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Roadless Area Conservation

National Forest System Lands in Idaho

Tribal Specialists Report

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Changes Between The Draft And Final EIS

- Included additional information about the five Idaho Tribes, including a summary of Tribal interests and treaty rights which may be affected by the permissions or prohibitions of the proposed action.
- Provided additional information on Government-to-Government relationships
- Added analysis of the new alternative, Modified Idaho Roadless Rule

Introduction

The United States has a unique relationship with American Indian Tribes -- as provided in the U.S. Constitution, treaties, and Federal statutes -- since federally recognized Tribes are considered “sovereign nations.” These relationships extend to the Federal Government’s management of public lands. There are numerous American Indian Tribes with interests in Idaho. Among these are five federally recognized Tribes with significant land holdings within the state. National Forest System (NFS) lands lie within their aboriginal territories (USDA FS, USDI BLM, 1997). They share some common watersheds and, in some cases, have reservations neighboring NFS lands. These “Idaho Tribes” are the Kootenai Tribe of Idaho, Nez Perce Tribe, Coeur d’Alene Tribe, Shoshone-Paiute Tribes, and the Shoshone-Bannock Tribes. These five Idaho Tribes were recognized by the Indian Claims Commission as having significant Indian Title to lands within Idaho (USGS, 1978).

Affected Environment

Tribal Reservation Interests and the Forest Service’s General Trust Duty

Each Idaho Tribe has interests in the management of NFS lands that include the right to be protected from any adverse impacts to their reservation land and property from activities on nearby Forests. The Agency largely fulfills its role in protecting those on-reservation interests (clean water, clean air) when it consults with each Tribe and complies with all related environmental and natural resource management laws (Okanogan Highlands Alliance v. Williams, 9th Circuit 2000).

Tribal Reserved Rights and the Forest Service’s Specific Statutory Duties

In addition, three Idaho Tribes have some specific off-reservation reserved rights, through treaties and agreements with the United States, on NFS land (USDA FS, USDI BLM 1997). These include statutory rights to natural resources on the forests such as fish, wildlife, and plants (Swim v Bergland, 9th Circuit 1983). In general, forest management must protect or enhance the resources that these reserved rights depend on (Treaty Rights Law Alert 2007). When there is a conflict with a Tribe’s reserved right on a forest and a primary purpose for the NFS lands, every effort is made to minimize the impact and mitigate environmental effects. The statutory rights of these three Tribes on National Forests in Idaho are generally described as follows:

Nez Perce Tribe

Treaty with the Nez Perce of 1855, Article 3: "The exclusive right of taking fish in all the streams where running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places in common with citizens of the Territory; and of erecting temporary buildings for curing, together with privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed lands." Treaty with the Nez Perce of 1863, Article 8: "The United States also agree to reserve all springs or fountains not adjacent to, or directly connected with, the streams or rivers within the lands hereby relinquished, and to keep back from settlement or entry so much of the surrounding land as may be necessary to prevent the said springs or fountains being enclosed: and, further, to preserve a perpetual right of way to and from the same, as watering places, for the use in common both whites and Indians."

Shoshone-Bannock Tribes

Treaty with the Eastern Band Shoshoni and Bannock, 1868, Article 4: "...but they shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and so long as peace subsists among the whites and Indians on the borders of the hunting districts."

Agreement of February 5, 1898, ratified June 6, 1900, Article IV: "As long as any of the lands ceded, granted, and relinquished under this treaty remain part of the public domain, Indians belonging to the above-mentioned tribes, and living on the reduced reservation, shall have the right, without any charge therefore, to cut timber for their own use, but not for sale, and to pasture their livestock on said public lands, and to hunt thereon and to fish in the streams thereof".

Agreement Article VIII: "The water from streams on that portion of the reservation now sold which is necessary for irrigation on land actually cultivated and in use shall be reserved for the Indians now using the same, so long as said Indians remain where they now live."

