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**Scoping Comments on the Elliott State Forest HCP  
Draft Environmental Impact Statement**

Submitted by the following organizations (see contact information on last page):

- Umpqua Watersheds, Inc.
- American Lands Alliance
- Coast Range Association
- Cascadia Wildlands Project
- Center for Biological Diversity

**Table of Contents**

1. Additional ‘take’ of NSO should not be allowed..... 2

2. Conservation Areas (Reserves)..... 3

3. Structure Based Management ..... 6

4. Aquatic Habitats..... 11

5. New information must be considered..... 13

Includes: Status Review for MM and NSO, New Carissa Oil Spill, NSO and MM research on the Elliott, Critical Habitat, Barred owls, HCP 5- Year Review, Climate Change, Swiss Needle Cast, and changes in the Northwest Forest Plan

6. Adaptive Management..... 18

7. Rotation Length..... 23

8. Herbicides and fertilizers..... 24

9. Other Species Considered..... 26

10. Also Consider..... 27

Includes: HRV, diseases, thinning, recreation, special forest products, retention trees, monitoring, ESF steering committee, HCP mitigation, HCP/FMP timelines

11. Roads ..... 28

12. Old Growth and Second Growth..... 29

13. NSO 2003 survey found less owls than ODF claims ..... 30

14. Other violations of the current HCP and FMP..... 31

15. Modification of the current HCP and ITP ..... 34

16. Elliott forest must contribute to recovery of endangered species ..... 35

Conclusion ..... 37

Please consider these comments on the draft Elliott State Forest Habitat Conservation Plan. Our concerns focus on the proposal to increase Elliott State Forest logging at the very time new information is pouring in on the dire situation of the Northern Spotted Owl and the Marbled Murrelet. The Elliott is a rare, murrelet-rich forest on the central Oregon coast as well as important older forest habitat for the Northern Spotted Owl. The Oregon Department of Forestry's stated purpose in requesting a new HCP is to increase logging and revenue<sup>1</sup>, as well as an 'adaptive-management' response to the problems documented in the current HCP's 5-year review<sup>2</sup>. We hope the U.S. Department of Fish and Wildlife (USFWS) will be able to make a sound connection in these two needs, and maintain a wildlife-friendly perspective for a HCP that truly protects endangered species.

The Elliott State Forest contains Common School Fund lands salvaged from millions of acres lost to private timber companies at the turn of the century, often through fraudulent land deals.<sup>3</sup> The gift to school children of these remaining Common School Fund lands should be a legacy that includes healthy forests, clean water, and abundant wildlife based on a truly sustainable forestry.

Please consider the following comments in the Draft Environmental Impact Statement (DEIS) for the Elliott Habitat Conservation Plan:

### **1. Additional 'take' of Northern Spotted Owls should not be allowed.**

The new HCP should not consider additional incidental take above the current, 1995 HCP, which allowed reducing the owl population from 69 owls on (or partially on) the Elliott, down to only 26 owls.

Currently, the Elliott State Forest has exceeded their Incidental Take Permit (ITP) of 43 owls. The 2003 count was only 11 pairs remaining on the Elliott, below 26 owls that are supposed to be supported on the Elliott. Between 1993 and 1998 the total number of NSO territories decreased by 48%, the number of pair sites decreased by 54%<sup>4</sup> and density of owls declined by 57%.<sup>5</sup> Research warns that on the Elliott "the declining adult survival rates are of concern, and these rates must stabilize over time for the population to be stationary... the declining trend in density and adult survival are cause for concern..."<sup>6</sup> This alarming situation must be addressed in the new FMP/HCP. No more NSO habitat should be logged and some of the "taken" habitat/populations must be restored.

The ODF should not discard the 1995 HCP baseline and create an arbitrary new baseline. The state of Oregon promised that habitat for 26 Northern Spotted Owls will be protected through 2055. Breaking that promise violates the law and public trust in the Elliott's HCP

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<sup>1</sup> Stated by Jim Young at the public scoping meeting in Roseburg May 2005.

<sup>2</sup> Email from Jim Young on 4/7/05.

<sup>3</sup> DSL web site: <http://www.oregonstatelands.us/adminoverview.htm>. Also, see *Looters of the Public Domain. Use and Abuse of America's Natural Resources*. S.A.D. Purter, Chapter 20, page 315.

<sup>4</sup> NSO Research on Oregon Department of Forestry Lands. July 18, 2000. Appendix A. page 25.

<sup>5</sup> NSO Research on Oregon Department of Forestry Lands. July 18, 2000. Appendix A. page 1.

<sup>6</sup> NSO Research on Oregon Department of Forestry Lands. July 18, 2000. Appendix A. page 26.

process. Habitat Conservation Plans are supposed to protect endangered or threatened species and their required habitat. Yet on the Elliott, only one-third of the spotted owls were protected. The HCP should not consider taking more since the owls are even more threatened now than 1995. The USFWS must keep its agreement to protect habitat for the last 26 owls.

ODF has claimed that the current HCP allows them to maintain very low number of owls because it does not require that 26 owls be maintained throughout the 60 years. ODF claims there is no violation unless 26 owls do not appear at year 60. We disagree. The current FMP says over the SHORT term, 19 to 23 pairs will be supported. LONG term, 60 years, it says 12 pairs supported and 45 owls taken.<sup>7</sup> For redundancy, the EA for the HCP refers to the number of owls on the Elliott on page numbers III & IV-9 and 27. The number of owls to be preserved over time in the short term and long term is the same as the FMP. And again, the HCP says: “It is estimated that over 60 years, 43 spotted owls could be incidentally taken by modification of habitat.” (S-7.) It is clear that the time period is “over 60 years”, not over 5 years that 43 owls can be “taken”, or at year 60 when 23 owls should appear.

Adding to the problem of declining owls is the reliance on adjoining BLM lands for owls to migrate into the Elliott. The 5-year review states that: “...immigration into the area should contribute to population stability. However, the declining trends in density and adult survival over this five year period are cause for concern in this study area.”<sup>8</sup> The BLM could lose their NSO reserves (LSRs) as early as 2008 (see section 5 below). ODF cannot rely upon uncertain activities as mitigation measures. ODF has no control over what occurs on BLM land and thus cannot rely upon the maintenance of high quality habitat on BLM lands as a means to achieve NSO population stability. ODF should come up with mitigation measures, the success of which can be measured, monitored, and adjusted if necessary.

The DEIS should consider these problems and keep or improve the 60 year promises of the current HCP in this time of trouble for the owls, and must restore habitat so that at least 26 owls can be supported. The new HCP should make it very clear that owls must be supported over time on the Elliott.

## **2. Conservation Areas (Reserves)**

There seems to be quite a bit of uncertainty regarding the extent and quality of the habitat that remains on the Elliott. Before issuing an ITP, the agencies must make a thorough inventory of what habitat is left. This should be a mandatory condition to approving any ITP. The science is quite clear that both NSO and murrelets are in extreme peril. If we don't know what and where the good habitat is, it is impossible to craft an effective conservation strategy. The most valuable habitat should be identified and placed into reserves. The reserves should be off-limits to cutting and other activities until NSO and

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<sup>7</sup> Elliott State Forest Management Plan. 1993. page VI-11.

<sup>8</sup> Comprehensive 5-year Review of the HCP. 2/18/02. page 7.

murrelets begin to recover, which is what is required under the ESA. The birds will never recover without maintaining the best habitat that is left.

The DEIS must clearly address how reserves will function to protect imperiled species, including describing how reserves will change over time and changes between the present and new plan.

**Reserves, or Conservation Areas, should protect spotted owls attempting to move away from barred owls.** Reserves include spotted owl core areas. But some spotted owls on the Elliott are have been pushed out of their core areas by barred owls. It can be assumed that in the future, the shuffle of barred and spotted owls will continue around the Elliott. The DEIS should address the issue of this shell game: a barred owl moving into a core area (HCP reserve), pushing the spotted owl out into mature forests that could be clearcut. The HCP must have a plan to quickly protect the spotted owl and sufficient nesting habitat. Simply saying that “Adaptive Management” will take care of this problem is not sufficient. Adaptive Management mechanisms are not a quick enough response, as we have seen in the current Elliott HCP (see section 6 for more).

**The percent of the Elliott in reserves** should not decrease from the current plans. If anything, reserves should increase because of the barred owl, decreased reserves on adjoining federal lands, and other changes as documented in section 5 of these comments. However, if the draft FMP plan is allowed to be implemented as described the in the May 2004 version, conservation areas will actually be reduced over time from the projected 56% of the forest the current plan would provide, down to only 30% of the forest in the proposed FMP.<sup>9</sup> The DEIS must address the impacts of this reduction over time, and present an alternative that does not reduce future reserves.

How many reserves, or conservation areas, are currently on the Elliott, and how many will be included in the draft FMP, is unclear. The DEIS must make it very clear what is and is not included in a reserve and how to compare the current plans to the proposed plans. For instance, reserves on the Elliott are currently described as 19% to 27% of the forest, depending on which hand-out you look at.<sup>10</sup> When we asked the ODF<sup>11</sup> what was counted in reserve percentages (i.e., T&E core areas, conservation areas, scenic reserves, riparian reserves, etc), they responded “The 1995 forest management plan has 19% in reserves, including riparian areas” and “The new draft strategies propose 20-30%”.<sup>12</sup> This is inconsistent data. Is it 19% reserves, 23% reserves or 27% reserves? How can the new plan almost double reserves from 19% to 30% when it will really decrease long range reserves from 56% to 30%? Somewhere in these figures reserve types are being mixed and matched. The DEIS must make it clear what is being counted in what percent, and what type of reserve will increase or decrease over time in the alternatives.

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<sup>9</sup> Handout at 6-17-04 public meeting in Roseburg, titled “Conservation Areas, Initial and at 100 years”.

<sup>10</sup> For instance, see the April 19, 2004 “Elliott State Forest Planning Update” handed out at the Roseburg June public meeting. Page 4 and 15 say “23% reserves”. The “Conservation Areas” handout from the same meeting say that in the “Owl HCP” (the no-action alternative), there are 27% reserves.

<sup>11</sup> Comments from Umpqua Watersheds et el on draft FMP, July 8, 2004. Page 8.

<sup>12</sup> Public Comments, Elliott State Forest Revision Process, Summer 2004. Matrix. 9/10/2004. Page 26.

For instance, long-rotation watershed basins might be counted as a “reserve” at times. It should not be because clearcutting is currently going on in these basins.<sup>13</sup> The DEIS should also not call “advanced structure” reserves or conservation areas, because they could be relatively young forests subject to imminent clearcutting.

The HCP should also make it clear how many acres in the reserves were clearcut before they were designated a reserve, compared to how many acres are actually late-successional forests.

**Permanent Reserves:** The DEIS should document what percent of the forest will be in permanent reserves under each HCP alternative. Large permanent reserves should be a prominent part of the final HCP because of their importance for wildlife. No permanent reserves are designated on the Tillamook State Forest, and this is what scientists say about that: “...the plan leaves no lands free from eventual regeneration harvest. From the standpoint of conservation biology, this is a significant weak point... (Noss 1993). ODF acknowledges the Department has a role in regrowing habitat for old-growth associates such as spotted owls and marbled murrelets, but assumes a priority that this goal can be accomplished without reserves, an assumption with which most conservation biologists would disagree (e.g., Hayes 1998), and that is at best an untested hypothesis.<sup>14</sup> On the Elliott, the USFWS should design permanent, non-managed reserves.

Permanent reserves will provide a baseline to measure change elsewhere on the Elliott. Permanent reserves are needed to develop into old growth. “If remnant old growth is retained, but no new old growth will be developed, this means that old growth on the ESF will steadily or suddenly (e.g., by large wildfire) be lost until, eventually, none exists.”<sup>15</sup> Under the proposed plan, “old growth will gradually be lost from the landscape due to the inevitable natural disturbances...”<sup>16</sup> The DEIS must consider these comments from the scientists who peer reviewed ODF’s proposed new FMP.

