

**Marys Peak Watershed Restoration and Road Decommissioning Project 1  
(Trash Rack Removal)**

**Documentation of Land Use Plan Conformance and NEPA Adequacy (DNA)**

**Compliance with the Aquatic Conservation Strategy for Marys Peak Watershed  
Restoration and Road Decommissioning Project 1 (Trash Rack Removal)**

Environmental Assessment Number OR080-03-05

August 2007

United States Department of the Interior  
Bureau of Land Management  
Oregon State Office  
Salem District  
Marys Peak Resource Area

Township 15 South, Range 8 West, Section 25, Willamette Meridian  
Five Rivers-Lobster Creek 5<sup>th</sup> field Watershed.  
Lane County, Oregon

Responsible Agency: USDI - Bureau of Land Management

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**BLM/OR/WA/PL-07/058+1792**

## **A. Description of the Proposed Action**

The Bureau of Land Management (BLM) Marys Peak Resource Area conducted an environmental analysis for the Marys Peak Watershed Restoration and Road Decommissioning Project 1 (Trash Rack Removal), which is documented in the Marys Peak Watershed Restoration and Road Decommissioning environmental assessment (EA, # OR080-03-05) and the associated project file. The Proposed Action of the Marys Peak Watershed Restoration and Road Decommissioning EA is to remove one trash rack (to restore the natural transport of LWD downstream and remove a fish passage barrier) within RR (Riparian Reserve) LUA (Land Use Allocation). A Finding of No Significant Impact (FONSI) was signed in April, 2003 and the EA and FONSI were then made available for public review.

In addition, a Decision Rationale (DR) was signed in November, 2003 and was based on the analysis documented in the EA.

On March 30, 2007, the District Court, Western District of Washington, ruled adverse to the U. S. Fish and Wildlife Service (USFWS), National Oceanic and Atmospheric Administration (NOAA-Fisheries) and USFS and BLM (Agencies) in *Pacific Coast Fed. of Fishermen's Assn. et al v. Natl. Marine Fisheries Service, et al and American Forest Resource Council*, Civ. No. 04-1299RSM (W.D. Wash)(PCFFA IV). Based on violations of the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA), the Court set aside:

- the USFWS Biological Opinion (March 18, 2004 ),
- the NOAA-Fisheries Biological Opinion for the ACS Amendment (March 19, 2004),
- the ACS Amendment Final Supplemental Environmental Impact Statement (FSEIS) (October 2003), and
- the ACS Amendment adopted by the Record of Decision dated March 22, 2004.

Previously, in *Pacific Coast Fed. Of Fishermen's Assn. v. Natl. Marine Fisheries Service*, 265 F.3d 1028 (9th Cir. 2001)(*PCFFA II*), the United States Court of Appeals for the Ninth Circuit ruled that because the evaluation of a project's consistency with the long-term, watershed level ACS objectives could overlook short-term, site-scale effects that could have serious consequences to a listed species, these short-term, site-scale effects must be considered. The following information shows how the Marys Peak Watershed Restoration and Road Decommissioning Project 1 (Trash Rack Removal), meets the Aquatic Conservation Strategy in the context of PCFFA IV and PCFFA II and documents the overall NEPA adequacy of the Marys Peak Watershed Restoration and Road Decommissioning Project 1 (Trash Rack Removal).

## **B. Land Use Plan (LUP) Conformance**

The proposed action is subject to the ROD/RMP.

The ROD/RMP (pg. 27) recommends "Design and implement fish habitat restoration and enhancement activities in a manner that contributes to attainment of Aquatic Conservation Strategy objectives. Aquatic Conservation Strategy #3 states "Maintain and restore physical integrity of the aquatic system, including shorelines, banks, and bottom configurations".

The ROD/RMP (pgs. 27 and 28) recommend rehabilitate streams to enhance natural populations of anadromous and resident fish. Rehabilitation measures may include fish passage improvements;

instream structures using boulders and log placement to create spawning and rearing habitat and placement of fine and coarse materials for overwintering habitat.

#### ESA Section 7 Consultation

##### *U.S. Fish and Wildlife Service*

Formal consultation with the Fish and Wildlife Service has addressed the potential impacts to federally listed wildlife species. A Biological Opinion (BO) received from the Service on April 4, 2002 (reference # 1-7-02-F-422) concluded that this type of project would not likely result in jeopardy to any listed species. All applicable Terms and Conditions required by the BO have been incorporated into the design features of the proposed project. No significant effects are anticipated to occur to any other Special Status Species or Special Attention Species (including Survey and Manage Species).

