UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
PROGRAM PLANNING AND INTEGRATION
Silver Spring, Maryland 20910

MAY 16 2013

To All Interested Government Agencies and Public Groups:

Under the National Environmental Policy Act (NEPA), an environmental review has been performed on the following action.

TITLE: Environmental Assessment to Analyze Impacts of a NOAA's National Marine Fisheries Service Determination that the Fishery Management and Evaluation Plans Submitted by the Oregon Department of Fish and Wildlife Satisfy the Section 4(d) Rule and that the Tribal Resource Management Plans submitted by the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation and the Shoshone-Bannock Tribes satisfy the Tribal 4(d) Rule and Do Not am Appreciably Reduce the Likelihood of Survival and Recovery of Snake River Spring/Summer-run Chinook Salmon Evolutionarily Significant Unit or Snake River Steelhead Basin Distinct Population Segment under the Endangered Species Act

LOCATION: Snake River basin, northeast Oregon and southeast Washington

SUMMARY: The state and tribal plans propose to manage all spring/summer Chinook salmon fisheries to achieve escapement objectives. The plans utilize a coordinated harvest rate schedule with five tiers based on predicted adult abundance to each of the affected populations. The majority of the harvest is anticipated to come from hatchery-origin stocks. The plans also describe a process to guide coordination of fishery design and implementation between the agencies implementing fisheries in the action area.

RESPONSIBLE OFFICIAL: Barry Thom
Deputy Regional Administrator, Northwest Region
NOAA National Marine Fisheries Service
7600 Sand Point Way, N.E.
Seattle, WA 98115-0070

The environmental review process led us to conclude that this action will not have a significant effect on the human environment. Therefore, an environmental impact statement will not be prepared. A copy of the finding of no significant impact (FONSI) including the supporting environmental assessment (EA) is enclosed for your information.

Although NOAA is not soliciting comments on this completed EA/FONSI, we will consider any comments submitted that would assist us in preparing future NEPA documents. Please submit any written comments to the responsible official named above.

Sincerely,

Patricia A. Montanio
NOAA NEPA Coordinator

Enclosure

Final Supplemental Environmental Assessment

To Analyze Impacts of a NOAA's National Marine Fisheries Service Determination that the Fishery Management and Evaluation Plans Submitted by the Oregon Department of Fish and Wildlife Satisfy the Section 4(d) Rule and that the Tribal Resource Management Plans submitted by the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation and the Shoshone-Bannock Tribes satisfy the Tribal 4(d) Rule and Do Not Appreciably Reduce the Likelihood of Survival and Recovery of Snake River Spring/Summer-run Chinook Salmon Evolutionarily Significant Unit or Snake River Steelhead Basin Distinct Population Segment under the Endangered Species Act

National Marine Fisheries Service
Northwest Region

May 2013

Cover Sheet
May 2013 Final Supplemental Environmental Assessment

Title of Environmental Review:	Supplemental Environmental Assessment to Analyze Impacts of a NOAA's National Marine Fisheries Service Determination that the Fishery Management and Evaluation Plans Submitted by the Oregon Department of Fish and Wildlife Satisfy the Section 4(d) Rule and that the Tribal Resource Management Plans submitted by the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, and the Shoshone-Bannock Tribes satisfy the Tribal 4(d) Rule and Do Not Appreciably Reduce the Likelihood of Survival and Recovery of Snake River Spring/Summer-run Chinook Salmon Evolutionarily Significant Unit or Snake River Steelhead Basin Distinct Population Segment under the Endangered Species Act
Evolutionarily Significant Units:	Snake River Spring/Summer-run Chinook salmon and Snake River Basin Steelhead
Responsible Agency and Official:	Barry Thom Deputy Regional Administrator National Marine Fisheries Service Northwest Region 7600 Sand Point Way N.E., Building 1 Seattle, WA 98115
Contacts:	Enrique Patiño Salmon Management Division National Marine Fisheries Service Northwest Region 7600 Sand Point Way N.E., Building 1 Seattle, WA 98115
Legal Mandate:	Endangered Species Act (ESA) of 1973, as amended and implemented – 50 CFR Part 223
Location of Proposed Activities:	Grande Ronde River and Imnaha River
Activity Considered:	ESA determination regarding two Fishery Management and Evaluation Plans and ~~two~~ three Tribal Resource Management Plans through part of the range of the ESA-listed Evolutionarily Significant Unit and Distinct Population Segment pursuant to the ESA 4(d) Rule and Tribal 4(d) Rule, respectively.

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EXECUTIVE SUMMARY

A Draft Environmental Assessment (EA) on the effects of two Fishery Management and Evaluation Plans (FMEPs) from the Oregon Department of Fish and Wildlife (ODFW), one Tribal Resource Management Plan (TRMP) form the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and one TRMP from the Shoshone-Bannock Tribes (SBT) was released by the National Marine Fisheries Service (NMFS) for a 30-day public comment period on August 11, 2011 (76 FR 49735). Since the draft EA was published, ODFW modified the Grande Ronde River FMEP to include fisheries managed by the Washington Department of Fish and Wildlife (WDFW) in the Washington State portion of the Grande Ronde River (ODFW 2012), the CTUIR provided clarifications regarding their original TRMP (CTUIR 2012), and the Nez Perce Tribe (NPT) submitted to NMFS a TRMP for the Grande Ronde and Imnaha Rivers (NPT 2012). NMFS considered these changes, clarifications and new TRMP to be substantial new information warranting additional information in the NEPA analysis, and warranting further public review. Consequently, NMFS prepared this Draft Supplemental Environmental Assessment to address the following:

- Inclusion of spring/summer Chinook salmon Fisheries in the Washington State portion of the Grande Ronde River to be managed by WDFW
- Clarification by the CTUIR on their original spring/summer Chinook salmon Fisheries TRMP in the Imnaha and Grande Ronde River subbasins
- A spring/summer Chinook salmon Fisheries TRMP in the Imnaha and Grande Ronde River subbasins submitted by the NPT

Draft Environmental Assessment Public Comment Period

NMFS published a document in the Federal Register on August 11, 2011 (76 FR 49735), concerning the availability of a draft document for public comment related to two FMEPs submitted by ODFW, one TRMP submitted by the CTUIR, and one TRMP submitted by the SBT. The comment period for review of the EA on this action expired on September 12, 2011. NMFS received comments from ODFW, the CTUIR, and the NPT (Appendix 1).

Supplemental Environmental Assessment Format

The Draft Supplemental Environmental Assessment reflects changes from the Draft Environmental Assessment based on new information collected since the draft was published. All new text is indicated in redline/strikeout format to show changes from the Draft Environmental Assessment, or is indicated with a new subsection title and explanation of the new text, as illustrated under this Executive Summary.

Draft Supplemental Environmental Assessment Comment Period

Based on comments received on the Draft Environmental Assessment, and as a result of additional information presented to NMFS during the comment period, a Draft Supplemental Environmental Assessment was prepared and published for an additional 30-day comment period. The comment period for the Draft Supplemental Environmental Assessment began on January 23, 2013, and ended on February 22, 2013 (78 FR 4834). No public or agency

comments were received; subsequently, the Final Supplemental Environmental Assessment was prepared. The redline/strikeout format, and other indications of changes from the original draft environmental assessment, are included in this final document.

1.0 PURPOSE OF AND NEED FOR THE PROPOSED ACTION

1.1 Background

NOAA's National Marine Fisheries Service (NMFS) is the lead agency responsible for administering the Endangered Species Act (ESA) as it relates to listed salmon and steelhead. Actions that may affect listed species are reviewed by NMFS under section 7 or section 10 of the ESA or under section 4(d), which can be used to limit the application of take prohibitions described in section 9. NMFS issued a final rule pursuant to ESA section 4(d) (4(d) Rule), adopting regulations necessary and advisable to conserve threatened species (50 CFR 223.203). Similarly, NMFS issued a final Tribal 4(d) Rule (50 CFR 223.209). These 4(d) Rules apply the take prohibitions in section 9(a)(1) of the ESA to salmon and steelhead listed as threatened, and also set forth specific circumstances when the prohibitions will not apply, known as 4(d) Limits. With regard to fisheries described in Fisheries Management and Evaluation Plans (FMEPs), NMFS declared in the 4(d) Rule that section 9 take prohibitions would not apply to activities carried out under those FMEPs that have been approved by NMFS and that are implemented in accordance with a letter of concurrence from NMFS. With regard to fisheries management described in Tribal Resource Management Plans (TRMPs), NMFS declared in the Tribal 4(d) Rule that section 9 take prohibitions would not apply to activities carried out under those TRMPs deemed by the Secretary of Commerce to not appreciably reduce the likelihood of survival and recovery of a listed species.

On April 22, 2010, NMFS received a TRMP for fisheries in the Grande Ronde and Imnaha Rivers from the Shoshone-Bannock Tribes (SBT), addressing activities affecting Snake River spring/summer Chinook salmon and Snake River steelhead in 2011 and beyond (SBT 2010). On June 28, 2010, NMFS received a TRMP for fisheries in the Grande Ronde and Imnaha Rivers from the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), addressing activities affecting Snake River spring/summer Chinook salmon and Snake River steelhead in 2011 and beyond. On July 21, 2010, NMFS received two FMEPs (one for the Grande Ronde River and one for the Imnaha River) from the Oregon Department of Fish and Wildlife (ODFW), addressing activities affecting Snake River spring/summer Chinook salmon and Snake River steelhead in 2011 and beyond (ODFW 2010a and ODFW 2010b). There were two small inconsistencies related to the application of the fishery framework among the plans submitted in 2010 and in June 2011, the SBT, the CTUIR and ODFW submitted their respective amended fishery plans to NMFS with the necessary corrections (SBT 2011; CTUIR 2011; ODFW 2011a; ODFW 2011b). A Draft Environmental Assessment (EA) on the effects of these plans was prepared and made available for public comment though a Federal Register notice (76 FR 49735, August 11, 2011). This Federal Register notice did not include the Washington Department of Fish and Wildlife's (WDFW) fishery in the Grande Ronde River or the NPT's Grande Ronde River and Imnaha River subbasins TRMP.

On February 17, 2012, the NPT submitted a revised TRMP for spring/summer Chinook salmon fisheries in Grande Ronde River and Imnaha River subbasins to NMFS that included the necessary management provisions for NMFS to include the TRMP in its review (NPT 2012). Concurrently, the WDFW consulted with ODFW to include the WDFW fishery as part of ODFW's Grande Ronde River FMEP. On April 24, 2012, ODFW submitted a modified FMEP for the Grande Ronde River subbasin to include WDFW's fishery (ODFW 2012). On March 6,

2012, the CTUIR resubmitted its Grande Ronde and Imnaha Rivers TRMP (CTUIR 2012). The CTUIR's 2012 TRMP included important clarifications, but it did not result in any changes that merit further analysis.

For the purpose of this analysis, ODFW and WDFW are considered applicants to the Proposed Action. NPT, CTUIR, and SBT are considered parties to the Proposed Action (collectively referred as "State applicants and parties").~~engaged in fisheries management in the Grande Ronde and Imnaha Rivers.~~ For the purpose of this analysis, the four submitted plans will be collectively referred to as Management Plans.

In the review of FMEPs and TRMPs, NMFS must consider whether these Management Plans satisfactorily address the criteria contained in the ESA 4(d) Rule and Tribal 4(d) Rule. If NMFS determines that the FMEPs and TRMPs submitted by the ~~parties~~ State applicants and parties "...are not likely to appreciably reduce the likelihood of survival and recovery..." and otherwise satisfy criteria of the 4(d) Rule and Tribal 4(d) Rule, whichever applies, then NMFS can approve the FMEPs and publish its determination on the TRMPs. NMFS' approval or determination, respectively, constitutes the Federal action that is subject to analysis as required by the National Environmental Policy Act (NEPA).

NMFS seeks to consider, through NEPA analysis, how its pending action may affect the natural and physical environment and the relationship of people with that environment. NMFS is also required to review compliance of ESA actions with other applicable laws and regulations. The NEPA analysis provides an opportunity to consider, for example, how the action may affect conservation of non-listed species, and socioeconomic objectives that seek to balance conservation with wise use of affected resources and other legal and policy mandates.

1.2 Description of the Proposed Action

The Federal action evaluated here is the proposed approval by the Secretary (through the Northwest Regional Administrator for NMFS) of ODFW's FMEPs and the proposed determination by the Secretary that the NPT's TRMP, the SBT's TRMP, and the CTUIR's TRMP would not appreciably reduce the likelihood of survival and recovery of the ESA-listed Snake River Spring/Summer-run Chinook Salmon Evolutionarily Significant Unit (ESU), and Snake River steelhead Distinct Population Segment (DPS)[1]. Activities identified in the FMEPs and TRMPs include fisheries that incorporate conditions intended for the conservation of salmon stocks, consistent with restoration objectives. The Proposed Action would result in the implementation of fisheries as described in the FMEPs and TRMPs.[2]

[1] An 'evolutionarily significant unit' (ESU) of Pacific salmon (Waples 1991) and a 'distinct population segment' (DPS) of steelhead (71 FR 834, January 5, 2006) are considered to be 'species,' as defined in Section 3 of the ESA. Unless otherwise stated, this document uses the term 'species' to refer to both ESUs and DPSs.

[2] NMFS's ESA review of Tribal Resource Management Plans does not itself permit the operation of the described fishery. The Unites States' treaties with Indian tribes are the supreme law of the land, and thus, NMFS cannot make judicially binding determinations regarding the nature and extent of tribal treaty rights. Such determinations are the province of Federal courts. NMFS's role is solely limited to making a determination as to whether a fishery would be likely to appreciably reduce the survival and recovery of ESA-listed fish.

Two alternatives are considered in this supplemental EA: (1) Not approve the FMEPs and issue a determination that the TRMPs would appreciable reduce the likelihood of survival and recovery of the ESA-listed species (i.e., No-action), and (2) Approve the FMEPs and issue a determination that the TRMPs would not appreciable reduce the likelihood of survival and recovery of the ESA-listed species (i.e., Proposed Action). No other alternatives that would meet the purpose and need were identified that were appreciably different from the two alternatives analyzed below (Section 2.0, Alternatives Including the Proposed Action).

1.3 Purpose of and Need for the Action

The purpose of and need for the Proposed Action is

1) For ODFW to provide fishing opportunities for the citizens of Oregon State,
2) For the SBT, NPT, and CTUIR to ~~provide~~ obtain ESA coverage for the proposed fisheries, and
3) For NMFS to protect and enhance natural-origin populations of the affected listed species through ESA compliance.

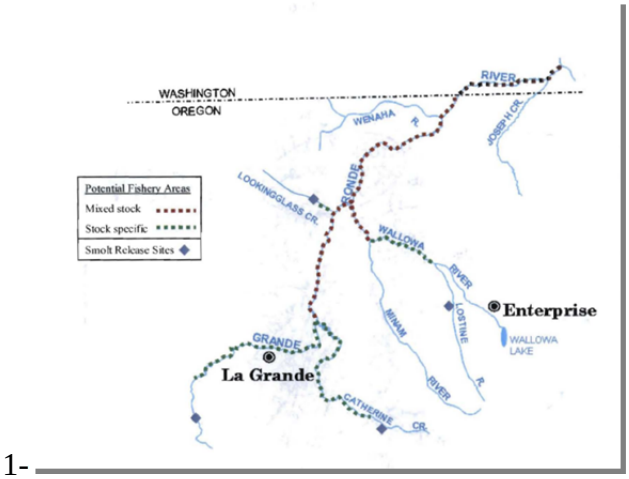
The FMEPs and TRMPs include adaptive management measures to limit ESA impacts and propose conservative harvest regimes on the affected listed species. The FMEPs and TRMPs describe monitoring programs that would be in place to ensure that the implementation of the fisheries is as intended, and that assumptions regarding the effects of the fisheries, particularly in application of the proposed ESA take limits, continue to remain valid such that the action would not reduce the likelihood of survival and recovery of the Snake River Spring/Summer Chinook Salmon ESU and Snake River Basin Steelhead DPS listed under the ESA.

1.4 Action Area

The action area includes the Grande Ronde and Imnaha River subbasins. The Grande Ronde River flows through Oregon and Washington and enters the Snake River at river mile (RM) 168. The Imnaha River in Northeast Oregon joins the Snake River above the mouth of the Grande Ronde River at about RM 192. The Grande Ronde and Imnaha River subbasins are 4,000 and 850 square miles in size, respectively. While the action area is large due to the habitat for the species being analyzed, the actual fishing locations for this action would be localized as depicted below. Fisheries maps outlining fishery locations were provided by ODFW (Figure 1), the SBT (Figure 2), ~~and~~ the CTUIR (Figure 3), and the NPT (Figure 4).

Figure 1. Two maps: 1- Grande Ronde; 2- Imnaha Rivers, indicating area of proposed spring Chinook salmon fisheries ~~by~~ set forth in ODFW's FMEP.

1-



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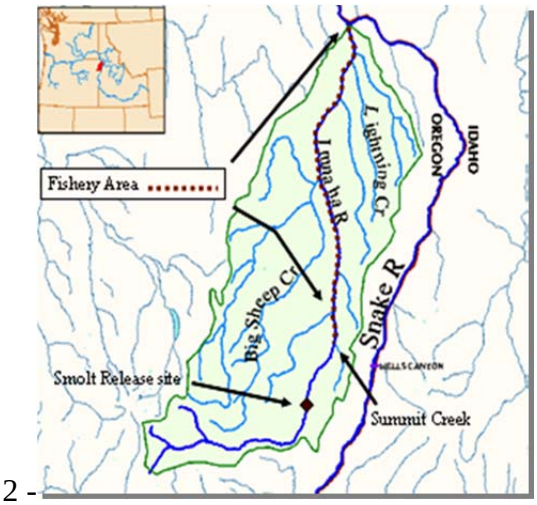


Figure 2. Map of the Grande Ronde and Imnaha Rivers indicating area of proposed spring Chinook salmon fisheries set forth in the SBT's ~~fisheries~~TRMP.

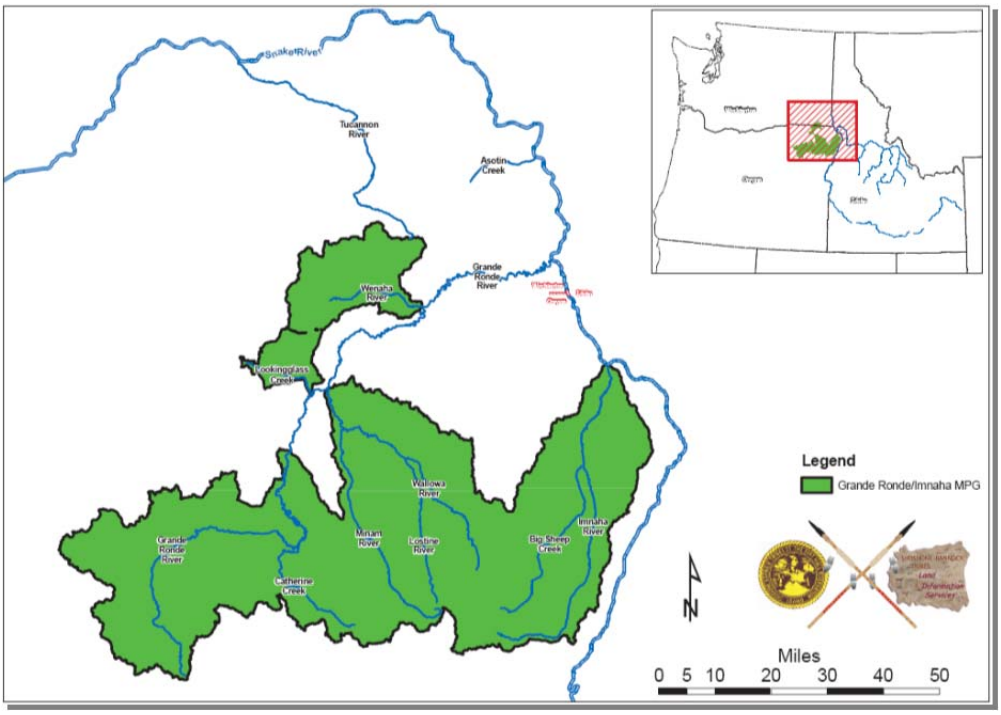


Figure 3. CTUIR spring Chinook salmon fishing areas proposed in the Grande Ronde and Imnaha Rivers subbasins set forth in CTUIR's TRMP.

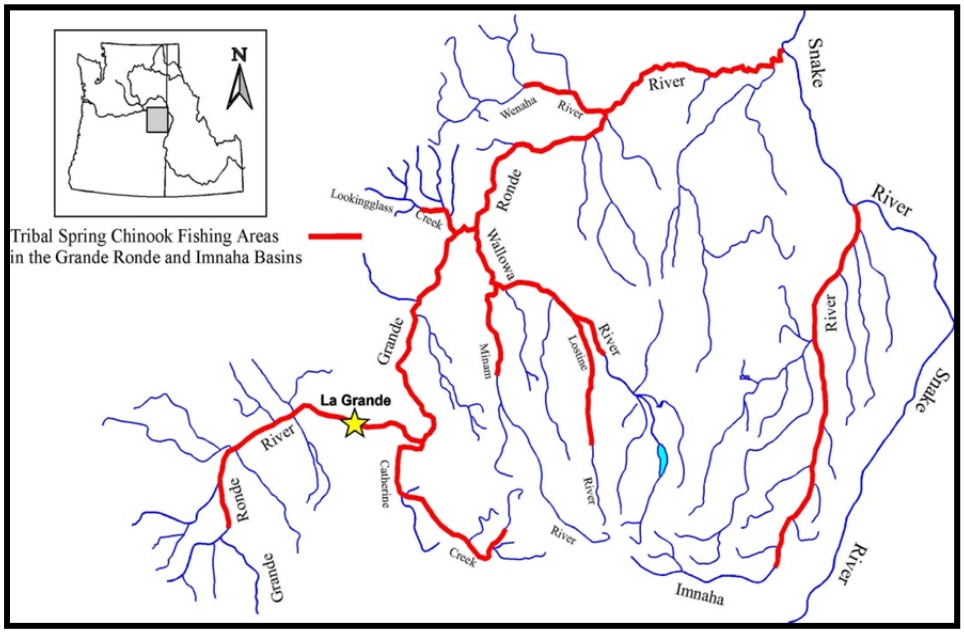
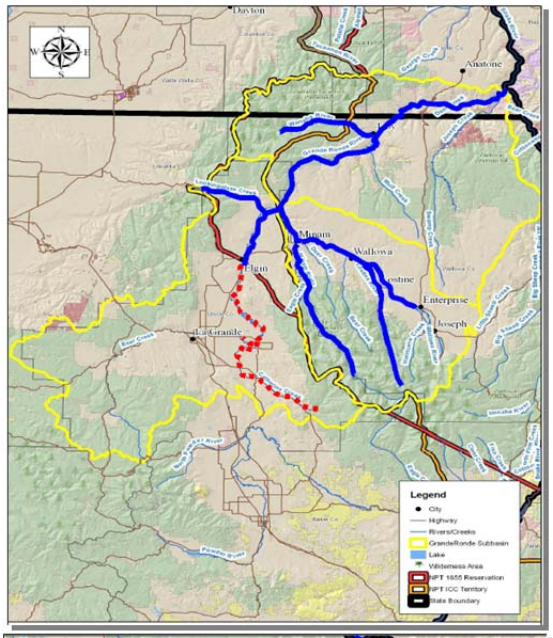


Figure 4. Two maps: 1- Grande Ronde; 2- Imnaha Rivers, indicating area of proposed spring Chinook salmon fisheries set forth in the NPT's TRMP.

