

NEZ PERCE TRIBE'S INTERESTS AND ACTIVITIES IN AND AROUND THE STIBNITE GOLD PROJECT AREA

a. The Nez Perce Tribe's Interest.

Since time immemorial, the Nez Perce Tribe ("Tribe") has occupied and used over 13 million acres of lands now comprising north-central Idaho, southeast Washington, northeast Oregon, and parts of western Montana. Tribal members engaged in fishing, hunting, and gathering across their vast aboriginal territory, and these activities still play a major role in the culture, religion, subsistence, and commerce of the Tribe.

In 1855, the United States entered into a treaty with the Tribe.¹ In this treaty, the Tribe explicitly reserved, and the United States secured, among other guarantees, a permanent homeland as well as "the right to fish at all usual and accustomed places in common with citizens of the Territory; and of erecting temporary buildings for curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land." *Id.* at art. 3.

The Stibnite Gold Project ("Project") is entirely within the Tribe's aboriginal territory as well as within the area determined by the Indian Claims Commission to have been exclusively used and occupied by the Tribe (Figure 1). The Project is also located on the Krassel Ranger District of the Payette National Forest. The lands comprising the Payette National Forest are open and unclaimed and subject to the Tribe's treaty-reserved rights. *See e.g., Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969), *aff'd*, *United States v. Oregon*, 529 F.2d 570 (9th Cir. 1976); *Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658 (1979) (*Fishing Vessel*).

The Tribe's treaty-reserved right to take fish and other resources presumed the continued existence of those resources. *See Fishing Vessel* at 678–79. Thus, the treaty secures to the Tribe the continued existence of those biological conditions necessary for the resources that are the subject matter of the treaties. *See Kittitas Reclamation District v. Sunnyside Valley Irrigation District*, 763 F.2d 1032 (9th Cir. 1985), *cert. denied*, *Sunnyside Valley Irrigation District v. United States*, 474 U.S. 1032 (1985). Harm to these resources and their habitat will harm the Tribe and its members.

Payette National Forest lands provide irreplaceable habitat for tribal resources, including imperiled stocks of spring/summer Chinook salmon, steelhead, and bull trout. Unfortunately, many of the resources sacred to the Tribe are at risk of disappearing on the Payette National Forest. Spring/summer Chinook salmon in the upper East Fork of the South Fork of the Salmon River ("EFSFSR"), which flows through the Payette National Forest, were extirpated by mining operations in the 1940s. Snake River spring/summer Chinook salmon were listed as threatened under the Endangered Species Act ("ESA") in 1992. The designated critical habitat for Snake River spring/summer Chinook salmon consists of river reaches in the Salmon River and all tributaries presently or historically accessible, which includes the EFSFSR up to the Glory Hole at Stibnite. Snake River Basin steelhead were listed as threatened in 1997. Although steelhead spawning does not occur upstream of the Glory Hole, juvenile steelhead do occur throughout the EFSFSR including upstream of the Glory Hole and in tributaries to the EFSFSR such as Meadow

¹ Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957 (1859).

Creek and Sugar Creek. Columbia River bull trout were listed as threatened in 1998. Streams proposed as critical habitat include the EFSFSR downstream and upstream of the Glory Hole at Stibnite, including Meadow Creek and Fiddle Creek.

Treaty tribes, such as the Nez Perce, have been recognized as managers of their treaty-reserved resources. *U.S. v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974). As a manager, the Tribe has devoted substantial time, effort, and resources to the recovery and co-management of treaty-reserved resources within its treaty territory.

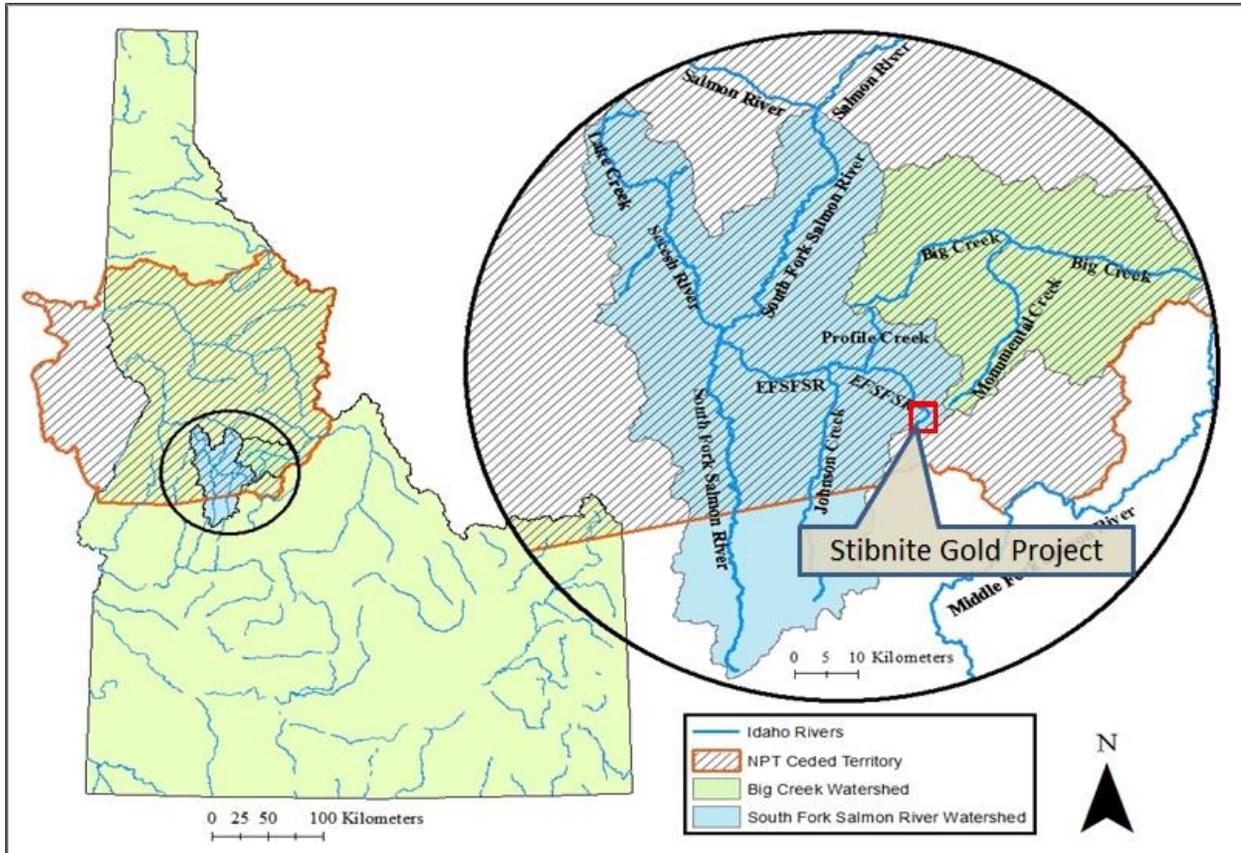


Figure 1. The location of the Stibnite Gold Project area in relation to the territory adjudicated by the Indian Claims Commission to be the Nez Perce Tribe’s area of exclusive use and aboriginal ownership. *Nez Perce Tribe v. United States*, Docket #175, 18 Ind. Cl. Comm. 1.

b. The Nez Perce Tribe’s Treaty Harvest in the EFSFSR and SFSR Watersheds.

The Tribe’s recent harvest activities in the South Fork Salmon River (“SFSR”) focus on hatchery returns to an adult weir and trap located downstream of the SFSR campground in the vicinity of Warm Lake. Approximately 1 million juvenile Chinook salmon are reared at McCall Fish Hatchery and released at that site every year. Tribal harvest typically occurs from mid-June through August and is most concentrated along that stretch of the river paralleled by the SFSR road from three miles downstream of the confluence with Lick Creek up to the weir. Non-tribal fishers also have a fishery in much of this area. Because harvest is managed to be protective of

ESA-listed returns and is shared between the Tribe and Idaho, both entities close their fisheries when either the ESA impact level or the shared harvest allocation are met. As part of its responsibilities in managing this shared fishery, the Tribe stations harvest monitors to keep track of its catch in the SFSR area and conducts regular patrols by Conservation Enforcement Officers.

