

D. Statutory Debarments

The procurement and nonprocurement debarment and suspension programs are based in regulation and/or executive order. There are also many statutorily-based debarment schemes, some of which also involve procurement and nonprocurement programs. In many of these statutory programs, Congress has restricted agencies' discretion whether to debar, or to determine the length of a debarment.¹⁵ Congress has increasingly opted to require agencies to debar or suspend in particular situations. Debarment and suspension are not intended to be punitive remedies, but rather are premised on the need to protect the integrity of government programs. The Conference believes that Congress should ordinarily allow agencies to retain the discretion to determine (1) whether debarments or suspensions are appropriate in individual cases, and (2) the appropriate length of such debarments. Moreover, Congress should review existing statutory schemes that mandate debarment and/or particular terms of debarment, and determine whether they should be continued. The primary basis for recommending that agency discretion not be limited with respect to most debarment and suspension determinations is the need to retain flexibility to meet the needs of the government and the public. The Conference believes that agency officials generally would be in a better position than Congress to determine appropriate remedial sanctions in individual cases that serve both to protect the fisc and meet program needs.¹⁶

The co-existence of the regulatory debarment programs that are the focus of this recommendation with a broad variety of statutory debarment programs creates a number of issues that relate to the interactions between them. The Conference may in the future study these issues, which include conflicts that arise from inconsistent procedural requirements and questions about whether all statutory programs are intended to have government-wide effect.

Recommendation

I. Entities coordinating the Federal Acquisition Regulation (FAR) and the Common Rule for nonprocurement debarment, and individual agencies in their procurement and nonprocurement debarment and suspension regulations, should promptly ensure that the applicable regulations provide that suspensions or debarments from either federal procurement activities or federal nonprocurement activities have the effect of suspension or debarment from both, subject to waiver and exception procedures.¹⁷

II. Entities coordinating the FAR and the Common Rule, and individual agencies in their regulations, should ensure that:

A. cases involving disputed issues of material fact are referred to administrative law judges, military judges, administrative judges of boards of contract appeals, or other hearing officers who are guaranteed similar levels of independence¹⁸ for hearing and for preparation of (1) findings of fact certified to the debarring official; (2) a recommended decision to the debarring official; or (3) an initial decision, subject to any appropriate appeal within the agency.

B. debarring officials in each agency should:

1. Be senior agency officials;
2. Be guaranteed sufficient independence to provide due process; and
3. In cases where the agency action is disputed, ensure that any information on which a decision to debar or suspend is based appears in the record of the decision.

III. Entities coordinating the FAR and the Common Rule, and individual agencies in their regulations, should provide that each regulatory scheme for suspension and debarment includes:

A. A list of mitigating and aggravating factors that an agency should consider in determining (1) whether to debar or suspend and (2) the term for any debarment;

B. A process for determining a single agency to act as the lead agency on behalf of the government in pursuing and handling a case against a person or entity that has transactions with multiple agencies;

C. (With respect to procurement debarment only) a minimum evidentiary threshold of at least "adequate evidence of a cause to debar" to issue a notice of proposed debarment;

D. A requirement that all respondents be given notice of the potential government-wide impact of a suspension or debarment, as well as the applicability of any such action to both procurement and nonprocurement programs; and

E. Encouragement for the use of "show cause" letters in appropriate cases.

IV. All federal agencies in the executive branch (broadly construed to include "independent" agencies) should implement the "Common rule" and FAR rules on suspension and debarment.

V. Congress should ordinarily refrain from limiting agencies—discretion by mandating suspensions, debarments, or fixed periods of suspension or debarment. Congress should also review existing laws that mandate suspensions, debarments, and fixed periods, to determine whether to amend the provisions to permit agency discretion to make such determinations.

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DEPARTMENT OF AGRICULTURE

Forest Service

Inland Native Fish Strategy

ACTION: Proposal to Prepare Interim Direction for Native Inland Fish Habitat Management.

SUMMARY: The notice is hereby given that the Forest Service, in cooperation with the Bureau of Land Management and U.S. Fish and Wildlife Service, is gathering information in order to prepare an Environmental Assessment (EA) for a proposal to protect habitat and populations of native inland fish. The Forest Service is proposing to amend Regional Guides and Forest Plans to include interim direction in the form of riparian management objectives, standards and guidelines, and monitoring requirements. The interim direction will apply to the geographic area covered by the Eastside Ecosystem Management Strategy Environmental Impact Statement (EIS) and Upper Columbia River Basin EIS, except for anadromous fish habitat (which is now being managed under the interim PACFISH strategy, approved February 24, 1995).

The purpose and need for the proposed action is to preserve management options for inland aquatic resources by reducing the risk of loss of populations and reducing potential negative impacts to aquatic habitat of resident fishes until the signing of Records of Decision for both EISs. As a companion to the protection provided for anadromous fish by PACFISH, this Environmental Assessment is intended to provide the basis for establishing appropriate interim direction to protect habitat and populations of resident native fishes outside of anadromous fish habitat, including bull trout which has recently been determined to be warranted by the U.S. Fish and Wildlife Service (**Federal Register** Vol. 59, No. 111, June 10, 1994, pp. 30254-30255). Specifically this EA will address National Forest System lands on the Bitterroot, Boise, Caribou, Challis, Clearwater, Colville, Deerlodge, Deschutes, Flathead, Fremont, Helena, Humboldt, Kootenai, Lolo, Malheur, Ochoco, Panhandle, Payette, Salmon, Sawtooth, Wallowa-Whitman, and Winema National Forests in the Northern, Intermountain, and Pacific Northwest Regions.

The Forest Service also serves notice that the agency is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparing the Environmental Assessment.

Written comments should be sent to the agency within 30 days from the date of publication in the **Federal Register**.

