



LUMMI INDIAN BUSINESS COUNCIL

2665 KWINA ROAD BELLINGHAM, WASHINGTON 98226 (360) 312-2000

June 8, 2022

<Sent via electronic service>

Jody Weil, MBS Forest Supervisor
810 State Route 20
Sedro-Woolley, WA 98284-1263

Re: USFS North Fork Nooksack Vegetation Management Plan Revised Environmental Assessment and Decision Notice Letter of Objection

Dear Ms. Weil:

I appreciate the time and effort you and MBS staff took to explain the rationale of the North Fork Nooksack Vegetation Management project at our meetings in February and April. My staff and I have reviewed the Revised Environmental Assessment (EA) and Decision Notice (DN) issued on April 25, 2022 and submit these additional comments and concerns. I have other concerns that were described in the original 11/8/2021 Lummi objection letter that I would like to see formally addressed, and I hereby incorporate by reference that letter to avoid duplication.

To summarize, there are two main issues: 1) Treaty Rights and the USFS's trust responsibility; and 2) Adverse impacts to ESA listed salmonids.

1) Treaty Rights and Federal Trust Responsibility

Our ancestors signed the Treaty of Point Elliot of 1855 with the United States government with an express right to harvest fish as we have done since time immemorial. The purpose of reserving our rights was to confirm our way of life in perpetuity. Under the United States Constitution and the federal courts these Treaty Rights are the supreme law of the land. The treaties still carry meaningful and modern rights for tribal members, and we must have resources to fish, hunt, and gather in order to exercise a meaningful treaty right.

Communication between the USFS and tribes for this project has been a challenge. I understand that there have been four different District Rangers leading this project with many changes since Erin Uloth left that may have added to the difficulty. I appreciate the efforts to try to rectify that problem and hope to see continued and lasting improvements in meaningful tribal engagement.

I reiterate my appreciation that you've extended the offer to discuss an MOU process to review the projects on the ground after the NEPA process has concluded. I welcome that; however, I continue to be concerned about the lack of follow through. Specifically, it is my understanding that the MOU with Nooksack tribe has not yet been resolved despite their ongoing efforts. Follow up for a Lummi-USFS MOU has also not yet been initiated.

I respectfully request that the USFS develop a timeline and clear process and actively work to complete the MOU/MOA. It is my understanding that work on the ground in the project area has already commenced to prepare for project implementation. Without a completed MOU, how will the USFS actively engage tribes with an on the ground review and meaningfully address our concerns?

I also reiterate from my November 2021 letter that for an MOU to work, there must be trust between us and confidence that the USFS will listen and implement changes. Good communication and a clear process is needed to ensure for a good working relationship so that the NF Vegetation Management Project and other future projects are planned in a way that meaningfully address and incorporate tribal concerns. The MOU is a step in the right direction to outline how that will be achieved, and I look forward to working together to develop it.

I also, however, stress that the Lummi Nation and other tribes are getting 'processed to death' with the numerous meetings at the local, state, and federal levels to attempt to address salmon recovery, and we already review hundreds of permits and applications for projects that are collectively damaging salmon habitat and threaten our cultural identity. For a treaty right to be meaningful, we must have fish to harvest, game to hunt, and plants to gather and ample access to those resources. We simply do not have the capacity to review every single project to ensure that our fisheries, wildlife and gathering resources are not put in further jeopardy, and we rely on the USFS to practice due diligence in protecting these resources as a trustee. The MOU is a useful but also burdensome tool, and we implore the USFS to do the right thing in advance rather than after a project has already been planned and decided.

2) Adverse impacts to ESA listed salmonids

As the salmon people and the largest fishing tribe in the Puget Sound, the Lummi Nation takes protections for ESA listed Nooksack early Chinook very seriously and have a high expectation that our federal trustees will take the utmost precaution when proposing projects within the Nooksack watershed. We are losing habitat faster than we are recovering it, and even short-term impacts that may adversely impact anadromous fish and their already damaged habitat is unacceptable. It is well known that legacy and some types of ongoing logging practices adversely affect salmon habitat.

While I am pleased that the USFS has extended stream buffers to protect water quality, I continue to be deeply concerned that the environmental review and analysis of the effect of the project on aquatic species was more of an afterthought. The Revised EA states that ESA consultation still has not occurred, and that the preliminary determination for ESA listed species including listed early Chinook is "Likely to Adversely Affect".

Nooksack early Chinook is a culturally important stock to the Lummi Nation, and we will oppose any project that may cause them harm. We are losing habitat faster than we are recovering it, and it is imperative that the USFS demonstrate that it is serious about upholding its trust responsibility by ensuring our important cultural resources are preserved and maximized.

In conclusion, while the extended stream buffers are a step in the right direction, the Lummi Nation cannot support a project that has a preliminary determination for ESA listed species as "Likely to Adversely Affect". That ESA consultation has not yet been completed continues to confirm our concern that the environmental review and analysis process for the NF Vegetation Management Project has not been done in alignment with the WRIA 1 Salmonid Recovery Plan nor properly sequenced to inform a Decision that will avoid harming listed salmonids.

I look forward to your response and further discussion to resolve these concerns.

Sincerely,

A handwritten signature in blue ink that reads "Merle Jefferson". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Merle Jefferson
Director, Lummi Natural Resources

(cc)

Ted Neff, District Ranger, Mount Baker Ranger District
George Swanaset Jr., Nooksack Natural Resources Director
Donald Hubner - NOAA Federal NMFS
Brian Mercier- BIA Regional Director
Lisa Wilson, LIBC Council member
GI James, LIBC Council member
Al Scott Johnny, LIBC Culture Department Director
Lena Tso- LNTHPO Compliance Officer