##### *National Oceanic and Atmospheric Administration and National Marine Fisheries Service*

Consultation with National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) for aquatic habitat restoration actions was completed in 2003 *Endangered Species Act Section 7 Formal consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for U.S. Forest Service and Bureau of Land Management Programmatic Activities in Northwestern Oregon, February 25, 2003*. The programmatic consultation addressed affects determinations, specific design features, and reporting requirements for the proposed actions. No listed fish species are known to occupy the project area stream at this time. The proposed action was determined to be a no affect for ESA listed species. The proposed actions are consistent with design features described in the NMFS programmatic package for Aquatic and Riparian Habitat Projects and are anticipated to Adversely Affect Essential Fish Habitat (EFH). The proposed action is not anticipated to exceed the typical range of effects for aquatic restoration actions as described in the Biological Assessment for Programmatic USDA Forest Service and USDA Bureau of Land Management Activities (December 12, 2006). Therefore, existing programmatic consultation on EFH is adequate to cover the proposed project and no additional consultation on EFH is necessary for project implementation.

#### **C. Identification of the applicable NEPA documents and other related documents that cover the proposed action.**

USDA Forest Service and USDI Bureau of Land Management. 1994a. *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*. Portland, OR.

USDA Forest Service and USDI Bureau of Land Management. 1994b. *Record of Decision (ROD) for amendments to Forest Service and Bureau of Land Management planning documents within the range of the northern spotted owl*. In combination with Attachment A: *Standards and guidelines for management of habitat for late-successional and old-growth forest related species within the range of the northern spotted owl*. Portland, OR.

USDI Bureau of Land Management. 1994. *Salem District Proposed Resource Management Plan/Final Environmental Impact Statement*. Salem, OR.

USDI Bureau of Land Management. 1995. *Salem District Record of Decision and Resource Management Plan*. Salem, OR.

USDA Forest Service and USDI Bureau of Land Management. 2001 *Record of Decision and Standards and Guidelines for Amendment to the Survey & Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines* and results of the 2001, 2002 Annual Species Review (IM OR-2002-064, June 14, 2002 and IM OR-2003-050, March 14, 2003 Table 1-1)

Other documentation relevant to the proposed action (e.g., biological assessment, biological opinion, watershed assessment, allotment evaluation, and monitoring report):

U. S. Fish and Wildlife Service, 2002. Formal and informal consultation on FY 2002-2003 projects within the North Coast Province which may disturb bald eagles, northern spotted owls, and marbled murrelets [FWS reference: 1-7-02-F-422]

National Marine Fisheries Service. 2003. *Endangered Species Act Section 7 Formal consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for U.S. Forest Service and Bureau of Land Management Programmatic Activities in Northwestern Oregon, February 25, 2003*

Watershed Analysis  
Lobster/Five Rivers

Completion Date  
January, 1997

#### **D. NEPA Adequacy Criteria**

##### **1. Is the current proposed action substantially the same action (or is a part of that action) as previously analyzed? Is the current proposed action located at a site specifically analyzed in an existing document?**

The proposed action (trash rack removal) would be completed as described in the ROD/RMP. The proposed action was specifically analyzed in the Marys Peak Watershed Restoration and Road Decommissioning EA/FONSI #OR080-03-5 (April, 2003).

##### 1. Riparian Reserves (ROD/RMP pp. 11-12)

- a. **Management Actions/Direction:** Implement watershed restoration projects in a manner that promotes long-term ecological integrity of native species, and attains Aquatic Conservation Strategy objectives.  
**Compliance:** Currently the trash rack prohibits the movement of juvenile salmon upstream and the natural transport of LWD downstream within South Fork Lobster Creek. Removal of the trash rack will allow the natural flow of the stream and restore fish and aquatic habitat.

##### 2. Fish Habitat (ROD/RMP pp. 27-28)

- a. **Management Actions/Direction:** Rehabilitate streams to enhance natural populations of anadromous and resident fish. Rehabilitation measures may include fish passage improvements; instream structures using boulders and log placement to create spawning

and rearing habitat and placement of fine and coarse materials for overwintering habitat. Fish passage barriers limit fish distribution, migration, and movement.

**Compliance:** Removal of the trash rack would restore habitat extent and suitability and allow the natural flow of LWD within South Fork Lobster Creek.

**2. Is the range of alternatives analyzed in the existing NEPA document(s) appropriate with respect to the current proposed action, given current environmental concerns, interests, and resource values?**

The range of alternatives is appropriate with respect to fish habitat restoration needs that recommend attainment of ACS objectives because the ROD/RMP has not been updated since implementation.

**3. Is the existing analysis valid in light of any new information or circumstances?**

There is no new data which affects the validity of the existing analyses relevant to the Marys Peak Watershed Restoration and Road Decommissioning Project 1 (Trash Rack Removal).

**4. Do the methodology and analytical approach used in the existing NEPA document(s) continue to be appropriate for the current proposed action?**

The methodologies and analyses continue to be appropriate for the Marys Peak Watershed Restoration and Road Decommissioning Project 1 (Trash Rack Removal).