Kootenai Tribe of Idaho

Treaty with the Flatheads, Kootenai, and Upper Pend Oreilles, 1855; Article 3

"The exclusive right of taking fish in all the streams running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."

Tribal History, Culture, and Background

Coeur d'Alene Tribe

In 1873 Executive Order established a 592,000 acre reservation for the Coeur d'Alene tribe; in 1887 an agreement to strengthen the commitment of the U.S. Government to secure tribal lands reduced the reservation land base. The Spokane, Kalispel, Colville, and Pend Oreille tribal members agreed to move to the reservation; In 1889 an Executive Order ceded all homeland of

the tribe, in addition to the forty percent of reservation agreed to in 1887; In 1894 an agreement removed the town of Harrison, Idaho from the reservation.

The Schitsu'umsh, "Those who are found here," originated in the regions of present-day northwestern United States. The tribe is comprised of three family bands. The first band is made up of those families living along and near the Coeur d'Alene River; the second band is made up of those living along the St. Joe River; and the third band is made up of those families living near Hayden Lake, Coeur d'Alene Lake, and Spokane River. Their ancestral lands encompassed nearly 5,000,000 acres in what are now Idaho, Washington, and Montana. The tribe traditionally hunted buffalo on the Montana plains, fished for salmon at Spokane Falls, and dug for camas and other wild root crops near Kalispell and present-day Palouse. Tribal members utilized the ancient trade routes between their homelands and those of other indigenous groups, including the Nez Perce, Shoshone, and Bannock. Members of the Schitsu'umsh tribe traveled as far west as the Pacific coast. The Schitsu'umsh became known as the Coeur d'Alene, "Heart of the Awl," following their encounter with French trappers.

The Coeur d'Alene band populations were decimated by the arrival of smallpox, measles, and other European diseases that came with Euro-American encroachment on tribal lands. Records indicate that in the late eighteenth century there were as many as 5,000 members of the Coeur d'Alene bands. In 1905, less than 200 years later, the population was recorded as only 490.

An Executive Order establishing the reservation was issued in 1873. In 1887 the tribe ceded nearly 3,500,000 acres in Washington, Idaho, and Montana to the U.S. government. Several thousand more acres were ceded in 1889 and 1894. Tribal lands were reduced from almost 4,000,000 acres to 345,000 acres.

Under the Homestead Act of 1909, over 80 percent of the reservation passed out of tribal ownership. Specifically, the tribe lost ownership of most of its land along Lake Coeur d'Alene through allotment and the opening of the reservation to non-Native settlers beginning that year. Moreover, the effects of the Homestead Act were gradual social, cultural, and economic degradation. The loss of a land base jeopardized tribal identity through forced acculturation, which in turn opened the door to many social problems. In response to this tragic downward spiral, the tribe filed a claim with the Indian Claims Commission on November 15, 1950, for the compensation for the illegal confiscation of their traditional homelands. On May 6, 1958, the Commission awarded the tribe \$4,342,778 on behalf of this claim. The tribe has subsequently pursued other claims and litigation, generally successfully. The proceeds from these awards have been applied toward economic development projects such as a gaming facility, which in turn have generated more profits, ultimately to be applied toward the general welfare of tribal members (Tiller 2005: 533-536.).

Shoshone-Paiute Tribes

The federally recognized Duck Valley Reservation is home to Shoshone Indians, descendants of the Newe people, as well as being home to Paiutes, descendants of the Numa. The Duck Valley Reservation dates back to the Treaty of Ruby Valley signed by the United States and the Western Shoshone Tribes in 1863. Ancestral lands of the Western Shoshone and Northern Paiute tribes make up the present day Duck Valley Reservation. In the 1800's Euro-Americans moved onto the lands of the bands and extended families.

