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Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476
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Ted Sturdevant, Director
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fishconsumption@ecy.wa.gov

RE: Comments on the Fish Consumption Rates: Technical Support Document

Dear Director Sturdevant: Ted,

Thank you providing a copy of the Washington State Department of Ecology's document, *Fish Consumption Rates: Technical Support Document* (publication #11-09-050; referred to as the "FCR document" in this letter). The report is well-researched and well-written. We appreciate the effort to thoroughly and accurately document the importance of fish consumption, not only to Tribes, but to all people of Washington State. The following comments are provided in hopes of strengthening the defensibility of the report for its use in revising Washington State rules and regulations.

The proposed rate increase reflects current Washington State resident fish consumption, not tribal-specific consumption

The Swinomish Indian Tribal Community ("Swinomish") strongly supports increasing the fish consumption rate used in Washington State regulations. The current 6.5 grams per day ("gpd") rate is a gross underestimate of all Washington State residents who eat fish (the term "fish" includes all marine, freshwater and anadromous species and shellfish), as demonstrated in the data reviewed in the FCR document. Such a low rate does not adequately protect the health of any fish-consuming person.

However, it must be clearly stated that while the suggested rate increase of 157-267 gpd may adequately protect many Washington residents (provided that all of the other factors used in the risk assessment calculations maintain the same stringency/ are not relaxed), these rates will not be protective of many tribal members, who currently consume much more fish. Although Swinomish has yet to complete our seafood diet study, the Suquamish Tribe's numbers provide apt figures —only the 75th percentile of Suquamish tribal members are protected using the 267gpd rate (keeping in mind that reasonable maximum exposure is considered protective at 90-95 percent of the population distribution). Swinomish cannot endorse inadequate protection—all tribal members have a right to be protected at the level of fish they consume (not just as a human right but also a Treaty right, c.f., O'Neill 2007).

Moreover, current tribal rates are suppressed, as briefly discussed in the FCR document (p. 96). Therefore, implying that even the highest of the suggested rates—267gpd—is protective of tribal peoples is not correct. If increasing the fish consumption rate means having to chose a number that only lies within the range of 157-267 gpd, then Oregon's precedent of 175 gpd is the lowest rate that can be considered sufficient in better protecting the health of all Washington State residents (as long as all other factors in the risk assessment remain unchanged). During the next review cycle, tribes will push for higher fish consumption rates that are more reflective of tribal practices.

Risk assessment and exposure assessment factors

While we understand that the FCR document focuses solely on one component of the risk equation—exposure via ingestion—no fish consumption rates can be endorsed unless all of the factors in the risk equation are explicitly stated up front. We want to ensure that none of the other factors are relaxed or adjusted such as to be not as protective of human health. For example, there has been some discussion about changing the "acceptable" cancer risk level --upping risk levels to 10-5 or 10-4; this is simply *un*acceptable. Not only does it render increasing the fish consumption rate moot, it sends a very clear message to Washington State residents that our health and welfare are not driving factors in setting regulations.

Equally disconcerting are the discussions regarding setting compliance schedules to be 40+ years instead of the current 10 years, and considering use of a fish diet fraction of less than 100%; both ideas would destroy all the advances made in protecting human health with increased fish consumptions rates.

Salmon must be included in the fish consumption rates

When assessing fish consumption rates, the entire "fish basket" must be included so that the total rate equals all of the types of fish eaten. This is important for all Washington State residents because when one species is unavailable, many people substitute by eating other species in greater quantities such that their overall consumption rate remains the same. If salmon is the species being substituted and it is not accounted for, people may not be protected to an adequate degree if they consume substitute species.

