

Public Comments for the Programmatic Restoration Decision

Comment	Type	Response/Use
USFWS EA is very old-decision in 1999 initially, and rolled over nearly verbatim again in 2006. Information has changed, critical habitat for bull trout, additional sensitive species, conservation/management plans. Need to supplement the EA.	analysis	The forest has prepared BEs to support the decision and update the impacts associated with new science, and species. Project proposals will be developed with site specific information such that additional mitigation will be included. It is expected that the Forest Service will be coordinating with multiple agencies and organizations in implementing actions that fit holistically for the needs of particular areas and work together with other actions.
Programmatic EA's tier to like actions (like stream, wetland and riparian restoration in the USFWS EA) within a large geographic context (like the Upper Klamath Basin in the USFWS EA), and then subsequent decisions tier to it by adding the specific information project site, issue, action, effects and project design criteria.	Use of decision	A programmatic decision allows actions to be implemented as long as they meet the project design criteria that shaped the analysis and impacts associated with the action. It is not a tiering process used in standalone project NEPA because additional NEPA analysis is not needed.
need for site specific project design criteria for each restoration action.	Project mitigation	Additional mitigation would be developed, if needed, at the specific site of the action so that it is consistent with the analysis as constrained by the design criteria and the BEs.
your proposed decision would cut out the NEPA process that provides for Public comments on restoration work through 2015	Public comments	The process includes a public review of proposed actions that would be covered by the programmatic restoration decision. These comments are intended to help shape the proposal and review concerns about the action so the deciding official can determine if the action should be implemented under the programmatic restoration decision or have its own NEPA analysis.
The Fremont-Winema extends well beyond the Upper Klamath Basin. To apply this across the Fremont-Winema is beyond the geographic extent of the USFWS EA.	Analysis area	<i>40 CFR 1500.5(h) tells agencies that they can "... eliminate duplication with other Federal procedures by providing that an agency may adopt appropriate environmental documents prepared by other agency (Sec 1506.3) 40 CFR 1506.3(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to re-circulate it except</i>

		<p><i>as a final product.</i> Geologic area does not change the expected effects at the project level. The actions are substantially the same. The impacts will be the same no matter where the action occurs. The BE's and blending the project descriptions for the programmatic consultation provides analysis that allows us to extend to the whole forest.</p>
<p>The F-W needs to realize that bundling projects under an umbrella that eliminates the NEPA process requires an extraordinary level of trust by the public. Unfortunately, in this regard, there is a long history of conflict between the conservation community and the Forest Service [FS] in spite of the recent shift of the FS to restoration oriented management.</p>	Public comments	<p>The NEPA process is not eliminated, as future actions are covered by this NEPA process. As part of the project development process public input will be sought to determine changes to the proposal and if the action should proceed under the programmatic decision. Complex and controversial restoration actions are more appropriately covered by their own NEPA analysis. Monitoring the use of the programmatic decision showing the type of actions and the amount of use will display how the programmatic restoration is being used by the Forest.</p>
<p>What is the guarantee that the restoration standards informing the proposed umbrella Programmatic Restoration EA will be continuously revised and updated to reflect the best available science? The proposal needs to address this ongoing standards upgrading issue. Trust is the issue again</p>	Updating the programmatic decision	<p>As new science and research come along, the decision will be reviewed and updated for new information. This will be done through project review and consistency per FSH 1909.15 section 18. Any updates will be posted to the Forest web page along with projects and monitoring.</p>
<p>As KD sees the situation, public trust can never emerge in the project planning situation as currently practiced where scoping to the public is often vague, where project planning and planners are internal, where ID teams are often selected to include the voices of specialists who are predetermined as being "on board" with the "traditional" project goals, objectives and methodologies, where alternatives are defined by this "select" planning group, where decisions are made in advance of public input as to which of these alternatives</p>	Building trust	<p>The programmatic restoration decision would provide the opportunity for the forest to expand its coordination with the Klamath Tribes and other agencies and organizations. The way projects are developed should provide a more holistic and centered focus for most of the restoration actions. Our planning process often looks focused on a decision and an action because of the identified need for action. The need is often the reason the NEPA analysis is occurring and is supported by forest plan objectives and goals.</p>

is preferred, and where the public is asked to comment after a decision has in effect already been made.		
KD recommends that the F-W begin by first proposing programmatic exclusion for the very simplest and least controversial of its restoration projects. For its more complex and comprehensive restoration projects, the F-W can take the next step of including representatives from the interested parties of the public in planning <u>from the beginning</u> and throughout planning and implementation.	Proposal adjustment	We will consider changing the decision to the simplest and least controversial actions.
The contention in the November 14, 2012 cover letter that no appeal period needs to be provided by the agency for the actions proposed in this planning process concerns us. Please further note that the 9 th Circuit has again confirmed that CE projects are subject to comment and appeal.	Comment on proposals	<i>40 CFR 1506.3(b)</i> allows the agency to treat this document as a final and not provide a comment period. There is no appeal being offered because there is no way to establish standing for appeal. <i>40 CFR 1500.5(h)</i> tells us to reduce delay and duplicating federal processes by adopting other agency's NEPA. Since there is also no objection process currently for this type of decision, it was decided to network the proposal to the public to capture their concerns and adjust the action. Additional public response will be sought for actions being proposed to be implemented under this programmatic decision. The public response will be used to modify an action if necessary or determine if the action should have its own NEPA analysis. A project being implemented under this programmatic decision will not go through additional NEPA analysis so a comment or appeal period would not be offered.
Please note that many significant environmental changes have occurred since the US FWS Programmatic EA that the agency is relying upon was written. New circumstances require new NEPA analysis.	analysis	See page 1, first comment
Category 15: Riparian Vegetation Treatments. The lack of conservation sideboards here is extremely troubling.	Vegetation treatments	Will provide additional constraints or not include at this time.

