

Tribal Rights and Interests

INTRODUCTION

Governmental Interests in the Boise, Payette, and Sawtooth National Forests

The Nez Perce, Shoshone-Bannock, and Shoshone-Paiute interest in the three Forests goes beyond that of spiritual and cultural, to the unique legal relationship that the United States government has with American Indian tribal governments. Federally recognized tribes are sovereign nations who work with the federal government and its agencies through the process of government-to-government consultation. The federal trust relationship with each tribe was recognized by, and has been addressed through, the Constitution of the United States, treaties, executive orders, statutes, and court decisions. In general, these mandates protect and enhance the ability of the tribes to exercise treaty rights and cultural practices off-reservation. Cultural interests and uses on the three Forests are protected through various federal statutes (see *Resource Protection Methods*, below, and *Appendix H* to the revised Forest Plans). The federal trust doctrine requires federal agencies to manage the lands under their stewardship with full consideration of tribal rights and interests, particularly reserved rights, where they have been exercised since time immemorial.

The ancestors of the modern day Nez Perce, Shoshone-Bannock, and Shoshone-Paiute Tribes were present in the Ecogroup area long before the establishment of the Boise, Payette, and Sawtooth National Forests. Many of the treaties and executive orders signed by the United States government in the mid-1800s reserved homelands for the Tribes. Additionally, the treaties with the Nez Perce and Shoshone-Bannock reserved certain rights outside of established reservations, including fishing, hunting, gathering, and grazing rights.

The following excerpts from the treaties with the Nez Perce and the Shoshone-Bannock and the Executive Order with the Shoshone-Paiute are provided as examples of the rights that the tribes have, and where they can exercise these rights.

Nez Perce Treaty of 1855: Article IV in this treaty states:

“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 citizen’s 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.”

Shoshone-Bannock Tribes Fort Bridger Treaty of 1868: Article 4 of the Treaty with the Eastern Band Shoshone and Bannock states:

“...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.”

Shoshone-Paiute Tribes Executive Order of 1877: This Order set aside the Duck Valley Reservation for several Western Shoshone bands who traditionally lived along the Owyhee River of southeastern Oregon, in southwestern Idaho, and along the Humboldt River of northeastern Nevada. Later they were joined by Paiute from the lower Weiser country of Idaho and independent Northern Paiutes from Fort McDermitt, Camp Harney, and Quinn River areas and from the Owyhee region of southwestern Idaho, and both settled on the reservation to take up farming and ranching. The aboriginal Northern Paiute territory includes portions of southwestern Idaho, eastern Oregon, and northwestern Nevada. Management of these historically occupied areas are still of interest to the Shoshone-Paiute tribes today.

Issues and Indicators

Issue: Forest Plan alternatives and management direction may affect the availability of resources, and the use of traditional cultural properties, important to American Indian rights and interests.

Background: A primary issue for the Tribes listed above concerns the availability and protection of treaty and cultural resources; including use and access to traditional cultural properties, the availability of treaty-reserved resources, and the protection of habitats upon which those resources depend. Adequate availability would allow harvest or utilization of resources in sufficient quantities to satisfy the ceremonial and subsistence needs of tribes, while still providing for the conservation needs of the species. Adequate access would not compromise cultural practices at traditional, cultural, or spiritual places.

Indicators: The indicators used to describe effects on the issue are changes in access to traditional cultural properties, the relationship of species viability to tribal harvest ability (see also indicators and analyses in the *Soil, Water, Riparian, and Aquatic Resources, Terrestrial Wildlife Habitat and Species, Vegetation Diversity, and Botanical Resources* sections of Chapter 3), and trends in watershed conditions.

Affected Area

The affected area for direct and indirect effects to the Nez Perce, Shoshone-Bannock, and Shoshone-Paiute Tribes are the lands administered by the Boise, Payette, and Sawtooth National Forests. This area represents the National Forest System lands where cultural, social, economic, religious, and governmental tribal interests exist, and the lands where those concerns could receive effects from both management activities and ecological events. The affected area for cumulative effects includes lands administered by the three National Forests, and lands of other ownerships both within and adjacent to these National Forest boundaries. Cumulative effects to the tribes extend well beyond National Forest lands, and this larger area lends a broader landscape perspective to maintaining ecological sustainability on the Forests.