The DEIS should consider if conservation areas are eliminated under the draft FMP after just a few decades. It says, “As the desired future condition is reached, conservation areas are no longer necessary because the overall landscape composition provides for the habitat needs for these species.”<sup>17</sup> The HCP DEIS must consider the implications of no permanent reserves and that in as little “a few decades” (30 years?) the best and oldest forests in conservation areas could be available for clearcutting. Conservation areas also include all forests over 172 years old on the Elliott that ODF refers to as “old growth”.<sup>18</sup> It is unclear if these forests will be available for clearcutting also in just “a few decades”.

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<sup>13</sup> For instance, the 82 acre Middle Elk 2005 timber sale in Management Basin 17, a 240-year rotation watershed, was sold for clearcutting. Also, the 7 acre 4200-wedges timber sale was clearcut in basin 6, a 240 year long-rotation watershed basin.

<sup>14</sup> *Simplified Forest Management To Achieve Watershed And Forest Health: A Critique*. A report authored by the Scientific Panel on Ecosystem Based Forest Management: Jerry Franklin, David Perry, Reed Noss, David Montgomery, Christopher Frissell. 2001. page 33.

<sup>15</sup> Scientific Review of the Elliott SF Management Strategies. ODF. 5-04. Dr. Janet L. Ohmann. page 42.

<sup>16</sup> Scientific Review of the Elliott SF Management Strategies. ODF. 5-04. Dr. Janet Ohmann. page 50.

<sup>17</sup> Draft FMP. May 2005. 3-10

<sup>18</sup> Draft FMP May 2004. Page 5-16.

The DEIS must consider if we know enough about growing older forest structure to be confident in clearcutting older forests in hopes of replacing them with older clearcuts. Before making a decision allowing this, USFWS must present some basis in science for the ‘no permanent reserve’ techniques.

Exclude salvage logging in reserves except for safety concerns. Dead trees, even ‘pulses’ of dead trees from natural events like wind or native diseases, should be allowed to provide wildlife habitat in the wildlife reserves. Most dead trees in reserves, especially large dead trees, should not be salvaged. “Although post fire salvage logging in reserves may provide some economic return, there is no evidence that it is ecologically justified.... Fires generally increase landscape heterogeneity, not reduce it. Intensive salvage harvest will decrease habitat complexity and remove many structural elements that provide post fire habitat for terrestrial and aquatic biota, and that may reduce negative consequences of fire in streams.”<sup>19</sup>

If a natural disturbance affected a reserve, “an older complex-structure stand could be selected as a replacement for this reserve and allowed to develop into old growth. There also would be great ecological and research value in retaining the burned reserve in its natural state, without salvaging.”<sup>20</sup>

The HCP DEIS should consider that under the draft FMP, there is no obligation to replace a reserve if a wildfire or other catastrophe occurs. Therefore, the conservation area would not become habitat again within the time of the incidental take permit. It would not function to benefit threatened or endangered species. There should be an alternative that will replace habitat in a Conservation Area lost to an unforeseen event. The DEIS should also recommend the FMP correct this problem.

### **3. Structure Based Management**

The ODF has proposed the draft FMP be based on “Structure Based Management” (SBM). The DEIS needs to take a hard look at this strategy to determine if it is adequate for the HCP. We believe it is not. The USFWS should strive for old forests, not old-like forests.

**Older vs. younger “advanced structure”:** The HCP DEIS must consider if Structure Based Management would allow cutting of older trees while reserving younger trees for wildlife. While structure of a forest is important, there are certain characteristics that can only develop with age so that older forests are ecologically more desirable for functional habitat than younger “advanced structure” forests. The older a forest gets, the more ecologically complex are its components, such as snags and deeply furrowed bark. Age is especially important for some species of canopy lichens.

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<sup>19</sup> Scientific Review of the Elliott SF Management Strategies. ODF.5-04. Dr. Robert Gresswell. page 38.

<sup>20</sup> Scientific Review of the Elliott SF Management Strategies. ODF. 5-04. Dr. Janet Ohmann. page 50.

If SBM is allowed to remain in the FMP, the DEIS should define “advanced structure” so that older forests with advanced structure are given priority for protections over younger forests with “advanced structure”. When we asked the ODF to do this in their FMP, they said these kinds of decisions would be made in the 10-year implementation plans, and not at the FMP or even the HCP level.<sup>21</sup> We disagree that this is where these decisions should be made. The USFWS should make the decision in the HCP that older advanced structure is more important for wildlife than younger advanced structure, and protect it more. If it is left up to the ODF to make these decisions in the timber sale planning process, economic biases will be too much of an influence.

**Older aged forests are important:** If the new HCP does not protect the oldest aged forests, the USFWS should explain how an advanced structure younger forest could provide the same number and quality of natural snags and cavity nests that marbled murrelets and spotted owls are dependent on,<sup>22</sup> or the same thickness of bark that other species (like bats) are dependent on, as an older forest with advanced structure. A number of studies have found both size and density of snags as well as amount of down woody debris to be an important component of spotted owl habitat.<sup>23</sup> The USFWS should explain how a younger ‘advanced structure’ forest provides the same type of down wood, nurse logs, duff thickness, and uncompressed (or healed) soils that **only** age can provide.

Scientists from the federal government reinforce the importance of AGE in their Late - Successional Assessment of the federal lands surrounding the Elliott State Forest” “Late-successional forest species... require stands much older than 80-years of age to meet their life history requirements.”<sup>24</sup> Take for instance the rare nitrogen fixing lichen, *Nephroma occultum*. This lichen grows almost exclusively in “pristine, old growth forest of approximately 400 years of age.”<sup>25</sup> This rare, yet ecologically important lichen of our low elevation coastal old-growth forests cannot colonize in a good structured yet young forest. Only age can produce the bark thickness and roughness that is crucial to some species survival. Since there are some very old trees in the Elliott (pre 1868 fire), there is the opportunity to recolonize this lichen as the younger forests grow older -- but not if trees are never allowed to get old again.

Before moving to SBM, the USFWS must guarantee that they can re-create all the habitat structures of an old forest that can come only with time.

**SMB lack measurable standards.** If the HCP allows SBM to be the guiding principle on the Elliott, firm standards and guidelines must be in place to reduce the inherent lack of qualitative measurements in SBM. Age is an easily measurable variable. Habitat defined by structure alone, without the measurable variable of age, can be bent to meet a short-term goal.

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<sup>21</sup> Public Comments, Elliott State Forest Revision Process, Summer 2004. Matrix. 9/10/2004. Page 10.

<sup>22</sup> Northern Spotted Owl Research on ODF Lands (including the Elliott) in the Coast Range. 7/18/00. pg 24. “Number of snags and size of snags were larger in nest areas than in forage or low use areas at ESF..”

<sup>23</sup> Northern Spotted Owl Research on ODF Lands (including Elliott SF) in Coast Range. 7/18/00. page 31.

<sup>24</sup> South Coast-Northern Klamath Late-Successional Reserve Assessment. Coos Bay, Roseburg, and Medford Districts BLM and the Mapleton Ranger District of the Siuslaw NF. May 1998. page 40.

<sup>25</sup> Northwest Forest Plan for Forest Service and BLM. Appendix J2, page 229.

Take for instance, the April 29, 2004 minutes of the “Elliott Core Planning Team Meeting”. Jim Young said:

About 50% of the Elliott is older than 80 years. Probably less than 25% would meet every aspect of the definition of advanced structure. However, many stands come very close to meeting the definition. For example, they may only be lacking a few snags but meet every other aspect. These stands should be identified as advanced structure in the FMP.

This looks like **a decision to lie** about the amount of advanced structure on the Elliott. The DEIS must disclose how many acres not meeting “advanced structure” definition would be counted as advanced structure anyway.

When the ODF was first soliciting public comments on SBM, they wrote: “Some older stands on the Elliott State Forest lack the structural diversity embedded for owl or Murrelet habitat, while some younger stands do have the structural components need and are being used by owls and Murrelets.”<sup>26</sup> We asked to see examples of these two types of stands. Larry Sprouse sent us one example area of each situation. I asked for two examples, but was told that one example each was all that was currently defined on the Elliott, though the final HCP will have the forest structures mapped. **We expect to see these maps in the DEIS** so the public can have the opportunity to spot check the data.

We looked at the two areas Larry Sprouse sent us. The first place we looked at was the “Older, Poor Structure Stands Footlog Region”.<sup>27</sup> Indeed, the trees in stands 29 and 31 were smaller than average for 126/130 year old stands. But nonetheless, we found some significant marbled murrelet habitat scattered throughout the stands, as well as structure that would support owls. Stand 31 in the “Older, Poor Structure Stands” was originally designated for clearcutting in the Fiscal Year ‘03 timber sale plan (Footlog Combo Sale), but recently dropped due to “Marbled Murrelet concerns”.<sup>28</sup> Even though this unit remains uncut because of concerns for Marbled Murrelets, this area would be written off as “Older, Poor Structure Stands” for Marbled Murrelet habitat. With this the ONLY example that ODF could give us of “Older, Poor Structure Stands”, where a murrelet was found nesting, how can the USFWS be confident in ODF’s judgment of Poor Structure?

After viewing the example of “Older, Poor Structure Stands”, we drove to the one area mapped as “Younger, Good Structured stands” that ODF said had the structural components needed for owls and murrelets. What we saw was a riparian area along Marlow Creek and its tributaries. Yes, the younger stands were more structurally diverse, as most stands are in riparian areas. But we thought it was an unfair comparison -- the higher elevation, dryer Footlog area and the lower elevation, wetter Marlow Creek.

If the SBM proposal for the Elliott HCP purports to save “Younger, Good Structured Stands”, while clearcutting “Older, Poor Structure Stands”, a better case must be made to show definitions of “advanced structure” are not slanted toward timber revenue considerations. The two examples given to us failed to do that. The Poor Structure had

<sup>26</sup> *Expectations* newsletter. September 2002. page 7.

<sup>27</sup> See photographs of Footlog in 10/30/02 comments on Elliott draft FMP from Umpqua Watersheds, et al.

<sup>28</sup> Coos District Fiscal Year 2003 Annual Operations Plan Summary (2<sup>nd</sup> version) 0715/02. Appendix A, page 7: “Footlog Ridge S.M. (Stand Management). This sale name used to be Footlog Combo. The regeneration harvest unit of this sale has been dropped due to murrelet considerations.”

Marbled Murrelet concerns, and the Good Structure was better simply because it was in a riparian reserve. We look forward to examining other examples identified in the DEIS.

**Poor History of SBM:** Structure Based Management has not done well in other Oregon state forests. The DEIS must consider these problems so they are not repeated in the Elliott's HCP. For instance, on the Tillamook, Clatsop, and Santiam State Forests, there are thousands of acres of misclassified stands. Many of these stands are clearcut because they are considered less complex than they really are. The Gnat Creek and Cougar Monster timber sales are only two examples of sales that clearcut or plan to clearcut the oldest and best stands in their respective basins. In 2002 the Clatsop State Forest accidentally used the wrong data to produce their stand structure maps in the draft Implementation Plans, resulting in 25% of the more complex forest being removed from the maps. This dramatic error not only emphasizes the need to protect older areas, it also casts doubt on the ability of the ODF to accurately map advanced structure forests. If the Elliott moves to SBM, USFWS must develop a plan to prevent the same type of errors occurring. Because of these past errors in favor of increased logging, the public must have input into what areas on the Elliott will be designated as Advanced Structure and what areas will be intensively managed. The USFWS should reference the comments from Sybil Ackerman of the National Wildlife Federation and other conservation groups and scientists on draft Western Oregon State Forests HCP, so the Elliott HCP will not encounter the same problems.

