



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

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OFFICE OF  
WATER AND  
WATERSHEDS

MAR 21 2019

Deane Osterman, Executive Director  
Kalispel Natural Resources Department  
Kalispel Tribe of Indians  
P.O. Box 39  
Usk, Washington 99180

Re: The EPA's Action on Certain Revisions to the Kalispel Tribe of Indians 2017 Surface Water Quality Standards

Dear Mr. Osterman:

The U.S. Environmental Protection Agency has completed its Clean Water Act review of portions of the new and revised water quality standards that the Kalispel Tribe submitted to the EPA on October 27, 2017. Under the CWA Section 303, 33 U.S.C. § 1313, tribes that are authorized for treatment in a manner similar to a state for the purpose of administering a WQS program must submit new and revised WQS to the EPA for review and approval or disapproval.

**Summary of the EPA's Action**

- I. Pursuant to the EPA's authority under CWA Section 303(c) and the implementing regulations at 40 CFR Part 131, the EPA is approving certain revisions to the following provisions, as described in the enclosed Technical Support Document:
  - Section 4: Definitions
  - Section 5: Mixing Zones
  - Section 9(c): Tier 3 Antidegradation Policy
  - Portions of Section 10: Toxic Substances pertaining to human health criteria, with the exception of 2,3,7,8-TCDD (dioxin) and thallium, which the EPA is deferring action on at this time
  - Portions of Section 11: Beneficial Water Uses to be Protected in Waters of the Reservation
  - Portions of Section 12: General Water Use and Criteria
  
- II. The EPA is not taking action on the following new and revised provisions in the following sections because they are not considered WQS under Section 303(c) of the CWA:
  - Section 1: Background
  - Portions of Section 10: Toxic Substances

III. The EPA continues to review the remaining 2017 revisions to the Kalispel Tribe's WQS in Sections 3, 10, 11, and 12 and will take separate CWA Section 303(c) action on the following revisions:

- Section 3: Certain revisions to Applicability, Section 3(b): Analytical Methods
- Portions of Section 10: Toxic Substances pertaining to aquatic life criteria and nutrients
- Portions of Section 11: Revisions to Designated Beneficial Uses of Waters of the Reservation, Cutthroat and Brown Trout Spawning, Incubation, and Rearing
- Section 12(a): Revisions to General Water Use and Criteria, Cutthroat and Brown Trout Spawning, Incubation, and Rearing
- Section 12(b): Revisions to General Water Use and Criteria, Adult Salmonid Migration
- Section 12(e): Revisions to General Water Use and Criteria, Wildlife Habitat, Fishing and Hunting

Pursuant to Section 7 of the Endangered Species Act, the EPA is developing a Biological Evaluation for consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on the revisions related to aquatic life protection (including the acute and chronic aquatic life criteria) listed above in Section III. The EPA will take action on those provisions upon conclusion of the ESA consultation process and will keep you updated on our progress.

The EPA appreciates our work together and we remain committed to providing assistance to the Tribe during your development of WQS that meet the requirements of the CWA and its implementing regulations. If you have any questions concerning this letter, please contact me at (206) 553-1855 or Hanh Shaw, Water Quality Standards Unit Manager, at (206) 553-0171.

Sincerely,



Daniel D. Opatzki  
Director

Enclosure: Technical Support Document

cc: Mr. Ken Merrill, Water Resources Program, Kalispel Tribe

# **Technical Support Document**

## **The EPA's Action on Certain Revisions to Surface Water Quality Standards of the Kalispel Tribe of Indians**

### **Introduction**

This document provides the basis for the EPA's decisions under the federal water quality standards (WQS) regulations at 40 CFR Part 131 and § 303(c) of the Clean Water Act (CWA) to approve certain new and revised WQS that the Kalispel Tribe of Indians submitted to the EPA on October 27, 2017.

