Water Quality Program Policy 1-11
Chapter 1: Assessment of Water Quality for CWA Section 303(d) and 305(b) Integrated Report

SCOPING COMMENTS RECEIVED

June 2016

In February 2016 Ecology conducted a 60-day scoping process to solicit all stakeholder and tribal ideas about areas they think should be revised or clarified in Water Quality Policy 1-11. This policy describes how waterbody segments will generally be assessed to determine attainment with Chapter 173-201A-WAC (surface water quality standards) and Chapter 173-204-WAC (sediment management standards) and then placed in various categories based on this determination. This policy also provides specification for data submittal and data quality necessary for inclusion in the assessment. This policy constitutes the "Listing Methodology" for the Integrated Report required by the U.S. Environmental Protection Agency (EPA) to meet Sections 303(d) and 305(b) of the federal Clean Water Act.

As a result of the scoping process for Policy 1-11, Ecology received ideas and suggestions from 15 entities that included local, state and federal governments, industry, tribes, and environmental interests.

Ecology has reviewed all scoping comments received and placed them into four categories, based on the level of attention that will be needed, from high to low:

- **High -**Comments that are technically complex or involve policy issues that will require significant public dialogue to help inform Ecology on concerns with the current policy or suggestions for changes or additions to the policy. (Comments)

- **Medium -**Comments that can be dealt with directly by Ecology to clarify or add language to Policy 1-11 without requiring significant public dialogue. (Comments)

- **Low -**Other comments not directly tied to a needed change in Policy 1-11 (these will be passed on to the relevant Water Quality program for consideration). (Comments)

- **Null -**Comments & responses that do not require a policy revision. (Comments)

Ecology's goal for this scoping effort is to have a transparent and open process for public participation on review and updates to Policy 1-11. Following this public dialogue and feedback, Ecology will make appropriate updates to Policy 1-11, and will conduct a formal public review of the updated Policy 1-11, anticipated for fall/winter 2016.

The following pages provide details on the four levels of scoping comments received.

➢ HIGH

Scoping Comments that will need significant public dialogue

Below is a summary of the key significant issues that will need significant public dialogue. Detailed comments that support each significant issue are included in subsequent tables in this document.

I. Issues Related to Assessment of Data to Determine Impairment Decisions (Sections 4, 6, 7, & 8)

Ecology Staff Involved:

- **WQP:** Patrick Lizon, Chad Brown (Standards)
- **EAP:** Jennifer Carlson, Bill Kammin (QA), EAP Monitoring experts
- **TCP:** Peter Adolphson, Sharon Brown

A. Quality Assurance/ Quality Control Concerns with Data Used (Comments)

1. Transparency of data used in the Assessment needs to be improved so that the public can access supporting documentation for QA/QC and listing determinations.
2. Data older than ten years needs to be managed so that impairment decisions are based on current conditions.

B. Representativeness of Data Used for the Assessment (Comments)

1. Ensure that data collected is representative of the overall waterbody segment.
2. Ensure appropriate data quantity thresholds for determining impairment & other categories.
3. The Assessment results should be representative of current conditions.
4. Critical periods for water quality parameters should be defined.

C. **Confidence level of Impairment** (Comments)

1. Increase confidence level of impairment decisions.
2. Clarify when and how natural condition determinations will be made.
3. Clarify application of narrative criteria to make listing and delisting decisions.

D. Delisting from Category 5 (Comments)

1. Improve and clarify data requirements to delist or reclassify waterbodies from impaired status.
2. Clarify when waterbody segments within a TMDL can move to Category 1.

II. Specific Parameter Assessment Sections

A. Bioassessments (Section 8b) (Comments)

Ecology Staff Involved:

- **EAP:** Chad Larsen
- **WQP:** Patrick Lizon, Susan Braley (facilitator)

1. There needs to be public dialogue on the listing methodology and impairment thresholds for bioassessments.
2. The uncertainties of using B-IBI need to be factored into the methodology.
3. The use of B-IBI scores for Section 303(d) purposes needs to be reconsidered.
4. The relationship between TMDL and stormwater permitting using B-IBI needs to be clarified.

B. Contaminated Sediments (Section 8c) (Comments)

Ecology Staff Involved:

- **TCP:** Peter Adolphson, Sharon Brown
- **WQP:** Susan Braley (facilitator)

1. Recent changes to the Sediment Management Standards (SMS) require subsequent changes to Policy 1-11 for contaminated sediments.
2. Determine what will happen to Category 4B listings that were based on part V of the SMS, which are no longer considered water quality standards.

C. Toxics using Fish Tissue (Section 8i) (Comments)

Ecology Staff Involved:

- **WQP:** Cheryl Niemi, Susan Braley (facilitator)
- **EAP:** EAP Toxics Staff

1. Determine the appropriate use of fish tissue concentrations as a surrogate for water column criteria in making waterbody impairment listing decisions.

III. Prioritization of TMDLs (Section 9) (Comments)

Ecology Staff Involved:

- **WQP:** Helen Bresler, Susan Braley (facilitator)

A. Improve transparency in how prioritizing TMDLs will occur in the Assessment process

B. Consider suggestions for prioritizing TMDL work.

HIGH

I. Issues Related to Assessment of Data to Determine Impairment Decisions

Policy 1-11 Sections affected:

- Section 4-Public Participation and Submitting Information
- Section 6-Assessment Methodology
- Section 7-Other Assessment Considerations
- Section 8-Specific Submittal and Basis for Assessment Decisions

IA. Quality Assurance/ Quality Control Concerns with Data Used

Comments on Significant Issue

1. **Transparency of data used in the Assessment needs to be improved so that the public can access supporting documentation for QA/QC and listing determinations.**

- Concerns were expressed about the ability to publicly access Ecology's supporting documentation for the listings including water quality data, QAPP, field records, field calibration records and data validation documents, and instances where best professional judgment is applied or evaluations are made on a case-by-case basis.

- Ecology should verify that adequate documentation exists for the use of data generated by methods other than those listed in 40 CFR 136, so that data users can determine that the method was formally approved for use by Ecology prior to sampling and the lab was accredited by Ecology to perform that method for a given parameter during the time of analysis.

