

DECISION NOTICE

USDA FOREST SERVICE

Decision to Delay the Effective Date for Surveying 7 “Survey and Manage” and Protection Buffer Species

National Forests in Forest Service Regions 5 (California) and 6 (Oregon and Washington) within the range of the Northern Spotted Owl

SUMMARY

The decision is made to further delay the effective date by which surveying would be necessary for 7 “category 2 survey and manage” and protection buffer fungi species, until such time as either (1) the decision is made to eliminate or modify survey requirements for these species pursuant to a proposal now being analyzed in an environmental impact statement, or (2) the level of disturbance, as described in the October 1998 EA, is reached. This decision is needed because surveys for these 7 species continue to be infeasible.

The effect of this decision is to create an opportunity for timber sales and other management activities to occur without raising the risk to persistence of these species. The Forest Service will be able to continue its management activities more in line with what was anticipated in the Northwest Forest Plan.

BACKGROUND

“Survey and manage” refers to one of the elements of the Northwest Forest Plan. See *Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl* (Northwest Forest Plan ROD, pages 36-37), and *Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl* (Northwest Forest Plan, C-4).

“Protection buffer” refers to another element of the Northwest Forest Plan. Protection is required for individuals of certain species, pursuant to management recommendations for each species, if they are discovered during surveys. Northwest Forest Plan, C-11, C-26. Survey and manage and protection buffer are two of the strategies adopted in the Northwest Forest Plan to ensure habitat of an amount and distribution that will support the continued persistence of these species.

The Northwest Forest Plan, adopted in April 1994, created a ramp-in schedule for surveying these species. By summer 1998 it became apparent that it was not technically feasible to survey for 32 of the species for which surveys were to begin by fiscal year 1999 (beginning October 1, 1998). The Forest Service and BLM proposed to defer surveys for these 32 species. Reasons given for this proposal were that the Northwest Forest Plan, itself, provided for schedule changes. In addition, information learned since 1994 was simply not sufficient to formulate adequate survey and manage protocols for these 32. While substantial progress had been made since 1994, and survey and manage protocols had been developed for most of the 80 species for which survey and manage became mandatory by October 1, 1998, it was not technically feasible to survey for these 32 species.

The Forest Service and BLM analyzed this proposal in an Environmental Assessment (EA) published in October 1998. *Environmental Assessment to Change the Implementation Schedule for Survey and Manage and Protection Buffer Species*. The proposal was analyzed by survey and manage taxa specialists, biologists, mycologists and botanists. According to the EA, postponing surveys for a year would not substantially increase the risk to long-term viability of any of these 32 species. Risk was avoided because the Northwest Forest Plan ultimately placed more land in reserve allocations than had originally been expected, timber harvest levels had been below estimates made at the time the Northwest Forest Plan was adopted, only a very small percentage of the land area of the Northwest Forest Plan would be affected in fiscal year 1999, and there were additional protection measures because of Component 1 (“manage known sites”) of survey and manage (Northwest Forest Plan, C-4).

The EA was made available for public review and comment. Comments did not indicate that any changes to the proposal were warranted. Some commenters provided additional information on the 32 species. Many comments questioned the sufficiency of the EA process to change the survey schedule originally described in the Northwest Forest Plan. Several commenters questioned the agencies’ assessment of risk to species and a few suggested an additional alternative that would postpone surveys for a longer period of time, or only survey for the 12 species considered to be at “high risk” from a further delay.

On the basis of the EA and comments received, the agencies published a joint Finding of No Significant Impact (FONSI) on February 26, 1999. Principal reasons given for finding no significant impact were that

- There would be no substantial increase in the risk to these 32 species;
- Some of the 32 species would benefit from the Component 1 strategy (“manage known sites”);
- Some protection for these 32 species would be provided by Late Successional Reserves, Riparian Reserves, application of the Aquatic Conservation Strategy, and the marbled murrelet standard and guideline;
- Timber harvest and prescribed burning would continue more in line with the predictions made in the Northwest Forest Plan; and
- Surveys would be conducted during the year as protocols were developed and surveys for a species became feasible.

