

Existing Opportunities to Increase Efficiencies in the Timber Sale Process

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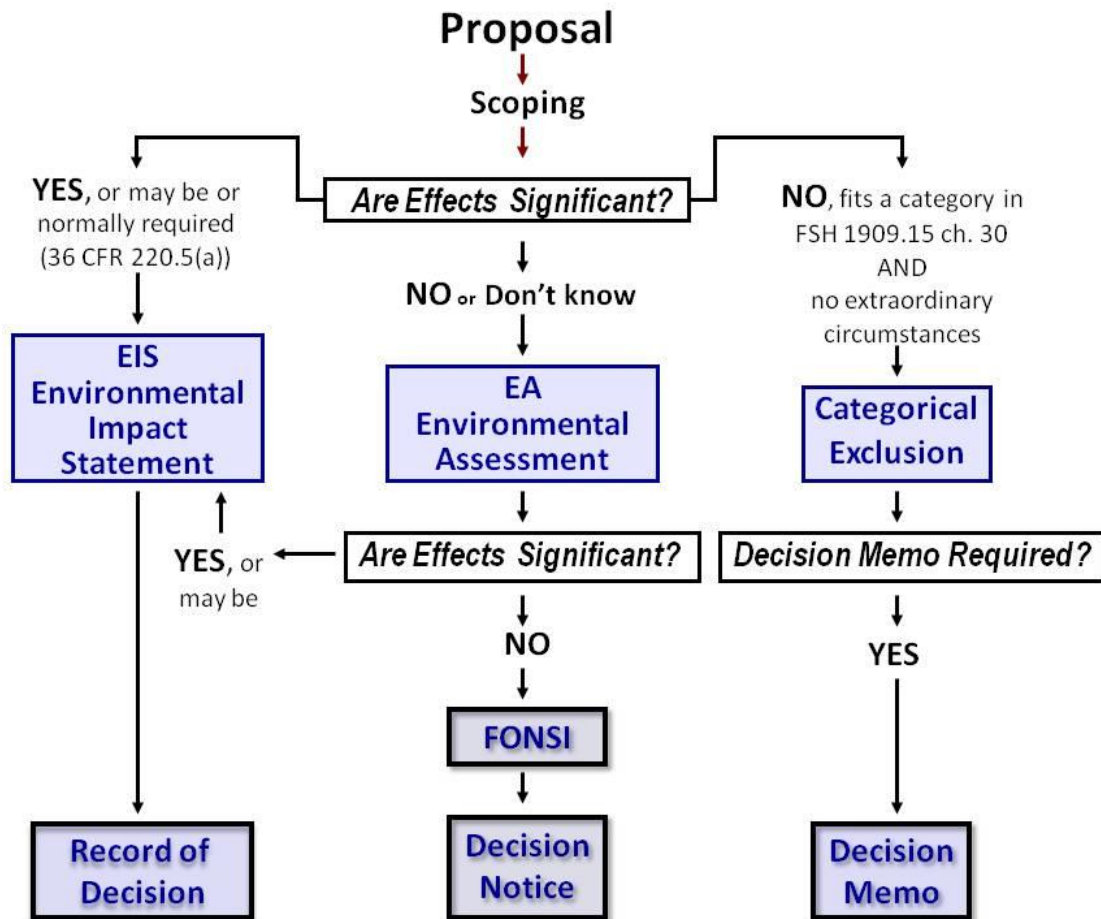
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NEPA Related

All Forest Service guidance for the preparation of NEPA documents can be found [here](#).

The BLM NEPA Handbook can be found [here](#) and their Web Guide is [here](#).

NEPA Documentation Overview



EIS vs EA

Compliance with the National Environmental Policy Act (NEPA) can be a major component in the overall cost of preparing a timber sale. Nationally, the preparation of an EIS costs substantially more than an EA which is more expensive than a CE. The agency should maximize its use of CE's and EA's if these documents provide sufficient defense against legal action. A recent decision (NOTE: [hyperlink the White Castle decision posted on our website](#)) by Judge Aiken concerning the EA prepared for the White Castle project on land administered by the BLM significantly expands the need for preparation of an EIS.

NEPA requires agencies considering "major Federal actions significantly affecting the quality of the human environment" or "(P)roposals that would substantially alter the undeveloped character of an inventoried roadless area or potential wilderness area" to prepare an EIS. Judge Aiken ruled that the White Castle project EA was inadequate because:

- The EA did not give full and meaningful consideration to **all** reasonable alternatives
- An EIS should have been prepared because:
 - The project's potential effects are "likely to be highly controversial"
 - The project's potential effects are "highly uncertain or involve unique or unknown risks"
 - The action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration
 - The Biological Opinion concluded that the project would "adversely affect" the northern spotted owl, its critical habitat, and its prey

Given this very broad interpretation of when an EIS is required, the agencies should consider using this form of NEPA compliance whenever there is any doubt that an EA or CE is sufficient.

