



# UPPER SNAKE RIVER TRIBES FOUNDATION, INC.

413 W. Idaho Street, Suite 101, Boise, Idaho 83702

(208) 331-7880

August 22, 2014

Paula Wilson  
IDEQ State Office  
Attorney General's Office  
1410 N. Hilton Street  
Boise, ID 83706

**Re: Docket No. 58-0102-1201 – Upper Snake River Tribes Foundation comments regarding IDEQ Discussion Paper #5: Anadromous Fish**

Dear Ms. Wilson:

The Upper Snake River Tribes (USRT) Foundation is composed of four Indian tribes of the Upper Snake River region in Idaho, Nevada, and Oregon: the Burns Paiute Tribe, Fort McDermitt Paiute-Shoshone Tribe, Shoshone-Bannock Tribes of the Fort Hall Reservation, and Shoshone-Paiute Tribes of the Duck Valley Reservation. The four tribes have common vested interests to protect rights reserved through the United States Constitution, federal treaties, federal unratified treaties (e.g. Fort Boise Treaty of 1864 and Bruneau Treaty of 1866), executive orders, inherent rights, and aboriginal title to the land, which has never been extinguished by USRT member tribes. USRT works to ensure the protection, enhancement, and preservation of the tribes' rights, resources, cultural properties, and practices and that they remain secured. These include but are not limited to hunting, fishing, gathering, and subsistence uses.

USRT would like to thank the Idaho Department of Environmental Quality (IDEQ) for the opportunity to comment on the Idaho Fish Consumption Rate and Human Health Water Quality Criteria – Discussion Paper #5: Anadromous Fish. Following thorough review of the discussion paper and taking into consideration what would be most protective of the health of Idaho Indian tribes, and the general public, USRT asks that IDEQ fully include anadromous fish in the calculation of the Idaho fish consumption rate. By including anadromous fish in the calculation it will ensure that the health of Idaho's Indian tribes, and the public as a whole, will be protected.

The importance of anadromous fish to the member tribes of USRT cannot be understated. Not only do anadromous fish provide subsistence to the tribes, they are viewed as culturally and spiritually priceless. Prior to European colonization, the construction of dams and other diversions, and depleted water quality and quantity, millions of anadromous fish returned annually to Idaho rivers and streams. A portion of those anadromous fish were harvested by USRT member tribes and it has been estimated that members of the Shoshone-Bannock Tribes

ate as much as 800 pounds of fish per year, the equivalent of 1,000 grams of fish per day.<sup>i</sup> Historic fish consumption estimations for the Northern Paiute vary widely from as little as 143 pounds per year (178 grams/day)<sup>ii</sup> to 700 pound per year (871 grams/day)<sup>iii</sup>.

While the number of returning anadromous fish to Idaho is significantly less now than prior to European colonization, USRT member tribes still rely on anadromous fish as a portion of their diet. USRT member tribes, through restoration activities, hatchery production, and participation in issues such as the Columbia River Treaty, Northwest Power and Conservation Council, and dam relicensing, to name a few, are working to increase anadromous fish runs in Idaho and beyond. Those efforts are paying dividends as the Chinook salmon return this year is anticipated to be the largest run in the modern dam era. Undoubtedly these efforts will continue in the future, leading to more and more fish in Idaho. As would be expected, as anadromous fish runs increase, so will consumption of those species by Idaho Indian tribes, as well as the general public.

Idaho tribal communities are the most substantial consumers of anadromous fish in the state and USRT and its member tribes are very concerned that Idaho will not include anadromous fish in their fish consumption calculation, which would cause significant health risks to the tribes. In its Discussion Paper #5: Anadromous Fish, IDEQ states “to include or exclude anadromous species from the calculation of a state-specific fish consumption rate, used to derive toxics criteria, is a risk management decision.” USRT and its member tribes disagree. This is not a risk management decision but about protecting human health and an issue of environmental justice. The mission of IDEQ is very clear: “To protect human health and preserve the quality of Idaho’s air, land, and water for use and enjoyment today and in the future.” Risking the health of Idaho’s tribes or the general public by excluding or including anadromous fish at a discounted rate in a state fish consumption rate is antithetical to the mission of IDEQ.

