day, including 63.2 grams per day for fish consumers. The study reported 90th percentile adult consumption between 97.2 and 130 grams per day.¹³ These consumption rates were between six and eleven times higher than the 6.5 grams per day used by the Environmental Protection Agency at the time.¹⁴ The means, 90th, and 95th percentile consumption rates from studies of tribes in the region (see Table below) illustrate that discrepancies between EPA estimates and tribal consumption are likely even larger.

Consumption of Finfish and Shellfish from All Sources for Tribes in the Northwest (grams/day)

Tribes(s)	Mean Consumption Rate	90 th Percentile	95 th Percentile
Columbia River Tribes	63	130	194
Tulalip Tribes	82	193	268
Squaxin Island Tribe	84	206	280
Suquamish Tribe	214	489	797

Source: Washington State Department of Ecology. *Fish Consumption Rates: Technical Support Document*. 2.0. August 27, 2012.

The EPA subsequently raised its default fish consumption rates to 17.5 grams per day, an estimate based on a national survey. Specifically, the agency used the 90th percentile consumption rate for fresh water and estuarine fish, despite that fact that the equivalent rate for marine fish was 49.16 and all fish 74.87 grams per day.

In 2007 EPA Region 10 issued guidelines for using tribal and local studies to estimate fish consumption rates. Region 10's guidance stressed the use of surveys from the local watershed of people directly impacted as well as surveys reflecting geographic and population groups similar to those under evaluation. The EPA specifically addressed the issue of “suppression effects” on tribal

fish consumption rates, stating that, they “should be considered when deciding whether the use of a surrogate Tribal fish and shellfish consumption rate would better represent potential future consumption rates than would consumption rates that represent only current or near-term contamination and habitat conditions.” The guidance specifically recommended that federal agencies use studies by the Suquamish and Tulalips tribes to determine federal clean-up requirements.¹⁵

The EPA also began rejecting state FCRs that failed to include local and tribal data. In 2010 the EPA delayed approval of the Oregon Department of Environmental Quality’s health water criteria for 103 toxic pollutants. Oregon had based its criteria on the EPA’s national default rate; the agency rejected the state’s rate for failing to include evidence of tribal consumption. In October 2011, the EPA approved Oregon’s 10-fold raise in its FCR to 175 grams per month.¹⁶ In May 2012, the EPA rejected the Idaho Department of Environmental Quality’s health water quality criteria for 88 toxic pollutants, rates again based on EPA national default levels. The EPA directed Idaho to “develop criteria to protect highly exposed populations, such as subsistence fishers,” specifically citing the 1994 CRITFC study as a “well designed survey” that is “directly applicable to a population of people - i.e., the Nez Perce Tribe - fishing in state waters.”¹⁷ Negotiated rulemaking to address Idaho’s default FCRs is scheduled for October 2, 2014.¹⁸

Washington State initially appeared on track, at least with a little prodding from the EPA. A November 2010 letter from EPA Region 10 to DOE informed the state of the federal agency’s “desire for Washington to move forward with revisions to the human health criteria in order to incorporate a higher fish consumption rate.” In December 2010, EPA urged the state to make revisions to human health criteria “the most important priority in this Triennial review.” The agency made clear in June 2013 that “the EPA believes there are scientifically sound regional and local data available in Washington that are sufficient to move forward in choosing a protective and accurate fish consumption rate at this time.”¹⁹

In September 2011, the Department of Ecology seemed to move forward. The agency issued a technical support document recognizing that its default FCRs for site cleanup of 54 grams per day and surface water quality of 6.5 grams per day were inadequate, based on outdated standards that did not reflect the exposure of high consuming populations. The state’s document recommended new rates between 157 and 267 grams per day. The agency stated its intention that default consumption rates “should be protective of all people in Washington who eat fish, including those individuals that eat a lot of fish, such as Native Americans, Asian and Pacific Islanders, and some recreational fishers.”²⁰

In August 2012, the agency shifted direction, removing specific recommendations from Version 2.0 of its draft Technical Document and recasting the report as a tool to assess “how much and what types of fish are consumed” in the state and “what data are available” - as opposed to a tool to propose policy changes. While reiterating that current rates “are not consistent with what we know about how much fish people in Washington eat,” the agency relegated specific recommendations to a pending regulatory process.”²¹ The agency's January 2013 final Technical Document stated that the CRITFC, Suquamish, Squaxin Island and Tulalip studies “meet measures of technical defensibility and contain data directly applicable to Washington population groups.” Despite this acknowledgement, the final version again failed to propose new FCRs.²²

Tribes and environmental groups quickly criticized the state's backpedalling. As the late Northwest Indian Fisheries Commission chairman Billy Frank Jr. summed up,

“The state Department of Ecology promised more than a year ago to develop a more accurate rate, but halfway through the process did an about-face. All it took was for business and industry lobbyists to voice some concerns to stop development of the new rate dead in its tracks. Tribes across the state have rejected Ecology’s proposed new roundtable approach to revise the rate because it does not offer a clear, decisive path forward in a government-to-government framework. In the meantime, tribes have begun talks with the U.S. Environmental Protection Agency to help address the problem.”²³

Tribes have continued to press for the EPA to take action, indicating their intention to ask the EPA to set fish consumption rates compatible with tribal health.²⁴

A report by Investigate West confirmed tribal concerns, showing that the shift in the state’s direction came on the heels of a flurry of lobbying by Boeing, the Association of Washington Businesses, the Northwest Pulp and Paper Association and local governments that operate sewage treatment plants.²⁵

Democratic Washington State Governor Jay Inslee also demonstrated his willingness to compromise tribal and community health in the face of pressure from large companies. Even as he proposed an increase in the fish consumption rate to 175 grams per day (the same as in Oregon), Inslee recommended allowing companies to negotiate variances when their pollution levels exceed allowable limits. Inslee also proposed raising the “acceptable” cancer rate also used to calculate pollution levels from one-in-one-million to one-in-one-hundred-thousand - an action that would offset gains in water quality from increased FCRs. Inslee also supported toxic reduction legislative to address pollution sources at their origins. Inslee's concession on cancer rates came after lobbying on the issue by Boeing, Weyerhaeuser, the Packaging Corporation of America, Schnitzer Steel and

municipalities such as Renton and Everett. Inslee directed the Department of Ecology to issue a preliminary draft rule by September 30.²⁶

While tribes generally supported Inslee's efforts to raise FCRs, they expressed concern about increased cancer risk rates. "This is a political decision, not one based on sound science," said then-Northwest Indian Fisheries Commission Vice-Chair (and now Chair) Lorraine Loomis (Swinomish). "While a toxics control effort is needed, it is not an effective replacement for strong water quality rules and standards. We cannot continue with a pollution-based economy," Loomis stated.²⁷

Tribes have not been alone in the struggle for FCR justice. Like the struggles to stop the construction of coal export terminals in Washington and Oregon, the Keystone XL Pipeline across the Midwest and the movement of explosive Bakken (North Dakota) oil on trains through the Northwest, environmentalists and communities impacted by these harms have joined with tribes to protect water quality in Washington State. The Northwest Indian Fisheries Commission joined with the Puget Soundkeeper Alliance, People for Puget Sound and ReSources for Sustainable Communities to form the Keep Seafood Clean coalition. The group's website serves as a source for information about fish consumption rates and policies.²⁸ Environmental and environmental justice groups, including Earth Justice, Washington Waterkeepers, and the Community Coalition for Environmental Justice, have sent comments to the Department of Ecology supporting higher FCRs. At least 13 sovereign Indian Nations and three tribal associations have endorsed raising state standards.²⁹ The Center for Environmental Law and Policy, a legal advocacy group that has long worked with tribes, has promoted grassroots lobbying for higher fish consumption rates.³⁰

In October 2013, environmental and fishing groups filed suit against the EPA in federal court. The lawsuit charged the agency with violating the Clean Water Act by failing to establish "human health criteria based on an accurate fish consumption rate." Earthjustice attorneys filed the suit on behalf of the Puget Soundkeeper Alliance, Columbia and Spokane Riverkeepers, ReSources for Sustainable Communities, the Pacific Coast Federation of Fishermen's Associations and the Institute for Fisheries Resources.³¹

BUSINESSES AGAINST ENVIRONMENTAL JUSTICE

Business lobbying has significantly shaped the Department of Ecology's actions and Governor Jay Inslee's policy proposals. Examining the arguments companies use to defend lower water quality standards in the state sheds light on just what is at stake. Companies opposing higher FCRs are dominated by transnational and regional companies that dump significant amounts of pollution into waters in the state. Typical to anti-environmental campaigns, these companies assail the science behind higher FCRs and threaten economic harms should they be raised. More troubling, however, many companies involved in lobbying against raising FCRs are also attacking the core idea of environmental justice and the concept that public policies should seek to end disproportionate environmental impacts on communities of color.

Many of the companies opposing higher fish consumption rates are *transnational corporations* (TNCs), the product of economic trends that have dominated the late 20th and early 21st centuries. Such companies envision a resource and labor landscape that spans nation-state borders, operating vis-à-vis the globe akin to how national companies in the United States have operated vis-à-vis individual states - that is, pitting states, and now nation-states, against one another in a race to the bottom for labor rights and environmental protections.