<p>Please note that the conditions under which riparian logging would be allowed are so broad as to cover almost any conceivable vegetative condition. Logging riparian areas to “increase diversity” or to “create planting gaps” would allow riparian logging without constraint or meaningful analysis. The proposed logging of riparian areas for diversity or gap creation is extremely controversial and casts a needless pall on the wide variety of restoration activities that we would like to support.</p>		
<p>Category 15.3 Commercial Removal. From reading the document, the public (and the decision maker) cannot know how many logging roads will be constructed, where they will be constructed, or what the impacts of road construction will be. Temporary road construction is not a restorative action: indeed it often results in long-term impacts to terrestrial and soil resources.</p>	<p>Vegetation treatments</p>	<p>Will provide restriction on road construction and length of skidding, 1,200 feet to existing roads or remove the commercial harvest from the proposal. .</p>
<p>EA assessed “restoration actions undertaken by the U.S. Fish and Wildlife Service’s Klamath Basin Ecosystem Restoration Office (ERO) in Klamath Falls, Oregon,” not Forest Service actions on the Fremont-Winema national forests. FWS’s actions are located on different land and carried out by a different agency with a different mission, laws and Departmental regulations and policies.</p> <p>FWS EA points out that the Forest Service “performs NEPA compliance separately.” Id. at 5. Thus, it is apparent that the FWS EA</p>	<p>Analysis</p>	<p>40 CFR 1500.5(h) allows the Forest to adopt appropriate environmental documents prepared by another agency. 40 CFR 1506.3(b) does reference an EIS but in light of 40 CFR 1500(h) this can also be an EA. To recirculate the document as a final document means that it happens after the comment period and with the decision. If this US FWS EA was a draft or incomplete, we would be required to provide a comment period. The US FWS EA is adequate under NEPA regulations so did not have to be recirculated.</p> <p>40 CFR 1506.3(b) allows the Forest to adopt the analysis because the actions are substantially the same. It does not matter the actions occur on different lands, the affects would be the same. They are the same type of actions, the same type of places, and would have same types of impacts, mitigations may be different for the project location</p>

<p>does not even purport to assess the projects you are proposing.</p> <p>you misunderstand CEQ’s NEPA regulations. The rules you cite (see draft Decision Notice at 4) refer to environmental impact statements, not environmental assessments. Even if these rules were relevant to EAs, they emphasize the importance of public involvement by requiring the agency adopting another agency’s EIS to “recirculate” the EIS for public comment if the actions are substantially the same, or, if not substantially the same, the EIS must be re-circulated as a draft.</p>		<p>due to resource protection needs, but the action is being proposed to fit the same constraints and effects.</p> <p>The US FWS is acknowledging that the Forest Service historically does its own NEPA for projects. This does not mean that the effects they have disclosed for like actions are different if they are located on National Forest System lands. This decision is being supported by the analysis in the FWS EA, the programmatic consultation BA and BO, and updated BEs for new species listed.</p>
<p>The 2006 BA and associated 2007 BO apply by their own terms only to actions “over the period FY 2007 to FY 2012 (6 years).” BA at 1. Fiscal Year 2012 ended on September 30, 2012. The projects you propose have yet to occur. Thus, on its face this past consultation is simply not relevant to your proposed actions.</p> <p>The BO informs the action agency as to the risk its actions will jeopardize the continued existence of ESA-protected species using the best science available today – not the scientific understanding of yesteryear. Some of the information in the 2006 BA and 2007 BO might serve that purpose, but our understanding of these types of projects and their effects is likely greater now than six years ago. If nothing else, we have surely</p>	<p>analysis</p>	<p>The cover letter for the addition of Modoc Suckers to the programmatic BO references the consultation as being for calendar years. It is appropriate for the Forest to use the consultation for the decision. The design criteria were further refined by the draft BA for the next phase of programmatic consultation. Based on the evaluation of monitoring the actions remained the same but for many the title of project groupings changed. The concern about the amount of restoration occurring in a watershed was removed because monitoring indicated it was no longer a concern. Vegetation treatments were removed from the BA so any vegetation actions that may affect an ESA listed species would have to have its own consultation or be designed to have no effect. When the new BO is prepared, the programmatic decision will be reviewed and the projects updated so that they are consistent with the new descriptions and design criteria. There is no intent on keeping the same standards when the consultation analysis changes. The intent of the decision is to remain consistent with the new BO for a project to be implemented under the programmatic decision.</p>