For tribes, the issue of salmon carries a different importance. Substitution is often not an option; tribal members may eat fish even if they are contaminated because of the cultural importance of those species (Donatuto, Satterfield and Gregory 2011). Salmon is an excellent example-- salmon is a cultural keystone species sacred to tribal people (Garibaldi and Turner 2004) and tribes have Treaty-protected rights to harvest and consume salmon. Tribal salmon consumption may currently be suppressed due to a devastating reduction in salmon run sizes attributable to pollution and environmental degradation of fish habitat (*see*, for example, the recent ruling of Phase II of *United*

States v. Washington, also referred to as the "culvert case"), but were salmon more plentiful, tribes would be able to harvest, and eat, more salmon.

Habitat quality and site-specific fish consumption rates

Treaty rights also play a key role in determining that we cannot support use of the EPA Region X Framework (discussed on page 78 of the FCR document). In the EPA framework, the habitat quality is categorized by two tribes—Tulalip Tribes' lower shellfish consumption, presumably due to lower quality and quantity of habitat, and Suquamish Tribe's higher shellfish consumption rates based on higher quality and quantity shellfish habitat. Yet treaty rights protect shellfish use for tribes no matter what their current consumption level and no matter what their current habitat quantity and quality; therefore assuming that Tulalip and Suquamish would have different levels of consumption even with similar habitat is incorrect. Many tribal people would like to eat more fish than they currently do (Donatuto and Satterfield, unpublished). Using the EPA Region X framework's habitat determination and categorizing any tribe as having lower quality and quantity of habitat sets the clean up to a lesser standard than what treaty rights protect, essentially pigeon-holing tribes into a downward spiral of habitat quality and quantity and undermining tribes' ability to return to heritage consumption rates in the future.

Although the FCR document contains a section on site-specific fish consumption rates, Swinomish would like to see explicit wording allowing individual tribes to set consumption rates at levels that reflect their own consumption levels, and not be forced to use a state-wide default that is not be protective of tribal people who harvest in the same areas over a lifetime.

Beyond the FCR document—the regulatory context for using fish consumption rates

As it currently stands, the water quality standards ("WQS") revisions are on hold, as are the MTCA revisions, leaving only the sediment management standard ("SMS") revisions on the table. While fish consumption rates are part of both the MTCA and WQS rules, they are not explicitly part of the SMS. In fact, the SMS contain no details regarding guidance of what is protective of human health. Therefore, while the FCR document is an important document in cataloging current rates of Washington State residents, and demonstrating that 6.5 gpd in the WQS and 54 gpd (and 50% diet fraction) in the MTCA are both inadequate, it is unclear to us what will become of these insights in regards to the rules' revisions. We do not want to see the fish consumption rate issue buried. Ideally, there should be a detailed human health component in the SMS, but barring that, we want assurances that the work presented in the FCR document will be employed when the WQS and MTCA rule revisions are placed on the table. We want to see specific timelines from Ecology regarding revisions for each of the rules as well as substantial steps taken to keep this document alive. We do not want to see all of the hard

work put into the FCR document simply become an Ecology exercise in time and resource use.

We look forward to the continued move forward toward revising the fish consumption rate to be more protective of human health in Washington State.

Sincerely,

Brian Cladoosby

M. Brian Cladoosby, Chairman

References:

Donatuto, J. and T.A. Satterfield. Flawed Assumptions, Flawed Conclusions: Using Interviews to Improve Our Understanding of the Impacts of Shellfish Contamination in a Native American Community. Unpublished.

Donatuto, J., T.A. Satterfield, and R. Gregory. 2011. Poisoning the body to nourish the soul: Prioritizing health risks and impacts in a Native American community. *Health, Risk, and Society* (13)2: 103–127.

Garibaldi, A. and N.J. Turner. 2004. Cultural Keystone Species: Implications for Ecological Conservation and Restoration. *Ecology and Society* 9(3):1-18. URL: http://www.ecologyandsociety.org/vol9/iss3/art1/ (September 15, 2007).

O'Neill, C. 2007. Protecting the Tribal Harvest: The Right to Catch and Consume Fish. Region 10 EPA Tribal Leaders Summit, Pendleton, OR.