

**From:** [Frament, Ellen -FS](#)  
**To:** [FS-KNFplanrevision](#)  
**Subject:** FW: IPNF and KNF Plans - Comments  
**Date:** Monday, April 09, 2012 11:31:22 AM  
**Attachments:** [Comments\\_KootenaiTribe\\_KIPZForestPlans.pdf](#)

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**From:** Bradford, Paul -FS  
**Sent:** Monday, April 09, 2012 11:08 AM  
**To:** Frament, Ellen -FS  
**Cc:** Winslow, Cami -FS; Timmons, Becky -FS  
**Subject:** FW: IPNF and KNF Plans - Comments

fyi

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**From:** Patty Perry [<mailto:patty@kootenai.org>]  
**Sent:** Monday, April 09, 2012 10:56 AM  
**To:** Farnsworth, Mary -FS; Wellner, Kent -FS; Bradford, Paul -FS; [vchristiansen@fs.fed.us](mailto:vchristiansen@fs.fed.us)  
**Cc:** William Barquin  
**Subject:** FW: IPNF and KNF Plans - Comments

Kootenai Tribe of Idaho comments on KIPZ Forest Plans.

Thank you,

Patty Perry  
Administrative Director

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**From:** William Barquin  
**Sent:** Thursday, April 05, 2012 3:19 PM  
**To:** Patty Perry  
**Subject:** IPNF and KNF Plans - Comments

Patty – I mailed the comments to the addresses listed today. I believe you were locating e-mail addresses for the addressees and other Forest Service personnel, so I have attached the electronic

version for you to forward.

We will continue government to government with the Forest Service as the Forest Plans and EISs are finalized. To that end, if the Forest Service would like to set up a staff or policy level meeting to discuss the comments or for additional clarification, I would suggest we get it on the calendar soon. I'm hoping, though, that much of the back and forth that will need to occur can be done on an individual staff level initially before requiring all of us to get together again.

Thank you and Happy Easter.

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# Kootenai Tribe of Idaho

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05 April 2012

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Re: Kootenai and Idaho Panhandle National Forests Draft Land Management Plans  
Comments of the Kootenai Tribe of Idaho

Kootenai Tribe elders pass down the history of the beginning of time, which tells that the Kootenai people were created by Quilxka Nupika, the Supreme Being, and placed on earth to keep the Creator-Spirit's Covenant – to guard and keep the land forever. The Kootenai have never lost sight of their original purpose as guardians of the land.

Bands of the Kootenai or Ktunaxa Nation have inhabited Kootenai Territory, which includes portions of Idaho, Montana, Washington, British Columbia and Alberta, since time immemorial. The Kootenai Tribe of Idaho (hereinafter “Kootenai Tribe”) is one of two bands in the United States.<sup>1</sup> Headquartered near Bonners Ferry, Idaho, the Kootenai Tribe of Idaho possesses federally reserved fishing, hunting and gathering rights within Kootenai Territory as reserved in the Treaty of Hellgate of 1855.

The Kootenai Tribe and the United States Forest Service enjoy a close working relationship and collaborate often on issues of common concern to protect the National Forest System lands within our Territory, which includes the Idaho Panhandle and

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<sup>1</sup> The other United States band is one of the constituent bands of the Confederated Salish and Kootenai Tribes of the Flathead Reservation. There are five Kootenai bands in British Columbia. Although each band is governed separately, collectively the bands may be referred to as the Ktunaxa or Kootenai Nation.

Kootenai National Forests. Management of the National Forests within Kootenai Territory is important to fulfill our Covenant with the Creator to keep and guard the land forever.

Forest management over the last century through fire suppression policies, overharvest and other policies has led to Forests in poor health. Forests need active management to resolve this man-made problem; passive management alone is not sufficient. Still, passive management as a tool is also important to allow natural wildfire to become part of the ecosystem. This passive management and allowance for wildfire, however, must take into account the needs of the Tribal and non-Tribal communities on and near the Forests who depend on vital resources, such as drinking water, from these lands.

Idaho Panhandle National Forests Alternative B is a well-balanced approach to Forest management. For instance, “[it] allows for the greatest ability to restore ecosystems that are out of desired conditions with respect to wildlife” (DEIS p. 402) that are critical to the exercise of Kootenai Treaty reserved rights. The mixture of active and passive management, along with management flexibility based on sound monitoring plans sets forth a workable, science-based roadmap for the Idaho Panhandle National Forests.

Kootenai National Forest Alternative B is likewise a well-balanced approach to management of that Forest. Alternative B places a proper amount of emphasis on “restoration of vegetation, protecting terrestrial and aquatic habitat, improving watershed conditions....” (KDEIS pp. 1-2).

The Kootenai Tribe offers the following comments on the draft Land Management Plans and Environmental Impact Statements for both the Idaho Panhandle and Kootenai National Forests. The comments focus primarily on the Idaho Panhandle National Forest due to time and resource constraints. We intend the comments, however, to apply to both the Idaho Panhandle and Kootenai National Forests in recognition of the joint planning effort and, therefore, similarities between the Plans, and the importance of each to Kootenai rights and interests.<sup>2</sup>

These comments apply solely to Kootenai Territory and Kootenai Tribal interests. We leave to our sister-tribes to comment on issues in their territories.

### American Indian Rights and Interests

The Kootenai Tribe appreciates the Forest Service’s recognition of American Indian rights and interests and the inclusion of such in the Forest Plans. The Desired Conditions (DC), Objectives (OBJ) and Guidelines (GDL), however, touch only a portion of the USFS responsibility toward federally recognized Indian tribes.

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<sup>2</sup> Specific page numbers are to the IPNF Land Management Plan (e.g. p. X) and DEIS (e.g. DEIS p. X). Kootenai National Forest page numbers are designated (p. KX) and (KDEIS p. X).

The government-to-government relationship between the United States and Indian tribes has been established over the course of history. That relationship has been further defined in statutes, court decisions, executive orders, memoranda, regulations and policies to include a trust responsibility to the tribes.

The fundamental principles common to the policies regarding the government-to-government relationship and the trust responsibility are identified in Executive Order 13175 of November 6, 2000:

- The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with the United States.
- Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian treaty and other rights.
- The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Executive Order 13175 further requires agencies to “respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments” when formulating and implementing policies that have tribal implications.

The Obama Administration continues to promote the government-to-government relationship through the Memorandum for the Heads of Executive Departments and Agencies issued November 5, 2009. The Memorandum requires all federal agencies to establish a “detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175” and annually submit “a progress report on the status of the action included in its plan together with any proposed updates to its plan.”

The U.S. Forest Service (USFS) is a leader in honoring and implementing the government-to-government relationship. In fact, the USFS established its first formal policy regarding Tribal Relations well before Executive Order 13175 required such of all agencies. Forest Service Manual (FSM) 1564 effective June 1, 1990 directed Forest Service employees to:

- Maintain a governmental relationship with federally recognized Tribal governments.
- Implement programs and activities honoring Indian treaty rights and fulfill legally mandated trust responsibilities to the extent they are determined applicable to National Forest System lands.
- Administer programs and activities to address and be sensitive to traditional American Indian and Alaska Native religious beliefs and practices.
- Provide research, transfer of technology, and technical assistance to Tribal governments.