- Ecology should develop methodology, standardized criteria, and technical procedures for conducting water (fresh and marine) investigations under the Standards. Ecology should also develop additional rules, policies, and guidance to fully implement the Water Quality Data Act.
- Those responsible for their data submittals should also submit data validation documentation or provide a data usability determination. Ecology must also be responsible for additional validation of any data that are being applied in water quality 303(d) listings. It is very important that all data used to document a Category 5 listing are reviewed for validity or credibility by Ecology, since Category 5 listings have significant impacts to dischargers and the expenditure of public funds. It should be the responsibility of Ecology, not the sampling entity, to determine whether the data "fairly characterize" the quality of the waterbody.
- Ecology needs to ensure that listing decisions are based on good science, representative water quality sampling, and laboratory or field instrument analyses that meet standards for accuracy and proper technique. This also means that listing decisions should not be based on a few random grab samples or data that was obtained many years earlier. There may be some improvements that could be made in existing Policy 1-11 language that would more thoroughly delineate these concerns.

- Concerns about data before 2006 that may not have quality assurance or documentation to meet Water Quality Data Act. Should Category 5 listings based on data not achieving Credible Data Act be reassigned to Category 2 or 3?

2. Data older than ten years needs to be managed so that impairment decisions are based on current conditions.

- The listing policy should be improved regarding the management of listings with respect to the age of the data on which the listing was based. Suggest including criteria for how a long after establishing a listing, based on a particular data set, it remains valid. Retention of data (which in some cases is decades old) to justify impairment decisions is critical to address.
- Varying comments on whether timeframe for data intervals should be 5 years or ten years. Some felt that a ten-year interval may be a good default "life-cycle" for a particular listing. Allowing listings to be removed from the list based on the age of the supporting data would help to maintain a meaningful 303(d) list that represents current conditions and informs prioritization of action.
- There is inconsistency in the Policy about the use of data older than 10 years of age. One part says data older than 10 years will not be used for current assessments, and yet another part allows the use of data greater than 10 years of age to carry listings forward. This seems inconsistent with the Policy itself or Water Quality Data Act where Quality Assurance documentation is lacking.
- Concerns with reliance on water quality data older than 10 years to support category 5 listings. It seems reasonable that Ecology should commit to completion of a TMDL within 10 years. Listings based on data older than 10 years may result in initiating TMDLs that are not reflective of current conditions. Category 5 303(d) listings based on water quality data that are 10 years or older could be reclassified to Category 3 (segment lacks sufficient data) until new data are provided for the water quality assessment of the vicinity
- Suggest adding a new category for old and/or non-representative data. Data in this category would be reviewed for conformance to the Policy and to determine if a new study is necessary.

IB. Representativeness of Data Used for the Assessment

Comments on Significant Issue

1. Ensure that data collected is representative of the overall waterbody segment.

- The program policy needs to include a statement that Ecology will implement a screening process to ensure data collected in locations that are not representative of the overall water segment are excluded from the assessment of that reach.

- Washington State Department of Ecology regulations for 303d Listing should require proof positive that a condition does exist.

- We propose a designated appeal period for Category 5 listings where an entity can show that appropriately conducted recent or new monitoring indicates that a listing does not accurately reflect the current condition of the receiving waterbody.

- Procedures for determination of salinity and therefore the application of fresh or marine standards lack completeness and approval. Example: Section 8. Significant emphasis is placed on protection of shellfish. Monitoring locations near shellfish beds can be tidally influenced which requires determining whether

marine or fresh water bacteria Standards apply. This can't be done without approved salinity determination procedures. Suggest finalizing procedures for determining salinity and either publish in the Policy or reference procedure.

2. Ensure appropriate data quantity thresholds for determining impairment & other categories.

- The data quantity thresholds supporting Category 5 listings for all parameters are very minimal. For some pollutants, a single data value would support a listing. Given the significant regulatory importance of Category 5, should a listing be dependent on a minimum number of samples and appropriate statistical analysis of exceedance frequency and specified confidence level to support a listing decision? Should Ecology consider a two-step process like Florida? An initial Category 2/3 listing based on limited data and then advancing to Category 5 if additional data provides higher confidence of true impairment?

- All pollutants listed in Section 8 should have similar water quality assessment thresholds for impaired Category 5 listings as they do for unimpaired Category 1 listings. If a Category 1 listing requires continuous monitoring then the Category 5 listings should also require the same continuous monitoring-based criteria. Alternatively, if a Category 5 determination can be made using discreet monitoring results of sufficient number and criteria exceedance frequency, then the same number and frequency should be used to place a waterbody segment into Category 1.

- Ecology should require a minimum number of samples for parameters that have a Category 5 determination in which a percentage of exceedance is calculated. For example, there should be a minimum requirement of 10 samples when 10 percent of samples exceed criteria represents the listing threshold. This approach prevents a small number of results from heavily influencing Category 5 listings.

- Due to the diurnal cycle of Dissolved Oxygen, pH and Temperature, we believe that continuous monitoring data sets should be used for Category 5. However, given the costly nature of continuous monitoring, at a minimum the data volumes, ages and methods of analysis used to inform Category 1 and 5 determinations should be equivalent and based upon scientifically sound minimum sample numbers and practice. Datasets that contain excursions from single sample events should be placed in Category 2 and be flagged for further study.

- Is it reasonable to assume water quality data from a grab sample to be representative of water quality averaging periods over a 1-hour, 1-day, 4-day period in a dynamic waterbody?

3. The Assessment results should be representative of current conditions.

- Consider a process that is sped up to more accurately reflect current conditions. Consider more frequent assessments for parameters that may change more frequently, such as bacteria, and less frequent for parameters that are slower to change, such as sediment.

- Ecology should refresh the 303(d) list at least every five years by including only those waters in Category 5 with data reflective of current conditions. Strive to allow the assessment list to be revised more frequently based upon recent and relevant data, such as shellfish classification.

- Under Section 8f-Total Phosphorus in Lakes-we suggest that the statement "the collection of phosphorous data must not be grouped nor spread out over time so as to mask periods of noncompliance" (pg. 41) should be generalized and applied to all parameters so that data submitted as part of a water quality assessment accurately reflects the recent water quality conditions.

- Bacterial listings based on Agency Advisories provide additive criteria for impaired Category listings in the bulleted list on pg. 27. These shellfish harvesting and swimming closures are typically seasonal or temporary and do not align with TMDL development for bacterial listings.

4. Critical periods for water quality parameters should be defined.

- Recommend that the "critical period" for each parameter, where appropriate, be explicitly defined and listed for each major watershed or WRIA. This information will add needed transparency to the Assessment process and provide a great service to those municipalities and permittees who want to target their resources to sample a waterbody specifically during its critical period.

- The terms "critical period" and "critical condition" are used as if they were interchangeable. We recommend Ecology identify and distinguish the operational formulae for determining each water quality parameter's "critical period" for monitoring and sampling. We also request a clarification of the difference between the "critical period" for monitoring data and the "critical condition" that is identified as part of the development of a TMDL waste load allocation and measure of safety analysis.

