



COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

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March 23, 2015

Maia Bellon, Director
Washington Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

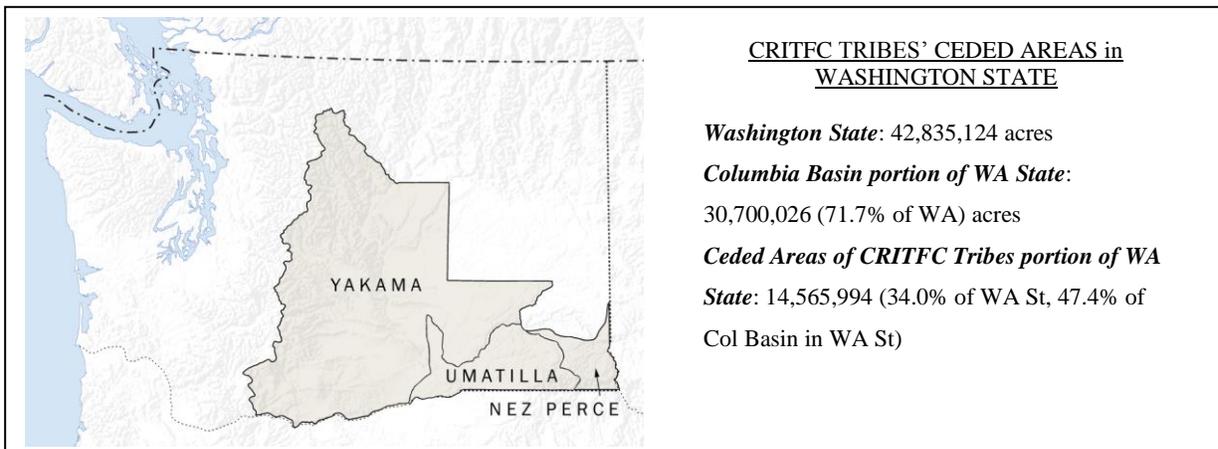
ATTN: Cheryl Niemi, Water Quality Program - swqs@ecy.wa.gov

RE: Comments on Washington State's Human Health Criteria and Implementation Tools Rule Proposal

Dear Director Bellon:

The Columbia River Inter-Tribal Fish Commission (CRITFC) thanks you for the opportunity to comment on Washington's proposed amendments to the water quality standards for human health criteria and implementation tools. As stewards of the Columbia River fishery, CRITFC can only support the implementation of regulations and programs that improve water quality to a level that is sufficient to protect our watershed from the harmful impacts of waterborne pollutants. While the state's proposed human health criteria finally includes a higher fish consumption rate, the improvements that this change would have made are countered by the state's proposal to use a less protective cancer risk level and other criteria that weaken the standards. The current rule puts our tribal members and our fishery resources at risk, is not adequate, and should be revised.

CRITFC's member tribes hold federally-secured tribal fishing rights that must be protected by Washington's proposal. At the time the treaties were signed, CRITFC's member tribes had established uses for over a third of Washington's surface waters that included the collection and consumption of an average of 1000 grams per day of fish that contained no man-made toxic chemicals.



Putting fish back in the rivers and protecting the watersheds where fish live

The right to take fish includes the right to consume clean fish. Yet quality has not been protected by the state's current standards which is evidenced by the forthcoming fish consumption advisory in the Hanford area and the multiple fish consumption advisories already issued by Washington Department of Health for the Columbia Basin, water quality has not been protected by the state's current standards. Washington's proposed rule does little to improve this situation when 36 out of 48 standards for freshwater carcinogen contaminants including PCBs remain the same as those used for the last 20 years. Mercury, which accounts for many of the state's fish consumption advisories, is also left unchanged and remains under the National Toxics Rule despite recommendations made by EPA in 2001 to move to a fish tissue-based criteria. Retaining the status quo for the state's water quality standards does not serve to reduce pollution in the waters that we share and will never drive the technological development needed to reduce pollutant discharges.

Of particular concern is the state's decision to reduce the level of protection afforded by the choice of cancer risk level by ten times. This decision alone also largely negates the benefit of setting a higher fish consumption rate, and leaves many cancer-causing and highly toxic chemical standards at status quo levels. Weakening of an acceptable cancer risk level is a bad precedent for the state to set when developing environmental policies that ought to be protecting the long term health of the public instead of short term economic gains. Tribal members and the public rely on the state to fulfill its obligations to limit their involuntary exposure to carcinogens that are released to our common waters. CRITFC urges the cancer risk level, established under current law by Washington, be maintained at 10^{-6} for this rulemaking.