*Tribal Relations Strategic Plan Fiscal Years 2010-2013*

(<http://www.fs.fed.us/spf/tribalrelations/documents/plan/TribalStrategicPlan2010-2013.pdf>)

The directives, regulations and policies summarized above require revisions to the draft Land Management Plans and Environmental Impact Statements to ensure proper implementation of the government-to-government relationship, honoring of Tribal treaty rights, fulfillment of legal mandates related to Indian tribes and promotion and protection of Indian religious beliefs and practices.

Tribal History and Status

Honoring the government-to-government relationship and Tribal trust and Treaty resources requires a careful understanding of tribal history and current legal status. Unfortunately, the Land Management Plans and DEISs contain a number of errors regarding Kootenai Tribal history and status.<sup>3</sup> The following information will provide clarity and accuracy.

The Kootenai or Ktunaxa Nation consists of seven modern bands, including two in the United States<sup>4</sup> and five in Canada.<sup>5</sup>

In 1855, the Kootenai, Salish and Flathead were called to a treaty sessions at Hell Gate, Montana for the purpose of ceding territory to the United States government. The Salish and Upper Kootenai tribes entered into the Hell Gate Treaty with the United States ceding the majority of Kootenai Territory and creating a reservation near Flathead Lake for the newly created Confederated Salish and Kootenai Tribes.<sup>6</sup>

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<sup>3</sup> The DEIS statements that “[a]round the beginning of the 20<sup>th</sup> century, the influx of human populations began in the inland northwest...” exhibit an unfortunate bias (DEIS p. 143; KDEIS p. 136). The authors likely meant “the influx of Europeans” began in the inland northwest.

<sup>4</sup> Kootenai Tribe of Idaho and Confederated Salish and Kootenai Tribes of the Flathead Reservation.

<sup>5</sup> Although each Canadian band governs itself separately in many regards, four of the bands have collectively organized as the Ktunaxa Nation Council.

<sup>6</sup> Governor Isaac Stevens of Washington Territory was appointed Superintendent for Indian Affairs by the federal government to negotiate treaties with the Indians of the Northwest. Under pressure to extinguish Indian title quickly, he resorted to grouping smaller tribes and bands into larger confederations, despite the

The Kootenai Tribe did not participate in the negotiations or sign the Treaty. Notwithstanding the Tribe's absence, the Treaty-ceded territory included the Idaho Kootenai's aboriginal territory. After numerous unsuccessful attempts by the Indian agents to persuade the remainder of the Idaho Kootenai to leave their traditional homes and take allotments on the Flathead Reservation, the United States government relented and provided a small land base of allotments as the Kootenai Reservation.

Although the Kootenai Tribe continued to hunt, fish and gather throughout Kootenai Territory, this became increasingly difficult. Through numerous fraudulent actions, portions of the allotted reservation were lost to non-Indians. (Kanen et al.: Roadless Area Conservation: National Forest System Lands in Idaho; Tribal Specialist Report (August 2008) Private owners throughout Kootenai Territory refused to allow the Kootenai to access their usual and accustomed fishing areas. *Id.* The Idaho Department of Fish and Game also began to forbid the Kootenai to hunt in their traditional areas. *Id.* These decisions were reversed in 1976 when the Idaho Supreme Court ruled that the Hellgate Treaty of 1855 guaranteed the Kootenai Tribe's hunting rights on state and federal lands, including the National Forests. *Id.*; *State v. Coffee*, 97 Idaho 905 (1976).

The Kootenai Tribe steadfastly honors its Covenant to keep and guard the land forever through the exercise of Tribal sovereignty, self-determination and the protection and restoration of resources within Kootenai Territory. Kootenai Tribal headquarters are located near Bonners Ferry, Idaho. There are 149 Kootenai Tribal citizens, the majority of whom reside on the Kootenai Reservation or in Boundary County. Portions of the scattered Kootenai Reservation are immediately adjacent to National Forest System lands.

The Kootenai Tribe actively co-manages its fish, wildlife and other resources in coordination and collaboration with the federal governments of the United States and Canada, States of Montana and Idaho and Province of British Columbia. The Kootenai Tribe also works closely with the Confederated Salish and Kootenai Tribes to protect and enhance shared and common resources in Kootenai Territory, as well with its sister-tribes in the Upper Columbia United Tribes, Ktunaxa Nation Council and others in the Columbia River Basin for resources and interests throughout the Pacific Northwest. Exercising the Tribe's co-management rights and responsibilities are important aspects to protecting Treaty resources. *See, United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), *aff'd*, 520 F.2d 676 (9<sup>th</sup> Cir. 1975).

In order to accurately describe the Kootenai Tribe and its status, the following revisions are requested:

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fact that the different tribes and bands he grouped together often had markedly different cultures and language. *See, United States v. Oregon*, 29 F.3d 481, 484 (9<sup>th</sup> Cir. 1994). The majority of Northwest treaties are referred to as Stevens Treaties, including the Hell Gate Treaty of 1855, and include substantially similar language.

Lower Kootenai Geographic Area (p. 84) – While we commend the USFS for its recognition of Treaty rights within this GA, it appears the authors combined the names of the Kootenai Tribe of Idaho and the Confederated Salish and Kootenai Tribes of the Flathead Reservation, two separate federally recognized Indian tribes. The Kootenai Tribe of Idaho has the right to hunt, fish and gather within this GA under the Treaty of Hellgate of 1855.

Pend Oreille Geographic Area (p. 88) – A portion of the Pend Oreille GA is in Kootenai Territory and the introductory paragraphs for this GA must recognize the Treaty rights of the Kootenai Tribe of Idaho and Confederated Salish and Kootenai Tribes of the Flathead Reservation as well as the cultural and religious significance of the area to the tribes.

Priest Geographic Area (p. 92) – A portion of the Priest GA is in Kootenai Territory and the introductory paragraphs for this GA must recognize the Treaty rights of the Kootenai Tribe of Idaho as well as the cultural and religious significance of the area to the Kootenai Tribe.

The Bull, Clark and Yaak Geographic Areas (pp. K75, K78 and K93 (respectively)) contain no mention of the Kootenai Tribe of Idaho and its Treaty and other rights in these GAs. We recommend inclusion of such information to ensure the GA specific information recognizes the Treaty rights, as well as the cultural and religious significance of the area to the Kootenai Tribe.

Chapter 3 (Affected Environment and Environmental Consequences) –

The Historical Setting section of the DEISs (DEIS p. 44; KDEIS p. 42) lists the Kootenai-Salish as one tribe. In fact, the Salish and Kootenai Nations were historically separate and have unrelated languages and distinct cultures. After the Hellgate Treaty was signed, the Kootenai Tribe of Idaho and the newly created Confederated Salish and Kootenai Tribes of the Flathead Reservation were recognized by the United States. While intermarriage among Kootenai and Salish families is becoming increasingly common, the Kootenai and Salish people remain separate based on language and cultural affiliation. To be accurate, this section must reflect that separateness.

