



**United States Department of Agriculture**  
Forest Service

# **Aquatic Invasive Species Law Enforcement Order**

## **Final Decision Notice and Finding of No Significant Impact**

March 2016

USDA Forest Service  
Pacific Northwest Region  
1220 SW 3rd Avenue  
Portland, Oregon 97204



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## Contents

<b>Aquatic Invasive Species Law Enforcement Order .....</b>	<b>1</b>
Background .....	2
Decision .....	4
Public Involvement .....	4
Decision Rationale .....	5
Rationale for Selecting Alternative 1 – Proposed Action.....	5
Other Alternatives Considered.....	5
Finding of No Significant Impact.....	5
Findings Required by Other Laws and Regulations .....	8
Administrative Review .....	8
Implementation Date .....	8
Contact Person.....	8
Appendix A – Indefinite Order .....	10
Appendix B – Aquatic Invasive Species Law Enforcement Order Project EA Response to Comments....	12

## Background

This decision notice documents my decision for the indefinite Aquatic Invasive Species (AIS) Law Enforcement Order for the Pacific Northwest Region.

The Pacific Northwest Region of the USDA Forest Service has proposed to issue an indefinite, Region-wide (Figure 1) aquatic invasive species law enforcement order that will prohibit possession of aquatic invasive species to prevent the spread or introduction of aquatic invasive species on National Forest System lands. An environmental assessment (EA) has been prepared to document the environmental effects associated with implementing the order following receipt of comments on the proposed order. Examples of aquatic invasive animal and plant species include, but are not limited to, zebra mussels, New Zealand mudsnails, yellow flag iris, and nonnative milfoils. These species are commonly transferred between water bodies by boats, boat trailers and recreational gear. The order will also help maintain native species populations and provide recreation and aesthetic benefits for present and future forest users across Pacific Northwest National Forest System lands.

This proposal is a follow up to the March 3, 2015 decision that authorized the Pacific Northwest Region to immediately implement a one year law enforcement order consistent with the Code of Federal Regulations (CFR's) stated below.

This order will prohibit possession of aquatic invasive species which will enable Forest Service law enforcement officers to enforce two federal regulations (36 CFR 261.58(s) and 36 CFR 261.58(t)) associated with protecting National Forest System lands from aquatic invasive species. The enforcement of these regulations will increase the Agency's consistency with the invasive species statutes of the states of Oregon and Washington, as described in the indefinite order. The order (signed) is provided in Appendix A to this Decision Notice.

The purpose and need for the proposal is to protect National Forest system lands from aquatic invasive species (AIS) which include both aquatic plant and animal species. The order will enable law enforcement officers to enforce an existing aquatic invasive species law (36 CFR 261.58(s) and 36 CFR 261.58(t)), protecting National Forest System lands from aquatic invasive species.



Figure 1. Pacific Northwest Region National Forest System Lands

## Decision

I have decided to select Alternative 1, the Proposed Action, as described in the EA in order to best achieve the purpose and need. This decision is based on my review of the analysis presented in the Aquatic Invasive Species Law Enforcement Order Environmental Assessment and the comments received from the public during the combined 30-day scoping and notice and comment period.

Alternative 1 includes the following, which is outlined in more detail in the environmental assessment:

The Forest Service will issue an indefinite order, pursuant to 36 CFR 261.50(a), prohibiting the following acts upon and within lands and waters of the National Forest System lands of the Pacific Northwest Region.

**1. Possessing, storing or transporting any bird, fish, or other animal or parts thereof, as specified in the order. [36 CFR 261.58(s)]**

For the purpose of this order, it is prohibited to possess, store, or transport any aquatic invasive species within the boundaries of National Forest System lands in the Pacific Northwest region. Examples of aquatic invasive animal species include, but are not limited to, zebra mussels, quagga mussels, New Zealand mudsnails, rusty crayfish, ringed crayfish, red swamp crayfish, Northern crayfish, nutria, bullfrogs, snakeheads, Chinese mystery snail, brook trout, walleye, bass, perch, goldfish, pike, catfish, and carp. Those species designated as gamefish or crayfish in the States of Oregon or Washington may be transported by anglers within the National Forest System Boundaries of the Pacific Northwest Region if the animals are no longer living.

**2. Possessing, storing, or transporting any part of a tree or other plant as specified in the order. [36 CFR 261.58(t)]**

For the purpose of this order, it is prohibited to possess, store, or transport any aquatic or riparian invasive plant species within the boundaries of National Forest System lands in the Pacific Northwest Region. Examples of aquatic and riparian invasive plant species include, but are not limited to, yellow flag iris, hydrilla, nonnative milfoils, yellow floating heart, purple loosestrife, Japanese knotweed, giant knotweed, salt cedar, and kudzu.

