

DEPARTMENT OF  
**ECOLOGY**  
State of Washington

# **Fish Consumption Rates & SMS Rule Revisions**

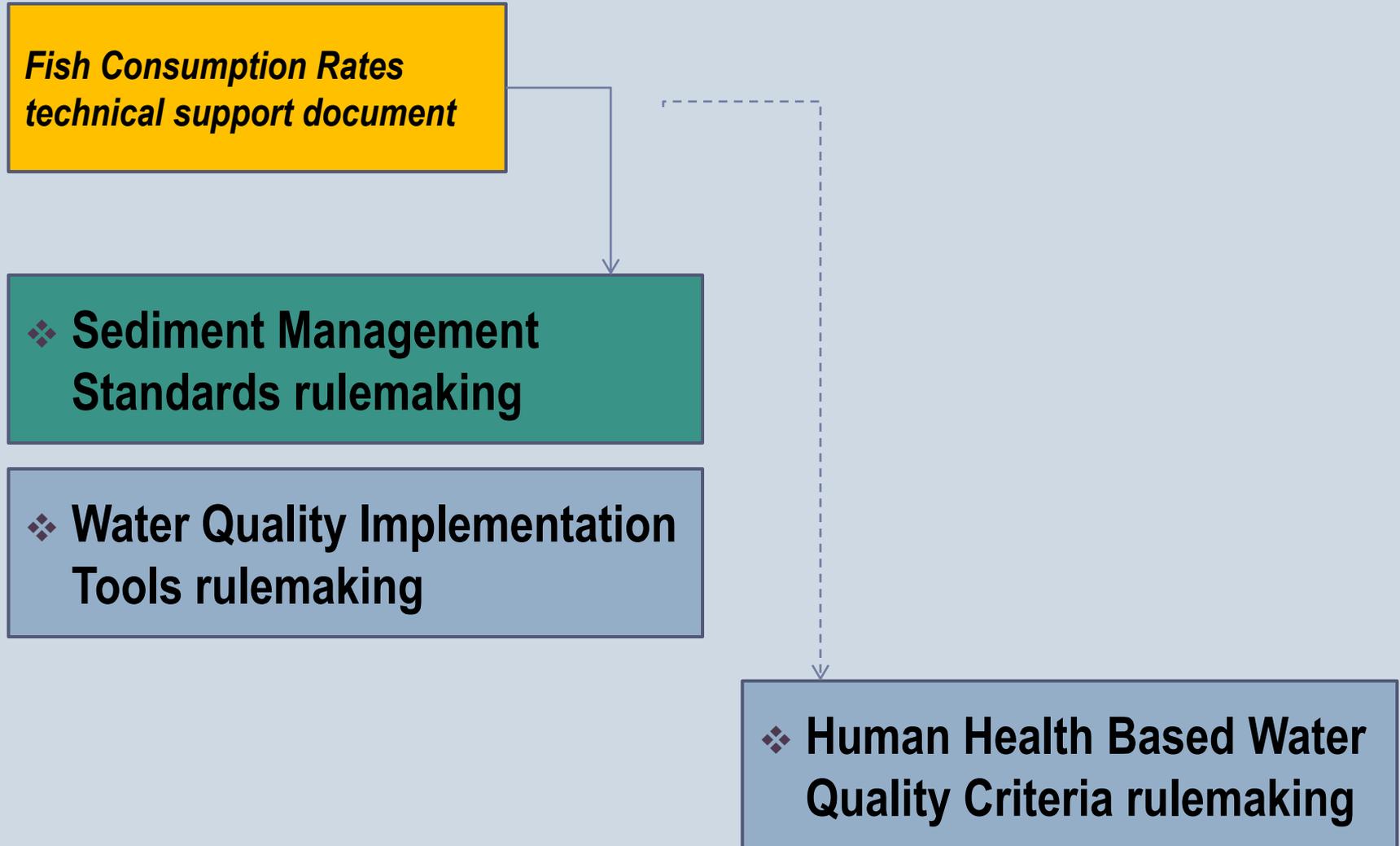
Water Quality Partnership Meeting  
March 15, 2012

Martha Hankins/Chance Asher/Dave Bradley  
Toxics Cleanup Program  
Department of Ecology

