Cover Sheet
January 2013

Title of Evaluation:	Endangered Species Act Section 4(d) Rule Proposed Evaluation and Pending Determination on the Nez Perce Tribe Tribal Resource Management Plan for the Grande Ronde and Imnaha Rivers in Northeast Oregon
Evolutionarily Significant Unit (ESU) Affected:	Snake River Spring/Summer Chinook Salmon (*Oncorhynchus tshawytscha*)
Responsible Agency and Official:	NOAA – National Marine Fisheries Service William W. Stelle, Jr. 7600 Sand Point Way N.E. Seattle, WA 98115
Contact:	Enrique Patiño NOAA's National Marine Fisheries Service Salmon Management Division 7600 Sand Point Way N.E. Seattle, WA 98115
Legal Mandate:	Endangered Species Act of 1973, as amended and implemented (50 CFR Part 223), and the Tribal 4(d) Rule (50 CFR 223.209)
Location of Proposed Activities:	Imnaha and Grande Ronde Rivers Sub-basins in the State of Oregon
Activity Considered:	Determination regarding a Tribal Resource Management Plan Submitted by the Nez Perce Tribe, under the Tribal 4(d) rule
Title of TRMP:	Tribal Resource Management Plan - Nez Perce Tribe (NPT) Grande Ronde and Imnaha River Subbasins Spring/Summer Chinook Salmon Treaty Fisheries

Table of Contents

1.0 Introduction & Background 1

1.1 Introduction 1

1.2 Background 2

2.0 Evaluation 5

2.1 Limit 4 Criteria and TRMP Evaluation 5

2.2 Section 4 (i) - Clearly defines the scope and area of impact 6

2.2.1 Sets management objectives and performance indicators for the plan 6

2.3 Section 4(i)(A) - Define populations within affected listed ESUs, taking into account: spatial and temporal distribution, genetic and phenotypic diversity, and other appropriate identifiably unique biological and life history traits. 10

2.3.1 Snake River Spring-Summer Chinook salmon 10

2.4 Section 4(i)(B) Uses the concepts of ‘‘viable’’ and ‘‘critical’’ salmonid population thresholds, consistent with Viable Salmonid Populations (VSP) concepts in “Viable Salmonid Population.” .....**Error! Bookmark not defined.**

2.5 Section 4(i)(C). Sets escapement objectives or maximum exploitation rates for each management unit or population based on its status, and assures that those rates or objectives are not exceeded. 16

2.6 Section 4(i)(D) - Display a biologically based rationale demonstrating that the harvest management strategy will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild, over the entire period of time the proposed harvest management strategy affects the population, including effects reasonably certain to occur after the proposed actions cease. 18

2.7 Section 4(i)(E) - Include effective monitoring and evaluation programs to assess compliance, effectiveness, and parameter validation. 21

2.8 Section 4 (i)(F) - Provide for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed. 21

2.9 Section 4(i)(G) - Provide for effective enforcement, education and coordination among involved jurisdictions. 22

2.10 Section 4(i)(H) - Include restrictions on resident and anadromous species fisheries that minimize any take of listed species, including time, size, gear, and area restrictions. 22

2.11 Section 4(i)(I) - Is consistent with plans and conditions established within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations. 22

3.0 (4)(ii) The Amount Of Take is Monitored and Provided to NMFS On A Regular Basis.. 23

4.0 (4)(iv) Written Concurrence 23
5.0 Reevaluation Criteria 23
6.0 Notice of Pending Determination 23
7.0 Pending Determination 25
8.0 References 26

1.0 INTRODUCTION & BACKGROUND

This section provides an introduction to this document, and to the Endangered Species Act's Tribal 4(d) Rule Fishery Limit Criteria; it also defines the action area and the scope of the evaluation.

The purpose of this document is to evaluate the extent to which the proposed fishery management plan complies with the Tribal 4(d) rule under the Endangered Species Act (ESA)[1]. The proposed plan describes tribal ceremonial and substance fisheries in the Grande Ronde and Imnaha Rivers subbasins.

1.1 Introduction

The United States has a unique legal relationship with Indian tribes as set forth in the Constitution of the United States, treaties, statutes, executive orders, and court decisions which are collectively considered "Treaty Trust Doctrine". The appropriate exercise of its trust obligation commits the United States to harmonize its many statutory responsibilities with the tribal exercise of tribal sovereignty, tribal rights, and tribal self-determination. Consideration of TRMPs under the Tribal 4(d) rule recognizes the unique legal and political relationships between tribes and the United States, and is consistent with the trust responsibility to tribes.

The Nez Perce Tribe (NPT) submitted a Tribal Resource Management Plan (TRMP) that may impact Snake River spring Chinook salmon, describing proposed Tribal fishery management activities (NPT 2012). NOAA's National Marine Fisheries Service (NMFS) is the lead agency responsible for administering the Endangered Species Act (ESA) as it relates to listed salmon.

When NMFS lists a species as threatened, protective regulations are not automatically applied to the species, and therefore NMFS must apply protective regulations under section 4(d) of the ESA to conserve the species. NMFS issued a final rule pursuant to section 4(d) of the ESA (65 FR 42422, July 10, 2000), adopting the take prohibitions in section 9(a)(1) of the ESA. As part of the rule, NMFS also sets forth specific circumstances when the prohibitions will not apply, known as 4(d) limits. A separate but closely related Tribal 4(d) Rule created an additional limit for tribal resource management plans (65 FR 42481, July 10, 2000). The Tribal 4(d) Rule limits the application of the take prohibitions if a tribe develops and implements a Tribal Resource Management Plan (TRMP) that NMFS determines will not appreciably reduce the likelihood of survival and recovery of the listed species. As a result, the application of section 9 take prohibitions for any listed species normally prohibited under section 9 may be limited via consideration of a TRMP through the Tribal 4(d) rule.

[1] NMFS's ESA review of tribal resource management plans does not itself permit the operation of the described fishery. Each tribe submitting a TRMP for NMFS's review must conduct fisheries in accordance with their treaty or other fishing rights. NMFS takes no position on those rights in making a determination as to whether a TRMP would be likely to appreciably reduce the survival and recovery of ESA-listed fish.

NMFS is evaluating the TRMP submitted by the NPT concurrently with a TRMP submitted by the Shoshone-Bannock Tribes (SBT) and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) and Fishery Management and Evaluation Plans (FMEPs) submitted by the Oregon Department of Fish and Wildlife (ODFW) and Washington Department of Fish and Wildlife (WDFW), to determine if the NPT's TRMP will appreciably reduce the likelihood of survival and recovery of Snake River Spring/Summer Chinook salmon in the Grande Ronde and Imnaha Rivers subbasins.

At this time, NMFS' recommendation is focused primarily on the requirements of section 4(d) of the ESA, acknowledging that the review of the plan's effects under NEPA is still necessary and pending. We believe sufficient information has been provided in the TRMP to evaluate the effects of the plan, but will not make a recommendation on determination of the plan's effects until the full review process has been completed. A draft Supplemental Environmental Assessment pursuant to NEPA is available at the same time this proposed evaluation and pending determination (PEPD) is being made available, and information developed during this combined process will be considered in making our final determination and recommendation.

1.2 Background

On January 2009, the Snake Basin Harvest Forum[2], an ad-hoc group, was formed as a result of the *U.S. v. Oregon* process to develop coordinated fishery plans in the Snake River basin. Together with co-managers, the criteria for NMFS's approval of spring/summer Chinook salmon fishery plans in northeast Oregon were further refined. The NPT submitted two long-term TRMPs for approval in May 2009 under ESA tribal 4(d) rule for tribal fisheries also in the Imnaha River subbasin and the Grande Ronde River subbasin targeting Snake River spring/summer Chinook salmon. However, the NPT's 2009 TRMP did not meet all the necessary criteria for a favorable ESA review and was deemed inadequate for review under the Tribal 4(d) Rule. On May 24, 2010, the NPT submitted two TRMPs for tribal spring/summer Chinook salmon fisheries – one for the Imnaha River and one for the Grande Ronde River. The NPT's 2010 TRMPs had similar shortcomings as the 2009 TRMP and was not reviewed under the Tribal 4(d) Rule.

