



Idaho Rivers United - PO Box 633 - Boise, ID 83701 - (208) 343-7481 - idahorivers.org

Protecting and Restoring the Rivers and Fish of Idaho

January 26th, 2024

USDA Forest Service  
Northern Regional Office  
ATTN: Regional Forester - Objection Reviewing Officer  
26 Fort Missoula Road  
Missoula, MT 59804

Re: Objection to "Nez Perce-Clearwater National Forest Plan

Idaho Rivers United hereby formally objects to specific findings and decisions within the revised Land Management Plan (LMP) for the Next Perce-Clearwater National Forest (NPCW) and the associated Final Environmental Impact Statement (FEIS), and Draft Record of Decision (DROD). We do so following the regulations at 36 CFR 219. The Draft ROD was dated and published in November of 2023 by the Responsible Official, Forest Supervisor, Cheryl Probert. Subsequently, the legal notice of the objection period appeared in the newspaper of record, the Lewiston Tribune, on November 28, 2023. The 60-day objection period thus ends on January 29, 2024.

Idaho Rivers United (IRU) is an environmental advocacy organization that is dedicated to protecting Idaho rivers and restoring our native fish populations. Since our inception in 1990, 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 members throughout Idaho and beyond. Our members and supporters expect the protection of rivers for their ecological, scenic, and recreational values; accordingly, our mission is to protect and restore the rivers and fisheries of Idaho

Idaho Rivers United has been involved in this revision process since the beginning and has submitted substantive comments at several occasions leading up to the publication of the November 2023 FEIS, LMP, and Draft ROD. Our specific comments submitted regarding the DEIS that are referenced throughout this objection are highlighted at the end of this objection.

Lead Objector:



Nick Kunath  
Conservation Program Manager  
Idaho Rivers United  
P.O. Box 633  
Boise, ID 83701  
Phone: (208) 908-9232  
Email: nkunath@idahorivers.org

## Grounds For The Objection

### I. Statement of the issues and parts of the Forest Plan to which this Objection applies.

#### A. The Forest Service wrongly excluded 77 rivers from consideration and affirmation of their Wild and Scenic River eligibility

In the Draft ROD, FEIS, and Forest Plan, the Forest Service wrongly uses the forest planning process to make unlawful and unsupported determinations that 77 of the 88 rivers found to be eligible for designation under the Wild and Scenic Rivers Act (WSRA) are not suitable for designation. This, in turn, results in a decision by the Forest Service not to afford those 77 “non-suitable” rivers the interim protections required by the 2012 Planning Rule as necessary to protect and enhance their free-flowing condition and their outstandingly remarkable values (ORVs). The process followed and conclusions reached by the Forest Service in this regard is contrary to the WSRA and the 2012 Planning Rule, 36 C.F.R. Part 219.

The parts of the Draft ROD, FEIS, and Forest Plan to which this Objection applies include, but are not limited to, the following:

- The Draft ROD on page 8, in which the Forest Supervisor proposes to adopt the “Preferred Alternative” as her decision; page 11 outlines the 11 rivers deemed suitable for inclusion and states the remaining 77 rivers will be stripped of interim protections; pages 34-39 reflecting the broad analysis that lead to suitability decisions; and Appendix I of the ROD
- The FEIS on page 47 (Section 2.3.11), which rejected consideration of an alternative that would have managed all 88 rivers found eligible for inclusion in the Wild and Scenic Rivers system using interim protection measures so as to protect and enhance their outstandingly remarkable values;
- The FEIS on page 47 (Section 2.3.12), which rejected consideration of an alternative that would have found all 88 rivers found eligible for inclusion in the Wild and Scenic Rivers system to also be suitable for inclusion, based upon

undefined “resource opportunities and concerns within and/or adjacent to these river corridors” that “were determined to warrant management actions that would be inconsistent with management direction under wild and scenic classification.”

- The FEIS, Appendix F: Nez Perce-Clearwater National Forests Wild and Scenic River Suitability (Nov. 2023) which, in multiple locations, provides an incomplete and unsupported consideration of the suitability for inclusion in the National Wild and Scenic Rivers System of 77 of the 88 rivers that were determined eligible for inclusion, and recommends that those 77 rivers be found not suitable.

**B. The Draft ROD, FEIS, and Forest Plan are contrary to the WSRA, National Environmental Policy Act (NEPA), the FSH, and present a flawed suitability analysis**

The Forest Service failed to consider a reasonable range of alternatives with respect to their findings of suitability under the WSRA. In particular, by failing to consider an alternative that would preserve interim protections for all “eligible” rivers, regardless of suitability, as well as additional reasonable alternatives, the Forest Service fails to meet the clear direction of NEPA.

The Forest Service takes an incomplete, one-sided, and flawed approach in its suitability analysis when reviewing potential benefits and impacts related to Wild and Scenic River designation. Throughout the ROD, FEIS, and Appendix F, the Forest presents its analysis often solely from the standpoint of curtailed timber production and perceived management curtailment as a result of WSRA protections that are unfounded and lead to flawed non-suitability findings.

The parts of the Draft ROD, FEIS, and Forest Plan to which this Objection applies include, but are not limited to, the following:

- The FEIS on page 47 (Section 2.3.12), which rejected consideration of an alternative that would have found all 88 rivers found eligible for inclusion in the Wild and Scenic Rivers system to also be suitable for inclusion, based upon undefined “resource opportunities and concerns within and/or adjacent to these river corridors” that “were determined to warrant management actions that would be inconsistent with management direction under wild and scenic classification.”
- Appendix F in its entirety
- The Draft ROD Appendix I in its entirety

**C. The Aquatic Ecosystems plan unacceptably alters the riparian area framework established under PACFISH/INFISH and in doing so fails to adequately protect ESA-listed fish and their designated Critical Habitat.**

The FEIS, ROD, and LMP fail to protectively manage the aquatic ecosystems and riparian areas that ESA-listed aquatic species depend on for survival and is contradictory to the Presidential Memorandum signed September 27th, 2023 directing Federal Agencies to advance the

recovery of Columbia Basin Salmon and Steelhead. The resulting changes in the Forest Plan will result in adverse impacts on ESA-listed species as well as their habitat.

The parts of the Draft ROD, FEIS, and Forest Plan to which this Objection applies include, but are not limited to, the following:

- The FEIS under Section 3.2.8 Aquatic Ecosystems and Fisheries
  - *Environmental Consequences* - pages 485, 489, 490, 497
  - Sections - *Riparian Management Zones Environmental Consequences, Aquatic Habitat Environmental Consequences, and Aquatic Species Environmental Consequences*
  - *Cumulative Effects* - pages 561-562
  - Section - *Effects to Resource from Other Resources*
  - Section - *Comparison of No Action Alternative (PACFISH/INFISH) vs. Action Alternatives (ARCS PLAN COMPONENTS) under Timber Harvest and Vegetation Management and Conclusions*
    - Specifically, page 609
- The Forest Plan under Aquatic Ecosystems
  - Section - *Riparian Management Zones*
    - Specifically - FW-STD-RMZ-01

## **II. Concise Statement explaining the objection and suggestions on how the decision may be improved.**

### **A. Wild and Scenic River Eligibility, Suitability, and Interim Protections**

In the Draft ROD, FEIS, and Forest Plan, the Forest Service wrongly and unlawfully relied upon new Forest Service-initiated “suitability studies” as the basis for the agency’s determination that only those segments found to be “suitable” for inclusion in the National Wild and Scenic Rivers System would receive “interim protection measures” to preserve their free-flowing state and their outstandingly remarkable values.

The Forest Service’s decision in this regard runs counter to the WSRA, the agency’s own 2012 Planning Rule at 36 C.F.R. Part 219, and other pertinent agency guidance. It is also without precedent; to the best of our knowledge, all other National Forests within the region that have completed new or revised forest plans since the promulgation of the 2012 Planning Rule have not conducted suitability determinations as part of the forest planning process, nor have they stripped interim protections from eligible rivers based on prior findings of unsuitability as part of a forest plan.

The Forest Service’s flawed decision excludes 77 rivers or river segments within the Nez Perce-Clearwater National Forest, previously found to be eligible, from further consideration of their potential for inclusion in the National Wild and Scenic Rivers system, and administratively strips them of their interim protection under the WSRA and the 2012 Planning Rule. Under the

Draft ROD and Forest Plan, these rivers would no longer be managed in a way that protects their wild and scenic eligibility.

The Forest Service's decision may be improved by revising the Draft ROD, FEIS, and Forest Plan to clarify that all rivers or river segments previously found to be eligible for inclusion in the National Wild and Scenic Rivers system will be managed to protect their free-flowing state and their outstandingly remarkable values under interim protections. More specifically, the Forest Plan should be revised to include "plan components, including standards or guidelines, to provide for . . . management of rivers found eligible . . . for the National Wild and Scenic River system to protect the values that provide the basis for their suitability for inclusion in the system." 36 C.F.R. § 219.10(b)(1)(v).

This management directive should include interim protections for the 77 rivers determined to be eligible but found not suitable in the Forest Suitability Report.<sup>1</sup>

**B. The Draft ROD, FEIS, and Forest Plan are contrary to the WSRA, National Environmental Policy Act (NEPA), the FSH, and present a flawed suitability analysis**

**1. Insufficient evaluation of reasonable alternatives:**

The Draft ROD, FEIS, and Forest Plan propose a narrow range of alternatives, including only four action alternatives. This narrow range doesn't meet the requirements of NEPA and is contrary to the WSRA and APA in several respects.

The Forest Service took an unreasonably narrow approach when evaluating alternatives related to the WSRA. In particular, the Forest Service failed to consider an alternative that would find each "eligible" river or section to be found "suitable" for inclusion in the Wild and Scenic River System or to consider an alternative in which all "eligible" rivers or sections would retain interim protections, regardless of suitability. Both of these alternatives were requested to be considered by Idaho Rivers United and partner organizations in a 2018 letter to the Forest Service and prior comments submitted during the scoping process.

The Forest Service failed to consider an alternative that would find all 39 rivers or sections that were found suitable under at least one alternative presented in the DEIS to be suitable in a new alternative or the presented Preferred Alternative. If these rivers or sections were suitable under any alternative, they must be considered suitable under the Preferred Alternative.

Additionally, the Forest Service failed to meaningfully disclose, consider, and analyze the benefits of the No Action Alternative and the related impacts of the Preferred Alternative caused by removing streams that are afforded Wild and Scenic eligibility protections under the No Action Alternative.

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<sup>1</sup> See USFS, Appendix F: Nez Perce-Clearwater National Forests Wild and Scenic River Suitability. While no formal eligibility study was presented in the FEIS, 88 rivers were analyzed to determine suitability. In order to be considered suitable, a river must first be determined to be eligible. The 77 sections of river deemed not to be suitable must still be considered eligible and afforded interim protection

The Forest Service's decision may be improved by revising the Draft ROD and the FEIS should be revised to include consideration of the alternatives and analysis mentioned above.