As stewards of the Columbia River, CRITFC's member tribes believe that the rulemaking should quantitatively specify requirements for how Washington will "maintain a level of water quality when entering downstream waters." The narrative in the draft rule is not sufficient to assure the attainment of downstream standards either with the state of Oregon or with on-reservation tribal standards. Downstream protection and regional consistency in water quality standards is a high priority for our member tribes and is supported by Resolutions #13-44 and #12-54 (attachments enclosed) of the Affiliated Tribes of Northwest Indians that call for regional consistency in human health criteria for fish consumption rate and cancer risk levels.

CRITFC has concerns about many additional aspects of the proposed draft rule including the choice of relative source contribution, drinking water intake, body weight, updated toxicity factors, and full consideration of bioaccumulation in fish tissue. The best available science on these criteria is documented in EPA's April 2014 draft 304a recommendations and has been available to the Department of Ecology since that time. The state should reconsider how to better incorporate EPA's science-based recommendations into rule. CRITFC also supports the comments on the draft rule that are being submitted by the Northwest Indian Fisheries Commission in March, 2015.

We have recommended that EPA, under the authority of the Clean Water Act, should fully disapprove Washington's proposed update to the state's water quality standards since they are explicitly based on increases in cancer risk, show no significant protective improvements, and contradict the federal trust responsibility to protect the treaty reserved right to clean fish.

Governor Inslee and the Department of Ecology should:

- Reconsider the provisions of this draft rule;
- Restore critical elements including a cancer risk rate of one-per-million and commit to other necessary provisions that will protect fish consumers in Washington State; and
- Consider the benefits that a regional approach to water quality standards might afford.

CRITFC fully supports the principal goal of the Clean Water Act to eliminate pollution from our Nation's waters and believes in a future where the Columbia River fishery is once again free of harmful contaminants. Thank you for considering our comments during this rulemaking. If you have any further questions please contact me or Dianne Barton, Water Quality Coordinator at 503-238-0667.

Sincerely,

A handwritten signature in blue ink that reads "Babtist Paul Lumley". The signature is stylized and cursive.

Babtist Paul Lumley
Executive Director

Attachments

Cc: Dennis McLerran, EPA Region 10 Administrator



2013 Mid-Year Convention Airway Heights, Washington

RESOLUTION #13 - 44

“REDUCE CANCER RISK TO TRIBAL FISH CONSUMERS TO AT LEAST ONE IN ONE MILLION

PREAMBLE

We the members of the Affiliated Tribes of Northwest Indians (ATNI) of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian Treaties, Executive Orders, and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise to promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the ATNI are representatives of and advocates for national, regional, and specific tribal concerns; and

WHEREAS, ATNI is a regional organization comprised of American Indians/Alaska Natives and tribes in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

WHEREAS, promotion of the health, safety, welfare, education, economic and employment opportunity of native people, and preservation of their cultural and natural resources are primary goals and objectives of the ATNI; and

WHEREAS, since time immemorial, we the first people of the Pacific Northwest have cared for and sustained the First Foods beginning with the pure water that we hold sacred and are guided by our traditional religious and cultural practices, are obligated to take action now to care for the water for the next seven generations; and

WHEREAS, many waters throughout the Pacific Northwest now contain unsafe levels of toxic contamination causing native people to face unacceptable health risks due to their consumption of shellfish and fish from these waters; and

WHEREAS, national Environmental Protection Agency (EPA) guidance allows subsistence fishermen to be exposed to cancer risks that are 100 times greater than those of the general population; and

WHEREAS, numerous regional fish consumption surveys show that this guidance has a disproportionate health impact in Native American communities, where a higher percentage of the population eats significant amounts of fish in comparison to the general population; and

WHEREAS, the application of standards that disproportionately and negatively impact tribal communities is prohibited by EPA's tribal trust responsibility, and EPA is required to uphold its national environmental justice policies; and

WHEREAS, EPA has effectively repudiated the applicability of its national cancer risk guidance to Native Americans in the Pacific Northwest by disapproving water quality standards submitted by Oregon and Idaho that were consistent with the risk thresholds for subsistence fishermen set forth in national guidance; and

WHEREAS, numerous regional fish consumption surveys show that this guidance has a disproportionate health impact in Native American communities, where a higher percentage of the population eats significant amounts of fish in comparison to the general population; and

WHEREAS, EPA relied upon these surveys to support its disapproval of water quality standards submitted by Oregon and Idaho that were consistent with the risk thresholds for subsistence fishermen set forth in national guidance which effectively repudiated the applicability of its national cancer risk guidance to Indian people in the Pacific Northwest; and