The IPNF Cultural Resources section (DEIS p. 371, 5<sup>th</sup> paragraph) contains an inaccurate description of the Kootenai Nation.<sup>7</sup> As noted above, there are seven bands of the Kootenai or Ktunaxa Nation located in what is now known as Idaho, British Columbia and Montana. The majority of the 149 citizens of the Kootenai Tribe of Idaho reside on the Kootenai Reservation and in Boundary County, Idaho. The Kootenai Reservation consists of a number of allotments reserved from the public domain in the late 1800's, a

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<sup>7</sup> The KNF Cultural Resources section (KDEIS pp. 343-344) recognizes the uniqueness of the Kootenai language from its neighbors. It continues, however, by citing ethnographic research from the 1940's to the present (which it defines as 1983). In addition to the rich oral history of the Kootenai Tribe, Tribal publications such as Century of Survival (2<sup>nd</sup> Edition) (Kootenai Tribe 2010) contain a wealth of information regarding Kootenai history and culture.

12.5 acre parcel deeded to the Tribe after the 1974 War and a number of other scattered parcels. Portions of the Kootenai Reservation are immediately adjacent to the Idaho Panhandle National Forest. (Kanen *et al.* 2008) The Kootenai Tribe exercises Treaty rights on the Idaho Panhandle and Kootenai National Forests, such as hunting, fishing and berry picking and uses the Forests for cultural and religious ceremonies.

We find it disappointing that this section contains many inaccuracies. For example, the Tribal Interest and Treaty Rights section (DEIS p. 390) contains a number of errors and we suggest that a wholesale replacement of this section is necessary.<sup>8</sup> We encourage the authors to seek additional information and clarification to better understand and communicate the complex Federal-Tribal relationship and the responsibilities federal agencies have to Tribal Nations.

At a minimum, the section should be revised to acknowledge that the Kootenai Tribe of Idaho and the Confederated Salish and Kootenai Tribes of the Flathead Reservation are two separate federally recognized tribes. Thus, the second sentence of the first paragraph should on page 390<sup>9</sup> should read: “Within the boundaries of the IPNF there are two tribes with Treaty reserved, off-reservation rights: the Kootenai Tribe of Idaho and the Confederated Salish and Kootenai Tribes of the Flathead Reservation.”<sup>10</sup>

The introductory paragraph should also acknowledge that not only must the USFS increase and improve the involvement of tribes in the decision-making process, but it also must recognize the co-management role of the tribes over the Treaty resources.

The Legal and Administrative Framework (DEIS pp. 390) rightfully includes the Treaty of Hellgate of 1855’s Article III reservation of “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.”<sup>11</sup> The description of the Kootenai Tribe of Idaho as “an executive order Tribe,” however, attempts to simplify the Tribe’s history and force tribes into being categorized as either executive order or Treaty tribes. Executive Orders and Treaties are only two of a variety of methods of federal recognition. Thus, the descriptor is inappropriate and misleading given the Kootenai Tribe’s Treaty reserved rights. We also note that the right reserved was not limited to hunting on open and unclaimed land, but consisted of all the Article III rights noted above.

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<sup>8</sup> The KNF Tribal Interest and Treaty rights section (KDEIS p. 348) is accurate to a certain extent. However, it fails to recognize the Kootenai Tribe of Idaho’s Treaty rights and inclusion of such is necessary to be fully accurate.

<sup>9</sup> This sentence is repeated on DEIS page 481 and must be updated in both sections.

<sup>10</sup> The Kootenai Tribe offers no opinion concerning the description of the other federally recognized tribes with rights or interests on the Idaho Panhandle National Forest. We note, however, that there is no federally recognized Indian tribe named the “Lower Pend Oreille Tribes”.

<sup>11</sup> Note that the Hellgate Treaty is also a Stevens Treaty, which refers to the U.S. negotiator Governor Isaac Stevens. (See DEIS pp. 390-391 (naming two Treaties between the Nez Perce Tribe and the United States “Steven’s Treaty of 1855 and 1863”).

The Affected Environment (Existing Condition) section (DEIS p. 395) must also mention that Kootenai Territory takes in the Priest Lake and Sandpoint Ranger Districts. The revised description of the Tribe's rights and status included in the introductory paragraphs should be inserted here as well.

The MA Summary by Alternative for Kootenai Tribe of Idaho (DEIS p. 407) uses the incorrect name of the Tribe, which should be "of Idaho" rather than "of Indians".

### Treaty Rights Protection and Enhancement

Recognition of the requirement to protect and enhance Treaty reserved rights and provide for tribal religious and cultural practices as American Indian Rights and Interests Forest-wide Goal-01 (p. 37) is imperative to meeting the USFS's trust responsibility:

Respect Indian tribal self-government and sovereignty, honor tribal Treaty and other rights through protection and enhancement of such, and meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments. Manage the Forests to address and be sensitive to traditional American Indian religious beliefs and practices.

FW-DC-AI-02 (p. 37) (see also DEIS p. 481) must also be amended to be consistent with Goal-01 and federal law: "The IPNF recognizes and maintains culturally significant species and the habitat necessary to support healthy, sustainable, and harvestable plant and animal populations to ensure that rights reserved by Tribes in treaties are protected and enhanced ~~not significantly impacted or diminished~~."<sup>12</sup>

In order to fully implement the Treaty and Tribal Rights and Interests Goal, specific DCs, OBJs, STDs and GDLs may be required in the specific sections for Access and Recreation, Vegetation, Wildlife, Watershed, Soil, Riparian and Aquatic Resources, Cultural Resources, Lands and Special Uses, Special Forest and Botanical Products to ensure Treaty and trust resources are available for Treaty harvest.

Access and Recreation FW-DC-AR-XX (p. 9) – Access to the National Forests is critical for effective exercise of Treaty reserved hunting, fishing and gathering rights, as well as for cultural and religious practices. Such access is a concern of all the tribes (DEIS p. 400). In order to ensure accommodation of Tribal needs, the Kootenai Tribe recommends inclusion of a new FW-DC-AR concerning Tribal access:

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<sup>12</sup> Given the endangered, threatened and functionally extinct status of the native fisheries for which the Kootenai Tribe of Idaho has Treaty fishing rights, ensuring Treaty rights are not significantly impacted or diminished is clearly insufficient. The Treaty right must include more than the ability to drop a fishing line in empty waters. *See, e.g., United States v. Washington*, 506 F. Supp. 187, 203 (W.D. Wash. 1980); *United States v. Adair*, 723 F.2d 1394 (9<sup>th</sup> Cir. 1983).

Provide access to traditional and Treaty resources and sacred sites, balancing the need for motorized access essential for reaching more distant locations, especially for elders who can no longer walk long distances, with protection of tribal resources from use and vandalism by non-tribal members.

The Kootenai Tribe also recommends the Legal and Administrative Framework for Access and Recreation in the DEIS (DEIS p. 274) include specific reference to the Treaty of Hellgate of 1855, Executive Order 13175, USDA and USFS regulation and policy, as well as the National Historic Preservation Act of 1966, American Indian and Religious Freedom Act of August 11, 1978 (42 U.S.C. § 1996), Archaeological Resources Protection Act of October 31, 1976 (16 U.S.C. § 470aa), Religious Freedom Restoration Act of 1993, Native American Graves Protection and Repatriation Act of 1990. This legal framework is important not only regarding access for Tribal members, but may include access constraints for the general public in order to protect tribal rights.