**2. The FEIS Appendix F: Nez Perce-Clearwater National Forest Wild and Scenic River Suitability and Draft ROD Appendix: I presents false conclusions and unsupported findings leading to incorrect "non-suitable" determinations**

Throughout the FEIS and Draft ROD Appendix I, the Forest Service's suitability study and analysis contain many crosscutting flaws that affect many rivers and their suitability determinations. Principally, the Forest Service wrongly found many rivers to be "unsuitable" based on misinterpretation of the Wild and Scenic Rivers Act's limitations on management activities. The Forest Service also finds many rivers unsuitable based on additional misinterpretations of the limits that the Wild and Scenic Rivers Act places on timber and fuel treatments. Additionally, the Forest Service wrongly finds many rivers unsuitable for designation because they are under other protective designations such as Wilderness or the Idaho Roadless Rule.

The FEIS should be revised to include consideration of the alternatives mentioned above and to include a more robust and complete suitability study that complies with the FSH. Such a study should consider the broad and river-specific errors we point out later in this objection, as well as the vast public support for retaining these rivers' eligibility protections.

**C. Fisheries issues**

The Aquatic Ecosystems portion of the Forest Plan does *not*, "...carry forward or improve upon the PACFISH and INFISH Biological Opinion (PIBO) direction that has been shown to have been effective in halting aquatic degradation at landscape scales."<sup>2</sup> Instead, the revised plan in fact lowers the burden of proof for a wide array of vegetation management or timber harvest operations in the riparian area. Specifically, it allows for extractive timber harvest activities beyond those solely designed to restore and enhance aquatic and riparian-associated resources; the plan opens the door for such activities to occur, with fuel loading and silvicultural desired conditions in mind, as near as 150 feet away from fish-bearing streams, as FW-STD-RMZ-01 outlines. In doing so, the plan effectively shrinks the riparian buffer established under PIBO direction and does not afford adequate protection to ESA-listed aquatic species or their habitat.

In the Draft ROD, it is clearly stated that the outcome of the presented Plan and programmatic action are "Likely to Adversely Affect Bull Trout and their Critical Habitat; Snake River Steelhead and their Critical Habitat; Snake River Spring/Summer Chinook Salmon and their Critical Habitat; and Snake River Fall Chinook Salmon and their Critical Habitat". While the FEIS analysis attempts to reduce the impact of these findings to individuals, changes in management

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<sup>2</sup> FEIS, page 485

in the riparian zone and the subsequent degradation that is possible will likely be felt at a population level for ESA-listed salmonids in the Forest that are already in danger of extirpation.

The Forest Service can improve upon the plan by reevaluating the LMP and FEIS to adjust Objectives, Standards, and Guidelines in such a manner that more fully carries forward protections from the PIBO as well as ensure that the plan will not result in adverse impacts to ESA-listed aquatic species and their habitats.

### **III. Detailed statement of the objection**

#### **A. By failing to protectively manage rivers found to be eligible for wild and scenic designation in the Draft ROD and Forest Plan for the Nez Perce-Clearwater National Forest, the Forest Service acted arbitrarily, capriciously, and contrary to law and agency policy.**

##### **1. The Forest Service lacks the authority under the Wild and Scenic Rivers Act or its 2012 Planning Rule to use “suitability studies” to administratively release from interim protections those rivers already found eligible for designation under the Act.**

At the outset, the Forest Service lacks the legal authority to use suitability studies as a means to forever release from interim protection and abandon rivers or river segments deemed by the agency to be “unsuitable” for designation under the Act, either as part of or separate from the forest planning process. This is especially true where those rivers have already been found *eligible* for designation under the Act and in previous Forest Plans.

Section 5(d)(1) of the WSRA states that, “[i]n 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[.]” 16 U.S.C. § 1276(d)(1). The Act itself does not define what a “potential national wild, scenic and recreational” river is, but federal case law suggests that the phrase means rivers that may warrant designation under the Act, as opposed to rivers the Forest Service may wish to exclude from further consideration. See, e.g., *Ctr. for Biological Diversity v. Veneman*, 335 F.3d 849, 854 (9th Cir. 2003), *opinion withdrawn and superseded on reh'g*, 394 F.3d 1108 (9th Cir. 2005) (construing 16 U.S.C. § 1276(d)(1) in the context of rivers the Forest Service had “determine[d] to be *potentially eligible* for inclusion in the national wild and scenic rivers systems.”) (emphasis added by the Ninth Circuit).

Indeed, *Veneman* lends credence to an interpretation of the WSRA that permits the use of suitability studies only as vehicles for recommendations to Congress—not for the removal of interim protections for eligible rivers. As the Ninth Circuit explained,

[F]or rivers added to the WSRS through the inventory process, the Forest Service determines the eligibility of a particular river first by establishing whether the river is free-flowing and possesses one or more ORV. If the river is found to have both

characteristics, the Service classifies the river as “wild,” “scenic,” or “recreational.” **Once the river has been deemed “eligible,” the Service conducts a suitability study before Congress makes the ultimate decision regarding designation.**

*Id.* at 855 (emphasis added). The *Veneman* court’s reference to a “suitability study” plainly implies an administrative antecedent to Congressional action—an agency recommendation only, not a license to remove substantive interim protections for rivers already deemed eligible for designation under the WSRA. The ability of Congress to make “the ultimate decision regarding designation” would clearly be undermined if eligible rivers lost their interim protections through administrative action resulting from an agency-initiated suitability study.

Consistent with Section 5(d)(1) of the WSRA, the Forest Service’s own 2012 Planning Rule imposes obligations on the agency to consider the eligibility of rivers for inclusion, and does not authorize “non-suitability” determinations as part of forest planning. First, the 2012 Planning Rule requires the agency, as part of the forest planning process, to:

[i]dentify 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.

36 C.F.R. § 219.7(c)(2)(vi) (emphasis added). Like the WSRA itself, the focus of the 2012 Planning Rule is thus on the identification of eligible rivers, and the rule says nothing about identification of rivers deemed suitable (or not) for designation. This stands in sharp contrast to the immediately preceding subsection of the rule, which instructs the Forest Service to “[i]dentify and evaluate lands that may be *suitable* for inclusion in the National Wilderness Preservation System and determine whether to recommend any such lands for wilderness designation.” 36 C.F.R. § 219.7(c)(2)(v) (emphasis added). Had the Forest Service intended for its Regions to identify the suitability of rivers as part of forest planning, it would have stated so explicitly—as it clearly knows how to do.

The 2012 Planning Rule also requires new or revised forest plans “to provide for” the 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.

36 C.F.R. § 219.10(b)(v) (emphasis added). The rule’s use of the conjunctive “or” indicates that the Forest Service is required to protect rivers that fall within either of the two categories. Thus, rivers “found eligible” must be protected, just as rivers “determined suitable” for inclusion in the National Wild and Scenic River system must be protected by a revised forest plan.

Support for this approach is found in Forest Service guidance. The Forest Service Handbook, for example, makes clear that because Congress is the ultimate decision-maker regarding Wild and Scenic River designation, rivers found by the agency to be eligible should be managed to preserve their eligibility characteristics until Congress makes its decision. See Forest Service Handbook, FSH 1909.12–Land Management Planning Handbook, Ch. 80–Wild and Scenic Rivers, at 26–27 (“Forest Service Handbook”) (“The planning rule at 36 CFR 219.10 provides for interim management of Forest Service-identified eligible or suitable rivers or segments, to protect their values prior to a congressional decision whether to designate them as part of the National System.”).

Notably, in the “Background to Forest Land Management Planning” and the “Decision Framework” section of the FEIS (1.3 and 1.6 respectively), the Forest Service incorrectly interprets the direction provided by the 2012 Planning Rule. By combining 36 C.F.R. § 219.7(c)(2)(v) and 36 C.F.R. § 219.7(c)(2)(vi), the Forest takes broad liberties regarding suitability that goes well beyond what is clearly stated within the Planning Rule.

The Forest inconsistently applies their interpretation of the Planning Rule. On page 1 of the new Forest Plan, the nine primary decisions made during planning are listed. Here, while combining the mandate of the Planning Rule for Wilderness and Wild and Scenic River Systems, they correctly state that they are to determine “rivers eligible for inclusion in the National Wild and Scenic River System” without conflating the misguided suitability analysis. As mentioned above, in the FEIS, the Forest incorrectly points towards the 2012 Planning Rule as providing authority for suitability analysis:

All rivers found eligible were then analyzed for their suitability status, as outlined in FSH 1909.12 Chapter 80, under the direction of the 2012 Planning Rule which states “eligible river segments may be evaluated for their suitability for inclusion in the Wild and Scenic River System during the plan revision process”

FEIS p. 1685. The quote provided which the Forest is relying on for their suitability rationale, contrary to its presentation, is not found within the 2012 Planning Rule, nor is it found within chapter 80 of the Forest Service Handbook. Again it appears that the Forest has taken liberties to rewrite and interpret guidance provided to them to justify their attempt to release eligible stream sections from interim protections and future suitability analysis.

In sum, both the WSRA and the 2012 Planning Rule require the Forest Service to identify *eligible* wild and scenic rivers as part of the forest planning process, and to provide for the management of those eligible rivers so as to “protect the values that provide the basis for their suitability for inclusion in the system.” 36 C.F.R. § 219.7(c)(2)(vi). They do not, however, authorize the use of either forest plans or so-called “suitability studies” as a means to strip away such interim protections from eligible rivers.

## **2. The Forest Service must protectively manage all rivers and river segments within the Nez Perce-Clearwater National Forest found to**

**be eligible for inclusion in the Wild and Scenic River System,  
including those found eligible in previous inventories and studies.**

As noted in the ROD, throughout the FEIS and Appendix F, the Forest Service initiated a new Wild and Scenic River eligibility and suitability study in 2017. This study identified 88 rivers or river segments as eligible for inclusion in the Wild and Scenic River system.

Within this analysis, the Forest Service determined that of the 88 identified eligible river sections, 11 were found to be suitable with the Little North Fork Clearwater River remaining eligible with no decision rendered regarding its suitability for inclusion in the Wild and Scenic Rivers system. The ROD clarifies these findings as well as the decision regarding interim protection measures that are afforded to both eligible and suitable sections:

These 11 rivers, plus the Little North Fork Clearwater River, in which no suitability determination was made as part of this planning process, will be subject to the interim protection measures in the Eligible and Suitable Wild and Scenic Rivers portion of the land management plan. The rivers found not suitable, will not be subject to these measures.

