

National Tribal Water Council & EPA Office of Water
2024 Fall In-Person Meeting
Carlton, MN
September 25-26, 2024

DAY 1 SUMMARY NOTES

I. Attendees

NTWC (in-person): Ken Norton, Chair (R9); Chauncey Means, Vice Chair (R8); Brian Patterson (R2); Rainee Tetreault (R4); Shaun Livermore (At-large, R4); Nancy Schuldt (R5); Scott Hauser (At-large, R10); Eric Morrison (Alaska, R10), Ann Wyatt (Alaska, R10); Mary Verner (R10)

NTWC (virtual): Dan Kusnierz (R1); Yolanda Barney (Navajo Nation, R9)

EPA (in-person): Holly Galavotti, Felicia Wright, Amy Weber, Erica Fleisig

EPA (virtual): Kelly Gravuer

ITEP (in-person): Elaine Wilson; Elaina Doral

II. EPA Welcome Remarks (Felicia Wright, EPA OITA)

Felicia Wright, Deputy Director, of the American Indian Environmental Office (AIEO) provided welcome remarks. The relationship between the EPA and National Tribal Water Council (NTWC) is critical in addressing challenges faced by Tribes. The EPA continues to work on providing safe drinking water and a healthy habitat for fish, wildlife, and plants that are important to tribal lifeways.

The American Indian Environmental Office is responsible for the General Assistance Program (GAP) and is continuing to improve the program. AIEO released a new GAP guidance to help increase flexibility and reduce the administrative burden. In addition to the new guidance, AIEO launched a performance management system that will be used to track trends and determine future needs. AIEO is providing training through the GAP Academy.

AIEO works cooperatively with the National Tribal Caucus (NTC) and the EPA tribal partnership groups. Felicia Wright reviewed the NTWC comment letter on the proposed reorganization of the NTC for today's discussion.

Ms. Wright noted the increased amount of funding through the Bipartisan Infrastructure Law and Inflation Reduction Act. For example, there was \$300 million for the Climate Pollution Reduction Grants with 34 awardees consisting of tribes and territories. EPA established 17 Thriving Communities Technical Assistance Centers that provide resources for those applying for grants. The feedback has been positive, and tribes have noted how helpful the centers are.

The AIEO is happy to keep working with the NTWC and keep things moving forward for the long haul.

III. NTWC Opening Remarks (Ken Norton, NTWC Chair)

Chairman Ken Norton provided opening remarks and emphasized the meeting's focus and the path forward. He mentioned it is an honor and inspiration to have the meeting on the homelands of the Fond du Lac Band of Lake Superior Chippewa.

He stated, “This place is special and immersed in tradition and culture. The Fond du Lac use the tools of modern day to protect what is essential for their survival. It is inspirational.”

He remarked that “we are at a crossroads with the upcoming election. We are familiar with both administrations. The Trump administration offered less protection of our sacred waters and regulation rollbacks. The Biden administration provided historic funding that have change lives and provided clean water through rules that uphold our treaty rights under the reserved rights rule.”

He hopes to get a final date for the release of the Baseline Water Quality Standards that will provide protection for Indian Country.

He mentioned how NTWC can engage with the NTC to bring NTWC and tribal voices to the EPA Administrator.

The NTWC is focusing on protecting subsistence rights for Alaska Native Tribes through advocating for a comprehensive review of the renewal of the CWA 301(h) waiver, not an automatic continuance of the 301(h) waiver [this is regarding the Asplund Wastewater Treatment Facility in Anchorage, AK]. This will protect the subsistence and tribal lifeways along with the beluga whales and shellfish.

The EPA and State of Alaska are working to develop and establish new or revised water quality standards to update the fish consumption rates.

NTWC members will be engaging and participating in an upcoming National Congress of American Indians’ webinar on the Tribal Reserved Rights Rule.

Chairman’s final remarks saying, “It is a time of change and momentum,” and he looks forward to hearing everyone’s perspective.