1-



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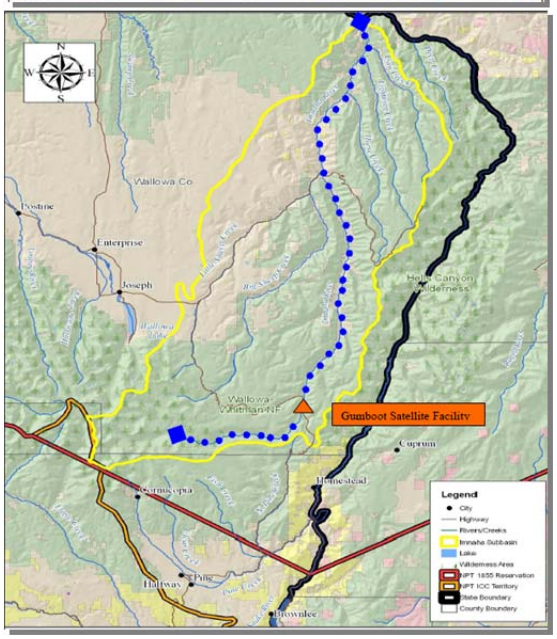

1.5 Scope

The scope of the action considered here includes ESA coverage for fisheries proposed for Snake River spring/summer Chinook salmon in the Grande Ronde and Imnaha Rivers (see footnote 2). The review addresses potential effects in the entire action area, although fishing would occur in localized areas only. The FMEPs and TRMPs are open-ended and would be in effect after the associated 4(d) determinations are signed. There will be periodic reviews of these Management Plans every 5 years, and the plans will be modified as warranted.

1.6 Relationship to Other Plans and Policies

This supplemental environmental assessment was prepared pursuant to regulations implementing NEPA (42 USC 4321), in compliance with Federal regulations for preparing an EA (40 CFR 1502), and consistent with recovery plans being developed pursuant to section 4 of the ESA by NMFS in conjunction with interested stakeholder groups. The Proposed Action analyzed in this supplemental EA relates to other plans and policies regarding the management and restoration of anadromous fish resources in the Pacific Northwest and ESA recovery planning. Recovery plans are in place or being developed for most parts of the Columbia River system in which anadromous fish occur (for example, see NMFS 2005a; NMFS 2009; Snake River Salmon Recovery Board 2006; also, a recovery plan for the Snake River Basin is currently under development by NMFS' Northwest Regional Office). Typically, development and on-going implementation of these plans includes participation by multiple Federal, tribal, state, and local agencies and stakeholder groups. These recovery plans contain (1) measurable goals for delisting, (2) a comprehensive list of the actions necessary to achieve delisting goals, and (3) an estimate of the cost and time required to carry out those actions.

After listing 27 Pacific salmon ESUs as threatened or endangered under the ESA, NMFS initiated a coastwide process to develop recovery plans for these species. An important part of this process was the creation of geographically based Technical Recovery Teams (TRTs). The TRTs are multi-disciplinary science teams chaired by Northwest Fisheries Science Center or Southwest Fisheries Science Center staff. They were tasked with providing science support to recovery planners by developing biologically based viability criteria, analyzing alternative recovery strategies, and providing scientific review of draft plans.

With the imminent publication of recovery plans for most ESA-listed salmon and steelhead in the Pacific Northwest, the Pacific Northwest TRTs either have completed or are close to completing their initial tasks of developing viability criteria and providing science support for recovery plan development. Most of the original TRTs have, therefore, been phased out as the TRTs completed their final tasks in late 2007 and early 2008.

A draft recovery plan for Northeast Oregon is being developed by NMFS in coordination with a Technical Team representing staff from tribes and relevant agencies and organizations, together with a diverse Sounding Board representing local stakeholders in Union and Wallowa Counties. The Technical Team and Sounding Board include representatives from CTUIR, Nez Perce Tribe, Grande Ronde Model Watershed, and various state and Federal agencies. The SBT and the Burns Paiute Tribe also participate on the Technical Team on an ad-hoc basis. All factors that have been identified as leading to the decline of ESA-listed salmon and steelhead are being

addressed in this draft recovery plan. For ESA-listed spring/summer Chinook salmon and steelhead, these factors include hydroelectric operations, harvest, habitat use, and artificial propagation. Snake River fall Chinook salmon will be addressed in a separate recovery plan. The draft Northeast Oregon Snake River Recovery Plan will then be consolidated into a DPS/ESU-wide Snake River Recovery Plan also now being developed.

As discussed below (Section 3, Affected Environment), the FMEPs and TRMPs describe the salmon and steelhead that would be affected in a manner consistent with the population descriptions given by the Interior Columbia Basin Technical Recovery Team (ICTRT 2003) and updated in ICTRT (2007a). They also incorporate Viable Population Thresholds provided by the ICTRT (2007b).

In 2008, NMFS concluded multiple ESA consultations for several Federal actions that occur simultaneously affecting the same listed species of Columbia River salmon and steelhead (NMFS 2008a, 2008b, 2008c). The Federal Columbia River Power System (FCRPS) Action Agencies and the U.S. Bureau of Reclamation for its Upper Snake projects, based their two biological assessments for their actions on a common comprehensive analysis entitled Comprehensive Analysis of the Federal Columbia River Power System and Mainstem Effects of Upper Snake and Other Tributary Actions (Corps et al. 2007a). NMFS later prepared its own Supplemental Comprehensive Analysis (SCA) to capture the best available data and analysis contemporaneous with its issuance of its biological opinions in 2008 (NMFS 2008a). NMFS' SCA builds on the FCRPS Action Agencies' Comprehensive Analysis, incorporating by reference the information relevant to NMFS' analysis on the FCRPS; that analysis includes information relevant to the consideration of fishery harvest in the Columbia and Snake Basins (NMFS 2008a).

2.0 ALTERNATIVES INCLUDING THE PROPOSED ACTION

Alternatives considered in this supplemental EA are: (1) Not approve the FMEPs and issue a determination that the TRMPs would appreciable reduce the likelihood of survival and recovery of the ESA-listed species (No-action); or (2) Approve the FMEPs and issue a determination that the TRMPs would not appreciable reduce the likelihood of survival and recovery of the ESA-listed species (Proposed Action). The following describes the alternatives.

2.1 Alternative 1 (No-action) – Not Approve the FMEPs, and Issue a Determination that the TRMPs Would Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

Under this alternative, the Secretary would determine that the FMEPs and TRMPs do not meet the criteria of the 4(d) Rule and Tribal 4(d) Rule, in which case all activities conducted under the FMEPs and TRMPs would not qualify for the limitations on application of section 9 take prohibitions. Consequently, the Management Plans would not have ESA coverage. Although the level of fishing impacts ~~most of these fisheries~~ has been ongoing, for the purpose of this analysis, NMFS treats the No-action Alternative as resulting in no fishing in the action area in 2012 ~~2011~~ and into the future. The rationale for this is to provide a wide range of alternative analyses for comparisons of effects on the human environment. However, mainstem harvest in

the Columbia River, which represents the majority of harvest effects for these species, would continue under the No-action Alternative.

There are a number of other potential outcomes that might occur under this No-action scenario – the SBT, the NPT, the CTUIR, WDFW and ODFW could pursue other ~~regulatory~~ mechanisms for ~~allowing the continuation of~~ executing fisheries without ESA coverage, for example. However, assuming the Management Plans would be implemented without NMFS approval would likely result in regulatory distinctions, but the same resource effects as under the Proposed Action. Consequently, because the closure of state-managed and tribal fisheries is one possible outcome, and because it represents one end of the spectrum of potential effects, NMFS has defined the No-action Alternative as no fisheries to provide the broadest possible range of effects to evaluate.

2.2 Alternative 2 (Proposed Action) – Approve the FMEPs, and Issue a Determination that the TRMPs Would not Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

Under this alternative, the Secretary would determine that the FMEPs and TRMPs do meet the criteria of the 4(d) Rule and the Tribal 4(d) Rule, whichever applies, in which case activities conducted under the FMEPs and TRMPs would qualify for the limitations on application of section 9 take prohibitions. For the purpose of this analysis, NMFS treats the Proposed Action Alternative as resulting in the level of fishing impacts as described in the FMEPs and TRMPs in 2012 ~~2011~~ and into the future, with a mandatory 5-year review. In the case of the tribal fisheries, NMFS does not assume the identity of which tribes would conduct the fishery; this is a matter for the tribes or the legal system to determine, ideally through the *U.S. v. Oregon* forum. The assumption herein for analytical purposes is that fisheries would take place (see footnote 2).

Alternative 2 would result in ESA coverage for ~~ongoing~~ fisheries in the action area as set forth in the TRMPs and FMEPs ~~regulated by ODFW and the SBT and CTUIR in the action area~~. Additionally, mainstem harvest in the Columbia River, which represents the majority of harvest effects for these species, would continue as under the No-action Alternative. While the action area described above is a large geographic area, fishing under the Proposed Action would only occur in a limited portion of this area at specific fishery access points. Furthermore, fishing would only occur for a short period of time each year because the fishery would be limited by potential effects under ESA requirements and by the amount of available fish to harvest.

A harvest report would be submitted annually to NMFS post-season each year under the FMEPs and TRMPs to evaluate its ESA compliance.

Fishing methods and gears proposed by ODFW include only hook and line. Fishing methods and gear proposed by the tribes include spear, hoop-net, hook and line, or other traditional and contemporary methods.

2.2.1 Escapement Goals

The FMEPs and TRMPs analyzed in this supplemental EA propose to use Viable Population Thresholds (VPT) described as “minimum abundance threshold” (or MAT) as decision criteria

(or reference points) that trigger specific actions at a population level. A summary of spring/summer Chinook salmon minimum abundance thresholds for the Imnaha River and Grande Ronde subbasin tributaries are described in Table 1. Individual tributary run projections and fishery access within tributary reaches provides managers the ability to provide harvest opportunity differentially among the populations.

Table 1. Name, critical level, viable population thresholds, and associated hatchery stocks included in the Imnaha and Grande Ronde River subbasins.

Fishery Management Area	Critical Level	Minimum Abundance Threshold
Catherine Creek/Indian Creek[1]	300	1000
Wallowa/Lostine Rivers	300	750
Upper Grande Ronde	300	1000
Lookingglass Creek[2]		
Wenaha River	225	750
Minam River	225	750
Imnaha River/Big Sheep Creek[3]	300	1000

[1] Catherine Creek population is considered a large (300/1000) when combined with Indian Creek. When fisheries target only the Catherine Creek portion of the Catherine/Indian Population, then the fisheries will be managed based on a Critical Threshold of 225 and Minimum Abundance Threshold of 750, that of an Intermediate-sized population.

[2] Given that the Lookinglass Creek population is considered extinct, the co-managers agree to manage Lookingglass Creek based on a modified harvest rate schedule as indicated in Table 4 below.

[3] Given that the Big Sheep Creek population is considered functionally extirpated, the co-managers agree to manage Big Sheep Creek as part of the Imnaha River population and change the ICTRT classification from intermediate (750) to large (1000).

2.2.2 Natural-origin Framework

The FMEPs and TRMPs analyzed in this supplemental EA propose to manage all Chinook salmon fisheries to achieve escapement objectives. The FMEPs and TRMPs utilize a harvest rate with five tiers based on predicted adult abundance to each of the affected populations. The majority of the harvest is anticipated to come from hatchery-origin stocks, as these are generally higher in abundance than the natural-origin populations. The ~~parties~~ State applicants and parties recognize that natural-origin populations defined at the critical population level (less than 30 percent of MAT) are at a high risk of extinction; therefore, a very conservative harvest approach would be employed (Table 2). Table 2 illustrates the framework, providing the total allowed population-specific ESA impacts according to the expected yearly forecasts for each of the affected populations.

Table 2. Harvest rate steps associated with the Viable Population Threshold for natural-origin populations for Imnaha River, Grande Ronde River, and tributaries.

Fishery Scenario	Number of natural-origin fish returning to a population	Total collective natural-origin mortality for all fisheries (tribal fisheries only)[1]
A	Below Critical Population Threshold (CAT)[2]	(1%)[1,3]
B	Critical to Minimum Abundance Threshold (MAT)[2]	A + 11% of margin above CAT (8%)[1,3]
C	MAT to 1.5X VPT	B + 22% of margin above MAT (16%)[1,3]
D	1.5X MAT to 2X MAT	C + 25% of margin above 1.5X MAT (19%)[1,3]
E	Greater than 2X MAT	D + 40% of margin above 2X MAT (28%)[1,3]

[1] Allocation of ESA impacts for tribal fisheries is provided as an example of what could occur on any given year, but fisheries will be managed subject to the total combined allowable ESA impacts.
[2] Population thresholds based on agreed to critical and viable population threshold values listed in Table 1.
[3] For Lookingglass Creek, fisheries will be managed slightly more liberal under fisheries scenarios A & B: A = 10% total harvest (tribal 8% and non-Indian 2%); B = A + 16% of margin above critical (tribal 12 %).

> = greater than
% = percent

In addition to Table 2, the common framework proposed by the ~~parties~~ State applicants and parties also includes the following steps:

A process ~~to come up with~~ to develop pre-season forecasts by population to be used by the State applicants and parties.

A process to determine the year-specific allowable ESA take by population using Table 1 and Table 2.

A process for providing NMFS with year-specific fishery plans prior to implementing fisheries on any given year.

A process to update pre-season forecasts.

A process for monitoring and reporting ESA impacts and harvest of hatchery-origin fish to the ~~parties~~ State applicants and parties and NMFS.

A process to terminate or modify fisheries to avoid exceeding the total population-specific impacts (determined by the processes 1-5 above) for any of the affected populations on any given year.

2.3 Alternatives Considered but Not Analyzed in Detail

Alternatives that would consider increases or decreases for harvest of hatchery-origin Chinook salmon, increases or decreases for allowable take of ESA-listed fish, or the approval of tribal fisheries only, were considered, but determined to be less likely to provide the intended benefit of ~~providing~~ ensuring fishing opportunities with ESA coverage while conserving and enhancing the natural-origin populations.

- Higher ESA Take Limit – NMFS could have considered a higher ESA take limit than what the ~~parties~~ State applicants and parties proposed; however, because the Proposed Action was designed in consideration of what is generally considered take levels consistent with conservation of the species, a higher ESA take limit would likely exceed what is deemed appropriate for a no-jeopardy determination under the ESA, and thus would not meet requirements under the ESA. Consequently, this alternative would not meet the purpose and need for the action because it would not meet the ESA conservation requirement.

- Lower ESA Take Limit – NMFS could have considered a more restrictive fishery than that proposed; however, the proposed abundance-based harvest rate schedule that would determine the allowable take in any given year carefully balances the need for protection of ESA-listed fish and the need for fishing opportunity by the ~~parties~~ State applicants and parties. Consequently, this alternative would not meet the purpose and need for the action.

- Issue a determination that the TRMPs would not appreciably reduce the likelihood of survival and recovery of the ESA-listed species, but not approve the FMEPs – NMFS could have considered a favorable determination on the TRMPs while determining that the state's FMEPs do not meet 4(d) Rule criteria. However, because the TRMPs and FMEP would be managed under the same overall ESA-impact limit for all fisheries in any given year, implementing only the TRMPs would not result in greater protection of ESA-listed fish than approving them jointly. In addition, implementing the TRMPs but determining that the FMEPs do not meet 4(d) Rule criteria would not meet the purpose and need of the Proposed Action because it would not provide opportunities for state recreational fisheries. Finally, the FMEPs and TRMPs are integrally linked in their management purposes and, therefore, are considered related or similar actions within the same scope of NEPA review.

3.0 Affected Environment

The two alternatives considered in this supplemental EA can potentially affect the physical, biological, social, and economic resources within the action area. Below is a description of the environmental resources that would be affected by these alternatives and the current baseline condition.

3.1 Water Quality

Habitat conditions important to the various ESA-listed salmonids in the action area vary widely; however, factors such as water quality and flow conditions are important to most fish species in the action area. Instream flows are addressed under the water quality affected environment conditions and corresponding analysis because decreasing the overall volume of water generally increases the contaminant concentration or ability to impair water quality. The draft recovery plans for the Imnaha subbasin, the Wallowa River, the Lostine River, the Wenaha River, the Upper Grande Ronde River, and the Catherine Creek and Lookingglass Creek systems identify that high stream temperatures and alteration to flows and the hydrograph are primary factors limiting spring/summer Chinook salmon (Huntington 1994; GRMW 1995; USFS 2002; NPCC 2004; ODEQ 2006).

Stream flow, or discharge, is the volume of water flowing in a stream channel expressed as unit per time (cfs, or cubic feet per second). Stream flow is an important determinant of water quality and aquatic habitat conditions. High water temperature, low levels of dissolved oxygen, and deleterious levels of toxins can all be exacerbated by low stream flow. Moreover, the quantity, quality, and connectivity (e.g., suitability for fish migration) of aquatic habitats are also influenced by flow. Agricultural and domestic water diversions are common sources of impacts on aquatic resources. Diversions and associated diking, damming, and dredging are a large contributing factor to the loss of salmon and steelhead habitat in some river basins (Beechie et al. 1994; McBain and Trush 1997). Stream flow is also a powerful determinant of aquatic habitat conditions through the effects of peak or flood events. It is during these flood flows that banks are either built or eroded, pools are deepened or filled, and large woody debris is contributed and redistributed. It is also during these flood flows that very high rates of mortality occur for salmonids in the egg or alevin life stage (McHenry et al. 1994). Changes in vegetation, such as extensive clear cutting, can increase the frequency and intensity of flood flows due to accelerated runoff. Zeimer (1998) found a 35 percent increase in mean peak flows after logging of the North Fork of Caspar Creek. While this effect disappears with forest stand recovery, urbanization has a more profound effect on peak flows because impervious surfaces increase speed of runoff (May et al. 1996). Both removal of vegetation and urbanization decrease the lowest flows by reducing the water storage capacity of watershed soils.

Mortality as a result of fisheries can reduce the transport of marine-derived nutrients to freshwater spawning and rearing areas. Gresh et al. (2000) estimated that only 6 to 7 percent of the marine-derived nitrogen and phosphorus that was delivered to the rivers of the Pacific Northwest by spawning salmon 140 years ago is currently returning to those streams. Gresh et al. (2000) attributed the loss to habitat destruction due to beaver trapping, logging, irrigation, grazing, pollution, dams, urban and industrial development, and commercial and sport fishing. Bilby et al. (2002) found a positive linear relationship between the biomass of juvenile anadromous salmonids and the abundance of carcass material at sites in the Salmon and John Day Rivers, suggesting that spawning salmon may be influencing aquatic productivity and the availability of food for rearing fishes, but mechanisms were not postulated.

Salmon carcasses also appear to promote the growth of riparian forests, a source of large woody debris and stream shading. Helfield and Naiman (2001) hypothesized that there were several pathways for the transfer of marine-derived nutrients from streams to riparian vegetation,

including the transfer of dissolved nutrients from decomposing carcasses into shallow subsurface flow paths and the dissemination in feces, urine, and partially-eaten carcasses by bears and other salmon-eating fauna. In studies with juvenile coho salmon, Quinn and Peterson (1996) correlated increased body size with higher rates of overwinter survival, although this study was not designed to determine whether the effect was related to carcass density. In summary, there is an increasing body of work suggesting that the biomass of carcasses affects the productivity of salmonid rearing habitat, but functional and quantitative relationships are poorly understood and difficult to generalize from the specific conditions studied. Limiting factors, and thus the ecological importance of marine-derived nutrients, differ among streams. Hatchery-origin fish in the action area are not expected to substantially contribute marine-derived nutrients to the ecosystem because most ~~these~~ are removed either by fisheries or at hatchery weirs and not allowed to spawn and die in the wild.

Human activity such as beaver trapping, logging, irrigation, grazing, pollution, dams, urban and industrial development have all contributed to a decline in water quality parameters in the action area. Other human activities that are unrelated to the proposed fisheries in the FMEPs and TRMPs that could affect water quality in the action area, such as boating, agricultural practices, logging, irrigation, pollution, dams, urban and industrial development, would continue for the duration of the proposed FMEPs and TRMPs.

3.2 Anadromous Fish Listed Under the ESA

Since 1991, NMFS has identified 12 ESUs and DPSs of Columbia River Basin salmon and Columbia River Basin steelhead as requiring protection under the ESA. Four of the listed anadromous salmonid species originate in the Snake River Basin. Only one ESU and one DPS are expected to be impacted by the fisheries evaluated in this supplemental EA, based on location of the fisheries and the run timing of the ESA-listed fish in the Snake River Basin. The current status of the one ESU and one DPS are described below.

3.2.1 Snake River Spring/Summer Chinook Salmon ESU

Snake River spring/summer Chinook salmon (*Oncorhynchus tshawytscha*) were listed under the ESA as threatened in 1992 and reaffirmed in 2005 (70 FR 37160, June 28, 2005). The Snake River Spring/Summer Chinook Salmon ESU consists of 28 extant populations that spawn and rear in the tributaries of the Snake River between the confluence of the Snake and Columbia Rivers and the Hells Canyon Dam and are grouped into five major population groups (MPGs). The factors that contributed to their decline include intensive harvest and habitat degradation in the early and mid-1900s, high harvest in the 1960s and early 1970s, and Federal and private hydropower development, as well as poor ocean productivity in the late 1970s through the late 1990s (ICTRT 2007a).

The proposed fisheries would take place in areas designated as critical habitat for Snake River spring/summer Chinook salmon. Designated critical habitat for Snake River spring/summer Chinook salmon includes all Columbia River estuarine areas and river reaches proceeding upstream to the confluence of the Columbia and Snake Rivers as well as specific stream reaches in a number of tributary subbasins. The proposed fisheries includes habitat designated as essential fish habitat under the Magnuson-Stevens Act (MSA). Key statistics associated with the

current status of Snake River Basin steelhead are summarized in Tables 8.5.2-1 through 8.5.2-4 of the SCA (NMFS 2008a). Only the Grande Ronde/Imnaha MPG is affected by the proposed fisheries.

3.2.1.1 Status and Trends

Historically, the Snake River drainage is thought to have produced more than 1.5 million adult spring/summer Chinook salmon in some years during the late 1800s (Matthews and Waples 1991). By the 1950s, the abundance of spring/summer Chinook salmon had declined to an annual average of 125,000 adults, and continued to decline through the 1970s. Returns were variable through the 1980s, but declined further in the 1990s. In 1995, only 1,797 spring/summer adults returned. Returns at Lower Granite Dam (hatchery and wild fish combined) dramatically increased after 2000, with 185,693 adults returning in 2001. The large increase in 2001 was due primarily to hatchery returns, with only 10 percent of the returns from fish of natural-origin. Large returns in recent years may be a result of cyclic ocean and climatic conditions favorable to anadromous fish and improved operation of the FCRPS. The 2001-2010 average abundance for spring/summer Chinook salmon adults over Lower Granite Dam is 80,195 and 21,026 for total combined and natural-origin fish, respectively (~~NMFS~~Patino 2011). However, the overall viability ratings for all populations in the Snake River Spring/Summer Chinook Salmon ESU remain at high risk after the addition of more recent year abundance and productivity data (Ford 2011).

Table 3 is used to illustrate the recent and current abundance of the populations of spring/summer Chinook salmon in the Grande Ronde/Imnaha MPG of the Snake River spring/summer Chinook salmon ESU, as well as the corresponding prescribed ESA limit using data from Table 2 and assuming current abundances continue for the duration of the FMEPs and TRMPs under consideration. Recent abundance trends for Snake River spring/summer Chinook salmon incorporate the fishery framework proposed in the FMEPs and TRMPS under consideration in this supplemental EA, as these levels of fisheries impacts have been ongoing in a manner similar to that proposed.