## Public Involvement

The scoping and comment letter for the Aquatic Invasive Species Law Enforcement Order Project was mailed to tribal contacts throughout Oregon and Washington in August 2015. The proposal has been listed in the Schedule of Proposed Actions (SOPA) since August 2015; the SOPA is published quarterly on the web for the Region. The Draft Environmental Assessment was available for public review and comment from August 12, 2015 to September 11, 2015.



Comments were received from several groups and individuals: Kettle Range Conservation Group – The Lands Council; Sharon L Sorby; Doug Heiken of Oregon Wild; Susan Saul; Wallowa County Board of Commissioners; and Liz Johnson-Gebhardt of Priest Community Forest Connection. All correspondence and full text of letters received are available in the project file for the Aquatic Invasive Species Law Enforcement Order at the Regional Office.

The Kettle Range Conservation Group – The Lands Council, Sharon L Sorby, Susan Saul, and Wallowa County Board of Commissioners support the proposal.

Doug Heiken of Oregon Wild supports the proposal and wanted the Forest Service to apply the order to all invasive species, give thought to how the list of species is developed, and to provide exemptions for people who are removing invasive species for disposal or subsistence.

Liz Johnson-Gebhardt of Priest Community Forest Connection supports the proposal and expresses concern for funding and resources to be available for the project.

The responses to these comments are found in Appendix B to the EA and this decision. No issues were raised that warranted development of an additional action alternative.

## Decision Rationale

### Rationale for Selecting Alternative 1 – Proposed Action

Alternative 1, the Proposed Action, was selected in order to meet the purpose and need for the project while remaining consistent with the requirements of the National Forest Management Act (36 CFR 219.8 and 36 CFR 219.9) to maintain viable populations of native species across the landscape and to align the agency with current state statutes in Oregon and Washington. I have also taken into consideration public comments (see Appendix B – Aquatic Invasive Species Law Enforcement Order EA Response to Comments).

I have carefully reviewed and considered all the comments submitted and the potential impacts of this order. I believe that the selected alternative, Alternative 1, is reasonable and balanced, provides the most protection to aquatic systems, as disclosed in the EA (Chapter 3).

### Other Alternatives Considered

In addition to the selected Alternative 1, I considered the no action alternative. Under the No Action Alternative, Forest Service law enforcement personnel would not have authority to enforce [36 CFR 261.58(t) or 36 CFR 261.58(s)] prohibiting the possession, storage, and transportation of invasive flora and fauna within the boundaries of National Forest Service lands in the Pacific Northwest Region or be consistent with Oregon and Washington statewide regulations and statutes. I did not select this alternative because it would not meet the purpose and need for action, nor would it align the agency with Oregon and Washington statutes.

### Finding of No Significant Impact

After considering the environmental effects described in the EA, I have determined that these actions will not have a significant effect on the quality of the human environment considering the

context and intensity of impacts (40 CFR 1508.27). Thus, an environmental impact statement will not be prepared. I base my finding on the following.

**Context:** The selected alternative is limited in that it is an administrative actions resulting in an indefinite order [36 CFR 261.58(t) or 36 CFR 261.58(s)] prohibiting the possession, storage, and transportation of invasive flora and fauna within the boundaries of National Forest Service lands in the Pacific Northwest Region. There are no ground-disturbing activities associated with the implementation of Alternative 1. Likewise, there will be no cumulative effects as documented in the EA (Chapter 3, pp. 11-13).

**Intensity:** Ten elements of impact intensity identified in 40 CFR 1508.27(b) have been considered in assessing the potential significance of effects. They are as follows:

1. Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

The proposed order is not ground disturbing and is an administrative action only. Enforcement of the order is expected to prevent or curtail the spread of aquatic invasive species and will have a neutral or overall beneficial effect to natural resources across the Pacific Northwest Region.

Hydrology – Implementation of Alternative 1 will be a beneficial effect on the hydrologic function of watersheds in the Region. (EA, Chapter 3, pp. 8-9)

Fish and Aquatic Habitat – Implementation of Alternative 1 will be a beneficial effect to aquatic species in the Region. (EA, Chapter 3, pp. 9-10)

Recreation – Implementation of Alternative 1 will be a beneficial effect to recreational activities in the Region. (EA, Chapter 3, pp. 10-11)

2. The degree to which the proposed action affects public health or safety.

The proposed order is not ground disturbing and is an administrative action only. Enforcement of the order is expected to protect public health and safety by preventing or curtailing the spread of aquatic invasive species. (EA, Chapter 3, pp. 11-12)

3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

The proposed order is not ground disturbing and is an administrative action only. Enforcement of the order is expected to protect unique characteristics of wetlands and wild and scenic rivers, Wilderness, potential wilderness or Inventoried Roadless Areas by preventing or curtailing the spread of aquatic invasive species. (EA, Chapter 3, p. 12)

4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.

