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Protecting and Restoring the Rivers and Fish of Idaho

Cheryl Probert, Forest Supervisor  
Nez Perce-Clearwater National Forests 903 Third Street  
Kamiah, Idaho 83536

RE: Draft Environmental Impact Statement on the Revised Land Management Plan for the Nez Perce – Clearwater National Forests.

Dear Supervisor Probert:

Thank you for considering our comments on Draft Environmental Impact Statement (DEIS) for the Nez Perce – Clearwater National Forests (Forests) Revised Land Management Plan (Plan).

Idaho Rivers United (IRU) is a 501(c)3 nonprofit environmental advocacy organization that is dedicated to protecting Idaho rivers and restoring our native fish populations. For almost 30 years, IRU has been working to defend Wild and Scenic rivers, advocate for endangered and threatened aquatic species, reform hydropower policy and promote enhanced water quality in all of Idaho's rivers. IRU represents over 5,000 river-loving, environmentally attuned members throughout Idaho and beyond.

We appreciate the tremendous effort, time, and resources committed to this important process. Idaho is a state prized for its wild rivers and vast wilderness areas. Preserving these unique places not only ensures that Idaho's growing recreational economy continues to thrive, but also protects our threatened and endangered anadromous and resident fish species.

The Forests hold some of the best habitat for Idaho's anadromous and resident fish. The rivers in this area are acclaimed as cold-water refugia for fish and anglers. Protecting this unique and invaluable habitat is our best opportunity to ensure future generations benefit from our growing recreational economy. Wild and Scenic Rivers enrich Idaho with preserved habitat, water quality, and unparalleled recreational opportunities.

The Ninth Circuit has explained that under NEPA, agencies "must provide the public with sufficient environmental information, considered in the totality of circumstances, to permit members of the public to weigh in with their views and thus inform the agency decision-making process." See *Bering Sea Citizens v. Corps of Engineers*, 524 F.3d 938, 953 (9th Cir. 2008). While the Court issued this holding in the context of an environmental assessment, its logic also applies to the preparation of an EIS given the fundamental informational purposes of NEPA. The

agencies' arbitrary refusal to suspend the public comment period on the DEIS under the extraordinary circumstances that faced the public even without the coronavirus emergency, but certainly in light of that, make the agencies refusal arbitrary, capricious and contrary to law, and a more than adequate basis for requiring the agencies to either re-open the comment period on the DEIS when the public health emergency has passed or risk having the DEIS remanded to them for failing to meet the procedural requirements of NEPA under the present circumstances. On behalf of our members and our rivers, we appreciate the opportunity to share our comments; we believe that everyone should be afforded the same opportunity.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Nicholas Nelson". The signature is fluid and cursive, with the first name being more prominent.

Nicholas Nelson  
Executive Director  
Idaho Rivers United  
PO Box 633  
Boise, ID 83701

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### **I. General Comments**

The public lands and rivers of the Nez Perce – Clearwater National Forests are of immense importance to the ecosystem and communities of the northwest, and Idaho’s economy. Our organization has worked for decades to protect our ESA listed fish, the clean rivers they depend upon, and the growing outdoor recreation economy that both provide.

The draft Plan and DEIS will set the course for at least the next 15 years of management for this region, and we are greatly concerned for both near and long-term impacts to ESA listed fish, eligible Wild and Scenic Rivers, and the communities dependent on a growing recreation economy.

The 2012 Planning Rule sets the guidance for the plan revision process; *“Plans will guide management of NFS lands so that they are ecologically sustainable and contribute to social and economic sustainability; consist of ecosystems and watersheds with ecological integrity and diverse plant and animal communities; and have the capacity to provide people and communities with ecosystem services and multiple uses that provide a range of social, economic, and ecological benefits for the present and into the future. These benefits include clean air and water; habitat for fish, wildlife, and plant communities; and opportunities for recreational, spiritual, educational, and cultural benefits.”*<sup>1</sup>

The draft Plan components seek to protect and enhance important riparian and aquatic values, many of which we support. However, both the draft Plan and DEIS are lacking a robust analysis of the environmental consequences of the alternatives, and therefore do not fulfill the requirement of the National Environmental Policy Act or the 2012 Planning Rule.

40 CFR § 1502.14 of the National Environmental Policy Act (NEPA) names the alternatives section as the heart of the environmental impact statement, and “it should present the

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<sup>1</sup> 36 CFR Part 219.1c

environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.” Specific comments on the lack of alternative analysis are included in sections to follow.

According to the 2018 local stakeholder survey included in the DEIS<sup>2</sup>, residents living within 50 miles of the Nez Perce – Clearwater boundaries believe that the 3 most important purposes of their local federal lands are to protect water quality, air quality, and wildlife habitat<sup>3</sup>. The range of alternatives in the Draft Plan and DEIS, however, do not reflect this sentiment. Rather, the draft Plan prioritizes timber harvest over these key benefits, and the DEIS fails to fully analyze the impacts of the alternatives. Specific examples and comments are in sections to follow.

We commend the Forest Service team for the review of all 1460 rivers within the Forests, and the findings of 89 as eligible for inclusion in the National Wild and Scenic Rivers System. These rivers must be protected for their free-flowing status and Outstandingly Remarkable Values. However, we are greatly concerned with Plan’s alternatives and analysis. The suitability study conducted in this process is both misguided and incomplete. While we can appreciate the effort to conserve resources by incorporating such a study into the plan revision, the result is a report that is difficult to analyze, and is incomplete in its assessment of impacts and comparison of alternatives. See section II of this document for specific comments.

In addition, we found the DEIS to disregard the economic contributions that sportfishing and outdoor recreation brings to local communities and the region. Without a robust analysis of this contribution, and the ecosystem services provided the Forests, the DEIS is incomplete.

IRU does not support any of the action alternatives provided in the DEIS and Draft Plan. We understand that the Preferred Alternative will be determined in the final EIS, but the range of alternatives is lacking and too narrow to allow for a robust analysis.

## **II. Wild and Scenic River Suitability Analysis**

The Wild and Scenic Rivers Act (WSRA) is perhaps our most important tool to ensure that future generations experience the free-flowing and ecologically intact Idaho rivers that we cherish. Wild and Scenic River designations provide important benefits to aquatic habitat and

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<sup>2</sup> DEIS, 3.8.2.10

<sup>3</sup> Bureau of Business and Economic Research, The University of Montana. (2018). USDA Forest Service Region 1 2018 social survey: Methods summary - revised. Missoula, MT: U.S. Department of Agriculture, Forest Service, Region 1

species<sup>4</sup>, and provide protection for the incredible recreational benefits of outstanding rivers. Wild and Scenic Rivers positively impact local communities and provide psychological, social, ecological, and economic benefits.<sup>5</sup>

While we support the eligibility findings and efforts towards final Wild and Scenic designation, we do not support the Suitability Study in the DEIS or the action alternatives proposed in the draft Plan. As described earlier, the rivers of the Nez Perce – Clearwater are incredibly important habitat for ESA listed salmon, steelhead, and bull trout. In addition, most of these waterways are designated critical habitat for these species. Wild and Scenic protections are the only method to ensure long term protection of such rivers from nearly irreversible impacts of dam construction, and other adverse impacts. 89 of 1460 rivers were determined to be eligible for designation, and the proposed alternatives only find 0 to 37 rivers as suitable.

IRU has advocated for Wild and Scenic river protections throughout the forest planning process. IRU and partner organizations submitted a letter in 2018<sup>6</sup> to the Forest Service to address concerns about the Suitability Study, and to ask that all 89 eligible rivers remain eligible and protected by the Plan. Unfortunately, the draft Plan and DEIS provide an inadequate River Study that is inconsistent with statute and Forest Service Planning Directives.

The draft Plan must forgo the Wild and Scenic Suitability Study because the Forest Service lacks authority to make agency-initiated suitability determinations during forest planning.

Furthermore, we highlight that the Wild and Scenic Suitability Study is incomplete and lacking sufficient analysis and alternative comparison to satisfy the *National Environmental Policy Act*, the *Wild and Scenic Rivers Act* (Public Law 90-542; 16 U.S.C. 1271 et seq.), the *2012 Planning Rule* (36 CFR Part 219), and the *National Wild and Scenic Rivers System; Final Revised Guidelines for Eligibility, Classification and Management of River Areas* (Federal Register Notice, Volume 47, NO. 173). In addition, the study findings do not fulfill the Forest Service Planning Directives (Forest Service Handbook and Forest Service Manual).

