

Tenmile Creek In-stream Habitat Restoration Decision Document

Roseburg District Aquatic Restoration Environmental Assessment (EA # OR 103-08-09)

South River Field Office, Roseburg District

Decision:

It is my decision to implement the Tenmile Creek In-stream Habitat Restoration Project (Figure 1). The landowner will place large wood, supplemented by boulders, at eight sites and remove a water crossing that is limiting fish passage in one stream reach totaling approximately 0.75 miles of Tenmile Creek where it flows through private land in Section 23 of T. 28 S., R. 8 W., Willamette Meridian. The work will be accomplished using an excavator operating from streamside access points or within the stream channel itself. Project implementation will span about five days. The project is intended to enhance rearing habitat, capture gravel spawning substrate, and restore fish passage.

All equipment will be pressure-washed or steam-cleaned prior to mobilization into the project area to minimize the risk of introducing soil from outside the project area that may be contaminated with noxious weed seed or other propagative materials. Any equipment removed during the life of the contract must be re-cleaned before being returned to the project area. The in-stream work will be restricted to the period between July 15 and September 15, during low summer flows.

Rationale for the Decision:

The Olalla-Lookingglass Watershed Analysis (1998 p. 80) noted limiting factors for the fishery resource may include a reduction of instream habitat structure, increased sedimentation, and the absence of a functional riparian area.

Projects of this nature were described under Alternative Two, the Proposed Action, described in the Roseburg District Aquatic Restoration EA (pp. 10-12). Effects would be consistent with those described in the EA (pp. 27-28). Implementation will aid in meeting the objectives of creating deep pools with ample hiding cover and holding gravels for spawning, and improving stream connectivity (EA, p. 5). Alternative One, the “No Action” alternative, would not meet these objectives.

Oregon Coast Coho Salmon

Tenmile Creek is designated as critical habitat and Essential Fish Habitat for Oregon Coast coho salmon. Potential effects from placement of logs for in-stream habitat are primarily associated with sediment generated by stream bank and stream channel disturbance.

Actions of this nature were programmatically consulted with the National Marine Fisheries Service and are addressed and authorized in *Endangered Species Act – Section 7 Programmatic Consultation Biological and Conference Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for Fish Habitat Restoration Activities in the States of Oregon and Washington*, dated April 25, 2013 (NMFS ARBO II). The project is consistent with NMFS ARBO II.

Placement of the in-stream structures in Tenmmile Creek will not result in any undue environmental degradation. The project is consistent with Aquatic Conservation Strategy objectives contained in the 1995 ROD/RMP (pp. 19-20), in that it will help: restore stream channel complexity; restore habitat connectivity; maintain and restore patterns of sediment, nutrient, and wood routing; and maintain and restore aquatic habitat.

Wildlife

Actions of this nature were programmatically consulted with the U. S. Fish and Wildlife Service and are addressed and authorized in *Endangered Species Act – Section 7 Consultation Programmatic Biological Opinion for Aquatic Restoration Activities in the States of Oregon, Washington and portions of California, Idaho and Nevada (FWS ARBO II) [01EOFW00-2013-F-0090]*, dated July 1, 2013. This project complies with FWS ARBO II.

Northern spotted owls (*Strix occidentalis caurina*) would be unaffected by the project. The project area is not located in northern spotted owl critical habitat and no suitable nesting, roosting and foraging (NRF) habitat is present within 0.25 miles (440 yards) from the outer edge of project area. The closest distance to NRF habitat is 0.33 miles. The project area is located within three home ranges of known spotted owl sites, Suicide Creek 4508(O), Band Tail 2095(O), and Irwin Rocks 2533(O/A), yet project implementation would occur between July 15 and September 15, after the critical nesting period, so no disruption or disturbance to northern spotted owls that may be present in the project area would be expected.

A small number of trees less than ten (10) inches diameter breast height would be removed to accommodate excavator operations at the locations of the in-stream structures. This would not constitute a measurable effect to existing habitat conditions or affect the ability of home ranges for the northern spotted overlapping the project area to continue to support northern spotted owl pairs.

The project area is not located in critical habitat designated for the **marbled murrelet** (*Brachyramphus marmoratus*). The project area is within the range of the marbled murrelet in Zone 2 which falls between 35 and 50 miles from the Oregon coast. The species would be unaffected by the project, because there is no suitable marbled murrelet habitat within 440 yards from the outer edge of project area and the project is over seven miles from the closest known murrelet site.

The project area is not within a known **bald eagle** or **golden eagle** nesting territory, therefore, no known nest or roost trees will be removed. The project will have no effects on either species.

The work associated with the instream restoration project would occur after the **migratory bird** breeding season (April – July), avoiding disturbance to breeding birds. Given that the work is very localized, with minimal ground disturbance, and planned to begin after the breeding season (early-August or later), impacts to nesting birds are expected to be minimal; most chicks are likely to have fledged from nests and are expected to be able to escape direct disturbance. The instream restoration work would not affect migratory birds at the population level.

Survey and Manage Compliance

In 2006, the District Court (Judge Pechman) invalidated the agencies' 2004 Record of Decisions (RODs) eliminating Survey and Manage due to NEPA violations. Following the ruling, parties to the litigation entered into a stipulated agreement exempting certain categories of activities from the Survey and Manage standard (hereinafter referred to as "Pechman Exemptions").

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.) (Judge Coughenour), granting Plaintiffs' motion for partial summary judgment and finding a variety of NEPA violations in the BLM and USFS 2007 ROD eliminating the Survey and Manage mitigation measure, but deferred issuing a remedy until further proceedings. Judge Coughenour did not set aside the Pechman exemptions, or enjoin the BLM from proceeding with projects.