In addition to the mainstem SFSR, the Tribe also has harvest in the Secesh, Lick Creek, Johnson Creek, and East Fork Salmon River.

Tribal harvest in the areas over the last 32 years are shown in Table 1.

Year	South Fork Salmon		Secesh River		Johnson Creek/East Fk South Fk	
	Hatchery	Wild	Hatchery	Wild	Hatchery	Wild
1985	0	0	na	na	na	na
1986	0	0	na	na	na	na
1987	0	0	na	na	na	na
1988	0	0	na	na	na	na
1989	0	0	na	na	na	na
1990	0	0	na	na	na	na
1991	0	0	na	na	na	na
1992	0	0	na	na	na	na
1993	34	12	na	na	na	na
1994	0	0	na	na	na	na
1995	0	0	na	na	na	na
1996	0	0	na	na	na	na
1997	1	0	na	na	na	na
1998	3	1	na	na	na	na
1999	4	0	na	na	na	na
2000	88	5	na	na	na	na
2001	436	106	na	na	na	na
2002	423	62	na	na	na	na
2003	763	75	na	na	na	na
2004	290	3	na	na	na	na
2005	365	7	na	na	na	na
2006	84	2	na	na	na	na
2007	145	3	na	na	na	na
2008	731	31	na	na	na	na
2009	785	29	na	na	na	na
2010	1,928	93	3	20	na	na
2011	1,063	149	1	26	na	na
2012	313	61	2	33	0	24
2013	393	55	0	30	0	19
2014	464	228	0	97	0	22
2015	257	132	0	88	0	0
2016	731	225	2	62	0	12

*"na" indicates that a fishery and harvest may have occurred, but no catch data are available.

Table 1. Tribal harvest totals by area.

c. The Nez Perce Tribe’s Fisheries Program and its Efforts to Restore Salmon in the EF/SFSR and the SFSR Watersheds Downstream of the Stibnite Gold Project.

The Tribe’s Department of Fisheries Resources Management (“DFRM”) has almost 200 employees, has over a \$22 million annual budget, and works in the Nez Perce ancestral homeland, in what is now north-central Idaho, northeastern Oregon, and southeastern Washington. The

DFRM program is one of the largest and most successful tribal fisheries programs in the United States. The Tribe began this program in the early 1980s after the federal courts acknowledged the Tribe's role as a co-manager of its fisheries. The program is funded primarily through Bonneville Power Administration ("BPA") as part of its implementation of the Northwest Power Act and its required mitigation for the effects of the Columbia River hydropower system. There are seven divisions within the DFRM: Administration, Conservation Enforcement, Harvest, Production, Research, Resident Fish, and Watershed.

DFRM started an office in McCall, Idaho in the mid-1990s to focus on issues in the SFSR watershed (including the EFSFSR). Approximately \$2.5 million in contracts are expended annually restoring Chinook salmon runs in the EFSFSR and SFSR. The Tribe's DFRM restoration activities include: 1) hatchery supplementation, 2) fishery research, and 3) watershed restoration. The following sections document the work accomplished, and estimate dollars spent, in these three areas. The location of some of these fishery activities in relation to the proposed Stibnite Gold Project location and fuel haul route associated with the Project are shown below in Figure 2.

