STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

February 2, 2012

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RE: Ecology's Response to Comments – Draft Fish Consumption Rates

Dear Ladies and Gentlemen:

Thank you for your comments on the draft Fish Consumption Rates Technical Support Document. Your comments are important to us and critical to a thorough review and evaluation of the available science regarding fish consumption rates in Washington State. Given the importance of fish consumption rates in establishing appropriate environmental standards, I want to assure you that all information, comments and concerns will be fully considered in an open and responsive manner.

It is clear that significant scientific and policy questions will need to be asked and answered in an open, transparent manner. The stakes are high, both for the people that eat significant quantities of Washington fish and shellfish, and for Washington businesses that have to comply with environmental regulations. Important cultural, spiritual, economic, public health and environmental interests are at stake.

As such, Ecology will take the time needed to get it right. We will fully engage interested parties in an open and transparent manner. We will work collaboratively to find a path to long-term reductions in toxic pollution that is fully informed and responsible – both for fish consumers who deserve to be protected and for businesses that provide jobs in local communities. Therefore, I have extended timelines to provide for more public and stakeholder involvement in the report and related rules. The enclosed document, *The Washington State Department of Ecology's Revised Fish Consumption Rates Process & Schedule*, outlines the revised process and schedule.

Washington's surface water and sediment standards are set to protect human consumption of fish and shellfish. These standards rely on accurate information about fish consumption rates. The technical support document, along with any new relevant information, will be used to inform our work on updating Washington's Sediment Management Standards and, at a later date, the human health criteria in our Surface Water Quality Standards.

Many types of toxic chemicals can accumulate in fish and shellfish, and updating the fish consumption rate is a key part of our larger effort to protect the health of Washington's residents by reducing exposure to toxic chemicals. We are taking steps to reduce ongoing discharges into our air and water, and continue to make progress cleaning up contaminated soils and sediments. We are strengthening our monitoring programs and working with businesses to ensure that toxic chemicals are safely managed. We are also working with businesses, citizens and the Legislature to reduce the use of toxic chemicals in the workplace and in consumer products.

Exposure to toxic chemicals can cause a wide range of health problems. Young children and the developing fetus are particularly vulnerable because their brains are still rapidly developing. Exposure to chemicals in the environment during these sensitive periods of growth is associated with learning and behavior problems in our kids. These problems are wide-spread and increasing in the U.S., creating a burden on children, families, our school system and all of society. While environmental exposures are not the only cause, they are one contributor that we can do something about.

As you know from the report, the current water quality and cleanup regulations were adopted in the early 1990s, using scientific information based on national data available at that time. Our current water quality standards are based on a consumption rate of 6.5 grams of fish per day. This is less than one-half pound of fish and shellfish per person, per month, which would be about one serving per month. Our current cleanup standards are based on a consumption rate of 54 grams of fish per day, which is less than four pounds of fish and shellfish per person, per month. This draft report indicates that a considerable number of people in Washington regularly eat larger amounts of Washington fish and shellfish and, consequently, have a higher exposure to risks related to toxics in fish than currently assumed.

Over the last several years, the Washington State Department of Ecology's (Ecology) scientists have worked with scientists from other agencies and universities to evaluate available studies and prepare this draft report. In this evaluation, we have considered the same studies used by the state of Oregon to update their regulatory standards. In addition, the Environmental Protection Agency (EPA) recently completed a five-year effort to update the national guidance on fish and shellfish consumption rates. The EPA document relies on the same body of scientific studies that Ecology has considered in the draft report.

Ecology received several hundred comments on the draft report and preliminary conclusions, and we are currently in the process of reviewing them. A number of important issues have been raised related to individual studies, the role of salmon, whether one statewide standard is appropriate and the overall level of conservatism reflected in our evaluation. Some people have said the draft range of values is too low and will not adequately protect our most sensitive populations. Others have said that the draft range is too high, is inconsistent with current laws and policies, is not adequately documented with current scientific information and will slow Washington's economic recovery.