However, there are no changed conditions or other factual circumstances that might render any of those 77 other rivers no longer eligible for designation or to warrant the removal of interim protections. Streams that were found eligible in previous Plans and those found eligible in the 2017 study were eligible then, and they remain eligible today. Accordingly, under the WSRA and the 2012 Planning Rule, the Forest Plan must provide for their interim protection, notwithstanding the findings of the 2017 Suitability Study.

While clear in policy and law, protecting eligible streams regardless of suitability findings also makes sense. Suitability factors change rapidly and quickly become inaccurate. For example, the political ripeness lens of suitability sunsets quickly with each election and with each shift in public awareness and opinion. Practically, securing a successful straw poll of support for designation at precisely the same time as a forest planning decision is nearly impossible. If such straw polls can render streams ineligible in the next forest plan and beyond, then over a very short timeframe the potential Wild and Scenic rivers on our public lands with interim protection would be ratcheted down to nearly none. To do this would be, and is, inconsistent with the language and intent of the Wild and Scenic Rivers Act. This is especially true because eligible and suitable rivers receive the same protections in Forest Plans and the same consideration in Congress. There is no conservation value to suitability in the context of forest planning. It is solely a release tool.

**B. The Draft ROD, FEIS, and Forest Plan is contrary to the WSRA, National Environmental Policy Act (NEPA), and Forest Service Handbook**

- 1. The Forest Service wrongly declined to consider in detail four alternatives that would add or maintain protection for eligible rivers.**

Comprehensive analysis of viable alternatives is “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14 (2016). NEPA requires federal agencies to “[r]igorously explore and objectively evaluate all reasonable alternatives to a proposed project.” *Ctr. For Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008) (quoting 40 C.F.R. § 1502.14(a) (2016)). This requirement includes an analysis of alternatives that “will avoid or minimize” a proposal’s adverse effects. 40 C.F.R. § 1500.2(e) (2016); see also 46 Fed. Reg. 18026, 18027 (Mar. 23, 1981) (CEQ’s Frequently Asked Questions on NEPA). “One of the benefits of a comprehensive environmental impact statement, which requires that all reasonable alternatives be analyzed and evaluated, is that it may be able to break through any logjam that simply maintains the precarious status quo.” *National Wildlife Fed’n v. National Marine Fisheries Serv.*, 184 F. Supp. 3d 861, 876 (D. Or. 2016). Comprehensive analysis of alternatives “may allow, even encourage, new and innovative solutions to be developed, discussed, and considered.” *Id.*

The Forest Service wrongly rejected from detailed consideration four alternatives that would have afforded additional protection to rivers found eligible, or potentially eligible, for designation under the WSRA. See FEIS at 47. These alternatives were proposed by river conservation groups, including Idaho Rivers United in our Draft EIS comments.

One rejected alternative would have found additional rivers within the national forest to be eligible for designation under the WSRA. See FEIS at 47, § 2.3.9. The Forest Service rejected that alternative out of hand, based upon its internal finding that just 88 rivers in the national forest are eligible. *Id.* The Forest Service all but admits that its process—begun in 2015 and presumably based upon data and information available to its “interdisciplinary team” at that time—ignored, or at best failed to incorporate and substantively respond to, the additional information (including identification of additional ORVs for additional rivers within the national forest) provided by stakeholders. *Id.* This approach is flawed and contrary to NEPA.

Another rejected alternative would have deferred any suitability studies or findings of non-suitability and instead managed all eligible rivers under interim protection. See FEIS at 47, § 2.3.10. The FEIS does not explain why this alternative is inconsistent with the purpose and need of the revised Forest Plan, and instead wrongly asserts that the “2012 Planning Rule requires that National Forests include the evaluation of rivers for potential inclusion as a Wild and Scenic River under the Wild and Scenic River Act of 1968.” *Id.* This statement, as applied here by the Forest Service, grossly misstates the applicable legal and regulatory requirements.

As stated above, the WSRA requires that “consideration shall be given by all Federal agencies involved to potential national wild, scenic and recreational river areas” in the planning process, 16 U.S.C. § 1276(d)(1), while the 2012 Planning Rule requires the Forest Service to both “[i]dentify the eligibility of rivers for inclusion in the National Wild and Scenic Rivers System” and “provide for . . . [the] management of rivers found eligible” for the system. 36 C.F.R. §§ 219.7(c)(2)(vi), 219.10(b)(v). These provisions do not require any suitability study as part of the forest planning process, nor do they allow for any definitive findings of non-suitability (and resulting stripping of interim protections) of the kind made by the Forest Service here, and

indeed the FSH gives the Forest Service discretion not to make suitability determinations as part of the forest planning process. FSH 1908.12, Ch. 83.

A third rejected alternative would have continued to provide interim protective management to all rivers found eligible for designation under the WSRA. See FEIS at 47, § 2.3.11. The Forest Service wrongly rejected this alternative based solely on its misreading of the FSH for the proposition that “eligible rivers found not suitable need not be managed under interim protection measures[.]” Id. This goes against decades of Forest Service precedent and past practice, which until very recently has always afforded interim protections to eligible rivers to preserve their free-flowing condition and ORVs pending Congressional action.

The final alternative rejected for further analysis would include all 88 eligible river segments as suitable. Here, once again, the Forest Service wrongly rejected this alternative on a misreading of the FSH. The Forest Service emphasizes its own flawed suitability analysis as the basis for throwing this alternative out that relies on claims that “the ability to protect these river values through other regulatory and administrative means” was enough to not consider this alternative in detail. The FSH at 1909.12, Ch. 80 83.32d outlines the Agency direction for suitability analysis conducted during plan revision. Here it clearly recommends that the Forest Service should include an alternative “in which all eligible segments are found suitable and are recommended for Congressional designation”.

In sum, the Forest Service provided insufficient basis to reject these proffered alternatives, and since each of them is consistent with the purpose and need of the Forest Plan, the FEIS should be revised to consider them in detail.

**2. For those alternatives considered in the FEIS, the Forest Service failed to explain, for each considered alternative, what the impacts would or would not be for potential wild and scenic rivers.**

When the Forest Service chooses to conduct a suitability study as part of forest planning, the FSH requires that

every study report and environmental analysis document must present an array of alternatives broad enough to encompass all reasonable proposals for use of the river area. Each alternative should be clear as to whether the river segment is found suitable or not suitable, and whether interim protection measures will apply or not. Each alternative should identify the plan components that would be added, removed, or modified. If the emphasis of an alternative is to protect the outstandingly remarkable values by means other than designation, include in that alternative any plan components needed to do so.

FSH 1908.12, Ch. 83.32d. The discussion of the alternatives considered in the FEIS falls short of this requirement:

- For Alternative W, the FEIS summarily states only that “Alternative W includes twelve rivers as suitable wild and scenic rivers” without mention of interim measures or any plan components that would be added, removed, or modified as a result of that alternative. FEIS at 40.
- For Alternative X, the FEIS states only that “Alternative X allocates zero suitable wild and scenic rivers. Rivers that are referred to in the State of Idaho Department of Water Resources River Plan are managed consistently with that plan, which includes provisions to protect water quality and maintain free flow.” FEIS at 40. There is no discussion of which rivers, if any, are referred to in the Idaho River Plan, or of what provisions protect the water quality and free-flowing condition of those rivers.
- For Alternative Y, the FEIS states that “Fourteen rivers are found suitable in Alternative Y, including the South Fork Clearwater and North Fork Clearwater” without mention of interim measures or any plan components that would be added, removed, or modified as a result of that alternative.
- For all Alternatives, including the Preferred Alternative, there is no detail provided regarding the plan components that would protect specific ORVs in lieu of designation. It is often stated that designation would be redundant because of varying plan components, but none are ever identified to allow the public an opportunity to accurately assess if the ORVs in question are indeed sufficiently protected by plan components or any attempt to help identify which components should be referenced.

Equally problematic and arbitrary is that there is no rational explanation provided in the FEIS or the Study Report included as Appendix F for the allocation of suitable rivers between the various alternatives. Although the FEIS briefly acknowledges that the “alternatives vary in the quantity and location of suitable wild and scenic rivers,” FEIS at 192, and that the “different alternatives recommend varying numbers of rivers for Wild and Scenic suitability and eligibility,” FEIS at 489, the Forest Service offers no rational basis for simultaneously considering Alternative Z (which would find 37 rivers suitable for wild and scenic designation) as well as Alternatives W, X, Y, and the Preferred Alternative (which would only find twelve, zero, fourteen, and eleven rivers, respectively, to be suitable for wild and scenic designation). In short, the number and choice of specifically proposed suitable rivers included in each alternative is entirely random. This grab-bag approach to assembling a range of alternatives for consideration in the FEIS defies common sense and is contrary to NEPA.

In addition, the Forest Service arbitrarily decided to not disclose the impacts of the action alternatives through a comparison with the No Action Alternative. The Forest Service explained this choice:

Although the No Action Alternative encompasses the greatest acreage and river miles, these river segments are further away from final designation decision than rivers considered in other alternatives. This alternative would maintain the status of these rivers as eligible and defer a suitability study to a later date. A suitability

study provides the basis for determining which eligible rivers or river segments should be recommended to Congress as potential additions to the National System. Due to the unknown outcome of a future suitability determination on rivers in the No Action Alternative, a direct comparison to the action alternatives is unwarranted, as it would be speculative. FEIS at 1692.

This statement is flawed for several reasons.

First, the claim that eligible rivers are “further away from final designation” is not supported by evidence and is false. Designations result from the public working with legislators to craft and pass legislation, largely irrespective of agency determinations. In practice, most modern designations are of eligible streams, and a smaller number are of streams either deemed suitable or not deemed eligible. Suitability determinations are no more valuable than eligibility determinations in securing designations, and indeed the fleeting opinions captured in suitability findings are quickly made irrelevant by elections, staff changes, and changes on the ground. While Agency testimony is certainly helpful in securing designations, such testimony seldom is (and need not be) supported or limited by a river’s suitability. Suitable rivers are no closer to designation than eligible rivers.

Second, speculating on the unknown outcome of a suitability determination is not relevant to comparing the effects of the alternatives under the forest plan. Both eligible and suitable rivers are managed identically in the forest plan, and that is what matters. The identical management of eligible streams in the No Action Alternative and the suitable streams in the action alternatives are described in plan components on pages 96 through 98 of the forest plan. Therefore speculating about whether an eligible river will become suitable is irrelevant. Speculating about whether rivers will be designated is out of scope in the context of Forest Planning.

The effect of the unfounded decision to not compare the No Action Alternative is significant. It hides from the public the fact that the Preferred Alternative marks a dramatic loss of river protections. Since 1990 the Forest Service has protected 29 streams totaling 559 miles as potential Wild and Scenic Rivers and would continue to do so under the No Action Alternative, whereas under the Preferred Alternative, the Forest Service will only protect 12 rivers as potential Wild and Scenic Rivers totalling 238 miles. This is a massive loss of protection for some of our Nation’s finest rivers and streams. The Forest Service should clearly show the effects of all alternatives, including the No Action Alternative, with equal treatment.