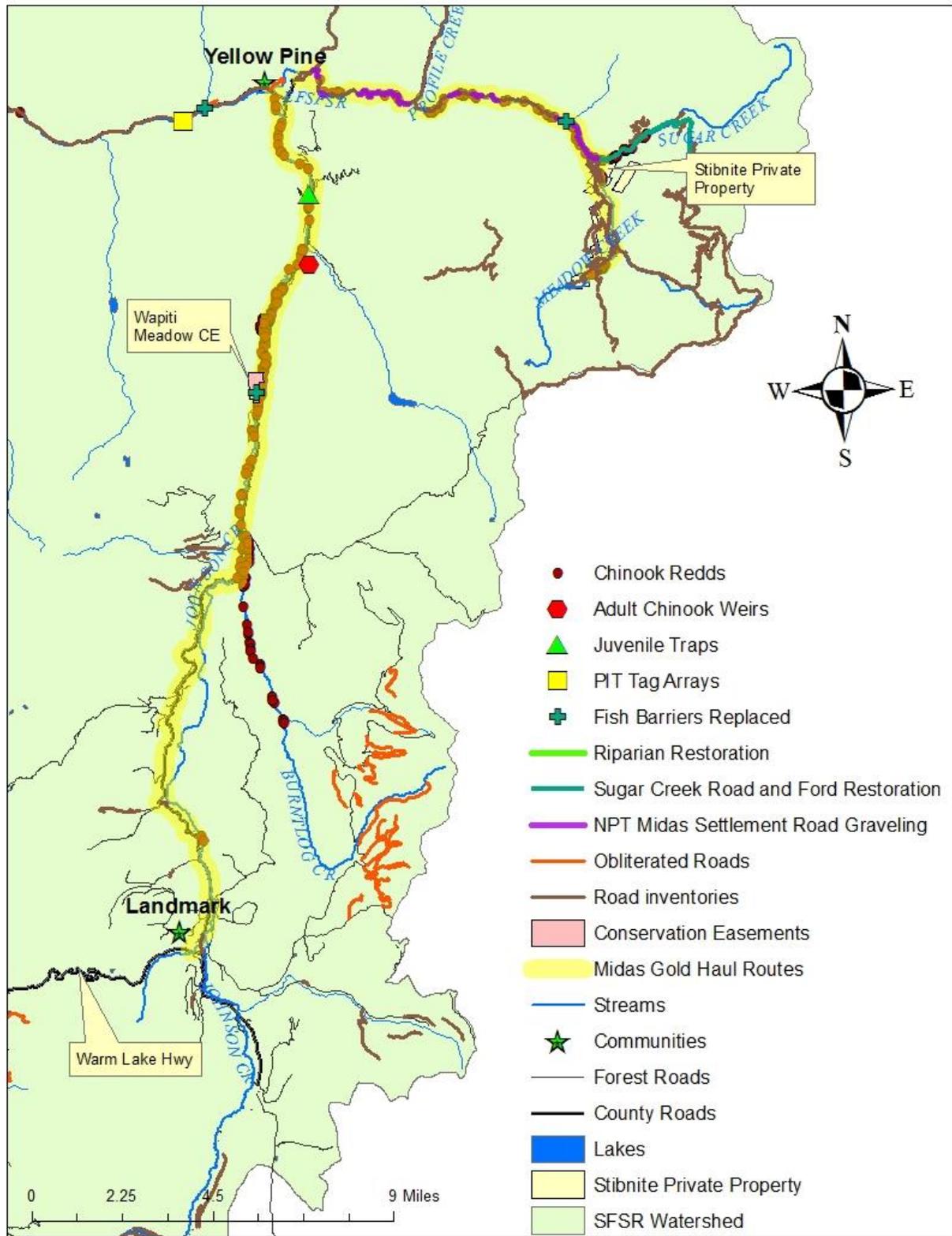


Figure 2. The location of tribal fishery activities in relation to the proposed Stibnite Gold Project.

DFRM Production Program

1. Johnson Creek Artificial Propagation Enhancement Operations and Maintenance

The Johnson Creek Artificial Propagation and Enhancement (“JCAPE”) project is a small-scale supplementation (production) project that is designed to increase survival of summer Chinook salmon spawning population in Johnson Creek. The JCAPE project produces up to 110,000 Chinook salmon smolts annually for direct release into Johnson Creek. The JCAPE project conducts activities at several locations including adult trapping on Johnson Creek, smolt releases into Johnson Creek, adult brood stock holding and spawning at the SFSR adult salmon trap, and egg incubation and juvenile fish rearing at the McCall Fish Hatchery.

