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First name: Shannon F.
Last name: Wheeler
Organization: Nez Perce Tribe
Title: Chairman
Comments: Regional Forester (Objection Reviewing Officer) Northern (Rl) Regional Office

Attn: Nez Perce-Clearwater Forest Plan Objection 26 Fort Missoula Road

Missoula, MT 59804

Forest Service Chief (Reviewing Officer) National Headquarters

Attn: Nez Perce-Clearwater Forest Species of Conservation Concern Objection 1400 Independence Ave., SW

Washington, DC 20250-0003

Re: Nez Perce Tribe's Objection to the Revised Land Management Plan and RegionalForester'sListofSpeciesof ConservationConcernfor the NezPerce[shy] Clearwater National Forests

Dear Reviewing Officers:

I submit on behalf of the Nez Perce Tribal Executive Committee, the governing body of the Nez Perce Tribe ("Tribe"), the attached Objection to the U.S. Forest Service's Draft Record of Decision ("DROD") and Final Environmental Impact Statement ("FEIS") for the revised land management plan ("Proposed Plan") for the-Nez Perce-Clearwater National Forests ("Forest"). The Tribe also objects to the Regional Forester's list of species of conservation concern ("SCC") on the Forest.

For the Nimiipuu, the lands, waters, and life sources of the Forest are inseparable from us as a people. Our language, traditions, practices, and beliefs are all inextricably tied to those lands and the fish, wildlife, trees, and plants. This relationship has been understood by the Nimiipuu for hundreds of generations and memorialized in countless ways.

Fundamental to our identity as Nimiipuu is our sacred covenant with the salmon. Salmon have been significant since the beginning of creation for the Nimiipuu; salmon is at the heart of us as a people. In our creation story, the salmon gave himself to us first. The creator had called all the beings together to let them know that the humans were coming to this land and we would be weak and feeble. Each of the animals had an opportunity to step forward and say why they would be needed. The first one to step forward was salmon. When salmon gave itself to us, it was told that it would lose its voice and we would then have to become the voice of the salmon. In giving itself to us, the salmon entrusted us with speaking for it. The Nimiipuu's relationship with other animal relatives and plants, including coho, steelhead, lamprey, elk, bighorn sheep, deer, wolves, grizzly bears, wolverines, camas, mountain tea, lodgepole pine, white pine, western larch, and spruce, is based on this covenant. We have[middot]an obligation to protect them because they are all our relatives and have given of themselves to nourish and sustain us.

This sacred promise manifests itself in our deep commitment, as the original stewards of our homeland, to ensure our animal relatives and future generations of Nimiipuu inherit the home that our ancestors knew. The lands and waters of the Forest are at the heart of our homeland. The Forest contains not only the life sources that have sustained us since time immemorial, but the places and landscapes within this unique geography define us as a people. These lands and waters do not belong to us; they belong to seven generations of future Nimiipuu who rely on us to keep the land and the resources that live upon it healthy and strong for their arrival.

[bull]

In 1855, the Tribe, confronted by massive imminent change threatening our survival as a people, entered into a treaty with the United States. In that treaty, the Tribe sought to preserve our culture and way of life by reserving sovereign rights to ourselves, including the right to[middot]fish, hunt, gather, pasture, and travel in and across our vast homeland.

This historical, cultural, and legal context explains why the Tribe has expended thousands of hours and substantial resources engaging the Forest with the goal of adopting a new Forest Plan that prioritizes the restoration, advancement, and protection of the Tribe's treaty-reserved rights and resources for decades to come. The Tribe's vision, captured in numerous written comments, staff[shy] to-staff meetings, and government-to-government consultations with the Forest, emphasizes native diversity, healthy and harvestable fish, wildlife, and plant populations, resiliency to shifts in climate, and protection of culturally-significant places and landscapes for access and use by Tribal members. The Tribe has also advocated for a new Forest Plan that embraces a comprehensive government-to-government relationship for the co-management of the Tribe's treaty resources across the Forest, as well as a robust monitoring framework to ensure Forest management actions are having their intended effects.

To realize these foundational goals in the new Forest Plan, the Tribe has consistently advocated for the adoption of standards as the only plan component that can provide mandatory, enforceable, and accountable constraints on management actions and, thereby, ensure that the Forest upholds its treaty and trust responsibilities to the Tribe. For too long, Forest management has resulted in action that is detrimental to our treaty rights and resources, harming our connection to the very land and resources in our homeland to which we reserved legal, rights via contract. It is time to correct this imbalance in our sovereign relationship with the Forest by implementing standards in the new Forest Plan that honor our status as a co-equal sovereign and prevent ongoing harm to our culture and way of life.

Restoring balance to our sovereign-to-sovereign relationship by protecting our treaty rights is not just aspirational, it is simply a legal obligation enshrined in the U.S. Constitution. As the supreme law of the land, upholding the Tribe's treaty is not just a "goal" or a "desired future condition." It is, as a matter of non-discretionary federal law, requiring every Forest official who took an oath to protect and defend the Constitution to view the Tribe's treaty through the same solemn lens.

The need for a new Forest Plan that both honors our treaty rights and sovereign status as a co[shy] manager and partner on the Forest has never been greater. Salmon and steelhead populations in the Columbia River Basin are on the verge of extinction. President Biden's September 27, 2023, Memorandum on Restoring Healthy and Abundant Salmon, Steelhead, and Other Native Fish Populations in the Columbia River Basin acknowledges this imminent threat to these species and provides clear direction to the Forest Service and other agencies to do everything possible under their authority to restore healthy and abundant native fish populations in the Basin. Recognizing the importance of salmon and steelhead to Columbia River ,Basin tribes, as well as the serious harm inflicted on the Tribe and other tribes by their decline, Biden's memorandum is an "all hands on deck" cal1 to all federal agencies, including the Forest, to fully leverage their authorities and prioritize the restoration of salmon and steelhead ahead of its other land management interests.

Unfortunately, the Forest's Proposed Plan still falls short of the Biden Administration's directive. Key management imperatives for protecting the habitat upon which our salmon and other treaty resources depend are missing from the Proposed Plan

As a co-manager of our treaty resources on the Forest, the Tribe firmly opposes the Forest's decision to remove Chinook salmon from the list of species of conservation concern; and objects to a number of plan components as vague, incomplete, overbroad, and unenforceable and, therefore, insufficiently protective of aquatic resources on

the Forest. For instance, the Tribe is also deeply troubled by the Forest's response to its elk management concerns. The current Forest Plans-which theTribe originally litigated for being insufficiently protective of elk-contain more standards related to the management of elk and elk habitat, and cumulatively provide more protection for elk, than those in the current Proposed Plan. This is simply unacceptable to the Tribe.

The Tribe is similarly concerned with the lack of a robust monitoring framework in the Proposed Plan. Fundamental to sound resource management are strong, enforceable, and accountable monitoring requirements to ensure that projects' actual shmt and long-term outcomes can be evaluated against projected or intended outcomes. The Forest has historically failed to adequately fulfill this critical role and, with the monitoring framework in the Proposed Plan, the Tribe is concerned that monitoring will not improve, hampering adaptive management.

In addition to needed fish and elk management protections, the Tribe views the cultural resources section and plan components as requiring significant revision. There are numerous culturally-significant areas on the Forest for which the Tribe requests special management designations, as well as new Forest-wide protections to avoid impacts to cultural resources.

And finally, the Tribe will continue to advocate for a Forest-wide, overarching standard or standards that accurately and comprehensively reflect the Forest's treaty and trust obligations to the Tribe. We are aware that the Forest has ongoing disagreement with the Tribe regarding the nature and scope of the Forest's obligations to the Tribe arising under our treaty. Based on our most recent discussions, we have included proposed tribal treaty standards language in the objection for Forest Service review.

Despite our outstanding differences with the Forest Plan, the Tribe is encouraged by the Forest's commitments to resolve the Tribe's concerns prior to issuing a final version. While the Forest declined the Tribe's request to postpone publication of the Forest Plan pending resolution of our concerns, the Forest reiterated its intent to continue potential resolution of our outstanding differences through government-to-government discussion. The Tribe appreciates the Forest's commitment and accepts this invitation to continue government-to-government consultation on the Forest Plan prior to a final decision, hopefully with mutually-acceptable outcomes on the near horizon.

We look forward to hearing from the Forest regarding the objection resolution process as well as establishing a schedule for continued government-to-government consultation prior to the Forest issuing a final Forest Plan record of decision and environmental impact statement.

Sincerely,

Shannon F. Wheeler Chairman

NEZ PERCE TRIBE'S OBJECTION TO THE REVISED LAND MANAGEMENT PLAN AND REGIONAL FORESTER'S LIST OF SPECIES OF CONSERVATION CONCERN FOR THE NEZ PERCE-CLEARWATER NATIONAL FORESTS
January 29, 2024

The Nez Perce Tribe ("Tribe") hereby objects to the U.S. Forest Service's Draft Record of Decision ("DROD") and Final Environmental Impact Statement ("FEIS") for the revised land management plan ("Proposed Plan") for the Nez Perce-Clearwater National Forests ("Forest"). The Tribe also hereby objects to the Regional Forester's list of species of conservation concern ("SCC") on the Forest. The Tribe requests an Objection resolution meeting or meetings in accordance with 36 C.F.R. [sect] 218.11(a). The Proposed Plan and SCC list affect the Tribe's treaty-reserved rights and resources within the heart of the Tribe's exclusive aboriginal homeland. Cheryl F. Probert,

Forest Supervisor, is the Responsible Official for the Proposed Plan. Leanne Martin, Regional Forester, is the Responsible Official for the SCC list.

Pursuant to 36 C.F.R. [sect] 218.5(a) and (b), the Tribe is eligible to object to this Plan Revision and SCC list. The Tribe has been extensively engaged in review of the Proposed Plan and SCC list. The Tribe submitted Scoping comments on November 14, 2014; Alternative Framework comments on May 1, 2018; Cooperating Agency comments on October 23, 2019; Draft Environmental Impact Statement comments on April 20, 2020; and Draft Record of Decision and Final Environmental Impact Statement Cooperating Agency comments on September 7, 2021. The Tribe participated as a Cooperating Agency in review of the Draft Forest Plan and Draft Environmental Impact Statement prior to its public release on December 20, 2019. The Tribal staff also participated in a Forest Plan Cooperator meeting with the Forest on April 8, 2022, to discuss elk-specific components of the Draft Forest Plan. The Tribe has also participated in staff-to-staff meetings throughout the planning process and engaged in formal consultation with the Forest on the Proposed Plan prior to its publication in late November, 2023.

While the Tribe acknowledges that the Forest has made some changes to the Proposed Plan as a result of the Tribe's engagement, the Forest has not made many of the substantive changes to the Proposed Plan and SCC list that the Tribe has consistently advocated for and believes are necessary to protect its treaty-reserved rights and resources.

The Tribe has discussed all issues listed in this Objection in its formal comments, government-to- government consultations, and staff-to-staff meetings with the Forest as required by 36 C.F.R. [sect] 219.53(a) and U.S. Forest Service policy.1

In accordance with 36 C.F.R. [sect] 218.8(d), the Tribe's lead Objector's name, telephone number, email address, and mailing address are:

Shannon F. Wheeler Chairman

Shannon F. Wheeler Chairman

Nez Perce Tribe
1. Importance of the Forest to the Tribe
Since time immemorial, the Nez Perce people, or Nim[iacute]ipuu, have occupied and used over 13 million acres of land in what is now north-central Idaho, southeast Washington, northeast Oregon, and parts of Montana. Tribal members engaged in fishing, hunting, gathering, and pasturing and other activities across their vast aboriginal territory.

On June 11, 1855, the Tribe reserved by treaty, and the United States secured to the Tribe, rights that the Nim[iacute]ipuu have exercised since time immemorial, including the right to take fish at all usual and accustomed places, and the rights to hunt, gather, pasture, and travel.2 These sovereign reservations were not merely "rights" that impose responsibilities on the United States. For the Nez Perce these reserved rights were and are a guarantee of our ability to preserve our culture and identity. Today, the Nim[iacute]ipuu exercise these treaty-reserved rights, both on and off-reservation, including on millions of acres of ancestral lands that are now National Forest System lands.

The Forest comprises the heart of the aboriginal homeland of the Nez Perce people, the Nim[iacute]ipuu. The Forest is located within the Tribe's area of exclusive use and occupancy, as adjudicated by the Indian Claims Commission,3 and encompasses areas of cultural and spiritual significance to the Tribe. And, when the Tribe entered into a treaty with the United States government in 1855, to protect its people, culture, and way of life, the Tribe reserved within its 1855 Reservation lands and waters that now comprise a portion of the Forest.4 As a

result, the Tribe considers the protection of its treaty-reserved rights and resources on the Forest to be a paramount obligation of the Forest.

The Forest remains critically important to Nez Perce Tribal members. It is directly adjacent to the Tribe's Reservation, and Tribal members also continue to use it, like hundreds of generations before them, for subsistence, cultural, religious, and commercial activities. It remains a popular destination for Nez Perce Tribal hunting and gathering, and contains unique places and landscapes integral to Nez Perce culture and identity. The Forest is also critically important to anadromous fish in the Columbia River Basin, providing important natural spawning and rearing habitat for listed Snake River Basin steelhead, bull trout, Chinook salmon, coho, and Pacific lamprey.

2. Forest Service's Treaty and Trust Responsibilities to the Tribe

As the Tribe has consistently emphasized throughout the Proposed Plan process, the Tribe believes the United States has foundational obligations pursuant to its treaty with the Tribe: the United States has an obligation to protect the Tribe's ability access to the Forest to exercise its treaty rights as well as an obligation to protect and ensure the viability and availability of the underlying natural resources on the Forest at healthy and harvestable levels to ensure that the exercise of the Tribe's treaty-reserved rights is possible. Under the United States Constitution, treaties are the "supreme law of the land" to which "all executive officers[hellip]of the United States shall be bound by oath or affirmation, to support[hellip]"5 These federal legal obligations to the Tribe under treaty are, therefore, primary; they are in addition to the United States' trust responsibilities to the Tribe and are independent of the Forest's other statutory and regulatory obligations.

As fiduciary, the United States and all its agencies owe a trust duty to federally-recognized Indian tribes to protect their resources.6 This trust relationship has been described as "one of the primary cornerstones of Indian law,"7 and has been compared to the relationship existing under the common law of trusts, with the United States as trustee, the tribes as beneficiaries, and the property and natural resources managed by the United States as the trust corpus.8

All executive agencies of the United States are subject to the federal trust responsibility to recognize and uphold treaty-reserved rights. Executive agencies must also protect the habitats and resources on which those rights rest, as the right to take fish and other resources reserved by the Tribe presumes the continued existence of the biological conditions necessary to support the treaty- reserved resources.9

The U.S. Department of Agriculture's ("USDA") Departmental Regulation on Tribal Consultation, Coordination, and Collaboration states that "USDA agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and meet the responsibilities that arise from the unique legal relationship between the Federal Government and Tribal governments."10

Forest Service Manual ("FSM") 1563.8b specifically states that the Forest Service "shall administer lands subject to off-reservation treaty rights in a manner that protects Indian tribes' rights and interests in the resources reserved under treaty."11 Further, FSM 1563.03 directs the Forest Service, among other responsibilities, to "[i]mplement Forest Service programs and activities consistent with and respecting Indian treaty and other reserved rights and fulfilling the Federal Government's legally mandated trust responsibilities with Indian Tribes."12

3. Need for Forest Plan Standards to Protect Tribal Rights and Resources

There are significantly fewer standards in this Proposed Plan than in either of the current Forest Plans. The Tribe is concerned by this development with respect to the protection of treaty-reserved rights and treaty-reserved resources.

Well-established Supreme Court precedent affirms that only Congress can abrogate treaty rights.13 Executive departments and agencies, including the U.S. Department of Agriculture and the Forest Service lack authority to authorize or take action that violates treaty rights and, therefore, must exercise utmost caution in administering

National Forest System lands under federal land management statutes when tribal treaty rights and resources are implicated.

The Forest also has independent statutory and regulatory obligations under the National Forest Management Act ("NFMA") and the 2012 Planning Rule to ensure that its actions and its implementing regulations do not weaken, degrade, or abrogate tribal treaty-reserved rights and resources. NFMA's implementing regulations expressly provide that they "do[] not affect treaty rights"14 and require that "[p]lans must comply with all applicable laws and regulations."15 NFMA's implementing regulations further mandate that "[t]he responsible official shall ensure that the planning process, plan components, and other plan content are within Forest Service authority, the inherent capability of the plan area, and the fiscal capability of the unit."16

Under NFMA, which governs Forest Service planning and management, the Forest Service is required to incorporate planning standards and guidelines in land management plans ("Forest Plans") for each unit of its National Forest.17 A standard is "a mandatory constraint on project and activity decisionmaking, established to help achieve or maintain the desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements."18 A guideline is "a constraint on project and activity decisionmaking that allows for departure from its terms, so long as the purpose of the guideline is met."19 Courts also make a distinction between standards and guidelines, viewing standards as mandatory20 and guidelines as discretionary.21 The 2012 Planning Rule, under which this Proposed Plan has been developed, does not prevent the Forest from selecting standards, as opposed to guidelines, to support desired future conditions and the health and availability of treaty-reserved resources.

The Tribe has consistently viewed Forest Plan standards as the component necessary to comply with NFMA's "do[] not affect treaty rights"22 mandate and to, otherwise, uphold the Tribe's and the United State's 1855 Treaty. Standards are the only Forest Plan component that provide legally enforceable, binding, and mandatory safeguards placed on the Forest through the Plan and "operate as parameters within which future development must take place."23 While guidelines may provide

the Forest with more management flexibility, guidelines also reduce accountability and oversight and, therefore, increase the risk that Forest management will violate the Tribe's treaty.