### **A. The Suitability Analysis is misguided**

It is evident that the Forest Service lacks the authority to conduct suitability determinations that remove eligible rivers from protections. In Appendix F of the DEIS, the Forest Service cites as authority to conduct the Suitability Study the following: (1) *Wild and Scenic Rivers Act Section*

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<sup>4</sup> Rothlisberger, S. T. (2017). *The Role of Wild and Scenic Rivers in the Conservation of Aquatic Biodiversity*. International Journal of Wilderness.

<sup>5</sup> Smith and Moorre. (2011). *Perceptions of Community Benefits from Two Wild and Scenic Rivers*. Environmental Management (2011) 47:814-827

<sup>6</sup> See Appendix A for 2018 letter submitted by IRU and partners.

4(A) and 5(D); (2) *National Wild and Scenic Rivers System; Final Revised Guidelines for Eligibility, Classification and Management of River Areas*; (3) *FSM 1920*; (4) *FSH 1909.12*<sup>7</sup>.

*National Wild and Scenic Rivers System; Final Revised Guidelines for Eligibility, Classification and Management of River Areas* are interagency guidelines, the *Forest Service Handbook* and *Forest Service Manual* are internal directives, while *Wild and Scenic Rivers Act* (Public Law 90-542; 16 U.S.C. 1271 et seq.) and *2012 Planning Rule* (36 CFR Part 219) are statute. Even if the Forest Service is allowed to follow its own directives that are not congruent with the WSRA, they are still not fulfilling the requirements in the directives. Specific comments are outlined numerically.

**1. We agree that the Forest Service is authorized and directed by the WSRA and 2012 Planning Rule to determine eligibility of rivers for inclusion in the national wild and scenic rivers system.**

Section 2(b) of the WSRA requires that all rivers that are free-flowing and possess one or more Outstandingly Remarkable Value be considered eligible in the WSRA system. It reads as follows:

Section 2.

(b) A wild, scenic or recreational river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possesses one or more of the values referred to in Section 1, subsection (b) of this Act. Every wild, scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion in the national wild and scenic rivers system and, if included, shall be classified, designated, and administered as one of the following:

(1) Wild river areas – Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

(2) Scenic river areas – Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.

(3) Recreational river areas – Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.

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<sup>7</sup> DEIS F-4-5

The Forest Service fulfilled requirements of Section 2(b) of the WSRA by conducting the eligibility study within the forests and finding 89 rivers as free-flowing with one or more “Outstandingly Remarkable Value”.

In addition, the Forest Service is authorized and directed by the *2012 Planning Rule* (36 CFR Part 219) at § 219.7 *New Plan Development of Plan Revision* to identify eligible rivers in planning, which reads as follows.

(2) In developing a proposed new plan or proposed plan revision, the responsible official shall:

(vi) Identify the eligibility of rivers for inclusion in the National Wild and Scenic Rivers System, unless a systematic inventory has been previously completed and documented and there are no changed circumstances that warrant additional review.

Identifying free flowing rivers with outstandingly remarkable values is a fundamental step towards final designation, and we commend the planning team for finding 89 rivers within the forests as eligible.

**2. Eligible rivers, as defined in Section 2(b) of the WSRA, must be protected for their free-flowing status and Outstandingly Remarkable Values in land management plan components.**

Rivers found eligible for Wild and Scenic designation, as directed by Section 2(b) of the WSRA, must be protected for free-flowing status and ORV’s according to the *2012 Planning Rule*. The *2012 Planning Rule* (36 CFR Part 219) at §219.10 *Multiple use*, reads as follows:

(b) Requirements for plan components for a new plan or plan revision. (1) The plan must include plan components, including standards or guidelines, to provide for:

(v) Protection of designated wild and scenic rivers as well as management of rivers found eligible or determined suitable for the National Wild and Scenic River system to protect the values that provide the basis for their suitability for inclusion in the system.”

Free-flowing rivers with outstandingly remarkable values are national treasures. The Forest Service is directed by the WSRA and the 2012 Planning Rule to protect these rivers, and a plan revision must include components to provide for interim protection.

**3. The Forest Service is not authorized to make suitability or non-suitability determinations in agency initiated river studies.**

Appendix F of the DEIS cites as authority Section 4(a) of the WSRA<sup>8</sup>, which pertains to study reports “which are designated herein or hereafter by the Congress as potential additions to such system”, and thus are Congressionally directed studies, not agency initiated. Furthermore, the *National Wild and Scenic Rivers System; Final Revised Guidelines for Eligibility, Classification and Management of River Areas* (Federal Register Notice, Volume 47, NO. 173) clearly establishes that Section 4(a) is intended for Congressional study rivers, and reads as follows:

Section 4(a) mandates that all rivers designated as potential additions to the system in section 5(a) be studied as to their suitability for inclusion in the system.

Section 5(a) of the WSRA clearly refers to Congressionally authorized study rivers, not agency initiated, and the Interagency Wild & Scenic Rivers Coordinating Council confirmed in a 1999 technical report that “an act of Congress is needed to list a river for study in Section 5(a)”.<sup>9</sup>

Appendix F of the DEIS also cites *National Wild and Scenic Rivers System; Final Revised Guidelines for Eligibility, Classification and Management of River Areas* (Guidelines) as authority to prepare a “Study Report, defined as a report on the suitability or non-suitability of a study river for inclusion in the national system.”<sup>10</sup> However, this is a misinterpretation by the Forest Service. The Guidelines are clear in the definition of this “Study Report” to be a requirement of Section 4(a) of the WRSA, which as noted above refers only to rivers authorized by Congress in Section 5(a), not agency initiated in land management planning.

In addition, the 1982 Guidelines states that “the Wild and Scenic Rivers Act provides two methods for adding a river to the National Wild and Scenic Rivers System.”<sup>11</sup> These two methods are by an act of Congress, or by Section 2(a)(ii) of the Act. These 1982 Guidelines, which are cited in the DEIS as authority for conducting a river study that includes suitability determinations, make clear that the defined “study report” requires authorization by Congress. It reads as follows:

Congress can designate a river directly or it can authorize a river for study as a potential wild, scenic, or recreational river. Upon completion of a study conducted by the Department of the Interior or the Department of Agriculture, a study report is prepared and transmitted to the President who, in turn, forwards it with his recommendations to Congress for action.

This clearly states that the referenced “study report” is only authorized by Congress.

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<sup>8</sup> DEIS F-4

<sup>9</sup> “The Wild and Scenic Rivers Study Process” *Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council. December 1999*

<sup>10</sup> DEIS F-5

<sup>11</sup> Federal Register Vol 47, No 173, 39455

Section 5(d) of the WRSA is also cited in Appendix F of the DEIS as authority, and reads as follows:

In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national wild, scenic and recreational river areas, and all river basin and project plan reports submitted to the Congress shall consider and discuss any such potentials. The Secretary of the Interior and the Secretary of Agriculture shall make specific studies and investigations to determine which additional wild, scenic and recreational river areas within the United States shall be evaluated in planning reports by all Federal agencies as potential alternative uses of the water and related land resources involved.

Section 5(d) of the WRSRA allows for agency initiated evaluation of potential rivers to determine eligibility, but does not authorize a determination of “suitability” or “unsuitability” of these rivers, and also does not authorize agencies to release eligible rivers from protections or further consideration for designation. It is clear that Section 5(d) of the WRSRA only authorizes a preliminary analysis to decide whether to recommend that Congress designate a river as a Congressional Study River in Section 5(a) of the WRSRA.