**3. The FEIS Appendix F: Nez Perce-Clearwater National Forest Wild and Scenic River Suitability and Draft ROD Appendix: I presents false conclusions and unsupported findings leading to incorrect “non-suitable” determinations**

Below, several overarching flaws are addressed that can be found throughout the suitability analysis presented in Appendix F as well as Appendix I to the Draft ROD. In addition to presenting the following issues that can be attributed to the majority of rivers found to be “not suitable”, issues and inconsistencies found within specific river suitability analysis narratives are included.

**a) The Forest Service wrongly found many rivers unsuitable based on a misinterpretation of the Wild and Scenic Rivers Act’s limits on restoration activities**

Across the analysis of many rivers, the Forest Service claims that Wild and Scenic eligibility or suitability would prevent, limit, or curtail aquatic and upland restoration work. This false premise creates a false choice between river protection and restoration activities, both in and beyond the river corridor in question. The Forest Service Handbook clearly states that the agency may conduct stream and upland restoration activities in an eligible or suitable Wild and Scenic River corridor.<sup>3</sup> The Interagency Council agrees.<sup>4</sup>

The Forest Service would only need to ensure that restoration activity would not have a “direct and adverse effect” on, or “substantially interfere with,” the recognized values of the river. This is a very permissive standard, based on section 10(a) of the Wild and Scenic Rivers Act that allows such uses and places no undue or significant burden on the Agency, particularly in light of the many assurances in the plan that the Agency will protect the values whether or not they are deemed eligible or suitable for designation. Furthermore, many recognized values would benefit from restoration work, and such work would be highly compatible with eligibility or suitability findings. Claims that suitability findings would prevent, limit, or curtail restoration work should be struck from the planning analysis

In nearly every situation in which a river or river segment was found to be unsuitable, the rationale can be found that designation may hinder restoration activities that the Forest Service wishes to conduct. However, as directed by the FSH, the Forest Service seems to have not considered the “recommendation to designate eligible segment(s) at a less restrictive classification (for example, scenic to recreational) to allow a specific resource activity”.<sup>5</sup>

To be clear, we do not advocate for this practice to be adopted in every situation and a detailed rationale must be presented if the Forest Service were to pursue this option, but it appears that in the suitability analysis of rivers, the Forest Service stopped short of exploring all options available to them that would maximize protections and management flexibility.

**b) The Forest Service wrongly found many rivers unsuitable based on a misinterpretation of the Wild and Scenic Rivers Act’s limits on Timber, Fuels, and Habitat Management Activities.**

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<sup>3</sup> Forest Service Handbook 1909.12 – Ch. 80, Section 84.3(8): Interim Protection Measures for Eligible or Suitable Rivers.

<sup>4</sup> A Compendium of Questions & Answers Relating to Wild & Scenic Rivers: A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council. 2018. Pg. 50. Available at: <https://www.rivers.gov/sites/rivers/files/2023-07/q-a.pdf>

<sup>5</sup> Forest Service Handbook 1909.12 - Ch. 80, Section 83.32d(3)

Across the analysis of many rivers, the Forest Service claims that Wild and Scenic eligibility or suitability would prevent, limit, or curtail timber management, fuels reduction, and wildlife habitat management efforts. Like with restoration, this false premise creates a false choice between river protection and other uses. The Forest Service Handbook clearly states that the agency may conduct timber management activities (including for fuels and wildlife benefits) in an eligible or suitable Wild and Scenic River corridor.<sup>6</sup> The Handbook states that for Scenic and Recreational rivers:

A range of vegetation management and timber harvest practices are allowed, if these practices are designed to protect users, or protect, restore, or enhance the river environment, including the long-term scenic character.

Timber management (and prescribed fire) is even permissible in Wild River corridors if associated with ORVs or to suppress wildfires.

Cutting of trees and other vegetation is not permitted except when needed in association with a primitive recreation experience, to protect users, or to protect identified outstandingly remarkable values. Examples of such exceptions include activities to maintain trails or suppress wildfires.

The Interagency Council agrees with these recommendations and concludes that:

WSR designation is not likely to significantly affect timber management activities beyond existing measures to protect riparian zones, wetlands, and other resource values as guided by other federal requirements.<sup>7</sup>

These are very permissive standards, based on section 10(a) of the Wild and Scenic Rivers Act which allows uses that do not substantially interfere with river values, and places no undue or significant burden on the Agency. The kind of work being proposed by the Agency - to protect rare habitats, communities, and wildlife habitat - is possible with basic care given to the rivers, which the public expects of the Agency. Claims that suitability findings would prevent, limit, or curtail timber management, fuels reduction, and timber-related wildlife habitat work should be struck from the planning analysis.

**c) The Forest Service wrongly found many rivers unsuitable, inconsistent with Endangered Species Act Recovery Goals and a September 2023 Presidential Memorandum**

Throughout the study, there is an incredibly high volume of rivers or river segments with fish as a primary ORV leading the eligibility criteria, many of which are specifically focused on ESA-listed species. For the vast majority of these rivers, it is clearly stated within the Draft ROD Appendix I and Appendix F that designation would be redundant as “Land Management Plan components for fisheries, aquatic resources, and riparian habitats, as well as standard design criteria and mitigations will serve to protect the free flow, water quality, and habitats of these rivers, supporting the preservation of these species”.

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<sup>6</sup> Forest Service Handbook 1909.12 – LAND MANAGEMENT PLANNING HANDBOOK CHAPTER 80 – WILD AND SCENIC RIVER EVALUATION, Section 84.3(9): Interim Protection Measures for Eligible or Suitable Rivers.

<sup>7</sup> A Compendium of Questions & Answers Relating to Wild & Scenic Rivers: A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council. 2018. Pg. 39. Available at: <https://www.rivers.gov/sites/rivers/files/2023-07/q-a.pdf>

However, that stands clearly at odds with statements made within the Draft ROD's Endangered Species Act section that states bluntly that the "proposed framework programmatic action are Likely to Adversely Affect Bull Trout and their Critical Habitat; Snake River Steelhead and their Critical Habitat; Snake River Spring/Summer Chinook Salmon and their Critical Habitat; and Snake River Fall Chinook Salmon and their Critical Habitat".

Given this fact, all rivers that possess ORVs related to ESA-listed aquatic species, as well as special status species must, at minimum, retain eligibility and interim protections to better protect these species and their habitats.

This analysis presented in the Draft ROD Endangered Species Act section highlights the deficiencies included in the plan as it relates to the management and protection of ESA-listed fish and their habitats. Additionally, this is contrary to the September 27th, 2023 Presidential Memorandum directing all Federal Agencies to act to the full extent of their authority to advance and support salmon and steelhead recovery. Moving forward with the plan, as presented, is a clear deviation from the Memorandum as well as ESA recovery goals and recommendations.

**d) The Forest Service wrongly found many rivers unsuitable because they were under other protective designations like Wilderness.**

The Forest Service arbitrarily decided to find many rivers unsuitable partially or entirely because those rivers flow through Wilderness Areas or Roadless Area, essentially arguing that Wild and Scenic suitability has no benefit so why bother? Moose Creek is a prime example among many.

Many designated Wild and Scenic Rivers flow through designated Wilderness, including the Selway River, Salmon River, and Middle Fork Salmon in Idaho. The Interagency Wild and Scenic Rivers Council concurs:

Congress has frequently added WSR status to rivers flowing through national parks, national wildlife refuges and designated wilderness. Each designation recognizes distinct values for protection, and management objectives generally designed to not conflict. In some cases, WSR designations extend beyond the boundaries of other administrative or congressional area designations, thereby providing additional protection to the free-flowing condition and river values of the area.<sup>8</sup>

Wilderness areas do convey some level of protection to rivers flowing through them because they disallow road construction. Wilderness does not protect rivers against water developments and does not stop the development of mining claims that existed prior to an area's designation as wilderness. Simple protection by artifact of wilderness designation also does not provide assurances that the ORVs identified and monitored under a finding of Wild and Scenic suitability will be protected. Nowhere in the Wilderness Act or within the Wilderness Character Monitoring Framework are *river* values specifically identified, characterized, or monitored for change

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<sup>8</sup> A Compendium of Questions & Answers Relating to Wild & Scenic Rivers: A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council. 2018. Pg. 44. Available at: <https://www.rivers.gov/sites/rivers/files/2023-07/q-a.pdf>

against thresholds intended to protect them. Asserting that there are no compelling benefits to Wild and Scenic suitability simply because wilderness protects against road building is unfounded.

While we acknowledge that eligibility and suitability determinations have lessened benefits in protected areas, it is unreasonable - and unmoored from the common practice of designating such rivers - to find such rivers unsuitable. We also note that the Forest Service finds rivers unsuitable both because some rivers are under protected designations like Wilderness, and also because other rivers are not protected as Wilderness, in a classic catch-22.

#### **e) Lack of economic analysis**

On page 23 of Appendix F, the Forest Service outlines its criteria for determining suitability and the five questions to address. One of which is “[w]ill the benefits of designation exceed the benefits of non-designation?”. In each river analysis section that follows, a strong emphasis is placed on the perceived potential negative economic impact that would result within eligible, suitable, or designated river corridors with no discussion related to the very real economic benefits. In general, the suitability study places an undue focus on the loss of timber base with no consideration of the “reasonably foreseeable potential uses of the land and water that would be enhanced” as a consequence of designation as required by the FSH.

The Draft ROD acknowledges this point when describing that the primary regional economic contributions from National Forests stem from the forest product sector as well as contributions from the recreation-based economies. Further, it is stated that “contributions to the recreation related resources are harder to define and harder to quantify. However, they are real”. While it may be more complex to analyze the economic benefits of the recreational economy compared to that of suitable acres for timber production, in order to present a complete suitability assessment, economic factors must be a part of the calculation.

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.” The Forest Plan, FEIS, and Appendix F do not account for the outdoor recreation industry’s economic impacts on the region. The outdoor recreation economy in Idaho rivals the size of the agricultural industry at \$7.8 billion in annual consumer spending, and Wild and Scenic Rivers in particular have a 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.” Without a comparable assessment and analysis in the FEIS, the

document is incomplete and lacks a robust comparison of alternatives.

**f) River-Specific non-suitability determination issues**

**(1) The North Fork Clearwater River was wrongly found not suitable**

The Forest Service presents a lengthy analysis and discussion of the merits of suitability for the North Fork Clearwater River and rightly highlights the ORVs of recreation, scenic, cultural, Nez Perce cultural, fish, wildlife, and botany.