The Tribe's perspective on standards is informed by decades of experience engaging the Forest on hundreds of projects across the Tribe's aboriginal homeland. Without mandatory standards to constrain Forest action, Forest projects can and do harm and degrade treaty-reserved resources in the short and long term. Harming or degrading treaty-reserved resources can interfere with Tribal members' ability to exercise the Tribe's treaty-reserved rights, connect with places and resources, and transmit that connection to younger generations. The degradation of treaty-reserved resources can interfere with the intergenerational connection to places and resources and the intergenerational transmission of how and where treaty rights are exercised. This is not what the Tribe bargained for with the United States in 1855.

4. Tribe's Specific Objections to the Regional Forester's SCC List and FEIS and Suggested Resolutions

NFMA's planning regulations direct the Forest Service to designate SCC, which are defined as "a species, other than federally recognized threatened, endangered, proposed, or candidate species, that is known to occur in the plan area and for which the regional forester has determined that the best available scientific information indicates substantial concern about the species' capability to persist over the long-term in the plan area."24 The Forest Service's Land Use Planning Handbook, FSH 1909.12 section 12.52, sets forth the process for identifying potential SCC. In addition to the regulatory requirement that SCC be "known to occur" in the plan area, the FSH requires species be "native to" the plan area.25

Once designated, SCC factor into the development of Forest Plan components (i.e., standards and guidelines). Forest Plans must include components that maintain or restore ecosystems and watersheds.26 Should these "ecosystem-based" components be insufficient to maintain viable populations of SCC (or protect species listed or

proposed for listing under the Endangered Species Act), then Forest Plans must also include additional species-specific components to maintain viable populations of SCC.27

4.1. Aquatic Species Objections

The Tribe raises three Objections here to the SCC list of aquatic species, for which the Regional Forester, Leanne Martin, is the Responsible Official. The first two address the Regional Forester's determinations that two species?spring/summer Chinook and coho salmon?are not native to the Clearwater River basin and therefore ineligible for designation. The third Objection is to the Regional Forester's determination, for many aquatic species, that habitat trends on the Forest are generally improving. The Forest's own assessments show otherwise.

Before addressing the Forest Service's legal and policy errors below, the Tribe must first emphasize two overarching concerns with respect to spring/summer Chinook and coho salmon in the Clearwater River basin. First, the Regional Forester ignored the operative definition of "native species" and instead crafted a novel, perplexing reason to exclude two of the most imperiled and Tribally-significant species from designation. Second, the Regional Forester's decisions about these species have negative consequences for the larger national effort to restore anadromous fish in the Columbia River Basin. In a September 27, 2023, Memorandum, President Biden declared it the policy of his Administration to "restore healthy and abundant salmon, steelhead, and other native fish populations to the Basin,"28 and directs federal agencies including the Forest Service to use their authority to advance this effort.29 The Tribe believes the Regional Forester has failed to comply with this direction by excluding Chinook and coho salmon from the SCC list. The Tribe asks that the Regional Forester reconsider this decision and fully engage in the effort to restore salmon and steelhead in the Columbia River basin, which necessarily includes designating Chinook salmon or spring/summer Chinook salmon as an SCC in the Clearwater River basin and re-evaluating coho salmon for designation based on the proper factors.

4.1.1. Failure to Designate Unlisted Chinook Salmon or, Alternatively, Spring/Summer Chinook Salmon in the Clearwater River Basin as SCC

4.1.1.1. Chinook salmon evolved in the Clearwater River basin until they were extirpated in the early 1900s.

Until the early 1900s, spring and summer Chinook salmon "spawned in virtually all accessible and suitable habitat in the Snake River upstream from its confluence with the Columbia River."30 This included the Clearwater River basin, until an inadequate fish ladder at the Lewiston Dam prevented adult Chinook salmon passage from 1927 to 194031 Consequently, "[t]he native runs of chinook salmon in the Clearwater River subbasin were nearly, if not totally, eliminated by hydropower development."32

Initial efforts to restore spring/summer Chinook to the Clearwater River basin depended on out- of-basin stocks.33 In 1991, when the National Marine Fisheries Service ("NMFS") first decided to list spring/summer Chinook salmon within the larger Snake River basin, it used these out-of-basin stocks as the basis for excluding the Clearwater River subbasin population from the larger Snake River evolutionarily significant unit ("ESU"). Applying what would soon become its 1991 ESU policy,34 NMFS concluded:

One area for which the evidence of stock transfers and hybridization is overwhelming is the Clearwater River. Indigenous chinook salmon populations were virtually or totally eliminated by Lewiston Dam (1927-40). Subsequent efforts to restore the runs included transfer of eggs from the Salmon River and massive outplants of juveniles from hatcheries throughout the Columbia River Basin. Descendants of these fish of mixed, nonnative origin are not considered part of the ESU for Snake River spring and summer chinook salmon.35

The Nez Perce Tribe has endeavored to restore a naturally occurring population of the species to the Clearwater River basin. Since the early 1990s, spring-run broodstock has been composed mostly of adult Clearwater returns (65% in the 1990s, and 94% since 2000), with the addition of Rapid River stock when necessary.36 A summer-run hatchery program, which began in 2009, has used 74% adult Clearwater returns for broodstock since 2014.37 The Nez Perce Tribe participates in these supplementation efforts with the goal of restoring wild populations of locally-adapted spring/summer Chinook and other native salmonids in the Clearwater River basin

to healthy and harvestable levels.

Previously designated as a sensitive species, the Forest identified spring/summer Chinook species in the Clearwater basin as eligible for SCC designation throughout this planning process, including on preliminary SCC lists released in 2014 and 2019. But the Regional Forester dropped the species from the final November 2023 SCC list. In her letter transmitting the final list, the Regional Forester concluded that "only non-native spring/summer Chinook occur in the Clearwater Basin, and thus, cannot be identified as SCC."38 The FEIS links the rationale for her decision to NMFS's 1991 ESU decision:

Although they were previously a sensitive species under the 1987 plan, spring and summer Chinook salmon in the Clearwater basin are a not a Species of Conservation Concern, primarily because the original stock was extirpated, and the reintroductions utilized out- of-basin fish that do not currently meet the criteria of being native (Matthews and Waples 1991, Waples 1991) to the plan area. The decision to consider them non-native provides consistency between federal agencies, in this case between Forest Service and National Oceanic and Atmospheric Administration Fisheries.39

As discussed below, this analysis is erroneous. Chinook salmon are "native to" the Clearwater River basin under the Forest Service's applicable definition of "native species," even if the current stocks had to be reintroduced after the Lewiston Dam caused extirpation or near extirpation of the species in the Clearwater River basin.

Moreover, the Regional Forester's reliance on NMFS's 1991 ESU Status Review is simply inappropriate. NMFS's Status Review addressed a different question than the one presented to the Regional Forester by the NFMA regulations and was responding to a different statutory framework. The Regional Forester's reliance on NMFS's 1991 ESU Status Review, therefore, is arbitrary and capricious.

4.1.1.2. Chinook Salmon, including spring/summer Chinook salmon, in the Clearwater River basin meet the Forest Service's operative definition of "native species"

NFMA's planning regulations define the term "native species" as: An organism that was historically or is present in a particular ecosystem as a result of natural migratory or evolutionary processes and not as a result of an accidental or deliberate introduction into that ecosystem. An organism's presence and evolution (adaptation) in an area are determined by climate, soil, and other biotic and abiotic factors.40

Parsed, the definition asks whether a species was "historically . . . present" in a particular ecosystem "as a result of natural migratory or evolutionary processes and not as a result of an accidental or deliberate introduction into that ecosystem." The operative factor is whether a species was historically present in a system through evolution or first arrived in the system through introduction. Stated plainly, native species initially occurred in an ecosystem naturally.

Without question, Chinook salmon occurred historically in the Clearwater River subbasin, within the Proposed Plan area, as a result of natural migratory and evolutionary processes. In contrast, smallmouth bass, brook trout, American shad, and now walleye are all species that are non-native to the Columbia River basin and the Clearwater River subbasin. These species were initially introduced, either deliberately or accidentally, into the ecosystem. Therefore, they do not meet the Forest Service definition of "native" to the Clearwater River.

The simple comparison between smallmouth bass and American shad on the one hand and Chinook salmon on the other illustrates the definition's distinction. Since Chinook salmon were historically present in the Clearwater River ecosystem as a result of natural processes, they are "native" to that ecosystem according to the Forest Service's definition and, therefore, are eligible to be designated an SCC by the Regional Forester.

The Regional Forester's conclusion[mdash]that the species' local extirpation in the Clearwater basin, followed by translocation of "non-native, out-of-basin genetic stock," renders the species "not native"41[mdash]does not track the Forest Service's definition of "native species." To start, the extirpation of a historically native species from an

ecosystem does not render it non-native under the definition. Species that were historically present in an ecosystem, but are no longer, still qualify (it includes any organism "that was historically or is present"42).

Additionally, the reintroduction of a locally-extirpated native species does not render the species non-native. The Forest Service's definition speaks only to circumstances where the species initially arrived in the system through accidental or deliberate "introduction." The fact that efforts to reintroduce Chinook salmon in the Clearwater River basin after their extirpation have relied on mixed-origin, out-of-basin broodstock is a common and inevitable consequence of local extirpation.43

The Regional Forester must apply the operative definition "native species" faithfully and accurately. By that definition, Chinook Salmon and, necessarily, spring/summer Chinook are native to the Clearwater basin.

4.1.1.3. The Regional Forester inappropriately relied on NMFS' 1991 ESU Status Review to reach her "non-native" determination

The Regional Forester based her "non-native" determination not on the applicable regulatory definition, but on NMFS' 1991 Status Review for the Snake River Basin spring/summer Chinook ESU, which excluded Clearwater fish due to the "mixed, nonnative origin" of their broodstock.44 The Status Review, in turn, applied the Endangered Species Act's ("ESA") unique definition of the term "species," which includes not only the taxonomic ranks of species and subspecies, but also "distinct population segment[s]"[mdash]a step-down category particular to the ESA's protective scheme.45

To determine when a stock of salmon qualifies as a distinct population segment and thus a "species" for purposes of ESA listing, NMFS developed the following policy:

A stock of Pacific salmon will be considered a distinct population, and hence a "species" under the ESA, if it represents an evolutionarily significant unit (ESU) of the biological species. A stock must satisfy two criteria to be considered an ESU:

1. It must be substantially reproductively isolated from other conspecific population units; and
2. It must represent an important component in the evolutionary legacy of the species.46

In its 1991 Status Review, NMFS excluded spring/summer Chinook from the Snake River Basin ESU based on application of the above policy[mdash]specifically the policy's second factor. NMFS' reference to "mixed, nonnative origin" Clearwater Chinook must be read in this context: the agency was referring to the genetic composition of the Clearwater Chinook "stock," not to the historical presence of the species.

The Regional Forester took this reference out of context. The question of whether the species, Chinook salmon, is "native" to the plan area under the NFMA regulations is fundamentally a different question than whether the stock qualifies as a "species" under the ESA.

Moreover, to the extent the 1991 ESU Status Review addresses the question of whether Chinook salmon as a species "was historically . . . present in a particular ecosystem as a result of natural migratory or evolutionary processes," it only supports such a conclusion. The report recognizes the natural historical presence of spring/summer Chinook in the Clearwater River subbasin and labels the species as "native" in this sense.47

4.1.1.4. The best available scientific information shows substantial concern about the ability of Chinook salmon in the Clearwater basin to persist over the long term in the plan area

The status of Chinook salmon throughout the Snake River basin, including the Clearwater, is dire. Both the fall Chinook stock and spring/summer Chinook stock are listed under the ESA. Spring/summer Chinook in particular are at just a fraction (<1%) of their historical abundance of 1 million or more.48

A majority of the historical populations that comprise the stock have been extirpated, with the currently extant (remaining) populations being a mixture of ESA-listed and non-listed (reintroduced) populations. In both cases,

the abundance of wild origin adult returns is extremely low. For example, wild origin spring/summer Chinook salmon adult returns to the Snake River

Basin (upstream of Lower Granite Dam) was estimated to be 6,997 fish in 2018.49 These numbers are well below even the lowest management threshold required for ESA-delisting and also resulted in many populations sitting at or below quasi-extinction thresholds (50 or fewer spawners).50

The number of wild origin spring/summer Chinook returning to the Clearwater sub-basin (the plan area) in 2018 was 875 (13% of the total return to the Snake Basin).51 Although returns of naturally spawning spring/summer Chinook in the Clearwater are not tracked as well as are other Snake Basin populations (because they are not listed under the ESA, they do not receive the same level of monitoring funding), they likely comprise about the same percentage of the total Snake Basin returns as they did in 2018. The plan area population does not function independently of the Snake Basin populations; their trends follow the same trajectory. To put the 2018 abundance in context, it represents only 18% of the Columbia Basin Partnership's low range goals for the Clearwater population and indicates a population in dire condition.

The Tribe, as a fish manager, has significant concerns about whether the species (and the Clearwater population of the spring/summer Chinook stock) will persist over the long-term.
4.1.1.5. The Regional Forester should designate Clearwater Chinook Salmon, or, alternatively, spring/summer Chinook as an SCC to further the national effort to restore anadromous fish in the Columbia River Basin.
President Biden's September 27, 2023 Memorandum, "Restoring Healthy and Abundant Salmon, Steelhead, and Other Native Fish Populations in the Columbia River Basin," provides clear direction to the Forest Service. Recognizing the importance of salmon and steelhead to Columbia River Basin tribes, as well as the serious harm inflicted on the Nez Perce and other tribes by their decline, the Memorandum calls for "a sustained national effort to restore healthy and abundant native fish populations in the Basin."52 The Memorandum directs all federal agencies and explicitly the Forest Service to "utilize their authorities and available resources to advance" this policy.53

The Clearwater River basin carries outsized importance for salmonid recovery. As NMFS recognized in its 2017 Recovery Plan for the Snake River spring/summer Chinook ESU and steelhead DPS, "[t]he Clearwater River basin includes habitats that are generally colder and wetter than extant population tributaries within the [spring/summer Chinook salmon] ESU."54 The basin, much of which lies on the Forest, promises both climate refugia and a living laboratory. According to NMFS,

[d]epending upon future trends in climate changes across the basin and responses of extant ESU populations to restoration efforts, future adaptations of ESU recovery strategies may include re- establishing naturally adapted ESU production in the Clearwater River. In the meantime, monitoring the performance of current out- of-ESU production in the Clearwater River basin could give valuable insights into alternative reintroduction strategies and the local adaptation process.55

Designating Chinook Salmon or, alternatively, spring/summer Chinook in the Clearwater as an SCC would be an obvious and effective use of the Forest Service's authority to further Administration policy. SCC designation imparts on the Forest the requirement for plan components that maintain "a viable population" of the species[mdash]one that "continues to persist over the long term with sufficient distribution to be resilient and adaptable to stressors and likely future environments."56 SCC designation would thus make the Forest a full partner in the effort to restore naturally-occuring fish in the basin.

SCC designation would also backstop the considerable risk to Chinook salmon and other aquatic species posed by the Forest's departure from the PACFISH/INFISH amendments. The Proposed Plan seeks to depart from these protective amendments while also increasing targets for timber harvest, a main driver of aquatic habitat degradation, from 50-60 million board feet ("MMBF") to 190-210 MMBF. By designating spring/summer Chinook

as an SCC, the Forest Service will ensure new and untested plan components provide the ecological conditions necessary to maintain viable salmonid populations.

All told, designating Chinook salmon or spring/summer Chinook in the Clearwater as an SCC is not only allowed under a plain interpretation of NFMA's implementing regulations and Forest Service policy; but will unquestionably further this Administration's directive to restore native fish locally and region-wide, and thereby honor the federal government's treaty and trust responsibilities to the Nez Perce Tribe.

Objection: The Regional Forester's determination that spring/summer Chinook salmon are not native to the Clearwater River basin, and therefore ineligible for designation as an SCC, is arbitrary, capricious, and contrary to the 2012 Planning Rule and agency and Biden Administration policy.

Proposed Resolution: The Forest Service should strike its "non-native" rationale for the species and designate Chinook salmon or all unlisted populations of the species Chinook salmon (Oncorhynchus tshawytscha) in the plan area as an SCC. Alternatively, the Forest Service should designate Chinook salmon or spring/summer Chinook in the Clearwater River basin as an SCC, and evaluate whether current ecosystem-based plan components will maintain a viable population of the species.

4.1.1. Failure to designate coho salmon as an SCC

4.1.2.1. Coho salmon evolved in the Clearwater River basin until they were extirpated in the early 1900s

The history of coho salmon in the Clearwater River basin largely mirrors that of spring/summer Chinook. The species was historically present in the mainstem Clearwater River and tributary rivers, including the Lochsa, Selway, and South Fork Clearwater.57 Construction of the Harpster Dam in 1910 eliminated coho access to the South Fork Clearwater, and the construction of the Lewiston Dam in 1927 restricted coho passage at the mouth of the Clearwater River until 1940.58 The Idaho Department of Fish and Game attempted to reintroduce coho in the 1960s using hatching channels at Meadow Creek, Red River, and Crooked River, but the efforts were unsuccessful and ended in 1968.59 Coho salmon were considered extinct in the entire Snake River basin in 1986.60

Beginning in 1995, the Tribe began operating its own program to reintroduce coho salmon to the Clearwater River basin, which continues to this day.61 In 2004, the Tribe published its Coho Salmon Master Plan for the basin, which established goals and objectives for the reintroduction program in furtherance "the Nez Perce Tribe['s] vision of restoring all fish species native to the Nez Perce Indian Claims Commission (ICC) Treaty territory."62 Its objectives include establishing a localized Clearwater River coho salmon broodstock and natural spawning populations of coho salmon in the Clearwater River basin.63

4.1.2.2. Coho salmon in the Clearwater River basin meet the Forest Service's operative definition of "native species," and their designation would bolster the effort to restore the species to the Columbia River Basin

As with spring/summer Chinook salmon, the Regional Forester excluded coho salmon from the SCC list based on the rationale that reintroduction efforts using non-local broodstock have rendered the species non-native to the Clearwater River subbasin:

The existing stocks of Clearwater Coho are not considered native in this drainage and are periodically evaluated as a potential threat to recovery of ESA listed stocks. Habitat trends are improving within the plan area, and reliable funding for supplementation programs exists, although the local population could be susceptible to stressors such as localized habitat degradation and climate change. As a result of federal non-native status, and lack of state natureserve [sic] ranking, this stock is not identified as SCC.64

Again, this rationale ignores the operative definition of "native species." The Forest Service's definition considers whether a species was "historically . . . present" in a particular ecosystem "as a result of natural migratory or evolutionary processes and not as a result of an accidental or deliberate introduction into that ecosystem."65 Like spring/summer Chinook, coho salmon were historically present in the Clearwater River subbasin until their local

extirpation due to the construction of the Harpster and Lewiston dams. The species naturally evolved in the Clearwater River basin and is therefore "native." The Regional Forester's contrary determination is in error.