Following the EA and FONSI, the agencies signed a joint decision document on February 26, 1999, to select Alternative 2 in the EA, which was “to postpone the survey schedule for 32 of the FY 1999 Component 2 Survey and Manage Species for a period of one year.”

Principal reasons given for this decision were that:

- The Northwest Forest Plan did not anticipate the infeasibility of surveys, and the flow of good and services anticipated by the Northwest Forest Plan would not continue if the deadline for these surveys were not postponed — thus the decision allowed continuation of public land management more in line with what was anticipated in the Northwest Forest Plan;
- There was no significant risk to these 32 species, because, at most, 0.16 of one percent of the Federal lands under the Northwest Forest Plan would be affected in fiscal year 1999; and
- Surveys would begin during the fiscal year “if feasibility problems can be solved.”

The extension expired at the end of fiscal year 1999, on September 30, 1999. During the period of delay, the agencies resolved technical feasibility issues for 25 of the 32 species. Surveys for these species are now technically feasible and are now being conducted prior to ground-disturbing activities throughout the species' ranges. Surveys are still not technically feasible for the remaining 7 fungi species.

DECISION

The decision is made to further postpone the effective date by which surveying would be necessary for 7 survey and manage fungi species and protection buffer species, until such time as either (1) the decision is made to eliminate or change the pre-project survey requirements for these species pursuant to a proposal now being analyzed in an environmental impact statement, or (2) the level of disturbance, as described in the October 1998 EA, is reached.

“Single season” survey protocols have been developed for these 7 species and will be conducted prior to ground-disturbing activities across the range of each species, except that surveys will not be conducted for *Sarcosoma mexicana* within the Oregon Coast Range and Oregon Willamette Valley physiographic provinces. (See attached “findings” document for rationale.)

Species	Taxa Group
<i>Sowerbyella (Aleuria) rhenana</i>	Fungus
<i>Bondarzewia montana</i>	Fungus
<i>Otidea leporina</i>	Fungus
<i>Otidea onotica</i>	Fungus
<i>Otidea smithii</i>	Fungus
<i>Polyozellus multiplex</i>	Fungus
<i>Sarcosoma mexicana</i>	Fungus

Table 1. 7 Survey and Manage and Protection Buffer species for which the survey deadline is extended.

This decision will amend National Forest Land and Resource Management Plans affecting the Gifford Pinchot, Mount Baker-Snoqualmie, Mount Hood, Olympic, Rogue River, Siuslaw, Siskiyou, Six Rivers, Umpqua, and Willamette National Forests and affected portions of the Deschutes, Okanogan, Wenatchee, Winema, Klamath, Lassen, Mendocino, Modoc, and Shasta-Trinity National Forests.

This decision is a short-term strategy to meet the dual objectives of the Northwest Forest Plan. A long-term strategy has been proposed and is currently being analyzed in a supplemental environmental impact statement (SEIS) for Survey and Manage and Protection Buffer species. *Amendment to the Survey and Manage, Protection Buffer, and other Mitigating Measures Standard and Guidelines*. A Notice of Intent to prepare the SEIS was published in the *Federal Register* on November 25, 1998. The draft SEIS was released to the public in December 1999.

This decision is based on the attached findings, to the effect that the disclosure of environmental consequences and conclusions in the EA and FONSI are still valid. Other related environmental documents which were taken into account include: the Land and Resource Management Plans for the National Forests listed above, and their supporting National Environmental Policy Act documents; the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl, also known as the Northwest Forest Plan, and the supporting Final Supplemental Environmental Impact Statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl.