**5. Are the direct and indirect impacts of the current proposed action substantially unchanged from those identified in the existing NEPA document(s)? Does the existing NEPA document analyze site-specific impacts related to the current proposed action?**

An assessment of fisheries/aquatic habitat activities was completed for the RMP. In addition, site specific impacts were analyzed in the Marys Peak Watershed Restoration and Road Decommissioning Project 1 (Trash Rack Removal). There are no substantial changes from those addressed in the analyses to the present.

**6. Are the cumulative impacts that would result from implementation of the current proposed action substantially unchanged from those analyzed in the existing NEPA document(s)?**

A cumulative impacts assessment of affected resources (vegetation, hydrology, soils, wildlife, fisheries/aquatic habitat and fuels/air quality) was completed for the Marys Peak Watershed Restoration and Road Decommissioning Project 1 (Trash Rack Removal) Project (EA #OR080-03-05). Cumulative impacts have not changed from those addressed in the EA.

**7. Are the public involvement and interagency review associated with existing NEPA document(s) adequate for the current proposed action?**

The RMP received substantial public involvement during the course of development. Progress in implementing the RMP has gone to the public for the past 8 years in the *Annual Program Summary*. The Marys Peak Watershed Restoration and Road Decommissioning Project 1 (Trash Rack Removal) Project (EA #OR080-03-05) EA notice for public comment was mailed to agencies, individuals and

organizations and a legal notice was published in one local newspaper soliciting public input. Three comment letters were received during the EA public comment period.

### Compliance with the Aquatic Conservation Strategy

On March 30, 2007, the District Court, Western District of Washington, ruled adverse to the US Fish and Wildlife Service (USFWS), National Oceanic and Atmospheric Administration (NOAA-Fisheries) and USFS and BLM (Agencies) in *Pacific Coast Fed. of Fishermen's Assn. et al v. Natl. Marine Fisheries Service, et al and American Forest Resource Council*, Civ. No. 04-1299RSM (W.D. Wash)(PCFFA IV). Based on violations of the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA), the Court set aside:

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### ***Existing Watershed Condition***

The Marys Peak Watershed Restoration and Road Decommissioning Project 1 (Trash Rack Removal) project area is located within the Five Rivers-Lobster Creek 5<sup>th</sup>-field watershed (tributary of the Alsea River). The project is located within the Upper Lobster Creek Key Watershed.

Twenty percent of the watershed is managed by BLM, 61% is managed by the U. S. Forest Service and 19% is managed by other landowners. The Lobster/Five Rivers Watershed Analysis (1997) describes the events that contributed to the current condition such as timber harvest, wildfire, and road building.

Late seral and/or old growth (greater than 80 years old) forests comprise 33% of the BLM managed lands in the watershed. We can infer then, that commercial harvest or stand replacement fire has occurred on 67% of the BLM managed lands in the watershed. The earliest harvests on BLM managed lands have been regenerated and are progressing towards providing mature forest structure. Most of the private industrial lands have been and will continue to be moved from mid condition class to the early condition class.

### ***Review of Aquatic Conservation Strategy Compliance:***

I have reviewed this analysis and have determined that the project complies with the ACS on the project (site) scale. The following is an update of how this project complies with the four components of the Aquatic Conservation Strategy, originally documented in the EA, p. 6. The project would comply with:

**Component 1 – Riparian Reserves:** maintaining canopy cover along all streams and the wetlands would protect stream bank stability and water temperature. Riparian Reserve boundaries would be established consistent with direction from the *Salem District Resource Management Plan*. Long term impacts to fisheries and aquatic habitat would be substantially reduced as a fish barrier (trash rack) is eliminated;

**Component 2 – Key Watershed:** establishing the Marys Peak Watershed Restoration and Road Decommissioning Project 1 (Trash Rack Removal), is located within the Upper Lobster Creek Key Watershed,

**Component 3 – Watershed Analysis:** The Lobster/Five Rivers Watershed Analysis was completed in 1997. The following are watershed analysis findings that apply to or are components of this project:

- Large wood controls sediment routing and storage in channels and on floodplains. Pool depth and complexity is also a function of the abundance of woody debris and sediment routing. Large pulses of sediment moving through a stream system can restrict pool depth and ultimately limit habitat capability (pgs. 51 & 52).
- Distribution and quality of pools depends on trends of beaver ponds, sediment routing, and levels of large woody debris. (P. 103).

**Component 4 – Watershed Restoration:** by eliminating the trash rack (barrier to fish passage and LWD routing) would result in long-term restoration of aquatic habitat.

In addition I have reviewed this project against the ACS objectives at the project or site scale with the following results. The no action alternative does not retard or prevent the attainment of any of the nine ACS objectives because this alternative would maintain current conditions. The Selected Action does not retard or prevent the attainment of any of the nine ACS objectives for the following reasons.