Forest service directives, including the Forest Service Manual and Forest Service Handbook, do contain guidance for conducting agency initiated suitability determinations during plan revisions. Chapter 80 of the Forest Service Handbook claims at 83.3 that “The purpose of the study report is to document the Forest Service’s analysis and conclusions on the suitability of legislatively mandated and Forest Service-identified rivers for designation as components of the National System. When the suitability study is complete, the outcome will be a finding by the Responsible Official in the applicable decision document for each eligible river evaluated as to whether or not the river is suitable for inclusion in the Wild and Scenic River System.” These directives are internal agency policies and procedures, which fall under the legal hierarchy illustrated in the Guide to Forest Service Directives<sup>12</sup> below:

Guide to Forest Service Directives (USDA 2010)

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<sup>12</sup> USDA 2010. Guide to Forest Service Directives. P. 6

<b>CONSTITUTION</b>		
<b>Article I</b>	<b>Article II</b>	<b>Article III</b>
<b>Legislative Branch</b> Authorizes Congress to make laws	<b>Executive Branch</b> Authorizes President to execute laws	<b>Judicial Branch</b> Authorizes courts to interpret laws
LAWS (U.S. Statutes and U.S. Code)	EXECUTIVE ORDERS (Issued by President; codified in Title 3, Code of Federal Regulations (3 CFR))	LEGAL DECISIONS (Case Law)
	REGULATIONS (Issued by Federal agencies; published in Federal Register and codified in CFR)	
	ADDITIONAL GOVERNMENT-WIDE GUIDANCE	
	INTERNAL AGENCY POLICY AND PROCEDURES  Department of Agriculture  Departmental Manual (DM)  Departmental Regulations (DR)  National Finance Center  External Procedures  Forest Service:  Issues regulations at 36 CFR  Issues internal policies and procedures in FSM and FSH  Negotiates master agreement with union	

The Forest Service Directives that allow for agency initiated suitability determinations contradict the overarching legal authorities of the Wild and Scenic Rivers Act (law) and 2012 Planning Rule (regulation), which do not authorize such suitability determinations without congressional authorization under Section 5(a) of the Wild and Scenic Rivers Act.

**4. Agencies are not authorized in agency initiated studies to strip eligible rivers of protections or future consideration for designation.**

The draft Plan and DEIS, through the Suitability Report in Appendix F, propose to remove eligible status from rivers that were clearly identified to be free-flowing and have one or more outstandingly remarkable value and are “considered eligible for inclusion in the national wild and scenic rivers system” following Section 2(b) of the WRSA. As previously demonstrated, in plan revisions the Forest Service is authorized and directed by the WRSA and the 2012 Planning rule to identify rivers that are eligible for inclusion and to protect them for free-flow and ORV’s.

However, the WSRA and the 2012 Planning Rule do not authorize agencies to strip protections from eligible rivers, and to remove them from future consideration.

Furthermore, conducting such a River Study that results in determinations of rivers as non-suitable and therefore no longer considered eligible (as claimed in the Forest Service Handbook Chapter 80) is counter to the purpose of the *National Wild and Scenic Rivers System; Final Revised Guidelines for Eligibility, Classification and Management of River Areas* (Federal Register Notice, Volume 47, NO. 173). The Guidelines were revised in 1982 to reflect changes in laws and regulations, and as directed by the President's 1979 Environmental Message that "the Secretary of Agriculture and the Secretary of the Interior shall jointly revise their guidelines for evaluating wild, scenic and recreational rivers to ensure consideration of river ecosystems and to shorten the time currently used to study rivers for designation."<sup>13</sup> Clearly, there is no language or intent in these Guidelines to authorize said agencies to remove eligibility or further consideration of our nation's free-flowing and outstanding waterways for designation.

The Forest Service found 89 out of 1460 rivers to be eligible for inclusion in the wild and scenic rivers system. This represents 6% of rivers with the planning area. The draft Plan proposes action alternatives that would find 58% - 100% of these eligible rivers as non-suitable and also proposes to remove protections of these rivers.

Alternative Z proposes the most rivers as suitable, which represents 2.5% of all rivers on the Forests, or 42% of rivers found eligible. Alternative X proposes that zero rivers are suitable. Wild and Scenic River designation is our most important tool for protecting free-flowing and outstanding rivers, our national treasures, from irreversible impacts within the river corridor. It is disconcerting that the Forest Service would propose utilizing a misguided "Suitability Study" to remove the vast majority of these eligible rivers from protections or future consideration. The ecological, social, and economic implications would be multi-generational, and result in the loss of our best opportunity to protect some of the last intact habitat for ESA listed anadromous fish. The Suitability Study as proposed in the draft Plan and DEIS is misguided, incomplete, and lacking alternative analysis.

### **B. The River Study Report is incomplete, lacking robust analysis, and falls short on alternative comparison.**

The draft Plan and associated Wild and Scenic Rivers study proposes action alternatives that would result in a loss of protections for 58% - 100% of rivers found eligible for designation. It is imperative that the River Study and DEIS provide substantial analysis of the environmental consequences and a comparison of impacts by alternative. As previously noted, alternative comparison is known as the heart of the environmental impact statement under NEPA. The

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<sup>13</sup> Federal Register Notice, Volume 47, NO. 173, 39455

Forest Service, as we described in Section A of these comments, is not authorized by the WSRA, 2012 Planning Rule, or *National Wild and Scenic Rivers System; Final Revised Guidelines for Eligibility, Classification and Management of River Areas (Guidelines)* to conduct suitability determinations unless authorized by Congress. Even in the case that the Forest Service is determined to be authorized to conduct this river study and suitability determinations, the study report is lacking robust analysis, alternative comparison, and fails to fulfill requirements of 1982 Guidelines and Forest Service Directives.

The 1982 Guidelines were enacted to provide a “uniform evaluation and management approach” for the evaluation of potential rivers and management of designated rivers. The Guidelines establish clear requirements for a study report, including 4(a) and 5(c) of the WSRA, and procedures required by the National Environmental Policy Act, which include

Appendix F, the Wild and Scenic River Suitability Report, of the DEIS fails to fulfill the requirements of the WSRA, 1982 Guidelines, 2012 Planning Rule, and Chapter 80 of the Forest Service Land Management Handbook.

**1. The River Study must include and analyze action alternatives that (1) find all eligible rivers as suitable, and (2) keep all free-flowing and outstanding rivers as eligible for designation under 2(b) of the Wild and Scenic Rivers Act.**

The draft Plan and DEIS propose a narrow range of alternatives, including only four action alternatives. This narrow range doesn’t meet the requirements of NEPA, which requires agencies<sup>14</sup> to:

- (a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for there having been eliminated.
- (b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

According to all regulations and directives related to conducting a River Study in a plan revision process, this requires including an alternative that finds all eligible rivers as suitable, and all rivers remaining as eligible, as “reasonable alternatives”. Both of these alternatives were requested to be considered by Idaho Rivers United and partner organizations in a 2018 letter to the Forest Service<sup>15</sup> and prior comments submitted during the scoping process. The DEIS does not include “reasons for there having been eliminated”, as required by NEPA.

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<sup>14</sup> 40 CFR § 1502.14

<sup>15</sup> See Appendix A.

Regulations and rules that direct the plan revision and river study process also require analysis of a broad range of reasonable alternatives, including the aforementioned. The plan doesn't provide an action alternative which finds all eligible rivers as suitable, which is required by the 1982 Guidelines (FRN, V. 47, No. 173, 1982) which reads as follows:

Analysis of Alternatives - The study report will present at least one alternative plan calling for national designation through either Congressional or Secretarial designation of all eligible segments of the congressionally authorized study area.

As acknowledged in this comment letter Section II.A, the river study in Appendix F of the draft Plan and DEIS is not a "congressionally authorized study area". However, the Forest Service is operating under the assumption that they are authorized by the 1982 Guidelines and Section 4(a) of the WSRA, and thus must follow the requirements of these guidelines. This would require "at least one alternative plan for national designation... of all eligible segments"<sup>16</sup>.

In addition, the Forest Service Handbook at 83.32d acknowledges that such river studies normally include a wide range of alternatives, including one which finds all eligible river segments as suitable. It reads as follows at 83.32d:

Study reports generally include the following types of alternatives: 2. An alternative in which all eligible segments are found suitable and are recommended for Congressional designation.

The draft Plan and DEIS do not include an alternative in which all eligible segments are found suitable, which does not align with Forest Service Directives.

Chapter 1 Purpose and Need of the DEIS, as required by 40 CFR § 1502.13, includes Significant Issues that guide the development of alternatives. It was identified during scoping that "The proposed action may not adequately apportion suitable Wild and Scenic River segments across the Nez Perce-Clearwater." Significant issues identified during scoping must guide the development of alternatives to meet the purpose and need of the proposed action. The DEIS acknowledges in this section that "The Nez Perce-Clearwater has some of the best aquatic habitat and rivers in the country. An alternative should be developed that finds many, or most, of the rivers suitable, with a preference on the rivers with the greatest contribution to their subbasin."<sup>17</sup> This section also describes "Indicators" that would demonstrate if the range of alternatives meets the purpose and need, including "eligible River segments suitable for inclusion in the Wild and Scenic River system." Id. The action alternatives find at most 37

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<sup>16</sup> FRN, V. 47, No. 173, 1982

<sup>17</sup> DEIS 1-29

eligible rivers as suitable, which represent only 42% of eligible rivers. Thus, the range of alternatives in the draft Plan and DEIS do not meet the purpose and need of the proposed action.