RATIONALE FOR THE DECISION

The actual acreage of disturbance was substantially less in fiscal year 1999 than what was expected at the time the 1-year extension was made on February 26, 1999. This means that the risk to the 7 species has been even lower than expected. For this reason there is an opportunity to extend the survey schedule for the 7 fungi species.

Surveys for 7 species are still not feasible. Protocols for these species would require 5 years of surveys to achieve a “high likelihood” of finding individuals. This is “infeasible” because the agencies cannot survey according to 5-year protocols in one year. For this reason the agencies would be barred from undertaking projects that include ground disturbance until those surveys were completed. This is simply not anticipated in the Northwest Forest Plan, and thus a change is warranted.

The effects to species by extending the survey schedules through this decision will be no greater than what was described in the EA because surveys are being delayed for fewer species and because the total acreage impacted will not exceed what was disclosed in the EA.

This decision will allow continuation of planned management actions, such as timber harvest and prescribed fire, without substantially increasing risks to any survey and manage and protection buffer species. This will help to achieve the two primary goals of the Northwest Forest Plan: providing sustainable output of goods and services; and maintaining and restoring healthy old-growth ecosystems and habitat for populations of native fish, wildlife, and plants (Northwest Forest Plan ROD, pages 2, 26, 61).

This decision is based on the most current scientific data available. New information related to species and survey requirements was obtained from field observations following four years of implementation of the Northwest Forest Plan, consultation with agency experts for the taxonomic groups, and materials obtained from herbaria and museums. New information since the February 26, 1999 extension has resulted in resolving the feasibility issues for 25 species. No new information suggests that further delaying the surveys for these 7 species will increase the risk to any of these 7 species.

MITIGATION

Surveys for the 7 fungi species will be done, as previously described, during the extension under “single season” survey protocols. These surveys are likely to find some individuals of these species, which will then be protected under the management recommendations for these species.

The amount of ground-disturbing activity will not exceed the amount as described in the EA i.e., an additional 55,716 acres could be disturbed (32,854 remaining acres from the timber harvest estimate and 22,862 remaining acres from the prescribed fire estimate) including Forest Service and Bureau of Land Management activities. (The methodology for estimating these remaining acres is contained in the attached “findings” document.)

MONITORING

The monitoring strategy for this decision is to tier to the existing monitoring plans and strategy in the Northwest Forest Plan, and individual National Forests, as detailed in the EA (p. 17). No additional monitoring is adopted by this decision.

APPLICABLE LAWS, REGULATIONS, AND POLICIES

This decision is guided by the provisions of the Northwest Forest Plan in which agencies “may propose changes ... which could include changing the schedule, moving a species from one survey strategy to another, or dropping this mitigation requirement for any species whose status is determined to be more secure than originally projected” (Northwest Forest Plan ROD, p. 37) as experience is acquired with the survey and manage requirements. The Northwest Forest Plan amended individual National Forest Land Management Plans within the range of the northern spotted owl.

The implementation of this decision is through amendment to National Forest LRMPs, in accordance with the National Forest Management Act.

NONSIGNIFICANT AMENDMENT OF FOREST PLANS

Under the National Forest Management Act (NFMA) (16 U.S.C. 1604(f)(4)) Forest Plans may “be amended in any manner whatsoever after final adoption and after public notice, and, if such amendment would result in a significant change in such plan, in accordance with subsections (e) and (f) of this section and public involvement comparable to that required by subsection (d) of this section.” The NFMA regulations at 36 CFR 219.10(f) state: “Based on an analysis of the objectives, guidelines, and other contents of the forest plan; the Forest Supervisor shall determine whether a proposed amendment would result in a significant change in the plan.” Neither NFMA nor its implementing regulations define the term “significant.” Instead, the regulations place full discretion to determine whether or not a proposed amendment will be significant in the hands of the Forest Service. NFMA and NEPA significance factors differ. “Significance” under NEPA is discussed in the FONSI.