ADDRESSES: Send written comments to USDA Forest Service, Idaho Panhandle

¹⁵ For example, DHHS is required to —exclude— from participation in the Medicare and Medicaid programs for 5 years any health care provider who is convicted of a crime related to the provision of services under those programs, or of patient abuse. 42 U.S.C. § 1320a-7(a).

¹⁶ This recommendation should not be read to discourage Congress from providing guidelines for agencies to consider in exercising their discretion.

¹⁷ Waiver and exception procedures are currently found in the FAR at 48 CFR 9.406-1(c), 9.407-1(d), and in the Common Rule at X.215.

¹⁸ See 5 U.S.C. § 554(d)(2).

National Forests, 3815 Schreiber Way, Coeur d'Alene, Idaho, 83814.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental assessment should be directed to David Wright, Team Leader, Idaho Panhandle National Forests, 3815 Schreiber Way, Coeur d'Alene, Idaho, 83814. Phone: (208) 765-7307.

SUPPLEMENTARY INFORMATION: The Forest Service, in accordance with 16 USC 1604 and 36 CFR 219 et seq. develops land and resource management plans to provide for multiple use and sustained yield of products and services including outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness.

PACFISH is the Anadromous Fish Habitat and Watershed Conservation Strategy being implemented by the Forest Service and Bureau of Land Management. This is an interim strategy to conserve Pacific Salmon, steelhead and sea-run cutthroat trout throughout their range in Oregon, Washington, Idaho and portions of California. The PACFISH decision notice was signed by Forest Service and Bureau of Land Management on February 24, 1995.

There are two ecosystem-based environmental impact statements being prepared for National Forest System and BLM-administered land in the Interior Columbia River Basin. The Eastside Ecosystem Management Strategy EIS applies to the area of Washington and Oregon east of the crest of the Cascade mountain range. The Upper Columbia River Basin EIS will apply to Idaho and portions of Utah, Wyoming, Nevada, and Montana. The two documents will contain long-term strategies designed to replace the interim protection afforded by PACFISH and this Inland Native Fish Strategy.

Concurrently, the Forest Service in the Pacific Northwest is completing an EA that proposes to amend the interim Forest Plan Direction issued on May 20, 1994 by Regional Forester John Lowe. This EA proposes adjustments to the Historic Range of Variability and portions of the wildlife screen. Any changes to the riparian screen portion of the current direction will be considered in the Inland Native Fish Strategy.

At its discretion, the Forest Service may amend forest plans based on the results of monitoring and evaluation (36 CFR 219.10(f), 219.12(k)). Review of research reports and published professional papers (Rieman and McIntyre 1993; Sedell et al. 1990; Grumbine 1990; Williams and Neves 1992; Oregon Trout 1994) indicates that additional long-term programmatic

protection may be warranted for native resident fish and their habitat. That long-term direction is being developed through the Columbia River Basin EIS process. This interim protection is being proposed to preserve options for long-term management that might be adopted as a result of those processes.

A range of alternatives will be considered. One of these will be the "no-action" alternative, in which current management of the area would continue without interim direction protection. Other alternatives will examine the effects of varying approaches to interim protection.

During the scoping process, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. Additional information will be utilized from the scoping activities that occurred for the PACFISH, Upper Columbia River Basin EIS and Eastside Ecosystem Management Strategy EIS. During scoping activities for these projects, issues and concerns were identified that relate to inland fisheries and may have bearing on this environmental analysis.

The responsible officials for National Forest System lands will be the Regional Foresters for the:

- Intermountain Region, Federal Building, 324 25th Street, Ogden, Utah 84401;
- Northern Region, P.O. Box 7669, Missoula, Montana 59807; and
- Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208.

The decision and reasons for the decision will be documented in a Decision Notice. The Environmental Assessment and Decision Notice are expected to be available in June, 1995.

Dated: March 8, 1995.

David J. Wright,

Inland Native Fish Team Leader, Idaho Panhandle National Forests.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-122-816]

Certain Softwood Lumber from Canada; Determination to Terminate and Not To Initiate Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of determination to terminate and not to initiate countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) has decided to terminate the first administrative review of the countervailing duty order on certain softwood lumber from Canada initiated on August 24, 1993, and not to initiate the second administrative review.

EFFECTIVE DATE: March 14, 1995.

FOR FURTHER INFORMATION CONTACT: Martina Tkadlec or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION: On July 30, 1993, the Coalition for Fair Lumber Imports (the Coalition), the Government of Canada, and the Government of Quebec requested an administrative review of the countervailing duty order on certain softwood lumber from Canada for the period March 12, 1992 through March 31, 1993. In addition, one hundred and ninety companies requested individual company reviews. On August 24, 1993, the Department published a notice initiating the administrative reviews for that period (58 FR 44653).

On July 28, 1994, the Coalition requested an administrative review of the countervailing duty order on softwood lumber from Canada for the period April 1, 1993 through March 16, 1994. On August 1, 1994, the Government of Canada requested an administrative review for the same period. In addition, one hundred and five companies requested individual company reviews.

On August 16, 1994, the Department revoked the countervailing duty order on softwood lumber from Canada pursuant to a decision of the Binational Panel convened under the United States-Canada Free Trade Agreement (59 FR 42029), and instructed the U.S. Customs Service to (1) stop collecting cash deposits on imports of softwood lumber from Canada, and (2) refund, with interest, all cash deposits made on or after March 17, 1994, the effective date of the Binational Panel's decision.

On December 15, 1994, the United States and Canada agreed to enter into consultations to try to resolve the trade dispute regarding softwood lumber from Canada. The Department also decided, under the authority of the Tariff Act of 1930, as amended, to compromise its