During the discussion of recreational values possessed by the North Fork Clearwater in Draft ROD Appendix I, the Forest Services attempts to argue that due to the proximity of other rivers known for their boating opportunities, the North Fork is somehow less suitable. This argument misses the mark of precisely why this river is deserving. Many boaters seek the North Fork Clearwater and its tributaries to avoid the crowds and popularity of the Lochsa, Middle Fork Clearwater, or other popular stretches within the general area. Further, the North Fork Clearwater River is unique in that it provides nearly 80 continuous unpermitted forested boatable miles punctuated by an unmatched number of dispersed campsites, characteristics that differentiate it from popular multi-day and day-trip rivers like the Lochsa, Selway, Middle Fork Clearwater, Main Salmon, and Middle Fork Salmon. Section 1(b) of the Wild and Scenic Rivers Act clearly states that the act intends to ensure that rivers that possess qualified ORVs “be protected for the benefit and enjoyment of present and future generations.” Simply because other regional rivers provide similar benefits should have no bearing on suitability.

A similar argument is made regarding angling and fly fishing within the corridor, which is renowned by anglers and attracts out-of-state visitors from beyond the region of comparison. The Draft ROD notes that “Fishing pressure is increasing more dramatically in the upper reaches including Black Canyon.”<sup>9</sup> Although the Dworshak reservoir prevents the migration of fish from lower reaches below the dam to its headwater tributaries, this barrier also serves to prevent the introduction of invasive aquatic, thus making this river unique. The North Fork Clearwater remains one of the few streams in which anglers can legally fish for and catch bull trout, and it possesses the same high-quality angling benefits as Cayuse Creek, Kelly Creek, and its tributaries, which were found suitable.

While the Forest characterizes changes in recreational visitor use, it inaccurately states that “Implementation of any actions to address the need for additional dispersed or developed recreational areas could potentially be restricted because permanent protection and enhancement of all ORVs may not be feasible during or as a result of these activities.”<sup>10</sup> By definition, recreational classified segments allow the development of recreation, administrative, and river access facilities in close proximity to the river<sup>11</sup> (consistent with the confined nature of

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<sup>9</sup> Draft ROD, Appendix I p. 31

<sup>10</sup> Draft ROD, Appendix I p. 32

<sup>11</sup> FSH 1909.12 Ch. 80, Section 84.3(6)

this river corridor). The assumption that managing evolving recreational needs will be hampered by Wild and Scenic protections is unfounded.

FEIS Appendix F presents conflicting information regarding the likelihood of future hydroelectric projects within the river corridor. In question 10, the Forest states that “the history of damming on the river and the number of potential dam sites remaining on the river suggest legislation may be needed to prevent future dam building.”<sup>12</sup> By moving forward with a suitable determination, this would be solved in perpetuity. However, the Forest contradicts this statement in question 12 stating “the feasibility of hydrologic development seems highly unlikely in the foreseeable future.” While the political climate surrounding dam building is shifting, the appetite to advance new hydroelectric projects is much higher for rivers that already have dams and reservoirs or for which potential sites have been identified. It is imperative that the Forest Service take action now to permanently protect the North Fork Clearwater from any such future developments.

While the North Fork Clearwater basin encompasses over 800,000 acres and is deserving of landscape-scale restoration, the eligible river corridor in question, concerning management direction compatible with the Wild and Scenic Rivers Act, is just over 25,000 acres or roughly 3.125% of the total drainage acreage. The Forest conflates restrictions that would apply for the corridor with the entire drainage stating:

“Management activities to improve forest health, enhance wildlife and fish habitat, and achieve desired future conditions could be effect or foreclosed with designation”<sup>13</sup>

“...interim protection measures could reduce the ability to restore both aquatic and upland habitats.”<sup>14</sup>

“...restorative work in the corridor or uplands to other ecological needs may be limited due to the interim protective measures in the adjacent river corridor. This, in turn, would limit the resources available to mitigate water quality concerns within the river corridor.”<sup>15</sup>

“Applying interim protection measures that could potentially become permanent would limit the restoration work adjacent and within the corridor. This in turn could reduce the ability of the Forest to fund projects that both protect and enhance the fisheries ORV and protect the recreation ORV.”<sup>16</sup>

“...if the coastal disjunct systems are priority, their protection may demand management actions within the corridor, potentially at the expense of some other outstandingly remarkable value or other resource values. This could set up an untenable situation to protect and enhance competing outstandingly remarkable values without the flexibility to allow for some diminishment of any of them.”<sup>17</sup>

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<sup>12</sup> FEIS, Appendix F, P. 46

<sup>13</sup> Draft ROD, Appendix I, P. 42

<sup>14</sup> Draft ROD, Appendix I, P. 32

<sup>15</sup> Draft ROD, Appendix I, p. 33

<sup>16</sup> *Id*

<sup>17</sup> Draft ROD, Appendix I, p. 39

“...prioritizing the protection and enhancement of these seven values, through designation, in this relatively small area could potentially adversely affect the ability to implement other needed ecological restorative activities within the river corridor and adjacent areas.”<sup>18</sup>

“The application of interim protection measures through designation could benefit the seven outstandingly remarkable values, as intended, or complicate or eliminate the ability to implement actions to protect them.”<sup>19</sup>

However, earlier in the conclusion presented in the Draft ROD Appendix I, the Forest Service clearly states that “Designation as a wild and scenic river does not prohibit management activities within a river corridor or adjacent lands.”<sup>20</sup> While designation requires that management activities be conducted thoughtfully and intentionally, it is inaccurate to assume that the desired management activities intended to return the drainage, as well as the river corridor, to desired conditions or manage climatic change would be “foreclosed” as a result of designation. Nowhere in the Draft ROD is this erroneous claim more frequently and in more different ways than for the North Fork Clearwater River. As stated above (see 3 a-e), restoration, timber, and wildfire activities are allowed, and generally all uses that do not substantially interfere with the river’s values are allowed. The fact that protecting the rivers’ values may add a layer of complexity when designing projects is not a valid reason to find rivers unsuitable. The Forest wrongly interprets how curtailed their management prescriptions would be within this corridor and the relatively small percentage of the drainage that these restrictions would apply to.

## **(2) The South Fork Clearwater River was wrongly found not suitable**

Like other rivers, the South Fork of the Clearwater River was deemed unsuitable in all alternatives with little rationale provided. The South Fork has clear, extraordinary, and well-documented values, and the Forest Service analysis offers no reason to find the river unsuitable. It discloses the need to maintain the road and power lines which of course is allowed in Wild and Scenic corridors, and it cites the agency’s desire to log up to 6,014 acres without the hindrance of protecting the river values.<sup>21</sup>

The ROD admits that the South Fork “provides the same values as the Middle Fork Clearwater, Lochsa, and Selway rivers on the Forest that are already protected through designation as wild and scenic rivers,” yet arbitrarily finds the South Fork not worthy.<sup>22</sup>

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<sup>18</sup> Draft ROD, Appendix I, p. 41

<sup>19</sup> Draft ROD, Appendix I, p. 42

<sup>20</sup> Draft ROD, Appendix I, p. 40

<sup>21</sup> See FEIS Appendix F, pgs. 178-183.

<sup>22</sup> *ROD App. 1. Pg. 121*

The many values of the South Fork, and in particular Golden Canyon, far outweigh the added requirement to protect values during logging operations, and indeed much of Golden Canyon is not richly forested or even accessible to logging operations.

We strongly refute the claim that Golden Canyon does not draw people to the area for whitewater paddling. Golden Canyon is wildly different from the Salmon and Lochsa, and to the paddling community the Forest Service's characterization of the run as sub-par is uninformed at best.<sup>23</sup> The river has appeared in narrowly curated guidebooks as a destination and recently appeared in films highlighting the river's impressive power and rapids.

Like for other rivers, the Forest Service's opposition to suitability is based on the following false premise: "Protections through designation would only allow management activities that prioritize the protection and enhancement of these outstandingly remarkable values. This could potentially adversely affect the ability to implement other ecological restoration activities within and beyond the river corridor."<sup>24</sup> As stated elsewhere this is false, to the point of gaslighting. Restoration activities are entirely permissible in Wild and Scenic River corridors, as well as beyond the corridor.<sup>25</sup> The Forest Service irrationally claims that they have and will protect the river values yet claims they must avail themselves of a tool that requires them to protect river values while engaging in those activities.

The conclusions and claims relied upon in finding the South Fork of the Clearwater River unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

### **(3) Bostonian Creek, Boundary Creek, Caledonia Creek, and Graves Creeks were wrongly found not suitable**

The Draft ROD acknowledges that:

"Eligible stream segments included in this group comprise the most significant complex of modeled climate shield reaches for bull trout persistence in 2040 within the region of comparison. The highest known numbers of fluvial and adfluvial bull trout within the region of comparison spawn in these streams, and habitat supports very high densities of juveniles."

Yet, the Draft ROD contains conflicting claims that "Wild and Scenic River designation may impede or create unnecessary barriers in treating fuels and addressing the wildfire crisis. Designation may also limit tools and adaptation strategies needed to increase resiliency to climate change." The Wild and Scenic Rivers Act does no such thing. The Forest Service has a robust suite of tools to treat fuels and adapt to climate change. The Forest Service has also

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<sup>23</sup> See FEIS Appendix F, Pgs. 178-183

<sup>24</sup> *ROD App. 1, Pg. 124*

<sup>25</sup> See: Forest Service Handbook 1909.12 – LAND MANAGEMENT PLANNING HANDBOOK CHAPTER 80 – WILD AND SCENIC RIVER EVALUATION, Section 84.3(8-9): Interim Protection Measures for Eligible or Suitable Rivers.

been directed to prioritize climate resilience protections (see 3.a. above). Agency policy is clear that timber management and restoration activities are allowed within Wild and Scenic corridors so long as values are protected. Agency policy is clear that active timber management is permitted<sup>26</sup>, that “WSR designation is not likely to significantly affect timber management activities beyond existing measures to protect riparian zones, wetlands, and other resource values as guided by other federal requirements.”<sup>27</sup>

The conclusions and claims relied upon in finding Bostonian Creek, Boundary Creek, Caledonia Creek, and Graves Creeks unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with agency policy and 30x30 climate direction.

#### **(4) Crooked Fork Creek, Brushy Fork Creek, and Hopeful Creek were wrongly found not suitable.**

These are important headwaters of the currently designated Lochsa Wild and Scenic River. Alternative Z acknowledged their ecological importance to basin integrity by finding Crooked Fork Creek and Brushy Fork Creek suitable, though Hopeful Creek was found not suitable in any alternative. These streams are three of only 28 projected to provide cold water refuge for bull trout and westslope cutthroat trout, unique attributes that the Forest Service falsely discounts as common in the Draft ROD. Although the Nez Perce-Clearwater National Forest is river-rich, the small number of science-supported cold water refuge streams are truly unique and their protection is supported under the administrative 30x30 initiative.