- Reduce discrepancy, define critical periods, develop and apply consistent methods and improve consistency with Standards.

- Recommend that the phrase "from all data considered" be removed from Section 8 and replaced with more discrete description of the periods that determine when monitoring data will be considered. We recommend that Ecology use a more consistent framework for all pollutants of concern.

1C. Confidence level of Impairment determinations

Comments on Significant Issue

1. Increase confidence level of impairment decisions.

- Suggest using advanced statistics/probability of impairment for the assessment to generate high confidence in listing and de-listing decisions, prevent segments from toggling on and off the list, and focus sparse public resources where they are needed most.

- Overly protective Category 5 determinations and overly burdensome and ambiguous Category 1 requirements create situations where it is likely that Categories 4a or 5 listings for Dissolved Oxygen, pH and Temperature would never be removed from the list.

- Widespread use of best professional judgment or determinations on a case-by-case basis reduces consistency and predictability for stakeholders. Institute use of standardized processes, improve consistency in decision-making and repeatability of listing decisions by reducing reliance on subjectivity.

- Ecology's methodology contains no reference to listing of waters because they have been identified as "threatened" contrary to EPA regulations. 40 C.F.R. § 130.7(b)(5)(i). Ecology's assessment database of waters does not include any method for the public to assess whether the agency has used waters identified as "threatened" as the basis for 303(d) listing. Therefore it can be deduced that Washington has listed precisely zero waters that have been listed as threatened. EPA Guidance indicates that a water should be placed in Category 5 of the 303(d) list when "available data and/or information indicate that at least one designated use is not being supported or is threatened, and a TMDL is needed." EPA recommends that states consider segments as threatened "those segments that are currently attaining WQS, but are projected as the result of applying a valid statistical methodology to exceed WQS by the next listing cycle (every two years).

2. Clarify when and how natural condition determinations will be made.

- Clarify application of continuous data and single temperature readings, and application of natural conditions. Provide more guidance and strive for a procedure to allow application of natural conditions where applicable.

- Consideration of the natural conditions element of criteria that include human allowance (temperature, D.O.) --in the absence of a contemporaneous determination on natural conditions should waterbodies with evidence of numeric impairment be placed on Category 2 or 3, rather than Category 5? Some professional judgment call must be made. It is wrong to list a water body as impaired for dissolved oxygen without making that judgment call, and a judgment call that says Ecology is unsure should only justify a Category 2, not a Category 5.

- Use of conflicting statements. Example: Section 7, Other Assessment Consideration, Natural Conditions, second paragraph. "A determination regarding natural conditions will require information and data to validate the condition, with no presumption either way." This section contains several references to presumptions that contradict this statement, such as "Pristine wilderness areas or other areas with no significant human impact will be assumed to represent natural conditions." Suggest that Ecology review and address conflicting statements in Chapters 1 and 2.

- Determinations of natural conditions lack transparency and predictability which results in inconsistent decision-making. Example: Sections 4, 6, 7, and 8. The Policy does not define "significant human impact", identify the information used to determine if natural conditions are causing impairment, or describe how significant human impact is determined through a systematic review of available data. Suggest defining what constitutes "significant human impact," identify the information used to determine whether natural conditions are the cause of impairment, and describe the methods used to arrive at a decision.

- Natural conditions for temperature and DO. How does Ecology staff determine if single or multiple 0.2 mg/l D.O. exceedances are due to natural conditions and not appropriate to flag as exceedances for 303(d) listing? This policy statement assumes impairment unless a systematic review of available data is performed (including use of data older than 10 years – which we believe is inappropriate – see preceding Comment 12) and the best professional judgment of Ecology staff is applied. The Natural Conditions program policy statement (page 21) also states: "For water bodies that appear to have natural conditions sufficient to override human influences, but the information is not conclusive, the waterbody segment will be placed in Category 2." This is the case for dissolved oxygen and pH in the lower Columbia River. This

approach is punitive to dischargers and water users and should be modified so that the systematic review by Ecology will not incorporate the use of data older than 10 years. Furthermore, if a discharger can demonstrate through Streeter-Phelps modeling of far-field dissolved oxygen effects that the effluent BOD discharged does not create a 0.2 mg/l D.O. decrease, then the corresponding river reach for the discharger should be categorized as not impaired by human action.

- Ecology's use of its natural conditions provisions is inconsistent with EPA guidance. EPA addressed the issue in its 2008 guidance answering the question: How should States make 303(d) listing decisions when naturally occurring pollutants are present in a waterbody? Specifically, EPA addresses the question of "303(d) decision making for waters impaired totally or in part by a naturally occurring pollutant, id. (emphasis in original), concluding that where a waterbody that "receives pollutant loadings from both natural background and anthropogenic sources . . . the waterbody is considered impaired and belongs on the 303(d) list or Category 5," Only where the exceedance of the applicable numeric criterion is "all natural" may the state not list the waterbody if it has a natural conditions provision in its standards. Contrary to EPA's guidance, Ecology states that waterbody segments will be found impaired only "when human activities cause, or have a strong potential to cause, significant impacts in addition to natural conditions."

3. Clarify application of narrative criteria to make listing and delisting decisions.

- Recommend that the Assessment of Information using Narrative Standards (pg. 20) be expanded to include more detail of the objective measures and criterion used to identify which water quality standards are not being met and what specific measures will be used for delisting.

- The rationale for the application of narrative criteria and its relationship to anti-degradation is not clear, contributing to ambiguous and inconsistent listing decisions. Suggest clearly describing methods for application of the narrative criteria and its relationship to the anti-degradation policy. Describe what constitutes documentation of environmental alterations related to deleterious chemical or physical alterations and include methods for the information's use.

  - Ecology states that it will list on the basis of narrative criteria when "both of the following" are true: • Documentation of environmental alteration related to deleterious chemical or physical alterations, such as nutrients or sediment deposition, is measured by indices of resource condition or resource characteristic or other appropriate measure. • Documentation of impairment of an existing or designated use is related to the environmental alteration on the same waterbody segment or grid. This language is ambiguous but appears to suggest that if Ecology does not have an index of resource condition no listing will be done. This is problematic since Ecology has not included in its methodology any indices of resource condition with the exception of bioassessment.

  - Include listing and TMDL specifications only for criteria fully adopted and EPA-approved water quality standard

  - Ecology states that impairment by total phosphorus in lakes will be evaluated on the basis of narrative criteria. The discussion in Section 6 of the listing methodology does not discuss the use of narrative criteria other than to state that data must show a deleterious alteration according to an index and that there is an associated use impairment. This dual requirement approach to interpreting Washington's

water quality standards is arbitrary. By requiring both, Ecology fails to give independent legal meaning to use designations and narrative criteria.