CURRENT CONDITIONS

The affected environment in context of American Indians refers to the treaty-reserved rights the tribes have to utilize the three National Forests and how these rights are being exercised. The ways Native American Indians use these public lands are discussed in the context of their cultural, economic, spiritual, and governmental interests. The current conditions for watersheds and species of traditional and cultural interest to the tribes are addressed in the following resources sections of Chapter 3: *Soil, Water, Riparian, and Aquatic Resources*, *Terrestrial Wildlife Habitat and Species*, *Vegetation Diversity*, and *Botanical Resources*. Additional background information on the tribes described below can be found in *Appendix D* to this EIS.

Cultural Interests in the Boise, Payette, and Sawtooth National Forests

Culture is the whole set of learned behavior patterns common to a group of people at a certain period of time, as well as their interactive behavior systems, their material goods, and their thoughts and beliefs. People rely on their culture in order to live, relate to others as collective groups, and know how to both understand and function in their world. Within the three Ecogroup Forests, cultures of the three tribes listed in Table TR-1 are dominant, each bringing their own language, traditions, and religions to the area.

Table TR-1. Federally Recognized Tribes within the Ecogroup Area

| Federally Recognized Tribe | Culture Area | Name of Bands within Tribe |
|--|--------------|--|
| Nez Perce Tribe | Plateau | Nez Perce (Ni mii puu), |
| Shoshone-Bannock Tribes (Fort Hall Reservation) | Great Basin | Eastern Shoshone (Sosoni) (including Lemhi), Bannock |
| Shoshone-Paiute Tribes (Duck Valley Reservation) | Great Basin | Western Shoshone (Warraeekas), Northern Paiute |

Since time immemorial, access to and availability of natural resources has been crucial to the survival of American Indians. Many places were visited during a yearly cycle of seasonal migrations to collect food, medicines, and other materials for sustenance, as well as for religious practices and social gatherings. Plants—usually gathered from meadows, river valleys, aquatic environments, and forests—are thought to have provided over half of native people’s diets. The rest of their diet came from fish, mammals, and birds, which were available in varying amounts.

The gathering of these and other natural resources is still a significant part of the individual cultures of the Nez Perce, Shoshone-Bannock, and Shoshone Paiute Tribes. The tribes see the continuation of gathering as an important link to their past. Because of their concern with the continuation of this aspect of their cultures, the tribes are taking an increasingly active role in the protection and restoration of various species of plants, animals, and fish.

Socio-economic Interests in the Boise, Payette, and Sawtooth National Forests

Use of natural resources for social or economic benefit by the individual tribes is based on proximity to the public lands in which they have interests. In addition, use of the three Forests for employment purposes has been minimal in the past but is of increasing interest to the tribes in terms of job training for tribal members, Tribal Employment Right Ordinance (TERO) Program contracts for thinning, trail maintenance, fire fighting, and State and Private Forestry rural assistance opportunities. The majority of resource use of forest products is tied to gathering for personal, traditional, and spiritual purposes and includes fishing for anadromous fish, hunting big game, gathering roots, berries, teepee poles, and firewood, and harvesting aspen for sweat lodges.

Traditional, Cultural, and Spiritual Interests in the Boise, Payette, and Sawtooth National Forests

There are numerous areas throughout the three Forests that have traditional, cultural and spiritual significance to the tribes. Some of these areas are significant to only one tribe, while others may be of interest to all tribes. The use and protection of these sacred areas by the tribes is a way of maintaining their links to the past and their ancestors. Areas where there are more than one of these features—such as hot springs, waterfalls, trails, rock art, and traditional use areas—often have some aspect of spiritual significance for the tribes.