3.2.1.2 Limiting Factors and Threats

Limiting factors for the Snake River Spring/Summer Chinook Salmon ESU include Federal and private hydropower projects, predation, harvest, the estuary, and tributary habitat. Ocean conditions have also affected the status of this ESU. These conditions have been generally poor for this ESU over at least the last four brood cycles, improving only in the last few years. Although hatchery program management is not identified as a limiting factor for the ESU as a whole, the ICTRT has indicated potential hatchery program effects for a few individual populations.

Table 3. Current (2005-2009) number of natural-origin spawners for six populations of Chinook salmon for the Grande Ronde/Imnaha MPG of the Snake River spring/summer Chinook salmon ESU, and the allowed ESA take that would be prescribed if these abundances would continue for the duration of the FMEPs and TRMPs.

	Natural-Origin Spawners (5 year geometric mean)*			Prescribed ESA Limit for Current Abundance as per Table 2	Prescribed ESA Limit as Percent of Current Population Abundance as per Table 2
Populations	**Listing (1992-1996)**	**Prior (1997-2001)**	**Current (2005-2009)**		
Wenaha	260	303	364	18	5.0
Lostine/ Wallowa	118	265	812	66	8.1
Minam	180	277	460	28	6.1
Catherine Creek	69	103	205	2	1.0
Upper Grande Ronde	76	34	109	1	1.0
Imnaha	482	855	1094	101	9.2

*Data from Ford (2011).

3.2.2 Snake River Basin Steelhead DPS

The Snake River Basin Steelhead DPS (*Oncorhynchus mykiss*) was listed as threatened on August 18, 1997 (62 FR 43937). The listing was revised on January 5, 2006 (71 FR 834), after a review of the relationship of wild steelhead to hatchery fish and resident *O. mykiss*. The revised Snake River Basin Steelhead DPS includes 23 extant anadromous populations in five MPGs that spawn in the Snake River Basin of southeast Washington, Northeast Oregon, and Idaho, and six hatchery stocks, including fish from the Dworshak National Fish Hatchery and the rearing facilities in Lolo Creek. There are only two natural-origin steelhead expected to be taken as a result of the implementation of the proposed fisheries and both fish are from the Imnaha MPG.

The proposed fisheries would take place in areas designated as critical habitat for Snake River Basin steelhead. Designated critical habitat for Snake River Basin steelhead includes all Columbia River estuarine areas and river reaches proceeding upstream to the confluence of the Columbia and Snake Rivers as well as specific stream reaches in a number of tributary subbasins. Key statistics associated with the current status of Snake River Basin steelhead are summarized in Tables 8.5.2-1 through 8.5.2-4 of the SCA (NMFS 2008a).

3.2.2.1 Status and Trends

Information on the range-wide status of Snake River Basin steelhead is described in the steelhead status review (Busby et al. 1996), the status review update (BRT 2003), the DPS listing (71 FR 834, January 5, 2006), the *U.S. v. Oregon* biological opinion (NMFS 2008d) and its Supplemental Comprehensive Analysis (SCA) (NMFS 2008a), and the most recent status review update by Ford (2011).

Only two of the 23 extant populations of Snake River steelhead have estimates of population-specific spawning abundance. Adult abundance data series are limited to a set of aggregate estimates (total A-run and B-run counted at Lower Grande Dam), for two Grande Ronde populations (Joseph Creek and Upper Grande Ronde River), and index area or weir counts for subsections of several other populations. The ICTRT used aggregate estimates of abundance at Lower Granite Dam, along with juvenile indices of abundance available for some areas, to infer abundance and productivity ratings for populations without specific adult abundance time series (Ford 2011). Both populations with specific spawning abundance data series are in the Grande Ronde MPG. The overall viability rating for the Joseph Creek population remained as highly viable after updating the analysis to include returns through the 2009 spawning year. The increase in natural-origin abundance for the other population with a data series, the Upper Grande Ronde River, was not sufficient to change the abundance/productivity criteria rating from moderate risk. The overall viability ratings for populations in the Snake River steelhead DPS range from moderate to high risk (Ford 2011). Population-level natural-origin abundance and productivity inferred from aggregate data and juvenile indices indicate that many populations are likely below the minimum levels defined by the ICTRT viability criteria (Ford 2011).

3.2.2.2 Limiting Factors and Threats

Limiting factors identify the most important biological requirements of the species. Historically, the key limiting factors for the Snake River Basin steelhead include hydropower projects, predation, harvest, hatchery program effects, and tributary habitat. Ocean conditions have also affected the status of this DPS. These ocean conditions generally have been poor over at least the last 20 years, improving only in the last few years.

3.3 Non-listed Fish

Approximately 60 other species of fish live in the Snake River and tributaries. About one-half are native species primarily of the families Salmonidae, Catastomidae, Cyprinidae, and Cottidae. White sturgeon (Acipenser transmontanus) occur in the main Snake and Salmon Rivers. The Snake River Basin also supports at least 25 introduced species, primarily representing the taxonomic families Percidae, Centrarchidae, and Ictaluridae. Most of the introduced species are game fish, which may be the targets of fisheries that could incidentally take listed anadromous salmonids (Simpson and Wallace 1978). Fisheries for introduced species are not included in the TRMPs and FMEPs, and are not considered as part of the Proposed Action.

3.4 Instream Fish Habitat

The draft recovery plans for the subbasins identify that the reduced availability and quality of instream habitat, lack of large wood, low pool frequency, and reduced wetted width are primary limiting factors for the Imnaha River mainstem, Upper Grande Ronde River, Wallowa/Lostine River, Wenaha River, Catherine Creek, and Lookingglass Creek spring/summer Chinook salmon populations (Huntington 1994; GRMW 1995; Wallowa County – Nez Perce Tribe 1999; USFS 2002; NPCC 2004; ODEQ 2006). Returning adults use pools and backwater habitat for holding/resting during migration, while habitat diversity, such as large wood, is an important feature for rearing habitat.

Habitat complexity issues primarily are a result of channel modifications, reduced wetted widths, and a lack of pools and large woody debris. Roads parallel many of the streams used by spring Chinook salmon in the action area impairing instream habitat. The Wallowa-Union railroad line runs from Elgin to Joseph and parallels the Wallowa River, and Oregon State Highway 82 parallels the Wallowa River for most of its length from Minam to Wallowa Lake. Other reaches have been channelized to accommodate road construction, residential development, and irrigated agriculture; many of these streams have water diversions, e.g., channel-spanning weirs and other impediments to fish passage. Past removal of beavers and large wood from stream channels contributed to poor quality and reduced frequency of pools throughout the subbasins in the action area.

The lower 30 miles of the Minam River still show the effects of loss of habitat diversity, channelization, and large woody debris from splash dam log transportation that occurred over 80 years ago. A splash dam was constructed at "Big Burn" (river mile 30) in 1918 and was used until 1924. The river continues to have a high width-to-depth ratio and lacks habitat complexity. The lowest 10 miles of the Minam River watershed (approximately 15,795 acres) are in private ownership, where it has been affected by roads and livestock grazing (Wallowa County-Nez Perce Tribe 1999). In Lookingglass Creek, the instream habitat limiting factors primarily affect spring Chinook salmon by reducing spawning, rearing, and migration potential. In Catherine Creek, reduced habitat complexity is primarily due to reduced wetted stream widths, and a lack of pools and large woody debris, while some streams have push-up dams or other impediments to fish passage (Huntington 1994; GRMW 1995; NPCC 2004). Habitat conditions in the Wenaha subbasin have had few impacts from human activities, and there are no ongoing land-use activities other than dispersed recreation. Habitat conditions are generally good and unlikely to change (NPCC 2004).

The limiting factors listed above can be primarily attributed to naturally occurring conditions, which are due to the river's large size and natural riffle-dominated character (Huntington 1994). Habitat effects caused by historical splash damming are reported to persist in many portions of the Upper Grande Ronde drainage (e.g., Meadow Creek, McCoy Creek, and Rock Creek and the mainstem of the Grande Ronde River above La Grande) (Huntington 1994; NPCC 2004~~; USFS 2004~~). Where used, these splash dams caused scouring that, in turn, caused substantial reduction in spawning gravel, pool habitat, in-channel structure, and increased width-to-depth ratios (NPCC 2004~~; USFS 2004~~). Spawning habitat has been lost in the upper reaches above Starkey due to gold dredging impacts (McIntosh et al. 1994). McIntosh (1994) compare historical and current stream habitat conditions in the Upper Grande Ronde River Basin from the Grande Ronde River valley upstream to the headwaters, showing a 66 percent mean decrease in pool frequency in managed (non-wilderness) watersheds from 1934 to 1992. Additionally, substrate composition shifted towards finer substrates and habitat diversity decreased. Habitat diversity and quantity issues primarily are due to reduced wetted widths and a lack of pools and large woody debris (Huntington 1994; GRMW 1995; NPCC 2004).

3.5 Wildlife

The diverse habitats in the Imnaha River and Grande Ronde River subbasins support a spectrum of terrestrial organisms including neo-tropical birds, small mammals, fur bearers, and larger mammals including beaver, whitetail and mule deer, elk, wolverine, and black bears.

Approximately 381 wildlife species occupy the Hells Canyon National Recreation Area (USFS 1998). Some of these species may feed minimally during limited times of the year on juvenile salmonids after emergence (or release in the case of hatchery-origin juveniles) or on decomposing carcasses of spawned adult salmonids.

Within the action area, fish are an important part of the diets of a variety of wildlife species including giant salamander, common loon, grebes, American white pelican, double-crested cormorant, herons, turkey vulture, harlequin duck, common and Barrow's goldeneye, common and red-breasted merganser, osprey, bald eagle, golden eagle, gulls, terns, belted kingfisher, Steller's jay, black-billed magpie, American crow, common raven, and American dipper. Mammals that consume salmon include Virginia opossum, water shrew, coyote, black bear, raccoon, mink, northern river otter, and bobcat. During salmonid freshwater rearing, these wildlife species may consume salmonid eggs, juveniles, adults, and carcasses.

Wildlife habitats within the Snake River Basin consist primarily of riparian/floodplain, shrub steppe, and agricultural lands. Other important habitats include forest lands and transitional steppe areas near the mountains and foothills (SRSRB 2006). The riparian/floodplain habitat lies along the Snake River and its tributaries. The shrub steppe and agricultural habitats encompass the uplands and comprise agricultural croplands, rangeland, and undeveloped areas. Areas of healthy riparian vegetation in the lower elevations are important to wildlife because they provide refuge and habitat (SRSRB 2006). The majority of wildlife is found in riparian, forest, and transitional steppe habitats where food and refuge are plentiful. Deer and elk are often found in agricultural fields.

Riparian zones are important habitats for a variety of wildlife species (SRSRB 2006). Some species are dependent upon riparian zones and some use the areas only for specific life stages. For example, black-crowned night herons and great blue herons use riparian areas for nesting. Furbearers, such as mink, muskrat, and beaver, are found along rivers and streams in riparian zones. Deer often use riparian zones to have their fawns. Neo-tropical birds use riparian zones as they migrate back and forth from Central and South America. And scavengers eat salmon carcasses in the riparian zone.

Invasive species infestations impacting salmon and habitat are currently limited to invasive fish and plant species within the action area. Existing boat traffic, recreation activities, and wading in the streams pose risks as vectors of introduction of new invasive species, like the New Zealand mud snail and the zebra mussel.

3.6 Listed Plants

ESA-listed plants in the action area include Spalding's catchfly (*Silene spaldingii*), Howell's spectacular thelypody (*Thelypodium howellii* ssp. *spectabilis*), and MacFarlane's four o'clock (*Mirabilis macfarlanei*), all three listed as threatened under the ESA.

Spalding's catchfly is an herbaceous perennial plant in the pink family (Caryophyllaceae) (USFWS 2007). It is a regional endemic found predominantly in bunchgrass grasslands and sagebrush-steppe, and occasionally in open pine communities, in eastern Washington, northeastern Oregon, west-central Idaho, western Montana, and barely extending into British

Columbia, Canada (USFWS 2007). There are currently 99 known populations of *S. spaldingii*, with two-thirds of these (66 populations) composed of fewer than 100 individuals each. There are an additional 23 populations with at least 100 or more individuals apiece, and the 10 largest populations are each made up of more than 500 plants (USFWS 2007). Occupied habitat includes five physiographic (physical geographic) regions: the Palouse Grasslands in west-central Idaho and southeastern Washington; the Channeled Scablands in eastern Washington; the Blue Mountain Basins in northeastern Oregon; the Canyon Grasslands of the Snake River and its tributaries in Idaho, Oregon, and Washington; and the Intermontane Valleys of northwestern Montana. Spalding's catchfly was listed as a threatened species under the ESA on October 10, 2001 (USFWS 2001). A recovery plan was finalized by the U.S. Fish and Wildlife Service (USFWS) in September 2007 (USFWS 2007).

Howell's spectacular thelypody (*Thelypodium howellii* ssp. *spectabilis*) was listed as a threatened species on June 25, 1999 (64 FR 28393). This taxon is endemic to the Baker-Powder River Valley in eastern Oregon. It is currently found in five populations in Baker and Union Counties, Oregon. It formerly also occurred in the Willow Creek Valley in Malheur County. Howell's spectacular thelypody is an herbaceous biennial that occurs in mesic, alkaline habitats in the Baker-Powder River Valley region in Northeast Oregon. Sites range from approximately 3,000 feet (1,000 meters) to 3,500 feet (1,100 meters) in elevation. The thelypody is threatened by a variety of factors including habitat destruction and fragmentation from agricultural and urban development, seasonal grazing by domestic livestock, competition from non-native vegetation, and alterations of wetland hydrology. At least five stable or increasing thelypody populations are distributed throughout its extant or historical range. All five populations are located on permanently protected sites. Permanently protected sites are either owned by a State or Federal agency or a private conservation organization, or protected by a permanent conservation easement that commits present and future landowners to the conservation of the species. No critical habitat has been designated for this species. A recovery plan was finalized by the USFWS in June 2002 (USFWS 2002).

MacFarlane's four-o'clock (*Mirabilis macfarlanei*) is a perennial plant with a deep-seated, thick tap-root and bright magenta flowers. The flowers form in clumps of four to seven, and each flower is up to 1 inch long and 1 inch wide. This species typically blooms in May to mid-June. Based on limited monitoring conducted by the U.S. Bureau of Land Management, individual plants have been observed to live well over 20 years. MacFarlane's four-o'clock occurs in steep river canyon grassland habitats that are characterized by regionally warm and dry conditions. In these habitats, less than 12 inches of precipitation occurs annually, mostly as rain during winter and spring. Thirteen populations of MacFarlane's four-o'clock are currently known. Three of these populations are found in the Snake River Canyon area (Idaho County, Idaho, and Wallowa County, Oregon), seven in the Salmon River area (Idaho County, Idaho), and three in the Imnaha River area (Wallowa County, Oregon). The total geographic range of the species is an area of approximately 29 by 18 miles. No critical habitat has been designated for this species. A revised recovery plan was finalized by the USFWS in June 2000 (USFWS ~~2002~~2000).

3.7 Socioeconomics

~~Prior to contact with European settlers, native peoples harvested fish from the Snake and Columbia Rivers and hunted elk, deer, bear, and waterfowl.~~ Salmon are culturally,

economically, and symbolically important to the Pacific Northwest. Historically, natural resources have been the mainstay of the economies of the Native Americans in the Columbia Basin. Salmon were an important aspect of the cultural life and subsistence of the Indian tribes that occupied the Columbia Basin. Hunting, fishing, and gathering have been important to tribes for thousands of years. These activities continue to be important today, both economically and for subsistence and ceremonial purposes[3].

The early history of non-Indian use of fishery resources in the Columbia River Basin is described in Craig and Hacker (1940). Due to the importance of recreational fisheries, the USFWS and NMFS jointly issued the "The Policy for Conserving Species Listed or Proposed for Listing Under the Endangered Species Act While Providing and Enhancing Recreational Fisheries Opportunities" on June 3, 1996 (61 FR 27978),which was issued pursuant to the Presidential Executive order 12962, issued on June 7, 1995. That order requires Federal agencies, to the extent permitted by law, and where practical and in cooperation with States and the tribes, to improve the quality, function, sustainable productivity, and distribution of aquatic resources for increased recreational fishing opportunity. Among other actions, the order requires all Federal agencies to aggressively work to promote compatibility and reduce conflict between administration of the ESA and recreational fisheries.

Portions of three counties, Union and Wallowa Counties in Oregon and Asotin County in Washington, are found within the Grande Ronde and Imnaha Rivers subbasins. Table 4 demonstrates that the populations of all three counties are predominantly white; all three counties have relatively small Hispanic and Native American populations (U.S. Census Bureau 2006).

Table 4. Demographic information regarding counties in the action area (U.S. Census Bureau 2006).

County	Population (2005)	Percent Hispanic Origin (%)	Percent Native American (%)
Asotin	21,247	2.5	1.3
Wallowa	6,875	2.1	0.8
Union	24,345	3.3	1.0

The median income in these three counties is substantially lower than the median income for the state. The 2003 median income in Asotin County was $35.672, Union County's was $37,069, and Wallowa County's was $34,769; the statewide median income was $48,438 in Washington and $42,568 in Oregon (U.S. Census Bureau 2006). The statewide average of people below the poverty line in Washington was 11.6 percent and 12.9 in Oregon, whereas in Asotin County it was 15.4 percent, in Union County it was 13.8 percent, and in Wallowa County it was 12.6 percent (U.S. Census Bureau 2006).

The fish that escape the ocean and Columbia River fisheries are targeted in tribal fisheries as well as retained in recreational fisheries in the action area. Tribal fisheries occur within the

[3] See also U.S. Department of the Interior, Secretarial Order No. 3206 (1997).

action area, using traditional fishing equipment created by local tribal craftsman. Fish caught in the tribal fisheries may be for ceremonial, subsistence, or commercial purposes. It is difficult or impossible to monetize these purposes to tribal people. The availability of local fish reduces tribal reliance on other consumer goods, or travel costs to participate in other fisheries. In 2012, the tribes harvested about 887 spring/summer Chinook salmon within the action area. It is difficult to place a monetary value on the tribal catch because many of the fish are used as a primary food source for which there may not be a substitute. The harvest of adult Chinook salmon is expected to have a monetary benefit for tribal members and their families by providing a local, traditional food source as well as supporting local craftsmen who make traditional fishing gear for harvest. The sale of some harvested fish also brings in revenue for tribal members and their families.

3.7.1 Tourism and Recreation

There are recreational activities that are specifically related to spring/summer Chinook salmon fisheries within the Imnaha and Grande Ronde River watersheds, in addition to fishing, including: hunting; river rafting and kayaking; hiking and camping; firewood, berry, and mushroom gathering; trail riding on horses, mountain bikes, and off-road vehicles; and non-consumptive observation of wildlife and scenery (Dean Runyan Associates 2009).

The economic impacts and effort of freshwater recreational fisheries statewide may be found in Dean Runyan Associates (2009). In 2008, nearly 2.8 million Oregon residents and nonresidents participated in fishing, hunting, wildlife viewing, and shellfish harvesting in Oregon. Of the total number of participants, 631 thousand fished, 282 thousand hunted, 175 thousand harvested shellfish, and 1.7 million participated in outdoor recreation where wildlife viewing was a planned activity. In 2008, state residents and nonresidents made three distinct types of fish and wildlife recreation expenditures: (a) travel, (b) local recreation (less than 50 miles from home), and (c) equipment purchases (includes boats and recreation vehicles). When all three categories are combined, fish and wildlife recreation resulted in expenditures of $2.5 billion in 2008. Oregon residents and nonresidents who traveled overnight and on day trips of 50 or more miles from home (one-way) made travel-generated expenditures of $862 million (Dean Runyan Associates 2009).

Local recreation expenditures of $147 million were made by Oregon residents while participating in these activities less than 50 miles from home. State residents and nonresidents also spent an additional $1.5 billion on specialty equipment and other activity-related purchases from retail establishments and suppliers based in Oregon. During 2008, travel-generated expenditures accounted for over $100 million in four of Oregon's travel regions (North Coast, Central Coast, Central, and Eastern). In all nine travel regions, travel-generated expenditures for wildlife viewing and fishing were particularly notable. While travel-generated expenditures for hunting occurred in each of the nine travel regions of the state, spending in the Eastern, Southern, and Willamette Valley travel regions accounted for nearly two-thirds of the total.

Local recreation expenditures occurred most notably in travel regions with large urban-centered populations (Willamette Valley, Portland Metro/Columbia, and Southern), with fishing, hunting, and wildlife viewing representing the bulk of all local recreation expenditures made throughout

the state. Table 5 shows detailed expenditures by county in the action area (Dean Runyan Associates 2009).

In 2008, the economic impact directly associated with freshwater fishing in the action area was over $12,000,000 (Dean Runyan Associates 2009). Other sources indicate that angler days for catching Chinook salmon in the 2001 Lookingglass Creek fishery were estimated to be 2,387 angler/days to catch 741 adults – 84 were natural-origin and the rest were hatchery-origin (Keniry 2004). While the 2,387 angler days in 2001 only represent a direct expenditure of $150,381, $250,635 in economic output, or $64,449 in worker earnings, similar outcomes with an average of 29 days of fishing per catch of natural-origin adult may be expected for the four other fisheries. This could be an important contribution to economic activity for the communities in Northeast Oregon, especially when natural-origin adult abundance levels increase for each population. Tribal fishers are generally fewer in number and more effective than recreational anglers, and therefore spend fewer days fishing. However, although the economic contribution of the tribal fishery is likely smaller than the non-tribal recreational fishery, fuel, food, and equipment purchases occur at local retail vendors.

Table 5. Expenditures by activity by county, 2008 (in thousands of dollars).

County	Freshwater Fishing ($)	Hunting ($)	Wildlife Viewing ($)
Travel			
Baker	5,670	4,524	8,259
Union	1,729	5,435	4,318
Wallowa	2,821	2,771	5,171
Subtotal	10,220	12,730	17,748
Local Recreation			
Baker	640	491	317
Union	700	596	170
Wallowa	567	217	115
Subtotal	1,907	1,304	602
Total	**$12,127**	**$14,034**	**$18,350**

The cost of being able to fish legally in Oregon in 2006 for resident anglers is shown in ODFW (2008). The maximum cost to participate in the salmon or steelhead fishery would occur if a person bought an annual license and adult tag (for salmon and steelhead) for $58.25, which allows the person to fish in all Oregon rivers and lakes (Table 6). The costs of fishing gear and tackle generally exceed the costs of the fishing license. Recreational anglers buy fishing licenses, which support fishery management and law enforcement activities. Anglers also pay a Federal excise tax on fishing gear which is returned to the states to support fisheries research, development, and public information actions (ODFW 2008).

No public opinion sampling has been formally conducted with regard to the Imnaha River and Grande Ronde River subbasin salmon fisheries, but several hundred anglers and tribal fishers have participated in the fishery each year. In addition, there are employment opportunities in the sector that supports such tourism and recreational services or the government sector that employs recreational fishery-related staff.

Table 6. Oregon ~~resident~~ annual costs for licenses in 2006 (ODFW 2006~~a~~).

Age Class	Annual Angling License ($)	Cost of Combined Angling License ($)	Cost of Hatchery Harvest (tag) ($)	Total Cost to Participate In Proposed Fishery ($)
Adult (Resident: 18 and older) license	24.75	21.50	12.00	58.25
Adult (Non-Resident: 18 and older) license	61.50	21.50	12.00	95.00
Juvenile (14 to 17 years of age)	6.75	6.00	12.00	24.75

3.8 Environmental Justice

This section was prepared in compliance with Presidential Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (EO 12898), dated February 11, 1994, and Title VI of the Civil Rights Act of 1964.