On June 24, 2010, the NPT sent a letter to NMFS, the U.S. Department of Justice, and the *U.S. v. Oregon* Policy Committee providing notice of a formal point of disagreement with respect to a policy dispute concerning the Tribe's view of NMFS's violation of the *U.S. v. Oregon* 2008-2017 Management Agreement by proceeding with a review of the SBT's TRMP. The CTUIR joined the NPT in that Motion for Enforcement. A District Court hearing was held on November 8, 2010, on this matter, and the Honorable Judge Garr M. King issued a court opinion on March 11, 2011 denying the Tribes' Joint Motion for Enforcement.

[2] The Snake Basin Harvest Forum is an offshoot of the *U.S. v Oregon* process, formed in early 2009 to serve as a venue for developing comprehensive and coordinated fisheries management plans in the Snake River Basin that meet the needs of the co managers, are ESA–compliant, and are consistent with recovery planning.

Considering the Court's Opinion and Order on the proposed fisheries' relationship to the 2008-2017 Management Agreement, NMFS proposed to evaluate the determinations on the two FMEPs from ODFW, the TRMP from the CTUIR, the TRMP from the NPT, and the TRMP from the SBT collectively because they would be co-managed, overlap in geography, impact the same spring/summer Chinook salmon populations, and rely on a common agreed-upon set of management criteria, including the same population-specific, abundance-based harvest rate schedule. A Draft Environmental Assessment, ODFW's FMEPs, two Pending Evaluation and Proposed Determination (PEPD) documents – one for the SBT's TRMP, and one the CTUIT's TRMP – were made available for public comment though an FR Notice (77 Fed. Reg. 19225). This FR Notice did not include a PEPD for the NPT's Grande Ronde River and Imnaha River subbasins TRMP.

NMFS continued to work with the NPT through the public comment period and beyond to resolve the pending issues and to include the NPT's Grande Ronde River and Imnaha River subbasins TRMP in the NEPA and ESA analysis because their fisheries are is an integral part of fishery management in the action area each year. After months of discussion and exploring several plausible options, the NPT agreed to include measures in its TRMP that would allow NMFS to reach a no-jeopardy conclusion under the ESA Tribal 4(d) Rule while retaining their legal and policy positions regarding the SBT's participation in Northeast Oregon spring/summer Chinook salmon fisheries. On February 17, 2012, the NPT submitted a revised TRMP for spring/summer Chinook salmon fisheries in Grande Ronde River and Imnaha River subbasins to NMFS that included the necessary management provisions for NMFS to include the TRMP as part of the Northeast Oregon approval package (NPT 2012).

The NPT's TRMP was submitted to NMFS under the government-to-government processes established in the final 4(d) rule for TRMPs 65 FR 42482, July 10, 2000, [50 CFR 223.209]. This process requires that before any TRMP qualifies for a limitation on the application of take prohibitions for threatened species, NMFS must determine that it will not appreciably reduce the listed species survival and recovery. The revised NPT's 2012 TRMP is consistent with the fishery framework developed to be used by all parties proposing fishery plans in Northeast Oregon (NPT 2012).

The proposed TRMP may affect Snake River Spring/Summer Chinook salmon, which are part of a species listed as threatened under the ESA. The Snake River Spring/Summer Chinook Salmon Evolutionarily Significant Unit (ESU) was listed as a threatened on April 22, 1992 (57 FR 14653) with a correction on June 3, 1992 (57 FR 23458), and reaffirmed as threatened on June 28, 2005 (70 FR 37160).

Harvest of Snake River spring/summer Chinook salmon is managed through several forums throughout their range in the tributaries, Snake River, Columbia River, and Pacific Ocean. Existing and pending harvest management related to this plan is shown in Table 1.

Artificial propagation programs for the listed Grande Ronde and Imnaha Rivers Spring/Summer Chinook salmon populations were established in the early 1980's under the Lower Snake River Compensation Plan (LSRCP), a Federally funded program designed to mitigate for fish habitat and fishing opportunity lost when the four Federal hydroelectric dams on the Lower Snake River were constructed between 1962 and 1975. Originally, the LSRCP hatchery programs used out-of-basin stocks of Spring/Summer Chinook salmon and focused primarily on returning adults for harvest mitigation. In recent years, these programs have transitioned into using local broodstock developed from natural-origin adult salmon returning respective subbasins. The integrated propagation programs approach in the basins are designed to promote conservation and recovery of the Snake River Spring/Summer Chinook salmon ESU while allowing for potential harvest opportunities.

Table 1. ESA-authorized harvest impacting Grande Ronde and Imnaha Rivers subbasins spring Chinook salmon.

Area Covered	ESU Covered	ESA Coverage Mechanism	Title	Status
Ocean Fisheries	All Columbia Basin	Section 7(a)(2) Consultation	Pacific Salmon Treaty	Completed 12/22/2008 (NMFS 2008b)
Mainstem Columbia	All Columbia Basin	Section 7(a)(2) Consultation	US vs. Oregon	Completed 03/05/2008 (NMFs 2008a)
Grande Ronde River	SR Spring/Summer Chinook salmon	4(d) limit 5	ODFW FMEP	In review concurrently with this TRMP
Imnaha River	SR Spring/Summer Chinook salmon	4(d) limit 5	ODFW FMEP	In review concurrently with this TRMP
Grande Ronde/Imnaha Rivers	SR Spring/Summer Chinook salmon	Tribal 4(d) rule	SBT TRMP	In review concurrently with this TRMP
Grande Ronde/Imnaha Rivers	SR Spring/Summer Chinook salmon	Tribal 4(d) rule	CTUIR TRMP	In review concurrently with this TRMP

As part of the *U.S .v. Oregon* Biological Opinion court settlement agreements, effective May 5, 2008, Hatchery and Genetic Management Plans (HGMPs) are being reviewed and revised to be consistent with the agreements and recovery goals (NMFS 2008a).

NMFS has prepared this PEPD regarding the NPT Grande Ronde/Imnaha TRMP for publication in the Federal Register to solicit public comment to assist in preparing a final determination.

2.0 EVALUATION

The final Tribal 4(d) Rule addressing TRMPs states that the prohibitions of section 223.203(a) of the Rule (16 U.S.C. 1531-1543) do not apply to actions undertaken by a tribe in compliance with a tribal resource management plan provided that:

1. The Secretary has determined pursuant to 50 CFR 223.204, and applying the standards contained in 223.203, and the government-to-government processes described therein that implementing the plan will not appreciably reduce the likelihood of survival and recovery of the listed salmonids.

2. In making that determination, the Secretary has taken comment from the public on the Secretary's pending determination.

3. The tribal plan specifies the procedures by which the tribe will enforce its provisions.

As per the Rule, NMFS consulted regularly with the NPT during the development of the TRMP through government-to-government and staff level communications. These occasions provided the opportunity to provide technical assistance, exchange information, and discuss what would be needed to provide for the conservation of the listed species and to be consistent with legally enforceable tribal rights and with the Secretary's trust responsibilities to the tribes.

The following is an evaluation of whether the TRMP adequately addresses the criteria specified in §223.204.

2.1 Limit 4 Criteria and TRMP Evaluation

NMFS is reviewing the TRMP submitted by the NPT to determine whether actions taken under the TRMP would appreciably reduce the likelihood of survival and recovery of the affected listed ESU. Though not required by the Tribal 4(d) evaluation process, the review will follow the format developed by NMFS for evaluating FMEPs under Limit 4 and Limit 6 of the July 10, 2000, 4(d) Rule (65 FR 42422). Limit 4 of the 4(d) rule involves nine criteria that not only describe a fishery but also provide a format for evaluating biological consequences that might result from conducting the fishery. Although these criteria were developed under a separate rule to cover state fisheries and joint state-tribal plans, they provide a useful framework for assessing the impacts of fishery management as described in TRMPs. NMFS' evaluation of the NPT's TRMP using this framework is detailed below.

4(d) Fishery Limit Criteria - from CFR 223.203

In considering the effects of this TRMP on listed species, NMFS took into account the following criteria for state FMEPs under Limit 4 and joint state-tribal plans under Limit 6 of the final ESA section 4(d) Rule.

2.2 Section 4 (i) - Clearly defines the scope and area of impact

The TRMP submitted by the NPT includes written descriptions, figures, and maps that define the scope of the plan and the area of impact considered in the plan (Section 1 of the TRMP for General Objectives and Scope, and Section 2 of the TRMP for description of Action Area). The plan also discusses the biological impact in terms of the affected species' range (TRMP's Section 3.0). This information is summarized below.

