

# *Walking Together:*

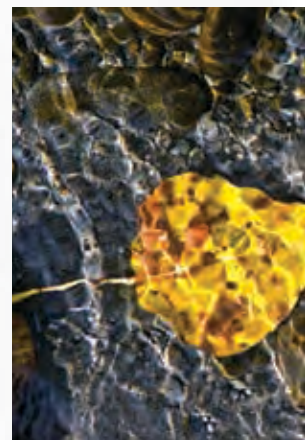
Advancing Tribal-EPA Partnerships  
for the 21st Century

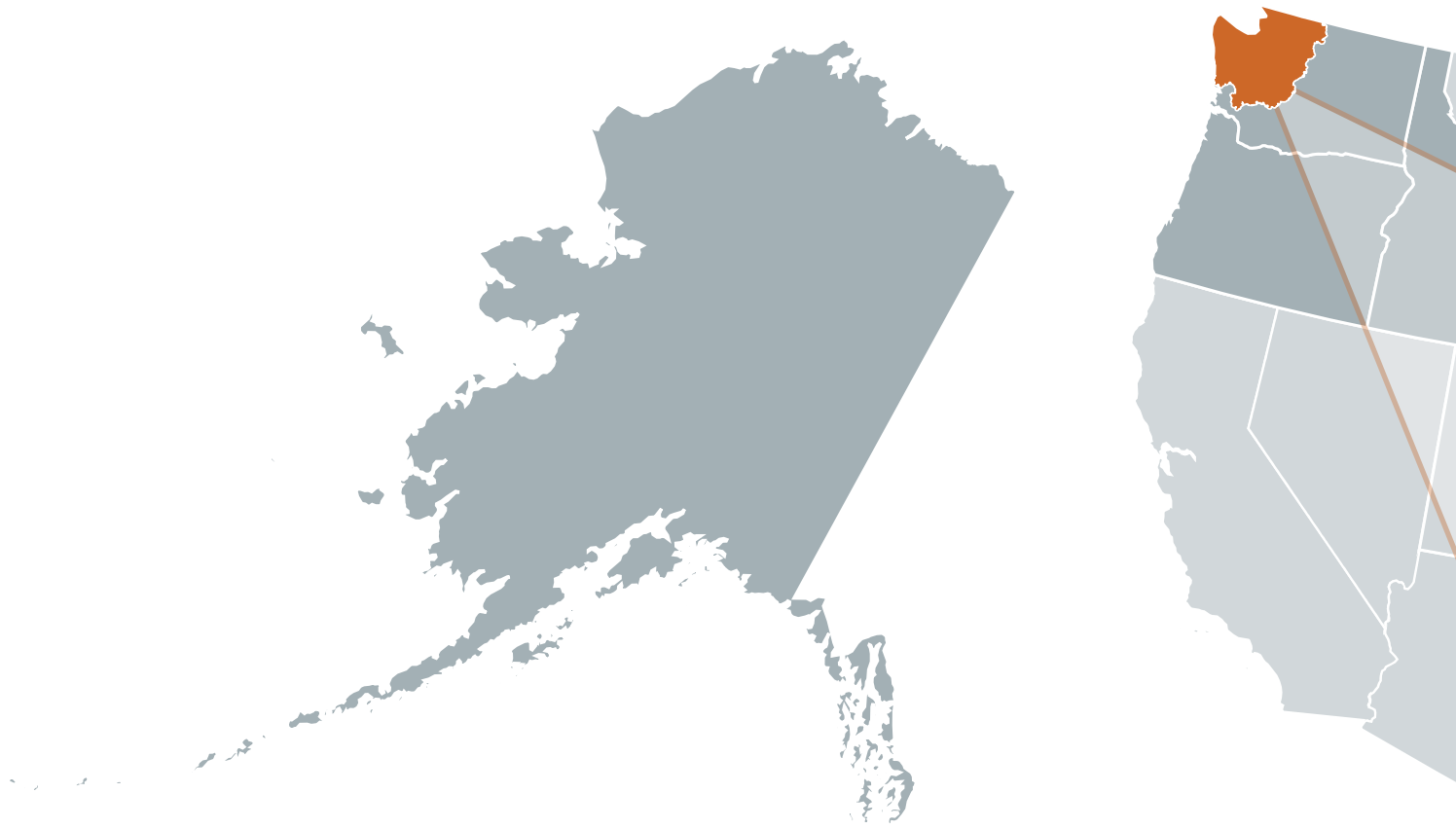




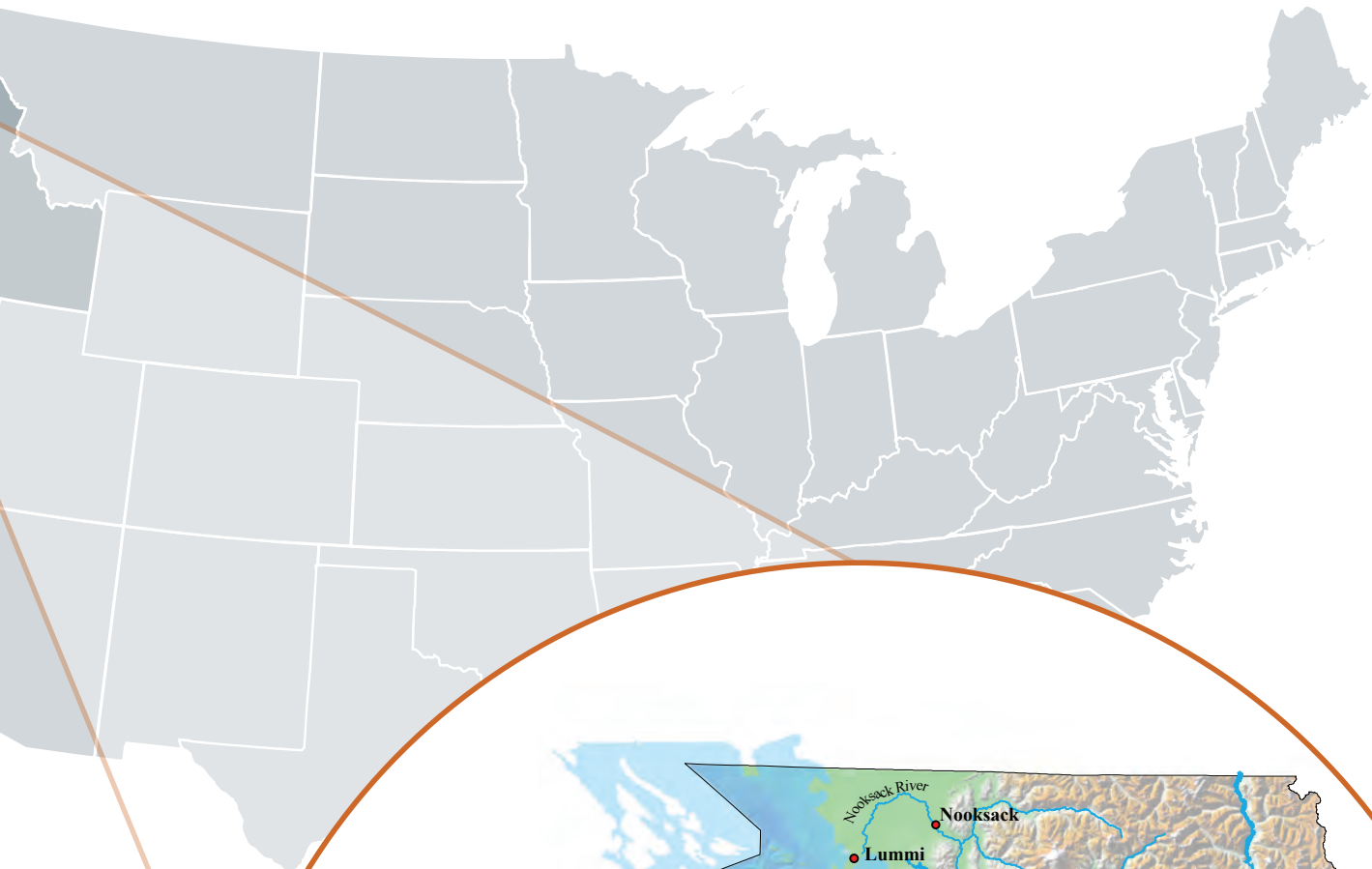
# *Walking Together:*

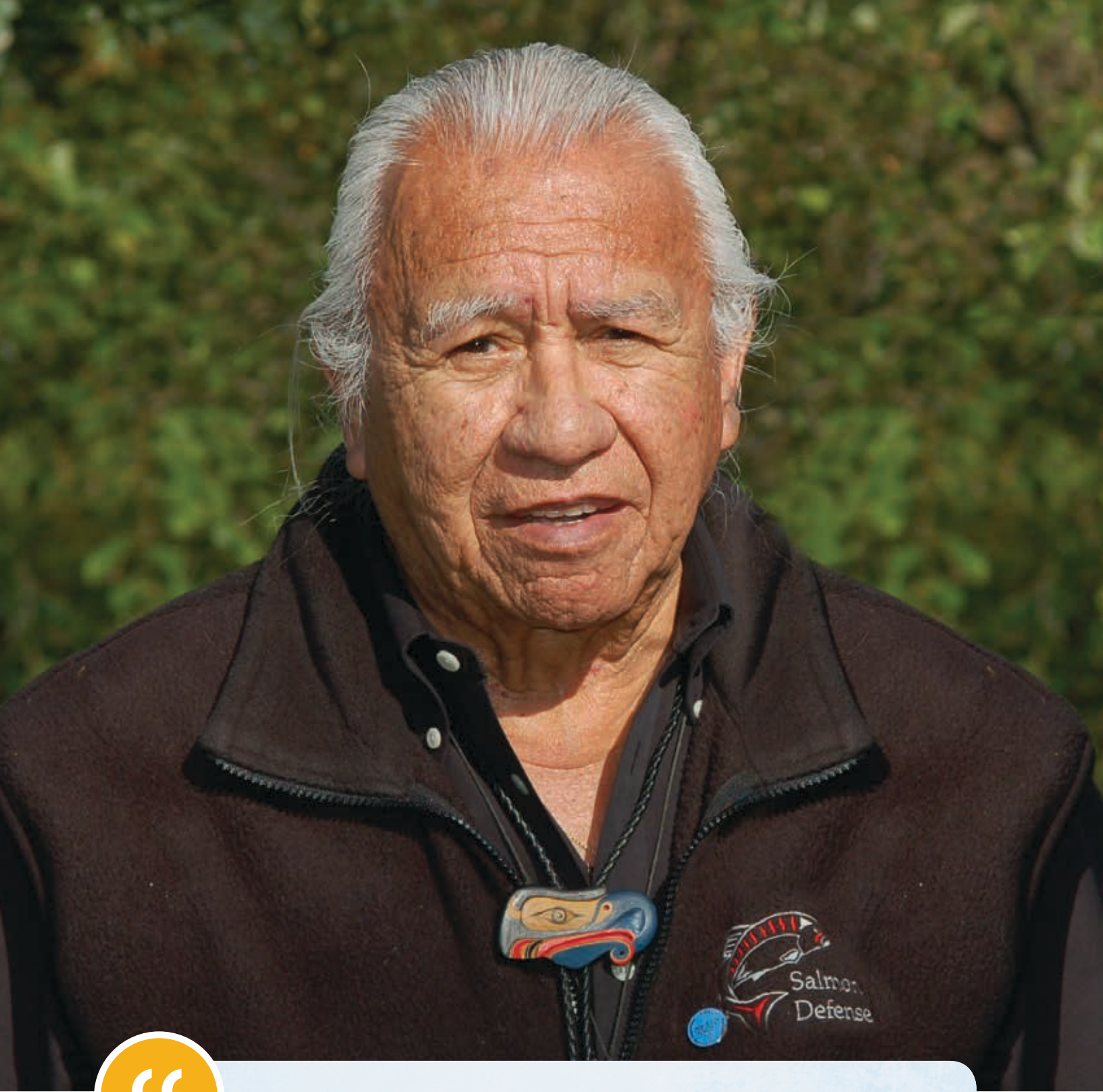
Advancing Tribal-EPA Partnerships for the 21st Century





**It is the intention of this report to represent the experiences and needs of the western Washington treaty tribes. However, based on our communications and many shared priorities and interests, we believe these lessons and growth strategies can be useful to tribes across the nation.**





**We are losing the battle for salmon recovery in western Washington because salmon habitat is being destroyed faster than it can be restored. As the salmon disappear, so do our tribal cultures and treaty rights. We are at a crossroads, and we are running out of time.**

*– Billy Frank Jr. 1931-2014*



# Statement of Purpose

---

Increase support for each tribal government to further protect the environmental integrity of tribal homelands and treaty-reserved resources through implementation of tribal environmental priorities and programs.

Western Washington Treaty Tribes continue to support the EPA General Assistance Program (GAP) as an ongoing partnership with EPA and propose a three-phase plan for growth in program development and funding for the implementation of tribal environmental protection programs. Initially no new authorities will be required; we plan to engage existing authority and building funding levels in current programs will have immediate results. Full commitment to this growth plan will advance development of technical support, staffing and project implementation of critical environmental protection, restoration and cleanup activities.