WHEREAS, formalization of this position throughout the Pacific Northwest is necessary to protect and improve human and environmental health through water quality and sediment standards for the benefit of natural resources, First Foods, and indigenous people throughout our region; and

WHEREAS, protecting Native Americans will protect all people who benefit the most from the beneficial use of fish consumption; now

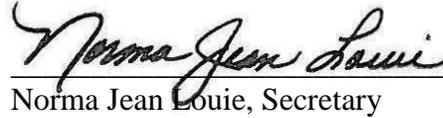
THEREFORE BE IT RESOLVED, that ATNI does hereby request that EPA immediately establish a regional and/or national policy that ensures that all Native American fish consumers will be protected to an incremental cancer risk threshold that is at least as protective as the threshold for the general population of 1 in 1,000,000, and consistent with ATNI Resolution #12-54 to accomplish a tribal fish consumption rate of no less than 175 grams per day for human health criteria rulemaking in the Pacific Northwest.

CERTIFICATION

The foregoing resolution was adopted at the 2013 Mid-Year Convention of the Affiliated Tribes of Northwest Indians, held at Northern Quest Resort Casino, Airway Heights, Washington on May 13 – 16, 2013 with a quorum present.



Fawn Sharp, President



Norma Jean Louie, Secretary



2012 Annual Convention Pendleton, OR

RESOLUTION #12 - 54

"REQUESTING THAT THE U.S. ENVIRONMENTAL PROTECTION AGENCY ACCOMPLISH A FISH CONSUMPTION RATE OF NO LESS THAN 175 GRAMS PER DAY FOR HUMAN HEALTH CRITERIA RULEMAKING IN THE PACIFIC NORTHWEST"

PREAMBLE

We, the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian Treaties, Executive Orders, and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise to promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific tribal concerns; and

WHEREAS, ATNI is a regional organization comprised of American Indians/Alaska Natives and tribes in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of the ATNI; and

WHEREAS, throughout time immemorial we as the first people of the Pacific Northwest have cared for and sustained the First Foods beginning with the pure water that we hold sacred,

and guided by our traditional religious and cultural practices, we are obligated to take action now to care for the water for the next seven generations; and

WHEREAS, numerous robust, valid, reputable scientific studies unfortunately have shown that shellfish and fish, including salmon and resident fish consumed by native people in the Pacific Northwest, exposes them to toxic contaminants and poses a human health risk; and

WHEREAS, scientific surveys have shown that native people in the Pacific Northwest today eat 300 – 500 grams of fish per day which is down from historical rates of more than 800 grams per day reflecting ceremonial, subsistence and other fishing practices which are secured by treaties and executive orders with the United States; and

WHEREAS, ATNI recognizes and appreciates that in 2011 Oregon adopted, and the U.S. Environmental Protection Agency (EPA) approved water quality standards based on a fish consumption rate of 175 grams per day; and

WHEREAS, on May 10, 2012 the EPA disapproved Idaho's request to use a fish consumption rate of 17.5 grams per day when deriving water quality criteria; and

WHEREAS, tribes need immediate assistance from EPA to continue to build capacity to develop and in some cases update tribal fish consumption rates; and

WHEREAS, tribes in the Pacific Northwest are concerned that EPA has long had knowledge of scientifically sound data concerning known tribal fish consumption levels and yet fails to enforce existing laws (i.e., the Clean Water Act) to protect fish consuming populations and acquiesces to the very industries and corporations they regulate; and

WHEREAS, tribes in the Pacific Northwest must coordinate to protect and improve human and environmental health through water quality and sediment standards for the benefit of natural resources, First Foods, and indigenous people everywhere; and

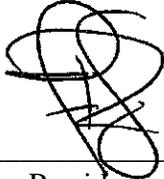
WHEREAS, adopting higher, more accurate fish consumption rates benefits not only tribal people, but all citizens, in the Pacific Northwest who consume fish and value a cleaner and more healthy environment; now

THEREFORE BE IT RESOLVED, that ATNI does hereby request that EPA immediately take necessary and appropriate steps to establish a federal default fish consumption rate of no less than 175 grams per day for Oregon, Washington, and Idaho to support and guide water quality and sediment management standards; and

BE IF FURTHER RESOLVED, and to use the EPA General Assistance Program to fund Tribal capacity efforts to develop and update Tribal fish consumption rates.

CERTIFICATION

The foregoing resolution was adopted at the 2012 Annual Convention of the Affiliated Tribes of Northwest Indians, held at the Wildhorse Resort & Casino in Pendleton, Oregon on September 24 – 27, 2012 with a quorum present.



Fawn Sharp, President



Norma Jean Louie, Secretary