

**Nez Perce–Clearwater National Forests
Forest Plan Assessment**

12.0 Areas of Tribal Importance

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Table of Contents

12.0 Areas of Tribal Importance	12-1
12.1 Introduction	12-1
12.2 Affected Tribes.....	12-2
12.2.1 Nez Perce Tribe.....	12-2
12.2.2 Neighboring Tribes	12-2
12.2.3 Existing Tribal Rights	12-3
12.3 Informing the Assessment.....	12-4
12.3.1 Sources of Information	12-4
12.3.2 Legal Direction	12-4
12.3.2.1 The following prescriptive elements regulate how areas of tribal importance may be managed in the Plan area:.....	12-4
12.3.2.2 The following guidance is available for managing areas of tribal importance:	12-4
12.3.2.3 The following guidance is available for communication and consulting with Indian tribes about areas of tribal importance	12-4
12.3.2.4 Treaties between Nez Perce Tribe and U.S. Government	12-5
12.4 Areas of Tribal Importance	12-5
12.4.1 Treaty Rights.....	12-5
12.4.2 Sites and Areas.....	12-5
12.4.3 Trails	12-6
12.4.4 Natural Resources	12-6
12.5 Current Conditions	12-7
12.6 Trends.....	12-7
12.7 Information Needs	12-8
12.8 Conclusion.....	12-9
12.9 References and Literature Cited.....	12-9

12.0 Areas of Tribal Importance

12.1 Introduction

This assessment provides information about areas of tribal importance, existing tribal rights, and the conditions and trends of these areas on the Nez Perce-Clearwater National Forests.

The 2012 planning rule required Forests undergoing plan development or revision to identify and evaluate available information relevant to the Forest Plan for areas of tribal importance (36 CFR 219.6(b)). The Forest Service Handbook (FSH) 1909.12, chapter 10, section 13.7 – *Assessing Areas of Tribal Importance*, directs the responsible official to identify and evaluate information about:

1. Indian Tribes and Alaska Native Corporations associated with the plan area.
2. Existing tribal rights, including those involving hunting, fishing, gathering, and protecting cultural and spiritual sites.
3. Areas of known tribal importance that are in the plan area or affected by management of the plan area.
4. Conditions and trends of resources that affect areas of tribal importance and tribal rights.

The planning rule did not define “areas of tribal importance.” However, documents associated with the rule-making, including this response to Tribal comments on the proposed planning rule,¹ provide some context:

Comment: One respondent requested that the final rule ensure protection of cultural resources. One respondent requested that the rule include acknowledgement of tribally-valued resources, access, and spiritual and cultural practices and locations and that these should be acknowledged during the development of land management plans, without disclosing any culturally and spiritually sensitive information.

Response: Under the preferred alternative at § 219.10, plan components for a new plan or plan provision would provide for protection of cultural and historic resources and management of areas of tribal importance. When developing plan components for integrated resource management, the responsible official would consider cultural and heritage resources and ecosystem services (§ 219.10). By definition, ecosystem services include cultural services such as educational, aesthetic, spiritual and cultural heritage values, recreational experiences and tourism opportunities. Under § 219.4 of the preferred alternative, the responsible official would request information about native knowledge, land ethics, cultural issues, and sacred and culturally significant sites during the planning process.

¹ Cultural/Spiritual Resources, Sacred Areas, and Confidentiality Responses to Tribal Comments on the Proposed Rule and Draft Environmental Impact Statement as reflected in the Final Programmatic Environmental Impact Statement

Areas of tribal importance may not always be recognized as cultural resources (FSH 1909.12, ch. 20, sec. 23.22i). Nor are they always represented by specific geographic locations. Areas may be identified by a Tribe as important because of the long-established significance or ceremonial nature attached to a use, area, or practice. For example, on the Nez Perce-Clearwater National Forests, areas of tribal importance include both specific locations such as Pilot Knob, as well as broad ecological values, such as the health of Salmon fisheries.

Identifying areas of tribal importance can be difficult. Data is often limited, and the best source of information remains Tribal governments and individuals. Information about areas of tribal importance usually surfaces during consultation for site-specific planning.