The homelands, waters, usual and accustomed areas, and traditional territories of each tribe in western Washington contain economically and culturally significant resources that are vital to tribal communities. However, the destruction of habitat and contamination of waters and foods have a direct, serious and substantial effect on the health and welfare of tribal people, their lands, treaty-reserved resources and political integrity. The principal objective of the requested program development and increase in funds is to further develop tribal environmental programs for the 21st century. Strategic program design includes funding development, program implementation, and alignment of authorities and resources to address the federal treaty trust responsibility of environmental protection and restoration critical to sustaining tribal people, lands, waters and resources on the reservation and throughout the usual and accustomed areas.

In 1992, the EPA Indian General Assistance Program (GAP) was established to build basic environmental protection capacity and promote “an EPA presence” within each tribal government that would support identification and response planning to address the environmental protection issues central to the health and welfare of their people, homelands and treaty-protected resources. While a great success, the GAP was conceived and designed as a first step. GAP statutory language specifically limits its use to capacity development only and explicitly excludes implementation activities (except for some solid-waste activities, baseline water quality monitoring and a few other specific exceptions). The second step, of creating an implementation strategy fully respectful of tribal sovereignty that is responsive to need and identifies appropriate funding mechanisms, has yet to be accomplished.

“Walking Together” responds to the call for implementation funding by identifying the needs of our treaty tribes and developing a pathway forward that is reflective of federal trust obligations and treaty agreements. We have invested, along with EPA, more than 25 years of work to establish environmental and natural resources programs and partnerships in western Washington. This report is intended to meet today’s needs and future challenges. “Walking Together” can be used by any tribe as a model. The ideas and information contained within this report were developed by the 20 treaty tribes in western Washington. It is improved from awareness of issues and direct comment from tribes across the country. While each tribe has individual and specific jurisdictional issues, management authorities, sovereign powers and relationships, all tribes share a need for increased implementation funding from EPA to protect their people, lands and resources. The information contained within this report is intended as a foundation while each tribe can develop an individual needs assessment and approach.





# Table of Contents

<b>Statement of Purpose</b> .....	<b>1</b>
<b>Executive Summary</b> .....	<b>5 - 11</b>
History .....	5
Urgency of Action .....	8
Purpose .....	9
Pathway Forward .....	9
Conclusion .....	11
<b>Timeline</b> .....	<b>12 - 13</b>
<b>History and Background</b> .....	<b>15 - 17</b>
Introduction .....	15
Tribal Grant History .....	15
“Walking Together” – The “Beyond GAP” Project .....	16
<b>Tribal Environmental Protection Programs Today</b> .....	<b>18 - 20</b>
The Bright Line between Capacity and Implementation .....	19
<b>Description of Need</b> .....	<b>21 - 25</b>
Implementation Needs .....	21
<b>Barriers</b> .....	<b>26 - 27</b>
<b>Pathway Forward</b> .....	<b>29 - 32</b>
Shared Elements – Adequacy, Reliability, Flexibility and Accountability .....	29
A Plan for Growth .....	31
<b>Phases</b> .....	<b>33 - 34</b>
Phase One – Fiscal Year 16 .....	33
Phase Two – Fiscal Year 16/ 17 .....	33
Phase Three – Fiscal Year 18+ .....	34
<b>Demonstration Projects</b> .....	<b>37</b>
Intent .....	37
Reports .....	37
<b>A Manual to Guide Tribal Toxics Monitoring Programs</b> .....	<b>38 - 40</b>
<b>Tribal Toxics Reduction Technologies Assessment</b> .....	<b>40 - 43</b>
<b>Tribal Guidance Document to SMS and SCUM II</b> .....	<b>43 - 47</b>
<b>Guidelines Development for Evaluating Resource Development Impacts on Tribal Communities</b> .....	<b>47 - 48</b>
<b>Conclusion</b> .....	<b>53</b>
<b>Acknowledgments</b> .....	<b>55</b>
<b>Implementation Success Stories</b>	
Jamestown, Nisqually, Stillaguamish – Water Quality / Harmful Algal Blooms .....	28
Upper Skagit Indian Tribe – Wastewater Treatment .....	35
Nooksack – Sediment / Climate Change .....	49
Port Gamble – Nearshore Monitoring .....	50
Skokomish – Estuary Restoration .....	51
Swinomish – Air Quality .....	52



# Executive Summary

---

Everyone deserves to live in a healthy and sustainable environment. Through established treaty rights, court decisions and federal policies, tribal members are promised access to protected reserved resources specific to them. For years the EPA has worked with the states, through program delegation and awarding predictable programmatic funding capacity to protect environmental and human health for their residents. As tribes of the 21st century, we strive for this same sovereign treatment. Currently, EPA does have some funding sources and authorities aimed at supporting tribes. They are not, however, designed or funded to meet the capacity and needs of tribes today. Funds are allocated in a “stovepiped” grant-based media process, forcing tribes to compete among themselves for limited federal allocations. These funds, whether they be program delegation or other funding source, are not sufficient to meet current tribal need, and do not provide the reliable programmatic funding necessary to protect the health of tribal resources and communities. Tribes simply cannot do what is necessary within the limitations of the existing resources.

This is an issue of **SOVEREIGNTY.**

This is an issue of **TREATY RIGHTS.**

This is an issue of **ENVIRONMENTAL JUSTICE.**

## History

---

The Northwest Indian Fisheries Commission (NWIFC) is a support service organization for the 20 treaty Indian tribes in western Washington. It was created following the 1974 *U.S. v. Washington* ruling (Boldt decision) that re-affirmed the tribes’ treaty-reserved fishing rights and their role as co-managers of the natural resources of the state of Washington. The NWIFC has more than 40 years of environmental and natural resources management knowledge and experience. The NWIFC assists member tribes in their roles as natural resources co-managers by supporting tribal policy and technical issue development, coordinating responses to shared natural resources management objectives, and supporting efforts of the individual tribal governments to speak with a unified voice on matters that impact tribes now and for generations to come.

The member tribes of the NWIFC work tirelessly to advance the essential partnerships necessary to restore and protect shared environments and resources. For more than 25 years, the U.S. Environmental Protection Agency (EPA) and the treaty tribes of western Washington have combined efforts to build and stabilize the foundation capacity of tribal environmental programs through the EPA Indian General Assistance Program (GAP).

Tribes are proud of the work that has been done to build basic capacity and to further the objectives of EPA Region 10’s Strategic Plan. Now tribes are ready for the next steps, to continue this unique relationship with EPA and other federal partners as we develop a growth plan to further the implementation of tribal environmental programs.

# Executive Summary

---

Since the official adoption of the 1984 Indian Policy by the EPA, followed in 1992 by the establishment of GAP, individual tribal governments and the EPA have partnered to build a solid foundation for innovative and successful programs. This foundation has created capacity at each tribe to focus on environmental protection, and allowed EPA to build its own capacity. The EPA has been working through the American Indian Environmental Office (AIEO) to build GAP funds and improve accountability. The GAP is an important success, and must be sustained as an essential funding source. But now it is time to design, fund and build the program expansion necessary to enable tribes to implement the corrective actions critical to protect tribal people, homelands and resources. While GAP will always be a foundational component of tribal environmental protection programs, many tribal governments need resources to actually advance, implement and respond to the issues identified and plans developed using GAP funds. As one tribal program manager stated, “With GAP we have good plans sitting on the shelf identifying the issues – but no money to implement them.” Clearly, protection of tribal resources requires funding that allow for planning, coordination and action.

In July 2011, tribal leaders from western Washington took the issue of treaty rights protection to the White House, advancing the Treaty Rights at Risk initiative. The initiative is a call to action for the United States to fulfill its obligation to protect tribal treaty rights. This report, “Walking Together: Advancing Tribal-EPA Partnerships for the 21st Century,” is a natural extension of the Treaty Rights at Risk work, and would further build on a long history of partnership with EPA that has been a central support to tribal environmental protection actions. To move forward, there need to be implementation mechanisms and funding sources to ensure tribes can remain engaged in local environmental protection and restoration efforts. Tribal governments must remain strong partners that are able to both initiate and participate in work that is critical to healthy tribal lands and resources.

A new idea, the Multi-Media Tribal Implementation (MMTI) program, was proposed by the EPA for the FY 2012 budget. In this proposal, the EPA recognized the need for increased implementation funding for tribal programs across media, and submitted a budget request to begin funding such activities. This report from tribes is intended to support that idea and reply to some important questions raised by OMB and concerned Congressional members in response to the MMTI proposal: “What is the specific need?” and “Are new authorities necessary?” The western Washington treaty tribes have detailed specific needs and suggested response approaches in this report, “Walking Together.” The report is a compilation of issues, ideas and next steps to better respond to the increasing threats to tribal homelands and resources. The proposed path forward honors the EPA/tribal partnership, learning from challenges and creating new opportunities. Many tribal governments are excited by this new approach to implementation and want to fully support any work that moves tribal environmental protection forward.

“Walking Together” includes the summary findings of discussions with tribal environmental program staff and leaders. It also includes information on the environmental issues, success stories, programmatic needs, and proposed implementation pathways and tools. This information was collected and compiled to inform an implementation

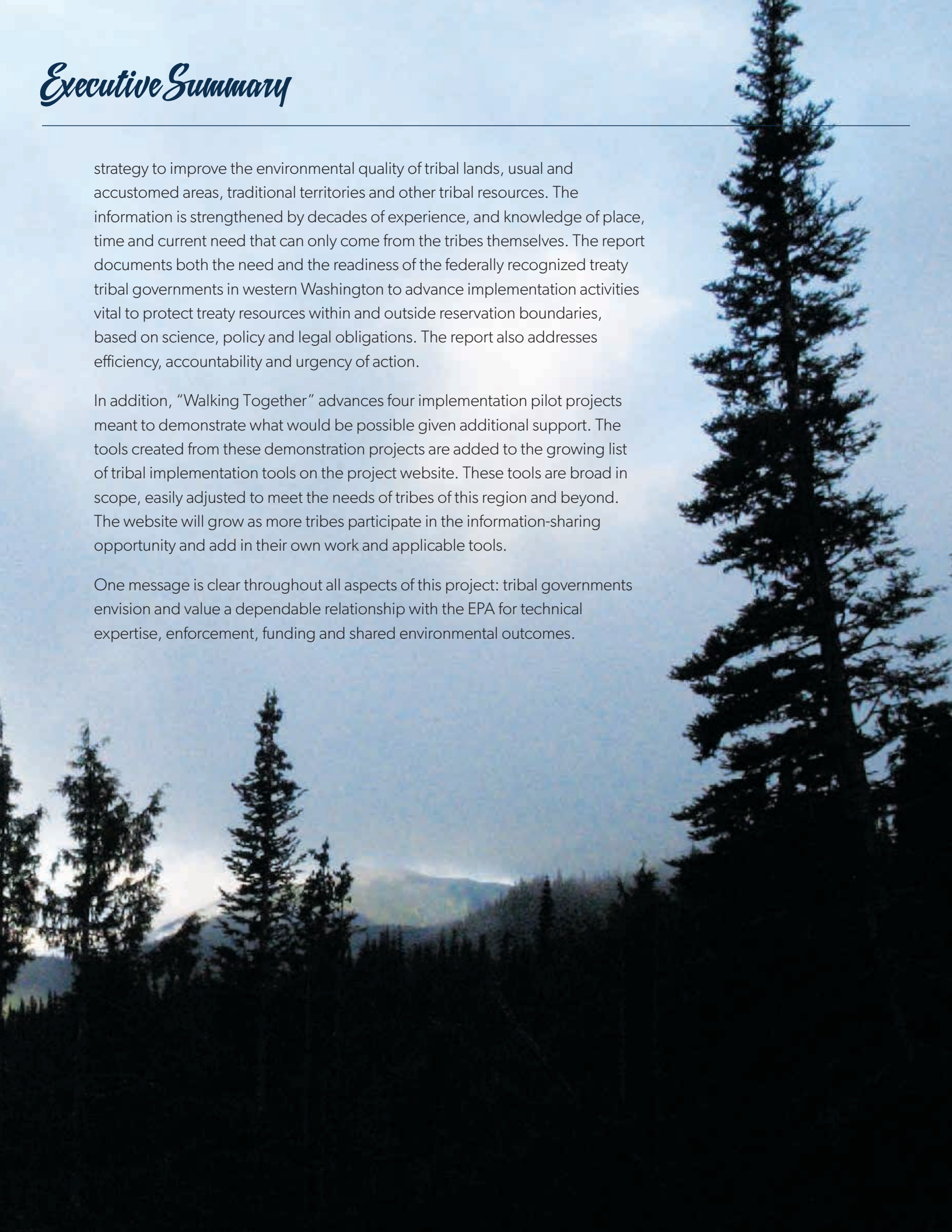
# *Executive Summary*

---

strategy to improve the environmental quality of tribal lands, usual and accustomed areas, traditional territories and other tribal resources. The information is strengthened by decades of experience, and knowledge of place, time and current need that can only come from the tribes themselves. The report documents both the need and the readiness of the federally recognized treaty tribal governments in western Washington to advance implementation activities vital to protect treaty resources within and outside reservation boundaries, based on science, policy and legal obligations. The report also addresses efficiency, accountability and urgency of action.

In addition, "Walking Together" advances four implementation pilot projects meant to demonstrate what would be possible given additional support. The tools created from these demonstration projects are added to the growing list of tribal implementation tools on the project website. These tools are broad in scope, easily adjusted to meet the needs of tribes of this region and beyond. The website will grow as more tribes participate in the information-sharing opportunity and add in their own work and applicable tools.

