



UPPER SNAKE RIVER TRIBES FOUNDATION, INC.

950 W. Bannock Street, Suite 1100, Boise, Idaho 83702

Tel (208) 608-4131 Fax (208) 319-3501

November 07, 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 the Relevance of the Six Fish Consumption Surveys Scored 10 or Better in Idaho Department of Environmental Quality's Review

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. Additionally, USRT and its member tribes have participated in numerous discussions with the Environmental Protection Agency (EPA) regarding both Idaho's water quality standards and fish consumption issues. IDEQ, during the October 4 meetings, noted that the Agency conducted a quality review of available fish consumption surveys and six scored 10 or better. What IDEQ did not reveal, however, was the criteria and scoring process used to determine the validity and applicability of the six surveys. USRT requests that IDEQ provide a detailed description of the fish consumption survey scoring

criteria and a comprehensive description of the ranking process. It is critical to the process that IDEQ divulge this information to sovereign nations, tribal consortiums representing sovereign nations, and stakeholders. With that said, based on a request from Mr. Burnell and Mr. Don Essig (IDEQ Water Quality Standards Coordinator) at the October 4th meeting, USRT has reviewed the six surveys that scored 10 or higher and provides the following comments.

USRT recognizes that none of the six fish consumption surveys that ranked 10 or higher by the IDEQ are entirely applicable to Idaho and are to a certain degree dated, with the exception of the 2012 Lummi Nation survey. However, the data included in the six surveys are relevant and provide a great amount of detail and information that can be gleaned by IDEQ in setting a fish consumption rate (FCR) in Idaho in the immediate future. It has come to the attention of USRT that a very comprehensive survey, which includes fish consumption data, has just been completed by the Confederated Tribes of the Colville Reservation (CTCR). Given that the CTCR survey is new and reflects the increasing number of anadromous fish returning to the Columbia River Basin, and that it is as much so or more relevant than the six “highly” ranked surveys, USRT asks IDEQ to include it in their analysis and decision-making framework leading up to an updated and revised FCR in Idaho.

In addition to the CTCR study, the IDEQ has at its disposal historic qualitative and quantitative data that clearly discloses that Indians of Idaho consumed fish at rates as high as 1,000 grams/day prior to dam construction.¹ Analysis of data from Hewes², Rostlund³, and Walker⁴ finds that prior to dam construction each member of the Shoshone-Bannock Tribes consumed approximately 859 grams/day of fish. Although tribal FCRs are not currently as high as they were historically, they are increasing commensurate with elevated fish runs returning to Idaho each year (due in large part to tribal fisheries programs). For instance, in 1991 and 1992 when the Columbia River Inter-tribal Fish Commission survey was conducted an average of 129,000 fish per year (summer Chinook, steelhead, fall Chinook, coho, and sockeye) were counted at Lower Granite Dam. In 2010 and 2011 an average of 341,000 fish per year were counted. Further, research has found that though fish consumption is currently suppressed due to anthropogenic changes, tribal FCRs are above 454 grams/day.^{5 6}

In September, 2012, the Affiliated Tribes of Northwest Indians (ATNI), at their Annual Convention, passed a resolution "Requesting that the U.S. Environmental Protection Agency accomplish a fish consumption rate of no less than 175 grams per day for human health criteria rulemaking in the Pacific

¹ State of Washington Department of Ecology. 2012. Fish Consumption Rates Technical Support Document. <https://fortress.wa.gov/ecy/publications/publications/1209058.pdf>

² Hewes, Gordon W. 1947. Aboriginal use of fishery resources in northwestern North America. Berkeley, CA: University of California: 268 p. Ph.D. dissertation.

³ Rostlund, Erhard. 1952. Freshwater fish and fishing in native North America. University of California publications in geography 9. Berkeley, CA; Los Angeles, CA: University of California Press. 313 p.

⁴ Walker, A. F. 1993. Sea trout and salmon stocks in the western Highlands. *In* Problems with sea trout and salmon in the western Highlands, pp. 6-18. Ed. by R. G. J. Shelton. The Atlantic Salmon Trust, Pitlochry. 79 pp.

⁵ Harper, Barbara and Harris, Stuart. 2008. A possible approach for setting a mercury risk-based action level based on tribal fish ingestion rates. *Environmental Research*, Vol. 107, pp. 60-68.

⁶ Harris, Stuart and Harper, Barbara. 1997. A Native American Exposure Scenario. *Risk Analysis*, Vol. 17, No. 6, pp. 789-795.

Northwest.” ATNI represents 57 Northwest tribal governments from Oregon, Washington, Idaho, Northern California, Southeast Alaska, and Western Montana. As IDEQ is aware, Oregon recently implemented a 175 grams/day standard. Given the fish consumption surveys that scored 10 or higher by IDEQ, historical data, the ATNI resolution, and the example set by Oregon, USRT believes that there is an appropriate amount of data and precedence to promulgate now a 175 grams/day FCR in Idaho. Although additional fish consumption data, derived through a new Idaho survey, would certainly add to the body of literature and most certainly find that consumption rates among tribal members currently is between 300 and 500 grams/day, it is not necessary for the promulgation of an interim 175 grams/day standard. USRT is greatly concerned that the promulgation of an updated and revised FCR in Idaho is going to take years to come to fruition and that the current 6.5 grams/day standard is not only not protective of high fish consumers, but of all beneficial uses. Thus, Idaho has at its dispense enough data (current and historical) to promulgate an interim 175 grams/day standard now that is protective of high risk groups, the general population, and all beneficial users and uses. Promulgation of a 175 gram/day interim standard would also be consistent with downstream water quality standards and National Pollutant Discharge Elimination System permits that may impact downstream tribes.

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. Because of such we are insistent that IDEQ should promulgate an interim rate of 175 grams/day while the final rule is being crafted. Additionally, IDEQ must incorporate the recently released CTCR study into their review process of relevant regional data. As IDEQ moves forward in the FCR process USRT is prepared to fully collaborate with the State. It cannot be understated the importance to Idaho’s Indian tribes that a FCR is established that is realistic, scientifically-derived, and fully protective to the health and wellbeing of all tribal members. 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. Thank you for your time and consideration of our comments.

Sincerely,



Heather Ray
Executive Director, USRT