A Shoshone leader named Captain Sam, looking for a home for his people, inspected the Duck Valley region in 1870 and recommended to the federal government that they be allowed to settle there. The government supported his request, establishing the reservation by Executive Order in 1877, and ordering the few white settlers who lived on the land to vacate; they were compensated for the land they had claimed. Shoshone occupied the land but soon faced a crisis brought about by a severe winter. Federal government inattention to the resulting illnesses forced many Shoshones to leave Duck Valley, and in 1884 a special Indian agent called the Indians together in council to request their removal to Idaho. Captain Sam and other Indians argued earnestly against removal, and the government acquiesced. In 1885 a band of about 60 Paiutes arrived at Duck Valley with a letter from an Indian agent recommending that they be allowed to settle there. In 1886 President Cleveland issued an executive order adding land to the Duck Valley Reservation for the use of the Paiutes. President Taft added additional acreage to the reservation in 1910. The two tribes share the reservation to this day (Tiller 2005: 686-688).

Kootenai Tribe of Idaho

The Kootenai Tribe of Idaho is one of six bands of the greater Kootenai Nation. Aside from the Idaho band, the Kootenai people may be found in British Columbia and northwestern Montana. The Kootenai traditionally relied on the region's rivers, lakes, prairies, mountain forests for their sustenance.

Fur traders were the first Euro-Americans to appear on Kootenai lands, arriving in the 1830's. Within a decade, Jesuit missionaries began arriving, and shortly thereafter, homesteaders began to appear, crossing though or settling on Kootenai lands.

The ambitious Washington territorial governor, Isaac Stevens, was determined to open the Northwest to the railroad and agricultural development. This ambition spurred him to call for the 1855 Council at Hellgate, Montana. At the council, Stevens offered reserved lands and protection from further encroachment to the various bands of Salish and Kootenai in attendance. Several of the bands agreed and were placed on the Flathead Reservation, but the Idaho Kootenais had refused to even participate in or attend the council.

After losing its land to allotment, the tribe was dealt a further series of blows. First, in 1930 the Grand Coulee Dam was constructed, destroying the salmon runs upon which the tribe had depended for centuries. Then in the 1940's, non-Indian landowners refused to allow the tribe to work its traditional fishing areas along the Kootenai River. The third strike came later in that decade when the Idaho Department of Fish and Game forbade the Kootenais to hunt in their traditional areas. This decision was revised three decades later when in 1976 the Idaho Supreme court ruled that the Hellgate Treat of 1855 guaranteed the tribe's hunting rights on state and federal lands. In 1947, the tribe established its own government, though they had essentially no land base. In 1974, after decades of frustration, the tribe declared war on the U.S. government in an attempt to force the BIA to fulfill its trust responsibilities and provide a reservation. Tribal members turned the road through the minuscule reservation into a toll road, charging vehicles 10 cents each, and demanded that the U.S. enter negotiations with them. Hostilities ceased when the tribe received assurances that negotiations would be forthcoming. The federal government finally fulfilled their obligations and deeded the tribe 12.5 acres.

Today the tribe is actively engaged in preserving its traditions and heritage, which have been so integral to its survival. Elders continue to speak the Native language, with some informal

teaching it to the young people. The Kootenai remain a small, tenacious band that continues to hold fast to its sovereignty and pursue its goal of expanding its land base (Tiller 2005: 542-543).

Nez Perce Tribe

The Nimilpuus originated in the northwest region of the United States. Their ancestral homelands encompassed present-day north-central Idaho, northeastern Oregon, and southeastern Washington. Carbon dating of village sites along the Snake River and its tributaries indicates that the Nimilpuus occupied these regions as long as 11,000 years ago. There are indications of even older settlements. The Nimilpuus encountered the Lewis and Clark Expedition in 1805. Translators from that group identified the people as Nez Perce, or “pierced nose” (French). The assignment of this term to the Nimilpuus is not clear as the tribe did not practice nose piercing. However, the name was accepted and the tribe became known as the Nez Perce Tribe of Idaho.