The DEIS must include alternatives that analyze and compare different classifications for river segments. The study does not present alternatives that assess different Wild and Scenic classifications for specific rivers (Wild, Scenic, or Recreational). The Guidelines ((FRN, V. 47, No. 173, 1982) state that “To provide for decision making and to satisfy the requirements of the National Environmental Policy Act, study reports will include an analysis of alternatives”. These Guidelines direct the development of a range of alternatives, which may include “alternative classifications for the river area”<sup>18</sup>. In addition, the Forest Service Handbook includes that river study reports generally include “An alternative in which some eligible segments are found suitable and are recommended for Congressional designation, while other eligible segments are found not suitable. This type of alternative may also include a recommendation to designate eligible segment(s) at a less restrictive classification (for example, scenic to recreational) to allow a specific resource activity.”

Prior forest plan revisions in the region also demonstrate a broader range of alternatives. The Final Environmental Impact Statement for the Southwest Idaho Ecogroup Revision Effort, which includes Payette, Boise, and Sawtooth National Forests, analyzed and compared 7 alternatives<sup>19</sup>. Each individual forest assessed rivers that are eligible for wild and scenic designation, with a finding of 176 rivers as potentially eligible for designation. Out of these 176, a suitability study was conducted on 5 rivers. The suitability study presented an alternative that found all rivers as suitable for designation, and an alternative with different classifications for some river segments.

The Nez Perce - Clearwater river study and DEIS must include a broader range of alternatives to allow for a more robust analysis and comparison.

## **2. The study must clearly demonstrate reasons for or against suitability.**

Considering the significance of the proposed suitability determinations, it is imperative that the study report make a clear case for its determinations. According to the Forest Service Handbook Chapter 83.3, “When the suitability study is complete, the outcome will be a finding by the Responsible Official in the applicable decision document for each eligible river evaluated as to whether or not the river is suitable for inclusion in the Wild and Scenic River System. This finding should clearly demonstrate the reasons for or against recommending an individual river or river segment to Congress.”

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<sup>18</sup> FRN, V. 47, No. 173, 1982

<sup>19</sup> Final EIS SWIEG Revision Effort

The study report in Appendix F of the DEIS fails to make a clear demonstration of the reasons for or against recommendation. The responses to the required and optional criteria are inconsistent, and it appears that some rivers received much more attention and study than others. Many responses of the criteria were applied across all study rivers, which makes the document difficult to analyze, and perhaps lacks the depth of study that individual rivers require to make determinations. In example, Table 9 in Appendix F of the DEIS, which helps fill the criteria of element 8, includes only rivers found suitable in different alternatives. The rivers that were not found suitable in any action alternative, such as Slate Creek, are not included, and this criterion is left unfulfilled. Considering that this analysis wasn't applied to all eligible streams, the study is lacking sufficient analysis to determine suitability.

**3. The DEIS fails to analyze and compare environmental consequences of alternatives, and disregards the impacts of river suitability determinations.**

If an eligible river is determined to be nonsuitable in any or all alternatives, the DEIS must analyze the environmental impacts of such a determination. According to the Forest Service Handbook at 83.32e Environmental Consequences, "The chapter describes the effects of changes in plan components and designation status of the river. This includes the type of projects that might occur in the area for each alternative and the potential outcomes that could happen." For example, impacts of timber harvest within ¼ mile of the river corridor, potential for dam developments, impacts of sedimentation from road construction upon ESA listed species. The DEIS fails to include analysis of any such impacts, and simply ignores that any nonsuitable determination could cause environmental consequences for rivers found eligible for designation. Prior plan revisions in Idaho have done so much more thoroughly. The Wild and Scenic Suitability Report FEIS for the Southwest Idaho Ecogroup Revision Effort acknowledges potential impacts to ORV's and eligibility status of study rivers if they are found not suitable. "Without designation, certain projects could be allowed to proceed that could change the recognized ORVs of the rivers and thus remove them from future Wild and Scenic River eligibility."<sup>20</sup> This acknowledges the potential impacts from a nonsuitable determination, and such an analysis must be included in the DEIS for the Nez Perce - Clearwater Forest Draft Plan Revision.

**4. The DEIS fails to accurately assess the environmental benefits of Wild and Scenic protections.**

A critical component for analysis and comparison of alternatives is an assessment of the potential uses that would be enhanced by wild and scenic protections. Section 10(a) of the Wild and Scenic Rivers Act directs that: "Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be

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<sup>20</sup> FEIS SWIEG J-55

included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values." The DEIS and river study fail to illustrate the potential benefits of wild and scenic protections on nearly all streams included in the river study. According to the Interagency Wild and Scenic Rivers Coordinating Council<sup>21</sup>,

Benefits may include, but are not limited to, providing managers tools or mechanisms to protect free-flowing condition, i.e., protection of river values through the assessment of hydroelectric facilities or water resource development projects within the designated reach; protection and enhancement of water quality and outstandingly remarkable values; and, if a river's management plan objective, promotion of economic development, tourism, or recreational use. Based on current limited studies, indications are that property values remain stable or increase on designated rivers. This is often tied to the protection and enhancement of scenery, other aesthetic values and water quality. Impacts may include, but are not limited to initial or sustained attraction to the river because of designation, authority for federal agencies to purchase property, and changes in permissible land use through zoning adopted by local governments to protect river values.”

Instead, the river study included in the DEIS often only includes the acreage of timber harvest that would be curtailed if a segment were found suitable. Considering that most literature suggest enhancements and positive impacts to aquatic habitat from wild and scenic protections, and that rivers must be managed to enhance their outstandingly remarkable values, this seems to be a major miss in the analysis.

### **III. Plan Direction for Eligible, Suitable, and Designated Wild Scenic Rivers**

**A. The draft Plan must include direction for the protection of eligible rivers. Rivers found eligible for Wild and Scenic designation, as directed by Section 2(b) of the WRSA, must be protected for free-flowing status and ORV’s according to the 2012 Planning Rule.**

The *2012 Planning Rule* (36 CFR Part 219) at §219.10 *Multiple use*, reads as follows:

(b) Requirements for plan components for a new plan or plan revision. (1) The plan must include plan components, including standards or guidelines, to provide for:

(v) Protection of designated wild and scenic rivers as well as management of rivers found eligible or determined suitable for the National Wild and Scenic River

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<sup>21</sup> “A Compendium of Questions & Answers Relating to Wild & Scenic Rivers”. A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council Compiled By: Gary Marsh, Bureau of Land Management (Retired), Washington, DC Contact: Dan Haas, U.S. Fish & Wildlife Service, Burbank, Washington. 2018

system to protect the values that provide the basis for their suitability for inclusion in the system.”

All action alternatives in the draft Plan and DEIS would find a select number of rivers as suitable, and any river determined nonsuitable as then no longer eligible. As we already emphasized, the Forest Service is not authorized to make such a determination in this plan revision, and therefore must include plan components for the management of eligible rivers according to the 2012 Planning Rule. This would include rivers found eligible in this plan revision process, those listed in the Nationwide Rivers Inventory, and any river determined eligible in any future evaluations.

**B. The draft Plan fails to meet the requirements of the 2012 Planning Rule to provide management direction not only for eligible rivers, but also for suitable and designated wild and scenic rivers.** According to the 2012 Planning Rule, “every plan must include the following components:”

- (i) Desired conditions. A desired condition is a description of specific social, economic, and/or ecological characteristics of the plan area, or a portion of the plan area, toward which management of the land and resources should be directed. Desired conditions must be described in terms that are specific enough to allow progress toward their achievement to be determined, but do not include completion dates.
- (ii) Objectives. An objective is a concise, measurable, and time-specific statement of a desired rate of progress toward a desired condition or conditions. Objectives should be based on reasonably foreseeable budgets.
- (iii) Standards. A standard is a mandatory constraint on project and activity decision making, established to help achieve or maintain the desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements.
- (iv) Guidelines. A guideline is a constraint on project and activity decision making that allows for departure from its terms, so long as the purpose of the guideline is met. (§ 219.15(d)(3)). Guidelines are established to help achieve or maintain a desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements.
- (v) Suitability of lands. Specific lands within a plan area will be identified as suitable for various multiple uses or activities based on the desired conditions applicable to those lands. The plan will also identify lands within the plan area as not suitable for uses that are not compatible with desired conditions for those lands. The suitability of lands need not be identified for every use or activity. Suitability identifications may be made after consideration of historic uses and of issues that have arisen in the planning process. Every plan must identify those lands that are not suitable for timber production (§ 219.11).

