



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

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August 22, 2014

Paula Wilson
Idaho Department of Environmental Quality State Office
1410 N. Hilton
Boise, Idaho 83706

By Electronic mail (paula.wilson@deq.idaho.gov)

Re: Docket No. 58-0102-1201 – Fish Consumption Rate and Human Health Water Quality
Criteria -Discussion Paper 5: Anadromous Fish

Dear Ms. Wilson:

The Nez Perce Tribe (Tribe) appreciates the Idaho Department of Environmental Quality's invitation to comment on the question of whether anadromous species should be included in the calculation of a state-specific fish consumption rate to derive water quality standards. For the reasons below, as well as the comments of the Columbia River Inter-Tribal Fish Commission submitted to IDEQ on this topic which the Tribe incorporates by reference, the Tribe urges the Idaho Department of Water Quality to protect the health of all citizens in Idaho by fully incorporating anadromous fish into the state's fish consumption rate.

Since time immemorial, the Tribe has occupied and used a territory encompassing more than 13 million acres in what are today north-central Idaho, southeast Washington, northeast Oregon, and western Montana. The Tribe's aboriginal area is the heart of salmon country – along the Salmon, Snake, Grande Ronde, Imnaha, Clearwater and Tucannon Rivers which historically were major salmon and steelhead producers. The Tribe's subsistence cycle involved traveling year to year, primarily to follow the salmon runs. The Tribe has historically and contemporarily fished for Chinook, Silver, Coho, and Sockeye varieties of salmon, lamprey, and several species of resident fish and some shellfish. The Tribe's economy and culture evolved around Northwest fish runs. This dependence on salmon and other anadromous species to meet dietary, spiritual, cultural, economic and basic subsistence needs is still a prevailing necessity of Nez Perce life.

In 1855, the United States entered into a treaty with the Tribe. Treaty of June 11, 1855 with the Nez Percés, 12 Stat. 957 (1859). In this treaty the Tribe explicitly reserved, and the United States secured, among other provisions, a permanent homeland as well as, in Article III, "the

right to fish at all usual and accustomed places in common with citizens of the Territory; and of erecting temporary buildings for curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed lands.” This treaty-reserved right to take fish represents an inherent right that the Nez Perce have held since time immemorial. The fishing right is as important to the Tribe today as it was in 1855 and before contact with non-Indians.

Nez Perce tribal elders believe that one of the greatest tragedies of this century is the loss of traditional fishing sites and Chinook salmon runs on the Columbia River and its tributaries. The Tribe has a vision of restoring all fish species native to the Nez Perce Treaty Territory. To that end, the Tribe has engaged in management of all species – both anadromous and resident – for all streams, lakes and watersheds within its management authority. The Tribe is actively involved in these efforts to protect Nez Perce culture and treaty rights, restore species and conditions consistent with the treaty, and to protect the long-term productivity of its natural resources. The treaty right to harvest and eat fish is a federally-secured right. The Tribe expects the IDEQ, in consultation with the Environmental Protection Agency (EPA), to follow EPA policy as it relates to establishing standards for fish consumption rates in water quality standards.

EPA explains in their 2000 Human Health Methodology document that “EPA expects that the standards will be set to enable residents to safely consume from local waters the amount of fish they would normally consume from all fresh and estuarine waters (including estuarine species harvested in near coastal waters).” According to the EPA this “is consistent with a principle that every State does its share to protect people who consume fish and shellfish that originate from multiple jurisdictions”. The state of Idaho shares this obligation to protect all people that consume fish that are impacted by contaminants released by Idaho dischargers into the Columbia River watershed.

The anadromous fish that populate waters in Idaho are impacted by pollutants from the Columbia River throughout their lifespan. As juveniles, salmon are exposed to and accumulate contaminants during the time spent in freshwater. Once in the estuary and near coastal waters, anadromous fish can grow about 0.5 to 1 mm per day while feeding in an ecosystem that is directly impacted by pollutants from the Columbia River. Many populations of Chinook salmon remain largely or entirely in coastal waters and will feed on forage fish that can also accumulate contaminants from terrestrial sources including the Columbia River plume.