**SBM has no basis in science:** If the USFWS use SBM in the HCP, there must be some science somewhere that says it works. The science we could find is very critical of the Structured Based Management of the North Coast State forests:

“In our view, the assumptions underpinning simplified structure-based management (SSBM) are not supported by the published scientific literature on structural development of natural forests, disturbance ecology, landscape ecology and conservation biology, or by the relationships between ecosystem structures and processes.”<sup>29</sup>

Even the ODF's own draft Elliott FMP appendices says:

Over the years, data on wildlife use of different habitats has been collected using various definitions of stand types. Therefore, the data does not always fit perfectly with the stand structure definitions used in the *Elliott State Forest Management Plan*. The matrix uses stand structure definitions that best fit the available data on wildlife use of stand types. The first two definitions (early and intermediate) are approximately the same as the stand structure definitions in the forest plan. However, there is no data on wildlife use of advanced structure. Instead, the wildlife matrix shows use of old growth stands, as defined in Brown 1985. Wildlife use of advanced structure stands may or may not be similar to wildlife use of old growth.”<sup>30</sup>

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<sup>29</sup> *Simplified Forest Management To Achieve Watershed And Forest Health: A Critique*. A report authored by the Scientific Panel on Ecosystem Based Forest Management: Jerry Franklin, David Perry, Reed Noss, David Montgomery, Christopher Frissell. 2001. page 2.

<sup>30</sup> Elliott State FMP Draft Plan May 2004. Page E-3

The DEIS must address this lack of a scientific basis for structure based management. Also consider the independent scientific review of ODF's Proposed Oregon State Forest HCP<sup>31</sup>. Most reviewers found SBM would not be sufficient for various species.

To determine if or how SBM will be used on the Elliott, the ESA requires that the USFWS to use the best available scientific and commercial data in analyzing impacts to the listed species.<sup>32</sup> In order to protect listed species to the full extent intended by the ESA, the USFWS cannot ignore evidence regarding the significant impacts. The "best scientific and commercial data" requirement prevents the haphazard implementation, "on the basis of speculation or surmise," of the ESA.<sup>33</sup>

**Stand structure is defined uniquely on Elliott.** Other state forests using SBM have six levels of structures, whereas the Elliott SMB is simplified with only three stand types. The oldest structure is also defined differently on the Elliott. The Tillamook SBM definitions<sup>34</sup> even admit there is such as thing as old-growth. The DEIS should explain why the Elliott is treated differently.

In the Tillamook, "Stand Type 4 – Layered", in the middle of the stand trajectory, has the same definitions as the Elliott "Advanced" structure, dominated by trees 18" DBH. The Tillamook then gets to have "Stand Type 5 Older Forest Structure" with at least 8 TPA 32" DBH<sup>35</sup>, and finally, the Tillamook has a Stand Type 6 Old Growth<sup>36</sup> The Tillamook also has a separate classification for "Hardwoods", recognizing that alder is a normal, natural component of the Forest. Why can't the Elliott have the same complexity as the Tillamook?

In fact, the picture used to describe the "Advanced Structure" on the Elliott with an average of 18" DBH trees<sup>37</sup> is the exact same picture used to describe "Older Forest Structure" on the Tillamook, with 32" DBH trees.<sup>38</sup> This is extremely misleading to depict the Elliott's "Advanced Structure", with this graphic.

The Elliott's draft FMP defines its oldest forests, "advanced structure", as having an overstory "dominated by trees of 18 inches or larger DBH and approximately 100 feet or more tall."<sup>39</sup> This is extremely small for a mature forest in the Coast Range. This could easily describe any 50 year old managed plantation. Only one third of the stand has to have trees averaging 21" DBH or larger. The FMP very clear that Elliott's 'advance structure will not have many components of old-growth: "decay and decadence required for old growth characteristics are generally lacking, successional trees required by old

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<sup>31</sup> Benda, Lee, et. al. 1998. Independent Scientific Review of the Oregon Department of Forestry's Proposed Western Oregon State Forests HCP. John Hayes, ed., College of Forestry, OSU, Corvallis, OR.

<sup>32</sup> 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(g)(8).

<sup>33</sup> Bennett v. Spear, 520 U.S. 154, 176 (1997).

<sup>34</sup> Final Plan Jan. 2001 Resource Management Concepts and Strategies. Page 4-10

<sup>35</sup> Final Plan Jan. 2001 Resource Management Concepts and Strategies. Page 4-17

<sup>36</sup> Final Plan Jan. 2001 Resource Management Concepts and Strategies. Page 4-18.

<sup>37</sup> Stand Structures.doc from the ODF

<sup>38</sup> Final Plan Jan. 2001 Resource Management Concepts and Strategies. Page 4-17

<sup>39</sup> Elliott State FMP Draft Plan May 2004. Page E-5

growth may be lacking, and dead and down material required by old growth is lacking.”<sup>40</sup> With this admission, we don’t see how the USFWS can claim any advanced structure forests, as defined for the Elliott, can function adequately for old-growth dependent species.

#### 4. Aquatic Habitats

The May 2004 draft FMP plans to leave a 100 foot no-cut buffer next to fish bearing streams. The DEIS should consider an alternative that leaves more. “Within the scientific community... there is still some uncertainty that a 100 ft. buffer will provide the full complement of ecological structure and functions provided by a fully intact, natural riparian zone.”<sup>41</sup>

The DEIS should also consider leaving a larger buffer on intermittent streams. “Research shows that 15-25% of Coho salmon production in a watershed may be produced by areas that are only intermittently covered by water (Bierly 1992)”<sup>42</sup> Under the current FMP, “Fish-bearing intermittent streams” receive a riparian buffer of 100 or 75 feet. The new FMP is unclear on fish-bearing intermittent streams. The DEIS must consider an alternative that increases protections for fish in any stream types.

The Elliott State Forests contain some of the most **landslide prone soils** in Oregon because it is situated in the “Tyee core area”. The DEIS must consider the impacts of landslides on fish habitat and how these landslides will be accelerated in time and in density by clearcut harvesting. Especially in short-rotation forestry, root strength might never be reestablished sufficiently to hold soils firmly in place.

Many (or most) of the Elliott’s timber sales are located in “high landslide hazard locations”. The ODF has never done any monitoring to see how many of these timber sales resulted in landslides. Past data should be gathered for the DEIS to adequately consider impacts to fish and wildlife and soil conditions from continuing to log in high hazard locations. This data should continue to be collected for on-going plan monitoring.

The Elliott 2004 draft FMP says: “...an RMA boundary may be expanded where a potentially unstable slope adjacent to a stream could deliver materials to the stream. The intent of this action is to increase the potential for large wood delivery should a disturbance event occur.”<sup>43</sup> The USFWS should REQUIRE the RMA boundary to be expanded in areas of potentially unstable slopes. “May be” is weak and can be easily avoided when there is economic pressure to produce more volume. The Forest Management Plan should have clear, not ambiguous, environmental protections. The USFW should also require the DEIS to consider the negative sediment from landslides, not just the positive large wood.

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<sup>40</sup> Elliott State FMP Draft Plan May 2004. Page E-5

<sup>41</sup> Scientific Review of the Elliott State Forest Management Strategies. ODF. May 2004. page 37.

<sup>42</sup> Elliott State Forest Management Plan. 12/93. page IIIk-15.

<sup>43</sup> Draft Elliott State Forest Management Plan. May 2004. page 5-28.

Aquatic habitats on the Elliott are not sufficiently protected from the effects of **cumulative clearcut harvest openings**. For instance, some timber sales in the 2006 Annual Operating Plan are proposed directly across a stream from recent clearcuts. Trout Head, Area II, is directly on the other side of Trout Creek from Dry Moby, (just being yarded February 2005). Bowl Bound Beaver is immediately across Beaver Creek from the Lower Beaver sale, clearcut in 2004. These fish bearing streams have as little as 75 feet buffer each side, for a total of 150 feet wide strip of forest between the clearcuts, except for yarding corridors that go through the buffers. The DEIS should address these cumulative watershed effects.

National Marine Fisheries Service says cumulative impacts cause problems:

“Watershed processes resilient enough to withstand disturbance from a single, site-specific action may be overwhelmed by the cumulative effect of multiple, widespread actions over time. Cumulative effects may impact ecological processes over large scales—resulting in a loss of habitat quality throughout a watershed. Effects assessments that identify potential risks solely for individual actions do not consider the complex interactions between upland, riparian, and aquatic processes which determine and sustain watershed health. They have therefore contributed to many of the current problems with water quality, habitat degradation and species status.”<sup>44</sup>

Jones and Grant (1996) document that excessive clearcut harvesting and roading together can result in altered hydrology of forested watersheds. Their analysis indicates peak flow increases due to roading and clearcut harvesting are as much as 50% in small basins and 100% in large basins, over control basins.

The Elliott State Forest 2003 Watershed Analysis appears to disagree with NMFS and other accepted research. It says that research “indicates that increases in peak flows due to clearcut harvest and road building are minor”<sup>45</sup>. Therefore, there are “no recommended actions or monitoring suggestions on the issue of peak flow increases from timber harvest and road construction...”<sup>46</sup> However, until the watershed analysis, and whatever research it used, can be peer reviewed, the USFWS should include a watershed scale cumulative effects analysis in the HCP EIS. At least the Elliott’s watershed analysis admits there is an effect for forests under 15 years old.<sup>47</sup> But other federal agencies have documented hydrologic effects in clearcuts at least 30 years old, sometimes 40 years old.<sup>48</sup> The DEIS must consider the site specific effects for the Elliott.

To determine riparian buffers and landscape watershed effects, the ESA requires that the USFWS to use the best available scientific and commercial data in analyzing impacts to the listed species.<sup>49</sup> In order to protect listed species to the full extent intended by the

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<sup>44</sup> NMFS Draft Proposal on Oregon Forest Practices — February 17, 1998. page 81

<sup>45</sup> Elliott State Forest Watershed Analysis. ODF. October 2003. page 4-10.

<sup>46</sup> Elliott State Forest Watershed Analysis. ODF. October 2003 page 4-12.

<sup>47</sup> Elliott State Forest Watershed Analysis page 4-10: “any increase in peak flow due to clearcut harvesting is short-lived (less than 15 years) due to regrowth of brush and trees.”

<sup>48</sup> See numerous Biological Opinions from NMFS for BLM timber sales.

<sup>49</sup> 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(g)(8).

ESA, the USFWS cannot ignore evidence regarding the significant impacts. The “best scientific and commercial data” requirement prevents the haphazard implementation, “on the basis of speculation or surmise,” of the ESA.<sup>50</sup>

## **5. New information must be considered.**

Due to recent research and reviews of the Northern Spotted Owls and the Marbled Murrelet, there is a wealth of new information on the population status of these species, as well as the barred owl. The DEIS should consider all this new information. The HCP’s mitigation measures will most likely need to become more protective of remaining suitable habitat for endangered birds, including habitat that is unoccupied or previously considered less important. Other management practices and mitigation measures need to be reexamined and likely revised to reduce emerging threats to endangered birds to maintain and enhance the resilience of their populations. There is a heightened risk that endangered birds will not survive if additional suitable habitat is eliminated.<sup>51</sup>

### **MARBLED MURRELET new information**

**The status review report for the Marbled Murrelet** was completed in March 2004.<sup>52</sup> Released to the public in early May, it finds that the murrelet population is still in decline and continues to need federal protection. The report predicts continued murrelet population declines in Oregon due to loss of nesting habitat from logging and urbanization. Population trend models cited in the report predict that marbled murrelets may disappear from all of their native Pacific Northwest range, including the Elliott, within 100 years. The Washington, Oregon, and California murrelet population is a genetically Distinct Population Segment (DPS) from the murrelet populations that are faring better in Alaska. The report concludes: “It is unrealistic to expect that the species will recover before there is significant improvement in the amount and distribution of suitable nesting habitat.”<sup>53</sup> The DEIS must consider this new information since the development of the original HCP.

**Oil Spills:** The New Carissa Oil Spill Draft Damage Assessment Restoration Plan<sup>54</sup> documents new information on murrelets that the USFWS should consider. The Restoration Plan says, “Because of their extensive use of nearshore water, marbled murrelets are susceptible to the impacts of oil spill and have been given one of the highest oil spill vulnerability index values among seabirds”<sup>55</sup>. In Spring of 1999, the New Carissa oil spill directly killed at least 262 Marbled Murrelets<sup>56</sup> in close vicinity to the Elliott

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<sup>50</sup> Bennett v. Spear, 520 U.S. 154, 176 (1997).

<sup>51</sup> See the testimony of Dr. Jerry Franklin and the subsequent discussion in USFWS (2004).