The NPT's TRMP is designed to provide Tribal members with treaty harvest opportunities consistent with the exercise of treaty fishing rights while contributing to the conservation and recovery of local Chinook salmon populations through application of an abundance-based sliding scale management framework designed to conserve listed species in coordination with other parties and consistent with management for artificial propagation and natural spawning escapement. The NPT intend to engage in ceremonial and subsistence harvest of both hatchery and natural-origin Spring/Summer Chinook salmon.

The NPT is identifying, through this long-term fishery plan, its intended fishing areas in the Grande Ronde River subbasin (Figure 1) and Imnaha River subbasin (Figure 2). Fisheries would occur during the summer months to produce harvest levels up to those outlined in the proposed TRMP. The NPT would issue yearly season regulations detailing the timing and season regulations for tributary fisheries consistent with this long-term TRMP.

The Grande Ronde and Imnaha Rivers subbasins (action area) are located within the Snake River basin in northeastern Oregon (Figure 1 and Figure 2). The Grande Ronde River flows through Oregon and Washington and enters the Snake River at RM 168. The Imnaha River in northeast Oregon joins the Snake River above the mouth of the Grande Ronde River at about RM 192. Both the Grande Ronde and Imnaha Rivers support runs of summer steelhead, spring Chinook salmon, and fall Chinook salmon. The Grande Ronde and Imnaha River subbasins are 4,000 and 850 square miles in area, respectively.

2.2.1 Sets management objectives and performance indicators for the plan

The TRMP submitted by the NPT includes objectives for harvest as well as performance indicators designed to monitor those objectives (NPT 2012). The stated objectives of the TRMP include: (1) Provides for exercise of Nez Perce federally-secured and legally-enforceable treaty

reserved fishing rights in both the Imnaha and Grande Ronde subbasins; (2) Establishes a framework to determine the amount of harvestable fish[3] available on an annual basis and to allocate harvest between Nez Perce treaty and non-treaty fisheries; (3) Maintains consistency with conditions and agreements established in the ongoing *U.S. v. Oregon* court proceeding that address treaty fishing rights; (4) Describes how hatchery production that is covered by the *U.S. v. Oregon* 2008-2017 Management agreement, including hatchery operations co-managed by the Tribe and designed to benefit listed anadromous fish also supports harvest; and (5) Does not appreciably reduce the likelihood of survival and recovery of Snake River spring/summer Chinook, fall Chinook, steelhead or sockeye populations listed under the ESA.

The NPT's TRMP relies upon the use of a abundance-based harvest sliding scale based on natural adult returns to guide long-term ESA-take limits (See Section 5.1 of the TRMP). While the NPT present a harvest sliding scale representing an example of agreements of allocation of ESA-take between tribes and the State of Oregon (NPT 2012), the NPT is also committed to managing fisheries according to a total combined population-specific ESA limit (NPT 2012, Cover Letter). The TRMP details activities that are to be conducted by the NPT, but provides a framework for how fisheries would be managed collectively with other parties (NPT 2012).

[3] "Harvestable fish" as defined in the U.S. v. Oregon Management Agreement are "Those fish determined pursuant to this Agreement to be available for harvest." At page 123.

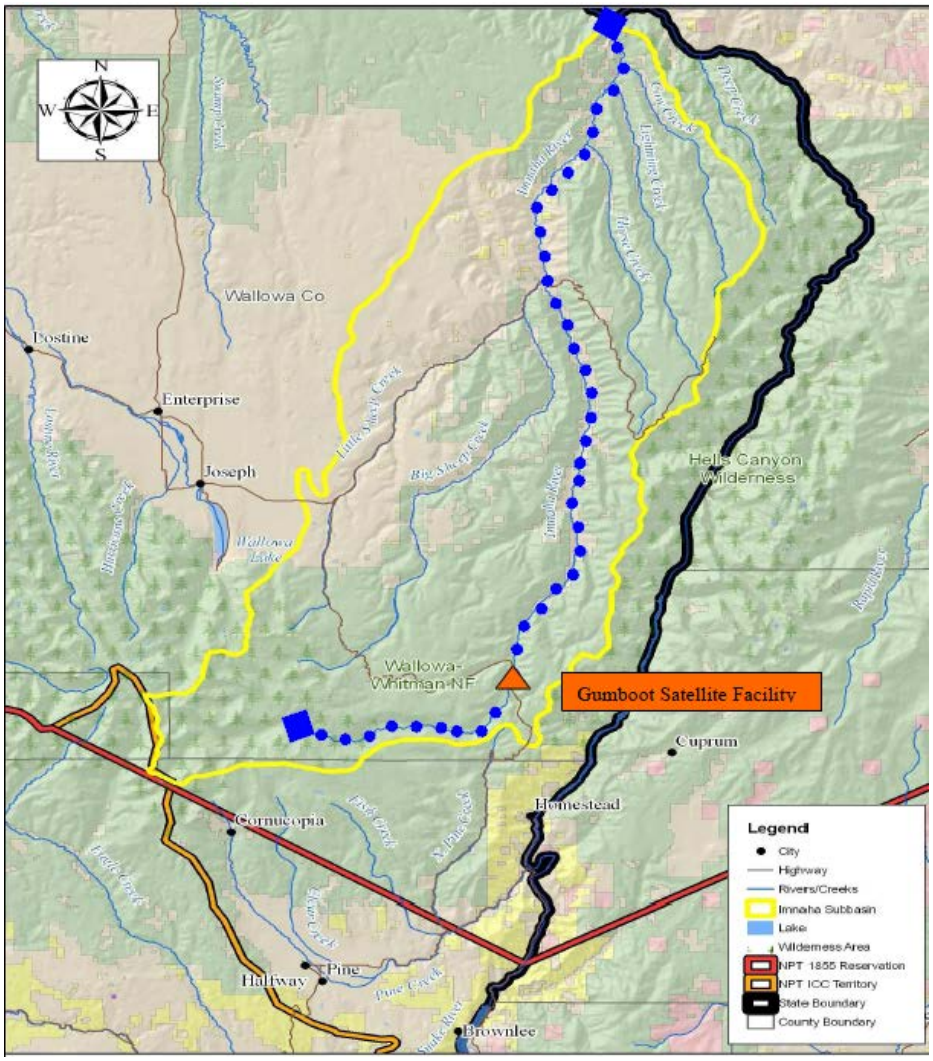

Figure 1. Depicted are the Nez Perce treaty-reserved fisheries in the Imnaha River Subbasin set forth in the NPT Plan.