The plaintiffs and Federal Agencies entered into settlement negotiations in April 2010, and the Court filed approval of the resulting Settlement Agreement on July 6, 2011. Projects that are within the range of the northern spotted owl were subject to the survey and management standards and guidelines in the 2001 ROD, as modified by the 2011 Settlement Agreement.

On April 25, 2013, the Ninth Circuit Court of Appeals invalidated portions of the 2011 Settlement Agreement, but the 2006 Pechman Exemptions remain unchanged.

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;
- 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 of 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."

The Tenmmile Creek In-stream Habitat Restoration project is on private land exempt from Survey and Manage requirements and meets exemption “c” described above, therefore no surveys or management of known sites is required.

Botany

Botanical review was completed and no threatened and endangered plant species were found in the project area.

Cultural/Historical resources

An inventory of the proposed project area was completed (July 3, 2013 and no cultural resources were observed (CRS: SR1306). The project will not affect any known sacred, religious, ceremonial or culturally significant Indian sites or National Register properties. The BLM has completed its Section 106 responsibilities under the 2012 National Programmatic Agreement and the 1998 Oregon Protocol. In compliance with the Act, ground-disturbing activities will be halted if cultural resources are discovered until an Archeologist can properly evaluate and document the resources.

Public Involvement & Response to Comment:

An interdisciplinary team began analysis for the Roseburg District Aquatic Restoration EA in the autumn of 2008, and the public was notified of initiation of the environmental assessment in the Winter 2008 Roseburg District Quarterly Planning Update.

A thirty-day period for public review and comment was provided upon completion of the environmental assessment (August 4, 2009 through September 3, 2009), consistent with BLM policy/practice to provide the public a review opportunity prior to issuance of any decision(s). Notification was made to state and Federal resource management and regulatory agencies. Local tribal and county government, trade groups and other interested parties were also notified. No comments on the environmental assessment were received.

Monitoring:

Monitoring will be done in accordance with the 1995 ROD/RMP, Appendix I (pp. 84, & 195-198), with emphasis on assessing the effects of the restoration activities on the following resources: Water and Soils; and Fish Habitat.

Administrative Remedies:

Effective Date of Decision

This decision will become effective on the day after the expiration of the appeal period, 30 days after this decision is signed, where no petition for a stay is filed, or 45 days after the expiration of the appeal period where a timely petition for a stay is filed, unless the Director of the Office of Hearings and Appeals or an Appeals Board has determined otherwise in accordance with specified standards enumerated in 43 CFR 4.21 (b).

Right of Appeal

Pursuant to 43 CFR § 4.410, this decision may be appealed to the U.S. Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals (Board) by those who have a “legally cognizable interest” to which there is a substantial likelihood that the action authorized in this decision would cause injury, and who have established themselves as a “party to the case.”

If an appeal is taken, a written notice of appeal must be filed with the BLM officer who made the decision in this office by close of business (4:30 PM PDT) not more than 30 days after the latest date of service of this decision upon the proponent and other affected parties. Only signed hard copies of a notice of appeal that are delivered to the Roseburg District Office, 777 NW Garden Valley Blvd., Roseburg, Oregon will be accepted. Faxed or emailed appeals will not be considered.

The person signing the notice of appeal has the responsibility of proving eligibility to represent the appellant before the Board under its regulations at 43 CFR § 1.3. The appellant also has the burden of showing that the decision appealed from is in error. The appeal must clearly and concisely state which portion or element of the decision is being appealed and the reasons why the decision is believed to be in error. If your notice of appeal does not include a statement of reasons, such statement must be filed with this office and with the Board within 30 days after the notice of appeal was filed.

According to 43 CFR Part 4, you have the right to petition the Board to stay the implementation of the decision. Should you choose to file one, your stay request should accompany your notice of appeal.

You must show standing and present reasons for requesting a stay of the decision. A petition for stay of a decision pending appeal shall show sufficient justification based on the following standards:

- The relative harm to the parties if the stay is granted or denied,
- The likelihood of the appellant’s success on the merits,
- The likelihood immediate and irreparable harm if the stay is not granted, and
- Whether the public interest favors granting the stay.

A notice of appeal with petition for stay must be served upon the Board and the Regional Solicitor at the same time such documents are served on the deciding official at this office. Service must be accomplished within 15 days after filing in order to be in compliance with appeal regulations, 43 CFR § 4.413 (a). At the end of your notice of appeal you must sign a certification that service has been or will be made in accordance with the applicable rules (i.e., 43 CFR §§ 4.410 [c] and 4.413) and specify the date and manner of such service. The Board will review any petition for a stay and may grant or deny the stay. If the Board takes no action on the stay request within 45 days of the expiration of the time for filing a notice of appeal, you may deem the request for stay as denied, and the BLM decision will remain in full force and effect until the Board makes a final ruling on the case.



Steven Lydick
Field Manager
South River Field Office

7/10/13

Date

Contact Information

For additional information, contact Steven Lydick, Field Manager, South River Field Office, 777 NW Garden Valley Blvd., Roseburg, Oregon 97471, 541-464-3211.

Additional contact addresses include:

U.S. Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy Street, MS 300-QC
Arlington, VA 22203

U.S. Department of the Interior
Office of the Regional Solicitor
805 SW Broadway, Suite 600
Portland, OR 97205

Figure 1: Tenmile Creek Instream Restoration