Vegetation (p. 12) – The DEIS recognizes that vegetation management may cause both beneficial and harmful effects to traditional uses, sacred sites, and cultural properties of interest to the tribes (DEIS p. 401). The Vegetation Goal-01 to trend toward the desired range for composition, structure, patterns and processes is sufficient to ensure protection and enhancement of Treaty resources and protection of sacred sites and cultural and religious practices.

Wildlife Goal-01 (p. 25) – National Forest System lands are the primary “open and unclaimed” lands upon which Treaty rights may be exercised and provide the bulk of the wildlife habitat in the area. As the DEIS recognizes, “[w]hile the Forest Service does not manage wildlife, it does manage the access and biological habitats that effect wildlife numbers and longer term viability.” (DEIS p. 401) Thus, habitat to support healthy and sustainable populations of wildlife capable of providing for the exercise of Treaty rights is essential. Moreover, National Forest System management should not be directed solely toward recovery of threatened and endangered species or avoiding disturbance to sensitive species. The following Goal-01 should be included and the remaining Goals renumbered:

The IPNF contributes to healthy and sustainable wildlife populations capable of supporting the exercise of Treaty reserved rights.

Special Forest and Botanical Products include important Treaty and religious resources such as huckleberries, mushrooms, plants and firewood. Forest Service regulations provide for free use of such by Tribal members. 36 C.F.R. §§ 223.239 and 223.240. Unfortunately, commercial and non-Treaty berry and mushroom harvesting is increasing at an alarming rate to the point that the ability to Treaty harvest has been impacted.

The DEIS states that “[h]istorically, the Forest has granted commercial and free use of special forest and botanical products to individuals and Tribes with treaty and other

reserved rights.” (DEIS p. 448) Unfortunately, this statement is inaccurate as a permit system to monitor general public and commercial harvest of these special forest products is not yet in place.

In order to ensure the ability to exercise Treaty reserved rights, the Kootenai Tribe recommends inclusion of Special Forest and Botanical Products Goal-01 (see DEIS p. 449):

The IPNF considers ‘treaty rights, customary and traditional uses (including subsistence and other historical uses of plant material by Tribes), the federal trust responsibility to Tribes, and competitive market demands in determining which products would be excluded from or allowed for sale to commercial harvesters. When there is a shortage of any particular special forest product for tribal use, commercial permits will be issued only to the extent that the tribal use can be accommodated.’

The Legal and Administrative Framework for Terrestrial Wildlife in the DEIS (DEIS p. 194) should specifically reference the Treaty of Hellgate of 1855, Executive Order 13175 and USDA and USFS regulation and policy to highlight the importance of the National Forests to the government-to-government relationship, Treaty rights protection and enhancement and the trust responsibility.

Watershed, Soil, Riparian and Aquatic Resources Goals (p. 30) recognize the importance of the Forests to water quality and aquatic resources and are sufficient to also protection and improvement of Treaty resources and cultural and sacred sites. We recommend, however, that the Legal and Administrative Framework for this section of DEIS Chapter 3 (Affected Environment and Environmental Consequences) (DEIS p. 138-139) include specific reference to the Treaty of Hellgate of 1855, Executive Order 13175 and USDA and USFS regulation and policies to recognize the importance of the watersheds and riparian and aquatic species to Tribal hunting, fishing and gathering and as a domestic water source.

The Legal and Administrative Framework for Lands/Special Uses (DEIS p. 304) should include specific reference to the Treaty of Hellgate of 1855, Executive Order 13175 and USDA and USFS regulations and policies related to Tribal Treaty rights and the government-to-government relationship. The Tribal Forest Protection Act (25 U.S.C. § 3101 *et seq.*) and the Sacred Sites Policy (Executive Order 13007) are also necessary to a full analysis of impacts of landownership administration and adjustments and special uses of National Forest System lands.

For example, Special Use Permits for occupancy and use on National Forest System lands have been granted to the Kootenai Tribe to ensure the ability to access Treaty harvest and cultural areas.<sup>13</sup> Also, disposal or exchange of National Forest System lands

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<sup>13</sup> The DEIS (DEIS p. 311) fails to mention Tribes as recipients of special use authorizations.

has a direct effect on Tribal Treaty rights, which must be considered if such disposal or exchange is proposed.

The Legal and Administrative Framework for Tribal Interest and Treaty Rights (DEIS p. 390) should include specific reference to 36 C.F.R. §§ 223.239 and 223.240 recognizing Tribal Treaty harvest without permit.

MA1a-STD-AR-01 (p. 45) contains restrictions on party size for access and recreation. The exercise of Treaty rights and cultural and religious practices by Tribal members should not be restricted in this manner.

GA-DC-WL-LK-XX (pp. 85-86, p. 88, p. 92) – We recommend inclusion of a Desired Condition to contribute to healthy and sustainable wildlife populations capable of supporting the exercise of Treaty reserved rights in the GAs consistent with the Forest-wide Goal.

Table 32 (Summary of Forest Plan Monitoring Questions and Performance Measures) (p. 101) – The Kootenai Tribe concedes that monitoring compliance with the USFS’s Treaty and trust responsibilities is difficult, but should include more than number of contacts or policies. For example, monitoring increases in wildlife, plants and fisheries to maintain and enhance Treaty harvest may be an appropriate metric. The Kootenai Tribe looks forward to discussing this comment further during ongoing government-to-government consultation to come to mutually acceptable approaches.

Appendix A (Possible Actions) (p. 130) – We recommend inclusion of additional possible actions such as ongoing government-to-government and staff consultation for each federally recognized tribe with historical or treaty interests in Forest land regarding cultural resource and sacred site protection and access to the Forests for cultural and religious practices, through a cooperatively established communications policy.

#### Tribal Co-Management Authority

In addition to inclusion of the Forest-wide goal, the draft Land Management Plans (LMPs) and draft Environmental Impact Statements (DEISs) require a number of revisions to ensure recognition of Tribal sovereign authority and status as co-managers of Treaty resources such as wildlife, fisheries and plants.

Description of the Idaho Panhandle National Forests (pp. 6 – 7), DEIS pp. 45, 181, 462 –

The description of the Idaho Panhandle National Forests and its distinctive features must recognize the Tribal communities not only for protection and enhancement of Treaty rights, but also to recognize that Reservation lands are immediately adjacent to and in the vicinity of the National Forest System lands. Also, the Forests supply the Kootenai Tribe’s domestic water. Thus, cooperation with Tribal governments concerning the Wildland Urban Interface (WUI) and fire risk management is important to Tribal self-

government and protection of Tribal people<sup>14</sup>. In addition to the IPNF's importance for Treaty reserved hunting, fishing and gathering. The Forests also contain many sacred sites important to tribal culture and religious practices. To highlight the importance of the Tribal communities, the Community Ideal Types for Boundary County (DEIS p. 462) must recognize the Kootenai Tribal community separately from the other communities.

The Plans must include coordination and cooperation with the tribes regarding Wildlife, Fisheries and Plants in the same manner as the USFWS, IDFG and WDFW.<sup>15</sup> Tribal plans must be used and incorporated into supporting analysis of the Plans. *See*, 36 C.F.R. § 219.7(c) and (d) (1982 Planning Rule requiring review and consideration of planning and land use policies of Indian tribes and consultation with Indian tribes).

