



THE TULALIP TRIBES

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The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie, and Skykomish tribes and other tribes and bands signatory to the Treaty of Point Elliot

March 18, 2015

Cheryl Niemi
Washington State Department of Ecology
Water Quality Program
P.O. Box 47600, Olympia, WA 98504-7600

Re: Comments on Proposed National Toxics Rule for Washington State

Dear Ms. Niemi:

Sixteen years ago the Tulalip Tribes, together with the Squaxin Island Tribe, published the results of our fish consumption survey, indicating that our tribal members consume, despite diminished and less accessible populations of fish and shellfish, dramatically higher amounts of fish than is assumed under the State of Washington's current rate of approximately 6.5 grams/day. Fish have been an integral part of our traditional diet for a very long period of time. It does not surprise us that modern health experts have become so aware of the importance of fish in contributing to the health of the general public, and recommend that it be consumed in significant quantities by all.

For Tulalip, as with many other tribes across the country, rates of diabetes, obesity and other chronic diseases have become epidemic among our people. In an effort to combat these alarming health trends, we have established several tribal programs aimed at encouraging individual tribal members to return to a healthier diet, including a diet richer in traditional foods -- in our area that means a lot of fish and shellfish. We want to be able to eat fish at levels that are more consistent with our traditional diet and what public health experts recommend.

However, studies in Puget Sound salmon and contaminants show that salmon accumulate their contaminants predominantly in Puget Sound, rather than fresh water or ocean¹. A more recent study in Puget Sound found PCBs were the most abundant persistent organic pollutants in both Dungeness crab and spot prawn, followed by PAHs, PBDEs and DDTs in crab, and PAHs and DDTs in spot prawn². Although it may be true that nontribal consumers in general eat a significant amount of fish from outside of the region, all of Tulalip's fin

¹ O'Neil, SM and West, JE. 2009. **Marine Distribution, Life History Traits, and the Accumulation of Polychlorinated Biphenyls in Chinook Salmon from Puget Sound, Washington.** *Transactions of the American Fisheries Society* 138:616-632

² Carey, AJ, Niewolny, LA, Lanksbury, JA and West, JE. 2014. **Toxic Contaminants in Dungeness crab (*Metacarcinus magister*) and Spot Prawn (*Pandalus platyceros*) from Puget Sound, Washington, USA.** Washington Department of Fish and Wildlife, Olympia, WA.

fish and shellfish catch areas are within Puget Sound. Since our subsistence and commercial Tulalip fishermen are confined to our local seafood, Puget Sound contaminant loads pose a greater risk to our Tribal fish/shellfish consumers.

We have concerns with Washington Department of Ecology's (DOE) proposed rule for revised human health criteria. Although the proposed rate of 175 g/day is an improvement towards a more realistic fish consumption rate, its potential benefit is greatly diminished by lowering other protective standards, such as the cancer risk rate. Not only will this cancer risk rate disproportionately impact our tribal members that fish within Puget Sound, it contradicts Ecology's previous policy. Since at least 1991, Ecology has vocally advocated and maintained a risk level of 10^{-6} , going as far codifying their position in WAC 173-201A-240(6). It appears that this proposed change of the cancer risk rate is neither a product of agency expertise nor a record of decision; rather it is influenced by fear-based politics on the part of business lobbyists. In the 2010 Triennial Review, representatives commenting for industrial dischargers remarked that the state ought to lower the protective level for the cancer risk rate if they were to raise the fish consumption rate.

In July 2014, Washington Governor Inslee announced that he would reduce the protective level of the cancer risk rate by ten-fold to one-per-100,000 (10^{-5}), referring to this change as a "risk management" decision. This decision is detrimental to the health of our tribal people, who are placed at the most risk in their level of consumption and cancer rate, while the state attempts to accommodate industry's concerns about reducing their pollutant discharge.

Ecology's own cost benefit analysis demonstrates neither significant increase in cost associated with the rule nor difficult engineering problems in near future.³ Ecology's analysis also shows that many facilities are unlikely to trigger new permit limits, regardless of criteria levels, due in part to the operation of Reasonable Potential Analysis and other NPDES permitting processes.⁴ This clearly demonstrates that any and all economic woes, which have been hyped in media and volleyed at the administration, are over-exaggerations and political tools to prevent progress in setting standards based on human health protection.

The federal implementing regulations for the Clean Water Act require Ecology to justify and analyze how new or revised water quality standards protect the designated uses. EPA has explained in numerous correspondences to the state of Washington and Ecology that these federal requirements also include the need for Ecology to analyze and justify the modifications to the cancer risk level and how increasing this risk will protect tribal treaty rights.⁵

³ See Ecology (January 2015) Preliminary Cost Benefit and Least-Burdensome Alternatives Analysis, Chapter 173-201A WAC Water Quality Standards for Surface Waters of the State of Washington. Publication no. 14-10-056, stating "likely qualitative and quantitative benefits of the rule exceed its likely costs." Page vii

⁴ Id at 42

⁵ See 40 CFR 131.6 and 40 CFR 131.11

As a federally recognized Indian tribe, whose reservation was established pursuant to the Treaty of Point Elliot of January 22, 1855 (12 Stat. 927) and by The Executive Order of December 23, 1873, the Tulalip Tribes reserved the right to take fish in their usual and accustomed (U&A) fishing places pursuant to the Treaty. The Tribes consume many types of seafood from their usual and accustomed waters in the course of exercising these rights, and the consumption of seafood is an important cultural and spiritual practice, which is integral to the Tribes' way of life.

At treaty times, tribal members consumed all of their fish from local waters and still continue to obtain most of their fish from local sources. Tulalip Tribes' reserved rights under the treaties and other legal agreements entitle them to continue to do so in perpetuity. Many tribal members would consume more fish and shellfish than they do at present, were these resources not depleted or viewed as contaminated. We are working toward a future with restored ecosystems that support fisheries resources that are both abundant in supply, and safe to consume.

Tulalip treaty rights were reserved in perpetuity and the entire U&A of the Tulalip Tribes is required for the Tulalip people to be able to exercise their cultural way of life in perpetuity. It is imperative to the Tulalip Tribes that these rights are secure and not further degraded by Washington's human health water quality standards.

The Tulalip Tribes fully support all the comments submitted by the Northwest Indian Fisheries Commission (NWIFC) regarding Ecology's Draft Rule for Human Health Criteria and Implementation tools.

Sincerely,



Herman Williams, Sr., Chairman

Cc: Ray Fryberg, Executive Director, Tulalip Tribes Natural & Cultural Resources Dept.
Dennis McLerran, Regional Administrator, EPA Region 10