

MEMORANDUM OF UNDERSTANDING
between

USDA FOREST SERVICE PAYETTE NATIONAL FOREST
and the
NEZ PERCE TRIBE

This **MEMORANDUM OF UNDERSTANDING** is hereby entered into by and between the USDA Forest Service, Payette National Forest, hereinafter referred to as the Forest Service, and the Nez Perce Tribe, a Sovereign Government.

A. **PURPOSE:** The purpose of this MOU is to establish a framework for a working relationship between the parties regarding the Nez Perce Tribe's implementation of fisheries restoration projects and fish rebuilding initiatives on the Payette National Forest. This MOU will establish a process to ensure timely and consistent notification, consultation, and coordination procedures that provide for participation of both parties regarding these initiatives. Such coordination will benefit natural resources, the parties, and the public.

In the Treaty of 1855, the Nez Perce Tribe ceded much of their aboriginal territory to the United States in exchange for a reservation that was to serve as a permanent homeland. In article III of the 1855 Treaty, the Nez Perce Tribe reserved certain rights including "the exclusive right of taking fish in all the streams where running through or bordering said reservation is further secured to said Indians: and also the right of taking fish at all usual and accustomed places in common with citizens of the Territory: and of erecting temporary building for curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed lands."

B. **STATEMENT OF MUTUAL BENEFIT AND INTERESTS:** Coordination of the implementation of the fisheries restoration projects and fish rebuilding initiatives will further the interests of the members of the Nez Perce Tribe, the Forest Service, and citizens of the United States.

Fishery resources are important to the Nez Perce Tribe's cultural, religious, and economic way of life.

C. FOREST SERVICE SHALL:

1. Notify the Nez Perce Tribe of proposed Forest Service projects or activities scheduled for environmental analysis. The process will include early notification through the Forest's quarterly Schedule of Proposed Actions and a project initiation letter prior to NEPA analysis. This initial, early notification will be followed by a more in depth scoping prior to formulation of project alternatives.
2. Advise, involve, and consult with the Nez Perce Tribe on any proposed changes, amendments or revision to the Forest Plan, which may influence anadromous fish resources and the Tribe's fisheries restoration projects and fish rebuilding initiatives, and to cooperatively revise and develop management standards.
3. Recognize NEPA documentation and ESA Section 10/Section 7 consultation and permits completed in accord with other Federal agencies regulations as sufficient for monitoring activities outlined in this MOU. If site-specific conditions warrant otherwise, the Forest Service will immediately notify the Nez Perce Tribe of their concerns in writing. The Forest Service and the Tribe will meet promptly and use their best efforts to consult, review concerns, and develop solutions regarding the issue.
4. Provide short-term use of Forest facilities, under Special Use Permit's, by the Nez Perce Tribe for meetings, lodging, storing equipment, using corrals for horses, as made available by the District Rangers.
5. Share with the Nez Perce Tribe information collected during inventory or monitoring activities that are relevant to management of anadromous fish and habitat on National Forest System Lands.

D. THE NEZ PERCE TRIBE SHALL:

1. Coordinate population-monitoring activities involving temporary structures (location, access, and installation requirements) with Forest Service technical personnel. Since other approved uses of the National Forest may occur in the vicinity of such activities, the Tribe agrees to provide the Forest Service with an installation, and operation plan for each monitoring project. The plan will include appropriate public safety measures and is intended to minimize conflict and risk with other Forest uses, especially those occurring in and/or near recreational waters or other areas of concern.
2. Provide the Forest Service with copies of existing consultation documents that are relevant to addressing NEPA and ESA consultation requirements for monitoring activities agreed to through this MOU.

3. Share, with the Forest Service, information collected during inventory or monitoring activities that is prepared for release to the public and is relevant to management of anadromous fish habitat on National Forest System lands.

