



# UPPER SNAKE RIVER TRIBES FOUNDATION, INC.

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October 11, 2012

Mr. Barry Burnell  
Water Quality Program's Administrator  
Idaho Department of Environmental Quality  
1410 North Hilton Street  
Boise, Idaho 83706-1255

**Re: Comments regarding negotiated rulemaking initiated to evaluate local and regional fish consumption information to determine whether Idaho's statewide criteria are protective of designated uses and, if the current criteria are not protective, to determine appropriate new criteria.**

Dear Mr. Burnell:

The Upper Snake River Tribes (USRT) Foundation, a tribal consortium representing four sovereign Indian tribes in the negotiated rulemaking process to evaluate local and regional fish consumption information to determine whether Idaho's statewide criteria are protective of designated uses, appreciates the opportunity to provide initial comments to the Idaho Department of Environmental Quality (IDEQ). USRT is composed of four federally-recognized tribes within the Upper Snake River region of Idaho, Nevada, and Oregon, including the Burns Paiute Tribe, Ft. McDermitt Paiute-Shoshone Tribe, Shoshone-Bannock Tribes of the Fort Hall Reservation, and Shoshone-Paiute Tribes of the Duck Valley Reservation. USRT works to ensure the protection, enhancement, and restoration of the tribes' rights, resources, and activities that are reserved by Treaties and Executive Orders, protected by federal laws and agreements, or are the subject of aboriginal claims asserted by the tribes. These include but are not limited to hunting, fishing, gathering, and subsistence uses. For centuries, USRT members have depended on the waters of Idaho for both sustenance and the fulfillment of cultural, religious, and spiritual ceremonies.

Representatives of USRT attended the October 4, 2012, initial negotiated rulemaking session at the IDEQ office. Preceding the session and since its conclusion USRT staff have reviewed relevant documents pertaining to the proposed rulemaking. From that review, and the October 4<sup>th</sup> session, USRT has several concerns regarding IDEQ's proposed methodology for developing a human health water quality criteria rule and associated fish consumption rate (FCR). The five preliminary concerns include:

- Acceptable risk level for the general population is  $10^{-5}$  and  $10^{-4}$  for high fish consumers

- Setting a FCR based on the general/broader population, rather than establishing a FCR protective of high risk/high fish consumers
- Anadromous fish treated differently than resident fish
- Lesser consideration of market fish consumption than of fish residing in Idaho waters
- Use of outdated fish consumption surveys in the development of an Idaho FCR

During the negotiated rulemaking session on October 4<sup>th</sup>, Don Essig (IDEQ Water Quality Standards Coordinator) presented the following narrative during the PowerPoint presentation (slide 50):

For carcinogens EPA specifies that AWQC may not result in risk greater than 1 in 100,000 for the general population AWQC and may not result in risks for high fish consuming groups exceeding 1 in 10,000.

USRT disagrees with the preceding and requests that IDEQ remove from its decision framework such a premise. Ambient water quality criteria should not treat populations differently by allowing for increased risks to groups that are high consumers of fish. IDEQ must initiate human health water quality criteria and an associated FCR that is targeted to protect high risk consuming groups. “To protect human health and preserve the quality of Idaho’s air, land, and water for use and enjoyment today and in the future” is the mission of the IDEQ. Individuals and subpopulations, in this case high fish consumption groups, must have the assurance that fish they consume are protective of their human health to no less degree than low or non-fish consumers.

Related to the preceding, Mr. Essig posited on several occasions that IDEQ is inclined to set a FCR based on the general/broader population, not based on high fish consuming subpopulations. USRT is gravely concerned that a FCR will be set that is not protective of Indian tribes, a high fish consuming subpopulation. In developing a FCR, the IDEQ must identify subpopulations where fish is a primary and important source of sustenance and determine rates of daily/weekly/monthly consumption. Obviously FCRs for the general/broader population are significantly different than for subpopulations. Establishment of a FCR must be reflective of all groups and subgroups in the State of Idaho, not just the general/broader population. Such a diluted FCR will neither be protective of human health or reflective of actual consumption rates amongst differing groups and subgroups.

An additional concern of USRT is in the IDEQ’s advancement that anadromous fish consumption may be treated differently than resident fish consumption because anadromous fish spend a portion of their life history in waters outside the boundaries of Idaho. While that may be true, anadromous fish begin and end their life history in Idaho waters (residing in State waters for up to two years). It is known that salmon and steelhead are more susceptible to water contaminants during juvenile stages than in adulthood. Given that much of the juvenile stage is spent in Idaho waters, this should be a consideration in setting water quality criteria, along with human health. Supplementary to this, IDEQ should carefully evaluate the consumptive rate of resident fish derived from Idaho waters. It is well understood that contaminant levels in resident fish residing in impaired waterbodies can be greatly elevated and pose significant health risks to consumers.