- While the 2012 methodology mentions narrative criteria, not only is there nothing substantive regarding the use of narrative criteria in the methodology, as demonstrated above, random samplings of the database demonstrate there is nothing there either. For example, data on toxics from the Columbia River are all assessed by Ecology in comparison to Washington's numeric criteria for human health, namely the National Toxics Rule. Likewise, the Department's methodology needs to discuss how it treats wildlife studies that demonstrate that levels of toxics are causing adverse effects to health and productivity of species such as mink, otter, eagles, falcons, and other piscivorus birds and mammals.
- If an agency has issued an advisory, regardless of how it pertains to Ecology's outdated human health criteria, Ecology should honor that finding that a designated use is impaired. The mere fact that people are being asked to curtail or eliminate the use is a form of impairment.

1D. Delisting from Category 5

Comments on Significant Issue

1. **Improve and clarify data requirements to delist or reclassify waterbodies from impaired status.**

- The data requirements to delist or reclassify waterbodies from impaired to other categories is substantial compared to listing requirements. The number of samples listing waterbodies as impaired is very small compared to the evidence required to delist them, particularly for tissue impairments. There should be more parity in these thresholds.
- Information necessary to qualify a waterbody for Category 5 listing (for many if not all pollutants) are dramatically inequitable to information necessary for other categories. This creates a bias towards impaired listings and in the absence of a de-listing process, results in an ever expanding Category 5 list. Suggest developing uniform, scientifically-defensible, and objective listing processes that evaluates information equitability within and amongst categories.
- Revise procedures for listing parameters to demonstrate the same level of rigor and burden of proof for delisting waterbodies as for listing waterbodies.
- Ecology should incorporate a clear and explicit set of conditions designed to move a waterbody from a Category 5 listing to a Category 1 listing at a level of proof consummate with a decision to list a waterbody as Category 5.
- The Policy describes listing processes, but fails to establish parameter-specific delisting procedures. Suggest developing transparent, predictable, and credible parameter-specific de-listing methods that are protective of designated uses and consistent with Standards. Efforts could initially focus on those parameters with the greatest stream miles/acres of impaired waters (temperature, bacteria, dissolved oxygen, pH).
- We have concerns with the following: number of samples required to list is less than the number required to de-list; critical period sampling is required to de-list, but not relevant for Category 5 listing;

change the language such that if an area is upgraded to "approved" for shell fishing, then all stations are moved to Category 1. If upgraded to "conditionally approved" upgrade to Category 2.

- Recommend deleting the paragraph in the Bacteria section under category 1 (pg. 28, 4th paragraph) for procedures to change from an impaired Category 5 to an unimpaired Category 1, because of the age of the data submitted and the less than certain connection between fecal bacteria concentrations and natural background conditions.

- Clarify Category 1 section to align shellfish classifications with Category 1. This would incorporate the work of DOH and their assessment for shellfish harvest. If an area is classified as "approved" it should automatically be placed in Category 1.

2. Clarify when waterbody segments within a TMDL can move to Category 1

- We do not consider it appropriate to defer any delisting until 100% of the water body segments in the TMDL meet WQS. Delisting provides evidence of water quality improvement success that stakeholders need to maintain public support for continued funding of water quality programs.

- Waterbody segments that meet water quality standards for listed parameters should be exempt from further TMDL requirements for those parameters. Ecology should define a clearer and more consistent path for allowing the permittee to move from the intense, temporary focus represented by a "pollution diet" as contained in a TMDL and transition into a water quality maintenance program with an adjusted program focus and investment portfolio consistent with a delisted Category 1 waterbody.

- We urge a revision of the Policy to develop credible, predictable, and transparent, parameter-specific listing and de-listing methods using advanced statistics that are consistent with Standards for waters within TMDL boundaries. This includes gaining clarity that waterbody segments are de-listed as soon as they meet Standards, regardless of whether complete TMDL implementation has occurred.

HIGH
II. Specific Parameter Assessment Sections

Policy 1-11 Section: 8

IIA. Bioassessment (Section: 8b)

Comments on Significant Issue

1. There needs to be public dialogue on the listing methodology and impairment thresholds for bioassessments.

- Ecology's current listing method using two bioassessment indices is problematic and should be addressed before the next listing cycle is completed. Ecology's approach of using two numbers for designating what is in Category 5 versus Category 1 is unusual, confusing, and not substantiated in the supporting materials Ecology provided with the draft 303(d) list. The method for establishing the B-IBI impairment threshold needs to be explained to the public and the public should be given an opportunity to comment on that method. EPA encourages Ecology to develop impairment thresholds for each ecoregion in Washington. EPA recommends converting B-IBI scores from the 0 to 50 point index to a 100 point index.

- Ecology's bioassessment 303(d) listings increased from 14 listings in 2012 to 105 listings in 2014. There is evolving science and regulatory policy questions associated with determining impairment for bioassessments. This section needs fuller discussion.

- Overall, the Category 5 determination section lacks sufficient sample collection attributes, QA measures, and correlation analysis results to meet the intent of CFRs, the state Administrative Procedures Act, and the Credible Data Act.

- Document the policy rationale and relationships between the narrative criteria, antidegradation policy, and use of numeric B-IBI criteria as the basis for listing decisions.

- Perform and document a thorough technical data analysis to: 1) improve transparency, use of credible data, and methods to conduct assessments; and 2) establish numeric criteria supportive of rule-making and updates to WQP.

- The bioassessment criteria are explicitly limited to River Invertebrate Prediction and Classification System (RIVPACS) and IBI scores. Methodology at 33. Ecology announces its new policy but provides no basis to support it.

2. The uncertainties of using B-IBI need to be factored into the methodology.

- The relationships between regulated pollutants and macroinvertebrates are frequently uncertain and this uncertainty is not incorporated into the decision-making process for bioassessments.

- Consider the 2015 updated taxa list and scoring system; consider natural conditions which may suppress scores; consider the variability of scores and the number of samples required for impairment; follow the policy of identification of a stressor prior to placement in Category 5.

- It is inappropriate to benchmark urban streams against pristine streams for regulatory purposes when there are tools available to determine the appropriate or reasonable level of B-IBI improvement that could be attained in urban streams.

3. The use of B-IBI scores for Section 303(d) purposes needs to be reconsidered.

- We support the use of B-IBI as an indicator, in combination with other tools, of watershed health trends. We have determined that improvements in water quality do not necessarily translate to improvements in B-IBI scores. We strongly oppose using B-IBI scores for 303(d) listing purposes. Instead, we urge Ecology to confirm water quality standards status of waterbodies with low B-IBI scores through water quality sampling data prior to making listing decisions.