The JCAPE project began collecting brood stock in 1998 and has collected brood stock every year since then, except in 1999. Weir installation and operation of a temporary adult Chinook salmon weir and trap typically occurs from late June through mid-September every year. A total of 35-40 pairs of natural origin adult salmon are collected each year to reach DFRM’s smolt target of 100,000 fish. All remaining adult salmon trapped are released upstream of the weir for natural spawning. Project employees transport brood stock from the Johnson Creek trap to the SFSR fish trap, where they are held until spawned. Egg incubation and juvenile fish rearing occurs at the McCall Fish Hatchery until the smolt stage. In late March/early April of each year, the smolts are transported to and released into Johnson Creek near Wapiti Meadows Ranch. On average, the project releases 98,534 smolts annually into Johnson Creek (release numbers have ranged from 57,392 to 130,284). The first supplementation adults returned in 2001. Supplementation adult returns have averaged 285 fish per year (return numbers have ranged from 63 to 531 annually).

The annual cost for this BPA-funded project is approximately \$500,000.

2. Lamprey Restoration

DFRM has collected lamprey from downriver dams, held them at the Tribe’s hatchery on the Clearwater River until the spring and then outplanted them in various tributaries within Nez Perce country. This work is based on the theory that pheromones emitted by juvenile lamprey may keep adults migrating into the targeted tributaries areas. This work is not an attempt to rebuild the lamprey populations per se, but an effort to keep them present in the targeted tributaries. Lamprey have been released in the SFSR since 2012 and have ranged from 11 to 62 fish with an average of 42 each year.

The annual cost for this Tribally-funded program is approximately \$40,000.

DFRM Research Program

1. Johnson Creek Artificial Propagation Enhancement Monitoring and Evaluation

The monitoring and evaluation program component of the Johnson Creek Artificial Propagation Enhancement (“JCAPE”) program comprehensively evaluates both natural and supplementation fish. This program incorporates a life cycle and life history characteristic approach that monitors the fish from egg to adult to quantify juvenile survival, smolt-to-adult survival return rates, and adult-to-adult ratios. This is accomplished using survival estimation modeling, adult counts, spawning surveys, and genetic analysis. Data used in analyses is collected via juvenile rotary screw traps, adult picket weir, and subbasin-wide multiple-pass spawning ground surveys.

Since project inception, fifteen complete cohorts have returned to Johnson Creek. Over this period, smolt survival from Johnson Creek to Lower Granite Dam has averaged 36% for supplemented smolts and 48% for natural smolts. Adult counts (including jacks) have ranged from a high of 1,652 in 2014 to a low of 56 in 1999. Smolt-to-adult return rates (Johnson Creek to Johnson Creek) have averaged 0.40% for supplemented fish and 0.88% for natural fish; adult-to-adult estimates have averaged 4.22 for supplementation Chinook and 2.14 for natural Chinook. A recent genetic analysis of the relative reproductive success of supplementation Chinook (Hess et al. 2012) determined that hatchery rearing of wild fish resulted in more wild-born adults in the next two generations than if fish had been left to spawn naturally. Further, the analysis showed no significant differences in the reproductive success between hatchery and wild fish, and that hatchery and wild interactions do not have a detectable negative impact on the fitness of wild fish.

The annual cost for this BPA-funded program is approximately \$1,040,000.

2. Salmon River Basin Integrated Status and Effective Monitoring Project

The Integrated Status and Effectiveness Monitoring Project (“ISEMP”) is an ongoing collaborative effort to design, test, implement, and evaluate Status and Trends Monitoring for salmon and steelhead populations in the interior Columbia River Basin. The use of Passive Integrated Transponders (“PIT tags”) is one tool that the Salmon River Basin ISEMP is using to answer scientific uncertainties regarding adult and juvenile steelhead and Chinook salmon. Specifically, PIT tags are used as a tool to examine and quantify growth, survival, and migratory patterns of juvenile steelhead and Chinook.