As IDEQ is fully aware, anadromous fish are an important dietary component of Indians in Idaho. Tribes have been instrumental in overseeing the return of healthy anadromous fish numbers back to Idaho,

overcoming obstacles such as dams and other diversion structures, misallocation and over-allocation of water, and habitat degradation, to mention only a few factors. In the past several decades the number of Chinook salmon passing over Lower Granite Dam and returning to Idaho has increased as much as 68-fold, which means that ever-increasing amounts of anadromous fish are being consumed each year in Idaho by both tribal and non-tribal individuals. Increased runs of sockeye and steelhead are also returning to Idaho each year and expected to further increase due in no small part to Indian tribes. It would be inappropriate if IDEQ choose to diminish the importance of anadromous fish in the diet of Idaho subpopulations and set a FCR that was not representative of actual consumption rates because those species spend a portion of their life history outside of Idaho.

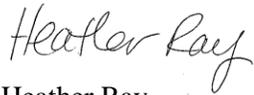
A fourth concern that USRT would like to express regarding the initial rulemaking session on October 4<sup>th</sup> is in regard to the inclusion of market fish in determining a FCR. As detailed previously, the number of fish returning to Idaho is on the rise and presumably populations of resident fish are also increasing due to numerous restoration and supplementation projects in the State. As anadromous and resident fish populations increase, fish consumers will likely alter their consumption patterns from one of market fish to native, Idaho-caught fish. But, in the interim, market fish consumption should be evaluated and recognized on par with Idaho-caught fish. Without such an evaluation it will be impossible to determine actual fish consumption rates in the State now and make projections on how much fish will be consumed in the future when there is more reliance on Idaho-caught fish rather than market fish. Further, given that current fish populations are greatly suppressed compared to historic numbers it is certainly the case that many consumers supplement their diet of Idaho-caught fish with market fish. A full evaluation of where, when, and to what degree this is occurring is necessary for the State of Idaho to set a valid FCR.

The fifth issue USRT would ask IDEQ to reconsider is the use of outdated fish consumption surveys to aid in the development of an Idaho FCR. IDEQ noted during the October 4<sup>th</sup> meeting that a quality review of available fish consumption surveys was conducted and six scored 10 or better. However, five of the six surveys were published between the years 1994 and 2002. The sixth survey was published in 2012 by the Lummi Tribe, but is not entirely relevant given its focus on seafood consumption. IDEQ also mentioned a seventh survey, ATSDR – Lake Coeur d’Alene, during the October 4<sup>th</sup> session that may be of value. It, however, was published even earlier than the other six in 1989. To reiterate, fish runs in Idaho have significantly increased since the aforementioned surveys were conducted and published. Because of this, and the fact that none of the surveys scored highly by IDEQ’s quality review comprehensively reflect consumption rates across the entire State of Idaho, particularly all of Idaho’s Indian tribes, new survey data is needed before a statewide FCR is designated. USRT and its Idaho member tribes are prepared to fully assist IDEQ in collecting and evaluating data that accurately captures consumptive rates amongst the State’s at-risk, high fish consumers.

USRT members, as at-risk, high fish consumers, have much at stake in the development of an adequate and protective FCR in the State of Idaho. As IDEQ moves forward in the FCR process USRT is ready to fully collaborate with the State as an integral tribal consortium of sovereign Indian tribes. It cannot be understated the importance to Idaho’s Indian tribes that a FCR is established that is accurate, statistically- and scientifically-derived, and fully protective to the health and wellbeing of all tribal members. Certainly, USRT members appreciate and respect IDEQ initiating the FCR rulemaking process but do have concerns after attending the October 4<sup>th</sup> session as elucidated in this letter. It is important that IDEQ

consider seriously the points outlined above and not lose sight of them as the process moves forward. Should IDEQ ascertain, at any time during the rulemaking process, that USRT or its member tribes could provide the Agency with additional information outside of the public process please contact us at (208) 608-4131 or [heather.ray@uppersnakerivertribes.org](mailto:heather.ray@uppersnakerivertribes.org). In the coming weeks USRT will provide comments on the six fish consumption surveys that IDEQ has identified as most relevant in the Idaho negotiated rulemaking process. Thank you for your time and consideration of our comments.

Sincerely,



Heather Ray  
Executive Director, USRT