On March 18, 2003, the Tribe adopted new WQS, which the EPA approved on June 24, 2004. On October 27, 2017, the Tribe resubmitted revised WQS that incorporated, among other things, the EPA's recent updates to its CWA Section 304(a) national recommended human health water quality criteria, as well as the Tribal Council's approved fish consumption rate of 389 grams/day to derive human health criteria.<sup>1</sup> Prior to adopting the revisions, the Tribe provided the opportunity for public comment starting on January 25, 2016, and held a public hearing on March 14, 2016. The invitation for comment and announcement of the public hearing was also sent to the EPA Region 10 and the Washington State Department of Ecology. No public comments were received other than those provided by the EPA.

Under § 303(c) of the CWA and federal implementing regulations at 40 CFR § 131.4, states and authorized tribes<sup>2</sup> have the primary responsibility for reviewing, establishing, and revising WQS, which consist of the designated uses of a waterbody or waterbody segment, the water quality criteria necessary to protect those designated uses, and an antidegradation policy. This statutory framework allows states and authorized tribes to work with local communities to adopt appropriate designated uses (as required in 40 CFR § 131.10(a)) and to adopt criteria to protect those designated uses (as required in 40 CFR § 131.11(a)).

### **New and Revised Provisions in the Kalispel Tribe's 2017 WQS the EPA is Approving**

Below is a summary of the revisions and rationale for the EPA's approval under CWA Section 303(c).

#### **A. Definitions (Section 4)**

The Tribe's 2017 WQS include revisions to the definitions for "Ceremonial and Cultural Water Use," "Cold Water Aquatic Life," "Pollutant," a new definition for "Fishing," and typographical corrections to the definitions for "µg/L," "Outstanding Resource Water," and "Pollution."

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<sup>1</sup> The Tribe resubmitted WQS in 2017 after revising significant figures and rounding in several human health criteria values from a previous September 22, 2016 submittal. The Tribe considered these non-substantive corrections, and the EPA is acting on the 2017 version of the Tribe's WQS. The Tribe's Council approved the 2017 version and a Tribal Attorney's Certification was included, dated October 25, 2017.

<sup>2</sup> The term "authorized tribe" means a tribe eligible under CWA § 518(e) and 40 CFR § 131.8 for treatment in a manner similar to a state (TAS) for the purpose of administering a water quality standards program. The EPA approved the Tribe's TAS application on November 4, 2002.

In accordance with its CWA authority, 33 U.S.C. § 1313(c)(3) and 40 CFR Part 131, the EPA approves these new and revised definitions. The definitions explain the terms as they are used in the Tribe's WQS, and provide information needed for the application and implementation of the WQS. They are consistent with Section 303(c) of the CWA.

### **B. Mixing Zones (Section 5)**

The EPA determined that the change from "low flow (7Q10)" to "critical low flow" is an editorial, non-substantive change to the Tribe's EPA-approved WQS. The EPA approves this editorial, non-substantive change as consistent with the CWA, 33 U.S.C. § 1313(c)(3) and 40 CFR Part 131. The EPA notes that the approval of this editorial, non-substantive change does not alter the EPA's prior approval of the underlying substantive WQS for mixing zones.

### **C. Antidegradation Policy, Tier 3 (Section 9(c))**

The Tribe revised its Tier 3 Antidegradation Policy to include specific characteristics that the Tribe may use to classify waters as Outstanding Resource Waters of the Reservation.

The EPA approves these revisions in accordance with its CWA authority, 33 U.S.C. § 1313(c)(3) and 40 CFR Part 131. The EPA's WQS regulation at 40 CFR 131.12(a) requires states and authorized tribes to adopt an antidegradation policy and to identify methods for implementing that policy. Both the policy and the implementation methods must be consistent with 40 CFR 131.12. Among other things, the state or tribe's policy must provide for the maintenance and protection of water quality in Outstanding National Resource Waters, identified by the state or tribe, referred to as "Tier 3" waters (40 CFR 131.12(a)(3)). The EPA is approving these revisions to the Tribe's Tier 3 antidegradation policy because they specify characteristics that qualify waters as candidates for classification as "Outstanding Resource Waters of the Reservation," where the water quality shall be maintained and protected.