The management components in the draft Plan at 5.5.2 Designated Wild and Scenic Rivers do not include objectives or guidelines, which are critical components to ensure that these rivers are managed to enhance and protect their free-flowing status and outstandingly remarkable values.

The Plan must include an objective to update the river management plans for designated Wild and Scenic Rivers within 3 years of a final Record of Decision. IRU requested in submitting a 2014 comment letter for Proposed Action that the Forest Service develop a new Comprehensive River Management Plan for the three currently designated Wild and Scenic Rivers; the Selway, Lochsa, and Middle Fork of the Clearwater. The CRMP, approved in 1969, is long overdue for an update because amendments to the Wild and Scenic Rivers Act added new requirements to management plans in Section 3(d). These world class rivers deserve an updated management plan that is current and follows requirements of the Act.

The management components in the draft Plan at 5.6.2 Suitable Wild and Scenic Rivers are insufficient to meet the requirements of the 2012 Planning Rule, and do not include any Objectives. The management components must include direction to move all Suitable Rivers towards Wild and Scenic designation, including Objectives with a time-specific desired rate of progress. This must also include a Desired Condition of congressional designation of suitable Wild and Scenic Rivers. We suggest that the final Plan follow the precedent established in the Payette National Forest Plan, which includes comprehensive management direction for eligible and suitable Wild and Scenic Rivers. Chapter 3 of the Final Revised Payette National Forest Plan includes the following direction for Wild and Scenic Rivers<sup>22</sup>

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<sup>22</sup> Final Revised Payette National Forest Plan III - 75

**DESIRED CONDITION**

River segments and their corridors that are eligible, suitable, or designated as Wild and Scenic Rivers are managed to retain their free-flowing status, classification, and outstandingly remarkable values for scenery, wildlife, cultural, fish, geology, hydrology, and ecological/botanical resources. Opportunities are provided so the public can understand the uniqueness of eligible, suitable, and designated Wild and Scenic Rivers. Suitable segments of Secesh River and the South Fork Salmon River are congressionally designated as Wild and Scenic Rivers.

<b>Management Direction for Wild and Scenic Rivers</b>		
<b>Type</b>	<b>Number</b>	<b>Direction Description</b>
<b>Goals</b>	WSGO01	Manage river segments that are eligible or suitable for potential addition to the National Wild and Scenic Rivers System to meet the requirement of the Wild and Scenic River Act.
<b>Objectives</b>	WSOB01	Emphasize the following in managing eligible and suitable Wild and Scenic Rivers: a) Maintaining or enhancing the outstandingly remarkable values; b) Maintaining the free-flowing character; c) Maintaining or enhancing values compatible with the assigned classification; and d) Accommodating public use and enjoyment consistent with retaining the river's natural values.
<b>Standards</b>	WSST01	When management actions are proposed that may compromise the outstandingly remarkable value, classification, or free-flowing character of an eligible Wild and Scenic River segment, a suitability study must be completed for that eligible river segment prior to initiating the actions.
	WSST02	Assign VQOs to the classifications of eligible, suitable, and designated Wild and Scenic River corridors as follows: a) Preservation to a Wild classification, b) Retention to a Scenic classification, c) Partial Retention to a Recreational classification.
<b>Guidelines</b>	WSGU01	Suitability studies for eligible segments on the Forest should be coordinated with: a) Idaho Department of Water Resources where the State's Comprehensive Water Plans involve National Forest System lands. b) Bureau of Land Management for each study where eligible segments occur in both jurisdictions. The lead agency should be determined before the study begins. c) Other national forests where eligible segments occur in both jurisdictions. The lead Forest should be determined before the study begins.
	<i>See also Guidelines for Fire Management (05); Lands and Special Uses (11); and Tribal Rights and Interests (03).</i>	

These management directions are far more comprehensive than those proposed in the draft Plan for the Nez Perce - Clearwater National Forest. Payette National Forest includes all required components under the 2012 Planning Rule, and also provides direction for management and protection of both eligible and suitable Wild and Scenic Rivers. In addition, Payette National Forest also includes congressional designation of suitable Wild and Scenic Rivers as a Desired Condition.

The draft Plan components do not meet requirements of the 2012 Planning Rule and are insufficient to ensure protection and enhancement of outstandingly remarkable values. The final Plan must include more comprehensive management directions, similar to those of the Final Payette National Forest Plan.

#### **IV. Affected environment and environmental consequences**

The DEIS is lacking a robust analysis and hard look at the impacts to water resources, aquatic and riparian habitat, ESA listed fish species, and social and economic sustainability. This is especially lacking in considering the effects of managing Wild and Scenic eligible rivers, and a comparison of effects from different action alternatives.

##### **A. Water Resources**

Protection of water quality and quantity in the Forests is essential. Unfortunately, the DEIS seems to avoid analysis of the negative effects of increased timber harvest to water resources, and rather focuses on proposed restoration activities. The DEIS describes the Draft Plan direction to protect and enhance water resources, but lacks analysis and comparison of alternatives, especially in consideration of “Effects to Resource from Other Resources”. In example, the effects of Timber Harvest to Water Resources does not provide sufficient analysis of effects that vary by action alternative. This section does acknowledge that increases in maximum clear-cut size from 40 to 375 acres results in “higher potential to affect water quantity when openings are larger.”<sup>23</sup> However, there is no analysis provided on the effects to water quality or comparison of action alternatives. Below is an example from peer reviewed literature on the effects of timber harvest on water resources:

“Soil and site disturbance that inevitably occur during timber harvest activities are often responsible for increased rates of erosion and sedimentation (Chamberlain and others 1991; FEMAT 1993; MacDonald and others 1991; Meehan 1991; Reid 1993; Rhodes and others 1994); modification and destruction of terrestrial and aquatic habitats (FEMAT 1993; van Kesteren 1986); changes in water quality and quantity (Bjornn and Reiser 1991; Brooks and others 1992; Chamberlain and others 1991; Rhodes and others 1994); and perturbation of nutrient cycles within aquatic ecosystems (Rowe and others 1992). Physical changes affect runoff events, bank stability, sediment supply, large woody debris retention, and energy relationships involving temperature (Li and Gregory 1995). All of these changes can eventually culminate in the loss of biodiversity within a watershed (FEMAT 1993; Rowe and others 1992).”<sup>24</sup>

Without a comparison of timber harvest effects on water quality by action alternative, how can impacts be assessed and understood? 40 CFR § 1502.14 of the National Environmental Policy Act (NEPA) calls alternative the heart of the environmental impact statement, and “it should

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<sup>23</sup> DEIS 3.2.2.1-40

<sup>24</sup> Lee, D. C., Sedell, J. R., Rieman, B. F., Thurow, R. F., & Williams, J. E. (1997). Broadscale assessment of aquatic species and habitats. In T. M. Quigley, S. J. Arbelbide, & T. M. Arbelbide (Eds.), *An assessment of ecosystem components in the interior Columbia basin and portions of the Klamath and great basins.*, Vol. 3. Gen. Tech. Rep. PNW-GTR-405 (pp. 1057-1713). Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station.

present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.” The DEIS clearly does not fulfill the requirements of NEPA.

The affected environment is described as watershed condition, water quality, water quantity, benefits to people and key ecosystem services, and watershed restoration. This section does not provide analysis on the effects of Wild and Scenic suitable or eligible rivers on water resources, or a comparison of alternatives. Considering that rivers managed as Wild and Scenic protect and enhance water quality, and prevent dam development, this must be included in the analysis. This section should include “Effects common to all action alternatives, and “effects that vary by action alternative”. Otherwise, analysis and comparison of effects to water quality are incomplete. Section 1(b) of the Wild and Scenic Rivers Act “preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.” In addition, Section 10(a) of the Wild and Scenic Rivers Act directs that "Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values." It is nearly common knowledge that WSR designation, or management as eligible or suitable, enhances water quality.

This section of the DEIS includes analysis of Recommended Wilderness (Effects that Vary by Action Alternative) and states that *“The overall effect of recommended wilderness areas in the draft plan are expected to be beneficial to water quality and quantity because of the limitation on land management activities within recommended wilderness.”* This section must include similar analysis for suitable Wild and Scenic Rivers and effects by action alternative, as management activities within the river corridor would undoubtedly affect these resources.