Among other values acknowledged<sup>28</sup> is one of the most important harlequin duck populations, which is culturally significant to the Nez Perce Tribe for regalia and oral history. Overall, the Forest Service found 70% of streams identified as having cultural value to the Nez Perce Tribe unsuitable, in contradiction to commitments to embrace tribal sovereignty and protect culturally important places and species in the forest.

Cold water refuge streams and highly important harlequin duck populations provide ample evidence of uniqueness, which conflicts with the unfounded statement: “I do not believe these river values are so unique, rare, or among the best representatives of these features that they rise to a level of significance, or otherwise contribute to vital national conservation purposes to warrant consideration as a Wild and Scenic River.”<sup>29</sup>

The suitability study erroneously claims that motorized use will be curtailed in these river corridors. However, recreational classification for Crooked Fork Creek and Brushy Fork Creek will continue to allow motorized use on the numerous roads mentioned in the Draft ROD. The

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<sup>26</sup> See: Forest Service Handbook 1909.12 – LAND MANAGEMENT PLANNING HANDBOOK CHAPTER 80 – WILD AND SCENIC RIVER EVALUATION, Section 84.3(9): Interim Protection Measures for Eligible or Suitable Rivers

<sup>27</sup> A Compendium of Questions & Answers Relating to Wild & Scenic Rivers: A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council. 2018. Pg. 39. Available at: <https://www.rivers.gov/sites/rivers/files/2023-07/q-a.pdf>

<sup>28</sup> Draft ROD Appendix I, p. 56-60

<sup>29</sup> Draft ROD, Appendix I, p. 60

Forest Service speculates in the Draft ROD that this area will see "...new wildland urban interface with fuels reduction needs"<sup>30</sup> and claims that "Land Management Plan components and direction will provide protection and direct benefits to the river values and will serve to preserve them during the life of the plan while allowing for resource management to meet other Plan desired conditions that might otherwise be foreclosed."<sup>31</sup> As stated elsewhere (see 3. c-e above), restoration, timber, and wildfire activities are allowed, and generally all uses that do not substantially interfere with the river's values are allowed. The fact that protecting the rivers' values may add a layer of complexity when designing projects is not a valid reason to find rivers unsuitable.

The conclusions and claims relied upon in finding these streams unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with agency policy.

**(5) Upper Lochsa, Big Sand Creek, North Fork Storm Creek, and South Fork Storm Creek were wrongly found not suitable**

These are among the most striking examples of streams with overwhelming outstanding values and public support, though are not found suitable in any alternative because of the Forest Service's interest in logging these watersheds without the hindrance of protecting the river values. Both the rivers in this list that are off-the-table for logging due to Wilderness designation (Big Sand Creek, and the forks of Storm Creek), as well as those more open to logging paradoxically (and arbitrarily) receive the same outcome of unsuitability. There is simply no single rational rationale that could produce unsuitability findings for all of these exceptional streams.

The Draft ROD states that forest restoration activities and fuel reduction activities would be "precluded or made more complex were these streams managed under the WSR protections."<sup>32</sup> As stated elsewhere (see 3. c-e above), such activities would not be precluded by WSR protections. Agency best practice is clear that while restoration activities should seek to protect and enhance stream values, they do not prevent restoration work from occurring.<sup>33</sup> Claims to the contrary are false. Restoration and timber activities are allowed, and generally, all uses that do not substantially interfere with the river's values are allowed. The fact that protecting the river's values may add a layer of complexity when designing these projects is not a reason to find the river unsuitable. These are Wild and Scenic eligible streams and are worth a relatively small amount of added effort to protect their values.

To find the upstream extensions of the Wild and Scenic Lochsa River and its primary wild headwaters unsuitable across all alternatives is an egregious abuse of discretion, and flatly wrong. These streams are truly extraordinary and boast incredible recreational, fisheries,

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<sup>30</sup> Draft ROD, Appendix I, p. 56

<sup>31</sup> Draft ROD, Appendix I, p. 60

<sup>32</sup> Draft ROD, Appendix I, p. 46

<sup>33</sup> FSH 1909.12 Section 84.3(8-9) and [A Compendium of Questions & Answers Relating to Wild & Scenic Rivers](#): A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council. 2018. p. 39

wildlife, and scenic values. The conclusion in the Draft ROD that the streams' ORVs do not rise to the level of a Wild and Scenic River is unfounded and runs counter to the findings of Congress on the inseparable Lochsa River directly downstream. These streams have vast public support for designation and documented threats in the FEIS, Appendix F. There is no reason these streams should not be found suitable, and not even considering suitability in any alternative is arbitrary, capricious, and an abuse of discretion.

The conclusions and claims relied upon in finding these streams unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with agency policy

### **(6) Bear Creek, Cub Creek, and Brushy Fork Creek were wrongly found not suitable**

Bear Creek is described within the DEIS Appendix F and Draft ROD Appendix I for its fisheries values supporting spawning and rearing habitat for multiple species. The large woody debris and natural gravel profiles from previous wildfires and the "Salmon Hole," significant both ecologically and culturally to Indigenous peoples, are unique features of this river described in detail in the DEIS Appendix F, but which receive no mention in the Draft ROD Appendix I. The Draft ROD acknowledges that Bear Creek is "one of three places Nimi'ipuu oral history indicates the Nez Perce Tribe originated from. It is also a traditional and significant place for the trail through the area linking the Clearwater valley with the Bitterroot valley as well as seasonal use of its fisheries and wildlife resources."<sup>34</sup> The Draft ROD also acknowledges that the nexus of these unique values within the Selway-Bitterroot Wilderness is, in itself, a unique feature.

Yet, the Draft ROD claims that "There is no benefit or compelling reason to support the application of permanent protection of these outstandingly remarkable values in these creeks, potentially at the expense of meeting other management goals."<sup>35</sup> As stated elsewhere (see 3. c-e above), forest management, fuels management, and restoration would not be precluded by Wild and Scenic protections. Agency best practice is clear that while restoration activities should seek to protect and enhance stream values, they do not prevent restoration work from occurring.<sup>36</sup>

Wilderness areas do convey some level of protection to rivers flowing through them because they disallow road construction. Wilderness does not protect rivers against water developments and does not stop the development of mining claims that existed prior to an area's designation as wilderness. Simple protection by artifact of wilderness designation also does not provide assurances that the ORVs identified and monitored under a finding of Wild and Scenic suitability will be protected. Nowhere in the Wilderness Act or within the Wilderness Character Monitoring Framework are *river* values specifically identified, characterized, or monitored for change against thresholds intended to protect them. Asserting that there are no compelling benefits to Wild and Scenic suitability simply because wilderness protects against road building is unfounded.

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<sup>34</sup> Draft ROD, Appendix I, p. 76

<sup>35</sup> Draft ROD, Appendix I, p. 77

<sup>36</sup> FSH 1909.12 Section 84.3(8-9) and [A Compendium of Questions & Answers Relating to Wild & Scenic Rivers: A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council](#). 2018. p. 39

The conclusions and claims relied upon in finding these streams unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with agency policy.

**(7) Moose Creek, North Fork Moose Creek, West Moose Creek, East Fork Moose Creek, Rhoda Creek, and Wounded Doe Creek were wrongly found not suitable**

The Forest Service analysis is ripe with evidence of the outstanding values of these streams, including river and basin integrity and the highest known numbers of spawning fluvial bull trout in the Selway Basin<sup>37</sup>, and offers not a single reason to find them unsuitable. Similar to Bear Creek and the tributaries above, these rivers are entirely in designated wilderness and are contiguous with the federally designated Selway Wild and Scenic River. Wilderness areas do convey some level of protection to rivers flowing through them because they disallow road construction, for example. Wilderness does not protect rivers against water developments and does not stop the development of mining claims that existed prior to an area's designation as wilderness. Simple protection by artifact of wilderness designation also does not provide assurances that the ORVs identified and monitored under a finding of Wild and Scenic suitability will be protected. Nowhere in the Wilderness Act or within the Wilderness Character Monitoring Framework are *river* values specifically identified, characterized, or monitored for change against thresholds intended to protect them. Asserting that there are no compelling benefits to Wild and Scenic suitability simply because wilderness protects against road building is unfounded.

On one hand, if rivers are already protected from logging then they are not deemed suitable for Wild and Scenic designation because there is no need. On the other hand, if rivers are not already protected from logging then they are not deemed suitable to allow for unhindered logging to occur. This contradiction shows the arbitrary nature of the Forest Service's approach to suitability on this Forest and the irrational conflicting bar that rivers must meet to merit protection as Wild and Scenic.

The conclusions and claims relied upon in finding these streams unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

**(8) Lake Creek was wrongly found not suitable**

The Forest Service's analysis of Lake Creek highlights the unique and important fisheries values that this river provides to the North Fork Clearwater Basin and the Forest at large. However, the decision to find this section "not-suitable" under any alternative is unfounded and contrary to Management Directions and policies throughout the Forest.

In the Draft ROD Appendix I, it is clearly stated that Lake Creek provides not only a unique and critical habitat for adfluvial bull trout within the Forest but rather that it supports a spawning population thought to occur in only two other areas within the region of comparison.<sup>38</sup> It is later stated that the values represented in Lake Creek warrant the consideration and protection of the Forest, but asserts that the general Plan components and direction in the Land Management Plan are sufficient to protect these resources. However, as described above, it is clear that the

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<sup>37</sup> FEID, Appendix F, p. 144

<sup>38</sup> Draft ROD Appendix I - pg 23

Forest Plan, as presented, needs to go further to advance the protection of bull trout, their critical habitat, and other ESA-listed species.

The Forest admits that “[d]esignation as a wild and scenic river would permanently protect Bull Trout in Lake Creek but would only allow management activities that prioritize the protection and enhancement of the fish outstandingly remarkable value”. The Wild and Scenic Rivers Act does no such thing. The Agency has a robust suite of tools to treat fuels and adapt to climate change. Agency policy is clear that timber management and restoration activities are allowed within Wild and Scenic corridors so long as values are protected. Agency policy is clear that active timber management is permitted, that “WSR designation is not likely to significantly affect timber management activities beyond existing measures to protect riparian zones, wetlands, and other resource values as guided by other federal requirements.”<sup>39</sup> The Forest Service Handbook also clearly states that for scenic and recreational sections, “A range of vegetation management and timber harvest practices are allowed, if these practices are designed to protect users, or protect, restore, or enhance the river environment, including the long-term scenic character.”<sup>40</sup>

Considering the importance of ensuring that the new Forest Plan meets ESA recovery goals, the conclusions and claims relied upon in finding this stream unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

### **(9) Lolo Creek was wrongly found not suitable**

The Forest Service analysis documents the many outstanding values of Lolo Creek including high-quality habitat for fisher, steelhead, native spring Chinook Salmon, and Pacific lamprey; whitewater boating; and cultural and historic importance to the Nez Perce Tribe due to its proximity to the Nez Perce Trail, which parallels, is within, and crosses the river. There is, however, no mention of the vast support in the record for finding Lolo Creek suitable, and indeed most of the suitability questions are simply left blank in the analysis in the FEIS Appendix F.