One message is clear throughout all aspects of this project: tribal governments envision and value a dependable relationship with the EPA for technical expertise, enforcement, funding and shared environmental outcomes.



# Executive Summary

---

## Urgency of Action

---

The ceded lands and usual and accustomed areas of each tribe in western Washington contain economically and culturally significant resources. Today, these treaty-reserved resources are threatened by contamination from point and nonpoint sources of pollution and are being threatened, eroded and destroyed as a result of increased population, urban growth, development, hydro-modifications, agricultural and forest practices, and global climate change. Because these watersheds, lands and food resources are vital for economic stability, growth, and the cultural and spiritual life of tribes, this degradation or contamination has a direct, serious and substantial effect on the health, welfare and integrity of both tribal and non-tribal communities and treaty-reserved resources. Using available resources, tribal governments are consistent participants in federal, state and local processes to advance shared environmental priorities (See “Implementation Success Stories” for examples of these relationships). But this is not enough. Both the Treaty Rights at Risk and the State of Our Watersheds reports (see [nwifc.org/beyondgap-walkingtogether](http://nwifc.org/beyondgap-walkingtogether) for further detail) document the need for tribal environmental protection programs to be developed and maintained at levels sufficient to protect those rights, lands and resources.

Today, tribes are constrained in their efforts to accomplish the work necessary to protect their rights and resources. Grant and project-based competitive funding is detrimental to efficiency and results. The cost of this shortfall is high. Without consistent and adequate support, tribal governments struggle to build and maintain agency partnerships and community relationships that are critical for the long-term sustainability of successful outcomes. This coupled with an ever-increasing administrative burden is restricting tribes’ ability to accomplish the work necessary to protect tribal treaty-reserved resources. Too often tribes are forced to stop the real work in order to apply, wait for, and meet administrative requirements of grants or other competitive funding sources to accomplish a project or issue response. Creating, managing and supporting programs while cobbling together funding sources with inconsistent policies is an inefficient use of available resources and ultimately creates less accountability, not more. Building dependable and predictable implementation funds for tribes will result in improved accountability, efficiency, and most importantly, greater environmental outcomes.

# Executive Summary

---

## Purpose

---

The principal objective is to further develop and stabilize tribal environmental programs as we continue into the 21st century. The ever-increasing human population in our region and associated land and water uses are creating more pollution and requiring more resources. Threats like the impacts associated with climate change make this need even more urgent. Effective programs require predictable and sustainable funding to protect and restore tribal lands, waters and resources. The United States has a federal trust responsibility to protect tribal treaty rights, including providing the funding for programs required to implement environmental protection strategies necessary to sustain tribal treaty rights. We must gather our cumulative experience and perspectives and walk this path together toward environmental justice as the “fair treatment and meaningful involvement of all people... with respect to the development, implementation, and enforcement of environmental laws, regulations, and polices.” ([www.epa.gov/environmentaljustice](http://www.epa.gov/environmentaljustice))

Each tribe has an individual story and every environmental program reflects the unique history, culture and location of that tribe. This broad range of experiences requires tribal governments to be able to address their own particular environmental management and protection needs. A path that supports the tribes’ ability to implement solutions appropriate to their specific priorities and concerns is an important component of this partnership. “Treatment in a manner similar to a state” (TAS) is a good beginning and works well for some tribes, though it is not the final step to full program realization for tribes, nor does it bring forward the necessary funding. Currently there are 95 TAS approvals in place nationwide; 48 tribes have authorized TAS for administering water quality standards and 47 tribes have TAS provisions under the Clean Air Act. TAS is a bridge supporting tribal self-determination that will allow tribes and tribal organizations to design their own programs that can promote efficiency, partnership development and rapid response to the environmental issues threatening the health and welfare of each unique tribal community, but it is not the only solution.

## Pathway Forward

---

Considering the immediacy of need and the programmatic improvements necessary, tribes are proposing a phased approach to accomplishing self-determination for their environmental protection programs on a broad scale. Initially no new authorities will be required, as we plan to engage existing authorities and build funding levels in those programs.





# Executive Summary

---

## **PHASE ONE (FY 16)**

Work within the administrative and regulatory guidelines of existing EPA programs and authorities to enhance implementation and environmental protection activities impacting tribal lands. This would include:

- Sustaining GAP funding and revising the existing GAP guidance to allow for increased flexibility and determine its tribal program design.
- Increasing the tribal allocation of specific program funds to allow for an immediate expansion of media-specific implementation projects.
- Fully utilizing the Performance Partnership Grant (PPG) rule to minimize funding limitations and maximize the ability to address tribal priorities, meet immediate needs and produce measurable environmental outcomes.

## **PHASE TWO (FY 16 /17)**

Work to increase funding and lift restrictions on existing programs. This would include:

- Continuing to support and increase base GAP funding to ensure all tribes have access to adequate, reliable funding to sustain capacity and initiate basic implementation activities. This will require changing GAP statutory language to allow for full implementation of environmental protection and restoration work.
- Increasing competitive, media-specific program funds comprehensively to allow for increased implementation project work.

## **PHASE THREE (FY 18+)**

Work with the EPA to create a self-governance compacting and self-determination contracting funding mechanism for tribal environmental protection programs reflective of the federal-tribal trust relationship. This would provide tribes the flexibility to design programs to meet the needs of their communities, while increasing program efficiency and accountability.

## *Conclusion*

---

The EPA and the treaty tribes in western Washington have a strong record of accomplishment, partnership development and innovation. Tribal governments have been encouraged by over 30 years of work with EPA in developing and institutionalizing an Indian Program within the agency. The EPA has many success stories and results from these partnerships, and tribes want to continue this walk together.

Let us build from that success and take the next step: creating and funding a growth plan that is respectful of the capability and needs of the 21st century tribal governments and the experience of our shared partnership with the EPA. Let us commit to an implementation program that will support tribal governments and the EPA to better protect tribal people and resources, and support a healthy, safe and prosperous Washington state and nation. Let us invest together and build a forward-thinking plan supporting the environmental integrity on which we all depend. And let us walk together purposefully to meet the growing threats to our shared natural resources.

# Timeline

## 1850s - 1950s

**TREATIES MADE; TREATIES BROKEN** Tribes in what was to become Washington state signed the Stevens Treaties, ceding their land to settlers while retaining their traditional fishing, gathering and hunting rights.

*"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; and of erecting temporary houses for the purposes of curing; together with the privilege of hunting on open and unclaimed lands. Provided, however, that they shall not take shell-fish from any beds staked or cultivated by citizens."* – Treaty of Point No Point, January 26, 1855

Within a few decades, the state of Washington began systematically denying tribal treaty-protected rights.

## 1960s - 1970s

**FISH WARS IN WASHINGTON STATE** In protest of denied treaty rights, tribal members actively fished in waters the state declared off limits. They were tear-gassed, arrested and jailed for fishing in their traditional sites.

## 1969 - 1970

**CREATION OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY** Congress passed the National Environmental Policy Act (NEPA) in late 1969. On Dec. 2, 1970, President Nixon signed EPA Order 1110.2, establishing the U.S. Environmental Protection Agency to consolidate federal research, monitoring, standard setting and enforcement activities to ensure environmental protection. He named William D. Ruckelshaus the first Administrator.

## 1974

**THE BOLDT DECISION** The Fish Wars set off a legal battle that led to *U.S. v. Washington* (the Boldt decision). Later upheld by the Supreme Court, the Boldt decision established the tribes as natural resources co-managers with the state of Washington. It also established that tribes were entitled to 50 percent of the harvestable number of salmon returning to Washington waters.

## 1975

### CREATION OF THE NORTHWEST INDIAN FISHERIES COMMISSION (NWIFC)

The 20 western Washington treaty tribes created the NWIFC to provide technical assistance and policy development to support the tribes' role as natural resources co-manager.

From the preamble to the NWIFC Constitution:

*"We, the Indians of the Pacific Northwest, recognize that our fisheries are a basic and important natural resource and of vital concern to the Indians of this state, and that the conservation of this natural resource is dependent upon effective and progressive management. We further believe that by unity of action, we can best accomplish these things, not only for the benefit of our own people but for all of the people of the Pacific Northwest."*

## 1972 - 1980

**EXPANDING THE TRIBAL ROLE** By 1970, no environmental laws mentioned tribes or Indian Country. Starting with the 1970 Clean Air Act, EPA and Congress struggled to delineate the tribes' role in environmental programs. Attempts were made to include tribes, but nothing formal was settled on. In 1978, EPA coordinated the first meeting of an agency-wide workgroup to develop policy for tribal environmental programs.

## 1984

### ADOPTION OF THE EPA INDIAN POLICY

Two important cases, *U.S. v. Montana* and *Nance v. EPA*, raised critical issues important to the growth of EPA's Indian program. President Reagan had called for tribal self-determination. The EPA Policy for the Administration of Environmental Programs on Indian Reservations was signed.

## 1990

### CREATION OF THE COORDINATED TRIBAL WATER QUALITY PROGRAM

A program development grant established the Coordinated Tribal Water Quality Program to further the ability of the 27 federally recognized tribes in Washington state to address water quality issues threatening treaty-protected resources. The program was funded through the 1990s by EPA support, Congressional support and eventually the Indian General Assistance Program.

1850s - 1950s



1960s - 1970s



1974



1975



1969 - 1970



1972 - 1980



1984



## 1992

### CREATION OF THE INDIAN GENERAL ASSISTANCE PROGRAM (GAP)

Congress passed the "Indian General Assistance Program of 1992" to provide grants to Indian tribal governments and intertribal consortia to build capacity to administer environmental regulatory programs, and provide technical assistance from EPA to develop multimedia programs to address environmental issues on Indian lands.

## 1994

### CREATION OF THE NATIONAL TRIBAL OPERATIONS COMMITTEE (NTOC)

EPA created the National Tribal Operations Council to better implement the 1984 Indian Policy. Designed to "improve communication and build stronger partnerships with the tribes," the NTOC comprises tribal leaders and EPA's Senior Leadership Team.

### CREATION OF THE AMERICAN INDIAN ENVIRONMENTAL OFFICE (AIEO)

EPA Administrator Carol Browner reaffirmed the 1984 Indian Policy, issuing a memorandum that outlined specific actions to better implement environmental protection on reservations. The American Indian Environmental Office (AIEO) was established within the Office of Water.

## 1996

### CREATION OF THE REGION 10 REGIONAL TRIBAL OPERATIONS

**COMMITTEE (RTOC)** Region 10's Office of Tribal Operations solicited nominations for RTOC members in the spring of 1996. A charter was officially adopted in 2000 after extensive tribal review. The charter, last certified in 2013, reads, "The mission of the RTOC is to protect and improve tribal health and environmental conditions for federally recognized Tribes consistent with the EPA's Indian Policy, the EPA's trust responsibility, federal laws, regulations, policies, and guidance."

## 2000

### CONSULTATION AND COORDINATION WITH INDIAN TRIBAL

**GOVERNMENTS** President Clinton signed Executive Order 13175 to establish consultation and collaboration with tribes in the development of federal policies with tribal implications, to strengthen government-to-government relationships, and to reduce the imposition of unfunded mandates on tribes.

## 2007

### EVALUATION OF THE TRIBAL GENERAL ASSISTANCE PROGRAM

According to an evaluation requested by the AIEO, GAP restrictions hindered tribal environmental program development by precluding the use of funds for implementation. The evaluation team recommended developing a mechanism to support tribal program implementation.

## 2011

**TREATY RIGHTS AT RISK - CALL TO ACTION** Tribal leaders from the Pacific NW bring "Treaty Rights at Risk" to the White House.

### EPA POLICY ON CONSULTATION AND COORDINATION WITH INDIAN

**TRIBES** EPA adopted a policy to establish national guidelines and institutional controls for consultation with tribes, giving the primary responsibility to program and regional offices.

## 2012

### STATUS OF CORRECTIVE ACTIONS IN RESPONSE TO 2008 REPORT A

"Framework for Developing Tribal Capacity Needed in Indian General Assistance Program" was created in response to recommendations made by a 2008 report by the EPA Office of the Inspector General.

## 2013

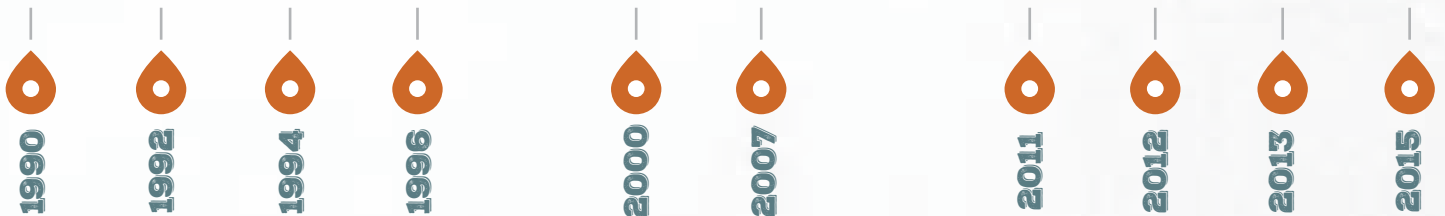
### BEYOND GAP PROJECT AWARDED TO NWIFC

NWIFC applied for and received a grant from Region 10 in FY 2013 to "further the application and scope of our tribal environmental protection programs from building capacity to addressing implementation necessary to protect Treaty Rights, which are at risk."