As with spring/summer Chinook, SCC designation will bolster efforts to restore an important Tribal fishery. Designation also provides a feasible means of advancing the policy priorities outlined in the President's September 27, 2023 Memorandum. Specific to coho, designation would enlist the Forest as a partner in a remarkable restoration effort undertaken so far by the Nez Perce Tribe alone.

Objection: The Regional Forester's determination that coho salmon are not native to the Clearwater River basin, and therefore ineligible for designation as an SCC, is arbitrary, capricious, and contrary to the 2012 Planning Rule and agency and Biden Administration policy.

Proposed Resolution: The Forest should strike the "non-native" rationale for coho salmon in the plan area and re-evaluate the species for designation as a species of conservation concern.

4.1.3. Inappropriate Use of Region-wide Riparian Habitat Trends to Evaluate Potential Aquatic SCC.

To identify SCC, the Regional Forester must use the best available science to identify substantial concern about the species' capability to persist long term in the Forest Plan area.66 A marker of best available science is its relevance. "The information must pertain to the issues under consideration at spatial and temporal scales appropriate to the plan area and to a land management plan."67

The Regional Forester repeatedly refers to improving habitat trends in the plan area as her basis for declining to designate a number of aquatic invertebrates and fish as species of conservation decisions.68 As citation, she provides Roper et al. (2019),69 a region-wide analysis of PACFISH/INFISH Biological Opinion ("PIBO") monitoring data. The analysis credits the PACFISH/INFISH amendments with overall upward trends in stream condition.70

But the region-wide conclusions in Roper et al. (2019) do not cross-apply to the Nez Perce- Clearwater National Forest. The FEIS paints a different picture at the Forest-wide and subbasin scales. According to PIBO monitoring data of watersheds within the Forest, the overall forestwide index of stream habitat has not statistically improved between 2001 and 2019.71 Only three of the nine PIBO metrics (large wood frequency, median substrate, and macroinvertebrate assemblage) saw statistically significant improvement. Many of these metrics[mdash]including all combined[mdash] remain below ecoregion reference benchmarks.72

At the subbasin scale, the majority of PIBO metrics (45 of 60) have not changed to a statistically significant degree.73 Of the 15 metrics that saw statistically significant change, 5 decreased away from eco-region reference values and just 10 increased towards reference values.74

All told, monitoring shows an overall static trend in Forest-wide stream conditions. While fair to say the PACFISH/INFISH amendments have halted degradation in the plan area, the Forest-wide trends do not match region-wide trends described in Roper et al. (2019). Where the Regional Forester relied on Roper et al. (2019) rather than plan-level monitoring data, she violated the requirement to use the best available scientific information to identify SCC.

Objection: The Regional Forester's conclusion that habitat conditions in the plan area have improved[mdash]repeated for most aquatic species considered and rejected for SCC designation[mdash]is arbitrary and capricious and contrary to the 2012 Planning Rule's best available scientific information requirement.

Proposed Resolution: In each instance where the Regional Forester relied on a rationale of improving habitat trends, reconsider aquatic species for designation as species of conservation concern using the 2019 Watershed Assessment cited in the FEIS. Species that should be reconsidered for SCC designation include the Straight

snowfly, Idaho snowfly, Lolo mayfly, a caddisfly (Ecosmoecus schmidi), shortface lanx, Cascades needlefly, Cordillera forestfly, coho salmon, redband trout, and Westslope cutthroat trout.

4.2. Terrestrial Species Objections

The following Objections involve two species designated as SCC, fisher and white-headed woodpecker. The Tribe does not object to their identification, but rather to the sufficiency of the Proposed Plan and FEIS as related to these two species. The Tribe therefore directs these Objections to the Forest Supervisor, Cheryl Probert, as the Responsible Official.

4.2.1. Fisher

The Tribe has a number of concerns regarding the maintenance of a viable population of fisher, a species of conservation concern, under the proposed plan. The Forest projects a 58% decline in Forest-wide fisher habitat at 50 years under the Preferred Alternative,75 with a total acreage far below the level identified by the U.S. Fish and Wildlife Service as necessary to prevent inbreeding depression in this population.76

4.2.1.1. Fisher Habitat Analyses Based Upon Faulty Assumptions

The Tribe has identified two concerns associated with the analyses used to assess habitat impacts to fisher. First, the analysis of female home range habitat defines mature trees as those 10" diameter at breast height ("DBH") or greater, chosen to reflect trees with a canopy height of at least 25 meters using VMap data.77 However, the best available science suggests that particular diameter threshold is inappropriately low,78 as illustrated by the Forest's use of a 15" DBH threshold in the fisher habitat availability modeling effort.79 Second, the FEIS suggests that fisher are not tied to a particular tree species dominance type,80 yet the best available science clearly demonstrates that ponderosa pine forest types are generally avoided by fisher.81 This is important because the Forest is proposing wide-scale conversion of forest stands to a ponderosa pine mix type within the warm moist Potential Vegetation Group.82

Objection: The Forest's faulty modeling assumptions overestimate the availability of suitable habitat for fisher under the Preferred Alternative: in the first instance due to the classification of relatively young or small-diameter trees as "mature" trees, and in the second instance due to the inclusion of mature trees within ponderosa pine stands as suitable for fisher.

Proposed Resolution: The Tribe requests that the Forest revise analyses in the FEIS specific to fisher to properly reflect the best available science regarding fisher use of mature trees and forest dominance types.

4.2.1.2. Management Practices Exacerbate Departure from Dry NRV

Under the Preferred Alternative, forests within the warm dry Potential Vegetation Type of Management Area 3 would be managed for increased dominance of ponderosa pine and Douglas- fir by reducing the dominance of grand fir and seral stage grasses and shrubs.83 Forests within the warm moist Potential Vegetation Type of Management Area 3 would be managed for increased dominance of ponderosa pine, western larch, and western white pine by reducing the dominance of Douglas-fir, subalpine fir and Engelmann spruce, grand fir, and seral stage grasses and shrubs.84

According to the FEIS, species dominance within the Warm Dry Potential Vegetation Type in Management Area 3 would change under the Preferred Alternative: from 17% to 55% for ponderosa pine, from 14% to 16% for Douglas-fir, from 33% to 10% for grand fir, and from 17% to 10% for seral stage grasses and shrubs.85 Within the Warm Moist Potential Vegetation Type in Management Area 3, ponderosa pine dominance would increase from 2% to 14%, western larch dominance would increase from 2% to 9%, western white pine would increase from 3% to 26%, Douglas-fir would decline from 11% to 10%, subalpine fir and Engelmann spruce would decline from 4% to 2%, grand fir would decline from 45% to 25%, and seral stage grasses and shrubs would decline from 10% to 5%.86

Fisher habitat is projected to decline precipitously under the Preferred Alternative, particularly within Management Area 3 and Management Area 2, where 46% and 39%, respectively, of fisher habitat occurs.87 Within 50 years, fisher habitat is projected to decline 32% within Management Area 3 and 19% within Management Area 288 due to a combination of a warming, drying climate, greater wildfire risk, and timber

harvest under the Preferred Alternative.89 The home range habitat model for fisher projects a 66% decline in fisher habitat Forest-wide after the second decade before rebounding slightly to a nearly 58% decline (to 410,126 acres) by the end of the fifth decade under the Preferred Alternative.90 This endpoint is over 207,000 acres below the 617,764-acre threshold identified by the U.S. Fish and Wildlife Service as necessary to sustain 50 breeding fisher and avoid the effects of inbreeding depression in the Northern Rockies.91

Disentangling the interactions of modeled climate change, wildfire stochasticity, and actions proposed under the Preferred Alternative is difficult. In general, the FEIS does a good job of detailing the complexity and nuance of these models, the various analytical tools used in the fisher impact assessment,92 and tradeoffs between the impacts of fuels treatments and high-severity wildfire.93 However, the FEIS makes clear that the Forest's specific reliance on regeneration timber harvest involving clearcuts to promote the dominance of early-seral tree species is projected to drive the degradation of fisher habitat on the Forest:

The outcome [of the fisher home range habitat model analyses] is that although all the alternatives fell within the natural range of variation for total acres disturbance, the patch size and distribution did not. Ultimately, this departure from historic landscape patterns is the primary driver of the decline in habitat suitable to support a fisher home range.94

The fisher habitat patch size and distribution of fisher habitat patches resulting from the Preferred Alternative are directly attributable to timber harvest practices, not wildfire, despite some interaction between those two factors.95 Maintaining viable populations of fisher within the Forest is important to the Tribe and mandatory under federal regulations.96

Objection: The Forest's own modeling indicates that the Preferred Alternative would eliminate more than half of fisher habitat across the Forest, likely to contribute to the eventual listing of fisher under the Endangered Species Act.

Proposed Resolution: The Tribe requests that the Forest revise the Preferred Alternative to ensure that modeled fisher habitat remains at levels likely to maintain the viability of fisher on the Forest based on the best available science. The Tribe further requests that the Forest revise the Preferred Alternative's Forestlands plan components to more closely align disturbance patch sizes and distribution with the projected "Dry" Natural Range of Variation for the warm dry and warm moist Potential Vegetation Types within Management Area 3.

4.2.1.3. Lack of Protections for Legacy Habitat Features

The loss of legacy habitat elements used for denning is also likely to contribute to declines in suitable habitat for fisher. The preferred method proposed by the Forest to restore the dominance of early-seral tree species (ponderosa pine, western larch, and western white pine) involves even- aged regeneration harvest of existing stands.97 Unfortunately, this harvest method is disproportionately impactful to the habitat elements used for reproduction by fisher. Whereas wildfire generally leaves partially-consumed standing and/or fallen large trees on-site, clearcut operations typically remove large trees entirely for economic, ecological, and/or safety reasons. The FEIS notes that fisher are known to persist on timber-producing lands elsewhere within their range, but management of those forests generally consists of treatments (e.g. thinnings and fuel reductions) which are less impactful to fisher habitat than clearcuts.98 Management of those lands also includes commitments to retain legacy habitat features. Those legacy features are not accounted for in the SIMPPLLE and PRISM models, and commitments within the Preferred Alternative to retain those features are only desired conditions and guidelines.

Management Area 3-GDL-FOR-05 requires that snags be retained within project areas but not necessarily within the treatment units themselves.99 The Preferred Alternative contains numerous plan components regarding the retention of green trees,100 but only Management Area 3-GDL- FOR-06 requires such retention, and the specific retention level specified therein may not be sufficient to sustain the necessary habitat structure across the landscape. The Tribe thanks the Forest for including Management Area 3-GDL-FOR-07 as an important protective measure for snags that nonetheless is likely to be inadequate to prevent overall declines in fisher

habitat on the Forest.

Maintaining viable populations of fisher within the Forest is important to the Tribe and mandatory under federal regulations,101 and the Tribe disagrees that the available data support the Forest's conclusion that fisher will persist on the Forest under the Preferred Alternative.102

Objection: Available data does not support the Forest's conclusion that fisher will persist on the Forest under the Preferred Alternative.

Proposed Resolution: The Tribe requests that the Forest:

* Revise Management Area 3-GDL-FOR-05 to apply specifically within treatment units;
* Revise Management Area 3-GDL-FOR-06 to align green tree retention levels with the best available scientific information regarding legacy habitat features in the number, sizes, and distribution predicted to occur after moderate- or high-severity fire.
* Establish one or more additional standards or guidelines to preserve legacy habitat features in the number, sizes, and distribution predicted to occur after moderate- or high-severity fire following regeneration harvests.

4.2.2. White-Headed Woodpecker

Maintaining viable populations of white-headed woodpecker within the Forest is important to the Tribe and mandatory under federal regulations.103 Stands with mature trees in an open structure represent key habitat conditions for species associated with ponderosa pine-dominated forests,104 including white-headed woodpecker. The FEIS notes that white-headed woodpecker habitat characteristics include an abundance of mature pines, relatively open canopy conditions (50-70%), and the availability of snags and stumps for nest cavities.105 Regional declines in white-headed woodpecker populations are attributed to past timber practices, regeneration harvest of timber, historic livestock grazing, fire and fire suppression, and climate change.106 The extent of ponderosa pine dominated forests within the warm dry Potential Vegetation Type has declined from its natural range of variation due to encroachment from Douglas-fir and grand fir.107

The Preferred Alternative prioritizes the restoration of open warm dry forest types dominated by ponderosa pine through a variety of plan components (e.g. FW-DC-FOR-02, FW-DC-FOR-03, FW-DC-FOR-05, and Management Area 3-OBJ-FOR-01) which would promote the removal of encroaching vegetation and the harvest and planting of ponderosa pine.108 Those and other "coarse filter" plan components109 and actions are relied upon to maintain viable populations of white- headed woodpecker within the Forest.

Unfortunately, analyses in the FEIS indicate that these plan components largely fail to achieve their intended purpose. Under the Preferred Alternative, ponderosa pine dominance within the warm dry forest Potential Vegetation Type would increase from 6% to 43% (desired range 50- 65%) within Management Area 2 and increase from 17% to 55% (desired range 50-60%) within the warm dry Potential Vegetation Type in Management Area 3 within 50 years.110 However, open dry forest dominated by ponderosa pine is projected to decline 74.8% Forestwide under the Preferred Alternative, while the extent of closed dry forest dominated by ponderosa pine would increase 88.8% Forestwide.111 Although the Preferred Alternative is defined by the Forest as meeting forested vegetation desired conditions in 30-35 years,112 the FEIS makes clear that achieving the long-term outcomes of the plan specific to dry ponderosa pine forest exceeds 150- year model projections.113

The Forest acknowledges limitations to the projection models that imply that the results themselves are not entirely reliable.114 Nonetheless, the FEIS goes on to attribute these projected outcomes to several factors: continuing losses of open dry forest types to high-severity wildfire,115 natural trends in crown growth and closure as open-canopy stands mature,116 and the harvest of some mature ponderosa pine to support timber production goals.117 Notably, the regeneration harvest of timber is identified by the Forest as a major driver of declines in white-headed woodpecker populations.118 It is unclear to the Tribe why high-severity wildfire would drive declines in open- canopy stands but not closed-canopy stands.

The Forest asserts that despite analytical uncertainties and the projections themselves, white- headed woodpecker habitat would actually increase on the Forest119 because a) white-headed woodpecker can use both closed and open forest structure120 and b) large and very large trees would increase Forest-wide and within all Potential Vegetation Types.121 However, neither of these assertions is fully accurate with respect to this species. Research indicates that white-headed woodpecker are closely associated with relatively open-canopied ponderosa pine forest122 within a mosaic of open- and closed-canopy conditions.123 In addition, the FEIS documents major projected declines in 15-19.9" DBH trees (all species) and only modest increases in 20"+ DBH trees within the warm dry Potential Vegetation Type in Management Area 2 and Management Area 3 within 50 years.124

As a result, the Tribe is very concerned that the Preferred Alternative is unlikely to sustain white- headed woodpecker populations or the conditions on which they depend. If the accuracy or sensitivity of the SIMPPLLE model specific to warm dry forest conditions is in question, the Forest needs to update that model. At this time, the FEIS does not provide compelling evidence to support the Forest's contention that results from the SIMPPLLE model should be disregarded, that reliance upon closed-canopy forest is consistent with the best available scientific information regarding white-headed woodpecker habitat selection, or that habitat benefits associated with the Preferred Alternative would sufficiently mitigate a projected 74.8% decline in the preferred habitat of this SCC.

Importantly, the Tribe disagrees that a 74.8% decline in open dry forest types within the Forest is inevitable and unavoidable.125 The restoration of open dry ponderosa pine forests is one of the most common forest restoration goals on Forest Service land throughout the western U.S., and an extensive body of research provides a robust basis to pursue those goals expeditiously. The Forest correctly identifies the restoration of warm dry forest types as a priority management need126 yet does not appear to have prioritized effort sufficient to meet that need under the Preferred Alternative.

Objection: The Preferred Alternative is unlikely to sustain white-headed woodpecker populations or the conditions on which they depend.

Proposed Resolution: The Tribe requests that the Forest revise one or more relevant plan components as needed to confidently maintain viable populations of white-headed woodpecker and the habitats on which they depend on the Forest.

5. Tribe' Specific Objections to the Proposed Plan and FEIS and Suggested Resolutions

5.1. Tribal Trust Components

5.1.1. Need For Standards For Forest-Wide Protection of Nez Perce Treaty- Reserved Rights

The Tribe appreciates that the Forest has included language in the DROD committing to work with the Tribe to adopt a mutually-acceptable Forest-wide standard or standards in the "Tribal Trust" section of the Revised Plan that reflect the Forest's legal obligations to safeguard the Tribe's access to, and exercise of, treaty-reserved rights on the Forest. The Tribe looks forward to working with the Forest during the Objection resolution period to identify a mutually-acceptable standard or standards necessary to accomplish this critical agency obligation.

The Tribe has repeatedly requested, through written comments, staff-to-staff meetings, and government-to-government consultation, that the Forest retain the Forest-wide treaty standards that have been in place for over 35 years in Forest's current 1987 Clearwater National Forest Plan. The current Clearwater Forest Plan treaty standards require the Forest to:

Ensure that Forest actions are not detrimental to the protection and preservation of Indian Tribes' religious and cultural sites and practices and treaty rights.127

[E]nsure proposed practices and management activities are coordinated with other governmental agencies and Indian tribes to [e]nsure requirements of all laws and regulations are met and terms of Indian Treaties are upheld.128

In an April 17, 2017, letter to the Tribe, Forest Supervisor Probert explained that the Forest was in the process of developing Forest Plan language to ensure trust responsibilities are met and assured the Tribe that the Proposed Plan would include "specific plan language that requires project level consultation, similarly to the language in the 1987 Clearwater Forest Plan." In the Tribe's April 20, 2020, comments on the Forest Plan and Draft Environmental Impact Statement, the Tribe requested that the Forest simply retain the Clearwater Forest Plan language quoted above.129

Upon review of the Forest Plan and Draft Final Environmental Impact Statement in June 2021, the Tribe was disappointed to see that the Forest unilaterally elected not to retain these standards and, instead, substituted a Forest-wide standard allowing agency actions to harm treaty-reserved resources in the short-time if the Forest determines, in its sole discretion, that those actions will result in long-term benefits to the Tribe's treaty-reserved resources and rights. In the Forest's October 13, 2023, letter to the Tribe, the Forest maintained that the Clearwater National Forest

Plan standards quoted above were appropriate for a Forest-wide "goal" but not a "standard" in the new Proposed Plan.

In response to the Forest's decision not to include a Forest-wide treaty standard in the Proposed Plan, the Tribe requested that the Forest arrange a meeting between the Tribe's legal counsel and the Forest Service's legal counsel to directly discuss the Tribe's original request and concerns with the new language. The Forest committed in an October 26, 2021, letter to arrange such a meeting. The Tribe, meanwhile, arranged in-person meetings in 2022 and 2023 with Secretary Vilsack, Undersecretary Wilkes, Deputy Undersecretary Harrell, Director Thompson, and Forest Service leadership in Washington D.C. regarding the Plan. At those meetings, the Tribe expressed concerns with the Forest's persistent unwillingness, throughout the planning process, to make necessary changes in the Proposed Plan to fulfill the United States' legal obligations to the Tribe under the Tribe's treaty. The Tribe pointed out that the Forest has repeatedly declined to adopt standards that would effectively protect the Tribe's treaty-reserved rights and resources.

The Tribe left the 2022 and 2023 Washington D.C. meetings with renewed confidence in the Biden Administration's commitment to protecting and honoring its treaty rights and tribal sovereignty, in keeping with several of the administration's executive actions.130 Consequently, the Tribe also left those meetings confident that the U.S. Department of Agriculture and the Forest would not adopt a Plan that lacked standards upholding the Tribe's rights under its and the United States' 1855 Treaty.

In an October 13, 2023, letter to the Tribe, and follow-up meeting with the Nez Perce Tribal Executive Committee, Forest Supervisor Probert expressed that she better appreciated the Tribe's position that Plan standards are necessary to protect the Tribe's treaty-reserved resources and rights and reiterated her commitment to developing collaborative solutions with the Tribe. At this meeting, the Tribe repeated its request for a meeting between its legal counsel and the Forest's legal counsel to discuss treaty right standards for the proposed plan.

An initial meeting between the Tribe's legal counsel and the Forest's Regional Office of General Counsel and Washington D.C. Office of General Counsel to discuss Plan standards occurred on October 26, 2023. The October 26, 2023, attorney call was an introductory conversation. During that meeting, the Tribe's counsel was

able to clarify the Tribe's view that the Forest has a treaty- based duty not only to ensure access to National Forest System lands for the exercise treaty rights but also to protect and ensure the viability and availability of the natural resources necessary to effectuate the Tribe's treaty-reserved rights. At the meeting, the Forest Service's attorneys agreed to develop some new language from the Tribe's legal counsel to consider.

Shortly thereafter, on November 6, 2023, a Nez Perce Tribal Executive Committee delegation met in person with Forest Service Chief Moore at the Forest headquarters in Washington D.C. to discuss the Proposed Plan. At that meeting, the Nez Perce Tribal Executive Committee delegation highlighted some of its outstanding concerns with the Proposed Plan and requested that the Forest postpone publication of the DROD and FEIS to allow more time for the Tribe and Forest to collaboratively resolve the Tribe's outstanding issues with the Proposed Plan, including adoption of Forest-wide standards sufficient to protect the Tribe's treaty-reserved rights and resources.

In a November 13, 2023, letter to the Tribe, Forest Supervisor Probert thanked the Tribe for attending the in-person meeting with Chief Moore. Supervisor Probert emphasized the Forest's commitment to meeting the Forest's treaty and trust responsibilities and appended a document reflecting the Forest's decision to convert 12 resource guidelines in the Proposed Plan to standards as well as add one desired condition, one standard, and one guideline to the "Tribal Trust" section "to ensure that activities have co-stewardship at the very core and that tribal members' ability to access forest products is not eroded."

On November 21, 2023, the Forest's legal counsel conveyed proposed language for the "Tribal Trust" section, including forest-wide standards, for the Tribe's attorneys' review.

Based on its review of the Proposed Plan components in the "Tribal Trust" section and the language proposed by the Forest's legal counsel on November 21, 2023, the Tribe outlines below its Proposed Plan language, including its proposed standards to protect treaty-reserved rights to hunt, fish, gather, pasture, and travel in and across the Forest.

5.1.2. Tribe's Specific Objections to Tribal Trust Components

5.1.2.1. Section Title

Objection: The title of this section, "Tribal Trust" is too narrow and does not reflect the Forest's independent, contractual legal obligations under the 1855 Treaty between the Tribe and the United States.

Proposed Resolution: Change the title of this section from "Tribal Trust" to "Tribal Treaty and Trust Responsibilities."

5.1.2.2. Proposed Plan's References to "tribes," "tribal," and "treaties"

Objection: References to "tribes," "tribal," and "treaties" are vague and imprecise. The Forest is within the Nez Perce Tribe's ceded area. No other tribe holds treaty-reserved rights on the Forest. Such references in the Proposed Plan should be to the Nez Perce Tribe.

Proposed Resolution: Change all references to "tribes," "tribal," and "treaties" to specifically refer to the Nez Perce Tribe, Nez Perce tribal members, and the Nez Perce treaties.

5.1.2.3. Goals

Objection: The language in FW-GL-TT-07 implies that government-to-government consultation can occur with parties in addition to the Tribe and the United States. This is not correct.

Proposed Resolution: Amend the text of FW-GL-TT-07 to read: "Consultation with the Nez Perce Tribe, traditional cultural practitioners, consulting parties, adjacent landowners, and projectdesigners aids the FS in protecting and enhancing traditional cultural properties, cultural landscapes, sacred sites, and other culturally significant areas that provide tangible links tohistorically rooted beliefs, customs, and practices."

5.1.2.4. Desired Conditions

Objection: FW-DC-TT-02 is too narrow and does not expressly include fish, roots, berries, and other resources

The Tribe's treaty-reserved rights expressly include (1) the "right of taking fish at all usual and accustomed fishing places"131which courts have interpreted to include a right to take up to half of the harvestable fish runs that pass through the Tribe's usual and accustomed fishing places132; and (2) the "privilege of[hellip]gathering roots and berries on open and unclaimed land."

Proposed Resolution: Amend the language to read: "Habitats support fish, wildlife, roots, berries,and other resources at healthyhuntable and harvestable population levels for the exercise of theNez Perce Tribe's treaty-reserved rights."

Objection: FW-DC-TT-05 could better articulate the importance of maintaining Nez Perce Tribal member connection to places and resources on the Forest.

Proposed Resolution: Amend FW-DC-TT-05 to read: "Through co-stewardship, consultation, and collaboration, and management actionsthe Forests provide for the past, present and future of theNez Perce culture. ensure Nez Perce Tribal member connection to places and resources on theForests."

Objection: FW-GL-TT-01 should be modified and converted to a desired condition because treaty rights are federal laws and compliance with federal laws[mdash]whether they be the Tribe's treaty or federal statutes such as NFMA[mdash]are mandatory Forest obligations not goals.

Proposed Resolution: Amend the language in FW-GL-TT-01 to read: "FW-DC-TT-??. Proposed practices and management activities uphold thehonor treaty-reserved rights of the Nez PerceTribeIndian tribes or tribal members."

Objection: FW-GL-TT-06 should be modified and converted to a desired condition because maintaining and enhancing access to the Forest for Nez Perce tribal members to exercise the Tribe's treaty-reserved rights is a legal requirement for the Forest that Forest management should be focused on achieving.

Proposed Resolution: Amend the language in FW-GL-TT-06 to read: "FW-DC-TT-??. The Nez Perce-Clearwater coordinates with the Nez Perce Tribe to maintain and enhanceensureunregulated Forest access for Nez Perce tribal members for the exercise of treaty-reserved rights, including the rights to hunt, fish, gather, pasture, and travel."

Objection: The Proposed Plan's policy section includes Joint Secretarial Order 3403 on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters of 2021, but the Proposed Plan lacks components implementing the policies mentioned in that Joint Secretarial Order.

Proposed Resolution: The Forest will include the following language as three Desired Conditions in the Proposed Plan:

"FW-DC-TT-??. The Forest will actively work with the Nez Perce Tribe as a co-steward of its treaty- reserved resources on the Forest."

"FW-DC-TT-??. The Forest will ensure that the Nez Perce Tribe, as a co-steward, plays an integral role in decision-making with respect to the management of the Forest."

"FW-DC-TT-??. The Forest will work with the Nez Perce Tribe to develop and implement agreements for the co-stewardship of federal lands and waters."

"FW-DC-TT-??. The Forest will eliminate regulatory and administrative obstacles to accomplishing co-stewardship of Forest lands by the Nez Perce Tribe."

Objection: The Proposed Plan has no components that explicitly accommodate and support the Nez Perce Tribe's right to navigate and guide people through its homelands, in and across the Forest.

Pursuant to Article 3 of its 1855 Treaty with the United States, the Nez Perce Tribe reserved the right to fish, hunt, gather, pasture, and travel. The 2016 Native American Tourism and Improving Visitor Experience (NATIVE) Act also provides for "increase[d] coordination and collaboration between Federal tourism assets to support Native American tourism" and to "enhance and improve self-determination and self-governance capabilities in the Native American community."133 The NATIVE Act specifically requires Federal agencies to "support the efforts of Indian tribes . . . to identify and enhance or maintain traditions and cultural features that are important to sustain the distinctiveness of the local Native American community."134

Proposed Resolution: The Forest will include the following language as a Desired Condition in the Proposed Plan:

"FW-DC-TT-??. The Forest will actively work with the Nez Perce Tribe to uphold the Nez Perce Tribe's rights to interpret and showcase their heritage and deep cultural connections to their ancestral homelands across the Forest."

5.1.2.5. Objectives

Objection: FW-OBJ-TT-03 is too narrow in scope and fails to reflect all applicable Forest obligations regarding access to important cultural sites.

Proposed Resolution: Change the language to read: "Develop, within five years, a long-term strategy with the Nez Perce Tribe to improve Tribal member access to important cultural sites on the Forests, consistent with the Treaty of 1855 and applicable federal law, regulations, executive orders, and agency policies. within 5 years.

5.1.2.6. Standards

Objection: FW-STD-TT-01 only provides a placeholder which is "reserved for new wording" and is not a cognizable Forest-wide standard for protection of Nez Perce treaty rights and resources.

Proposed Resolution (a):

Adopt, as FW-STD-TT-01 and 02, the following standards from the 1987 Clearwater Plan:

Ensure that Forest actions are not detrimental to the protection and preservation of Indian Tribes' religious and cultural sites and practices and treaty rights.

[E]nsure proposed practices and management activities are coordinated with other governmental agencies and Indian tribes to [e]nsure requirements of all laws and regulations are met and terms of Indian Treaties are upheld.

These binding, mandatory, and legally-enforceable standards accurately and comprehensively reflect the Forest's legal obligations as an agency of the United States and signatory to the 1855 Treaty with the Tribe. This language also ensures compliance with the Forest's independent obligations under NFMA's implementing regulations, which prohibit Forest Plans from affecting treaty rights135 and require that "[p]lans must comply with all applicable laws and regulations."136 The current standards quoted above are appropriately drafted to ensure that Forest staff avoid interpreting or construing the 1855 Treaty in a manner outside of its authority or contrary to applicable judicial precedent: "[t]he responsible official shall ensure that the planning process, plan components, and other plan content are within Forest Service authority, the inherent capability of the plan area, and the fiscal capability of the unit."137

Proposed Resolution (b): The Forest includes the following standard as FW-STD-TT-03: "All new land management activities shall avoid impacts that would deprive the Nez Perce Tribal members of their ability to

access and exercise the Tribe's treaty-reserved rights and resources or would impair their traditional and cultural practices, as identified by the Tribe, consistent with federal law."

This standard accurately and comprehensively reflects the Forest's treaty and trust responsibilities to the Tribe, for the reasons identified above.

Objection: FW-STD-TT-02 identifies the wrong legal entity.

Proposed Resolution: Reword FW-STD-TT-02 as follows: "Commercial collection of special forest products shall not be permitted if the Nez Perce Tribal Executive Committee Nez PerceTribe identifies that it would result in limiting Tribal member access to, or use of, those treaty reserved resources. This determination shall be reviewed annually."

Objection: Lack of specific standards to accommodate and support the Nez Perce Tribe as a co- steward of the Forest.

Proposed Resolution:The Nez Perce Tribe proposes that the Forest adopt the following standards:

FW-STD-TT-??. "The Forest shall include the Nez Perce Tribe in early identification and development of proposed projects and management activities on the Forest."

FW-STD-TT-??. "The Forest shall invite the Nez Perce Tribe to participate in interdisciplinary team planning where projects that may affect Nez Perce Tribal rights and interests are reviewed, including Level 1 meetings with regulatory agencies."

FW-STD-TT-??. "The Forest shall ensure that, for each land management planning cycle, the Forest engages in early collaboration and consultation with the Nez Perce Tribe regarding projects or management activities proposed by the Nez Perce Tribe for inclusion in the schedule of proposed actions that directly support the Nez Perce Tribe's rights and role as a co-steward, consistent with applicable federal law."

Objection: The Proposed Forest Plan lacks specific plan standards to support the Nez Perce Tribe's sovereign, treaty-reserved right to navigate and guide people in and across the Forest to facilitate its heritage and culture outside of the regulatory framework for use and occupancy of the Forest.

Proposed Resolution: The Forest adopts the following standard:

FW-STD-TT-??. "The Forest shall not regulate, through special use permits, licenses, or other administrative action, Nez Perce Tribal activities involving the use and occupation of Forest land and waters to navigate and guide people, by any mode of transportation, to facilitate its heritage and culture."

5.1.2.7. Guidelines

Objection: FW-GDL-TT-02 identifies the wrong legal authority.

Proposed Resolution: Reword the guideline as follows: "To ensure Tribal access to first foods and culturally important botanical species, personal use collection of special forest products should not be permitted in areas of known conflict with Tribal uses when identified and requested by the Nez Perce Tribal Executive Committee Nez Perce Tribe for the duration of one harvest season."

5.2. Aquatic Ecosystem Components

The Tribe appreciates the Forest's willingness to receive input on aquatic resources plan components and to promise changes to the November 2023 Proposed Plan based on this input. Nonetheless, the Tribe remains deeply concerned by the departure from PACFISH/INFISH standards and guidelines and about the sufficiency of the aquatics-related components in the Proposed Plan. At a broad scale, PACFISH and INFISH appear to be

working. The plan amendments have been credited with region-wide upward trends in stream condition.138 But these trends do not necessarily apply to the Forest. According to PIBO monitoring data, the overall forestwide index of stream habitat has not statistically improved between 2001 and 2019.139 Most PIBO metrics of stream condition[mdash]including all combined[mdash]remain below ecoregion reference benchmarks.140

Anadromous and resident fish on the Forest, including Chinook salmon, steelhead, bull trout, and Pacific lamprey, suffer as a result. Steelhead provide a bellwether: the Snake River Basin steelhead Distinct Population Segment ("DPS") has declined tremendously since 2014 and is in serious trouble. In 2019, NOAA Fisheries reported that the Early Warning Indicator has been triggered for Snake River Basin DPS.141 This indicator[mdash]developed by NOAA Fisheries in the Biological Opinion for the Columbia River Power System[mdash]is based on fish abundances and trends and is a useful metric for determining when additional actions need to be taken to stave off the extinction of listed salmon and steelhead. The abundance aspect of the Early Warning Indicator is triggered when the four-year average abundance falls below 10,325 fish, and the trend aspect of the Early Warning Indicator is triggered when there is downward slope in abundance (based on five years of returns) that exceeds 90% of other five-year periods. The Tribe's 2022 monitoring data continues to show dangerously low steelhead abundance levels[mdash]as low as when the fish were first listed under the ESA.142

Within the DPS, the Clearwater River Major Population Group ("MPG") is comprised of five existing populations[mdash]the Lower Mainstem Clearwater River, South Fork Clearwater River, Lolo Creek, Selway River, and Lochsa River populations. The vast majority of the critical habitat for four of those populations[mdash]the South Fork Clearwater, Lolo Creek, Selway River, and Lochsa River[mdash]lies within the Forest. The MPG is both at risk (it is not meeting viability objectives143) and vital to the survival of the DPS (the Clearwater River basin, and in particular the basin's mountain areas, will provide very important thermal refugia in a changing climate144).