- B-IBI methodology is a landscape-scale measure of aquatic health. Applying a landscape-scale index to make conclusions about specific assessment units is inappropriate because B-IBI scores are dependent upon habitat conditions that may vary widely within and between reach sections, and integrate all upstream conditions to some degree.

- A great deal of historic B-IBI sampling was often conducted by untrained or minimally trained volunteers as part of "education and outreach" activities, rather than under an approved QAPP or SOPs. Results lacking documented QA procedures should not be used for regulatory purposes.

4. The relationship between TMDL and stormwater permitting using B-IBI needs to be clarified.

- Clarify and document regulatory linkages between stressor identification studies supportive of TMDL development and stormwater permitting.

IIB. Contaminated Sediments (Section: 8c)

Comments on Significant Issue

1. Recent changes to the Sediment Management Standards (SMS) require subsequent changes to Policy 1-11 for contaminated sediments.

- Ecology needs to revise Policy 1-11 to be consistent with the state's 2013 SMS revisions. Refer to EPA scoping comments letter.

- Listings based upon part V of the sediment management standards should remain in category 5. Ecology has requested that EPA no longer review and approve certain provisions of the sediment management standards (SMS). There are numerous category 5 listings based on Part V of the SMS. The tribes have suggested that these listings should not disappear from the list, simply because Ecology has requested and EPA has granted, a different treatment of the standards that both agencies previously treated as water

quality standards for over 20 years. These waters/sediments are polluted and must be adaptively managed through appropriate clean up efforts to ensure protection of the designated uses.

- The recent revisions to the SMS and interactions between Ecology and EPA indicate that changes to the assessment approach and chemical criterion for Category 5 listing for contaminated sediment will occur. Assessment of sediment data in the current policy follows WAC 173-204-510 through 520. We recommend that if Ecology decides to revise these assessment criteria, any revision should use mean concentrations and chemically similar stations or another assessment approach which accounts for the fact that sediment data can be spatially and temporally heterogeneous. Developing an appropriate revised approach may require technical input and analysis.

- The current policy regarding contaminated sediment states that samples must be taken from surface sediments 0-15 cm in depth. The 2015 Sediment Cleanup Standards User's Manual (SCUM II, Section 4.4.5) identifies 0-10 cm as the default surface sediment sampling layer for comparison to the SMS criteria. We recommend identifying in the updated policy that the 0-10 cm layer is the appropriate layer for sampling.

- Bioassay exceedances without co-located chemistry exceedances are ranked no differently than bioassay exceedances with co-located sediment quality standard exceedances. There are many cases where only a single line of evidence is present and a waterbody is more appropriately described as of concern while multiple lines of evidence more definitively categorize some waterbodies as impaired.

- Listings based on fish tissue concentrations and on sediment chemistry or bioassay should be removed. If sediment listings are not removed, they should at least be simplified, such that listings may be just for PAHs instead of listing separately for each and every PAH that is a concern. A listing statement for PAHs can include in its description which PAHs are of concern.

2. Determine what will happen to Category 4B listings that were based on part V of the SMS, which are no longer considered water quality standards.

- Category 4b listings based upon part V of the SMS should be moved to Category 5. There are also numerous category 4b listings that were taken out of category 5, because they were deemed to have a plan in place sufficient to ensure water quality standard compliance. However, Ecology has revised part V of the standards in such a way that no longer provides assurances that clean ups will in fact achieve water quality standards. Without the adequate legal authority to ensure that cleanups under part V will achieve water quality standards, Ecology can no longer ensure that those listings are: 1) not polluted; 2) cleanup is adequate; and 3) that a TMDL is not necessary. Therefore, category 4b listings should be placed into category 5. (See letter from Suquamish to EPA re: final consultation on the SMS.)

- The listing policy should continue to provide a feasible and functional Category 4b pathway for contaminated sediment cleanups. Many sediment cleanups have, or are progressing toward, a Cleanup Action Plan (CAP), Record of Decision (ROD), or other approved, legally enforceable cleanup plan. "EPA's Approval and Decision on Revisions to Washington's Sediment Management Standards, Chapter 173-204 WAC," dated December 18, 2015, states that Ecology has committed to revise Water Quality Policy 1-11 with respect to contaminated sediment assessment and listing. It is expected that, as EPA has suggested, Ecology will not use Part V of the SMS- the sediment cleanup standards-to determine Category 1-5 sediment listings. When revising WQP 1-11, Ecology should recognize the value and investment in sediment cleanup and related source control being made throughout the state.

IIC. Toxics Assessment Using Fish Tissue (Section: 8i)

Comments on Significant Issue

1. **Determine the appropriate use of fish tissue concentrations as a surrogate for water column criteria in making waterbody impairment listing decisions.**

- Fish tissue listings are inappropriate and inconsistent with Standards and the Administrative Procedures Act. Suggest adopting fish tissue concentration "water quality criteria" through rule-making and/or adopt a means for establishing narrative criteria based on tissue concentrations prior to use in the Assessment.

- For Category 5 listings based on fish tissue concentrations and bioassay results (pg. 47-51), should a very few data values on a surrogate parameter --Fish tissue equivalent concentration (FTEC)--be the sole basis for a category 5 listing? There are several concerns that FTECs are not sufficient to support a Category 5 listing. Is it reasonable that FTEC data would be sufficient to support a Category 2 or 3 listing with requirement for water column data to directly assess impairment for Category 5?

- Use of fish tissue data must remain an approved method for listing. Tissue-based listings are one of the surest ways to detect bio-accumulative toxics entrained in the aquatic trophic system. The tribes have worked diligently over the last decade to ensure that human health criteria are revised to more accurately reflect both the likely exposure and potential toxicity of numerous toxic pollutants, and thereby resulting in adequately protective water quality standards. However, for water quality standards to be relevant and protect the designated uses, they must, as a practical matter, be monitored and implemented. Given that many of the human health criteria pollutant parameters are lipophilic and/or bioaccumulative they are best detected when stored in tissue, and may go undetected. Therefore, it is absolutely essential that the Department of Ecology maintain and increase their fish tissue analysis and subsequent water quality assessment listing process, in order to effectively address these pollutants through the federal Clean Water Act and state Water Pollution Control Act regulatory processes. See Letter from Suquamish, Swinomish, and Jamestown S'Klallam to Governor Jay Inslee, re: Washington State Water Quality Standards, dated March 14, 2014, page 5, bullet point 3.