# Separate but coordinated processes

July 2012

Dec 2012



# Ongoing public dialog around updating default fish consumption rates (FCRs)

- ▶ **Fish Consumption Rate Technical Support Document (*draft*)**
  - ➔ Ecology publication number 11-09-050
  - ➔ Public comment period Sept 2011 – Jan 2012
  - ➔ Over 300 comments received
  - ➔ Comments are posted at: [www.ecy.wa.gov/toxics/fish.html](http://www.ecy.wa.gov/toxics/fish.html)
  - ➔ Response from Ecology Director Ted Sturdevant: [www.ecy.wa.gov/toxics/docs/fishcomments\\_response.pdf](http://www.ecy.wa.gov/toxics/docs/fishcomments_response.pdf)
- ▶ **Technical Workshop held December 12, 2011 at U.W.**
  - ➔ Workshop summary & presentations at: [www.ecy.wa.gov/toxics/fish\\_publicinvolvement.html#12122011](http://www.ecy.wa.gov/toxics/fish_publicinvolvement.html#12122011)

Additional workshops are being planned for late April 2012 (tentative) at both east and west locations

# Ecology received over 300 comments on FCRs

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## Summary of comments

- ▶ Decisions should be justified in terms of public health benefits
- ▶ Ecology should describe the process that agencies use to estimate human health risk, including how chemicals get into fish and shellfish
- ▶ Ecology should clarify whether the proposed default FCR is intended to be protective of the 90<sup>th</sup> to 95<sup>th</sup> percentile of all Washington fish consumers; or of the 90<sup>th</sup> – 95<sup>th</sup> percentile of high-end fish consumers (and is it appropriate to classify individuals as consumers or non-consumers?)
- ▶ Ecology should consider changing target risk levels to avoid large portions of the state's waters being identified as impaired
- ▶ A number of specific suggestions regarding the use of the regional-specific dietary fish consumption surveys used by Ecology
- ▶ There was a divergence of opinion on whether or not salmon should be included, suggestions include regional and species specific approaches

# What is Ecology doing in response to comments?

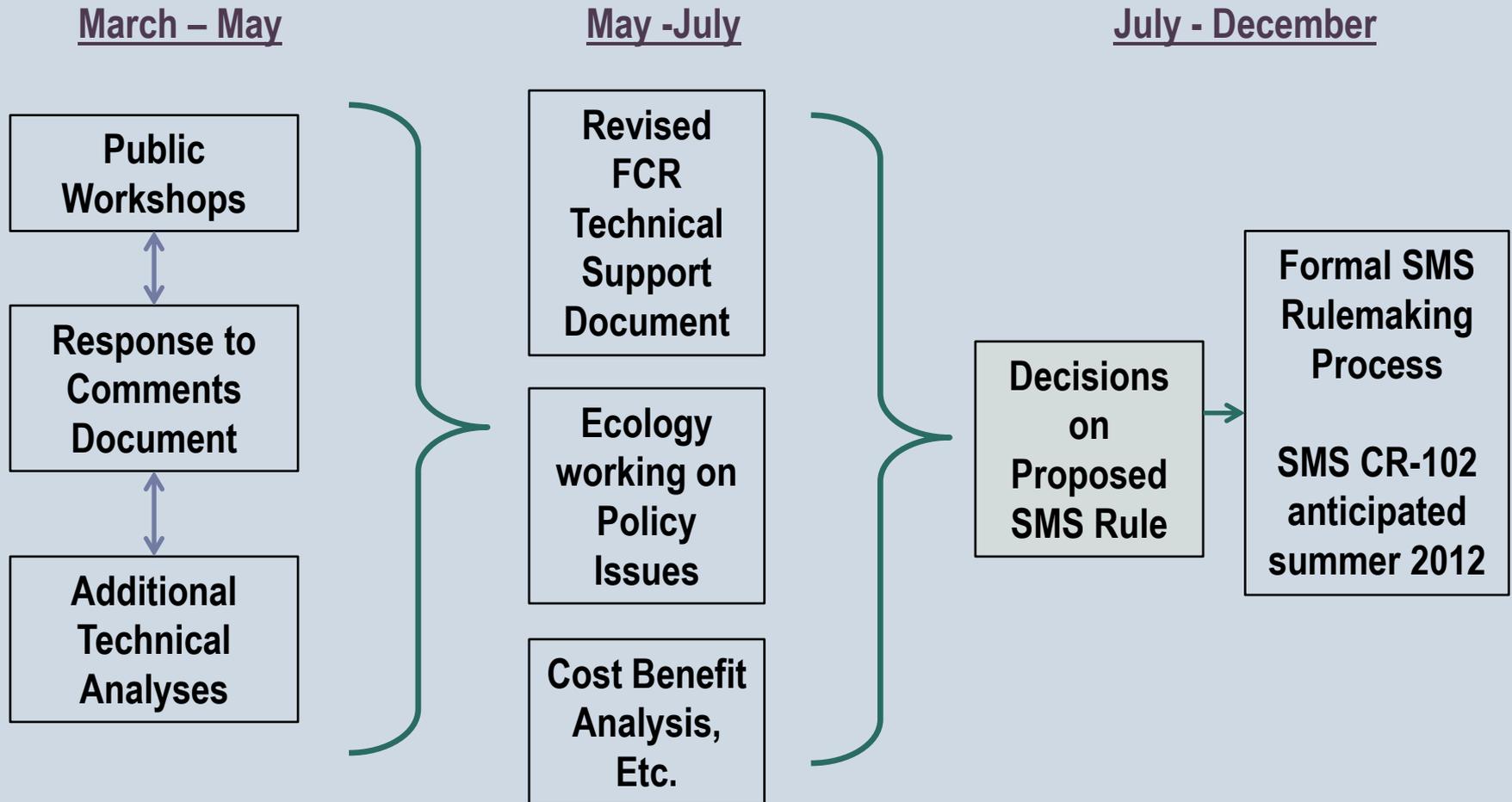
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- ▶ **Preparing a written response to comments**
- ▶ **Addressing scientific and policy questions**
- ▶ **Additional technical analyses, including**
  - ❑ Review/revise dietary studies used (methodology, statistics, species consumed)
  - ❑ Potentially using national data to better characterize the general Washington population
  - ❑ Identify health benefits of eating fish & shellfish
  - ❑ Reviewing recent data on recreational fishers
  - ❑ Species specific issues
- ▶ **Revising the FCR technical support document**
- ▶ **Schedule adjusted to allow additional analysis and public input**