In the early nineteenth century, the tribe participated in the fur trade with both Great Britain and America. As more and more settlers began to encroach upon the region, the tension between the Native population and the Euro-American newcomers escalated into violent conflicts. In June 1855 the Nez Perce agreed to cede several million acres to the United States in return for an approximate 7.5 million-acre reservation. In 1863 a new treaty was signed mandating a reduction in the tribe’s lands to just 750,000 acres. Often called the “steal treaty”, it stripped the Nez Perce of the Wallowa and Imnaha valleys and the land at the confluence of the Snake and Clearwater rivers, the site of the present-day towns of Lewiston and Clarkston. A number of Nez Perce bands refused to sign the treaty, including the Wallowa Valley Band led by Chief Joseph. A war ensued and resulted in the eventual surrender of the Nez Perce in 1877. Members of the Wallowa Band, among others, retreated north to Canada for a period of four months. Upon their return, the Nez Perce were confined to the new reservation lands. The reservation was further reduced by the effects of the Allotment Act of 1877. In 1893, the federal government opened all non-allotted Nez Perce lands to the public. These actions resulted in the loss of 542,000 acres of tribal lands.

In 1948, the tribe became a self-governing Nation under an adopted constitution and bylaws. As with many other tribes, the Nez Perce have experienced a cultural renaissance during the past half century. A revival of traditional arts and crafts, dance, and religion has been ongoing since the 1940s. Today, the Nez Perce are involved in writing their own history and reviving the Nez Perce language (Tiller 2005: 544-546).

Shoshone-Bannock Tribes

The Shoshone-Bannock Tribes of Fort Hall comprise members of the eastern and western bands of the Northern Shoshone and the Bannock, or Northern Paiute, bands. Ancestral lands of both tribes occupied vast regions of land encompassing present-day Idaho, Oregon, Nevada, Utah, Wyoming, Montana, and into Canada. The tribes are culturally related and, though both descend from the Numic family of the Uto-Aztecan linguistic phylum, their languages are dialectically separate. When the Northern Paiutes left the Nevada and Utah regions for southern Idaho in the 1600s, they began to travel with the Shoshones in pursuit of buffalo. They then became known as the Bannocks.

The tribes generally subsisted as hunters and gatherers, traveling during the spring and summer seasons, collecting foods for use during winter months. They hunted wild game, fished

the region's abundant and bountiful streams and rivers (primarily for salmon), and collected native plants and roots. Buffalo served as the most significant source of food and raw material for the tribes. After the introduction of horses during the 1700s, hundreds of Idaho Indians of various tribal affiliations would ride into Montana on cooperative buffalo hunts. The last great hunt of this type occurred in 1864, signaling the end of a traditional way of life.

Fort Hall was established in 1834 as a trading post. It became a way station for settlers traveling along the Oregon and California trails that cut through tribal lands. Relations between the tribes and the Euro-American settlers were strained at best. In 1863 more than 200 Shoshones were massacred along the Bear River. The attack was led by volunteer soldiers from California, and it was one of the first and largest massacres of Native peoples west of the Mississippi River. In 1864 the government attempted to confine the tribes to a reservation with the Treaty of Soda Springs, but it failed to gain ratification. The Fort Hall Reservation was established for the tribes by an Executive Order in 1867. The 1868 Treaty of Fort Bridger confirmed the agreement. This treaty established both the Fort Hall Reservation in Idaho and the Wind River Reservation in Wyoming. The treaty stipulated the establishment of a separate reservation for the Bannock band, but the promises were breached and the band remained at Fort Hall with the Shoshones.

Although the tribes were initially permitted to leave reservation lands for summer hunting and gathering practices, settlers rallied against it, and the Bannock Wars of 1878 ensued. Tribal members participating in the conflict were returned to Fort Hall. The population of the reservation increased when other Northern Shoshone bands were forcibly moved to Fort Hall.