- Ecology should consider discontinuing the use of tissue data within the assessment process for toxic substances (pages 47-51 of the current policy). The stakeholder process should include a robust discussion of the advantages and disadvantages of using tissue data. If the tissue approach stays in the policy, clear procedures need to be identified for how a water body that is listed related to tissue would be delisted. (See also earlier comment on de listing related to age of data.)

- There are many uncertainties and assumptions embedded in the use of tissue concentrations as an indicator of water quality that make it an unreliable assessment tool including uncertainties inherent in derivation of bioconcentration factors (BCFs). In addition, whether the source of toxic pollutants in tissue is the water column or sediment or a combination of these sources is not clear. The fact that some resident fish might be long-lived also contributes to the uncertainty of the source and timing of potentially related surface water impacts.

- For toxic pollutants, Ecology notes that assessment decisions can be made “as defined by exceedances of either numeric criteria or narrative criteria, as determined by criterion tissue equivalent concentrations and fish advisories.” It further states that only fish tissue from resident fish may be used, without noting that as

EPA did in the Columbia River Dioxin TMDL, anadromous fish can be used for determining water quality impairments perfectly well.

- This section states that Ecology may use fish and shellfish advisories but only if they are based on "site-specific information and data associated with the specific segment." This extremely narrow interpretation of Washington's narrative criteria for protection of designated uses from toxic contaminants is entirely inconsistent with the applicable standards. For example, limiting the evaluation of fish tissue levels to back-calculating to the NTR criteria is just another way of using the NTR criteria with data from a different medium. It is not consistent with the narrative criterion that requires limits on toxic substances that cause toxicity to "the most sensitive biota dependent upon those waters." Biota likely to be the most sensitive are piscivorous birds and mammals whose body weight is small and fish consumption is high (e.g., mink, otter, eagles) or species with very high lipid content, such as orca whales.

III. Prioritization of TMDLs

Policy 1-11 Section: 9

IIIA. Improve transparency in how prioritizing TMDLs will occur in the Assessment process. (Section: 9)

Comments on Significant Issue

- We urge Ecology to provide a clear roadmap to developing and implementing TMDLs. In the past, we asked that Ecology develop a strategic plan to indicate where it intended to direct its water quality resources into the future. We make that request again and ask that it involve stakeholders with interest and expertise.

- The policy doesn't address the way in which the priority ranking will be made available for public comment in future Integrated Reports.

- Section 9 lacks the detail necessary to promote transparency and understanding of TMDL prioritization. Example: The lack of clearly described and consistently implemented TMDL prioritization processes impacts stakeholders by limiting early engagement, knowledge of problem areas, and a collaborative approach towards achievement of Standards. Suggest establishing an explicit and transparent TMDL prioritization process, and make it publically available through the Policy. The process should result in early engagement and involvement with stakeholders in TMDL prioritization. To achieve this, it may be instructive to review Appendix E of the Water Quality Program Permit Writer's Manual8 Part 1 or other documents as appropriate to reference in the Policy.

- Review and clarify multiple sections including: add stronger language regarding regional TMDL leads following policies; reconsider the primary criteria for TMDL selection; and consider collaboration with local organizations that prioritize clean-up projects based upon local trend programs.

- Ecology should use the assistance from stakeholders to collaboratively identify issues within watersheds and include these stakeholders in the TMDL prioritization process. We request that the prioritization process of TMDLs be reflective of publically-recorded procedures that are adopted into regulations under the state's Administrative Procedures Act.

IIIB. Consider suggestions for prioritizing TMDL work (Section: 9)

Comments on Significant Issue

- Consider a watershed approach to data collection, review and analysis. Meet with and collaborate with those that collect the data or utilize data to implement local programs.
- Include local stakeholders in determination of waterbodies within TMDL boundaries.
- The state does not place enough emphasis on developing TMDL's for Lakes. This results in lack of funding to address credible impairments. According to the 2012 Water Quality Assessment, there are 81 statewide lakes in Category 5 for water and only 12 in Category 4a. Suggest utilizing the Assessment to develop lake-based TMDLs or Straight to Implementation Projects where appropriate.
- In general we oppose development of TMDLs for waters other than Category 5 waters. This is because even under the current TMDL program, Washington is not meeting its 303(d) responsibilities for polluted waters, as evidenced by the 2013 GAO Report on the Clean Water Act.

➢ Medium

The following comments can be dealt with directly by Ecology staff to clarify or add language to Policy 1-11 without requiring significant public dialogue. All updates will go through a full public review when the next draft Policy 1-11 is ready for public review, after the public dialogue phase occurs.

Section of Policy 1-11	Comment Received
Section 1: Introduction & Background	In Section 1, stress a partnership between Ecology and those who generate quality data in order to maximize the effectiveness of the assessment program and assurance that waterbodies are placed in the correct categories.
Section 1: Introduction & Background	In Section 1, encourage watershed-based approaches in partnership with local agencies and organizations to review data locations, data quality and placement of waterbodies in categories.
Section 1: Introduction & Background	Ecology never explicitly recognizes the legal definition of a water quality standard in its methodology. Nor does it explicitly acknowledge the regulatory requirement to base its assessment on data and information. These huge gaps together result in Ecology's generally ignoring designated uses and narrative criteria and the data and information gathered that demonstrate impairments of uses and narrative criteria.
Section 2: Waterbody Segments & GIS Layers	We support Ecology's implementation of the National Hydrography Dataset for river segmentation and locating sampling stations, since accurate representation of sampling station sites (and distinction of bankside samples from in-river samples) is very important to interpreting the results. The current waterbody segmentation system employed by Ecology can result in very large and, in certain cases, somewhat arbitrary assignments of segments. It would be best to assign segments based on reaches between large river confluences and referencing distinct physical features such as bridges. The segmentation system also needs to include the "start" and "end" river miles in large rivers where they are readily known from USGS records or NOAA-NOS charts, in addition to the latitude and longitude from the National Hydrography Dataset.
Section 4: Public Participation & Submitting Information	Page 8: It is important for Ecology to accept continuous water quality monitoring data sets. These data are required by the agency to document diurnal patterns in pH, dissolved oxygen, and temperature measurements in a receiving stream. Water quality monitoring instruments that are properly calibrated and maintained are highly reliable for recording water quality data that are necessary to accurately evaluate waterbody conditions. It is recommended that Policy 1-11 be updated to support Ecology acceptance of continuous water quality monitoring data sets.
Section 4: Public Participation & Submitting Information	Page 12: The program policy does not define "third parties" in the document. Please provide a definition of the term "third parties" within the document and provide a logical basis or framework for exercise of Ecology's discretion, which is based on emphasizing the use of the highest quality data providing the most representative characterization of actual water quality conditions in a segment.

