

Bull Run Creek Large Wood Placement Project

Final Decision and Decision Rationale for Bull Run Creek Large Wood Placement Project

East Alsea Landscape Management Project Environmental Assessment
(U. S. Forest Service)

February 2010

United States Department of the Interior
Bureau of Land Management
Oregon State Office
Salem District
Marys Peak Resource Area

Township 13 South, Range 9 West, Section 10 Willamette Meridian
Lower Alsea River Watershed 5th field Watershed.
Lincoln County, Oregon

Responsible Agency: USDI - Bureau of Land Management

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BLM/OR/WA/AE-10/027+1792

I. Introduction

The United States Forest Service (USFS) has conducted an environmental analysis for the Bull Run Creek Large Wood Placement Project, which is documented in the East Alsea Landscape Management Plan Environmental Assessment and the associated project file. The Proposed Action of the East Alsea Landscape Management Plan Project EA is to place approximately 70 trees to 0.9 miles of Bull Run Creek, where the creek flows through land managed by the Bureau of Land Management. The trees will be placed via helicopter. Bull Run Creek is an anadromous fish-bearing stream with Oregon Coast (OC) Coho Salmon. The shortage of high quality aquatic habitat in the Oregon Coast Range, including the Lower Alsea River Watershed, limits recovery of coho salmon and the ability to maintain healthy populations of other aquatic-dependant species, especially other anadromous fish.

The project will occur within Riparian Reserve Land Use Allocation (LUA). A Finding of No Significant Impact (FONSI) was signed on March 10, 2010 and the FONSI was then made available for public review.

The decision documented in this Decision Rationale (DR) is based on the analysis documented in the EA.

II. Decision

I have decided to implement the Bull Run Creek Large Wood Placement Project as described in the proposed action (EA p.3) hereafter referred to as the “selected action”. The selected action is shown on the map attached to this Decision Rationale. This decision is based on site-specific analysis in the East Alsea Landscape Management Plan Project EA, the supporting project record, management direction contained in the Salem District Resource Management Plan (May 1995), which are incorporated by reference in the EA.

The following is a summary of this decision.

- Placement of approximately 70 individual trees and/or log structures along 0.9 miles of one fish bearing stream on federal land to improve fish habitat.
- All design features and mitigation measures described in the EA (Appendix A) will be incorporated into the proposed action.

III. Compliance with Direction:

The analysis documented in the East Alsea Landscape Management Plan EA is site-specific and supplements analyses found in the *Salem District Proposed Resource Management Plan/Final Environmental Impact Statement*, September 1994 (RMP/FEIS). This project has been designed to conform to the *Salem District Record of Decision and Resource Management Plan*, May 1995 (RMP) and related documents which direct and provide the legal framework for management of BLM lands within the Salem District (EA pp. 88). All of these documents may be reviewed at the Marys Peak Resource Area office.

Survey and Manage Species Review

The Bull Run Creek Large Wood Placement project is consistent with court orders relating to the Survey and Manage mitigation measure of the Northwest Forest Plan, as incorporated into the Salem 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. 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 Court's December 17, 2009 ruling, the Pechman exemptions are still in place. 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 (including timber sales). Nevertheless, I have reviewed the Bull Run Creek Large Wood Placement Project in consideration of both the December 17, 2009 and October 11, 2006 order. Because the Bull Run Creek Large

Wood Placement project entails stream improvement work with the placement of large wood, I have made the determination that this project meets Exemption C of the Pechman Exemptions (October 11, 2006 Order), and therefore may still proceed 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.

Compliance with the Aquatic Conservation Strategy

On March 30, 2007, the District Court, Western District of Washington, ruled adverse to the U. S. Fish and Wildlife Service (USFWS), National Oceanic and Atmospheric Administration (NOAA-Fisheries) and USFS and BLM (Agencies) in *Pacific Coast Fed. of Fishermen's Assn. et al v. Natl. Marine Fisheries Service, et al and American Forest Resource Council*, Civ. No. 04-1299RSM (W.D. Wash)(PCFFA IV). Based on violations of the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA), the Court set aside:

- the USFWS Biological Opinion (March 18, 2004),
- the NOAA-Fisheries Biological Opinion for the ACS Amendment (March 19, 2004),
- the ACS Amendment Final Supplemental Environmental Impact Statement (FSEIS) (October 2003), and
- the ACS Amendment adopted by the Record of Decision dated March 22, 2004.

Previously, in *Pacific Coast Fed. Of Fishermen's Assn. v. Natl. Marine Fisheries Service*, 265 F.3d 1028 (9th Cir. 2001)(*PCFFA II*), the United States Court of Appeals for the Ninth Circuit ruled that because the evaluation of a project's consistency with the long-term, watershed level ACS objectives could overlook short-term, site-scale effects that could have serious consequences to a listed species, these short-term, site-scale effects must be considered. The following paragraphs show how the Bull Run Creek Large Wood Placement project meets the Aquatic Conservation Strategy in the context of PCFFA IV and PCFFA II.

Existing Watershed Condition

The Bull Run Creek Large Wood Placement Project area is in the Lower Alsea River 5th-field watershed which drains into the Alsea River. Thirteen percent of the Lower Alsea River Watershed is managed by BLM, 45% is private and 42% is managed by the USFS. Approximately 46% of the total BLM managed lands consist of stands greater than 80 years old and approximately 28% of BLM managed lands are located in riparian areas (within 100 feet of a stream).

Review of Aquatic Conservation Strategy Compliance:

Relevant information from the Lower Alsea River Watershed Analysis (USFS 1999), the Lower Alsea River/Drift Creek Water Quality Restoration Plan (USDA 2006b), and analyses for the Project, including the Aquatic Conservation Strategy (ACS) Consistency Assessment (Appendix D), was incorporated by reference into this environmental analysis. Based on this information, all project actions would meet the ACS standards and guides, and all ACS objectives would be met at the 5th-field watershed scale, and over longer time periods of decades or more.

IV. Alternatives Considered

The EA analyzed the effects of the proposed action and the no action alternatives. No unresolved conflicts concerning alternative uses of available resources (section 102(2) (E) of NEPA) were identified. No action alternatives were identified that will meet the purpose and need of the project and have meaningful differences in environmental effects from the proposed action (EA Chapter 2). Complete descriptions of the "action" and "no action" alternatives are contained in the EA, pages 31-76.

V. Decision Rationale

Considering public comment, the content of the EA and supporting project record, the management direction contained in the RMP, I have decided to implement the selected action as described above. The following is my rationale for this decision.

1. The selected action:
 - Meets the purpose and need of the project (Chapter 1).
 - Complies with the *Salem District Record of Decision and Resource Management Plan*, May 1995 (RMP) and related documents which direct and provide the legal framework for management of BLM lands within the Salem District (EA p.88).
 - The Bull Run Creek Large Wood Placement project is in full and complete compliance with the 2001 Survey and Manage FSEIS and ROD. This project is in compliance with Judge Marsha Pechman's January, 2006 ruling on the 2004 Record of Decision for Survey and Manage Standards and Guidelines, as stated in Point (3) on page 14 of the January 9, 2006, Court order in Northwest Ecosystem Alliance et al. v. Rey et al.
 - Will not have significant impact on the affected elements of the environment (EA FONSI pp. 1-3) beyond those already anticipated and addressed in the RMP EIS.
 - Has been adequately analyzed.

Purpose and Need (EA section 2.1)	No Action	Proposed Action
<p>The shortage of high quality aquatic habitat in the Oregon Coast Range, including the lower Alsea River watershed, limits recovery of coho salmon and ability to maintain healthy populations of other aquatic-dependant species, especially other anadromous fish.</p>	<p>Lower reaches of Bull Run, Scott, East Fork Scott, and Grass Creeks contain less than 32 pieces of large wood per mile; the Oregon Watershed Enhancement Board (OWEB) considers these streams to be depleted of large wood.</p> <p>Some areas would continue to degrade before they begin to recover because it would be decades before large trees develop and become sources of large wood that can be recruited into the streams.</p>	<p>Creates deep pools with abundant cover and backwater areas for fish. This increases winter and summer rearing habitat for salmonids by providing more physical space and greater habitat diversity;</p> <p>Improves long-term sediment-retention capability of streams. Trapping, sorting, and storing gravels (sediment) are required for spawning habitat;</p> <p>Creates deep sediment deposits and provides more stable spawning gravels during high flows, thus increasing egg-to-fry survival;</p> <p>Provides slow water refuges at periods of high flows and increases floodplain connection. Stored sediment would increase the frequency of over-bank flows, allowing juvenile salmonids access to off-channel habitats that are preferred for rearing during the winter (Nickelson et al. 1992);</p> <p>Creates more frequent over-bank flows, more aggraded stream channels, and more abundant pool and riffle sequences would be expected to increase surface and ground water exchange. Ground water can buffer natural stream-heating processes (Poole and Berman 2001) and increase the availability of preferred summer-stream temperatures for salmonids;</p> <p>Increases fine sediment storage adjacent to streams, which can provide a substrate for establishing riparian vegetation. Riparian vegetation can increase stream shade, potentially reducing stream temperatures and increasing the availability of suitable habitat for salmonids; and</p> <p>Collects and stores nutrients (e.g., leaves, needles, and salmon carcasses) that provide a suitable substrate for feeding aquatic insects, thereby increasing food availability for salmonids.</p>

2. The No Action alternative was not selected because it does not meet the Purpose and Need directly, or delays the achievement of the Purpose and Need (EA Chapter 1), as shown in *Table 2*.