FW-DC-WL-17 (p. 27) and -GDL-WL-13 (p. 29), Appendix A (p. 129), DEIS p. 252 – The majority of the habitat supporting Treaty resources such as native ungulates lies in the National Forests. Thus, the Plan must ensure coordination and cooperation with Tribal governments as co-managers of those species.

FW-DC-WTR-02 (p. 30) and –GDL-WTR-01 (p. 35), DEIS p. 151, 401-403 – Tribal water quality standards apply on-reservation. Additionally, tribes are involved in establishing TMDLs and water quality plans in coordination with the states and the Environmental Protection Agency to achieve standards for off-reservation waters. Additional effects analysis (DEIS pp. 401-403) of impacts to Tribal drinking water supplies should be conducted as the Kootenai Tribe's drinking water comes from the Forests and protection of the watershed is important to Tribal member health and safety.

FW-DC-AQS-03 (p. 33) – Forest Plan recognition of Tribal population goals is an important component of the government-to-government relationship and the Kootenai Tribe commends the USFS for its inclusion here. Tribal population goals are especially important given the decreased ability of Kootenai citizens to exercise Treaty rights because of the suppressed fisheries populations as discussed in the Fisheries section of these comments.

FW-DC-AQS-04 (p. 34) – Bull trout are an important Treaty resource and culturally significant to the Kootenai Tribe. We recommend revising this DC to recognize the Tribe's co-management authority and the necessity of cooperation and coordination with the Tribe as is done in FW-DC-AQS-06 concerning the Kootenai River white sturgeon.

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<sup>14</sup> The Kootenai Tribe also recommends that GA-DC-FIRE-LK-01 (p. 85) specifically state that threat of wildfire to the Kootenai Tribal community is reduced in addition to the other communities listed.

<sup>15</sup> Also note on page 7 of the IPNF LMP the need for cooperation and coordination with Montana Fish, Wildlife and Parks. Further, while the Kootenai Tribe recognizes that the focus of the Plans efforts are within the United States, coordinating with Canadian and British Columbia agencies is also essential to ecosystem-based management the Plans promote.

FW-DC-AQ-01 and -02 (p. 37), DEIS pp. 101 and 103, 267-268 – Similar to water quality standards, Tribal air quality standards must also be met where applicable. The Federal Air Rules for Reservations (40 C.F.R. Part 49; Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon and Washington, Final Rule (April 8, 2005)) apply where Tribal air quality standards have not yet been set. Cooperation with tribes in addition to states is required to meet State or Tribal Implementation Plans and Smoke Management Plans. In addition to the Montana-Idaho Airshed Group, which the Kootenai Tribe participates in, there exists also the National Tribal Air Association (NTAA) and the Idaho Governor's Idaho Crop Residue Advisory Committee, which advises IDEQ on smoke management planning.<sup>16</sup> The Kootenai Tribe has adopted as a matter of Tribal law the Idaho state standards for crop residue disposal and smoke management and cooperates with IDEQ to implement the regulatory framework on the Kootenai Reservation (Kootenai Code Chapter 28).

Early consultation with tribes on project planning is an important to fulfill the trust responsibility. Tribal involvement, not only through input during government-to-government consultation, but also with key participation in developing projects, is more likely to result in successful restoration of the Forests in Kootenai Territory. Furthermore, this process better reflects the government-to-government relationship.

#### Culture, Cultural Resources and Sacred Sites

The Kootenai Tribe commends the Forest Service for its recognition of the contribution of the ecosystem to the fulfillment of human life (DEIS pp. 42-45). Ecological systems are critical components of Kootenai social, economic and traditional culture. (See DEIS p. 451) Cultural conditions, uses and practices must be inserted into all Plan components to ensure traditional ways of life are sustained for the future. These Plan components should both preserve cultural knowledge, and strive to recover specific cultural practices that may have been changed or lost due to social, economic or ecological change.

When the Tribe speaks of cultural resources, it does not simply mean physical artifacts related to Tribal life. The complete experience of the environment is essential to the Tribe's cultural identity.

Cultural resource and sacred site protection is of paramount importance to the Kootenai Tribe. The Kootenai Tribe recommends inclusion of Cultural Resources Goal-01:

Reduce looting, vandalism and incidental damage through increased patrols to protect cultural resources and increased education about the importance of protecting cultural resources and the consequences for unlawful damage to or taking of cultural resources.

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<sup>16</sup> Note also the importance of coordination with Canada and British Columbia concerning smoke management.

While we understand limited budgets dictate the amount of effort, we recommend not limiting FW-OBJ-CR-01, -02, -03 and -04 (pp. 38-39) to a certain number. If such restrictions are necessary, then we recommend stating that the figures used therein are minimums. We also suggest that any public outreach include explanation of the reasons for confidentiality of cultural resource sites and the consequences of looting, vandalism and other disturbances of cultural resources.

The Historic Range of Variability (HRV) analysis and sources of methods to assess historic conditions (DEIS p. 50) are important to ensuring Forest health and productivity. Traditional Ecological Knowledge (TEK), however, should also be considered as it contributes another level of understanding to the discussion. (DEIS p. 395)

The Kootenai Tribe and the Forest Service have a long-held understanding and mutual respect concerning protection of Kootenai cultural resources and sites. In fact, not only have Kootenai Tribal members and staff participated directly with Forest Service personnel regarding Kootenai cultural resource and site protection, but we are also proud that the Forest Service has hired Kootenai Tribal citizens to work on these issues. Unfortunately, the DEIS does not acknowledge the hard work jointly performed by the Kootenai Tribe and the Forest Service to protect the widespread cultural resources in the Forests, or the mutual understanding of what such protection means. The statement that “the majority of the 100 or so American Indian sites should probably be allocated to scientific study or preservation category given their rarity in forested, mountainous terrain that characterizes much of the IPNF” appears to disregard the understanding of confidentiality for tribal sacred and cultural sites. (DEIS p. 375)

The first line of cultural resource protection is to ensure that such resources and sites are not known to the general public. For this reason, the Kootenai Tribe determined that identification of Special Interest Areas runs contrary to cultural resource protection. However, the lack of identification of Special Interest Areas does not mean there are no such areas (DEIS p. 399).

The confidentiality of cultural resources and sacred sites is acknowledged in the DEIS (DEIS p. 401). It is important to also note, however, that Tribal evaluation of impacts from the alternatives is followed up with ongoing government-to-government consultation with the Forest Service in order to ensure project management decisions do not impact such resources and sites.

### Terrestrial Wildlife

Wild game, wetland plants and waterfowl provide the Tribe with abundant resources year round. Since time immemorial, the Kootenai Tribe sought out native ungulates such as deer, elk, moose, bighorn sheep, woodland caribou and mountain goat. These native ungulates continue to be important cultural and subsistence resources for which the Kootenai Tribe has Treaty reserved rights to hunt. Moreover, forest habitats that support

diverse and sustainable populations of wildlife capable of providing for the exercise of Treaty rights are essential.

Several wildlife related issues were identified to be of concern during Tribal reviews of the DEIS, but in general, there was a lack of essential information to weigh the effects of each alternative for wildlife species highlighted. Important information was not provided, where only brief notations (“see wildlife specialists report” (DEIS p. 228) without references) or only general indications of assessments and analyses were discussed. The Kootenai Tribe recommends supplementing the DEIS information with added references and citations from the Wildlife Specialists Report and the Analysis of the Management Situation for Revision of the Kootenai and Idaho Panhandle Forest Plans (AMS). For example, the following excerpt in the AMS contains important information that if expanded and analyzed further would lead to a greater understanding of wildlife impacts.