## **B. Aquatic and Riparian Habitat**

Protection of ESA listed fish and habitat is of critical importance. *The DEIS provides an analysis of the effects to aquatic and riparian habitat and species of forest-wide directives in the draft plan, and a comparison to the No Action alternative. However, the DEIS does not include an analysis and comparison of action alternatives, and is therefore incomplete.*

The DEIS fails to illustrate the effect of Wild and Scenic protections upon aquatic and riparian habitat. In contrast, 3.2.3 Wildlife section is focused entirely on threatened, endangered, candidate, and proposed species, and demonstrates that wild and scenic management direction would positively impact Lynx and Wolverines

“Management direction for both designated and suitable wild and scenic rivers helps to maintain wide forested corridors along major waterways that may facilitate lynx movement through the landscape, providing connectivity.”

“Alternatives for suitable wild and scenic rivers would have environmental consequences that could potentially benefit wolverines...These areas would receive restrictions on dam building, which could flood wolverine habitat and potentially create a barrier to dispersal.”<sup>25</sup>

There is no such discussion of the effect of management direction for suitable Wild and Scenic rivers in the Aquatic and Riparian Habitat section of the DEIS. Rather, the DEIS claims that such management direction would have no impact:

“Identifying segments of rivers and streams that are suitable for Wild and Scenic River designation would have no effect on aquatic habitat because no actions are associated with suitability. Actual designation of the river or stream as a Wild and Scenic River would be the action upon which effects to aquatic habitat would need to be described. This decision would not be included under any of the alternatives, although management of eligible rivers as if they were designated would be considered in project planning. Such consideration would not affect aquatic riparian areas...”<sup>26</sup>

This directly contradicts language found in other portions of the DEIS that recognize the effects of wild and scenic protections to aquatic and riparian habitat:

“While wild and scenic suitability would enhance protections for aquatic wildlife, forestwide plan components for protection of rivers would continue to provide for wildlife that use rivers.”<sup>27</sup>

*“Designation of a river segment as suitable, particularly where the river segment is included as designated critical habitat for an ESA-listed fish species, or where it has an additional priority identified in any recovery plan for a listed fish species, would be consistent with recovery goals identified in recovery planning. Maintenance and improvement of stream habitat are central tenets of recovery planning, similar to language contained in the Wild and Scenic Rivers Act, which directs ORVs to be maintained, particularly in rivers where fish is identified as an ORV.”<sup>28</sup>*

*“Under all alternatives, plan direction protects aquatic and riparian habitats rivers from many activities and threats that could adversely affect ecological conditions for aquatic wildlife. Some alternatives provide more protection than others because they offer larger amounts of suitable wild and scenic rivers.”<sup>29</sup>*

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<sup>25</sup> DEIS 3.2.3.3 - 68

<sup>26</sup> DEIS 3.2.2.2-52

<sup>27</sup> DEIS 3.2.3.2-17

<sup>28</sup> Appendix F-31

<sup>29</sup> 3.2.3.2-32 DEIS

It is evident, both by the lack of analysis of effects and the various contradictions, that the DEIS fails to provide a comprehensive and robust comparison of alternatives and consideration of wild and scenic suitability determinations and management direction.

In addition, there is no clear comparison of alternatives related to effects of timber harvest on aquatic habitat and species.<sup>30</sup> Considering the wide range in timber harvest proposed across alternatives, a more detailed analysis of impacts is needed. The effects of timber harvest on water quality are widely understood in peer review literature, with an example as follows:

“Soil and site disturbance that inevitably occur during timber harvest activities are often responsible for increased rates of erosion and sedimentation (Chamberlain and others 1991; FEMAT 1993; MacDonald and others 1991; Meehan 1991; Reid 1993; Rhodes and others 1994); modification and destruction of terrestrial and aquatic habitats (FEMAT 1993; van Kesteren 1986); changes in water quality and quantity (Bjornn and Reiser 1991; Brooks and others 1992; Chamberlain and others 1991; Rhodes and others 1994); and perturbation of nutrient cycles within aquatic ecosystems (Rowe and others 1992). Physical changes affect runoff events, bank stability, sediment supply, large woody debris retention, and energy relationships involving temperature (Li and Gregory 1995). All of these changes can eventually culminate in the loss of biodiversity within a watershed (FEMAT 1993; Rowe and others 1992).”<sup>31</sup>

Many Forest Service projects have potentially disastrous effects on aquatic ecosystems. Frissell and Bayles (1996, p.231) summed up the current state of affairs as follows: "For aquatic systems in the west, the management crisis arises from the cumulative and persistent effects of thousands of miles of roads, thousands of dams, and a century of logging, grazing, mining, cropland farming, channelization, and irrigation diversion."

Research on the CNF has shown that water quality and fish habitat in roadless areas, even though these areas have seen major fire, is far better than in roaded areas. Indeed, the assessment supports this view. Specifically, the map on Table 1-39 is a visual representation of the issue and page 1-138 states that the high functioning watersheds "are primarily in Wilderness or unroaded areas of the Forests."

Even more profound is the fact that after over 20 years of so-called restoration logging—building roads and logging, in part to pay for road decommissioning on some routes, a strategy of robbing Peter to pay Paul or the check is in the mail—none, or almost none of the watersheds which have been affected by "management" meet current forest fish habitat and water quality standards on either national forest. While the assessment claims that progress is being made, this is a failed management strategy. Progress toward functioning watersheds that may take decades or

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<sup>30</sup> DEIS 3.2.2.2-57-58

<sup>31</sup> Lee, D. C., Sedell, J. R., Rieman, B. F., Thurow, R. F., & Williams, J. E. (1997). BROADSCALE ASSESSMENT OF AQUATIC SPECIES AND HABITATS. In T. M. Quigley, S. J. Arbelbide, & T. M. Arbelbide (Eds.), *An assessment of ecosystem components in the interior Columbia basin and portions of the Klamath and great basins.*, Vol. 3. Gen. Tech. Rep. PNW-GTR-405 (pp. 1057-1713). Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station.

centuries is not acceptable.

Perhaps as a result of this recognition on the part of the agency, the desired conditions in the PA (including Table 15) resemble the existing water quality and fish habitat standards. These elements should be standards, rather some future goal that will never be met in any reasonable time frame. For example, current standards include cobble embeddedness, yet the PA includes those as desired conditions in Table 15. This is a backsliding from the commitment the agency made to American citizens in 1987.

Further, there is little link between the desired conditions, objectives and standards. While some of the objectives and standards are laudable, they perpetuate the same management paradigm that has failed to recover watersheds. In fact, the standards are generally weaker than those in the current plans, the lack of a cobble embeddedness standard being on example. In order to be accountable, if watersheds do not meet standards, then management actions which further cause watershed degradation such as roadbuilding and logging should not be allowed

The global climate is undergoing rapid changes, which alter stream temperatures, and threaten salmonid fisheries, which rely on cold water. Changes in stream temperatures are causing redistribution of fish populations to colder waters which often fragments these populations into smaller, colder habitats (Isaak et al. 2014, Rieman et al. 2007, Wenger et al. 2011). These changes will cause declines in salmonid populations due to drastic reduction of coldwater habitat within this century (Isaak et al. 2014). There is still time to save these populations and protect native fisheries if drastic conservation management efforts are taken to target the protection of coldwater habitats.

As stated by Isaak et al. 2014, “There are thousands of stream kilometers that are cold enough to provide suitable habitats even with substantial future climate change and warming this century. Most of these coldwater habitats occur on federal land at higher elevations, particularly the National Forests.” The FS can play a huge role in protecting coldwater fisheries by making changes to how federal lands are managed. Some examples of conservation of coldwater management practices include assessing habitat needed to maintain coldwater fish populations, using this data to implement climate refuges for these populations, and using geospatial data and conservation initiatives provided by agencies like the Western Native Trout Initiative (Isaak et al. 2014).

