

**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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March 20, 2001

EMS TRANSMISSION 03/21/2001  
Instruction Memorandum No. OR-2001-036  
Expires: 9/30/2002

To: District Managers, Deputy State Directors, Staff & Branch Chiefs

From: Associate State Director

Subject: Questions and Answers - Applying the Survey and Manage Record of Decision to Existing Management Activities, and Oregon Natural Resources Council Action et al. Stipulation to Dismiss

On January 17, 2001, the Forest Service, Bureau of Land Management, and U.S. Fish and Wildlife Service announced the signing of a Record of Decision (ROD) by the Secretaries of Interior and Agriculture to amend the "Survey and Manage" provisions in the Northwest Forest Plan (NFP). These amendments were made through a Supplemental Environmental Impact Statement for Amendment to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines. On February 12, 2001, the ROD became effective. All projects with decisions signed on or after February 12, 2001, will comply with the new ROD.

Attached is a set of questions and answers which explain how the Survey and Manage ROD applies to existing management activities with National Environmental Policy Act Decisions signed prior to the February 11, 2001, effective date of the ROD. Please review this information carefully in order to determine the status of each of your sales and projects and identify necessary steps for moving forward with the project. Please pay close attention to your decision document dates for each project and the NFP requirements in place at the time of each decision.

One of the results of this ROD is the expiration of the "Stipulation for Order Dismissing Action," also known as the ONRC Action stipulation, or settlement agreement. Under its own terms, the Stipulation expired on February 11, 2001, the effective date of the Survey and Manage ROD. This means that our obligation to perform the additional surveys and prepare Supplemental Information Reports for the plaintiffs before lifting the suspension of the formerly enjoined sales, is ended. You now need to review all sales that are still suspended due to Oregon Natural Resources Council (ONRC) Action et al v. USFS, BLM, CV 98-942WD, or any unawarded timber sales, in accordance with the attached Questions and Answers. When any necessary

changes to the sale have been documented, notify the State Office of your intent to proceed with lifting any suspension or awarding the sales. The State Office will provide assistance to review the sale to ensure that no other lawsuit; injunction; NFP requirement; or issue with appeals before the Interior Board of Land Appeals (IBLA) prevents you from proceeding. For sales with appeals before IBLA, the Board maintains jurisdiction and needs to be informed of the action being taken on the sales. In cases where the original decision was remanded by the Board, contact the State Office for instructions on how to proceed.

Contact Cheryl McCaffrey (503-952-6050) for questions regarding interpretations of the Standards and Guidelines. Contact Alan Wood (503-952-6072) regarding questions on sold sales, litigation issues, or appeals with IBLA. Contact Lyndon Werner (503-952-6071) regarding questions concerning contract modifications and appraisals.

Signed by  
Charles E. Wassinger

Authenticated by  
Mary O'Leary  
Management Assistant

1 Attachment

1 - [Survey and Manage Questions and Answers](#) (4 pp)

#### Distribution

WO-230 (Room 204 LS) - 1  
OR-014 (Mel Crockett) - 1  
OR-020 (Jon Reponen) - 1  
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## Questions and Answers

### Applying the S&M ROD to Existing Management Activities

1. **Q. We know that the Record of Decision for the Survey & Manage Final Environmental Impact Statement (S&M ROD) applies to management activities with NEPA Decisions or Decision Documents (Decisions) signed after February 11, 2001, when the S&M ROD became effective. How does the S&M ROD apply to existing management activities with Decisions signed before that date?**
  - a. The Record of Decision for the S&M FEIS re-establishes the original intent of the

Agencies interpretation of "Implement" for the purpose of determining when pre-disturbance surveys are required. In the Courts ruling in Oregon Natural Resource Council (ONRC) Action et al v. USFS, BLM, CV 98-942WD (W.D. Wash.), the court ruled that the language of the Northwest Forest Plan (NFP) required pre-disturbance surveys up until ground was disturbed on a management activity. The S&M ROD amends the NFP to make clear that the Agencies' interpretation of implement requires pre-disturbance surveys only for management activities that do not have signed Decisions. **Therefore, the surveys previously conducted by the agencies under the NFP, using the agencies definition of "Implement" (a signed NEPA decision or decision document), are the only required pre-disturbance surveys for S&M species, other than red tree vole (RTV) surveys, for management activities with decisions prior to the effective date of the S&M ROD.** (See ROD pg.17-18 and 44). A quick reference to the Northwest Forest Plan requirements and their effective dates is shown below.