Further complicating matters is the desire among tribal members to keep many of these areas confidential, to be protected from misuse and desecration. Information has been released inadvertently in the past (USDA 2012). Because of this, some Tribes do not want areas of tribal importance identified on public maps. Consider this comment from a social assessment regarding the Forests ability to protect sacred sites on the Nez Perce-Clearwater National Forests (Russell and Adams-Russell 2004, p. 181):

We were promised that when it came to the Smoking Place, the Indian graves, and Pilot Knob, that even though they are known sites, they (Forest Service) would not attract visitors there. If they (visitors) came upon it, then fine. We were told this. Instead, they have made the way easier. They are just inviting people to plunder the site. If they are going to do that, then they need to protect these places.

As a result of inadvertent disclosure of information on areas of tribal importance, Congress included specific language in the *Food, Conservation, and Energy Security Act of 2008* to “prevent the unauthorized disclosure of information regarding reburial sites, including the quantity and identity of human remains and cultural items on sites and the location of sites” (P.L. 110-246, Sec. 8101(2)).

12.2 Affected Tribes

12.2.1 *Nez Perce Tribe*

As the first occupants of this area, the Nez Perce are intimately tied to these lands. Nearly the entire planning area falls within what the Indian Claims Commission has determined to be the Nez Perce Tribe’s area of “exclusive use.” The Nez Perce Treaty of 1855 reserved the rights for Nez Perce people to continue to hunt, fish, gather, and pasture on “open and unclaimed” lands, later clarified by the courts to include public lands now managed by the Forest Service.

12.2.2 *Neighboring Tribes*

Two neighboring tribes, the Coeur d’Alene Tribe to the north, and the Confederated Salish and Kootenai Tribes to the east, have indicated their interests in the management of portions of the Nez Perce-Clearwater National Forests. The Coeur d’Alene Tribe frequently utilized northern portions of the Palouse and North Fork Ranger Districts. Some parcels of the Palouse are adjacent to the Coeur d’Alene Reservation. Confederated Salish and Kootenai Tribes used the eastern edge of the Plan area, particularly portions of the North Fork and Powell Ranger Districts along the Idaho–Montana border, as well as the corridor now known

as the Lolo Trail National Historic Landmark, which was a common trade route for the Salish people.

Some Nez Perce descendants are enrolled in the Confederated Tribes of the Umatilla Indian Reservation or the Colville Confederated Tribes. These tribes, therefore, have articulated some interest, particularly in the management of the Nez Perce National Historic Trail.

12.2.3 **Existing Tribal Rights**

Tribes are sovereign nations with whom the Forest Service maintains government-to-government relationships. Each tribe has unique rights, interests, and governing processes, necessitating unique coordination and consultation in order to ensure the Forest Service meets its trust responsibility to the tribes.

Trust responsibility is the U.S. government's permanent legal obligation to exercise statutory and other legal authorities to protect tribal lands, assets, resources and treaty rights. The Supreme Court has found that treaties are superior to State laws, including State constitutions, and are accorded equal status with federal statutes. Treaty rights and trust responsibilities will be reflected in revision topics and management concerns throughout the revision process.

In accordance with federal legislation and agency policy, the Nez Perce-Clearwater National Forests strive to do the following:

- Maintain a governmental relationship with federally-recognized tribal governments.
- Implement programs and activities honoring Indian treaty rights.
- Fulfill legally mandated trust responsibilities.
- Administer programs and activities in a manner that addresses, and is sensitive to, traditional religious beliefs and practices.
- Provide research, transfer technology, and provide technical assistance to tribal governments.
- Solicit and utilize tribes' unique traditional ecological knowledge.

Although the Nez Perce Tribe ceded to the United States much of its original 17 million acres of homeland across Idaho, Oregon, and Washington, they reserved specific rights on these lands to ensure the survival of their people. Article 3 of the Treaty of 1855 states the following:

The exclusive right of taking fish in all streams where running through or bordering said reservation is further secured to said Indians: as also the right of taking fish at all usual and accustomed places in common with the 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.

12.3 Informing the Assessment

12.3.1 *Sources of Information*

Sources used to inform this assessment include the Forest plans for the Nez Perce-Clearwater National Forests, recent social assessments on the Forests, past project records, conversations with Nez Perce Tribal leadership and staff, and with Forest leadership and staff, field notes and survey data. A tribal relations specialist with the Forest Service worked with a Forest Planning Liaison from the Nez Perce Tribe to gather information from Nez Perce Leadership, staff and tribal members relevant to this assessment. Treaties with affected tribes outlined specific rights reserved for the Nez Perce Tribe (see section 12.2.3).

