

Determination of NEPA Adequacy (DNA)

U.S. Department of the Interior
Bureau of Land Management (BLM)
Salem District, Oregon
Tillamook Field Office

Rabinsky's Cube Timber Sale

DOI-BLM-OR-S060-2013-0009-DNA

- A. **Location of Proposed Action:** T.3N, R.2W, Sections 7 and 9, and T.3N, R.3W, Section 1 Willamette Meridian, Columbia County, Oregon

Description of the Proposed Action:

The proposed action is to implement the Rabinsky's Cube Timber Sale which would sell federal timber on approximately 281 acres of land within the South Scappoose Creek watershed. The sale would entail commercial thinning of approximately 274 acres and regeneration harvest on approximately 7 acres. The thinning treatments would occur in the Matrix and Riparian Reserve Land Use Allocations (LUA); regeneration harvest would occur in the Matrix LUA. The effects associated with thinning, regeneration harvesting and associated connected actions in the South Scappoose Creek watershed were analyzed, described and disclosed for Alternative 2 (the Proposed Action) of the *South Scappoose Creek Project Environmental Assessment* (EA# DOI-BLM-OR-S060-2011-0007-EA). The Notice of Decision to implement Alternative 2 of the EA was published in November of 2011 in *The South County Spotlight* of Scappoose, Oregon and included a 15 day protest period as required by 43 CFR subpart 5003. The decision was also documented in the *Decision Record South Scappoose Creek Project* document which was made available to interested publics at the same time as the newspaper notice. The Rabinsky's Cube Timber Sale specifically includes portions of units 1 and 3; and all of units 2, 5, 16 and 17 as described in the South Scappoose Creek EA. (See Figure 1 for map of the Rabinsky's Cube timber sale area)

- B. **Conformance with the Land Use Plan (LUP) and Consistency with Related Subordinate Implementation Plans**

LUP Name: *Salem District Record of Decision and Resource Management Plan*, dated May, 1995 (ROD/RMP) and *Salem District Proposed Resource Management Plan/Final Environmental Impact Statement*, dated September 1994 (FEIS)

This action is also in conformance with the following documents:

- The *Final Supplemental Environmental Impact Statement (FSEIS) on Management of Habitat for Late-Successional and Old-Growth Related Species Within the Range of the Northern Spotted Owl* (USDA, USDI 1994a) (Northwest Forest Plan)
- *Record of Decision and Standard and Guidelines for Amendments to the Survey and Manage, Protection Buffer and other Mitigation Measures Standards and Guidelines*. (USDA and USDI, January 2001) (*without Annual Species Reviews*) (S&M ROD)

The proposed action is in conformance with the applicable LUPs because it is specifically provided for in the following LUP decisions:

The Salem District ROD/RMP (1995) calls for managing developing stands on available lands to promote tree survival and growth and to achieve a balance between wood volume production, quality of wood, and timber value at harvest (ROD/RMP p. 46); and increase the proportion of merchantable volume in the stand, to produce larger, more valuable logs, to anticipate mortality of small trees as the stand develops, to maintain good crown ratios and stable, wind-firm trees (ROD/RMP p. D-2) by applying commercial thinning treatments. It also calls for supplying a sustainable source of forest commodities from the Matrix land use allocation to provide jobs and contribute to community stability (ROD/RMP pp. 1, 46-48); and to select logging systems based on the suitability and economic efficiency of each system for the successful implementation of the silvicultural prescription, for protection of soil and water quality, and for meeting other land use objectives (ROD/RMP p. 47) by developing timber sales that can be successfully offered to the market place. The Salem District ROD/RMP gives direction to provide habitat for a variety of organisms associated with both late-successional and younger forests (ROD/RMP p. 20). The ROD/RMP also calls for applying silvicultural practices in Riparian Reserves (RR) to control stocking, reestablish and manage stands, and acquire desired vegetation characteristics needed to attain Aquatic Conservation Strategy objectives (ROD/RMP p. 11). The Rabinsky's Cube Timber Sale Project is within the Matrix and RR LUAs.

C. Identify the applicable NEPA document(s) and other related documents that cover the proposed action.

Applicable NEPA Documents:

South Scappoose Creek Project Environmental Assessment (EA# DOI-BLM-OR-S060-2011-0007-EA), September 13, 2011, Salem District, Tillamook Resource Area.

Decision Record for the South Scappoose Creek Project (November 23, 2011) Salem District, Tillamook Resource Area.

Other Related Documents:

Endangered Species Act (ESA) Consultation

Biological Assessment of habitat-modification projects proposed during Fiscal Years 2013 and 2014 in the North Coast Planning Province, Oregon that are Not Likely to Adversely Affect (NLAA) northern spotted owls or marbled murrelets, and their critical habitats, May 21, 2012, Prepared by the interagency Level 1 Team (terrestrial subgroup) for the North Coast Planning Province: Siuslaw National Forest, Salem and Eugene BLM Districts, and US Fish and Wildlife Service.

*Letter of Concurrence and Conference Concurrence Regarding the Effects of Habitat Modification Activities within the North Coast Province, FY 2013 and 2014, proposed by the Eugene District, Bureau of Land Management; Salem District, Bureau of Land Management; and the Siuslaw National Forest on the Northern Spotted Owl (*Strix occidentalis caurina*), Marbled Murrelet (*Brachyramphus marmoratus*), and their Designed and Proposed Critical Habitat*, dated July 17, 2012 and prepared by the Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service Portland, Oregon (FWS Reference Number 01EOFW00-2012-I-0124)

Rabinsky's Cube Timber Sale would not affect ESA listed fish therefore consultation with National Marine Fisheries Service (NMFS) is not required.

D. NEPA Adequacy Criteria

Is the current proposed action a feature of, or essentially similar to, an alternative analyzed in the existing NEPA document? Is the project within the same analysis area, or if the project location is different, are the geographic and resource conditions sufficiently similar to those analyzed in the existing NEPA document? If there are differences, can you explain why they are not substantial?

Yes. Alternative 2 (the Proposed Action) of the South Scappoose Creek Project EA considered a forest management project to commercially thin approximately 1540 acres and regeneration harvest approximately 100 acres. It is located within sections 7, 9, 19 and 29 of Township 3 North, Range 2 West; and sections 1, 11 and 13 of Township 3 North, Range 3 West, Willamette Meridian. The Decision Record for the South Scappoose Creek Project did not delineate which areas are associated with the proposed timber sale names listed in the table on page 1 of the Decision. The Rabinsky's Cube Timber Sale is comprised of fewer acres than listed in the Decision Record and specifically includes portions of units 1 and 3; and all of units 2, 5, 16 and 17 as shown and analyzed in the South Scappoose Creek Project EA.

The EA analyzed the potential effects of the Proposed Action based on best available information that included use of BLM corporate digital information (GIS data), aerial photos, and on-the-ground site visits. LiDAR data is not available for the area that includes Rabinsky's Cube Timber Sale. While the corporate data is reasonably accurate, there are limitations in its effectiveness for detecting and estimating all features of the landscape. Consequently the estimates of area and length of features can vary from that estimated on GIS maps with actual on-the-ground circumstances. Also, data limitations can obscure features that affect road and unit boundary layout such as unmapped creeks and short steep ground slopes that do not show up on contour maps.

As a result of data limitations the length of new temporary road to be constructed in six locations as actually determined on the ground is approximately 1,600 feet longer than GIS estimates shown in the EA, all of which would be constructed outside of Riparian Reserves. This change in temporary road length is not considered to be substantial by the Interdisciplinary Team because it would result in less than 0.6 acres of additional ground disturbance, or about a 4% increase over that assumed in the EA, which is well within RMP standards. Also, the difference between the estimated and actual temporary road lengths would not change the status of the watershed regarding percentage of area impacted by roads which would remain within Oregon Watershed Enhancement Board's low risk category with less than 4% of the area in roads, the same as originally described in the EA.

The discovery of a small stream in the southeast corner of T3N, R3W Section 1 resulted in several acres of treatment being changed from regeneration harvest to commercial thinning or excluded from treatment area in order to comply with Riparian Reserve standards and guides and Aquatic Conservation Objectives. The discovery of the stream and resulting modification to the proposed action was documented in the Decision Record for the South Scappoose Creek Project

Considered together these minor deviations between project layout and the estimated Proposed Action details from the EA are well within RMP guidelines and therefore the action is substantially the same as the action previously analyzed.

- 1. Is the range of alternatives analyzed in the existing NEPA document(s) appropriate with respect to the current proposed action, given current environmental concerns, interests, resource values, and circumstances?**

Yes. The Environmental Assessment analyzed and disclosed the predicted environmental effects of two alternatives to the South Scappoose Creek Project: Alternative 1 (No Action) and Alternative 2 (Proposed Action). This was an appropriate range of alternatives given the purpose and need for the project and the environmental concerns and values of the area.

Alternative 1 was the No Action Alternative. Alternative 2 – The Proposed Action, was designed to (1) Manage developing stands on available lands to promote tree survival and growth and to achieve a balance between wood volume production, quality of wood, and timber value at harvest; (2) Supply a sustainable source of forest commodities from the Matrix land use allocation to provide jobs and contribute to community stability; (3) Provide habitat for a variety of organisms associated with both late-successional and younger forests; (4) Maintain water quality standards and improve stream conditions; (5) Develop large conifers which in the future could be recruited as large coarse woody debris, large snag habitat and in-stream large wood. Develop long-term structural and spatial diversity, and other elements of late-successional forest habitat, to control stocking (stand density), to acquire desired vegetation characteristics and improve diversity of species composition within the RR LUA; (6) Protect, manage, and conserve federal listed and proposed species and their habitats to achieve their recovery in compliance with the Endangered Species Act, approved recovery plans, and Bureau special status species policies; and (7) Maintain and develop a safe, efficient and environmentally sound road system and reduce environmental effects associated with identified existing roads within the project area. Both Alternatives are described in the EA sections 2.3 and 2.4.

The selected alternative is Alternative 2 – the proposed action. No new environmental concerns, interests, resource values, or circumstances have been revealed since the EA was published in 2011 that would indicate a need for additional alternatives.

2. Is the existing analysis adequate and are the conclusions adequate in light of any new information or circumstances (including, for example, riparian proper functioning condition [PFC] reports; inventory and monitoring data; most recent Fish and Wildlife Service lists of threatened, endangered, proposed, and candidate species; most recent BLM lists of sensitive species)? Can you reasonably conclude that all new information and all new circumstances are insignificant with regard to analysis of the proposed action?

Yes. Several new circumstances have arisen since the publication of the South Scappoose Creek Project EA on September 13, 2011 but none of these changes have resulted in new information which could affect the adequacy of the analysis.

- 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 and that the original 2006 *Pechman Exemptions* are still in place. The last valid Record of Decision governing Survey and Manage is the 2001 *Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines* (not including subsequent Annual Species Reviews). This new development does not affect the adequacy of the analysis since all areas that required surveys were surveyed and none of the species from the 2001 ROD list (without ASR) were found.
- A new BLM State Directors Special Status Species list was released in Dec. 2011. There were

no changes to the list that would trigger further survey and analysis consequently this change would not affect the adequacy of the NEPA analysis.

- On October 28, 2008, the USFWS initiated a status review of the red tree vole, including an evaluation of the North Oregon Coast population and the red tree vole throughout its range; the EA recognized this fact on page 88. On October 13, 2011, after review of the best available scientific and commercial information, the USFWS determined that ESA listing of the North Oregon Coast population of the red tree vole as a distinct population segment (DPS) was warranted. However, they also determined the development of a proposed listing rule was precluded by higher priority actions to amend the lists of Endangered and Threatened Wildlife and Plants. Upon publication of the 12-month petition finding, the USFWS has added this DPS of the red tree vole to their list of candidate species. Pursuant to BLM's procedures regarding the management of candidate species, the North Oregon Coast population of the red tree vole is being managed as a Sensitive Species under the Bureau's Special Status Species Policy; it is also managed as a Survey and Manage Species. The fact that the North Oregon Coast DPS of the red tree vole has been added to the USFWS candidate species list does not affect the adequacy of the existing NEPA analysis since there is no suitable red tree vole habitat within the timber sale area.
- On November 21, 2012, in compliance with an order from a U.S. District Court, the USFWS finalized the 2012 designation of Critical Habitat for the spotted owl. The final rule was published in the Federal Register on December 3, 2012 and became effective on January 3, 2013. The Rabinsky's Cube Timber Sale Project is not located within Spotted Owl Critical Habitat and therefore is unaffected by this change.
- At the time of the publication of the South Scappoose Creek Project EA (September 13, 2011) the second and final round of mollusk surveys was needed to fulfill protocol requirements on the 100 acres proposed for regeneration harvest (EA pg. 87). These surveys were completed November 2nd through November 16th 2011 and the results disclosed in the Decision Record in November 2011. No target species were located during surveys including Species listed as Sensitive under the BLM's 6840 Special Status Species Policy and Survey and Manage Species (SEIS Special Attention Species) as identified within the 2001 S&M ROD without Annual Species Review.
- On June 26, 2013 Judge Richard J. Leon of the U.S. District Court, District of Columbia ruled in *Swanson Group et al. v. Salazar-DOI/Vilsack-DOA*, that the Owl Estimation Methodology (OEM) violated the Administrative Procedures Act (APA) and has prohibited federal agencies from using the methodology until it has gone through a public review process. The OEM is used by the USFWS to estimate "take" of spotted owls resulting from federal actions where insufficient survey data exists. The Rabinsky's Cube Timber Sale is included in the *Biological Assessment of habitat-modification projects proposed during Fiscal Years 2013 and 2014 in the North Coast Planning Province, Oregon that are Not Likely to Adversely Affect (NLAA) northern spotted owls or marbled murrelets, and their critical habitats*, May 21, 2012. The Biological Assessment included an analysis that involved the prediction of four owl sites generated by the OEM in the Northern Coast Range Province. None of the sites are located in the Tillamook Resource Area and the effects analysis associated with the South Scappoose Creek Project would be the same with or without OEM predicted sites included in the assessment. Consequently, while there may be some question as to whether ESA consultation covering the Rabinsky's Cube Timber Sale will continue to be extant, the analysis in the EA is nonetheless accurate and adequate.

3. Do the methodology and analytical approach used in the existing NEPA document(s) continue to be appropriate for the current proposed action?

Yes, the methodology and analytical approach used for the analysis contained in the EA continue to be appropriate in respect to the current proposed action. (1) There are no new standards or goals for managing resources. (2) There are no changes in resource conditions since the EA was published in 2011. (3) There are no changes in resource-related plans, policies or programs of other government agencies. (4) There are no new land designations in the South Scappoose Creek project planning area. (5) There are no changes in statute, case law or regulation that would affect the adequacy of the analysis in the EA, which supports the Rabinsky's Cube Timber Sale.

4. Are the direct and indirect impacts of the current proposed action substantially unchanged from those identified in the existing NEPA document(s)? Does the existing NEPA document sufficiently analyze site-specific impacts related to the current proposed action?

Yes. The EA adequately addresses the impacts (direct, indirect, and cumulative) of the proposed action on the relevant elements of the environment (EA, pp. 30-120). The EA describes impacts to Vegetation and Forest Stand Characteristics; Water Resources; Threatened or Endangered Fish Species or Habitat, Magnuson Stevens Act –Essential Fish Habitat and Fish Species with Bureau Status; Soils Resources; Endangered Species Act (ESA) Listed Wildlife Species, Habitat and/or Designated Critical Habitat; Invasive and Non-Native Plant Species; Bureau Sensitive and Special Attention Plant and Animal Species and Habitats; Migratory Bird Treaty Act Birds; Recreation and Visual Resources; Air Quality, Fire Risk and Fuels Management; and Carbon Storage, Carbon Emissions, and Climate Change. Impacts from implementing the Rabinsky's Cube Timber Sale would fall within those analyzed in the EA, and were anticipated in the EA.

Also see sections D(1) and D(3) of this DNA for further discussion.

5. Can you conclude without additional analysis or information that the cumulative impacts that would result from implementation of the current proposed action are substantially unchanged from those analyzed in the existing NEPA document(s)?

Yes. The cumulative effects considered in the EA included those from past, present and reasonably foreseeable future projects on public and private land. No unanticipated actions or events have occurred in the planning area that would have additional cumulative effects with the Rabinsky's Cube Timber Sale Project.

6. Are the public involvement and interagency review associated with existing NEPA document(s) adequate for the current proposed action?

Yes. There have been many opportunities for public involvement and interagency review associated with the Project EA. External scoping (seeking input from people outside of the BLM) was conducted by means of a scoping letter for the South Scappoose Creek Project sent out to a total of 21 county, state and federal government agencies, organizations, associations, and interested parties on the Tillamook Resource Area mailing list on February 17, 2011. This scoping letter was also posted to the BLM's Salem District website. A Notice for Public Comment was published in *The South County Spotlight* newspaper of Scappoose Oregon on February 23, 2011. Finally, a description of the proposal was included in the Salem District, Bureau of Land Management Project Updates for the spring and summer of 2011 which were mailed to more than 240 individuals, organizations and agencies.

As a result of this scoping effort, nine letters providing comments were received. In addition to the letters, three phone calls were received by individuals requesting additional information or wishing to provide comment. A summary of the public comments received and BLM responses is located in Appendix 1 of the EA.

Based on the original scoping responses, a notification of availability of the South Scappoose Creek Project EA was mailed to nine agencies, individuals and organizations on September 14, 2011. Additionally, a legal notice was placed in *The South County Spotlight* newspaper soliciting public input on the action on September 21, 2011 and the EA was posted to the BLM's Salem District website. On October 13, 2011, Tillamook Resource Area staff members provided a field tour of the South Scappoose Creek Project Area as requested by the Scappoose Bay Watershed Council; the tour was attended by approximately 22 interested persons.

A total of three written comment letters or e-mails were received during the 30 day comment period for the EA. A summary of these comments and BLM responses can be found in Appendix A of the South Scappoose Creek Decision Record.

The public involvement process outlined above provided appropriate public involvement and interagency review opportunities at a level commensurate with potential impacts associated with the proposed action.

E. Interdisciplinary Analysis: Identify those team members conducting or participating in the preparation of this worksheet.

<u>Name</u>	<u>Role or Resource Represented</u>
Steve Bahe	Interdisciplinary Team Leader & Wildlife Resources
Andy Pampush	Environmental Coordinator
Brian Christensen	Forester
Christian Sween	Soils Resources

F. Mitigation Measures: List any applicable mitigation measures that were identified, analyzed, and approved in relevant LUPs and existing NEPA document(s). List the specific mitigation measures or identify an attachment that includes those specific mitigation measures. Document that these applicable mitigation measures must be incorporated and implemented.

No mitigation measures were identified or incorporated into the Rabinsky's Cube Timber Sale Project. Project design features set forth on pages 21 - 28 of the EA are consistent with the Best Management Practices described in Appendix C to the ROD/RMP on pages C1 – C11 and adequately minimize potential negative impacts associated with the project.

REVIEWED BY



Environmental Coordinator



Date

CONCLUSION

Based on the review documented above, I conclude that this proposal conforms to the applicable land use plan and that the existing NEPA documentation fully covers the proposed action and constitutes BLM's compliance with the requirements of NEPA.



Tillamook Resource Area Field Manager



Date

Figure 1

