LOWER ELWHA KLALLAM TRIBE

ʔəʔɬx̣ʷə nəxʷsƛ̓ay̓əm "Strong People"

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September 7, 2012

Dennis McLerran, Regional Administrator
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

Re: Failure of Ecology to Revise Fish Consumption Rate

Dear Administrator McLerran:

I am writing to you to express the Lower Elwha Klallam Tribe's disappointment regarding the Washington State Department of Ecology's (Ecology) recent and abrupt decision to suspend the development of a revised fish consumption rate (FCR) for Washington State cleanup and water quality standards. It is time for EPA to step in and promulgate a reasonable interim FCR.

Our Tribe is located at the mouth of the Elwha River, just west of Port Angeles, and because of our continued subsistence dependence on fish and shellfish and our experiences with contamination in Port Angeles Harbor and elsewhere, we have been heavily involved in the development of an appropriate FCR. We now join the Northwest Indian Fisheries Commission and other Tribes who have written to express our serious concern.

Ecology's decision contradicts its previous assurances that a revised FCR would be in place prior to the end of the current Administration's term and negates the tremendous efforts that the tribes exerted in working with Ecology over for the past few years. It also leaves Washington's water quality standards out of compliance with the Clean Water Act, as it does not provide FCR that are protective of human health.

The current water quality and cleanup standards in effect in Washington State have long been recognized as grossly under-protective of fish consumers and environmental health. After being advised in 2008 by its Science Advisory Board (SAB) that the existing fish consumption rates of 6.5 g/day were not scientifically defensible, Ecology engaged in research and the

drafting of a technical document with the expressed goal of developing a science-based default fish consumption rate for Washington State. The pending draft document, prepared by one of the region's foremost experts in the subject area, recognizes that Washington fish consumers eat much more fish than the existing default rates and proposes a new rate for both cleanup and water quality standards of more than 200 grams per day.

As you may know, the State of Oregon passed similar fish consumption rules in 2011 that resulted in a default value of 175 gms/day. We believe that the fish consumption data in Washington State shows even greater levels of seafood consumption among Native American populations. The data is also clear that Asian-Pacific Islanders and non-native subsistence fishers consume quantities of fish at levels even higher than that proposed by Washington State.

During this process Ecology engaged the Northwest Indian Tribes requesting assistance in reviewing and providing feedback on the proposed new rate. Our technical review found the proposed rate to be reasonable as a default rate for the state. However, we also recognized that, in fact, Puget Sound Tribes often consume far greater quantities of seafood per day even than what has been proposed.

During the public comment period, Ecology received significant negative response from Industry groups and municipalities over the potential impacts of the proposed FCR standard on water quality standards. While we strongly support Ecology's decision to develop human health based criteria for surface water quality standards and its efforts to establish a realistic default fish consumption rate, we are disappointed and dismayed with its recent actions to revise the technical document and remove the conclusions and recommendations for a new default fish consumption rate. We are further dismayed by Ecology's decision to evaluate this subject with a stakeholder group of its choosing. This change, made without consultation with the tribes, nullifies the assurances and commitments that Ecology originally made to the tribes in this process. Ecology has further chosen to postpone the fish consumption rate issue indefinitely, which it originally stated would be enacted through the sediment management standards (SMS) update in 2012. We view this abrupt change as a prioritization of industry concerns over the protection of human health and tribal treaty rights. Ecology's action leaves the development of a fish consumption rate to a vague stakeholder process and the uncertainty of an upcoming change in state administration.

I am encouraged by your September 6, 2012 letter to Ecology in which you "strongly support the adoption of human health criteria" for fish consumption rates derived from "scientifically sound data." We agree that a Washington standard similar to that of Oregon's 175 grams would be easily justified with the available data. We ask that you continue to actively engage with Ecology to ensure that a reasonable, scientifically supported fish consumption value be established in a timely manner. And as an interim matter, we ask that EPA consider promulgating a higher default Fish Consumption Rate for Washington's Water Quality and cleanup standards—a standard that more reasonably reflects the realities of tribal and non-tribal fish consumption in this State. We understand the complexities of reconciling science and potential economic costs in establishing public health policy. But Ecology's lack of meaningful action warrants solicitation of regional and national leadership and expertise, as well as the authority of the EPA to address this critical issue.

We thank you for your time and attention to this matter of great importance to native peoples and all residents of Washington State who consume seafood harvested from our state waters.

Sincerely,

Frances G. Charles

Frances G. Charles, Chairperson
Lower Elwha Klallam Tribe

cc: Northwest Indian Fisheries Commission, Tribal Chairs, and Commissioners
Ted Sturdevant, Ecology Director
Bob Perciasepe, EPA Deputy Administrator
Lower Elwha Tribal Council, Environmental Coordinator, and General Counsel