Executive Order 12898 (59 FR 7629, February 16, 1994) states that Federal agencies shall identify and address, as appropriate "…disproportionately high and adverse human health or environmental effects of [their] programs, policies and activities on minority populations and low-income populations…." While there are many economic, social, and cultural elements that influence the viability and location of such populations and their communities, certainly the development, implementation and enforcement of environmental laws, regulations and policies can have impacts. Therefore, Federal agencies, including NMFS, must ensure fair treatment, equal protection, and meaningful involvement for minority populations and low-income populations as they develop and apply the laws under their jurisdiction.

Both EO 12898 and Title VI address persons belonging to the following target populations:

- Minority – all people of the following origins: Black, Asian, American Indian and Alaskan Native, Native Hawaiian or Other Pacific Islander, and Hispanic[4]

[4] Hispanic is an ethnic and cultural identity and is not the same as race.

- Low income – persons whose household income is at or below the U.S. Department of Health and Human Services poverty guidelines.

Definitions of minority and low income areas were established on the basis of the Council on Environmental Quality's (CEQ's) *Environmental Justice Guidance Under the Environmental Policy Act* of December 10, 1997. CEQ's *Guidance* states that "minority populations should be identified where either (a) the minority population of the affected area exceeds 50 percent or (b) the population percentage of the affected area is meaningfully greater than the minority population percentage in the general population or other appropriate unit of geographical analysis." The CEQ further adds that "The selection of the appropriate unit of geographical analysis may be a governing body's jurisdiction, a neighborhood, a census tract, or other similar unit that is chosen so as not to artificially dilute or inflate the affected minority population."

The CEQ guidelines do not specifically state the percentage considered meaningful in the case of low income populations. For this study, the assumptions set forth in the CEQ guidelines for identifying and evaluating impacts on minority populations are used to identify and evaluate impacts on low income populations. More specifically, potential environmental justice impacts are assumed to occur in an area if the percentage of minority, Hispanic, and low income populations are meaningfully greater than the percentage of minority, Hispanic, and low income populations in the general population.

In the action area, there are minority and low-income populations to which this Executive Order could apply. For analytical purposes, this supplemental EA assumes that the tribes potentially affected, given the TRMPs submitted for this area, are the SBT, CTUIR, and NPT (see footnote 2). ~~The tribes affected are the SBT, CTUIR, and the Nez Perce Tribe.~~ The U.S. Census Bureau reported the race composition of Northeast Oregon residents in 2006 (U.S. Census Bureau 2006) to be 94-98 percent White, 1-3 percent Hispanic, 0-1 percent Asian, 0-1 percent Black or African American, and 1-2 percent Native American (U.S. Census Bureau 2006). The composition of the angling public in Oregon (as reported in the 2001 survey, USDOI et al. 2001) reflect participation by minorities proportional to race composition in Northeast Oregon, with whites accounting for 96 percent of the participants in Oregon. However, it is believed that all ethnic groups do engage in recreational fishing, and the TRMPs ~~are~~ specifically ~~designed to allow~~ describe harvest by tribal members.

THE FOLLOWING TEXT HAS BEEN ADDED TO THE SUPPLEMENTAL EA AND WAS NOT INCLUDED IN THE DRAFT EA

3.9 Cultural Resources

Impacts on cultural resources typically occur when an action disrupts or destroys cultural artifacts, disrupts cultural use of natural resources, or would disrupt cultural practices. Within the action area, it is possible that some cultural artifacts are present around fishing areas because of the historical use of these areas by local tribes.

The early history of non-Indian use of fishery resources in the Columbia River Basin is described in Craig and Hacker (1940). Prior to contact with European settlers, native peoples harvested fish from the Snake and Columbia Rivers and hunted elk, deer, bear, and waterfowl. Salmon are culturally, economically, and symbolically important to the Pacific Northwest. Historically,

natural resources have been the mainstay of the economies of the Native Americans in the Columbia Basin. Salmon were an important aspect of the cultural life and subsistence of the Indian tribes that occupied the Columbia Basin. Hunting, fishing, and gathering have been important to tribes for thousands of years. These activities continue to be important today for commercial, subsistence and ceremonial purposes[5].

Within the action area, natural fish resources are used for ceremonial, subsistence, and commercial purposes. Salmon are critically important for cultural practices, as a food source, and for the tribal economy. This includes using traditional fishing equipment created by local tribal craftsmen. Fisheries in the larger tributaries are implemented by both states and tribes, but shift primarily to tribal fisheries in upstream, small tributaries. Tribal fisheries in the action area primarily target spring/summer Chinook salmon.

END OF NEW TEXT

4.0 ENVIRONMENTAL CONSEQUENCES

This section of the assessment evaluates the potential effects of the alternatives (including the Proposed Action) on the biological, physical, and human environments described in Chapter 3, Affected Environment. No other resources of the environment were identified that could potentially be impacted by or benefit from any of the alternatives.

4.1 Effects on Water Quality

4.1.1 Alternative 1 (No-action) – Not Approve the FMEPs, and Issue a Determination that the TRMPs would Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

Fisheries proposed in the FMEPs and TRMPs would not be implemented under the No-action Alternative. The absence of fisheries under the No-action Alternative would not affect water temperature, in-stream flows, and contaminants levels, identified as limiting factors in Subsection 3.1, Water Quality, because there is no relationship between fishing activity and fluctuation of these water quality parameters.

The absence of fisheries under the No-action Alternative would be beneficial to water quality with respect to the amount of marine-derived nutrients delivered to the ecosystem by Chinook salmon that would die near the spawning grounds, before or after spawning, instead of being caught in the proposed fisheries. A small increase in marine-derived nutrients delivered to the ecosystem would be the only logical positive effect of the No-action Alternative on water quality. However, it is not certain if this small gain would yield measurable beneficial effects given habitat changes that have already occurred, and that may continue to occur, due to beaver trapping, logging, irrigation, grazing, pollution, dams, urban and industrial development in the action area (Subsection 3.1, Water Quality); for example, the reduction in large woody debris as a result of past logging practices would be expected to decrease the retention of salmon carcasses in the watershed. It is likely that the amount of marine-derived nutrients under the No-action Alternative would remain primarily a function of other factors in the action area, since the lack

[5] See also U.S. Department of the Interior, Secretarial Order No. 3206 (1997).

of fishing would not substantially impact the growth of riparian forests as described by Helfield and Naiman (2001) either beneficially or adversely. The functional and quantitative relationships between carcass density and productivity of salmonid rearing habitat are poorly understood and difficult to generalize (Quinn and Peterson 1996); therefore, it is difficult to estimate these relationships under the No-action Alternative. Note that ~~most~~ many hatchery-origin fish, which are the primary target of the proposed ~~fishery~~ fisheries, would be removed at hatchery weirs and not allowed to spawn in the wild under the No-action Alternative. Therefore, the No-action Alternative would not result in a substantial number of hatchery fish contributing to marine-derived nutrients to the ecosystem, and so would not result in a substantial increase in the total number of salmonids reaching the ecosystem.

There would be no other measurable effects on water quality from the No-action Alternative.

4.1.2 Alternative 2 (Proposed Action) – Approve the FMEPs, and Issue a Determination that the TRMPs would Not Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

For the purposes of this analysis, this document assumes that the ~~The~~ Proposed Action Alternative would result in the ~~implementation~~ level of fisheries impacts as described in the FMEPs and TRMPs (see footnote 2). Compared to the No-action Alternative, the implementation of fisheries under the Proposed Action Alternative would not result in changes to water temperature, instream flows, and contaminants levels because there is no relationship between fishing activity and these water quality parameters. Compared to the No-action Alternative, the implementation of fisheries under the Proposed Action Alternative would result in the removal of a small percentage of Chinook salmon returning to the tributaries in the action area each year, relative to the expected tributary-specific returns, that would otherwise die in the streams after spawning as under the No-action Alternative (Table 2). ~~Most~~ Many of the hatchery-origin fish that would reach the hatchery weirs under either alternative would be removed and would not substantially contribute nutrients to the system regardless of alternative. Therefore, the Proposed Action Alternative would have only a small adverse effect on water quality compared to the No-action Alternative, and result in only a small loss in the amount of marine-derived nutrients delivered to the ecosystem by natural-origin fish that would die as a result of fisheries instead of dying after spawning.

The decrease in the amount of marine-derived nutrients under the Proposed Action Alternative compared to the No-action Alternative would be very small. It is probable that the potential small reduction in marine-derived nutrients would not be sufficiently different from the No-action Alternative to result in differences in the growth of riparian forests due to transfer of dissolved nutrients from decomposing carcasses into shallow subsurface flow paths and the dissemination in feces, urine, and partially-eaten carcasses by bears and other salmon-eating fauna. However, it is not certain if this small reduction would yield measurable negative effects given habitat changes that have already occurred, and that may continue to occur, due to beaver trapping, logging, irrigation, grazing, pollution, dams, urban and industrial development in the action area (Subsection 3.1, Water Quality); for example, the reduction in large woody debris as a result of past logging practices would be expected to also decrease the retention of salmon carcasses in the watershed. It is likely that the amount of marine-derived nutrients under the Proposed Action Alternative would remain primarily a function of other factors in the action area, since proposed fisheries would not substantially impact the growth of riparian forests as

described by Helfield and Naiman (2001) either beneficially or adversely. The functional and quantitative relationships between carcass density and productivity of salmonid rearing habitat are poorly understood and difficult to generalize (Quinn and Peterson 1996); therefore, as under No-action conditions, the degree of effect is difficult to estimate under the Proposed Action, but is anticipated to be minor.

There would be no other measurable effects on water quality from the Proposed Action Alternative.

4.2 Effects on Anadromous Fish Listed Under the ESA

4.2.1 Alternative 1 (No-action) – Not Approve the FMEPs, and Issue a Determination that the TRMPs would Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

Even if the level of fishery impacts ~~fisheries~~ proposed in the FMEPs and TRMPs have been ongoing in recent years, for the purpose of analysis in this supplemental EA, it is assumed that these would not be implemented under the No-action Alternative. The absence of fisheries in the action area under the No-action Alternative would result in an improvement in the status and trends of the Snake River spring/summer Chinook salmon ESU described in Subsection 3.2, Anadromous Fish Listed under the ESA, in any given year proportional to the year-specific expected take as per Table 2. No fishing under the No-action Alternative would only preclude the harvesting of about two fish for the Snake River steelhead DPS described in Subsection 3.2, Anadromous Fish Listed under the ESA, in any given year, and thus the effects of the No-action Alternative on the ESU would be negligible.

With respect to Chinook salmon, the No-action Alternative would only affect the Imnaha/Grande Ronde MPG of the spring/summer Chinook salmon ESU. The maximum take (harvest or indirect mortality) of natural-origin Snake River spring/summer Chinook salmon by population in this MPG is presented in Table 3. The annual abundance under the No-action Alternative could increase from 1 to 9.2 percent of a population in any given year as a result of the No-action Alternative, given that the expected run-sizes for the affected spring/summer Chinook salmon populations in the foreseeable future are at or below the Minimum Abundance Thresholds (MAT) for most populations in the MPG. The expected increase in the number of fish reaching the spawning grounds under the No-action Alternative would be small in the foreseeable future (Table 3).

The maximum current take (harvest or indirect mortality) of Snake River steelhead DPS would be negligible under the No-action Alternative. The Grande Ronde River MPG take would be expected to be zero, and Imnaha River MPG take would be expected to number no more than two mortalities per year. The expected increase or decrease in the abundance trends for the two steelhead MPGs under the No-action Alternative would be up to two fish in the foreseeable future.

The No-action Alternative would have no effect on limiting factors and threats to spring/summer Chinook salmon or steelhead other than harvest (including hydropower projects, predation, harvest, hatchery program effects, and tributary habitat, ocean conditions). Therefore, these limiting factors and threats would continue to affect listed fish in the action area (Section 5,

Cumulative Effects). The No-action Alternative could only have minor, if at all measurable, positive effects on harvest as a limiting factor and threat because the No-action Alternative would only eliminate tributary harvest for these species. Mainstem harvest in the Columbia River, which represents the majority of harvest effects for these species, would continue under the No-action Alternative. The magnitude of the harvest that would not occur under the No-action Alternative is represented in Table 3.

The No-action Alternative would have no effect on critical habitat or essential fish habitat for Snake River spring/summer Chinook salmon or steelhead. Fisheries currently do not affect designated critical habitat for any ESA-listed species or essential fish habitat because most of the harvest-related activities occur from river banks. Gear and methods used would include hook-and-line, spear, hoop-net, and/or other traditional and contemporary methods. None of these gear types or methods affect the primary constituent elements of critical habitat. Regardless, under the No-action Alternative, no gear or fishing methods would be employed because there would be no fisheries, thus, further reducing any risk to critical habitat or essential fish habitat.

4.2.2 Alternative 2 (Proposed Action) – Approve the FMEPs, and Issue a Determination that the TRMPs would Not Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

For the purposes of this analysis, this supplemental EA assumes that the Proposed Action Alternative would result in the level of fishery impacts described in the FMEPs and TRMPs (see footnote 2). ~~Fisheries proposed in the FMEPs and TRMPs would be implemented under the Proposed Action Alternative.~~ However, the Proposed Action Alternative would not result in a decrease in the abundance of ESA-listed fish in any given year compared to those described in Subsection 3.2, Anadromous Fish Listed Under the ESA, because abundance trends described for the current Affected Environment for all affected ESA-listed fish species account for fishery-related past and ongoing incidental mortality at levels comparable to those proposed in the FMEPs and TRMPs. Therefore, the abundance trends for ESA-listed species described in Subsection 3.2.1, Snake River Spring/Summer Chinook Salmon ESU, and Subsection 3.2.2, Snake River Basin Steelhead DPS, would be only slightly lower than those expected under the No-action Alternative (the absence of fisheries). The year-specific number of ESA-listed spring/summer Chinook salmon that would not spawn in the wild as a result of the Proposed Action Alternative would be equivalent to the expected harvest numbers assuming current abundance presented in Table 3.

As under the No-action Alternative, the maximum take (harvest or indirect mortality) of listed Snake River steelhead resulting from the implementation of the proposed fisheries in the FMEPs and TRMPs under the Proposed Action Alternative would be expected to be negligible for the Grande Ronde River MPG and would be estimated at a maximum of two fish for the Imnaha River MPG. Similar to the No-action Alterative, the effect on the population's status as a result of this possible small change in abundance for the steelhead MPGs under the Proposed Action Alternative would be up to two fish in the foreseeable future.

~~As under~~Compared to the No-action Alternative, there would be no change in the effect on ~~the Proposed Action Alternative would have no effect on~~ limiting factors and threats to spring/summer Chinook salmon or steelhead (including hydropower projects, predation, harvest,

hatchery program effects, and tributary habitat, ocean conditions) under the Proposed Action. Therefore, these limiting factors and threats would continue to affect listed fish in the action area (Section 5, Cumulative Effects). The Proposed Action Alternative would result in the continuing of status quo fisheries, in conjunction with mainstem Columbia River fisheries, which represents the majority of harvest for these fisheries, and thus would result in a slight decrease in abundance to what could be realized under the No-action Alternative. However, the proposed harvest levels under the Proposed Action Alternative are equivalent to current harvest levels in the action area, which are reflected in the summary of status and trends for spring/summer Chinook salmon and steelhead (Subsection 3.2.2.1, Status and Trends, and Subsection 3.2.2.2, Limiting Factors and Threats).

Unlike the No-action Alternative, fishing would occur under the Proposed Action Alternative, including the use of hook-and-line gear, spears, hoop-nets, and other traditional and contemporary methods. However, as described under the No-action Alternative, gear and methods employed would have no effect on critical habitat or essential fish habitat for Snake River spring/summer Chinook salmon or steelhead. No other activities related to fisheries under the Proposed Action Alternative would affect critical habitat or essential fish habitat because of the relatively minor or negligible effects on the physical environment from fishing.

4.3 Effects on Non-listed Fish

4.3.1 Alternative 1 (No-action) – Not Approve the FMEPs, and Issue a Determination that the TRMPs would Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

Even though the fisheries impact levels ~~fisheries~~ proposed in the FMEPs and TRMPs have been ongoing in recent years, for the purpose of analysis in this supplemental EA, it is assumed that these would not be implemented under the No-action Alternative. The absence of fisheries in the action area under the No-action Alternative may result in an increase or a decrease in the abundance of non-listed fish, native and introduced, compared to current conditions. If non-listed fish are potentially harvested by ongoing fisheries, even if at very low levels, the absence of Chinook salmon fisheries under the No-action Alternative could result in an increase in abundance for non-listed fish if environmental and ecological conditions are favorable for these species. However, fishing gear and methods currently used for Chinook salmon fisheries (hook-and-line gear, spears, hoop-nets, and other traditional and contemporary methods) are unlikely to result in the harvest of non-listed non-salmonid fish. If non-listed fish are prey for adult Chinook salmon, their abundance could decrease under the No-action Alternative given that a small number of more Chinook salmon would be present in the action area. However, adult Chinook salmon approaching the spawning grounds do not actively seek prey during this period of their life cycle. Therefore, the No-action Alternative may result in slightly positive or slightly negative effects on non-listed fish species, although it is more likely that effects on this resource would be minimal.

4.3.2 Alternative 2 (Proposed Action) – Approve the FMEPs, and Issue a Determination that the TRMPs would Not Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

For the purposes of this analysis, this supplemental EA assumes that the Proposed Action Alternative would result in the level of fishery impacts described in the FMEPs and TRMPs (see footnote 2). ~~The Proposed Action Alternative would result in the implementation of fisheries as described in the FMEPs and TRMPs.~~ Fisheries targeting spring/summer Chinook salmon under the Proposed Action Alternative would not result in additional effects on non-listed fish species, native and introduced, beyond that considered under the No-action Alternative because the methods and gears in these fisheries (hook-and-line gear, spears, hoop-nets, and other traditional and contemporary methods) would not likely result in the incidental catch of non-listed fish. If non-listed fish are potentially harvested by proposed fisheries, even if at very low levels, the Proposed Action Alternative could result in a slight decrease in abundance for non-listed fish. If non-listed fish are prey for adult Chinook salmon, their abundance could increase under the Proposed Action Alternative given that a small number of additional Chinook salmon would be removed from the action area. However, adult Chinook salmon approaching the spawning grounds do not actively seek prey during this period of their life cycle. Therefore, fisheries in the action area under the Proposed Action Alternative could likely result in a slightly negative or slightly positive, if at all measureable, biological or ecological effect on non-listed fish species compared to the No-action Alternative.

4.4 Effects on Instream Fish Habitat

4.4.1 Alternative 1 (No-action) – Not Approve the FMEPs, and Issue a Determination that the TRMPs would Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

Ongoing fisheries and the use of fishing methods and gears (i.e., hook-and-line gear, spears, hoop-nets, and other traditional and contemporary methods) do not result in any potential interaction between tribal fishermen or anglers and channel morphology (such as lack of large wood, low pool frequency, and reduced wetted width); habitat diversity; geological conditions; flows; or spawning, rearing, and migration potential for anadromous and resident fish. Therefore, the absence of fisheries under the No-action Alternative would have negligible effects on these components of instream fish habitat in the tributaries where the Proposed Action would occur.

Fishing activity itself is not a major contributing limiting factor in the action area. Effects on instream fish habitat from past and ongoing road and railroad construction, residential development, and irrigated agriculture, water diversions (channel-spanning weirs and other impediments to fish passage), splash dams, push-up dams, an livestock grazing on instream fish habitat would continue under the No-action Alternative because, while there would be no FMEP- or TRMP-related fishing, these activities would continue to occur. Similarly, the effects of the loss of habitat diversity, channelization, and large woody debris from splash dam log transportation that occurred over 80 years ago in the Minam River would continue under the No-action Alternative. The instream fish habitat limiting factors in Lookingglass Creek affecting spawning, rearing, and migration potential for Chinook salmon would continue under the No-

action Alternative. Reduced wetted stream widths and a lack of pools and large woody debris in Catherine Creek would continue under the No-action Alternative as well. The good instream habitat conditions in the Wenaha subbasin would continue under the No-action Alternative; a lack of fishing activity would neither benefit nor adversely impact this subbasin habitat in any measurable manner.

The effects of past removal of beavers and large wood from stream channels that contributed to poor quality and reduced frequency of pools throughout the subbasins in the action area would continue under the No-action Alternative regardless of the lack of fishing activity. Additionally, the effects of other human activities on substrate composition would continue under the No-action Alternative. Therefore, in the absence of any of the proposed fisheries (No-action Alternative), there would be no effect on this resource because of ongoing effects from other sources and the immeasurable impact that fishing activities have on this resource. All other existing effects on instream fish habitat, such as historical splash-damming, land-use practices, erodible soils, and extremes of flow (Subsection 3.4, Instream Fish Habitat) would continue under the No-action Alternative, with continued negative effects.

4.4.2 Alternative 2 (Proposed Action) – Approve the FMEPs, and Issue a Determination that the TRMPs would Not Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

For the purposes of this analysis, this supplemental EA assumes that the Proposed Action Alternative would result in the level of fishery impacts described in the FMEPs and TRMPs (see footnote 2). Potential effects on instream fish habitat under the Proposed Action Alternative would be related to fishing activity and deployment of gear and fishing methods. However, methods and gear that would be used under the Proposed Action Alternative (hook-and-line gear, spears, hoop-nets, and other traditional and contemporary methods) would not alter channel morphology (such as lack of large woody debris, low pool frequency, width-to-depth ratio, and reduced wetted width), habitat diversity, geological conditions, flows, or spawning, rearing, and migration potential for anadromous and resident fish because these do not result in any interaction with these elements of instream fish habitat. Therefore, the proposed fisheries under the Proposed Action Alternative would have negligible effects on these components of instream fish habitat. Furthermore, any potential effect of the Proposed Action Alternative on instream fish habitat compared to the No-action Alternative, however negligible, would be limited in duration and geographical scope as described in the FMEPs and TRMPs. Fisheries would occur only for a short period of time each year (limited by ESA impacts and available fish for harvest) and in a limited portion of the action areas (fishery access points).

As stated under the No-action Alternative, fishing activity itself is not a major contributing limiting factor in the action area. While fishing would occur under the Proposed Action Alternative, it would not measurably contribute to the ongoing effects of other, more impactive and cumulative effects on instream habitat. Similar to the No-action Alternative, the effects of past and ongoing road and railroad construction, residential development, and irrigated agriculture, water diversions (channel-spanning weirs and other impediments to fish passage), splash dams, push-up dams, livestock grazing, on instream fish habitat would continue under the Proposed Action Alternative but because they would occur in conjunction with FMEP- or TRMP-related fishing. The effects of the loss of habitat diversity, channelization, and large

woody debris from splash dam log transportation that occurred over 80 years ago in the Minam River would continue under the Proposed Action Alternative, and the combined effect of these activities with the proposed fisheries would be similar to the No-action Alternative. The instream fish habitat limiting factors in Lookingglass Creek affecting spawning, rearing, and migration potential for Chinook salmon would continue under the Proposed Action Alternative with the same comparison to No-action Alternative effects. Similar to the No-action Alternative, the reduced wetted stream widths and a lack of pools and large woody debris in Catherine Creek would continue under the Proposed Action Alternative. The good instream fish habitat conditions in the Wenaha subbasin would continue under the Proposed Action Alternative, and like conditions under the No-action Alternative, there would be no measurable negative effect on instream fish habitat from fishing activity, which has little or no direct impact on instream conditions.

Similar to the No-action Alternative, the effects of past removal of beavers and large wood from stream channels that contributed to poor quality and reduced frequency of pools throughout the subbasins in the action area would continue under the Proposed Action Alternative. Additionally, the effects of other human activity on substrate composition would continue under the Proposed Action Alternative. Therefore, there are no differences in the effects on this resource under either alternative because of the ongoing effects from sources unrelated to the proposed fisheries and the immeasurable impact that fishing activities have on instream habitat. Similar to the No-action Alternative, all other existing effects on instream fish habitat, such as historical splash-damming, land-use practices, erodible soils, and extremes of flow (Subsection 3.4, Instream Fish Habitat) would continue under the Proposed Action Alternative, but fishing would not measurably contribute to their individual or cumulative effects on instream habitat.