The rise of TNCs in the current era is evidenced in the increase of foreign direct investment and the fragmentation of production processes (following the rise of financial flows and portfolio investment) across national boundaries even as control is centralized in large companies. The World Trade Organization, and agreements such as the North American Free Trade Agreement and so-called Trans-Pacific Partnership, represents the development of political institutions to match on-the-ground economic realities. Gillette Corporation CEO Al Zeien succinctly describes this new type of economic entity:

“A multinational has operations in different countries...[A] global company views the world as a single country. We know Argentina and France are different, but we treat them the same. We sell them the same products, we use the same production methods, and we have the same corporate policies. We even use the same advertising, in a different language, of course.”³²

Companies opposing higher fish consumption rates in Washington State display these characteristics. FCR justice opponent Lockheed Martin, for instance, boasts that its F-35 (fighter jet) program includes wings made in Italy, components for center fuselage produced in Turkey and control surfaces and edges made in Norway, the Netherlands and Denmark.³³ Boeing boasts that it employs some 165,000 people in the United States and 70 countries.³⁴ While large companies have

dominated opposition to higher FCRs, the Boeing Machinists and Association of Western Pulp and Paper Workers have also expressed concerns about potential job impacts of higher FCRs.³⁵

Even companies rooted in the region due to their reliance on natural resources organize, and must operate, in a transnational context impacted by global capital and markets. The National Council for Air and Stream Improvement, a timber industry “non-profit,” boasts that its member companies include giants like the Koch brothers’-owned Georgia Pacific, Louisiana Pacific and Weyerhaeuser; regional companies like Potlatch Corporation (Spokane, WA) and Boise Cascade; and Canadian members.³⁶ The Northwest Pulp & Paper Association describes that the “pulp and paper sector operates in a highly competitive global market” and that “overseas competition has significant cost advantages.”³⁷ In documents filed with the Securities and Exchange Commission, Pope Resources, a Poulsbo, Washington-based lumber company opposing higher FCRs, held logs out of production between 2008 and 2010 “in response to the dramatic downturn in log prices.” A reduction in log imports from Russia to China changed the international price environment and “led to an opportunity for North American log producers to supply a larger portion of the growing Chinese market....While domestic manufacturers historically represent the largest consumer of our sawlogs, 2011 marked the first time that they slipped behind export markets as a percent of total sawlog production.”³⁸

Such companies view the planet and our communities as a landscape of competing resources, labor costs, markets, competitors and regulations that impact their bottom line of profit-maximization. In this context, companies can always seek to increase or maintain profits by blocking regulations that protect environmental and human health. Many companies opposing FCRs are major polluters who dump contaminants into state waters under the federal National Pollution Discharge Elimination System (NPDES). This program is managed by the state under the Clean Water Act and authority of the EPA. Under the program, the state issues permits to dump specified concentrations of particular contaminants into state waters from industrial sites, storm water runoff, and the release of pollutants into publically-owned treatment works (POTW). Among opponents to raising FCRs, Boeing holds 25 active pollution permits while Weyerhaeuser holds 7. At least eight businesses, opponents of environmental justice in FCR default rates, pollute water bodies in at least 16 different sites around the state.³⁹

NPDES permits can allow a substantial quantity of pollutants to be discharged into water bodies in the state. For instance, Weyerhaeuser's Raymond, Washington facility is permitted to discharge a daily limit of 30,000 gallons of flow into a POTW per day. This source drains to the Willapa River. Weyerhaeuser's Federal Way Technology Center is permitted to dump some 150,000 gallons of flow

into a POTW. Most permits do not list overall quantities of toxins, but rather contaminant concentration levels intended to trigger remedial action.⁴⁰

Opponents of higher FCRs include companies that have frequently violated the terms of their NPDES permits. These include violations of effluent levels under the Clean Water Act, monitoring and reporting requirements, and the exceedance of benchmarks designed to trigger additional monitoring and/or clean-up. Boeing, Weyerhaeuser, TransAlta Centralia Mining LLC and Boise Cascade lead the pack in total permit violations in the past five years. While Boeing has 22 effluent violations among its 712 total violations and exceedances, the company racked up 112 reporting and 284 monitoring violations. Boeing's effluent violations would likely increase were the company following the monitoring and reporting terms of its permit. Weyerhaeuser had 86 recorded effluent violations among its 191 total, while TransAlta Centralia Mining had 63 effluent violations among its 102 total. Boise Cascade had 70 overall violations and triggers, including 15 effluent violations.⁴¹

NPDES Permits and Violations and Triggers (2009-2013) for Companies Opposing Environmental Justice in Fish Consumption Default Rates

Company	Active NPDES Permits	Total Violations (Active and Inactive Permits)	Effluent Violations	Benchmark Exceedences	Reporting Violations	Monitoring Violations
Boeing	25	712	22	287	112	284
Weyerhaeuser	7	191	86	23	62	20
Boise Cascade	3	79	15	0	25	39
Georgia Pacific	3	22	10	4	8	0
Pope Resources	2	4	1	0	2	1
JR Simplot	2	29	5	0	8	16
TransAlta Centralia Mining LLC	3	102	63	2	12	25
Inland Empire Paper Company	1	4	2	0	2	0
Boise White Paper Inc.	1	1	0	0	1	0
Nippon Paper Industries USA	1	2	1	0	1	0

As is common in anti-environmental campaigns, companies opposing higher FCRs emphasize economic arguments and assail the science behind the need for higher rates. In the transnational context in which this conflict has played out, economic arguments can include tacit threats that companies may leave the region if new FCRs are implemented – a strategy also seen in Boeing’s negotiations with trade unions. In a March 2014 letter to Governor Jay Inslee, Boeing warned that the company’s proposed policies were needed “In order to avoid unnecessary impacts to Boeing’s ability - and that of other businesses - to thrive and create jobs in the state.”⁴² The Northwest Pulp & Paper Association, likewise, warned that raising FCRs would undermine the ability to “attract new industrial and commercial development in the state” as well as to “construct the public infrastructure to support growth.”⁴³ While such arguments are frequently cast in terms of potential job impacts, *not one of these companies* addressed the potential positive economic impacts of healthier fisheries on commercial and recreational fishing, restaurants, tourism, and other sectors that could gain from restored ecosystems.

Companies involved in lobbying this issue have also criticized the science behind the need for higher FCRs. One theme in this vein has been the argument that salmon should be excluded from the estimation of fish consumption rates. The National Council for Air and Stream Improvement, Inc. (NCASI), a forest products “non-profit,” has stated that this should be done because salmon are anadromous, spawning and rearing briefly in streams before spending the bulk of their life maturing, and accumulating toxins, in the open ocean. While this argument plays on a grain of truth (salmon are anadromous), it selectively excludes evidence that toxins in the open ocean frequently originate in near-shore areas. Salmon (especially Coho and Chinook) spend significant time in nearshore waters in the Salish Sea. Forage fish, important for adult salmon diets, frequent nearshore habitat, and that juvenile salmon in streams and nearshore areas can be particularly vulnerable to the effects of toxins.⁴⁴

NCASI’s recommendation was endorsed by Weyerhaeuser and the Northwest Pulp and Paper, Boise White Paper LLC and other companies.⁴⁵ In addition, the Poulsbo, Washington-based Pope Resources and aerospace giant Lockheed Martin support the exclusion of salmon from FCR calculations.⁴⁶ The agribusiness company J.R. Simplot and Boeing rejected the inclusion of salmon in comments on the second draft of the state’s technical report.⁴⁷

While economic threats and attacks on science provide a bulk of these companies arguments, they frequently offer an even more troubling reason for keeping FCRs low - the rejection of the core environmental justice principle that policies should be crafted to avoid a disproportionate impact on people of color and other communities that have long borne the brunt of negative ecological impacts of many kinds.

The National Council for Air and Stream Improvement, Inc (NCASI) provides a good starting point. The North Carolina-based NCASI is comprised of a 501(c) 6 non-profit and 501(c) 3 foundation. The former touts itself as providing "scientific research to the forest products industry to achieve environmental goals."⁴⁸ In reality, C-6 non-profits are "business leagues" that achieve federal tax exemption only when they promote the common interests of their members and direct their activities toward the "improvement of business conditions of one or more lines," according to the Internal Revenue Service.⁴⁹ That is, 501(c)6 non-profits achieve non-profit status by promoting the profits of their industrial members. NCASI's 501(c)3 supports its C-6.

All evidence indicates that NCASI is fulfilling its legal mandate. With a budget of nearly \$13 million in 2010, NCASI represents some of the largest forest products companies in the country. The group boasts that its 75 member companies represent more than 90 percent of the paper and paperboard produced in the country and over one-half of industrial timberland acreage.⁵⁰ For improving the business conditions of its members, Ronald A. Yeske received \$582,565 in pay and benefits in 2012 as president of both NCASI legal entities. Including Yeske, NCASI's C-6 employed 13 people at over \$3.5 million in total compensation in 2012.⁵¹

NCASI deceptively couches its concerns about fish consumption rates in the language of representativeness, declaring, "We have serious concerns that the fish consumption data used to develop the proposal are not representative of the general population." As emerges in NCASI's lobbying materials, this translates into little more than rejecting consideration of the health impacts of low FCRs on high consumption communities - i.e., rejecting environmental justice:

"The proposed range of default FCRs overstates the fish consumption rates for the vast majority of residents of the state. The proposed range is based on high-end statistical consumption rates (e.g., 80th to 95th percentile values) developed from five fish consumption rate studies of known high fish consuming populations. Four of the studies are of tribal groups and the fifth is a study of the King County Asian and Pacific Islander (API) subpopulation...

Studies that apply to general populations suggest that fish consumption rates are considerably lower than Ecology's proposed range. For example, EPA indicates that for US adults, the 90th and 95th percentile consumption rates of freshwater and estuarine finfish and shellfish are 17.4 and 49.6 g/day, respectively. These values suggest that Ecology's proposed FCR range is not representative of fish consumption rates for the general population statewide...

[I]f Ecology is driven to adopt a single default FCR for use statewide and has no data characterizing fish consumption by the general population of Washington State, it should draw from EPA's data for the general US population. Based on these data, EPA has concluded that the mean consumption rate of fresh and estuarine finfish and shellfish by adults...is 7.50 g/day. The associated 90th and 95th percentile consumption rates are 17.4 and 49.6 g/d, respectively. Although these FCRs are almost certainly high-biased (i.e., conservative) estimates for the general US population, they provide a much better measure of fish consumption by the general population of Washington State

than the range of FCRs proposed by Ecology, which clearly reflects high-end consumers exclusively, and so are preferable for use as default values meant to apply statewide.”⁵²

By arguing that fish consumption rates should be based on “EPA’s data for the general US population,” NCASI is pressing for the use of an average based on all fish consumers and non-consumers alike - a number that would grossly underestimate the consumption levels of indigenous, Asian and Pacific Islander communities and many recreational fishers. Using such an average would sacrifice the health of high consumption communities in order to limit companies’ costs of compliance. NCASI’s proposal is also starkly at odds with the principles of environmental justice.