<p>learned something from monitoring the previous six years' worth of fish and watershed restoration projects.</p> <p>It is the second purpose of consultation where your reliance on the out-dated consultation fails decisively. It is through consultation that FWS determines whether the proposed actions will take protected species. If so, FWS must determine a legal level of take, prescribe mitigation measures to minimize the amount of take, and permit the action agency's otherwise illegal take. The 2007 BO provides a detailed incidental take statement limited in scope to authorizing specified levels of take associated only with the 2006-2012 activities being consulted upon. The 2007 BO does not authorize any incidental take associated with the post-FY 2012 projects you propose.</p>		
<p>It is worth noting that many of the projects you propose are intended to remedy the consequences of poorly conceived past Forest Service activities, e.g., reengineering of diversion structures, external and/or internal modification to culverts, realignment of culverts, replacement of undersized culverts, and, replacement of culverts and bridges. One of the purposes of NEPA and the ESA is to foster informed decision-making that prevents problems in the first instance. Had these informed decision-making processes been used when these diversion structures, culverts and bridges were installed originally, today's need to cure</p>	<p>comment</p>	<p>Many of the proposed actions for restoration are not expected to occur very often, like reengineering of diversion structures, because we do not have many on the forest. Some of the actions are corrections for structures placed long before resource concerns were considered and before the NEPA. The decision to implement programmatic restoration would allow us to more easily work with permit holders or other to correct long standing problems caused by old design that was appropriate for the time it was installed. We have learned from problems created by past design and have been incorporating protection of resources and ecological function into current projects. As the knowledge changes, we have been changing with it and adjusting past actions accordingly. Some of the actions may occur on private lands where the Forest Service may fund a portion of the work and would be covered by this decision.</p>

<p>these problems might have been avoided. We recommend you avoid repeating past mistakes by devoting the resources necessary to thoughtful and legal planning this time around.</p>		
<p>See page 2 of Supervisor Way’s draft Decision Notice and FONSI in the link above and you will discover that #15 does not exist in the USFWL Environmental Assessment. Project type #15 added by Supervisor Way is: “Silviculture treatments in riparian/wetlands and uplands” “Silviculture treatments” is a euphemistic way of saying logging to placate the vast majority of the public who don’t want logging to occur on public land.</p>	<p>Project description</p>	<p>This treatment is in the US FWS EA as project 16 and is called Silviculture Treatments in riparian/wetlands and uplands. The Forests description was split into types of actions so that it could better describe what was being proposed. Silviculture treatments include a variety of treatments, one of which includes commercial removal (logging) of material. A commercial tool was added so that aspen release would be more effective. It was called commercial so not to hide the use of logging equipment. It is not expected to be a large component of the restoration and will be accomplished by a stewardship contract.</p>
<p>He mistakenly follows the USFS script used to justify all logging: improve the economics of the local communities.</p>	<p>Decision Rationale</p>	<p>The improving of economics of the local community is not a logging focus but a holistic landscape restoration offering. It supports the concept of providing contracting type work to the local community in a wide variety of restoration actions and in a way that will be more responsive to landscape functions and local social needs. It costs the Forest between 10 to 20 thousand dollars to prepare a NEPA analysis for simple restoration work. This money is most often not available so the action does not move forward.</p>
<p>Incredibly, section 15 of the Design Features Attachment tells the public that future projects that log trees less than 21 inch DBH anywhere in the forest except 1) inventoried Roadless Areas, 2) potential Wilderness, and 3) large undeveloped areas greater than 1,000 acres will be exempt from NEPA analysis.</p>	<p>Project Design Criteria</p>	<p>The reason for an actions is <i>To establish or maintain desired riparian and wetland hardwood, shrub, and/or conifers characteristics or restore plant species composition and structure that would occur under natural disturbance regimes consistent with INFISH and Riparian Conservation Area standards and guidelines.</i> This is not authorizing logging everywhere on the Forest. It is focused on riparian, wetland, hardwood, and juniper treatments. In the uplands it would allow the planting and thinning of noncommercial trees. This criterion was added to assure that the commercial type action would not occur in the listed areas without additional NEPA and public disclosure.</p>