Effective Dates	Requirements
10/01/98 to 2/25/99 (NFP ROD)	Surveys for all C-2 Species required
02/26/99 to 9/30/99 (Deferral EA)	Surveys for all C-2 Species required except 32 infeasible species until their protocols are developed
10/01/99 to 03/08/99 (Deferral EA expired)	Surveys for all C-2 Species required
03/09/99 to 02/11/01 (Extension EA)	Surveys for all C-2 Species required except 7 (Single season surveys)
02/12/01 into future (New ROD)	Amended S&Gs for S&M

**2. Q. Why are RTV surveys an exception?**

- a. Another issue raised in ONRC Action was the "habitat screening" done for RTV to limit pre-disturbance surveys to areas where connectivity was an issue. The court found that there was no language in the NFP exempting areas of habitat from surveys, and that the NFP required RTV surveys in all habitat. RTV surveys for most activities with decisions signed after September 30, 1996 are still required and must be done if they have not been completed previously. However the S&M ROD does permit future survey protocols to identify habitat conditions or locations where surveys may not be needed (ROD pg. 44-45).

3. **Q. What is the status of the Settlement Agreement in ONRC Action?**

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- a. The Settlement Agreement expired on the effective date of the S&M ROD pursuant to page 6 of the Agreement and as described on page 45 of the S&M ROD, unless the S&M ROD is not implemented due to litigation.

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4. **Q. If the Settlement Agreement has expired, what happens to the enjoined awarded sales listed on Exhibit A of the Agreement?**

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- a. The Settlement Agreement allowed the agencies to move forward with timber sales prior to the release of the S&M ROD. For those sales where agencies issued a Supplemental Information Report (SIR), modified the project as needed, and lifted the suspension or awarded a contract, we have "utilized" the Settlement Agreement and the activity will remain as modified. No changes to these sales will be made. As the purpose of the Settlement Agreement was to move forward on timber sales prior to the S&M ROD being effective, the Settlement Agreement no longer applies to sales where we have not executed that option. Timber sales on which we have not "utilized" the Settlement Agreement are now covered by the language in the S&M ROD, and are discussed below.

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5. **Q. Do any of the Survey and Manage requirements of this S&M ROD apply to existing project NEPA Decisions?**

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- a. Yes, to a limited extent. The applicability of the S&M ROD to existing Decisions is described on pages 18 and 19 of the S&M ROD, and is dependent on the current status of a management activity with Decisions signed before the S&M ROD effective date. There are two categories of activities addressed in the S&M ROD. The first is activities under an awarded contract or signed permit, or if actual habitat disturbance has already commenced using agency crews. We will refer to these as "awarded" activities. The second is activities that are not under an awarded contract or signed permit, or actual habitat disturbance by agency crews has not begun. This would include such things as sold and un-awarded timber sales, and timber sales or other projects with Decisions before the S&M ROD effective date that have not been sold. We will refer to these as "un-awarded" activities. There are distinctions between the two categories as the agencies have

different obligations and requirements with awarded contracts.

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6. **Q. So how do we handle the awarded timber sales where the agencies didn't utilize the terms of the Settlement Agreement?**

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- a. These sales are covered under part "a" on page 18 of the S&M ROD. Because of the language in the S&M ROD (discussed in Question 1), the controlling document for these activities are the NFP Standards and Guides in effect at the time the Decision for the sale was signed, (see the chart on page 1 for dates and S&M requirements), including RTV surveys for sales where RTV surveys were not completed because of habitat screening (see question 2). All of the sales that were suspended, either because they were enjoined under ONRC Action, or possibly because of an Administrative Appeal, need to be reviewed by the field office, the contract modified if necessary for RTV sites found, and the suspension on the contract lifted. During this review, all pertinent information needs to be considered. This includes the NFP Standards and Guides in place at the time the Decision was signed, the project NEPA document's analysis and mitigation expectations, any new information as the result of required RTV surveys, other S&M sites found during the suspension which require protection, and the language of the project contract.

