



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

May 14, 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:

The National Marine Fisheries Service (NMFS) has reviewed the draft rule language for the mixing zone policy and appreciates efforts by the Idaho Department of Environmental Quality (IDEQ) to strengthen the existing rule language regarding authorization of mixing zones. We understand that flexibility in the use of mixing zones is very important to National Pollutant Discharge Elimination System dischargers, but this creates a very difficult set of rules for the services to analyze in consultation. To be specific, NMFS is supportive of the following additions to the rule language: (1) requirement for mixing zones to be appropriately sized (i.e., no larger than is necessary); and (2) clarification of the "unreasonable interference with, or danger to, beneficial uses" concept. However, more details regarding implementation of these provisions will be necessary to complete our consultation. Some of the details we are concerned with are summarized below.

1. The language at 060.01.c states that the IDEQ "shall not authorize a mixing zone that is determined to be larger than is necessary." We encourage you to be more specific in stating that mixing zones are only allowed to be as large as necessary after all available and practical treatment methods have been used. Mixing zones should not be used as dilution to allow dischargers to avoid or minimize wastewater treatment.
2. NMFS appreciates the language in section 060.d.ii prohibiting mixing zones from jeopardizing listed species or adversely modifying critical habitat. However, taking



action prior to reaching jeopardy or adverse modification is desirable for all parties and we suggest adding a new subpart under 060.01 that says, "Mixing zones shall be designed to avoid or to minimize adverse effects to species and critical habitat listed under the Endangered Species Act. (ESA)"

3. The rule language at 060.01.h needs to take into account not just that larger mixing zones can be granted, but that 060.01.c also may limit a mixing zone to less than 25% of the critical flow volume for all discharges that are unable to meet criteria at the end of the pipe.
4. The provision at 060.01.h.ii requires that mixing zones be located away from the edge of the stream. This provision of the rules may be a problem in situations where it is advantageous to have a side-of-bank discharge to keep higher concentrations of pollutants away from the primary fish migratory corridor within the stream.
5. The provision at 060.01.i specifies that the restrictions identified in 060.01.h may be exceeded if needed by a discharger. Therefore, mixing zones using more than 25% of the critical flow volume or extending more than 25% of the stream width could be authorized. This will make completing consultation difficult on this rule. NMFS will not be able to successfully analyze the effect of mixing zones larger than 25% on listed species without knowing how many, where, or how large they will be. There are two possible solutions to this problem. The first is to make larger mixing zone authorizations subject to Environmental Protection Agency (EPA) approval. Such an approval would require ESA consultation, deferring the analysis to a future action. The second alternative is to provide performance standards that are protective of listed species and that can be considered during consultation for this rule.

Thank you for considering our comments and we look forward to participating in the June 12, 2014 negotiated rulemaking meeting.

Sincerely,



David Mabe
Snake Basin Office Director