***The DEIS does not incorporate any coldwater conservation initiatives into the revised Forest Plan.***

The DEIS utilizes ambiguous terms such as “functioning properly”, “functioning at risk,” and “impaired.” As these terms are qualitative and subjective, quantitative measures are needed to inform land management practices. Quantitative analyses to each category, and specific, predictable ways to achieve these quantitative measurements where the public can check the Forest Service’s work, much like the fisheries standards in the governing 1987 Nez Perce and Clearwater Forest Plans is needed. With three qualitative categories, if a watershed is functioning at risk, there is no way to determine if the watershed is improving upward towards “functioning properly” or declining into “impaired.” This would allow projects that could degrade water

quality without the public or the Forest Service understanding the impacts. In Appendix K of the DEIS, the Forest Service said, “In 2011, the Nez Perce-Clearwater completed the watershed condition classification for 220 HUC12 subwatersheds. In summary, 140 watersheds were rated as functioning properly, 73 were rated as functioning at risk, and 7 were rated as impaired. As shown in Figure 1, the majority of subwatersheds with Class 2 and 3 ratings are concentrated in the western, more road intensive portion of the Forest. The most significant driver of the ratings was roads and trails.” DEIS Appx K-5

***The DFP fails to consider the significance of watershed-level and cumulative implications of chronically compacted or otherwise detrimentally disturbed soils***

From USDA Forest Service, 2008f:

Many indirect effects are possible if soils are detrimentally-disturbed... Compaction can indirectly lead to decreased water infiltration rates, leading to increased overland flow and associated erosion and sediment delivery to stream. Increased overland flow also increases intensity of spring flooding, degrading stream morphological integrity and low summer flows.

However, the DFP plan elements do not set limits on, or require a full cumulative effects analyses of, levels of compaction within a watershed.

The NPCNF American River/Crooked River project FEIS stated:

Cumulative effects may also occur at the landscape level, where large areas of compacted and displaced soil affect vegetation dynamics, runoff, and water yield regimes in a subwatershed. About 4,849 acres are currently estimated to have sustained detrimental compaction or displacement in the American River watershed due to logging, mining, or road construction. ... About 4,526 acres are currently estimated to have sustained detrimental compaction or displacement in the Crooked River watershed due to logging, mining, and road or trail construction. (Emphasis added.)

An estimated 73 percent (208) of past activity areas on FS lands in American River (and an estimated 69 percent (166) of past activity areas on FS lands in Crooked River) today would show detrimental soil disturbance in excess of 20 percent.

American River (and most of Crooked River) is considered similar in soils and logging history to Red River, where 80 percent of sampled tractor logged activity areas did not meet Forest Plan standards. In many instances, these impacts occurred prior to forest plan implementation, but monitoring of more recent activities shows inconsistent improvement in practices. This degree of soil damage is consistent both with other Forest monitoring (USDA FS 1988a, 1990, 1992), and research (Krag, 1991; Froelich, 1978; Davis, 1990, Alexander and Poff, 1985). Indirect effects of soil surface and substratum erosion include effects to vegetation and hydrologic processes.

The Forest Service must address the hydrological by accounting for all soil damage in a

watershed, to incorporate the best available science and disclose the full extent of soil restoration needs in the watershed. USDA Forest Service, 2009c states, in regards to project area sites where DSD soils were not to be restored by active management: “For the ...severely disturbed sites,... “no action” ...would create indirect negative impacts by missing an opportunity to actively restore damaged soils. These sites would naturally recover in time, approximately 60 to 80 years.” (Emphasis added.)

More on this from the Forest Service’s own experts. The Bitterroot National Forest admits that subwatersheds which have high levels of existing soil damage could indicate a potential for hydrologic and silviculture concerns. (USDA Forest Service, 2005b, p. 3.5-11, 12.) The Idaho Panhandle National Forests (USDA Forest Service, 2007c) acknowledge that soil conditions affect the overall hydrology of a watershed:

Alteration of soil physical properties can result in loss of soil capacity to sustain native plant communities and reductions in storage and transmission of soil moisture that may affect water yield and stream sediment regimes. (P. 4-76, emphasis added.)

USDA Forest Service, 2009c states:

Compaction can decrease water infiltration rates, leading to increased overland flow and associated erosion and sediment delivery to streams. Compaction decreases gas exchange, which in turn degrades sub-surface biological activity and above-ground forest vitality. Rutting and displacement cause the same indirect effects as compaction and also channel water in an inappropriate fashion, increasing erosion potential.

Kuennen et al., 2000 (a collection of Forest Service soil scientists) state:

An emerging soils issue is the cumulative effects of past logging on soil quality. Pre-project monitoring of existing soil conditions in western Montana is revealing that, where ground-based skidding and/or dozer-piling have occurred on the logged units, soil compaction and displacement still are evident in the upper soil horizons several decades after logging. Transecting these units documents that the degree of compaction is high enough to be considered detrimental, i.e., the soils now have a greater than 15% increase in bulk density compared with undisturbed soils. Associated tests of infiltration of water into the soil confirm negative soil impacts; the infiltration rates on these compacted soils are several-fold slower than rates on undisturbed soil.

...The effects of extensive areas of compacted and/or displaced soil in watersheds along with impacts from roads, fire, and other activities are cumulative. A rapid assessment technique to evaluate soil conditions related to past logging in a watershed is based on a step-wise process of aerial photo interpretation, field verification of subsamples, development of a predictive model of expected soil conditions by timber stand, application of this model to each timber stand through GIS, and finally a GIS summarization of the predicted soil conditions in the watershed. This information can then be combined with an assessment of road and bank erosion conditions in the watershed to give a holistic description of watershed conditions and to help understand cause/effect relationships. The information can be related to Region 1 Soil Quality

Standards to determine if, on a watershed basis, soil conditions depart from these standards. Watersheds that do depart from Soil Quality Standards can be flagged for more accurate and intensive field study during landscape level and project level assessments. This process is essentially the application of Soil Quality Standards at the watershed scale with the intent of maintaining healthy watershed conditions. (Kuennen et al., 2000; emphasis added)

Kootenai National Forest hydrologist Johnson, 1995 noted this effect from his reading of the scientific literature: “Studies by Dennis Harr have consistently pointed out the effects of the compacted surfaces (roads, skid trails, landings, and fire lines) on peak flows.” Elevated peak flows harm streams and rivers by increasing both bedload and suspended sediment, which is not considered in the DEIS’s watershed analysis.

It is clear the Forest Service must consider the cumulative effects of past and proposed soil disturbances to assure that soil productivity will be maintained. This includes impacts from activities that include logging, motorized vehicle use, livestock grazing, etc. Such cumulative effects analysis found in the Soil and Water Conservation Practices Handbook (FSH 2509.22), which states:

#### Practice 11.01 – Determination of Cumulative Watershed Effects

**OBJECTIVE:** To determine the cumulative effects or impact on beneficial water uses by multiple land management activities. Past, present, or reasonably foreseeable future actions in a watershed are evaluated relative to natural or undisturbed conditions. Cumulative impacts are a change in beneficial water uses caused by the accumulation of individual impacts over time and space. Recovery does not occur before the next individual practice has begun.

**EXPLANATION:** The Northern and Intermountain Regions will manage watersheds to avoid irreversible effects on the soil resource and to produce water of quality and quantity sufficient to maintain beneficial uses in compliance with State Water Quality Standards. Examples of potential cumulative effects are: 2) excess sediment production that may reduce fish habitat and other beneficial uses; 3) water temperature and nutrient increases that may affect beneficial uses; 4) compacted or disturbed soils that may cause site productivity loss and increased soil erosion; 5) increased water yields and peak flows that may destabilize stream channel equilibrium.

**IMPLEMENTATION:** As part of the NEPA process, the Forest Service will consider the potential cumulative effects of multiple land management activities in a watershed which may force the soil resource’s capacity or the stream’s physical or biological system beyond the ability to recover to near-natural conditions. A watershed cumulative effects feasibility analysis will be required of projects involving significant vegetation removal, prior to including them on implementation schedules, to ensure that the project, considered with other activities, will not increase sediment or water yields beyond or fishery habitat below acceptable limits. The Forest Plan will define these acceptable limits. The Forest Service will also coordinate and cooperate with States and private

landowners in assessing cumulative effects in multiple ownership watersheds. Booth, 1991 further explains the relationship between soil quality conditions and hydrology: Drainage systems consist of all of the elements of the landscape through which or over which water travels. These elements include the soil and the vegetation that grows on it, the geologic materials underlying that soil, the stream channels that carry water on the surface, and the zones where water is held in the soil and moves beneath the surface. Also included are any constructed elements including pipes and culverts, cleared and compacted land surfaces, and pavement and other impervious surfaces that are not able to absorb water at all.

...The collection, movement, and storage of water through drainage basins characterize the hydrology of a region. Related systems, particularly the ever-changing shape of stream channels and the viability of plants and animals that live in those channels, can be very sensitive to the hydrologic processes occurring over these basins. Typically, these systems have evolved over hundreds of thousands of years under the prevailing hydrologic conditions; in turn, their stability often depends on the continued stability of those hydrologic conditions.