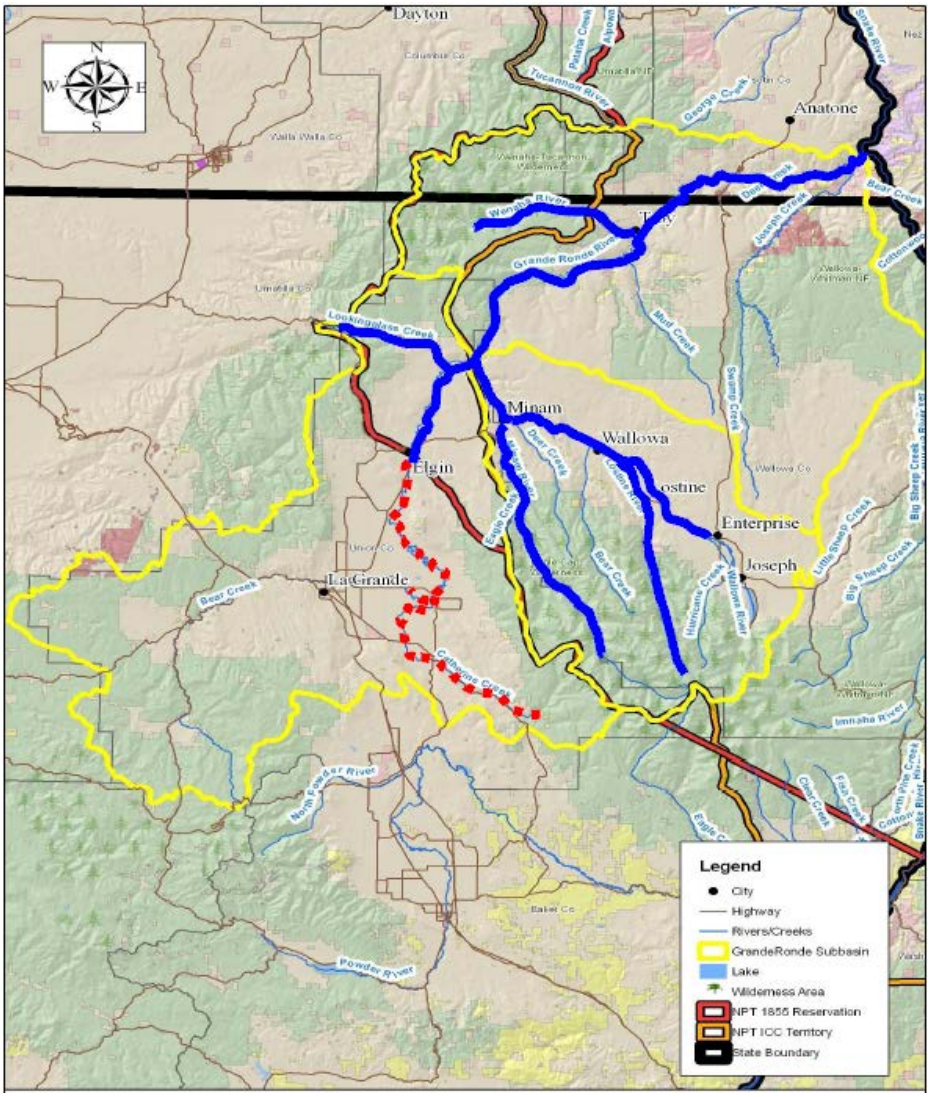

Figure **2**. Depicted are the Nez Perce treaty-reserved fisheries in the Grande Ronde River Subbasin set forth in the NPT Plan.

Performance indicators include fish population parameters used to assess the status of populations and the effects of the proposed fisheries on the local fish populations, including (see NPT 2012): (1) number and composition (hatchery and wild) of actual Spring/Summer Chinook salmon harvest within the subbasin by the NPT; (2) estimated fishery-related incidental mortality of listed Spring/Summer Chinook salmon and non-target fish in the basin; (3) level of Tribal fishing effort within the basin; and (4) level of consistency (compliance) with annual harvest goals and fishing regulations.

In addition, NMFS evaluates whether the TRMP adequately addresses the following criteria:

2.3 Section 4(i)(A) - Define populations within affected listed ESUs, taking into account: spatial and temporal distribution, genetic and phenotypic diversity, and other appropriate identifiably unique biological and life history traits.

The TRMP describes the populations of listed ESUs it expects to be affected by the fishery management within the plan (TRMP's Section 3.0). The only listed species affected by fisheries included in the TRMP is the Snake River Spring/Summer Chinook Salmon ESU. This section of the evaluation takes into account spatial and temporal distribution, genetic and phenotypic diversity, and other appropriate identifiably unique biological and life history traits that are relevant to the impacts on the species.

2.3.1 Snake River Spring-Summer Chinook salmon

The Snake River Spring-Summer Chinook Salmon ESU includes all natural-origin populations of Spring/Summer-run Chinook salmon in the mainstem Snake River and the Tucannon River, Grande Ronde River, Imnaha River, and Salmon River subbasins, as well as fifteen artificial propagation programs. The populations are aggregated into five extant Major Population Groupings (MPGs) based on genetic, environmental, and life history characteristics. The Lower Snake River MPG includes the Tucannon River and Asotin Creek (extirpated) populations. The Grande Ronde/ImnahaRiver MPG includes six populations within the Grande Ronde River drainage and two in the Imnaha River. Three populations within the South Fork Salmon River drainage and a fourth in the Little Salmon River form an additional MPG. Chamberlain Creek along with six populations in the Middle Fork drainage constitute the next upstream MPG. The Upper Salmon River MPG includes several major tributary populations along with two mainstem sections also classified as independent populations.

NMFS has initiated recovery planning for the Snake River drainage, organized around a subset of management unit plans corresponding to State boundaries (three Management Units Plans: Southeast Washington, Northeast Oregon, and Idaho). Viability criteria recommended by the ICTRT are being used in formulating recovery objectives within each of these three Management Unit planning efforts.

The recovery plans being synthesized and developed by NMFS will incorporate viability criteria recommended by the ICTRT (ICTRT 2007). The ICTRT recovery criteria are hierarchical in nature, with ESU/DPS level criteria being based on the status of natural origin Chinook salmon assessed at the population level. A detailed description of the ICTRT viability criteria and their derivation (ICTRT 2007) can be found on-line at *www.nwfsc.noaa.gov/trt/col/trt_viability.cfm*. Under the ICTRT approach, population level assessments are based on a set of metrics designed to evaluate risk across the four viable salmonid population (VSP) elements – abundance, productivity, spatial structure, and diversity (McElhany et al. 2000). The ICTRT approach calls

for comparing estimates of current natural-origin abundance (measured as a 10-year geometric mean of natural origin spawners) and productivity (estimate of return per spawner at low to moderate parent spawning abundance) against predefined viability curves. In addition, the ICTRT developed a set of specific criteria (metrics and example risk thresholds) for assessing the spatial structure and diversity risks based on current information representing each specific population. The ICTRT viability criteria are generally expressed relative to particular risk threshold - low risk is defined as less than a 5% risk of extinction over a 100-year period and very low risk as less than a 1% probability over the same time period.

The ICTRT recommends that each extant MPG should include viable populations totaling at least half of the populations historically present, with all major life history groups represented. In addition, the viable populations within an MPG should include proportional representation of large and very large populations historically present. Within any particular MPG, there may be several specific combinations of populations that could satisfy the ICTRT criteria. The ICTRT identified example scenarios that would satisfy the criteria for all extant MPGs (ICTRT 2007, Attachment 2). In each case, the remaining populations in an MPG should be at or above maintained status.

The proposed fisheries affect only natural-origin population of the Grande Ronde and Imnaha Rivers subbasins.

2.3.1.1 Grande Ronde/Imnaha MPG

The Grande Ronde/Imnaha MPG has eight historical populations (two currently considered functionally extirpated). The basic ICTRT criteria call for a minimum of four populations at viable or highly viable status. The potential scenario identified by the ICTRT would include viable populations in the Imnaha River (run timing), the Lostine/Wallowa River (large size) and at least one from each of the following pairs: Catherine Creek or Upper Grande Ronde (large size populations); and Minam River or Wenaha River.

For the Grande Ronde/Imnaha MPG, the current ICTRT data series extend the time period of record through at least the 2008 return year (Figure 2). Estimates of natural-origin abundance for the most recent five-year brood cycle are available for 6 populations in the Grande Ronde/Imnaha MPG (Table 2). In the Grande Ronde/Imnaha MPG, three of the populations exhibited moderately positive trends, while the remaining three had relatively flat or slightly negative trajectories in total spawning abundance since 1995.

The overall viability ratings for all of the populations in the Snake River Spring/Summer Chinook Salmon ESU remain at High Risk after the addition of more recent-year abundance and productivity data. Under the approach recommended by the ICTRT, the overall rating for an ESU depends upon population level ratings organized by MPG within that ESU. The following brief summaries describe the current status of populations within the Grande Ronde/Imnana

MPG, contrasting the current ratings with assessments previously done by the ICTRT using data through the 2003 return year.

Table 2. Recent (five year geometric mean) estimates of total and natural origin spawning escapement for Grande Ronde/Imnaha Spring/Summer Chinook salmon MPG. Estimates for all periods based on most current population level data sets (Ford et al., 2010 in review).

Population (organized by major population group)	Natural Spawning Areas								
	Total Spawners (5 year geometric mean, *range*)			Natural Origin (5 year geometric mean)			% Natural Origin (5 year average)		
	Listing (1992-1996)	*Prior (1997-2001)*	Current (2005-2009)	*Listing (1992-1996)*	*Prior (1997-2001)*	Current (2005-2009)	*Listing (1992-1996)*	*Prior (1997-2001)*	Current (2005-2009)
Grande Ronde/Imnaha									
Wenaha	260	303 (84-899)	364 (293-478)	93	274 (69-756)	325 (270-430)	49%	92%	95%
Lostine/Wallowa	118	265 (132-689)	812 (443-1778)	73	218 (120-541)	267 (131-668)	70%	88%	41%
Minam	180	277 (149-608)	460 (313-765)	88	262 (142-547)	414 (301-697)	63%	97%	95%
Catherine Creek	69	103 (43-512)	205 (143-275)	38	95 (43-382)	80 (42-122)	63%	95%	34%
Upper Grande Ronde	76	34 (4-83)	109 (17-419)	33	33 (4-83)	19 (13-43)	55%	100%	33%
Imnaha	482	855 (387-2282)	1094 (727-1996)	225	347 (158-1119)	196 (127-281)	50%	46%	25%

For the Grande Ronde/Imnaha MPG (Table 3), the Wenaha River, Lostine/Wallowa River and Minam River populations showed substantial increases in natural abundance relative to the previous ICTRT review, although each remains below their respective MAT (Ford et al., 2010 in review). Geometric mean productivity estimates remain relatively low for all populations in the MPG. The Upper Grande Ronde population is rated at high risk for spatial structure and diversity while the remaining populations are rated at moderate.

