

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
SALEM DISTRICT OFFICE

DECISION RECORD FOR THE
FISCAL YEAR 2001-2002 ROAD-RELATED WATERSHED RESTORATION
PROJECTS
EA No. *OR-080-01-10*

Background

The FY 2001-2002 Road-Related Watershed Restoration Projects are located in Lincoln and Benton Counties, Oregon – in the North Fork Alsea and Lower Alsea River watersheds. The major objectives are to improve fish passage and to reduce sediment production by stabilizing roads.

I have reviewed the proposals and alternatives for the road improvements and have considered information included in the project Environmental Assessment (EA Number OR-080-01-10) dated April 23, 2001.

Public Involvement

Project planning involved contact with U.S. Fish and Wildlife Service, National Marine Fisheries Service, Oregon Department of Fish and Wildlife, U.S. Forest Service, adjacent industrial land owners, and affected residents.

The Environmental Assessment and Finding of No Significant Impact (FONSI) were available for public review from April 23 to May 31, 2001. One comment was received via email on May 7, 2001, from U.S. Fish and Wildlife Service regarding the applicability of the *Programmatic Biological Opinion of Fiscal Year 2001 projects in the North Coast Province which would modify the habitat of bald eagles, northern spotted owls or marbled murrelets* (Oct. 4, 2000) with regards to the Klickitat Road Repair project. A copy of the email is included in the project file. Issues raised in that letter are addressed in the Decision Rationale.

Decision Record

My decision is to implement the Proposed Action (Alternative 1) as described in the *Fiscal Year 2001-2003 Road-Related Watershed Restoration Projects* Environmental Assessment with the following change in the Bear Creek Restoration design features:

BLM and Oregon Department of Fish and Wildlife will work together in determining where wood and boulder materials can be placed to help stabilize Bear Creek following the culvert removal. It is anticipated that scouring would occur too rapidly without some

form of stabilization. Logs and boulders will be placed to mimic natural stream structure.

Additional stabilization of the Bear Creek Road 13-8-8.1 located beyond the main Bear Creek crossing will consist of removing cross drain culverts and replacing them with drain dips, restoring intermittent/perennial tributary stream channels, outsloping the roadbed to help restore natural drainage patterns, pulling back embankment material from any areas indicating instability, ripping the roadbed to encourage re-establishment of vegetation, and sowing approved grass species to minimize sediment movement from disturbed areas.

Decision Rationale

My decision to implement the Proposed Action (Alternative 1) is based on the primary goals of the projects to assist in restoring and improving ecological health of watersheds and aquatic systems, while honoring existing road right-of-way agreements. The actions are proposed as a means of implementing the watershed restoration component of the Northwest Forest Plan Aquatic Conservation Strategy. Watershed restoration is an integral part of the federal strategy to recover fish and riparian habitat and to improve water quality. Alternative 2, Deferred Action, was not chosen because it would result in continued road deterioration, sedimentation, inhibited fish passage, and delay of watershed restoration activities.

The proposal complies with relevant laws, regulations and management plans for managing BLM-administered lands, including the following:

Record of Decision and Standards and Guidelines for Amendment to the Survey & Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines (S&M ROD, January 2001) and the Final Supplemental Environmental Impact Statement For Amendment to the Survey & Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines (S&M FSEIS, November 2000).

Salem District Record of Decision and Resource Management Plan (RMP, May 1995).

Salem District Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS, September 1994).

Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl (ROD, April 1994) and the Final Supplemental Environmental Impact Statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (SEIS, February 1994).

The proposed projects conform with and would follow the general management guidance outlined in the RMP and would meet the Aquatic Conservation Strategy Objectives as stated on pages 3 and 4 of the EA.

There will be no substantial changes to the action as originally proposed in the E. The action as modified is within the scope of the alternatives identified in the original EA, and the environmental impacts are within those described in the original EA and are less than or the same as those anticipated for the preferred alternative in that assessment. There are no significant new circumstances or facts relevant to environmental concerns and bearing on the modification to the proposed action or its impacts which were not addressed in the EA.

I have determined that neither a supplement to the EA nor a change to the Finding of No Significant Impact (FONSI) for the project is necessary for these reasons.

Discretionary Actions

Discretionary actions are those actions where the BLM has the discretion to implement irrespective of any obligations incurred as a result of such things as right-of-way agreements. Since the BLM has the discretion to decide to implement such actions, they must be designed to be in compliance with the Endangered Species Act, National Environmental Policy Act and other laws and regulations.