Alteration of a natural drainage basin, either by the impact of forestry, agriculture, or urbanization, can impose dramatic changes in the movement and storage of water. ...Flooding, channel erosion, landsliding, and destruction of aquatic habitat are some of the unanticipated changes that ...result from these alterations.

...Human activities accompanying development can have irreversible effects on drainage-basin hydrology, particularly where subsurface flow once predominated. Vegetation is cleared and the soil is stripped and compacted. Roads are installed, collecting surface and shallow subsurface water in continuous channels. ...These changes produce measurable effects in the hydrologic response of a drainage basin.

### **C. Social and Economic Sustainability**

1. **The analysis and comparison of effects to Social Sustainability are misleading and incomplete.** This section makes the claim that Alternative X (highest timber output and motorized use) would have the highest “contributions to integrity and resiliency of watersheds” and also fisheries<sup>32</sup>. The only rationale for this claim seems to be that Alternative X includes restoration objectives slightly higher than other alternatives. However, this does not account for cumulative effects of increased timber harvest, road building, and motorized use. We find it hard to believe that Alternative X, with zero Recommended Wilderness or Suitable Wild and Scenic Rivers, would also contribute to highest contributions to watershed resiliency and fisheries, as this contradicts the best available science. The DEIS correctly demonstrates the degree of uncertainty; “It is unknown if these objectives are sufficient to achieve aquatic desired conditions over the

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<sup>32</sup> DEIS 3.8.2.23-24

next 30 years, particularly in light of projected increases in timber harvest, but the monitoring plan contains elements to address trends in aquatic habitat.<sup>33</sup>

- 2. The DEIS fails to provide substantive analysis of the economic impacts and contributions of outdoor recreation, such as sportfishing and rafting in the Forests and region.** The DEIS seems to create a narrative that Wild and Scenic River protections are an economic burden on local communities, because of the potential to curtail timber harvest within the river corridor. However, we disagree with this assessment.

According to the Interagency Wild and Scenic Rivers Coordinating Council, “the economic impacts of implementing various alternatives should be addressed through the evaluation process to determine whether a river is a suitable addition to the National System or through the river management planning process, or a designated WSR. Economic issues, such as development and ecotourism, both inside and outside of potentially designated river corridors may be considered.”<sup>34</sup> The forest plan and DEIS do not account for the outdoor recreation industries economic impacts to the region. The outdoor recreation economy in Idaho rivals the size of the agricultural industry at \$7.8 billion in annual consumer spending<sup>35</sup>, and Wild and Scenic Rivers in particular have significant impact on local communities.

The Middle Fork of the Salmon River, for example, has a significant economic impact on the regional economy. The 2018 Salmon-Challis National Forest Assessment found that “in total, therefore, visitor expenditures associated with recreational use of the Middle Fork are estimated at \$16.6 million annually...Spending by Middle Fork floaters are estimated to support approximately 116 jobs and \$3 million in labor income and spending by Main Salmon floaters are estimated to support 95 jobs and \$2.4 million in labor income in the broader economic area on an average annual basis.”<sup>36</sup> Without a comparable assessment and analysis in the DEIS for the Nez Perce -Clearwater, the document is incomplete and lacking a robust comparison of alternatives. The Lochsa and Selway Rivers are world renowned destinations for commercial and private rafting adventures, and the DEIS fails to analyze the economic contributions of such activities. In addition, various river stretches within the Clearwater Basin are visited by sportfishers on an annual basis, providing substantial economic benefits to rural communities. It is estimated that Steelhead fishing season in the Clearwater region contributes \$8.6 million of economic activity per month<sup>37</sup>.

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<sup>33</sup> DEIS 3.2.2.2-57

<sup>34</sup> “A Compendium of Questions & Answers Relating to Wild & Scenic Rivers”. A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council Compiled By: Gary Marsh, Bureau of Land Management (Retired), Washington, DC Contact: Dan Haas, U.S. Fish & Wildlife Service, Burbank, Washington. 2018

<sup>35</sup> Outdoor Industry Association- <https://outdoorindustry.org/state/idaho/>

<sup>36</sup> Salmon-Challis National Forest Assessment Report, July 2018

<sup>37</sup> Data provided by Kathryn Tacke, Idaho Department of Labor

## **V. Protecting ESA listed fish**

The Forest contains important habitat for native fish species such as ESA-listed salmon, steelhead, and bull trout, as well as cutthroat trout. Salmon, trout, and char all require similar habitat conditions. Low streamflow, high water temperature, and excessive turbidity impedes adult migration to spawning grounds for these fish. Spawning and rearing activities are heavily influenced by adequately sized cobbles and flows (Bjornn and Reiser, 1991). Natural processes such as fires, droughts, floods, and landslides are critical in creating aquatic habitat complexity, diversity, and connectivity (Rothlisberger, 2017). Fish species found in the Forest, especially migratory stocks, heavily rely on this complex habitat creation. Native salmonids generally persist in areas with little human influence (Thurow et al., 1997). Protected areas such as Wild and Scenic Rivers, Wilderness areas, and roadless areas host the most intact populations of native fish (Williams et al., 2011). These places function as population strongholds for native fish, as well as other species found within the Forest.

Anadromous fish returns to the Forest have been greatly reduced, primarily due to the construction and operation of main-stem dams along the Columbia-Snake Rivers (CBFWA, 1990). All accessible reaches of the Clearwater and Salmon Basins within the Forest are designated as critical habitat for the Snake River Distinct Population Segment (DPS) and Evolutionarily Significant Unit (ESU) of steelhead and spring/summer Chinook salmon, respectively. (NOAA Fisheries, 2017). While native spring/summer Chinook were extirpated from the Clearwater Basin due to the Lewiston Dam, the Forest is critical to population recolonization efforts and hosts hatcheries as well as natural spawning populations of the Snake River ESU. Wild, native steelhead of both the A-run and B-run variety return to spawn in streams within the Forest. Snake River spring/summer Chinook and steelhead remain well below minimum abundance thresholds, which are just the baseline for recovery towards “healthy and harvestable” levels as Section 3.2.2.2 of the Forest Plan DEIS states. The Forest is also home to ESA-listed fall Chinook as well as reintroduced populations of Coho salmon that were regionally extirpated.

As the Forest Plan recognizes in the Desired Conditions for Aquatic Ecosystems, complex, well connected watersheds with natural flow and disturbance regimes that support species recovery are important. Native fish species, as previously mentioned, especially rely on these natural processes playing out. As such, restoration activities should occur on 20 priority watersheds every five years as outlined in Alternative X. The maximum level of restoration activities from the alternatives as far as sediment input and road building are concerned should be selected as well. The most notable alteration of upland and riparian conditions that has influenced stream process and function across the Nez Perce-Clearwater is road development. It is important to note that these restoration activities should occur, regardless of alternative selected and not as a mitigation measure for increased levels of timber harvest.

The development of a Conservation Watershed Network (CWN) in the Forest Plan that prioritizes migratory salmonid habitat is a commendable action and welcome evolution of the PACFISH and INFISH temporary standards. Forest Plan components related to the CWN as well as Riparian Management Zones (RMZ) should emphasize the importance of continued restoration and conservation at a watershed scale for native fish. However, the criteria used to designate a watershed within the CWN should be more specific and include an updated reasoning for designation or exclusion from the CWN, rather than simply replacing those stream areas identified as Key or Priority under PACFISH and INFISH guidelines.

The unique aspect of the Snake River salmonid populations, combined with their current population vulnerability brought on by very low abundance warrants stringent protections at the management level and active restoration efforts. It is important to manage salmonid populations within the Forest at a fine grain, Major Population Group (MPG) level as far as habitat work is concerned. Sedimentation from roads should be the focus of RMZ designations, along with the established focus of buffer zones from timber harvest. Guidelines associated with road and trail construction in RMZ's should be upgraded to standards and analysis of their impacts to aquatic life and native fish in particular should be expanded upon.

While the DEIS covers a general overview of native fish species found within the Forest, a more comprehensive summary of current population status and trends needs to be included. The status of ESA-listed fish is extremely important when considering activities such as timber harvest and road construction or continued use in areas that impact important spawning, rearing, or migratory streams for native fish. The current very low abundance of Snake River salmonids regionally and within the Forest must more prominently factor into both management activities and river and watershed protection in the form of Wild and Scenic designation or CWN and RMZ classification. A more thorough analysis of current ESA-listed fish population trends should go into the creation of Goals, Desired Conditions, Objectives, Standards, and Guidelines throughout the Aquatic Ecosystems section of the Forest Plan.

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