Ecology is very aware of the fact that our rules can affect the bottom line of Washington businesses. We recognize that more protective standards will pose new challenges for the regulated community. We believe that dischargers deserve a predictable compliance path that reflects real-world constraints on technology and resources.

This is why we are working on a rule change to improve and increase regulatory compliance tools that address short and long-term source control. These changes will allow water quality permittees to maintain compliance with their permits, while they effectively work toward meeting permit limits that better prevent and control sources of toxic pollutants. These tools will be available before we update the Surface Water Quality Standards with a new fish consumption rate.

Over the coming months, we will be working with groups and individuals who have raised these concerns. I am confident that together we can work through these challenging and complex issues, and that this effort will ultimately improve our ability to reduce levels of toxic chemicals in the environment and better protect Washington's residents, even as Washington's businesses recover and grow.

Sincerely,

Ted Sturdevant
Director

Enclosure: Washington State Department of Ecology's
Revised Fish Consumption Rates Process & Schedule
(*Revised January 31, 2012*)

ENCLOSURE

Washington State Department of Ecology's
***Revised* Fish Consumption Rates Process & Schedule**
(Revised January 31, 2012)

Rationale for Schedule Revisions:

Ecology has received substantial public input on the process of updating our fish consumption rates for sediment cleanup and water quality standards. It is clear that significant scientific and policy questions will need to be asked and answered in an open, transparent manner.

The stakes are high, both for the people that eat significant quantities of Washington fish and shellfish, and for Washington businesses that have to comply with environmental regulations. Important cultural, spiritual, economic, public health and environmental interests are at stake.

As such, Ecology will take the time needed to get it right. We will fully engage interested parties in an open and transparent manner. We will work collaboratively to find a path to long-term reductions in toxic pollution that is fully informed and responsible – both for fish consumers who deserve to be protected, and for the businesses that provide jobs in local communities.

Key Changes:

- Extending timelines
- Additional stakeholder engagement
- Formation of business and tribal working groups
- Additional public workshops
- Additional legislative briefings

Fish Consumption Rates Process – Key Elements:

<u>Fish Consumption Rate Technical Report</u>: Establishes baseline information about exposure from fish consumption based on current data in the Pacific Northwest.

<u>Sediment Management Standards Rule</u>: Addresses state default fish consumption rates used for making toxic cleanup decisions under MTCA. Requires approval by EPA under Federal Clean Water Act.

<u>Water Quality Implementation Tools Rule</u>: Aimed at increasing and improving tools available to dischargers for complying with surface water quality standards.

<u>Water Quality Human Health Standards Rule</u>: Incorporates more accurate fish consumption rates into the human health criteria under the water quality standards. New rates will result in more protective standards. Requires approval by EPA under Federal Clean Water Act.

PROCESS TO DATE 2009 - 2011				
	Fish Consumption Rate Report	**Sediment Management Standards**	**Water Quality Implementation Tools**	**Water Quality Human Health Standards**
2009				
		Gathered public input on needed changes to standards.		
2010				
Spring/ Summer		Science Advisory Group meetings		
Winter				Gathered public input on needed changes to standards.
2011				
August				Response to public input published
October	Draft report published	• Rulemaking announced • Advisory committee formed • Informal rule language published	Rulemaking announced	
December	Public workshop		Public workshop	

REVISED PROCESS 2012 - ?				
	Fish Consumption Rate Report	**Sediment Management Standards**	**Water Quality Implementation Tools**	**Water Quality Human Health Standards**
2012				
January	Public comment period ended on report		Public workshop	
February - May	Meetings with commenters and business and tribal working groups	Ongoing stakeholder meetings and legislative briefings		
March			Two public workshops	
April/May	Two public workshops			
June	Report finalized			
Summer		Draft rule proposal (CR102 - includes cost/benefit analysis)	Draft rule proposed (CR 102 - includes cost/benefit analysis). Timing dependent on stakeholder input.	
Fall/Winter		Rule adoption no more than 180 days after draft rule proposed.	Rule adoption no more than 180 days after draft rule proposed.	
				Rule making begins after Implementation Tools Rule is finalized (CR101)