Use of Categorical Exclusions

[USFS Handbook](#) [BLM Handbook](#)

A proposed action may be categorically excluded from further analysis and documentation in an EIS or EA only if there are no extraordinary circumstances related to the proposed action and if:

- (1) The proposed action is within one of the categories established by the Secretary at [7 CFR part 1b.3](#); or
- (2) The proposed action is within a category listed in [sections 220.6 \(d\) and \(e\)](#). ([36 CFR 220.6\(a\)](#))

Resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS are:

- (1) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species;
- (2) Flood plains, wetlands, or municipal watersheds;
- (3) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas;
- (4) Inventoried roadless areas or potential wilderness areas;
- (5) Research natural areas;
- (6) American Indians and Alaska Native religious or cultural sites, and
- (7) Archaeological sites, or historic properties or areas.

The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion (CE). It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions and if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determine whether extraordinary circumstances exist. ([36 CFR 220.6\(b\)](#))

Categorical Exclusions (USFS and BLM)

All CE's listed here supporting timber sales require the Project or Case File and a Decision Memo. Multiple CE's can be used within the same project area.

36 CFR 220.6(e)(6)

Timber stand and/or wildlife habitat improvement activities that do not include the use of herbicides or do not require more than 1 mile of low standard road construction. Examples include but are not limited to:

- (i) Girdling trees to create snags;
- (ii) Thinning or brush control to improve growth or to reduce fire hazard including the opening of an existing road to a dense timber stand;
- (iii) Prescribed burning to control understory hardwoods in stands of southern pine; and
- (iv) Prescribed burning to reduce natural fuel build-up and improve plant vigor.

36 CFR 220.6(e)(12)

Harvest of live trees not to exceed 70 acres, requiring no more than ½ mile of temporary road construction. Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing. Examples include but are not limited to:

- (i) Removal of individual trees for sawlogs, specialty products, or fuelwood, and
- (ii) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

36 CFR 220.6(e)(13)

Salvage of dead and/or dying trees not to exceed 250 acres, requiring no more than ½ mile of temporary road construction. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include but are not limited to:

- (i) Harvest of a portion of a stand damaged by a wind or ice event and construction of a short temporary road to access the damaged trees and
- (ii) Harvest of fire-damaged trees.

36 CFR 220.6(e)(14)

Commercial and non-commercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than ½ mile of temporary road construction, including removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include but are not limited to:

- (i) Felling and harvest of trees infested with southern pine beetles and immediately adjacent uninfested trees to control expanding spot infestations, and
- (ii) Removal and/or destruction of infested trees affected by a new exotic insect or disease, such as emerald ash borer, Asian long horned beetle, and sudden oak death pathogen.

16 U.S.C.6591b

Section 8204 of the Agriculture Act of 2014 (Public Law 113-79) amended Title VI of the Healthy Forests Restoration Act of 2003 (HFRA) (16 U.S.C. 6591 et seq.) to add Sections 602 and 603. Section 603 establishes a categorical exclusion for qualifying insect and disease projects in designated areas on National Forest System lands. An insect and disease project that may be categorically excluded under this authority is a project that is designed to reduce the risk or extent of, or increase the resilience to, insect or disease infestation in the areas.

This categorical exclusion may be used to carry out an insect and disease project in an insect and disease treatment area designated by the Secretary under section 602. Landscape scale areas may be designated by the Secretary if they meet at least one of the criteria found in HFRA, Sections 602(c)(1)(2) & (3).

Within designated landscape scale areas, projects carried out under this authority are limited to areas in:

the wildland-urban interface; or

Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland urban interface.

A project under this authority must either carry out a forest restoration treatment that:

complies with the eligibility requirements of the Collaborative Forest Landscape Restoration Program under section 4003(b) of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7303(b)).

Or, a project under this authority must carry out a forest restoration treatment that:

maximizes the retention of old-growth and large trees, as appropriate for the forest type, to the extent that the trees promote stands that are resilient to insects and disease; considers the best available scientific information to maintain or restore the ecological integrity, including maintaining or restoring structure, function, composition, and connectivity; and
is developed and implemented through a collaborative process that—
includes multiple interested persons representing diverse interests; and
is transparent and nonexclusive; or
meets the requirements for a resource advisory committee under subsections (c) through (f) of section 205 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7125).