The Draft ROD states that “Permanent protections through designation ... could potentially adversely affect the ability to implement ecological restoration activities within and near the river segment found eligible.”<sup>41</sup> As stated elsewhere (see 3. c-e above), restoration, timber, and wildfire activities are allowed, and generally all uses that do not substantially interfere with the river’s values are allowed. The fact that protecting the rivers’ values may add a layer of complexity when designing projects is not a valid reason to find rivers unsuitable.

The Draft ROD claims that:

“Designation as a Wild and Scenic River could potentially change this [Tribal and recreational] access if impacts from the roads were determined to adversely affect the fish or wildlife outstandingly remarkable values.”<sup>42</sup>  
“...permanent protection of the identified outstandingly remarkable values, which would be at the expense of other management goals and actions needed to enhance

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<sup>39</sup> A Compendium of Questions & Answers Relating to Wild & Scenic Rivers: A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council. 2018. Pg. 39. Available at: <https://www.rivers.gov/sites/rivers/files/2023-07/q-a.pdf>

<sup>40</sup> FSH 1909.12-80 pg 32

<sup>41</sup> Draft ROD, Appendix I, p. 68

<sup>42</sup> Ibid.

resources, associated with the Tribe's reserved Treaty rights improve fish habitat, address the wildfire crisis, and restore forests ravaged by insects and disease."<sup>43</sup>

This is a false and threatening statement that erroneously pits river protection against Tribal sovereignty. The Forest Service offers no evidence to back this hyperbolic claim of conflict. Recreation is an ORV on Lolo Creek and Tribal uses of the stream should be another. Those uses, including access, would need to be protected under the Wild and Scenic Rivers Act. Furthermore, we are aware of no examples of road closures of this nature.

Lolo Creek downstream of the Forest Service managed reach has been deemed suitable by the Bureau of Land Management. The Forest Service considered a similar case of adjacency regarding the Little North Fork of the Clearwater, in which the Nez Perce-Clearwater National Forest deferred to the Idaho Panhandle National Forest to match the adjacent finding (of eligibility). It is arbitrary and capricious to show deference to adjacency findings within its own agency but not to the Department of Interior, an equally important manager of the Wild and Scenic River System overall.

#### **(10) The Potlatch River was wrongly found not suitable**

The Forest Service analysis of support or opposition is arbitrary and capricious. The analysis is silent on the over 700 public comments in support of suitability/eligibility protections for the Potlatch River. Paddlers are vested, knowledgeable, and in some cases local stakeholders in the future management of the Potlatch. Instead of properly weighing these supportive comments the Forest Service does not mention them, and instead fabricates a story of potential future opposition that is not even based on the use of the Forest Service portions of the river. This omission of support and fabrication of opposition - which paints a negative picture of support - is arbitrary and capricious. The record shows overwhelming support for suitability and eligibility and no evidence of opposition.<sup>44</sup>

The Forest Service claims that "Current protections would likely perpetuate this river's important contributions to the system" while also admitting that the potential for dam building on the river is "moderate" and suitability could curtail timber harvest on 766 acres of land otherwise open to logging to reach economic goals. The Forest Service can't reasonably claim that suitability protections aimed at protecting river values would not be compatible with their desired logging on the Forest, and also claim that logging would not impact the values of the river.<sup>45</sup>

The Record of Decision states that the "Potlatch River is not suitable for designation as a Wild and Scenic River in the forest plan due to the lack of certainty around future land management activities in most of the river corridor."<sup>46</sup> The Forest Service manages and has a great deal of certainty over lands inside the eligible river corridor. If this concern is instead over a lack of control over lands *outside* of the eligible river corridor, that is a ubiquitous issue for many if not most Wild and Scenic Rivers and in no way disqualifies the river from suitability. The Forest Service could indeed protect the river values in a suitable corridor.

The Record of Decision states: "Water supply to the portion of the river that lies within the forest boundary is controlled by a multitude of private and corporate landowners with varying

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<sup>43</sup> Draft ROD, Appendix I, p. 69

<sup>44</sup> See *FEIS Appendix F, Pg. 37-40.*

<sup>45</sup> See *FEIS Appendix F, Pg. 37-40.*

<sup>46</sup> *ROD App. 1, Pg. 13.*

interests.”<sup>47</sup> This is largely or entirely a false statement: there are no significant impoundments or large diversions in the Potlatch watershed upstream of the eligible reach, and there is ample flow to support the current recreational and fisheries values. The Forest Service cites no proposals for this to change, and we note that the Forest Service acknowledges that “Congress and the Secretary of the Interior have designated many river segments which are above or below dams that have regulated flows.”<sup>48</sup>

The Record of Decision states: “Designation would not ensure that water quantity or quality is protected, nor would it ensure the persistence of the river’s outstanding and remarkable value as boatable waters.”<sup>49</sup> This is a moot point, as many eligible, suitable, and designated rivers are downstream of private lands, dams, and extractive water rights. While designation would not ensure water quantity and quality are protected, it seldom does, and that in no way disqualifies the river from suitability.

The Record of Decision states: “Designation could limit or impact the ability of the Potlatch Implementation Group to implement activities for improving, restoring, and protecting habitat for steelhead.”<sup>50</sup> This statement is without basis and is misleading at best. Significant stream restoration activities are permitted on Wild and Scenic rivers. Agency policy is clear that while restoration activities should seek to protect and enhance stream values, they do not prevent restoration work from occurring.<sup>51</sup> The Forest Service Handbook simply recommends that “Construction of structures and vegetation management designed to protect and enhance wildlife and fish habitat should harmonize with the area’s largely undeveloped character and fully protect identified river values” in scenic river corridors, and make similar considerations in wild and recreational corridors. The Handbook continues that a “fisheries restoration or enhancement project that has the potential to affect the free-flowing character must be evaluated as a water resources project.”<sup>52</sup> This is a routine screening carried out by Agencies, and by no means constitutes an impact on the project. Quite the opposite, it supports projects that benefit the river as a whole.

The conclusions and claims relied upon in finding the Potlatch River unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

### **C. Fisheries and Riparian Management Zone issues**

The Forest Service, in both the FEIS and Forest Plan, outlines a significant change in strategy regarding what is permissible in riparian areas. PACFISH/INFISH guidelines were implemented

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<sup>47</sup> *ROD App. 1, Pg. 13.*

<sup>48</sup> A Compendium of Questions & Answers Relating to Wild & Scenic Rivers: A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council. 2018. Pg. 18. Available at: <https://www.rivers.gov/sites/rivers/files/2023-07/q-a.pdf>

<sup>49</sup> *ROD App. 1, Pg. 13*

<sup>50</sup> *ROD App. 1, Pg. 13.*

<sup>51</sup> A Compendium of Questions & Answers Relating to Wild & Scenic Rivers: A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council. 2018. Pg. 50. Available at: <https://www.rivers.gov/sites/rivers/files/2023-07/q-a.pdf>

<sup>52</sup> Forest Service Handbook 1909.12 – LAND MANAGEMENT PLANNING HANDBOOK CHAPTER 80 – WILD AND SCENIC RIVER EVALUATION, Section 84.3(8): Interim Protection Measures for Eligible or Suitable Rivers.

in 1995 as a means to arrest stream habitat degradation and protect the natural processes that maintain habitat for native fish. These guidelines were successful, as the revised plan mentions, “Strategies employed by the Northwest Forest Plan, PACFISH, and INFISH appear to have been successful at halting the loss of old growth due to timber harvest within riparian areas and at preventing damage to aquatic systems in the Pacific Northwest (Thomas et al. 2006) and the intermountain region.”<sup>53</sup>

The plan goes on to say, “However, some suggest a protection mindset emerged that has prevented management within riparian areas that would be desirable to sustain and promote ecological processes beneficial to aquatic or terrestrial ecosystems. Warren et al. (2013) found that reaches with complex old-growth riparian forests had frequent canopy gaps, which lead to greater stream light availability compared to adjacent reaches with simpler second-growth riparian forests. Light availability strongly influences stream primary production, water temperatures, and resource availability at the base of stream food webs.”<sup>54</sup>

Referencing complex old-growth forests as an example of a condition that could be “managed” to provide perceived better conditions for fish is concerning. The Forest Ecosystem Management Assessment Team (FEMAT) regional-scale scientific assessment, which led to the Northwest Forest Act and the referenced successes of the PACFISH/INFISH amendments to Forest plans across salmonid habitat, held an underlying assumption that old-growth forest conditions are needed for full riparian ecosystem functions.<sup>55</sup> In December 2023 the Forest Service issued a notice of intent to prepare an Environmental Impact Statement to amend land management plans for units across the country to include consistent direction on conserving and restoring old-growth forests.<sup>56</sup>

This odd example of the desire for active management in the riparian zone sets the table for a paradigm shift by the Forest Service in subsequent sections of the plan. Using active management that mimics natural disturbance cycles in order for an ecosystem to achieve “natural range of variation” conditions can be beneficial in many circumstances. However, this sort of language is used throughout the aquatics section of the FEIS to justify the departure from standards established under PACFISH/INFISH, and the establishment of the quite diminished RMZs, thereby opening the door for extractive timber operations in riparian areas as long as desired conditions are met.

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<sup>53</sup> FEIS, Pg. 481.

<sup>54</sup> FEIS, Pg. 481.

<sup>55</sup> Quinn, T., G. Wilhere, and K. Krueger (managing editors). 2020. Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications. Habitat Program, Washington Department of Fish and Wildlife, Olympia, Washington. <https://wdfw.wa.gov/sites/default/files/publications/01987/wdfw01987.pdf>

<sup>56</sup> Land Management Plan Direction for Old-Growth Forest Conditions Across the National Forest System, 88 FR 88042. <https://www.federalregister.gov/documents/2023/12/20/2023-27875/land-management-plan-direction-for-old-growth-forest-conditions-across-the-national-forest-system>

Throughout the FEIS, riparian buffers are stated to be, "...larger than adequate to protect aquatic resources"<sup>57</sup> and research is cited to suggest that the PACFISH/INFISH established 300-foot buffer on either side of the stream for fish-bearing streams is overly protective, "...Many researchers suggest that a 100-foot area where trees are retained next to fish-bearing and perennial streams is generally likely sufficient to protect against temperature increase (Anderson and Poage 2014, Reeves, Pickard, and Johnson 2016, Sweeney and Newbold 2014, Witt et al. 2016)." <sup>58</sup> By only citing temperature regulation in this particular section of the FEIS that describes the effects of the action alternatives on riparian areas, the Forest Service is effectively cherry-picking from a suite of riparian habitat functions that all operate in concert, which are touched on earlier in the FEIS.

