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RE: Comments on Ecology's Fish Consumption Rate Technical Support Document

Thank you for the opportunity to comment on Department of Ecology's "Fish Consumption Rates Technical Support Document: A Review of Data and Information about Fish Consumption in Washington, September 8, 2011". The Confederated Tribes of the Colville Reservation (CCT) is very interested in the outcome of this document and would like to provide general and specific comments to the document which will ultimately impact and affect tribal resources and tribal fish consumption.

Current Washington State Consumption Rate

Given the national trend of increasing fish consumption, the adamant recommendation of the Washington Department of Health, and the fact that current consumption rates do not account for suppression factors, we support Ecology's findings and recommendations that recent available scientific information supports a substantially higher consumption default rate range of 157 to 267 grams per day. We recommend a rate at the higher end of the range because it will reflect a more protective level.

Tribal Consumption Rates and Tribal Information Support a Higher Consumption Rate

The CCT is a confederation of twelve tribes within a current reservation of 1.4 million acres and 1.5 million acres of ceded lands (former reservation) where we have Supreme Court affirmed hunting and fishing rights. Tribal ancestral lands are vast, encompassing millions of acres of lands within watersheds where tribes continue their connection to their families, cultural practices and food resources. Within the CCT regulatory infrastructure, we provide tribal codes to protect reservation natural resources including our own fish consumption rate, clean-up standards and natural resource management programs to support overall tribal goals and objectives.

The CCT vision and current management objectives include aggressive programs and projects to provide more fish to tribal people and to residents of the state who reside near the Columbia River and those watersheds that drain into the Columbia. Members of the CCT are the only Tribal people who are fishing salmon on the Columbia River (and tributaries) from their own reservation lands. In addition to the management of programs to recover endangered and

threatened fish populations, the CCT is providing fish to tribal subsistence users and non-tribal residents by providing for more fish through habitat improvements, hatchery development, fish distribution efforts, and programs on reservation and throughout our U&A areas.

The CCT are in a unique situation where we seek a dynamic balance between the importance/priority of anadromous species such as salmon versus habitat needs of resident fish. We are presently managing for partial losses of salmon due to the construction of the two largest dams on the Columbia system which are located partially on the Colville Reservation. Currently salmon migrating up the Columbia River do not pass the Chief Joseph Dam, but we fish for salmon at the tailrace of Chief Joseph Dam and as they run up the Okanogan River system. The CCT is currently constructing a salmon hatchery on the Columbia near the mouth of the Okanogan River to provide salmon for tribal subsistence use and to bolster salmon recovery in the system for the future. The hatchery will provide an added benefit to non-tribal fish consumers in the state.

Recent CCT data support a trend of increasing fish being harvested. Colville Tribal Fish and Wildlife Program reported 9,845 Sockeye and Chinook harvested from Okanogan and Columbia Rivers from 2002 through 2006, this number increased substantially in the past five years to 44,148 from 2007 through 2011.[1]. Creel data from the Columbia River, Lake Rufus Woods reach (above Chief Joseph Dam to Grand Coulee Dam) reported 5,916 anglers with 5,714 fish count[2]. This area is also being evaluated for potential salmon habitat/passage, and is currently being utilized by commercial aquaculture facilities. Those aquaculture facilities are currently raising millions of pounds of triploid rainbow trout annually. CCT has been purchasing fish from the commercial facility, which are released in the Columbia for tribal subsistence and recreational fish opportunities; from 1997 to 2005 over 200,000 fish were released under this program. This reach of the Columbia River has become an incredibly popular trophy and meat fishery with fishing visits exceeding 40,000 angler days per year (Shallenberger, 2008).