<sup>52</sup> Evaluation Report for the 5-Year Status Review of the Marbled Murrelet in Washing, Oregon, and California. Prepared for U.S. Fish and Wildlife Service, Region 1. March 2004. See complete report at: [www.earthjustice.org/backgrounder/display.html?yes&ID=100](http://www.earthjustice.org/backgrounder/display.html?yes&ID=100)

<sup>53</sup> 5-year Status Review of the Marbled Murrelet. See web reference above.

<sup>54</sup> Draft Damage Assessment Restoration Plan and Environmental Assessment for the M/V New Carissa Oil Spill Oregon Coast. May 2005.

<sup>55</sup> Id page 12.

<sup>56</sup> Id page 39.

State Forest. The MV Kure Oil Spill into Humboldt Bay on November 5, 1997 should also be considered as new information. USFWS recently issued a Notice of Intent to Conduct Restoration Planning for Natural Resources Injured by the Release of Oil from the MV Kure Oil Spill, Humboldt County, CA.<sup>57</sup> Because of the significant amount of murrelets that were killed in the spill, many of the proposed restoration activities will focus on the enhancement/conservation of murrelet habitat. After the modeling was completed a few years after the spill, it became clear that the number of murrelet mortalities from the spill were ten times than initially believed. Both the MV Kure and New Carissa Oil Spills together are estimated to have killed 10% of the murrelet population on marbled murrelet conservation zone 4, which is designated as critical to the survival of the species. The Elliott State Forest is situated in an area where future oil spills will likely affect the murrelet population on the forest. Mitigation measures should be in place in case of additional oil spills.

**Elliott Marbled Murrelet research:** The 1995 Elliott HCP included a 6 year incidental take permit for Marbled Murrelets because “little was known about the murrelet at that time. As such, part of the HCP strategy called for ODF to fund research on the murrelet that could be used to guide the development of long-term conservation, and support an extended ITP for the species.”<sup>58</sup> ODF spent \$500,000 in the first 5 years of the current HCP on a murrelet research program.<sup>59</sup> By now the ODF should have some published data. The DEIS should consider any new information in these studies.

**Critical Habitat for Murrelets:** Since the original HCP, critical habitat was designated for Marbled Murrelets. The Elliott State Forest was originally proposed for designation as critical habitat in the recovery plan, but was not because in 1996 the ODF was operating under the 6-year HCP contributing to the recovery of marbled murrelets. The murrelet recovery plan says: “Any lands within critical habitat that are covered by a legally-operative incidental take permit for marbled murrelets, based on an approved Habitat Conservation Plan that addresses conservation of the marbled murrelet, are excluded from critical habitat while the permit is active.”<sup>60</sup> This means that in 2001, when the HCP for Marbled Murrelets on the Elliott expired, the Elliott should have reverted to critical habitat. The DEIS must consider this as designated critical habitat for the Murrelets.

The 1997 Marbled Murrelet Recovery Plan says: “Maintenance of suitable and occupied marbled murrelet nesting habitat in the Elliott State Forest... is an essential component for the stabilization and recovery of the marbled murrelet.”<sup>61</sup> “Essential nesting habitats that occur on forest lands under non-Federal management include...the Elliott State Forest.”<sup>62</sup> The DEIS must consider this recovery plan.

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<sup>57</sup> 70 Fed. Reg. 13,043 (March 17, 2005).

<sup>58</sup> Elliott State Forest “Project Overview” handed out at public scoping meetings, May 2005.

<sup>59</sup> Elliott State Forest 1995 HCP. S-8

<sup>60</sup> Marbled Murrelet Recovery Plan. USFWS. September 1997 page 109.

<sup>61</sup> Marbled Murrelet Recovery Plan. USFWS. September 1997. Page 127

<sup>62</sup> Marbled Murrelet Recovery Plan. USFWS. September 1997. Page 132

## **SPOTTED OWL new information**

Spotted owl numbers have fallen by nearly a quarter in sections of Oregon's coast near the Elliott State Forest. The Elliott State Forest research on Owls reflects this decline, losing two-thirds of the areas owls from 1993 to the present.<sup>63</sup>

In September of 2004 USFWS contractors completed a report on the current status of the spotted owl bringing to light a series of new concerns about the continued viability of the spotted owl. The HCP DEIS must review and consider all the new information about new threats contained in this report.<sup>64</sup> The USFWS completed its official status review and analysis in November 2004. This report<sup>65</sup> describes more new information about the owl the DEIS must consider. Due to the increased threats to the NSO, the Elliott FMP/HCP must protect all remaining NSO habitat and more habitat must be created. Northern spotted owls are now declining so rapidly in Washington and Canada that the protection of the remaining owls in Oregon may be far more important to overall survival of the species than previously considered.

Jerry Franklin and Alan Franklin are two of nine scientists who reviewed more than 1,000 research papers and interviewed northern spotted owl experts for the U.S. Fish and Wildlife Service. The AP reported Jerry Franklin saying: "Habitat is critical. Given all the uncertainties on the risk to spotted owls, it would just be exacerbated by the removal of additional habitat." "When it was just barred owls, I was not so concerned," said Alan Franklin. "Then you get sudden oak death and West Nile virus. You're getting three factors that are going to hit them on some level we don't know. The whole multiple stressor thing has me very concerned about what is going to happen."

Jerry Franklin summarized the "findings" of the Northern Spotted Owl Status Review scientific review panel as follows:

... in view of current uncertainties, such as the eventual outcome of the Spotted Owl/Barred Owl competition, West Nile Virus, and Sudden Oak Death, and whatever else comes along -- such as global change and other kinds of introductions -- existing suitable habitat could be important to the persistence of the Northern Spotted Owl. [repeated with emphasis] Existing suitable habitat could be important to the persistence of the Northern Spotted Owl, i.e., risk to Northern Spotted Owl may increase if additional suitable habitat is removed. It is not clear where the Spotted Owl may find the refuge or refuges from new threats within existing suitable habitat. Barred Owl intrusions do not negate the need for structurally complex forest habitat to sustain Northern Spotted Owl based on existing knowledge.<sup>66</sup>

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<sup>63</sup> Five Year Review for the Elliott Habitat Conservation Plan. ODF. 2-18-02. Also see the 2003 NSO study, finding only 11 NSO pairs left on the Elliott.

<sup>64</sup> See Courtney, Blakesley, Bigely, Cody, Dumbacher, Fleischer, Franklin, Franklin, Gutierrez, Marzuluff, Szukowski. September 2004. Scientific evaluation of the status of the Northern Spotted Owl. Sustainable Ecosystems Institute, Portland, Oregon. <http://www.sei.org/owl/finalreport/finalreport.htm>

<sup>65</sup> [http://pacific.fws.gov/ecoservices/endangered/recovery/pdf/NSO\\_5-yr\\_Summary.pdf](http://pacific.fws.gov/ecoservices/endangered/recovery/pdf/NSO_5-yr_Summary.pdf)

<sup>66</sup> U.S. Fish & Wildlife Service Scientific Review Panel for the NSO. June 22, 2004 Public Hearing. WA ST. University, Vancouver Campus. Transcript of proceedings. Page 121. <http://www.sei.org/owl/meetings/minutes/june-meeting-transcripts.pdf>

There are significant new uncertainties for the owl that have not been fully considered at the regional or local scale, including a lack of consideration in Critical Habitat designation and the Northwest Forest Plan. The status review shows that habitat loss has been greatest in Oregon. As recognized by the spotted owl status review, all existing suitable habitat could be critical to the survival of the spotted owl.

Also consider the **Northern Spotted Owl Research on Oregon Department of Forestry Lands**, July 18, 2000.<sup>67</sup> This research on the Elliott State Forest found “that the populations were declining during the period of study” and “On the Elliott Study area, total number of territories located decreased by 48%, and density of owls/km<sup>2</sup> declined by 57%.”<sup>68</sup> “On the Elliott there were a total of 26 territories in 1993.... In 1998 we located 12 total sites...”<sup>69</sup> The study concluded that “the declining trend in density and adult survival are cause for concern.”<sup>70</sup> This study also found that the NSO did best in the oldest forests, which should be considered in the HCP in an alternative that does not use Structure Based Management.

**Barred owls:** Barred owl competition and displacement are significant concerns expressed in the status review for the Northern Spotted Owl, implying more suitable habitat may need to be protected to ensure that these two owl species can co-exist. Even the latest NSO study (2003) on the Elliott found increasing barred owl numbers. For the first time in the public record, barred owls were found in the Elliott, at eight spotted owl sites. Half of those sites no longer have spotted owls.<sup>71</sup> The HCP should reconsider how much mature forests the Northern Spotted Owl needs by estimating the current and future impacts of the Barred Owl.

In order to retain options while this issue is being played out the USFWS must consider at least one alternative that requires protection of all remaining owl habitat in the new proposed HCP and FMP.

**Elliott State Forest HCP 5-year review** contains new information that is important to consider in the new HCP. “The five HCAs that contain active spotted owl nest sites or activity centers are not configured to contain the core use areas for the sites where this area has been identified... In particular, the two sites noted as being important to the Elliott population because of their demonstrated ability to contribute new individuals into the spotted owl populations, Roberts Creek and Salander Creek, are not included in any HCAs.”<sup>72</sup> “...delineation of HCAs is not entirely consistent with known spotted owl core areas. Of the 15 core areas, only 6 are wholly or partially within HCAs... only a few of the HCAs include areas known to receive high use by active spotted owl pairs.”<sup>73</sup>

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<sup>67</sup> Principal Investigators: Elizabeth Glenn, Dr. Robert Anthony, Amy Ellingson, Dr. John Tappeiner, Tara Nierenberg. This research includes Appendix A: Demographic characteristics; Appendix B: Home range and habitat use; and Appendix C: Characterizing NSO habitat on state forest lands in the Oregon Coast Range

<sup>68</sup> id. Appendix A, page 2.

<sup>69</sup> id. Appendix A, page 9.

<sup>70</sup> id. Appendix A, page 26

<sup>71</sup> Kingfisher Northern Spotted Owl Survey Report. 2003

<sup>72</sup> Elliott HCP 5-year review. February 18, 2002. page 25.

<sup>73</sup> Elliott HCP 5-year review. February 18, 2002. page 17-18.

## **New information pertaining to both owls and murrelets:**

**New Diseases:** Potential loss of habitat from Sudden Oak Death syndrome makes the remaining habitat more valuable than previously considered in any programmatic NEPA document. West Nile Virus could place even greater strain on the remaining owl and murrelet populations.

**Wildfire:** Greater than expected loss of habitat to wildfire over the last several years, makes all remaining habitat more valuable than previously considered in any programmatic NEPA document.

**Other Research:** Other research on the Elliott State Forest, since the last HCP, should be described and considered in the DEIS. For instance, in 1998 permanent plots were installed in thinning project to measure the effectiveness of thinning mature stands.<sup>74</sup> This plot was re-measured in 2003. The results should be included in the DEIS.

**Climate Change:** New information on climate change, as generally accepted by the scientific community, should be considered in the 100-year graphs of growth and yield. "...long-term goals will not be attained because climate change over the next 50 years will alter patterns of precipitation, soil moisture, and runoff."<sup>75</sup> Forest growth, disturbance regime and composition all may be severely affected by global warming over the next century. Under a new climate regime, we may not be able to regrow new owl habitat as assumed in the current Elliott HCP. The new HCP should take the new climate change information into account. Existing old forests are relatively resilient to climate change. It is risky to be conducting regeneration harvest and expect to be able grow new owl habitat elsewhere in the Elliott under an uncertain climate regime.

**Swiss Needle Cast:** This disease is prevalent on the Elliott, especially in the northeast corner. The ODF has denied that SNC is a significant problem on the Elliott, but we see it everywhere – chlorotic yellow patches rippling through young plantations. In the DEIS the USFWS should document just how much SNC is on the Elliott and consider how it will retard regrowth of mature forests.

**Changes in the Northwest Forest Plan:** Since the original 1995 Elliott HCP, the Northwest Forest Plan has undergone major changes allowing more owl and murrelet habitat to be cut. Survey and Manage protections for old growth dependent species have been eliminated. Aquatic Conservation Strategy can no longer be considered an enforceable standard and guideline.