NCASI is not alone in openly rejecting FCRs protective of high consumption communities. The Northwest Pulp & Paper Association endorses the business league's position that "The proposed range of default FCRs overstates the fish consumption rates for the vast majority of residents in Washington State."⁵³ Weyerhaeuser dismisses these populations by stating that "An appropriate default FCR range for Washington should certainly be expanded to include 17.5 grams/day." ⁵⁴ Likewise, defense industry corporation Lockheed Martin calls for "comprehensive statewide data" that can "more realistically reflect the seafood consumption rate of the overall Washington population." Lockheed Martin criticizes the "very small number of people" on which proposed FCRs are based and concludes that "it does not appear technically justifiable to apply a high-fish consumer seafood consumption rate...to all locations in Washington when not all locations are used or can be used" for treaty rights purposes.⁵⁵

In a twist on the idea of equality, the Northwest Food Processors Association (NWFPA) argues that “equal protection of all population groups is impossible because all people do not have identical FCR and behaviors.” The “general population,” they conclude, “would be protected at a level 100 times more stringent than high end populations” because they consume less fish – that is, protecting the health of high-consumption communities will result in too much protection for the general populace!⁵⁶

Companies and business associations have also attempted to stall the issue by calling for the development of more statewide data. While more data can always be useful, the EPA informed the state in 2013 that sufficient data existed to establish fish consumption rates protective of everyone in the state. In the end, the business call for more data rings hollow – amounting to the continued rejection of rates consonant with community health in high consumption communities. For instance, the NWFPA calls for the development of statewide data, stating that “there are not State of Washington specific fish consumption rates.” Similarly, the Association of Washington Businesses bemoans that Ecology should “acknowledge that the lack of a general population fish consumption

survey is a significant data gap.”⁵⁷ Agricultural giant JR Simplot calls for the state to develop statewide data, emphasizing that the Department of Ecology has “flexibility in regards to the level of protection used to establish a FCR.”⁵⁸

Boeing argues that data based on fish consumers only (and not non-consumers) “misleads the casual reader and creates a consistent bias suggesting a higher level of fish consumption in the general population than in fact exists.” Calling for publishing data on the number of tribal members in surveys who consume at higher levels, Boeing argues that “When consumption rates are presented without these population numbers, readers are likely to assume erroneously that many more individuals consume fish at the high rates shown.”⁵⁹ While Boeing's approach is more subtle than that of other companies, the same effort to criticize using too few people (e.g., traditional tribal consumers and members of the Asian and Pacific Islander communities) to set state levels is at work.

Lockheed Martin goes further, rejecting outright that the state should concern itself with tribal political rights. The military contractor – a company that survives on public money – rejects the use of the EPA Region 10 *Framework for Selecting and Using Tribal Fish and Consumption Rates*. The company does so on the grounds that while the “EPA has a federal government trust responsibility to assure that tribal concerns and interests are considered...Washington State Department of Ecology does not have this same trust responsibility.” The aero-space giant concludes, “it appears inappropriate for the [trust] framework to serve as a primary basis for selection of state fish consumption rates.”⁶⁰ Lockheed Martin's rejection of concern for tribal rights contradicts Washington State's pledge to respect the sovereignty of Indian tribes in the 1989 Centennial Accord.

RIGHT WING, WRONG ENDS

Transnational and regional companies and local governments operating under NPDES permits dominate opposition to higher default fish consumption rates. They have been joined, however, by political leaders and groups across the spectrum of the American political right, including conservatives, libertarians and far-right promoters of global conspiracy theories. This includes organizations and individuals that promote other anti-tribal policies and have allied with organized anti-Indian groups. The far right does not always see eye-to-eye with big business and conservatives, often differing on issues like free trade agreements and immigration. However, the case of fish consumption rates demonstrates how property rights and environmental issues can provide a bridge between big business, conservatives and the far right.

Rob McKenna and the Anti-Indian Movement

The most prominent Washington State conservative staking out a position on FCRs is former Washington State Attorney General, and failed 2012 gubernatorial candidate, Rob McKenna. In an April 2014 editorial posted on his Smarter Government Washington website, McKenna echoed companies like Boeing by emphasizing economic arguments against higher FCRs. McKenna wrote that “unrealistic standards will kill jobs” and result in an “exodus of well-paying jobs from our state.” Also like Boeing and other big business, McKenna fails to even mention potential economic gains from healthier waters and fisheries in the state.

McKenna joins the chorus of businesses rejecting core environmental justice principles. “If the state sets an FCR that is far out-of-whack with *median fish consumption*,” he writes, “we will end up with unattainable water quality standards that are not rational.” By calling for FCRs based on “median fish consumption,” McKenna ignores the health concerns of indigenous people, Asian and Pacific Islanders and recreational fishers who consume higher levels of fish. McKenna appears to dismiss out-of-hand tribal studies of fish consumption, quoting a *Walla Wall Union-Bulletin* editorial to title his article, “It seems silly to base important policy on a number pulled from thin air.”⁶¹

Opposing higher fish consumption rates is by no means the first time Rob McKenna has championed anti-tribal causes. In 1997, while serving on the Metropolitan King County Council, McKenna and fellow council member Kent Pullen attempted to impose county regulations on the Muckleshoot Tribe – a violation of tribal sovereignty. Pullen was a one-time advisor of the anti-Indian Steelhead/Salmon Protection Action for Washington Now (S/SPAWN). S/SPAWN led 1980s efforts in the state to abrogate treaties with Indian tribes, including a 1984 initiative campaign to place fisheries management solely in the hands of Washington State.⁶²

McKenna also allied his Attorney General's office with national anti-Indian leaders dedicated to the outright termination of Indian tribal governments and abrogation of tribal treaty rights. In 2007, Attorney General McKenna appointed Barbara Lindsay of One Nation United (ONU) to his Task Force on Eminent Domain. That same year, McKenna's office gave advice to Lindsay aimed at helping ONU craft a more effective anti-treaty legal strategy. Barbara Lindsay is the former Executive Director of S/SPAWN and later led the group's progeny - United Property Owners of Washington, United Property Owners, and One Nation United. Each of these entities supported the abrogation of treaty rights and effective termination of tribal governments.

In 2008, Rob McKenna attempted to nominate Elaine Willman to Washington State's Executive Ethics Board, according to an email to from Willman to McKenna. Willman is the former chair (and current board member) of the national anti-Indian group Citizens Equal Rights Alliance (CERA). CERA has long supported tribal termination and treaty abrogation. Willman currently serves as the Director of Tribal Affairs for Hobart Village, Wisconsin. The anti-Indian leader has declared that the United States should not recognize treaties and, falsely, that the Constitution ended tribal sovereignty. She has used her position in Hobart to foster litigation that would undermine the sovereignty of the Oneida Tribe of Wisconsin.⁶³

Rob McKenna's political alliances provide an example of how conservatives, libertarians and the far right can coalesce around environmental issues. In addition to working with far right anti-Indian groups, McKenna built relationships with several organizations opposing higher default fish consumption rates. These include the Washington Policy Center, (Evergreen) Freedom Foundation and Citizens Alliance for Property Rights.⁶⁴ Hunter Graham Goodman, a onetime Washington Policy Center vice-president, served as McKenna's Legal and Legislative Affairs Director during his tenure on the Metropolitan King County Council. Goodman later served as Deputy Chief of Staff under Attorney General Rob McKenna.⁶⁵ McKenna is quoted on the Policy Center's webpage saying, "Time and again I've turned to the experts at Washington Policy Center, who bring forward powerful ideas that are well reasoned and thoroughly researched. That's what makes them such a great partner for me and many leaders and policy makers in our state."⁶⁶ Washington Policy Center Vice President for Research Paul Guppy was appointed to McKenna's Eminent Domain Task Force.

McKenna's relationship with the Freedom Foundation also extends back to his days on the Metropolitan King County Council. A meeting schedule faxed to McKenna's office by the Washington Policy Center listed the Evergreen Freedom Foundation as a participant in an upcoming meeting.⁶⁷ In 2008 McKenna appointed Trent Green of the Freedom Foundation to the Eminent Domain Task Force.⁶⁸ McKenna also appointed Citizens Alliance for Property Rights leader Steve Hammond to the task force.⁶⁹

“Heritage Foundation of the Northwest”: The Washington Policy Center

The Washington Policy Center (WPC), a statewide conservative think tank, has opposed higher fish consumption rates.

WPC Eastern Director Chris Cargill casts proposals to raise fish consumption in common conservative terms, arguing that higher FCRs give “more power to unelected bureaucrats...to impose harsher water rules.” Cargill falsely claims that the proposed changes are “not based on science but statistical projections” [which are routinely used in science] and wrongly claims that DOE provides “little evidence” for increasing FCRs. Mimicking the business assault on environmental justice, Cargill derides that,

“Many of those high [fish] consumers, according to the DOE, are the state’s Native Americans, who make up less than 2 percent of the state’s population. The state insists basing consumption rates for the state on such a tiny percentage is appropriate.”⁷⁰

According to the Washington Policy Center’s webpage, the late Jack Kemp once referred to the groups as “The Heritage Foundation of the Northwest.” Reporting gross receipts of \$2.9 million in 2012, this Seattle-based 501(c)3 has earned this description by promoting conservative budget proposals, aggressively opposing public sector unions and advocating “free market environmentalism.”⁷¹

While the Washington Policy Center does not oppose tribal rights as stridently as the organized anti-Indian movement, the group has expressed similar ideas and policies proposals. WPC’s Paul Guppy has written that “Indian-owned businesses have a *special tax status* – they do not pay state or federal taxes.”⁷² WPC Policy Analyst Brandon Housekeeper writes, “For decades tribal members have benefited from a system of *special rules and regulations* that give them significant competitive advantages not available to other citizens.” For Housekeeper, these “special” rights include tribal exemption from state taxation and smoking laws [italics added].⁷³

The language of “special rights” is used by anti-Indian activists to undermine the legitimacy of tribal sovereignty and treaty rights. The Policy Center matches this language by supporting the extension of state taxes, and tax-like fees, into Indian Country in violation of tribal sovereignty. The group castigated Governor Christine Gregoire for failing to incorporate “revenue sharing” into gaming

compacts with tribes in Washington State. In these compacts, authorized under the 1988 Indian Gaming Regulatory Act (IGRA), tribes agreed to provide funds to reduce problem gaming and discourage tobacco use, and invest in government services, law enforcement, job training, health care and public works.⁷⁴ For the Washington Policy Center, this was not enough. WPC's Brandon Housekeeper drew a parallel between "revenue sharing" and taxing Indian tribes, criticizing that the agreement "do(es) not require Indian tribes to pay any part of their gambling profits to the state, in place of the taxes normally paid by most other business."⁷⁵

The Washington Policy Center also criticized gas agreements between 16 tribes and the State of Washington. Under these pacts tribes purchase fuel for tribally-owned stations with the state's motor vehicle fuel tax included, report their purchases to the Department of Licensing, and receive 75 percent of the tax as a refund. In addition, tribes agree to spend fuel tax proceeds on transportation and related services.⁷⁶ Policy Center opposition to these agreements plays on court decisions that have undermined tribal sovereignty by allowing some taxation of non-Indians on reservation lands. At the same time, tribal sovereign immunity, a feature of sovereignty, has blocked the state's ability to sue tribes to collect taxes. In contrast to WPC rhetoric, these gas compacts have allowed the state to collect a tax that it otherwise could not because of the sovereign status of Indian Nations.⁷⁷ The Policy Center's favored policy would undermine tribal sovereignty by further extending state taxes into Indian Country.

