

3/5/2010

**Biological Evaluation (BE)**  
***Best Available Science<sup>1</sup> Language Example***

**To be used in “Effects Analysis Consideration” Section**

This biological evaluation is based upon the best available science, including peer-reviewed scientific literature, state and federal agency reports and management input, discussions with scientists and other professionals, and ground-based observations.

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<sup>1</sup> See attached letter dated June 20, 2007 which provides additional direction for documenting best available science.



File Code: 1920/1950  
Route To:

Date: June 20, 2007

Subject: Clarification of May 2nd, 2007, Advice on Documenting "Best Available Science"

To: Regional Planning Directors

The following information is to clarify the 1920/1950 memo signed by Acting Director Richard Cook on May 2, 2007, and is based on additional advice from OGC. Note that the language under the first bullet below has changed from the language in the May 2 memo.

A recent court ruling enjoined the Forest Service from implementing the 2005 planning rule on three counts regarding National Environmental Policy Act (NEPA), the Endangered Species Act, and the Administrative Procedure Act (*Citizens for Better Forestry v. USDA*). As a result, we are operating under the 2000 rule's transition provisions and the 2004 interpretive rule. Questions have been raised about documenting consideration of "best available science" in forest plan and project records under those rules.

The 2004 interpretive rule states "Projects implementing land management plans and plan amendments...must be developed considering the best available science in accordance with 219.36 (a) ... and must be consistent with the provisions of the governing plan" (Appendix B to §219.35). In plain language, the stated rule language means that projects proposed and carried out must be consistent with the forest plan and show consideration of "best available science." The need to employ the best science is not new, as Agency decisions have always required a sound technical basis. The court decision in the planning rule case and other cases highlight the need to document how best science is used in making decisions.

With the above in mind, the Ecosystems Management Coordination (EMC) staff developed the following recommendations for documenting consideration of best available science in planning and project level environmental analyses.

- What constitutes best available science might vary over time and across scientific disciplines. As a general matter, we show consideration of the best available science when we insure the scientific integrity of the discussions and analyses in the project NEPA document. Specifically, the NEPA document should identify methods used, reference scientific sources relied on, discuss responsible opposing views, and disclose incomplete or unavailable information, See 40 CFR, 1502.9 (b), 1502.22, 1502.24.
- The project record should reference all scientific information considered: papers, reports, literature reviews, review citations, peer reviews, science consistency reviews, results of ground-based observations, and so on. The specialists report in the record should include



a discussion substantiating that consideration of the aforementioned material was a consideration of the best available science.

- The responsible official should include a statement in the record of decision, decision notice, or decision memo showing consideration of the best available science as the basis for the decision. For example: “My conclusion is based on a review of the record that shows a thorough review of relevant scientific information, a consideration of responsible opposing views, and the acknowledgment of incomplete or unavailable information, scientific uncertainty, and risk” and then briefly mention specific things from the record.

Please share this memo with all forest supervisors and district rangers and consider the above advice when conducting environmental analyses in your region. Direct questions to Ron Pugh, Planning Specialist (202) 205-0992, or JoEllen Keil, NEPA Specialist at (202) 205-0939.

*/s/ Richard J. Cook (for)*

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