<p>The form requires each natural resource specialist to sign and date the form verifying that “there is no new information or effects that would require additional NEPA analysis than what has been already disclosed in the Programmatic Restoration Decision.” The form does not give the specialists an option for a minority opinion or a way to say if or why the timber sale’s “effects would require additional NEPA analysis.”</p>	<p>Project Approval Form</p>	<p>The intent of the form is to assure that specialists have seen the project and it has been coordinated with them. If a specialist is unable to sign the form saying it is consistent with disclosed effects, the form would not be needed because the action would have to be covered by its own NEPA. There is no point to record a minority opinion because the project would not be able to proceed under the programmatic decision.</p>
<p>There is concern that allotment permittees will be impacted by projects that are implemented without their input.</p>	<p>Project development</p>	<p>Not only will allotment permittees be involved during the development of an action, but all permit holders that could be impacted by the action. The information would be best shared by a meeting with the permittee rather than an exchange of letters.</p>
<p>Service that has had its reputation developed through encouraging public involvement in management of the American people’s public land. Such involvement balances pressure from special interests as well as realizing a mission of being instructive to all entities that the Service conforms to policy, procedure and scientific analyses. This proposal would be a case of attempting to abrogate court established civil rights.</p>	<p>Public participation</p>	<p>The draft decision was sent out for public comment though regulations would have allowed signing the decision without comment. It was import to not blindside the public with such a decision and getting their thoughts was important. The process for implementing a decision under this programmatic decision also requires a public process. It requires a collaborative effort with other groups and organizations to make sure what is implemented will fit within a holistic plan for a watershed; which includes using watershed analysis. It does not take rights away from people, if there is a concern over a type of action; the public review prior to implementation will consider those concerns and determine if it is more appropriate to cover the analysis under its own NEPA process or modify the action.</p>
<p>The Service is asking for us, and the various publics comprising the general public, to trust the Service in this loosely described scope of actions over an indeterminate time period affecting yet undefined areas, water courses, aquifers and species when de facto evidence of past performance indicates that we should consider quite a contrary concern.</p>	<p>Trust</p>	<p>The Forest hears and acknowledges that trust is needed. The process proposed for implementing these actions is in response to building this trust. Actions will require a documented public review and be shown to fit within a wider, holistic approach to restoration of a particular watershed. The actions covered by the programmatic decision have historically been covered by project specific categorical exclusions, which historically have had little to no public comments and little to no collaboration in project development. The</p>

		<p>process proposed for implementing actions under the programmatic decision would involve more public, agencies, and organizations working together under a more unified approach. With the NEPA covered for such actions, the Forest will be able to respond more quickly to implementation as a supporting partner and use the NEPA savings of 10 to 20 thousand dollars per CE decision toward implementing actions.</p>
<p>Environmental assessment” requires site specific analysis, including looking up several scales and down several to scientifically evaluate actual conditions and to recognize cautions to avoid potential unintended consequences</p>	Analysis	<p>Programmatic NEPA provides analysis through defining a project by what will not happen. Project design criteria are developed as side boards to constrain impacts. The impacts for similar actions would not change from site to site because the proposed action will be designed in such a way to fit the analysis. Any site specific mitigations needed for the action for protection of resources would be included in the project proposal and reviewed by the public. The commenter’s knowledge of the site will be considered in the final project design.</p>
<p>The Watershed Analysis program provided a view of the broader landscape habitats and their subordinate environments. All of which took considerable on the ground (and water) exploration, inquiry and consideration in order to scope the watershed for future actions. None of this documentation and guidance, or procedure, is specified as being a critical component of the “Restoration” proposal.</p>	Project development	<p>Though the decision does not specifically mention watershed analysis as a supporting document, it does not mean it would not occur. An implemented action needs to fit within the broader context of what is needed for a watershed, which also includes private lands and other agency lands including State of Oregon wildlife and fisheries objectives. Forest watershed analysis is focused on National Forest System lands, the programmatic decision will broaden this look to provide a more holistic picture of the role our restoration actions will play when the watershed includes other ownership. It is expected that the Forest will be implementing actions that are more supportive of collaborative developed landscape objectives.</p>
<p>The attempt to employ out dated findings regarding other landscapes generated by another Federal agency with a different mandate and mission that has demonstrated their own limited and flawed analyses and application, now appears to be a preferable course of action.</p>	analysis	<p>The effects for specific types of actions are the same no matter where the action occurs. The actions proposed in the programmatic decision are substantially the same. They have been modified to include more specific design criteria that supports a more rigorous analysis used in consultation and have been modified for the next round of consultation. The impacts associated with the actions are well understood. Findings from monitoring the current</p>

		programmatic consultation have been included into the programmatic project design and design criteria.
Adoption of the FWS analysis creates unneeded reputational embarrassment to the F-W Forest, and denigration of performance expectations and standards for staff and management. It may initiate the idea that Forest Service favors are now for sale.	statement	Well thought out and collaborative actions is the goal of the programmatic decision.
The proposal also violates the spirit and the letter of NEPA in not simultaneously circulating the other agency's document to which you wish to tier. Whether involving an EA, EIS or attempting to avoid either, it is our understanding that you are required to do so.	NEPA	The document being adopted was fully referenced and could be found easily. It will be made a part of the Forest web page when the decision is implemented as stated in regulations.
The proposal does not include any termination date, nor date for review, evaluation and reauthorization, which also is in violation of policy, procedure and obvious rational management.	analysis	NEPA analysis does not have a termination. It is the discretion of an agency to provide a review date. Forest Service regulations have a process for reviewing NEPA decision for changed conditions and new science. FSH 1909.15 section 18 applies. When the new programmatic consultation is implemented, this decision will be reviewed and updated for those findings. When the US FWS updates its analysis, this decision will also be reviewed to see what needs changing. This will be the method used to update the covered actions for new science. The documentation for these changes will be posted on the Forest web page for programmatic restoration projects.
The Service cannot rationally think that it is authorized by this document to 'take' or 'incidentally take' species that have subsequent to the tiered document's publication been identified as threatened or endangered, and also knowingly be aware that your own scientists and specialists have concluded that other habitat co-dependent species exist and require further study to	ESA	Forest specialists are supportive of this approach and have provided input into specific project design criteria and project descriptions. BEs have been prepared disclosing impacts and findings for sensitive and ESA listed species. The forest realizes that new species will get listed under ESA. No projects can anticipate when this will occur so when a new species is listed the Forest reviews its ongoing actions to determine how they need to be adjusted to provide protection for the newly listed species. If a species is listed and there is no programmatic consultation approach, actions that "may affect" the