IV. NTWC Roundtable (NTWC Members)

The following is a highlight of the topics discussed by the NTWC members during the roundtable.

- **Operations and maintenance for recent drinking water infrastructure development**
Federal agencies are funding infrastructure development, such as drinking water and wastewater construction. Chairman Norton discussed protecting those investments by advocating for funding for operations and maintenance. He noted the importance of having a tribal voice in the federal Infrastructure Task Force and the NTWC plans to write a letter of support to Roselyn Tso, Director of the Indian Health Service.
- **Operators**
NTWC members discussed the need for funding and support to train and retain tribal utility workers and operators. Shaun Livermore (At-large, R4) stated that there are not enough certified operators. Rainee Tetreault (R4) added that it’s hard to keep operators to conduct the operations and maintenance. It’s important to provide a livable wage for operators.
- **Messaging**
Shaun Livermore noted the importance of messaging when drafting comments and/or recommendations. Nancy Schuldt (R5) discussed using the theme of stewardship, which helps shape the people’s perception by taking care of what has been given to us. Brian Patterson (R1)

added that messaging should be given to tribal leaders where they can take it to the national level.

- **Emerging contaminants, such as PFAS and microplastics**

Emerging contaminants are an issue of concern for tribes, particularly PFAS. Nancy Schuldt (R5) expressed concern of PFAS affecting water supplies. Ann Wyatt (Alaska, R10) is concerned with PFAS and the difficulty to address it due to the relationship between the cities and tribes. Mary Verner (R10) added that PFAS are found at Department of Defense sites and inquired about the relationship between the Dept. of Defense and the EPA. Dan Kusnierz (R1) advocated for a smaller grant program that can help tribes assess PFAS issues on their land and water. Yolanda Barney (Navajo Nation, R9) shared her concerns about microplastics.

- **Algae blooms**

Eric Morrison (Alaska, R10) shared concerns from Alaska Native Tribes having to move due to erosions and algae blooms. In Alaska, there are 12 tribes having to deal with algae blooms. There is no funding available, and tribes are unable to use IGAP funding due to policy issues.

V. **NTWC Priorities for 2023 & 2024** (NTWC Members)

In May 2023, the NTWC identified ten (10) priorities to help guide the Council during the years of 2023 and 2024. NTWC members reviewed each priority and discussed the successes and challenges. NTWC members identified a few actions that could be completed for the following priorities:

- **Priority #5: Support Tribal Positions with Regard to Mining Operations**
Current actions involving mining include the release of a Final Report on the Recommendations to Improve Mining on Public Lands by the Department of the Interior's Interagency Working Group and the development of the White House Council on Native American Affairs Critical Minerals Working Group. The NTWC plans to promote and advocate for the working group's final report.
- **Priority #9: Identify and Recommend Specific Tribal Water Training and Certification Needs**
NTWC plans to support the rollout of the revisions to the CWA Section 401 Certification Rule and advocate for training and or webinar opportunities with a focus on writing.

VI. **NTWC Business Section** (Elaine Wilson, ITEP)

- **NTWC Membership Recruitment Update**

NTWC is currently accepting applications for Region 6 and Region 7 representatives due to the vacancies. Under the new cooperative agreement between US EPA and the NAU/ITEP and the amended NTWC bylaws, NTWC membership recruitment now includes two brand new positions - Region 3 and At-Large representatives. Recently, an application was received from Region 3 and an interview will be scheduled in October. The interviewing team generally consists of Nancy Schuldt, Shaun Livermore, Eric Morrison, and/or Yolanda Barney.

- **NTWC Membership Guidebook**

Elaine Wilson provided an overview of the NTWC membership guidebook that is given to new members during their welcome orientation. The guidebook includes a copy of the [amended] NTWC bylaws, meeting schedule, priorities, and a synopsis of outreach and engagement activities.