Projects carried out under this authority are subject to the following size limitation on the number of acres treated:

may not exceed 3000 acres.

Projects carried out under this authority are subject to the following limitations relating to roads:

A project . . . shall not include the establishment of permanent roads.

The Secretary may carry out necessary maintenance and repairs on existing permanent roads for purposes of this section.

The Secretary shall decommission any temporary road constructed under a project under this section not later than 3 years after the date on which the project is completed. (

All projects and activities carried out under this authority:

shall be consistent with the land and resource management plans...”

For projects and actions carried out under this authority:

The Secretary shall conduct public notice and scoping for any project or action.

16 U.S.C. 6554(d)

Section 404 of the Healthy Forests Restoration Act categorically excludes applied silvicultural assessments for information gathering and research purposes. Section 404 ([16 U.S.C 6554](#)) provides as follows:

Applied silvicultural assessment and research treatments carried out under this section on not more than 1,000 acres for an assessment or treatment may be categorically excluded from documentation in an environmental impact statement and environmental assessment under the National Environmental Policy Act of 1969.

Applied silvicultural assessments must be peer reviewed by scientific experts including non-Federal experts. For guidance on use of this CE, see Title IV of the [Healthy Forests Restoration Act 16 U.S.C 6551-6556](#).

Categorical Exclusions (FS)

This is the CE that the Forest Service has been using for roadside salvage of hazard trees after a fire. A Decision Memo is not required.

36 CFR 220.6(d)(4)

Repair and maintenance of roads, trails, and landline boundaries. Examples include but are not limited to:

- (i) Authorizing a user to grade, resurface, and clean the culverts of an established NFS road;
- (ii) Grading a road and clearing the roadside of brush without the use of herbicides;
- (iii) Resurfacing a road to its original condition;
- (iv) Pruning vegetation and cleaning culverts along a trail and grooming the surface of the trail; and
- (v) Surveying, painting, and posting landline boundaries.

Categorical Exclusions (BLM)

This is the CE that the BLM uses for roadside salvage of hazard trees after a fire.

516 DM 11.9 C (2)

Sale and removal of individual trees or small groups of trees which are dead, diseased, injured, or which constitute a safety hazard, and where access for the removal requires no more than maintenance to existing roads.

Supplementing Existing NEPA Documents (USFS)

When assessing the opportunities for salvaging burnt or wind thrown timber from an area, the NEPA compliance for such could be completed in a shorter time frame if the timber in question lie within an area that lies within the project area of an existing NEPA document. The USFS NEPA Handbook ([FSH 1909.15 – Chapter 10 - 18.1 - Review and Documentation of New Information Received After Decision Has Been Made](#)) describes the process needed to do so.

This starts with the preparation of a Supplemental Information Report (SIR) which will conclude that either the additional timber that is being considered to be removed is covered under the existing CE, EA or EIS or that an official Supplement will need to be prepared. If the CE, EA or EIS needs to be officially supplemented, a new Decision Memo, FONSI or ROD will have to be issued.

Survey and Manage

Pechman Exemption

Judge Pechman's Order from October 11, 2006 directs that thinning projects in stands younger than 80 years old do not have to comply with the Survey and Manage requirements.

