

INTERIOR BOARD OF LAND APPEALS

Umpqua Watersheds, Inc., et al.

158 IBLA 62 (December 18, 2002)

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UMPQUA WATERSHEDS, INC., ET AL.

IBLA 2001-355

Decided December 18, 2002

Appeal from a decision of the Field Manager, Myrtlewood Resource Area, Oregon, Bureau of Land Management, denying a protest of the proposed Jonesville Slugger and Little Big Sandy timber sales. OR-120-TS-01-30 and OR-120-TS-01-31.

Dismissed in part; affirmed in part.

1. Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact--Timber Sales and Disposals

It is proper for BLM to approve a timber sale, absent preparation of an EIS, when, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4332(2)(C) (1994), it has taken a hard look at the environmental consequences of doing so and reasonable alternatives thereto, considering all relevant matters of environmental concern, including the expected individual and cumulative impacts to soils, water quality and quantity, and threatened or endangered species, and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. BLM's decision not to prepare an EIS will be affirmed if the appellant does not demonstrate, with objective proof, that BLM failed to consider a substantial environmental problem of material significance to the proposed action, or otherwise failed to abide by the statute.

APPEARANCES: Francis Eatherington, Roseburg, Oregon, for Umpqua Watersheds, Inc.; Doug Heiken, Eugene, Oregon, for Oregon Natural Resources Council Action; Bonnie Joyce, Myrtle Point, Oregon, for Friends of the Coquille River; Karla Bird, Field Manager, Myrtlewood Resource Area Office, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Umpqua Watersheds, Inc., Oregon Natural Resources Council Action, and Friends of the Coquille River (hereinafter, collectively, Umpqua) have jointly appealed a June 18, 2001, decision issued by the Field Manager, Myrtlewood (Oregon) Resource Area, Bureau of Land Management (BLM), denying their protest of the proposed Jonesville Slugger and Little Big Sandy timber sales (Nos. OR-120-TS-01-30 and OR-120-TS-01-31). 1/

On February 20, 2001, the Field Manager issued Decision Documentation, deciding to proceed with the Jonesville Slugger and Little Big Sandy timber sales, subject to specified project design features and other mitigation measures. The potential environmental impacts of the proposed timber sales and associated activities and two alternatives (including no action) had been analyzed and the December 1999 "Revised Big Creek Analysis Area Environmental Assessment" (EA) (No. OR-128-98-11) prepared to comply with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4332(2)(C) (1994), and tiered to the Final Environmental Impact Statement (EIS) for the Coos Bay District Proposed Resource Management Plan (RMP). 2/

The Revised EA addressed a larger timber harvest program in BLM's Myrtlewood Resource Area. The "Big Creek Analysis Area" encompassed 16,661 acres (9,021 acres (Federal), 1,047 acres (Coquille Indian Tribe), and 6,593 acres (private)), in the Big Creek 6th field subwatershed. The three alternatives considered the following harvests, described by total area covered and estimated timber volume: Alternative I (No Action) --

1/ Umpqua's May 7, 2001, letter of protest was signed only by the listed representative of Umpqua Watersheds, Inc. The Field Manager stated, in her June 2001 decision, that Oregon Natural Resources Council Action and Friends of the Coquille River were not a "party to your protest." (Decision at 1.) BLM now asserts that Oregon Natural Resources Council Action and Friends of the Coquille River are not parties to this appeal within the meaning of 43 CFR 4.410(a), and thus lack standing to appeal, even though their representatives signed Umpqua's July 19, 2001, Notice of Appeal/Statement of Reasons for Appeal (NA/SOR). (Memorandum to Board from Field Manager, dated Aug. 7, 2001 (BLM Response), at 1; see, e.g., Laser, Inc., 136 IBLA 271, 273-74 (1996). In the Friends and residents of Log Creek, 150 IBLA 44, 46-47 (1999), and Blue Mountains Biodiversity Project, 139 IBLA 258, 261 (1997), we recognized that when an appeal is jointly filed by several appellants, those appellants who lack standing to appeal because they were not parties to the decision from which the appeal is taken are properly dismissed. Accordingly, the appeal is properly dismissed as to Oregon Natural Resources Council Action and Friends of the Coquille river.

2/ The EA addressed whether the proposed timber sales and associated activities were likely to result in a significant impact to the human environment, thus dictating preparation of an EIS. In a Dec. 13, 1999, Finding of No Significant Impact (FONSI), the Field Manager concluded that no EIS was required.

None; Alternative II (Proposed Action)-- 587 acres (16.55 million board feet (mmbf)); Alternative III (Alternative Action)--704 acres (22.87 mmbf). Alternative II would authorize Regeneration Harvest (308 acres in 13 units); Commercial Thinning (245 acres in 6 units); Density Management Thinning (11 acres in 1 unit); Hardwood/Brush Conversion (23 acres in 3 units). Ninety acres of commercial/density management thinning and 2 acres of hardwood/brush conversion in Riparian Reserves would be conducted. Alternative II would also authorize construction of 1.9 miles of new roads, renovation of 13.8 miles of road, and improvement of 0.9 miles of road, and closure of 11.1 miles of existing roads.

In her February 2001 Decision Documentation, the Field Manager adopted "Alternative II," which provided for partial cutting on 587 acres of public land including the sales tracts which are situated in secs. 3 and 9, T. 29 S., R. 10 W., and secs. 14, 15, 23, and 24, T. 29 S., R. 11 W., Willamette Meridian, Coos County, Oregon. ^{3/} The sale area consists of 7 sale units (EA Units 5, 6, 25, 32, 36 DM, and 40). The sales area is also in the 2,611-acre Swamp Creek, 3,002-acre Middle Big Creek, and 488-acre Jones Creek drainages in the Big Creek 6th field subwatershed and Middle Fork Coquille River 5th field watershed. Timber sales in this area are conducted in accordance with the Northwest Forest Plan. ^{4/}

The timber cut is expected to produce 1.84 mmbf of merchantable timber, which will be yarded using a one-end log suspension cable-type system in the regeneration harvest area and a skyline cable system in the commercial thinning area). The timber cuts were described as follows:

Commercial thinnings * * * would retain 90-130 trees/acre in most units. In these cases, spacing would vary throughout the thinning units and hardwoods would be thinned along with conifer[s]. * * *

^{3/} The Jonesville Slugger sale would involve cutting 240 thousand cubic feet (mbf) of timber, by regeneration harvest and commercial thinning, from 36 acres in 5 sale units, situated in secs. 14, 15, 23, and 24, T. 29 S., R. 11 W., Willamette Meridian, Coos County, Oregon. The Little Big Sandy sale would involve cutting 1,600 mbf of timber, by regeneration harvest, from 21 acres in 2 sale units, situated in secs. 3 and 9, T. 29 S., R. 10 W., Willamette Meridian, Coos County, Oregon.

^{4/} The Northwest Forest Plan is the generally accepted title given to the "Standards and Guidelines for Management of Habitat for Late - Successional and Old - Growth Forest Related Species Within the Range of the Northern Spotted Owl" (Attachment A), which was adopted by the Secretaries of Interior and Agriculture, in an Apr. 13, 1994, Record of Decision (ROD). The Northwest Forest Plan generally provides for the comprehensive management of timber and other natural resources on all Federal lands in California, Oregon, and Washington, within the geographic range of the Northern spotted owl (designated a threatened species under the Endangered Species Act of 1973 (ESA), as amended, 16 U.S.C. §§ 1531-1543 (1994)).

Regeneration harvest units would retain approximately 7 wildlife trees/acre in the GFMA [General Forest Management Area] units[.] [5/]

(Revised EA at 6-7.) A new one-half mile road would be constructed and used with existing roads during the timber harvest and related operations. The roads would be decommissioned following harvesting.

On April 26, 2001, BLM published a Notice of Sale, thus authorizing the Jonesville Slugger and Little Big Sandy timber sales, pursuant to 43 CFR 5003.2(a) and (b). See Sierra Club, Grand Canyon Chapter, 136 IBLA 358, 361 (1996). On May 9, 2001, Umpqua filed a protest, challenging the subject timber sales and the remainder of the Big Creek Analysis Area Project (Project). CLR Timber Holdings, Inc. (CLR), and Christian Futures Logging, Inc. (Christian), were the high bidders at the competitive timber sale held on May 25, 2001.

In her June 2001 decision, the Field Manager denied Umpqua's protest, addressing all of the points raised by Umpqua.

Umpqua appealed the Field Manager's June 2001 decision, objecting to BLM's approval of a "large regeneration harvest of old growth and mature forest," rather than the "commercial thinnings and other more sensitive logging practices" favored by other BLM offices when the harvest is in a watershed of the Coast Range that supports salmon. 6/ (NA/SOR at 1.)

In an October 29, 2001, letter, BLM notified the Board that it had decided to award the timber sale contracts (Nos. OR-12-TS-2001.0030 and OR-12-TS-2001.0031), pursuant to 43 CFR 5003.3(f).

Before proceeding to the substantive issues raised by Umpqua, we will consider a motion to dismiss filed by BLM. BLM contends that Umpqua Watersheds, Inc.'s appeal should be dismissed because it is being pursued by a party not qualified under 43 CFR 1.3(b), the regulation governing who is entitled to appear before the Department and pursue appeals before this Board. (BLM Response at 2.) See Resource Associates of Alaska, 114 IBLA 216, 218 (1990).

The Board is not required, by statute, regulation, or Departmental policy, to dismiss an appeal filed by someone not qualified to practice before the Department, although an appeal is subject to dismissal for that

5/ On appeal, Umpqua repeatedly and erroneously refers to the regeneration harvests, which would be undertaken on less than half of the lands in the two sales, as "clearcut[s]." (NA/SOR at 2.)

6/ In conjunction with their appeal, Umpqua filed a petition seeking a stay the effect of the Field Manager's June 2001 decision during the pendency of the appeal. Because we here resolve the instant appeal, we will deny Umpqua's stay petition as moot.

reason. Klamath Siskiyou Wildlands Center, 155 IBLA 347, 350 (2001); Resource Associates of Alaska, 114 IBLA at 218; Ganawas Corp., 85 IBLA 250, 251 (1985); Henry H. Ledger, 13 IBLA 356, 357 (1973).

When the person filing an appeal fails to demonstrate that he or she is qualified under 43 CFR 1.3(b) to practice before the Department, and the record does not otherwise establish the requisite qualification, the appeal is properly dismissed. 7/ Gail Schmardebeck, 142 IBLA at 161-62; Resource Associates of Alaska, 114 IBLA at 218-19; Robert G. Young, 87 IBLA at 250. Thus, were Eatherington unable to demonstrate to our satisfaction, that she is qualified to practice under 43 CFR 1.3(b), we would dismiss her appeal.

In response to BLM's motion, Eatherington asserts that she is a "full-time employee," and has represented Umpqua Watersheds, Inc. as a part of the "Southwest Oregon Province Advisory Committee." (Letter to the Board, dated Aug. 27, 2001, at 1.) The categories of those entitled to practice before the Department include individuals representing a "corporation, business trust, or * * * association" who are either "an officer or [a] full-time employee." 43 CFR 1.3(b) (3).

Neither 43 CFR 1.3(b) nor the Board has ever defined who is an "officer" or "full-time employee" of an "association." Thus, we will afford them their ordinary meaning. We have no reason to doubt Eatherington's assertion that she is a full-time employee of Umpqua Watersheds, Inc. We therefore conclude, as a matter of fact, that Eatherington is a full-time employee of an association within the meaning of 43 CFR 1.3(b) (3), and is qualified to appear before this Board. Accordingly, the motion to dismiss is denied.

In the NA/SOR, Umpqua contends that the Field Manager erred by denying its protest and permitting the timber sales to go forward because BLM had not adequately considered all of the potential environmental impacts of those sales and the cumulative impact of the timber harvest, road building, related activity, and the rest of the Project. It argues that the sales, when taken together with the remainder of the Project, threaten to destroy mature and old-growth forests, erode soils, and adversely impact wildlife and fish and other aquatic species by habitat destruction, and negative impact upon water quality and quantity. It states that the Project "will cause irreparable and permanent harm to the ecosystems of the Big Creek watershed." (NA/SOR at 3.) It also argues that the sales and the rest of the Project will result in significant impacts to the human environment, BLM was required to prepare an EIS, and its failure to do so violated section 102(2) (C) of NEPA.

7/ The burden of demonstrating that the person seeking to represent an appellant is qualified under 43 CFR 1.3(b) rests with the appellant. Klamath Siskiyou Wildlands Center, 155 IBLA at 349-51; Gail Schmardebeck, 142 IBLA 160, 161-62 (1998); Resource Associates of Alaska, 114 IBLA at 218-19; Robert G. Young, 87 IBLA 249, 250 (1985); Allen Duncan, 53 IBLA 101, 103, 88 I.D. 345, 346 (1981).

Umpqua asserts that, by going forward with the sales and the Project, BLM violated the Survey and Manage (S&M), Aquatic Conservation Strategy (ACS) and other requirements of the Northwest Forest Plan. It argues that, by not formally consulting with the National Marine Fisheries Service (NMFS), U.S. Department of Commerce, BLM has failed to comply with the requirements of section 7 of the ESA, as amended, 16 U.S.C. § 1536 (1994), because the timber harvest, road building, and related activity are likely to adversely affect the Oregon Coast Evolutionarily Significant Unit (ESU) Coho Salmon (Oncorhynchus kisutch), a Federally-designated threatened species found in the Big Creek subwatershed and downstream in the Middle Fork Coquille River. Umpqua states that BLM has violated its duty to manage the public lands in accordance with the Coos Bay District RMP and take action necessary to prevent unnecessary or undue degradation of the public lands. 43 U.S.C. § 1732(a) and (b) (1994).

Umpqua asks the Board to reverse the Field Manager's decision and remand the case to BLM for preparation an EIS and direct BLM to comply with section 7 of the ESA and section 302 of FLPMA. (NA/SOR at 12-13.)

[1] A BLM decision to proceed with contemplated action without preparing an EIS, will be deemed to be in accordance with section 102(2)(C) of NEPA if the record demonstrates that BLM has, considering all relevant matters of environmental concern, taken a "hard look" at potential environmental impacts, and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. Cabinet Mountains Wilderness v. Peterson, 685 F.2d 678, 681-82 (D.C. Cir. 1982); In Re North Murphy Timber Sale, 146 IBLA 305, 310 (1998) 8/; Nez Perce Tribal Executive Committee, 120 IBLA 34, 37-38 (1991). An appellant seeking to overcome a decision to proceed without an EIS must demonstrate, with objective proof, that BLM failed to or did not adequately consider a substantial environmental question of material significance to the proposed action, or that it had otherwise failed to comply with section 102(2)(C) of NEPA. In Re North Murphy Timber Sale, 146 IBLA at 310; Southern Utah Wilderness Alliance, 127 IBLA 331, 350, 100 I.D. 370, 380 (1993); Red Thunder, 117 IBLA 167, 175, 97 I.D. 203, 267 (1990); Sierra Club, 92 IBLA 290, 303 (1986).

If BLM has complied with the procedural requirements of section 102(2)(C) of NEPA, by taking a hard look at the environmental impacts of a proposed action, it will be deemed to have complied with the statute, even though a different substantive decision may have been reached by this Board or a court (in the event of judicial review). Strycker's Bay Neighborhood Council v. Karlen, 444 U.S. 223, 227-28 (1980); Natural Resources Defense Council v. Morton, 458 F.2d 827, 838 (D.C. Cir. 1972); Oregon Natural Resources Council, 116 IBLA 355, 363 (1990). As we said in Oregon Natural Resources Council, 116 IBLA at 361 n.6:

8/ Rev'd on other grounds, Oregon Natural Resources Council v. United States Forest Service, No. C98-942WD (W.D. Wash. Aug. 2, 1999), slip op. at 11-12.