- **NTWC Priorities for 2025 and 2026**

A subcommittee of the NTWC will be created to brainstorm and draft the NTWC priorities for 2025 and 2026. Ken Norton, Scott Hauser, Yolanda Barney, and Mary Verner volunteered to participate on the subcommittee. Chairman Norton noted that the priorities may depend on the upcoming administration's water priorities.

Comments/Questions

Nancy Schuldt (R5) participates in the National Water Quality Monitoring Council (NWQMC) and is seeking someone to replace her on the council. Rainee Tetreault (R4) volunteered to be the NTWC representative on the NWQMC.

VII. Discussion of Reorganizing the National Tribal Caucus (Felicia Wright, EPA OITA; Amy Weber, EPA OITA; NTWC Members)

NTWC members and EPA staff had an open discussion regarding the proposed reorganization of the National Tribal Caucus (NTC) under the Federal Advisory Committee Act (FACA). The NTWC submitted a comment letter that opposed the reorganization under the FACA. Chairman Norton wanted to hear about the possible outcomes of the reorganization effort. He also wanted to focus on how the NTWC can have a better relationship and effectively engage with the NTC. The NTWC proposes to engage with the NTWC [water] media specialist Sharri Venno in its comment letter.

Felicia Wright provided a brief background on the NTC. Over 30 years ago, under EPA Administrator Carol M. Browner, a National Tribal Operations Committee was created to support tribal interaction and engagement with EPA. The principal purpose of the NTOC is to advise EPA on how the Agency's tribal programs can be improved. The NTOC serves as a forum for federally recognized tribes to meet with EPA Senior Leadership on policy and resource matters related to tribal capacity building, environmental program development and implementation in Indian country. The NTOC has evolved over time; currently the Tribal representatives to the NTOC (i.e., the National Tribal Caucus) are elected Tribal representatives from the 10 Regional Tribal Operations Committees. The NTC also coordinates with EPA-supported tribal partnership groups, such as the National Tribal Water Council.

There are two possible pathways for reorganization: (1) NTC as an advisory committee under the FACA law; or (2) NTC as an information exchange committee/entity under the Unfunded Mandates Reform Act (UMRA) exemption. The American Indian Environmental Office (AIEO) has been receiving input from tribes on the proposed reorganization.

The tribal consultation began on April 11, 2024, and ended on August 9, 2024. The office received 33 comment letters, and most were strongly opposed to the idea. The AIEO is establishing a work group consisting of tribal representatives and EPA staff to review the comments, discuss concerns, and develop recommendations.

Scott Hauser asked about the outreach of the work group and suggested that there is a broad representation across the nation and across tribes. Felicia Wright responded that the AIEO is working to ensure a representative selection and possibly develop subgroups, which was a useful process when developing the GAP hub and guidance.

Chairman Norton and Vice Chairman Means will be attending a meeting with the NTC on October 15, 2024. Chairman Norton plans to develop a list of NTWC's top three priorities, which will include operations and maintenance, and the finalization of the Baseline Water Quality Standards.

Nancy Schuldt asked about membership and its requirements. The response was that it is proposed the membership consist of tribal leaders. However, tribal leaders have many responsibilities, limited time, and may not be experts in environmental media topics. Often, tribal leaders delegate to program leaders who are more engaged.

Eric Morrison stated that membership should focus on getting good people that will stand up and have experience. Representatives should speak for people that don't have a voice.

Mary Verner asked about the potential improvements if the NTC is under a FACA. Felicia Wright replied FACA is a little more structured and has formality that help elevate the discussion.

Scott Hauser shared he participated in a partnership with NOAA Fisheries that moved under FACA. He noted the differences before and after the FACA status. After FACA, there were less comments and more unanswered questions.

VIII. Tribal Reserved Rights Rule (Erica Fleisig, OST; Kelly Gravuer, OST)

Erica Fleisig and Kelly Gravuer provided an overview of the final rule, Federal Water Quality Standards Regulation to Protect Tribal Reserved Rights, and the changes from the proposal. The final rule was published in the Federal Register on May 2, 2024, and became effective on June 3, 2024.

The rule defines "Tribal Reserved Rights" as any rights to CWA-protected aquatic and/or aquatic-dependent resources reserved by right holders, either expressly or implicitly, through federal treaties, statutes, or executive orders.

EPA made three key changes in response to public comments:

1. The rule requirements are triggered by a Tribe asserting their rights.
2. States must "take into consideration" suppression effects.
3. The EPA will engage early in the process, if requested and feasible.

For more information: <https://www.epa.gov/wqs-tech/revising-federal-water-quality-standards-regulation-protect-tribal-reserved-rights>

Comments/Questions

Mary Verner asked if this rule applies to state rulemaking going forward only or if the state has already adopted a WQS that is not protective, can the Tribe or the EPA ask the state to "reopen" that WQS. Erica Fleisig replied that tribes may use the opportunity to engage and comment with states during its triennial reviews.

Eric Morrison's concern is trying to determine what resources should be protected and his tribe may list all the resources. Erica Fleisig stated that the EPA does not expect tribes to identify everything. As a starting point, a tribe may identify a resource to protect.

Mary Verner asked if a tribe has to point to a specific WQS that needs to be revised or could a Tribe notify the EPA and state(s) of reserved rights within a geographic region. Tribal environmental

programs consist of small staff compared to the size of a state's environmental program. It's time consuming for a tribal program to track every activity. Erica Fleisig replied that the EPA envisions that a specific reserved right would be asserted. A blanket notice may not work because the state and the EPA will need information about which water quality standard(s) the Tribe believes are not adequately protective of applicable rights.

Scott Hauser commented that as tribes assert their rights, the EPA should support them as part of their federal trust responsibility.

- IX. Tribal Reserved Rights – Region 5 Case Study on Wild Rice and Sulfate** (Nancy Schuldt, NTWC R5)
Nancy Schuldt (R5) discussed the efforts of the Fond du Lac Band of Lake Superior Chippewa to protect wild rice under the Tribal Reserved Rights Rule. The state of Wisconsin initiated public comment as part of its triennial review to update its water quality standards. In July 2024, the Fond du Lac Band submitted a comment letter to advocate for a sulfate criterion.

There are over 15 years of research and sound science that shows the adverse effects of sulfate on wild rice. In the past, the Fond du Lac Band, along with nearby tribes and organizations, advocated for sulfate criterion for the state of Minnesota. The tribe has participated in a webinar with the EPA Office of Science and Technology to share the scientific research.

This process is a test case. The Fond du Lac Band has had discussions with the EPA Region 5 water quality staff about how this process will work. As of today, the tribe has not heard any updates from the state of Wisconsin.

Questions/Comments

Chair Norton stated that engagement with the tribe should have happened early.

- X. Fond du Lac Band of Lake Superior Chippewa Water Projects** (Nancy Schuldt, NTWC R5)
Nancy Schuldt provided an overview of the water projects on the Fond du Lac Band of Lake Superior Chippewa reservation lands and ceded territories. The Fond du Lac Band consists of over 100,000 acres with 40% covered by wetlands and 10% consisting of open water and mixed waters.

The St. Louis River flows along the northern and eastern boundary of the tribal lands. The St. Louis River watershed flows from the headwaters in the Mesabi Iron Range. Downstream, where the river connects to Lake Superior, is the traditional Fond du Lac homelands and one of the Great Lakes areas of concern. The St. Louis River is an important fishery resource for the reservation, and the Band is involved in remediation and restoration actions throughout the watershed.

The Fond du Lac are at the front lines for many water resource issues in Minnesota. A few issues include wild rice protection, mining, pipelines, wetland protection, and the Great Lakes restoration. The water program has over 26-years of water quality monitoring data, which has been useful when looking at trends. It has helped to develop new water quality standards.

The Fond du Lac has treatment as a state (TAS) status for CWA 303(c), 401, 106, and 319. The water program conducts on-reservation monitoring, management, restoration, and protection according to the tribe's water quality standards. This is one of the ways that tribes can exercise their sovereign authorities by taking on these federal programs.

The Fond du Lac water program has been researching how mercury is moving through the ecosystem. Mercury bioaccumulates in the fish, such as walleye and northern pike. The state of Minnesota has issued a fish advisory. The tribe has issued a fish consumption guidance as tribal members consume more fish than the general population.

Wild rice has great importance to the Fond du Lac. The tribe has worked on researching the impacts to and protecting wild rice waters. The tribe has established a partnership with tribes and organizations within Region 5 to manage the wild rice and water quality data in a shared database through the EPA National Information Exchange Network grant.

The Fond du Lac has also been addressing the impacts of mining. The tribe objected to the proposed PolyMet copper-nickel mine due to its adverse effects on downstream reservation waters, and the failure to comply with the tribe's water quality standards. The U.S. Army Corp of Engineers revoked the CWA 404 permit.

A tour was scheduled for the second day so meeting participants could see the sites that were mentioned during the presentation.

XI. Conclusion of Day 1 of the Meeting

**National Tribal Water Council and EPA Office of Water
2024 Fall In-Person Meeting
Cloquet, MN
September 25-26, 2024**

DAY 2 SUMMARY NOTES

I. Attendees

NTWC (in-person): Ken Norton, Chair (R9); Chauncey Means, Vice Chair (R8); Brian Patterson (R2); Rainee Tetreault (R4); Shaun Livermore (At large, R4); Nancy Schuldt (R5); Scott Hauser (At-large, R10); Eric Morrison (Alaska, R10), Ann Wyatt (Alaska, R10); Mary Verner (R10)

NTWC (virtual): Dan Kusnierz (R1); Yolanda Barney (Navajo Nation, R9)

EPA (in-person): Holly Galavotti, Felicia Wright, Amy Weber, Erica Fleisig

EPA (virtual): Mario Sengco, Becky Garnett, Lisa Larimer, James Ray, Danielle Anderson
Mary Lou Soscia (retired EPA), Lon Kissinger (retired EPA)

ITEP (in-person): Elaine Wilson, Elaina Doral

II. Tour of Fond du Lac Band of Lake Superior Chippewa Sites (Nancy Schuldt, NTWC R5)

Nancy Schuldt guided the group on a tour of two sites on the Fond du Lac Band of Lake Superior Chippewa lands. The first stop was Perch Lake where the tribe's traditional wild rice, *manoomin*, grows. The group was introduced to the tribe's water quality monitoring team and a tribal elder. The second stop was at the Spirit Lake Native Farms where wild rice is parched, and maple syrup is harvested and processed. Thereafter, the group traveled to the tribe's Resource Management Building where the afternoon meeting was held.

III. Revisions to the State of Alaska's Water Quality Standards & Other States (Erica Fleisig, OST; Mario Sengco, OST)

Mario Sengco provided an overview of the Alaska Human Health Criteria. On June 5, 2024, the EPA determined that new and revised human health criteria (HHC) are necessary to protect Alaska's designated uses, especially updating the fish consumption rate, revising HHC for 99 toxic pollutants, and new HHC for eight (8) additional toxic pollutants.

The Alaska Department of Environmental Conservation provided a proposed HHC rulemaking schedule where a draft would be provided in fall 2023 and the final rule adopted in fall 2024. However, the state has not provided a draft to the EPA yet.

EPA and the Alaska Department of Environmental Conservation (ADEC) are working, in parallel, to develop and establish new or revised water quality criteria for Alaska that protect human health in accordance with the Clean Water Act. The EPA conducted a pre-proposal consultation period with Alaska Native Tribes and Native Corporations concluded on August 9, 2024.

Comments/Questions

Eric Morrison shared that he will be conducting a fish consumption survey with a non-profit consisting of the Cook Inlet fisheries and seven tribes. He asked for a briefing with OST to ask further questions to obtain the best data, such as measuring the fish. Lon Kissinger replied with some suggestions. There are differences in methodologies and suggested conducting the survey in parallel with the community harvest surveys. Lon suggested contacting Nayak Polissar to assist with the statistics, which may be difficult.

Eric Morrison stated the tribes in the region are looking to declare the king salmon as endangered. He requested to add that note and the tribes plan to work on restoration in the future.

Nancy Schuldt asked if this parallel process has happened before. Erica Fleisig replied that it happens occasionally. It happened with the State of Washington in 2016.

Eric Morrison commented on the difference between Alaska Native Tribes and Alaska Native Corporations where tribes have a trust responsibility to protect tribal members and the corporations don't. He is interested to see the results between the corporations and tribes and how it will be mediated. Mario Sengco stated that a summary of the consultations will be provided in the docket when the rule is published.

IV. Case Study: Idaho Fish Consumption Rate Study (Mary Lou Soscia, Lon Kissinger)

Mary Lou Soscia provided an overview of the various studies conducted within the Columbia River Basin. Below is an overview of the studies conducted.

- 1994: Columbia River Inter-Tribal Fish Commission Fish Consumption Survey showed Tribal people consume 9-12 times higher amounts of fish than the average U.S. citizen.
- 2002: EPA and CRITFC Fish Contaminant Study discovered 92 pollutants in fish sampled from 24 tribal fishing sites in the Columbia River Basin.
- 2006: EPA, Oregon, and Umatilla Tribe worked on Oregon water quality standard fish consumption rate agreement that included a rate of 175 grams/day.
- 2011: Oregon fish consumption rate revised human health criteria process with the EPA established the CWA state human health criteria at a rate of 175 grams/day.
- 2022: EPA promulgated federal HHC after partially disapproving WA's submitted updated HHC. EPA Administrator signed a rule for Washington HHC at a rate of 175 grams/day.

In 2006, the State of Idaho submitted a revised fish consumption rate and revised HHC at a rate of 17.5 grams/day. The submittal was disapproved by the EPA in 2012. The EPA approved a less protective water quality standard with objections from the tribal governments in ID.

The EPA conducted a survey in collaboration with five tribes in Idaho. In 2016, the preliminary survey report was provided to the Idaho Department of Environmental Quality. In 2019, the EPA approved a rate of 66.5 grams/day. The tribal surveys helped build tribal environmental capacity, determined current and heritage fish consumption rates, and provided a vision for the future.

For more information: <https://www.epa.gov/columbiariver/idaho-tribal-fish-consumption-survey>

Comments/Questions

Chairman Norton inquired about the impact of an administration change on the EPA Administrator's determination for the State of Alaska. Erica Fleisig replied that the determination puts the state on

notice that the change needs to happen. She noted that determinations may be undone, but that would require a new action.

Becky Garnett shared that the EPA Region 10 office is in contact with the State of Alaska. Both the EPA and the state are communicating but proceeding in their own processes.

Lon Kissinger commented on the importance of good planning and design prior to conducting a fish consumption survey. It is particularly important that appropriate statistical methods be used that are developed by competent statisticians. A key concern is getting a sample that represents all relevant segments of a tribal population so that survey results can be used to make conclusions about a tribal population as a whole. Nayak Polissar is a well-known statistician who has worked on many Pacific NW fish consumption surveys. He was lead statistician for recent fish consumption surveys for tribes in Idaho referenced above. Lon noted that of the two available approaches for conducting a fish consumption survey, the [NCI method](#) or [food frequency questionnaires](#), most tribes, because of resource limitations, would want to conduct a food frequency questionnaire. It is important to use physical models to allow tribal members to quantify their consumption of fish and shellfish. Models may be of cooked or prepared portions; however, they would reference the raw edible flesh weight associated with each model. Concentrations of contaminants in seafood would be based on levels in raw portions. Tribal populations may have unique preparations, for example seafood stews or fish jerky. Consumption of a small amount of dried fish is equivalent to consumption of a much larger amount of raw fish. Use of recipes will allow determination of the quantity of fish in preparations such as stews to establish accurate consumption rates. For Alaska, it would be useful to have seafood consumption surveys and community harvest surveys for the same populations to correlate the results of the two different methodologies. Lon also observed that there is quite a lot of fish consumption information available, at least in EPA Region 10. There is adequate information to develop ambient water quality criteria for Alaska. There is no reason for continuing with Alaska's lax AWQC based on a fish consumption rate of 6.5 grams per day. The 6.5 grams per day is orders of magnitude lower than actual Native American FCRs. For persistent organic pollutants (POPs), in many cases, anthropogenic background levels are greater than risk-based levels derived using almost any Native American FCR data set. In certain cases, analytical methods are not sufficiently sensitive to detect risk-based levels. Because of these issues, attaining risk-based water quality criteria that are protective of Native Americans may be difficult. Nonetheless, there may be an aspirational quality to these criteria, thus they should be developed and attained as technology allows.