A new change will be the results of the October 2003 settlement agreement<sup>76</sup> that will significantly modify, maybe even eliminate, Late Successional Reserves, Riparian Reserves, and other BLM reserved lands in 2008. The BLM must revise their Resource

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<sup>74</sup> Five Year Review for the Elliott Habitat Conservation Plan. 2/18/02. Page 24.

<sup>75</sup>Scientific Review of the Elliott State Forest Management Strategies. ODF. May 2004. Excerpt from Dr. Peter Bisson on page 55.

<sup>76</sup> American Forest Resource Council v. BLM

Management Plans to consider eliminating all of their reserves protecting Marbled Murrelets and Northern Spotted Owl. They must pick an alternative that “shall be consistent with the O&C Act as interpreted by the 9<sup>th</sup> Circuit Court of Appeals”<sup>77</sup> In other words, if all goes as planned, there will be virtually no reserves left on Coos Bay BLM lands that surround the Elliott State Forest on two sides. This means the Elliott State Forest must shoulder additional responsibility to protect owls and murrelets to avoid jeopardy.

In conclusion, the draft Elliott Forest Management Plan (May 2004 version) does not appear to take any of this new information into account. For instance, in 100 years, when the Marbled Murrelet is expected to be at extreme risk of extinction, the advanced structure (older forests) under the proposed new FMP will be approximately 13 percent less than the current FMP. In 10 years, the percent of advanced structure (older forests) under the current HCP will be approximately 48 percent of the Elliott. Under the new proposed plans, there will be 4 percent LESS advanced structure forests. It could be worse if the definition of “Advanced Structure” allows the oldest forests to be logged before younger forests. Another example of weakening current protections: the current HCP and FMP protects 27% to 55% of the forest as reserves while the new proposed plans protect only 20% to 30% of the forest as reserves.<sup>78</sup>

If all this new information is considered, logging of mature forests must not be allowed to increase, as described in the new Forest Management Plan. The USFWS must use the new information to eliminate mature forest logging.

The ITP/HCP must also include a framework for how the agencies will account for **changed circumstances and new information that arises in the future**. This concept should not solely be dealt with by utilizing adaptive management. There must be an opportunity for the public to raise and/or comment upon new information and changed circumstances that are impacting the species to be conserved under the HCP.

## 6. Adaptive Management

The USFWS must develop an effective Adaptive Management strategy. The current FMP/HCP strategy has been ineffective. We detail some of the problems of the current Adaptive Management strategy in these comments so that they can be improved in the new HCP.

The new HCP must have a clear, unambiguous trigger requiring USFWS to act using adaptive management. The term adaptive management was used by ODF as an excuse to do nothing on the Elliott. In the new HCP there needs to be very clear criteria to utilize adaptive management.

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<sup>77</sup> 2003 Settlement Agreement #3.5.

<sup>78</sup> Handout at 6-17-04 public meeting in Roseburg, titled “Conservation Areas, Initial and at 100 years”.

Any and all changes made using adaptive management must be subject to public comment, and most importantly, third party enforcement. The HCP/ITP should clearly spell out under what circumstances adaptive management should be used. Adaptive management should not be used to put off USFWS' mandatory revocation duties. There are specific legal requirements as to when a permit should be revoked and agencies should not use adaptive management as a way to avoid revoking the permit.

There are circumstances in which use of adaptive management is inappropriate. For example, other laws are in place to specifically deal with changed circumstances/new information. If a new species is listed, then consultation under the ESA should be reinitiated immediately. If new information comes to light, the agencies should prepare a SEIS to determine whether issuance of the ITP/HCP remains appropriate. In other words, the use of adaptive management should not obscure other relevant legal obligations.

In identifying and addressing all foreseeable changing circumstances, the FMP/HCP should identify, and require ODF to modify the FMP/HCP in response to:

- changes in the ODF's land management and development practices;
- changes that may be proposed to HCPs and other neighboring land plans as a result of monitoring, adaptive management, responses to lawsuits, etc;
- declines in the condition of the covered species due to inadequate conservation measures in the HCP;
- designation of critical habitat for the covered species;
- development of recovery plans and recovery plan provisions for the covered species (though significant new information requires a SEIS, not simple adaptive management);
- fires, windstorms, pest outbreaks, disease outbreaks, and other stochastic events that are natural ecosystem processes; and
- increased susceptibility of the habitats to invasive exotic pests, pathogens, and plant and animal species due to ODF's resource management practices.

Other foreseeable changing circumstances include the effects of human-induced climate change, which is likely to cause ecological gradients, vegetation zones, and species' habitat needs to shift significantly, and is likely to create more severe weather patterns, further impacting species and ecosystems. The HCP's adaptive management programs should, among other things, require ODF to monitor each covered species' populations, reproductive success, primary habitat components, and other key biological outcomes and trends, including those which correlate to the species' recovery.

The HCP should also include thorough and effective adaptive management **protocols** that are linked to effectiveness monitoring for all biological goals, include comprehensive adaptive management triggers, and outline the responses and responsibilities that can result from adaptive management reviews. Reviews should include independent peer review and public participation. All plan components should be subject to adaptive management. The HCP should *require* ODF to adopt modified, new, or additional conservation measures to recover the covered species, should the original conservation measures prove ineffective.

**The current Adaptive Management strategy on the Elliott** allowed the ODF to do nothing for years after the 1998 owl study and the HCP 5-year review were released showing substantial problems in the placement of Habitat Conservation Areas (HCAs) as well as concerns of plummeting owl populations. The USFWS must address these problems in the new HCP DEIS, and explain how the new Adaptive Management strategy will be different. Details of these problems follow:

The current HCP says: “Potential incidental take of owls and murrelets would be minimized and mitigated by a variety of techniques. This alternative would include research and adaptive management to meet goals for the wide range of resources on the Elliott.”<sup>79</sup> “Adaptive Management” of the HCP was to be based on two studies:

- A) The HCP 5-year review, and
- B) Owl research ongoing while the HCP was developed.

**A) The HCP 5-Year Review** was completed in 2002 because the HCP required that: “A comprehensive review after 5 years will assess the adequacy of the conservation strategy to meet established goals based upon monitoring, research, and adaptive management components of the strategy”<sup>80</sup>

The 5-year review found that some of the best, most important and most productive spotted owls on the Elliott were not protected, as intended, with a Habitat Conservation Area (HCA).

“The five HCAs that contain active spotted owl nest sites or activity centers are not configured to contain the core use areas for the sites where this area has been identified... In particular, the two sites noted as being important to the Elliott population because of their demonstrated ability to contribute new individuals into the spotted owl populations, Roberts Creek and Salander Creek, are not included in any HCAs.”<sup>81</sup>

The Coos District should have used Adaptive Management to address this problem, but instead, the situation worsened for the Salander Creek owls. The Roberts Creek owls had some protection by being in a long-rotation watershed (for now). But the Salander Creek owls live in the area targeted for intensive logging. Not only did the ODF fail to implement Adaptive Management, it actually increased logging in the Salander Creek owl’s habitat, even though the 5-year review repeats its warning several times:

“...delineation of HCAs is not entirely consistent with known spotted owl core areas. Of the 15 core areas, only 6 are wholly or partially within HCAs... only a few of the HCAs include areas known to receive high use by active spotted owl pairs. In particular, the lack of HCAs including the core use areas of Roberts Creek and Salander Creek **may result in lack of adequate protection to maintain these highly productive sites...**”<sup>82</sup> “Under the HCP, there is no specific protection for Roberts Creek or Salander Creek owl sites.”<sup>83</sup> “In particular, the two sites noted as being

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<sup>79</sup> HCP page III-25

<sup>80</sup> HCP page IV-10

<sup>81</sup> Elliott HCP 5-year review. February 18, 2002. page 25.

<sup>82</sup> Elliott HCP 5-year review. February 18, 2002. page 17-18.

<sup>83</sup> Elliott HCP 5-year review. February 18, 2002. page 17-18.

important to the Elliott population because of their demonstrated ability to contribute new individuals into the spotted owl populations, Roberts Creek and Salander Creek, are not included in any HCAs.”<sup>84</sup>

But instead of timely Adaptive Management, the Salander Creek owl pair suffered systematic logging of their best nesting, roosting, and foraging (NRF) habitat after this review surfaced in 2002. In 2003 the ODF proposed to clearcut the Lone Surprise timber sale, a forest that the Salander Creek Owls were documented using in a 1998 owl survey, and the Howell Ridge sale adjacent to a forest the owls were using. Both these sales clearcut NRF Habitat. Lone Surprise even contained rare old-growth groves over 300 years old – the best spotted owl habitat on the entire Elliott. These sales were clearcut in 2004. The FY 2005 sales included the Salander Top timber sale, *inside* the home range of the Salander Creek owl pair. This totals 207 acres of the forests the Salander Creek owls used, clearcut since the 2002 recommendation not to. Additionally, between Lone Surprise and Salander Top sales, the ODF sold another 117<sup>85</sup> acres of NRF habitat, for a total of 324 acres of logging in owl habitat near the Salander Creek owl pair, all AFTER information the pair needed more protections. What kind of Adaptive Management is that?

In 2004 another owl survey was done on the Elliott, and for the first time since the Salander Creek owl pair have been monitored, they failed to nest successfully. The DEIS for the new HCP must make sure this kind of targeting of vulnerable owls will not happen again!

**B) The current HCP also required adaptive management based on the results of research that was on-going when the HCP was adopted.** “The Oregon Department of Forestry is sponsoring research to understand better the managed forest conditions that support healthy spotted owl populations. The goal is to develop and implement silvicultural prescriptions that will provide for sustainable populations of owls and a continuous supply of timber.... An adaptive management approach will be used, **adjusting prescriptions and strategies in response to new information.**”<sup>86</sup>

The research was published in 1998. It also found that the Salander Creek owl pair was unprotected by any HCA<sup>87</sup> and recommended “no timber harvest in the core use areas” on the Elliott State Forest.<sup>88</sup> But as we documented above, instead of appropriate Adaptive Management, the ODF targeted the Salander Creek pair for intensive logging instead.

The Owl study on the Elliott stated that “preserving areas of older forest such as areas on ESF that escaped the 1868 fire... will likely be important for their long-term survival.

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<sup>84</sup> Elliott HCP 5-year review. February 18, 2002. page 25.

<sup>85</sup> Cedar Glenn clearcuts 81 acres of 145 year old forests averaging a DBH of 32”, and Cedar Top clearcuts 36 acres of a 125 year old forest averaging a DBH of 25”.

<sup>86</sup> HCP page IV-42. emphasis ours.

<sup>87</sup> Appendix B. Final Research Report. Home Range and Habitat Use of Northern Spotted Owls on State Forest Lands in the Oregon Coast Range.

<sup>88</sup> Appendix A. page 29

Several sites at ESF (Roberts Creek, Salander Creek)... have had high reproduction relative to other sites on ODF land over the course of the study. Because of the demonstrated ability of these sites to contribute new individuals into the spotted owl populations, protection of these particular sites may be important to help stabilize populations at ESF...<sup>89</sup> One of the few areas on the Elliott that escaped the 1868 fire, and was used by the Salander Creek Owl, was sold in 2003, the Lone Surprise sale.

The purpose of the study was “to better understand how young forests are used by spotted owls.”<sup>90</sup> Owls living in young forests in the North Coast area were compared with owls living in mature forests in the Elliott so that the data obtained could be used to “implement silvicultural strategies to provide habitat for spotted owl populations within managed forests”.<sup>91</sup> But the data did not show that owls could survive in managed forests, instead showing the owls are dependent on older forests and that there was an alarming decline of owls on the Elliott<sup>92</sup>

I asked Jim Young: “Was adaptive management implemented to correct this situation?”<sup>93</sup> He responded: “This information is being considered in development of the revised FMP/HCP.”<sup>94</sup> But this is not timely, and we anticipate the new HCP will propose to take more owls, not protect the Salander Creek pair.

To properly implement effective adaptive management the new HCP should consider the results of the 5-year review and NSO research on the Elliott (better late than never), identify and address all foreseeable changing circumstances, and require modification of the HCP in a timely way.

