



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Oregon State Office

P.O. Box 2965

Portland, Oregon 97208



In Reply Refer to:

6840 (OR-931) P

January 3, 2006

EMS TRANSMISSION 01/05/2006

Instruction Memorandum No. OR-2006-023

Expires: 9/30/2007

To: District Managers: Eugene, Prineville, Salem, Spokane, and Vale

From: State Director, Oregon/Washington

Subject: Endangered Species Act Consultation for Pacific Salmon Critical Habitat

Program Area: This Instruction Memorandum (IM) applies to all lands administered by the Bureau of Land Management (BLM) that include critical habitat designated by the National Marine Fisheries Service (NMFS) for Pacific salmon species in a final rule published in the Federal Register (70 FR 52360 09/02/05).

Purpose: The purpose of this IM is to inform District Managers of requirements under the Endangered Species Act (ESA) for consultation on designated critical habitat.

Policy/Action: Under Section 7 of the ESA, the BLM is required to consult on all actions that “may affect” designated critical habitat. In the event a consultation cannot be concluded prior to the effective date for designation of critical habitat, ongoing actions must be reviewed to determine whether or not they violate Section 7(d) of the ESA. If they do violate Section 7(d), those actions must be suspended or modified until ESA consultation is completed.

Timeframe: On and after January 2, 2006, or until ESA consultation on critical habitat is concluded.

Budget Impact: None

Background: On September 2, 2005, the NMFS designated critical habitat for 12 Evolutionarily Significant Units (ESUs) of Pacific salmon listed as threatened or endangered under the ESA within the Northwest Forest Plan and PACFISH aquatic

conservation strategy areas. The effective date for the final rule is January 2, 2006. Critical habitat is designated for the following ESUs (ESA listing status is in parentheses):

1. Snake River Basin steelhead (Threatened)
2. Upper Columbia River spring-run chinook salmon (Endangered)
3. Upper Columbia River steelhead (Endangered)
4. Middle Columbia River steelhead (Threatened)
5. Lower Columbia River chinook salmon (Threatened)
6. Lower Columbia River steelhead (Threatened)
7. Columbia River chum salmon (Threatened)
8. Upper Willamette River chinook salmon (Threatened)
9. Upper Willamette River steelhead (Threatened)
10. Puget Sound chinook salmon (Threatened)
11. Hood Canal summer-run chum salmon (Threatened)
12. Ozette Lake sockeye salmon (Threatened)

Under Section 7 of the ESA, the BLM is required to consult on all actions that “may affect” designated critical habitat. To address these designations, the districts should use Streamlining Consultation procedures (July 27, 1999) and ensure the following actions have been or are taken.

I. CONFERENCE REPORT OR OPINION ISSUED BY NMFS:

The State Office has coordinated with the affected districts to identify conference documents issued by NMFS for critical habitat. District staff identified there is no significant new information or changes to the action(s) that caused effects which were not considered in the previous analysis that resulted in conference documents. Consequently, on December 9, 2005, the BLM Oregon State Office and Forest Service Region 6 Office, on behalf of the affected BLM districts and National Forests, jointly requested that NMFS roll over the conference documents to consultation documents. There were conference documents for three BLM actions in the request: 1) Gold Goose Neuman Road Density Management Project (Salem District); 2) Molalla River Basin Knotweed Control Project (Salem District); and, 3) Bridge Creek Passage (Prineville District).

In the event that NMFS does not conclude consultation for critical habitat by January 2, 2006, the districts must prepare a Section 7(d) analysis to ensure that there is not an irreversible or irretrievable commitment of resources such that it would prevent the formulation or implementation of a reasonable and prudent alternative that might prevent the destruction or adverse modification of designated critical habitat.

II. CONSULT ON PROPOSED AND ONGOING ACTIONS WHERE A CONFERENCE REPORT HAS NOT BEEN ISSUED:

A. For proposed actions:

1. Do not proceed with an action until consultation proceedings are completed. For a timber sale, this means do not sign a decision rationale or Finding of No Significant Impact (FONSI), or publish the Timber Sale Notice in the newspaper, until consultation

has been completed. For forest management actions, do not sign a decision rationale or a FONSI, or publish the Notice of Decision in the newspaper, until consultation has been completed.

B. For ongoing actions:

1. Districts should review all actions where National Environmental Policy Act procedures have been completed to determine assessment needs for ESA Section 7 consultations for critical habitat.

a. For actions with “not likely to adversely affect” determinations that have Level 1 team concurrence, batch according to Section 7 watersheds where possible, or by like-type activities, and submit as soon as possible to the NMFS for letters of concurrence. See items 2 and 3 below regarding actions that can go forward once consultation has been initiated and those actions that need to be suspended upon initiation of consultation.

b. Prioritize and batch “likely to adversely affect” actions, where possible by Section 7 watersheds or by some other logical grouping, to help expedite consultation. These actions should be submitted for formal consultation as soon as possible. See items 2 and 3 below regarding actions that can go forward once consultation has been initiated and those actions that need to be suspended upon initiation of consultation.

2. Determine whether ongoing actions can continue. Ongoing actions can continue where:

a. Formal or informal consultation for the species and critical habitat have been completed; or

b. An ESA Section 7(d) determination has been made that concludes there is not an irreversible or irretrievable commitment of resources such that it would prevent the formulation or implementation of a reasonable and prudent alternative that might prevent the destruction or adverse modification of proposed critical habitat.

1) Reinitiations of consultation for critical habitat are taking place where consultation has already been concluded for the species. The determination of effect for the species in the Biological Assessment was based upon an analysis of effects to habitat indicators using NMFS 1996. The habitat indicators correspond to the primary constituent elements (PCEs) of critical habitat for Pacific salmon. It can be concluded that there will be no irreversible or irretrievable commitment of resources where effects to the habitat indicators corresponding to the PCEs of critical habitat were determined to be insignificant (not meaningfully measured, detected, or evaluated) or discountable (extremely unlikely to occur), or the environmental baseline conditions for critical habitat can be restored within a short period of time (are reversible and retrievable).

3. Ongoing actions need to be modified or suspended if there is discretion to do so where
 - a. An ESA Section 7(d) determination either has not or cannot be made which concludes there will be no irreversible or irretrievable commitments of resources such that it would prevent the formulation or implementation of a reasonable and prudent alternative that might prevent the destruction or adverse modification of proposed critical habitat.

Manual/Handbook Sections Affected: The 6840 section of the manual provides the basis for this IM.

Coordination: The action has been coordinated with the Solicitor's Office and WO-230.

Contact: Questions should be referred to Joe Moreau, Fisheries Program Lead, OR-931 at 503-808-6418.

Districts with Unions are reminded to notify their unions of this Instruction Memorandum 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
Elaine M. Brong

Authenticated by
Mary O'Leary
Management Assistant

Distribution
WO-230 (Karl Stein)
OR-931 (Joe Moreau)
Forest Service Region 6 (Scott Woltering)