



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



In Reply Refer to:
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Information Bulletin No. OR-2008-027

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

From: State Director, Oregon/Washington

Subject: Strategy to Conduct and Complete Conferencing with the National Marine Fisheries Service on Proposed Oregon Coast Coho Salmon and Critical Habitat

We have received a letter, dated November 27, 2007, from the Regional Director of the National Marine Fisheries Service (NMFS) regarding the status of the Oregon Coast (OC) coho salmon evolutionarily significant unit (ESU) and corresponding critical habitat as a result of recent litigation. The OC coho salmon ESU is currently proposed for listing as threatened and its corresponding critical habitat is proposed for designation under the Endangered Species Act (ESA). The letter is enclosed.

BLM Conferencing Policy

“Proposed” status for the species and its critical habitat triggers conferencing requirements for ongoing and new actions under the ESA and the Bureau of Land Management (BLM) policy. The ESA requires federal agencies to conference on proposed species only when actions may “jeopardize the continued existence” of the proposed ESU or “adversely modify or destroy” proposed critical habitat. However, the Bureau of Land Management (BLM) Manual Section 6840.06 B.1 states, the BLM “shall confer with the United States Fish and Wildlife Service (USFWS)/NMFS on any action that will adversely affect a proposed fish species and/or proposed Critical Habitat.”

To meet the BLM conferencing policy for the OC coho ESU and critical habitat, the districts will complete the following steps:

- 1) Fish Biologists assess all actions and make ESA effect determinations for the proposed OC coho salmon and critical habitat. Only “likely to adversely affect” (LAA) actions must be brought forward and evaluated in a conference.

- 2) Utilize the streamlined consultation procedures when applicable.
Convene the Level 1 Team; discuss and evaluate the LAA actions; and concur with, or modify effect determinations, as needed.
- 3) If there is agreement upon the analysis and the LAA determination, finalize and submit the Biological Assessment to NMFS.
- 4) Do not proceed with the LAA action until conference proceedings are completed. For timber sales, this means do not publish the decision is not published in the newspaper.

The BLM Manual at Section 6840.06 B.2 states: “Until the conference proceedings are completed, the BLM shall not carry out any action that would cause an irreversible or irretrievable commitment of resources such that it would prevent the formulation or implementation of a reasonable and prudent alternative that might avoid jeopardy to the proposed species and/or prevent the adverse modification of proposed critical habitat.” The conference proceedings are considered complete when the National Oceanic and Atmospheric Administration (NOAA) Fisheries produces a conference opinion.

Please keep in mind that both formal and informal consultations must be concluded by the effective date for a final listing determination or project activities may need to be suspended. The date for the final listing determination for the OC coho salmon ESU is February 4, 2008, by court order. We do not know if the final determination will be to list the species. However, if the decision is to list the species, it is typical for NMFS to allow 30 or 60 days beyond the *Federal Register* date for the decision to become effective. This would put the effective date either in early March or April 2008.

The steps described above facilitate conversion of the conference opinion to a biological opinion by NOAA Fisheries within that 30-or 60-day window. We also do not know if there will be a concurrent designation of critical habitat. However, it is recommended to conference on critical habitat at the same time as we are conferencing on the species for the sake of efficiency.

Optional Conferencing for “Not Likely to Adversely Affect” (NLAA) Actions

It is strongly encouraged to conference on NLAA actions with multiple year contracts or time frames, such as timber sales. It is likely that such actions will extend beyond the date(s) when the final listing and designation determinations will be posted in the *Federal Register*. While not required to meet BLM policy, it reduces the risk that a project may be suspended pending completion of informal consultation. Should a district choose to conference on NLAA actions, proceed with the project after completion of Step 3, above, provided the Level 1 Team concurs on the NLAA determination and supporting analysis. Informal conferencing need not be concluded prior to proceeding with the action to meet BLM Manual policy at Section 6840.06 B.2. An NLAA action cannot result in jeopardy to the species because there is no associated ESA “take.” Similarly, an NLAA action cannot result in the destruction or adverse modification of critical habitat.

Analytical Process for Use in Conferencing

Writers of biological assessments for conferencing are reminded that all “may affect” timber sales in the Northwest Forest Plan (NWFP) area are required to use the *Analytical Process for Developing Biological Assessments for Federal Actions Affecting Fish within the Northwest Forest Plan Area* (AP) (BLM-Instruction Memorandum No. OR-2005-012). An exception is a National Fire Plan action utilizing counterpart regulations. The interagency website with the AP paper, its transmittal letter, and 1999 streamlining consultation procedures is available at:

<http://www.blm.gov/or/esa/Fisheries.htm>

Essential Fish Habitat Consultation

The Essential Fish Habitat (EFH) consultation requirements pursuant to the Magnuson Stevens Act, as amended, remain in effect. EFH consultations are required for salmon species addressed in federal fishery management plans, such as the OC coho salmon. EFH consultations are typically included in a separate section of a biological assessment. The NMFS will address EFH requirements in conjunction with the ESA conference.

Any questions regarding this process may be directed to Joe Moreau, Fisheries Program Lead, at 503-808-6418.

Districts with Unions are reminded to notify their unions of this Information Bulletin 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
Edward W. Shepard
State Director

Authenticated by
Paj Shua Cha
Records Section

1 Attachment

1 – [Listing Status, Section 7, and Consultation Requirements for OC Coho Salmon](#) (3pp)

Distribution

WO-230 (204 LS)
WO-270 (204 LS)
OR-080 (Randall Herrin, Bob Ruediger)
OR-090 (Alan Corbin, Dave DeMoss, Chuck Vostal)
OR-100 (Scott Lightcap, Steven Niles)
OR-110 (Dale Johnson, Blair Moody)
OR-120 (Bill Hudson, Jon Menten)