Section of Policy 1-11	Comment Received
Section 4: Public Participation & Submitting Information	Resolve the language regarding calendar year and water year.
Section 4: Public Participation & Submitting Information	Resolve how to manage and accept continuous data. There is more of this type of data available and could be valuable for assessment.
Section 5: Categories	Should Ecology more broadly consider government-developed environmental control programs as meeting the essential elements of the Other Pollution Control Program and supporting listings in Category 4b? (pg. 15)
Section 5: Categories	Clarify the role of EPA in approval of Category 4b submissions.
Section 5: Categories	Demystify the use of Category 4b to encourage local programs to step in and be proactive, for example as implemented by the Clean Water Kitsap and Kitsap Public Health District Pollution Identification and Correction programs.
Section 5: Categories	For Category 1, define "critical condition" period and the role it plays in placement in Category 1.
Section 5: Categories	For Category 3, clarify the application of this category for areas under consideration in a TMDL.
Section 5: Categories	For Category 4, provide more guidance and strive for a procedure to encourage the use of 4b and allow application of 4c where applicable.
Section 5: Categories	For Category 5, clarify language regarding how much data is required or used to remain in Category 5 when meeting standards.
Section 5: Categories	Page 18: “A waterbody segment may also be placed in Category 5 if it is currently meeting standards, but credible trend information and data collected through a valid statistical methodology indicates that the water body is not expected to meet applicable water quality standards by the next assessment cycle.” The program policy statement that is underlined is in direct conflict with the data-based selection of the 303(d) listing process. Remove the underlined sentence or modify it to define the statistical methodology that would be allowed for a Category 5 listing.
Section 5: Categories	It is not appropriate to defer any delisting off a Category 4 until 100% of the waterbody segments under the TMDL meet applicable water quality standards. Assessment determinations should be based on performance (meeting standards) not just completing a TMDL and assuming that it will achieve compliance with the standards.
Section 5: Categories	In general, we encourage Ecology to use the full breadth of categories to help prioritize future data collection and actions. For instance, active use of Category 2 may stimulate other initiatives to address any potential water quality issues sooner than listing with some uncertainty as Category 5 and initiating the long timeline of developing TMDLs. Such use of Category 2 may help focus Ecology resources and TMDLs on the most obvious and definitive impairments.
Section 5: Categories	According to EPA's Long Term Vision for 303(d) (2013) a Category 4 listing should include more flexibility than Ecology's current 4b approved programs. We request that Ecology explicitly incorporate language that encourages alternative restoration plans, adaptive management strategies, closure response plans, or other suitably

Section of Policy 1-11	Comment Received
	equitable substitutes as alternatives negotiated between a jurisdiction and Ecology into Category 4.
Section 6: Assessment Methodology	The Policy does not provide specific details, or reference to standard procedures for the use of non-detect data. Omitting reference to, or inclusion of, standard procedures for use of non-detect data results in inconsistent evaluation of data and decision-making during the WQA. Suggest providing reference to, or include, standard procedures applied to non-detect data such that Ecology staff are consistently evaluating data, and data submittals contain comparable information.
Section 6: Assessment Methodology	The statute and EPA's implementing regulations require that 303(d) listings be based on all components of applicable water quality standards, including the antidegradation policy. In its 2012 listing methodology, Ecology makes no reference to the state's antidegradation policy.
Section 8d-Dissolved Oxygen	Specific Submittal and Basis for Assessment Decisions: d. Dissolved Oxygen - Category 5 Determination - Page 38, paragraph 7: The first and last sentences of the policy statement should include reference to multiple measurements collected on separate days of continuous monitoring. We suggest that the first sentence of this program policy should be clarified to state "using sample data when a minimum of three excursions exist", and the last sentence of this program policy should be clarified to state "when three daily minimum values recorded on separate days of continuous monitoring are below the criterion".
Section 8h-Total Dissolved Gas	Language in this section appears to be directed toward the hydropower facilities industry. Ecology should clarify if the policies described are directed exclusively towards waterbody segments affected by hydropower facilities or other dams? We would like more information on policy decisions based on conditions that are not related to hydroelectric power, especially the critical condition.
Section 8i-Toxics	Ecology uses a special treatment of arsenic for natural conditions. Methodology at 48. This states that: "[i]norganic arsenic . . . requires a natural conditions evaluation prior to a final listing determination." The current methodology contains language that specifically calls for a "natural conditions evaluation" prior to a listing decision. While we have no way of knowing precisely what Ecology means, the language suggests that Ecology will not list a water exceeding arsenic criteria until it makes a determination that the arsenic is from human sources. This is an incorrect reading of Ecology's water quality standards and EPA's listing guidance.
Section 10-Abbreviations, Acronyms, and Definitions	Section needs to be inclusive of, but not limited to, those terms identified in Attachment A, item 1 or others as identified by the Interagency Team.

➢ Low

Comments not directly tied to a needed change in Policy 1-11 (These will be passed on to relevant program for consideration)

Comment Received	Program Responsible
We urge Ecology to make its mid- and long-term strategies available of how it intends to prioritize, develop, and implement TMDLs and changes it anticipates to water quality standards over the next 5, 10 and 15 years. This will enable stakeholders to do complementary program planning to anticipate changes for a more timely and complete implementation.	Water Quality Program Management
Requests that Ecology commence that formal rulemaking before finalizing this internal guidance document to adopt its listing and TMDL procedures, including appeal procedures, under the State's Administrative Procedures Act.	Water Quality Program Management
Recommend when TMDL requirements have been implemented and standards achieved, an antidegradation standard should prevail as the guiding mandate forward. Once compliance is achieved, the permittee's program should be encouraged to shift its limited resources to addressing improvements and water quality standard compliance in the next impaired watershed.	TMDL Program
Request that a Use Attainability Analysis (UAA) or alternatively, a beneficial use confirmation study, be conducted before a TMDL is developed. This would ensure the TMDL remedies are needed and appropriate.	TMDL/Water Quality Standards
For aquatic dissolved oxygen concentration standards. Suggest Comparing modern water quality with that of the “natural” (= pre-modern) quality of the same body of water to assign “violations” of the standards in the modern body. My understanding is that, at present, the DO levels of the pre-modern water body are themselves used as the standard where those levels are lower than the modern standard and that a modern “violation” is defined if the modern water’s DO is 0.2 mg/L (or more) lower than that “natural” level. At present, where pre-modern water quality is unknown, regulators are at liberty to use a computer simulation to estimate them. I recommend that that practice be stopped and that the pre-modern conditions be defined as those existing at the earliest date from which reliable data are available. Where pre-modern conditions are unknown but simulated by computer, it is usually impossible for third parties to verify or dispute water quality violations assignments.	Water Quality Standards
For dissolved oxygen, the water quality violations identified by computer simulations should be regarded as advisory, not definitive. That is, violations should be defined by observed, replicable field observations – not by computer calculations. The reason for suggesting this change is that few computer simulations of complex aquatic systems can be accurate enough to serve as the sole basis (absent observations) for expensive efforts to reduce degradation of water quality.	Water Quality Standards
Develop clear guidance or methods to support development of lake specific studies which establish phosphorus criteria. This reduces local stakeholder’s ability to assist in the state in developing lake specific criterion.	Water Quality Standards