determine their status in sensitive areas.			newly listed species will be consulted with the responsible regulatory agency. This decision does not negate other laws and requirements.
Past project performance based on disregard for the latest available science and 'Best Practices,' expediency, or ignorance, has caused much corrective project work over past decades. A case in point regarding both the invalidity of the USF&W document being tiered to and concerned citizens questioning Forest Service intent, rather than trusting, is the Antelope Grazing Allotments EA.	statement		<p>It is hard to hold past decisions based on the knowledge at the time to today's standards and science. Knowledge and science is always changing and what is considered true today may be found a mistake in the future.</p> <p>The Forest is not tiering the US FWS document, it is adopting their analysis because our actions are substantially the same as theirs and the expected effects would be the same.</p>
Rectifying past decision and project errors requires broad consideration of issues throughout scoping, planning, review, implementation and monitoring. Public involvement has been, and is, a valuable source of intellectual and practical input, and a check and balance process. Asking for broad participation early of course lessons later time and resource costs as has been demonstrated in past project work on these forests. Effectiveness and efficiency can be positively correlated.	trust		Public involvement and collaboration is still a central part of implementing an action using the programmatic restoration decision. If a person has not been involved with the initial identification of watershed priorities, they will have an opportunity to share their knowledge of an area for consideration of the actions design prior to it being implemented. Actions that are controversial, as voiced by comments, will be analyzed using their own NEPA process.
The significant drawdown of Service budget; Congressionally required outsourcing and sale of physical assets necessary to appropriate program and resource management; Critical retirement of knowledgeable staff who were the repository of experienced organizational memory and skill; As in other organizations, that newer personnel have little on the job understanding of organizational coordination and so make and repeat costlier errors. However, using	statement		Using the administrative expediciencies provided by adopting another agencies analysis allows our new employees to focus their time on the more complex actions and developing collaborative successes by being a productive partner. They can spend more of their limited time in actions that provide a quick and responsive outcome rather than in constant analysis or have to wait until the Forest takes on the planning area where partners have identified as needing restorative actions. The current approach of listing actions for a landscape analysis is driven by a vegetation/timber need and areas of the forest may never get covered and changed conditions may put such analysis on a twenty to forty year rotation. Specific restoration needs

<p>administrative expediencies, while ignoring the true need for staff training and development only expedites the trend toward organizational incompetence, and it's even more dire long term consequences.</p>		<p>would not be able to be accomplished under such a schedule. The flexibility of being able to a responsive partner and participate in collaborative watershed restoration is provided by the programmatic decision.</p>
<p>The process you propose for adopting the FWS EA and subsequently using the process proposed for implementing projects eliminates the public's opportunities for comment, notice and appeal.</p>	<p>Public comments</p>	<p>Adoption is a NEPA process not often used by the Forest Service. It is new to most of us and is used to reduce duplication of work. Public input is not being eliminated by the programmatic process. In the future, such a decision will be subject to the objection process once the regulations change. A review of this decision was provided to the public for them to voice concerns. The concern over providing comment, notice, and appeal for individual projects has been heard however the CEQ regulations allow the decision to proceed without recirculating the adopted document for a comment period and could be treated as a final document with a decision. The review period provided was a substitute for an objection period and comments are being used to modify the proposal.</p>
<p>While the project design criteria may be useful in developing projects, the FWS EA is not NEPA-sufficient to meet Forest Service regulations and policies.</p>	<p>analysis</p>	<p>For the actions being covered by the programmatic restoration decision, the NEPA analysis is adequate and is more extensive than that provided by use of decision memos, which these actions would fall under.</p>
<p>There are ways to reach your goals that do not involve shortcutting the NEPA process and adopting an outdated, insufficient EA.</p> <p>Discontinue or improve management practices causing the need for restoration before damage is done and restoration is needed such as grazing.</p> <p>Maintain restoration structures and/or continue restoration practices already in place.</p> <p>Leverage limited restoration planning dollars</p>	<p>Statements</p>	<p>Each time an action is reviewed for analysis an updated and improved approach is sought. New science and findings about past management is incorporated into project design and evaluated to determine changes for the next time the action is proposed. This is evident with the long list of mitigations found in our EAs for other projects and the project design criteria associated with the programmatic restoration actions.</p> <p>The programmatic restoration decision would allow maintenance and continuation of restoration to occur more quickly and use the 10 to 20 thousand dollars to prepare individual decision memos to be used to develop a collaborative plan for an area, watershed or on projects. Maintenance actions were not disclosed as part of the original proposal so additional NEPA would be needed. The intent of future</p>

