



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
1201 NE Lloyd Boulevard, Suite 1100
Portland, Oregon 97232-1274

July 7, 2020

Michelle Dale
Senior Water Quality Standards Scientist
DEQ State Office
Idaho Department of Environmental Quality
1410 North Hilton Street
Boise, Idaho 83706

Re: Comments Regarding the Idaho Department of Environmental Quality 2020 Triennial Review of Idaho Water Quality Standards.

Dear Ms. Dale:

On May 19, 2020, NOAA's National Marine Fisheries Service (NMFS) participated in the Idaho Department of Environmental Quality (IDEQ) public meeting for the 2020 Triennial Review of Idaho's Water Quality Standards. During that meeting, the IDEQ invited participants to submit written comments by June 30, 2020, and acknowledged that an additional public comment opportunity will be offered when the draft Triennial Review Report is released. While we recognize our submittal comes after the stated deadline, we hope you will consider our comments as you continue to conduct your triennial review.

Metals

On May 7, 2014, NMFS issued a biological opinion for the U.S. Environmental Protection Agency's (EPA) approval of the State of Idaho's water quality criteria for toxic substances (NMFS Tracking Number 2000-1484). As described in that biological opinion, NMFS concluded the approval of some criteria would jeopardize anadromous fish species listed under the Endangered Species Act (ESA) and adversely modify their designated critical habitats. NMFS identified reasonable and prudent alternatives (RPAs) that would avoid jeopardizing the species and adversely modifying their designated critical habitat. In addition, NMFS identified specific timelines for implementation of the RPAs. Table 1 summarizes these criteria, their respective RPA, identified timelines for RPA implementation, and whether the RPA has been implemented to date.

We appreciate IDEQ's recent efforts to address the RPAs specific to copper and selenium. The tremendous amount of work that IDEQ dedicates to the rulemaking process does not go unnoticed. We also appreciate your recognition of the mercury aquatic life criteria as a potential issue to consider for prioritization during this triennial review cycle. Regarding this topic, the IDEQ is seeking comment about "whether to adopt aquatic life criteria, or to develop a strategy for demonstrating the human health criteria is protective of aquatic life through monitoring." IDEQ's use of the phrase "adopt aquatic life criteria" lacks clarity; however, the title of the issue



paper (*Data and Information Needs Necessary for the State of Idaho to Consider Adoption of EPA 304(a) Aquatic Life Criteria for Mercury*) suggests this phrase intends to refer to the current nationally recommended 304(a) criteria for mercury. The most recent nationally-recommended chronic aquatic life criterion concentration for mercury is 0.77 ug/L. In 2014, NMFS determined that the chronic mercury criterion of 0.012 ug/L was likely to jeopardize ESA-listed species and adversely modify their designated critical habitat. Based on our current understanding, neither adoption of the current 304(a) recommendation for the mercury chronic criterion nor development of a strategy to demonstrate the protectiveness of the human health criterion to aquatic life will advance implementation of the mercury RPA. We encourage the IDEQ to consider alternative approaches that were previously suggested by the EPA in their disapproval letter and that are outlined in the mercury issue paper.

Table 1. Summary of the reasonable and prudent alternatives (RPAs) for each element of Idaho water quality standards that were found to jeopardize or adversely modify anadromous fish species and critical habitat listed/designated under the Endangered Species Act.

Water Quality Standard Element	RPA	RPA Implementation Timeline	RPA Implementation Status
Hardness Floor	Remove the low hardness floor	May 7, 2017	Incomplete
Arsenic	Adopt a new chronic criterion	May 7, 2021	Incomplete
Copper	Adopt new acute and chronic criteria at least as stringent as the 2007 304(a) national recommended aquatic life criteria	May 7, 2017	Complete
Mercury	Adopt a new chronic criterion	May 7, 2021	Incomplete
Cyanide	Calculate effluent limits using mixing zone limitations described in the copper RPA	N/A	Ongoing
Selenium	Adopt a new chronic criterion	May 7, 2018	Complete

Aside from mercury, two RPAs remain to be implemented (Table 1). We strongly encourage the IDEQ consider incorporating the hardness floor as a high priority issue for consideration during this triennial review cycle. Finally, we encourage the IDEQ to include the arsenic aquatic life criteria as a potential issue for inclusion in your triennial review process.

Beneficial Use Designation

On September 25, 2019, NMFS issued a biological opinion for the EPA approval of the Snake River Hells Canyon site-specific temperature criterion (NMFS Tracking Number WCRO-2019-00175). As part of this biological opinion, NMFS included an incidental take statement that required the IDEQ, as part of its next triennial review, to review available data and consider designating salmonid spawning as a beneficial use in the Snake River from its confluence with the Salmon River to its confluence with the Clearwater River. Thank you for including the salmonid spawning use designation in the Lower Snake Asotin subbasin as a triennial review topic. We encourage you to identify this particular topic as a high priority for water quality standards rulemaking.

Ammonia

In 2012, NMFS consulted on EPA's proposed approval of the Oregon aquatic life criteria for ammonia (which were equivalent to Idaho's current ammonia criteria for aquatic life) and concluded the proposed approval would jeopardize ESA-listed fish species and adversely modify their designated critical habitats (NMFS Tracking Number 2008-00148). In 2015, Oregon submitted new ammonia freshwater aquatic life criteria to EPA for approval. These newly adopted criteria were based on the 2013 nationally recommended 304(a) criteria. NMFS reviewed the newly adopted ammonia criteria and determined EPA's proposed approval satisfied the conditions of the RPA identified in the 2012 biological opinion. NMFS encourages the IDEQ to pursue updating the existing ammonia criteria (which are based on data that is at least 20 years old) with the more recent nationally-recommended 304(a) criteria during this triennial review cycle.

We appreciate your consideration of our comments. If you have any questions or would like to discuss the contents of this letter further, please contact Johnna Sandow, Fish Biologist, in the Southern Snake Branch Office, at (208) 378-5737.

Sincerely,

A handwritten signature in black ink that reads "Michael Tehan". The signature is written in a cursive, flowing style.

Michael P. Tehan
Assistant Regional Administrator

cc: H. Shaw – EPA
L. Macchio – EPA
S. Fisher – USFWS