Habitat protection is already recognized as a key tool for recovery of steelhead populations. Idaho Governor Little's Salmon Workgroup,145 as well as the Snake River Basin Recovery Plan, describe the need to preserve and improve habitat in order to recover the species, especially in the face of climate change. The Snake River Basin Recovery Plan recommends the following for Snake River Basin steelhead generally and for the Clearwater River MPG specifically:

* Preserve, restore, or rehabilitate natural habitat-forming processes in areas with high suitability for steelhead by reestablishing riparian areas and reconnecting floodplains, and reducing surface runoff.
* Minimize, in freshwater tributary habitat, increases in summer temperature by implementing measures to retain shade along stream channels and augment summer flow.
* Reduce and prevent sediment delivery to streams by improving road systems and rehabilitating mining sites.146

Future timber management activities on the Forest will constitute the lion's share of human-caused impacts facing anadromous fish on the Forest. A significant portion of habitat for the Clearwater River MPG and other anadromous fish lies within the Forest's roaded front country where harvest management has increased significantly (by 200%) since Snake River Basin steelhead were listed in 1997.

Table: Region 1 - Resource Management (usda.gov)

Not only has timber volume on the Forest substantially increased, but the total acres of timber harvest have dramatically increased as well. The Forest now routinely completes timber projects that are larger than 30,000 acres, with timber volumes in excess of 50 million board feet. This recent era of intensive timber management on the Forest comes with significant environmental effects.

Table on Timber Harvest/Sales

On top of these increases, the DROD now establishes a Projected Timber Sale Quantity ("PTSQ") of 190-210 MMBF annually[mdash]a fourfold increase from existing plans. Given that Snake River Basin steelhead populations and other anadromous and resident fish will also face additional impacts from climate change over the life of this Proposed Plan, the Forest should only be strengthening, not weakening, its plan components to protect aquatic and riparian resources.147

With this background, the Tribe objects to a number of plan components for not being sufficiently protective of aquatics resources due to reasons such as verbiage, vagueness, incompleteness, overbroad exceptions, and lack of enforceability (i.e. guidelines rather than standards). For Water and Aquatic Resources, these components include: FW-DC-WTR-04; FW-DC-WTR-05; FW-DC- WTR-09; FW-OBJ-WTR-04; FW-OBJ-WTR-05; and FW-OBJ-WTR-07. For Riparian

Management Zones, these include: FW-GDL-RMZ-01; FW-GDL-RMZ-02; FW-GDL-RMZ-05; FW-GDL-RMZ-03; FW-STD-RMZ-08; FW-STD-RMZ-09; and FW-STD-RMZ-10. For

Infrastructure (Riparian and Aquatics), these include: FW-GDL-ARINF-01; FW-GDL-ARINF- 04; FW-GDL-ARINF-10; FW-STD-ARINF-04; and FW-STD-ARINF-05. For Livestock Grazing

(Aquatics and Riparian) these include FW-GDL-ARGRZ-01 and FW-STD-ARGRZ-04.

The Tribe has raised its concerns about these components with the Forest in ongoing staff-to-staff meetings and hopes to reach resolution outside of the objection process. Nonetheless, for the sake of completeness and to preserve all rights and remedies, the Tribe raises objections to each component below, as well as resolutions in the form of deleted and proposed text denoted by strikethrough and underline, respectively. The Forest has already agreed to changes to some of the components; these are noted with an asterisk.

5.2.1. Water and Aquatic Resources
5.2.1.1. FW-DC-WTR-04
Objection: The component is incomplete; it should include stream temperature as a stated metric to remove any doubt of its use as a part of the desired condition. Stream temperature remains a significant forestwide problem.

Proposed Resolution: Amend the desired condition to read: "Instream habitat conditions for managed watersheds move in concert with or towards reference conditions. Aquatic habitats are diverse, with channel characteristics and water quality reflective of the climate, geology, and natural vegetation of the area. Instream habitat conditions across the Nez Perce-Clearwater, such as large woody material, percent pools, stream temperature, residual pool depth, median particle size, and percent fines are within reference ranges as defined by agency monitoring (for example, PIBO) and match the frequency distribution of comparable reference sites for a given channel type, channel size, climate, and geomorphic setting."
5.2.1.2. FW-DC-WTR-05
Objection: The component is incomplete. It should include both federal water quality standards and account for contributions to downstream water quality violations.

Proposed Resolution: Amend the desired condition to read: "Water quality, including groundwater, meets or exceeds applicable state water quality standards, fully supports designated beneficial uses, and is of sufficient quality to support surrounding communities, municipal water supplies, and natural resources. The Nez Perce-Clearwater has no documented lands or areas that are delivering water, sediment, nutrients, or chemical pollutants that would result in conditions that contribute to violations of the State of Idaho's and the Environmental ProtectionAgency's water quality standards."
5.2.1.3. FW-DC-WTR-09

Objection: The component is vague and incomplete. It only calls for beaver "presence" which alone will not ensure the full desired condition of supporting conservation and recovery.

Proposed Resolution: Amend the desired condition to read: "Beavers are present in watersheds where their activities benefit ground water, surface water, and aquatic habitat complexity, and where their activities support conservation and recovery of imperiled aquatic species, and inpopulations sufficient to fulfill their ecological function."

5.2.1.4. FW-OBJ-WTR-04

Objection: The component should be broadened to include floodplain connectivity as a standalone cause for reconnecting habitat.

Proposed Resolution: Amend the objective to read: "Reconnect 10 to 20 miles of habitat in streams every five years where passage barriers created by roads or culverts are limiting the distribution of fish or other aquatic species of concern or side-channels through floodplain connectivity."

5.2.1.5. FW-OBJ-WTR-05

Objection: The component should make clear that decommissioning system roads will meet the stated objective.

Proposed Resolution: Amend the objective to read: "Improve soil and watershed conditions on 3,000 to 4,000 acres every five years, emphasizing actions in priority watersheds and Conservation Watershed Network watersheds. This includes system and non-system road decommissioning."

5.2.1.6. FW-STD-WTR-07

Objection: Given the importance of large woody debris for stream condition, the component should restrict the removal of moved wood from the stream channel or floodplain.

Proposed Resolution: Amend the standard to read: "Large woody debris shall not be removed from stream channels or floodplains unless it threatens public safety, such as fire ingress/egress; critical infrastructure, such as mid-channel bridge piers; or for the implementation of restoration projects when there will be a net increase in the amount of woody debris in the RMZ post project. Large woody debris moved to protect public safety and critical infrastructure must remain in thestream channel or floodplain."

5.2.2 Riparian Management Zones

5.2.2.1. FW-GDL-RMZ-01.

Objection: To account for the departure from PACFISH buffers, and to strengthen protections, this component should be a standard, not a guideline.

Proposed Resolution: Convert the guideline to the following standard:"FW-GDLSTD-RMZ-01##. New landings, skidding, staging, or decking and machine burn piling shouldshall be located outside riparian management zones to minimize effects to riparian and aquatic resources unlessthey must inherently occur in riparian management zones. Where new activities inherently must occur in riparian management zones, locate them so that they do not degrade or retard aquatic and riparian desired conditions.

5.2.2.2. FW-GDL-RMZ-02.

Objection: To ensure consistent application, this component should be a standard with an exception for restoration (e.g. placement of large woody debris in stream channels) within the RMZ, not a guideline.

Proposed Resolution: Convert the guideline to the following standard:"FW-GDLSTD-RMZ-02##. To prevent damage to stream channels, yarding activities shouldshall achieve full suspension over the active channel, with the exception of yarding for stream restoration activities."

5.2.2.3. FW-GDL-RMZ-05.

Objection: To ensure consistent application, this component should be a standard, not a guideline.

Proposed Resolution: Convert the guideline to the following standard: "FW-GDLSTD-RMZ-05##. To maintain

water quality, pumping directly from a stream channel shouldshall be avoided if chemical products are to be directly mixed with water being withdrawn. When chemicals are used, pumping should be conducted from a fold-a-tank that is located outside the riparian management zones."
5.2.2.4. *FW-GDL-RMZ-03.
Objection: To ensure consistent application, this component should be a standard, not a guideline.

Proposed Resolution: Convert the guideline to the following standard:"FW-STDGDL-RMZ-03##. To minimize sediment delivery and adverse effects to stream channels, cConstruction of machine fireline shall be located outside ofin riparian management zones should be avoided, except where needed to cross streams except where needed to cross streams or reduce risk to responders or thepublic to an acceptable level."
5.2.2.5. *FW-STD-RMZ-08.
Objection: The component allows for overbroad exceptions and should provide an affirmative statement of the Forest Service's authority to regulate valid existing rights.

Proposed Resolution: Amend the standard to read: "New road, trail, and landing construction, including temporary roads and mechanical trail construction, shall not be constructed in riparian management zones except where:

* needednecessaryfor the implementation of restoration projects, or
* necessary for stream crossings, or
* a road or trail relocation contributes to attainment of aquatic and riparian desired conditions, or
* a road or trail inside the RMZ would greatly reduce the total ecological, cultural or social impacts of an existing or proposed route outside the RMZ, or
* allowed by lawForest Service authorities are limited by law or regulation(e.g., General Mining Act of 1872), in accordance with the laws and regulations applicable to theForest Service."
5.2.2.6. *FW-STD-RMZ-09.
Objection: The component is unclear and potentially incomplete; it should include reference to the RMZ to ensure full protection from retardants and other fire chemicals.

Proposed Resolution: Amend the standard to read: "Aerial application of chemical retardant, foam, or other fire chemicals and petroleum shall be avoided in RMZs and mapped aerial retardant avoidance areas."
5.2.2.7. FW-STD-RMZ-10.
Objection: The component is vague as to the level of restoration that should occur following the location of fire activities within the RMZ.

Proposed Resolution: Amend the standard to read: "New incident bases, camps, helibases, helispots, staging areas, and other centers for incident activities shall be located outside of riparian management zones unless. When no practical alternative exists,. measures shall be takento restore rRiparian features that wereare impacted by these activities shall be restored to thefullest extent possible."
5.2.2.8. *FW-STD-RMZ-## (New RMZ Standard Needed).
Objection: The component is incomplete; text was stricken from an earlier iteration of what is now FW-STD-RMZ-08 requiring management of new road, trail, and landing construction to protect aquatic and riparian desired conditions.

Proposed Resolution: Amend the standard to read: "FW-STD-RMZ-##. New road, trail, and landing construction in the RMZ, including temporary roads, shall be managed to protect aquatic and riparian desired conditions in the long term."

5.2.3. Infrastructure (Aquatics and Riparian)
5.2.3.1. FW-GDL-ARINF-01.
Objection: To ensure consistent application, this component should be a standard, not a guideline.

Proposed Resolution: Convert the guideline to the following standard: "FW-GDLSTD-ARINF- 01##. Where possible, cConstruction, reconstruction, and maintenance activities of roads, skid trails, temporary roads, and airstrips, shouldshall hydrologically disconnect the drainage system from delivering water, sediment, and pollutants to water bodies to prevent concentrated water from directly entering streams."
5.2.3.2. FW-GDL-ARINF-04.
Objection: To ensure consistent application, this component should be a standard, not a guideline.

Proposed Resolution: Convert the guideline to the following standard: "FW-GDLSTD-ARINF- 04##. To reduce road-related mass wasting and sediment delivery to watercourses, new and relocated roads, including skid trails and temporary roads, and other linear features shouldshall not be constructed on lands with high mass wastinglandslide potential."
5.2.3.3. FW-GDL-ARINF-10.
Objection: To prevent any ambiguity, the guideline should clearly apply to both new and improved infrastructure.

Proposed Resolution: Amend the standard to read: "New or improved tTransportation infrastructure should be designed to maintain natural hydrologic flow paths, including surface and subsurface flow, to the extent practical. For example, streams and seeps upslope from roads should have cross-drains or relief culverts with sufficient capacity to ensure water is not routed down ditches."
5.2.3.4. FW-STD-ARINF-04.
Objection: This component should be strengthened by requiring appropriate design features to minimize sediment delivery.

Proposed Resolution: Amend the standard to read: "New, replacement, and reconstructed stream crossing sites, such as culverts, bridges, and other permanent stream crossings, shall accommodate at least the 100-year flow, including associated bedload and debris, and includedesign features to minimize sediment delivery to stream channels (e.g., cross drains, resloping,drainage ditches, etc.)."
5.2.3.5. FW-STD-ARINF-05.
Objection: To remove ambiguity about the scope of the prohibition the use of large woody debris within the road prism, this component should expressly sanction the use of large woody debris outside of the fill area in accordance with approved bioengineering practices.

Proposed Resolution: Amend the standard to read: "When constructing or reconstructing roads, incorporating woody debris shall not be incorporated into the fill portion of the road prism shallbe avoided. Large wood or plantings may be used within other parts of the road prism (e.g., thetoe of slope) to protect or enhance riparian and aquatic resources, or in accordance withbioengineering practices when approved by the Forest Engineer."

5.2.4. Livestock Grazing (Aquatics and Riparian)
5.2.4.1. FW-GDL-ARGRZ-01.
Objection: To ensure consistent application, this component should be a standard, not a guideline.

Proposed Resolution: Convert the guideline to the following standard: "FW-GDLSTD-ARGRZ- 01##. To maintain or improve riparian and aquatic conditions and achieve riparian desired conditions over time through adaptive management, new grazing authorizations and reauthorizations that contain low gradient, alluvial channels shouldshall require that end-of- season stubble height be 10 to 15 cm (4 to 6 inches) along the greenline. However, application of the stubble height numeric value range shouldshall only be applied where it is appropriate to reflect existing and natural conditions for the specific geo-climactic, hydrologic, and vegetative conditions where it is being applied. Other indicators more sensitive to detecting changes to streams, including those in current ESA consultation documents, may be used if they are based on current science and monitoring data and meet the purpose of this guideline. Long-term monitoring and evaluation should be used to adapt this numeric range or the use of other indicators."

5.2.4.2. FW-STD-ARGRZ-04.
Objection: Lack of clarity.

Proposed Resolution: Amend the standard to read: "Water sources to new or reconstructed spring developments shall be protected from livestock trampling."

5.2.5. Lands and Special Uses (Aquatics and Riparian)
5.2.5.1. FW-STD-ARLND-04.
Objection: As a standard, and to ensure consistent application, this component should use binding language.

Proposed Resolution: Amend the standard to read: "In the Conservation Watershed Network and in subwatersheds with Endangered Species Act critical habitat or listed aquatic species, new hydroelectric facilities and water developments should shall not be constructed unless it can be demonstrated that there are no substantial adverse effects to critical habitat or listed aquatic species. Exceptions to this standard include situations where Forest Service authorities are limited such as the Alaska National Interest Lands Conservation Act, 1872 Mining Law, or valid state water rights. In those cases, project effects shall not retard attainment of desired conditions for watershed function, to the extent possible within Forest Service authorities."
5.3. Wildlife Components and FEIS
5.3.1. Range of Alternatives

The FEIS details five action alternatives which all share identical desired conditions, standards, and guidelines in terms of forest conditions and wildlife habitat.148 The main differentiator between alternatives is the pace at which the Forest achieves those desired conditions. Unfortunately, however, those outcomes are uniformly negative for at least some wildlife species.

Objection: National Environmental Policy Act regulations require that agencies evaluate reasonable alternatives to proposed actions,149but the Forest has too narrowly defined its purpose and need such that the proposed alternatives do not meaningfully vary.

Proposed Resolution: The Tribe requests that the Forest revise the FEIS to properly consider a reasonable range of alternative strategies for management of the Forest.
5.3.2. Forest Tree Species Dominance
Although the Preferred Alternative is defined, in part, as achieving the Forest's desired conditions within 30-35 years,150 the FEIS makes clear that some of the most foundational desired conditions would not be achieved in that timeframe. Forestwide, the dominance of grand fir would not reach its desired range within 50 years, and the dominance of both Douglas-fir and Douglas-fir/western larch would be further from their desired ranges within 50 years than they are today.151 Tree species dominance within some Management Areas and Potential Vegetation Types would be significantly misaligned with their respective natural ranges of variation and the Forest's own desired conditions under the Preferred Alternative as well.

Objection: The Preferred Alternative's plan components do not ensure that the Forest will achieve desired conditions within the 30-35 year timeframe identified in the Preferred Alternative.

Proposed Resolution: The Tribe requests that the Forest revise the Preferred Alternative's plan components to promote progress toward, and attainment of, desired conditions with respect to forest tree species dominance.
5.3.3. SIMPPLE Model Not Validated
Many of the planning assumptions and analyses contained in the FEIS are based upon the modeled natural range of variation for various forest stand conditions across the Forest. The Forest used what it terms the Simulating Vegetation Patterns and Processes at Landscape Scales (or SIMPPLLE) model, a work product proprietary to the Forest Service, to derive these ranges of variation.152 Unfortunately, this model has been the subject of only superficial peer review,153 and no data is presented in the FEIS or elsewhere validating its

accuracy with respect to this Forest. The Forest openly acknowledges limitations associated with the model,154 but these caveats are unsupported by peer-reviewed validation.

Objection: The Forest's SIMPPLLE model is unvalidated.

Proposed Resolution: The Tribe requests that the Forest validate the SIMPPLLE model with respect to accuracy on the Forest as well as all caveats contained in the FEIS through retrospective analyses and professional peer review.

5.3.4. Desired Conditions Differ from NRV

FEIS analyses specific to wildlife regularly assume that the Preferred Alternative's desired conditions reflect the natural range of variation, but the Forest acknowledges that desired conditions deviate in some cases from the natural range of variation for reasons associated with climate change or economic interests. With some exceptions,155 the nature and extent of those deviations is not clearly reflected in the FEIS, however. These discrepancies appear to drive several instances of declining wildlife habitat quality and extent for species like fisher and white-headed woodpecker and are likely to have far-reaching ecosystem impacts as well. Ultimately, the Forest's "coarse filter / fine filter" approach cannot function if the coarse filter differs substantially from the ecology of the landscape.

To account for warming and drying climatic conditions, the Forest used the SIMPPLLE model to derive a "Dry Natural Range of Variation" built upon assumptions of increasing disturbance, decreases in all large tree size classes, and changed tree species composition.156 Unfortunately, the Preferred Alternative would establish desired conditions that exceed even these ecological ranges.157 Within Management Area 3's warm dry Potential Vegetation Type, ponderosa pine would be managed to levels 6-21 percentage points higher than its projected "Dry" Natural Range of Variation, while grand fir would be managed to levels approximately 9-17 percentage points below its projected "Dry" Natural Range of Variation. Within Management Area 3's warm moist Potential Vegetation Type, ponderosa pine would be managed to levels 9-20 percentage points above its projected "Dry" Natural Range of Variation, western white pine would be managed to levels 3-27 percentage points above its projected "Dry" Natural Range of Variation, and grand fir would be managed to levels 12-31 percentage points below its projected "Dry" Natural Range of Variation.

Notably, the desired conditions for tree species dominance in the Preferred Alternative also appear to conflict, in some instances, with historical data from the Forest itself. For example, the FEIS makes no attempt to reconcile the inputs or outputs of the SIMPPLLE model with the forest conditions recorded by John Leiberg,158 the Lewis and Clark Expedition, Traditional Ecological Knowledge, or other first-person accounts. The FEIS's analyses regarding forest vegetation appear to be entirely based on a single Forest-wide map of potential vegetation developed in the early 2000s,159 the basis of which is unclear due to an incorrect citation in the FEIS.

Objection: The Preferred Alternatives desired conditions deviate in some cases from the natural range of variation and the Preferred Alternative fails to clearly describe the ways in which the desired conditions differ from the modeled natural range of variation for all forest types and ecological conditions.

Proposed Resolution: The Tribe requests that the Forest revise the Preferred Alternative to clearly describe the ways in which the desired conditions differ from the modeled natural range of variation for all forest types and ecological conditions. The Tribe further requests that the Forest align the Preferred Alternative's desired conditions with the natural range of variation in ways that are appropriately consistent with historical records and reduce or eliminate the degradation of habitat conditions for SCC, particularly but not exclusively within the warm dry and warm moist Potential Vegetation Types.

5.3.5. Elk

Elk are of great personal, family, and cultural interest within the Tribe and form the basis for much of the treaty-reserved hunting activity of Tribal members. For decades, the Tribe has therefore committed substantial resources to reviewing the land management proposals of the Forest Service (and other entities) to help ensure

that elk populations, and thus opportunities for the exercise of the Treaty-reserved hunting right, are sustained across the Tribe's treaty territory. The Tribe has long pointed out to the Forest that the Tribe reserved in its 1855 Treaty, at healthy and harvestable levels, those resources necessary to facilitate its treaty-reserved rights[mdash]and that Tribal members cannot fully exercise their treaty-reserved right to hunt elk in areas lacking healthy populations of elk. This fundamental relationship between treaty rights and wildlife population health drives the Tribe's evaluations and objections.

5.3.5.1. History of the Tribe's Efforts to Improve Elk Management on the Forests

The Tribe has spent the past 30 years attempting to improve the Forest's elk analyses and management. In 1988, the Tribe administratively appealed the 1987 ROD for the Nez Perce National Forest Plan160 and the Clearwater National Forest Plan161 to highlight deficiencies in the Forest Plans' elk habitat model, the "Leege guidelines."162 Both Forest Plans required use of the Leege guidelines to assess the attainment of elk habitat objectives in project evaluations.163

The Tribe appealed the Forest Plans because it believed that the Leege guidelines were inadequate for assessing Project-related impacts to elk habitat. Specifically, the Tribe was unhappy with the Leege guidelines' attempt to account for elk vulnerability within an inadequate and outdated elk habitat effectiveness model.

As a result of its 1988 appeals, the Tribe entered into settlement agreements for both the Nez Perce and the Clearwater National Forests.164 These agreements, executed in 1989, addressed in part, the lack of an adequate elk vulnerability component in the Leege guidelines. As part of the settlement agreements, the forests agreed to modify the Forest Plans. The Tribe's Settlement Agreement with the Nez Perce Forest says in important part:

The Nez Perce National Forest will invite the Idaho Department of Fish and Game, University of Idaho, and the National Forest Research Station to participate, along with the Nez Perce Tribe, in developing a study plan to validate and, if needed, refine the Nez Perce elk effectiveness model. This study plan will review applicable, ongoing elk research in northern Idaho. Model changes and refinements will be incorporated into the Nez Perce Forest version of the elk effectiveness model, and the amended version of the model will be used in future forest planning. It is intended that this study will be completed before the next Forest Land and Resource Management Plan.165

The Nez Perce National Forest incorporated this agreement into its Forest Plan as Amendment No. 7, which says:

Model changes and refinements will be incorporated into the Nez Perce Forest version of the elk effectiveness model, and the amended version of the model will be used in future forest planning.166

In February 1992, a research team comprised of representatives from the Nez Perce and Clearwater National Forests, Idaho Department of Fish and Game, and the Tribe came together to update the Forests' elk habitat effectiveness model. In December 1997, the research team finalized this work and published a revision of the Leege guidelines: the Servheen guidelines.167

The two purposes for developing the Servheen guidelines were to standardize and update the measure of elk habitat effectiveness contained in the Leege guidelines and to devise and implement an improved measure of elk vulnerability[mdash]a recognized shortcoming of the elk habitat effectiveness model contained in the Leege guidelines.

Unlike the Leege guidelines, the Servheen guidelines recognized that the effectiveness of elk habitats and the vulnerability of elk populations were important yet separate elk management issues. Thus, the Servheen guidelines created separate models for elk habitat effectiveness and elk vulnerability that were intended to be used in concert. Neither model was intended to be used as a stand-alone model, as each refined distinctly

different portions of the elk habitat effectiveness model contained in the Leege guidelines. Inexplicably, the Forests have never fully used the Servheen guidelines.

Since the Servheen guidelines were developed in 1997, the Tribe has urged the Forest to also use even newer available science, including the more recent science developed by the U.S. Forest Service's own staff, alongside the required Servheen guidelines, in order to accurately model Project-related impacts to elk habitat.

A number of peer-reviewed studies have been published in the years since 1997 investigating the direct, indirect, and cumulative effects of roads, motorized recreation, forage quality, invasive weeds, livestock grazing, predation, hunting pressure, and other factors on elk habitat and elk vulnerability. Many of these studies have been conducted and published by U.S. Forest Service research staff located at the Starkey Experimental Forest and Range near La Grande, Oregon. As a result of this research, a number of important management concerns and analysis considerations have been identified since 1997.

On the basis of some of these studies, the U.S. Forest Service itself developed an updated method to evaluate elk vulnerability as part of its internal Forest Plan revision process in August 2006. The U.S. Forest Service's 2006 Evaluation Report[mdash]Terrestrial Wildlife Habitat document ("Evaluation Report") used peer-reviewed literature from 1991-2005 to develop an updated analytical tool superior to that contained in the Servheen guidelines.

The Evaluation Report acknowledges well-documented concerns associated with using road densities, the metric used by both the elk habitat effectiveness and elk vulnerability models contained in the Servheen guidelines, to evaluate the impact of roads on elk habitat. As recommended by recent research, the Evaluation Report instead makes use of a distance-bandingapproach that accounts for the spatial configuration of motorized routes and the avoidance of those routes by elk.

Early in the development of this Preferred Alternative, the Tribe was an active participant in a series of meetings and discussions with Forest staff, Forest Service research staff, and Idaho Department of Fish and Game staff regarding elk plan components.168 Throughout those meetings and discussions, the Tribe was consistent in recommending strong component language that would meaningfully protect and enhance elk populations, using the best available science, in support of the exercise of treaty-reserved rights. Since that time, the Tribe has repeatedly made clear that changes and conditionalities introduced by the Forest in subsequent drafts of the plan components were not sufficiently protective of this critical treaty-reserved resource.

Unfortunately, the current Forest Plans[mdash]which the Tribe originally litigated for being insufficiently protective of elk[mdash]contain more standards related to the management of elk and elk habitat, and cumulatively provide more protection for elk, than those in the current Preferred Alternative. This is simply unacceptable to the Tribe. Despite decades of effort to improve elk evaluations on the Forest, the Forest is now asking the Tribe to accept a Preferred Alternative that is less protective than the current 1987 Forest Plans, which it found insufficiently protective in the late 1980s. Needless to say, this is extremely frustrating. The Tribe's specific objections to the current Preferred Alternative can be found in section 5.3.9.

5.3.5.2. Elk Management

Elk are perhaps the most thoroughly-studied terrestrial animal in the Tribe's homeland. Decades of research, both locally and across the West, have given us a detailed understanding of what elk need, how they behave, and how they are impacted, both individually and at a population scale, by various management actions. There are entire textbooks devoted to their management.

Elk are not a complicated species to manage. Elk need adequate forage, security, and space year- round to carry out their basic life functions. Elk are a major focus of research not because they are complicated, but because of other demands placed upon their habitat; demands like timber production, livestock forage, recreation, and rural development. Land managers typically want to know how 'much' of what elk need is enough. How much forage is

enough? How little security will elk accept? How much hunting pressure or disturbance can an area withstand? How much winter range can we afford to lose? How much habitat security can we trade for forage, or vice versa?

Poor land management can force animals away from important resources, for example by avoiding good forage that's too close to roads (where risk from hunters is highest). If pushed beyond the thresholds identified by researchers (for example, too many roads make too much of the forage base unavailable), populations are likely to shrink or collapse. The pressures to manage the landscape right up to or beyond those thresholds are intense, particularly in a major commodity- production region like ours.

In many cases, biologists have a pretty good idea where those thresholds are. So good, in fact, that models have been developed to simplify the process of assessing, across multiple factors, the likelyimpacts of various management actions. The earliest models were simplistic and served mainly as a reality check. As science has advanced, increasingly sophisticated models have been developed.

5.3.5.3. Management of Elk Populations on the Forest

Entire books have been written describing the history of elk populations within the Clearwater basin. Based on most lines of evidence, elk populations in this area historically were patchy and modest in size. Elk populations in the Clearwater boomed in the mid-1900s due to a combination of abundant forage from logging and fires, elimination of wolves and grizzlies, bounties on other predators, a more limited road network (in some areas), and a less-numerous, less-mobile, less- technologically-advanced human population. In other words, a high-forage, high-security landscape with elk populations at record highs. These conditions led to the "glory days" for Clearwater elk hunting some older Tribal members and residents remember and clamor for. In reality, elk populations during that time were artificially inflated due to a convergence of unique circumstances and Forest Service management philosophies that were, in hindsight, completely unsustainable.

Predictably, the bubble burst. Logging intensity declined as the cutover areas regenerated and other resource concerns became increasingly apparent (e.g. salmon and steelhead declines). Wolves were restored to the Clearwater due, in large part, to national leadership by the Tribe. Grizzlies are now slowly beginning to return as well, and black bear and mountain lion populations have generally recovered.

Yet road networks continue to creep into increasingly remote areas, and ATV/UTV use has exploded. The human population of the region continues to grow. Technology now allows some hunters to shoot elk at 1,000+ yards, and more and more hunters are doing that. Habitat security has dropped so low in some places that forage gains from logging or wildfires are entirely eclipsed by motorized disturbance.

As a result, elk populations are substantially lower on the Forest now than they were in prior decades. In some areas, lower elk populations represent a return to a more balanced and healthy ecosystem with the return of native predators and reduced logging activity. But in other areas, elk populations remain unnaturally constrained by human disturbance and forage availability. This is of concern to the Tribe.

5.3.5.4. Desired Conditions for Elk

The Preferred Alternative relies heavily on desired conditions to sustain and enhance the distribution and abundance of elk on the Forest. In many cases, however, these desired conditions are defined so broadly as to be trivial and largely meaningless for management. For example:

* FW-DC-WLMU-07 ("Elk habitat is distributed throughout the planning area to support elk populations. Motorized access does not preclude use of high-quality nutritional resources or winter ranges."): The first sentence of this desired condition could be met by two or more well-separated patches of elk habitat on the Forest.

Management Area 3-DC-WLMU-01 ("Ten to twenty percent of Management Area 3 is in a condition that provides moderate or high-quality nutritional forage for Elk. Areas with moderate or high-quality forage are distributed across the management area, with a portion of the moderate or high-quality nutritional forage occurring greater than 0.5 miles from open motorized routes."): The secondsentence of this desired condition could be met with

just two patches of moderate- or high-nutrition habitat, with one patch more than 0.5 miles from an open road.

In other respects, these desired conditions are defined so prescriptively that they risk departure from the natural range of variation in some areas, would conflict with desired conditions for other wildlife species, or would provide room for managers to degrade conditions to the identified level. For example:

* Management Area 2-DC-WLMU-01 ("Ten to twenty percent of Management Area 2 is in a condition that provides moderate or high nutritional quality forage for elk. Areas with moderate or high-quality forage are distributed across the management area."): This desired condition is based entirely on elk nutritional needs169 and is not reconciled with the needs of other wildlife species or the natural range of variation for forest patch size, age class, Potential Vegetation Type, or other landscape attributes within the FEIS.
* Management Area 2-DC-WLMU-02. "Areas at least 5,000 acres in size exist without motorized access open to the public to maintain habitat use by elk"): As worded, reducing the extent of such patches to just above 5,000 acres would meet the desired condition. This desired condition could be met by the existence of just two such patches across all of Management Area 2.

Objection: Lack of elk-related desires conditions that are biologically meaningful, ecologically appropriate and restorative.

Proposed Resolution: As it has on many prior occasions, the Tribe once again requests that the Forest to establish desired conditions specific to elk that reflect biologically meaningful, ecologically appropriate, and restorative management goals, as follows:

* FW-DC-WLMU-07. "Elk habitat is distributed throughout the planning area tosupport elk populations within its natural range of spatial and ecological variation. Motorized access does not preclude use of moderate- or high-quality nutritional resources or winter ranges by elk."
* [middot]Management Area 2-DC-WLMU-01. "Ten to twenty percent of Management Area 2 is in a condition that provides moderate or high nutritional quality forage for elk within the natural range of spatial and ecological variationfor such conditions. Areas with moderate or high-quality forage are distributedacross the management area."
* Management Area 2-DC-WLMU-02. "Areas at least 5,000 acres in size exist without motorized access open to the public to maintain habitat use by elk are notdiminished."

Management Area 3-DC-WLMU-01. "Ten to twenty percent of Management Area 3 is in a condition that provides moderate or high-quality nutritional forage for elk within the natural range of spatial and ecological variation for such conditions.Areas greater than 0.5 miles from open motorized routes are not diminished. Areaswith moderate or high-quality forage are distributed across the management area,with a portion of the Areas providing moderate or high-quality nutritional forage occurring are located more greater than 0.5 miles from open motorized routes."

5.3.5.5. Lack of Elk Habitat Protections

The Preferred Alternative contains five standards and guidelines related to management of elk habitat. Of those five, only three (specifically related to the enforcement of road closures, design criteria for fencing, and disturbance on winter ranges) provide management protections or sideboards helping to ensure the availability of elk on the Forest. In contrast, the current Forest Plans contains a greater number of standards related to the management of elk and elk habitat, and the cumulative protection afforded by those plan components are far higher in the current Forest Plans than in the Preferred Alternative.

In lieu of protective plan components, the Preferred Alternative relies upon Idaho Roadless Rule designations and desired conditions to protect elk habitat from motorized disturbance.170 The FEIS provides a useful exploration of tradeoffs and opportunities the Forest may consider to benefit elk during project development,171 but the Preferred Alternative lacks action-forcing plan components that would require those deliberations as well

as protective constraints on management that would prevent trending away from desired conditions.

Objection: Lack of protective plan components for elk.

Proposed Resolution: The Tribe is disappointed to conclude that the Preferred Alternative is less protective than the current Plan, and inadequately protective overall, of this critical treaty- reserved resource on the Forest. The Tribe requests that the Forest revise the Preferred Alternative's standards and guidelines specific to elk, as follows:

* Management Area 2-GDL-WLMU-01. "To increase available habitat for elk, vegetation management projects designed to improve elk habitat should increaseavailable summer forage inmaintain or expand areas of moderate or high nutritionpotentialquality forage located more than 0.5 miles from open motorized routes."
* Management Area 3-GDL-WLMU-01. "To improve vital rates of female elk byincreasing predicted percent body fat, treatmentsvegetation management projects designed to improve elk habitat should improve focus on one or more of the habitat covariates likely to improve predicted cow female elk body fat condition and reducethe extent of human disturbance within the project area while also consideringdistance from open motorized routes."
* New Forestwide Standard. "Following implementation, management actions shallresult in no net increase in the extent of human disturbance to big game species atthe HUC12 scale."

"Big game winter range," referenced in FW-GDL-WLMU-02 and elsewhere, is not defined within the FEIS, LMP, or ROD. The Tribe recommends that the Forest define "winter range" for all big game species172 in a spatially- or technically-explicit manner such that compliance with FW-GDL- WLMU-02, FW-DC-WLMU-07, and other relevant plan components can be monitored and enforced.

5.3.5.6. Elk Analysis Based on Marginal Nutritional Productivity

The Preferred Alternative defines high quality nutritional resources for elk as those areas that produce vegetation with dietary digestible energy greater than 2.6 kcal per gram of forage.173 However, the best available science clearly indicates that 2.6 kcal per gram of nutrition is only marginal from an elk reproductive standpoint; good nutritional levels start at 2.75 kcal per gram and are considered to be excellent only at levels at or above 2.9 kcal per gram.174 The Preferred Alternative relies heavily on 2.6 kcal per gram of dietary digestible energy as a threshold for analyses in the FEIS175 and as a specific criterion within various plan components (e.g. FW-DC-WLMU-07, MA2-DC-WLMU-01, MA3-DC-WLMU-01, MA3-OBJ-WLMU-01, and MA2-

GDL-WLMU-01). Unfortunately, desired management outcomes for elk habitat are unlikely to be reached as a result.

