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## Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476  
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### Swinomish Tribal Community Demands EPA Act to Stop Harm to Lower Skagit River Salmon from Temperature Pollution

*Ongoing violations of temperature standards for 20 years harm ESA-listed salmon populations;  
Tribe provides notice to sue EPA*

**LaConner, WA** — The Swinomish Indian Tribal Community today filed a 60-day notice of intent to sue the Environmental Protection Agency (“EPA”) based on the State Department of Ecology (“Ecology”) failure to implement a 20 year-old water clean-up plan to address warm stream temperatures in the Lower Skagit River that cause ongoing harm to salmon. The notice makes clear that EPA must reinstate Endangered Species Act consultation on how to ensure that threatened salmon are protected under the clean-up plan.

“The Swinomish people’s way of life and livelihoods, as well as protected Treaty rights, have been disrespected and disregarded for years. It is time for this to stop,” said **Swinomish Chairman Steve Edwards**. “The Skagit River and its tributaries are critical habitat for Chinook recovery in the Puget Sound. We are the People of the Salmon, and these fish are integral to the Tribe’s sustenance, culture, identity and economy, yet we no longer have enough to feed our families, and the Orcas are starving. Our federal and state natural resource trustees must finally find the political will to act.”

This problem dates back many decades and stems from agriculture and other development along the river and its tributaries that stripped away nearly all the native trees and streamside vegetation that once provided shade and habitat critical for salmon. With streamside vegetation now nearly all gone, temperatures in the lower Skagit River watershed have exceeded water quality standards for over two decades, reaching harmful, often lethal temperatures for salmon and other aquatic life.

Chairman Edwards continued, “I know that we won’t recover water quality that our salmon need in my lifetime, but Swinomish is always thinking about the next seven generations. The EPA and Ecology have refused to use their authorities to get trees replanted along salmon streams for years and the salmon and Swinomish’s Treaty Rights have suffered as a direct result. Today, we say no more. These agencies must follow federal laws and must uphold their Trust Responsibility and put a plan together with binding commitments that restore stream health for our salmon now.”

Chinook salmon populations in the Lower Skagit River have declined steadily and dramatically, reaching such an extreme low point they were listed as threatened under the Endangered Species Act in 1999. The Tribe has suffered a more than 80% decline in its salmon harvest over the corresponding decades. The Swinomish people have cared for the Skagit River and fished its waters and its estuary since time immemorial and have a reserved treaty right to fish within the entire Skagit River basin and beyond. Yet salmon populations are now so low that Tribal citizens have had to buy and freeze fish for important cultural ceremonies.

“The Clean Water Act demands that Ecology implement what the science shows: riparian habitat buffers are essential to protect water quality for salmon,” said Earthjustice Attorney Janette Brimmer. “EPA, in approving Ecology’s plans 20 years ago, relied upon Ecology’s promises, now obviously incorrect, that buffers would be in place by 2020. Those failed promises dictate that EPA and Ecology must go back to the drawing board and ensure a clean up plan that protects threatened salmon by recovering salmon streams from harmful temperature pollution.”

### Background

The Department of Ecology has done nothing to enforce long-planned riparian buffers that scientists all agree are needed for salmon habitat. The notice of intent letter states that the EPA must reinitiate consultation with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service under the Endangered Species Act to address the inadequacy of the original biological opinion and the failed plan to comply with water quality standards.

The law requires the EPA to begin this work again because the original biological opinion and approval of the water quality plan are based on assumptions in a flawed state action plan known as a “Total Maximum Daily Load” (TMDL) that have been proven untrue and incorrect. The TMDL was required to keep pollution and water temperatures within acceptable ranges to protect water quality and prevent harm, but after 20 years, the TMDL has proven a complete failure. Ecology’s Lower Skagit Temperature TMDL, finalized in 2004 and updated in 2008, determined that the means to address harmful high stream temperatures in affected waterways was to plant native trees and vegetation. These riparian habitat buffers would provide shade, ensure a cooler microclimate, and lessen channel erosion and widening, all heat pollution issues.

The TMDL modeled that, to bring the high-temperature (i.e. “impaired”) waterways into compliance with water quality standards by 2080, 100% of impaired stream miles had to be planted with buffers by 2020, with the width of those buffers ranging from 92 to 130 feet, in accordance with scientific consensus. Unfortunately, voluntary replanting efforts have completely failed. As of 2020, the deadline set by Ecology’s Lower Skagit Temperature TMDL, only about 8% of stream miles had been revegetated. Meanwhile, temperature violations continue every year and are expected to worsen with climate change.

The Skagit River is home to all six species of Pacific salmon found in Washington State, including steelhead, and is the most important salmon-producing river in Puget Sound. It is the second largest producer of salmon in Washington after the Columbia River and one of the largest on the West Coast. Skagit River salmon are critically important to the Swinomish Indian Tribal Community and to all the parts of the ecosystem that depend on salmon, including orcas. Swinomish is a federally recognized tribe with over 1,100 members. Swinomish is a signatory to the 1855 Treaty of Point Elliott. Its 10,000-acre reservation is located 65 miles north of Seattle, Washington, on Fidalgo Island.

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