Shaun Livermore recommended focusing on the messaging and be ready to provide information to the public, such as the fish file size. Information can be brought to the people to get their support.

Ann Wyatt shared that her tribe applied to obtain their fish consumption rate and will know in a couple of months if it's approved. Eric Morrison and Ann Wyatt commented on the difference between the tribes' subsistence rights compared to sport fishing. Alaska Native people are limited to 25 fish and sport fishermen are allowed up to 300 fish.

V. Case Study: Maine Fish Consumption Rate Study (Dan Kusnierz, NTWC R1)

Dan Kusnierz presented on the recent history of fish consumption rates as applied to water quality standards in Maine. In 2009, EPA collaborated with the tribes in Maine to publish the Wabanaki Traditional Cultural Lifeways Exposure Scenario that reflects lifeways of tribal people using natural resources and traditional lifeways.

The scenario document was used as the basis for the Penobscot Indian Nation's tribally adopted water quality standards. The tribe submitted a TAS application, but it is not currently approved. With the use of the scenario document, the Penobscot Indian Nation developed a fish consumption rate of 286 grams/day. The State of Maine's fish consumption rate was 32 grams/day.

There are jurisdictional issues in Maine. In 2016, EPA promulgated WQS in waters on Indian lands to protect sustenance fishing. In 2019, the State of Maine and tribes in Maine negotiated a solution to protect tribal health and established a sustenance fishing designated use in waters selected by the tribes. The fish consumption rate was changed to 200 grams/day. In 2020, EPA approved Maine's revised HHC.

Comments/Questions

Chairman Norton asked what happens under the Tribal Reserved Rights Rule if a tribe has a higher fish consumption rate than the state. Erica Fleisig replied that if a tribe has a reserved right to fish for subsistence in waters where the state establishes water quality standards, the tribe could assert their right to trigger the process of the state needing to consider the tribal fish consumption rate data.

Dan Kusnierz added that it is important to pay attention to the cancer risk levels since there are different methods to calculate the number.

Lon Kissinger inquired about the background levels of PCBs and dioxin. Dan Kusnierz replied that dioxin, PCBs, and mercury are handled differently in Maine. The fish consumption rates don't apply to dioxin or mercury as far as regulating it.

Eric Morrison commented on the difference between Alaska Native Tribes and Alaska Native Corporations when looking at WQS in Alaska. Tribes have a responsibility to protect tribal people and natural resources for harvesting and subsistence rights. Corporations have an obligation only to their shareholders.

VI. EPA Guidance for Developing Fish Advisories (Lisa Larimer, OST)

Lisa Larimer provided an overview of the EPA's updates of recommended contaminants to monitor for fish and shellfish advisories. EPA has established two lists of contaminants that programs should consider monitoring: (1) contaminants to monitor for advisories; and (2) contaminants to monitor to watch. EPA added PFAS to both lists in addition to other contaminants. EPA provided methods that can be used to analyze the new contaminants.