### **D. Toxic Substances (Section 10)**

#### **Introductory Provisions in Section 10:**

The Tribe's 2017 WQS include a number of revisions to Section 10, Toxic Substances. At this time, the EPA is only acting on the revisions to the general introductory text in this section, and revisions to the Tribe's human health criteria (and associated footnotes). The EPA is not taking action on the revisions to criteria or footnotes that apply to aquatic life in Table 2 and nutrients in Table 3.

The Tribe deleted the following sentence from provision 10(1): "The numeric criteria in Table 2 shall apply to all waters for which the Tribe determines that designated uses are attainable that provide for the protection and propagation of fish, shellfish, and wildlife, and for recreation in and on the water," and revised provision 10(3) to clarify that Tables 2 and 3 apply to all reservation waters for the protection of aquatic life and human health. The result of these revisions is that the criteria in Table 2 continue to apply to all reservation waters. Therefore, EPA

approves these revisions as an editorial, non-substantive change to the Tribe's EPA-approved WQS.

A second revision to provision 10(3) specifies that any toxics criteria that are not listed in the Tribe's WQS will be developed with consideration of the EPA's National Recommended Criteria and other relevant information. The EPA approves this clarifying text with the understanding that any criteria derived in the future would be submitted to the EPA for review and action under CWA Section 303(c).

Finally, the Tribe revised provision 10(4) to note that the human health criteria were derived using a fish consumption rate of 389 grams/day, and a cancer risk level of  $10^{-6}$ . This language provides explanatory information for how the Tribe derived its human health criteria (which the EPA is acting on below), but does not itself describe the desired condition of the Tribe's waters. Therefore, the revisions to provision 10(4) are not considered WQS that require the EPA's action under Section 303(c) of the CWA.

#### **Human Health Criteria in Table 2, Section 10:**

Prior to Table 2, introductory language addresses the frequency and duration of aquatic life criteria that the EPA is not taking action on at this time. This introductory language also notes that the criteria values (for both human health and aquatic life) are in micrograms per liter unless otherwise noted. The EPA has incorporated the units of measurement directly into its approval of the Tribe's human health criteria.

#### New Human Health Criteria

In addition to revising the existing human health criteria from 2004, the Tribe included new human health criteria for the following pollutants in their 2017 WQS: 1,1,1-trichloroethane, 1,2,4,5-tetrachlorobenzene, 1,2-dichloropropane, 2,4,5-trichlorophenol, 3-methyl-4-chlorophenol, alpha-hexachlorocyclohexane (HCH), bis(chloromethyl)ether, chlorophenoxy herbicide 2,4,5-TP, chlorophenoxy herbicide 2,4-D, dichlorobromomethane, dinitrophenols, gamma-hexachlorocyclohexane (HCH) Lindane, hexachlorocyclohexane (HCH) Technical, methoxychlor, pentachlorobenzene, mercury, barium, beryllium, cadmium, chromium (III), chromium (VI), and 1,2-dibromo-3-chloropropane (DBCP).

#### Human Health Criteria Derivation

The input parameters that the Tribe used to derive the human health criteria in the 2017 WQS are generally consistent with the EPA's 2000 Human Health Methodology<sup>3</sup> and the EPA's 2015 CWA section 304(a) human health criteria recommendations<sup>4</sup> with the exceptions noted below in the EPA's action on the criteria. The Tribe used the input values described below to derive human health criteria that are scientifically sound and protective of the Tribe's designated uses for fishing and ceremonial and cultural uses.

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<sup>3</sup> USEPA. October 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. U.S. Environmental Protection Agency, Office of Water, Washington, D.C. EPA-822-B-00-004, available at <https://nepis.epa.gov/Exe/ZyPDF.cgi/20003D2R.PDF?Dockey=20003D2R.PDF>.

<sup>4</sup> <https://www.epa.gov/sites/production/files/2015-10/documents/human-health-2015-update-factsheet.pdf>.