**NEW GAP GUIDANCE ISSUED** EPA's original GAP guidance document was issued in 1994 and updated in 2000 and 2006. After a consultation and revision process, AIEO issued new guidance in May 2013. The new guidance increased accountability and reporting requirements, decreased flexibility, and added mandatory EPA/Tribal Environmental Plans (ETEPs).

## 2015

**WALKING TOGETHER** The final Beyond GAP report is issued.





Lorraine Loomis

Gina McCarthy



**EPA Administrator Gina McCarthy and Regional Administrator Dennis McLerran clearly recognize the federal government’s trust responsibility to protect the health and treaty rights of the tribes, which also benefits everyone else who lives here.**

*– Lorraine Loomis, Chair, NWIFC*

**Our Government-to-Government work with tribes is absolutely fundamental to protecting people’s health and the environment in the Northwest and beyond. The tribes’ deep connection and expertise in environmental and natural resource issues must be understood, valued and taken into account to inform our work. This is critical to supporting our tribal partners as we walk together to leave future generations a healthy and sustainable environment.**

*– Dennis McLerran, Regional Administrator, EPA Region 10*



# History and Background

---

## Introduction

---

The evolution and substance of EPA's Indian Program is a success story for tribes and EPA. Tribes have worked to be responsive to threats to the environment and human health, while simultaneously developing program capacity. EPA has worked on developing and sustaining its own ability to support the growth and work of tribal environmental programs. The treaty tribes of western Washington have demonstrated consistent leadership and capability to design and implement models and programs to advance our work together. The development of the GAP concept was an important step, and was accomplished by identifying need and working in partnership to advance change.

## Tribal Grant History

---

While GAP is integral to the continued success of tribal environmental protection work, there are other media-specific programs that support tribal governmental efforts. Outside of GAP funds, the largest sources of tribal grant resources are Clean Water Act (CWA) section 106 and 319 and Clean Air Act (CAA) section 103 and 105 grants. Reviewing the awards for these programs, the available resources are clearly either stagnant or declining.

### **CLEAN WATER ACT SECTION 106**

Since 2005, while the national total available funds have increased, the total tribal allocation of CWA 106 funds has gradually declined from 11.55% of total funds to 10.24% of total available funds. So while the available national funding limit has increased \$42.7 million, the national tribal allocation has only increased \$1.6 million over 10 years.

### **CLEAN WATER ACT SECTION 319**

Despite an increase in the cost of testing, staffing and management, base funding in CWA 319 has remained stagnant at \$30,000 per year. Competitive funds, both regionally and nationally, have dropped consistently since 2008. These competitive funds, for which there is continued and growing need, dropped from a Region 10 allocation of \$1,316,394 (approximately 31% of national allocation) in 2008 to a low of \$590,312 (approximately 25% of national allocation) in 2014.

### **CLEAN AIR ACT SECTION 103 & 105**

Over the last 10 years, the amount of funds for tribal air quality management grants has remained virtually unchanged. Showing a modest increase of less than 1% of total funding, tribal air grants have only grown \$2.1 million since 2005.

# History and Background

---

It is clear additional support in media-specific grants is necessary to continue the important work already under way by tribes. However, this only addresses a portion of the demonstrated need; implementation funds applicable to the broad scope of need are necessary to move forward in protecting and preserving the environment and human health.

## *“Walking Together” — The Beyond GAP Project*

---

The “Walking Together” project developed here is intended to initiate the next step by building an implementation funding strategy that creates solutions and allows action to protect all that is vital to our survival. “Walking Together” is about working with, and engaging the experience and expertise of, the tribes in western Washington to document need and compile a forward-thinking plan to support implementation activities important to protect tribal lands and resources. Through engagement with tribal leaders and tribal staff, knowledge and perspectives have been compiled to create an improved implementation strategy for tribal environmental programs. This project is a progressive effort by the member tribes of the NWIFC to address programmatic and funding deficiencies impeding their resource protection efforts. This plan supports tribal implementation of environmental protection and restoration.

The plan is based on a number of assumptions:

- GAP alone is inadequate to support tribal environmental program objectives and needs.
- Environmental health and natural resources are in jeopardy – treaty rights are at risk.
- Tribes have successfully built basic operational and management capacity using GAP funds and are ready to move to the next step of environmental program development.
- GAP must stay in place for base capacity as currently developed for maintenance of core program function, staff development, new staff training, and replacement of equipment and supplies.
- Tribes are key players in water quality, habitat protection/restoration and other environmental issues, and are successful in addressing regional problems in Indian country and for the wider community.
- A growth plan is needed to allow for individualized program design, scope and priorities.
- Funding support needs to be adequate, flexible and reliable.

Protecting tribal resources and the habitat they depend on requires funds to be used within and outside of reservation boundaries, comprehensively responsive to tribal management authorities.

# History and Background

---

The “Walking Together” report has the following objectives:

- Develop a pathway that identifies barriers and creates solution-based guidelines and mechanisms to support development of tribal program implementation strategies.
- Further relationships that are central to the environmental integrity of our region by engaging partners in designing the next phase of tribal environmental protection programs.
- Design a pathway that best fits the needs of a multi-media tribal program supporting implementation of tribal environmental priorities including: monitoring and scientific research/analysis, issue identification, land-use planning and regulatory approaches, on-the-ground project implementation, participation in environmental processes at all levels, and public involvement and education. All these topics must anticipate the impact of climate change.
- Funding options to support tribal implementation should be identified.



**The work the Tribes have done in the last 30 years speaks for itself.**

*– Tribal Environmental Director*



# *Tribal Environmental Protection Programs Today*

---

With more than 20 years of EPA GAP grant-supported capacity building, all member tribes of the NWIFC have an environmental office staffed with a minimum of one environmental specialist. Today, those offices range from a staff of two focused on EPA-specific media programs (typically water issues), to staffs of 20 or more professionals working on a wide range of natural resources issues supported from a variety of tribal and non-tribal funding sources. All tribes report being recipients of a basic GAP grant, as well as at least one other EPA grant (such as CWA 106 or 319). Some tribes have multiple EPA grants running simultaneously, targeting a variety of media-specific issues (air, water, solid waste, etc.). Others use EPA funds as seed money to leverage additional tribal federal, state and local dollars to address targeted natural resources concerns, such as shoreline management or toxic site cleanup. Tribes have also used EPA funds to evaluate climate change impacts related to air and water quality. Many tribes actively use the Performance Partnership Grant (PPG) process, which allows increased flexibility and advanced accountability for multiple EPA grants. Through the use of the PPG, tribes are merging media-specific funding sources to accomplish larger, multi-media outcomes. PPGs are valuable because they can allow the breakdown of media-specific, programmatic funds to allow for a more holistic approach to natural resources management. However, they do not address the issues of inadequate, competitive funding sources. No matter the size of the environmental program, each tribe relies heavily on the consistency of GAP funding as a reliable base to develop and support its unique programs.

As sovereign nations, tribes approach natural resources management in different ways, depending on the size and complexity of the issues they are addressing. Current tribal environmental programs include everything from basic water quality monitoring to indoor air programs, solid-waste management and cleanup, toxic reduction in traditional foods, habitat restoration, land acquisition, research, toxics prevention, climate change adaptation and brownfields site management. The geographic location and specific environmental concerns in each tribe's area of interest impact the size and structure of its program. Some tribes have positioned their departments in a manner that mirrors EPA's media-specific program structure, while others approach natural resources management in a more integrated way, working closely with other tribal departments such as housing (indoor air), utilities (solid waste, drinking water), realty (land acquisition) and legal (water quantity).

Using varied support mechanisms (please see table below), tribal governments have undertaken a wide variety of environmental implementation projects. Many of these were conceived, planned and enabled with GAP funds, though the actual work was accomplished using other funding sources. Some of this work has been accomplished through utilization of the "treatment in a manner similar to a state" (TAS) process. While this program has its advantages for some tribal governments, it is not appropriate, or adequate, for all tribes due to their unique governing structure and approach to resource management. In order for each tribal government to express its sovereignty and jurisdictional and management authorities, the EPA must realize that TAS is not the answer to all environmental implementation issues for all tribes. Instead, tribal governments are calling for consistent and reliable funding to allow for management of the wide range of environmental threats being faced, and opportunities made available, which impact their lifeways.

It should be noted that even within the current constraints, tribes have been successful in implementing a variety of environmental projects. Tribal governments have repeatedly shown their willingness and ability



# Tribal Environmental Protection Programs Today

---

to find, access and manage diverse funding sources for environmental implementation work, which is accomplished by combining and leveraging resources from local, state and federal partners. And while GAP has been instrumental in providing the capacity to study and plan for these projects, the tribal governments have been necessarily creative in seeking out additional support and resources. From the Department of Agriculture to the Department of Energy, and from direct financial support from tribal revenue to managing a crew of volunteers, tribes have accomplished important implementation work. Examples of these projects can be found throughout this report as “Implementation Success Stories.”



**...Tribes must leverage money from other sources to accomplish what is needed...**

*– Program Manager*

**With GAP you can do assessment work, planning, and build technical capacity but you cannot follow through with response actions.** *– Tribal Administrator*



## *The Bright Line between Capacity and Implementation*

---

Specific examples of the bright-line need between the capacity development enabled through GAP funding and implementation are:

**Science:** Can train staff to monitor water quality, but can't pay for routine field work that identifies emerging pollution problems, or engage technical capacity for applied response projects such as culvert removal or water quality standards development.

**Invasive Species:** Can identify and map where knotweed is, but can't initiate a removal strategy.

**Geographic Information Systems (GIS):** Can purchase computers and software, train staff to use the software, and develop a library of local spatial data, but can't implement the projects the data indicate are needed.

**Habitat/Landscape Recovery and Restoration:** Can identify stream reaches lacking large woody debris, but can't pay to fix the problems; can identify blocking culverts, but can't pay to fix the problem.

# Tribal Environmental Protection Programs Today

---

*The Bright Line between Capacity and Implementation (cont.)*

**Shellfish Protection:** Can monitor and identify sources of nutrient loading and fecal contamination resulting in shellfish area closures, but can't conduct source control work, septic inspections and training, or repair; can develop new methodologies to identify human sources of pathogens in pilot areas, but can't apply the methodology systematically across tribes' entire U&As.

**Stormwater:** Can identify outfalls and nonpoint sources of bacterial contamination or other effects on aquatic life or habitat, but can't work to fix the problems identified.

**SEPA & Building Permits:** Can develop a database to track and comment on permits, but can't implement its use for ongoing review to defend treaty rights.

**Response Monitoring:** Can conduct ambient monitoring but can't monitor for effectiveness of remedial or corrective actions.

**Water Quality – Stream Temperatures:** Can monitor for summertime stream temperatures, but can't institute any remedy of cause.

**Salmon Recovery:** Can conduct ecosystem evaluations and identify issues, but can't implement a response strategy such as constructing logjams, acquiring riparian lands or remediating pollution sources.

**Forest Practices:** Can review timber harvest activities and issues related to tribal treaty resources, water quality and habitat conditions, but can't address or correct water pollution sources.

**Toxics in Traditional Foods:** Can conduct fish tissue analysis on tribal resources, assess chemical contaminants and identify the risks of consuming fish, but can't initiate control activities to reduce or eliminate toxic contaminants/pollution sources.

# Description of Need

---

## Implementation Needs

---

Without the development of targeted, flexible and reliable funding for implementation, environmental progress will be inhibited. Twenty-plus years of GAP funding has created a solid base, but now tribes must have the opportunity to address their environmental objectives and outcomes identified as most critical to treaty-reserved resources. The issues have been identified and plans developed, but without adequate implementation funding, the plans, remedies and expectations of tribal people will not be met. It is not enough to learn about the problems, tribes must be given the necessary tools to respond to the problems.

Sufficient resources for implementation are absolutely necessary. Tribes must be able to rely upon consistent, adequate funding and technical support. Small, competitive grants are not the complete answer. There is not enough funding available, and what is awarded comes with large administrative burdens including researching available funding, completing sometimes lengthy applications, waiting on approval, waiting on funding, and then complying with multiple levels of grant administrative challenges while trying to complete the agreed-upon work plan. Sustaining a tribal environmental protection program by cobbling together grants and available resources is inefficient and does not meet tribal needs or protect treaty rights. Within a competitive grant system, the tribes with few staff and resources to dedicate to grant writing may not access any additional funding. Accountability is important, but the administrative burden and inefficiency of current systems are cumbersome and redundant. Tribes need access to flexible, long-term, consistent funding and excellent accountability can be part of that. With these resources, tribes could begin to address the tangible implementation needs identified through capacity-building GAP activities.

In addition to on-reservation treaty-protected resources, issues relating to Usual and Accustomed (U&A) areas need to be addressed. Currently, the treaty tribes of western Washington are limited in their ability to address off-reservation ecosystem threats. For instance, depending on the funding source, water quality management concerns are limited to those waters that affect the waters of the reservation. This does not deal with the increasing threats to tribes' U&A and treaty resources from a variety of sources, such as agricultural practices, dump sites, roads, hydro-modified shorelines and other development. Also, the growing impacts of climate change are not felt only within reservation boundaries. Many of these impacts are already present in the natural systems on which the tribes rely. Glacier melt, ocean acidification, forest disease and other effects threaten tribal treaty-reserved resources. These broad-scale impacts require long-term, collaborative adaptation measures and the time to begin the process is now. Most of the treaty tribes of western Washington are currently evaluating climate change impacts to their homelands and are developing plans to implement adaptation action. Tribes must be provided the means to create and implement climate adaptation strategies that are not only effective and far-reaching, but also culturally appropriate and relevant. Funding must be available that both meets tribal objectives and also meets the full scope of their management authorities, on and off reservation.