Non-High Priority Site Designation

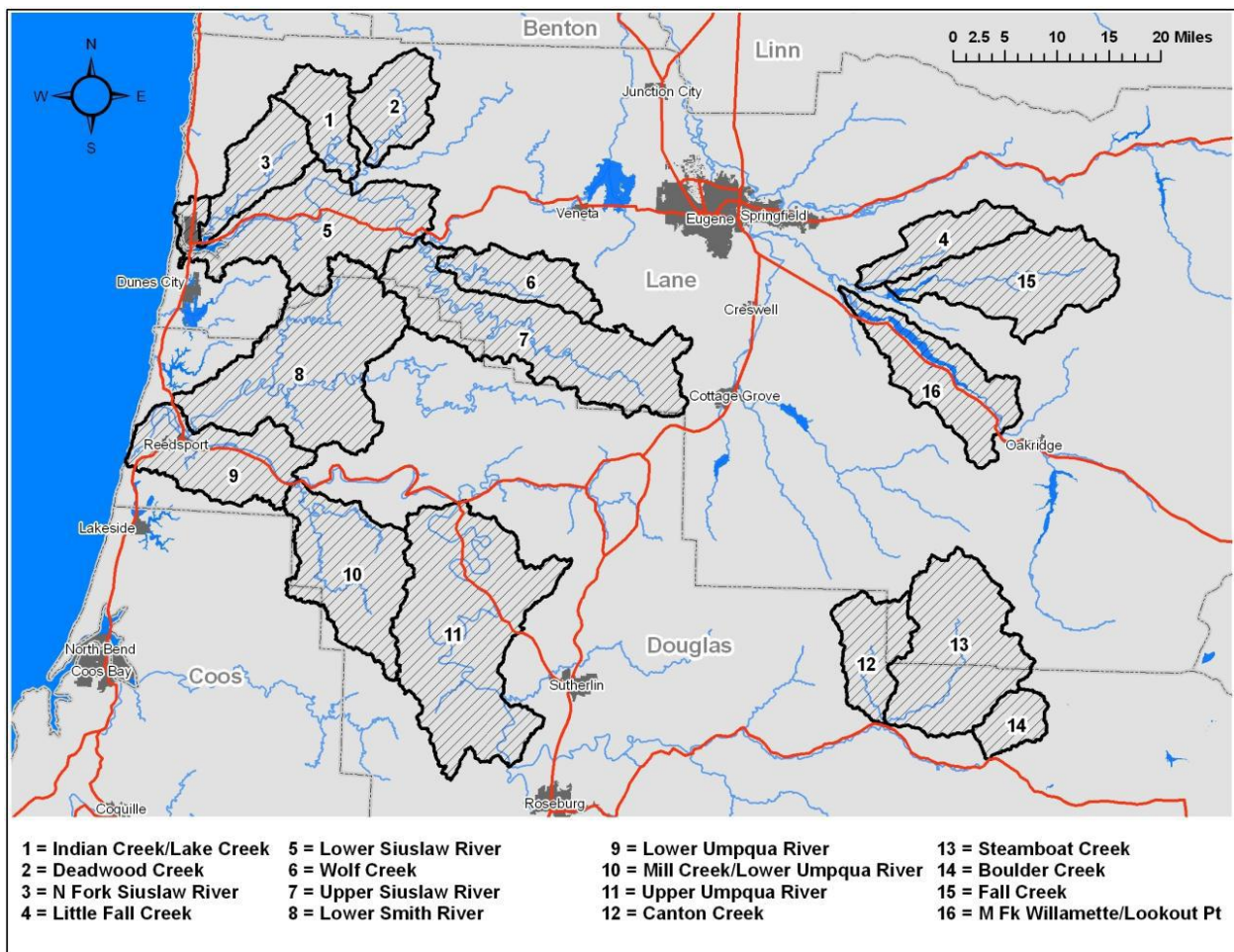
The Record of Decision (ROD) (January 11, 2001) allows managers to identify non-high priority sites for Category C and D species. Both categories are comprised of species considered to be "uncommon" and with direction to manage high priority sites.

To identify a Category C or D species site as a Non-High Priority site (NHP), [the four-step process listed on Survey & Manage Standards & Guidelines page 10](#) is to be followed and documented in the project NEPA determination. The NHP document (described in Step 3) is intended to be a concise and complete record of the process prepared by the originating administrative unit, no more than 5-7 pages in total length. The document provides the rationale and scientific evidence for designating sites as Non-High Priority. This guidance applies, on a case-by-case basis, to activities at the project level.

Watersheds Exempted from Red Tree Vole Surveys in Matrix and Adaptive Management Areas (AMA)

There are certain watersheds that are exempt from pre-disturbance surveys in Matrix and AMA or a combination of Matrix/AMA and Riparian Reserve allocations. On 22 April 2003, the "Supplemental Direction for Identification of Non-High Priority Sites for Red Tree Voles Within the Pilot Area" was transmitted to the field ([Forest Service File Code 2630; Bureau of Land Management Instruction Memorandum No. OR-2003-062](#)). The supplemental direction established a programmatic process that allows field units to identify non-high priority sites. Application of the programmatic process allows for sites within Matrix and AMA or a combination of Matrix/AMA and Riparian Reserve land allocations in 5th field watersheds with high amounts of future red tree vole habitat in reserved land allocations, to be identified as non-high priority and thus released for other management priorities. This direction is still valid.