4.5 Effects on Wildlife

4.5.1 Alternative 1 (No-action) – Not Approve the FMEPs, and Issue a Determination that the TRMPs would Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

Because proposed fisheries would not be implemented under the No-action Alternative, there would be no fishery-related effects on the spectrum of wildlife species listed in Subsection 3.5, Wildlife. Likewise, the lack of fish harvest (fish removal from the system) under the No-action Alternative could result in a small increase of salmonids spawning in the wild given the recent abundance of natural-origin fish (Table 3), but given the expected harvest numbers and the large geography of the action area, the No-action Alternative would not measurably affect the diet of any affected wildlife species that consumes natural-origin salmonids, including those listed in Subsection 3.5, Wildlife. These wildlife species may consume salmonid eggs, juveniles, adults, and/or carcasses, and the No-action Alternative is not expected to substantially alter the number of anadromous fish spawning (Table 3) and thus its ~~affect~~ effect on the number of eggs, juveniles, adults, or carcasses that may be available for consumption in any given year would be minimal. Because ~~most~~ many hatchery-origin salmonids are intended for harvest and are normally removed at hatchery weirs and not allowed to spawn in the wild, the absence of fisheries under the No-action Alternative would not substantially increase the abundance of salmonids in the diet of wildlife species including those listed in Subsection 3.5, Wildlife.

Since no fishery would occur, there would be no associated human activities in wildlife habitat (riparian/floodplain, shrub steppe, and agricultural lands) within the action area. There would be no new construction of fishery access points, roads, permanent camping sites, or any long-lasting habitat alterations of any kind under this alternative. Therefore, the No-action Alternative would not result in any fishery-related alterations of wildlife habitat such as forest, shrub steppe, agricultural lands, floodplains, wetlands, uplands, or transitional steppes where food is abundant for many species in the action area (Subsection 3.5, Wildlife). Furthermore, there would be no effect on dredge spoil deposited in rivers and wetlands, reservoir impoundments, tailrace outfalls, riparian/floodplain, shrub steppe, and agricultural lands, which is a component of wildlife habitat in the action area, under either alternative because fishing or the lack of fishing would not alter or contribute to dredge spoil depositions. There would be a small reduction of localized disturbances along river banks under the No-action Alternative. However, this reduction in disturbances would be localized to fishing areas and would be temporary in nature. Hiking, camping, and other shore-based activities would continue under the No-action Alternative. Therefore, the beneficial effects on riparian zones that are important habitats for a variety of wildlife species would be small.

Under the No-action Alternative, there would be no effect on nesting and feeding habitats for birds in the action area because there would be no fishing activity affecting these habitats. The potential reduction in disturbance of wildlife and wildlife habitat in the action area by the absence of fishery activities would be mostly counteracted by the continued presence of humans engaged in other practices, such as camping, hunting, or boating.

The No-action Alternative could have a slight beneficial effect on wildlife and its habitat by reducing the risks of introduction of new invasive species, like the New Zealand mud snail and the zebra mussel, by potential introduction vectors such as recreation activities, and by wading in the streams.

4.5.2 Alternative 2 (Proposed Action) – Approve the FMEPs, and Issue a Determination that the TRMPs would Not Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

For the purposes of this analysis, this supplemental EA assumes that the Proposed Action Alternative would result in the level of fishery impacts described in the FMEPs and TRMPs (see footnote 2). Because proposed fisheries would be implemented under the Proposed Action Alternative, the potential exists for fishery-related effects on the wildlife species that could be present in the action area listed in Subsection 3.5, Wildlife. Effects on wildlife under the Proposed Action Alternative would be related to effects on the diet of any affected wildlife species that consumes fish in the action area, including those listed in Subsection 3.5, Wildlife. Some of these wildlife species may consume salmonid eggs, juveniles, adults, and/or carcasses, and, in contrast to the No-action Alternative, the Proposed Action Alternative is expected to slightly reduce the number of natural-origin anadromous fish migrating past fisheries and spawning in tributaries in any given year based on the harvest rates indicated in Table 2. However, the number of natural-origin fish intercepted by fisheries would be small (Table 2), and therefore the number of salmonid eggs, juveniles, adults, and/or carcass losses in streams in any given year that may be available for wildlife in the action area would also be small. Hatchery-origin fish would not contribute substantially to the diet of wildlife (salmonid eggs,

juveniles, adults, and/or carcasses) under either alternative because many of these would be removed either by the proposed fisheries or in weirs in the absence of fisheries. Therefore, the Proposed Action Alternative would have little if any measurable effect on wildlife species compared to the No-action Alternative.

Human activities in wildlife habitat within the action area would be somewhat higher under the Proposed Action Alternative than under the No-action Alternative. However, similar to the No-action Alternative, the Proposed Action Alternative would not result in any fishery-related alterations of wildlife habitat such as forest, shrub steppe, agricultural lands, uplands, or transitional steppes where food is abundant for many species in the action area (Subsection 3.5, Wildlife) because anglers would not use these areas in fishery-related activities. The only potential effects on wildlife or wildlife habitat under the Proposed Action Alternative are in riparian areas adjacent to the streams in which fisheries would be implemented. The effect of the Proposed Action Alternative on wildlife compared to the No-action Alternative would be related to the presence and activity of anglers in riparian areas. The overall effect is expected to be low when compared to current conditions as other stream-use activities, such as hiking and camping, would continue to occur in conjunction with fishing activities. No new trails or any form of construction would occur in riparian areas under the Proposed Action Alternative.

As under the No-action Alternative, there would be no new construction of fishery access points, roads, permanent camping sites, or any long lasting habitat alterations of any kind under the Proposed Action Alternative in any wildlife habitat area.

Under the Proposed Action Alternative, there may be a small effect on nesting and feeding habitats for waterfowl in the action area compared to the No-action Alternative because fishing activity in or around these types of habitats would occur. The potential small disturbance of wildlife and wildlife habitat in the action area under the Proposed Action Alternative would be additive to the continued presence of humans engaged in other practices, such as camping, hunting.

The Proposed Action Alternative could have a slight negative effect by increasing the risks of introduction of new invasive species, like the New Zealand mud snail and the zebra mussel, by potential introduction vectors such as recreation activities and wading in the streams. The gear used in these fisheries (tackle and boats, etc.) are not expected to be brought in from outside the basin in any great number, and the states have in place check stations and other mechanisms, independent of the proposed activities, that would reduce transfer from out-of-basin locations of any non-indigenous species to levels no different from other activities not part of the proposed action. The potential small increase in the risks of introduction of new invasive species under the Proposed Action Alternative would be additive to the continued presence of humans engaged in other practices, such as camping and hunting.

4.6 Effects on ESA-listed Plants

4.6.1 Alternative 1 (No-action) - Not Approve the FMEPs, and Issue a Determination that the TRMPs would Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

Under the No-action Alternative, there would not be any fishing activities in any listed plant habitat area such as bunchgrass grasslands, sagebrush-steppe, open pine communities, steep river canyon grassland habitats, or mesic, alkaline habitats in the Baker- Powder River Valley region in Northeast Oregon. Other activities taking place in any of these sensitive plant habitat areas within the action area would likely continue and would affect Spalding's catchfly, Howell's spectacular thelypody, and MacFarlane's four-o'clock. However, impacts on these species specifically by anglers would not occur under the No-action Alternative.

4.6.2 Alternative 2 (Proposed Action) – Approve the FMEPs, and Issue a Determination that the TRMPs would Not Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

For the purposes of this analysis, this supplemental EA assumes that the Proposed Action Alternative would result in the level of fishery impacts described in the FMEPs and TRMPs (see footnote 2). Unlike the No-action Alternative, effects on ESA-listed plants under the Proposed Action Alternative could occur as the result of encounters with ESA-listed plants by potential anglers. However, fishing activity considered under the Proposed Action Alternative would not occur in bunchgrass grasslands, sagebrush-steppe, open pine communities, steep river canyon grassland habitats, or mesic, alkaline habitats in the Baker- Powder River Valley region in Northeast Oregon. Therefore, there is little or no likelihood of anglers encountering listed plants or their habitats (Spalding's catchfly, Howell's spectacular thelypody, and MacFarlane's four-o'clock) under the Proposed Action Alternative. Other activities taking place in any of these sensitive plant habitat areas within the action area would likely continue, but would not result from the Proposed Action, and so effects resulting from the Proposed Action on ESA-listed plants would be equivalent to those expected under the No-action Alternative.

4.7 Effects on Socioeconomics

4.7.1 Alternative 1 (No-action) – Not Approve the FMEPs, and Issue a Determination that the TRMPs would Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

The potential effects of the No-action Alternative on socioeconomics would be low to moderately adverse, because the lack of spring/summer Chinook salmon fishery opportunities would preclude Native Americans from engaging in practices that are culturally, economically, and symbolically important to the tribes (Subsection 3.7, Socioeconomics). The No-action Alternative would reduce the demand for traditional fishing equipment created by local tribal craftsman. Tribal fishing would likely occur outside of the action area resulting in an increase in travel costs to tribal members. In addition, the absence of fish would result in increased reliance on other consumer goods, which would cost more than the low cost of tribal fishing. About 887 spring/summer Chinook salmon would not be harvested within the action area.

Similarly, the potential effects of the No-action Alternative on non-tribal socioeconomics would be low to moderately adverse because the lack of spring/summer Chinook salmon fisheries would preclude recreational fishing opportunities for Oregon and Washington State residents. The No-action Alternative would result in a reduction of visitors to this area engaging in recreational opportunities. This reduction could also result in reduced expenditures for fishing and camping gear, gasoline and supply sales, food, and lodging. It is not clear what effect this reduced expenditure may have on the median income in the three counties in the action area (Union and Wallowa County in Oregon and Asotin County in Washington are found within the Grande Ronde and Imnaha River subbasins), but a reduction in activities that use locally owned or operated businesses would be expected to have an adverse impact on the incomes of persons employed by those businesses.

4.7.2 Alternative 2 (Proposed Action) – Approve the FMEPs, and Issue a Determination that the TRMPs would Not Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

For the purposes of this analysis, this supplemental EA assumes that the Proposed Action Alternative would result in the level of fishery impacts described in the FMEPs and TRMPs (see footnote 2). Unlike under the No-action Alternative, the Proposed Action Alternative would have low to moderate positive impacts on socioeconomics in the action area. Such benefits would be realized by ~~providing~~ ensuring fishing opportunities for Native Americans with ESA coverage, ~~allowing~~ so that tribal members can engage in practices that are culturally, economically, and symbolically important to the tribes. The Proposed Action Alternative would also have low to moderate positive impact on non-tribal socioeconomics in the action area because it would provide important recreational fishing opportunities for Oregon and Washington State residents.

The Proposed Action Alternative would result in an increased number of visitors to the action area engaging in recreational opportunities compared to the No-action Alternative. This increase could also result in increased expenditures for fishing and camping gear, gasoline and supply sales, food, and lodging. It is not clear what effect this increased expenditures may have on the median income in the three counties in the action area (Union and Wallowa County in Oregon and Asotin County in Washington are found within the Grande Ronde and Imnaha Rivers subbasins); it is likely that median incomes would generally remain similar to those described by recent years' statistics, and higher than under the No-action Alternative, since the fisheries considered under this alternative are similar to those taking place recently and when the 2006 economic data were collected (Subsection 3.7, Socioeconomics).

Under the Proposed Action Alternative, approximately 887 spring/summer Chinook salmon would be harvested within the action area compared to no fishing under the No-action Alternative. The Proposed Action Alternative would, therefore, maintain the demand for traditional fishing equipment created by local tribal craftsman. Compared to the No-action Alternative, tribal fishing would continue to occur inside of the action area, thereby eliminating an increase in travel costs to tribal members to fish elsewhere.

In addition, the harvest of fish would result in decreased reliance on other consumer goods for tribal members compared to the No-action Alternative. Less reliance on other consumer goods

to substitute for salmon would result in less economic cost to tribes than under the No-action Alternative.

4.7.3 Effects on Tourism and Recreation

4.7.3.1 Alternative 1 (No-action) – Not Approve the FMEPs, and Issue a Determination that the TRMPs would Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

The potential effects of the No-action Alternative on tourism and recreation would be low to moderately adverse, because, as mentioned in Subsection 4.7, Effects on Socioeconomics, the lack of spring/summer Chinook salmon fisheries opportunities could result in fewer visitors to the action area who both fish and hunt, and who may spend financial resources on other tourist attractions while visiting (Subsection 3.8, Environmental Justice). This lack of visitor tourism for recreational opportunities could then result in reduced community expenditures for licenses, fishing and camping gear, gasoline and supply sales, food, and lodging. However, other tourism and recreational activities in the action area (hunting; river rafting and kayaking; hiking and camping; firewood, berry, and mushroom gathering; trail riding on horses, mountain bikes, and off-road vehicles; and non-consumptive observation of wildlife and scenery) would still be available to residents and tribal members.

Dean Runyan Associates (2009) provide economic estimates for freshwater fisheries for the action area presented in Table 4. The potential reduction of direct expenditures by freshwater anglers under the No-action Alternative would be on the order of $12 million yearly (Subsection 3.7.1, Tourism and Recreation) compared to current conditions. However, economic benefits of other tourism and recreational activities (e.g. travel, local recreation, equipment purchases) in the action area would still be realized. The economic benefit of travel, local recreation, and equipment purchases would be reduced somewhat from the approximately $2.5 billion in 2008 under the No-action Alternative. Similarly, travel-generated expenditures on the order of $862 million could still occur under either alternative since overnight and day trips of 50 or more miles (one-way) from home could still occur under the No-action Alternative.

Travel expenditures would not be affected under either alternative in most Oregon travel regions because fishing is only a small part of tourism and recreational activities. There is no expected effect on travel expenditures in large urban centers under the No-action Alternative because fishing is a negligible component of travel expenditures there. There could be a reduction on revenue to support fishery management and law enforcement under No-action Alternative as a result of a reduction of fishing license purchases, but law enforcement may not be needed in the action area since spring/summer Chinook salmon fisheries would not occur. There could be a reduction in Federal tax to support fisheries research, development, and public information actions as a result of a reduction of purchases of on fishing gear under the No-action Alternative, but other fisheries in the State that are not affected by this alternative would continue to generate tax revenues.

Additional negative impacts could occur from the No-action Alternative in the employment sector that supports such tourism and recreational services or the government sector that employs recreational fishery-related staff. In years when natural-origin adult abundance numbers are

expected to be high, there could be a negative impact on economic activity for the communities in Northeast Oregon because no fishing would be allowed under the No-action Alternative; sectors of the economy that benefit from fishing opportunities would no longer have access to this opportunity.

No economic data are available for tribal fisheries in the action area. However, the No-action Alternative would also diminish the economic contribution of the tribal fishermen at local retail vendors.

The No-action Alternative could result in negative impacts in the employment sector that supports such tourism and recreational services or the government sector that employs recreational fishery-related staff.

4.7.3.2 Alternative 2 (Proposed Action) – Approve the FMEPs, and Issue a Determination that the TRMPs would Not Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

For the purposes of this analysis, this document assumes that the Proposed Action Alternative would result in the level of fisheries impacts described in the FMEPs and TRMPs (see footnote 2). Unlike the No-action Alternative, the potential effects of the Proposed Action Alternative on tourism and recreation in the action area would be low to moderately beneficial. Such benefits would be realized by visitors supporting community expenditures for freshwater fisheries, including through purchase of recreational supplies such as fishing gear, license fees, camping equipment, consumables and fuel at local businesses, and lodging expenditures. This positive effect would also be combined with any positive effect realized by tribal fishing and fishing opportunities and related expenditures for other tourist attractions/activities in the action area (Subsection 3.7.1, Tourism and Recreation).

Dean Runyan Associates (2009) provides economic estimates for freshwater fisheries for the action area presented in (Table 4). The potential increase in direct expenditures by freshwater anglers under the Proposed Action Alternative would be on the order of $12 million yearly (Subsection 3.7.1, Tourism and Recreation) compared to the same expected decrease under the No-action Alternative. However, the economic benefits of other tourism and recreational activities (e.g., travel, local recreation, equipment purchases) in the action area would be realized under both alternatives. The economic benefit of travel, local recreation, and equipment purchases would remain at approximately $2.5 billion in 2008 under the Proposed Action Alternative, and would increase somewhat compared to the No-action Alternative. Travel-generated expenditures on the order of $862 million could still occur under either alternative since overnight and on day trips of 50 or more miles (one-way) from home could occur under both alternatives.

Travel expenditures would not be affected under either alternative in most Oregon travel regions because fishing is only a small part of tourism and recreational activities. There is no expected effect on travel expenditures in large urban centers under the Proposed Action Alternative compared to the No-action Alternative because fishing is a negligible component of travel expenditures there. The expected revenue to support fishery management and law enforcement would remain the same as current under the Proposed Action Alternative, and could slightly

increase compared to the No-action Alternative as a result of a increase purchases of fishing license. The Federal tax to support fisheries research, development, and public information actions would remain as current under the Proposed Action Alternative, and could increase as a result of an increase of purchases of on fishing gear compared to the No-action Alternative, but the increase would not be substantial because other fisheries in the State that are not affected by either alternative and would generate tax revenues regardless of alternative.

Additional positive impacts could occur under the Proposed Action Alternative in the employment sector that supports such tourism and recreational services or the government sector that employs recreational fishery-related staff. The Proposed Action Alternative could have a positive impact on the important contribution to economic activity for the communities in Northeast Oregon that result from fishing activities, especially when natural-origin adult abundance levels increase for each population.

No economic data are available for tribal fisheries in the action area. However, the Proposed Action Alternative would augment the economic contribution of the tribal fishermen at local retail vendors compared to the No-action Alternative.

4.8 Effects on Environmental Justice

4.8.1 Alternative 1 (No-action) – Not Approve the FMEPs, and Issue a Determination that the TRMPs would Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

The lack of fishing opportunities under the No-action Alternative would not result in a disproportionate negative impact on any minority or low income population group because the negative economic effect would be realized by all groups (White, Hispanic, Asian, African American, and Native American) in the action area. Because the lack of fishing opportunities would negatively impact all tribal fisheries and the overall tourism and recreation-based economic and employment sector in the action area, all population sectors would be potentially impacted under the No-action Alternative.

4.8.2 Alternative 2 (Proposed Action) – Approve the FMEPs, and Issue a Determination that the TRMPs would Not Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

For the purposes of this analysis, this document assumes that the Proposed Action Alternative would result in the level of fisheries impacts described in the FMEPs and TRMPs (see footnote 2).The Proposed Action Alternative would not provide exclusive fishing opportunities to select portions of the population sector and would be made available to all groups. There are no data to suggest that any one population group enjoys a disproportionately greater benefit from fishing opportunities in the action area than any other group (e.g., has more ceremonial, subsistence, or employment opportunity over other groups). Because the fishing opportunities would positively benefit tribal communities, and the overall tourism and recreation-based economic and employment sector in the action area, all population sectors (White, Hispanic, Asian, African American, and Native American) would potentially benefit under the Proposed Action Alternative.

THE FOLLOWING TEXT HAS BEEN ADDED TO THE SUPPLEMENTAL EA AND WAS NOT INCLUDED IN THE DRAFT EA

4.9 Effects on Cultural Resources

4.9.1 Alternative 1 (No-action) – Not Approve the FMEPs, and Issue a Determination that the TRMPs would Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

There may be some cultural artifacts present in the action area (Subsection 3.9, Cultural Resources). The lack of fishing opportunities under the No-action Alternative could result in a decrease in impacts on cultural resources compared to current conditions because it is possible that some cultural artifacts are present around fishing areas due to the historical use of these areas by local tribes. The No-action Alternative would not have any effects on the availability of natural resources such as elk, deer, bear, and waterfowl to native people because the lack of fishing activities would not affect these resources or preclude the tribes from hunting and gathering these natural resources. The No-action Alternative would have a low-to-moderate negative effect on the tribes engaging in fishing activities inside the action area, and the tribes would have to travel outside the action area to fish for salmon.

Most negative effects on cultural resources under the No-action Alternative would result from the absence of fisheries in the action area. Salmon are an important cultural resource to tribes within the action area as a local, fundamental food source, as well as for commercial, subsistence, and ceremonial purposes (Subsection 3.9, Cultural Resources), and no fishing in the action area would reduce harvest by tribes. Fisheries in the large tributaries are implemented by both states and tribes, but shift primarily to tribal fisheries in upstream, small tributaries. As a result, tribal fisheries in the action area primarily target spring/summer Chinook salmon (Subsection 3.9, Cultural Resources) in upstream tributaries. Therefore, the absence of fisheries in the action area would reduce the fish available for commercial, subsistence, and ceremonial purposes and would have a negative impact on tribes.

4.9.2 Alternative 2 (Proposed Action) – Approve the FMEPs, and Issue a Determination that the TRMPs would Not Appreciably Reduce the Likelihood of Survival and Recovery of the ESA-listed Species

Under Alternative 2, most effects on cultural resources would result from fishing in the action area relative to Alternative 1.

There may be some cultural artifacts present in the action area (Subsection 3.9, Cultural Resources). Fishing under the Proposed Action Alternative could result in small in impacts on cultural resources compared to the No-action Alternative if fishermen come into contact with cultural artifacts that are present around fishing areas, but the likelihood of contact is minimal. Similar to the No-action Alternative, the Proposed Action Alternative would not have effects on the availability of natural resources such as elk, deer, bear, and waterfowl to native. Compared to the No-action Alternative, the Proposed Action Alternative would have a low-to-moderate beneficial effect on tribes engaging in fishing activities inside the action area, as the tribes would not have to travel outside the action area to fish for salmon.

Most beneficial effects of the Proposed Action Alternative on cultural resources would result from fishing in the action area relative to the No-action Alternative. Salmon are an important cultural resource to tribes within the action area as a local, fundamental food source, as well as for commercial, subsistence, and ceremonial purposes (Subsection 3.9, Cultural Resources). Fisheries in the large tributaries are implemented by both states and tribes, but shift primarily to tribal fisheries in upstream, small tributaries. As a result, tribal fisheries in the action area primarily target spring/summer Chinook salmon (Subsection 3.9, Cultural Resources) in upstream tributaries. Therefore, fishing in the action area under the Proposed Action Alternative would maintain the fish available for commercial, subsistence, and ceremonial purposes and would have a positive impact on tribes compared to the No-action Alternative.

END OF NEW TEXT

5.0 CUMULATIVE IMPACTS

5.1 Other Agency Programs, Plans, and Policies

Cumulative impacts of NMFS' Proposed Action Alternative (Alternative 2) under the 4(d) Rule and Tribal 4(d) Rule would be minor, if at all measurable. Other Federal, tribal, and state actions are expected to occur within the action area, in the Snake River Basin, in other Columbia River tributaries, and in the migration corridor between the Snake River and the Pacific Ocean that would affect the fish populations considered under the Proposed Action. State and tribal fisheries occur in Idaho, Oregon, and Washington portions of the Snake River Basin and in the mainstem Columbia River. Land management and water-use decisions that affect these populations are made inside and outside the Snake River Basin. There are overarching concerns and legal mandates for the recovery of listed salmon and steelhead populations in the Columbia River Basin; at the same time, there are social and cultural needs for sustainable fisheries and sustainable economic use of resources.

There are numerous initiatives by State, Federal, tribal, and private entities designed to restore salmon and steelhead populations, but it is not usually clear who or when those initiatives would be implemented, or how effective they would be. In part, this is due to the reduced effectiveness of individually and separately implemented actions at the local scale. An exception to this uncertainty, then, would come as a result of a more broad-scale implementation of different actions across larger portions of the watersheds – such a broad-scale approach exists in several scenarios currently playing out in the Columbia and Snake River basins. In large part, these actions are coordinated through or in association with Federal ESA recovery plans either already developed or currently in development by NMFS. These plans are intended to provide a framework by which Federal, state, local, tribal, and private actions can be designed and implemented in a manner that would most effectively restore salmon and steelhead populations. Federal actions for salmon recovery in the Columbia River Basin that are currently underway include initiatives by the Northwest Power and Conservation Council to mitigate impacts of the Federal Columbia River Power System. Council initiatives include development of subbasin plans in support of regional planning and recovery efforts. Additionally, NMFS and the USFWS are currently negotiating an ESA section 6 agreement for a state forestry program with Idaho Department of Lands that addresses listed fish species issues raised during the Snake River Basin Adjudication process. State initiatives include legislative measures to facilitate the recovery of

listed species and their habitats, as well as the overall health of watersheds and ecosystems. Regional programs are being developed that designate priority watersheds and facilitate development of watershed Management Plans. All of these regional efforts are expected to help increase salmon and steelhead populations in the action area (and elsewhere in the region) because of compatible goals and objectives.

5.2 Conservation Management under the ESA

Fisheries that may impact listed salmon and steelhead within the action area are managed based on the impacts on ESA-listed fish that are returning to the Snake River. Because the allowable impacts on listed species are based on an abundance-based, sliding scale for allowable ESA impact in conjunction with a carefully managed conservation program, if other conservation measures are unsuccessful in returning fish to the area, fishery impacts would remain constrained. If the cumulative effects of other fisheries, pinniped predation on salmonids, ocean conditions, hydropower mortality or conservation efforts do not allow sufficient escapement of returning adult salmon to the action area to meet conservation needs while ~~providing for~~ ensuring the implementation of the proposed fisheries, fishing would be constrained according to the stipulations included in the proposed FMEPs and TRMPs. Similarly, hatchery-origin (i.e., non-ESA-listed fish) fish in the basin are managed for escapement goals; if the cumulative effects of other fisheries, pinniped predation on salmonids, ocean conditions, or hydropower mortality do not allow sufficient escapement to hatcheries in the action area, fishing would necessarily be constrained according to the stipulations included in the proposed FMEPs and TRMPs (ODFW 2011; ODFW ~~2011b~~ 2012; CTUIR ~~2011~~ 2012; SBT 2011; NPT 2012).

If the cumulative effects of salmon management efforts fail to provide harvestable fish, then impacts due to fishing in the action area would be substantially diminished. Therefore, the cumulative impacts of NMFS' current Proposed Action are expected to be minor because of reporting and monitoring requirements that would ensure compatibility with other conservation strategies. Conservative management of fishing opportunity is only one element of a large suite of regulations and environmental factors that may influence the overall health of listed salmon and steelhead populations and their habitat. The proposed fishing programs are coordinated with monitoring and adaptive management measures so that fishery managers can respond to changes in the status of affected listed species. Monitoring and adaptive management would help ensure that the affected ESU and DPS are adequately protected and would help counter-balance any potential adverse cumulative impacts. Healthy and self-sustaining Snake River salmon and steelhead populations would be an important component in long-term recovery of each of the affected species as a whole.

5.3 Climate Change

The action area – the Snake River Basin – is located in the Pacific Northwest. The climate is changing in the Pacific Northwest due to human activities, and this is affecting hydrologic patterns and water temperatures. Regionally averaged air temperature rose about 1.5°F over the past century (with some areas experiencing increases up to 4°F) and is projected to increase another 3°F to 10°F during this century. Increases in winter precipitation and decreases in summer precipitation are projected by many climate models, although these projections are less certain than those for temperature (USGCRP 2009).

Higher temperatures in the cool season (October through March) are likely to increase the percentage of precipitation falling as rain rather than snow, and to contribute to earlier snowmelt. The amount of snowpack measured on April 1, a key indicator of natural water storage available for the warm season, has already declined substantially throughout the region. The average decline in the Cascade Mountains, for example, was about 25 percent over the past 40 to 70 years, with most of this due to the 2.5°F increase in cool season temperatures over that period. Further declines in Northwest snowpack are likely due to additional warming this century, varying with latitude, elevation, and proximity to the coast. April 1 snowpack is likely to decline as much as 40 percent in the Cascades by the 2040s (USGCRP 2009).

High and base stream flows are likely to change with warming. Increasing winter rainfall is likely to increase winter flooding in relatively warm watersheds on the west side of the Cascade Mountains. Earlier snowmelt, and increased evaporation and water loss from vegetation, will increase stream flows during the warm season (April through September). On the western slopes of the Cascade Mountains, reductions in warm season runoff of 30 percent or more are likely by mid-century. In some sensitive watersheds, both increased flood risk in winter and increased drought risk in summer are likely due to warming of the climate (USGCRP 2009).

In areas where it snows, a warmer climate means major changes in the timing of runoff: increased stream flows during winter and early spring, and decreases in late spring, summer, and fall. Flow timing has shifted over the past 50 years, with the peak of spring runoff shifting from a few days earlier in some places to as much as 25 to 30 days earlier in others. This trend is likely to continue, with runoff shifting 20 to 40 days earlier within this century. Major shifts in the timing of runoff are not likely in areas dominated by rain rather than snow (ISAB 2007; USGCRP 2009).

Fish habitat changes due to climate change are likely to create a variety of challenges for ESA-listed species of fish. Higher winter stream flows can scour streambeds, damaging spawning redds and washing away incubating eggs (USGCRP 2009). Earlier peak stream flows could flush young salmon and steelhead from rivers to estuaries before they are physically mature enough for the transition, increasing a variety of stresses and the risk of predation (USGCRP 2009). Lower summer stream flows and warmer water temperatures will degrade summer rearing conditions in many parts of the Pacific Northwest for a variety of salmon and steelhead species (USGCRP 2009), and are likely to reduce the survival of steelhead fry in streams with incubation in early summer. Other likely effects include alterations to migration patterns, accelerated embryo development, premature emergence of fry, and increased competition and predation risk from warm-water, non-native species (ISAB 2007). The increased prevalence and virulence of diseases and parasites that tend to tend to flourish in warmer water will further stress salmon and steelhead (USGCRP 2009). Overall, about one-third of the current habitat for the Pacific Northwest's coldwater fish may well no longer be suitable for them by the end of this century as key temperature thresholds are exceeded (USGCRP 2009).

Climate change is also likely to affect conditions in the Pacific Ocean. Historically, warm periods in the coastal Pacific Ocean have coincided with relatively low abundances of salmon and steelhead, while cooler ocean periods have coincided with relatively high abundances (USGCRP 2009). It is likely that, as ocean conditions change, abundances of salmon and

steelhead will continue to change accordingly, resulting in changes in abundance of adults returning to freshwater to spawn.

While climate change may well have impacts on the abundance and/or distribution of ESA-listed salmonids that are considered under the Proposed Action, the fishery management scheme described in the FMEPs and TRMPs is directly responsive to observed fish abundance, and so, as abundances change, fisheries would be adjusted accordingly.

6.0 AGENCIES CONSULTED

National Marine Fisheries Service
Oregon Department of Fish and Wildlife
Confederated Tribes of the Umatilla Indian Reservation
Shoshone-Bannock Tribes
Washington Department of Fish and Wildlife
Nez Perce Tribe

7.0 LITERATURE CITED

[Minor edits to formatting, which did not change the information provided, were made and are not marked.]

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8.0 FINDING OF NO SIGNIFICANT IMPACT FOR NMFS' APPROVAL OF TWO FISHERIES MANAGEMENT AND EVALUATION PLANS UNDER THE ESA SECTION 4(d) AND THREE TRIBAL RESOURCE MANAGEMENT PLANS UNDER THE ESA SECTION 4(d) TRIBAL RULE

National Oceanic and Atmospheric Administration Administrative Order 216-6 (NAO 216-6) (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality regulations at 40 CFR 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant in making a finding of no significant impact and has been considered individually, as well as in combination with the others.

The two Fisheries Management and Evaluation Plans (FMEPs) submitted by the Oregon Department of Fish and Wildlife (ODFW 2011 and ODFW 2012) and the three Tribal Resource Management Plans (TRMPs) submitted by the Confederated Tribes of the Umatilla Indian Reservation (CTUIR 2011), the Nez Perce Tribe (NPT 2012), and the Shoshone-Bannock Tribes (SBT 2011) are all intended to satisfy the ESA Tribal 4(d) Rule with respect to spring/summer Chinook salmon fisheries in the Grande Ronde and Imnaha Rivers sub-basins potentially affecting ESA-listed Snake River Spring/summer Chinook Salmon Evolutionarily Significant Units (ESU) and the Snake River Steelhead Distinct Population Segment (DPS).

NMFS' determination that the fisheries proposed in the FMEPs and TRMPs would not appreciably reduce the likelihood of the survival and recovery of the species in the wild constitutes the Federal action that is subject to analysis as required by the National Environmental Policy Act (NEPA). The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

1. **Can the proposed action reasonably be expected to jeopardize the sustainability of any target species?**

Response: The target species for the proposed fisheries are hatchery-origin and natural-origin Snake River spring/summer Chinook salmon. The proposed fisheries will have no effect on hatchery-origin spring/summer Chinook salmon overall range-wide abundance, distribution, and productivity because hatchery-origin fish are produced for the purpose of harvest; enough broodstock will be allowed to escape fisheries to sustain the desired hatchery production into the future. The proposed fisheries will have no effect on natural-origin Snake River spring/summer Chinook salmon overall range-wide abundance, distribution, and productivity because the proposed level of harvest will be kept low enough to be consistent with the maintenance of self-sustaining populations.

2. **Can the proposed action reasonably be expected to jeopardize the sustainability of any non-target species?**

Response: The proposed action is not expected to jeopardize the sustainability of non-target species for the following reasons:

Salmonids: There will be some effects on listed and non-listed non-target salmonids from the proposed action. Effects on listed no-target salmonids include direct contact with fish or alteration of habitat elements. Listed non-target fish include natural-origin fish belonging to the Snake River Steelhead DPS. Impacts on listed non-target fish are low because the fisheries described in the FMEPs and TRMPs are specifically designed to maximize efficiency of the methods on the target fish, and non-target fish would therefore be unlikely to be susceptible to the fisheries to any large degree.

Impacts on non-listed non-target salmonids also include direct contact with fish or alteration of habitat elements. The non-listed salmonids in the basin include resident rainbow trout, brook trout, and whitefish. The impacts on non-listed salmonids from the proposed action will be low and consistent with the maintenance of self-sustaining populations.

Other Fish Species: There will be no effects on non-target fish species from the proposed action because the types of gear and fishing methods used in the proposed fisheries are not expected to result in encounter with individuals of these species.

Wildlife: Impacts on avian and terrestrial wildlife would typically occur through physical contact, disruption of habitat, or avoidance of areas where human activity is high. Potential impacts associated with the fisheries include the presence of fishers entering the water, noise associated with talking and vehicle operation, and presence of vehicles and people along the streambanks and access ways. It is not likely that the proposed fisheries would impact or displace wildlife because such activities would be accomplished by using existing roads and pathways, and would occur at levels similar to what currently occurs for recreational activities unrelated to the proposed fisheries. The effects on prey availability for wildlife would be low because the proposed fisheries would leave available a portion of the hatchery-origin and natural-origin fish that are not harvested, and other fish not harvested would be available for wildlife to eat. The fisheries would not include upland activities; therefore, it is not anticipated that nesting or breeding areas would be impacted by fishing activities.

3. Can the proposed action reasonably be expected to cause substantial damage to ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in Fisheries Management Plans?

Response: There will be no effect on ocean or coastal habitats from the proposed action because the action area is in the Grande Ronde and Imnaha Rivers (tributaries to the Snake River), many river miles from the ocean. There will be no negative effect on the 303(d) listing impairment status of the Snake River because proposed action in the rivers will be localized and will not contribute to the total contaminant load in the Snake River system.

There will be no effect on Essential Fish Habitat (EFH) for Chinook salmon[6] because there will be no impact on water quality or substrate necessary for Chinook salmon to carry out spawning, breeding, feeding, or growth to maturity and because activities associated with the proposed fisheries such as wading or inadvertently hooking instream structures are unlikely to remove or destroy habitat elements. The controlled harvest of hatchery-origin and natural-origin

[6] EFH has not been defined for steelhead.

spring/summer Chinook salmon described in the proposed FMEPs and TRMPs will have no effect on water quality related to marine-derived nutrients because most hatchery-origin fish that are not harvested will be removed at hatchery weirs, and the number of natural-origin fish harvest is low relative to population abundance. Because all of the fisheries proposed are based on a shared harvest framework involving all other fishing parties, and therefore effects of fisheries can be carefully managed, the absence of fisheries would potentially result in only a small increase of marine-derived nutrients relative to the potential small increase of natural-origin fish spawning and dying in the action area.

4. Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?

Response: The proposed action is not reasonably expected to have a substantial adverse impact on public health or safety because the proposed fisheries are not associated with any known health hazards directly or indirectly. There is a certain amount of safety risk associated with any fisheries because participants are in contact with the river and sometimes inclement weather conditions. However, participation in the proposed fisheries is limited to state-licensed fishermen and to enrolled Tribal members and poses no risk to public safety in general.

5. Can the proposed action reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of the species?

Response: The proposed action will have a minor, adverse impact on ESA-listed Snake River spring/summer Chinook salmon because only a small fraction of natural-origin fish will be harvested during the proposed fisheries. The percent mortality resulting from the proposed fisheries will not have a discernible effect on their overall range-wide abundance, distribution, and productivity because the resulting mortality of any harvest that might occur is limited to a small fraction of the population. There are no expected impacts on habitat designated as critical for endangered or threatened species because activities associated with the proposed fisheries (such as wading, anchoring boats, or inadvertently hooking instream structures) are unlikely to remove or destroy critical habitat elements.

There are no expected indirect impacts on marine mammals, such as removing fish that would otherwise be available as prey, because marine mammals are not usually present in the action area, and the fish subject to removal by the fisheries (through kept catch or incidental mortality) would not later be subject to potential predation by marine mammals because of their semelparity (i.e., the adult salmon killed in the proposed fisheries would not be returning to the ocean after spawning had they not be killed). Also, no indirect effect on marine mammal habitat is expected because shore-based activities are not inconsistent with marine mammal behavior or habitat. Because marine mammals are not present in the action area, no direct impacts on any marine mammal species, listed or non-listed, resulting from fishing activities would occur as a result of the proposed action.

6. **Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships)?**

Response: The proposed action is not expected to have a substantial impact on biodiversity and/or ecosystem function, such as benthic productivity or predator/prey interactions, within the affected area because of the limited scope, both in area and time, of the annual fisheries, because the fish to be removed represent only a small fraction of the population-specific expected returns on any given year, and because gear and methods used are very specific and interact almost exclusively with the target species. The harvest of natural-origin target species is managed specifically to preserve biodiversity and ecosystem function.

7. **Are significant social or economic impacts interrelated with natural or physical environmental effects?**

Response: Impacts on socioeconomics will be moderately beneficial for local businesses supplying recreational fishing commodities because the proposed fisheries will result in an increase in economic activity from additional purchase of recreational supplies such as fishing gear, camping equipment, consumables, and fuel at local businesses from customers visiting the area solely or primarily as a result of the proposed fisheries. The proposed fisheries are expected to draw moderate numbers of people from certain distances outside of the action area and, therefore, fisheries would be expected to add moderately to the revenue within the action area. However, considering that recreational fishing businesses are not responsible for a large percentage of the economy within the action area or the state, the relative economic increase would likely be low at this scale. Therefore, because there are no significant social or economic impacts, there is no anticipated interrelationship with other environmental effects.

8. **Are the effects on the quality of the human environment likely to be highly controversial?**

Response: The effects on the quality of the human environment are not likely to be highly controversial because these effects are consistent with implementation of the fishery over several prior years and are positive impacts for the affected communities. No comments were received from the public during the public comment period.

9. **Can the proposed action reasonably be expected to result in substantial impacts on unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas?**

Response: The proposed action is not expected to result in substantial impacts on unique areas, such as historical or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas because it does not involve the construction of any new infrastructure, and because all of the fishing activity occurs either from river bank access points already in place in Grande Ronde and Imnaha Rivers and utilized by fishers year-around.

10. Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: The effects on the human environment are all known impacts, since fisheries of this type have been prosecuted and evaluated in multiple locations over recent years. No unique or unknown risks have been identified in this action area to the species potentially affected by this action.

11. Is the proposed action related to other actions with individually insignificant, but cumulatively significant, impacts?

Response: The cumulative impacts of the proposed action have been considered in the EA. The take of ESA-listed species would be limited to a level considered to result in a no-jeopardy ESA determination when considering all existing fishery conditions, all other permits, and other plans and policy actions in the area affecting these conditions and permits. The effects of this action are not expected to interact with other reasonably foreseeable actions to a degree that will produce cumulatively significant impacts.

12. Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed or eligible for listing in the National Register of Historic Places or to cause loss or destruction of significant scientific, cultural, or historical resources?

Response: The proposed action is not likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural, or historical resources because of the limited scope of the action area, which includes none of the aforementioned structures or resources.

13. Can the proposed action reasonably be expected to result in the introduction or spread of non-indigenous species?

Response: The proposed action would not result in the introduction or spread of a non-indigenous species because the action considered in this supplemental EA is limited to fisheries with associated impacts on ESA-listed species in a limited number of locations in the Grande Ronde and Imnaha Rivers. Fishing activities are not likely to introduce or spread any non-indigenous species any more than other ongoing activities such as hiking, camping, tourist activities, fishing for non-listed species, and all forestry practices. The gear used in these fisheries (tackle and boats, etc.) are not expected to be brought in from outside the basin in any great number, and the states have in place check stations and other mechanisms, independent of the proposed activities, that would reduce transfer from out-of-basin locations of any non-indigenous species to levels no different from other activities not part of the proposed action.

14. Is the proposed action likely to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration?

Response: The proposed action is not likely to establish a precedent for future actions with significant effects or to represent a decision in principle about a future consideration because the proposed action is similar in nature and scope to similar fisheries actions in the action area over

the past several years, and has a limited, authorized implementation period before additional analyses on a subsequent fisheries request is undertaken. This is the first NEPA review for this particular proposal in the action area, but Chinook salmon fisheries in the mainstem Columbia River under the *U.S. v. Oregon* 10-year agreement were analyzed through ESA determinations and NEPA reviews. Future take increase requests in the action area would be analyzed through new ESA determinations and NEPA reviews.

The supplemental EA for the proposed action was prepared pursuant to regulations implementing the NEPA (42 USC 4321), in compliance with Federal regulations for preparing an EA (40 CFR 1502), and consistent with recovery plans being developed pursuant to section 4 of the ESA by NMFS in conjunction with interested stakeholder groups. The proposed action analyzed in this supplemental EA relates to other plans and policies regarding the management and restoration of anadromous fish resources in the Pacific Northwest and ESA recovery planning and, therefore, cannot be viewed as an independent decision in principal about a future consideration.

Recovery plans are in place or being developed for most parts of the Columbia River system in which anadromous fish occur (for example, see NMFS 2005; NMFS 2009; Snake River Salmon Recovery Board 2006; additionally, a recovery plan for the Snake River Basin is currently under development by NMFS' Northwest Regional Office). Typically, development and on-going implementation of these plans includes participation by multiple Federal, tribal, state, and local agencies and stakeholder groups. These recovery plans contain (1) measurable goals for delisting, (2) a comprehensive list of the actions necessary to achieve delisting goals, and (3) an estimate of the cost and time required to carry out those actions. Therefore, the recovery plans provide a guide to the implementation of actions, including the proposed fisheries, within a framework of broader consideration.

15. Can the proposed action reasonably be expected to threaten a violation of Federal, state, or local law or requirements imposed for the protection of the environment?

Response: The proposed action is not expected to threaten a violation of Federal, state, or local law or requirements imposed for the protection of the environment because the proposed action was developed in the broader context of consultations involving Federal and state agencies charged with recovery planning and implementation of the ESA and other environmental regulations. Fisheries permits related to this action would be issued under state and tribal laws that are also consistent with Federal and local laws related to environmental protection.

16. Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: The proposed action will not result in substantial cumulative adverse effects on target or non-target species because the take of ESA-listed species would be limited to a level considered to result in a no-jeopardy ESA determination when considering all existing fishery conditions, all other permits, and other actions in the area affecting these conditions and permits. The cumulative impacts of the proposed action have been considered in the supplemental EA and are addressed in an associated biological opinion prepared prior to final NMFS decision.

8.1 List of Reviewers

- Kate Hawe, NWR NEPA Coordinator
- Robert Bayley, Salmon Management Division QA/QC Coordinator
- Chris Fontecchio, General Counsel

8.2 FONSI References

CTUIR (Confederated Tribes of the Umatilla Indian Reservation). 2011. Tribal Resource Management Plan. Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Grande Ronde and Imnaha River Subbasins Spring Chinook Salmon Treaty Fisheries.

NMFS (National Marine Fisheries Service). 2005. Endangered and threatened species; final listing determinations for 16 evolutionarily significant units of West Coast salmon, and final 4(d) protective regulations for threatened salmonid ESUs. Final rule. Federal Register 70: 37160-37204. June 28, 2005.

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NPT (Nez Perce Tribe). 2012. Nez Perce Tribe's Long-term Harvest Plan for Nez Perce Northeast Oregon Subbasin Tributary Treaty Fisheries. February 17, 2012.

ODFW. 2011. Fishery Management and Evaluation plan. Snake River Spring/Summer Chinook – Imnaha Subbasin. June 2011.

ODFW. 2012. Fishery Management and Evaluation plan. Snake River Spring/Summer Chinook – Grande Ronde Subbasin. April 30, 2012.

SBT (Shoshone-Bannock Tribes). 2011. Tribal Resource Management Plan for Shoshone-Bannock Tribes Snake River Spring/Summer Chinook Salmon Fisheries within the Grande Ronde and Imnaha Sub-Basins. June 7, 2011.

SRSRB (Snake River Salmon Recovery Board). 2006. Technical Document Snake River Salmon Recovery Plan for SE Washington. December 2006.

8.3 Determination

In view of the information presented in the supplemental EA and analysis prepared for the proposed action, I hereby determine that NMFS's determination that fisheries proposed in the TRMPs submitted by the CTUIR, NPT, and SBT would not appreciably reduce the likelihood of the survival and recovery of the species in the wild and NMFS's approval of the two FMEPs submitted by the ODFW will not significantly impact the quality of the human environment. In addition, all beneficial and adverse impacts of the proposed action have been considered in reaching a finding of no significant impacts. Accordingly, preparation of an Environmental Impact Statement is not necessary to further analyze the potential for significant impacts resulting from the proposed action.

Barry Thom, Deputy Regional Administrator

May 15, 2013
Date

Appendix 1 Draft Environmental Assessment Response to Comments

Nez Perce

TRIBAL EXECUTIVE COMMITTEE
P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

September 12, 2011

To: William W. Stelle, Jr.
Regional Administrator
NOAA Fisheries
7600 Sand Point Way, N.E., Bldg. 1
Seattle, WA 98115

Also: Via e-mail to: NEOregonFisheryPlans.nwr@noaa.gov ; subject line "Comments on Northeast Oregon Fishery Plans"

Re: Nez Perce Tribe's concerns with NOAA's draft ESA and NEPA documents regarding the Shoshone-Bannock Tribe's tribal resource management plans for the Imnaha and Grande Ronde sub-basins.

I write on behalf of the Nez Perce Tribe. The Nez Perce Tribe is writing to express its concerns with NOAA Fisheries' draft ESA and NEPA documents regarding the Shoshone-Bannock Tribes' (SBT's) proposed tribal resources management plan (TRMP) for the Imnaha and Grande Ronde sub-basins.