ENVIRONMENTAL CONSEQUENCES

Effects Common To All Alternatives

Resource Protection Methods

Laws, Regulations, and Policies – Numerous laws, executive orders, and regulations govern the relationship and collaboration between American Indian tribes and the federal government, represented here by the three National Forests. Examples of specific legislation designed to identify and protect American Indian artifacts, cultural resources, human remains, and traditional cultural uses of interest to American Indians are described in *Appendix H* to the revised Forest Plans, particularly under the sections for *Vegetation, Botanical Resources, Terrestrial Wildlife Habitat and Species*, and *Soil, Water, Riparian, and Aquatic Resources*. In project planning and implementation, the Forest Service must comply with these laws and regulations, and in doing so, must meaningfully consult with tribal governments.

In addition, numerous laws, regulations, and policies govern the use and protection of Forest resources that may be of tribal interest or covered under tribal reserved rights. Many of the more important ones are also briefly described in *Appendix H* to the revised Forest Plans. Activities authorized or implemented by the Forest Service must comply with these laws, regulations, and policies, which are intended to provide general guidance for the implementation of management practices, and for protection of resources, including those of interest to the tribes.

Forest Plan Direction – Management direction for tribal rights and interests has been developed for the revised Plans for all three Forests. This direction includes standards, guidelines, and objectives for consultation and resource protection, and the following management goals:

- Facilitate the exercise of tribal rights to meet federal trust responsibilities.
- Enhance relationships with American Indian tribes in order to understand and incorporate tribal cultural resources, values, needs, interests, and expectations in Forest management and allow cooperative activities where there are shared goals.

Furthermore, management direction for other resource programs—such as vegetation, soils, water, riparian, aquatic, and wildlife—are designed to provide for habitat and watershed conditions that contribute to species viability at sustainable and harvestable levels (see Revised Forest Plans, Chapter 3, Forest-wide Management Direction). Direction has also been provided at the Management Area level to address special areas of concern to the tribes, such as the South Fork Salmon River and Bear Valley Creek. Forest Plan direction would guide implementation of projects and activities on the three Forests. Monitoring of resource conditions would also occur.

General Effects

Species Viability – Under the Endangered Species Act, the Forest Service must comply with direction to protect threatened and endangered species, including chinook salmon and steelhead trout, which are of great interest to the tribes. The latest direction from biological opinions and conservation strategies for these species has been incorporated into the Forest Plans, and this direction would be followed under all alternatives. Similar direction exists for a wide range of Region 4 sensitive fish, wildlife, and plant species, and the overall objective is to manage conditions so that these species do not have to be listed under the Endangered Species Act.

Many of the species found on the Ecogroup Forests, including salmon and steelhead, are wide-ranging, anadromous, or migratory, only spending part of their lives here. Thus, the primary influence that Forest management activities have on these species is related to changes in the habitats they use while they are here. These changes can be positive or negative, temporary to long term, and they can influence the amount of habitat available, the condition of that habitat, and vulnerability to disturbance or mortality within that habitat. These changes can also occur from natural events, and Forest management can indirectly affect the likelihood, size, and timing of such events through activities such as vegetation manipulation, fire suppression, and fire use.

Potential habitat and disturbance effects from Forest management activities and natural events are described for species in the following sections of Chapter 3: *Soil, Water, Riparian, and Aquatic Resources*, *Terrestrial Wildlife Habitat and Species*, and *Botanical Resources*. In addition, potential effects to vegetation habitat components from management activities and natural events are presented in the *Vegetation Diversity*, *Vegetation Hazard*, and *Fire Management* sections. Although effects differ by alternative in these analyses, no alternative would result in significant negative effects to species viability. For listed species, threats are reduced by management direction and the aquatic conservation strategy, which minimize or avoid negative effects on these species. Over the long term, the recovery strategy would contribute to species viability and improvement of watershed conditions. For chinook salmon

and steelhead trout, restoration and protection of habitat under all alternatives would contribute positive effects to species viability over the short and long term, although the cumulative off-Forest effects from activities such as commercial harvest, or facilities such as hydroelectric dams would still pose serious threats. Short-term or temporary effects from restoration activities would be mitigated by Forest Plan direction, best management practices, and other resource protection methods.

