

**United States
Department of
Agriculture**

**Forest
Service**

R-6

OR/WA

**Bureau of Land
Management**

**United States
Department of
the Interior**

Reply Refer To: 2670 (FS)/6840 (BLM) (OR-931) P

Date: March 1, 2006

FS-Memorandum

**EMS TRANSMISSION 03/03/06
BLM-Information Bulletin No. OR-2006-083**

To: Forest Supervisors: Malheur, Mt. Baker-Snoqualmie, Mt. Hood, Ochoco, Olympic, Umatilla, Wallowa-Whitman, Wenatchee, Willamette NFs, CGNSA Manager, and District Managers: Salem, Eugene, Prineville, Vale, and Spokane

Subject: Consultation Due to Critical Habitat Designation for Pacific Salmon

During December 2005, we informed you of the National Marine Fisheries Service (NMFS) designation of critical habitat (CH) for 12 Evolutionarily Significant Units (ESUs) of Pacific salmon listed as threatened or endangered under the Endangered Species Act (ESA) within the Northwest Forest Plan and PACFISH aquatic conservation strategy areas. The letter identified your responsibilities under section 7 of the ESA to consult on all proposed and ongoing actions that "may affect" designated CH, and actions to specifically take regarding proposed and ongoing actions. This letter pertains to the review of ongoing actions to: (1) determine the need to reinitiate consultation on our actions, and (2) identify general steps to consider for assessing effects of our actions when we reinitiate consultation.

Our staff from the Oregon State Office of the Bureau of Land Management (BLM) and Region 6 of the Forest Service (FS) has been meeting with the NMFS Pacific Northwest Region staff to generally discuss consultation needs and procedures for reinitiating consultation for newly designated CH. They have identified several categories of ongoing actions and discussed efficiencies for conducting consultations. Three categories of ongoing actions have been identified as follows: (1) Ongoing actions with conference opinions or reports for the CH that was proposed in 2004; (2) Ongoing actions with consultations that addressed the 2000 final rule for CH; and (3) Ongoing actions with consultations that addressed neither the 2004 proposed rule nor the 2000 final rule for CH.

Category 1 actions:

The ongoing actions with conference opinions or reports for the CH identified in the 2004 proposed rule can be adopted as consultation documents. As identified in our December letters, the FS Regional and BLM State offices coordinated with the affected FS and BLM administrative units regarding conference documents issued by NMFS for CH; and in early December, a list of these conference documents was submitted to NMFS for consultation. On December 29, 2005, the NMFS adopted these conference documents as consultation documents. Additionally, some other consultations that were concluded during 2005 have been amended to include CH. Our section 7 consultation responsibility has been met for this first category of ongoing actions.

Category 2 actions:

Some ongoing actions may have a consultation that addressed CH designated in Calendar Year (CY) 2000. On February 16, 2000, the NMFS designated CH for the same 12 ESUs that are addressed in the 2005 final rule. Subsequently, NMFS may have concluded either informal or formal consultation on our actions for the 2000 CH designation during CYs 2000-2003. The NMFS withdrew the 2000 final rule for CH in 2003 to settle litigation; however, the consultation documents remain valid. The FS and BLM administrative units need to identify consultations concluded on CH designated in 2000, and to determine the need to reinstate either informal or formal consultation based on the conditions for reinstatement as identified in the consultation document or the regulations for interagency cooperation.

The following section of 50 CFR Part 402, Interagency Cooperation – Endangered Species Act of 1973, as Amended; regulates the conditions for reinstatement of formal consultation:

§402.16 Reinstatement of formal consultation

Reinstatement of formal consultation is required and shall be requested by the Federal agency or by the Service, where discretionary Federal involvement or control over the action has been retained or is authorized by law and:

- (a) If the amount or extent of taking specified in the incidental take statement is exceeded;*
- (b) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;*
- (c) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or*
- (d) If a new species is listed or critical habitat designated that may be affected by the identified action.*

The conditions for reinstatement of consultation are the same for both formal and informal consultations except condition (a) would not apply to informal consultations. The above conditions are for reinstatement of formal consultation and would be found in a biological opinion. Informal consultations would have the reinstatement conditions (b) through (d) in the Letter of Concurrence. Since an informal consultation doesn't include an incidental take statement, condition (a) from the interagency cooperation regulations does not apply.

The September 2, 2005, designated CH (70 Federal Register 52630) includes the same stream reaches as were identified as CH in the 2000 decision. The 2000 designation defined CH as the “geographical area occupied by the species, at the time of listing,” and further as “all accessible river reaches within the current range of the listed species” while the 2005 designation more precisely identified the actual stream reaches occupied by the species at the time of listing, based on interagency data analysis. The 2005 designation includes only the stream channel (defined by the ordinary highwater line), while the 2000 designation was broader in scope, and also included the riparian area (defined as the area adjacent to a stream that provides the following functions: shade, sediment transport, nutrient or chemical regulation, streambank stability, and input of large woody debris or organic matter). For the above reasons, condition (d) above does not

necessarily trigger the need to reinitiate consultation unless one of the other conditions for reinitiation is met.

Category 3 actions:

The third category is ongoing actions for which consultation was not concluded on CH (either the 2000 or 2005 designations) but has been concluded on the listed species/ESUs. These consultations will have to be conducted by the individual FS or BLM administrative units. The NMFS in cooperation with the FS Regional and BLM State offices has developed general steps describing the new information and analysis to be considered to reinitiate consultation (attachment):

If you have questions, FS personnel should contact Scott Woltering (Region 6 TES Aquatic Biologist) at 503-808-2669, and BLM personnel should contact Joe Moreau (Fisheries Lead, Oregon State Office) at 503-808-6418.

/s/ Jim Golden for
LINDA GOODMAN
Regional Forester, Region 6
USDA Forest Service

/s/Cathy L. Harris for
ELAINE M. BRONG
State Director, OR/WA
USDI Bureau of Land Management

Authenticated by
Mary O'Leary
Management Assistant

1 [Attachment](#)

BLM Distribution
WO-230 (204LS) (Karl Stein)
OR-931 (Joe Moreau)

cc: