



# Lower Elwha Klallam Tribe

ḥəlx̣wə nəx̣wsʔay'əm "The Strong People"

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October 26, 2012

Ted Sturdevant  
Director  
Washington Department of Ecology  
P.O. Box 4600  
Olympia, WA. 98505-7600

Re: Ecology's revised process for updating fish consumption standards

Dear Mr. Sturdevant:

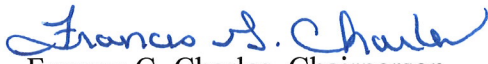
The Lower Elwha Klallam Tribe and numerous other tribes in Washington State have participated for several years in the state-led process to develop science-based Fish Consumption Rates (FCR) that are protective of Washington State fish consumers. Following a rigorous process of examining peer reviewed scientific data and fish consumption studies, specific recommendations were developed by Ecology staff for a range of FCRs. The range in FCR values was very similar to that adopted by the state of Oregon. Despite the fact that several tribal fish consumption studies have shown dramatically higher rates of fish consumption, Lower Elwha has been willing to support a FCR in the proposed range as a default value for the state that provides better and more appropriate protection to Washington's fish consumers than the current 6.5 grams/day. Our tribal staff has expended significant time and resources in actively working with Ecology and other tribes to support Ecology's efforts to update the current FCR standards for water quality and environmental cleanups, which are outdated and grossly inadequate.

We are greatly disappointed by Ecology's dramatic change in direction with its plans to "revise" the FCR development process and convene a series of "technical meetings." The stated rationale of achieving a more "transparent" process seems dubious at best. We are particularly concerned about Ecology's decision to strip out the Fish Consumption Rate recommendations that were included in its draft FCR report. It is hard to see why this is not simply an accommodation of those interests that seek to delay and negotiate down a scientifically valid FCR. Ecology's efforts to effectively "restart the clock" will only serve to maintain and extend a risk and exposure level that can no longer be justified on any scientific or public health basis. Tribal people, Asian Pacific Islanders, and many other residents of, and visitors to, Washington State who consume large quantities of fish have been at risk of dramatically elevated levels of exposure to environmental toxins for far too long. We can no longer afford to continue to kick the FCR can down the road.

The Point no Point treaty of 1855 guaranteed our people the right to catch and consume fish in our Usual and Accustomed Areas. We believe that this treaty right also entails a right to fish and shellfish resources that are not harmful to human health due to environmental toxins that the State allows to be released into waters that we all must share. And as you know, treaty tribes are governments with a more fundamental interest than that of the “stakeholders” or “interest groups” served by Ecology’s last-minute change in direction. Lower Elwha has no interest in re-convening a series of “technical meetings” or otherwise legitimizing this process. Therefore, we must respectfully decline to participate in Ecology’s Policy Forums and Technical meetings. If the state establishes an interim FCR that is significantly more protective of human health, then we will consider meeting with the state on a government-to-government basis to discuss development of an FCR.

We thank you for your time and attention to this matter of critical importance to the Tribe.

Sincerely,

  
Frances G. Charles, Chairperson  
Lower Elwha Klallam Tribe

Cc: Dennis McLerran  
Northwest Indian Fisheries Commission  
Lower Elwha Tribal Council, Environmental Coordinator, General Counsel