We are currently in the process of updating our CCT Water Quality Standards and revising our own fish consumption rate based on new available scientific data and a recent tribal and reservation resident survey conducted for the purpose of evaluating potential exposure pathways in the Upper Columbia River as part of the Upper Columbia River Remedial Investigation and Human Health Risk Assessment. The work was conducted under the authority of the CERCLA, 1980 and SARA 1986 Acts and in accordance with relevant work plans developed pursuant to the June 2006 Settlement Agreement signed by the United States and Teck Cominco American Incorporated. All data collection and informed consent procedures for the survey were approved by the Institutional Review Boards for the Environmental Protection Agency[3]. The Tribal Resource Consumption and Use Survey (CCT Survey) was completed in March 2011 and the final report is nearing completion. The survey includes relevant new data documenting fish

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[1] Rayton, M. Personal Communication. 2012 Confederated Tribes of the Colville Reservation (CCT) Fish and Wildlife Department.

[2] Shallenberger, E. Rufus Woods Creel and Supplementation Project. 2009. Prepared for U.S. Department of Energy, Bonneville Power Administration.

[3] Upper Columbia River Remedial Investigation and Feasibility Study Tribal Consumption and Resources Use Survey Draft Report. 2011. Submitted to the US EPA, Region 10 by Westat, Rockville Maryland.

consumption of tribal and reservation residents and is one of the largest ever conducted with a Tribal population.

A total of 1,783 reservation residents completed the required surveys (both Tribal members and non-member reservation residents). 82.98% of reservation population surveyed consumed fish in the last year. Of those fish consumed, 76.75% of reservation residents consumed salmon, 46.19% consumed trout, and 13.02% consumed walleye. Information about consumption frequency of fourteen other species of fish, shellfish (mussels, crawfish) and other aquatic species was gathered as well. Other significant findings include that tribal fishing and consumption have been suppressed due to various concerns about contamination and other factors. In our survey, reservation residents responded that they would eat more fish if not for contaminant concerns[4].

Open Questions

Ecology's technical document raises the question of whether salmon should be considered in evaluating fish consumption rates, as they are migratory. Every life stage of the salmon is critical to fish health, survival and the bioaccumulation of contaminants which ultimately contributes to the contaminant body burden of tribal people.

Usual and Accustomed Fishing Areas

The definition of Usual and Accustomed Fishing Areas in the draft is not inclusive of all federally recognized Tribes of Washington State as it references the "1854 and 1855 negotiated treaties with Pacific Northwest native Americans in Washington State". The definition should be revised to include including all federally recognized tribes regardless of the mechanism by which they were established. The CCT was established by Presidential Executive Order. Specific to the CCT, Usual and Accustomed areas of the CCT within Washington State are vast and cover much of the lands and waters east of the Cascade Range. CCT tribal programs are implementing programs to provide more fish into the future for tribal subsistence consumption as well as providing an added benefit to non-tribal Washington residents.

A default fish consumption rate is a conservative rate and state risk driven standards can be driven to a more conservative value on a site specific basis. Any site specific revision to the state-wide default fish consumption rate must be towards a higher (more protective) rate of consumption, not a lower rate. Such is the case under Washington's MTCA, in which exposure parameters, specifically the default fish consumption rate, cannot be revised downward. While not strictly applicable to the Sediment Management Standards Rule (SMS), the basis for a single-sided default rate that can be adjusted on a site specific basis to be more but not less protective of human health is rooted in solid risk management principles and represents good public policy that CCT recommends will be incorporated into Section 173-204-571 of the SMS Rule.

The structural link between the fish consumption rate that the State of Washington eventually adopts and its use within the proposed Sediment Management Standards as a key variable in setting human health based cleanup standards is, in the document's current iteration, weak, ambiguous and subject to challenge. Key terms and application scenarios that affect both

[4] Environment International. 2012. Draft Upper Columbia River Resources Survey Food Questionnaire Data Report.

documents, such as Usual and Accustomed Areas and site-specific fish consumption rates must be consistently defined and their application specified in a manner that correctly cross-tracks, before CCT will support promulgation of the rule and supporting technical documents.

In conclusion, CCT survey data and other recent scientific data support a higher fish consumption rate. It is imperative that the State increase the fish consumption rate as the current rate is unrepresentative of true consumption patterns, and an increased rate will result in more protective and risk-appropriate clean up actions and healthier population.

Sincerely,

Gary W. Passmore, Director
Office of Environmental Trust