

First publication of the notice of this timber sale will be July 30, 2014 in the Eugene Register-Guard. This notice in the newspaper constitutes the decision document for purposes of protest under 43 CFR 5003 - Administrative Remedies. Protests of this sale must be filed within 15 days after the first publication of this notice. As interpreted by BLM, the regulations do not authorize the acceptance of protests in any form other than a signed, written hard copy that is delivered to the physical address of the Eugene District Office as defined below.

Site and Mailing Address:

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If you have any questions, please call Mike Korn at (541) 683-6792

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
EUGENE DISTRICT OFFICE**

**DECISION RECORD
Wild Fish - Re-thin EA**

**Environmental Assessment
DOI-BLM-OR-E050-2011-0004-EA**

DECISION

It is my decision to implement Wild Fish project analyzed under the Re-thin EA. This thinning project consists of approximately 302 acres and is located in T17S-R7W-section 33 and T18S-R7W-section 3. The EA analyzed the effects of thinning on approximately 750 acres of previously thinned forest stands located in Late Successional Reserve (LSR), Matrix and Riparian Reserve (RR) land use allocations (LUA). A description of the Alternatives follows later in this decision.

My decision is to implement Alternative 3 in Matrix and associated Riparian Reserves. Alternative 2 will be implemented in LSR and associated Riparian Reserves. Wild Fish project consists of 302 acres within two units; unit 1 (225 acres) is matrix land use allocation, while unit 2 (77 acres) is un-mapped late successional reserve land use allocation. Alternative 3 will be implemented in unit 1; the thinning prescription will include a relative density (RD) of 33 including the riparian reserves. Riparian reserve acres in unit 1 will receive coarse woody additions at the 30% tolerance level in clumps (approximately 9.5 trees per clump; one clump every 5 acres; clump size of 1/6th of an acre). Alternative 2 will be implemented in unit 2; the thinning prescription will include an RD of 25 including riparian reserves and will receive coarse woody additions at the 50% tolerance level in clumps (approximately 29 trees per clump; one clump every 10 acres; clump size of 6/10th of an acre). Coarse woody additions will be implemented with a service contract. Three gaps less than one acre in size will be established. Marbled murrelet surveys were completed in 2013, yielding one detection in unit 2; this changed the land use allocation of unit 2 from matrix to un-mapped late successional reserve.

There will be no new roads constructed however road renovation/improvement will occur as needed in the planning area.

The Re-thin Environmental Assessment (EA) was made available for a 30 day public comment period from February 21, 2013 to March 22, 2013. Comments were received from three groups, responses to substantive comments were mailed to the commenters along with the decision record for the first timber sale implemented under the Re-thin EA, which was Burnt Bottle Timber Sale.

Rationale for selection: The Alternatives chosen, best meet the purpose and need for the action and provide the most appropriate use and protection of resources based on management direction provided in the 1995 Eugene District RMP.

PLAN CONFORMANCE

This action is in conformance with the 1995 Eugene District Resource Management Plan (*amended*). The RMP anticipated the need to: (1) conduct commercial thinning in Matrix land use allocations by primarily thinning from below to improve growing conditions for remaining conifers and other tree species and to provide commodities; (2) Implement silvicultural treatments such as density management in LSR and RR land use allocations by thinning to accelerate the development of structural characteristics typical of late-successional forests, improve understory species composition, provide openings for development of early seral habitat and enhance snag and coarse woody recruitment to benefit multiple species; and (3) Improve riparian function in the riparian reserve land use allocations to contribute to the attainment of Aquatic Conservation Strategy (ACS) objectives.

SURVEY AND MANAGE

The Wild Fish project is consistent with court orders relating to the Survey and Manage mitigation measure of the Northwest Forest Plan, as incorporated into the Eugene District Resource Management Plan.