12.3.2 *Legal Direction*

Applicable laws, policy, directions, and regulations provide the management direction for tribal relations and issues. Forest Service activities and special use authorizations will comply with the Forest Plans. Tribal concerns are typically addressed during site-specific project design. Relevant direction regarding areas of tribal importance can be separated into regulatory and implementation guidance.

12.3.2.1 **The following prescriptive elements regulate how areas of tribal importance may be managed in the Plan area:**

- Farm Bill 2008 (Public Law 110-246)
- Executive Order 13007 – Protection and Accommodation of Access to Indian Sacred Sites (1996)
- Native American Graves Protection and Repatriation Act 1990 (25 USC 3001)
- American Indian Religious Freedom Act 1978 (42 USC 1996)
- Archeological Resources Protection Act of 1979 (16 USC 470 aa-mm)
- Forest Service Sacred Sites Policy
- Forest Service Manual

12.3.2.2 **The following guidance is available for managing areas of tribal importance:**

- Forest Service Handbook
- Lolo Trail National Historic Landmark Heritage Preservation Plan

12.3.2.3 **The following guidance is available for communication and consulting with Indian tribes about areas of tribal importance**

- Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments (2000)
- USDA Regulation 1350-001
- USDA Regulation 1340-007
- American Indian and Alaska Native Relations Handbook (FSH 1509.13)
- Forest Service Manual (FSM 1563—American Indian and Alaska Native Relations)

12.3.2.4 **Treaties between Nez Perce Tribe and U.S. Government**

- Treaty of 1855
- Treaty of 1863

12.4 **Areas of Tribal Importance**

As described in the Introduction (section 4.1), "areas of tribal importance" is an abstract concept. This is partly because areas of tribal importance are defined by the Tribe, not by the Forest Service. Further, the concept remains abstract because it is often difficult to capture and express in terms common to Forest Service planning documents the complex nature of the relationship the Nez Perce people have with the land. Consider this passage from *Treaties - Nez Perce Perspectives* (Nez Perce Tribe 2003, p. 86):

The land and its resources have provided the basis for the Nez Perce way of life for countless generations. The lessons we learn from nature and the environment about its conservation and care are carried forward to each generation. The land defines who we are, and we recognize the unity of the physical and spiritual universe. We still move with the seasons, managing their bounty and diversity with an explicit respect for maintaining a balance with our surroundings. We celebrate Mother Earth's annual rebirths and offer thanks for the first foods she provides to us in recognition of our promise with the Creator and with the land. We possess a land ethic based on use, reciprocity, and balance.

Treaty rights and protected resources are critically important to the Nez Perce people. However, the land and health of the environment also hold a special and unique place in the spiritual and everyday lifeways of many Native Americans. The Tribal government's Department of Natural Resources has programs for air quality, environmental restoration and waste management, forestry, and water resources. Comments from Tribal members reflect concern over efforts to diminish standards of environmental quality during Forest Plan revision (Russell and Adams-Russell 2004), as well as the need to protect, perpetuate, and preserve natural resources by making decisions based on the needs of future generations (Bradbury 2013).

The following section is an effort to categorize areas of tribal importance from the specific to the abstract.

12.4.1 **Treaty Rights**

Treaty-reserved rights to use resources on the Nez Perce-Clearwater National Forests are well established and remain the central theme for comments received from Tribal members on plan revision. The ability to hunt, gather, pasture, camp, and fish, and to utilize the resources as well as access resource sites, is of paramount interest and a primary concern to the Nez Perce Tribe. The protection, access to, and use of treaty-reserved resources was a common theme in communications with the Tribe.

12.4.2 **Sites and Areas**

The 1987 Nez Perce National Forest Management Plan identified the Silver Creek-Pilot Knob, Little Baldy, Burnt Knob, Green Mountain and the Southern Nez Perce Trail areas as having special significance to the Nez Perce Tribe.

Musselshell meadows, camas meadow areas, and berry harvesting sites are still in use by tribal members. These areas would have high spiritual importance to specific tribal members and families specifically (Russell and Adams-Russell 2004).

The Smoking Place and the Indian graves were identified as important cultural sites during a 2004 social assessment (Russell and Adams-Russell 2004).