In 1888 the tribes were forced to cede over 1,800 acres of their 1.2 million-acre reservation to accommodate the development of the town of Pocatello located nearby. Around the turn of the century, Pocatello had grown so dramatically that the tribes were forced to agree to the cession of an additional 420,000 acres. For this they received approximately \$600,000. The bulk of the lands were made available to the public through a land rush, a competition of sorts where individuals and families staked claim on designated lands during a race. On June 17, 1902, 6,000 settlers took part in the "Day of the Run" land rush of the Shoshone-Bannock lands.

The 1887 Dawes Severalty Act initiated the allotment of the reservation. This process was completed by 1914, with over 347,000 acres having been distributed among 1,863 individual allotments between 1911 and 1913 alone. By the time allotment of the tribal lands was terminated, nearly 36,000 acres had been alienated from Native ownership through sales, patents in fee, or certificates of competency. Surplus lands were ceded to Pocatello or sold to non-Natives, thus creating the checkerboard pattern of land ownership that now exists within the reservation boundaries.

In 1907, the Lehmi Reservation for the Lehmi Band of Shoshones was terminated. Remaining families were relocated to Fort Hall. In 1936, the tribes approved a constitution and bylaws for self-government under the provisions of the Indian Reorganization Act of 1934. The tribes ratified a corporate charter in 1937. As of 1992, 96 percent of the Fort Hall Reservation was once again under Indian control, either through federal trust or ownership by individual tribal members (Tiller 2005: 538-541.).

Consultation and Consideration of Tribal Concerns and Interests

The Forest Service strives to ensure that the rights and interests that Tribes have within Idaho's roadless areas are protected. In addition to a Tribe's legal interests in forest management, the

Forest Service has discretionary authority to provide additional priorities and preferences for Idaho Tribes based on their unique status with the United States (U.S. Air Tour Association v. Federal Aviation Administration D.C. Cir. 2002).

On September 23, 2004, President George W. Bush issued an Executive Memorandum recommitting the Federal Government to work with federally recognized American Indian Tribal Governments on a Government-to-Government basis, demonstrating strong support and respect for Tribal sovereignty and self-determination. President Bush also reaffirmed an earlier Executive Order (13175), Consultation and Coordination with Indian Tribal Governments, which requires agencies to consult with tribal officials early in the process of developing proposed regulations.

Management of roadless areas has been a topic of interest and importance to Tribal governments. During the promulgation of the 2001 Roadless Rule, Forest Service field line officers were asked to make contact with Tribes to ensure awareness of the initiative and rulemaking process. Outreach to Tribes was conducted at the National Forest and Grassland level, which is the appropriate Forest Service leadership level for initially conducting government-to-government dialog with Tribal leaders on this draft EIS. Tribal representatives remained engaged concerning these issues during the subsequent litigation and rulemaking efforts.

During the development of its proposed roadless rule (2005-06) the State of Idaho solicited input from the Coeur D'Alene, Kootenai, Nez Perce, Shoshone-Bannock, and Shoshone-Paiute Tribes. The State's Petition indicates that a vital part of its public process in developing its Petition was the recommendations and comments received from American Indian Tribes. The Governor's Office was keenly aware of the spiritual and cultural significance some of these areas hold for the Tribes.

In the spring of 2007 the Forest Service began to analyze the State's roadless management proposal under the Administrative Procedures Act. Initially the Forest Service sent out scoping letters to national Tribal organizations, announced the project in the local media, and in the Schedule of Proposed Actions for all of the forests in Idaho, however no Tribes responded with issues. Next, in the late summer of 2007, the Forest Service sent out a briefing letter tailored to Tribal Governments, displaying the three draft alternatives and the proposed analysis process. The briefing paper also described a process for government-to-government consultation once the draft EIS was released. The Team Leader presented this brief on August 20, 2007 to the Idaho Council on Indian Affairs. Four of the Five federally recognized Tribes based in Idaho were present.