Under NFMA and its regulations, an amendment that does not result in a significant change in a forest plan must be undertaken with public notice and appropriate NEPA compliance. If a change to a forest plan is determined to be significant, the Regional Forester must follow the same procedure required for the development of the forest plan, including the EIS.

The Forest Service Land and Resource Management Planning Handbook (FSH 1909.12) provides more detailed guidance for exercising this discretion. This guidance offers a framework for consideration, but does not demand mechanical application. No one factor is determinative and the guidelines make clear that other factors may be considered.

Under section 5.32, FSH 1909.12 lists four factors to be used when determining whether a proposed change to a forest plan is significant or not significant: timing; location and size; goals, objectives, and outputs; and management prescriptions. It also states that “other factors may also be considered, depending on the circumstances.” The determination if a proposed change to a forest plan is significant or not depends on analysis of all of these factors. While these factors are to be used, they do not override the statutory criterion that there be a significant change in plan. Basically, the decision-maker must consider the extent of the change in the context of the entire plan affected, and make use of the factors in the exercise of his or her professional judgment. The Forest Service has carefully evaluated this decision and concluded that it does not constitute a significant amendment of the Forest Plans for the National Forests within the range of the Northern Spotted Owl.

Timing:

The timing factor examines at what point, over the course of the Forest Plan period, the Plan is amended. Both the age of the underlying document and the duration of the amendment are relevant considerations. The handbook indicates that the later in the time period, the less significant the change is likely to be. All of the Forest Plans are near the end, or at least halfway through the first planning period. Even so, because the schedule change will only be in place until the signing of the ROD for the forthcoming Survey and Manage SEIS, or until one of the other limits is reached, we do not expect the direction will be in place for the remainder of the planning period. The action is limited in time and changes to the Plans are not intended to be permanent. The fact that this action will be in place only for an interim period, supports the determination that the action does not constitute a significant amendment of Forest Plans.

Location and Size:

The key to the location and size consideration is context or “the relationship of the affected area to the overall planning area” (FSH 1909.12, sec. 5.32(d)). As further discussed in FSH 1909.12, sec. 5.32(d): “the smaller the area affected, the less likely the change is to be a significant change in the forest plan.” As discussed in the FONSI (p. 2) and the EA (p. 5, 11, 14–17) the change in schedule applies to an area of less than 1 percent of the federal land in the Northwest Forest Plan area and to 7 survey and manage component 2 species and protection buffer species for which surveys are currently required prior to FY 1999 ground-disturbing activities. These levels of ground-disturbing activities will not be exceeded by this decision.

The basic planning unit is the National Forest. Adoption of the Northwest Forest Plan Record of Decision amended individual National Forest LRMPs. This decision separately amends these plans. The areas in the planning unit affected by the extension of this schedule change is limited to the area of land described in the EA (pg. 16). As such, it is not so large in size as to mandate a significant amendment (EA, p. 15). The cumulative effects of this action are addressed by the species status evaluation (EA, Appendix C).

Goals, Objectives, and Outputs:

The goals, objectives, and outputs factor involves the determinations of “whether the change alters the long-term relationship between the levels of goods and services in the overall planning area” (FSH 1909.12, sec. 5.32(c)). This criterion concerns analysis of the

overall forest plan and the various multiple use resources that may be affected. There is no guarantee under NFMA that output projections will actually be produced. As discussed in the EA, the change in schedule would result in less impact to resource goals, objectives, and outputs than the “no action” alternative (EA, pp. 12, 13, 15 and 16). The guidance in FSH 1909.12, sec. 5.32 (c) explains: “In most cases, changes in outputs are not likely to be a significant change in the forest plan unless the change would forego the opportunity to achieve an output in later years.” Any short term temporary reductions in outputs do not foreclose opportunities to achieve such outputs in later years. Thus, an extension of the schedule change does not foreclose the achievement of existing goals and objectives. The effects to biological diversity and protection of species goals was analyzed in the EA by the direct effect to Survey and Manage and Protection Buffer species (EA, pp. 12, 14 and 15). The effects of this decision will actually be less than what was described in the EA since technical feasibility issues were resolved for 25 of the 32 species, the expected short duration of extending this schedule change, and affected habitat not exceeding that described in the EA. A longer-term strategy is being developed and examined in a separate SEIS.