On December 17, 2009, the U.S. District Court for the Western District of Washington issued an order in *Conservation Northwest, et al. v. Rey, et al.*, No. 08-1067 (W.D. Wash.) (Coughenour, J.), granting Plaintiffs' motion for partial summary judgment and finding a variety of NEPA violations in the BLM and USFS 2007 Record of Decision eliminating the Survey and Manage mitigation measure. Judge Coughenour deferred issuing a remedy in his December 17, 2009 order until further proceedings, and did not enjoin the BLM from proceeding with projects. Plaintiffs and Defendants entered into settlement negotiations that resulted in the 2011 Survey and Manage Settlement Agreement, adopted by the District Court on July 6, 2011.

The Ninth Circuit Court of Appeals issued an opinion on April 25, 2013, that reversed the District Court for the Western District of Washington's approval of the 2011 Survey and Manage Settlement Agreement. The case is now remanded back to the District Court for further proceedings. This means that the December 17, 2009, District Court order which found National Environmental Policy (NEPA) inadequacies in the 2007 analysis and records of decision removing Survey and Manage is still valid.

Previously, in 2006, the District Court (Judge Pechman) had invalidated the agencies' 2004 RODs eliminating Survey and Manage due to NEPA violations. Following the District Court's 2006 ruling, parties to the litigation had entered into a stipulation exempting certain categories of activities from the Survey and Manage standard (hereinafter "Pechman exemptions").

Judge Pechman's Order from October 11, 2006 directs: "Defendants shall not authorize, allow, or permit to continue any logging or other ground-disturbing activities on projects to which the 2004 ROD applied unless such activities are in compliance with the 2001 ROD (as the 2001 ROD was amended or modified as of March 21, 2004), except that this order will not apply to:

- A. Thinning projects in stands younger than 80 years old (emphasis added):
- B. Replacing culverts on roads that are in use and part of the road system, and removing culverts if the road is temporary or to be decommissioned;
- C. Riparian and stream improvement projects where the riparian work is riparian planting, obtaining material for placing in-stream, and road or trail decommissioning; and where the stream improvement work is the placement large wood, channel and floodplain reconstruction, or removal of channel diversions; and
- D. The portions of project involving hazardous fuel treatments where prescribed fire is applied. Any portion of a hazardous fuel treatment project involving commercial logging will remain subject to the survey and management requirements except for thinning of stands younger than 80 years old under subparagraph a. of this paragraph."

Following the District Court's December 17, 2009 ruling, the Pechman exemptions still remained in place. I have reviewed the Wild Fish Project in consideration of both the December 17, 2009 partial summary judgment and Judge Pechman's October 11, 2006 order. Because the Wild Fish project includes no regeneration harvest and includes thinning only in stands less than 80 years old, I have made the determination that this project meets Exemption A of the Pechman Exemptions (October 11, 2006 Order), and therefore may still proceed to be offered for sale even if the District Court sets aside or otherwise enjoins use of the 2007 Survey and Manage Record of Decision since the Pechman exemptions would remain valid in such case.

DESCRIPTION OF THE ALTERNATIVES

Alternative 1 is the no action Alternative. Three action Alternatives were designed and analyzed in the Rethin EA. Alternative 2 includes thinning from below to a relative density between 25 and 27 in Matrix and LSR lands, including their associated Riparian Reserve lands; LSR and the associated RR treatments include: small gaps less than 1 acre are included, however no gaps in Burnt Bottle unit were analyzed to minimize the spread of existing weeds; snags and coarse woody debris in clumps to provide 50% tolerance level (DecAID 2012); Burnt Bottle would receive three snag patches located more than 200 feet from dense blackberry infestations but no coarse woody debris additions would occur. Blackberries would be controlled using prescribed fire and planting a mixture of hardwoods and conifers in Burnt Bottle and Territorial thinning units. Snags and coarse woody debris would be enhanced in clumps to provide a 30% tolerance level (DecAID 2012) within Riparian Reserves associated with the Matrix land use allocations in both Alternatives 2 and 3.