After the release of the draft EIS government-to-government consultation continued with all the interested Tribes. More than ten meetings were held with Tribal councils prior to, during and after the formal comment period. Comments were received from all five federally recognized Tribes. Several adjustments to the proposed rule were influenced based on government-to-government consultation (see discussion of the Modified Idaho Roadless Rule below)

Environmental Consequences

All Alternatives

Impacts on Tribal resources and Tribal practices from resource management activities are not expected as this is a programmatic EIS and site-specific activities are not identified. It is projected that none of the alternatives would cause direct impacts to treaty rights. Once site-specific projects or activities are proposed, compliance with applicable laws including environmental and procedural laws would be considered and consultation would be conducted. Historic and prehistoric cultural resource and traditional properties would be protected by law as described in the Cultural section of this document.

2001 Roadless Rule (No Action)

The 2001 Roadless Rule prohibits road construction/reconstruction and timber cutting in Idaho Roadless Areas with some exceptions. Based on trend information, about 15 miles of road construction/reconstruction and 9,000 acres of timber cutting are projected over the next 15 years. Because of the minimal amount of disturbance allowed and projected, there would likely be less conflict between interest groups and Tribes over the use and management of areas that may contain sacred sites. If privacy were necessary for sacred sites, maintaining roadless characteristics would help maintain the privacy. A roadless condition might improve the habitat of plants that the Tribes use during gathering activities. Without future road access to Idaho Roadless Areas, it could be difficult for some tribal members (such as elders) to access cultural sites, hunting grounds, fishing grounds, and gathering grounds located there.

The exercise of treaty rights and traditional uses of roadless areas may be enhanced by maintaining the integrity of landscapes and plant resources in those areas. In Idaho, traditional tribal uses include the harvesting of food plants as well as medicinal and basketry materials. Sacred sites, as defined in EO 13007, are likely to be located in Idaho Roadless Areas. Under the 2001 Roadless Rule landscape integrity and sacred sites are likely to be maintained because of the limited amount of activities that are permitted under this alternative.

Existing Plans

Existing Plans prohibit road construction/reconstruction in management prescriptions similar to the Wild Land Recreation and Primitive themes (about 3.22 million acres). In these areas there would be no effect on Tribes over the use and management of areas that may contain sacred sites. About 4,482,000 acres are in management prescriptions similar to the Backcountry/Restoration (Backcountry) theme, and 1,263,200 acres are in prescriptions similar to General Forest, Rangeland, and Grassland (GFRG) theme. About 105 miles of road construction, 75 miles of road reconstruction and 40,500 acres of timber cutting are projected to occur over a 15-year period within Idaho Roadless Areas under Existing Plans. In addition, road construction and reconstruction to access new mineral leases (oil and gas, and geothermal) would be permitted in the GFRG theme, and to access unleased phosphate deposits in the Backcountry and GFRG theme (about 13,620 acres).

There is some potential risk to sacred sites where American Indians conduct ceremonies that require privacy in areas in prescriptions similar to the Backcountry and GFRG themes. If a road were built to or near such a site, the associated increase in visitation could make it difficult to

conduct ceremonies there, undermining the important cultural practice. A Tribe could request that the Forest Service temporarily close the site to non-tribal members for a short period under the new 2008 Farm Bill Authority. Roads, timber cutting, and mining may also alter the character of places that have historical or cultural value, thereby diminishing their value.

The exercise of treaty rights and traditional uses of roadless areas may be enhanced by maintaining the integrity of landscapes and plant resources in those areas. In Idaho, traditional tribal uses include the harvesting of food plants as well as medicinal and basketry materials. Sacred sites, as defined in EO 13007, are likely to be located in Idaho Roadless Areas. Under Existing Plans there is a potential that landscape integrity and sacred sites may be affected because of the activities that are permitted under this alternative. However, prior to implementing resource management activities, impacts on tribal governments and tribal practices would be assessed and consultation requirements fulfilled.