[Section 102(2) (C) of NEPA] does not direct that BLM take any particular action in a given set of circumstances and, specifically, does not prohibit action where environmental degradation will inevitably result. Rather, it merely mandates that whatever action BLM decides upon be initiated only after a full consideration of the environmental impact of such action.

The only decision now before us is BLM's decision to conduct the Jonesville Slugger and Little Big Sandy timber sales. Future decisions regarding other timber harvests and associated activity, which were addressed in the EA and approved as part of the Project in the February 2001 Decision Documentation are not now in issue because no notice of sale or other decision document authorizing that activity has been issued.

Issues regarding whether the contemplated additional timber harvest activity and the Project as a whole might violate the S&M, ACS, and other requirements of the Northwest Forest Plan, the consultation requirements of section 7 of the ESA, or the land-use planning and unnecessary/undue degradation prescriptions of section 302 of FLPMA are not before us. 9/ See In Re Red Top Salvage I Timber Sale, 142 IBLA 109, 113-15 (1998) (compliance with ACS requirements of Northwest Forest Plan). When, and if, BLM goes forward with additional timber harvests, it will be appropriate to ask whether, given existing and reasonably foreseeable impacts, it is likely that the action will violate the requirements of the Northwest Forest Plan, section 7 of the ESA, or section 302 of FLPMA. Before issuing any additional notice(s) of sale or other decision document(s), BLM should assure itself that the activities authorized at that time will not violate these requirements. That determination, which may be based (in whole or in part) on the Revised EA and related documentation, will in all likelihood be subject to scrutiny and appeal. However, until BLM decides to go forward with other timber harvesting and associated activity, it would be premature to address whether those activities would violate the Northwest Forest Plan, section 7 of the ESA, or section 302 of FLPMA.

We believe it appropriate to consider whether BLM properly analyzed the cumulative impacts of the Jonesville Slugger and Little Big Sandy

9/ Neither of the sales involves a regeneration harvest in a Connectivity/Diversity Block. (See Decision at 3; Revised EA at 8 (Map); Prospectus (Jonesville Slugger Timber Sale) at Exhibits A and A-1; Little Big Sandy Timber Sale Prospectus at Exhibits A and A-1; BLM Answer at 15.) We find no violation of the RMP provision limiting regeneration harvests to less than 1/15 of the available acres per decade (or 1/5 once every 30 years, where necessary to maintain a viable harvest unit) in any Connectivity/Diversity Block. (NA/SOR at 30-31 (citing Coos Bay District RMP, dated May 8, 1995, at 54).)

To the extent that any other part of the Project may involve a regeneration harvest in a Connectivity/Diversity Block, and thus arguably violate BLM's RMP, that issue is not presently before us.

timber sales and the other timber harvesting and associated activity approved in the February 2001 Decision Documentation (as well as other past, present, and reasonably foreseeable future actions), in satisfaction of its environmental obligations under section 102(2)(C) of NEPA. See, e.g., Friends of the Nestucca, 144 IBLA 341, 358-59 (1998), appeal filed, Coast Range Association v. Shuford, No. 98-819-JO (D. Or. July 7, 1998). We also believe it appropriate to address whether BLM adequately considered whether cumulative impacts might give rise to a violation of the requirements of the Northwest Forest Plan, section 7 of the ESA, or section 302 of FLPMA. See 40 CFR 1508.27 (A proposed action may be considered to have a significant impact where it "threatens a violation of Federal * * * law or requirements imposed for the protection of the environment").

Umpqua argues that BLM failed to substantiate that the regeneration harvest satisfies two of the principal purposes set forth in the EA; 1) to contribute to the Coos Bay District's decadal Allowable Sale Quantity (ASQ) volume commitment, and 2) address BLM's socio-economic commitment by promoting the production of merchantable timber through multiple timber sales from the GFMA. (NA/SOR at 28 (referring to Revised EA at 3).) It alleges that BLM has not disclosed the District's decadal Allowable Sale Quantity, in violation of 40 CFR 1502.21. According to Umpqua, this precludes BLM from incorporating material in support of an EA by reference unless it is "reasonably available for inspection by potentially interested persons within the time allowed for comment." Umpqua also claims that BLM does not show how it is meeting its local and national socio-economic commitment because the sales are occurring at a time when timber prices are at an all-time low, and that BLM will not realize the best returns for this public resource while further depressing the value of private timber. (NA/SOR at 28-29.)

When the Revised EA was prepared in December 1999, the District was operating under the Allowable Sale Quantity of 32 mmbf per year set out in the RMP. This amount is considerably more than the amount of timber to be harvested under the sales. (See Coos Bay District RMP at 52; Letter to Board from Field Manager, dated Aug. 24, 2001 (BLM Answer), at 14.) This Allowable Sale Quantity was fully disclosed in a document available to the public. Thus, we find no violation of 40 CFR 1502.21. Further, these sales were designed to "[c]ontribute" to the attainment of the ASQ. (See February 2001 Decision Documentation at 3.)

Umpqua contends that, when the revised EA was prepared, the ASQ should have been reduced in response to outstanding court orders requiring additional compliance with the Northwest Forest Plan. (NA/SOR at 28.) However, the adjustment Umpqua refers to would not occur until July 31, 2001, which was after BLM's June 2001 decision. (See Decision at 7; BLM Answer at 14; NA/SOR at 10.) Umpqua has identified no violation of law resulting from this delay. (See Decision at 17; Coos Bay District RMP at 77.) The ASQ had not yet been amended, and BLM has demonstrated that the sales would contribute to attaining the level in effect when the Revised EA was prepared.

The ASQ is not a hard-and-fast constraint on timber harvest. Sales may occur even though they may cause the District to fall below or go over the ASQ:

The ASQ for the RMP is an estimate of annual average timber sale volume likely to be achieved from lands allocated to planned, sustainable harvest. * * *

The ASQ represents neither a minimum level that must be met nor a maximum level that cannot be exceeded. It is an approximation because of the difficulty associated with predicting actual timber sale levels over the next decade, given the complex nature of many of the management actions/direction. It represents BLM's best assessment of the average amount of timber likely to be awarded annually in the planning area over the life of the plan, following a start-up period. The actual sustainable timber sale level attributable to the land-use allocations and management direction of the RMP may deviate by as much as 20 percent from the identified ASQ. [Emphasis added.]

(Coos Bay District RMP at 52.)

The record supports the conclusion that going forward with the sales would, at least, "[a]ddress," if not completely satisfy, BLM's socio-economic commitment under section 1 of the Act of August 28, 1937 (O&C Act), as amended, 43 U.S.C. § 1181a (1994), by providing for the production of merchantable timber in economically depressed times. (See Decision at 6-7.) There is no dispute that timber prices were low. However, there is no basis for a conclusion that BLM is required by any statute or other law, to maximize the sales price of timber by withholding it from sale. Nor is this required by section 103(c) of FLPMA, 43 U.S.C. § 1702(c) (1994), cited by Umpqua, to make the "most judicious use of the [public] land." (See NA/SOR at 29.) We find no evidence that BLM failed to properly consider the socio-economic impacts of going forward with the sales.

Umpqua also argues that BLM failed to adequately consider the likelihood that authorized timber sale activities in the contract areas will spread root rot caused by Phytophthora lateralis in the Port Orford Cedar (POC). (NA/SOR at 29-30.) It notes that, by permitting winter timber hauling ("during the wettest part of the year"), BLM has undermined its project design feature providing the basic strategy for POC management to limit the spread of root rot by restricting timber haul to the dry season in EA Unit 5 and other units. Id. at 29 (citing Revised EA, Section G (Revised Design Features), dated Nov. 17, 1999, at 5.) Umpqua asserts:

[T]he EA pretends like it is protecting [U]nit[]
* * * 5 from POC root rot with a useless mitigation
measure. * * * The EA should have analyzed the

true threats to the POC, with realistic mitigation measures. The EA needs to be remanded until real protections can be put in place.

(NA/SOR at 29.)

