

Addendum to the Biological Assessment of the United States Department of Agriculture National Forest System Land Management Planning Rule for Federally Listed Endangered and Threatened Species, Species Proposed for Federal Listing, and Species that are Candidates for Federal Listing on National Forest System Lands.

During ongoing consultations among the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the Forest Service, two points of concern related to planning rule language regarding protections under the Endangered Species Act (ESA) were raised and discussed by the group. This addendum to the October 4, 2011 Biological Assessment previously prepared for the planning rule discusses these concerns and proposed resolution of them.

The first point of concern is the omission of explicit language in the planning rule addressing “critical habitat.” Section 219.9 (Diversity of plant and animal communities) of the rule provides the following provisions relevant to this topic:

(a) *Ecosystem plan components.*

(1) *Ecosystem integrity.* As required by § 219.8(a), the plan must include plan components, including standards or guidelines, to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore their structure, function, composition, and connectivity.

(2) *Ecosystem diversity.* The plan must include plan components, including standards or guidelines, to maintain or restore the diversity of ecosystems and habitat types throughout the plan area. In doing so, the plan must include plan components to maintain or restore:

- (i) Key characteristics associated with terrestrial and aquatic ecosystem types;
- (ii) Rare aquatic and terrestrial plant and animal communities; and
- (iii) The diversity of native tree species similar to that existing in the plan area.

(b) *Additional, species-specific plan components.* (1) If the responsible official determines that the plan components required in paragraph (a) are insufficient to provide the ecological conditions necessary to: contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, or maintain a viable population of each species of conservation concern within the plan area, then additional, species-specific plan components, including standards or guidelines, must be developed to provide such ecological conditions in the plan area.

The intent of these provisions is to provide broad ecosystem level and species-specific ecological conditions necessary to contribute to the recovery of federally listed species. Plan components designed to meet these requirements are expected to maintain or restore the ecological conditions on which threatened and endangered species depend, including designated critical habitat. The ESA requirement to avoid destruction or adverse modification of critical habitat is implicit in these rule provisions.

Existing Forest Service Manual (FSM) directives set out the Forest Service policy and direction relevant to the conservation of critical habitat and other habitats essential to threatened, endangered, and proposed species. FSM 2670.31 specifically includes the following direction:

Place top priority on conservation and recovery of endangered, threatened, and proposed species and their habitats through relevant National Forest System, State and Private Forestry, and Research and Development activities and programs”.

Identify and prescribe measures to prevent adverse modification or destruction of critical habitat and other habitats essential for the conservation of endangered, threatened, and proposed species. Protect individual organisms or populations from harm or harassment as appropriate”.

Agency compliance with these directives is not discretionary.

Taken as a program, Agency compliance with the Endangered Species Act, the National Forest System Land Management Planning Rule, and Forest Service policy direction contained in FSM 2670 is expected to satisfy the statutory requirements of the ESA.

The second point of concern is the need for a more explicit statement of what is intended by the proposed planning rule’s provision for maintaining or restoring the ecological conditions necessary to “contribute to the recovery of federally listed threatened and endangered species”. The Agency has essentially adopted the definition of “recovery” that is found in the ESA regulations pertaining to Interagency Cooperation at 50 CFR Part 400. Section 402.02 defines recovery as follows:

*Recovery means improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in Section 4(a)(1) of the Act.*

Section 219.19 of the planning rule now includes a definition for recovery as follows:

*Recovery.* For the purposes of this subpart, and with respect to threatened or endangered species: The improvement in the status of a listed species to the point at which listing as federally endangered or threatened is no longer appropriate.

The inclusion of this definition in § 219.19 of the planning rule clarifies the intent of the Agency regarding the requirement to contribute to the recovery of threatened and endangered species.

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