E. IT IS MUTUALLY AGREED AND UNDERSTOOD BY ALL PARTIES THAT:

1. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).
2. PARTICIPATION IN SIMILAR ACTIVITIES. This instrument in no way restricts the Forest Service or the Cooperator(s) from participating in similar activities with other public or private agencies, organizations, and individuals.
3. COMMENCEMENT/EXPIRATION/TERMINATION. This MOU takes effect upon the signature of the Payette National Forest and the Nez Perce Tribe and shall remain in effect for five years from the date of execution. This MOU may be extended or amended upon written request of either the Payette National Forest or the Nez Perce Tribe and the subsequent written concurrence of the other(s). Either the Payette National Forest or the Nez Perce Tribe may terminate this MOU with a 60-day written notice to the other(s).
4. RESPONSIBILITIES OF PARTIES. The Payette National Forest and the Nez Perce Tribe and their respective agencies and offices will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.
5. PRINCIPAL CONTACTS. The principal contacts for this instrument are:

Forest Service Policy Contact	Cooperator Policy Contact
Boyd Hartwig	Allen P. Slickpoo, Jr.
Payette National Forest	Nez Perce Tribe
PO Box 1026	PO Box 365
McCall, ID 83638	Lapwai, ID 83540
Phone: (208) 634-0784	Phone: (208) 843-2253
FAX: (208) 634-0728	FAX:
E-Mail: bchartwig@fs.fed.us	E-Mail:

Forest Service Technical Contact	Cooperator Technical Contact
Dr. David Burns	Felix McGowan
PO Box 1026	PO Box 365
McCall, ID 83638	Lapwai, ID 83540

Phone: (208) 634-0700	Phone: (208) 843-7144
FAX: (208) 634-0744	FAX:
E-Mail: dcburns@fs.fed.us	E-Mail: felixm@nezperce.org

6. NON-FUND OBLIGATING DOCUMENT: Nothing in this MOU shall obligate either the Payette National Forest or The Nez Perce Tribe to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the Department of Agriculture and The Nez Perce Tribe will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

7. ESTABLISHMENT OF RESPONSIBILITY. This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

8. The Tribal Chairperson, or designate, and appropriate staff will meet with the Forest Supervisor and appropriate staff at least annually to:

- Discuss fish habitat issues of mutual concern.
- Review the results of both agencies' inventory and monitoring programs conducted during the previous year, and
- Coordinate an annual inventory/monitoring program for the upcoming year which may include, but not limited to: Sediment monitoring; grazing and mining activity; fish production and smolt habitat capability; streams to be inventoried and protocol to be used; establishing Ecosystem Analysis at the Watershed Scale (EAWS) priorities; evaluating fish passage; training opportunities; fishing access; etc.

The Forest Service and Nez Perce Tribe will alternate hosting this meeting to review management of National Forest lands within Nez Perce Territory.

9. This MOU applies specifically to the facilitation of exercising the reserved treaty rights of the Nez Perce Tribe for fishing, hunting, gathering, and pasturing to the extent applicable on lands administered by the Forest Service, and the parties' relationships and dealings involving those rights. It is not intended, and should not be construed to abrogate or otherwise affect any party's authority or responsibility in other areas. Similarly, it is not intended, and should not be construed to otherwise

define or restrict the parties' obligations, relationships or dealing in other areas of their respective authorities, responsibilities, or sovereign prerogative.

10. Adaptations to planned Forest Service and Nez Perce Tribe activities may need to occur based on changed circumstances. If this occurs, each party agrees to notify the other of how the changes will affect proposed and on-going projects/activities and elements of this agreement, and pursue mutually agreed to modifications to this agreement and activities covered therein.
11. The fact that the Tribe and the Forest Service is or may have been a party to this MOU shall not be construed as a waiver of any rights, claims, or defenses that, absent this MOU, any of those entities may have under the treaty between the United States and the Nez Perce Tribe, or under other applicable laws of the United States.

THE PARTIES HERERTO have executed this instrument as of the last date shown below.

THE NEZ PERCE TRIBE

USDA FOREST SERVICE
PAYETTE NATIONAL FOREST

Anthony D. Johnson 10-24-03
ANTHONY D. JOHNSON Date
Tribal Chairman

Mark J. Madrid 11/5/03
MARK J. MADRID Date
Forest Supervisor

Jake Whiteplume 10-23-03
JAKE WHITEPLUME Date
Secretary

THE AGREEMENT AND CONTENT OF THIS INSTRUMENT
HAS BEEN EXAMINED AND APPROVED FOR SIGNATURE
Dylan A. Anderson 11/6/2003
AGREEMENTS COORDINATOR DATE