Umpqua attributes winter hauling to BLM's decision to go forward with the "Sandy/Remote" timber sale, rather than either of the sales now under consideration. (NA/SOR at 29.) The EA Unit 5 encompasses Sale Unit 1 of the Little Big Sandy Timber Sale. (See Decision at 9; Revised EA at 8 (Map), Appendix 3 ("Alternative II-Proposed Action-Roads (East 1/2)"); Prospectus (Little Big Sandy Timber Sale) at Exhibits A and A-1.) However, it is clear that Sale Unit 1 access for hauling and other purposes is along "Spur 1, and BLM has specified that there will be "Summer hauling only on Spur[] 1." (Little Big Sandy Timber Sale Prospectus at Special Provisions, Exhibits A and A-1.) There will be no winter hauling with respect to that portion of the Little Big Sandy Timber sale. (Decision at 9.) We find no evidence that BLM approved winter hauling in connection with either of the sales now under review: "[N]either of the timber sales * * * involve winter haul." (Decision at 5.) There is no error because BLM has adopted the project design feature cited by Umpqua. In addition, BLM considered the likelihood of POC damage from root rot resulting from the sales. (See Revised EA at 1, 4; Revised EA, Section B at 4; Revised EA, Amendment to Section L, dated Nov. 8, 1999.)

Umpqua has presented no evidence that there will be any winter hauling in connection with the Sandy/Remote sale, either within that contract area or on the road which runs along the edge of EA Unit 5 (which is "across the road" from the Sandy/Remote sale), or that the sale is likely to promote the spread of POC root rot in that unit. (NA/SOR at 29; see Revised EA at 8 (Map), Appendix 3.)

Umpqua argues that BLM failed to adequately consider the potential cumulative impacts of the timber harvesting, road building, and related activity approved in connection with the subject sales and the other sales considered in the EA, which together will result in 308 acres of regeneration harvest and 1.9 miles of new roads. (NA/SOR at 15-16, 18-19, 23-27.) It specifically asserts that BLM failed to properly analyze the likelihood that large-scale harvesting and road building in the Big Creek subwatershed will cause extensive surface runoff and soil erosion, sedimentation, and higher peak flows in local streams, which will adversely affect downstream fish and aquatic species (including the threatened Oregon Coast ESU Coho Salmon).

BLM is required to consider potential cumulative impacts of a proposed action, together with past, present, and reasonably foreseeable future actions. 40 CFR 1508.7; see Park County Resource Council, Inc. v. United States Department of Agriculture, 817 F.2d 609, 623 (10th Cir. 1987); Howard B. Keck, Jr., 124 IBLA 44, 53 (1992), aff'd, Keck v. Hastey, No. S92-1670-WBS-PAN (E.D. Cal. Oct. 4, 1993).

In her decision, the Field Manager stated that BLM considered the cumulative impacts of the Project and other timber harvesting and associated activity:

The Revised EA fully considered direct, indirect and cumulative effects, as ecosystem functions and processes interactions are currently understood in the various sciences, and evaluated them using readily assessable analytical tools. All analyses used a watershed, subwatershed or drainage framework encompassing all [land] ownerships (corresponding to the 5th, 6th and 7th fields).

(Decision at 14.) The EA reflects consideration of the cumulative impacts of the Project, other timber harvesting and associated activity (including the Chu-aw Clau-she timber sale on Coquille Indian tribal lands in the Big Creek subwatershed), with focus on the salient aspects of their impact on the environment. (See February 2001 Decision Documentation at 1; Revised EA at 4, 19-26, 30-34; Revised EA, Sections F, I, J and M.)

The EA was tiered to the EIS for the Proposed RMP, and the cumulative impacts of past, present, and reasonably foreseeable future timber sales (including the subject sales) and related activity in BLM's Coos Bay District, which encompasses the Myrtlewood Resource Area, had been considered in the EIS. (Decision at 17; February 2001 Decision Documentation at 1; FONSI at 2; Revised EA at 1; BLM Answer at 3, 14-16.) The effect of this tiering is not effectively challenged by Umpqua, and Umpqua fails to show a failure to comply with section 102(2)(C) of NEPA. See In Re North Murphy Timber Sale, 146 IBLA at 311-12, 314-15.)

Umpqua argues that BLM's analysis, and particularly its hydrological assessment, is not supported by data, calculations, or other evidence. (NA/SOR at 23-24.) We agree that BLM's analysis, as contained in the EA consists mostly of the opinion of BLM's hydrological expert, based on his knowledge of the Project area, and the effects of timber harvesting and associated activity. (See Revised EA, Section M (Amended Hydrologist's Report), at 1-2, 4-7.) BLM's hydrologist concluded:

The watershed hydrologic condition will continue to maintain or improve. By implementation of * * * [A]lternative [II] current age class distribution would shift to 31 [percent] of BLM lands in the watershed in the 0-20 year old age class and 33 [percent] of all lands. This is very similar to the no action alternative (30 [percent]). * * * Extreme peak and minimum flows in the low elevation Coast Range are depend[e]nt on climatic patterns rather than vegetation manipulation. [Emphasis added.]

Id. at 1. Based in part upon his opinion, BLM concluded that the likely hydrological impacts of the two sales were negligible, and that they added little or nothing to the cumulative impacts of the Project as a whole:

[M]ore than half of the [sale] units * * * are commercial thinning (31 acres) which have not been conclusively shown to increase peak flows at all in the [C]oast [R]ange. Much of the forest and vegetation is retained on site such that evapotranspiration and rainfall interception remain practically unchanged. Peak flow data studies (including small peaks that are not floods and larger peaks) in similar coastal environments have shown that there is no statistical difference between undisturbed stands and partial cut units when 59-69 [percent] of the stand volume was selectively removed by ground based methods. * * * The thinning prescription will remove substantially less forest stand volume (no greater than 35 [percent]). The three regeneration units in the timber sales * * * are very small (total 2[6] acres) and fully vegetated riparian reserves are maintained between the unit[s] and small headwaters channels. With this landscape configuration, there is no study to suggest that small increases in peak flow or any kind of increased water yield will even occur. This is because the intervening riparian reserve of trees and vegetation should transpire any small increases in available water. Therefore, changes in flow from the timber sales are expected to be negligible. [Emphasis added.]

(Decision at 5; see id. at 12, 14-15; Revised EA at 4; Revised EA, Section M (Amended Hydrologist's Report), at 1-2, 4-7; BLM Answer at 4-5, 9-11, 14.) Umpqua fails to present evidence contradicting this analysis, or otherwise show that BLM improperly minimized the contribution made by the sales to the cumulative hydrological impact of the Project.

Umpqua fails to demonstrate that BLM's expert opinions were improperly based, or that BLM failed to consider factors likely to affect the resulting impacts, or that the opinions were flawed in any way. Bare assertions will not suffice. Umpqua has not submitted any independent analysis and supporting evidence demonstrating cumulative impacts which BLM overlooked, or the type, extent, and magnitude of impacts which BLM failed to appreciate. (See, e.g., NA/SOR at 15, 19 and 27.) Above all, Umpqua fails to demonstrate that, because of geographic proximity and/or other reasons, there is likely to be an interaction between other projects and the proposed project or even just in terms of the whole Project which may result in an enhanced or modified impact that BLM was required to consider," but which it failed to consider. Wyoming Outdoor Council, 147 IBLA 105 at 109 (1998).

Umpqua has also failed to show that any of the potential cumulative impacts is likely to adversely affect Coho Salmon, triggering formal consultation with NMFS under section 7 of the ESA, which would constitute a significant impact, requiring preparation of an EIS. Its arguments are, for the most part, conclusory allegations. (See, e.g., NA/SOR at 16-17.) Nor has it demonstrated that any impact is likely to violate S&M, ACS, or other requirements of the Northwest Forest Plan, or is likely to result in an unnecessary or undue degradation of the public lands. 10/

BLM adequately considered the cumulative impacts likely to occur as a consequence of the proposed timber sales (in conjunction with other past, present, and reasonably foreseeable future actions (including the rest of the Project)), in conformance with section 102(2)(C) of NEPA, and was not required to prepare an EIS for that reason before approving the sales.