The ISEMP salmon study design proposed the use of in-stream extended length PIT tag arrays coupled with representative adult PIT tagging at Lower Granite Dam (“LGD”) as a means to provide reliable and consistent adult escapement estimates into tributary streams. The study design relies on PIT tag arrays to provide “recapture” data for wild/natural adult salmon and steelhead PIT tagged at LGD. Interrogation of adults passing in-stream PIT tag arrays is used to decompose the adult run-at-large passing LGD into precise and reliable estimates of adult escapement for stream-type Chinook salmon and steelhead at the subpopulation, population, and major population group/distinct population segment spatial scales.

For its part, DFRM is responsible for the operation, maintenance, Quality Assurance/Quality Control of detection data, and data analysis from 22 in-stream arrays within the Clearwater River (4), Grande Ronde River (3), Imnaha River (5), SFSR (6), Middle Fork Salmon River (2), and upper Salmon River (2) basins. In addition, the ISEMP provides technical, logistical, and data analysis support for a host of additional PIT tag arrays operated by the ISEMP as well as other state and federal agencies and supports the operation of a rotary screw trap operated in the lower Secesh River, a tributary of the SFSR.

The ISMEP salmon in-stream arrays recorded approximately 1 million PIT tag detections annually. The PIT tag detection infrastructure in the Snake, Clearwater, and Salmon basins routinely detect approximately 50% of the adult Chinook and 40% of the adult steelhead tagged at the LGD adult trap each year. In-stream PIT tag detections are further used to assess and quantify adult escapement into tributary streams, describe adult migration and arrival timing, monitor adult straying and dip-in behavior, estimate adult residency time, estimate kelting rate, monitor juvenile abundance and survival, and describe juvenile migration timing and patterns.

The annual cost for this BPA-funded program (SFSR and East Fork Salmon River only) is approximately \$50,000.

3. Lower Snake River Compensation Program

The Lower Snake River Compensation Program (“LSRCP”) is primarily a hatchery program administered by the U.S. Fish and Wildlife Service that provides mitigation for the effects of the Lower Snake River dams. It funds the McCall Hatchery, which provides for most of the fish harvest in the SFSR. The Tribe’s LSRCP Monitoring and Evaluations (“M&E”) Project coordinates LSRCP hatchery production planning and evaluations and provides information and recommendations for policy and management purposes.

In addition to contributing to the co-management of the LSRCP, the LSRCP M&E project is structured to monitor and evaluate LSRCP hatchery production performance and natural production status and performance. The Northwest Power Planning Council’s Artificial Production Review recommended a comprehensive set of performance measures to guide independent reviews of artificial propagation programs. Within the SFSR basin, LSRCP activities focus on monitoring of natural- and hatchery-origin adult escapement, spawner success, and hatchery natural interactions through the evaluation and monitoring of naturally-spawning spring/summer Chinook salmon. Data is collected through multiple-pass spawning ground surveys in the mainstem SFSR below the McCall Hatchery Trap.

The annual cost for this LSRCP-funded program (SFSR only) is approximately \$80,000.

4. Secesh Chinook and Joseph Creek Steelhead Adult Abundance

This BPA-funded project collects information for monitoring of trends in wild adult salmon escapement and productivity. Information from this project is used for effective population management and for a direct measure of salmon recovery efforts in a wild salmon stream. Dual frequency identification is used to monitor the wild salmon population as they migrate into the Secesh River at the Chinook Campground. The estimated total adult salmon natural-origin (“NOR”) abundance was 475 fish in 2016, which was slightly higher than the estimated adult

salmon NOR abundance in 2015 of 306. The estimated proportion of hatchery-origin fish was 1.7% in 2016.

Salmon escapement data from this project informs managers and policy makers whether management actions taken within the state and Columbia River basin are benefitting wild salmon. If management actions benefit wild salmon, escapement should increase above viable population levels (thresholds) as depicted in Figure 3 below. The viability threshold used to evaluate delisting potential is based on the 10-year geometric mean of annual NOR abundance and is set at 750 fish for the Secesh River. Including the 2016 estimate, the 10-year geomean abundance is currently 715 fish, up from 652 fish the previous year.