The proposed order is not ground disturbing and is an administrative action only. Enforcement of the order is not scientifically controversial and based on the public input received on the short-term closure order, is not controversial to the general public. There is no dispute about the size, nature of effects of the order. (EA, Chapter 3, pp. 6-13)

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

The proposed order is not ground disturbing and is an administrative action only. Enforcement of the order will not involve any uncertain, unique or unknown risks. (EA, Chapter 3, pp. 11-13)

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

The proposed order is not ground disturbing and is an administrative action only. Enforcement of the order will not establish a precedent for future actions, as any future decisions or actions will need to comply with the analysis requirements of the National Environmental Policy Act. (EA, Chapter 3, pp. 11-13)

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

The proposed order is not ground disturbing and is an administrative action only. Enforcement of the order will have no direct effects, but will indirectly result in a decrease in the spread of aquatic invasive species. There are no other administrative orders that overlap temporally or spatially with this order to contribute to a cumulative effect of administrative actions that prohibit the spread of aquatic invasive species. (EA, Chapter 3, pp. 11-13)

8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

The proposed order is not ground disturbing and is an administrative action only. Enforcement of the short term order was determined to not adversely affect any scientific, cultural or historic resource or any listed or eligible property on the National Register of Historic Places; enforcement of this order is expected to have the same determination. (EA, Chapter 3, p. 12)

9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

The proposed order is not ground disturbing and is an administrative action only. Enforcement of the order is expected to beneficially affect listed species and their critical habitat by preventing or curtailing the spread of aquatic invasive species. (EA, Chapter 3, pp. 9-11)

10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

The proposed order is not ground disturbing and is an administrative action only. Enforcement of the order will allow the agency to comply with State statutes and rules that are already in place for protection of the environment. (EA, Chapter 3, pp. 12-13)

## Findings Required by Other Laws and Regulations

This decision is consistent with all applicable acts and regulations such as the *National Forest Management Act* (NFMA) (36 CFR part 219), *National Environmental Policy Act* (NEPA), the *Council on Environmental Quality* (CEQ) regulations (40 CFR parts 1500-1508), *United States Department of Agriculture* (USDA) *NEPA Policies and Procedures* (7 CFR part 1b), *Forest Service NEPA Procedures* (36 CFR part 220), the *Clean Water Act* (CWA), the *Endangered Species Act* (ESA) and the *National Historic Preservation Act* (NHPA). The Proposed Action analyzed in this EA is consistent with all applicable laws, regulations, and policies. (EA, Chapter 1, pp. 3-4)

## Administrative Review

The Aquatic Invasive Species Law Enforcement Order was subject to the pre-decisional administrative review (objection) pursuant to 36 CFR Part 218, Subparts A and B. The 45-day objection filing period legal notice was published on January 20, 2016 in the Regional Office's newspaper of record, *The Oregonian*, and the objection filing period concluded on March 7, 2016. No objections were received.

## Implementation Date

Because no objections were filed within the 45-day time period, implementation of the proposed order may occur on, but not before, the 5th business day (March 14, 2016) following the close of the objection filing period.

## Contact Person

For further information on this decision, contact James Capurso, Regional Fisheries Biologist, at 1220 SW 3<sup>rd</sup> Avenue, Portland, OR 97204. Phone: 503-808-2847 or [jcapurso@fs.fed.us](mailto:jcapurso@fs.fed.us).

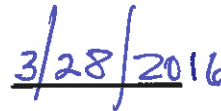
Copies of the Environmental Assessment and this final Decision Notice can be found on the Pacific Northwest Region's website at:

[http://data.ecosystem-management.org/nepaweb/nepa\\_project\\_exp.php?project=47350](http://data.ecosystem-management.org/nepaweb/nepa_project_exp.php?project=47350)

Approved by:



JAMES M. PEÑA  
Regional Forester  
USDA Forest Service, Region 6



Date Signed

# Appendix A – Indefinite Order

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE  
PACIFIC NORTHWEST REGION  
PORTLAND, OREGON

ORDER NO. 06-00-00-16-0001

REGIONAL ORDER  
OCCUPANCY AND USE  
Aquatic Invasive Species

Pursuant to 36 CFR §261.50 (a), the following acts are prohibited upon or within lands and waters of the National Forest System to include National Forests, National Scenic Areas, National Monuments and National Grasslands administered by the Pacific Northwest Region (Region 6) within the states of Oregon, Washington, California and Idaho as described below. This Order shall become effective for a period of three (5) years beginning on the date signed unless rescinded. At that time, the Order will be reviewed for potential changes. If no changes are required, the Order will continue for an additional (5) years until the next review.