**Table 1: Projects’ Consistency with the Nine Aquatic Conservation Strategy Objectives**

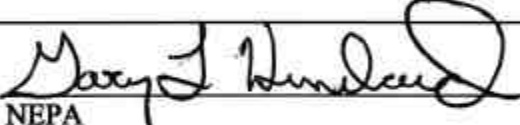
ACS Objective	How Project Meets the ACS Objective
1. Maintain and restore distribution, diversity, and complexity of watershed and landscape features to ensure protection of aquatic systems.	<p><b>Project 1 (Trash Rack Removal)</b>                      The proposed project is designed to restore functions such as flow and sediment routing at the watershed or landscape scale.</p>
2. Maintain and restore spatial connectivity within and between watersheds.	<p><b>Project 1 (Trash Rack Removal)</b>                      The trash rack removal will allow fish and LWD passage from approximately 3 additional miles of the South Fork of Lobster Creek restoring connectivity within the watershed.</p>
3. Maintain and restore physical integrity of the aquatic system, including shorelines, banks, and bottom configurations.	<p><b>Project 1 (Trash Rack Removal)</b>                      The project will restore the natural function of the channel to pass LWD and remove stress from the banks where stream flow is currently forced to flow due to the structure (EA p38).</p>
4. Maintain and restore water quality necessary to support healthy riparian, aquatic, and wetland ecosystems.	<p><b>Project 1 (Trash Rack Removal)</b>                      In the long term, removal of the trash rack would also help restore the natural transport of woody debris in the Lobster Creek system and reduce sediment inputs from channel bank erosion caused by the existing structure (EA p38). During trash rack removal, increases in stream sedimentation and resulting turbidity can be expected as equipment is operating in the stream channel.</p>
5. Maintain and restore the sediment regime under which system evolved.	<p><b>Project 1 (Trash Rack)</b>                      A reduction in sediment concentration is expected with the implementation of the project as it will remove the structure from the active channel and reduce the existing level of erosion occurring at the stream banks. With the structure removed the system is expected to return to a more natural sediment regime.</p>
6. Maintain and restore in-stream flows.	<p><b>Project 1 (Trash Rack)</b>                      This project will not have an impact on in-stream flows as the site currently maintains flow within the stream channel.</p>
7. Maintain and restore the timing, variability and duration of floodplain inundation and water table elevation in meadows and wetlands.	<p><b>Project 1 (Trash Rack)</b>                      With the removal of the trash rack and its associated debris, the stream will be allowed to re-establish itself at its normal channel elevation. This action will result in the stream only being able to access its floodplain during normal events. The existing situation (debris and bedload built up behind the structure) artificially elevates the stream to the floodplain level during even low flow times of the year. The removal of the trash rack and associated debris will restore a more natural channel – floodplain relationship.</p>

ACS Objective	How Project Meets the ACS Objective
<p>8. Maintain and restore the species composition and structural diversity of plant communities in riparian zones and wetlands to provide thermal regulation, nutrient filtering, and appropriate rates of bank erosion, channel migration and CWD accumulations.</p>	<p><b>Project 1 (Trash Rack Removal)</b>  This project will have no impacts on this objective.</p>
<p>9. Maintain and restore habitat to support well distributed populations of native plant, invertebrate, and vertebrate riparian-dependent species</p>	<p><b>Project 1 (Trash Rack Removal)</b>  This project will make available approximately 3 miles of stream channel for recolonization or population expansion of the species described in this objective.</p>

**E. Interdisciplinary Analysis:**

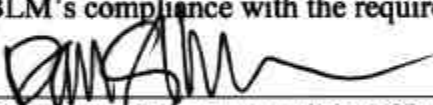
List of Interdisciplinary Team Members

Affected Resource	Name	Initial	Date
Botany	Ron Exeter	RE	Aug 20, 2007
Vegetation	Hugh Snook	HS	8/24/07
Cultural Resources	Dave Calver	DC	8/20/07
Fisheries	Scott Snedaker	SS	8/21/07
Hydrology, Water Quality, Soils (including floodplains)	Steve Wegner	SW	8/24/07
Natural Resources Supervisor	Daniel Schreindorfer	DS	8/20/07
Fuels/Air Quality	Tom Tomczyk	TT	8/22/07
Recreation/Visual Resources/	Traci Meredith	TMM	8/20/07
Wildlife	Gary Lienta Scott Hopkins	SL	8/20/07

Prepared by:   
NEPA

**Conclusion**

Based on the review documented above, I conclude that this proposal conforms to the applicable land use plan and that the NEPA documentation fully covers the proposed action and constitute BLM's compliance with the requirements of NEPA.

  
Signature of the Responsible Official *DCivg*

8/20/07  
Date