Alternative 3 includes thinning from below to a relative density between 30 and 38 in Matrix and LSR lands and their associated Riparian Reserves; LSR and the associated RR treatments include: small gaps less than one acre; snags and coarse woody debris enhancements in clumps to provide 80% tolerance level (DecAID 2012). Blackberries would be controlled without prescribed fire in Burnt Bottle and Territorial units for both Alternatives 3 and 4.

Alternative 4 includes thinning from below to a relative density between 30 and 38 in Matrix and LSR lands and their associated Riparian Reserves; LSR and the associated RR treatments include: No gaps were considered in this alternative; snags and coarse woody debris enhancements that are well distributed to provide 50% tolerance level (DecAID 2012). Snags and coarse woody debris would be well distributed to provide a 30% tolerance level (DecAID 2012) within Riparian Reserves associated with Matrix land use allocations in Alternative 4.

None of the Alternatives considered new road construction however road renovation and improvement was included in all the Alternatives. Streamside no treatment buffers were a minimum of 75 feet for all Alternatives.

Minor corrections to the EA after the public comment period

In the EA one of the issues considered but not analyzed was “What are the effects of thinning on marbled murrelet potential nesting structure and adjacent occupied sites? This issue was considered but not fully analyzed because required protection measures would be applied to all action alternatives. Trees contributing to the potential for marbled murrelet nesting would be protected from harvest. Sites that are considered occupied by marbled murrelets will be protected. No harvest would occur within these sites and operational timing restrictions in adjacent areas would protect these areas during nesting season (*EA page 4*)”

This should read as: “What are the effects of thinning on marbled murrelet potential nesting structure and adjacent occupied habitat?” “This issue was considered but not fully analyzed because required protection measures would be applied to all action alternatives. Trees contributing to the potential for marbled murrelet nesting would be protected from harvest. Habitat that is considered occupied by marbled murrelets will be protected. No harvest would occur within these habitat areas and timing restrictions in adjacent areas would protect these areas during nesting season.”

Wild Fish unit 2: Marbled murrelet surveys were completed in this unit yielding a detection resulting in the entire unit demarcated as an occupied site for marbled murrelets. The land use allocation has also been changed from Matrix to un-mapped Late Successional Reserve. **The area to the south of unit 2 has been demarcated as marbled murrelet occupied habitat, and will not be thinned as part of this action.** Thinning in Wild Fish unit 2 will occur under Alternative 2. Snags and coarse wood additions will be implemented. The EA includes specific design features such as: “management activities would be limited so as not to disrupt normal behavior near active northern spotted owl or marbled murrelet breeding sites during critical breeding seasons. Treatments would maintain at least 40% canopy cover on at least 75% of each unit to minimize potential adverse effects to spotted owls or marbled murrelet habitat. Large

remnant trees would be maintained in all land use allocations. Potential marbled murrelet nest trees would be retained (*EA page 9*)." The analysis in the EA is adequate due to these protection measures.

Pataha Ridge units 1 and 2: Spur B was wrongly identified as 90 feet in the draft EA; the correct length for Spur B is 250 feet, this has been changed in the current EA.

Descriptions of Alternatives 2 and 3 (pages 5 and 6) include the following: The few coarse woody clumps located south, east or west of a perennial stream would be a minimum of 100 feet from the stream where harvest of the inner portion of the secondary shade zone would also be avoided. Instead, these coarse woody clumps located south, east or west of a perennial stream would be a minimum of 150 feet from the stream, thinning of the inner portion of the secondary shade zone would be avoided.

CONSULTATION AND COORDINATION:

Public participation

Scoping was initiated in August of 2011; a scoping letter was mailed out to local businesses, groups, government agencies and individuals soliciting feedback about the thinning project. Three groups and individuals responded with the following comments. They were in support of thinning, economic viability, gap creation, protection of hardwoods, no new road construction, stream and riparian protection and adequate provisions for snags and downed wood.