<p>by combining types of funding to conduct planning on a large geographic area (a watershed or similar logical area).</p>		<p>restorations is to avoid the need for maintenance by restoring functions that would be naturally maintained.</p> <p>Large landscape and watershed project areas are normally driven by vegetation management needs funded through timber dollars. The Forest has been using these large areas to identify restoration needs to make more efficient use of specialist time. These actions are not always the result of collaborative planning nor do they fit within a holistic approach to watershed restoration. They tend to be individual opportunities. Important restoration by have to wait until an area analysis is proposed, which may not be timely for other partners and can result in the loss of funds for implementation. The programmatic restoration provides the forest with the flexibility to move more quickly in response to partnerships within a focus area. Time can be spent up front in developing a holistic watershed proposal.</p>
<p>Please consider emphasizing collaboration with Forest stakeholders at the beginning of every planning process and carry that collaboration through project implementation. This would go a long way toward renewing public trust in the agency, increasing support for projects, and minimizing delays due to appeals and litigation</p>	Trust	<p>The programmatic restoration decision has a collaboration focus and a process for bringing others who were not involved in the collaboration into the process through a public review process. The decision may include a third party monitoring process to review the programmatic restoration process.</p>
<p>we feel that restoration science is still developing and that site-specific review and public involvement are critical to making sound decisions that are in the public interest and have the support of the public.</p>	Public involvement	<p>The process being proposed for implementation of an action will require public review of the proposed action. It also is to show the collaborative approach used to develop the action and demonstrate why the action is to move forward to implementation.</p>
<p>The more we think about this programmatic-only approach to NEPA, the more concerned we become that this proposal runs afoul of the letter and spirit of the landmark conservation law that is NEPA as well as the</p>	NEPA	<p>The public review process will be used to determine if an action should be covered under this programmatic restoration decision. A complex project that generates a lot of public concern will not be covered by this decision. This is the trust aspect of the programmatic decision. The decision meets the intent of NEPA and provides a</p>

Appeal Reform Act.		focus to collaboration in determining which actions should be implemented under the programmatic restoration decision. Collaboration is the key to getting actions implemented, even with a more lengthy NEPA process. Being responsive is also important in developing trust and being an effective partner. The programmatic restoration decision provides the flexibility to being responsive and not requiring partners to wait for the Forest to find funds to complete NEPA that historically is not commented on or challenged.
If the FS would focus this process on non-controversial and widely supported restoration actions (e.g., NOT silviculture) and if public were provided timely notice and opportunity to comment and appeal future sitespecific restoration projects under this EA, then it might not draw much controversy. We have provided previous comment on these concerns, but unfortunately our recommendations do not appear to be reflected in the current proposal.	Process	The intent of networking this proposal to the public was to provide the opportunity to respond to the concept. A draft decision was used so that the nature and rationale for the action could be understood. The CEQ regulation for adoption allowed the action to be implemented with a decision without a comment period, which met no appeal of the decision could be offered because standing could not be established. The public responses are being used like the decision had an objection period. The action will be modified to better take in the concerns about silviculture treatments. A public process for comment on individual projects is being provided. An appeal of individual projects that fall under the programmatic restoration decision is not provided. An administrative review by the Forest Supervisor could be offered since these decisions are normally ranger decisions. It would allow the Forest Supervisor to review comments to determine the degree of controversy and whether the decision should proceed under the programmatic restoration decision.
We continue to be concerned about the silvicultural exemption, especially it's breadth and vagueness. Logging is an inherently controversial activity that is not suitable for programmatic-only NEPA coverage. The FS can still use silviculture as a restoration tool; they just have to follow normal NEPA procedures. This is perfectly appropriate.	Proposal Silviculture Treatments	The proposal will be modified to remove complex silviculture and disturbance treatments particularly those actions that would require mechanized removal of material. The forest thought it could confine the treatment enough to reduce impacts and effects but realizes it is not the right time to prose such actions under a programmatic decision.