Proposed Idaho Roadless Rule (Proposed Action)

The Proposed Idaho Roadless Rule prohibits road construction/reconstruction in the Wild Land Recreation, Primitive, and SAHTS themes (about 3.1 million acres). About 5,258,700 acres are in the Backcountry theme and 609,600 acres are in the GFRG theme. Road construction/reconstruction and timber harvest are permissible in GFRG, and permitted in specific situations in Backcountry. About 38 miles of road construction, 23 miles of road reconstruction and 18,000 acres of timber cutting are projected to occur over 15 years within Idaho Roadless Areas. In addition, road construction and reconstruction to access new mineral leases (oil and gas, and geothermal) would be permitted in the GFRG theme, and to access unleased phosphate deposits in the Backcountry and GFRG theme (about 13,190 acres).

There is some potential risk to sacred sites where American Indians conduct ceremonies that require privacy in the Backcountry and GFRG themes. If a road were built to or near such a site, the associated increase in visitation could make it difficult to conduct ceremonies there, undermining the important cultural practice. A Tribe could request that the Forest Service temporarily close the site to non-tribal members for a short period under the new 2008 Farm Bill Authority. Roads, timber cutting, and mining may also alter the character of places that have historical or cultural value, thereby diminishing their value.

The exercise of treaty rights and traditional uses of roadless areas may be enhanced by maintaining the integrity of landscapes and plant resources in those areas. In Idaho, traditional tribal uses include the harvesting of food plants as well as medicinal and basketry materials. Sacred sites, as defined in EO 13007, are likely to be located in Idaho Roadless Areas. Under Proposed Idaho Roadless Rule there is still a potential that landscape integrity and sacred sites may be affected because of the activities that are permitted under this alternative. However, prior to implementing resource management activities impacts on Tribal governments and Tribal practices would be assessed and consultation requirements fulfilled.

Modified Idaho Roadless Rule (Preferred Alternative)

Based on consultation with Tribes and public comments, several changes were made to the proposed rule. The following highlights some of the changes that respond to Tribal concerns.

1. Language was added to the rule that states “This subpart does not modify the unique relationship between the United States and Indian Tribes that requires the Federal

Government to work with federally recognized Indian tribes on a Government-To-Government basis as provided for in treaties, laws, or executive orders. Nothing herein limits or modifies prior existing tribal rights, including those involving hunting, fishing, gathering and protection of cultural and spiritual sites.”

2. The rule was changed to strengthen the relationship of the Idaho Roadless Rule with land management plan components that provide direction for managing/protecting the fish, wildlife, gathering, and cultural resources that are essential to meeting the Agencies trust duty and fulfilling statutory off-reservation treaty rights.
3. About 257,700 acres on the Caribou-Targhee and Sawtooth National Forests were changed from GFRG to Backcountry, including lands in Toponce, Oxford, and Elkhorn Mountains Roadless Areas.
4. The Rapid River Roadless Area on the Nez Perce and Payette National Forests was changed from Primitive to Wild Land Recreation.
5. The permissions for road construction/reconstruction were narrowed in the Backcountry theme. Temporary roads may be constructed to facilitate hazardous fuel treatment projects within the community protection zone (narrow area around communities—no more than 1½ miles wide); or to reduce the significant risk of wildland fire effects to an at-risk community or municipal water supply system.
6. In the case of significant risk, additional analysis must be completed that shows that conditions are conducive to a wildland fire disturbance and there would be adverse effects on an at-risk community or municipal water supply system as a result. The analysis must also show the activity cannot be reasonably accomplished without a temporary road and that the activity maintains or improves one or more of the roadless area characteristics over the long-term.
7. Areas in the Backcountry theme where there are no communities or municipal water supply systems would be managed like the 2001 Roadless Rule (for example, no road construction, and limited timber cutting for ecosystem composition and structure or for improvement of threatened, endangered, or sensitive species habitats). Many of the areas within the Backcountry theme that were of tribal concern have few, if any, communities or municipal water supply systems.
8. The Modified Rule permits but decreases road construction and reconstruction to access 5,770 acres of unleased phosphate deposits in the GFRG theme. Road construction/reconstruction would be prohibited to access unleased deposits in the Bear Creek, Bald Mountain, and Poker Creek Roadless Areas.