Freedom for Who? The Freedom Foundation

Formerly known (and still legally registered as) the Evergreen Freedom Foundation, the Freedom Foundation (FF) also chimed in with an article written by Delaney Foreman. In a piece claiming that "DOE's power is nearly unchecked," Foreman writes that "The recent fish consumption battle could bring unprecedented water quality regulations so severe that modern science would be unable to measure the purity." Despite the state agency's clear responsibility to manage NPDES permitting under the Clean Water Act (and EPA authority), Foreman wrongly concludes that "[N]o federal mandate requires that Washington comply with these standards." Delaney also fails to mention any potential human health impacts of low FCRs on high consumption communities.⁷⁸

The Freedom Foundation is Washington State's leading libertarian-leaning think tank producing research and policy proposals on issues ranging from property rights and business to state budgets and education. The Foundation is listed as member of the State Policy Network, a national "free market think tank" that pushes anti-labor and anti-environmental goals alongside calls to privatize schools, block health care reform and cut taxes on the wealthy.⁷⁹ Common to such groups, the Freedom Foundation describes its mission as seeking "individual liberty, free enterprise, and limited, accountable government."⁸⁰ The Freedom Foundation, a 501(c)3, reported gross receipts over \$3.2

million in 2012. The Foundation has positioned itself as the think tank to the state's Tea Party organizations, its staff appearing at numerous Tea Party events to stress issues such as taxation and property rights. The Foundation is also virulently anti-labor, launching a "Free WA Tour" against public employee unions in April 2014.⁸¹

The Freedom Foundation strongly opposes county government regulations designed to protect critical environmental areas. Stop Taking Our Property (STOP) – Thurston County, a project of the Freedom Foundation, has fought a critical areas ordinance in Thurston County, a policy that includes the use of buffers to protect critical ecological areas.⁸² Vegetated buffers between development projects and critical areas (e.g., wetlands, rivers and shorelines) protect water quality by slowing down stormwater runoff and allowing the uptake of contaminants before they reach water bodies. Buffers also provide food and nutrient resources to fish and other aquatic organisms. These policies are important in protecting both treaty and non-treaty fisheries.

In contrast to these important buffer functions, STOP activists have waved rally signs stating "Your buffers steal our land."⁸³ Freedom Foundation Property Rights Director Glen Morgan likens critical areas ordinances to North Korean central planning. "Our goal," he writes, "is that our children and our grandchildren can...laugh at the terrible central planning schemes of their parents and grandparents. They will laugh at the silly buffers."⁸⁴

Seeming to defend the virtually unfettered use of private property, the group has also echoed John Birch Society-style anti-communism. An article on the Freedom Foundation website attributed to both R. Durrant and FF Citizens Action Network Director Scott Roberts declares,

"The trashing of individual liberties is all quite predictable as the central planning of the GMA [Growth Management Act] is imposed on the people. This GMA insanity can be used to impose such insults to one's property as moratoriums on the ability to develop your own property and *water buffers that severely limit your ability to use your own land*...This environmentalism is nothing short of socialism and reeks of Marxism [sic] doctrine...The GMA needs to be completely revised, if not entirely eliminated, in order to allow for individual and local control, and to stop this top-down government tyranny from hammering our constitutionally guaranteed property rights" [Italics added].⁸⁵

Glen Morgan goes further, asking, "Why is it that so many who support the Critical Areas Ordinance appear to be so callous and uncaring about the plight of their fellow citizens?" Morgan compares the Thurston County CAO process to the "banality of evil" observed by Hannah Arendt. Arendt's 1963 book *Eichmann in Jerusalem: A Report on the Banality of Evil*, analyzed Nazi war criminal Adolph Eichmann's role in the extermination of European Jews. While Morgan concedes that "it may not be as extreme as Hannah's writings," he concludes that "Our government does not

care about the little guy, and neither do the ‘environmentalists.’ There is no human empathy there.”⁸⁶ Even as he alleges a lack of empathy on the part of his political opponents, Morgan utterly ignores the very real human beings affected by the degradation of nearshore and stream habitat that critical areas ordinances intend to protect – Indian tribes with treaty-reserved resource rights and non-Indian families who make their living and recreate along the region’s shorelines.

The Freedom Foundation supports the imposition of local government taxes on Indian Nations. This is seen in a case involving Thurston County’s attempt to tax the Great Wolf Lodge, a development built on Chehalis Indian Tribe trust land by a corporation with majority tribal ownership. A federal district court ruled that the county could tax the land, relying on a line of court cases that have moved away from respecting the inherent sovereignty of Indian tribes and toward a balancing of federal, state and tribal interests.⁸⁷ In 2013, the Ninth Circuit Court of Appeals overturned the district court, ruling that provisions of the 1934 Indian Reorganization Act barring state and local taxation of federal trust lands also applies to permanent improvements on those lands. The three judge panel held that, “neither Thurston County nor any other state or local entity can tax the Great Wolf Lodge or other permanent improvements on that land.”⁸⁸

The nuances of federal Indian law, and any semblance of respect for tribal sovereignty, are lost on the Freedom Foundation and STOP leader Glen Morgan. Morgan writes of the Chehalis Tribe and Great Wolf Lodge:

“A troubling trend in local government is always the desire to increase taxes, and invent new fees and excuses to take more and more money from average people while politically-connected entities escape with no significant penalties. Nowhere is this dichotomy more evident than in Thurston County.”

Morgan continues, casting tribal sovereignty as an example of a “multi-million dollar out-of-state corporation” getting away with “zero tax liability” and concluding that,

“Any international organization can set up an identical company across the state on one of these newly purchased ‘tribal trust land’ properties, and undercut identical tax paying businesses across the road. These mini-Cayman Islands of Washington State do not deserve to exist.”⁸⁹

For Morgan, sovereign tribal nations exempt from state and local taxes “do not deserve to exist.”

Befitting such views, Morgan attended a 2013 meeting hosted by the anti-Indian group Citizens Equal Rights Alliance in Bellingham, Washington. Speakers at the meeting openly supported the termination Indian tribal governments and the abrogation of treaties with Indian Nations.⁹⁰

The Freedom Foundation also played host to radical anti-Indian activist John Fleming at the its 2007 Leadership Conference. Billed as the West Coast Director of Protect Americans' Rights and Resources, a Wisconsin-based anti-Indian group, Fleming falsely told attendees that tribal sovereignty is "a myth," that no tribal treaties are "effective today," and that tribes "weren't sovereign nations. They were Asiatic nomads that lived in certain areas."⁹¹ Fleming is best known for leading the passage of a tribal termination resolution at the Washington State Republican Party's 2000 convention. Fleming has gone so far as to claim that the Articles of Confederation should form a basis for modern federal Indian policies, an absurd claim that would allow states to terminate tribes and abrogate treaty rights.⁹²

PR's Capers: Conspiracy Theories and Environmental Justice as "Cancer"

The fish consumption rate conflict also attracted the attention of the far right Citizens Alliance for Property Rights (CAPR). In June 2012, Kevin Paulson, President of CAPR's Spokane Chapter, wrote to the Department of Ecology that "Our Chapter wants to officially go on record that we are not in favor of your specific recommendations for increased Fish Consumption Rates." Paulson alleges that the proposal would waste tax dollars and "cause businesses to suffer financially." Dismissing environmental justice, Paulson criticizes that "your (DOE) increased FCR standards are based on consumption patterns of minority populations of tribes across the state."⁹³

The Enumclaw, Washington-based CAPR boasts 14 chapters in Washington State and 5 in California. In Washington State the group is divided into three state non-profits, including the CAPR Political Action Committee and CAPR Legal Fund. CAPR claims that the legal fund is a 501(c)3 non-profit. CAPR places itself in the realm of the American far right by characterizing *regulatory* policies as *socialist*, promoting global conspiracy theories and stridently attacking civil rights, in particular, environmental justice. CAPR has also allied itself with Tea Party activists, organizing events with the Whatcom County (Washington) Tea Party and Freedom Foundation. The San Francisco Bay Area CAPR worked with several Tea Party groups to oppose sustainable development programs.⁹⁴

CAPR focuses on opposing growth management policies that attempt to protect ecological health. For instance, the group assails the use of vegetated buffers between development projects and critical ecosystems. CAPR blithely refers to critical areas as "a portion of your private property that you can't use but must guard forever for your ecologically minded neighbors' use and enjoyment."⁹⁵ In Tea Party fashion CAPR declares that "Gang Green [environmentalists] thinks that buffers are the neatest thing since socialism."⁹⁶

CAPR's San Francisco Bay Area chapter strongly rejects the civil right of environmental justice and proclaims assimilationist ideas about indigenous peoples:

“The cancers of environmental justice, social justice, transportation justice (every justice but equal justice) are metastacizing [sic] throughout the body politic. The USDA has put out a document for public comment on it’s [sic] Environmental Justice Strategic Plan. Page 12 of the draft specifies that the purpose is to help minority and/or low income populations including American Indian or Alaska Native populations. It’s time to put an end to all these ‘special classes’ of people. We are all Americans. Let’s not let our government put us in categories and play us off against each other.”⁹⁷

CAPR also illustrates how far right threats to tribal treaty rights and ecological health are often linked to broader assaults on civil rights. For instance, Steve Hammond is president of the Citizens Alliance for Property Rights Political Action Committee. Hammond is a former Metropolitan King County Council member (2003 to 2005), claiming to have been recruited to replace former S/SPAWN advisor and Council member Kent Pullen to “bring a clearly-focused set of principles to the county council.”⁹⁸ As late as 2010 Hammond was a member of the Pastoral Advisory Board of the Christian Coalition of Washington State. Christian Coalition literature bearing Hammond’s name rejected equality under the law for gay men and lesbians, describing the state’s marriage equality law as elevating “peculiar and unseemly two-person relationships by granting them parity with one-man-one-woman marriages.”⁹⁹

Several CAPR chapters promote the Agenda 21 conspiracy, a “theory” prominent in Tea Party and far-right property rights circles. The Agenda 21 conspiracy casts *domestically-driven concerns* about growth management and environmental protection as a *global, United Nations conspiracy*. Agenda 21 refers to an *entirely voluntary* U.N. program for sustainable development, particularly in poorer countries. In far right hands, however, the U.N. plan becomes an evil conspiracy threatening the continued existence of the United States.

