

United States Department of Agriculture	Forest Service	R-6 R-5	OR/WA CA	Bureau of Land Management	United States Department of the Interior
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FS-Memorandum

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BLM-Instruction Memorandum No. OR-2007-060
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To: BLM District Managers: Coos Bay, Eugene, Lakeview, Medford, Roseburg, Salem
BLM Field Managers: Klamath Falls, Tillamook
FS National Forest Supervisors within the Northwest Forest Plan Area
FS Area Manager: Columbia River Gorge National Scenic Area

Subject: Compliance with the Aquatic Conservation Strategy

This memorandum provides information regarding two court rulings pertaining to the Aquatic Conservation Strategy (ACS). Specifically, it provides direction for determining project consistency, under the requirements of the National Forest Management Act and the Federal Land Policy and Management Act, with the ACS objectives added to all Forest Service (USFS) land management plans and included in Bureau of Land Management (BLM) resource management plans by the Northwest Forest Plan Record of Decision (NWFP ROD) (1994 ROD - B-11) for lands within the range of the northern spotted owl.

Background

On March 30, 2007, the District Court, Western District of Washington, ruled adverse to the US 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. This memorandum addresses actions needed to respond to the rulings of PCFFA IV and PCFFA II.

Consistency with the Aquatic Conservation Strategy – Analysis and Documentation Requirements

As a result of PCFFA IV, we must now assess project consistency with the nine ACS objectives as we did prior to the 2004 Record of Decision for the ACS amendment. New project NEPA decisions must be consistent with the wording regarding ACS consistency, including consistency with the nine ACS objectives, as ACS consistency is described in the 1994 NWFP ROD on page B-10. This excerpt is provided from Page B-10:

“The intent is to ensure that a decision maker must find that the proposed management activity is consistent with the Aquatic Conservation Strategy objectives. The decision maker will use the results of watershed analysis to support the finding. In order to make the finding that a project or management action “meets” or “does not prevent attainment” of the Aquatic Conservation Strategy objectives, the analysis must include a description of the existing condition, a description of the range of natural variability of the important physical and biological components of a given watershed, and how the proposed project or management action maintains the existing condition or moves it within the range of natural variability.” (1994 ROD, Attachment B, p. B-10)

Project-level NEPA decisions made subsequent to the March 30, 2007, court ruling must be consistent with the above excerpt from page B-10. In other words, an analysis of the project, considering the applicable ACS objectives, must be included within the body of the project environmental assessment (EA) or environmental impact statement (EIS). As with any NEPA analysis, appropriate consideration of potential cumulative effects is key to informed decision making. Where project analysis is documented in a specialist’s report, that analysis should be summarized and referenced in the body of the EA or EIS, including relevant conclusions. Actions that are categorically excluded from documentation in an EA or EIS (40 CFR 1508.4) should be documented consistent with agency NEPA procedures.

In making the ACS consistency finding and to be guided by *PCFFA II*, the decision maker must:

1. Review projects against the ACS objectives at the project or site scale, rather than only at the watershed scale. This review can be accomplished through cumulative effects analyses (e.g., by evaluating the incremental effect of the project added to the existing condition, and the effects of other present and reasonably foreseeable future actions) on watershed conditions.
2. Evaluate the immediate (short-term) impacts, as well as long-term impacts of an action.
3. Provide a description of the existing watershed condition, including the important physical and biological components of the 5th field watershed.
4. Provide written evidence that the decision maker considered relevant findings of watershed analysis.

Decisions documents (e.g., decision notices, decision memoranda, records of decision, or decision rationale) must include the finding of ACS consistency, with a statement of the findings required in the paragraph on page B-10 of the 1994 ROD, quoted above.

Endangered Species Act (ESA) Consultation

While formal and informal ESA consultation on projects should continue using existing, stand-alone procedures, additional guidance may be issued separately.

Contact for Further Information

Questions regarding this memorandum should be addressed as follows:

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