Umpqua argues that BLM failed to comply with the Northwest Forest Plan. It specifically asserts that BLM's decision to permit yarding in Riparian Reserves violates that Plan because it will not accelerate the acquisition of old-growth characteristics and attainment of ACS objectives. (NA/SOR at 24-25 (citing ROD, Attachment A at C-32).) It also claims that BLM's decision to reduce the interim widths of Riparian Reserves, increasing 16 acres "to be clearcut, either now or in the future," violates that Plan because it has not been fully justified and documented, or shown to be based on scientifically sound reasoning. (NA/SOR at 25 (citing ROD, Attachment A at B-16).)

Addressing timber thinning in riparian reserves, BLM cited the riparian reserves treatment analysis in Revised Section O of the Revised EA. (BLM Protest Decision at 6.) The objective of the treatment is to "accelerate development of large tree/old growth characteristics [in 40 to 50 year old predominately Douglas-fir stands] * * * by thinning young stands." (Revised Section O, Memorandum of Mar. 4, 2000, at 1.) BLM considered leaving cut trees on site as Umpqua desires, but concluded that it was necessary to remove most of the felled trees based on evidence that leaving felled trees on the ground would create a serious threat of devastating damage from Douglas Fir beetle infestation and/or wild fire. Id.; see EA at 13. Thus, we find the record provides a rational basis for the BLM decision.

Umpqua accuses BLM of improperly allowing reduction of riparian reserve widths. The Northwest Forest Plan allows reduction of the interim widths of Riparian Reserves, based on a Watershed Analysis. (ROD, Attachment A at B-16.) With one exception, the Field Manager did not

10/ Umpqua argues that BLM's failure to abide by applicable environmental protection statutes and regulations constitutes the unnecessary or undue degradation. (NA/SOR at 4 (citing 43 CFR 3809.0-5(k)).) The cited regulation is not applicable to timber sales. We find no violation of section 102(2)(C) of NEPA, or other statute or regulation, and it is not necessary do consider unnecessary or undue degradation.

approve any reduction of Riparian Reserve widths in her February 2001 Decision Documentation. In the Sale Unit 1 of the Little Big Sandy Timber Sale, she did approve a 0.6 acre reduction along one side of an intermittent stream (Stream Segment No. 11) near the boundary of that sale unit. (Decision at 10; see Revised EA at Appendix 2; Revised EA, Section O, at Revised Table 1 and Figure 1; Little Big Sandy Timber Sale Prospectus at Exhibit A.) That reduction has yet to be implemented. BLM argues that, in accordance with the Northwest Forest Plan, it has fully justified and documented this reduction. Its contention is borne out by the record. (Decision at 11; February 2001 Decision Documentation at 2; see Revised EA at 22; Revised EA, Section J at 1, 4-5; Revised EA, Section K; May 1997 Big Creek Watershed Analysis, at 141-63.) Umpqua has offered no contrary argument or supporting evidence.

Thus, we are not persuaded that Umpqua has demonstrated a violation of Northwest Forest Plan requirements, arising from the subject sales, with respect to either yarding in or reducing the interim widths of Riparian Reserves.

Umpqua asserts that BLM's failure to survey for red tree voles violates the Northwest Forest Plan. (NA/SOR at 32-33.) However, the record shows that BLM had completed surveys of the sales areas for red tree voles and other S&M species before the Field Manager's February 2001 Decision Documentation. (Decision at 1, 16; February 2001 Decision Documentation at 2; Revised EA at 33; Revised EA, Section B (Revised Issues Identified and Analyzed then Eliminated from Further Consideration), at 1-2; Revised EA, Section U (Survey and Manage/Protection Buffer Species Information), dated Apr. 9, 2001, at 1-2, 5, 7-9; BLM Answer at 16.)

Umpqua provides no evidence that the surveys failed to follow approved protocols or otherwise conformed to the requirements of the Northwest Forest Plan, and we are not persuaded that the Northwest Forest Plan required BLM to finish surveying for red tree voles outside the sale areas before approving the sales because of an interdependence of the species or for any other reason. See NA/SOR at 33 ("Red Tree vole[s] * * * depend on each other for the persistence of the species within the project [area]"); BLM Answer at 16 ("[S]urveys were * * * required [by the Northwest Forest Plan] * * * on areas where ground disturbing activities were to occur in suspected habitat" of S&M species).

Umpqua asserts that the Field Manager's decision to permit timber harvest in buffers set aside for red tree voles, mollusks, and other S&M species violates the Northwest Forest Plan. (NA/SOR at 31-32.) It contends that, for this reason, BLM was required, by 40 CFR 1508.27, to prepare an EIS, because this activity "'threatens a violation of Federal * * * requirements imposed for the protection of the environment,'" and thus constitutes a significant impact. (NA/SOR at 31 (quoting from 40 CFR 1508.27(b)(10)).) It concludes that BLM's failure to prepare an EIS violates section 102(2)(C) of NEPA.

Umpqua has identified no S&M buffers where timber will be harvested, but merely indicates that there is the possibility that buffers may have been identified when BLM undertook to survey for red tree voles, mollusks, and other S&M species during the period between the Revised EA in December 1999 and the Field Manager's February 2001 Decision Documentation. See NA/SOR at 31-32. The timber volume and acres that BLM implemented in the February 2001 Decision Documentation are the same as were analyzed in the EA before the surveys and before management recommendations regarding rare plants and wildlife within the timber sale units.

The BLM decision to go forward with the two sales does not authorize timber harvesting within any buffers set aside for red tree voles, mollusks, or other S&M species. Through its S&M process BLM established management buffers where harvesting would not occur in all of the sale units. This is evident from the changes in the size and shape of the original EA units and those offered for sale. See Decision at 1-2, 10, 16; February 2001 Decision Documentation at 2-3; Revised EA at 33; Revised EA, Section U (Survey and Manage/Protection Buffer Species Information), at 1-2, 5, 7-12, Implementation of Management Recommendations for S&M Wildlife, Implementation of Management Recommendations for Completed EA Units (Units 5, 6, 25, 32, 36DM, and 40); Prospectus (Jonesville Slugger Timber Sale) at Exhibits A and A-1; Prospectus (Little Big Sandy Timber Sale) at Exhibits A and A-1.

The designation of management buffers was completed by BLM on April 9, 2001, which was after the February 2001 Decision Documentation, but prior to BLM's April 2001 decision to go forward with the sales. The size and shape of the sale units were altered prior to BLM's April 2001 decision. It appears that those alterations were in response to BLM's management buffer designations, and the record indicates that there will be no timber cut in the buffer zones. See also BLM Answer at 16 ("At the time of the advertisement of these sales, all of the requirements for the survey and protection of [S&M] species required under the Northwest Forest Plan * * * had been completed"). Umpqua offers no evidence that BLM has approved harvesting in a buffer zone. See Sierra Club, Grand Canyon Chapter, 136 IBLA at 361;

We also find no error in the Field Manager's making the decision to approve specific timber sales contingent on the completion of BLM's S&M surveys and designation of buffers: "Prior to each Notice of Sale (which constitutes a decision document for that sale), required surveys for Survey and Manage/Protection Buffer species will be completed and appropriate management recommendations applied." (February 2001 Decision Documentation at 2, emphasis added.) By making the decision to approve a timber harvest contingent on the designation of buffers, BLM caused the sales areas to be shaped in accordance with those designations. Thus, BLM did not run afoul of the requirement of section 102(2)(C) of NEPA to prepare an EIS. It has not been shown that the subject sales (or even the Project) were likely to result in a significant impact, because they threatened a violation of the Northwest Forest Plan, and thus of a "Federal * * * requirement[] imposed for the protection of the environment." 40 CFR 1508.27.