San Francisco Bay Area CAPR promotes media personality Glen Beck’s conspiracy novel *Agenda 21*. The book depicts a futuristic dystopia in which the U.N. program has been implemented in the U.S.

Beck’s website describes the gist of the book:

*“A violent and tyrannical government rules what was once known as America. The old, the ill, and the defiant all quickly vanish. Babies belong to the state....Just a generation ago, this place was called America. Now, after the worldwide implementation of a UN-led program called Agenda 21, it’s simply known as ‘the Republic.’ There is no president. No Congress. No Supreme Court. No freedom. There are only the Authorities... Why are all citizens confined to ubiquitous concrete living spaces? Why are Compounds guarded by Gatekeepers who track all movements?...And, most important, why are babies taken from their mothers at birth? As [the book’s heroine] Emmeline begins to understand the true objectives of Agenda 21 she realizes that she is up against far more than she ever thought [Italics in original].”*¹⁰⁰

In a review of Beck's book, SF Bay CAPR casts the One Bay Area Plan in the vein of this land of detention camps, tyranny and the end of America. Municipal agencies developed the One Bay plan to implement the 2008 California Sustainable Communities and Climate Protection Act of 2008, legislation requiring 19 metropolitan areas to develop integrated land use, transportation and housing plans that seek to reduce greenhouse gas emissions.¹⁰¹ Despite the fact that the plan is based on a legislative mandate, and that it is commonplace for municipalities in democracies to adopt policies based on state legislation, the Bay Area CAPR declares that

"This is top down, central planning. This is a real program, not fiction. This is AGENDA 21 masquerading under the terms Sustainable Communities Strategies, Smart Growth, Sustainable Development...I took an oath to support and defend the Constitution of the United States and it is being trampled on and shredded by this type of planning...Let's not let the fiction of Glen Beck's 'Agenda 21' become the reality of sustainable development in the United States of America."¹⁰²

In 2012 CAPR hosted Agenda 21er Rosa Koire of Democrats Against Agenda 21. Koire outlandishly casts this *entirely voluntary* U.N. plan as

"the action plan implemented worldwide to inventory and control all land, all water, all minerals, all plants, all animals, all construction, all means of production, all energy, all education, all information, all human beings in the world."¹⁰³

Washington Farm Bureau

The conservative Washington Farm Bureau (WFB) also opposes raising default FCRs. In 2012 Farm Bureau Local Affairs Director Dan Wood falsely alleged that there is "no scientifically defensible position" for new standards and criticized the Department of Ecology for relying on a study by the Suquamish tribe that "has not yet been published in a peer-reviewed journal."¹⁰⁴ In the end, the Farm Bureau rejected standards based on high consumption "ethnic populations." Under the heading "Problems with Ecology's Parameters and Data," the WFB states,

"Shellfish and fish make up a greater percentage of some ethnic population's diets. Ecology appears to be pushing these standards to protect these specific, sensitive, at-risk populations in the state rather than targeting a more focused program to address this critical issue."¹⁰⁵

The Washington Farm Bureau has supported other policies at odds with tribal sovereignty. In February 2012 the group opposed provisions of state House Bill 2233. This bill proposed creating a process by which Washington State could retrocede (return) civil and criminal jurisdiction in Indian

Country to tribes. The bill addressed violations of tribal sovereignty that occurred under Public Law 280 (PL 280), a 1953 Congressional act allowing states to extend their laws into Indian Country. Under PL 280, Washington State asserted full jurisdiction over eleven tribes in the state in 1957 and limited jurisdiction over the remainder in 1963.¹⁰⁶

Specifically, the Farm Bureau opposed the definition of Indian Country in HB 2233, arguing that under this definition “it appears that the process of retrocession would extend tribal authority over non-Indians...As the bill is written, it could grant authority over non-Indians traveling through reservations on public roads. Washington Farm Bureau is asking that the bill be amended to clarify that it does not create any new authority over non-Indians.” The definition of Indian Country in HB 2233 was simply that found in federal statutes. Tribal jurisdiction over non-members is a feature of political sovereignty allowing nations to protect all people living in their territories. This aspect of tribal sovereignty is a frequent target of anti-Indian groups and has been undermined by some Supreme Court decisions. HB 2233 was signed into law in March 2012.¹⁰⁷

While not exhibiting the full-blown conspiratorial terms of CAPR, the Washington Farm Bureau flirted with far right ideas by passing a resolution opposing “all aspects of Agenda 21” at the group’s 2012 annual conference. In its 2014 Policy Book, the Farm Bureau declared “We oppose the United Nations Agenda 21 and the ratification or implementation of any or all of its components.”¹⁰⁸

Tea Party and a Small Fish Dinner

The Tri-Cities Tea Party has indicated its opposition to raising FCRs, sharing an opinion piece on the issue on its Facebook page. The article declares,

“[Governor] Inslee’s extreme environmental agenda is already underway. Last month, Inslee announced that he would move forward with his plan to dramatically increase Washington State’s fish consumption rate in an effort to unrealistically boost water quality standards...The new rate Inslee wants to set? No less than 175 grams—an equivalent of one serving of fish per day, per person....Inslee is testing the waters for his extreme environmental agenda by setting unrealistic water quality standards. It’s just the beginning of the incredible burden he plans to place on Washington cities, businesses and residents through future legislative action and—if unable to make the state Senate blue — executive action.”¹⁰⁹

The article stresses economic reasons for opposing higher FCRs and makes no mention of potential health impacts of low FCRs on high consumption communities.

ENVIRONMENTAL JUSTICE FOR ALL

The conflict over the Department of Ecology's default fish consumption rates in Washington State takes place in the context of a broader struggle to restore the region's ecosystems to a healthy status. The alliance underway between tribes, environmentalists, resource groups and concerned members of Northwest communities represents a powerful coalition for social and ecological change. This movement combines the organizing skills, resources and aspirations of environmental and environmental justice groups, resource groups and concerned community members with moral and political authority, and the unique federal-tribal relationship of Indian Nations.

Building such a movement requires confronting a multifaceted array of political opponents. On the one hand, our communities face transnational and regional companies that would put profits above the health and well-being of our many communities. On the other, our movement must confront conservative, libertarian and far right groups and leaders often animated by narrow versions of national identity and property rights would place the concerns of certain property owners over those of many members of our communities.

Because these groups promote narrow versions of the national community and the responsibilities of property rights, our struggle must be prepared to defend the civil rights of people of color, the LGBT community and immigrants. Opponents are also often arrayed against the rights of working people to safe and democratic workplaces and a decent standard of living. While much can separate our communities, we all need economic and environmental justice. Our differences are small in the face of our commonalities. We are a community of communities, each with their own integrity and concerns, yet we must unite around a vision of economic, racial and environmental justice and a deep and abiding concern for the land in which we all live. By fighting for the rights of the indigenous nations and the many and diverse communities in our region, we can win a world in which all can live in justice.

NOTES

¹ Washington State Department of Ecology. *Fish Consumption Rates. Technical Support Document. A Review of Data and Information About Fish Consumption in Washington*. September 2011. Publication no. 11-09-050; Washington State Department of Ecology. *Fish Consumption Rates for High Exposure Population Groups*. July 2009.

² U.S. Environmental Protection Agency. 2002. *Fish Consumption and Environmental Justice: A Report developed from the National Environmental Justice Advisory Council Meeting of December 3-6, 2001*.

³ Frank, Billy Jr. Cited in Treaty Indian Tribes in Western Washington. *Treaty Rights at Risk: Ongoing Habitat Loss, the Decline of the Salmon Resource, and Recommended Changes*. July 14, 2011.

⁴ Treaty Indian Tribes in Western Washington. *Treaty Rights at Risk: Ongoing Habitat Loss, the Decline of the Salmon Resource, and Recommended Changes*. July 14, 2011.

⁵ For more on the environmental justice movement generally, see Bullard, Robert D. ed. 1994. *Unequal Protection: Environmental Justice and Communities of Color*. San Francisco: Sierra Club Books; Bullard, Robert D., ed. 2005. *The Quest for Environmental Justice: Human Rights and the Politics of Pollution*. San Francisco: Sierra Club Books; Bullard, Robert D., ed. 1993. *Confronting Environmental Racism: Voices from the Grassroots*. Boston: South End Press.

⁶ President Bill Clinton. Executive Order #12898. February 11, 1994.

⁷ U.S. Environmental Protection Agency. 2002. *Fish Consumption and Environmental Justice: A Report developed from the National Environmental Justice Advisory Council Meeting of December 3-6, 2001*. In this report, Stuart Harris from the Confederated Tribes of the Umatilla Indian Reservation and Barbara Harper of the International Institute for Indigenous Resource Management stress the importance of fisheries decline to indigenous cultures:

"Native American communities are inseparable from their lands and resources, so evaluation of their risks from contamination must integrate human physiological and mental health, ecological health, socio-economic health and cultural and spiritual health within a single framework...The individual and collective well-being of tribal members is often derived from membership in a health community that has access to ancestral lands and traditional resources and from having the ability to satisfy personal responsibility to participate in traditional community activities and to help maintain the spiritual quality of our resources."

⁸ U.S. Environmental Protection Agency. 2002. *Fish Consumption and Environmental Justice: A Report developed from the National Environmental Justice Advisory Council Meeting of December 3-6, 2001*, p.43-49.

⁹ U.S. Environmental Protection Agency. 2002. *Fish Consumption and Environmental Justice: A Report developed from the National Environmental Justice Advisory Council Meeting of December 3-6, 2001*, p.49.