While GAP funds may support a portion of the work identified, and program-specific funds can be used to support some of that project work, there is not adequate or reliable funding to address the full range of implementation needs.

# Description of Need

---

Some examples of the existing implementation project needs that are not adequately funded are as follows:

## MEDIA | PROJECT

A vertical orange rounded rectangle with the word "WATER" written vertically in white, bold, sans-serif capital letters.

### WATER

Remove dikes, levees, culverts and dams to restore and improve the connectivity and environmental integrity of western Washington watersheds and aquatic systems.

Increase wetland, estuary, riparian, stream and river restoration to increase habitat critical to treaty-reserved resources.

Continue and expand water quality monitoring in all waters pertaining to the tribe to include specific elements such as turbidity, dissolved oxygen, toxics, etc.

Acquire land critical to habitat protection and climate resiliency.

Legal resources to address issues such as instream flows, restoration, water quality and land purchases to protect tribal treaty interests.

Map tribal wetlands and shorelines to ensure protection and enhancement.

Stormwater management.

Full implementation and enforcement of the Safe Drinking Water Act.

Develop, regulate, monitor and enforce a sustainable and healthy shellfish program for subsistence and commercial tribal use; meeting water quality goals are essential for safe shellfish harvest and consumption.

Wastewater system management, education and enforcement to protect water quality.

Create an accurate groundwater model to support future water management decisions.

Develop and enforce a tribal water code to ensure quantity and quality of water for protection of environmental and human health.

Monitor coliform and nutrient levels in all waters pertaining to tribal resources.

Expand water quality monitoring to include the marine and estuarine waters.

Develop, monitor and enforce stormwater standards.

Complete accurate fish consumption studies.

Develop tribal water quality standards.

# Description of Need

---

## MEDIA PROJECT

### LAND

Initiate, manage and engage toxic cleanup efforts including Superfund (CERCLA), Natural Resource Damage Assessments and source control programs.

Expand solid-waste and recycling programs to include regulation, education and enforcement.

Identify, assess and manage brownfields sites impacting tribal resources.

Monitor off-reservation dump sites that impact tribal resources.

### AIR

Initiate and/or enhance indoor air quality activities to include monitoring and mitigation to protect human health.

Assess wind energy potential to improve overall tribal sustainability.

Enhance or begin outdoor air quality monitoring, regulation and enforcement.

Expand participation in local, state and federal permit review processes to allow for full determination and mitigation of potential impacts to treaty-protected resources.

### MULTI-MEDIA

Develop and enforce tribal environmental codes on issues from riparian protection to solid-waste management. Resources are needed for code research, writing, community education, administration and compliance.

Address off-reservation environmental concerns pertaining to Usual and Accustomed (U&A) areas. Tribes must be able to address all resource impacting environmental concerns.

Address climate change through analysis of projected impacts and implementation of plans for adaptation and response.

Complete Environmental Site Assessments and Environmental Health Assessments.

Support for ongoing and additional involvement in community and watershed based community action teams, including watershed action teams and others.

Expand participation in local, state and federal permit review processes to allow for full determination and mitigation of potential impacts to treaty-protected resources.

# Description of Need

---

## MEDIA | PROJECT

### MULTI-MEDIA

Eradication of noxious weeds impacting tribal resources.

The ability to implement preventative projects to protect the environment prior to damage occurring.

Large-scale cleanup project support (technical, legal and policy) to ensure tribal objectives and resources are protected and prioritized.

Create and enhance sustainable development and redevelopment, such as rain gardens and native plant landscaping, water reuse, groundwater augmentation, etc. to promote native species and resource conservation.

Address emerging issues such as algae blooms, sustainable development, energy conservation, climate change, green infrastructures, oil and coal transport, etc. to mitigate future impacts.

Hire additional technical staff (such as engineer, fish specialist, hydrogeologist, water rights specialist, site cleanup expert, permit review staff, etc.) to meet increasing needs of tribal environmental program.

Address, monitor and mitigate all sources of pollution including local, regional and international sources.

Implement climate change adaptation strategies for aquatic environments to address changes to wetlands, stream temperature, stream flow and excess sedimentation due to glacier loss.

Implement climate change adaptation for coastal environments to address water quality impacts due to sea level rise and ocean acidification.

Implement climate change adaptation for terrestrial environments to address changes to plant distribution, forest disease, invasive species and wildlife migration patterns.

Support emergency response infrastructure such as Emergency Operations Centers.

Support research and response to habitat alteration and loss, such as glacier and snow-melt loss contributions to water quantity/quality.

Expand research and response to emerging issues to improve our ability to understand species response to climate change effects such as glacier losses, etc.

Restore, protect and acquire riparian zones for habitat, flood control and water supply protection.

# Description of Need

---

## MEDIA

## PROJECT

# MULTI-MEDIA

Invest in sustainable community infrastructure and redevelopment such as water reuse, energy recapture, energy metering networks, etc.

Advance integration of cleanup partnerships across jurisdictions.

Increase investments in integrated data collection needs such as LIDAR between tribes, local, state and federal entities.

Reduce greenhouse gas emissions through tribal renewable energy development and energy efficiency projects.

This description of need is not intended to minimize the value or importance of identified funding sources including National Estuary Program (NEP) funds, Nonpoint (319) or other important grant programs. Simply that the consistency and intensity of the threats important to tribal issues are not adequately met by existing funding sources.

“

**From GAP we have a good sense of the landscape and the issues. Now we need to do the work like dike setbacks, re-establishing functioning flood and channel migration zones, re-vegetation and stormwater management.”**

*– Tribal Biologist*

”

Tribes have identified and are willing to engage in the critical work of implementing environmental protection activities. Money and time has been spent studying the issues, planning projects and seeking outside support. With dozens of plans on the shelf, there is no direct way to put projects and priorities into action. On this walk forward, tribes continually run into the same barriers over and over again. We must find a way past these obstacles and get to the real work of protecting the environment, human health and treaty resources. These barriers fall into four main categories:

## 1

### ADEQUACY

The lack of adequate funding is a major barrier. Small, media-specific grants help to accomplish some projects, but ultimately tribes need access to meaningful implementation funding to allow full protection of the environment, human health and tribal trust resources. Until there are sufficient funds, tribes continue to suffer the ongoing degradation of the environment and corresponding impacts to the health of people and resources. Tribes must have access to adequate funding to do the work that needs to be done.

---

## 2

### RELIABILITY

The uncertainty of competitive grant-based funding directly undermines the tribes' ability to address their environmental priorities. Too much time is spent finding, researching, applying for, waiting for and reporting on grant funds. Hiring full-time, qualified staff is challenging without certainty of continued employment. Tribal participation in intergovernmental forums is compromised if they cannot sustain continued involvement. They undertake larger implementation projects only with huge burden and risk because they cannot access reliable, multi-year funding. The lack of reliability directly impacts the tribes' ability to get the important work done.

---

## 3

### FLEXIBILITY

Environmental conditions and management are quickly changing worlds. New threats emerge, political landscapes shift, staff turnover occurs. The most well thought out environmental management plan can quickly become outdated in the face of emerging, urgent issues. Being restricted to a very specific work plan greatly hampers the tribes' ability to meet the ever-changing needs of our environment. Staffs are small and workloads tremendous. Tribes must have the ability to shift their work to meet the needs at the time. They must also have the flexibility to use their limited funds to implement projects both on and off the reservation. Without flexibility, efficiency and outcomes are compromised and the ability to protect people and tribal trust resources is hampered.

---

## 4

### ACCOUNTABILITY

Piecing together programs and projects dependent on small, competitive grants results in high levels of administrative burden and incongruent, unnecessary accountability measures. While the concept of the Performance Partnership Grant (PPG) rule is well meaning, in practice tribes have found that



# Barriers

---

they are not able to fully use the flexibility promised. The recently released GAP guidance requirements have multiplied these issues with more accountability measures, additional administrative burdens and less flexibility – in short, more mandated planning documents and reporting to the detriment of successes on the ground. Tribes have demonstrated years of fully functioning management systems. EPA's files are filled with quarterly reports, annual reports, GAP success stories, interim correspondence and requests for assistance. Relationships and government-to-government protocol have been integrated. Tribes understand and fully support the need for accountability measures. But tribes also insist that these measures be reasonable, flexible, and culturally and governmentally appropriate.



# Jamestown, Nisqually, Stillaguamish — Water Quality / Harmful Algal Blooms

The Jamestown S'Klallam, Nisqually and Stillaguamish tribes are participating in the SoundToxins monitoring program to provide early warning of harmful algal blooms (HAB) and outbreaks of bacteria that could sicken humans.

SoundToxins is managed by the National Oceanic and Atmospheric Administration's Northwest Science Center, Washington Sea Grant and the Washington Department of Health. EPA's National Estuary Program provided funding to the project.

"We want to make sure shellfish are safe to consume, not just for tribal members, but for all seafood consumers," said Sue Shotwell, shellfish farm manager for the Nisqually Tribe.

During the shellfish growing season from March to October, tribal natural resources staff sample seawater weekly at designated sites. Additional sites across Puget Sound are monitored for toxin-producing algae by various citizen beach watchers, shellfish farmers, educational institutions and state government agencies. The monitoring results are posted in an online database.



The SoundToxins program helps narrow down the places where shellfish should be sampled for toxins, which is more expensive and time-consuming than testing the water.

"Just because we find algae that produce toxins doesn't necessarily mean there are toxins in the seafood, but it could mean there will be soon," said Stillaguamish marine and shellfish biologist Franchesca Perez. "If high numbers of an HAB species are found, then a sample of the water is sent to SoundToxins for further analysis, and appropriate parties are contacted to protect consumers and growers."

"The SoundToxins program aims to provide sufficient warning of HAB and Vibrio events to enable early or selective harvesting of seafood, thereby minimizing risks to human health and reducing economic losses to Puget Sound fisheries," said SoundToxins program director Vera Trainer of NOAA's Northwest Fisheries Science Center.

## Shared Elements - Adequacy, Reliability, Flexibility and Accountability

While each tribe has specific program needs, common barriers must be addressed in order for future environmental programs to be effective.

First, tribes must have adequate funding to do the necessary work. Leveraging various partnerships and applying for project-specific grants requires a tremendous amount of time and effort.

This administrative work takes away from the actual work of protecting the environment and tribal resources. Adequate funding would allow the focus to remain where it is needed. In addition, funding levels must be gradually increased to meet growing costs and programmatic expenses. At a minimum this should be tied to a cost of living index. Adequate funding will not be the same across all tribes. Each tribe must be granted the appropriate amount of funding to do the necessary work responsive to their specific situation.

“

**[There are] not enough dollars to do what needs to be done.**

– *Water Quality Manager*

”

“

**It may be a feast right now [with regard to a specific programmatic fund], but could be a famine the next round. [It would be] better if we knew the funds were reliable over time.**

– *Environmental Planning Manager*

”

Second, the funding and technical support offered must be reliable. Tribes need base-level, non-competitive funds for their ongoing work. The success of the GAP is a testament to what reliable funding can accomplish. Multi-year projects can only be accomplished with long-term, guaranteed funding. Long-term challenges, such as the impacts associated with climate change, require stable funding sources. Reliable funding is also a key component to address staffing challenges, especially for small, remote tribes. Reliable funding enables tribes to better recruit and keep highly capable staff. Specialized technical assistance requires consistent funding support. The new EPA

ETEP guidelines acknowledge the need for federal partners, such as EPA, to provide a source for this type of support. Moving forward together, sustained, consistent funding will be an essential part of future successful partnerships.



**Let the tribes spend the money on their own priorities.** – *Environmental Programs Director*



Third, the funding must provide flexibility that allows for self-determination of objective priorities. Tribes should be able to use funding to protect human health and the environment as it is necessary, perceived and targeted by them. Constrained funding sources create inefficiency in accomplishing important environmental work. While Performance Partnership Grants (PPGs) are

intended to increase environmental performance and decrease grant administration, there is still a tremendous burden associated with the management of PPGs. Tribes must still apply, and in some cases compete, for the limited program-specific funds available to them. While the EPA is managed in a compartmentalized manner (or “stovepipe” approach), tribal governments must respond quickly to complicated arising issues that often don’t match well to a grant award cycle or media-specific problem. While the Federal Register (in 2015) lists 62 different EPA grant programs with tribal eligibility, none of them offer flexible multi-media implementation support.

Flexible funding sources should allow for tribes to respond to immediate changes in priorities. Responding to emerging threats, proposed development projects, spills or storm events can change the required focus of a small tribal environmental office overnight. Newly discovered environmental threats, such as closed dump sites, can dramatically shift the workload. Climate change is a growing threat, and no one can anticipate its full impact. Tribal environmental offices must immediately respond to the changing priorities, no matter the external political or funding priorities. In order to address the dynamic issues, support must be able to be directed quickly to the most pressing needs.



**Sometimes our priorities don’t fit with the funding available.** – *Water Quality Manager*



In addition, tribes need to be able to address off-reservation concerns that directly impact treaty-reserved resources. In western Washington, those Usual and Accustomed (U&A) areas stretch across jurisdictions. The decisions and actions taking place across different landscapes, authorities and management priorities can be a direct threat to the rights of affected tribes. Funding must support work to investigate, coordinate, manage and address off-reservation issues.