Management Prescriptions:

The management prescriptions factor involves the determination of (1) “whether the change in a management prescription is only for a specific situation or whether it would apply to future decisions throughout the planning area” and (2) “whether or not the change alters the desired future condition of the land and resources or the anticipated goods and services to be produced” (FSH 1909.12, sec. 5.32(d)).

The desired future conditions and the long-term levels of goods and services projected in current plans would not be substantially changed by extending this schedule change. As noted above, the schedule change is temporary and short term and applies only to 7 species over a relatively limited area of Federal lands within the overall planning area (EA, p. 16).

PUBLIC INVOLVEMENT

On September 25, 1998, a scoping letter was sent out through each National Forest within the area affected by this decision. These Forests mailed the scoping letter to their lists encompassing over 1,200 interested individuals, organizations, Federal agencies, and state, local, and Tribal governments. This letter notified the public that an EA was being prepared, the purpose of and need for the action, the proposed action, and an invitation to participate and make comment during the formal comment period.

The EA was issued for a 30-day formal comment period beginning October 7, 1998. A total of 72 individuals and representatives of organizations, agencies and governments commented during this period. Their comments and the Forest Service and BLM responses were categorized in 12 substantive issues. The summary of comments and responses is attached as Appendix G of the EA. A list of the individuals and organizations submitting comments on the EA is found in Appendix H.

No additional notice or opportunity for public comment was offered prior to this decision. There is no requirement in statute or regulation for such notice and comment. There is no precedent for notice and comment in this situation — an extension of an action found not to significantly affect the quality of the human environment. Agency staff analyzed this action and we have found the information in the EA and conclusions in the

FONSI to be still valid. No public purpose would be served by another round of notice and comment.

ADMINISTRATIVE REVIEW

This decision may be appealed in accordance with the provisions of 36 CFR 217.8 by filing a written notice of appeal, in duplicate, within 45 days of the date of publication of the legal notice of availability of this decision. The Decision is effective 7 days after publication of legal notice, 36 CFR 217.10(a). The appeal must be filed with the Chief of the Forest Service:

Chief of Forest Service (ATTN 1570)
14th and Independence Avenue SW
Post Office Box 96090
Washington DC 20090-6090

The decision made on February 26, 1999, was appealed. Two appeals were filed in a timely manner. As of this date, neither appeal has been decided.

PUBLIC NOTICE OF THIS DECISION

Notice of this decision will be published in the following newspapers: *The Sacramento Bee*, *The Oregonian*, and *Seattle Post-Intelligencer*.

EFFECTIVE DATE

The effective date of this decision will be no sooner than 7 days following publication of the Public Notice of this decision. This decision is effective until the ROD for the Survey and Manage SEIS, or until acreage disturbance limits are reached, or until amended or superceded.

ADMINISTRATIVE OR SUPPORTING RECORD

Records documenting the preparation and review of this schedule change are available at:

Survey and Manage Project
c/o Regional Ecosystem Office
PO Box 3623
Portland, OR 97208-3623

For further information, please contact: Jim Schuler, USDA Forest Service, Strategic Planning, PO Box 3623, Portland, OR 97208-3623, Ph: (503) 808-2491.

SIGNATURES

By signing this Decision Notice/Decision Record, we exercise our respective authorities over only those portions relevant to our authority.

/s/Robert Devlin (for)

HARV FORSGREN

Regional Forester, Region 6

USDA Forest Service

Date: 2-18-00

/s/ Bradley Powell

BRADLEY POWELL

Regional Forester, Region 5

USDA Forest Service

Date: 2-18-00