¹⁰ Nehlsen, Willa, Williams, Jack E. and James A. Lichatowich. 1991. Pacific Salmon at the Crossroads: Stocks at Risk from California, Oregon, Idaho and Washington. *Fisheries* 16(2):4-21. In 1991 the American Fisheries Society described 214 separate stocks of Pacific salmon as "depleted," including 101 at high risk of extinction, 58 at moderate risk, and 54 of special concern. Seventy-six of these stocks occur in the Columbia River basin and 41 in the Washington coast/Puget Sound area. "Stocks" refer to populations of fish that spawn in a particular river system at a particular time. This concept is similar to those of population and "evolutionary significant unit" in ecological studies – i.e., they are groupings of a species defined by genetic difference from other populations and by reproductive isolation. In this study, stocks were considered any fish spawning in a particular river system or in a portion of it in a specific season that do not substantially interbreed with other stocks. Protection of stocks is important for the maintenance of genetic diversity in specific salmon species.

ESA listings come from the Northwest Regional Office of the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) (<http://www.nwr.noaa.gov>). As of 2011, the NMFS lists 15 separate evolutionary significant units of salmon passing through Washington State waters as endangered or threatened under the Endangered Species Act (ESA). These include Puget South Chinook, Puget Sound steelhead, Hood Canal Summer

Chum and 10 Columbia and Snake River salmon runs. The concept of an “evolutionary significant unit” (ESU) for salmonids is used by NOAA’s NMFS to represent the concept of a “species” under the ESA. NOAA-NMFS defines an ESU as (1) being “substantially reproductively isolated” from other units and (2) representing an “important component in the evolutionary legacy of the species.” (*Federal Register*, Vol 56(224), November 20, 1991, p.58618). Discrepancies between these ESA listings and the “stocks” described in Nehlson et al (1991) occur because the latter lists multiple streams within a given watershed/listing area while the NOAA-NMFS ESA listings combine tributaries and streams in the designated area together.

¹¹ Treaty Indian Tribes in Western Washington. 2011. *Treaty Rights at Risk: Ongoing Habitat Loss, the Decline of the Salmon Resource, and Recommendations for Change*. July 14, 2011. <http://treatyrightsatrisk.org/white-paper/>. Downloaded January 17, 2013. As legal impediments to tribal fishing fell after the Boldt decision, treaty coho and Chinook harvest grew from about 600,000 to 1.5 million Chinook, while steelhead rose from near zero to about 40,000 fish annually. As habitat destruction ensued, tribal harvest plummeted. By 2010 Chinook and coho harvest had dropped to about 40,000 while Puget Sound steelhead has again approached zero.

¹² Suppression effects due to water contamination also occur when the state Department of Health issues fish consumption advisories due to contamination. For instance, the state is currently advising people to eat no salmon or other species from the Lower Duwamish and Spokane River from Idaho border to the Upriver Dam. Washington Department of Fish and Wildlife. 2013. *Fish Washington: Sport Fishing Rules*. <http://wdfw.wa.gov/publications/01384/wdfw01384.pdf>. Downloaded March 8, 2013. Because tribes also fish and shellfish commercially, their treaty rights are suppressed when shellfish gathering is closed due to contamination. Between 2008 and 2012 the Washington State Department of Health reported an average of 23.4 commercial biotoxin closures per year with highs of 31 in 2010 and 29 in 2012. Email from Rose Oram, Office of Shellfish and Water Protection, Washington Department of Health dated March 6, 2013. I would like to thank the Ms. Oram and other staff at the DOH who were very professional and timely in answering questions about shellfish biotoxin closures.

¹³ CRITFC was formed in 1977 to provide coordination and technical assistance to the Yakama, Nez Perce, Warm Springs and Umatilla tribes. Columbia River Inter-Tribal Fish Commission. A Fish Consumption Survey of the Umatilla, Nez Perce, Yakama and Warm Springs Tribes of the Columbia River Basin. Technical Report 94-3. October 1994. Columbia River Inter-Tribal Fish Commission. 729 N.E. Oregon St., Portland, OR 97232.

¹⁴ Columbia River Inter-Tribal Fish Commission. A Fish Consumption Survey of the Umatilla, Nez Perce, Yakama and Warm Springs Tribes of the Columbia River Basin. Technical Report 94-3. October 1994. Columbia River Inter-Tribal Fish Commission. 729 N.E. Oregon St., Portland, OR 97232.

¹⁵ Environmental Protection Agency. 2007. Framework for Selecting and Using Tribal Fish and Shellfish Consumption Rates for Risk-Based Decision Making at CERCLA and RCRA Cleanup Sites in Puget Sound and the Strait of Georgia. Working Document. Revision 00. Office of Environmental Cleanup. Region 10. 1200 Sixth Avenue. Seattle WA 98101. [http://yosemite.epa.gov/r10/CLEANUP.NSF/7780249be8f251538825650f0070bd8b/e12918970debc8e488256da6005c428e/\\$FILE/Tribal%20Shellfish%20Framework.pdf](http://yosemite.epa.gov/r10/CLEANUP.NSF/7780249be8f251538825650f0070bd8b/e12918970debc8e488256da6005c428e/$FILE/Tribal%20Shellfish%20Framework.pdf)

¹⁶ Letter from Michael A. Bussell, Director, Office of Water and Watersheds, United States Environmental Protection Agency Region 10 to Neil Mullane, Administrator, Water Quality Division, Oregon Department of Environmental Quality dated June 1, 2010; Letter from Michael A. Bussell, Director, Office of Water and Watersheds, United States Environmental Protection Agency Region 10 to Neil Mullane, Administrator, Water Quality Division, Oregon Department of Environmental Quality dated October 17, 2011.

¹⁷ Letter from Michael A. Bussell, Director, Office of Water and Watersheds, United States Environmental Protection Agency Region 10 to Barry Burnell, Water Quality Programs Administrator, Idaho Department of Environmental Quality, dated May 10, 2012.

¹⁸ Idaho Department of Environmental Quality. Water Quality: Docket No. 58-0102-1201 - Negotiated Rulemaking. <http://www.deq.idaho.gov/58-0102-1201>.

¹⁹ *Puget Soundkeeper Alliance et al v. U.S. EPA*. Complaint for Declaratory and Injunctive Relief. Earthjustice. Seattle, WA. Filed in U.S. District Court for Western District of Washington. October 11, 2013.

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- ²⁰ Washington State Department of Ecology. *Fish Consumption Rates. Technical Support Document. A Review of Data and Information About Fish Consumption in Washington*. September 2011. Publication No. 11-09-050; Le, Phong. Wash. wants less risk for people who eat fish. *Seattle Times*. November 5, 2011. <http://seattletimes.com>. Downloaded July 18, 2012.
- ²¹ Washington Department of Ecology. Technical Support Document. Version 2.0 Draft. August 2012. Publication 12-09-058. <https://fortress.wa.gov/ecy/publications/publications/1209058.pdf>.
- ²² Washington Department of Ecology. Technical Support Document. Version 2.0. Final. January 13, 2012. Publication 12-09-058. <https://fortress.wa.gov/ecy/publications/publications/1209058.pdf>.
- ²³ Frank, Billy, Chairman, Northwest Indian Fisheries Commission. Tribes Call for Fish Consumption Rate Action. December 3, 2012. NWIFC. <http://nwifc.org/2012/12/tribes-call-for-fish-consumption-rate-action/>. Downloaded March 21, 2012.
- ²⁴ Associated Press. Tribes to ask EPA to step in on clean-water rule. *The Seattle Times*. September 6, 2014. http://seattletimes.com/html/localnews/2024480745_tribesepaxml.html. Downloaded September 10, 2014.
- ²⁵ McClure, Robert. Business Interests Trump Health Concerns in Fish Consumption Fight. *Investigate West*. <http://www.invw.org/article/business-interests-trump-1344>. March 30, 2013.
- ²⁶ Department of Ecology. Current Rule Making: Feedback on Current Rule-making. <http://www.ecy.wa.gov/programs/wq/swqs/whatpeoplesay.html>; Mapes, Lynda V. Inslee proposes new water-quality standards. *Seattle Times*. July 9, 2014. http://seattletimes.com/html/localnews/2024026950_fishstandardsxml.html; Office of Washington State Governor Jay Inslee. Insee takes new approach to create meaningful, effective state clean water standards. July 9, 2014. <http://www.governor.wa.gov/news/releases/article.aspx?id=293>.
- ²⁷ Northwest Indian Fisheries Commission. Tribes Cautious About Governor's Toxics Reduction Plan. July 9, 2014. <http://nwifc.org/2014/07/tribes-cautious-governors-toxics-reduction-plan-2/>; Letter from Northwest Indian Fisheries Commission to Maia Bellon, Director Washington Department of Ecology dated January 31, 2014.
- ²⁸ Keep Seafood Clean. <http://keepseafoodclean.org/>. Accessed August 20, 2014.
- ²⁹ Washington State Department of Ecology. Current Rule-Making Activity. <http://www.ecy.wa.gov/programs/wq/swqs/whatpeoplesay.html>.
- ³⁰ Center for Environmental Law and Policy. Archives. <http://www.celp.org/category/uncategorized/>.
- ³¹ *Puget Soundkeeper Alliance et al v. U.S. EPA*. Earthjustice. Seattle, WA. Complaint for Declaratory and Injunctive Relief. Filed in U.S. District Court for the Western District of Washington. October 11, 2013.
- ³² Quoted in Robinson, William I. 2004. *A Theory of Global Capitalism: Production, Class, and State in a Transnational World*. Baltimore, MD: The John Hopkins University Press.
- ³³ Lockheed Martin. International. <http://www.lockheedmartin.com/us/products/f35/f35-sustainment/international.html>. Downloaded March 22, 2013.
- ³⁴ Boeing International. Close relationships with global stakeholders are key to success. <http://www.boeing.com/boeing/aboutus/international/about.page>. Downloaded March 22, 2013.
- ³⁵ Associated Press. Unions join fight over Washington fish consumption. June 16, 2014. <http://bigstory.ap.org/article/unions-join-fight-over-washington-fish-consumption>.
- ³⁶ National Council for Air and Stream Improvement, Inc. P.O. Box 13318. Research Triangle Park, NC 27709-3318. IRS Form 990 for tax year beginning April 1, 2012 and ending March 31, 2011; National Council for Air and Stream Improvement, Inc. P.O. Box 13318. Research Triangle Park, NC 27709-3318. IRS Form 990 for tax year beginning April 1, 2007 and ending March 31, 2007; National Council for Air and Stream Improvements, Inc. 2013. <http://www.ncasi.org/about/membership/canadianmembers.aspx>; <http://www.ncasi.org/about/facility/default.aspx>
- ³⁷ Letter from Christian M. McCabe, Executive Director, Northwest Pulp & Paper Association to Ted Sturdevant, Washington State Department of Ecology, dated January 17, 2012.
- ³⁸ United States Securities and Exchange Commission. Form 10-K. Pope Resources, A Delaware Limited Partnership. www.sec.gov. Downloaded January 6, 2012.
- ³⁹ Data on companies holding and violation NPDES permits was obtained from the Washington State Department of Ecology's webpage at <https://fortress.wa.gov/ecy/wqreports/public/?p=110:300:4261153983684542>.