National Forest System lands administered by the Pacific Northwest Region:

Colville National Forest	Umatilla National Forest
Deschutes National Forest	Umpqua National Forest
Fremont-Winema National Forest	Wallow-Whitman National Forest
Gifford Pinchot National Forest	Willamette National Forest
Malheur National Forest	Crooked River National Grassland
Mt Baker-Snoqualmie National Forest	Hells Canyon National Recreation Area
Mt Hood National Forest	Oregon Dunes National Recreation Area
Ochoco National Forest	Cascade Head Scenic Research Area
Okanogan-Wenatchee National Forest	Columbia River Gorge National Scenic Area
Olympic National Forest	Mount St Helens National Volcanic Monument
Rogue River-Siskiyou National Forest	Newberry National Volcanic Monument
Siuslaw National Forest	

PROHIBITION:

- 1. Possessing, storing or transporting any bird, fish or other animal or parts thereof, as specified in the order. [36 CFR §261.58 (s)]**

The intent of this order prohibits possessing, storing, or transporting any aquatic invasive animal species within the boundaries of National Forest System lands in the Pacific Northwest Region. Examples of aquatic invasive animal species include, but are not limited to, zebra mussels, quagga mussels, New Zealand mudsnails, rusty crayfish, ringed crayfish, red swamp crayfish, Northern crayfish, nutria, bullfrogs, snakeheads, Chinese mystery snail, brook trout, walleye, bass, perch, goldfish, pike, catfish, and carp. Those species designated as gamefish or crayfish in the States of Oregon or Washington may be transported by anglers within National Forest System Boundaries of the Pacific Northwest Region if the animals are no longer living.

**2. Possessing, storing or transporting any part of a tree or other plant as specified in the order.**  
[36 CFR §261.58 (t)]

The intent of this order prohibits possessing, storing, or transporting any aquatic or riparian invasive plant species within the boundaries of National Forest System lands in the Pacific Northwest Region. Examples of aquatic and riparian invasive plant species include, but are not limited to, yellow flag iris, hydrilla, nonnative milfoils, yellow floating heart, purple loosestrife, Japanese knotweed, giant knotweed, salt cedar, and kudzu.

Oregon and Washington State Laws referencing the transportation of aquatic invasive species can be found under the following State statutes:

Oregon: ORS 496.012, 496.138, 496.620, 496.645, 496.650, 498.002, 498.052, and 498.222; HB 2220 (2009 OL Ch. 764) and HB 2583 (2009 OL Ch. 303); Oregon Administrative Rules Division 56 Prohibited species and Division 44 native species

Washington: RCW 77.15.290; RCW 77.15.809; RCW 77.15.811; WAC 220-20-039(1); WAC 220-56-122(6); and WAC 232-12-016(2) (d) and (e).


**EXEMPTIONS:**

Pursuant to 36 CFR §261.50 (e), the following persons are exempt from this order:

1. Persons with a permit specifically authorizing the otherwise prohibited act or omission.
2. Any Federal, State, or local officer, or member of any organized rescue or firefighting force in the performance of an official duty.

These prohibitions are in addition to general prohibitions pursuant to 36 CFR Part 261, Subpart A. This Regional Order supersedes Order No. 06-00-00-15-0001, dated March 3, 2015. This order does not rescind or replace any other Forest Order or special restriction pertaining to the described lands.

Executed in Portland, Oregon, this 28<sup>th</sup> day of March, 2016.



JAMES M. PEÑA  
Regional Forester  
Pacific Northwest Region

Violations of these prohibitions are punishable as a Class B Misdemeanor, by a fine of not more than \$5,000 for an individual or \$10,000 for an organization, or imprisonment for not more than 6 months, or both (16 USC§551; 18 USC§3559 and 18 USC§3571).

## Appendix B – Aquatic Invasive Species Law Enforcement Order Project EA Response to Comments

The pre-decisional Environmental Assessment/Scoping letter was available for public review and comment from August 12, 2015 to September 11, 2015. Several written comments were received during the comment period from the following groups and individuals: Kettle Range Conservation Group – The Lands Council; Sharon L Sorby; Doug Heiken of Oregon Wild; Susan Saul, Wallowa County Board of Commissioners; and Liz Johnson-Gebhardt of Priest Community Forest Connection.