A 2010 California Department of Fish and Game report incorporates a table that lays out the estimated buffer widths required for a riparian area to retain its many ecological functions.<sup>59</sup>

**Table 2.2** Estimated widths of unmanaged near-stream vegetation in forested watersheds needed to maintain various functions of riparian ecosystems. Source: Everest & Reeves, 2007.

| Riparian function   | Width unmanaged vegetation required | References  |
|---|-------------------------------------|---|
| Maintain water temperature  | ~50 m                               | Brazier and Brown 1973, FEMAT 1993, Steinblums et al. 1984          |
| Maintain microclimate   | ~125 m*                             | Chen 1991, FEMAT 1993   |
| Control sediment  | ~50 m                               | For example, U.S. Army Corps of Engineers 1991                      |
| Control nutrients/contaminants  | ~100 m±*                            | Desbonnet et al. 1994, Nriagu and Lakshminarayana 1989, Wenger 1999 |
| Maintain streambed/banks  | ~30 m*                              | Erman et al. 1977   |
| Maintain wildlife habitats  | ~150 m±*                            | Schoen 1977, USDA Forest Service 1997                               |
| Maintain fish habitats  | >70 m*                              | Bisson et al. 1987, FEMAT 1993                                      |
| Note: Widths were derived from site-scale studies but correctly apply to riparian networks at watershed scales. |                                     |   |
| * = Requires late-successional or old-growth forest vegetation.   |                                     |   |

While the FEIS and revised plan paint a picture of new science coming to the fore that proves the riparian buffers established under PACFISH/INFISH to be excessive, recent reports and

<sup>57</sup> FEIS, Pg. 609.

<sup>58</sup> FEIS, Pg. 501.

<sup>59</sup> Stephen Swales. 2010. California Forest Management Practices and the Conservation of Anadromous Salmonids, Fisheries Branch Administrative Report No. 2010-3, California Department of Fish and Game. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=30710#:~:text=Numerous%20studies%20have%20shown%20that,increased%20input%20of%20fine%20sediments.>

research continue to reference the foundational scientific research of FEMAT and others as still applicable when protecting fish habitat.

A 2018 Aquatic and Riparian Conservation Strategy (ARCS) planning document from USFS Pacific Northwest and Pacific Southwest Regions is clear on current thinking surrounding riparian buffer widths, “The scientific basis for this approach was originally provided in FEMAT (1993) and later supported by Everest and Reeves (2007), who concluded that there was no scientific evidence that either the default prescriptions or the options for watershed analysis in the NWFP [Northwest Forest Plan] provide more protection than necessary to meet stated riparian management goals.”<sup>60</sup>

While the revised plan establishes in theory the same (if not greater in the case of intermittent streams) riparian widths under the RMZ framework as PACFISH/INFISH, the portrayal of such widths as “larger than adequate” in the plan sets the table for the segmentation of the RMZ into inner and outer zones of management, an action that shrinks the riparian buffer under PACFISH/INFISH, which has successfully maintained native fish habitat and arrested stream degradation.

Under the new strategy established under the Aquatic Ecosystems component of the revised plan, timber harvest is allowed in the riparian area, where it has not been allowed for decades under PACFISH/INFISH. The new strategy allows timber harvest in the inner zone, “Per FW-STD-RMZ-01, limited timber harvest could occur within the first site potential tree height distance from streams if needed to *restore or enhance aquatic and riparian resources* [emphasis added].”<sup>61</sup> “Timber Harvest in this zone shall leave trees on site or use for aquatic restoration.”<sup>62</sup>

The troubling addition and the heart of our objection to new riparian guidelines pertain to what is permissible in the outer zone - set at 150 to 300 feet away from fish-bearing streams for FEIS analysis. FW-STD-RMZ-01 states, “Vegetation management may occur in the outer Riparian Management Zones to *meet desired conditions for fuel loading and silvicultural desired conditions* [emphasis added], so long as project activities retain functions of the outer Riparian Management Zone, including sediment filtering, large wood recruitment to streams, and protection of the inner Riparian Management Zone from windthrow.”

This language related to fuel loading and silvicultural desired conditions makes management in the outer zone of a RMZ more similar to Forest-wide management and lowers the burden of proof on timber harvest activities in the riparian area by not including the “restore or enhance aquatic and riparian resources” phrasing. While there is “do not retard attainment” language included in FW-STD-RMZ-01 for aquatic/riparian desired conditions, this is certainly not the same as requiring all RMZ vegetation management to “restore or enhance” said resources.

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<sup>60</sup> Aquatic and Riparian Conservation Strategy. 2018. USDA Forest Service, Pacific Northwest and Pacific Southwest Regions. [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd644753.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd644753.pdf)

<sup>61</sup> FEIS, Pg. 511.

<sup>62</sup> FW-STD-RMZ-01, Forest Plan

The revised plan would be better suited following the ARCS guidance from the aforementioned Pacific Northwest and Pacific Southwest regions USFS document, which plainly states, “Standard TM-1. Timber harvest and other silvicultural practices shall occur in RMAs **only as necessary to attain desired conditions for aquatic and riparian resources** [emphasis added]. Vegetation in RMAs will not be subject to programmed timber harvest.”

When coupled with the pattern of language throughout the revised plan that attempts to establish PACFISH/INFISH riparian buffers as “larger than adequate”, our concern is that the new RMZ buffers are in effect now narrower in width and more permissive of timber harvest activities similar to those conducted beyond riparian areas - to the detriment of both ESA-listed and other important native fish.

As the FEIS mentions, the Forest Service must contribute to ESA recovery per the 2012 Planning Rule.<sup>63</sup> The plan goes on to state that, “The directives further explain that development of, or changes to, plan components to provide for ecological conditions for threatened and endangered species should be based on a need to change the plan identified from the assessment of the ecological conditions necessary to contribute to their recovery and maintaining or restoring critical habitats (FSH 1909.12, ch. 10, sec. 12.55), or from information brought forward during the public and governmental participation process. (1909.12\_20.23.13a).”<sup>64</sup>

The revised plan seems to be counting on moving conditions for native fish toward desired conditions based on the natural range of variation (NRV) at some undetermined point in the future by introducing disturbance into riparian areas via management strategy. This strategy is said to supersede the “short-term impacts” that will adversely affect fish populations, but for ESA-listed Snake River salmonid populations facing imminent extirpation, we question the wisdom of this. For instance, 44% of Snake River summer steelhead populations across their range are modeled to fall below the Quasi-Extinction Threshold (QET) of 50 spawners by 2025.<sup>65</sup> The FEIS admits, “It is important to note that while some plan components could temporarily have adverse effects to listed species (for example, FW-OBJ-TBR-01: Offer 190-210 million board feet timber per year.), those components would have to be implemented in a way that does not compromise the above-mentioned desired conditions.”<sup>66</sup>

Further, a conflict of priorities is evident in Management Area 3, which, “...contains lands most departed from desired conditions in terms of vegetation composition but also contains streams most departed from aquatic desired conditions. It contains watersheds with the highest priorities for restoration to support recovery goals for listed anadromous fish in the Clearwater basin. Some of the aquatic restoration objectives vary by alternative according to the amount of timber

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<sup>63</sup> 2012 Planning Rule, § 219.9

<sup>64</sup> FEIS, Pg. 539.

<sup>65</sup> Snake Basin Chinook and Steelhead Quasi-Extinction Threshold Alarm and Call to Action. Nez Perce Tribe Department of Fisheries Resources Management. Presented to Northwest Power and Conservation Council May 5, 2021. [https://www.nwcouncil.org/sites/default/files/2021\\_05\\_4.pdf](https://www.nwcouncil.org/sites/default/files/2021_05_4.pdf)

<sup>66</sup> FEIS, Pg. 545.

harvest and other silvicultural treatments needed to move vegetation conditions towards their desired conditions.” “It is unknown if these objectives are sufficient to achieve aquatic desired conditions over the next 30 years, particularly considering projected increases in timber harvest, but the monitoring plan contains elements to address trends in aquatic habitat.”<sup>67</sup>

In summary, not only is it unknown if aquatic desired conditions will be achieved in the next several decades in the highest priority habitat for ESA-listed fish. However, certainly, the “short-term” impacts of timber harvest (including that done in the outer RMZ zone) to achieve desired conditions unrelated to aquatics will be acutely felt by ESA-listed fish *on a population level*, which are actively trending towards extinction.

The language in FW-STD-RMZ-01 outlines a clear departure from PACFISH/INFISH strategy and does not meet the requirement to contribute to the recovery of ESA-listed fish as the above-referenced section of the handbook outlines.

Throughout the FEIS and Draft ROD, the Forest Service asserts that this new management regime will continue to capitalize on the advances made under PACFISH/INFISH. Considering how broad these new management plans are, with a particular focus on the shift to Riparian Management Zones, it can be difficult to pinpoint what the on-the-ground impacts may be, particularly in the short term. However, it is quite clearly stated in the Draft ROD section focused on the Endangered Species Act found on page 68:

Endangered Species Act effect determinations of the proposed framework programmatic action are Likely to Adversely Affect Bull Trout and their Critical Habitat; Snake River Steelhead and their Critical Habitat; Snake River Spring/Summer Chinook Salmon and their Critical Habitat; and Snake River Fall Chinook Salmon and their Critical Habitat.

This analysis highlights the deficiencies included in the plan as it relates to the management and protection of ESA-listed fish and their habitats. Additionally, this is contrary to the September 27th, 2023 Presidential Memorandum directing all Federal Agencies to act to the full extent of their authority to advance and support salmon and steelhead recovery. Moving forward with the plan, as presented, is a clear deviation from the Memorandum as well as ESA recovery goals and recommendations.

#### **IV. Statement that demonstrates the link between prior substantive formal comments attributed to the objector and the content of the objection.**

On October 19th, 2018, Idaho Rivers United, American Rivers, American Whitewater, and Outdoor Alliance submitted comments regarding the published 2017 eligibility and suitability study. These comments echo the main arguments in this objection and urged the Forest to

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<sup>67</sup> FEIS Pg. 582-583.

reconsider their approach to suitability and if suitability was to be determined, recommended that all 88 rivers included within the study retain interim protections.

On April 20th, 2020, Idaho Rivers United again filed comments on the Draft Forest Plan and DEIS that again raised each issue that is addressed in this objection. Our Letter ID issued by the Forest Service for these comments is 44089-3190-1052.

We look forward to working with the Reviewing Officer on these important issues and suggested remedies.

Sincerely,

A handwritten signature in cursive script that reads "Nick Kunath".

Nick Kunath  
Conservation Program Manager  
Idaho Rivers United  
P.O. Box 633  
Boise, ID 83701  
Phone: (208) 908-9232  
Email: [nkunath@idahorivers.org](mailto:nkunath@idahorivers.org)