➢ Null

Comments do not require a Policy Revision (Ecology responses provided)

Section of Policy 1-11	Comment Received	Ecology Response
General	We request that Ecology include all of Boeing's identified areas as topics for discussion and allow the public the opportunity to participate in the prioritization process for review (rather than Ecology determining priorities).	Ecology received comments that will require varying degrees of public input. Boeing will have the opportunity, along with other public stakeholders, to be involved in the priorities that Ecology sets.
General	AWB identified 11 issues that are all relevant and important for making Category 5 decisions. We would expect all of our issues to survive any screening step and be fulling considered in the public participation process.	See response above.
Section 2: Waterbody Segments & GIS layers	(AWB) Should there be an exception process to waterbody segmentation if the transition to the NHD creates regulatory vulnerability to an NPDES permittee? (pg. 5)	No. This process is about identifying the status of waterbodies in the state, including those that are impaired, and working towards cleaner water. It is not about easing regulatory vulnerability to NPDES permit holders.
Section 2	Ecology maintains a valuable Geographical Information Systems (GIS) waterbody layer containing the Standards, but it lacks consistency with Table 602 in Standards and is not promoted as a definitive tool for determining where Standards apply. Where discrepancies with Table 602 in 173-201A exist, local programs suffer. Suggest comparing Table 602 in Standards with the GIS layer for consistency. Improve consistency and approve the GIS layer as a tool for stakeholder use in regulatory decision-making.	We agree that having the ability to use the GIS layer as a tool for regulatory decision making is important. We have worked internally to create an interactive GIS map that will be made available for use with the Water Quality Assessment, and will include GIS layers from several programs (Assessment, standards, permitting).
Section 4: Public Participation & Submitting information	Promote trainings for local organizations on data quality, submitting data, the assessment and listing process, how to manage and navigate Category 4b, de-listing process, and the public process.	Ecology will commit to workshops to the degree resources allow. We can also point people to information on Ecology's website about data quality and submitting data.
Section 4: Public Participation & Submitting information	Data that is judged by Ecology to be invalid can be misrepresentative of actual water quality conditions. It is recommended that Policy 1-11 be updated to require Ecology to exclude such unusable data from the EIM database.	We in the Water Quality Program do not have the authority to exclude data not used in the Assessment from the EIM database, since it may be entirely acceptable for other purposes. It is important to understand that EIM is

Section of Policy 1-11	Comment Received	Ecology Response
		used by other programs, not just the WQA. We use data that has a minimum QA level of 3 or 4 for the Assessment.
Section 8g-Temperatures	Ecology asserts that its approach to natural conditions is not a "presumption either way," id. at 21, but goes on to say that "[i]f the determination is made that potential human influences exist that could impact temperature, the waterbody segment will be placed in Category 5," id. at 44. Because Ecology states that it after determining an exceedance it "will take an additional step to determine if the water is impaired due to human influences," this latter statement is, in fact, a presumption that temperature exceedances are natural, notwithstanding Ecology's assertion. According to Ecology, only if "the determination is made" that temperature exceedances are caused by humans will it list the water as impaired. This is the most obvious reason why Ecology's listing methodology for temperature impairments is inconsistent with long-standing EPA policy. Ecology's methodology is not consistent with EPA guidance because it requires that the human contribution be "significant." And it is not consistent with EPA guidance because it provides for Ecology's not placing waters that have violations of the numeric criteria into Category 5 where natural conditions may "override human influences."	It appears you are misinterpreting how we are making 303(d) listings for temperature. In previous Assessments we have been challenged for placing waters on Category 5 when numeric criteria for temperature are exceeded because we don't have proof that the temperature is above the allowable 0.3 degrees due to human influences. We countered these arguments by stating that even if you have insufficient information, you cannot rule out anthropogenic sources without sufficient historic and background information to ensure that human influences are not contributing to the exceedance. Policy 1-11 (page 44) states: "Ecology lists waterbody segments on the Category 5 list due to temperature impairment when the numeric criteria are exceeded. In most cases, insufficient information exists to determine the level of human influence on temperature for each listed site. This approach assumes that human influences have contributed to the exceedance over the numeric criteria and the increase is measurable over natural conditions. While this approach may list waterbody segments as impaired for temperature without fully knowing the extent of the human influences, listings are based on existing and readily available information. In the absence of information, the waterbody segment will remain in Category 5 until further information or data are provided to change the category determination." Ecology does commit to taking an

Section of Policy 1-11	Comment Received	Ecology Response
		additional step to determine if the water is impaired due to human influences, but will only do so when information is provided to validate that there are no human influences.
	EPA regulations require that Ecology provide EPA with "[a] rationale for any decision to not use any existing and readily available data and information[.]" 40 C.F.R. § 130.7(b)(6)(iii). We have never seen an example of Ecology's having provided a rationale for a decision to not use any existing and readily available data and information and no such document exists on Ecology's website for any past 303(d) list submission. The responses to comments have been cursory and dismissive. Certainly one has not been provided for public review on this proposed 303(d) list.	Ecology has committed to provide a list of data and information that was not used in this assessment on our website so that it is easily available to the public. Ecology uses all data that can be assessed under WAC 173-201A and that meets the assessment policy (WQP Policy 1-11, Ch. 1) and that are allowable under the Credible Data (Policy 1-11 Ch.2). This information is provided in the submittal to EPA for approval.
	Ecology's listing methodology makes clear that we have no business submitting data and information for which we do not control the quality assurance plans. This year's proposed list is just one action in a series in which Ecology has, over very many years, repeatedly ignored federal law and policy, and its own water quality standards. That it is the Washington Department of Ecology that turns its back on the leading Clean Water Act case in the country—the Supreme Court's Jefferson County decision—a case in which it was the defendant, is nothing short of disturbing. And that it does so by playing games with public participation is even more so.	Ecology can only use data and information in which the quality of the data is known and documentation can be provided that meets the Credible Data Policy developed in response to the credible data requirements of the Water Quality Data Act (codified in RCW 90.48.570-590). Ecology has consistently responded to similar comments in previous listing cycles.