VI. Public Involvement/ Consultation/Coordination

Scoping: Letters describing the actions considered in the proposed project were mailed to about 200 parties on July 14, 2008. Public comment was also solicited through news releases in the Newport News-Times in Newport, Oregon; the Corvallis Gazette-Times in Corvallis, Oregon; and the Siuslaw News in Florence, Oregon. The Siuslaw National Forest's quarterly —Project Update publications were also used for public outreach. Comments on the proposed project were requested by August 15, 2008. Through these scoping efforts, three parties responded.

Comment Period and Comments:

A legal notice, advertising that the East Alsea Landscape Management Project Preliminary Analysis is available for a 30-day public review and comment period, was published in the Eugene Register-Guard on June 12, 2009. Letters attached to the preliminary analysis and appendices were mailed to interested parties prior to June 12, 2009. The legal notice and letters indicated the beginning and end of the 30-day comment period, described the comment process, and identified a Forest Service contact person. Copies of the preliminary analysis were also made available at the Siuslaw National Forest Headquarters in Corvallis and the District office in Waldport. Comments on the preliminary analysis were due on July 13, 2009.

Comments from two parties were received and indicated overall support for the proposed project, although a few concerns were expressed. These concerns and the Forest Service responses to them are summarized in Appendix E, section 2, Table E-1.

Consultation/Coordination:

Wildlife: The US Fish and Wildlife Service (FWS) is responsible for the wildlife species listed under the Endangered Species Act. Listed species that may occur in the planning area include the northern spotted owl and marbled murrelet. The Forest Service is responsible for supporting recovery of these species and meets this obligation by working with the FWS through a required consultation process and by implementing their terms and conditions. These terms and conditions are included in Appendix A. Consultation for this project is completed, and the FWS concluded that this project would not jeopardize the continued existence of the northern spotted owl or marbled murrelet. The reference for the FWS letter of concurrence is 13420-2008-I-0125.

Fish: Oregon Coast coho salmon (*Oncorhynchus kisutch*) is listed as threatened under the Endangered Species Act; designated critical habitat for this species has been identified as well as essential fish habitat under the Magnuson-Stevens Fisheries Conservation and Management Act. National Marine Fisheries Service programmatic consultation, using the Consultation for Fish Habitat Restoration Activities in Oregon and Washington, CY2007-CY2012, is the consultation process used to protect the listed fish species and their critical habitat as well as essential fish habitat.

VII. Conclusion

I have determined that change to the Finding of No Significant Impact (FONSI – March 2010) for the Bull Run Creek Large Wood Placement Project is not necessary because I've considered and concur with information in the FONSI. The comments on the EA were reviewed and no information was provided in the comments that lead me to believe the analysis, data or conclusions are in error or that the proposed action needs to be altered. There are no significant new circumstances or facts relevant to the proposed action or associated environmental effects that were not addressed in the EA.

This decision may be appealed to the Interior Board of Land Appeals in accordance with the regulations contained in 43 Code of Federal Regulations (CFR), Part 4 and Form 1842-1. Form 1842-1 can be obtained from the Salem District website at <http://www.or.blm.gov/salem/html/planning/index.htm>.

If you appeal: A public notice for this decision is scheduled to appear in the *Newport News-Times* newspaper on Wednesday, March 10, 2010. Within 15 days of this notification, a *Notice of Appeal* must be filed in writing to the office which issued this decision – Marys Peak Field Manager, Bureau of Land Management, 1717 Fabry Road SE, Salem, OR, 97306. A copy of the *Notice of Appeal* must also be sent to the BLM Regional Solicitor (see Form 1842-1). The appellant has the burden of showing that the decision appealed from 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 regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

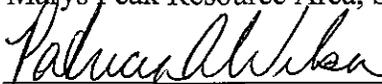
The relative harm to the parties if the stay is granted or denied,
The likelihood of the appellant's success on the merits,
The likelihood of immediate and irreparable harm if the stay is not granted, and
Whether the public interest favors granting the stay.

Statement of Reasons: Within 30 days of the filing of the *Notice of Appeal*, a complete statement of reasons why you are appealing must be filed with the Interior Board of Land Appeals (see Form 1842-1).

If no appeals are filed, this decision will become effective and be implemented 15 calendar days after the public notice of the Decision Record appears in the *Newport News-Times*. The public

notice is scheduled to appear in the *Newport News-Times* on Tuesday, March 30, 2010.

Contact Person: For additional information concerning this decision, contact Gary Humbard (503) 315-5981, Marys Peak Resource Area, Salem BLM, 1717 Fabry SE, Salem, Oregon 97306.

Approved by: 
Trish Wilson
Marys Peak Resource Area Field Manager

3-8-10
Date