<p>When logs are commercially removed, inappropriate incentives arise that could easily allow economics to override ecological restoration objectives. It is worth noting that the mandate of the FWS and the USFS are quite different. FWS does not have timber targets to meet so the risk of improper incentives is not as great.</p> <p>We recommend that the silvicultural category be completely eliminated, or a 16" dbh limit be adopted, or a 20" dbh limit with no commercial removal be allowed. If the tribes think that large lodgepole trees need to be removed from riparian areas, just use the normal NEPA process and justify it on a site-specific basis.</p>		
<p>All the categories of restoration actions need more sideboards that specific an appropriate scale for coverage by this EA, e.g., scale should be described as acres of treatment, square footage of soil disturbance, cubic yards of soil movement, etc. It is easier to see how small projects might be covered by this process, but larger projects should get their own EAs. Also, a temporal scale needs to be clearly specified. The EA should expire and be reanalyzed</p>	<p>Proposal constraints</p>	<p>Sideboards dealing with the scale of treatments were considered early in the development of design criteria. The constraints found in the current programmatic consultation were proposed. When the Forest received a draft BA for the next generation of programmatic consultation it no longer had those constraints because monitoring for the current programmatic consultation found them to not be needed.</p> <p>There is a monitoring component proposed with implementation of the programmatic restoration decision. At the watershed scale, all restoration actions will be listed to determine how much activity is occurring in a watershed, the type of actions, and amount. The concern for too much activity is also captured in the project description to determine when the best timing for implementation should be.</p>
<p>We also continue to be concerned about the process for adopting this EA. The cover letter says there is no comment period, no appeal</p>	<p>NEPA</p>	<p>Adoption of another agency's NEPA is not a described process in the Forest Service NEPA handbook. It is a process not used often and is not a "normal" NEPA process. The letter avoided confusing the</p>

<p>period, just a "networking" opportunity. This is inconsistent with the Appeal Reform Act, the USFS NEPA regs at 36 CFR 220, as well as normal NEPA practice within the Forest Service.</p>		<p>public with normal NEPA terminology so not to expectations of administrative processes that would not occur. If the ability to offer an objection period was possible, it would have been used. The intention of the "networking" of the decision was to receive public comments to use in refining the decision, like the objection process.</p>
<p>we are concerned when programmatic NEPA is not followed up with site-specific NEPA. This proposal seems to contemplate that approval of this one EA will adequately cover a wide variety of future sitespecific actions that will not receive future site-specific NEPA analysis. The FS may be able to adopt the FWS programmatic EA, but they still have to do site-specific NEPA to consider the site-specific effects of actions. Programmatic NEPA is not the end of the NEPA process but a step toward later site-specific NEPA. Proper NEPA analysis is not generic, but rather site-specific. This staged decision-making framework is described in the CEQ regs section on "tiering"</p>	<p>NEPA</p>	<p>This decision is being made using the CEQ regulations dealing with adoption, not tiering. There is a difference. Tiering involves incorporating resolution of issues from an overriding NEPA document such as is done with the Forest Plan in EAs. Adoption is finding that the analysis of another NEPA document is sufficient to support a decision because the action is substantially the same. Programmatic documents typically do not require additional NEPA, just a certification that the action is consistent with the effects disclosed in the NEPA analysis and with project design criteria that limit the impacts. For an action to be covered by the programmatic decision it must be consistent with project design criteria which include a site specific review of the project area to include project mitigations to provide resource protection. This will be reviewed by the public prior to implementation.</p>
<p>This proposal also runs afoul of the Forest Service own NEPA regs at 36 CFR 220. If a proposal is not suitable for a CE or an EIS, then an EA must be prepared for all proposals where: (1) The Forest Service has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated (see 40 CFR 1508.23); (2) The proposed action is subject to Forest Service control and responsibility (see 40 CFR 1508.18); (3) The proposed action would cause effects</p>	<p>NEPA</p>	<p>The action is a programmatic decision and fits under these regulations it does not say each action would have to have its own standalone NEPA analysis.</p>

<p>on the natural and physical environment and the relationship of people with that environment (see 40 CFR 1508.14); and (4) The proposed action is not statutorily exempt from the requirements of section 102(2)(C) of the NEPA (42 U.S.C. 4332(2)(C)). This is most clearly triggered when there is a site-specific proposal. See 36 CFR 220.4(a).</p>		
<p>If it was appropriate to do a programmatic EA for a range of site-specific management actions they would be approved as part of the forest plan, but that is not considered appropriate. The Fremont LRMP at page 232 says: "It would be unrealistic and wrong to try to identify, analyze, and schedule the myriad projects or activities that occur on a National Forest Instead, this type of site-specific planning occurs at the project-level planning stage, ... " And the Winema LRMP at page 1-1 says "Specific activities and projects will be planned and implemented to carry out the direction in this plan. The Forest will perform environmental analysis on these projects and activities.</p>	NEPA	<p>Impacts to specific actions are not covered by forest plans where the analysis considered accomplishing goals and objectives at a large scale. Impacts for the types of actions proposed under the programmatic restoration decision are well known and do not vary from site to site. Impacts to specific resources are protected by providing specific mitigations so that they are consistent with disclosed impacts. The programmatic restoration decision provides the project level planning by providing constraints and incorporating any site specific mitigations to the project when needed.</p>
<p>We are also concerned that public involvement is not being provided consistent with the Appeal Reform Act. The FS must comply with both NEPA and the Appeal Reform Act which requires notice, comment, and opportunity to appeal on all actions implementing forest plans. The FS may be able to adopt FWS' Restoration EA, but they cannot adopt the FWS process for public participation.</p>	NEPA	<p>CEQ regulation allows agencies adopting another agency's NEPA analysis to recirculate the document as their final document. A comment period is not required. 40 CFR 1606.3(b) 40 CFR 1500.5 (h) also states that an agency may eliminate duplication of other Federal procedures by providing that an agency may adopt appropriate environmental documents prepared by another agency.</p>