Population level status ratings remain at high risk across all MPGs within the Snake River Spring/Summer Chinook Salmon ESU, and, although recent natural-spawning abundance estimates have increased, all populations remain below minimum natural-origin abundance thresholds. Relatively low natural production rates and spawning levels below minimum abundance thresholds remain a major concern across the ESU. The ability of populations to be self-sustaining through normal periods of relatively low ocean survival remains uncertain. Factors cited by the 2005 BRT (Good et al. 2005) remain as concerns or key uncertainties for several populations. Overall, the new information considered does not indicate a change in the biological risk category since the time of the last BRT status review.

2.4 Section 4(i)(B) Uses the concepts of ‘‘viable’’ and ‘‘critical’’ salmonid population thresholds, consistent with Viable Salmonid Populations (VSP) concepts in “Viable Salmonid Population.”

The NPT provides ‘‘viable’’ and ‘‘critical’’ salmonid population thresholds to assist in NMFS’ evaluation and determination (TRMP’s Section 3.3, Table 2). The Interior Columbia Technical Recovery Teams (ICTRT) expanded upon McElhany *et al.* 2000 and has completed the ICTRT

Viability Criteria Review Draft 2007 available at www.nwfsc.noaa.gov/trt/trt_documents/ictrt_viability_criteria_reviewdraft_2007_complete.pdf. Also the current Grande Ronde-Imnaha MPG status assessments is available at http://www.nwfsc.noaa.gov/trt/col/trt_grande_ronde_chinook_mpg.cfm. The NPT's TRMP uses the concepts of "viable" and "critical" salmonid population thresholds consistent with Viable Salmonid Populations (VSP) concepts in the technical document "Viable Salmonid Populations and the Recovery of Evolutionarily Significant Units" (McElhany et al. 2000). The NPT propose viable and critical abundance thresholds as indicated in Table 4.

Based upon comparisons to the ICTRT viability documents, the TRMP sufficiently specifies critical and viable threshold abundance levels for each of the Spring/Summer Chinook salmon populations in the Grande Ronde and Imnaha subbasins. The critical threshold established for the fishery for basic populations is 150, for intermediate populations is 225, and for large population is 300. These numbers represent 30% of the minimum abundance threshold established by the ICTRT for basic, intermediate, and large populations (500, 750 and 1000, respectively). Therefore, critical abundance thresholds are comparable to the ICTRT's minimum abundance goals for maintained populations. The ICTRT did not establish critical threshold values for these populations.

McElhany et al. (2000) describe four key parameters for evaluating the status of salmonid populations: population size (abundance), population growth rate (productivity), spatial structure, and diversity. Abundance and productivity may be affected by the fisheries proposed in this TRMP, but measurably only for the Snake River Spring/Summer Chinook Salmon ESU. Spatial structure and diversity for Snake River Spring/Summer Chinook salmon are likely not influenced by these same fisheries. Spatial structure is generally a function of available habitat and distribution. Fisheries do affect habitat in that they impact adult migratory corridors, and these impacts are explicitly included in this evaluation. The extent to which the proposed fisheries disproportionally affect populations is also cogent in this evaluation. Because the proposed fisheries are to be managed under a framework that is responsive to population abundance (sliding scale), especially at low abundance levels, the expected fishery-related ESA impact rates would not reduce population size to levels where spatial effects are exacerbated. Diversity concerns for ESA-listed species in the Snake River are primarily related to the effects of hatchery-origin fish spawning in the wild and the resulting effects on the biological characteristics of each stock. Fisheries included in this TRMP would help remove a portion of hatchery-origin fish and thus can help reduce the number of hatchery-origin fish spawning in the wild. The existing or proposed fishery-related ESA impact rates on natural-origin fish would be low and not expected to exert enough selection pressure on any single characteristic to affect diversity.

Figure 2. Spawning abundance for the Grande Ronde/Imana Major Population Group in the Snake River Spring/Summer Chinook Salmon ESU. The dark line indicates natural origin spawner numbers, light (red) line indicates total natural spawners (including naturally spawning hatchery fish). The dotted line is the long-term (whole time series) mean of the total spawers, and the green shaded area indicates +/1 standard deviation around the mean (Ford et al., 2010 in review).

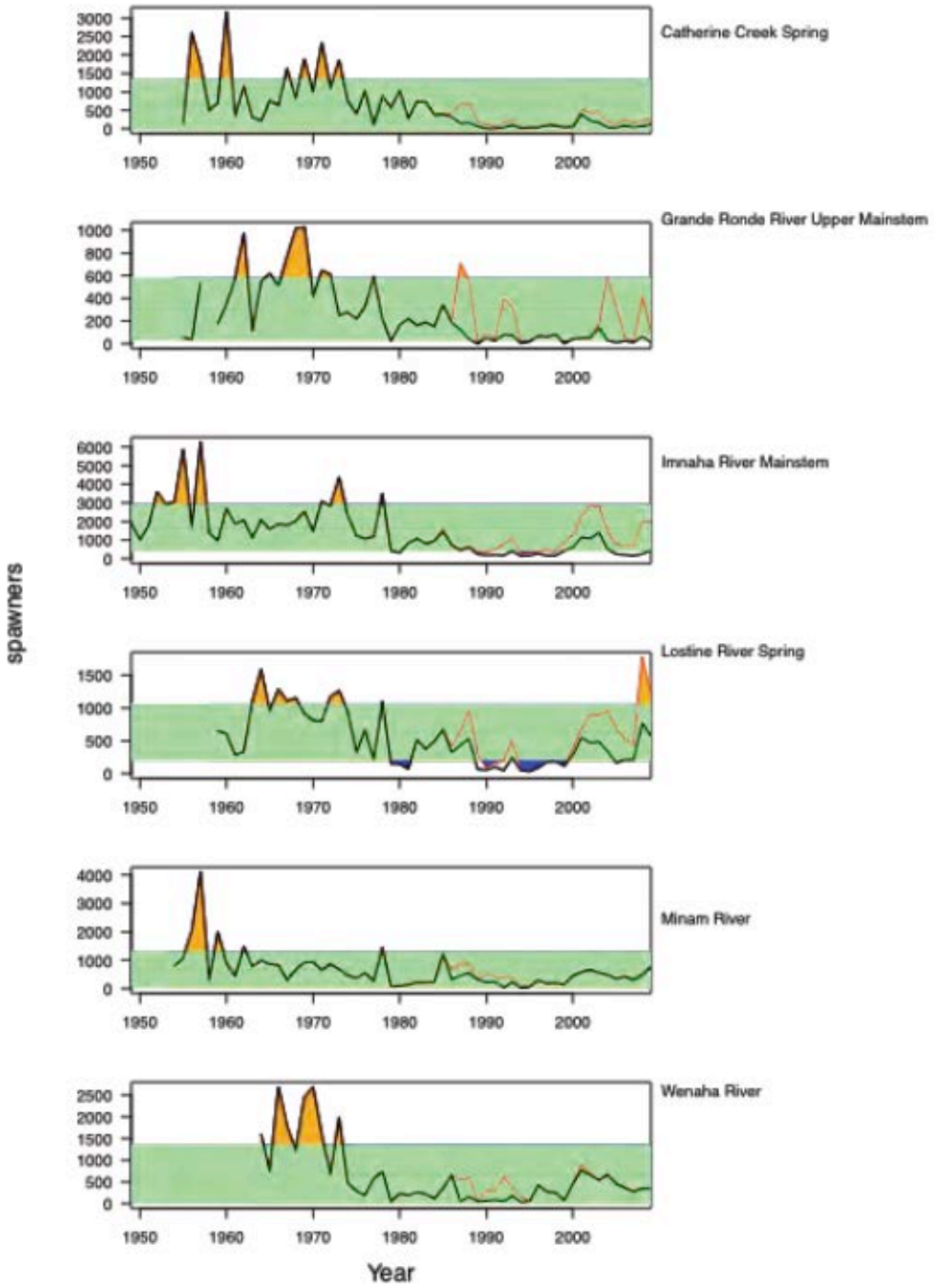

Table 3. Grande Ronde/Imnaha MPG. Summary of current population status vs. ICTRT viability criteria (Ford et al., 2010 in review).