## NOTE

- ▶ Policy issues related to Sediment Management Standards are being addressed in a separate document
- ▶ Economic issues related to FCRs are being addressed in the SMS Cost-Benefit Analysis, Small Business Economic Impact Statement, & Least Burdensome Alternative Analysis

# Work on FCRs fits into a Sediment Management Standards rulemaking process that includes economic & policy considerations



# Why is Ecology revising the SMS rule?

Lack of clarity in the sediment cleanup standards leads to unpredictable and inconsistent cleanup decisions

- **Human Health Risk:** SMS limited to a narrative standard.
- **Background Chemical Concentrations:** SMS rule does not address anthropogenic background.
- **Freshwater Sediment Standards:** SMS rule limited to a narrative standard for benthic community protection.
- **Synchronizing MTCA and SMS Rules:** SMS and MTCA rules do not always work seamlessly together.



# SMS Rule Revisions

## Advisory Group/Public Comments

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- ▶ October 2011:
  - ▶ Draft SMS rule language.
- ▶ Received over 40 comments on SMS rule (on website)
- ▶ Using the comments to:
  - ▶ Prepare additional technical analyses
  - ▶ Revise SMS rule language for formal public comment.
  - ▶ Draft Cost Benefit Analysis and other regulatory analyses.



# Advisory Group Feedback: Rule/Policy Issues

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- ▶ Human Health Risk Issues
- ▶ Regional Background vs Natural Background vs Non-Anthropogenic Background
- ▶ Freshwater Sediment Standards
- ▶ Remedy Selection/Institutional Controls
- ▶ Source Control and Recontamination at Cleanup Sites
- ▶ Liability Settlements: Unit and/or entire site
- ▶ How do the pieces fit together?



# Issue Areas

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## ▶ Level of protection for cleanup

- ▶ Target risk levels for cancer and non-cancer risks
- ▶ Type of risk (incremental vs. standard approach)
- ▶ Reasonable maximum exposure (default fish consumption rates/other exposure parameters/level of conservatism)
- ▶ Freshwater sediments – chemical criteria for certain metals

## ▶ Calculating background concentrations for cleanup

- ▶ Sampling areas, sample size, statistical metric, etc.
- ▶ Process and funding

## ▶ Evaluating/selecting active cleanup measures

- ▶ Definition of active cleanup (role of monitored natural recovery)
  - ▶ Use of disproportionate cost analysis
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# Issue Areas (Continued)

- ▶ Extended periods of time to attain cleanup standard
  - ▶ Compliance time frames/reasonable restoration time frames
  - ▶ Institutional controls
  - ▶ Sediment recovery zones
- ▶ Amount detail in rule vs. guidance
  - ▶ Human health guidance/Compliance determinations
  - ▶ Background concentrations
  - ▶ Freshwater sediments
- ▶ Compliance with Administrative Procedures Act (Significant Legislative Rule)
  - ▶ Cost Benefit Analysis
  - ▶ Small Business Economic Impact Statement
  - ▶ Least Burdensome Alternative Analysis



# Sections -560, -580, -590 Source Control

- ▶ Section -560 RI/FS:
  - ▶ Determine recontamination potential which can affect remedy implementation.
  - ▶ Identify current and potential sources to the site.
  - ▶ Identify contaminant migration routes to and from the site.
  - ▶ Compliance time frame for discharges.
- ▶ Section -580 Remedy Selection:
  - ▶ Evaluate source control measures to prevent recontamination for long term effectiveness and evaluation of alternatives.
- ▶ Section -590 Sediment Recovery Zone:
  - ▶ Discharges within zone must meet AKART.
  - ▶ Best management practices used for diffuse, nonpoint discharges.