The combined impact of direct contact with pollutants in the Columbia River and from indirect uptake of contaminants through food webs associated with the river are evident in tissues of adult Chinook salmon. O’Neil et.al. (2006) analyzed the body burdens of persistent organic pollutants in adult salmon returning to the non-urbanized north-central coast of northern British Columbia and to more urbanized areas including the Lower Columbia River. O’Neil’s results show a distinct difference between the concentrations of persistent organic pollutants (PCB, DDT, and PBDEs) in adult salmon from the Columbia River as compared to northern British Columbia. Adult Chinook salmon from the Columbia River, despite time spent in the ocean, contain higher body burdens of organic pollutants than anadromous fish from non-urbanized watersheds.

The State of Idaho should also consider protection and enhancement of the important anadromous fisheries in the Clearwater, Salmon and Snake Rivers – now and into the future. Currently, Idaho rivers support one of the largest steelhead fisheries in the nation. Most of the steelhead caught in the fishery are “A run” hatchery fish, the majority of whom spend equally as much time in the freshwater as the ocean. The B run steelhead returning to the Clearwater River, and that spend only one year in the ocean are similar. It is also important to consider the “jack” salmon fisheries. The last several years, Idaho has opened a fishery on fall chinook jack salmon and many of these fish (those overwintering in the Snake River reservoirs) can spend more time in freshwater than the ocean. In the future, when the region is able to “delist” salmon and steelhead, consumption of wild anadromous fish with varying periods of freshwater residency, will also be possible. Establishing consumption standards now that are considerate of Idaho’s reputation for steelhead and salmon fisheries is crucial.

Moreover, including anadromous species in the State of Idaho’s fish consumption rate would be consistent with the Tribe’s vision for regional continuity in managing water quality. In September, 2012 the Affiliated Tribes of Northwest Indians, of which the Tribe is a member, passed Resolution 12-54, concluding that “adopting higher, more accurate fish consumption rates benefits not only tribal people, but all citizens, in the Pacific Northwest who consume fish and value a cleaner and more healthy environment.” The resolution requests that EPA work to adopt a fish consumption rate of no less than 175 grams for Oregon, Washington and Idaho.

As IDEQ is aware, Oregon has adopted a fish consumption rate of 175 grams. Oregon followed the direction of the Human Health Focus Group and included Pacific salmon and other migratory species in their consumption rate to adequately account for pollutants. Oregon justified this choice because data are not available to calculate accurate relative source value corrections for these species. Also, the relative source contribution process does not account for carcinogenic risk. In addition, in July 2014, Governor Inslee presented a policy approach for Washington state that incorporates a fish consumption rate of 175 grams per day which includes anadromous fish. The Tribe’s position is that these regional data sources from Oregon and Washington— States that are in close proximity to Idaho—are relevant to the State of Idaho in their process for developing fish consumption rates that will be a factor in determining ambient water quality criteria (AWQC) for the State.

Finally, as IDEQ is aware, the Tribe, in cooperation with EPA, the State of Idaho and other tribes in Idaho, is currently engaged in its own fish consumption survey. The Tribe’s survey design and questionnaire includes anadromous and resident species. The Tribe will provide the results of this survey to IDEQ in 2015 and expects that this local data on Nez Perce fish consumption, which will necessarily include data implicating tribal consumption of anadromous species from waters in Idaho, will be fully considered in the State of Idaho’s promulgation of fish consumption rates to protect human health.

In summary, the Tribe concludes that including anadromous fish in the State of Idaho’ fish consumption rate recognizes the Tribe’s culture and sovereignty, honors the Tribe’s treaty-reserved rights which the State of Idaho has an obligation to protect, is based in sound science, and is consistent with the Tribe’s desire for a regional fish consumption approach that includes

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anadromous fish which benefits all communities in the Pacific Northwest. Thank you for considering the Tribe's comments on this very important topic.

Sincerely,

A handwritten signature in blue ink, consisting of a series of loops and a horizontal line extending to the right.

Silas C. Whitman
Chairman