Anadromous fish begin and end their life cycle in Idaho waters and are an invaluable tribal and state resource. Residency of anadromous fish in Idaho waters varies from one to three years. It is unclear, after reviewing scientific literature, what portion of an anadromous fish’s pollutant burden is accrued while living in and traversing Idaho waters. Nor is it evident how Idaho’s water quality standards impact water quality in the downstream states of Oregon and Washington, in which anadromous fish exit and enter as they migrate to and from Idaho. Given that anadromous fish do reside in Idaho for a portion of their life history it would be unconscionable to completely remove them from consideration when calculating an updated fish consumption rate for Idaho. Further, it is ambiguous, at best, from a health and scientific standpoint how it would be possible for IDEQ to determine a discounted rate for anadromous fish inclusion in a revised Idaho fish consumption standard given the uncertainty to the amount of pollution burden anadromous fish acquire while in Idaho waters.

A similar debate whether to include anadromous fish or not recently occurred in Oregon. Their conclusion, as should be the one in Idaho, was that “including Pacific salmon in the fish consumption rate can provide more scientific certainty that Pacific salmon consumption is being

accurately accounted for when calculating risk-based water quality criteria.”<sup>iv</sup> That determination led to Oregon adopting a 175 grams/day fish consumption rate. Scientific certainty should drive every decision that IDEQ makes, particularly when human health is at the center of the decision.

Additionally, IDEQ must consider the effects to downstream waters (e.g. Oregon) if they determine to exclude or only partially account for anadromous fish in their updated fish consumption rate. Without full accounting of anadromous fish in the fish consumption rate, Idaho’s water quality criteria will be less protective than those adopted in Oregon. As required by federal regulation at 40 CFR 131.10(b), when states adopt water quality standards they “shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.”

Again, USRT appreciates the opportunity to comment on this important discussion topic and cannot impress upon IDEQ enough the opinion of USRT and its member tribes that anadromous fish must be fully included in the updated Idaho fish consumption rate. If you have any questions following review of these comments, please contact Scott Hauser, USRT Environmental Program Director, at (208) 331-7880 (office) or (208) 995-4872 (cell) and/or by email at [scott.hauser@usrtf.org](mailto:scott.hauser@usrtf.org).

Sincerely,



Scott Hauser  
Environmental Program Director

<sup>i</sup> Scholz, A., K. O’Laughlin, D. Geist, D. Peone, J. Uehara, L. Fields, T. Kleist, I. Zozaya, T. Peone, and K. Teesatuskie. 1985. *Compilation of Information on Salmon and Steelhead Total Run Size, Catch and Hydropower Related Losses in the Upper Columbia River Basin, above Grand Coulee Dam*. Fisheries Technical Report No. 2. Upper Columbia United Tribes Fisheries Center, Eastern Washington University, Department of Biology. Cheney, Washington 99004. December  
<sup>ii</sup> Tooze, J., et. al. 2006. A new statistical method for estimating the usual intake of episodically consumed foods with application to their distribution. *Journal of the American Dietetic Association* 106:10, 2006, pp. 1575-1587.

<sup>iii</sup> United States Senate Committee on Indian Affairs (U.S. Senate). 2007. Shoshone-Paiute Tribes of Duck Valley Water Rights Settlement Act Hearing. One Hundred First Congress, First Session. April 26, 2007.

<sup>iv</sup> Upper Snake River Tribes Foundation. 2012. Northwest Power and Conservation Council Presentation. Boise, Idaho. 8 August 2012.

<sup>v</sup> State of Oregon Department of Environmental Quality. *Human Health Focus Group Report – Oregon Fish and Shellfish Consumption Rate Project*. June 2008.