Umpqua asserts that BLM's decision to go forward with the timber sales violates the ACS requirements of the Northwest Forest Plan, because BLM will, at best, "maintain" the Big Creek watershed in a degraded condition, and, at worst, contribute to further degradation of the watershed: "The Aquatic Conservation Strategy (ACS) objectives * * * require[] that degraded watersheds be restored and functioning watersheds be maintained." (NA/SOR at 18.) It contends that, having admitted that the watershed is "highly degraded," BLM errs by asserting that it is not required to restore the watershed, but may simply maintain its condition. Id. (citing Decision at 15).

BLM has admitted that the 16,661-acre Big Creek subwatershed, which contains 10 drainage areas (including Swamp Creek, Middle Big Creek, and Jones Creek), is, as a whole, degraded (but not highly degraded), such that it is not properly functioning or is functioning at risk with respect to all of the ACS objectives. (Decision at 15; BLM Answer at 5-6; see Big Creek Watershed Analysis at 2-4, 155, Appendix D.) Nonetheless, BLM specifically concluded that the timber sales in the Swamp Creek, Middle Big Creek, and Jones Creek drainages, are in conformance with, and will not prevent BLM from attaining the ACS objectives for the subwatershed. (Revised EA at 1; Revised EA, Section K (Revised ACS Analysis), at 1.) This conclusion is supported by evidence in the record. See Revised EA, Section K (Revised ACS Analysis), at 2-8; Biological Assessment ("Consultation Report for Effects Determinations on Listed and Proposed Fish Species and Proposed or Designated Critical Habitat"), dated Mar. 29, 2000 (BA), at 3-4, 7-13. BLM's Watershed Analysis, which determined that the subwatershed was generally in a degraded condition, specifically identified the two units of the Little Big Sandy timber sale as Priority 1 units for regeneration harvesting. See Big Creek Watershed Analysis at 164-66, Appendix G.

Umpqua argues that the timber harvesting authorized under the Project will further degrade the Big Creek subwatershed, violating the ACS strictures of the Northwest Forest Plan. However, the matter now before us is whether the Jonesville Slugger and Little Big Sandy timber sales will have that effect. Umpqua makes few assertions with respect to the specific timber sales, and, to the extent that it does, we find little or no evidence to support those assertions. See NA/SOR at 18-19. For example, Umpqua addresses yarding in Riparian Reserves, across streams, and downhill, harvesting on sensitive soils and within the Transient Snow Zone. There is no evidence that any of these activities will take place on the sale tracts. Decision at 3, 6, 11, 14; BLM Response at 8, 9; BLM Answer at 13; Letter to District Manager, Coos Bay District, Oregon, BLM, from Regional Administrator, Northwest Region, NMFS, dated June 21, 2000 (NMFS Letter), at 13-14.)

Contrary to Umpqua's assertions, BLM is not required by the Northwest Forest Plan to improve or restore the subwatershed as a condition precedent to approving the Jonesville Slugger and Little Big Sandy timber sales. See NA/SOR at 19-20. Umpqua recognizes that the issue is "what are the

objectives of the ACS." *Id.* at 19. At page 20 of the NA/SOR it states: "The spirit and intent of the ACS is clear in its documentation that it is aimed at restoring degraded habitats and maintaining the remaining good habitat conditions." In her June 2001 decision the Field Manager correctly noted that "[C]omplying with the Aquatic Conservation Strategy objectives means that an agency must manage the riparian-dependent resources to **maintain the existing condition or** implement actions to restore conditions." (Decision at 15 (quoting from Northwest Forest Plan, Attachment A at B-10), emphasis added.) The ACS is based on nine objectives designed to maintain (prevent further degradation of) ecosystem health at watershed and landscape scales to protect habitat for fish and other riparian-dependent species and to restore currently degraded habitats. (Attachment 1 (Biological Requirements and Status Under 1997 Environmental Baseline, NMFS, February 1997) to NMFS' Programmatic BO, at 39.) Each project must be consistent with ACS objectives, i.e., it must maintain the existing condition or move it within the range of natural variability. Pacific Coast Federation of Fishermen's Association v. National Marine Fisheries Service (PCFFA II), 71 F. Supp.2d 1063, 1067 (W.D. Wash.), aff'd in part, vacated in part, 253 F.3d 1137 (9th Cir. 2001). Notwithstanding the potential for minor, short-term adverse effects, actions that are fully consistent with the ACS objectives are expected to maintain or restore essential aquatic habitat functions, and should not impede recovery of Pacific salmonid habitat. (Biological Opinion and Conference Opinion, NMFS, dated Mar. 18, 1997 (Programmatic BO), at 39.) Thus, "[m]anagement actions that do not maintain the existing condition or lead to improved conditions **in the long term** would not 'meet' the intent of the Aquatic Conservation Strategy and thus, should not be implemented." (Decision at 15 (quoting from Northwest Forest Plan, Attachment A at B-10).)

The ACS generally seeks to maintain and restore the health of aquatic ecosystems. It does not require BLM, in the context of approving a particular timber sale (or any other management action), to provide for improving the affected watershed's general degraded condition. "[T]he proposed action is a timber sale, not a restoration project." (Decision at 15.) "[T]he Northwest Forest Plan does not require every action conducted in a watershed to result in improvement to the watershed." (BLM Answer at 7.) The ACS objectives describe the attributes and distribution of aquatic ecosystems believed necessary to provide conditions for maintaining currently strong populations of fish and other aquatic and riparian dependent organisms and to allow for recovery of currently degraded ecosystems. (PCFFA II, 71 F. Supp.2d at 1067.)

BLM may, and should, provide for improvement. However, BLM relies on "natural disturbance and recovery processes," and it "may take decades, possibly more than a century" to achieve the ACS objectives. (Attachment 1 to NMFS' Programmatic BO at 40.) Thus, a timber sale, which would not further degrade the watershed, is not precluded if it maintains the status quo. See BLM Answer at 1-2, 7.

Umpqua argues that, in her September 30, 1999, decision in PCFFA II, Judge Rothstein effectively determined that the sales are in violation of the ACS requirements of the Northwest Forest Plan. Umpqua admits that Judge Rothstein did not rule on the validity of these sales when addressing sales where BLM had obtained Biological Opinions pursuant to section 7 of the ESA. Nonetheless, Umpqua argues that its reasoning is applicable, noting that in a June 5, 2001, order in PCFFA v. NMFS, No. C00-1757R (W.D. Wash.) (June 5 PCFFA Order), Judge Rothstein ruled that "the same issues apply even to [Not Likely to Adversely Affect] sales without Biological Opinions, like Big Creek." (NA/SOR at 20.)

When examining the evidence in the casefile and submitted by Umpqua regarding the portion of the Big Creek subwatershed likely to be affected by the two timber sales (or even the Project), we find nothing approaching the "overwhelming evidence of the ongoing degradation to the habitat of [a threatened or] endangered aquatic species" Judge Rothstein found in connection with the sales at issue in her September 1999 PCFFA II decision. PCFFA II, 71 F. Supp.2d at 1073.

We accept the relevance of that decision to the two sales. In its June 5 PCFFA Order at 5 the court found "that to the extent that NMFS' concurrence in the NLAA designation was based on the scientific methods invalidated in PCFFA II by this court and the Ninth Circuit, this concurrence is illegitimate." (See also Letter to Board from Umpqua, dated Aug. 27, 2001, at 1-2 (citing Order, PCFFA v. NMFS, No. C00-1757R (W.D. Wash.), dated Aug. 8, 2001, at 13; BLM Response at 8.)

A determination regarding whether a particular timber sale or overall forest management project is consistent with the ACS must be determined at the sale or project level (not at the watershed level), and in the short-term (less than 10 years) as well as the long-term, especially considering the cumulative site-specific impacts of all sales or projects in the affected watershed. PCFFA II, 71 F. Supp.2d at 1069-70, 1073; see PCFFA v. NMFS, 253 F.3d at 1143-47; NA/SOR at 20-22. BLM is also required to fully and sufficiently incorporate recommendations from its watershed analysis in its ACS assessment. PCFFA II, 71 F. Supp.2d at 1071-73; see PCFFA v. NMFS, 253 F.3d at 1143, 1147; NA/SOR at 22.