1. The Imnaha and Grande Ronde Fisheries and Fisheries Co-Management.

1 The Nez Perce Tribe, the CTUIR, and the State of Oregon are the sole recognized fishery co-managers in the Imnaha and Grande Ronde sub-basins. The United States—through NOAA Fisheries, the Bureau of Indian Affairs and the U.S. Fish and Wildlife Service, represented by the U.S. Department of Justice—has acknowledged this in the U.S. v. Oregon Management Agreement and Court Order.

The geographic location of the Imnaha sub-basin in northeast Oregon and the Grande Ronde sub-basin in northeast Oregon and southwest Washington is depicted on the attached map.

2 The 1855 Treaty between the United States and the Nez Perce Tribe, by its express terms, specifically encompasses the Imnaha and the lower Grande Ronde sub-basins. In 1855, the Nez Perce Tribe reserved, and the United States secured to the Tribe, "The exclusive right of taking fish in all the streams where running through or bordering said reservation . . . ." 12 Stat. 957.

Article II of the 1855 Treaty described the Nez Perce Reservation: among other areas, the lower Grande Ronde River and the entire Imnaha River lie within those boundaries.[1] Id. This is made additionally clear by the 1967 decision of the Indian Claims Commission (ICC), in its findings and determination of the area of "actual and exclusive use and occupancy" of the Nez Perce Tribe. 18 Ind. Cl. Comm. 1 (1967). The ICC was created by Congress in 1946 to hear claims by Indian tribes for, among other things, inequitable compensation for the taking of aboriginal land by the United States. Compensable aboriginal title required "actual and exclusive use and occupancy 'for a long time' prior to the cession, transfer, or loss of the property." Id. at 128 (citations omitted). In its Nez Perce decision, the ICC made comprehensive findings, based on detailed anthropological evidence from both the United States and the Nez Perce Tribe, of the area of "actual and exclusive use and occupancy" and "aboriginal ownership" of the Nez Perce Tribe. Among other areas, it included the lower Grande Ronde River and the entire Imnaha River. Id. at 131 and Finding No. 94.[2] The attached map depicts the Imnaha and Grande Ronde sub-basins relative to the United States' 1855 Treaty with the Nez Perce and the determination made by the ICC.

2

The Nez Perce Tribe and CTUIR jointly described the legal and factual basis for their respective judicially established, treaty-based management roles, along with the State of Oregon, in the Imnaha and Grande Ronde subbasins in U.S. v. Oregon. U.S. v. Oregon, Docket # 2580-1.

3

The Nez Perce Tribe and the CTUIR are committed to engaging with each other on a government-to-government basis with respect to our two tribes' allocations, as has been previously indicated to NOAA.

4

The Nez Perce Tribe has also indicated its willingness to voluntarily agree to harvest within overall ESA impact limits in the Imnaha and Grande Ronde; the Nez Perce Tribe's agreement to do so, though, is premised on the legal reality that this total ESA mortality cannot and will not be impacted by SBT fishing because, as set forth in the letter used to submit the NPT plan[3], the SBT

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[1]The 1863 Nez Perce Treaty by its express terms did not abrogate but was instead "supplementary and amendatory" of the 1855 Treaty: it reduced the size of the land reservation, but otherwise preserved "all the provisions" not "specifically changed," including the 1855 Article III fishing rights. 14 Stat. 647; Preface and Article VIII.

[2] ICC decisions are cited as precedent in the Ninth Circuit, and indeed in this case. E.g., United States v. Oregon, 29 F.3d 481, 487 (9th Cir. 1994) (ruling against Colville Tribes in dispute over northeast Oregon fishing in favor of Nez Perce Tribe; citing Nez Perce 1967 ICC decision as evidence that Nez Perce Tribe has "continually" been recognized as the entity in which 1855 Treaty fishing rights vested).

[3] For record purposes, and for self-contained review, the Nez Perce Tribe noted in its submittal letter on the Salmon River sub-basin the following fundamental points of law and fact regarding SBT assertions of fishing rights:

"[T] he Shoshone-Bannock Tribes' (SBT) claims to fishing rights in the Salmon River subbasin, as asserted in their Salmon River subbasin TRMP, are judicially undetermined in nature and scope, and are not legally enforceable rights.

The SBT treaty – the Treaty with the Eastern Band Shoshone and Bannock of July 3, 1868, 15 Stat. 673 – provides in Article 4 "the right to hunt on the unoccupied lands of the United States so long as game may be found thereon . . . ." This is not the "usual and accustomed" treaty fishing right held by Columbia River Tribes, including the Nez Perce Tribe, under the 1855 Stevens treaties, which is the basis of the case law in U.S. v. Oregon, and which has well-established principles dating back to the U.S. Supreme Court decisions in U.S. v. Winans, 198 U.S. 371 (1905) and Seufert Bros.Co. v. U.S., 249 U.S. 194 (1919). A "U&A" fishing right, for example, is not defeasible: it is permanent and includes the right to cross private property as necessary to exercise the right when surrounding land ownership changes (Winans); and is it not limited to a tribe's treaty ceded area (Seufert).

The SBT right by contrast is heavily contingent (it requires the existence of multiple present realities, most obviously unoccupied land), has had little judicial explanation generally, and in the case of the exact SBT right, has no federal court determination at all (as emphasized by the disclaimer section of the present U.S. v. Oregon Management Agreement, pp. 2-3). The SBT often cite State v. Tinno, 497 P.2d 1386 (Idaho 1972), but that decision is not binding precedent (the court recognized that it lacked jurisdiction and issued an advisory opinion) and at most found that the treaty word "hunt" would have been understood to include fishing, and that some evidence had been provided of SBT fishing at the Yankee Fork of the Salmon River; it provides no judicial determination of the nature and scope of the SBT right.

The most probable explanation for how the SBT right would be addressed in court today is set out in State v. Buchanan, 978 P.2d 1070 (Wash. 1999), cert. denied, 120 S.Ct. 1158. Buchanan dealt with a Nooksack tribal member with a treaty right to "hunt upon open and unclaimed lands," who was arrested on state land outside his tribe's ceded area. In short, Buchanan suggests that the SBT right would be presumed to exist within its treaty ceded area (the SBT have no ceded area in their treaty but it is possible their ICC territorial boundary would be treated as equivalent) but that any claim beyond that would be tested with a standard requiring proof of "actual occupation or use" "over an extended period of time" – a standard inconceivable within the "exclusive use" areas of the Nez Perce 1855 Treaty and the Nez Perce ICC aboriginal territory; and which has never been judicially determined in the Salmon River subbasin even outside of those areas.

It is notable that the United States refused to file water rights claims on behalf of the SBT in the SRBA based on the SBT treaty right to "hunt"/fish, as the United States had done on behalf of the Nez Perce Tribe based on its U&A treaty fishing rights. This refusal occurred after the United States "discussed with the [SBT] their claims to [treaty-based] off-reservation water rights; retained a historian to determine if the Treaty might be read as the Tribes apparently viewed it; and actively sought the assistance of the Tribes and their experts." Shoshone-Bannock Tribes v. Reno, 56 F.3d 1476, 1482 (9th Cir. 1995)."

have no legally recognized fishing rights in these subbasins.[4] (It is NOAA's misunderstanding of this cornerstone principle that has led NOAA to incorrectly conclude that the Nez Perce Tribe's plan for the Imnaha and Grande Ronde Rivers is "incomplete.") 5

The Nez Perce Tribe's position, consistent with the law, is that any fishery that is proposed to be conducted by the SBT in the Grande Ronde or Imnaha River sub-basins must be counted against the State of Oregon's allocation, unless and until such time as the SBT judicially establish that the Treaty of Fort Bridger entitles them to treaty fisheries in the Imnaha and Grande Ronde sub-basins. 6

II. Flaws in NOAA's approach to the SBT TRMP for the Imnaha and Grande Ronde sub-basins.

The foundational flaw in NOAA's present consultation actions is this: the United States has never, in any capacity, recognized or acknowledged any SBT fishing rights within the Imnaha and Grande Ronde sub-basins, based on the Treaty of Fort Bridger or any other legal theory.

NOAA itself is party to a Federal Court Order in which the United States (through NOAA, the BIA, and USFWS – represented by the U.S. Department of Justice) agreed that the status of the SBT fishing rights is undetermined. U.S. v. Oregon, Docket #s2545, 2546. 7

NOAA is also a party to a recent Federal Court Order in which the Court again emphasized that the SBT's fishing rights "are undetermined in the locations that are the subject of their [Imnaha and Grande Ronde] TRMP [Tribal Resource Management Plan] and they are not denominated a "co-manager" or a "management entity" in the basins at issue." U.S. v. Oregon, Docket # 2589.[5] In that same Federal Court Order, the Court stated:

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[4] The Nez Perce Tribe negotiated the fishery harvest and hatchery plans for Northeast Oregon with Oregon and expressed its commitment to coordinate allocation with CTUIR and NOAA as necessary and applicable; it is ironic and disturbing that NOAA appears to have assisted the SBT in copying the NPT TRMP so that NOAA may then analyze the SBT TRMP.

[5] This is a repetition of a legal reality that has been explained to the SBT by the Federal Court over the past 25 years, beginning with Judge Leavy in 1986. In ruling that the SBT motion to intervene would be "allowed," Judge Leavy made it clear that he was "not at all" making any ruling on the scope or breadth of the SBT right, and noted that "They [SBT] run the risk of losing." In 1988, Judge Marsh found that "by their own statements, the Shoshone-Bannock Tribes agree that the scope of their 1868 treaty fishery rights have not been determined, nor should it have been." U.S. v. Oregon, 699 F. Supp. 1456, 1466 (D. Or. 1988), aff'd, 913 F.2d 576 (9th Cir. 1990), cert. denied, 501 U.S. 1250 (1991). On December 4, 2002, in response to a request for clarification from counsel for the SBT, the Federal Court stated "I understand that they haven't established the nature of their right" and that "They've been allowed to intervene.

> I do comment that [NOAA] engaging in the consultation process on a harvest plan to determine whether a planned fishery harvest will "not appreciably reduce the likelihood of survival and recovery of the listed salmonids," 50 C.F.R. § 223.204(a), without first determining *whether a fishery harvest may legally occur in the first place* seems to put the cart before the horse. I also underscore, as have the parties, that NOAA's review of the Shoshone-Bannock's TRMP has absolutely no bearing on the existence or scope of the Shoshone-Bannock Tribes' fishing rights.

7

Id. at 14 (emphasis added).

NOAA's present action is legally hypothetical and therefore entirely ineffectual; it is contradictory of the status quo legal reality – undetermined and unrecognized – of SBT fishing rights; and it is administratively wasteful. It is also contrary to the purpose and plain meaning of the Tribal 4(d) rule.

NOAA's provision of ESA "coverage"[6] – pursuant to Section 7 consultation, the 4(d) rule, or the Tribal 4(d) rule – is designed to insulate actors from civil and criminal penalties associated with the otherwise applicable prohibitions against take of listed species. 16 U.S.C. § 1540.

The Tribal 4(d) rule provides:

> (a) *Limits on the prohibitions.* The prohibitions of § 223.203(a) of this subpart relating to threatened species of salmonids listed in § 223.102 do not apply to any activity undertaken by a tribe, tribal member, tribal permittee, tribal employee, or tribal agent in compliance with a Tribal resource management plan (Tribal Plan), provided that the Secretary determines that implementation of such Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the listed salmonids. *In making that determination the Secretary* shall use the best available biological data (including any tribal data and analysis) to determine the Tribal Plan's impact on the biological requirements of the species, and will assess the effect of the Tribal Plan on survival and recovery, *consistent with legally enforceable tribal rights and with the Secretary's trust responsibilities to tribes.*

8

"Tribal rights" is one of 4 defined terms, 65 Fed. Reg. 42482:

There have been no definitive rulings on any of the issues raised in their complaint." U.S. v. Oregon, Docket #2322; Transcript of Proceedings, December 4, 2002, at 10-12.

[6] The Nez Perce Tribe maintains that tribal Treaty fisheries are subject to limitations only under the conservation necessity standards in federal case law, including case law governing the United States v. Oregon litigation. See, e.g., U.S. v. Oregon 2008-2017 Management Agreement.

8

> ***Tribal rights***—Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and which give rise to legally enforceable remedies.

Id. (emphasis added).

9

Both NOAA's draft 4(d) determination document and NOAA's draft NEPA document fail to provide a complete reading of the Tribal 4(d) rule. NOAA instead offers truncated references to selected portions of the rule that emphasize the determination of whether a planned activity would "not appreciably reduce the likelihood of survival and recovery of the listed salmonids."

NOAA is doing exactly what Idaho feared NOAA would do in implementing the Tribal 4(d) rule; as Idaho put it:

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> Not all tribes have similar rights to fish. NMFS seems to imply that all tribes will be treated equally and defines "Indian Tribe" to include any federally recognized tribe, band, nation, pueblo, community or other organized group within the United States. It is unclear NMFS will accept the responsibility to ensure that tribal activities approved by NMFS are within a valid, adjudicated treaty right. NMFS should be careful to avoid having the Section 4(d) rule serve as a de facto means to expand off-reservation natural resources authorities of the tribes in ways that have not been recognized by the courts.

State of Idaho's Comments on the Proposed Section 4(d) Rule Limiting Section 9 Protections Applicable to Salmon For Actions Under Tribal Resource Management Plans, March 3, 2000, at 5.

A complete, rational reading of the Tribal 4(d) rule obligates NOAA to examine the status of existing determinations – i.e. not determine on its own, which NOAA has no authority to do, but locate a legal determination –of legally enforceable tribal rights for the geographic areas set forth in a tribal plan. The Tribal 4(d) rule does not authorize NOAA to make new determinations of legally enforceable tribal rights to fish or of the location of any such rights.

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Here, NOAA can easily discharge its obligation under the Tribal 4(d) rule to examine the status of existing determinations of legally enforceable rights for the Imnaha and Grande Ronde basins. As described above, NOAA is a party to a Federal Court Order in which the Court has emphasized that SBT fishing rights "are undetermined in the locations that are the subject of their [Imnaha and Grande Ronde] TRMP [Tribal Resource Management Plan] and they are not denominated a "co-manager" or a "management entity" in the basins at issue." U.S. v. Oregon, Docket # 2589. Again, no court at any level has ever recognized SBT fishing rights in the sub-basins at issue before NOAA.

If NOAA were to make a determination on a SBT TRMP for the Imnaha and Grande Ronde—a determination that must be "consistent with legally enforceable tribal rights"—in the face of the Federal Court Orders set forth above that the SBT's rights are "undetermined" in the Imnaha and Grande Ronde and the underlying legal and factual realities– such determination would by definition be "contrary to law," "arbitrary and capricious," and contrary to the law of the case in U.S. v. Oregon. Similarly, if NOAA were to assert that a SBT TRMP for the Imnaha and Grande Ronde "is consistent with plans and conditions established within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations" – in the face of these Federal Court Orders set forth above and the underlying legal and factual realities – this too would be an agency action "contrary to law," "arbitrary and capricious," and contrary to the law of the case in U.S. v. Oregon. And, if NOAA were to make such determinations this would interject real-world uncertainty where none exists, thereby harming the Nez Perce Tribe, the CTUIR, the State of Oregon, and the general public.

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13

NOAA's draft ESA and NEPA documents turn NOAA's 4(d) determination into a legally ineffectual and administratively wasteful exercise of reviewing an entirely hypothetical fishery and making an entirely hypothetical determination as to whether the hypothetical fishery would "appreciably reduce the likelihood of survival and recovery of listed salmonids."

14

As the Federal Court stated, NOAA, by "engaging in the consultation process on a harvest plan to determine whether a planned fishery harvest will 'not appreciably reduce the likelihood of survival and recovery of the listed salmonids,' 50 C.F.R. § 223.204(a), without first determining whether a fishery harvest may legally occur in the first place seems to put the cart before the horse."

15

NOAA itself recognizes the legal pointlessness of the present consultation:

> NMFS's ESA review of tribal resource management plans does not itself permit the operation of the described fishery.

NOAA ESA 4(d) Rule Proposed Evaluation and Pending Determination on the SBT TRMP for the Grande Ronde and Imnaha Rivers in Northeast Oregon, n. 1.

16

> The SBT assert that the fishery described in the TRMP is consistent with their treaty fishing rights. Any final determination made by NMFS pursuant to the Tribal 4(d) Rule will address [NOAA appears to mean "solely address"] whether the proposed fishery would appreciably reduce the likelihood of survival or recovery of threatened salmon species. This determination would neither expand nor limit whatever treaty fishing rights the SBT possess.

Id., n. 3.

Unfortunately, however, even NOAA's disclaimers are unclear, and NOAA buries them in footnotes. NOAA appears to be trying to express the position that:

> NOAA's determination pursuant to the Tribal 4(d) rule is limited to whether a proposed fishery plan "would appreciably reduce the likelihood of survival or recovery of threatened salmon species." NOAA's determination pursuant to the Tribal 4(d) rule does not take — nor should it be viewed as taking – any position on the nature or scope of the treaty fishing rights asserted by the SBT and consequently neither expand nor limit whatever treaty fishing rights the SBT may possess.

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If NOAA is committed to the "disclaimers" that it sets forth (which themselves need to be more precise) then NOAA needs to ensure that the remainder of its draft documents conform to NOAA's position. At present, NOAA's documents do not carry forth NOAA's position consistently and consequently give rise to confusion and uncertainty.

Nowhere is this more troubling than in NOAA's "Figure 1" of NOAA's 4(d) draft document that purports to depict "SBT fishing areas in the Grande Ronde and Imnaha River sub-basins"; NOAA's Figure 1 may depict the SBT's "desired," "proposed," or "contemplated" fishing areas in the Grande Ronde and Imnaha River sub-basins – but beyond that, as a legal matter, there *are no* "SBT fishing areas" in these sub-basins, as the SBT have never taken action to have their assertions recognized or judicially established.

18

Throughout NOAA's draft 4(d) determination document, NOAA fails to write with accuracy and precision, as by failing to use the words "proposed in" or "contemplated in" when referring to the SBT TRMP. This is misleading and creates the potential for misunderstanding, confusion and uncertainty in the future. Uncertainty that NOAA introduces about harvest planning in the Imnaha and Grande Ronde sub-basins poses the potential for real-world harm to the Nez Perce Tribe, the CTUIR, and the State of Oregon, and to the general public.

19

NOAA's draft NEPA document creates even more opportunity for misunderstanding, confusion and uncertainty.

At the outset, it is important to note that NOAA failed to consult with the Nez Perce Tribe during the scoping process of this NEPA document: this itself is contrary to law.

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NOAA's draft NEPA document has no foundation in factual or legal realities.

21

On the opening page of its draft NEPA document, NOAA states: "For the purpose of this analysis, ODFW, CTUIR, and SBT are considered parties engaged in fisheries management in the Grande Ronde and Imnaha Rivers. For the purpose of this analysis, the four submitted plans

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will be collectively referred to as Management Plans." This description is contrary to the Federal Court Order that NOAA entered into as well as the recent federal court order involving NOAA:

> However, as reflected in the Management Agreement, the Shoshone-Bannock Tribes' fishing rights are undetermined in the locations that are the subject of their TRMP and they are not denominated a "co-manager" or a "management entity" in the basins at issue. The Shoshone-Bannock Tribes sought to intervene in this case on October 10, 1985, but they have taken no action on the complaint in intervention since then. All of the parties agreed in the Management Agreement that the Shoshone-Bannock Tribes' participation in the Management Agreement "in no way represents an admission, determination, settlement, or adjudication of any legal or factual issues related to the nature and scope of the Shoshone-Bannock Tribes' off-reservation fishing rights[.]" Mngmt. Agmt. 2-3.

22

This type of legal and factual inaccuracy is what led the Federal District Court to state:

> I do note, however, that the United States' communications with the Shoshone-Bannock Tribes unnecessarily inflamed the situation. In the Dygert Letter, NOAA accepted the TRMP from the Shoshone-Bannock Tribes as a "co-manager," borrowing the lingo from the Management Agreement, rather than explicitly recognizing that the Shoshone-Bannock Tribes hold no such position.

Page 13.

It is remarkable that NOAA continues to recklessly inflame the situation with its disregard for the facts and the law.

Despite the draft NEPA document's disclaimer – similar to the one found in NOAA's draft ESA document on the SBT TRMP – NOAA's NEPA document describes the "purpose and need for the action" as "to provide fishing opportunities…for enrolled tribal members of the SBT[.]" NOAA has no authority to pursue such a purpose, nor is such a purpose grounded in any legal basis. The statement cannot be reconciled with NOAA's disclaimer, and it cannot be reconciled with what NOAA's asserts is its task under the Tribal 4(d) rule.

23

NOAA goes even further afield with respect to the facts, describing that NOAA would provide "ESA coverage for *ongoing* fisheries regulated by ODFW and the SBT and CTUIR in the action area." There are *no* ongoing SBT fisheries in the Imnaha and Grande Ronde Rivers. In fact, in 2010, when, apparently as a result of confusion created by NOAA, the SBT took four fish from the Imnaha; as soon as the Nez Perce Tribe, the CTUIR, and the State of Oregon learned of this infringement, the SBT left the area and the State of Oregon requested and received confirmation from the SBT Council that the SBT "do not intend to resume fishing on the Imnaha River until

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24 their interests relative to the river are resolved." Letter from the Oregon Governor's Office to Chairman, Nez Perce Tribe, July 19, 2010.[7]

25 NOAA's draft NEPA document's section on "socio-economics" is entirely divorced from the realities of the specific action area, offering generalities about "Native Americans" in "the Columbia Basin" without reference to the actual history and legal determinations regarding the Imnaha and Grande Ronde River sub-basins.

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[7] Oregon's action at this time was consistent with its prior position when the SBT sought to intervene in U.S. v. Oregon. The State of Oregon adopted the Joint Memo of the Columbia River Tribes and the State of Washington in Opposition to the Shoshone-Bannock Tribes' Motion to Intervene. U.S. v. Oregon, Docket #s 1338, 1341. This joint brief differentiated the 1855 rights of the Nez Perce, Umatilla, Yakama and Warm Springs from the allegations of the SBT, and stated as follows with respect to the SBT assertions:

> In sum, the best that can be said for the Shoshone-Bannocks' claim of allocation and injunctive rights is that the existence and nature of such rights is undetermined....Such a judicial determination [of the SBT assertions] must first settle whether such rights exist. If they do, it must be determined what share the Shoshone-Bannocks are entitled to, and which of the existing parties must give up a part of their allocation to the Shoshone-Bannocks.

Subsequently, the State of Washington stated as follows with respect to SBT assertions in the State of Washington on the mainstem Snake River:

> We understand that the Shoshone-Bannock Tribes claim off-reservation fishing rights under Article 4 of the Fort Bridger Treaty of July 3, 1868, which provides that the signatory Tribes "shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon." The Washington Supreme Court has construed similar language in the so-called "Stevens treaties" as being "limited to the right previously exercised—that is to the ceded lands or to lands on which the [Tribe] traditionally hunted." State v. Buchanan, 138 Wn.2d 186, 203, 978 P.2d 1070, 202-203 (1999), cert.denied, 528 U.S. 1154 (2000). The Shoshone-Bannock Tribes' ceded lands are not within Washington State. Nor do we know of any evidence that the Shoshone-Bannock Tribes traditionally hunted Chinook salmon in the mainstem Snake River in what is now Washington State. We conclude, therefore, that Shoshone-Bannock tribal members are subject to Washington State law when they hunt for Chinook salmon in the mainstem Snake River within Washington State.

State of Washington, Attorney General's Office to Shoshone-Bannock Tribal Attorneys, June 11, 2002.

