

January 12, 2012

RE: Comments on Fish Consumption Rates Technical Support Document: A Review of Data and Information about Fish Consumption in Washington (Publication 11-09-050)

To Whom It May Concern,

Thank you for the opportunity to comment on Washington State Department of Ecology's (Ecology) Fish Consumption Rates Technical Support Document (Publication 11-09-050), which Ecology will use as it considers updates to the Water Quality Standards for Surface Waters and the Model Toxics Control Act Cleanup Regulation. As you know, the harvest, consumption and ceremonial use of fish and shellfish is a fundamental part of coastal tribal culture, and the Jamestown S'Klallam Tribe views determining accurate fish consumption rates as a high priority. We appreciate the attention that Ecology staff members are giving to this important issue and the participation of all interested parties in the related discussions. Our main comments are listed below.

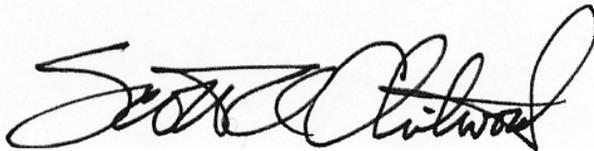
- The Jamestown S'Klallam Tribe has been involved in meetings and workshops relevant to fish consumption rates, some of which have been sponsored by the Northwest Indian Fisheries Commission (NWIFC), from the beginning. **The Jamestown S'Klallam Tribe contributed to and supports the recent comment letter (dated January 3, 2012) submitted by the NWIFC on behalf of the tribes, and we incorporate those points within this letter.**
- **Unfortunately, our Tribe is intimately aware of how pollution and habitat loss, among other factors, can impact tribal citizens' ability to harvest and consume fish.** Dungeness Bay, one of the Jamestown S'Klallam Tribe's traditional shell-fishing grounds, has had multiple closures due to bacteria pollution, and the oyster farm we operated there was ultimately shut down because of it. Other shellfish areas within the Tribe's Usual and Accustomed fishing areas (U&A) are closed because of proximity to permitted discharges, and the potential pollution load. **In addition to shellfish pollution, loss of habitat for salmon has played a role in suppressing the fish consumption rate for citizens of the Jamestown S'Klallam Tribe.** The Tribe has been working for over 25 years to help restore stream flows in the Dungeness River and other streams in our Usual and Accustomed fishing areas (U&As), particularly those that are home to species listed under the Endangered Species Act (ESA). The Dungeness River, for example, is home to numerous salmonid species, four of which are ESA-listed as threatened: Spring/ Summer Chinook, Summer Chum, Bull Trout and steelhead. Dungeness River stream flows are impaired for a variety of reasons, which stakeholders are trying to address. Simply stated, reduced flows are directly related to diminished fish habitat resulting in a lower abundance of fish. **A reduced fish consumption rate for the Jamestown S'Klallam Tribe is the culmination of these (pollution and habitat) and other confounding factors.**
- **The Jamestown S'Klallam Tribe advocates factoring in salmon consumption when determining the FCR.** As highlighted in the document, salmon (and certain shellfish) are the primary fish species consumed by Washington fish eaters. Salmon consumption in Washington, including by high risk groups, must be a factor if the FCR is to be sufficiently protective of Washington consumers. The Technical Support Document does well to note that experts with

experience in areas of toxicology, risk assessment, public health, biostatistics, and/or epidemiology concluded for Oregon Department of Environmental Quality that Pacific salmon should be included in Oregon's fish consumption rate (p109).

- While the document acknowledges that "tribal populations enjoy treaty fishing rights, and harvesting and eating seafood plays a significant role in their cultures" (p3), the document should better illustrate **that Treaty Tribes have reserved rights to *uncontaminated* fish and shellfish as defined in treaties signed with the United States in the 1850's. While the state has to set protective levels for all fish consumers, tribal treaty rights go beyond that obligation, and this should be an important consideration in determining an FCR.**
- A fish consumption study for the Jamestown S'Klallam Tribe has not been conducted. We recognize that our tribal citizens' actual fish consumption rate may be higher than even the high-end of the range described by the September 2011 Ecology Fish Consumption report, even with the conditions suppressing fish diets. However, in February 2011 the Fish and Game Committee stated that the **Department of Ecology moving forward with a default rate of *at least 175g/d* is a positive change.** It will be imperative to apply the rate so that it provides meaningful protection (time and acceptable risk and other parameters may be manipulated in the application of the rate but should retain protection for high-risk populations). Ecology must not set a low default rate and claim that the rate may be increased on a site-by-site basis. This will be prohibitively costly in resources, and in personal health of fish consumers.

Again, the Tribe commends the State for finally refining Washington's fish consumption rate to one that is more accurate and more protective of human health when referenced for State Water Quality Standards. Hopefully this will be another step towards improving the condition of these natural resources for tribal and non-tribal citizens in Washington.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Chitwood". The signature is fluid and cursive, with the first name "Scott" written in a larger, more prominent script than the last name "Chitwood".

Scott Chitwood
Natural Resources Director