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August 17, 2012

Billy Frank, Jr., Chairman
Northwest Indian Fisheries Commission
6730 Martin Way E.
Olympia, WA 98516

Dear ~~Chairman Frank~~: Billy

Thank you for your letter dated August 16 regarding our work on updating state standards related to human risk exposure from toxics in fish and the issue of revising Washington's fish consumption rate. I understand and appreciate your frustration with the process. This has certainly been a complicated, controversial and challenging undertaking – and the real work still lies ahead.

As you point out, we have changed elements of our approach to these issues. It was clear to me that our work on documenting fish consumption rates in our Technical Support Document, and our update of the Sediment Management Standards, had gotten mired in issues related to our Surface Water Quality Standards, which we had not even begun to address. That's why I decided to move up our work on revising our Surface Water Quality Standards and deemphasize a default rate in our Sediment Standards rule while still providing a high level of protection for fish consumers.

But many aspects of our work have not changed. We had never planned to establish a default fish consumption rate in the Technical Support Document. The purpose of the document was, and is, to provide a firm scientific foundation for what we know about fish consumption in Washington State. In fact, it was the mistaken perception that we were, indeed, establishing a default rate in a technical document that caused a great deal of concern to many parties and was bogging down the process. Not only were many concerned about the precedential implications for future work on the Surface Water Quality Standards, but some also believed the agency was improperly making decisions that legally should be made within the public rulemaking process as defined by the Administrative Procedures Act.

As you know, significant contributions to the Technical Support Document comes from studies from the Yakama Nation, the Umatilla Confederated Tribes, the Nez Perce Tribe, the Warm Springs Confederated Tribes, the Tulalip Tribes, the Squaxin Island Tribe, and the Suquamish Tribe. This scientific groundwork is essential to making good decisions about human health risk. The Technical Support Document was always intended to be a neutral, science-based look at actual fish consumption rates relevant to Washington State. I believe that removing unnecessary policy recommendations in the document and making it clear that this is a scientific, fact-based document allows it to move forward without the policy debate baggage. In turn, this will build a strong technical foundation for the important work ahead of revising fish consumption rates and human health criteria. We are still on track to finalize this document before December.

It is true that I had hoped to establish a single, default numeric fish consumption rate in our Sediment Management Standards. But as you know, this process also got caught up in issues related to Surface Water Quality Standards. This threatened to derail or at least delay our rule update work on sediment standards. Part of my job is to ensure that Ecology's processes are fair, transparent, inclusive of the public, and durable. Given the number and complexity of the questions – and the extremely high level of concern given the precedential relationship to the Surface Water Quality Standards – that arose from our effort to adopt a default fish consumption rate in the Sediment Standards by year's end, it was and is my judgment that pushing ahead on our original timeline regardless of those concerns and questions would have substantially weakened the foundation of the work ahead and the durability of Ecology's proposed rule revisions next year.

My decision to propose using Reasonable Maximum Exposure as the standard of protection for fish consumers in the Sediment Management Standards, instead of a default numeric rate, allowed us to move forward toward completing this rule revision this year. The Reasonable Maximum Exposure standard is no less protective than a default rate, albeit not as efficient. I feel this loss of efficiency is a small price to pay to complete this important work this year. I do not agree that this approach to sediment standards creates an unworkable situation relative to adopting a revised fish consumption rate in our Surface Water Quality Standards.

I appreciate the leadership that you and tribes have shown on these important issues, as well as your commitment to continue working on revising the fish consumption rate. While fish consumption rates are a crucial part of human health criteria, they are not the only factor in establishing risk levels. We must also make decisions about exposure durations and risk assumptions. Updating our water quality standards to be appropriately protective of high fish consuming Washingtonians remains my goal, and I believe our process puts us on firm ground to move forward toward that end.

In closing, let me acknowledge again your dissatisfaction with my recent decisions on process. I want you to know that in my mind there is no question that part of my responsibility as director of Ecology is to ensure that our pollution control efforts allow tribal members to safely eat their traditional foods, including local fish and shellfish. To succeed, we have a legacy of pollution to overcome, and much work ahead to control ongoing toxic pollution – much of which will not even be addressed by revisions to our fish consumption rate because it falls outside the purview of the Clean Water Act. While a revised rate is by no means the entire answer, it is part of the answer, and Ecology is moving forward with this work. I hope and ask for tribal participation and partnership in this effort, and on broader efforts to combat toxic pollution.

Sincerely,

Ted Sturdevant
Director

cc: Dennis McLerran, EPA Region 10
NWIFC Commissioners
Tribal Chairs