<p>The FS expresses concerns about delays caused by NEPA process. NEPA is a legal requirement. It's not optional. It does take time, but it leads to better decisions that are more likely to find public support. The FS should search for other ways to be more efficient in the way it implements NEPA's requirements. Simply sidestepping NEPA and notice & comment procedures under the Appeal Reform Act for a whole suite of different actions is not an appropriate approach.</p>	NEPA	<p>The programmatic NEPA analysis is an appropriate process for disclosing impacts. CEQ regulations allow the Forest to adopt another agency's NEPA analysis for substantially the same type of actions. Though the Forest could have gone right to a decision it chose to allow public comments to influence the final decision. The document was not required to be recirculated for a comment period. Congress does not require the Forest Service to provide an appeal any longer and has directed the Forest Service to use the objection process in the future. Final regulations providing direction have not been completed. The forest is using an approach much like the objection process to gather public comments prior to signing a decision. A public process for the public to review and voice concerns about an action is part of the implementation process.</p>
<p>The criteria for covered categories of restoration actions should be very clear, with no ambiguity about what is allowed under this decision and what kinds of action require site-specific NEPA analysis. Road construction must be specifically prohibited. Commercial removal of logs must be explicitly prohibited.</p>	Proposal	<p>This is being considered in the final decision</p>
<p>The FWS EA does not provide an adequate description of the existing condition, or site-specific environmental consequences. The description of effects of silviculture are far too generic. It does not clearly describe all the likely effects of restoration actions in all the places that could be impacted under this process.</p>	Proposal	<p>The description of silvicultural treatments in the US FWS document was too general and Forest attempted to provide more sideboards. The distance that many of the proposed hardwood restorations were from roads necessitated the need to further provide a limit to the length of roads needed to access landings while providing flexibility to making sure landing are not located adjacent to major scenic routes. The location of hardwood stands also meant there could be a concern for impacts to undeveloped areas and long roads to access those stands so constraints were developed to make sure those issues would be incorporated in project design. The complexity of silvicultural treatments is being considered in making the final decision.</p>
<p>Attachment 3 is not adequate. The NEPA analysis must carefully document all the</p>	Analysis	<p>Attachment 3 is not intended to be a NEPA analysis but a documentation of the project being proposed and/or implemented</p>

<p>contingencies under which covered restoration actions might occur -- All the different soil types and topographies. All the different plant communities. Impacts to habitat for all the different special status species. Proximity to special resources. Possible conflicts with site-specific recreation uses. Compliance with all the different land allocations. Consideration of new information that renders the programmatic EA obsolete. Compatibility with the cumulative effects regime that exist in all the different watersheds. etc. etc. It's hard to imagine this being done well and thoroughly in an EA.</p>		<p>under the programmatic restoration decision. It is designed to assure the action is consistent with the impacts disclosed by the programmatic restoration EA and that additional issues associated with resource protection, specific to the site, are included. New science, information, and design features will be considered as they become known through the process described in FSH 1909.15 section 18, correction, supplementation,, or revision of environmental documents and reconsideration of decision to take an action.</p>
<p>This proposal is akin to adopting a huge new list of Categorical Exclusions for the Fremont-Winema NF. The FS has already adopted an agency-wide set of categories at 36 CFR 220. The Fremont-Winema cannot use this flawed process to adopt its own expansive set of additional CEs.</p>	<p>NEPA</p>	<p>Individually these projects would fall under one of the categorical exclusions listed in 36 CFR220. There are no new categories being generated by this decision. Rather than wait for the action to be proposed and the analysis completed at that time, the Forest is adopting the analysis of the US FWS and making a decision that covers those actions so they can be implemented in a timely and less costly manor. The decision will focus on the less complex restoration actions such as those that would involve hand vegetation treatments, without mechanized removal or treatments. The public review process will be used to assure the appropriate level of NEPA analysis is performed.</p>
<p>Part of our concern with this project is its precedent-setting nature. If the FS can adopt the FWS restoration EA without a normal public process, what's to stop them from adopting an old-growth logging EIS prepared by another agency, e.g., the BLM WOPR EIS? This is why we insist that this process be crystal clear in avoiding any controversial actions or vagueness standards.</p>	<p>statement</p>	<p>The concern is noted and be assured that the Forest would not take on a controversial action like old growth management without public comment. Note that even for these simple actions the Forest provided the public the ability to comment on the proposal and used a focused group to help design the proposal. Silvicultural and disturbance treatments were not removed to allow a larger group to comment and see the whole compliment of restoration actions being proposed. In the future, once the objection process is implemented, adoption will have a formal process. It is being used informally at</p>

			<p>this time. The public process for implementing an action under the programmatic restoration decision will be used to identify controversy and determine if it is appropriate to implement under the programmatic restoration decision or its own NEPA process. Actions that build public trust are very important to the Forest.</p>
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