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RE: Relevance of IDEQ-Filtered Fish Consumption Surveys (Docket No. 58-0102-1201)

Dear Ms. Wilson:

The Kalispel Tribe of Indians is writing to provide comments on the relevance of existing fish consumption surveys to the development of a fish consumption rate ("FCR") for Idaho. In short, these surveys demonstrate that state water quality standards must be derived from an FCR of at least 175 g/day to adequately protect human health.

To evaluate the relevance of existing fish consumption surveys, IDEQ should begin with EPA's May 10, 2012 disapproval letter. There EPA expressly stated:

Among the available and relevant information on fish consumption, the EPA believes that the Columbia River Inter-Tribal Fish Commission survey (CRITFC) is particularly relevant for Idaho to consider in revising human health criteria. The CRITFC study is a well designed survey and is directly applicable to a population of people - i.e., the Nez Perce Tribe - fishing in state waters. There are also several other local and regional studies (including several that have been published since 2006) that are relevant when evaluating fish consumption rates in Idaho.

This statement, excerpted from a section entitled "Remedy to Address EPA's Disapproval," answers the question whether existing local and regional fish consumption surveys are relevant. They are relevant. The question before IDEQ is how to use the information contained in these surveys to ensure that fish caught in Idaho waters are safe to eat. The disapproval letter and longstanding EPA policy divide this inquiry into three steps: (1) identify the most highly exposed population; (2) determine whether this population "is at greater risk and would not be adequately protected by criteria based on the general population"; and (3) if the highly exposed population faces a greater risk than the general population, "adopt more stringent criteria using alternative exposure assumptions."

As subsistence fishers are the most highly exposed population, IDEQ may proceed directly to step 2 of the inquiry. It is worth emphasizing at the outset that the risk to subsistence fishers cannot be evaluated simply by comparing Indian and non-Indian fish consumption data. While Indian people generally do eat more fish than non-Indians, not all Indians are currently subsistence fishers. In the 1994 CRITFC Survey, there is a stark difference between the consumption rates of Indians who eat a significant amount of fish (90th percentile FCR for fish consumers of 130 g/day), and those who practice a subsistence lifestyle (95th and 99th percentile for fish consumers of approximately 180 and 390 g/day, respectively). The CRITFC tribes' subsistence rate, which is likely suppressed due to lack of available fish and/or avoidance of contaminated fish, is actually lower than the subsistence FCR for the general population. *See* 2002 EPA Fish Consumption Report (95th and 99th percentile fish consumption rates among fish consumers from the general population of approximately 330 and 507 g/day, respectively). Indian subsistence fishers do establish the top of the fish-eating curve where more fish are available for consumption. *See* 2000 Suquamish Survey (90th and 95th percentile of 489 and 767 g/day, respectively); 2012 Lummi Survey (90th and 95th percentile of 800 and 918 g/day, respectively). In light of the foregoing, EPA's default FCR for the general population of 17.5 g/day is not adequate to protect both Indian and non-Indian subsistence fishers.

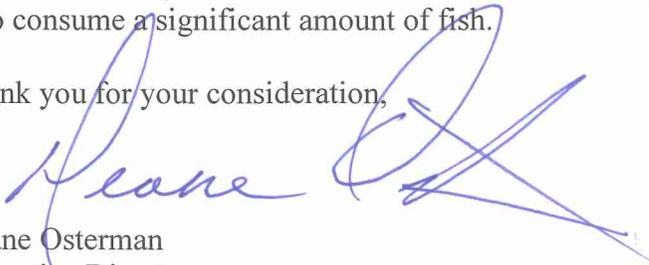
To address this inadequacy, IDEQ must adopt more stringent criteria using alternative exposure assumptions. The existing national, regional, and local data cited above—all of which is extracted from IDEQ's filtered group of fish consumption surveys—are more than sufficient to develop this criteria. The 1994 CRITFC Survey demonstrates a need for a FCR of at least 180 g/day to begin to protect subsistence fishers, and an FCR of at least 389 g/day to protect all subsistence fishers. These consumption rates are prefaced with "at least" because it is well documented that fish populations in the Columbia River watershed have increased since the CRITFC Survey was completed in 1994, and because the Suquamish and Lummi Surveys show that both the subsistence FCR and the number of subsistence fishers increase as more fish become available. There is accordingly no risk that using the 1994 CRITFC Survey to develop an FCR that is protective of local subsistence fishers will somehow be overprotective. And because Idaho is obligated to meet the downstream water quality standards of Oregon, it must adopt an FCR of at least 175 g/day. Such action will ensure that Nez Perce fish consumers are protected to the same extent as their CRITFC counterparts are in Oregon, and that all subsistence fishers in Idaho are protected equally as well.

There is no question that a new fish consumption survey could help IDEQ develop more protective water quality standards. Indeed, the Confederated Tribes of the Colville Indian Reservation will be releasing a new fish consumption survey in short order that further documents the need for an FCR in excess of 175 g/day. The real question here is whether the benefit of conducting a new fish consumption survey justifies the expense of the survey and prolonging the elevated health risk that subsistence fishers currently face. If the motivation underlying the new study is to ensure that an FCR derived from existing studies is not underprotective, then the answer may be yes. However, if the goal is to avoid adopting an overprotective FCR, the answer is clearly no. As nobody is under the illusion that the former concern is driving IDEQ's review, there is no need to conduct a new study unless the existing studies are proven to be wholly irrelevant. The burden of proof here falls on the regulated community because EPA's 2000 Human Health Methodology authorizes states and tribes to rely

on existing local and regional studies. Industry is not going to be able to prove these studies irrelevant in light of (1) EPA's determination to the contrary in its disapproval letter to IDEQ, (2) EPA's approval of Oregon water quality standards based largely on the very same studies, and (3) the overall scientific soundness of these studies. Accordingly, IDEQ should adopt water quality standards based on an FCR of at least 175 g/day.

If IDEQ determines that a new fish consumption survey is needed to develop a permanent FCR, contrary to the facts and policies just described, it should adopt an FCR of 175 g/day as an interim consumption rate before conducting a new study. Idaho's current FCR of 6.5 g/day has been outdated for more than a decade, and IDEQ should act immediately to remedy the ongoing environmental injustice and health risks that its existing water quality standards visit upon people who consume a significant amount of fish.

Thank you for your consideration,



Deane Osterman
Executive Director
Kalispel Natural Resources Department