Grande Ronde/Imnaha MPG	Abundance/Productivity Metrics				Spatial Structure and Diversity Metrics			Overall Viability Rating
Population	*ICTRT Minimum Threshold*	*Natural Spawning Abundance*	*ICTRT Productivity*	*Integrated A/P Risk*	*Natural Processes Risk*	*Diversity Risk*	*Integrated SS/D Risk*	
Wenaha 2000-2009	**750**	**441** (270-756)	**0.72** (0.5-1.06)	**High**	Low	Moderate	**Moderate**	**HIGH RISK**
1995-2004		*306* (51-756)	*0.68* (0.5-0.94)	**High**				
Lostine/Wallowa 2000-2009	**1000**	**320** (120-668)	**0.77** (0.52-1.14)	**High**	Low	Moderate	**Moderate**	**HIGH RISK**
1995-2004		*198* (33-541)	*0.85* (0.58-1.26)	**High**				
Minam 2000-2009	**750**	**467** (301-697)	**0.86** (0.62-1.2)	**High**	Low	Moderate	**Moderate**	**HIGH RISK**
1995-2004		*287* (62-651)	*1.07* (0.74-1.55)	**High**				
Catherine Creek 2000-2009	**750**	**107** (42-382)	**0.71** (0.49-1.03)	**High**	Moderate	Moderate	**Moderate**	**HIGH RISK**
1995-2004		*87* (34-382)	*0.73* (0.47-1.14)	**High**				
Upper Grande Ronde 2000-2009	**1000**	**32** (13-140)	**0.42** (0.26-0.68)	**High**	High	Moderate	**High**	**HIGH RISK**
1995-2004		*40* (4-140)	*0.42* (0.27-0.68)	**High**				
Imnaha River 2000-2009	**750**	**388** (127-1342)	**0.90** (0.74-1.13)	**High**	Low	Moderate	**Moderate**	**HIGH RISK**
1995-2004		*378* (74-1342)	*0.0.95* (0.77-1.16)	**High**				

Table 4. List of the TRT-defined natural fish populations, critical and minimum abundance thresholds, and associated hatchery stocks included in this TRMP.

Fishery Management Area	Critical Population Threshold	Viable Population Threshold	Associated hatchery stock(s)
Catherine Creek/Indian Creek[1]	300	1000	Catherine Cr. Endemic /Lookingglass Hatchery
Wallowa/Lostine Rivers	300	1000	Lostine River Endemic /Lookingglass Hatchery
Upper Grande Ronde River	300	1000	Grande Ronde Endemic
Lookingglass Creek[2]	150	500	Catherine Cr. Endemic
Wenaha River	225	750	None
Minam River	225	750	None
Imnaha River/Big Sheep[3]	300	1000	Imnaha Endemic

[1] - Catherine Creek population is considered a large (300/1000) when combined with Indian Creek. When fisheries target only the Catherine Creek portion of the Catherine/Indian Population, then the fisheries will be managed based on a Critical Threshold of 225 and Minimum Abundance Threshold of 750, that of an Intermediate-sized population.
[2] – Given that Lookinglass Creek is considered extinct, the co-managers agree to manage Lookingglass Creek based on a modified harvest rate schedule as indicated in Table 4 below. [3] – Given that Big Sheep Creek is considered functionally

extirpated, the co-managers agree to manage Big Sheep Creek as part of the Imnaha River population and change the ICTRT classification from intermediate (750) to large (1000).

2.5 Section 4(i)(C). Sets escapement objectives or maximum exploitation rates for each management unit or population based on its status, and assures that those rates or objectives are not exceeded.

For the purpose of evaluating the proposed fisheries, NMFS considers harvest rates (as described in the sliding scale in the TRMP's Section 5.1, Table 11) to adequately represent exploitation rates. Exploitation rates are typically defined as the proportion of a population at the beginning of a given time period that is caught during that time period, which, for an actively migrating anadromous population is essentially the same as the harvest rate. The NPT TRMP sets maximum exploitation rates for each management unit or population based on its status, and assures that those rates or objectives are not exceeded. The NPT's TRMP is intended to be multi-year harvest management plan for Snake River Spring/Summer Chinook salmon fisheries in the Grande Ronde and Imnaha Rivers Subbasins. The harvest management framework in the Grande Ronde and Imnaha Rivers Subbasins limits the exploitation rates of ESA-listed natural-origin fish based on population-specific abundance-based harvest sliding scales that are most restrictive when population abundance is low relative to the MAT (Table 5). This sliding scale is applicable to all affected populations in these two subbasins and represents total allowable take of natural-origin Spring/Summer Chinook salmon by all parties fishing in these subbasins.

The harvest rate levels for Grande Ronde River Spring/Summer Chinook salmon in all fisheries implemented according to the framework included in this plan would not exceed the numbers provided by the sliding scale in Table 5, as follows:

- At adult escapement below Critical Abundance Threshold (CAT) for each population (Step A), a 1% harvest rate for natural-origin Chinook salmon would be allowed for all fisheries. It is assumed that tribal fisheries would be the only fisheries planned and executed that may impact populations with preseason and inseason forecasts at or below CAT.
- At adult escapement above CAT and below Minimum Abundance Threshold (MAT) for each population (Step B), an 11% harvest rate on the margin between CAT and MAT would be allowed for all fisheries in addition to that allowed by Step A of the sliding scale. The NPT indicate they plan to negotiate an 8%/3% (11% total) split between tribal and state fisheries but, ultimately, tribal fisheries will be managed for a combined total harvest rate of 11% of the margin between Critical Abundance and MAT, as illustrated in Table 5[4].

[4] The NPT propose a harvest sliding scale for Nez Perce Treaty fisheries in their TRMP. However, the sliding scale in Table 5 represent the sliding scale with the total-combined ESA-take limits that the NPT are committed to manage under as per the language in their cover letter to the TRMP which states "… the Tribe will modify its

- At adult escapement between MAT to 1.5X MAT for each population (Step C), a 22% harvest rate on the margin would be allowed for all fisheries in addition to that allowed by Step B of the sliding scale. The NPT indicate they plan to negotiate a 16%/6% (22% total) split between tribal and state fisheries but, ultimately, tribal fisheries will be managed for a combined total harvest rate of 22% of the margin between MAT and 1.5X MAT, as illustrated in Table 5.
- At adult escapement between 1.5X MAT and 2X MAT for each population (Step D), a 25% harvest rate on the margin would be allowed for all fisheries in addition to that allowed by Step C of the sliding scale.. The NPT indicate they plan to negotiate a 19%/6% (25% total) split between tribal and State fisheries but, ultimately, tribal fisheries will be managed for a combined total harvest rate of 25% of the margin between 1.5X MAT and 2X MAT, as illustrated in Table 5.
- At adult escapement greater than 2X MAT for each population (Step E), a 40% harvest rate on the margin for would be allowed for all fisheries in addition to that allowed by Step D of the sliding scale. The NPT indicate they plan to negotiate a 28%/12% (40% total) split between tribal and State fisheries but, ultimately, tribal fisheries will be managed for a combined total harvest rate of 40% of the margin between 2X MAT and and the expected returns greater than 2X MAT, as illustrated in Table 5

fisheries or cease all fishing activity when NMFS informs the Tribe that the ESA limit has been reached for any of the affected populations."

Table 5. Population-specific harvest sliding scale for total (and tribal*) fisheries that target adult spring/summer Chinook salmon in Imnaha and Grande Ronde subbasins.

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

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

Fishing seasons, and the corresponding population-specific harvest rates, would be planned based on pre-season forecasts of terminal abundance for each of the affected populations. Pre-season abundance forecasts would be updated inseason each year by the *U.S. v Oregon* Technical Advisory Committee (TAC). The updated inseason forecasts would be used to re-calculate allowable take of ESA-listed fish inseason as per Table 5. Therefore, the harvest management framework proposed in the TRMP will be responsive to the most accurate and updated abundance forecast for each of the affected natural-origin populations in these two subbasins, and indirectly set to achieve the maximum escapement possible while allowing the implementation of fisheries in a manner that is responsive to expected population abundance.

