United State Department Interior  
BUREAU OF LAND MANAGEMENT  
Oregon State Office  
P.O. Box 2965  
Portland, Oregon 97208

In Reply Refer to:  
6840/5400/2812 (OR-931) P

May 27, 2004

EMS TRANSMISSION 05/28/2004  
Instruction Memorandum No. OR-2004-079  
Expires: 9/30/2005

To: District Managers: Coos Bay, Eugene, Medford, Roseburg, and Salem

From: State Director, Oregon/Washington

Subject: Rescinding Instruction Memoranda No. OR-2004-056 and OR-2004-058

Program Area: All resource programs


Policy/Action: The Department of Justice has determined that it is the official government position that the Oregon Coastal Coho Salmon (OCC Salmon) Evolutionarily Significant Unit (ESU) remains listed as “threatened” under the Endangered Species Act (ESA). Consequently, the Bureau of Land Management (BLM) is required to conclude ESA consultation with National Oceanic and Atmospheric Administration (NOAA) Fisheries on federal actions which may affect OCC Salmon before: 1) signing National Environmental Policy Act of 1969 decision documents; 2) lifting suspensions on timber sales formerly suspended in the OCC Salmon ESU area; or, 3) offering timber sales or awarding or approving contracts for timber sales.

Timeframe: Upon receipt

Budget Impact: There will be costs for ESA consultation that would not have been incurred were the OCC Salmon not listed.

Background: Based upon initial interpretations of the 9th Circuit Court action which dismissed appeals and lifted the stay on the District Court of Oregon order in Alsea Valley Alliance, and Mark Sehl v. Donald Evans et al. No. 99-6265-HO (which set aside the August 10, 1998, ESA listing of the OCC Salmon by NOAA Fisheries), the BLM issued two IMs. The IMs provided direction on how to proceed with actions in the OCC Salmon ESU: 1) sold, awarded timber sales contracts that had been suspended under the discretionary authority provided by special contract provision E-4; and, 2) all other actions. Subsequently, the Department of Justice has determined that it is the position of the United States that the OCC
Salmon remains listed as “threatened” under the ESA until such time as the 9th Circuit Court issues a mandate to the District Court to make effective the order dated February 24, 2004, dismissing the cross-appeals and dissolving the stay pending appeal, in Alsea Valley Alliance v. Evans, 358 F.3d 1181 (9th Cir. Feb. 24, 2004), dismissing appeal from remand and vacatur order, 161 F. Supp.2d 11154, 1162 (D. OR. Sep. 10, 2001). This determination by the Department of Justice is attached.

**Manual/Handbook Sections Affected:** None

**Coordination:** Coordination has occurred with Roger Nesbit of the Regional Solicitor’s Office.

**Contact:** If there are questions, contact Joe Moreau (OR-931) at 503-808-6418, Lyndon Werner (OR-931) at 503-808-6071, or Alan Wood (OR-931) at 503-808-6072.

**Districts with Unions** are reminded to notify their unions of this IM and satisfy any bargaining obligations before implementation. Your servicing Human Resources Office or Labor Relations Specialist can provide you assistance in this matter.

Signed by
Kathy J. Eaton
Acting Associate State Director

Authenticated by
Mary O'Leary
Management Assistant

1 Attachment(s)
   1 - [Letter from Department of Justice to Earthjustice](#) (1p)

### Distribution
- WO-230 (204LS)
- OR-014 (Rod Johnson)
- OR-082 (Jeffrey Gordon)
- OR-090 (Dave DeMoss)
- OR-100 (Steven Niles)
- OR-110 (Dave Roche)
- OR-120 (Jon Menten)
May 18, 2004

Michael Mayer
Earthjustice
705 Second Avenue, Suite 203
Seattle, WA 98104-1711
Fax: (206) 343-1526

Re: Notice of Intent Regarding Oregon Coast Coho (Oncorhynchus kisutch)

Dear Mr. Mayer:

I am writing in response to your April 2, 2004, letter setting out your intent to commence litigation against one or more federal agencies under the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531 et seq., over recent statements or alleged actions pertaining to the Oregon Coast Coho evolutionarily significant unit ("ESU"). Your letter references recent orders of the Ninth Circuit in the Alsea litigation and suggests that the government is misconstruing the effect thereof, resulting in alleged violations of ESA Section 7 obligations. See Alsea Valley Alliance v. Evans, 358 F.3d 1181 (9th Cir. Feb. 24, 2004), dismissing appeal from remand and vacatur order, 161 F. Supp.2d 1154, 1162 (D. Or. Sep. 10, 2001). You note that a December 2001 order of the Ninth Circuit had stayed the effect of the district court order pending appeal.

This is to advise you that it is the position of the United States that the Ninth Circuit’s order of February 24, 2004, will become effective when the Ninth Circuit issues a mandate to the district court, pursuant to Federal Rule of Appellate Procedure 41. Until that happens, the order’s statements that the cross-appeals are dismissed and the stay pending appeal is dissolved are not effective. Thus, for the time being the district court’s order remanding and vacating the listing of the Oregon Coast coho ESU remains stayed and the ESU remains listed as “threatened” under the ESA.

Sincerely,

Jean Williams
Section Chief

cc: Patti Goldman, Earthjustice
Michael Bancroft, NOAA GC
Alecia Van Atta, NOAA GC
Roger Nesbit, BLM OGC
Val Black, DOA OGC
Owen Schmidt, DOA OGC