The Modified Rule prohibits road construction/reconstruction in the Wild Land Recreation, Primitive, and SAHTS themes (about 3.25 million acres). In these areas there would be little conflict between interest groups and Tribes over the use and management of areas that may contain sacred sites. About 5,312,900 acres are in the Backcountry theme and 405,900 acres are in the GFRG theme. Road construction/reconstruction and timber harvest are permissible in GFRG. In the Backcountry theme, temporary road construction and road reconstruction would be permitted to facilitate timber cutting to reduce hazardous fuels in CPZ (442,000 acres). In addition, outside the CPZ, temporary road construction would be permitted to reduce significant risk of wildland fire effects to at-risk communities or municipal water systems if that is the only way to accomplish objectives. Regional forester approval is also required. About 33

miles of road construction, 17 miles of road reconstruction, and 15,000 acres of timber cutting are projected to occur over 15 years within Idaho Roadless Areas.

In addition, road construction and reconstruction to access new mineral leases (oil and gas, and geothermal) would be prohibited in the GFRG theme; therefore, there would be no effect on tribal interests from these activities. Road construction and reconstruction would be permitted to access unleased phosphate deposits on 5,770 acres in the GFRG theme.

There is some potential risk to sacred sites where American Indians conduct ceremonies that require privacy in areas in the Backcountry (primarily within the CPZ) and GFRG themes. However, under the Modified Rule, roads to facilitate timber cutting would be temporary and could be used only for the specified purpose. A Tribe could request that the Forest Service temporarily close the site to non-tribal members for a short period under the new 2008 Farm Bill Authority. The exercise of treaty rights and traditional uses of roadless areas may be enhanced by maintaining the integrity of landscapes and plant resources in those areas. In Idaho, traditional tribal uses include the harvesting of food plants as well as medicinal and basketry materials. Sacred sites, as defined in EO 13007, are likely to be located in Idaho Roadless Areas. Under Modified Idaho Roadless Rule, landscape integrity, except in possibly in phosphate lease areas, would be maintained or enhanced because of the limited activities permitted and the design of those activities (reduce wildland fire risk, retain large trees, restore ecosystem composition, and structure, etc.). Some sacred sites could be affected because of the activities that are permitted under this alternative. However, prior to implementing resource management activities, impacts on tribal governments and tribal practices would be assessed and consultation requirements fulfilled.

Cumulative Effects

The effects of other programmatic management and policy decisions would be limited because they do not approve site-specific actions. Management decisions such as PACFISH, INFISH, the Northern Rockies Lynx Management direction, and the management direction for grizzly bears in the Greater Yellowstone ecosystem all enhance wildlife and fisheries habitat, which would indirectly improve habitat conditions consistent with all of the Tribe's desired direction. These decisions in combination with the management direction (permissions and prohibitions) would further improve wildlife and fisheries habitat. By doing this, these programmatic actions safeguard the exercise of treaty rights and traditional uses of NFS lands. The 2001 Roadless Rule, Proposed Rule and Modified Rule may further enhance the traditional uses of Idaho Roadless Areas through their various prohibitions on road construction/reconstruction, tree cutting, sale, or removal, and mining activities in Idaho Roadless Areas. In the context of the state of Idaho as a whole, these alternatives would limit activities on NFS lands that have the potential to conflict with the exercise of treaty rights and traditional uses. These additional protections would vary by alternative, commensurate with the projected level of activities. Prior to implementing resource management activities, impacts on Tribal interests and Tribal practices would be assessed and consultation requirements fulfilled.

Other policy decisions such as the National Fire Plan, Healthy Forests Initiative, Healthy Forests Restoration Act, and Energy Policy Act were considered in the analysis. The projections for timber cutting and minerals development were based, in part, on implementing the objectives of these policies.

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