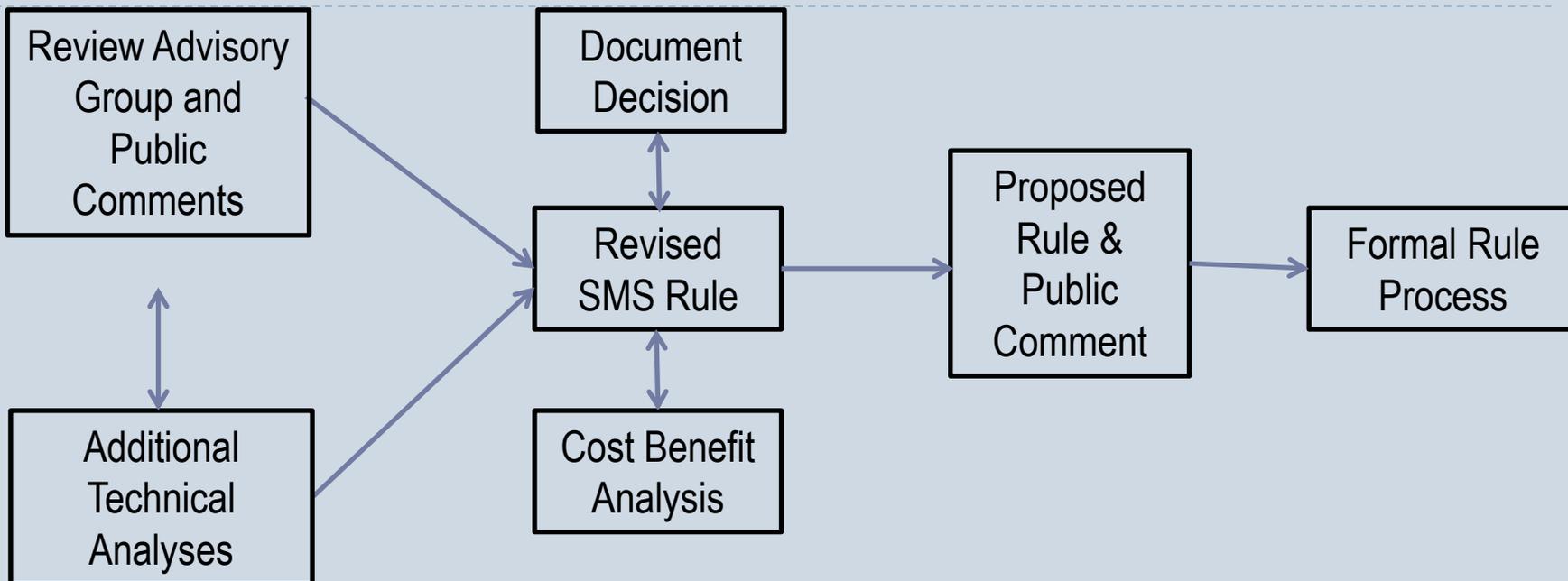
# 2012 Next Steps - SMS Rule Revisions

February – May

May -June

July - August

Sept - December



Develop Guidance: Freshwater Standards, Human Health, Regional and Natural Background

Background Sampling Plan, Sampling and Final Data Report



# Information on the SMS Rule Revisions

- ▶ **General information:** <http://www.ecy.wa.gov/programs/tcp/regs/2011-SMS/2011-SMS-hp.html>
- ▶ **Preliminary Draft SMS Rule Language:**
  - ▶ <http://www.ecy.wa.gov/programs/tcp/regs/2011-SMS/adv-comm/mtg-111209/111209-mtg-mat.html>
- ▶ **Advisory Group comments on draft SMS rule language:**
  - ▶ <http://www.ecy.wa.gov/programs/tcp/regs/2011-SMS/adv-comm/sms-rule-comments.html>
- ▶ **Draft Fish Consumption Rate Technical Report:**
  - ▶ <http://www.ecy.wa.gov/toxics/fish.html>
- ▶ **Public comments on the draft FCR Technical Report:**
  - ▶ <http://www.ecy.wa.gov/programs/tcp/regs/2011-SMS/fish-consump-com.html>
- ▶ **Freshwater Sediment Standards SQV Technical Report:**
  - ▶ <http://www.ecy.wa.gov/programs/tcp/regs/2011-SMS/adv-comm/mtg-111209/111209-mtg-mat.html>



# Contacts for the SMS Rule Revisions

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- ▶ SMS rule language and general rule questions/comments
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- ▶ Fish consumption rates
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