



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
10095 W. Emerald
Boise, Idaho 83704

April 29, 2014

Paula Wilson
Idaho Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

Re: Comments for the Preliminary Draft Rule Language for the Mixing Zone Policy (Docket 58-0102-1401)

Dear Ms. Wilson:

On April 4, 2014, the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) received notice that the Idaho Department of Environmental Quality (IDEQ) posted the preliminary draft negotiated rule for Idaho's mixing zone policy (Docket Number 58-0102-1401) and requested written comments by May 15, 2014. NMFS appreciates being given the opportunity to participate in the negotiated rulemaking process and to provide comments on this preliminary draft rule.

NMFS is responsible for the conservation and recovery of four anadromous fish species that occur in Idaho and that are listed as either threatened or endangered under the Endangered Species Act (ESA). Those species include Snake River spring/summer Chinook salmon, Snake River fall Chinook salmon, Snake River sockeye salmon, and Snake River Basin steelhead. NMFS is also responsible for the conservation and recovery of designated critical habitat for these species. Implementation of the mixing zone policy has the potential to directly and indirectly affect ESA-listed species and their critical habitats. Currently, NMFS is able to review the details of mixing zones that are authorized in federally-issued discharge permits. Because of this review opportunity, NMFS has assurance that ESA-listed species and their critical habitats will be fully protected under the ESA.

Idaho is actively pursuing primacy for the National Pollutant Discharge Elimination System (NPDES) program. Once Idaho is granted primacy for this program, NMFS will not have the opportunity to ensure authorized mixing zones will not jeopardize the continued existence of ESA-listed species and will not adversely modify their critical habitats. Therefore, the mixing zone rules, and associated implementation guidance document, must ensure protection of ESA-listed species and their critical habitats.



Unfortunately, NMFS is unable to attend the first negotiated rulemaking meeting that is scheduled for May 1, 2014. Although we are unable to submit specific comments before the first scheduled meeting, we anticipate submitting comments to the IDEQ by May 15, 2014. The purpose of this general letter is to notify the IDEQ and other negotiated rulemaking participants of our interest in this topic.

NMFS would like to thank you again for notifying us of this rulemaking effort and allowing us the opportunity to participate. We look forward to reviewing notes from the May 1, 2014 meeting and to participating in future negotiated rulemaking meetings (if they are deemed necessary).

Sincerely,



David Mabe
Snake Basin Office Director