26 NOAA's "environmental justice" section of its NEPA document is even more inflammatory, describing, "In the action area…The tribes affected are the SBT, CTUIR and the Nez Perce Tribe." Again, this has no basis in the actual history and legal determinations regarding the Imnaha and Grande Ronde sub-basins.

Conclusion

27 NOAA's draft ESA and NEPA documents with respect to the SBT TRMP in the Imnaha and Grande Ronde sub-basins are legally hypothetical and therefore entirely ineffectual; they are contradictory of the status quo legal reality – unestablished and undetermined – of SBT fishing rights; and they are administratively wasteful. The Tribe moreover is extremely concerned that NOAA's failure to give meaning to the language of the 4(d) rule in its entirety, as well as NOAA's lack of accuracy and precision in its disclaimers, and its failure to ensure that the

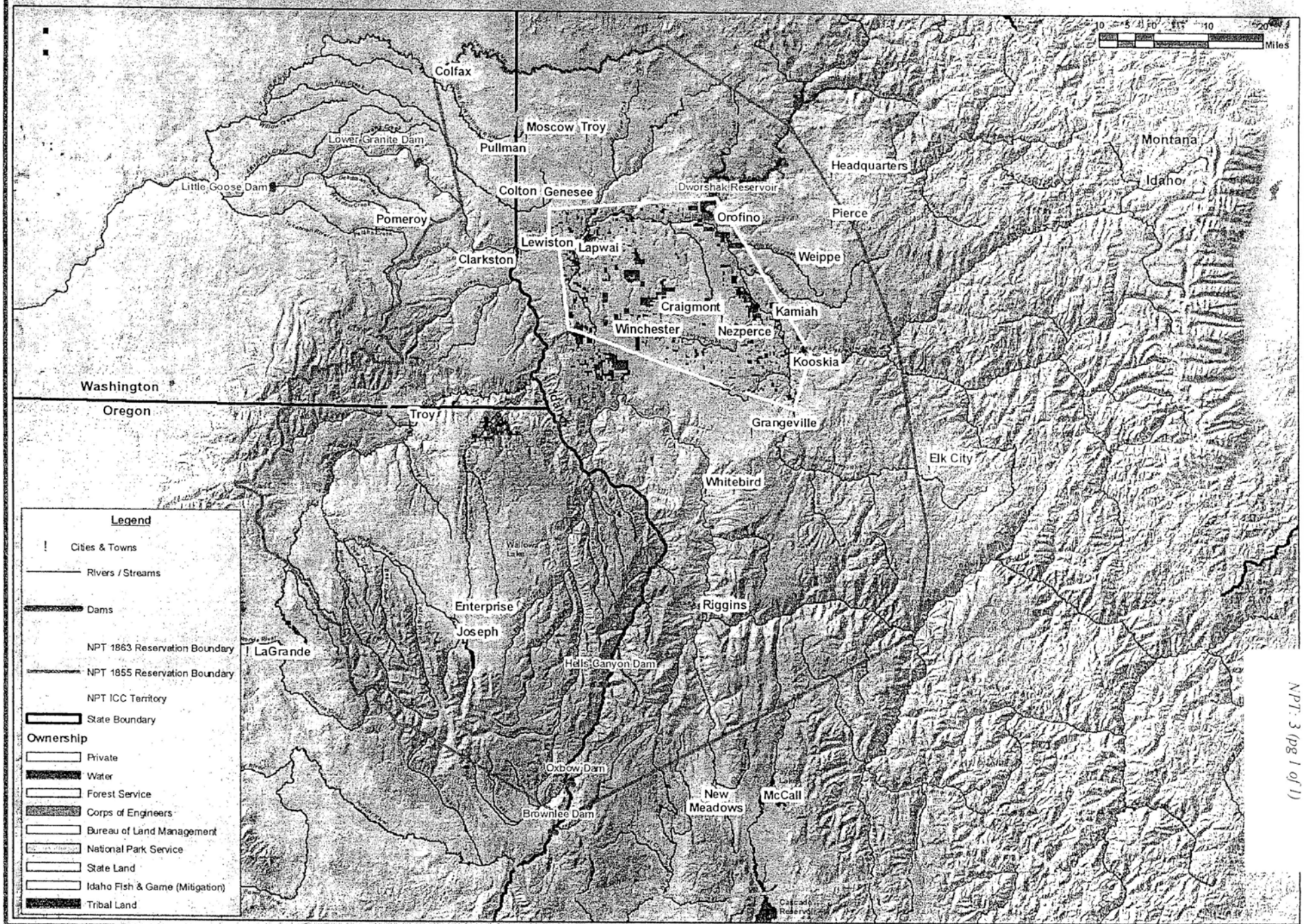
28 remainder of the documents conform to the disclaimers, may again create confusion and misunderstanding and the potential for a volatile real-world situation on the Imnaha and Grande Ronde rivers in the future. The Tribe urges NOAA to carefully consider its actions and to comply with the law.

Thank you for this opportunity to share our concerns.

Sincerely,

Brooklyn D. Baptiste
Chairman

Territory of the Nez Perce Tribe



NPT 3 (pg 1 of 1)

NMFS Responses to Nez Perce Tribe September 12, 2011, Comment Letter

1. Comment Noted
2. Comment Noted
3. Comment Noted
4. Comment Noted
5. Comment Noted
6. Comment Noted
7. Comment Noted
8. Comment Noted

9. Both NOAA's draft 4(d) determination document and NOAA's draft NEPA document fail to provide a complete reading of the Tribal 4(d) rule.

NMFS provided an adequate ESA 4(d) history and discussion of the ESA's purpose in Subsection 1.1, Background, to frame the scope of the EA analyses of environmental consequences. NMFS's actions in analyzing environmental consequences pursuant to NEPA are not inconsistent with a "complete reading of the Tribal 4(d) rule." "The NEPA process is intended to help public officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment" (40 CFR 1500.1(c)).

The purpose of the EA is to assist NMFS with planning and decisionmaking by analyzing impacts on environmental and social resources from fishing in the action area (40 CFR 1501.3). Although the purpose and need is to provide ESA coverage for ongoing fishing activities, NEPA requires a broader assessment of impacts based on the activities resulting from the Proposed Action. The treaty rights disputes in the action area are not pertinent to the analysis of the aggregate effects of fishing. The key issue for a NEPA analysis is how fishing, by any person, party, or entity, and by all parties collectively, would impact resources in relation to the alternatives[1]. "Relation" is used broadly because NEPA requires an assessment of direct, indirect, and cumulative effects. So, any entity/party that fishes, or who may fish, in the action area has a relationship to resource impacts.

Finally, NMFS cannot ignore an applicant's or party's request for action. In this case, the SBT sought ESA 4(d) approval from NMFS for ESA compliance with a fishery in the action area (i.e., the SBT's request for action by NMFS). NMFS properly analyzed impacts related to that request in its NEPA analysis. The issue of whether the SBT possesses treaty rights to fish in the action area is outside the scope of NEPA mandates and requirements. Furthermore, the Council on Environmental Quality has affirmed that "a potential conflict with local or federal law does not necessarily render an alternative unreasonable" (CEQ 40 Most Asked Questions, 2b).

[1] Council on Environmental Quality regulations refer to outside agency "parties" as "applicants" (40 CFR 1501.2(d)). However, NMFS Northwest Region does not consider the term "applicants" to be accurate for ESA 4(d) approvals, so the term "parties" has been applied.

10. Comment Noted (See also Comment Response No. 9).

11. The Tribal 4(d) rule does not authorize NOAA to make new determinations of legally enforceable tribal rights to fish or of the location of any such rights.

The draft EA that analyzes the Proposed Action does not make any determination about legally enforceable tribal rights or the location of such rights, nor will the final EA or Finding of No Significant Impact (FONSI) (if such a NEPA finding is warranted). NMFS specifically notes in the EA that "NMFS takes no position on those rights in making a determination as to whether a fishery would be likely to appreciably reduce the survival and recovery of ESA-listed fish" (Subsection 1.2, Description of the Proposed Action, footnote 3). As stated above, NMFS's mandate under NEPA is not to determine or to analyze treaty rights or any other legal rights, but to analyze environmental consequences associated with a Proposed Action and its alternatives (40 CFR 1500.1(c)).

Finally, NMFS's ESA review of Tribal Resource Management Plans does not itself permit the operation of the described fisheries. The United States' treaties with Indian tribes are the supreme law of the land, and thus NMFS cannot make judicially binding determinations regarding the nature and extent of tribal treaty rights. Such determinations are the province of Federal courts. NMFS's role is solely limited to making a determination as to whether a fishery would be likely to appreciably reduce the survival and recovery of ESA-listed fish if that fishery is implemented (i.e., the ESA determination), and whether there exists a potential for significant impact on the human environment under the Proposed Action or its alternatives (i.e., the NEPA determination).

12. If NOAA were to make a determination on a SBT TRMP for the Imnaha and Grande Ronde – a determination that must be consistent with legally enforceable tribal rights – in the face of the Federal Court Orders set forth above that the SBT's rights are "undetermined" in the Imnaha and Grande Ronde and the underlying legal and factual realities – such determination would by definition by "contrary to law," "arbitrary and capricious," and contrary to the law of the case in U.S. v Oregon.

This comment consists of legal argument and has been noted. The EA is an analysis pursuant to NEPA, and its conclusion about potential impacts on the human environment does not affect treaty rights, as discussed above. Further, while NMFS disagrees with the legal conclusions contained in the comment, it is noted that 40 CFR 15.02.14(c) requires that the alternatives section of the NEPA document "[i]nclude reasonable alternatives not within the jurisdiction of the lead agency." The Council on Environmental Quality has affirmed that "An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. [For example,] alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable…" (CEQ 40 Most Asked Questions, 2b). Additionally, the Council on Environmental Quality has clarified that "in determining the scope of alternatives to be considered, the emphasis is

on what is 'reasonable' rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative" (CEQ 40 Most Asked Questions, 2a).

13. If NOAA were to make such determination, it would interject real world uncertainty where none exist, thereby causing harm.

Comment noted.

14. NOAA's draft ESA and NEPA documents turn NOAA's 4(d) determination into a legally ineffectual and administratively wasteful exercise of reviewing an entirely hypothetical fishery and making an entirely hypothetical determination as to whether the hypothetical fishery would "appreciably reduce the likelihood of survival and recovery of listed salmonids."

Comment noted.

15. Comment Noted
16. Comment Noted
17. Comment Noted
18. Comment Noted
19. Comment Noted

20. At the outset, it is important to note that NOAA failed to consult with the Nez Perce Tribe during the scoping process of this NEPA document; this itself is contrary to law.

NMFS did not act contrary to any law during development of the NEPA document. No public scoping was conducted for this analysis because the level of NEPA review determined by NMFS for this action was an EA. Neither the Council on Environmental Quality regulations nor NOAA's NEPA implementing regulations require public scoping for the preparation of an EA (40 CFR 1501.7; NOAA Administrative Order (NAO) 216-6 5.02(c)).

NMFS implements an internal scoping process to make its determination on the level of NEPA review for a Proposed Action – EA, environmental impact statement (EIS), or categorical exclusion. This internal scoping process does not involve the public or any interested party or applicants and is necessarily an internal decision making process. Although not required by Council on Environmental Quality regulations or NAO 216-6, the NMFS NWR publishes its draft EAs for public comment. If the EA cannot be supported by a FONSI, an EIS will be prepared for NEPA compliance. If an EIS is warranted, NMFS will follow applicable Council on Environmental Quality and NAO 216-6 requirements to invite public participation to prepare the EIS during a formal public scoping process.

21. Comment Noted

22. On the opening page of its draft NEPA document, NOAA states "For the purpose of this analysis, ODFW, CTUIR, and SBT are considered parties engaged in fisheries management in the Grande Ronde and Imnaha Rivers. For the purpose of this analysis, the four submitted plans will be collectively referred to as Management Plans." This description is contrary to the Federal Court Order that NOAA entered into as well as the recent Federal Court Order involving NOAA:… It is remarkable that NOAA continues to recklessly inflame the situation with its disregard for the facts and law.

The quoted sentence has been deleted to avoid further misunderstanding. The intent was to state that for the purpose of analysis, it is assumed that the Proposed Action is lawful and will be carried out, though as discussed above NMFS recognizes that there are disputes over tribal treaty rights, and that the EA does not in any way attempt to resolve those disputes. The effects analyses consider the total impacts of fishing, regardless of allocation.

23. Despite the draft NEPA document's disclaimer…NOAA's NEPA document describes the purpose and need for the action as to provide fishing opportunities for enrolled tribal members of the SBT. NOAA has no authority to pursue such a purpose, nor is such a purpose grounded in any legal basis.

The purpose and need statement considers how the Proposed Action and its activities will satisfy the applicant's and parties' objectives as well as NMFS's objective to ensure that any action implemented is consistent with ESA requirements; the analysis in the EA responds to these collective objectives (40 CFR 1502.13). It is important that both purpose and need objectives are reflected so that a range of reasonable alternatives can be developed. The fisheries described in the EA are not NMFS's purposes or needs but rather those of the tribal parties and State applicants.

Note that the purpose and need statement has been modified in the supplemental EA.

24. NOAA goes even further afield with respect to the facts, describing that NOAA would provide "ESA coverage for *ongoing* fisheries regulated by ODFW and the SBT and CTUIR in the area." There are *no* ongoing SBT fisheries in the Imnaha and Grande Ronde Rivers [emphasis added by commenter].

While it may be accurate to say that the ODFW fisheries, for example, are ongoing, this statement did not seek to address the dispute about tribal treaty rights or past practices. It is sufficient to say that Alternative 2 would result in coverage for fisheries as set forth in the plans submitted to NMFS.

Note that the supplemental EA has been modified to reflect this comment.

25. NOAA's draft NEPA document's section on "socio-economics" is entirely divorced from the realities of the specific action area, offering generalities about "Native Americans" in the "Columbia Basin" without reference to the actual history and legal determinations regarding the Imnaha and Grande Ronde River sub-basins.

It is unclear from this comment if this pertains to the draft EA analysis in Subsection 4.7 or to the Affected Environment discussion in Subsection 3.7. The socioeconomic analysis is to inform the decision maker about possible economic and related effects to communities in the action area under the alternatives. The scope of analysis is not about the history of any one particular community, but rather about the anticipated impacts to the current economic and social condition of that community and in relation to the conditions of other communities affected by the alternatives. As discussed above, the Proposed Action is assumed to be in compliance with applicable laws for the purpose of determining potential environmental impacts, to inform NMFS' decisions, and is in no way an attempt to determine the existence or extent of treaty rights. The analysis focuses on changes to the industry and its economic output to local and area communities under the alternatives.

The historic background for the importance of fish to communities in the action area is provided in Subsection 3.7, Socioeconomics. This framework is sufficient as general context for the analysis of current revenue and related industry conditions.

Note that additional information has been added to Subsection 3.7 specific to the action area, and corollary additional analyses have been conducted in Subsection 4.7.

26. NOAA's "environmental justice" section of its NEPA document is even more inflammatory, describing, "In the action area…the tribes affected are the SBT, CTUIR and the Nez Perce Tribe." Again, this has no basis in the actual history and legal determinations regarding the Imnaha and Grande Ronde sub-basins.

NMFS considers the SBT, CTUIR, and Nez Perce to be "affected tribes" for the purposes of analyzing effects of the Proposed Action on environmental justice. Again, this assumption is in no way an effort by NMFS to determine the extent or existence of treaty rights. The purpose of the review is to describe the nature and scope of impacts to any minority or low income population, which includes tribal populations, that would be disproportionate in relation to effects to other populations within the action area as a result of implementing an alternative.

As stated in Subsection 3.8, Environmental Justice, the environmental justice review is subject to Executive Order 12898. However, additional information may have been helpful to the reader for developing analysis context. New text describing the Environmental Justice Order and the Council on Environmental Quality's guidance for analysis has been added to Subsection 3.8, Environmental Justice.

27. NOAA's draft ESA and NEPA documents with respect to the SBT TRMP in the Imnaha and Grande Ronde sub-basins are legally hypothetical and therefore entirely ineffectual; they are contradictory of the status quo legal reality – unestablished and undetermined – of SBT fishing rights; and they are administratively wasteful.

See Comment Responses Numbers 12 and 14.

Confederated Tribes *of the*
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September 12, 2011

Via e-mail to NEOregonFisheryPlans.nwr@noaa.gov

Enrique Patino
National Marine Fisheries Service
Salmon Management Division
7600 Sand Point Way, NE
Seattle, WA 98115

Re: **Comments on Northeast Oregon Fishery Plans**

Dear National Marine Fisheries Service:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) submits the following comments in response to NOAA's Notice that it is proceeding with the proposed evaluation of the Shoshone-Bannock Tribes's (of the Fort Hall Reservation in eastern Idaho) (SBT) proposed Tribal Resource Management Plan (TRMP) for fisheries in Northeast Oregon.

1 In or about 1985 the SBT filed a complaint to intervene in the *United States v. Oregon* proceeding in the United States District Court for the District of Oregon, a proceeding that was in its eighteenth year. That proceeding is where, among other things, fishery allocation in the Columbia River and its tributaries is determined among states and tribes. The SBT intervened to have the Court determine the nature and scope of any SBT treaty fishing rights that might exist. The Tribes and States of Oregon and Washington and tribes objected to intervention by the SBT on a number of grounds, including the existence of any treaty fishing rights within the scope of the proceeding.

2 The Court allowed the SBT to intervene, but specifically noted that it was not making "any ruling on the scope or breadth" of any SBT fishing rights that may exist. (Docket No. 1380, July 25, 1986 Tr. at 111). The SBT failed to act on its Complaint in *U.S. v. Oregon* over the past 25 years, and still has not. Consequently, the SBT hold no federally recognized or established fishing rights in Northeast Oregon or any other geographic area subject to the US v. Oregon Court's jurisdiction. *See, e.g.,* the Court's recent holding that "as reflected in the *U.S. v. Oregon* Management Agreement, the Shoshone-Bannock Tribe's fishing rights are undetermined in the

2 locations that are the subject of their [Imnaha and Grande Ronde] TRMP and they are not denominated a 'co-manager' or a 'management entity' in the basins at issue." *U.S. v. Oregon*, Opinion and Order, Docket # 2589 (D. Oregon, March 11, 2011).

3 NOAA asserts that this "ESA review of tribal resource management plans does not itself permit the operation of the described fishery" and that its review of the SBT TRMP "would neither expand nor limit whatever treaty fishing rights the SBT possess." NOAA thereby admits the existence and scope of those rights are not established.

4 As the federal Court also stated earlier this year, NOAA, by "engaging in a consultation process on a harvest plan .... without first determining whether a fishery harvest may legally occur in the first place seems to **put the cart before the horse**." *U.S. v. Oregon,* Opinion, Docket #2589. (Emphasis added.)

5 The CTUIR believes that NOAA should not proceed to an ESA determination on the SBT TRMP until such time as any SBT's treaty fishing rights in Northeast Oregon are established and proven.

6 The CTUIR would also like to clarify the meaning of the CTUIR's description of "state" and "tribal" fisheries impacts in the CTUIR's TRMP for the Imnaha and Grande Ronde Rivers. The "tribal" fisheries referred to in the CTUIR plan do not encompass fisheries the SBT may attempt to conduct. In our plan, the CTUIR has committed to addressing the allocation issues with the Nez Perce Tribe. Any fisheries that may be conducted by the SBT in the Grande Ronde or Imnaha River sub-basins shall be counted against the State of Oregon's allocation, unless and until such time as the SBT judicially establishes that the Treaty of Fort Bridger or any other legal theory entitles them to treaty fisheries in the Imnaha and Grande Ronde sub-basins.

7 This position is consistent with and reaffirms the CTUIR position with respect to the SBT taken in past *US v. Oregon* proceedings, including but not limited to, NOAA's 2010 treatment of the SBT TRMP for Northeast Oregon tributaries.

Please do not hesitate to contact N. Kathryn Brigham or Brent Hall at (541) 429-7407 should you have any questions.

Sincerely,

Les Minthorn

Les Minthorn, Chair
Board of Trustees
Confederated Tribes of the Umatilla Indian Reservation

NMFS Responses to Confederated Tribes of the Umatilla Indian Reservation September 12, 2011, Comment Letter

1. Comment Noted
2. Comment Noted
3. NMFS's ESA review of Tribal Resource Management Plans does not permit the operation of the described fisheries. The United States' treaties with Indian tribes are the supreme law of the land, and thus NOAA cannot make judicially binding determinations regarding the nature and extent of tribal treaty rights. Such determinations are the province of federal courts. NOAA's role is solely limited to making a determination as to whether a fishery would be likely to appreciably reduce the survival and recovery of ESA-listed fish. NOAA's assertions in the court proceeding stand for themselves.
4. Comment Noted
5. Comment Noted
6. Regardless of how the Tribal fishing rights issue is resolved, the Environmental Assessment and Endangered Species Act documents consider the effects of total combined take and not the plausible allocations of take among the different proposals. Considering these effects is not intended to cause or endorse any specific allocation of the catch (See Response to Comment No. 3).
7. Comment Noted

Oregon
John A Kitzhaber MD., Governor

Department of Fish and Wildlife
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September 12, 2011

Enrique Patiño
National Marine Fisheries Service
Salmon Management Division
7600 Sand Point Way, NE.
Seattle, WA. 98115

RE: Comments on Northeast Oregon Fishery Plans

Dear Mr. Patiño

The Oregon Department of Fish and Wildlife (ODFW) appreciates the opportunity to comment on the Shoshone-Bannock Tribal Resource Fishery Management Plan (Plan) for spring chinook fisheries in Northeast Oregon. We are not commenting on the specific elements of the plan, but on the jurisdictional issue underpinning the ongoing dispute between the affected tribes.

1 As we have commented in the *US v Oregon* forum, ODFW reiterates the need to resolve the long standing jurisdictional debate regarding the status of the Shoshone-Bannock Tribes (SBT) treaty fishing rights in Northeast Oregon. Without resolution, Oregon and the other *US v Oregon* parties cannot appropriately manage or enforce any of the fisheries contemplated under the Plan or the current *US v Oregon* agreement.

2 If appropriate federal or judicial resolution determines the SBT have treaty rights in the affected area, then the management parties can proceed with management and enforcement of the fisheries within the appropriate tribal impact allocations and NMFS approved Plan. If it is determined that the SBT does not have treaty fishing rights in the affected area, then managers may proceed with implementation of fisheries consistent with the non-tribal fishery rules, regulations and impact allocations.

3 While some tribes have asked for Oregon's assistance resolving this dispute, we do not have the legal authority, appropriate forum or historical expertise to attempt to make a determination on this jurisdictional point. The Federal government does, however, as the tribes' trustee. We ask that as the trustee you exercise that authority in as timely a manner as possible.

4 Again it is very clear to Oregon that authorization of the SBT Plan without resolution of the long standing jurisdictional issues will lead to management and enforcement conflicts that the state of Oregon is ill-equipped and unable to resolve.

Thank you again for the opportunity to comment.

Sincerely

Steve Williams
Deputy Fish Division Administrator,
US v Oregon Policy Representative

NMFS Responses to Oregon Department of Fish and Wildlife September 12, 2011, Comment Letter

1. Comment Noted
2. Comment Noted
3. Comment Noted
4. NMFS's ESA review of Tribal Resource Management Plans does not permit the operation of the described fisheries. The United States' treaties with Indian tribes are the supreme law of the land, and thus NOAA cannot make judicially binding determinations regarding the nature and extent of tribal treaty rights. Such determinations are the province of Federal courts. NOAA's role is solely limited to making a determination as to whether a fishery would be likely to appreciably reduce the survival and recovery of ESA-listed fish. NOAA does not agree that management and enforcement conflicts would necessarily arise from such determination.