Significant reductions in the extent of western white pine, ponderosa pine, western larch, whitebark pine and subalpine larch cover types have been documented (USDA 1998c). Along with the decrease in the species listed above, increases in the extent of Douglas-fir and grand fir have been documented. Perhaps more importantly to wildlife is the increase in density of trees and the shift to largely mid-seral structural stage (USDA 1998c). The result for wildlife is a potential reduction in specific habitat features associated with specific cover types (for example; white-headed woodpecker and ponderosa pine). The shift to mid-seral forest changes the structure and conditions that some species may require, (for example; downed woody debris permits American marten access to rodents under the snow). Changes in forest cover types, structural components, and in the size and arrangements of habitat may have impacted wildlife populations. AMS, p.46

To further supplement the effects analysis in the wildlife section of the DEIS, the Tribe suggests a comparative analysis of wildlife habitats by incorporating a combined distribution of forest size classes and cover types, which are presently modeled separately within the AMS. In this way, the DEIS can portray critical illustrations and analysis regarding wildlife habitat status, alternative effects on habitats and future trends.

The DEIS wildlife sections for the KNF and IPNF disregard opportunities that forest management provides to improve or address dwindling habitat qualities. Moreover, the DEIS does not clearly explain that forest stands change over time and provide different habitats for different species over their successional life span. As a result, the Kootenai Tribe recommends revising FW-OBJ-WL-02 (p. 27) or including an additional OBJ to address a mosaic of habitat variables and relevant limiting factors for native ungulates.

The DEIS relies primarily on a number of outdated information and studies. For example, the DEIS black swift section (DEIS p. 235) states “[t]here are several waterfalls scattered throughout the Forest, although the use of or potential of these areas is unknown.” In fact,

both the Forest Service and Kootenai Tribe Fish and Wildlife Department bird surveys have documented black swift in several locations. Thus, corrections for at least Bonner Ferry and Sandpoint Ranger Districts are necessary.

Similarly, the DEIS common loon section (DEIS p. 236) contains outdated information. For example, the Kootenai Tribe Fish and Wildlife Department conducted loon surveys on Boundary County lakes in 2010 and 2011. Loons were documented in 2011 on Herman Lake (pair) and Bonner Lake (single) during the July “Loon Day” survey. Throughout the summer, loons were documented on Perkins, Bonner, Herman and Dawson Lakes. This information was communicated to Forest Service personnel.

GA-DC-WL-LK-02 (p. 86) states that the “[u]se of the area along the divide between Idaho and Montana from Northwest Peaks south to the Kootenai River is retained.” The Kootenai Tribe requests clarification of the intent of this ambiguous statement. GA-DC-WL-LK-PO-01 (p. 89) perhaps may contain language closer to the intent.

Promotion of sustainable and harvestable levels of wildlife requires promoting a healthy ecosystem through a combination of active and passive management and a careful examination of current population status and future needs. The 1987 Plan called for wildfire suppression in caribou habitat to prevent the loss of trees. (DEIS p. 100) Suppressing wildfire in potential caribou habitat may seem better for caribou in the short term, but in the long term it keeps the Forests from achieving desired conditions and will ultimately be detrimental to the species the standards are intended to assist. Without intermittent disturbances, such as prescribed or natural fire, timber management, and insects and diseases, there is a potential to decrease large blocks of caribou habitat for a long period of time. Therefore, management diversity can provide buffers while improving caribou habitat, forest diversity and long term sustainability that the standards are intended to assist.

Likewise, relying solely on wildfire for management will result in doing more harm than good for wildlife. This assertion is exemplified by the statement “[b]ecause of the location of the [caribou] habitat, generally on ridge and mountain-tops in remote areas, the area would otherwise form one of the best places to use wildfires for improving other resource conditions.” (DEIS p. 100)

Alternative B is a well-balanced approach to addressing forest health and wildlife needs. Additional clarification, however, is required for the statement that “under all alternatives, wildfires would continue to be suppressed.” (DEIS p. 100) Considering the caribou do not currently inhabit a large portion of the Forests, this may be an opportune time to actively restore the habitat in those areas and to diversify the area to provide for long term viability of caribou habitat.

Clarification is also requested concerning the nature and status of caribou habitat. For example, the DEIS states that “...fire would help trend the subalpine fir-Engelmann spruce dominated stands towards a more desirable composition and structure, and would

likely help in the restoration of whitebark pine habitat” (DEIS p. 100), while in another section states “[c]aribou habitat is currently within HRV” (DEIS pp. 226 and 227).

Additional definition of the quantity and quality of current habitat is necessary in order to assist measurement of progress. (DEIS pp. 213-216 (grizzly), DEIS pp. 221-223 (caribou), DEIS p. 240 (grey wolf), DEIS pp. 251-252 (elk)).

### Fisheries and Aquatic Species

The statement concerning hatchery fish (DEIS pp. 138 and 159) must be made specific to any particular hatchery or hatchery fish it is directed toward. The Kootenai Tribe operates a conservation aquaculture program for endangered Kootenai River white sturgeon and is in the process of developing a burbot hatchery and additional sturgeon rearing capability to prevent extinction of these culturally significant fish species (KTOI 2010). Blanket statements that hatchery fish are causing declines in aquatic species should not be used unless there is specific science to support such.

Other portions of the DEIS are internally inconsistent and also do not appear to be drafted specifically for the Forests. For example, the DEIS acknowledges that “[c]urrent condition and trends show that native aquatic species are in decline.” (DEIS p. 138). A later section, however, states the exact opposite: “Current conditions and trends show that populations of many native aquatic species are stable or improving.” (DEIS p. 159).

Unfortunately for the Kootenai Tribe, the majority of the Treaty fisheries are endangered, threatened or have been extirpated from Kootenai Territory.

- Kootenai River white sturgeon – ESA-listed as endangered (2006 Libby BiOP as clarified (USFWS 2006 and USFWS 2008))
- Bull trout – ESA-listed as threatened (USFWS 2002)
- Burbot – functionally extinct (Kootenai River/Kootenay Lake Burbot Conservation Strategy (KVRI 2005) and Pyper et al. 2008)
- Kokanee – functionally extinct (Status of Kokanee Populations in the Kootenai River in Idaho and Montana and South Arm Kootenay Lake, British Columbia (Ericksen et al. 2009))
- Westslope cutthroat trout – previously petitioned for threatened and endangered status; species of special concern (KTOI and MFWP 2004) (also see DEIS p. 167 statement that IDFG says westslope cutthroat are improving)
- Columbia River redband rainbow trout – species of special concern (KTOI and MFWP 2004)

A significant effort is underway involving the Kootenai Tribe, Confederated Salish and Kootenai Tribes of the Flathead Reservation, States of Idaho and Montana, numerous U.S. federal agencies, the Canadian federal government and the Province of British Columbia, along with other stakeholders, to improve the fisheries through habitat restoration and aquaculture. The Forests are important pieces of the recovery and

restoration effort through the delivery quality water. This water is a significant component of the ecosystem, including the mainstem Kootenai River (DEIS p. 173 – states “it is highly unlikely that Forest management activities affect the mainstem Kootenai River”).