EA public review

This EA and preliminary finding of no significant impact statement were made available for public review and comment for a 30 day period starting on February 21 inviting public comment, three comments were received. In addition the EA was posted on the Eugene District internet website. A copy of this Decision Record and Finding of No Significant Impact (FONSI) and a copy of the EA will be mailed to the commenters; the Environmental Assessment, FONSI and Decision Record will be posted on the Eugene District internet website.

U.S. Fish and Wildlife Service (USFWS)

ESA consultation

Consultation with the USFWS has been completed under the 2013-2014 programmatic consultation documents (USDI-FWS LOC-01EOW00-2012-I-0214, 2013) (USDI-FWS BO 01EOW00 2013F, 2013). Wild Fish unit 1 is located in spotted owl critical habitat whereas unit 2 is located outside spotted owl critical habitat. Wild Fish unit 1 is being thinned to a light to moderate prescription under Alternative 3. Alternative 3 would not likely adversely affect northern spotted owl designated critical habitat because the lighter thinning prescription being applied maintains >60% canopy cover as foraging habitat.

Both Wild Fish units are not located within marbled murrelet critical habitat.

National Marine Fisheries Service (NMFS)

ESA consultation

The proposed thinning action may affect, but are not likely to adversely affect, coho salmon and their designated critical habitat in the Wolf Creek 5th-field watershed. Therefore, the BLM will conduct informal consultation with NMFS prior to reaching a decision on the proposed action for Eames Swing Units I and II. The proposed action as described and analyzed in this environmental assessment would have no effect on coho salmon and their designated critical habitat in the Wildcat Creek and Upper Siuslaw 5th-field watersheds. The Wild Fish timber sale is located in the Wildcat Creek 5th field watershed and would have no effect on coho salmon and their designated critical habitat.

Essential Fish Habitat

The Magnuson-Stevens Fishery Conservation and Management Act requires federal agencies to consult with the Secretary of Commerce regarding any action or proposed action authorized, funded or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH) under the Act. The

actions being implemented under the Rethin EA would have “No Effect” on waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.

TRIBAL COORDINATION

The Bureau of Land Management Siuslaw Resource Area sent scoping letters to the Confederated Tribes of Siletz, the Confederated Tribes of the Grand Ronde and the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians during the scoping period. No response was received. Copies of the EA were mailed to them for public comment and no responses were received.

CULTURAL RESOURCES

The Wild Fish project occurs in the Oregon Coast Range physiographic province where the terms of Appendix D of the *Protocol between the Oregon State Historic Preservation Office and the Bureau of Land Management* are in effect.

Eugene District Cultural Resource maps and survey reports were consulted; there are no known cultural resources that occur in the vicinity of the project area.

Survey techniques are based on those described in Appendix D of the *Protocol for Managing Cultural Resource on Lands Administered by the Bureau of Land Management in Oregon*. Post-disturbance survey, when conducted, follows standards based on slope as defined in the Protocol appendix. These standards only mandate post-disturbance survey on slopes of 10% or less, or if professional judgment prompts such efforts due to topographic features or existence of nearby cultural resources. Ground disturbing work must be suspended if cultural material is discovered during project work until an archaeologist can assess the significance of the discovery.

ADMINISTRATIVE REMEDIES

The decision to implement this project may be protested under 43 CFR 5003 - Administrative Remedies. In accordance with 43 CFR 5003.2, the decision for this project will not be subject to protest until the notice of sale is first published in the Eugene Register-Guard. This published notice of sale will constitute the decision document for the purpose of protests of this project (43 CFR 5003.2b). Protests of this decision must be filed with this office within fifteen (15) days after first publication of the notice of sale. As interpreted by BLM, the regulations do not authorize the acceptance of protests in any form other than a signed, written hard copy that is delivered to the physical address of the BLM Eugene District Office.

/S/ Michael J. Korn
Michael J. Korn,
Field Manager, Siuslaw Resource Area

07/14/2014
Date