In general, the Tribe used the following input parameters:

- A **fish consumption rate (FCR)** of 389 grams per day. This value is based on the 99<sup>th</sup> percentile of surveyed adults from *A Fish Consumption Survey of the Umatilla, Nez Perce, Yakama, and Warm Springs Tribes of the Columbia River Basin* (Columbia River Inter-Tribal Fish Commission, 1994), which provides relevant local and regional fish consumption data consistent with the EPA's 2000 Human Health Methodology.
- **Toxicity factors** (reference doses for non-carcinogens and cancer slope factors for carcinogens) consistent with the EPA's 2015 recommendations.
- **Bioaccumulation factors (BAFs)** consistent with the EPA's 2015 recommendations using the trophic level with the highest BAF (typically trophic level four) or bioconcentration factors (BCFs) where BAFs were not available.
- A **cancer risk level** of  $10^{-6}$  for carcinogens, consistent with the EPA's 2000 Human Health Methodology.
- A **relative source contribution (RSC)** consistent with the EPA's 2015 recommendations for non-carcinogens (0.2, in most cases).
- A **drinking water intake rate** of 2.4 liters per day consistent with the EPA's 2015 recommendations.
- A **body weight** input of 70 kg based on the NHANES III database (1988-1994). The Tribe indicated that it does not have information to show that the EPA's 2015 increased body weight assumption of 80 kg applies to tribal members. Therefore, the Tribe has chosen to retain use of the previous body weight assumption until regional-specific information is available.

#### **The EPA's Action on the Human Health Criteria in Table 2, Section 10:**

The EPA's regulations at 40 CFR § 131.11(a) provide that new or revised criteria "must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect designated uses." If these requirements are met, states and authorized tribes are able to develop criteria that may be more or less stringent than those recommended by the EPA.

#### The EPA's Evaluation and Rationale for Approval of the Tribe's Human Health Criteria

The EPA evaluated the Tribe's new and revised human health criteria, based on the input values described above, as follows:

- First, the EPA acknowledged the Tribe's decision to ensure water quality sufficient to support both fishing and ceremonial and cultural uses, which is a matter of tribal policy and within the Tribe's authority under the CWA.
- Second, the EPA evaluated the scientific defensibility of the assumptions and methodology the Tribe used in deriving criteria to protect its water quality goals, including the derivation of the fish consumption rate and other inputs to the human health criteria equation used to protect the Tribe's fishing and ceremonial and cultural practices.

The EPA's 2000 Human Health Methodology recognizes the variability of fish consumption rates among population groups and by geographic region. In employing the 2000 Methodology to derive criteria, the EPA urges states and tribes to use fish intake levels derived from local or regional data instead of the national default FCR to ensure the fish intake level selected is protective of highly exposed subpopulations. The 2000 Methodology includes a four-preference hierarchy concerning the use of FCR data: (1) use of local data; (2) use of data reflecting similar

geography/population groups; (3) use of data from national surveys; and (4) use of the EPA's default intake rate. The Tribe's use of a FCR of 389 g/day is consistent with the 99<sup>th</sup> percentile of *A Fish Consumption Survey of the Umatilla, Nez Perce, Yakama, and Warm Springs Tribes of the Columbia River Basin* (Columbia River Inter-Tribal Fish Commission, 1994), which includes the relevant local and regional fish consumption data consistent with the EPA's 2000 Human Health Methodology. This value is also consistent with the Kalispel Tribal Council Resolution. The EPA has determined that the Tribe's decision to derive human health criteria using local and regional fish consumption data, in this case 389 g/day, is based on a sound scientific rationale.

The EPA has also determined that the Tribe's decisions to either incorporate the EPA's 2015 CWA section 304(a) recommendations into the derivation of its human health criteria (including more conservative values from those recommendations like the highest trophic level-specific BAFs), or provide an adequate justification for selecting alternative values (e.g., the EPA's previously recommended body weight, and a local FCR) are based on a sound scientific rationale. The EPA determined that the methodology used by the Tribe to develop the FCR and other variables used in developing the criteria resulted in human health criteria that are scientifically sound and sufficiently protective of the Tribe's designated uses for fishing and ceremonial and cultural uses, with the additional information provided below for certain criteria.

Therefore, in accordance with the CWA, 33 U.S.C. § 1313(c)(3) and 40 CFR Part 131, the EPA is approving the majority of the Tribe's new and revised human health toxics criteria listed in Table 2, with the exception of 2,3,7,8-TCDD (dioxin) and thallium as described further below.