Another inconsistency appears in relation to Kootenai River white sturgeon habitat (DEIS pp. 172 and 173) with the statements that the species inhabits 430 miles (695 river kilometres) on one page and then states the species inhabits 168 miles on the next. The correct amount of river miles the species inhabits is 168 miles.

The DEIS relies primarily on a number of outdated studies. A list of more recent studies is attached.

The description of kokanee “from Kootenay Lake” (DEIS p. 174) is somewhat misleading. Kokanee rearing occurs in Kootenay Lake, but kokanee spawn in the tributaries, including Boundary Creek, which lies partially in the IPNF. (Status of Kootenai Kokanee (KTOI 2009))

The description of effects from Dams and Diversions (DEIS p. 188) requires additional clarification and analysis. It is true that most dams are not under Forest Service control. However, a careful examination of the dams and diversions on or impacting National Forest System lands is important to understanding the effects to the resources and will assist in planning for addressing such effects.

#### Plants of Special Interest

The analysis of rare plants (DEIS p. 105) should also include an analysis of plants of cultural importance to the Kootenai Tribe. A list of plants of cultural importance is attached.

#### Special Forest and Botanical Products

As stated in the Treaty Rights section of these comments, Treaty harvest of special forest and botanical products must be assured. Monitoring of the special forest and botanical products is an essential step in managing these Treaty resources and should be included in the Monitoring Program (p. 99).

#### Monitoring of Natural Resources (Fish, Wildlife, Special Forest and Botanical Products)

Determining the extent to which ecological systems are experiencing disturbance and change in structure and function is critical for long term conservation of biotic diversity in the face of changing landscapes and land use. The ability to assess status and trends in the condition of ecosystems can allow identification of existing or developing problems prior to a crisis. Yet the complex and diverse nature of ecosystems necessitates the use

and appropriate validation of selected measurable objectives and sets of indicators of biological condition to allow efficient monitoring of a broad range of systems.

Currently, both the IPNF and KNF monitoring sections lack sufficient objectives that relate to Tribal Treaty rights protection and enhancement and the federal trust responsibility. The Kootenai Tribe recommends sufficient delineations for compliance level monitoring. Following compliance monitoring, it would be practical to assess the deficiencies in effectiveness monitoring, which show how management actions are affecting the objectives.

Once adequate compliance and effectiveness monitoring submissions are in place, the Forest Plans can demonstrate a mixture of active and passive management that maintains management flexibility based on sound monitoring plans, which in turn will produce a workable, science-based roadmap for both the Kootenai and Idaho Panhandle National Forests.

#### Recommended Wilderness Areas (MA1b)

The amount of recommended wilderness in the current proposal contains fewer acres than the 1987 Plan (DEIS pp. 1, 21 and 23, 324; Tables 71, 72 and 73), which appears to run contrary to the intent of recommended wilderness to maintain wilderness characteristics. It is important that the Plan and the environmental impact statement identify the reasons for the changes in acreages and the difference in locations of such acreages. Ongoing government-to-government consultation on the recommended wilderness area boundaries, as well as management guidance for such, will be necessary before the Plan is finalized.

#### Forest Health and Resiliency

It is the interactions between biotic and abiotic ecosystem components and ecosystem processes that are responsible for creating and maintaining diversity. These interactions and processes are what constitute biological integrity, or an “(eco)system’s wholeness.” (Angermeir & Karr 1994). Moreover, and as stated in the AMS “[t]he structure and function of the [vegetation] component types that make up the ecosystem are an indication of the relative health of ecosystems.”

The Kootenai Tribe agrees that old growth forests are an integral part of the landscape, and concurs with the decision not to create old growth reserves (DEIS p. 33). The Forests in Kootenai Territory historically contained a dynamic, natural distribution of varied cover types and age classes (landscape mosaic). Focusing solely on one area and designating it as old growth runs contrary to the dynamic nature of forest conditions over the landscape. This dynamic structure is captured in the AMS over the Forest landscape. However, the AMS does not prescribe a specific age class at a specific locale, which is what the old growth reserve designation attempts. The concept of old growth reserves is

contrary to the natural processes and landscape perspective promoted in the draft Forest Plan.

The Kootenai Tribe supports a dynamic management strategy that emphasizes care be taken in management and connectivity of old growth stands, since they provide valuable habitat that require several generations to develop.

Insect and disease effects to Forest health and resiliency are disheartening (DEIS pp. 59, 61-62), especially the estimates of percentages of certain species that may be killed by beetles. The potential impacts show the importance of maintaining management flexibility to prevent or respond to infestations.

### Old Growth

Historic old growth could best be referred to as “desired” (Figure 8, DEIS p. 66-67; AMS). The Kootenai Tribe recommends the Forest Service improves this subsection rationale and enhances the summary of AMS and USFS Northern Regional Old Growth Management Considerations (2008) specifically related to old growth definitions.

### Western White Pine

Western white pine is an important Kootenai cultural species that was traditionally used to fashion the Kootenai sturgeon-nose canoe. Restoration of this species, then, is important not only for Forest health (DEIS p. 64), but also to fulfill Treaty and trust responsibilities. Additional information is necessary to ensure that trending toward desired conditions for this species is achievable. For example, the direction assumes that the available planting stock will be viable as to minimal mortality in order to provide a cost effective means for restoration. The Plan and analysis should include whether planting stock will be available over the life of the Plan and what the current expectations are for the mortality of the out planted stock.

### Whitebark Pine

Whitebark pine (DEIS p. 65) is also important to the Kootenai Tribe and restoration of this species is important for Plan implementation. The restoration guidelines, however, do not present any probable solution to the blister rust and mountain pine beetle problems or regeneration. Very little whitebark pine, if any due to its location at high elevation, will be accessible under general forest, so the Forests will have to manage the species strictly through restoration efforts. The Plan and analysis should include a detailed discussion of restoration efforts to be pursued, including propagation of viable planting stock through a program similar to the white pine genetics program as recommended by Forest Service research staff and how restoration efforts will be conducted in areas closed to active management.

### Forest Resilience (FW-OBJ-VEG-01, p. 20)

While it is desirable to recover populations of white pine and whitebark pine, it may be advisable to include a caveat that these species are susceptible to insect and disease mortality, rather than “insect/disease resistant species dominant types” (p. 20).

### Precommercial Thinning

The Spectrum modeling was constrained by operational and logistical limitations showing only 5,000 acres per year could be feasibly thinned. We are concerned that this limitation will only provide failure to meet the desired conditions and objectives for forest resilience and hope that this numerical constraint will not be used as a production gate on the Forest. The Plan states the objective to treat 250,000 acres over the life of the Plan (15 years) or approximately 16,666 acres per year (p. 20). Given the current backlog of thinning acres, this would indicate the need for greater thinning to achieve protection and restoration than the 5,000 acres modeled.

### Prescribed Fire

Similarly, we are concerned that the fuels treatment objectives (p. 25) will fail to meet desired conditions. Additionally, greater allowance for acres treated is necessary to account for areas not designated for active management.