2.6 Section 4(i)(D) - Display a biologically based rationale demonstrating that the harvest management strategy will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild, over the entire period of time the proposed harvest management strategy affects the population, including effects reasonably certain to occur after the proposed actions cease.

The NPT's TRMP harvest management framework for Snake River Spring/Summer Chinook salmon fisheries in the Grande Ronde and Imnaha Rivers subbasins is based on an abundance-based sliding scale that uses annual forecasted returns by population to calculate total, combined

allowable ESA take for each of the affected populations separately (Table 5) (see footnote 4). The NPT's TRMP relies on use of a harvest framework that uses the ICTRT viability threshold of natural spawning fish as the reference point for harvest. The proposed harvest framework prescribes year-specific levels of allowable ESA take based on annual forecasted return and run composition information. The abundance-based strategy is designed to be conservative on low returns levels to ensure broodstock collection and natural escapement occurs consistent with identified escapement goals and viability thresholds, while still providing for conservative tribal ceremonial and/or subsistence fisheries on these returns. The NPT TRMP commits the Tribe to work with other parties to developed agreed-upon preseason and inseason run forecasts by population, to report catch and ESA take in real-time, and to adjust or close fisheries when the total allowable take of any of the affected population has been reached by the combined effect of all parties implementing fisheries in these subbasins in any given year (Section 5.3.1 of the TRMP).

Table 6 is used to illustrate the recent and current abundance of the populations of Spring/Summer Chinook salmon in the Grande Ronde/Imnaha MPG of the Snake River Spring/Summer Chinook salmon ESU, as well as the corresponding prescribed ESA limit using data from Table 5 and assuming current abundances continue for the duration of the NPT TRMP. Because the harvest framework is very restrictive when abundance is low, the allowable ESA take for Upper Grande Ronde, Catharine Creek, and Wenaha populations would be very low and fisheries in the subbasins would have to be shaped so as to not to exceed the prescribed ESA take. In the example in Table 6, which uses the ICTRT 5-year geometric mean estimates of spawners, the allowable take for the Wenaha population would be on the order of 18 fish (5% of the run), for the Upper Grande Ronde population would be on the order of 1 fish (1% of the run), and for the Catherine Creek population on the order of 2 fish (1% of the run). As a result, implementation of the TRMP, along with other harvest plans for Spring/Summer Chinook in Northeast Oregon, would not be expected to measurably impact abundance, productivity, spatial structure, or diversity.

Table 6. Current (2005-2009) number of natural-origin spawners for six populations of Chinook salmon for the Grande Ronde/Imnaha MPG of the Snake River Spring/Summer Chinook salmon ESU, and the ESA take that would be allowed if these abundances continue for the duration of the TRMP.

Populations	**Natural-Origin Spawners (5 year geometric mean)***		**Minimum Abundance Threshold**	**Prescribed ESA Limit for Current Abundance as per Table 5**	**Post Fisheries Escapement (Current spawners – Allowed Take as per Table 5)**
	Prior (1997-2001)	**Current (2005-2009)**			
Wenaha	303	364	750	18	346 (364-18)
Lostine/ Wallowa	265	812	1,000	66	746 (812-66)

Minam	277	460	750	28	432 (460-28)
Catherine Creek	103	205	750	2	203 (205-2)
Upper Grande Ronde	34	109	1,000	1	108 (109-1)
Imnaha	855	1,094	1,000	101	993 (1,094-101)

*Data from from Ford 2011.

Impacts on abundance would be limited because the fisheries would be specifically managed by harvest rate schedules based directly on preseason and inseason abundance of each of the affected populations. If populations are above critical levels and fisheries are implemented, the number of ESA-listed fish harvested would only be a portion of the margin of fish above CAT and MAT levels and limiting the take of natural-origin fish is the priority.

Terminal area fisheries have the potential to impact productivity in two separate ways: (1) by direct reduction in abundance through harvest natural-origin fish, which can impact productivity at very low abundance levels; and (2) by removing hatchery fish that would otherwise spawn in the wild, which would potentially reduce the spawning success of natural-origin adults as well as the fitness of the offspring in some circumstances (Berejikian et al. 2008; Araki et al. 2009). The NPT's TRMP would not be expected to impact productivity because the proposed framework uses ICTRT abundance thresholds to determine allowable ESA take and ESA take would be very conservative at low abundances. The NPT's TRMP proposes a framework to be shared with other tribes and state fisheries that would result in at least some removal of hatchery fish, which may provide a positive benefit to productivity compared to not implementing the proposed framework.

Impacts on spatial structure would not be expected because the proposed fisheries would not selectively target any particular component of the return by age, sex, size, or run timing.

Impacts on diversity would be limited because the proposed fisheries would not selectively target any particular component of the return by age, sex, size, or run timing. Therefore, all life history strategies and the extent of their ranges would be expected to be maintained.

It is generally accepted that further reductions in fishery-related ESA take would not produce the desired yearly and long-term level of natural escapement to the Grande Ronde/Imnaha MPG populations. Other factors that affect salmon survival and productivity would also need to be addressed in order to realistically meet the viability criteria developed by the ICTRT for this MPG.

This TRMP employs a number of key strategies as recommended by the Federal government (Federal Caucus 2000) as part of their harvest conservation measures, that include: (1) fishery-related redistribution of the conservation burden historically borne by fisheries; (2) use of

threshold points to restrict the take of ESA-listed fish; and (3) sliding scale approach to determine appropriate ESA take limits on critically-low runs as well as on healthier runs at levels that may not slow recovery.

2.7 Section 4(i)(E) - Include effective monitoring and evaluation programs to assess compliance, effectiveness, and parameter validation.

The NPT's TRMP includes effective monitoring and evaluation programs to assess compliance, effectiveness, and parameter validation (TRMP's Section 7). To ensure compliance with ESA requirements, monitoring of NPT fisheries within the TRMP management area would be conducted using monitoring strategy and schedule will be described each year in a Snake River Basin Sampling Plan (Oatman and Sharma 2010). Sampling strategies for Grande Ronde and Imnaha River subbasins treaty fisheries would be summarized in the yearly Fishery Implementation Plan (FIP) submitted to NMFS prior to the fishing season each year for the duration of the TRMP.

Information from Columbia and Snake rivers dam counts would be utilized for inseason runsize updates of the affected populations as part of the fishery management framework described in Section 5.1 of the TRMP. Tribal harvest managers would keep abreast of running harvest totals for the Tribe. When NMFS notifies the Tribe that an ESA take limit for any population has been reached for any given year, conservation enforcement officers will enforce applicable annual tribal regulations for this treaty fishery to preclude additional take of natural-origin fish of these populations.

A post-season report would be produced each year and would be provided to NMFS. The report would be used to assess the fisheries success and identify potential modifications to improve fisheries planning and fisheries implementation (adaptive management process). The post-season report would also outline fisheries characteristics as they relate to performance indicators. The report would be utilized to evaluate effectiveness and parameter validation, such as fishery impacts and options to improve performance of run projections, harvest criteria, fishery logistics, monitoring, and enforcement.

2.8 Section 4 (i)(F) - Provide for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed.

As noted under Sections 2.5 and 2.7, above, parties will evaluate fishery monitoring data, dam counts and weir capture data weekly (or as often as needed) to verify assumptions, refine management strategies, and adjust management actions to ensure that ESA take limits are not exceeded. The Tribal fishery could continue until the ESA take limits of natural origin fish are reached. Through the process of periodic inseason harvest data reposting by the NPT, post-season report from the NPT, and preparation of yearly FIPs prior to each year's fishing season, the NPT, other parties, and NMFS will consider any needed revision of assumptions regarding

fishery impacts, management strategies to ensure allowable ESA impacts are not exceeded while meeting the objectives of parties (TRMP's Sections 8.0, 9.0 and 10.0).

2.9 Section 4(i)(G) - Provide for effective enforcement, education and coordination among involved jurisdictions.

The NPT's TRMP provides for effective enforcement and coordination among involved jurisdictions. The NPT will provide appropriate enforcement of respective fisheries that will be implemented according to this long-term plan. Conservation enforcement officers will conduct routine patrols of the fishery area to observe the fishery and enforce applicable annual tribal regulations for this treaty fishery.

2.10 Section 4(i)(H) - Include restrictions on resident and anadromous species fisheries that minimize any take of listed species, including time, size, gear, and area restrictions.