⁴⁰ Washington State Department of Ecology's webpage at <https://fortress.wa.gov/ecy/wqreports/public/?p=110:300:4261153983684542>

⁴¹ Washington State Department of Ecology's webpage at <https://fortress.wa.gov/ecy/wqreports/public/?p=110:300:4261153983684542>.

⁴² Letter from The Boeing Company to Governor Jay Inslee dated march 12, 2014.

⁴³ Letter from Christian M. McCabe, Executive Director, Northwest Pulp & Paper Association to Ted Sturdevant, Washington State Department of Ecology, dated January 17, 2012.

⁴⁴ "The consumption of salmon," NCASI argues, "should be excluded from any statewide default FCR." The reason for this, the business league argues, is because salmon are generally anadromous, spawning in freshwater rivers and streams and spending the bulk of their adult life in "the open ocean." Like most good distortions, NCASI's arguments contain a grain of truth. The groups writes that, "If a significant fraction of the contaminant burden found in salmon is accumulated in true fresh water systems it makes sense that the consumption of salmon be included in an FCR. However, if accumulation in the open ocean dominates, inclusion of salmon in an FCR makes no sense because there is no action the state can take that will have a significant effect on the contaminant burden found in returning adult salmon." NCASI cites several studies to claim that the majority of bioaccumulative toxins found in regional salmon species derive from the open ocean. The group does makes room for case-by-case exceptions for resident Chinook known to rear in Puget Sound, and the incorporation of data on specific species, or even runs, into FCRs; they also recognize that food web in the Puget Sound is more contaminated than that in the open ocean. However, in the end they reject the adoption of "a single [fish consumption] default value for the dose of any contaminant received by humans via consumption of salmon." National Council for Air and Stream Improvement, Inc. Comments on Publication 11-09-050, Fish Consumption Rates Technical Support Document. A Review of Data and Information about Fish Consumption in Washington. Submitted to Washington State Department of Ecology. January 11, 2012.

While salmon do mature in open marine waters, Catherine O'Neill of the Center for Law and Policy at Seattle University points out that the studies cited by NCASI do not in fact make this case. While it is true that salmon generally grow to maturity in marine waters, these studies sampled fish that in fact spend time in the Salish Sea, including Puget Sound and the Strait of Juan de Fuca. All salmon migrate through the Salish Sea while Coho and Chinook, in particular, spend more time in nearshore waters. In addition, many species of animal are vulnerable to toxins in early stages of development, making it critical that these waters be clean for early salmon development. In addition, even salmon at sea may feed on species that develop in nearshore waters, an even more efficient method for transferring toxins up the food chain than direct water contact. Forage fish (such as surf smelt, Pacific herring sand lance) often spawn on Salish Sea coasts while some species are reported to feed in these waters during adulthood. O'Neill, Catherine. Center for Progressive Reform. 2012. (Puget) Sound Science. November 8, 2012. <http://progressivereform.org/CPRBlog.cfm?idBlog=E072AEC3-A728-A0BD-32965A41D8C66EBB>. Port Gamble S'kallam Tribe. <http://www.pgst.nsn.us/content/pdfs/ForageFish.pdf>. Downloaded February 5, 2013; Penttila, D. 2007. Marine Forage Fishes in Puget Sound. Puget Sound Nearshore Partnership Report No. 2007-03. Published by Seattle District, U.S. Army Corps of Engineers, Seattle, Washington. See also Quinn, Thomas P. 2005. *The Behavior and Ecology of Pacific Salmon and Trout*. Seattle: University of Washington Press.

Finally, the business arguments for excluding salmon sidestep altogether the issue of cumulative impacts. As with many environmental problems, the ultimate problem is often not the one polluter (though some large companies contribute in an outsized fashion), but the many – not the 10 polluters, but the 1,000, 10,000 and 100,000. While the amount of toxin running off from a single Site may not affect the open ocean, the runoff from lands and streams that rim the Pacific Ocean does. While the study of the origins of oceanic pollutants is relatively new, Rosalinda Gioia and her colleagues note that many Persistent Organic Pollutants (Or POPs, such as PCBs and PAHS) are somewhat volatile (they evaporate relatively quickly). As such these pollutants can travel many miles through the air before re-depositing into the ocean and becoming incorporated into the food chain. While these authors report that rivers can also supply the ocean with POPs, air-travel is considered the most common means of pollution by terrestrially-produced pollutants. Gioia, Rosalinda, Dachs, Jordi, Nizzetto, Luca, Berrojalbiz, Cristobal, Del Vinto, Sabino, Mjanelle, Laurence and Kevin C. Jones. 2011. Sources, Transport and Fate of Organic Pollutants in the Oceanic Environment. In Quante, M. et al.

(eds). 2011. *Persistent Organic Pollution – Past, Present and Future*. Berlin: Springer-Verlag. DOI 10.1007/978-3-642-17419.

⁴⁵ Letter from Ken Johnson, Corporate Environmental Manager, Weyerhaeuser to Ted Sturdevant, Director, Washington Department of Ecology dated January 17, 2012; Letter from Christain M. McCabe, Executive Director, Northwest Pulp & Paper Association to Ted Sturdevant, Director, Washington Department of Ecology dated January 17, 2012; Letter from Paul Butukus, Environmental Manager, Boise White Paper LLC, to Washington Department of Ecology dated October 26, 2012.

⁴⁶ Letter from Gene Matsushita, Senior Manager, Environmental Remediation, Lockheed Martin to Ted Sturdevant, Director, Washington Department of Ecology dated January 17, 2012. Letter from David L. Nunes, President and CEO, Pope Resources to Ted Sturdevant, Director, Washington State Department of Ecology dated January 17, 2012. Pope Resources argues that,

"numerous studies have shown that salmon accumulate most of their body burden of bioaccumulative contaminants such as PCDS and dioxins/furans during their first few years of life while they are at sea. Therefore, any change in Washington regulations will not impact what bioaccumulates in salmon."
(See Footnote 47).

Rather, Pope argues, the FCR should be restricted to non-migratory finfish species and shellfish.

⁴⁷ Letter from Alan L. Prouty, Vice President, Environmental and Regulatory Affairs, J.R. Simplot to Ted Sturdevant, Washington Department of Ecology dated October 26, 2012; Letter from Terry Mutter, Director Enterprise Strategy, Environment, Health & Safety, The Boeing Company to Adrienne Dorrah, Washington Department of Ecology dated October 26, 2012.

⁴⁸ National Council for Air and Stream Improvement, Inc. P.O. Box 13318. Research Triangle Park, NC 27709-3318. IRS Form 990 for tax year beginning April 1, 2012 and ending March 31, 2011.

⁴⁹ Reilly, John Francis, Hull, Carter C. Barbara A. Braig Allen. *IRS 501(c)(6) Organizations*. Internal Revenue Service. <http://www.irs.gov/pub/irs-tege/eotopick03.pdf>. Downloaded January 15, 2012.

⁵⁰ National Council for Air and Stream Improvements, Inc. 2013. <http://www.ncasi.org/about/membership/usmembers.aspx>. Downloaded January 16, 2013.

⁵¹ National Council for Air and Stream Improvement, Inc. P.O. Box 13318. Research Triangle Park, NC 27709-3318. IRS Form 990 for tax year beginning April 1, 2012 and ending March 31, 2011; National Council for Air and Stream Improvement, Inc. P.O. Box 13318. Research Triangle Park, NC 27709-3318. IRS Form 990 for tax year beginning April 1, 2007 and ending March 31, 2007; National Council for Air and Stream Improvements, Inc. 2013. <http://www.ncasi.org/about/membership/canadianmembers.aspx>; <http://www.ncasi.org/about/facility/default.aspx>.

⁵² Letter from Jeffrey Louch, PhD. Senior Scientist, NCASI Steve Stratton West Coast Regional Manager, NCASI to the Washington State Department of Ecology dated January 11, 2012.

⁵³ Letter from Christian M. McCabe, Executive Director, Northwest Pulp & Paper Association to Ted Sturdevant, Washington State Department of Ecology dated January 17, 2012.

⁵⁴ Letter from Ken Johnson, Corporate Environmental Manager, Weyerhaeuser to Ted Sturdevant, Washington State Department of Ecology, dated January 17, 2012.

⁵⁵ Letter from Gene Matsushita, Senior Manager, Environmental Remediation, Lockheed Martin Enterprise Business Services to Ms. Martha Hankins, Washington State Department of Ecology Toxic Cleanups Program dated January 17, 2012.

⁵⁶ Letter from David McGiverin, Environmental, Sustainability & Productivity Manager, Northwest Food Processors Association to Ted Sturdevant, Washington State Department of Ecology, dated October 26, 2012.

⁵⁷ Letter from Gary Chandler, Vice President Government Affairs, Association of Washington Businesses to Adrienne Dorrah, Washington Department of Ecology Toxics Cleanup Program dated October 26, 2012.

⁵⁸ Letter from Alan L. Prouty, Vice President, Environmental and Regulatory Affairs, J.R. Simplot to Ted Sturdevant, Washington Department of Ecology dated October 26, 2012.