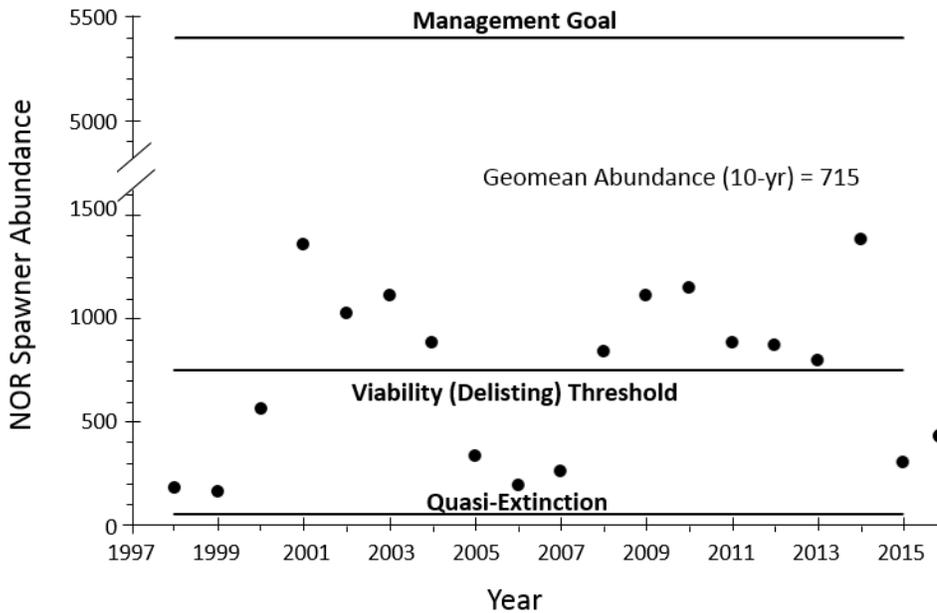


FIGURE 3. Estimated natural origin adult salmon spawner abundance (wild fish) in the Secesh River from 1998 to 2016.

The annual cost for this BPA-funded program (SFSR only) is approximately \$300,000.

DFRM Watershed Program

1. McCall Watershed Division Project

The McCall Watershed Division Project began during the 2007-2009 Northwest Power and Conservation Council Fish and Wildlife Provincial Review (“Review”). The Tribe’s Watershed Division submitted to the 2007-2009 Review a project in the EFSFSR to address fish passage at the legacy Glory Hole in the Stibnite Gold Project area. The Tribe originally intended to reestablish fish passage there through a 30-foot tall cascade and rehabilitate one mile of fish habitat above the Glory Hole through a degraded reach of the upper main stem EFSFSR. Before the Tribe could implement the project, however, the private land-owner of

the Glory Hole river reach entered into a lease-to-purchase option with Midas Gold. Consequently, the reach was inaccessible to the Tribe for habitat enhancement projects.

Since its founding in 2007, the Tribe's McCall Watershed Division has been able to acquire conservation easements at Wapiti Meadows with at \$1 million dollar grant awarded to the Tribe, installed nine fish passage projects within the SFSR and EFSFSR watersheds, and decommissioned 180 miles of road to reduce sediment levels in the SFSR that are detrimental to listed fish species. Renewed mining activities such as the Stibnite Gold Project, however, could undermine the gains in fisheries and habitat improvements vital to the Tribe by negatively affecting the SFSR and EFSFSR watersheds through increased sedimentation to streams (mining activities, increased traffic adjacent to streams), potential fuel and chemical spills, and decreased water quality resulting from mineral exploration.

The annual cost for this BPA-funded program is approximately \$780,000.

Conclusion

DFRM currently spends approximately \$2,790,000 annually on fisheries supplementation, research, and watershed restoration projects near, and downstream of, the Stibnite Gold Project.