



maximum exposure of 175 grams per day for freshwater areas, to be used only with exposure assumptions of a bodyweight of 70 kg and 30 year duration of exposure. The current FCR in Washington of 6.5 grams/day assumes only one meal of fish per month. Many tribal families and individuals eat fish multiple times per day. The Washington Department of Ecology has proposed a fish consumption rate of 175 g/day in the draft human health criteria—about one meal per day. Although this would be a step forward, subject to other provisions in the rule, it is far lower than the fish consumption rate that has been documented in tribal communities in Washington. For example, the Lower Elwha Klallam Tribe has a fish consumption rate of 583 g/day that has been evaluated and supported by the WA State Dept. of Ecology Science Advisory Board (SAB). This FCR, exclusive of salmon, was used in the development of a human health risk assessment for the cleanup of the former Rayonier mill site in Port Angeles Harbor. Clearly, the Lower Elwha Tribe and other Washington tribes are making significant concessions in supporting the proposed 175 g/day for fish consumption. However, this concession was only on the explicit assumption that the protective level of other human health criteria would not be weakened -- an assumption that is no longer valid in the state's proposed draft rule.

The Tribe is particularly disappointed in the state's decision to reduce the protective level of the cancer risk rate in state standards by ten times, from a  $1 \times 10^{-6}$  to  $1 \times 10^{-5}$ . This decision largely negates the benefit of setting a higher fish consumption rate, and leaves many cancer-causing and highly toxic chemicals at status quo, and sets a disturbing precedent for future rules, actions and expectation of standards. This reduction of cancer risk essentially reduces the fish consumption rate to 17.5 g/day. After 20 years of research indicating that the fish consumption rate does not adequately protect tribes and other people who consume high levels of fish, the state has now opted to eliminate the potential benefit to public health of an increased FCR by reducing the protective level of other variables used to calculate the standards.

Washington Native American Tribes have well-established treaty fishing rights which include access to and co-management of fisheries resources in Washington State waters. These rights include the presumption of accessing healthy, contaminant free fish to harvest and consume. Due to greater levels of fish consumption by Indian Tribes and Asian/ Pacific Islanders relative to non-native populations, we are exposed to a disproportionately greater risk to environmental contaminants. Washington State's proposal for an increase in the allowable cancer risk to high end (tribal/ Asian-Pacific Islander) consumers is unacceptable, and clearly merits an examination of environmental justice implications by the EPA. In addition, the increase in the allowable cancer risk will adversely affect downstream standards of tribes and the State of Oregon. The Tribe supports regional consistency in an FCR and HHC that will ensure protection across the many shared watersheds in the Pacific Northwest.

The Lower Elwha Klallam Tribe has other concerns about the proposed draft rule, which are addressed in detail in the comments submitted by the Northwest Indian Fisheries Commission and incorporated here by reference. The Tribe remains especially concerned that the standards for many highly toxic chemicals such as PCBs and Mercury will not require any improvement by dischargers, and that the standards for arsenic will be less protective. The Department of Ecology should reconsider the provisions of the draft rule, and restore critical elements including a cancer risk rate of one-per-million and other provisions that will protect fish consumers in the state of Washington.

The tribes have consistently indicated that they would be receptive to working with industry and municipalities on implementation of the rule, however, these implementation tools should be adjusted so that they are directed towards accountability and attainment of water quality standards.

Washington State is required to meet the provisions of the Clean Water Act to preserve the beneficial uses of water, including fishing. The public health issues that are determined by these standards affect everyone in Washington who eats fish. On top of this concern, the state must not impair the tribe's treaty-reserved rights to take and consume fish at all their usual and accustomed fishing grounds and stations. The proposed rules by the state of Washington do not meet these requirements.



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