Objection: Inadequate elk nutrition analysis and associated plan components.

Proposed Resolution: The Tribe requests that the Forest revise the Preferred Alternative by properly defining high-quality nutritional resources for elk using the best available science and adjust all associated analyses and plan components accordingly.

5.3.5.7. Elk Habitat Management and Impact Assessment Framework

The Preferred Alternative's Potential Management Approaches section includes a new framework to guide elk habitat enhancement efforts: FW-MSA-ELK-01.176 That framework is informed largely by habitat nutritional capacity and potential, distance from roads, and hunter success objectives. Other factors known to influence habitat selection by elk, such as livestock grazing, stand density manipulation, non-motorized recreational activities, fencing and infrastructure, and certain land cover types are not considered within the FW-MSA-ELK-01 framework.

The Tribe has long recognized the need for an updated framework to replace that provided in Servheen et al. 1997,177 one that is responsive to the best available science and holistically incorporates the many factors influencing habitat quality and use by elk. When future projects are proposed under the new Forest Plan, the

Forest should make use of an analytical framework that integrates the extensive body of scientific literature specific to elk and provides guidance to Forest staff on how to weigh potential habitat management tradeoffs. In the absence of such an assessment tool, the Tribe believes that the Forest is unlikely to adequately assess and consider impacts to elk at the project level. Unfortunately, the framework proposed under FW-MSA-ELK-01 does not sufficiently meet this need.

Objection: Lack of elk analytical framework that integrates the extensive body of scientific literature specific to elk and provides guidance to Forest staff on how to weigh potential habitat management tradeoffs.

Proposed Resolution: The Tribe urges the Forest to work with the Tribe and other competent partners to develop an integrative, comprehensive elk habitat assessment framework for the Preferred Alternative. At a minimum, the intended framework should provide the information necessary to understand all relevant current conditions for elk, quantify and allow for the comparison of probable outcomes from various action proposals, and provide a basis for Forest staff, the Tribe, and members of the public to understand the potential benefits and risks of proposed actions at the project level. That framework need not be overly complex, deterministic, or costly in terms of time or funding, but it should be responsive to the best available science at any given time, integrative of all factors relevant to elk habitat quality and use, and generate actionable outputs of practical use to resource managers.

Objection: Assessment frameworks can only be effective when used. Although the Preferred Alternative describes Management Area 3-GDL-WLMU-01 as providing the mechanism under which projects would be evaluated,178 neither Management Area 3-GDL-WLMU-01 or any other plan component references, encourages, or compels use of FW-MSA-ELK-01 during project development or analyses. Because use of this tool would be entirely discretionary under the Preferred Alternative, the Tribe has no confidence it or any alternative assessment framework would be used regularly or consistently by the Forest.

Proposed Resolution: The Tribe requests that the Forest mandate the use of FW-MSA-ELK-01 or an updated assessment framework during project development and analyses within the Preferred Alternative.

Objection: The Preferred Alternative states that Management Area 3-GDL-WLMU-01 "requires decisions to maintain or improve predicted percent body fat of female elk at a HUC 12 Scale through the manipulation of four covariates that influence elk habitat use and predicted female percent body fat."179 The Tribe is concerned that efforts to manipulate vegetation interspersion (one of those covariates) by "arrang[ing] the shape and size of forage and cover patches to increase edges by creating irregularly shaped forage areas with high edge to interior ratios that are interspersed at a landscape scale"180will degrade habitat quality and connectivity for wildlife species, like fisher, requiring forest conditions and landscape patterns more closely aligned with the natural range of variation.

Proposed Resolution: In addition to a reformulation of the impact assessment framework and the establishment of a mandate for its use, the Tribe recommends that manipulation of vegetation interspersion pursuant to Management Area 3-GDL-WLMU-01 be conditioned upon the natural range of variation specific to the habitat type(s) within the project area.

5.3.6. Bighorn Sheep and Pack Goats

The Tribe is pleased to see that the Allison-Berg allotment would be classified as unsuitable for domestic sheep grazing under the Preferred Alternative.181 This milestone represents an essential step forward in the recovery of bighorn sheep within the Tribe's homeland, and the Tribe thanks the Forest for its leadership in this regard.

However, the Tribe is alarmed and disappointed to see that the Preferred Alternative weakens protections for bighorn sheep with respect to contact with pack goats. The Tribe, Forest, and numerous partners have expended tremendous effort and expense over the past several decades to conserve and recover bighorn sheep within the Tribe's homeland in the face of pneumonic disease risk posed by domestic sheep and goats. Recent gains have

been hard-fought and will be maintained only through the continued minimization of reinfection risk. The decision to allow the nearly unrestricted use of pack goats within bighorn sheep occupied core herd home ranges through a specific exclusion from FW-STD-WL-02 jeopardizes these hard-fought gains and the health of bighorn sheep populations on the Forest. The FEIS correctly notes that contact and pathogen transmission from pack goats to bighorn sheep "could affect a substantial portion of the herd and lower population recovery long term."182 The Tribe does not believe this risk is outweighed by the interests of a relatively small number of recreationists within a relatively small portion of the Forest.

Objection: Plan weakens protections for bighorn sheep with respect to contact with pack goats.

Proposed Resolution: The Tribe requests that the Forest revise FW-STD-WL-02 to apply to domestic sheep and goat grazing as well as the use of pack goats (both with and without a special use permit) in or within 16 miles of bighorn sheep occupied core herd home ranges.

Objection: The Tribe notes that FW-GL-WL-03 could be met simply through the existence of a website (even one not maintained by the Forest Service) with such information.

Proposed Resolution: Because the risk of contact between bighorn sheep and pack goats depends so greatly on the knowledge and practices of the goat packers, the Tribe recommends that FW- GL-WL-03 be revised as a standard requiring that "recreationists utilizing pack goats be provided educational materials, including best management practices, for avoiding contact with and reducing the risk of disease transmission to bighorn sheep" as a condition of such use.

5.3.7. Grizzly Bear

5.3.7.1. Lack of Protections in Management Area 3

The Preferred Alternative relies almost exclusively on protective land allocations and designated areas within MA1 and Management Area 2 to support grizzly bear recovery within the Forest. However, Management Area 3 comprises 31% of the total area of the Forest, including large areas within the headwaters of the North Fork Clearwater River and Lochsa River important with respect to the movements and occupancy of grizzly bears within the Forest. Grizzly bears are threatened under the Endangered Species Act wherever they occur, not just within the Bitterroot Recovery Zone or backcountry areas. Lands designated as Management Area 3, particularly those located within the interior of the Forest, must provide conditions to support grizzly bear recovery as well.

The FEIS identifies several factors likely to contribute to relatively high human-bear conflict and bear mortality within Management Area 3,183 highlighting the critical need for protections for this species in those areas particularly. The FEIS notes that 83.5% of Management Area 3 is within 1,600' of a road, for example, and additional roads are likely to be desired by managers to access

the remaining 204,521 acres for vegetation management.184 Unfortunately, only 194,805 acres of Management Area 3 is considered to be secure habitat, and only 20 blocks of secure habitat larger than 10,000 acres remain outside of Wilderness and Recommended Wilderness on the Forest. The extent of those areas is expected to decline under the Preferred Alternative185 because all are either entirely or mostly within a setting where motorized use would be classified as suitable.186 In fact, the Preferred Alternative has the second lowest amount of secure habitat classified as not suitable for motorized uses of all the alternatives.187 The lack of protections for secure habitat under the Preferred Alternative within Management Area 3 would render nearly one third of the Forest188 not biologically suitable for occupancy by grizzly bears.189

The Tribe is very concerned about the implications of FW-GDL-ES-01 on the exercise of treaty rights and the maintenance and recovery of treaty-reserved resources, particularly but not exclusively within Management Area 3. The wording of FW-GDL-ES-01 is sufficiently vague to apply to all areas of the Forest where motorized use is suitable. In those areas, FW-GDL-ES-01 appears intended to ensure the maintenance or expansion of motorized

access over the life of the Plan. The FEIS identifies a number of ways in which this guideline may hinder the recovery of grizzly bears.190 The Tribe believes FW-GDL-ES-01 is also likely to hinder the maintenance and recovery of other species of cultural prominence, such as elk, that depend upon habitat secure from motorized disturbance. These species are likely to require an expansion of secure habitat to remain abundant and available to Tribal members in some areas, particularly within Management Area 3 where secure habitat is already lacking.191 FW-GDL-ES-01 appears likely to jeopardize the exercise of treaty-reserved rights and conflict with the Forest's trust responsibilities to the Tribe in at least some circumstances.

As part of the Forest's trust responsibility to the Tribe, the Forest should fully commit to the recovery of all culturally-prominent species driven to extirpation in the recent past, including grizzly bears. This commitment should not be restricted to lands to which Tribal members have the least access. Furthermore, the Tribe understands that the Forest intends that coarse plan direction obviates the need for specific plan components for grizzly bear192 but does not believe those coarse plan components will be sufficiently protective of this ESA-listed and culturally- prominent species.

Objection: The Preferred Alternative fails to adequately protect grizzly bear recovery and fails to support grizzly presence outside of Wilderness and Idaho Roadless areas where Tribal members have the greatest access.

Proposed Resolution: The Tribe requests that the Forest revise the Preferred Alternative to support grizzly bear recovery outside of Wilderness and Idaho Roadless areas, as follows:

* "FW-DC-WL-06. The grizzly bear Bitterroot Recovery Zone Forest provides the ecological conditions necessary to support recolonization reestablish and sustaina healthy population of grizzly bears. Forest management and Land Management Plan land use allocations provide connectivity to allow secure support unhindered passage from occupied habitat to the Bitterroot Recovery Zone."
* Management Area 2"FW-STD-WL-01. New NFS motorized trails open to the public should not be authorized in Idaho Roadless Areas unless there are adjacentareas of 5,000 acres without open motorized system routes when such routes woulddiminish the extent of areas 5,000 acres or greater in size without open motorizedsystem routes. This standard does not apply to[hellip]"
* "FW-DC-REC-09. The Nez Perce-Clearwater trail system provides an array of trail classes for a variety of designed uses. Trail systems connect local communities through the Nez Perce-Clearwater, facilitating long-distance travel, as well as loop opportunities to accommodate short-term, day use activities, except where theexistence of such systems would hinder the attainment of desired conditions forwildlife, fish, or other treaty-reserved resources."
* "FW-GDL-ES-01 should be removed from the Preferred Alternative."

The Tribe further requests that the Forest revise the Preferred Alternative with the following changes to land allocations to support the recovery of grizzly bear, wolverine, mountain goat, and other culturally-significant wildlife species on the Forest sensitive to various forms of human disturbance:

* Apply the Management Area and Recommended Wilderness land designations from Alternative Z to the Preferred Alternative.
* Apply the land designations under the Summer Recreation Opportunity Spectrum from Alternative Z to the Preferred Alternative.
* Apply the land designations under the Winter Recreation Opportunity Spectrum from Alternative W to the Preferred Alternative.

5.3.7.2. Other Grizzly Objections

Objection: The Summary of State Management of Grizzly Bears fails to note that the state of Idaho has announced its intent to sue the U.S. Fish and Wildlife Service over the continued listing of grizzly bears as threatened within the continental United States.193

Proposed Resolution: The Preferred Alternative should be revised to reflect the contents of the State of Idaho's May 10, 2023 letter with respect to state management intent and reasonably foreseeable actions by the State.

Objection: The Tribe is concerned that the Preferred Alternative lacks any constraints on grizzly bear attractants. Despite the documented occurrence of several grizzly bears within the Forest over the past several years and a healthy black bear population posing an independent risk of human-bear conflicts, the Forest currently lacks any restrictions on food storage. The FEIS appropriately explores the risks posed to grizzly bear recovery by unsecured attractants, but these risks are not reflected or mitigated in the Preferred Alternative. FW-DC-WL-06 and -07 are well- intentioned but, as desired conditions, do not constitute commitments by the Forest.194 The Forest's apparent intent to wait to establish food storage orders or other preventative measures until grizzly bear conflicts occur195 poses needless risk to the public, grizzly bears, and grizzly bear recovery efforts.

Proposed Resolution: The Tribe requests that the Forest establish an objective in the Preferred Alternative that commits the Forest to establish bear-proof food storage infrastructure at all developed recreation sites. The Tribe further requests that the Forest establish one or more objectives in the Preferred Alternative that commit the Forest to implement the Possible Management Strategy and Approach specific to grizzly bears described in Appendix 4.196

5.4. Cultural Resources Components

5.4.1. General Cultural Resource Objections

Objection: The Proposed Plan fails to consistently identify the Forest as the aboriginal homeland and ceded territory of the Nez Perce Tribe.

The Proposed Plan when describing the Planning Area acknowledges that the Forest falls within the Tribe's aboriginal homeland and ceded territory of the Tribe but fails to consistently acknowledge this fact throughout the document. The "Cultural and Heritage Values" section contains boilerplate from the Forest Site Identification Strategy, stating that the Forest is "uniquely situated at the crossroads of several American Indian cultural areas[hellip]. Today, these Indian groups and descendant communities, including the Nez Perce, retain an ongoing and vibrant culture with unbroken ties to this region." The Tribe raised concern about this language in 2014.197

Proposed Resolution: The Tribe requests that the Forest edit the Proposed Plan to consistently acknowledge the Plan area as the ancestral homeland and ceded territory of the Nez Perce Tribe.

Objection: The management status of "Geographic Areas" in the Proposed Plan is unclear. The Lolo Trail NHL is listed as Management Area 1, but only discussed in the Proposed Plan under "Geographic Areas." The Gospel-Hump Multi-Purpose Area, Pilot Knob, and Lower Salmon River Geographic Areas are not obviously identified as Management Areas in the Proposed Plan. Concerns about Management Areas were addressed to the Forest Service in 2004.198

Proposed Resolution: In addition to Wilderness areas, Wild and Scenic Areas, and the National Historic Landmark, the Forest should also designate Pilot Knob, Musselshell Meadows, McComas Meadows, and Packer Meadows as Management Area 1 to protect the cultural values of these places for the Tribe. The Tribe requests eliminating off-road travel in these locations, ecological restoration, and prioritization of traditional cultural practices and use by Tribal members.

Alternatively, the Tribe proposes that the Proposed Plan create a Cultural Resource Special Management Area classification to ensure consistent identification, management, and protection of sites and landscapes significant to the Nez Perce Tribe. The Tribe proposes including the following sites under this designation: Pilot Knob, Selway Crag, Chimney Butte, Baldy Mountain, Coolwater Ridge, McComas Meadows, Packer Meadow, Fish Lake, Lost Lake, Weir Creek and Jerry Johnson hot springs, Smoking Place, Indian Post Office, the Lower

Salmon River, Rapid River watershed, and the Lochsa traditional cultural property.

Objection: The Forest Plan descriptions of Geographic Areas fail to note their cultural significance to the Tribe. Ancestral archaeological sites, hunting and gathering areas, spiritual sites, burials, traditional cultural properties (TCPs), and historic properties of religious and cultural significance to Indian Tribes (HPRCSITs) exist in all the Geographic Areas of the Forest. Concerns about Management Areas were addressed to the Forest Service in 2004. Specifically, the Lower Salmon River has many significant ancestral Nez Perce and historical euroamerican archaeological sites, and should be recorded as an archaeological district.

On Pilot Knob, unwanted management intrusions to this Nez Perce spiritual site started when the Forest Service built a fire lookout in the early twentieth century and compounded this intrusion when the Forest allowed the state of Idaho to build a radio communication tower in the 1970s. The Tribe passed a resolution directing the Forest to protect Pilot Knob in 1986.199

Proposed Resolution: The Forest should update the Forest Plan to acknowledge the cultural significance of all the designated Geographic Areas. In the Lolo Trail NHL, the Forest should prioritize traditional uses and travel in the NHL corridor. Firewood cutting, timber harvest, permitted livestock grazing, and off-road vehicle use should be prohibited, and the Forest should avoid using the NHL corridor and especially the historic trails for fire suppression activities, except in coordination with the Nez Perce Tribe. New temporary or permanent road construction should be prohibited in the NHL, as it will detract from its integrity.200

Objection: The Human Uses of the Forest section's Desired Conditions do not make clear that the intent is to protect and preserve existing archaeological and historic sites and provide resources for future research in archaeology, history, climate, and environment. The Desired Conditions also fail to make clear that TCPs will be preserved and protected for the Tribes and local communities. The Tribe requested a standard for preservation of tribal sites in 2015.201

Proposed Resolution: The Forest should rewrite this section to make the text grammatically correct and the meaning and intent clear. Elimination of passive voice in the Desired Conditions would make this section more readable.

Objection: Under the Guidelines for Human Uses of the Forest Desired Conditions, it is unclear what a "future use determination" is and how it will help achieve preservation goals.202

Proposed Resolution:Define "future use determination."

Objection: The Forest's objective to "Stop or mitigate ongoing effects to cultural resources at developed recreation sites at a rate of two campgrounds every 5 years,"203 is not sufficient.

Proposed Resolution: The Forest should address the impacts to cultural resources regardless of the present development status, not just for developed campgrounds. The Forest should also consider curtailing recreation activities that are damaging cultural resources, not just resolving or mitigating those impacts.

Objection: The Forest should not rely upon other agencies to nominate the Southern Nez Perce Trail to the National Register of Historic Places (NRHP) "with Forest participation and support."204

Proposed Resolution: The Forest shall nominate the Southern Nez Perce Trail to the National Register of Historic Places.