### Stand-replacing Fire

The projection of 2,600 acres per decade of stand replacing fires calculated in Appendix B appears to be extremely low given the thousands of acres which have been destroyed on the Lower Kootenai GA alone in the last 50 years. It may be necessary to control stand replacing fires, particularly in areas designated active management, given that restoration of desired habitat conditions will require vegetative growth through timber management and stewardship activities.

### Fire

Further clarification for FW-OBJ-FIRE-01 (p. 25) is necessary. For example, what is meant by 10% of the ignitions over the life of the plan? Does this mean letting the lightning caused fires to burn until extinguished by snowfall if they do not impact residences? It is also important to clarify how the objective will meet restoration.

### Miscellaneous Comments

The Kootenai Tribe recognizes the importance of guidelines to assist in Forest management (p. 3). The definition of guidelines and the requirements described to ensure project or activity consistency with the Plan appear to give greater weight to guidelines than necessary. The requirement that projects or activities be designed in accord with the

guideline or require additional documentation to show why it deviates and is as effective will increase the burden on the Forests and their governmental partners. Instead, guidelines should be guides and not requirements and if generally followed, a Forest Plan amendment should not be required.

Restoration and recovery of the Forests in order to fulfill the Forest Service's Treaty and trust responsibility requires a strong functioning infrastructure in the forest products industry (DEIS pp. 104 and 479). If there are no mills or other facilities to purchase forest products that are a byproduct of forest restoration actions, there will be a corresponding need for Congressional appropriations in an era of ever-tightening budgets. Additional analysis would be useful to highlight the effects of additional losses in the forest products industry.

The Forests are important components of the economies in Kootenai Territory. A comprehensive understanding of the extent to which the Forests contribute to the economies is important. Additional clarifications are necessary in order to fully analyze the impacts.

The definitions regarding employment and income (DEIS p. 463) are not entirely clear. For example, the Kootenai Tribe has a significant economic impact in Boundary County, Idaho. (Peterson, Steven: 2010 Economic Impact Report, Five Tribes of Idaho). It is difficult to determine, however, whether the Kootenai Tribe is included as part of the Government Sector or another category. Similarly, it is not clear what is included in the various categories in Table 119 (DEIS p. 470) or Table 122 (DEIS p. 473).

The Kootenai Tribe requests clarification as to the definition of "Government" sector, what is included in the categories in Table 119 and the definition of "Intergovernmental Revenue" as used in Table 122.

The Secure Rural Schools and Community Self-Determination Act is critical to local governments. Additional analysis of what effects changes to the payments may have is necessary to fully analyze the impacts.

### Conclusion

The Kootenai Tribe appreciates the work it took to develop and draft two major Forest Plans and environmental analyses. With some additional effort, we believe the Forest Plans can be improved and set the stage for a better plan to manage these crucial areas of Kootenai Territory.

We look forward to continuing our work together on a government to government basis to address these comments and further refine the Forest Plans.

## LIST OF RECENT STUDIES REGARDING KOOTENAI TERRITORY FISHERIES

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Ireland, S. C., J. T. Siple, R. C. P. Beamesderfer, V. L. Paragamian, and V. D. Wakkinen. 2002. Success of hatchery-reared juvenile white sturgeon (*Acipenser transmontanus*) following release in the Kootenai River, Idaho. *Journal of Applied Ichthyology* (18) 642-650.

<http://www.restoringthekootenai.org/ResourcesKootenai/OnlineLibrary/SturgeonLibrary/>

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Paragamian, V. L., and G. Kruse. 2001. Kootenai River white sturgeon spawning migration behavior and a predictive model. *North American Journal of Fisheries Management* 21:10-21.

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Paragamian, V. L., R. C. P. Beamesderfer, and S. C. Ireland. 2005. Status, population dynamics, and future prospects of the endangered Kootenai River white sturgeon population with and without hatchery intervention. *Transactions of the American Fisheries Society* 134:518-532.

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[http://www.fws.gov/pacific/bulltrout/RP/Chapter\\_4%20Kootenai.pdf](http://www.fws.gov/pacific/bulltrout/RP/Chapter_4%20Kootenai.pdf)

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U. S. Fish and Wildlife Service. 2008. Clarification of the 2006 Fish and Wildlife Service Biological Opinion Regarding the Effects of Libby Dam Operations on the Kootenai River White Sturgeon, Bull Trout, and Kootenai Sturgeon Critical Habitat (1-9-01-F-0279R).

## Partial List of Plants of Tribal Significance

antelope-bush / bitterbush	<i>Purshia tridentata</i>
bear grass	<i>Xerophyllum tenax</i>
black cottonwood	<i>Populus balsamifera</i>
black gooseberry	<i>Ribes lacustre</i>
black huckleberry	<i>Vaccinium membranaceum</i>
bracken fern	<i>Pteridium aquilinum</i>
canby's lovage	<i>Ligusticum canbyi</i>
cattail	<i>Typha latifolia</i>
choke cherry	<i>Prunus virginiana</i>
Douglas fir	<i>Pseudotsuga menziesii</i>
fireweed	<i>Epilobium angustifolium</i>
grand fir	<i>Abies grandis</i>
high-bush cranberry	<i>Viburnum edule</i>
Indian hemp	<i>Apocynum cannabinum</i>
kinnikinnick	<i>Arctostaphylos uva-ursi</i>
lodgepole pine	<i>Pinus contorta</i>
mock-orange	<i>Philadelphus lewisii</i>
mullein	<i>Verbascum thapsus</i>
nodding onion	<i>Allium cernuum</i>
ocean spray	<i>Holodiscus discolor</i>
oregon-grape	<i>Mahonia aquifolium</i> or <i>M. repens</i>
paper birch	<i>Betula papyrifera</i>
pasture sage	<i>Artemisia frigida</i>
pineapple weed	<i>Matricaria discoidea</i>
prickly rose	<i>Rosa acicularis</i>
prickly-pear cactus	<i>Opuntia fragilis</i>
red-osier dogwood	<i>Cornus stolonifera</i>
Rocky Mountain juniper	<i>Juniperus scopulorum</i>
saskatoon berry, serviceberry	<i>Amelanchier alnifolia</i>
silver berry	<i>Elaeagnus cummutata</i>
skunk cabbage	<i>Lysichiton americanum</i>
snowberry / waxberry	<i>Symphoricarpus albus</i>
snowbrush	<i>Ceanothus velutinus</i>
soopolallie / buffaloberry	<i>Shepherdia canadensis</i>
stinging nettle	<i>Urtica dioica</i>
thimbleberry	<i>Rubus parviflorus</i>
trembling/quaking aspen	<i>Populus tremuloides</i>
wapato	<i>Sagittaria latifolia</i>
western larch	<i>Larix occidentalis</i>
western red cedar	<i>Thuja plicata</i>
western yew	<i>Taxus brevifolia</i>
white spruce	<i>Picea glauca</i>
western white pine	<i>Pinus monticola</i>

whitebark pine  
wild bergamot / horsemint  
wild strawberry  
wolf lichen  
wood lily  
yampah  
yarrow  
yellow glacier lily

*Pinus albicaulis*  
*Monarda fistulosa*  
*Fragaria virginiana*  
*Letharia vulpina*  
*Lilium philadelphicum*  
*Perideridia gairdneri*  
*Achillea millefolium*  
*Erythronium grandiflorum*