Finally, tribes must be partners in establishing accountability. Tribes understand and agree with the need for accountability and transparency. Tribes receiving federal funding have met at least basic financial management standards. Prior to compacting with the Department of Interior, tribes must demonstrate financial management capability as shown by the tribe having no material audit exceptions in the required annual audit for the

previous three fiscal years. Accountability ensuring programmatic progress must be individually designed. Counting methods, such as the number of “treatment in a manner similar as a state” (TAS) designations, are not accurate or even reasonable measures of success. Accountability measures must reflect the different goals and objectives each tribe designates, while still meeting the basic requirements of the funding authority. Working together, tribes and their partners will create accountability measures.



**Every grant we take on requires additional administrative work. This requires staffing to meet all those requirements. The tribe is very careful in taking on additional activities knowing the time commitments they will incur.** – Tribal Environmental Specialist

**Many of our problems are in our U&A but off reservation. We are limited from identification and cleanup of projects which would solve these problems.**

– Tribal Environmental Specialist



## A Plan for Growth

---

Based on comprehensive tribal input, the following phases are presented as a way to advance the work and efficiency of tribal environmental protection programs. The phased approach is intended to allow for both immediate relief and time to accomplish more extensive changes. These three phases are all reliant upon a strong GAP base that is essential for program continuity and cohesiveness. This proposal is meant to be inclusive to all tribes with consideration to their unique and specific needs and priorities. Some tribes will choose one phase to focus their attention on, while others will require combined phases to create the most advantageous program for their particular situation. The diagram below illustrates there is no one right place to be within the circles of growth. Each tribe will rely on its experience, and weigh its needs to determine its program design and funding needs.

## PHASE 1

FY 16

Work within existing EPA structures and authorities.

Enhance opportunity and increase flexibility.

## PHASE 2

FY 16 /17

Increase funding and lift restrictions on existing funding mechanisms and authorities.

## PHASE 3

FY 18+

Create self-governance compacting or self-determination contracting model for EPA/Tribal environmental protection programs.

**GAP**  
**IS THE**  
**FOUNDATION.**

# Phases

---

## Phase One — Fiscal Year 16

---

### **Work within the administrative and regulatory guidelines and authorities of existing EPA programs to enhance implementation and environmental protection activities impacting tribal lands.**

- Revise the existing GAP guidance to allow for increased flexibility and determine its tribal program design. Extensive comments were provided during the public review phase of the new guidance that could be used to revise it, making it more culturally appropriate, useful and timely.
- Increase the tribal allocation of specific program funds, such as CWA 319, 104 and 106, and CAA 103 and 105, to allow for an immediate increase for media-specific implementation projects. Some of the funds have limited percentages dedicated to tribal projects or maximum regional limits. In these cases, the tribes request that those allocations be adjusted to reflect the complex nature and ever-increasing challenges tribes face, as well as the vital role tribes play in environmental work benefiting the wider community.
- Expand utilization of the Performance Partnership Grant (PPG) rule to maximize the tribes' ability to set their own priorities, meet their immediate needs and produce measurable environmental outcomes. Part of this change could come from internal EPA support to decrease the separate administrative burdens by each media grant and increase the inherent partnership opportunities across the Agency. There is full support for the tribes and EPA to maximize this tool. Fully realized, the PPG rule could transition to full implementation and self-determination, providing increased value to available funding mechanisms.

## Phase Two — Fiscal Year 16/17

---

### **Work to increase funding and lift restrictions for increased implementation work in tribal environmental programs.**

- Continue to support and build the existing GAP funds to provide a more substantial base support for tribes and modify legislative language to specifically allow for implementation of tribal programs, including activities in the U&A areas. Tribes could work through the new EPA ETEP process to identify implementation priorities, require long-term planning, potential threats and appropriate accountability process. The advantage of increased funding and flexibility would allow tribes to advance work they identified and prepared for under current GAP restrictions.
- Increase funding levels in existing media programs to better meet tribal needs. These increases should be seen across all EPA media programs, including air, brownfields, toxics, waste and water. Cross-environmental grants, such as education, enforcement and compliance, multimedia, place-based programs, and research and science, should also be increased to allow for greater tribal participation. This option would be used by tribes with specific needs that fit into the narrow definitions offered by existing EPA programs.

## Phase Three — Fiscal Year 18+

---

### **Establish a self-governance compacting and a self-determination contracting mechanism for tribal environmental protection programs.**

Under a self-governance compacting or self-determination contracting model, tribes and tribal organizations can design, administer and manage programs, functions, services and activities previously administered by the EPA. This would provide tribes the flexibility to redesign programs to meet the needs of their communities while continuing to protect the federal trust and treaty relationship. Federal partners, such as the EPA, would benefit from a reduction in the high administrative costs associated with multiple smaller competitive awards.

The tribal right of self-government comes from the inherent sovereignty of tribes. The federal government recognizes the special government-to-government relationship with tribes, including the right of tribes to self-govern (per U.S. Constitution and treaties). The Indian Self-Determination and Education Assistance Act (ISDEAA) of 1975 (P.L. 93-638) was designed to strengthen tribal control over federal funding and program management. After more than 30 years of failed termination policies by the federal government to sever the treaty obligations with the tribes, the ISDEAA transferred administrative control to tribes over federal programs.

Further legislation was passed in 1988 to amend the ISDEAA and authorize a Self-Governance Demonstration Project in the Department of the Interior – Bureau of Indian Affairs. Congress subsequently extended similar authority to the Department of Health and Human Services – Indian Health Service in 1992. The tribes in the Northwest were at the forefront of this initiative. They wanted to change the government-to-government relationship by seeking a new way to work with the federal government and bring decision-making to the local level. Permanent self-governance authority was enacted for the BIA in 1994 and the IHS in 2000. The result has been a resounding success for tribes and for the federal agencies to meet their goals.

Forging a similar partnership with EPA to develop a self-governance model is something tribes want to explore. How do tribes accomplish this without the statutory authority? Since there is currently no self-governance authority for the EPA, tribes would like to explore it from a policy and administrative standpoint. One option would be for the northwest tribes to conduct a self-governance demonstration project with EPA, similar to the models of the BIA and IHS under ISDEAA.

Too often progress is seen as a straight line from the starting point to the end point. Tribal environmental protection work is not a straight-line trajectory. Tribes must be responsive and quick to deal with an ever-changing world of new emerging threats. These phases should not be viewed as a linear progression toward one common set of actions. Instead, the unique experience and expectation of each tribe is reflected in each of the phases. Some tribes will need to pursue all three options to achieve success. Others will be able to accomplish their goals with one or two. When based on a strong GAP program, each phase is one piece to the puzzle; all are necessary for a full and complete picture of a healthy tribal environment.



# Upper Skagit Indian Tribe — Wastewater Treatment

---

The Upper Skagit Tribe upgraded its wastewater treatment in 2011 from several large septic systems to an advanced sewage filtration system. The new wastewater treatment plant serves the existing 76 homes and eight community facilities, and meets future growth plans.

Using a GAP grant and leveraged funding to plan community wastewater improvements, the tribe installed technology from Orenco Systems, using textile sheets to filter effluent in an oxygen-rich environment where naturally occurring microorganisms remove impurities. The treated effluent is returned harmlessly to the environment through rapid infiltration basins.

This method of wastewater treatment is economical and ideal for the small community of the Upper Skagit Indian Tribe's reservation on Helmick Road, which had been relying on septic drainfields for more than 20 years.

"The community has waited a lot of years for safer wastewater disposal and a treatment plant to support residential expansion," said Lauren Rich, Environmental Planning and Community Development Program manager for the Upper Skagit Tribe.

Well-functioning wastewater treatment facilities protect public health and the natural environment. Failing septic systems can lead to groundwater contamination. Waste also can make its way to the surface if soil loses its capacity to absorb effluent.





# Demonstration Projects

---

## Intent

---

As part of the Beyond GAP work, pilot projects were identified to create and share implementation tools for environmental protection, restoration and remediation. These pilot projects begin to demonstrate what tribes could do with adequate implementation resources. Each of these reports addresses immediate and important threats to tribal governments, ranging from toxics in the environment to impacts from proposed developments. While these pilot projects are geographically specific, each was designed with the idea that they could be broadly applicable due to similar threats to traditional foods and cultures.

## Reports

---

The summary reports for each project follow. The full reports can be found on the Beyond GAP website. ([nwifc.org/beyondgap-walkingtogether](http://nwifc.org/beyondgap-walkingtogether))

### **1 A MANUAL TO GUIDE TRIBAL TOXICS MONITORING PROGRAMS**

This project developed a manual for designing toxics monitoring plans that include approaches for understanding broader regional trends in toxics.

---

### **2 TRIBAL TOXICS REDUCTION TECHNOLOGIES ASSESSMENT**

This assessment provides a toxic chemical reduction guide focused on waterborne discharges for a limited set of chemicals that pose significant threats.

---

### **3 TRIBAL GUIDANCE DOCUMENT TO SMS AND SCUM II**

This document provides guidance to tribal technical staff regarding how site-specific criteria for contaminated sediment sites are derived under Washington state jurisdiction within a tribe's treaty-reserved usual and accustomed areas using the Sediment Cleanup User's Manual II.

---

### **4 GUIDELINES DEVELOPMENT FOR EVALUATING RESOURCE DEVELOPMENT IMPACTS ON TRIBAL COMMUNITIES**

This project presents effective guidelines for evaluating potential development-imposed impacts for use by tribal communities and others to aid in determining the practicality of proposed projects.

# *A Manual to Guide Tribal Toxics Monitoring Programs*

---

## **PROBLEM STATEMENT**

Without specialized monitoring plans and initial detection, many silent chemical threats go unabated. It is fundamentally important to be able to measure these toxics so that we know how much of these pollutants are entering tribal waters, including waters within usual and accustomed fishing areas. Measuring toxics will be challenging but is critical to supporting the regulatory processes designed to reduce pollution, such as showing “reasonable potential” to exceed water quality standards in watersheds. This is often the first step in invoking National Pollution Discharge Elimination System (NPDES) permits.

Traditionally, GAP funding has served to support baseline water quality monitoring programs that generally only address a limited number of “conventional” water quality parameters. GAP funding typically cannot be used to detect long-term toxic threats in water, sediments and fish tissue, let alone provide the data necessary to initiate and support implementation of strategies to address toxics using appropriate technologies and regulatory responses. GAP funding allows tribes to build environmental program capacities. Once capacity is established, tribes have to seek implementation funding from other sources, including under EPA’s media-specific programs, to support program development and implementation as well as long-term environmental monitoring, while continuing to use GAP funding for ongoing capacity-building activities. However, this project is unique, because there are no media-specific programs oriented toward launching an effort of this order or magnitude. Therefore, this project serves to fulfill a unique gap in tribal capacity building by supporting the advancement of tribal programs to address emerging threats to natural resources and human health.

This project has developed a manual for designing toxics monitoring plans to achieve the purposes above. The manual includes approaches for understanding broader regional trends in toxics, as well as designs to address the unique pollution problems faced by individual tribes. In doing so, the manual looks at monitoring designs on multiple scales. It also addresses the design differences necessary to deal with various land-use scenarios, all of which are responsible for pollution caused by a wide array, albeit different set, of toxic chemicals.

## **PURPOSE**

- 1** Identify toxics monitoring projects and programs that are needed to detect, and subsequently address through regulatory responses, chemical threats to treaty-reserved natural resources and tribal member health. This will include analyzing existing monitoring and program efforts (extent, type, media and scope of monitoring), identifying gaps and providing a summary report of findings using Coast Salish efforts as the example.
- 2** Develop a manual for tribes to use when designing toxics monitoring programs. The outputs of these monitoring programs can be used to trigger various regulatory and non-regulatory responses to address toxic chemical threats to treaty-reserved natural resources and tribal members’ health.
- 3** Present and provide this vital information to the Coordinated Tribal Water Quality Program for widespread use.

# *A Manual to Guide Tribal Toxics Monitoring Programs*

---

## **OUTCOMES**

- Understand existing gaps, needs and resources necessary to launch a long-term toxics monitoring effort designed to identify and support toxics reduction efforts related to treaty-reserved resources and tribal members' health.
- Provide information to tribes interested in developing long-term toxics monitoring programs to protect treaty resources and human health.

## **OUTPUTS**

- Analysis of federal, state and tribal toxics monitoring programs and data gaps using Salish Sea examples.
- Manual for tribes to use when developing toxics monitoring programs and Quality Assurance Project Plans.
- Presentation(s) to the Coordinated Tribal Water Quality Program on summary of existing toxics monitoring efforts, data gaps and essential components of monitoring designs.

## **NARRATIVE**

Many toxic and endocrine-disrupting chemicals are finding their way into ecosystems and traditional tribal foods. These chemicals are a serious but silent threat to both treaty-reserved resources and tribal members' health. In an effort to expand tribal program capacity beyond baseline monitoring, this project seeks to research, analyze and recommend means to efficiently and effectively undertake long-term toxics monitoring efforts.