Objection: FW-DC-REC-07 and FW-DC-REC-08 do not include historic character as part of the desired condition for historic trails and roads designated as roadways.205

Proposed Resolution: The Forest shall make preservation and protection of the historic character part of the desired condition. The Forest shall prohibit motorized vehicles on the historic tread of the Lolo Trail, Nez Perce National Historical Trail, and the Southern Nez Perce Trail.

5.4.2. Effects to Historic Properties

Objection: The amount of motorized activities authorized under the preferred alternative will be actively harmful to cultural resources.206 The only specific cultural resources mentioned are historic routes and buildings. Any increase in motorized access, especially in new areas, will impact w[eacute]eyekin sites and other places of religious and cultural significance to Nez Perce Tribal members. Increased motorized access also has the potential to adversely affect the Lochsa Corridor TCP and the setting and feeling of other historic properties.207 The Tribe addressed concerns about viewshed and soundscape impacts from motorized access in 2019.208

Proposed Resolution: The Forest shall preserve roadless areas and maintain limited road density across the Forest. Additionally, the Forest shall consult with the Tribe prior to the construction of new roads or authorization of new motorized areas and be prepared to abandon proposed motorized routes that will have an adverse effect on historic properties.

Objection: The Forest should not be seeking to protect the scenic components of only "several of the most notable cultural sites and travelways." A decrease in scenic integrity across the Forest will have an adverse effect on the Lochsa Corridor TCP and other historic properties that rely on integrity of setting and feeling to remain eligible for listing on the National Register of Historic Places ("NRHP"). The Tribe addressed concerns about viewshed impacts from motorized access in 2019.209The Tribe is concerned that the "enhancement" to historic structures, which were often built on top of Nez Perce sites, is being considered at the expense of impacts to other types of historic properties.210 The Tribe addressed concerns about cultural resource enhancement in 2019.211

Proposed Resolution: The Proposed Plan shall address, or lay out a framework for addressing, the effect the decrease in scenic integrity will have on all historic properties, not just the most notable ones.

Objection: The Forest is not considering auditory impacts to historic properties/TCPs/HPRCSITs from infrastructure development.212The Tribe addressed concerns about soundscape impacts from motorized access in 2019.213

Proposed Resolution: The Forest shall identify potential auditory impacts from proposed infrastructure developments on historic properties/TCPs/HPRCSITs and consult with the Tribe on those impacts.

Objection: There are no specifications for how the Proposed Plan ensures "[hellip] that cultural and historical sites are surveyed and protected from damage from timber harvest."214Harvesting older stands of ponderosa pine would impact Tribal members' treaty-reserved gathering rights, as several species of lichen and mushroom require stands of larger ponderosa pines to grow.

Proposed Resolution: The Forest shall provide a survey or similar plan that details how cultural and historic sites and treaty-reserved gathering rights will be protected from damage from timber harvest.

Objection: Rapid River is a NRHP eligible TCP, so any management that occurs within the broader Rapid River area needs to be consistent with and uphold the cultural values the Tribe places on that landscape.215 Concerns about Management Areas were addressed to the Forest Service in 2004.216

Proposed Resolution: The Forest should include the Rapid River watershed in a Cultural Resource Special Management Area classification, and shall consult with the Tribe to ensure management in the broader Rapid River landscape is consistent with the Tribe's cultural values.

5.4.3. Consultation
Objection: No consultation process is defined prior to the Forest determining that historic properties are not eligible for listing on the NRHP.217

Proposed Resolution: The Forest shall provide an adequate plan for consultation with the Tribe prior to determining that historic properties are not eligible for listing on the NRHP. Alternately, the Forest shall require consultation with the Nez Perce Tribe when determining NRHP eligibility in its Programmatic Agreement for historic properties management with Idaho SHPO, ACH, and the Nez Perce Tribe.
5.4.4. Other
Objection: Lack of adequate justification for the additive weighting of relative effects. Also lack of an adequate plan to support the assumption that historic properties will be protected during project implementation without an adequate plan for doing so.218

Proposed Resolution: The Forest shall provide a justification for the additive weighting of relative effects as well as a plan for ensuring historic properties will be protected during project implementation.
6. Monitoring Plan Components
6.1. Lack of Adaptive Management Commitments

Neither the Preferred Alternative nor the associated Monitoring Plan describes a clear action- oriented process to make use of the Forest's monitoring efforts and data within an adaptive management framework. The Tribe is particularly concerned that the monitoring plan lacks temporal commitments, which could allow downward trends in one or more metrics to persist throughout most of the Plan's lifespan without corrective action by the Forest.

Objection: Lack of temporal commitments in monitoring plan.

Proposed Resolution: The Tribe requests that the Forest revise the Preferred Alternative by detailing an action-forcing process through which monitoring data is analyzed, contrasted against desired conditions, other plan components, and the United States' treaty commitments, and used to guide Forest actions in a timely manner and within an adaptive management framework.
6.2. Wildlife-Related Monitoring
6.2.1. Ponderosa Pine as Focal Species

The selection of and narrative supporting the selection of ponderosa pine as a focal species219 is confusing and not clearly integrated within the Preferred Alternative's monitoring plan. How does the status of this tree species, distinct from other dominant or indicative tree species present on the Forest, contribute "meaningful information regarding the effectiveness of the plan in maintaining or restoring the ecological conditions to maintain the diversity of plant and animal communities and the persistence of native species in the plan area"?220 While ponderosa pine is clearly a key constituent of warm dry forest types, its presence alone provides little information regarding the diversity, function, or persistence of those systems (contrasted against, for example, the presence of western ridged mussels in an aquatic system). The supporting narrative contains lengthy references to non-forested grassland communities that provide little clarity on the role of ponderosa pine as a focal species. It is also unclear if the designation of ponderosa pine as a focal species is intended to apply to all locations where that species occurs, or only in some habitat types.221 If the Forest seeks an indicator of "the integrity of warm dry habitats and the xeric grassland communities within them,"222 the Tribe recommends selection of white-headed woodpecker, flammulated owl, or another obligate wildlife species as a focal species.

Objection: Lack of clarity regarding Forest's selection of Ponderosa Pine as a focal species.

Proposed Resolution: The Tribe requests that the Forest revise the Preferred Alternative by more clearly defining the Forest's intention and use of ponderosa pine as a focal species. Alternatively, the Tribe requests that the Forest select a new focal species whose presence more directly and appropriately reflects healthy forest

conditions within warm dry forest types.

6.2.2. Monitoring Management Inputs Rather Than Resource Conditions

Many of the monitoring questions contained within the Preferred Alternative's monitoring plan are measured by acres managed, acres treated, number of decisions made, etc. These measures of management inputs, although important from an administrative perspective, appear unlikely to meaningfully address their associated monitoring question(s). This is particularly true for MON- WL-05, MON-WL-10, MON-WLMU-01, and MON-WLMU-02.

Objection: Monitoring inputs not clearly connected to monitoring questions.

Proposed Resolution: The Tribe requests that the Forest revise MON-WL-05, MON-WL-10, MON- WLMU-01, and MON-WLMU-02 to more directly reflect their associated monitoring questions.

MON-WLMU-02 is associated with both FW-DC-WLMU-02 and FW-STD-WLMU-01, but FW- STD-WLMU-01 should be monitored through a measure of actual compliance with the standard, not simply the number of routes closed.

Proposed Resolution: The Tribe requests that the Forest revise MON-WLMU-02 (or develop a new monitoring plan component) to directly reflect compliance with FW-STD-WLMU-01.

6.2.3. Monitoring Specific to Focal Species

Federal law requires that monitoring plans contain one or more monitoring questions and associated indicators addressing the status of focal species to assess the ecological conditions required under [sect]219.12.223 The Tribe is pleased to see a monitoring question specific to the actual status of the western pearlshell mussel (MON-WTR-12) and several monitoring questions specific to the actual status of ponderosa pine (e.g. MON-FOR-02). However, the Preferred Alternative's monitoring plan does not contain any monitoring questions directly related to the status (abundance, trend, etc.) of elk.

Objection: Lack of any monitoring questions directly related to the status (abundance, trend, etc.) of elk.

Proposed Resolution: The Tribe requests that the Forest establish one or more monitoring questions (and associated indicators) specific to the population and/or demographic status of elk on the Forest with sufficient spatial resolution to inform project development.

6.2.4. Monitoring Specific to Endemic, Niche, and Pollinator Species

A number of desired conditions call for habitat to support wildlife endemic to the plan area and/or with specific habitat needs. FW-DC-TE-01 provides that "[u]ncommon habitat elements (mineral licks, talus slopes, fractured wet bedrock, rocky outcrops, scree slopes, waterfalls, and geologic inclusions) support long term persistence of endemic species with narrow or vary narrow habitat specificity and limited distribution associated with these habitats." FW-DC-TE-02 provides that [p]eatlands, including fens and bogs. . . support unique plant and animal species." FW-DC-TE-03 provides that "[p]lant communities are comprised of a diverse mix of native grass, forb, shrub, and tree species, which provide forage for pollinator species." The monitoring questions associated with these desired conditions rely solely on management inputs, however (they ask "[w]hat actions have occurred" to conserve rare endemic terrestrial and animal communities and provide pollinator habitat), which do not themselves measure actual conditions, or show trends toward or away from desired conditions.224

The Forest must develop monitoring questions for FW-DC-TE-01, FW-DC-TE-02, and FW-DC- TE-03 that relate directly to these desired conditions. And because these desired conditions seek to benefit endemic species, habitat specialists, and pollinators, the Forest should develop monitoring questions that evaluate the Forest-wide abundance and trends of such species.

Many endemic, niche, and pollinator species were considered by the Forest for SCC designation, but rejected due to lack of information. They include the northern alligator lizard, ring necked snake, boulder pile mountainsnail, lyre mantleslug, Nimapuna disc, Seven Devils mountainsnail, smoky taildropper, thinlip tightcoil,

and Western bumblebee. The Forest should develop monitoring questions related to these species. Doing so will allow the Forest to ascertain ecological conditions and trends while also gathering the information necessary for future SCC evaluations.

Objection: FW-DC-TE-01, FW-DC-TE-02, and FW-DC-TE-03 lack any associated monitoring questions that assess the actual status of ecological conditions.

Proposed Resolution: The Tribe requests that the Forest revise and/or add monitoring questions for FW-DC-TE-01, FW-DC-TE-02, and FW-DC-TE-03 to directly assess the conditions of and trends for each terrestrial ecosystem.

Because these desired conditions relate directly to the ability of an ecosystem to support particular types of wildlife, the Tribe requests that the Forest develop monitoring questions that assess the populations and trends of relevant wildlife species, including the northern alligator lizard, ring necked snake, boulder pile mountainsnail, lyre mantleslug, Nimapuna disc, Seven Devils mountainsnail, smoky taildropper, thinlip tightcoil, and Western bumblebee.

6.2.5. Misaligned Monitoring Questions

Objection: MON-WL-01 contains two monitoring questions, yet the second question ("What is the status of forest meso-carnivores (e.g. lynx, wolverine, fisher) on the Forest?)"225lacks associated indicators and measures.

Proposed Resolution: The Tribe requests that the Forest revise the Preferred Alternative to include indicators and measures for the second monitoring question identified under MON-WL-01.

Objection: MON-WL-09 is not sufficiently related to the desired condition (FW-DC-WL-06) it seeks to address.

Proposed Resolution: The Tribe requests that the Forest revise MON-WL-09 to directly reflect desired conditions regarding ecological conditions and habitat connectivity rather than administrative effort or attendance at meetings.

Objection: MON-WL-12 is not sufficiently related to the desired condition (FW-DC-WL-09) it seeks to address.

Proposed Resolution: The Tribe requests that the Forest revise MON-WL-12 to directly reflect desired conditions regarding habitat connectivity and wildlife movements rather than administrative consideration or effort.

6.3 Water and Aquatic Resources-Related Monitoring

6.3.1 Reliance on PIBO for Aquatics Monitoring

Objection: Several of the monitoring questions (MON-WTR-02, MON-WTR-04, MON-WTR-10) rely on PIBO as the Indicator and Measure. While the regional scale of the PIBO monitoring makes it a desirable dataset for monitoring the effectiveness of the Pacfish/Infish Biological

Opinion, the scale, timing, and site selection of PIBO in unlikely to provide adequate data to address monitoring needs for specific to watersheds and subwatersheds on the Forest.

Proposed Resolution: The Tribe requests that the Forest develop a monitoring protocol detailed and scale appropriate to answer the monitoring questions proposed.

6.3.2. Inadequate Water Quality Monitoring Protocol

Objection: MON-WTR-05 relies on IDEQ monitoring and the number of locations/miles listed as impaired under 303(d and 305(d) to determine the status and trend of water quality on the Forest. While this monitoring would suffice as determining when stream water quality has reached a regulatory threshold, it isn't appropriate to

determine trends at the watershed or subwatershed scale. Additionally, this monitoring would not allow for determining if activities on the Forest are contributing to degraded water quality downstream through cumulative effects (i.e. temperature and sediment).

Proposed Resolution: The Tribe requests that the Forest develop a monitoring protocol detailed and scale appropriate to answer the monitoring questions proposed.

6.3.3. Inadequate TMDL Monitoring

Objection: MON-WTR-06 doesn't include any monitoring activities in the indicators or measures to determine if management activities are contributing to TMDL load allocations.

Proposed Resolution: The Tribe requests that the Forest develop a monitoring protocol detailed and scale appropriate to answer the monitoring questions proposed.

6.3.4. Aquatic and Riparian Resources Desired Conditions

Objection: MON-WTR-09 doesn't include any monitoring activities in the indicators or measures to determine if management activities are resulting in evaluation of management actions or obtainment of desired conditions, relying on summaries of pre-project, multi-scale analysis instead of post implementation assessments.

Proposed Resolution: The Tribe requests that the Forest develop a monitoring protocol detailed and scale appropriate to determine trends to achieve desired conditions.

6.3.5. Monitoring of Management Inputs Rather Than Resource Conditions

As with Wildlife monitoring, many of the aquatics monitoring questions, indicators, and measures are measured by projects (i.e. number of decisions made, etc.). These measures of management inputs will not meaningfully address their associated monitoring question(s). This is true for MON- WTR-03, MON-WTR-09, MON-CWN-01, MON-CWN-03, MON-RMZ-01, and MON-RMZ-02.

Objection: Monitoring inputs are not clearly connected to monitoring questions.

Proposed Resolution: The Tribe requests that the Forest revise MON-WTR-09, MON-CWN-01, MON-CWN-03, MON-RMZ-01, and MON-RMZ-02 to more directly reflect their associated monitoring questions.

Objection: MON-WTR-03 and its measures and indicators only look at management actions. None consider actual measures of condition that bear on its relevant plan components, FW-DC-WTR- 02 and FW-DC-WTR-10.

Proposed Resolution: The Tribe requests that the Forest revise MON-WTR-03 to directly reflect its associated desired conditions.

7. Old-Growth Components

Objection: MA2 and MA3-DC-FOR-10. The Forest should increase all ecologically-appropriate old-growth stands in all dominance types due to their outsized ecosystem importance and should only accept reductions in old-growth that occur through natural disturbance, such as insect and disease activity and wildlife. For instance, although perhaps uncommon, old growth grand fir stands were historically present within MA3 and provide important habitat conditions for fisher and other wildlife species. Protection of those stands is important to the long-term persistence and legal status of fisher in the Forest.226

Proposed Resolution: MA2 and MA3-DC-FOR-10 should be amended to read: "All ecologically- appropriate old-growth in all dominance types Amounts of old growth where the cover type isPonderosa pine, western larch, western white pine, and whitebark pine are maintained or increased from existing amounts except where reductions occur due to natural disturbance. Amounts of old growth where the cover type is western redcedar, Pacific yew, and western hemlockare maintained through time."

Objection: MA2 and MA3-GDL-FOR-02. This guideline should apply to all ecologically- appropriate old-growth dominance types, not just those listed. However, some dominance types should not be managed for increased

resiliency when such trends are inconsistent with those communities' underlying ecology (such as old growth grand fir).227

Proposed Resolution: MA2 and MA3-GDL-FOR-02 should be amended to read: "Vegetation management activities may be authorized in old growth stands where the cover type is Ponderosapine, western larch, western white pine, Pacific yew, western redcedar, western hemlock, andwhitebark pineonly if the underlying ecology of the stand warrants activities designed to increasethe resistance and resiliency of the stand to disturbances or stressors, the activities are designed to increase the resistance and resiliency of the stand to disturbances or stressors, and if the activities are not likely towill not modify stand characteristics to the extent that the stand would no longer meet the minimum screening criteria definition of an old growth type (Green et al. 2011). See the glossary for the definitions of resistance and resilience."

Objection: MA2 and MA3-GDL-FOR-03. Inconvenient routing is not an adequate justification for fragmenting remaining old-growth stands. The ecological benefits these intact stands provide are too important.228

Proposed Resolution: MA2 and MA3-GDL-FOR-03 should be amended to read: "To prevent fragmentation of existing old growth in all dominance types where the cover type is Ponderosapine, western larch, western white pine, Pacific yew, western redcedar, western hemlock, and

whitebark pine, permanent road construction shouldwill be avoided in these old growth covertypesunless a site-specific analysis determines that route is optimal considering other desiredconditions."

Objection: MA2 and MA3-GDL-FOR-04. This guideline should apply to all ecologically- appropriate old-growth dominance types, not just those listed, for the reasons stated in the above objections.229

Proposed Resolution: MA2 and MA3-GDL-FOR-04 should be amended to read: "To promote resilient old growth cover types, ecologically-appropriate stands other than those types describedin MA2 and MA3-DC-FOR-10 shouldmust be managed to meet minimum screening criteria for old growth of the types specified in MA2 and MA3-DC-FOR-10, if present."