#### Human Health Criteria for Methylmercury and Total Mercury

In 2001, the EPA replaced its 304(a) recommended human health criterion for total mercury with a fish tissue-based human health criterion for methylmercury. The recommendation is expressed as a fish tissue value, thus reflecting the latest science that indicates consumption of contaminated fish and shellfish is the primary human route of exposure to methylmercury. The Tribe's previous methylmercury fish tissue criterion from 2004 was based on the EPA's 2001 304(a) recommendation, but the Tribe adjusted the value in 2017 to incorporate the 389 g/day FCR.

The EPA's preferred approach for translating a concentration of methylmercury in fish tissue to a concentration of total mercury in ambient water is to derive site-specific BAFs based on water and fish collected in the waterbody of concern, when available. Since site-specific information is not available at this time, the Tribe used the national default BAF values from the EPA's *Notice of Availability of Water Quality Criterion for the Protection of Human Health: Methylmercury*, 66 Fed. Reg. 1344 (Jan. 8, 2001), to translate the newly calculated fish tissue criterion into a total mercury water column criterion. The Tribe used a BAF of 160,000 corresponding to trophic level 2. This approach of using a national default BAF is consistent with the EPA's recommendations in the Notice of Availability cited above in the absence of site-specific bioaccumulation data. The Tribe intends to use the calculated total mercury value for implementation in permits and other water programs.

The EPA is approving the Tribe's total mercury and methylmercury criteria. The EPA acknowledges the total mercury water column criterion is intended to be a conversion of the fish tissue methylmercury criterion for implementation purposes. In the future, if the Tribe has

information to develop site-specific BAFs, any resulting new criterion would need to be submitted to the EPA for separate EPA approval as a site-specific criterion.

#### Human Health Criteria for Arsenic

The EPA acknowledges the uncertainty surrounding the toxicological assessment for arsenic with respect to human health effects. The EPA's current plan for addressing arsenic issues is described in the *Assessment Development Plan for the Integrated Risk Information System (IRIS) Toxicological Review of Inorganic Arsenic* (EPA/630/R-14/101, November 2015). Despite this scientific uncertainty, because the Tribe relied on the existing cancer slope factor (CSF) in the IRIS database that the EPA used to calculate its existing 304(a) recommendations for arsenic, the EPA is approving the Tribe's arsenic criteria. As new information becomes available from IRIS, the EPA encourages the Tribe to consider revisions, if necessary, to incorporate the latest science for arsenic.

#### Human Health Criteria Based on Maximum Contaminant Levels

Instead of using the inputs above to derive the human health criteria for beryllium, cadmium, chromium (III), chromium (VI), and 1,2-dibromo-3-chloropropane (DBCP), the Tribe based its criteria for these pollutants on the maximum contaminant level goal (MCLG; maximum contaminant level in the case of DBCP) under the Safe Drinking Water Act (SDWA).<sup>5</sup> Since the EPA does not have 304(a) recommended human health criteria for these pollutants, it is reasonable for the Tribe to rely on the MCLG (and MCL for DBCP) to ensure protection of actual and potential drinking water sources. Similarly, the water and organism human health criteria values in the Tribe's WQS for 1,1,1-trichloroethane and 1,1-dichloroethylene are also based on the MCLG, and the Tribe's WQS for 1,2-dichloroethane is based on the maximum contaminant level; these MCLG and MCL-based criteria are more stringent than the values that the Tribe calculated using the inputs above, and therefore the Tribe decided to adopt the more stringent MCLG or MCL to ensure protection of drinking water sources.

The Tribe's selected value for barium is based on the EPA's SDWA MCLG despite the EPA having a 304(a) recommendation for this pollutant. The EPA did not update its 304(a) recommendation for barium in 2015, but will likely update it in the future. In the meantime, the EPA has concluded that the Tribe's adoption of the MCLG for barium is a reasonable choice to protect drinking water sources. However, the EPA recommends that the Tribe expeditiously evaluate and incorporate any updated science related to barium toxicity reflected in any future 304(a) criteria updates.