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- ⁵⁹ Letter from Terry Mutter, Director Enterprise Strategy, Environment, Health & Safety, The Boeing Company to Ms. Adrienne Dorrah, Washington Department of Ecology Toxics Cleanup Program dated October 26, 2012.
- ⁶⁰ Letter from Gene Matushita, Senior Manager, Environmental Remediation, Lockheed Martin Enterprise Business Services to Ms. Martha Hankins, Washington State Department of Ecology Toxic Cleanups Program dated January 17, 2012.
- ⁶¹ McKenna, Rob. "It seems silly to base important public policy on a number pulled from the air." *Smarter Government Washington* website. http://smartergovernmentwa.org/seems-silly-base-important-public-policy-number-pulled-thin-air/?utm_source=weeklyroundup&utm_medium=email&utm_campaign=040614.
- ⁶² See Tanner, Chuck and Leah Henry-Tanner. 2012. *Trampling on the Treaties: Rob McKenna and the Politics of Anti-Indianism*. Independent Research Reports.
- ⁶³ See Tanner, Chuck and Leah Henry-Tanner. 2012. *Trampling on the Treaties: Rob McKenna and the Politics of Anti-Indianism*. Independent Research Reports.
- ⁶⁴ Though now using the name Freedom Foundation, the group started and continues to be legally registered as the Evergreen Freedom Foundation. See Evergreen Freedom Foundation's 2013 IRS-990.
- ⁶⁵ Resume of Hunter Graham Goodman circa 2003; Email from Hunter Goodman, Deputy Chief of Staff, Washington State Attorney General's Office to Linda Matson. October 5, 2011.
- ⁶⁶ Washington Policy Center. 2011. What Others are Saying about Washington Policy Center. <http://www.washingtonpolicy.org/about/what-others-are-saying-about-washington-policy-center>. Downloaded March 2, 2012.
- ⁶⁷ Fax transmission from the Washington Policy Center to Hunter Goodman, Rob McKenna's Office, Metropolitan King County Council. September 19, 2002.
- ⁶⁸ E-mail from Tim Ford to Rob McKenna, March 17, 2009; E-mail from AG Rob McKenna to Tim Ford, March 17, 2009; Draft Appointment Letter from AG Rob McKenna to Trent England, March 18, 2009.
- ⁶⁹ Letter from AG Rob McKenna to Steve Hammond, President, Citizens Alliance for Property Rights, November 3, 2008.
- ⁷⁰ Cargill, Chris. Rule-making needs oversight. *Spokane Spokesman-Review*. July 8, 2012. <http://www.spokesman.com/stories/2012/jul/08/rule-making-needs-oversight/?printfriendly>. Downloaded July 19, 2012.
- ⁷¹ Washington Policy Center. 2011. "What Others are Saying about Washington Policy Center." <http://www.washingtonpolicy.org/about/what-others-are-saying-about-washington-policy-center>. Downloaded March 2, 2012.
- ⁷² Guppy, Paul. It's not racist to talk about Indian gaming policy. Washington Policy Center. <http://www.washingtonpolicy.org/blog/post/its-not-racist-talk-about-indian-gaming-policy>. Downloaded July 12, 2012.
- ⁷³ Housekeeper, Brandon. Washington Policy Center. 2008. Policy Notes: Washington State Compacts with Tribal Businesses. July 2008. Seattle, WA.
- ⁷⁴ Washington State Gaming Commission. http://www.wsgc.gov/docs/tribal/machine_gaming.asp. Downloaded July 19, 2012.
- ⁷⁵ Housekeeper repeated this equation of revenue sharing and taxing tribes in an article castigating the state for entering a compact with the Spokane Tribe that contains no requirement that the tribe "pay a portion of its annual business profits into the state general fund, thus making all tribal commercial activity tax-free." Housekeeper, Brandon. Washington Policy Center. 2008. Policy Notes: Washington State Compacts with Tribal Businesses. July 2008. Seattle, WA.
- ⁷⁶ Washington State Department of Licensing. 2011 Tribal Fuel Tax Agreement Report. <http://dol.wa.gov>.

⁷⁷ The U.S. Supreme Court has complicated this legal issue by undermining tribal sovereignty and allowing a colonial extension of state taxing authority across the boundaries of Indian Country in some circumstances. While tribes and tribal entities are generally immune from state taxation, non-Indians may be taxed in Indian Country for purchases when the “legal incidence” of the tax is deemed to fall on the non-Indian purchaser and the tax is not otherwise pre-empted by federal law. This is true even when the tribe may face an economic burden from the tax. Tribes can even be required to collect these state taxes. While the Supreme Court has undermined tribal sovereignty under federal law by allowing state taxing powers to extend into Indian Country, another aspect of tribal sovereignty – tribal sovereign immunity – has been upheld. This has hindered the ability of state governments to sue in order to collect taxes. In effect, state governments have a colonially-extended “special right” without a litigious remedy. States do have other remedies, however. For background on this area of law, see Canby, William C. Jr. 2004. *American Indian Law*. Minneapolis, MN: Thomason West; Jensen, Erik M. 2007. Taxation and Doing Business in Indian Country. Case Research Paper Series in Legal Studies. Working Paper 07-7. February 2007. Case Western Reserve University. Downloaded from Social Science Research Network Electronic Paper Collection. <http://ssrn.com/abstract=967370>. Major cases in this area of law include *Moe v Confederated Tribes of the Kootanai and Salish Tribes of the Flathead Reservation*. 425 U.S. 463 (1976) (“the State may require the Indian proprietor simply to add the tax to the sales price and thereby aid the State's collection and enforcement thereof”); *Washington v. Confederated Tribes of the Colville Indian Reservation*. 447 U.S. 134 (1980) (States may tax purchases by non-Indians on an Indian reservation even when tribes may be economically harmed by the tax); *Oklahoma Tax Commission v. Chickasaw Nation* 515 U.S. 450 (1995) (“if the legal incidence of the tax rests on non-Indians, no categorical bar prevents enforcement of the tax”) . An important case upholding tribal sovereign immunity in a tax case is *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe*. 498 U.S. 505. (Tribal sovereign immunity bars the state from suing to collect on-reservation taxes).

⁷⁸ Foreman, Delaney. The DOE's Sweet Irony. Evergreen Freedom Foundation. July 29, 2014. http://www.myfreedomfoundation.com/blogs/liberty-live/doe_s-sweet-irony#.

⁷⁹ See State Policy Network. <http://www.spn.org/>; also, see Center for Media and Democracy. *Exposed: The State Policy Network*. http://www.prwatch.org/files/spn_national_report_final.pdf.

⁸⁰ Evergreen Freedom Foundation. Mission. <http://myfreedomfoundation.com/index.php/about/mission/>. Downloaded July 31, 2012.

⁸¹ Freedom Foundation. Free WA Tour flier. April 2014.

⁸² Krotzer, Chelsea. Thurston County critical-areas ordinance hearing is a big draw. *The Olympian*. June 23, 2012. <http://theolympian.com>. Downloaded August 17, 2012.

⁸³ Krotzer, Chelsea. Thurston County critical-areas ordinance hearing is a big draw. *The Olympian*. June 23, 2012. <http://theolympian.com>. Downloaded August 17, 2012.

⁸⁴ Morgan, Glen, Property Rights Director, Freedom Foundation. Eventually Everyone will Laugh at the Plannters of Today. April 16, 2012. <http://www.myfreedomfoundation.com>. Downloaded August 17, 2012; Roberts, Scott, Citizen Action Network Director, Freedom Foundation. STOP Thurston County invites Thurston County Commissioners to debate. March 11, 2012. <http://www.myfreedomfoundation.com>. Downloaded August 17, 2012.

⁸⁵ Durrant, R. and Scott Roberts. Growth Management Act - a property rights taking. Freedom Foundation. <http://www.myfreedomfoundation.com>. Downloaded August 17, 2012.

⁸⁶ Morgan, Glen, Property Rights Director, Freedom Foundation. Do ‘Environmentalists Care About People. Freedom Foundation. July 17, 2012. <http://archive.myfreedomfoundation.com/blog/liberty-live/detail/do-environmentalists-care-about-people.html>.

⁸⁷ This trend was articulated in *McClanahan v Arizona State Tax Commission* (411 U.S. 164, 1973) in which the Supreme Court stated that “the trend has been away from the idea of inherent sovereignty as a bar to state jurisdiction and toward reliance on federal pre-emption.” See also, *White Mountain Apache Tribe v. Bracker*. (448 U.S. 136) In this case the Supreme Court weighed federal, state and tribal interests to determined that Arizona motor carrier license and fuel taxes did not apply to on-reservation timber operations. The Court reasoned that due to extensive federal

involvement, taxation would undermine the federal policy intending that profits from timber sales accrue to the tribe. While the tribe won in this case, *Bracker* represents another in a number of colonial Supreme Court decisions disrespecting the inherent sovereignty of Indian Nations. In the Great Wolf Lodge case, the district court relied heavily on a balancing of tribal and state interests based on *Bracker*. *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization*. Case No. C08-5562BHS. Order Granting Defendants' Motion for Summary Judgment and Denying Plaintiffs Motion for Summary Judgment Re: *Bracker* Preemption. April 2, 2010.

⁸⁸ The 9th Circuit Appeals Court rejected the lower court's *Bracker* analysis on the grounds that the *Bracker* balancing act applies to non-Indian activity on reservations, while *Chehalis v. Thurston County* dealt with permanent improvements to the property on trust lands. The Supreme Court had previously ruled in *Mescalero Apache Tribe v. Jones* (411 U.S. 145, 1973) that "these permanent improvements on the Tribe's tax-exempt land would certainly be immune from the State's ad valorem property tax." See *Confederate Tribes of the Chehalis Reservation v. Thurston County Board of Equalization*. No 10-35642. United States Court of Appeals for the Ninth Circuit. July 20, 2013.

⁸⁹ Morgan, Glen. Pay higher Property Taxes in Thurston County - unless you are the Great Wolf Lodge. February 3, 2012. Freedom Foundation. <http://www.myfreedomfoundation.com>. Downloaded August 17, 2012.

⁹⁰ See Tanner, Charles Jr. Take These Tribes Down: The Anti-Indian Movement Comes to Washington State. Institute for Research and Education on Human Rights. <http://www.irehr.org/issue-areas/treaty-rights-and-tribal-sovereignty/478-take-these-tribes-down>.

⁹¹ Evergreen Freedom Foundation. 2007. Video of November 11, 2007 Evergreen Freedom Foundation Leadership Conference.

⁹²For more on John Fleming's place in the anti-Indian movement, see Borderlands Research and Education. 2012. *Anti-Indianism in the Skagit Count, Washington GOP*. P.O. Box 1836. Silverdale, Washington 98383.

⁹³ Letter from Kevin Paulson to Washington State Department of Ecology. June 21, 2012. Citizens Review Online. <http://citizenreviewonline.org/capr-goes-on-record-against-ecology-proposals/>.

⁹⁴ Whatcom Tea Party. Email newsletter. March 22, 2013; SF Bay CAPR. June 15, 2013.

⁹⁵ Citizens Alliance for Property Rights. 2012. <http://proprirights.org/>. Downloaded January 15, 2012.

⁹⁶ Citizens Alliance for Property Rights. 2012. <http://proprirights.org/>. Downloaded June 12, 2012.

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