Northwest Indian Fisheries Commission

6730 Martin Way E., Olympia, Washington 98516-5540
Phone (360) 438-1180 www.nwifc.org FAX # 753-8659

August 24, 2012

Mr. Dennis McClerran
Regional Administrator
United States Environmental Protection Agency
Region 10
1200 Sixth Avenue Suite 900
Seattle, WA 98101

Dear Administrator McLerran:

On behalf of the Northwest Indian Fisheries Commission (NWIFC) and its member tribes, we write to express our deep dissatisfaction over the Department of Ecology's (Ecology) recently announced changes to the adoption of revised fish consumption rates (FCR) in Washington State. While we strongly support Ecology's decision to begin development of human health-based criteria in the surface water quality standards, we are disturbed by the planned revisions to the technical support document and sediment management standards. We view the state's abrupt change in course as a prioritization of industry concerns over protection of human health and tribal treaty rights. Ecology's newly adopted strategy will slow progress in the development of a more accurate fish consumption rate and obscures the positive results we have jointly accomplished during the last several years, leaving the resolution of this issue to a vague stakeholder process and the uncertainty of future state administrations. For this reason, the tribes request your agency's engagement in the development of a FCR for use in setting water quality standards that is protective of tribal peoples, and their rights and resources.

The ultimate purpose of fish consumption rates is to protect human health. No one questions the fact that Washington's current fish consumption rate is not accurate. Tribes acknowledge the difficulty of adopting and implementing revised standards, and have engaged in and supported extensive governmental and stakeholder processes. Tribes are also mindful of and committed to the economic health of our region – however we will not prioritize economic gain for some over the health of our people or the environment that sustains us and our economies.

Tribal governments in western Washington are particularly frustrated with Ecology's change in course as they have committed significant effort over the last two years, working with Ecology to present the science and build a responsible and meaningful path forward. Initially tribal work focused on establishing a FCR as part of the state's water quality standards. Ecology, bracing for the industry pushback they knew would occur, forwarded a timeline delaying the work of water quality rule development and proposed prioritizing the development of a technical support document and rule-

making for the state's sediment management standards. Tribes were initially reluctant to accept this shift in emphasis, but eventually agreed to support these efforts based on a commitment from Ecology that the sediment management standards would ultimately speed the development of human health criteria in water quality standards. Now Ecology has reversed course again without any prior discussion with the tribes.

The tribes were repeatedly assured by Ecology that, at a minimum, the state would complete revised FCRs in the technical recommendations and in the sediment management standards before the completion of the current state administration's term. Unfortunately, Ecology's new approach nullifies these assurances and commitments. Ecology has removed a default FCR from the sediment management standards, and has delayed the completion of the Technical Support Document on Fish Consumption Rates—stripping the document of important summary results and conclusions. This pathway is completely contrary to commitments made to tribes as recently as the June 2012 Centennial Accord meeting at Suquamish.

The continued delay leaves the residents of Washington exposed indefinitely to inadequate and inaccurate standards for the protection of human health, with tribes at particularly high levels of risk. This delay also leaves Washington's water quality standards noncompliant with the basic mandates of the Clean Water Act, which require water quality standards to be set at levels protective of human health. The tribes are deeply disappointed at the abrupt change in course that Ecology has taken and the lack of tribal consultation in making these decisions.

The fish consumption rate issue has become a remarkable illustration of why the treaty tribes in western Washington have developed the "Treaty Rights at Risk" initiative as a call to action. State agency processes are not able to accomplish the work necessary to protect tribal people, their homelands or the resources on which their rights and cultures depend. The tribes require that the Federal Government carry out its obligation to tribes to protect tribal treaty rights by using federal statutes and authorities to establish a FCR for use in setting water quality standards.

Tribes are now looking to the Environmental Protection Agency for further engagement on the establishment of accurate and protective fish consumption rates in Washington State in a timely manner. Ecology, tribes, and others have invested years of work to develop an accurate and scientifically sound default FCR with poor results to date. We would like to request a meeting with you and the tribal representatives of our fish consumption leadership /oversight group in September to discuss options for EPA to help move fish consumption rates forward expeditiously in the state of Washington.

Tribes remain steadfast in their commitment to revise fish consumption rates in the state's water quality standards, and they remain willing to work collaboratively with the state as long as tangible progress is being made. However, it is clear that active engagement by federal agencies such as yours will be necessary to make this happen. Should you have any questions regarding this request, or wish to further discuss this matter, please do not hesitate to contact me directly or Fran Wilshusen, fwilshus@nwifc.org.

Thank you for your continued leadership on this important matter.

Sincerely,

Billy Frank, Jr.
Chairman

cc: Tribal Chairs
NWIFC Commissioners
Bob Perciasepe, EPA