#### **Deferred Action on Human Health Criteria for 2,3,7,8-TCDD (dioxin) and Thallium**

IRIS was the primary source of toxicity values (i.e., reference dose (RfD) and cancer slope factor (CSF)) for the EPA's 2015 updated CWA section 304(a) human health criteria recommendations. Given the current uncertainty regarding aspects of the science upon which human health criteria for dioxin and thallium are based, the EPA did not update the criteria for these pollutants in 2015. The Tribe calculated human health criteria for dioxin and thallium using the inputs identified above and using the EPA's previous IRIS toxicity values (CSF for dioxin and the RfD for thallium), which are no longer in the IRIS database.

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<sup>5</sup> <https://www.epa.gov/ground-water-and-drinking-water/national-primary-drinking-water-regulations>.



For dioxin, IRIS does not currently contain a measure of dioxin's cancer-causing ability (i.e., a CSF).<sup>6</sup> For thallium, the EPA's IRIS database does not currently contain an estimate of thallium's toxicity (i.e., a RfD).<sup>7</sup> In the future, the EPA intends to reevaluate the existing human health criteria recommendations for these pollutants to take into account the latest toxicity and bioaccumulation information. As new information becomes available, the EPA will reevaluate the Tribe's revised criteria for these two pollutants.

**Human Health Criteria Footnotes in Table 2, Section 10:**

Footnotes to Table 2 have been substantially revised in the Tribe's 2017 WQS. The EPA is addressing the following footnotes related to human health criteria and not taking action on footnotes relating to aquatic life criteria at this time.

**Footnote A** is new and provides a detailed description regarding the use of fish tissue residue data to evaluate compliance with the organisms only human health criteria for highly bioaccumulative pollutants. The EPA is taking no action on this footnote since it is not considered a WQS subject to the EPA's review and approval under CWA section 303(c). Instead this footnote addresses implementation and compliance with the criteria, not the criteria themselves.

**Footnote D** is comparable to footnote t in the 2004 WQS. The revised footnote indicates that the criteria are applicable to the inorganic form of arsenic and that the criterion is expressed as the dissolved concentration in the water column. This footnote also references endnote A which further details the aquatic life criteria calculations for arsenic. The EPA is approving the first two sentences of this footnote which apply to the human health criteria for arsenic and is taking no action on the sentence applying to aquatic life since it is not considered a WQS subject to the EPA review and approval under CWA section 303(c).

**Footnote F** is new and identifies the total chromium [i.e., Chromium (III) + Chromium (VI)] human health criterion for the consumption of water and organisms as the MCL (100 µg/L). The EPA is approving this footnote per the rationale expressed above regarding the Tribe's choice to use the MCL in the absence of a 304(a) recommended human health criterion.

**Footnote H** is new and indicates that the human health criterion for the consumption of water and organisms is expressed as total mercury unless fish tissue and site-specific water column data are available consistent with EPA's Guidance. The EPA is approving this footnote since it specifies the applicable expression of the mercury criterion adopted by the Tribe.

**Footnote I**, related to footnote H, is a simplified version of footnote i in the 2004 WQS that states the methylmercury criterion is a fish tissue concentration. The EPA is approving this footnote since it specifies the applicable expression of the methylmercury criterion adopted by the Tribe consistent with the EPA's recommendations.

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<sup>6</sup> [http://cfpub.epa.gov/ncea/iris/index.cfm?fuseaction=iris.showQuickView&substance\\_nmbr=1024](http://cfpub.epa.gov/ncea/iris/index.cfm?fuseaction=iris.showQuickView&substance_nmbr=1024).

<sup>7</sup> [http://cfpub.epa.gov/ncea/iris/index.cfm?fuseaction=iris.showQuickView&substance\\_nmbr=1012](http://cfpub.epa.gov/ncea/iris/index.cfm?fuseaction=iris.showQuickView&substance_nmbr=1012).

**Footnote L** is new and specific to human health criteria for cyanide expressed as total cyanide per liter (CN/L). The EPA is approving this footnote since it specifies the applicable expression of the cyanide criterion adopted by the Tribe consistent with the EPA's recommendations.