The EA for Fiscal Year 2001-2002 Road Related Restoration Projects included the following discretionary actions:

- Racks Creek Road Decommissioning
- Bear Creek Road Restoration

A Programmatic Biological Assessment for FY 2001 projects within the North Coast Province which would disturb bald eagles, northern spotted owls and marbled murrelets during critical nesting periods was initiated on January 2, 2001 with U.S. Fish and Wildlife Service (USFWS). *An Amendment to the Programmatic Biological Assessment for FY 2001 projects within the North Coast Province which would disturb bald eagles, northern spotted owls and marbled murrelets* was submitted on May 10, 2001. As of this date, no Biological Opinion has been received, however the above activities would either be implemented to ensure that they occur outside the nesting periods as described in the BA, or would comply with the Opinion when it is received from USFWS.

All the projects analyzed in this Environmental Assessment are located in area tributaries to the Alsea River, which is a coastal drainage. The proposed projects are all consistent with the terms and conditions of the *Programmatic Biological Opinion for Programmatic Actions in the U.S. Forest Service-Siuslaw National Forest, Salem District Bureau of Land Management (BLM), and Eugene District BLM, that are Likely to Adversely Affect Oregon Coast Coho Salmon within the Oregon Coast Range Province (June 4, 1999)*. The actions are also covered under the *Issuance of New Incidental Take Statements for Three Programmatic Biological Opinions and Adoption of Three Conference Opinions on Proposed Critical Habitat as Biological Opinions for Designated Critical Habitat (June 5, 2000)*. Both Opinions were issued by the National Marine Fisheries Service.

Non-Discretionary Actions

Most of the roads in the Salem District are included in various right-of-way agreements. These agreements specify that the parties have the right to access their lands for timber harvest by using existing roads or constructing new roads. The agreements specify the conditions under which the right to use or construct a road can be denied.

Although, there is no specific language in the agreements that require each party keep all road in the agreement area open and maintained, the agreements do state that the non-owning party can maintain or make emergency repairs to roads and recover pro-rata costs for doing the work should the controlling party fail to do so.

Even though the BLM may not have the purview to forgo not do maintenance, that does not preclude BLM from negotiating with the Permittee's on how and when the maintenance is conducted. Negotiable in this context, however, does not equate to discretionary subject to Section 7 consultation purposes. Formal consultation for non-discretionary actions in this case is not required. The maintenance conducted for the following projects should incorporate the standard mitigation used to protect spotted owls or marbled murrelets to the extent feasible, that would normally result from a formal Section 7 process. In this way, the species of concern can be protected, irrespective of the discretion involved.

- Klickitat Road Repairs
- Fall Creek Culvert
- West Fork Mill Creek Culvert
- Swamp Creek Culvert

Therefore, at a minimum, the following activities will apply as stated in the EA:

Project activities (including associated site evaluation, road construction, hauling, planting, etc.) shall not take place within 0.25 miles of a spotted owl nest or the activity center of any known pair (unless known to be occupied, as defined by protocols), or within 0.25 miles of a known occupied murrelet site, during the critical nesting period; March 1 to July 7 for spotted owls April 1 to August 5 for murrelets). The unit wildlife biologist may modify the distance and timing based on site specific information.

The proposed work must be accomplished to protect critical aquatic resources and to maintain the access to the public and to permittees. The existing Right-of-Way Agreements with private landowners guarantee them continued access to their ownership via these roads.

Implementation

Implementation of this decision may begin 30 calendar days after the publication of the public notice of this decision. A copy of the decision is available in the public area at the Salem District office. A notice will be placed in the Corvallis Gazette-Times notifying the public of the decision.

Monitoring

Monitoring for compliance with the Environmental Assessment will be conducted by Marys Peak Resource Area resource specialists during contract administration. Monitoring and evaluations will also be accomplished in compliance with Appendix J of the RMP following completion of the project to ensure that decisions and priorities conveyed by the plan are being implemented, that progress toward identified resource objectives is occurring, that mitigating measures and other management direction are effective in avoiding or reducing adverse environmental impacts.

Right to Appeal

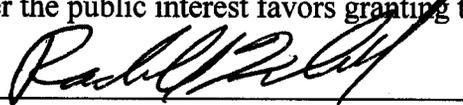
The decision may be appealed to the Interior Board of Land Appeals (Board), Office of the Secretary, in accordance with the regulations contained in 43 Code of Federal Regulations (CFR), Part 4 and the enclosed Form 1842- 1. If an appeal is taken, your notice of appeal must be filed in this office within 30 days from the date of publication of this decision. The appellant has the burden of showing that the decision appealed is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) or 43 CFR 2804.1 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board,, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Board and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) **The likelihood of immediate and irreparable** harm if the stay is not granted,
- (4) **Whether the public interest favors granting the stay.**

Responsible Official: 

Date: 06/19/01

Randall Gould
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Bureau of Land Management
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