Lisa Larimer presented information on fish tissue studies as part of the National Aquatic Resource Surveys. EPA collected composite samples of fish that are commonly consumed by the public. EPA's findings include that mercury, and PCBs have been detected in 100% of the samples. PFAS was detected in 86-100% of the samples depending on waterbody type.

For more information: <https://www.epa.gov/choose-fish-and-shellfish-wisely>

Comments/Questions

Chairman Norton asked if microplastics are found in the tissue of aquatic organisms. Lisa Larimer replied that the EPA has conducted a research study and have found microplastics in the stomach, but did not analyze the tissue.

Scott Hauser asked why the EPA is only looking at amphetamines (among pharmaceuticals). Lisa Larimer stated that in the scientific literature amphetamines were found at a concentration that tripped the level for inclusion on the monitoring list. At this point, it is unknown whether amphetamines are actually accumulating in fish to a point that it is problematic for humans.

Eric Morrison is interested in similar sampling studies in the Cook Inlet area. He noted the issues in the area, such as chemical manufacturing plants and algal blooms.

Yolanda Barney asked about PFAS sampling and whether there is a comparison between what's found in fish, in drinking water treatment plants and the source water. Lisa Larimer replied that PFAS is tricky since more PFAS compounds may be found in the water or fish but rarely in both. There is no correlation at this point.

VII. Baseline Water Quality Standards & Water Quality Standards Approaches (Danielle Anderson, James Ray, EPA)

James Ray provided an update on the EPA's Proposal to Promulgate Federal Baseline Water Quality Standards for Indian Reservations and available templates and tools for tribes. In April 2023, the EPA Administrator signed the proposed rule. Thereafter, a 90-day tribal consultation occurred during summer 2023. It is anticipated that the rule will be finalized in fall 2024. Once finalized, the rule would establish CWA effective water quality standards (WQS) for waters on over 250 Indian reservations, safeguard water quality, and apply until tribes obtain TAS and EPA-approved WQS.

James Ray highlighted available tools and resources for tribes. The EPA has a downloadable and customizable TAS application template for WQS and water quality certifications. Another resource is the model WQS template for waters on Indian reservations that include editable text and numeric criteria tables. Tribes may work with an EPA regional office to determine the appropriate fish consumption rate using the EPA's human health criteria calculator.

For more information: <https://www.epa.gov/wqs-tech/promulgation-tribal-baseline-water-quality-standards-under-clean-water-act>

Comments/Questions

Chairman Norton wanted to confirm that a tribe may write a letter to opt-out and submit the letter to the EPA is allowable under the rule. James Ray confirmed, as articulated in the proposal, that a letter is allowable.

Mary Verner asked if a tribe has tribally adopted WQS, but are not approved by the EPA yet, would EPA use the tribe's standards? James Ray replied, as provided in the proposal, that the EPA is the

implementing entity on reservation lands and may use those standards as a guide. The tribe's standards could be factored in on how Baseline WQS would be implemented by the EPA on tribal lands.

Chairman Norton noted the promulgation of the standards for the Colville Indian Reservation. This process can be expensive but an option for tribes. Felicia Wright shared that the EPA requested \$25 million for DITCAs in the presidential budget and is an option for tribes.

VIII. Summary of Action Items and Closing Remarks (Ken Norton, NTWC Chairman)

Below is the list of the action items.

- Draft a letter to Roselyn Tso, Director, of the Indian Health Service in support of the operations and maintenance funding.
- Draft recommendations that the NTWC could support regarding the Final Report on the Recommendations to Improve Mining on Public Lands and improve the way mining is conducted on U.S. public lands.
- Form a subcommittee or working group for developing the NTWC 2025 & 2026 Priorities.
- Email the NTWC Member Guidebook to NTWC members and Holly Galavotti.
- Include updates on the monthly NTWC/EPA calls from NTWC members who sit on various organizations on behalf of the NTWC.
- Read the recommendations section of the Alaska white paper on Asplund Wastewater Treatment Facility.