**Footnote M** is new and specific for dioxin regarding assessments of compliance using total toxic equivalents of TCDD and dioxin-like compounds present in water and fish tissue. The EPA is taking no action on this footnote since it is not considered a WQS subject to the EPA review and approval under CWA section 303(c). Instead this footnote addresses implementation and compliance with the dioxin criteria not the criteria themselves.

**Footnote Q** is similar to footnote q in the 2004 WQS indicating that both human health criteria for PCBs refer to total PCBs. The EPA is approving this footnote since it specifies the applicable expression of the PCB criteria adopted by the Tribe consistent with the EPA's recommendations.

**Footnote R** identifies multiple pollutants (Barium, beryllium, cadmium, copper, asbestos, 1,2-dibromo-3-chloropropane, 1,2-dichloroethane, 1,1-dichloroethylene, 1,1,1-trichloroethane, chlorophenoxy herbicide 2,4-D) for which the MCL is used as the human health criterion for the consumption of water and organisms; a similar footnote k existed in the 2004 WQS but included only two pollutants (copper and asbestos). The EPA is taking no action on Footnote R because it simply clarifies the source of the Tribe's criteria for these pollutants. Because this footnote does not establish a legally binding requirement and it does not describe a desired ambient condition of a waterbody to support a particular designated use it is not considered a WQS subject to the EPA's review and approval under 303(c) of the CWA.

#### **E. Beneficial Water Uses to be Protected in Waters of the Reservation regarding "Fishing" (Section 11)**

The revised WQS add the designated use of "fishing" (defined by the Tribe as, "The collection of fish, shellfish, or other aquatic organisms for consumption or other uses") as a designated beneficial use for the following waters of the reservation: Calispell Creek, Pend Oreille River, and Cee Cee Ah Creek.

In accordance with its CWA authority, 33 U.S.C. § 1313(c)(3) and 40 CFR 131, EPA approves the addition of the "fishing" use in Section 11 of the Tribe's WQS. The Tribe's human health criteria in Section 10 apply to waters designated with the "fishing" use (as well as the "ceremonial and cultural use"). Section 11 establishes and describes the designated uses that are to be protected in Reservation TAS waters. Minimum requirements for state and tribally adopted WQS (40 CFR 131.6) include use designations consistent with the provisions of CWA Sections 101(a)(2) and 303(c)(2). CWA Sections 101(a)(2) and 303(c)(2) both specify the uses of recreation in and on the water and propagation of fish and wildlife. CWA Section 303(c)(2) and 40 CFR 131.10(a) also require consideration of additional uses, including public water supply, and agricultural purposes. The addition of the "fishing" designated use is consistent with Sections 101(a)(2) and 303(c)(2) of the CWA and regulatory requirements at 40 CFR 131.6 and 131.10(a).

The EPA is not taking action at this time on the revisions to beneficial uses regarding aquatic life uses in this section.

**F. General Water Use and Criteria (Section 12(f))**

Section 12(f) of the Tribe's WQS is revised to clarify that the criteria in this section apply to waters used for consumption, sweat bathing, and any other ceremonial or cultural use, in addition to swimming and wading (the uses for which these criteria previously applied).

In accordance with its CWA authority, 33 U.S.C. § 1313(c)(3) and 40 CFR 131, EPA approves the revisions to section 12(f). The criteria in this section, which EPA previously approved, include bacteria criteria to protect recreation (swimming and wading) and general narrative provisions that require protection of public health and practices that lead to maintenance of Tribal WQS. Expansion of application of these criteria to waters used for consumption, sweat bathing, and any other ceremonial use is consistent with the EPA's regulation at 40 CFR 131.11(a)(1), which requires states and tribes to adopt the water quality criteria necessary to protect the most sensitive designated use. It is also consistent with 40 CFR 131.11(b)(2), which allows states and tribes to establish narrative criteria where numerical criteria cannot be established or to supplement numerical criteria.

The EPA is not taking action at this time on the revisions to uses and criteria regarding protection of aquatic life in this section.