We do not find that, when assessing ACS compliance, BLM ignored the impacts of the sales at the sale or project level or the short term impact by focusing on watershed level and long-term impacts, or that it failed to adequately incorporate watershed recommendations in its sales determinations, or otherwise failed to conform to Judge Rothstein's ruling in her September 1999 PCFFA II decision. (See BLM Answer at 8-9; BLM Response at 6, 8.) As BLM states in its Answer:

[BLM's] biological assessment for these sales shows [at page 7] that none of the factors in the matrix of pathways and indicators, used to make affects determinations, show any degrade factors for the aquatic environment at the

project level in the long-term or in the short term.
 It shows that in all cases these factors will be maintained. [Emphasis added.]

(BLM Answer at 1.) The reference to assessment using the "Matrix of Pathways and Indicators" (Matrix), reflects an analysis by BLM (concurred in by NMFS) constructed to reveal whether and to what extent anadromous salmonids and their habitat in the Big Creek subwatershed would be affected by the Project, as demonstrated by impacts upon various primary aspects of their environment (water quality, habitat access, habitat elements, channel condition and dynamics, flow/hydrology, and watershed conditions), and the constituent elements of these basic habitat characteristics (indicators). (See BA at 7, 9-13; NMFS Letter at 2, 17-18; Attachment 2 to NMFS' Programmatic BO at 8-11; Attachment 3 to NMFS's Programmatic BO at 4, 10-13; PCFFA II, 71 F. Supp.2d at 1067.)

The Matrix "reflects the information needed to implement the Aquatic Conservation Strategy." (Attachment 3 to NMFS's Programmatic BO at 2.) The completion of the "Checklist," using the Matrix demonstrates whether ACS objectives are being met. (See Attachment 2 to NMFS' Programmatic BO at 8; Attachment 3 to NMFS' Programmatic BO at 14, 27; BA at 7; Revised EA, Section K at 2-8; PCFFA II, 71 F. Supp.2d at 1067.) The Checklist incorporates an assessment first of the "Environmental Baseline," reflecting the current condition of the aquatic ecosystem, given the continuing effects of previous actions and resource commitments on Federal, State, and private lands in the Big Creek subwatershed. (BA at 7, 9-13; Attachment 2 to NMFS's Programmatic BO at 10-11.) It then incorporates an assessment of likely added impacts the specific sales (and the proposed Project) will have on that ecosystem, reflecting that all of the indicators will be maintained. (BA at 7, 9-13; Attachment 2 to NMFS' Programmatic BO at 11.) This demonstrates that BLM undertook an appropriate comprehensive analysis, and found that proceeding with the individual sales (and the Project) would result in maintaining the existing condition of the subwatershed.

We, therefore, find that BLM did not violate the ACS requirements of the Northwest Forest Plan when it approved the Jonesville Slugger and Little Big Sandy timber sales. In Re Red Top Salvage I Timber Sale, 142 IBLA at 113, 115. "[M]ere difference of opinion provides an inadequate basis for disturbing decisions of BLM personnel in the field." In Re North Murphy Timber Sale, 146 IBLA at 325-26.

Finally, Umpqua asserts that BLM violated section 7 of the ESA by failing to formally consult with NMFS, based on its erroneous determination that approved timber harvesting, road building, and related activity were not likely to adversely affect (NLAA) the threatened Oregon Coast ESU Coho Salmon. (NA/SOR at 13-18.) It asserts that BLM deliberately made an NLAA determination to avoid the effect of earlier Judge Rothstein rulings in PCFFA which overturned timber sales for lack of compliance with the ACS requirements of the Northwest Forest Plan. (NA/SOR at 15.)

Umpqua seeks to put BLM's NLAA determination in issue, stating "[o]ur appeal must cover the entire project's NLAA determination because there is no such thing as separate ESA determination for one small part of that project." (NA/SOR at 14.) We disagree with this assertion. In its March 6, 2000, BA, BLM concluded that each of the actions considered in the EA and approved in the February 2001 Decision Documentation for the Project, including each of the two sales was not likely to adversely affect the threatened Coho Salmon. (BA at 1-2, 7-13; NMFS Letter at 2, 11-18.) For reasons stated above, we focus solely on whether BLM properly determined that the Jonesville Slugger and Little Big Sandy timber sales are NLAA the threatened Coho Salmon. 11/

Umpqua argues that BLM's NLAA determination is incorrect because the approved activity has more than a negligible potential to result in 'take' within the meaning of section 3 of the ESA, as amended, 16 U.S.C. § 1532(19) (1994), and to have adverse effects on a threatened or endangered species. (NA/SOR at 13 (referring to Attachment 3 to NMFS' Programmatic BO at 7, 15).) It contends that this potential exists by reason of the nature of the approved activity, stating that "[r]egeneration harvests have always resulted in a LAA [Likely to Adversely Affect] before because of their 'potential' for adverse effects." (NA/SOR at 6; see id. at 15-18.)

Fish species listed as threatened or endangered species and their critical habitat are afforded protection under section 7 of the ESA. BLM may not take action likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat. 16 U.S.C. § 1536(a) (2) (1994); Natural Resources Defense Council v. Houston, 146 F.3d 1118, 1125, 1127 (1998). To assure that a taking is avoided, BLM is required, by section 7(a) (2) of the ESA, to consult with NMFS whenever it finds that the activity may affect a listed species and/or its critical habitat. 16 U.S.C. §§ 1532(15) and 1536(a) (2) (1994); 50 CFR 402.01 and 402.14(a) and (b) (1); Natural Resources Defense Council v. Houston, 146 F.3d at 1125-27. This consultation may be informal when BLM determines that the proposed activity is not likely to adversely affect a listed species and/or its critical habitat, and NMFS concurs with BLM's determination. 50 CFR 402.14(a) and (b) (1); Natural Resources Defense Council v. Houston, 146 F.3d at 1126; Sierra Club, Angeles Chapter, Santa Clarita Group, 156 IBLA 144, 168 (2002).

BLM concluded that the timber sales may, but would not be likely to, adversely affect the threatened Coho Salmon or its critical habitat.

11/ We reject Umpqua's assertions that the sales are NLAA "only because the entire [P]roject was called a[n] NLAA." (NA/SOR at 14; see id. at 9 ("The Project's analysis led to a[n] NLAA, which led the implemented sales to be a[n] NLAA".)) BLM determined not only that the Project was NLAA, it also found that each of the constituent parts, including the sales at issue here was NLAA.

(BA at 1, 8; BLM Answer at 1-4; see Attachment 3 to NMFS' Programmatic BO at 6.) BLM specifically considered whether there was more than a negligible probability that the sales would result in a "take" of Coho Salmon, or destruction or adverse modification of its critical habitat. It concluded that there was only a negligible probability. (BA at 8; Decision at 3; BLM Answer at 2-4.) It thus employed the standard advanced by Umpqua, which was taken from NMFS' March 1997 Programmatic Biological Opinion. BLM also consulted with NMFS informally, and NMFS concurred with BLM's assessment. (NMFS Letter at 2, 17-18.)

Umpqua makes no effort to demonstrate how BLM's decision to authorize the two sales threatens to jeopardize the continued existence of the Coho Salmon, to destroy or adversely modify its critical habitat, or even to result in a "take," by constituting an effort "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct," such species. 12/ 16 U.S.C. § 1532(19) (1994) (1994). Nor have they shown that BLM was required, by section 7(a) (2) of the ESA and 50 CFR 402.14(a), to formally consult with NMFS, because such action was likely to adversely affect the Coho Salmon, or its critical habitat, contrary to BLM's assessment.

There are no fish-bearing streams (including streams providing habitat for Oregon Coast ESU Coho Salmon) running through or adjacent to any of the units involved in the Jonesville Slugger or Little Big Sandy timber sale. (Decision at 3; Revised EA at 32; Revised EA, Section J at 5; Big Creek Watershed Analysis at 115; NMFS Letter at 15; BLM Answer at 3.)