Sixteen watersheds within the pilot area were noted as having high amounts (83–100%) of red tree vole habitat in reserved land allocations. Within these 16 watersheds, any site in Matrix or AMA, or a combination of Matrix/AMA and Riparian Reserve land allocations can be identified as non-high priority, and hence pre-disturbance surveys within those allocations within these watersheds are not required. The 16 watersheds are: Lower Smith River, Lower Umpqua River, Wolf Creek, Fall Creek, Upper Umpqua River, Mill Creek (Lower Umpqua River), Canton Creek, Lower Siuslaw River, Upper Siuslaw River, Steamboat Creek, Boulder Creek (North Fork Umpqua River), Middle Fork Willamette River/Lookout Point, Deadwood Creek, North Fork Siuslaw River, Little Fall Creek, and Indian Creek/Lake Creek (Figure 2). Within these 16 watersheds, projects in land allocations other than Matrix, AMA, or a combination of Matrix/AMA and Riparian Reserves are not exempted from surveys by this direction.



Red Tree Vole Non-High Priority Site Designation

RTV sites outside of the Pilot watersheds described above can be designated as non-high priority sites which exempts them from having to comply with the 10 acres nest site buffers. The same four step process is used. The BLM has successfully defended the use of this process (NOTE: Hyperlink Appendix C from Rickard Creek EA) in court for the [Rickard Creek Timber Sale](#). On March 14, 2015, Judge Aiken ruled (NOTE: Hyperlink the decision) that the four step process of identifying non-high priority sites is valid.

Another significant aspect of Judge Aikens ruling is that she validated that it is not necessary to survey the entire area being considered as high priority and non-high priority sites.

In sum the Northwest Forest Plan incorporates a flexible standard for determining the number of extant vole sites. Critically, this standard does not require the BLM to actually demonstrate how many red tree vole sites exist in the Mary's River Watershed. (See AR 14695). Rather, the BLM need only reasonably determine that there are likely a moderate-to-high number of extant vole sites.

Listed Species Consultation

Use of Surrogates to Assess “Take”

On June 10, 2015, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service [amended the incidental take statement provisions](#) of the implementing regulations for section 7 of the Endangered Species Act of 1973. The two primary purposes of the amendments were to address the use of surrogates to express the amount or extent of anticipated incidental take and to refine the basis for development of incidental take statements for programmatic actions. These changes (if utilized by the USFS and BLM) will significantly reduce the documentation needed and the legal uncertainty in obtaining incidental take statements for timber sales and resource management plans.

The amended regulations clarify that surrogates may be used to express the amount or extent of anticipated take, provided the biological opinion or the incidental take statement: (1) Describes the causal link between the surrogate and take of the listed species; (2) describes why it is not practical to express the amount of anticipated take or to monitor take-related impacts in terms of individuals of the listed species; and (3) sets a clear standard for determining when the amount or extent of the taking has been exceeded.

The biology of the northern spotted owl and marbled murrelet lend them especially well to the use of habitat as a surrogate. While the final rule uses vernal shrimp as the example of its use, [the proposed rule](#) used the northern spotted owl.

*An example of when we might use a surrogate measure for take is timber harvest activities within habitat of the threatened northern spotted owl (*Strix occidentalis caurina*). Such activities can cause take by modifying habitat conditions that significantly disrupt the spotted owl's nesting, roosting, or foraging behavior. Although the number of spotted owls likely to be taken as a result of project effects to its habitat can be estimated, detection and monitoring of the affected owls to determine when take has occurred or when the amount or extent of anticipated take has been reached is not practical for two reasons. First, there is a low likelihood of finding an injured or dead spotted owl because*

their home ranges are large (about 3,000 acres on average) and there is a high rate of removal of injured or dead individuals by predators and scavengers. Second, the nature of the anticipated take impact to the spotted owl is primarily in the form of reduced fitness of adult owls, leading to reduced survival and reproduction in the future.

Documenting this reduction is very difficult, and doing so may take months or years at considerable expense. Using habitat metrics to express the extent of take and to evaluate the impacts of take on the species is a practical alternative because effects to habitat: are causally related to take of spotted owls; can be readily monitored; and provide a clear standard for when the anticipated amount has been exceeded.

In some situations, the most practical surrogate for expressing the amount or extent of anticipated take of listed species is the amount of listed species' habitat impacted by the proposed action, and the expression of the habitat surrogate is fully coextensive with the project's impacts on the habitat.

The use of habitat as a surrogate for assessing the impacts of a project on spotted owls or marbled murrelet's would alleviate the expense of conducting surveys and would help clarify the real impact of timber sales on the owl which is one of habitat modification rather than a number associated with the amount of take. Under the current situation, if ten owls are said to be in an area which is subject to minor amounts of habitat modifications then the consultation process can allow for the "take" of ten owls even though it is anticipated that the same ten owls will still be in the area after the habitat modification occurs. With the use of habitat as a surrogate, it is not necessary to determine how many owls will be affected by a project but rather identify the affects that habitat modification might have on owls in the area and monitor those effects though tracking the habitat modification itself.