Public comments submitted on the Aquatic Invasive Species Law Enforcement Order Project Draft EA were documented and analyzed using a process called content analysis. This is a systematic method of compiling and categorizing all of the public viewpoints and concerns submitted during the official comment period for the EA. Content analysis helps the Forest Service identify issues and concerns with the Environmental Assessment and helps the decision maker arrive at an informed decision.

The comment letters listed here are directly addressed in the following response to comments. All comments were read and addressed in the response to comments.

The letters from the Kettle Range Conservation Group – The Lands Council, Sharon L Sorby, Susan Saul, and Wallowa County Board of Commissioners were letters of support for the proposed action alternative and contained no comments needing to be addressed. The agency thanks these groups and individuals for their support.

### Comments from Doug Heiken of Oregon Wild

**Comment #1:** Oregon Wild supports development of the invasive species enforcement order.

**Response #1:** Thank you for your support.

**Comment #2:** We urge the FS to apply this order to all invasives, not just aquatic ones.

**Response #2:** We recognize the need for an effective strategy against all invasive species. The most effective preventive measure is to stop species from being introduced and established. Preventive measures typically offer the most cost-effective means to minimize or eliminate environmental and economic impacts. Prevention relies on a diverse set of tools and methods, including education. By utilizing and training our law enforcement officers that are already in the field making contacts with public land users, we hope to educate forest users to raise the awareness of the invasive species problem and reduce the chance of unintentional introduction of aquatic invasive species. Our current focus is to target areas where we can do the most good and to be consistent with other federal and state agencies. The 2005 Final Environmental Impact Statement for the Pacific Northwest Region Invasive Plant Program amended Forest Plans in Region 6 to



address terrestrial invasive species and contains numerous prevention standards that are designed to reduce the spread of invasive plant species.

**Comment #3:** We urge the FS to give careful thought to how the list of species is maintained, updated, and disseminated through public education.

**Response #3:** The Pacific Northwest Region is utilizing this order to provide greater coordination with state enforcement of aquatic invasive species. Both states of Oregon and Washington maintain rigorous invasive species programs to educate and inform the public to prevent further spread of undesired species. In 2012, the USDA Forest Service (USFS) Pacific Northwest Region Aquatic Invasive Species (AIS) Management Plan was prepared, generating a list of aquatic invasive species that are the focus of regional surveys and management response. The list of focal AIS species (Table 1 of the EA) was developed in coordination with Portland State University, Oregon State University, Oregon Department of Fish and Wildlife, and Washington Department of Fish and Wildlife.

Occurrence of AIS in the Pacific Northwest is reported in a national database managed by the United States Geological Survey (USGS). The Nonindigenous Aquatic Species (NAS) information resource (link: <http://nas.er.usgs.gov/default.aspx>) provides information regarding known infestations of AIS, including maps and literature references and is available to the general public.

**Comment #4:** The FS should provide exemptions for people who are carrying invasives that are being removed from the forest for proper disposal.

**Response #4:** We encourage public users to report any sightings of aquatic invasive species on National Forest System lands to the proper authorities rather than attempting to dispose of a possible invasive species. Transportation and accidental introduction has led to many invasions; throughout the world, introduction of non-indigenous species has led to the destruction of native plants and animals and, in some cases, resulted in economic disasters for human enterprises. The most effective strategy against invasive species is to prevent them from ever being introduced and established. Transportation of these invasive species is regulated by the states. Exemptions exist for State and Federal agents performing their duties, including invasive species removal.

**Comment #5:** What about people who have caught invasives (such as crayfish) with the intent to kill and eat them?

**Response #5:** As stated in the proposed order, possessing, storing or transporting any bird, fish, or other animal or parts thereof, is prohibited [36 CFR 261.58(s)] except the transportation of gamefish or crayfish by anglers. Transportation of these invasive species is regulated by the states.

**Comments from Liz Johnson-Gebhardt of Priest Community Forest Connection**

**Comment #6:** We are greatly supportive of protecting all lands from invasive species, both aquatic and animal species. PCFC believes in doing whatever is possible to protect native species and limit if not eradicate invasive species.

**Response #6:** Thank you for your support.

**Comment #7:** Lack of resources to provide this Law Enforcement order and unlikely to be able to provide additional funding to enforce this program.

**Response #7:** We recognize the limited resources and funding available for enforcing this project. A key to addressing the problems caused by aquatic invasive species (AIS) is increasing public awareness of AIS, their impacts, and what individuals can do to prevent their introduction and spread. By working with and training our dedicated law enforcement in the field, we can continue to coordinate efforts across other federal and state agencies and educate public land users.