BLM determined that timber harvesting and road building, given implementation of project design features and other mitigation measures, were unlikely to result, either in the short-term or in the long-term, in increased surface runoff or sedimentation, or have other consequences, which might negatively impact the quality or quantity of water in local streams, within or downstream of the Project area. (Revised EA at 4; Revised EA, Section B at 4-5; Revised EA, Section F; Revised EA, Section J at 1-5, 7-8; Revised EA, Section M at 1-2, 4-7; BA at 7, 9-13; Decision at 14.) NMFS concurred with BLM's analysis. (NMFS Letter at 17-18.) Thus, BLM and NMFS concluded that the aquatic ecosystem was not likely to suffer from the approved sales and associated activity.

12/ Umpqua relies on NMFS' March 1997 Programmatic Biological Opinion when asserting that, if a forest management project fails to comply with the Northwest Forest Plan's standards and guidelines "for the relevant land [use] allocations," including late-successional reserves, key watersheds, and riparian reserves, it "is an automatic '[l]ikely to jeopardize,'" or, "[a]t the least," an LAA. (NA/SOR at 17 (quoting from Attachment 2 to NMFS' Programmatic BO at 14).) However, it does not demonstrate that the timber sales will fail to comply with those standards and guidelines. See BA at 3; Northwest Forest Plan, Attachment A at C-1 to C-61.

Umpqua has failed to present evidence to the contrary. It asserts that surface runoff will result in adverse changes to downstream water quality and quantity, and have negative implications for threatened Coho Salmon. *See, e.g.*, NA/SOR at 15-16. However, it presents no evidence that the surface runoff will occur in quantities amounts and places likely to result in changes in water quality and quantity substantial enough to have an adverse impact on downstream fish and fish habitat. It asserts that the sales will permit a large-scale regeneration harvest in a degenerated watershed which provides water to downstream habitat for the Coho Salmon and it is likely that the harvest and related activities will adversely affect the Coho Salmon. (*See, e.g.*, NA/SOR at 16-17.) However, it tenders no evidence to support this contention. Nor has Umpqua met the burden of showing that a project design feature or other mitigation measure intended to prevent any adverse impact to Coho Salmon was not properly considered by BLM, or is likely to fail or otherwise not accomplish its purpose. Oregon Natural Resources Council, 116 IBLA at 362 n.7.

Umpqua argues that NMFS' concurrence in BLM's NLAA determination is directly contrary to Judge Rothstein's June 5, 2001, order in PCFFA v. NMFS, No. C00-1757R (W.D. Wash.). This decision invalidated NMFS' concurrence in an NLAA determination by the Bureau of Indian Affairs regarding the Chu-aw Clau-she timber sale. (NA/SOR at 13.) They assert that the judge's order was applicable to "all NLAA timber sales subject to the ACS." *Id.* at 14 (citing June 5 PCFFA Order at 6-7). Noting that the Chu-aw Clau-she sale is in the immediate vicinity of and within the same watershed as the two sales, Umpqua states that "[t]hese sales are identical in every way." (NA/SOR at 13.) It contends that the NLAA determination at issue in PCFFA contains the "exact same flaws" as the NLAA determination now before us. *Id.* at 14. Umpqua concludes that Judge Rothstein's order is equally applicable to the Jonesville Slugger and Little Big Sandy timber sales.

We find nothing in Judge Rothstein's June 5 PCFFA Order which explicitly or implicitly holds that NMFS' concurrence in BLM's NLAA determination regarding the Jonesville Slugger and Little Big Sandy timber sales is contrary to section 7 of the ESA. The effect of that order extended only to the sales which had been specifically challenged in PCFFA v. NMFS, No. C00-1757R (W.D. Wash.). *See* June 5 PCFFA Order at 7, where Judge Rothstein stated that "NMFS is enjoined from using the methods, struck down in PCFFA II, in further actions regarding the timber sales challenged in this case." (Emphasis added).

To the extent that Judge Rothstein's June 5 PCFFA Order may have implications for other sales, it precludes NMFS' reliance on "scientific methods invalidated in PCFFA II by this court and the Ninth Circuit." Reliance on those methods had been enjoined in that case. (June 5 PCFFA Order at 5; *see id.* at 7.) We have no jurisdiction here to adjudicate the validity of NMFS' concurrence in this case. We concern ourselves only with whether BLM's NLAA determination was supported by the facts, and whether BLM otherwise abided by its obligations under section 7 of the ESA. Nothing in Judge Rothstein's order speaks directly to that question. Nor is there any evidence here that BLM employed the scientific methodology

invalidated by the courts in PCFFA II. See BLM Answer at 2, which states that "BLM did not use the methods invalidated in the court decision." We find nothing which causes us to believe that BLM's NLAA determination with respect to the Jonesville Slugger or Little Big Sandy timber sale was in error, or that BLM otherwise failed to fulfil its responsibilities under section 7 of the ESA.

Finally, we note that the Coast ESU Coho Salmon is no longer a threatened species under the ESA. Subsequent to the filing of this appeal, NMFS' August 10, 1998, listing of the Oregon Coast ESU Coho Salmon has been overturned by a Federal district court as arbitrary and capricious, because, while it properly encompassed natural populations of Oregon Coast ESU Coho Salmon, it did not provide a rational basis for not including hatchery populations of such fish. Alsea Valley Alliance v. Evans, No. 99-6265-HO (D. Or. Sept. 10, 2001). We have not been informed whether this ruling has been appealed nor do we know whether NMFS has taken steps to broaden its listing, thus complying with the court's directive.

However, so long as the Federal district court's ruling remains in effect, its action renders BLM's original decision not to formally consult with NMFS proper under section 7 of the ESA. In addition the removal of this species from the protective requirements of that statute renders BLM's March 2000 Biological Assessment and NMFS's June 2000 letter of concurrence statutorily unnecessary.

We, therefore, find no violation of section 7 of the ESA in the case of BLM's approval of the subject timber sales. Natural Resources Defense Council v. Houston, 146 F.3d at 1125-27.

To the extent they are not addressed herein, all other allegations of error of fact or law asserted by Umpqua are rejected as contrary to the facts or law, or immaterial.

In summary, we find that the Field Manager properly determined, in her February 2001 Decision Documentation and FONSI, that there will be no significant impact from approving the proposed Jonesville Slugger and/or Little Big Sandy timber sales. BLM has, considering all relevant matters of environmental concern, taken a hard look at potential environmental impacts and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by adoption of the identified mitigation measures. Nez Perce Tribal Executive Committee, 120 IBLA at 37-38. Thus, the Field Manager properly found that no EIS was required.

Umpqua failed to carry the burden of demonstrating, with objective proof, that BLM failed to, or did not adequately, consider a substantial environmental problem of material significance to the proposed action, or otherwise failed to abide by section 102(2)(C) of NEPA. Guido Rahr, 143 IBLA 338, 344 (1998); Oregon Natural Resources Council, 131 IBLA 180, 186 (1994); Southern Utah Wilderness Alliance, 127 IBLA at 350, 100 I.D. at 380; Red Thunder, 117 IBLA at 175, 97 I.D. at 267; Sierra Club, 92 IBLA at 303. The fact that Umpqua has differing opinions about likely

environmental impacts or prefers that BLM take another course of action does not demonstrate that BLM violated the procedural requirements of NEPA. San Juan Citizens Alliance, 129 IBLA 1, 14 (1994).

Having failed to show that BLM did not appropriately comply with the environmental review requirements of section 102(2)(C) of NEPA or otherwise demonstrate error in BLM's decision making process, the Field Manager properly denied Umpqua's protest to the proposed Jonesville Slugger and Little Big Sandy timber sales in her June 2001 decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's motion to dismiss the appeal is granted with respect to Oregon Natural Resources Council Action and Friends of the Coquille River, Umpqua's petition to stay the effect of the Field Manager's June 2001 decision is denied, and that decision is affirmed.

R. W. Mullen
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge