

*Nez Perce*

**TRIBAL EXECUTIVE COMMITTEE**

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October 11, 2012

**By Electronic ([paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)) Mail**

Barry Burnell  
Water Quality Division Administrator  
DEQ State Office  
1410 N. Hilton  
Boise, Idaho 83706

Re: Nez Perce Tribe's comments regarding IDEQ's initiation of negotiated rulemaking, Docket No. 58-0102-1201 (evaluation of local and regional fish consumption information to determine whether Idaho's statewide criteria require revision to protect designated uses)

Dear Mr. Burnell:

The Nez Perce Tribe appreciates the opportunity to comment on the Idaho Department of Environmental Quality's (IDEQ) process for evaluating local and regional fish consumption information to determine whether Idaho's statewide human health criteria for fish consumption are protective of designated uses, or need revision in accordance with applicable requirements of the Clean Water Act. Based on the information that IDEQ provided at the October 4 public meeting, the Tribe has several preliminary concerns regarding IDEQ's proposed approach and requests that the agency fully consider them before proceeding with its evaluation of the fish consumption rate.

### **The Treaty of 1855**

The importance of salmon, steelhead and lamprey to the Tribe cannot be overstated. Ranging throughout the Columbia and Snake River systems, including the aboriginal territory of the Tribe encompassing the Clearwater and Salmon River basins in Idaho, these fish have been since time immemorial, and continue to be, critical to Nez Perce culture, economy, subsistence, spiritual beliefs and way of life. In its 1855 Treaty with the United States, the Tribe reserved, and the United States secured, among other guarantees, the exclusive right to take fish on the Nez Perce

Reservation, as well as the right to take fish at all usual and accustomed places in common with the citizens of the Territory. The Tribe, as a result of its treaty rights, is a fisheries co-manager with Idaho, Oregon and Washington throughout the areas where salmon, steelhead and lamprey range. As a fisheries co-manager, the Tribe is deeply committed to rebuilding the fisheries resource: from habitat restoration in the watersheds in Idaho, Oregon and Washington; to releasing fish at Dworshak, Kooskia and Nez Perce Tribal hatchery that provide harvest opportunities for tribal and non-tribal fishers.

It is important to recognize that 20 million fish are released above Lower Granite Dam that support fisheries throughout the Columbia-Snake Basin. It is also important to understand the magnitude of the salmon and steelhead fisheries that occur above Lower Granite Dam. An enormous number of salmon and steelhead are harvested above Lower Granite Dam by both non-tribal and tribal fishers. This harvest number has dramatically increased in the last two decades due in large part to tribal efforts to rebuild runs that historically numbered in the millions of fish but which were decimated by the early 20<sup>th</sup> century.

The Tribe has been a strong supporter of efforts to improve human health criteria for fish consumption in the Columbia and Snake River Basins. The Tribe was pleased with Oregon's decision last year to adopt a fish consumption rate of 175 grams/day, a figure that reflects and honors in large part the larger quantities of fish that Tribal members consume in region. Earlier this year the Tribe joined other member tribes with the Affiliated Tribes of Northwest Indians in passing resolutions that called for revising fish consumption rate water quality standards in Idaho and Washington to levels consistent with Oregon's standards.

Given the Tribe's treaty-reserved fisheries; its role as co-manager in protecting and restoring salmon, steelhead and lamprey to their historic ranges, including Idaho; and the Tribe's overall interest in human health and safety for Tribal members, the Tribe has a significant interest in ensuring that Idaho's human health criteria for fish consumption are protective of Tribal members who consume much greater amounts of fish and therefore are at a much greater human health risk than other Idaho citizens.

### **Government-to-government cooperation**

The Tribe would appreciate IDEQ's process to be consistent with, and respectful of, the government-to-government relationship that the State of Idaho and the Tribe maintain. The Tribe recognizes that IDEQ, as an Idaho regulatory agency, has an established rulemaking process, and that as a part of that process it encourages and relies on public participation to inform its decisionmaking. The Tribe, however, is a sovereign nation – not just the “interested public.” As such, the Tribe hopes that IDEQ intends to fully embrace our government-to-

government relationship by not limiting our interactions to public meetings. The Nez Perce Tribal Executive Committee, the governing body of the Tribe, is committed to engaging IDEQ and State of Idaho leadership on this issue in a productive and mutually respectful manner. Both governments are stewards of the resource and have a mutual interest in supporting fish consumption rates that are protective of its citizens.

### **Revising Fish Consumption Rates based solely on the general population is unacceptable**

The Tribe is concerned that IDEQ may limit revision of human health criteria based on the amount of fish the “general population” consumes to the detriment of Tribal members, Pacific Islanders and other underrepresented “sub-groups” that live in Idaho and who eat much greater amounts of fish based for subsistence, economic, cultural or spiritual reasons. There were several references in IDEQ’s October 4 presentation to so-called “sub-groups” and “sub-populations” in the context of setting fish consumption rates based on the “general population,” not based on high fish consuming populations (see, for example, slide 50 in Mr. Essig’s presentation). IDEQ’s focus on separating minority populations, like the Tribe, that consume higher amounts of fish from the “general population,” suggests that IDEQ may discount or marginalize Tribal fish consumption from the decisionmaking framework. Establishing acceptable risk levels for the general population that intentionally permits higher risk levels for Tribes is unacceptable. Fish are a staple of the Tribal diet based on deeply-rooted cultural, spiritual and religious tradition. IDEQ has a responsibility to protect the health and safety of underrepresented and vulnerable populations in Idaho as well as the majority population.

### **Anadromous and marketed fish must be included in the fish consumption rate**

The Tribe is also deeply concerned that IDEQ may exclude from consideration anadromous and market fish in evaluating whether to revise its fish consumption rate (see slides 48 and 46, respectively, in Mr. Essig’s presentation). Fish consumption survey results demonstrate that fish consumers generally eat species that are available geographically and seasonally, regardless of the species that are available at a given location. In 2002, EPA published a report, based in part on data provided by the Columbia River Intertribal Fish Commission, demonstrating that several species of anadromous and resident fish taken in waters within Idaho contained PCBs, dioxin, and pesticides. Fish consumption rates should fully account for fish from all sources and not through a Relative Source Contribution analysis.

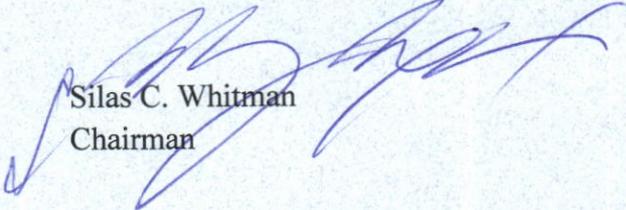
### **Statewide Tribal fish consumption data needs to be updated and considered in IDEQ’s evaluation**

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The Tribe appreciates IDEQ's positive recognition of the 1994 CRITFC fish consumption study (see slide 31, Mr. Essig's presentation). As stated above, however, the number of fish above Lower Granite Dam has increased dramatically in the last two decades. The number of fish that Tribal and sport fishers harvest and consume from waters within Idaho has increased as well, and will likely continue to increase as long as this positive trend continues. This encouraging trend clearly supports revising the human health criteria to provide for a higher fish consumption rate. As a result, the Tribe and other tribes in the region have requested EPA's assistance in developing a statewide tribal fish consumption survey so that updated information can be collected and analyzed regarding current Tribal fish consumption practices in Idaho. The Tribe believes this information is not only necessary for building Tribal capacity, but will also assist Idaho in evaluating its fish consumption rate.

Thank you again for consideration of the Tribe's comments. The Tribe is committed to working with Idaho, the other tribes and EPA in ensuring that Idaho's fish consumption rate is fully protective of the health of Tribal members and their neighbors who share a deep respect for the resource.

Sincerely,



Silas C. Whitman  
Chairman

Cc: Dennis McLarren