Attachment 1 - 2

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7. **Q. Are there some examples that further clarify the answer to question 6?**

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- a. Yes.

Example 1. **No RTV surveys are required for the project area, and no additional S&M sites for other species that would require management have been found.** Lift the suspension, no other action is necessary and the sale may proceed.

Example 2. **We want to modify the timber sale to no longer buffer sites for species that have been removed from S&M Manage Known Site.** You cannot do this, it would be contrary to the NFP S&G in effect at the time the project Decision was made, and probably contrary to your

NEPA document. Leave the project as it was awarded.

**Example 3. Since the suspension we have found additional sites of species that required the management of known sites at the time of the Decision and that still require the management of know sites.** Modify the contract to manage the sites in accordance with the applicable NFP S&G and your NEPA document.

**Example 4. We have managed sites for species that have been removed from S&M under the new S&M ROD and subsequent surveys have located more sites of this species.** Continue to manage the original sites as per the current timber sale contract in accordance with the NFP S&G in effect at the time of the sale, and in accordance with your project NEPA document (see example 2 above). The management of new sites is not required and not managing new sites will not change your NEPA affects analysis. Additionally any commitment in your NEPA Decision to manage new sites for S&M species found after award is moot for species that have been removed from S&M, and it would be inappropriate to modify an existing contract to manage species that no longer require management at the time of modification.

**Example 5. Surveys since the suspension have discovered species that are new Manage Known Sites under the current S&M ROD.** You are not required to modify the project to manage known sites. You are still in compliance with the NFP S&Gs in effect at the time of the Decision and your project NEPA documentation. Standards and guidelines do not require management of sites discovered after the project is sold (S&G pg.24).

8. **Q. Were the effects writers for the EIS aware that we may not be managing some of these known sites. Was this considered in the EIS?**

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- a. Yes, the experts writing the species effects were familiar with, and continued to assume the Agencies' interpretation of the requirement to conduct pre-disturbance surveys and assumed that actions expected to occur as a result of project NEPA decisions signed in accordance with the Agencies' 1998 interpretation had already take place (FSEIS pg. 193-194).

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Attachment 1 - 3

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9. **Q. What about un-awarded projects including un-awarded ONRC Action sales?**

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- a. These activities are covered under part "b" on page 18 of the S&M ROD. There are two situations for un-awarded activities that are slightly different.

*Un-awarded Projects with decisions before October 1, 1998.* If the project Decision was after September 30, 1996, RTV surveys are required (see question 2), and must be completed if they have not already been done. Any RTV sites found are managed under the management recommendations for RTV in effect at the time the surveys were concluded. **Except for any RTV surveys as above, no additional surveys including "category 2" species, beyond those required by the NFP for decisions prior to FY 99, using the agency's definition of "Implement," are required.**

*Un-awarded Projects with decisions after September 30, 1998.* **As these decisions occurred after the date for full implementation of the NFP S&M Standard and Guide, all surveys required for S&M species under the NFP, including RTV and "Category 2" species, must be completed for these projects as required by the NFP (as amended by the Decision to Delay Implementation for selected species).**

In both situations, the results of **all** surveys conducted on the project area, regardless of when conducted, need to be reviewed. Species that formerly required management of known sites, but that have now been dropped from Survey and Manage or are assigned to category F in the S&M ROD, no longer require management. Species that require management of known sites under the current S&M ROD will be managed as described under *Application of Manage Known Sites Direction* under Timing Requirements for Surveys section in the standards and guidelines in the (S&G page 24). This section says that for those species still considered rare, and requiring management of known sites, that the management will typically be applied to sites found after the decision date but prior to the sale date. Manage known site direction may also be applied to additional sites for uncommon species, depending on factors such as the level of concern or the available habitat.

In both of the above situations, if sites are no longer managed as the species has been dropped from S&M, the impact to the entire project area and project design should be compared to the existing project NEPA documentation to assure that the Decision is still valid. There should be no significant new circumstances or facts relevant to environmental concerns and bearing on the modification to the proposed action or its impacts which were not addressed in the project Decision. If there are significant changes in the anticipated environmental effects, then the activity should remain unmodified, or the project NEPA documentation should be amended and a new decision issued tiered to the 1/11/01 S&M ROD.