For the reasons listed above, no significant direct, indirect, or cumulative negative effects are expected to the viability of treaty resources or traditional and cultural species of interest to American Indians as a result of National Forest activities.

Harvest Ability – As noted above, no alternative would have significant negative effects on species viability. Habitat should be present under all alternatives in sufficient amount and distribution that contribute to viable populations. However for certain species, whether those populations attain or remain at harvestable levels may be more affected by activities and decisions that occur outside the Forests' sphere of influence. Chinook salmon and steelhead numbers, for instance, could fluctuate more based on hatchery augmentation, commercial harvest levels, or migration barriers than habitat conditions.

Elk are currently at near record levels, and minor habitat changes should have little effect on a species that is a habitat generalist. Changes in populations and bull/cow ratios, however, could indirectly occur from Fish and Game Department decisions on hunting provisions. Similarly, bighorn sheep populations or habitats are not expected to change much by alternative, and distribution patterns may be more limited by increasing off-Forest development.

Desired conditions for vegetation components have been largely based on their historical ranges of variability (HRV), which reflect conditions prior to Euro-American settlement. Managing vegetation toward or within desired conditions should provide diverse habitat conditions for plant and animal species. However, competition for those species has increased substantially with increasing human populations in the area. Management direction has been developed to address the gathering of plants in general, and for cultural and traditional purposes (see revised Forest Plans, *Chapter III, Forest-wide Management Direction, Botanical Resources*).

Accessibility to traditional harvest sites is also part of this issue. Under all alternatives, the road transportation system would likely be reduced compared to current conditions. Although the amounts of decommissioned roads would vary somewhat by alternative, the percentages of decommissioned roads would be small for all alternatives over the short term when compared to the entire road system. Also, it is assumed that most decommissioned roads would not be integral to the transportation system, but would rather be local spurs to harvest units or mines that are no longer needed for production and are causing negative effects to other resources. The main arterial and collector system would remain under all alternatives, and this system should provide adequate access to traditional tribal use areas.

For the reasons listed above, no significant direct, indirect, or cumulative negative effects are expected to the ability to harvest traditional and cultural species of interest to American Indians.

Watershed Conditions – Due to increased resource protection and restoration activities, watershed conditions are expected to improve under all alternatives (see *Chapter 3, Soil, Water, Riparian, and Aquatic Resources*). Management direction and the long-term aquatic conservation strategy for all action alternatives are expected to contribute to the conservation of species important to the tribes (see revised Forest Plans, *Chapter III, Forest-wide Direction and Management Area Direction*). Additional direction regarding tribal consultation on these issues is also provided.

Although the amount of watershed restoration activities would vary somewhat by alternative, the overall direct, indirect, and cumulative effects to watershed conditions from these activities would be positive over both the short and long term. Although some temporary and even some short-term negative effects may be allowed, short- or long-term benefits to these resources must be demonstrated, as described in the following standards for Soil, Water, Riparian, and Aquatic Resources in Chapter III of the revised Forest Plans.

Standard 1: Management actions shall be designed in a manner that maintains or restores water quality to fully support beneficial uses and native and desired non-native fish species and their habitat, except as allowed under SWRA Standard #4 below. Use the MATRIX located in Appendix B to assist in determining compliance with this standard.

Standard 4: Management actions will neither degrade nor retard attainment of properly functioning soil, water, riparian, and aquatic desired conditions, except:

- a) Where outweighed by demonstrable short- or long-term benefits to watershed resource conditions; or
- b) Where the Forest Service has limited authority (e.g., access roads, hydropower, etc.). In these cases, the Forest Service shall work with permittee(s) to minimize the degradation of watershed resource conditions.

Use the MATRIX located in Appendix B to assist in determining compliance with this standard.

Improved watershed conditions, in turn, would provide good water quality and sustainable aquatic habitat for species such as chinook salmon and steelhead trout, which are of great concern to the tribes. Forest-wide monitoring of resource conditions would also occur.

For the reasons listed above, no significant direct, indirect, or cumulative negative effects are expected to watershed conditions that provide habitat for traditional and cultural species of interest to American Indians.