Numerous project documents contain information that may help identify areas of tribal importance. For example, the 1990 Silver Cougar Timber Sale Environmental Assessment and related Finding of No Significant Impact further delineated the Silver Creek-Pilot Knob area of significance. The 2012 Little Slate Project Final Environmental Impact Statement identified Little Slate Creek as a traditional use area for camping, hunting, gathering of plant resources, a travel corridor, fishing, and religious and ceremonial activities. Many project documents use similar text about the importance of the project area for Treaty-reserved and traditional uses.

12.4.3 **Trails**

The Lolo Trail National Historic Landmark also holds special significance to the Nez Perce Tribe given its association with their rich history. That history and associated significance has been reported in the Lolo Trail National Historic Landmark Heritage Preservation Plan.

The Nez Perce National Historic Trail, which traces the 1877 flight of the Nez Perce from their traditional lands, holds historical and cultural significance for the Nez Perce and other tribes. The 1990 Comprehensive Management Plan for the trail is currently under revision.

The southern Nez Perce Trail is also recognized as culturally significant.

12.4.4 **Natural Resources**

For a tribe to exercise treaty-reserved rights, the resources they rely upon must exist. For instance, in order for tribal members to hunt, fish, or gather, there must be healthy and sustainable populations of game, fish, roots, berries, medicinal plants, and so on. According to Russell and Adams-Russell (2004) social assessment on the Forests, timber harvesting, road building, or any other activity affecting water quality appears to be high on the list of tribal concerns for Forest plan revision. Some specific resource areas of importance that have arisen during scoping with the Nez Perce Tribe include the following:

Fisheries—One of the most significant resource concerns is fisheries, specifically Chinook and steelhead trout. The relationship between the Nez Perce and salmon is well established (see Landeen and Pinkham 1999), and remains a prominent area of concern for the Tribe during communications with Forest officials.

Water Quality—Given the cultural importance of salmon, water quality and its potential effects on fisheries is a significant issue for Forest Plan revision. Timber harvesting, road building, or any other activity affecting water quality appears to be high on the list of tribal concerns for Plan revision. (Russell and Adams-Russell 2004).

Wildlife and Game—Hunting of game is a tribal treaty right. Tribal members enjoy rights to hunt wild game, including deer, elk, moose, bighorn sheep and mountain goats. Tribal members have described elk and elk habitat as a special interest area. The Nez Perce Tribe has taken an active role to assist with bighorn sheep research. Non-game wildlife is also

important to the Tribe. For instance the Nez Perce government has been active participants in the wolf recovery program in Idaho since its inception in 1995. All wildlife species are considered important and interdependent.

Botanical Resources—Traditional plant materials are widely gathered and used by Tribal members to this day. Tribal members have repeatedly expressed interest in the health of native vegetation and botanical resources, including nuts, berries, roots, and herbs. Important resources include camas bulbs, Kaus Kaus, huckleberries and dozens of other species. Forest Service practices or management decisions that may diminish the quantity and quality or access to these resources affect their availability for Tribal use.

Timber—Timber is used for fuel wood collection and cutting of poles for tipis. Logging is also an important component of the tribal economy.

12.5 Current Conditions

For detailed discussions of conditions and trends for specific resources, refer to the accompanying assessment reports for those resource areas, including terrestrial and aquatic ecosystems (Section 1.0), air, soil, and water resources (Section 2.0), and endangered, threatened, and sensitive species (Section 5.0).

Conditions along the Nez Perce and Lolo Trails were re well documented for existing management plans, but could be updated. The Lolo Trail National Historic Landmark Heritage Preservation Plan and the Nez Perce National Historic Trail Comprehensive Management Plan (CMP) provide direction for the management of resources, recreational use, and preservation of cultural resources along the trails. The Nez Perce National Historic Trail CMP is currently under revision.

The Silver Creek—Pilot Knob area is a well-documented area of cultural significance to the Nez Perce Tribe. Pilot Knob has been identified by the Tribe as a significant sacred site. The Tribe on several occasions has expressed concern that the area is open to degradation, and that the Forests need to work more closely with the Tribe to protect this sacred site (Russell and Adams-Russell 2004, p .180). During public comment on the 2004 Forest Plan revision, the Nez Perce Tribe requested that the Forests remove developments and restrict access to the Pilot Knob area (USDA Forest Service 2004).

12.6 Trends

The following drivers of change have been identified on the Nez Perce – Clearwater National Forests:

Vandalism and Theft—The destruction or degradation, removal of materials, or use of resources from sites and areas considered important by the Tribes diminishes the ability of Tribal members to utilize these areas for traditional purposes. Recent reports on areas of tribal importance found that open access to sacred sites was leading to vandalism, theft, and exploitation (USDA 2012). Tribal members have expressed concern that Forest managers are not doing enough to protect sacred sites, such as Pilot Knob, from plunder (Russell and Adams-Russell 2004, p. 181).

Conflicting Uses—Authorized uses (e.g., recreation, timber, grazing, motorized recreation) of resources across the Forests may conflict with areas of tribal importance, and their access and use by Tribal members. For example, competition with recreational and commercial users over resources that have traditional importance to tribal members has been cited as a concern (Russell and Adams-Russell 2004, p. 180).

Natural Deterioration—The passage of time degrades the integrity of many structures and sites and alters landforms which possess sensitive sites or resources.

Access—Access to areas for hunting, fishing, and gathering is an issue of concern to the Tribe and tribal members. Forest managers may take actions without fully understanding potential impacts to areas of tribal importance, as demonstrated by the following quote (Russell and Adams-Russell 2004, p. 180):

There are places we used to go to gather roots and berries and then you go there and find the road is closed. We never hear about it, they just close the road. We don't usually say anything, we just find another place to go, but then you never know when that place might be closed to.

The Forest may take road actions that either deny tribal members access to important areas, or conversely open areas to use that lead to the degradation of important resources or sites.

Wildland Fire Impacts—Wildland fire can destroy built-environmental resources, affect populations and habitats of important flora and fauna, erode soil that protects archaeological properties, and alter historic landscapes. (Suppression efforts can likewise damage – dozer lines, helispot construction, retardant/water drops, etc.)

Incomplete Understanding of Site Locations—Lack of complete cultural resource inventories across the Plan area leave hundreds of historic properties unknown and thus outside the rubric of effective management. Resources such as traditional cultural properties may also remain unknown or unnoticed given their unapparent nature and reluctance of the communities which ascribes value to the properties to advertise their location or otherwise define their existence.

Incomplete Understanding of culturally-important plant species—To protect against exploitation of plants used for medicinal or spiritual purposes, tribes are often reluctant to share information about certain species. Occasionally plants are prevalent across the forest, but might only be gathered in very specific locations where they are known for potency and higher medicinal value. Through years of dialogue, FS staffs know some key species and locations, but likely lack comprehensive knowledge to protect many others.

12.7 Information Needs

No specific additional information needs have been identified at this time. If relevant information does not exist for areas of tribal importance, there is no requirement to begin new studies. The assessment only need identify information gaps, which the responsible official could fill through inventories, plan monitoring, or research (FSH 1909.12, Chapter 10, 11.11).

Tribal input to the assessment may identify further define areas of importance across the plan area.

12.8 Conclusion

The 2012 Planning Rule direction to identify and evaluate areas of tribal importance will help protect Treaty-reserved rights and traditional uses across the Nez Perce-Clearwater National Forests. However, the standard Forest Service practice of identifying, evaluating, and cataloging sites in databases, such as is done with archaeological sites or historic properties, may not be sufficient to capture the broad range of resource values that tribal governments are likely to identify as areas of importance. As described above, tribal members and governments are as likely to associate with a specific location (Pilot Knob) as they are with a traditional practice (camas bulb gathering) or a broad ecological concern (the health of salmon runs). A more holistic approach to recognizing areas of tribal importance for project planning may be required to satisfy the intent of the 2012 Planning Rule. Based on this assessment, recommendations for Forest Plan revision include the following concepts:

- Be aware of the broad ecological values important to the Nez Perce Tribe and tribal members, and understand that these interests arise from long-established cultural and spiritual ties to the landscape. Recognize that an interdisciplinary resource approach is needed to account for the breadth of the tribe's interest in the health of the land.
- Honor the specific Treaty-reserved and associated rights possessed by the Tribe.
- When possible, identify and locate specific sites and geographic areas of spiritual and traditional use, and ensure this knowledge informs project planning in the early stages.
- Strengthen project-specific consultation with the tribe to identify and protect areas of tribal importance early in project development.

12.9 References and Literature Cited

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