## **TOXICS MONITORING SERVES AT LEAST EIGHT IMPORTANT PURPOSES:**

- 1** Develops understanding of the extent of impacts and potential threats from the oft-unobserved toxic chemicals.
- 2** Is the primary driver for initiating regulation of toxics discharges, because the water-quality-based NPDES effluent limitations for toxics are often not implemented unless the pollutants are first detected. Often CWA 303(d) listings, Total Maximum Daily Loads and 40 CFR 122.4 prohibitions are the primary reasons for new water-quality-based NPDES effluent limitations, but the pollutants must first be identified in the water column or other media to be triggered.
- 3** Many tribal monitoring programs are responsible for CWA 303(d) and 305(b) listings. These listings form the basis for regulatory responses such as TMDL development, which can then be used to reduce both point and nonpoint sources of pollution.
- 4** Toxics monitoring is necessary to determine the success of various toxics reduction efforts such as chemical action plans, and can be used to trigger adaptive management responses.

# *A Manual to Guide Tribal Toxics Monitoring Programs*

---

- 5** Numerous chemicals (such as PBTs) cannot be detected until they bioaccumulate in aquatic organisms. Therefore, special monitoring arrangements are necessary to understand the level of impact to treaty-reserved resources and human health.
- 6** Science has identified many “emerging contaminants of concern,” for which standards or regulations do not exist. However, it is necessary to demonstrate impact and collect data before the threat to tribal resources can be evaluated and rules can be set in motion.
- 7** Long-term monitoring and data collection are necessary to develop, revise and enforce tribal water quality standards.
- 8** Toxics monitoring and data collection are fundamental to protecting human health and tribal treaty resources and are important drivers in rule revisions such as the toxics water quality standards governing the human health and aquatic life designated uses.

Given the complexity and cost associated with this type of monitoring, it is very important that efforts are optimized to be effective and calibrated to effectuate the appropriate corresponding regulatory and non-regulatory responses, and are not redundant with other efforts.

Essential manual components will include information and references on design types, site selection, monitoring frequency and timing, media to sample, toxics to measure related to land use and objectives, sampling methods and detection limits.

## *Tribal Toxics Reduction Technologies Assessment*

---

### **PROBLEM STATEMENT**

Toxic chemicals are increasingly finding their way into our rivers and oceans, tribal traditional foods and even our bodies. These chemicals present a threat to both human health and aquatic resources. Of greatest concern are children and elders who tend to be at higher risk from the adverse effects of these chemicals.

Several common chemicals of concern in Washington state include:

- Arsenic (inorganic)
- Benzo(a)pyrene
- Mercury
- Polychlorinated biphenyls
- 2,3,7,8-Tetrachlorodibenzo-p-dioxin

Wastewater treatment plants (WWTP), stormwater and industrial point sources may serve as both generators and conveyors of these pollution sources. However, permits and other regulatory mechanisms often lack

# *Tribal Toxics Reduction Technologies Assessment*

---

effluent limitations or requirements for treatment necessary to begin the abatement process. Tribes that engage in human health and natural resources issues related to toxics – such as developing National Pollutant Discharge Elimination System (NPDES) permits or Total Maximum Daily Loads (TMDLs), or other watershed-wide toxic reduction efforts – are often ill-equipped to engage in the complex dialogue on these matters.

## **PURPOSE**

The goal of this assessment is to provide an implementation-ready toxic chemical reduction guide focused on waterborne discharges for a limited set of chemicals that pose significant threats to tribal natural resources and the health of the membership of Washington's tribes.

## **OUTCOMES**

- Understanding of high-risk chemical threats, their sources and conveyances, and limitations on detection.
- Understanding treatments and feasibility for reducing toxics in effluent.
- Providing information to tribes regarding strategies and technologies to reduce toxic substances in wastewater.
- Increasing tribal engagement in toxic effluent limitation development.

## **OUTPUTS**

- An analysis of common chemical contaminants found in wastewater effluent.
- An implementation-ready guide, which will support tribal natural resources staff to engage in NPDES permit discussions regarding effluent limitations for toxic criteria.
- Presentation(s) to the Coordinated Tribal Water Quality Program to help disseminate information and educate staff.

## **NARRATIVE**

The selection of chemicals focused on in this analysis were predicated both on their presence and toxicity to human health and the fisheries, shellfish and other resources on which Washington's tribes depend for subsistence, cultural, ceremonial and economic purposes. This list was not intended to be exhaustive, but rather to focus attention on these key pollutants. We intend this effort to be used as a practical, implementation-ready guide for tribes, the Washington Department of Ecology and EPA to use in developing permits, certifications, orders, TMDLs and other pollutant reduction efforts. This information is requisite for directing facilities to reduce toxics in their discharge.

The main objective of this effort is to assess and describe methods to minimize toxic inputs into tribal waters by assessing the pollutant loads going into a wastewater treatment plant and other facilities as well as out of the plant. Multiple methods are currently being assessed including source controls like product substitution, pretreatment (via influent limits for industrial facilities discharging into the publicly owned treatment works),





# *Tribal Toxics Reduction Technologies Assessment*

---

operational optimization, minimizing infiltration and inflow, evaluation of intake water and filtration, structural and operational best management practices (BMPs) within the treatment plant, treatment controls and even reclamation. Content of this report will include a more detailed analysis of the following: 1) analytical methods for detecting toxics and use in NPDES permits of point source facilities, 2) identifying sources of select toxics and the effect on receptors (particularly when ingested by humans), and 3) treatment technologies that have been identified and used for reduction of toxics in stormwater and other sources where toxics cycle among multiple media (e.g. surface water, sediment, tissue in aquatic biota).

These treatments (including treatment trains and incremental treatments), controls, practices and management methods will be evaluated in terms of performance, feasibility and unit costs as well as other considerations such as land availability. The performance and costs of various combinations of methods (source control/pre-treatment influent limits/BMPs/enhanced end-of-pipe treatments) to reduce toxics loads from WWTP effluents and other facilities will provide permit writers and tribal staff the key information necessary to protect and restore their watersheds. The report will include a flow chart on options for monitoring these pollutants and associated detection and reporting limits. It will also include details and citations of technologies, management methods (both operational and structural), source controls, pretreatment limits, and types of treatment and reclamation that will reduce pollutants going into receiving waters. Analysis assumptions will be detailed in the report.

Results of this analysis will also include identifying how each pollutant is mobilized in a drainage and sources from land use and facilities. Associating toxics with specific sources establishes the potential settings and pathways in which a toxic substance becomes mobile. This information enables the identification of pollution abatement actions resulting in real improvements to tribal waters.

## *Tribal Guidance Document to SMS and SCUM II*

---

### **PROBLEM STATEMENT**

The Sediment Cleanup User's Manual (SCUM) II was created by the Washington State Department of Ecology (Ecology) to serve as technical guidance for the revised Sediment Management Standards (SMS), Chapter 173-204 Washington Administrative Code (WAC). The revised SMS became effective on September 1, 2013. The intent of the revisions was to better integrate some of the provisions of the Model Toxics Control Act (MTCA) with some of the provisions in the older SMS, clarify requirements for the protection of human health and higher trophic level organisms, establish numeric standards to protect freshwater benthic organisms, and to coordinate source control and cleanup actions.

The revisions for the protection of human health and higher trophic level organisms focus on deriving site-specific criteria instead of establishing standards that can be applied across all sites. Many tribes do not have the funding or staff knowledgeable about SMS, MTCA or toxics cleanups to meaningfully participate in this resource-intensive process. Tribal staff are often pitted against industry consultants who have experience across tens if not hundreds of sites. On such an uneven playing field, tribes may be forced to accept site cleanup levels and goals that are not protective of tribal treaty rights and resources. These are also environmental justice issues, as tribal members are at a disproportionately higher risk of exposure to environmental contamination.

# *Tribal Guidance Document to SMS and SCUM II*

---

## **PURPOSE**

The intent of this document is to provide guidance to tribal technical staff regarding how site-specific criteria for contaminated sediment sites are derived under Washington state jurisdiction within a tribe's treaty-reserved usual and accustomed areas using the SCUM II. The targeted audience is technical staff who do not have experience specific to sediment remediation sites but still have some background in the environmental science and policy fields. This document is not intended to help tribes create their own sediment quality standards for on-reservation cleanups under tribal jurisdiction, but the information provided might be useful for those that wish to do so.

The content of this document relates to guidance available at the time of its online publication, based on the latest available version of the SCUM II from December 2013 (Publication no. 12-09-057). In July and August 2014, Ecology held workshops to try to incorporate input from a variety of stakeholders and tribes, with the intention of revising some of SCUM II to incorporate these edits in December 2014.

The SMS Tribal Guidance Document goes over the importance of treaty rights to tribes, and establishes the framework for how and why Washington tribes have an active role in sediment cleanups. It also clarifies the role of tribes as co-managers of the natural resource within Washington state, as opposed to community or other stakeholders. The guidance document explains the importance of the Centennial Accord, which establishes a structure for government-to-government consultation between the state of Washington and tribes.

## **OUTCOMES**

This guidance will improve tribal understanding of revisions to the SMS guidance including:

- SMS-specific language.
- Elements of a meaningful and accurate sediment dataset.
- How data collected will affect the site-specific cleanup levels.
- Effective remediation technologies for the sediment cleanup site of interest.
- Long-term monitoring strategies, including toxics reduction in species of concern, e.g. shellfish, bottom fish and benthic organisms.
- While this document is not intended to replace the need for government-to-government consultation with affected tribes, state and federal agencies may also refer to it to better understand what aspects of sediment cleanups are important to tribes.

## **OUTPUTS**

- Peer review by tribal technical staff, consultants and EPA before finalization.
- Guidance document posted on NWIFC website.
- Workshops through NWIFC networks to inform tribal technical staff about document and its use.

# Tribal Guidance Document to SMS and SCUM II

---

## NARRATIVE

The document explains the importance of tribal participation in toxics cleanups in terms of environmental justice and treaty-reserved rights to harvest and access. According to EPA, environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. It is based upon the concept that everyone will enjoy the same degree of protection from environmental and health hazards, and equal access to the decision-making process to have a healthy environment in which to live. The impact of environmental justice on tribes is two-fold. Tribal members who practice subsistence and ceremonial traditions often use the natural resources of an affected area more frequently than other groups. For example, fishing, shellfish harvesting and plant gathering are cultural practices of Coast Salish tribes. If these resources are collected from a polluted area, then tribal members will be disproportionately affected. The second aspect is that due to historic poverty and discrimination, tribes are more often affected by the location of polluting facilities. These influences caused tribes to have less of a voice where the polluting facilities were located, or were less likely to report polluters when incidents or violations occurred.

A distinguishing feature between tribal consumers of fish and shellfish in Washington state versus non-tribal consumers is their reliance on locally harvested seafood. A 2012 Ecology report found that 67 to 68 percent of total fish and shellfish consumed by the Squaxin Island Tribe was locally harvested. That percent was even higher for other tribes: 88 percent for the Columbia River Tribes, 72 to 88 percent for the Tulalip Tribes, and 81 to 96 percent for the Suquamish Tribe<sup>1</sup>. This affects tribal members' exposure since they will be exposed to the same contaminants repeatedly as opposed to the typical consumer who might be exposed to varying concentrations of different contaminants from different sites.

These details provide a legal and policy background. However, the document's main focus is explaining how the technical aspects of new guidelines of the Sediment Management Standards affect the generation of site-specific standards at sediment cleanup sites that are supposed to be protective of subsistence tribal consumers. The framework of the SMS calls for an upper-bound Cleanup Screening Level (CSL) and a lower-bound Sediment Cleanup Objective (SCO). Both the CSL and SCO are determined by selecting the highest of three different criteria: background, risk-based criteria and practical quantitation limit (PQL).

The background is based on natural background levels of a substance for the SCO and the regional background for the CSL. Natural background is supposed to model pristine conditions, while regional background models use diffuse pollution sources that cannot necessarily be controlled under the jurisdiction of MTCA or SMS (e.g. diffuse stormwater pollution, aerial deposition). Natural background is based on a 90 percent upper confidence interval on the 90th percentile of sediment samples collected (90/90 UTL), called background threshold value (BTV). Regional background is also based on the 90/90 UTL of sediment samples collected. Therefore, these statistics are heavily dependent upon which sites are selected for natural background as well as regional background. However, depending on the reliability of the dataset, this can influence how low the screening level will be, which will therefore influence the protectiveness of the cleanup.

<sup>1</sup>Ecology. 2012. *Fish Consumption Rates Technical Support Document: A Review of Data and Information About Fish Consumption in Washington*. Washington State Department of Ecology. Publication 12-09-058. Version 2.0. August 2012.

# *Tribal Guidance Document to SMS and SCUM II*

---



The SMS Tribal Guidance Document discusses in detail how to improve the quality of the sediment dataset and what outcomes are influenced by these decisions.

Risk-based concentrations are based on the lowest of benthic criterion, human health risk, higher trophic level risk and applicable laws. Since the lowest of the risk-based concentrations must compete with the highest of itself, natural background and practical quantitation limit, the risk-based concentration will most likely not become the standard. The selection of the SCO and CSL makes it unlikely that the cleanup will achieve concentrations based on human health risk. However, a health evaluation can be a valuable tool for determining human health risk and potential effects of contaminants on tribal members who harvest from areas in proximity to a contaminated site. The guidance document goes over how tribal technical staff should select specific exposure parameters that would be protective of subsistence tribal consumers, including parameters that are unique to the SMS and not in EPA Human Health Risk Assessment Guidance. The quantity of each parameter, for example the fish consumption rate, can differ from tribe to tribe. The document goes over the best ways to select an existing tribal fish consumption study, and how to set up the tribe's own study if the tribe feels that is necessary.

# *Tribal Guidance Document to SMS and SCUM II*

---

The guidance document goes over sampling contaminated sediment sites, including: tissue, natural/ regional background, matching total organic carbon (TOC) and grain size. These details are important for creating a meaningful dataset that can be used to influence the effectiveness of the cleanup. Tissue samples can show bioaccumulation of persistent pollutants. Having a reliable natural or regional background dataset can help create a more protective SCO or CSL. Matching TOC and grain size can create a more meaningful sediment dataset since these two factors affect the concentrations and accumulations of contaminants.

Remediation technology selection influences how quickly a site will recover to below the SCO and CSL. The guidance document discusses seven technologies that are commonly used at sediment sites: source control, dredging, in situ treatment, capping, enhanced monitored natural recovery, monitored natural recovery and institutional controls. However, these technologies are not mutually exclusive of one another. For example, capping can be used to minimize residual re-suspension after dredging. Dredging can be a method of source control in order to remove exposure from contaminated sediments. The guidance document discusses the pros and cons of each technology, as well as its potential effect on subsistence tribal consumers.

The document is slated for review by technical staff at tribes, consultants, as well as EPA. The intent of the SMS Tribal Guidance Document is to better inform tribal technical staff on the best approaches for designating cleanup levels that are protective of subsistence consumers. Introducing the SMS vocabulary and concepts will better prepare technical staff for meetings with regulators and industry consultants so that the most protective site-specific standard can be derived. The guidance document will be posted on the NWIFC website, and outreach will be conducted through NWIFC professional networks in order to inform tribal technical staff.

## *Guidelines Development for Evaluating Resource Development Impacts on Tribal Communities*

---

### **PURPOSE**

To begin development of effective guidelines for evaluating potential development-imposed impacts for use by tribal communities and others to aid in determining the practicality of the project. This project will focus on the first two phases of the guideline development: 1) scoping the Salish Sea territory to define what topics, issues and areas the guidelines need to cover in order to accurately assess the impacts of resource-based development projects on tribal community health and wellbeing; and, 2) assess the current status of ecological resilience of important tribal natural resources. The guidelines will be developed with information from the Coast Salish Tribes in the Pacific Northwest.

### **OUTPUTS**

**1)** A literature review of the proposed natural resources development studies of interest in the Salish Sea Region. **2)** A qualitative evaluation of stressors on identified natural resources of greatest concern to tribes in relation to proposed development projects and current ecological resiliency of those natural resources in the Salish Sea.

# *Guidelines Development for Evaluating Resource Development Impacts on Tribal Communities*

---

Outputs #1 and #2 were accomplished in conjunction with Dr. Joe Gaydos and the SeaDoc Society and cultural experts from the Coast Salish Gathering. We created a list of six proposed and approved development projects in the Salish Sea region. Cultural experts provided names of species that are especially important or of priority concern. We performed a literature review for any peer-reviewed studies about the identified priority species, or similar species, which may be impacted by the six projects. Using descriptive scales, we ranked the likelihood that each development project may impact the priority species. A peer-reviewed publication has been authored and will be submitted for review.

**3)** A framework of what detailed guidelines should cover in order to evaluate comprehensive tribal health and wellbeing in relation to impacts from resource-based development and based on findings from Output #2.

Output #3 was accomplished in conjunction with Dr. Robin Gregory of Decision Research. We describe a proposed methodology of “next steps” using Outputs #1 and #2 to enable equitable Coast Salish decision-making and planning, taking into account relevance and significance of data as well as probability of risk and uncertainty through expert elicitation. The methodology has been written in report format available for distribution for tribes, government agencies and other interested parties.

## **OUTCOMES**

The methodology document titled “Evaluating Impacts of Proposed Resource Development Projects on Coast Salish Tribes” summarizes key considerations in developing a defensible and culturally appropriate approach for evaluating the potential impacts of resource development projects on Coast Salish Tribes. The report outlines an approach to conduct impact assessments and analyses that will responsibly capture many of the likely costs and benefits of these new developments. It is different from standard impact assessment approaches, such as those often conducted by industry proponents or state and federal resource management agencies, because it seeks to identify the values and concerns that are important to tribes and first nations rather than simply the values of mainstream society. This shift in perspective is both philosophical and methodological: the hope is that tribes will no longer be forced to participate in the evaluation of environmental, health, economic and cultural changes using assessment systems that are not their own and that fail to capture many important impacts. It is also practical in that only by first identifying correctly the categories of impacts and understanding their relation to indigenous communities can culturally appropriate suggestions for project mitigation or compensation be made.

## Nooksack — Sediment / Climate Change

---

The Nooksack Indian Tribe has monitored glacial sediment discharge for several years in the Nooksack River watershed, focusing on areas that could influence water quality and the reproductive success of threatened spring chinook.

The tribe collects continuous turbidity data at three stations and 20 remote sites. Tribal technicians also sample suspended sediment at each site.

“This work is being conducted to establish a baseline that will serve as a reference for a likely shift in sediment dynamics with climate change,” said Oliver Grah, water resources program manager for the tribe.

A series of landslides in 2013 had the tribe concerned about the effects of increased sediment on threatened chinook salmon and steelhead. After debris flows along the Middle Fork Nooksack River in the spring, turbidity at the Nugent’s Corner Bridge on the mainstem exceeded the maximum levels the tribe’s automated turbidity meter could record.

By August, the turbidity on the mainstem had returned to levels typical for the season.

“The North Fork and Middle Fork are always turbid this time of year because they’re glacially fed,” said Tom Cline, water quality supervisor. “The South Fork is less turbid because it is fed by snowmelt, but it also suffers from low flow and high temperatures in August and September.”

Most of the sediment monitoring is funded by a GAP grant, base CWA 319 and competitive 319 funds, as well as BIA, NWIFC and the North Pacific Landscape Conservation Cooperative.

“Combined funding from different grantors provided funding leveraging,” Grah said. “Also, all of this work is being shared with and vetted through our Water Resources Inventory Area watershed management project and with other tribes and stakeholder groups.”



## Port Gamble — Nearshore Monitoring

The Port Gamble S’Klallam Tribe is finding more juvenile salmon in small bays than in other nearshore environments, even those adjacent to large estuaries in Hood Canal and Admiralty Inlet.

“We’re not seeing fish near the mouths of big river systems like we expected, such as the Duckabush or Dosewallips rivers,” said Hans Daubenberger, the tribe’s habitat biologist. “Fish appear to be quickly leaving the marine waters around our large river estuaries in search of smaller and calmer areas with shallow water to find food.”

Since 2011, the tribe has been using beach seines, surface trawls and a hydroacoustic “torpedo” to determine where and how juvenile fish are using nearshore environments. The beach seining and surface trawls show what types of fish are in the nearshore; and the hydroacoustic equipment show the abundance of fish.

The largest densities of fish were found in Port Gamble Bay, Pleasant Harbor, Jackson Cove, Hood Head, Port Ludlow, Kilisut Harbor, and Quilcene and Dabob bays and surprisingly not in waters adjacent the Duckabush and Dosewallips river systems.

“While we know juvenile salmon typically use estuaries for refuge and feeding, the data we’ve collected indicate that the small embayments we survey are consistently more productive in terms of nutrients in the water column.” Daubenberger said.

Forage fish, such as surf smelt and herring, spawn in embayments and their larvae are a high energy food source for salmon, so it’s important to recognize the forage fish populations too, he said.

The tribe conducted further hydroacoustic surveys and beach seining in 2013 to expand on the data collected. EPA’s National Estuary Program supported the project.





# Skokomish — Estuary Restoration

---

Kneeling in a thicket of vegetation on the Skokomish estuary, Shannon Kirby combed her hands through the tall green grasses in front of her, calling out codes that identify them by size, type and abundance.

Kirby, then a biologist for the Skokomish Tribe, was studying the native freshwater and saltwater vegetation taking over the estuary after 100 years of being diked and dredged.

“The response in vegetation is very promising, as well as the diversity that’s out here,” Kirby said. “Estuarine plants are a huge source of food for animals, as well as doubling as a water filtration system, neutralizing pollutants and yet providing nutrients for plant growth. We’re right on target for where an estuary should be.”

The tribe found pickleweed, salt grass, sedges, rushes, sea arrow grass and Puget Sound gumweed.

Since 2010, every August, when everything is in full bloom, tribal staff visits 75 sites throughout the 1,000-acre estuary, looking at plant types, sizes, growth and soil composition.

The tribe began restoring the estuary at the mouth of the Skokomish River in 2007, through dike and culvert removal, large woody debris installation and native plant revegetation. Through three phases so far, the tribe has restored up to 1,000 acres of habitat for salmon and wildlife.

Currently in the third phase, the tribe is reconnecting historic tidal channels that were blocked or filled in over time, further allowing the tidelands to flow properly. In addition, fish-blocking culverts and tide gates are being removed or replaced with larger culverts and bridges.

Funding for the restoration of the Skokomish estuary includes Puget Sound Partnership funding through the Environmental Protection Agency.



## *Swinomish — Air Quality*

---

The Swinomish Tribe has been monitoring ambient air quality in partnership with EPA for more than 16 years.

“We’ve got two major oil refineries and a sulfur reduction plant right next to the reservation,” said Tony Basabe, Swinomish air quality analyst. “When I arrived in 1998, I thought we ought to monitor and find out what the refineries are doing to us.”

Swinomish has the only federally recognized nitrogen oxide (NO<sub>x</sub>) monitoring station north of Seattle, and until a few years ago was the only ozone monitoring station.

EPA grant funds support monitoring to characterize or manage specific known short- or long-term risks to environmental values such as human health risks, ecological risks, and cultural resources and values.

Swinomish has two monitoring stations: one near the tribal village, and one at the other end of the reservation, near the Swinomish Casino and Lodge overlooking March Point, the site of the two oil refineries.

While the air near March Point contains petrochemicals from the refineries, the pollution near the tribal village tends to contain the product of combustion: hydrochemicals from wood smoke, car and boat exhaust, and production from a logging yard.

The March Point monitoring station also is next to railroad tracks where trains carrying petroleum coke are expected to increase from two per day to four. The baseline data collected before the increase will help the tribe track the rise in pollution.

The tribe records real-time continuous pollution data for particulates, ozone and nitrogen dioxide, as well as meteorological data for wind speed and direction, temperature and relative humidity, barometric pressure, solar radiation and precipitation. The data goes into EPA’s Air Quality System (AQS) repository, which stores results from more than 10,000 monitors.



# Conclusion

---

The General Assistance Program (GAP) set a basic benchmark for success: “Accomplish an EPA presence at each tribe.” This meant providing base-level GAP funding to each federally recognized tribe to support the tribal governments’ efforts to build their own environmental protection capacity. That is largely how GAP has gauged its success. A fundamental premise in developing meaningful tribal programs is to fully acknowledge both the sovereignty and individual nature of each tribe, and EPA’s capacity development effort held to that ideal.

Now, a new benchmark must be set: environmental protection and improvement. This means an implementation strategy. We need to build a programmatic platform large enough to accommodate the diversity of size, management authorities, and scope of both need and opportunity that exist across Indian country. EPA’s Indian Program must create an implementation strategy that meets the individual needs and priorities of each tribal government. Practical application will require a design that reflects tribal governance authorities and responsibilities, that accommodate growth. This proposal advances a phased approach to accomplish funding strategies designed for efficiency, stability and expansion of capacity. Evaluation of the accomplishment or success of such a diverse and broad-based program will require careful documentation of individual starting points coupled with measurement of progress toward self-described goals, environmental results, program function and stability.

Together, we have the ability and the willingness to move environmental protection forward for on-reservation treaty-reserved resources, tribal usual and accustomed areas, tribal traditional territories and the broader community. Tribal governments have repeatedly proven to be leaders, especially in the Northwest, and have demonstrated the ability to leverage a range of resources to accomplish truly remarkable environmental outcomes (please see “Implementation Success Stories” throughout the report). The tribal/EPA partnership has proven to be successful in building base capacity. Tribes appreciate EPA’s environmental goals and are encouraged by our federal partners’ recognition of tribal efforts and accomplishments. Tribes are ready to put their plans and priorities to work immediately, as is illustrated by the demonstration projects described in this report.

“Walking Together” is not the beginning of our relationship, but is a reminder of the importance of a mutual effort to preserve, protect and enhance the environment and human health.

**IT IS TIME TO WALK FORWARD TOGETHER,  
AGAIN, TO ADVANCE TRIBAL  
ENVIRONMENTAL PROTECTION EFFORTS.**



# Acknowledgments

---

The Northwest Indian Fisheries Commission, with its member tribes, acknowledges all the parties that made “Walking Together” possible.

In particular, we would like to thank:

- The U.S. Environmental Protection Agency, particularly the Region 10 team, which stood by this project through multiple iterations and review processes. Your commitment to this project was a crucial ingredient to its completion.
- The Tribal Workgroup and Advisory Panel made up of representatives and staff from the treaty tribes in western Washington for sharing perspectives and experience that combined to become the substance of this report. Your contributions of past success and future need provide value and context to taking the next step. Thank you for your dedication, this could not have been accomplished without your time, effort and input.
- And finally, the interview participants, too numerous to name, from throughout the region and nation who lent their time, expertise, and experience to the project. We hope you see your words and perspective represented in this report. Your input was invaluable and you have ensured this project is strengthened as a result of your experiences and knowledge.