The NPT's TRMP includes restrictions on resident and anadromous species fisheries that minimize any take of listed species, including time, size, gear, and area restrictions. Bull trout is a species that may be affected by the actions taken under the NPT's TRMP. In the 4(d) Rule issued at the time of bull trout listing, the U.S. Fish and Wildlife Service found that state and Tribal fishing regulations are adequate to protect bull trout from excessive taking and therefore it is not necessary to prohibit take incidental to or in accordance with State and Native American Tribal fish and wildlife conservation laws (June 10, 1998, 63 FR 31647 [50 CFR 17.44(w)]).

No listed adult steelhead or fall Chinook salmon are expected to be present during the period of the actions described in the NPT's TRMP. The regulations for the fisheries proposed under the NPT's TRMP are specifically designed to protect listed species and limit harvest to specified limits; because the proposed fisheries would not target other resident or anadromous species, such species would be expected to be much less vulnerable to the proposed fisheries (NPT 2012).

2.11 Section 4(i)(I) - Is consistent with plans and conditions established within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

As Described in Section 10 of the TRMP, The NPT's Spring/Sumer Chinook salmon harvest plan in Northeast Oregon is consistent with plans and conditions established within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations. The parties to *U.S. v. Oregon* are under a court order obligating them to "exercise their sovereign powers in a coordinated and systematic manner in order to protect, rebuild, and enhance upper Columbia River fish runs while providing harvests for both treaty Indian and non- Indian fisheries." The NPT are tribal parties for the Grande Ronde and Imnaha River subbasin. As such, the NPT is responsible for cooperatively developing tributary fisheries with other parties, and providing tributary harvest plans to other affected parties to the case for review and comment.

NPT assert that the implementation of this plan for harvest management is consistent with the legally enforceable treaty-reserved fishing rights held by the NPT, as well as the Department of Commerce's trust responsibilities to the NPT. The TRMP is also consistent with the existing and ongoing Federal court proceedings in *U.S. v. Oregon*.

Proposed harvest management guidelines established in the TRMP may change in the future due to new and updated information that is collected over the life of the TRMP. The Tribe proposes to implement this plan until new and updated information is collected that indicates changes are needed to meet either ESA requirements or Tribal needs. If conditions warrant, further modification to the Plan may also be made to remain consistent with *U.S. v. Oregon* and Nez Perce treaty fishing rights. Such a modification shall be proposed in writing to NMFS..

3.0 (4)(ii) The Amount Of Take is Monitored and Provided to NMFS On A Regular Basis

As stated in Section 4(i)(E) of this PEPD, in-season reports on the fishery will be provided to NMFS and other parties on a regular basis, and a final report on the fishery will be provided prior to the next year's fishery. The reports will include the composition and number of salmon harvested, estimated harvest effort, and composition and number of salmon caught and released. Every five years, starting in 2013, NMFS will meet with the NPT to evaluate the program based on the monitoring data to determine if any changes to the TRMP are necessary.

4.0 (4)(iv) Written Concurrence

If the determination is made that the TRMP adequately addresses all of the criteria specified in the Tribal 4(d) Rule, NMFS will publish notification of its determination in the Federal Register along with the basis for that determination.

5.0 Reevaluation Criteria

NMFS will re-evaluate this determination if: (1) the described rate of incidental harvest of listed fish is exceeded; (2) the actions described by the TRMP are modified in a way that causes an effect on the listed species that was not previously considered in NMFS' evaluation; (3) new information or monitoring reveals effects that may affect listed species in a way not previously considered; or (4) a new species is listed or critical habitat is designated that may affect NMFS' evaluation of the TRMP.

6.0 Notice of Pending Determination

As required by the Tribal 4(d) Rule, the Secretary seeks comment from the public on the pending determination as to whether or not the TRMP would appreciably reduce the likelihood of survival and recovery of the listed salmonids.

7.0 Pending Determination

NMFS has reviewed the NPT's TRMP and evaluated it against the requirements of the Tribal 4(d) Rule, and the impacts of the proposed treaty fisheries have been evaluated in light of considerations specific to the Grande Ronde and Imnaha Rivers subbasins Spring/Summer Chinook salmon returns and fisheries starting in 2013. Based on this review and evaluation, NMFS' pending determination, subject to information provided during public comment, is that fisheries implemented consistent with the TRMP be found not to appreciably reduce the likelihood of survival and recovery of Snake River Spring/Summer Chinook salmon, consistent with the July 10, 2000, ESA Tribal 4(d) rule (50 CFR 223.204). If the Regional Administrator so finds and approves the TRMP, take prohibitions would not apply to fisheries implemented in accordance with the approved TRMP.

This conclusion is based on the TRMP's use of a sliding scale management framework shared by all parties in the two subbasins which ensures:

- Fisheries are not expected to alter the substantially the abundance, productivity, diversity, and distribution of natural-origin Spring/Summer Chinook salmon;
- The fisheries are responsive to ICTRT abundance targets annually;
- Areas with poor returns will be protected by closure or limited harvest, and;
- The proposed fishery management strategy is a science-based approach that manages impacts in coordination with other fishery management entities in the area.

8.0 References

Araki,H., B. Cooper, and M. Blouin. 2009. Carry-over effect of captive breeding reduces reproductive fitness of wild-born descendants in the wild. Biol. Lett. doi:10.1098/rsbl.2009.0315

Berejikian, B.A., D.M. Van Doornik, J. Scheurer, and R. Bush. 2009. Reproductive behavior and relative reproductive success of natural- and hatchery-origin Hood Canal summer chum salmon (Oncorhynchus keta). Can. J. Fish. Aquat. Sci. 66: 781–789.

CTUIR (Confederated Tribes of the Umatilla Indian Reservation). 2010. Tribal Resource Management Plan. Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Grande Ronde and Inmaha River Subbasins Spring Chinook Salmon Treaty Fisheries. May 2010

CTUIR. 2011. Tribal Resource Management Plan. Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Grande Ronde and Inmaha River Subbasins Spring Chinook Salmon Treaty Fisheries. June 2010.

Federal Caucus. 2000. Conservation of Columbia Basin Fish: Final Basinwide Recovery Strategy Volume 1.

Ford, M.J., T. Cooney, P. McElhany, N. Sands, L. Weitkamp, J. Hard, M. McClure, R. Kope, J. Myers, A. Albaugh, K. Barnas, D. Teel, P. Moran, and J. Cowen. 2010. Status review update for Pacific salmon and steelhead listed under the Endangered Species Act: Northwest. Draft U.S. Department of Commerce, NOAA Technical Memorandum (In Review).

Good, T.P., R.S. Waples, and P. Adams (editors). 2005. Updated status of Federally listed ESUs of West Coast salmon and steelhead. U.S. Dept. Commer., NOAA Tech. Memo. NMFS-NWFSC-66, 598 p. http://santacruz.nmfs.noaa.gov/files/pubs/00749.pdf

ICTRT. 2007. Viability Criteria for Application to Interior Columbia Basin Salmonid ESUs Review Draft March 2007. http://www.nwfsc.noaa.gov/trt/trt_documents/ictrt_viability_criteria_reviewdraft_2007_complete.pdf

McElhany, P., M.H. Ruckelshaus, M.J. Ford, T.C. Wainwright, and E.P. Bjorkstedt. 2000. Viable salmonid populations and the recovery of evolutionarily significant units. U.S. Dept. Commer., NOAA Tech. Memo. NMFS-NWFSC-42, 156 p.

NMFS (National Marine Fisheries Service). 2008a. Endangered Species Act – Section 7 Consultation Biological Opinion and Magnuson-Stevens Fishery Conservation and

Management Act Essential Fish Habitat Consultation. Consultation on Treaty Indian and Non-Indian Fisheries in the Columbia River Basin Subject To the 2008-2017 *US v. Oregon* Management Agreement. NMFS, Portland, Oregon. May 5, 2008.

NMFS. 2008b. Endangered Species Act Section 7(a)(2) Consultation Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation. Consultation on the Approval of Revised Regimes under the Pacific Salmon Treaty and the Deferral of Management to Alaska of Certain Fisheries Included in those Regimes. December 22, 2008.

NPT. 2012. Long-Term Nez Perce Harvest Plan for Snake River Spring/Summer Chinook Salmon in the Imnaha and Grande Ronde Subbasins of Northeast Oregon. February 17, 2012.