We would also like to mention here two other situations where Adaptive Management should have kicked in under the current Elliott HCP, but did not.

- Two different species of fish were listed under the ESA during the implementation of the current FMP/HCP. There was no adaptive management. There was not even a change in the buffers widths that was promised in the FMP if fish were listed<sup>95</sup>. The ODF was so slow in addressing the listing that the Watershed Analysis for the Elliott did not come out until the fish were delisted years later.
- The Coos District ODF study on the Marbled Murrelets found that ODF should consider “... maintaining all occupied sites and other older-aged forests for recruitment habitat, and creating new habitat in areas adjacent to existing murrelet nesting habitat. This would not only allow for the creation of larger blocks of murrelet habitat but also provide buffers to existing nesting areas and potentially allow murrelets to expand into

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<sup>89</sup> Summary of Northern Spotted Owl Research on Oregon Dept of Forestry Lands in the Coast Range. July 18, 2000. page 37-38.

<sup>90</sup> Summary of NSO Research on ODF Lands in the Coast Range. July 18, 2000. Page 2.

<sup>91</sup> Id. Page 3.

<sup>92</sup> Owl territories on the Elliott decreased by 48% (from 26 in 1993 to 12 in 1998) and the number of pair sites decreased by 54% (from 13 in 1993 to 7 in 1998).

<sup>93</sup> Email to Jim Young on March 30, 2005

<sup>94</sup> Email from Jim Young on 4/7/05.

<sup>95</sup> 1995 Elliott FMP page V-25.

the newly create habitat.”<sup>96</sup> This recommendation was not considered in Adaptive Management. In fact, the Cedar Glenn timber sale was sold next to the Glen Headwaters Marbled Murrelet Management Area (MMMA) the year after this report came. While the MMMA contained young forests being thinned, the Cedar Glenn sale contained some of the best murrelet habitat on the forest.

ODF’s record in implementing Adaptive Management on the current Elliott HCP is abysmal. The DEIS must consider the current problems and how they will be improved.

## **7. Rotation Length**

Short rotation forestry is proposed in the draft FMP, shorter than the 80-year rotation in the current plan. The HCP DEIS must critically analyze the negative impact to wildlife from short-rotation forestry. The draft FMP implies they could clearcut managed plantations as often as every 30 years<sup>97</sup>, similar to what is practiced on private industrial forests.

The DEIS must consider the impacts to wildlife more than economic returns. Shortening rotations has huge implications for forest integrity. Maintaining a larger percentage of the forest in a younger age class means wildlife dependent on older forests will have less habitat. Less snags will be available to wildlife dependent on dead trees. Herbicides will impact wildlife and water far more often. Soil disturbance every 30 years instead of 80 years means twice the erosion and compaction, potentially delaying forest regrowth after a few rotations. The Elliott’s HCP Core Team said “Monitoring soil conditions is not presently in the monitoring plan... There is no need to monitor on the Elliott. The system is in nutritional balance.”<sup>98</sup> The DEIS must more fairly consider short rotation impacts. The USFWS cannot claim there is “nutritional balance” because the Elliott has not experienced short rotations before. Instead, soil conditions must be added to the monitoring plan and effects of short rotation forestry must be considered after the third and fourth rotation.

The ODF insists “In order to maximize revenue, we have to consider short rotation forestry, and some stands will be harvested on short rotations” in the new FMP/HCP.<sup>99</sup> The USFWS should consider if the ODF has been making enough money from the Elliott so far, and if adding short rotations is absolutely needed for increased money. If the Elliott has been meeting their legal mandate for revenue since 1995, why are short rotations now necessary to increase revenue?

In the DEIS economic evaluations, the USFWS should also consider the negative economic impact of short-rotation forestry. The constitutional requirement for the Elliott

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<sup>96</sup>Final Report. Marbled Murrelet Habitat Characteristics on State Lands in Western Oregon. Nelson and Wilson. OSU, 2002. Submitted to ODF and ODFW. Page vii.

<sup>97</sup>Coos District 2005 Annual Operations Plan Introduction. Page 6. No thinning is in the 2005 AOP because Coos District expected the new FMP to “require some of these stands to be clearcut in the next decade”.

<sup>98</sup> Elliott State Forest Core Team meeting notes. August 19, 2004

<sup>99</sup> Elliott State Forest Core Team meeting notes. August 19, 2004

State Forest is to maximize revenue, not net present value (NPV). Accordingly, the land management strategy employed must maximize cash flow to the Common School Fund. It is within the investment strategy of the Common School Fund itself that the goal of optimal return is then satisfied. Optimal return (NPV) is not a burden of the Common School Fund lands. Therefore, no reason exists to shorten rotations from current lengths. Maximum cash to the Common School Fund occurs from rotations length near or beyond culmination of mean annual increment.

During a long and distinguished career at the USDA Pacific Northwest Research Station, Robert Curtis demonstrated that maximum tree growth for saw timber outputs is 80 to 120 years for high site Coast Range forest lands.

Patterns of development of mean annual increment in relation to age predicted by the widely used DFSIM, SPS, TASS, and ORGANON simulators were examined. Although predictions differ considerably among simulators for portions of the range of sites, ages, and treatments, comparisons indicated that (1) culmination is relatively late, (2) the curve is relatively flat in the vicinity of culmination, and (3) systematic thinning tends to delay culmination. Harvest ages of 40 to 50 years reduce volume production relative to potential by amounts ranging from moderate to large according to site, treatment regime, and simulator. Within unknown upper limits, moderate extension of rotations to minimize conflicts among timber production and environmental, aesthetic, and wildlife values would not materially reduce long-term volume production and might increase value production.<sup>100</sup>

## **8. Herbicides and fertilizers:**

The DEIS should consider herbicide effects on all aspects of the Elliott's ecosystem. There is new information that herbicides can be detrimental to salmon<sup>101</sup>. Additionally, even if the label directions are followed, herbicides can kill species such as amphibians and butterflies, and degrade habitat for upland bird species. Simply following the label is not enough to ensure herbicide safety for wildlife. Recent research has demonstrated that herbicides can have more insidious effects than previously thought. For instance, studies of farmers and other people exposed to glyphosate herbicides have shown that this exposure is linked with increased risks of the cancer non-Hodgkin's lymphoma, miscarriages, and attention deficit disorder. Glyphosate herbicides caused genetic damage and damage to the immune system in fish. In frogs, glyphosate herbicides caused genetic damage and abnormal development.<sup>102</sup>

The ODF aerial sprays Aresenal, Garlon or Accord (glyphosate) herbicides on 90% of the clearcuts. New information also indicates that herbicides thought the safest can contribute to the onset of Parkinson's disease in people. This would include the prisoners forced to

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<sup>100</sup> Curtis, Robert O. 1994. Some simulation estimates of mean annual increment of Douglas-fir: results, limitations, and implications for management. Research Pap. PNW-RP-471. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 27 p.

<sup>101</sup> Diminishing Returns. Salmon Decline and Pesticides. Dr. Richard D. Ewing. February 1999. [www.ifrfish.org/salpest.htm](http://www.ifrfish.org/salpest.htm)

<sup>102</sup> Journal of Pesticide Reform. Winter 2004 Vol. 24, No. 4. [www.pesticide.org/glyphosate.pdf](http://www.pesticide.org/glyphosate.pdf)

work with the chemicals. Herbicides have a major environmental impact on the human environment. Herbicides are meant to kill and cause nerve and hormonal damage.

These effects should be fully disclosed, described, and considered in the HCP for its effects on the 22 considered species and 3 listed species. It is unclear why it has been proposed that the HCP not cover the use of herbicides. It is likely that more herbicides are used on the Elliott State Forest than all the federal lands in Oregon combined. The HCP must document the amount and kind of herbicides used on the Elliott per year and fully document impacts to wildlife.

The ODF usually replies to herbicide comments that they practice “integrated pest management and uses means other than herbicides when appropriate such as mechanical release (i.e. chainsaws).”<sup>103</sup> Yet every timber sale in every Annual Operation Plan we have ever reviewed, uses herbicides exclusively. Not one “uses means other than herbicides”. Since the district claims integrated pest management (IPM) *is* being used, the DEIS should explain *how* IPM is used.

Integrated Pest Management (IPM) is more than just using various treatments for unwanted vegetation. It is also a philosophy of how to avoid unwanted vegetation to begin with. For instance, thinning instead of clearcutting provides shade that inhibits some species of unwanted brush, so thinning could be a component of the district’s IPM program. Another example of IPM would be the requirement for logging equipment to be washed before entering the Elliott Forest, to cleanse off invasive weed seeds and pathogens. Since the BLM requires this, there are washing stations easily available in the area and the operators are used to it. If the Coos District implemented the same policy, less herbicide would be necessary on landings and roadsides. The DEIS must consider these issues. If the DEIS requires IPM, the DEIS should spell it out what that means.

When we submitted these comments for consideration in the FMP, the ODF responded: “Research and experience indicate good results from appropriate use of herbicides and fertilizers in specific situations.” The ODF is just guessing at this because herbicide use on the Elliott has never been monitored or tested in any way. There is no research on the Elliott’s herbicide use. ODF continues: “Herbicide applications on the Elliott are at relatively low levels.” No, they are the highest of any government agency in Oregon. ODF claims: “Eliminating herbicide use would result in low survival and reduced growth of conifers, due to competition from brush. “ No, the adjoining BML and Forest Service do just fine without aerial application of herbicides on their regeneration harvests. Again, ODF is just making claims that are not based on any science or monitoring. ODF continues: “Replacing herbicide application with mechanical, labor intensive methods would significantly increase costs...” Again, not true. The ODF has access to prisoners that make only about \$2.00 a day. It is even more cost effective for the Elliott to eliminate aerial herbicide applications than any other government agency in the area. ODF says: “The current restrictions, application standards, and monitoring program associated with herbicide and fertilizer applications are considered by ODF to be sufficient to provide resource protection.” The current restrictions have not kept up with

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<sup>103</sup> Coos District 2006 AOP summary. Page 6.

the science on herbicide damage. There is virtually no effective monitoring program on the Elliott to look at both immediate and long-term damage to soils, fish, amphibians, human impacts, etc.

Fertilizers effects must also be considered, including adding nitrogen into the watersheds, possibly causing increased algae growth in creeks and streams. Loon Lake could be affected by excessive nitrogen caused by fertilizers. Fertilizer additives can also be toxic.

The DEIS for the HCP must consider the herbicide and fertilizer program on the Elliott in the HCP, and fairly consider the environmental consequences of continuing with the program. The DEIS must also look at watersheds sprayed with herbicides and fertilizers where **people obtain their household drinking water**. Impacts to all kinds of people must be considered in the DEIS, including the elderly with compromised immune systems and pregnant women and their developing fetuses.

## 9. Other species considered

The federal register listed 22 other species to be considered in this HCP but no plants, mushrooms or lichens were listed. The Northwest Forest Plan lists hundreds of rare plant, mushroom and lichen species that are dependent on late successional forests.<sup>104</sup> Some of these plants could be found on the Elliott, especially in unique habitats, such as rock walls, that are scattered around on the Elliott. The HCP should consider protecting some of the unique habitat and rare plants whose habitats are found on the Elliott, to help forestall their listing under the ESA on federal lands in the future. Protections on the Elliott could be especially helpful for keeping these species off the Endangered Species List since the requirements to protect the rare plant, mushroom and lichen species have been removed from the Northwest Forest Plan.

Also, in addition to fisher (*Martes pennanti*), the list of protected species should also include American martens (*Martes americana*). The USFWS should consider the study *Status of American Martens in Coastal Forests of the Pacific States*. This study found “Martens still occur in the central and southern coastal mountains of Oregon. Our results suggest that conservation of martens in coastal forests will require new initiatives to protect existing populations and new efforts to document all populations of martens in this region.”<sup>105</sup> Please ask if you would like us to send you a copy of this study.

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<sup>104</sup> Standards and Guidelines for Management of Habitat for Late Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl. USDA FS and USDI BLM. (aka Northwest Forest Plan). April 1994. Page C-49 through C-61.

<sup>105</sup> *Journal of Mammalogy*, 82(2):478–490, 2001. Status of American Martens in Coastal Forests of the Pacific States. William J. Zielinski, Keith M. Slauson, Carlos R. Carroll, Christopher J. Kent, and Donald G. Kudrna. *Redwood Sciences Laboratory, Pacific Southwest Research Station, United States Forest Service*, 1700 Bayview Drive, Arcata, CA 95521 (WJZ, KMS).

## 10. Also Consider...

- The **historical range of variability** (HRV) of mature and old-growth forests should be documented and considered in the HCP and FMP. The proper scale for the HRV should be the Coast Range and should not include habitat created by early settlers fires, as these human disturbances were not natural events. The FMP and HCP should mimic the HRV.
- Laminated Root Rot is a native **disease** that adds biological diversity to the forest, but thinning native stands could spread this disease unnaturally fast. Swiss Needle Cast likewise is a native disease that is spreading unnaturally fast on the Elliott. When plantations have Swiss Needle Cast, adjoining native forests should not be logged. It has also recently been documented that stands with Swiss Needle Cast should not be clearcut to “cure” the disease. Thinning is better at helping the stand recover. The Elliott should also have a monitoring program to watch for Sudden Oak Death in any of the susceptible species on the Elliott.
- Young native forests, never before logged, should not be thinned, especially in wildlife reserves. Too much thinning can homogenize a forest. Native forests will generally reach a satisfactory complexity in its own time. • Managed plantations comprise over half of the Elliott State Forest. **Thinning** managed plantations should be done before any more native forests are converted to plantations.
- **Recreation impacts** should be fully considered in the HCP. We have encouraged the ODF to increase hiking and equestrian recreation opportunities on the Elliott. When they agree, the HCP must consider impacts from all recreation, especially ATV use, which is rampant on the Elliott. ATV use (and to a lesser extent, equestrian use), especially during wet weather, can cause extensive road erosion, creating ditches that funnel sediment laden water into fish habitat<sup>106</sup>. These impacts should be anticipated and mitigated.
- **Special Forest Products** should be included in impacts considered in the HCP. I have seen truckloads of salal leaving the forest. In addition to environmental impacts, the FMP should disclose the current income from these permits, the income that could be gained if all special forest products leaving the forest were taken legally, and the expected future income from special forest products.
- The HCP should require the **trees retained in regeneration harvests** to include the biggest and oldest trees in the stand. We have seen retained trees in some ODF clear cuts, like Lone Surprise, that were tiny compared to the trees that were cut and removed. The purpose of retained trees is to provide a legacy to the new forest. The largest trees in the stand will best meet this purpose.
- HCP **monitoring** should be well defined as to who will do what, when, and include how the public will be able to monitor the monitoring. Close monitoring is especially important because the FMP is based on “modeling” by John Sessions. The modeling could be wrong. Prompt and adequate monitoring would help correct modeling errors.

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<sup>106</sup> See an example pictured in 10/30/02 comments on the Elliott draft FMP from Umpqua Watersheds, et al.

- The Elliott State Forest **Steering Committee** should be less biased. “The primary role of the steering committee is to provide guidance and direction to the Planning Team as they move forward in revising the Elliott Plan and considering a revision to the Habitat Conservation Plan”.<sup>107</sup> Unfortunately, there is no member of the general public on the steering committee. It consists only of members who have an economic interest in the ESF.<sup>108</sup> No member of the public can even attend the meetings<sup>109</sup>, increasing its pro-money slant even more. This provides a very unbalanced and biased “guidance and direction to the Planning Team”. The Elliott State Forest Habitat Conservation Plan should be less focused on money. It is likely illegal for planning team advisory committee to meet secretly behind closed doors.
- The USFW should make clear that the **full range of HCP mitigation is mandatory** to protect valuable habitat. For instance, the current HCP (IV-41) requires deferring stands for logging that include: (1) spotted owl occupancy; (2) those with 100 year age class or older that meet medium to high quality habitat standards for marbled murrelet nesting habitat; and (3) those closest to high quality marbled murrelet potential nesting habitat, northern spotted owl activity centers, and HCAs. (See section Adaptive Management for timber sale examples). The new HCP should make it very clear in the HCP that target volume is not the only mitigating factor. The full range of mitigation is mandatory.
- **The HCP should come before the FMP.** The timeline for the draft FMP Board of Forestry approval is August 2005, but the Biological Opinion for the HCP isn’t expected until April 2006, eight months later. The USFWS should explain how can the Board of Forestry can approve a Forest Management Plan before knowing how much logging the HCP will allow? If agreements have already been made with the U.S. Fish and Wildlife service to allow an Incidental Take Permit (ITP), please disclose these agreements to the public. If not, explain how ODF can determine logging levels before determining the habitat burden for an ITP. In 10 years, the current owl HCP would have an annual harvest of about 23 mmbf, while the proposed Landscape Strategy in the draft FMP **would almost double logging** to 40 mmbf a year. At the May 24, 2005 Roseburg public meeting, ODF was asked if additional owls would be allowed to be taken? We were told the ODF doesn’t know. If ODF doesn’t know how many owls can be taken, how can logging levels be determined under the proposed Integrated Landscape Strategy?

## 11. Roads:

The DEIS must consider the high density of roads on the Elliott, perhaps over 5 miles per square mile, and the negative effects to wildlife. The National Marine Fisheries Service have said that a density over 2 miles per square mile has negative effects on watershed conditions. Other scientists have identified the negative effects of roads in a Structure

<sup>107</sup> Email from Dan Shults, Chair of the Elliott Steering Committee, February 28, 2005.

<sup>108</sup> Id. “The Elliott Steering Committee is made up of agency representatives and representatives from specific fiduciary beneficiary groups.”

<sup>109</sup> Email from Dan Shults, Chair of the Elliott Steering Committee, 2/17/05. “These meetings do not fall under public meeting laws.” In response to my request to attend a meeting, the answer was “no”.

Based Management system, such as the Tillamook:

“A silvicultural system that requires an extensive road network is inimical to regional conservation needs for many sensitive and protected species. The repeated harvest entries dispersed extensively over the landscape of intensive silvicultural systems that numerous simplified structure-based management forest plans require, appear almost certainly to preclude the persistence of any large-scale ecological refugia free from human disturbance. Road systems and their impacts are an important element of any management strategy, one that SSBM fails to address. All of the aforementioned factors—among others—must be considered when prescribing an intensive silvicultural management regime. By failing to account for such factors and some of the more severe impacts associated with intensive silviculture, the simplified stand structure model now being applied to various management regimes (e.g., Oliver and Larson 1996) fails to address road systems and their impacts.”<sup>110</sup>

The DEIS must consider these factors and impacts identified above.

ATV road use into the west fork of the Millicoma River, and along the banks<sup>111</sup> should be addressed with environmental impacts analyzed. ATV road use on the Elliott has expanded recently and is expected to expand more. ATVs use old logging roads, as well as make their own unauthorized roads. The HCP must consider these impacts on fish (as well as on nesting endangered birds).

## 12. Old Growth and Second Growth

The ODF has stated that they do not log old-growth on the Elliott.

“Reserving remnant old-growth trees is a district policy. Care is taken to walk through the units and mark the residual old-growth as green tree retention. The only exception to this policy is if an old-growth tree is located where it impedes operability and causes a hazardous situation.”<sup>112</sup>

This is not true. The only timber sale we know that included old growth, “Lone Surprise”, cut dozens of 300 year old trees. We also found a piece of what could have been a Western Hemlock tree with 500 rings on it.

In the new HCP, the USFW should require the ODF to reserve from harvest all old-growth trees (including all trees that survived the 1868 fire). The confusion between what the ODF claims they are reserving, and what happened in Lone Surprise, should be explained so the public and be assured that there are no hidden loopholes allowing old-growth to be cut. If all the old-growth trees in Lone Surprise were cut because of “operability” or because they were hazardous, then no old-growth on the Elliott is safe. It would appear those two loopholes could log every old-growth tree near a timber sale.

The USFWS should also require that individual old-growth trees within predominately mature, but not old-growth units, should also be protected as retention trees. Protection

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<sup>110</sup> Simplified forest study page 29.

<sup>111</sup> See photographs and documents we submitted to ODF on October 30, 2002

<sup>112</sup> 2006 AOP Public Comments and Responses. Coos District. Current Stand Summary. Page 1. <[http://oregon.gov/ODF/STATE\\_FORESTS/planning.shtml#Public\\_Comments](http://oregon.gov/ODF/STATE_FORESTS/planning.shtml#Public_Comments)>

means that other trees are felled away from them, they are not used as tail-hold trees, yarding corridors are not placed next to them, and not topped for snag creation.

The new HCP should use the same definition of old-growth as the current HCP, 156 years and older. “A mature and/or old growth forest stand. ... In this document, refers to stands 156 years or older...”<sup>113</sup>

The USFWS should also consider how it uses the term “second growth” in the DEIS. ODF applies the term “second-growth” to 150 year old native forests regenerated after the 1868 fire, as well as to plantations created by clearcutting old-growth that escaped the fire. We believe the latter is the appropriate definition. The DEIS should use more appropriate terminology in the HCP. The term “second-growth” should not be applied to native, unmanaged forests that regenerated from the 1868 fire. The current HCP uses the term “second growth” three times, always applied to a “managed forest”. The new HCP should continue to use the term like this.

If “second-growth” is applied to all forests regenerated from fire, then there is no such thing as first-growth. **All forests in the Pacific Northwest originated from fire** – some from a fire 500 years ago, some 300 years ago and some 150 years ago. Calling native, mature, never-before-logged forests “second-growth”, the same name used for human-created plantations, lessens their historic value. Native forests are far more valuable to wildlife and ecosystems than plantations created from nursery stock. Calling mature, native forests “second growth” brings them down to the level of an even aged plantation. Mature, native forests should be called a native forest, or an original forest, or a virgin forest or old-growth if it is over 156 years old. Calling them “second growth” is not a frank and candid description.

### **13. 2003 NSO survey on the Elliott found less owls than ODF claims**

The ODF has claimed the 2003 NSO survey on the Elliott found “12 active pair sites and a resident single for a total of 13 activity centers and 25 owls.”<sup>114</sup> The HCP should not use this figure. The final results really say “Based on the more rigorous protocol for demographic studies, there were 10 active pair sites and three resident-single sites”.<sup>115</sup>

But even if we go with ODF’s less rigorous protocol, the 12 active pairs and 1 resident single includes the “Four-mile owl site on nearby private land...”<sup>116</sup> The ODF has no control over the potential cutting of the Four-mile owl core so it should not be included in the HCP. This brings the active pair sites down to only 11 on the Elliott.

Those include the “Murphy Creek Pair”. “There were no spotted owl responses detected at this site in 2003”.<sup>117</sup> This should not have been counted as an active pair in 2003,

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<sup>113</sup> Elliott HCP. 1995. Page 3-13. “Key Terms”.

<sup>114</sup> Response to 2006 AOP Public comments for the Coos district. Page 5.

<sup>115</sup> Final Spotted Owl Survey Report. Kinfisher Ecological, Inc. page 6.

<sup>116</sup> Id. Page 7.

<sup>117</sup> Id. Page 19

which brings the count down to only 10 active pairs.

That includes the Palouse Creek pair. "...an unbanded male was found in the area... No more spotted owls were detected at this site in 2003".<sup>118</sup> That means this pair has turned into a resident single which brings the count to 9 active pairs and two resident singles.

That includes the Sock Creek resident single that the surveyors said was really the Tom Fool pair male. Since the Tom Fool pair was also counted, the Sock Creek resident single was double counted. That brings the count down to 9 active pairs and one resident single.

But that counts the Upper Mill Creek pair. "...it was decided that the Upper Mill Creek pair moved to the Tom Fool site after being displaced by the barred owl."<sup>119</sup> That means the Tom Fool owls were double counted another time. That would bring our total down to 8 active pairs and one resident singles.

Our interpretation of the data might not be exactly correct in who's a pair and who's a resident single, but our interpretation does show that the 2003 owl data should be reexamined by the USFWS. In any case, the number is definitely below ODF's claim of "12 active pair sites and a resident single for a total of 13 activity centers and 25 owls"<sup>120</sup> on the Elliott State Forest. The USFWS should also note that the 2003 owl survey found 8 barred owls on the Elliott, some occupying historic owl sites. The HCP do another owl survey done in 2006 so it is based on the most current data and trends.

#### 14. Other violations of the current HCP

Throughout this document we have pointed out violations of the current HCP, such as Adaptive Management. This section details several more violations of the FMP and HCP that the DEIS should consider in additional impacts.

**Harvest levels for the current HCP have been too high.** The 2006 AOP Summary states the Elliott's Annual Objective for clearcuts is 510 acres, 15 acres above ODF's stated target of 525 acres. The Coos District said the extra 15 acres of clearcutting is to catch up to past years of not meeting the objective. This is the second year in a row the Coos District has exceeded their clear-cutting target. In FY 2005 it was exceeded by 142 acres.<sup>121</sup>

The DEIS must consider the fact that the Elliott has been exceeding their ITP harvest level since 2001. The target that ODF has been meeting was made **assuming there was an incidental take permit (ITP) for Marbled Murrelets past 2001**<sup>122</sup>. Since this didn't

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<sup>118</sup> id. Page 20.

<sup>119</sup> id. Page 24.

<sup>120</sup> Response to 2006 AOP Public comments for the Coos district. Page 5.

<sup>121</sup> Coos District 2005 Annual Operations Plan Summary. Page 6.

<sup>122</sup> Elliott State Forest EA for the Habitat Conservation Plan. USDI Fish and Wildlife Service. 1995. page III & IV-73. "Table III & IV-15... Annual Timber Harvest Volume... Assumes an ITP is obtained for harvest of northern spotted owl habitat beyond 2005 and for marbled murrelet habitat beyond 2001.

happen, it is understandable that there were “4 years where the acres of clearcut fell below the annual target due to murrelets.”<sup>123</sup> ODF was not allowed to make that up in 2005 and 2006 since there is *still* no ITP for Marbled Murrelets. The target volume must be lowered for years 2001 through 2006 to reflect the fact that since 2001 there has been no MM ITP.

The assumptions USFWS used when determining target volume included an ITP for years 2002, 2003, and 2004.<sup>124</sup> Since this assumption was wrong, the Coos District should have lowered the target volume, especially when it was evident that murrelets were causing the decline in the volume sold.

“Surveys for murrelets resumed in 1998 in preparation for timber sales to be sold when the ITP expired in 2001 and afterwards. As it turns out, the Elliott is a murrelet-rich environment and murrelets are found even on about 25 percent of timber sales proposed in “poor” murrelet habitat. When murrelets are found, the proposed sale is scrapped or modified and a significant acreage of timber in the vicinity is set aside as a Marbled Murrelet Management Area (MMMA), thereby reducing the amount of timber available to sell.”<sup>125</sup>

It was illegal for the ODF to play catch-up for in 2005 and 2006, trying to attain a target volume made under the assumption a MM ITP would be extended after 2001. The USFWS should consider the impact of exceeding harvest levels in the new HCP.

**The ODF is clearcutting when they are required to be thinning.** The 2005 and 2006 AOP identified 0 acres of thinning when their target should have been 500 acres. The Elliott FMP and HCP have an annual objective of 500 acres of “Conifer Partial Cut”. But the 2005 and 2006 AOP was approved for 0 acres of “Conifer Partial Cut”. Missing the HCP’s annual objective completely is not allowed without reconsulting. It is also not allowed under administrative rules. “Administrative rules prevent districts from adopting recommendations inconsistent with the forest management plans and implementation plans”<sup>126</sup>. If the FMP objective is to thin 500 acres, thinning 0 acres is not consistent with the FMP. Clearcutting young managed plantations also violates the FMP: “Units are selected for regeneration harvesting as they reach a designated rotation age.”<sup>127</sup> The FMP says that “harvest volume is maximized if harvest ages are set at the “culmination of mean annual increment,” or CMAI... CMAI for stands on the Elliott State Forest ranges from approximately age 100 to age 150...”<sup>128</sup> ODF claimed that they are not thinning because the new draft FMP will “require some of these stands to be clearcut in the next decade”<sup>129</sup>. It is illegal for the ODF to implement a proposed plan before it is approved.

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<sup>123</sup> Coos District 2006 AOP summary. Page 5.

<sup>124</sup> Elliott State Forest Environmental Assessment for the Habitat Conservation Plan. USDI Fish and Wildlife Service. 1995. page III & IV-73.

<sup>125</sup> *Oregon’s Common School Forest Lands: management status update*. February 10, 2003. (Revised March 31, 2003). John H. Beuter. Umpqua-Tualatin, INC. page III.

<sup>126</sup> Guidelines on How to Provide Useful Comments on Oregon Department of Forestry Draft 2006 Annual Operations Plans. ODF. February 2005 page 3.

[www.odf.state.or.us/DIVISIONS/management/state\\_forests/AOP.asp](http://www.odf.state.or.us/DIVISIONS/management/state_forests/AOP.asp)

<sup>127</sup> Elliott FMP page J-1.

<sup>128</sup> Elliott FMP page VI-41.

<sup>129</sup> Coos District 2005 Annual Operations Plan Introduction. Page 6.

**Logging is occurring in and near Owl Core Areas**, in violation of the recommendations of the 2000 NSO study and HCP mitigations on page IV-41 of the current HCP. Core areas are defined as “areas within the home range that received higher use than other areas.”<sup>130</sup> Some examples are the Salander Top, logging within the home range of the Salander Creek owl, and Lone Surprise, logging in rare old-growth forests used by the Salander Creek owl (see section 6 above). Another example the “**4200 Wedges Timber Sale**”<sup>131</sup> The ODF decided to clearcut in one of the longest rotation basins (basin 6) that the Owl HCP forbids clearcutting in. With no explanation, the 4200 Wedges Timber Sale clearcut within the heart of the Benson Creek Spotted Owl Site, completely ignoring the recommendations of the NSO study not to harvest in core areas. It also clearcut the exact site that the Murphy Creek female spotted owl was observed in during the 5 year ESF Spotted Owl Study.<sup>132</sup>

The 4200 Wedges Timber Sale clearcut one of the most protected and best used places on the Elliott for Spotted Owls, logging trees up to 50” DBH. When we asked for an explanation, we were told it was determined to not be Marbled Murrelet habitat, so no surveys were done, but no explanations are available for how the Owl HCP was so blatantly violated in a long-rotation watershed basin. One excuse of why this sale was needed came out of an ODF memo: “improve access to about 50 acres of ODF timber.”<sup>133</sup> Why would ODF want to improve access to “timber” in a 240-year rotation basin they can’t log and is in the heart of an important spotted owl core area?

**The HCP and the FMP require the best habitats be logged last**, stands over 100 years old be deferred, stands with NSO occupancy be deferred, stands next to MM activity centers and HCAs be deferred and not to fragment mature forests.<sup>134</sup> The ODF has consistently violated these mitigation measures.

Some of the sales we have not yet talked about are three 2004 sales share a common boundary with a Marbled Murrelet Management Areas (MMMA), such as **Cedar Glenn**, **Top Panther**, and **Joe Buck**. Some of the MMMA’s contains plantations, like the one next to Cedar Glen while Cedar Glen contains the best MM habitat in the area. Cedar Glenn units virtually encircle about half it’s adjoining MMMA. (Herbicide spraying the clearcuts during the MM nesting season next to MMMA’s is another impact the new HCP should consider).

Another example is the 2006 **Bowl Bound Beaver** sale, clearcutting 70 acres of 124 year old forests that are a connection between the Trout Mouth Marbled Murrelet Management Area (MMMA) on its west boundary, and the Beaver Creek Habitat Conservation Area (HCA) on its east boundary. These two areas of protected older forests are connected by the Bowl Bound Beaver timber sale. Clearcutting here will increase habitat fragmentation. The ODF misrepresents this sale in the Pre-Operations

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<sup>130</sup> NSO Research on ODF lands. 7/18/00. Appendix B. page 46.

<sup>131</sup> Advertised 9-18-02. Regeneration harvest of 7 acres, 327 mbf, average DBH 24”, up to DBH 55”.

<sup>132</sup> NSO Research on ODF Lands. Appendix B. Home Range and habitat use. Page 39. See Start star for September 1997. This is exactly in Area II in the 4200 Wedges Timber Sale.

<sup>133</sup> Summary of modifications to the FY 2003 AOP. From Greg Kreimeyer, ADF to James Young, 9/6/02.

<sup>134</sup> FMP V-28 and HCP IV-41

Report, which says, “The sale areas are isolated residual stands or are located on the edge of a contiguous block of mature timber and does not increase fragmentation of interior habitat”.<sup>135</sup> This is incorrect. There is a clearcut adjoining Bowl Bound Beaver on it’s south side, but the north side is the stream buffer, the west side is the Trout Mouth MMMA, and the west side is the Beaver Creek HCA. Bowl Bound Beaver is neither isolated nor on the edge of mature timber It is in the middle of mature timber. It could even be better habitat than the Beaver Creek HCA which contains old clearcuts. Bowl Bound Beaver sale area has better owl habitat too even though HCAs and MMMAs are supposed to contain the best older habitat in the area.

These blatant violations of the current FMP and HCP<sup>136</sup> must be accounted for in the DEIS for the new HCP, and policies developed to more closely monitor the ODF. Or, reconsultation on the current HCP should be initiated.

## **15. Modification of the current HCP and ITP**

We are not opposed to the modification of the current HCP and ITP to address impacts to NSO and MM from current unsustainable harvesting levels on the Elliot.

The Endangered Species Act requires that the Secretary of Interior list endangered and threatened species and designate critical habitat for those species.<sup>137</sup> Section 9 of the ESA prohibits the “taking” of any listed species.<sup>138</sup> “Take” means “harass, harm, pursue, shoot, wound, kill, trap, capture, or collect.”<sup>139</sup> Section 10 allows the USFWS to issue a permit allowing “take” notwithstanding Section 9 only if the take is “incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.” 16 U.S.C. § 1539(a)(1)(B). To obtain an incidental take permit, the applicant may submit a HCP that shows “the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking,” and “the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.”<sup>140</sup>

Under section 7 of the Act, federal agencies must consult with USFWS or NOAA Fisheries to ensure that any action authorized or carried out by the agency is not likely to jeopardize the continued existence of any endangered species, or result in the destruction or adverse modification of the critical habitat of the species. 16 U.S.C. § 1536. USFWS regulations provide that “jeopardize the continued existence of” means “to engage in an action that reasonably would be expected, directly or indirectly, to reduce the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.”<sup>141</sup> “Destruction or adverse

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<sup>135</sup> Pre-Operations Report for Bowl Bound Beaver. Draft 12/28/04. page 6.

<sup>136</sup> FMP V-28 and HCP IV-41

<sup>137</sup> 16 U.S.C. § 1533(a).

<sup>138</sup> 16 U.S.C. §§ 1538(a)(1)(B) and (G).

<sup>139</sup> 16 U.S.C. § 1532(19)

<sup>140</sup> 16 U.S.C. § 1359(a)(2).

<sup>141</sup> 50 C.F.R. § 402.02.

modification” is defined as “a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species.” *Id.*

If the terms of the HCP and in turn the ITP are exceeded (as described in section 1, 6 and 13 of these comments) or if new information (as described in section 5 of these comments) indicates that listed species may be impacted to an extent not previously considered, reinitiation of section 7 consultation must occur when discretionary Federal involvement or control has been retained. 50 C.F.R. 402.16. The USFWS has retained the authority to suspend or revoke the ITP permit if the ODF does not comply with the conditions of the permit and at the least the terms of the existing ITP and HCP should be reexamined because there is strong reason to believe that the terms of the existing HCP are not sufficient to meet the obligations of the ESA. There have been a number of intervening events that necessitate reinitiation of consultation regarding the terms of the incidental take. While this reinitiation of consultation has not occurred, the Elliott State Forest continues to log heavily and in some instances likely in excess of the mitigation measures required by the HCP and the incidental take permit.

Intervening events that necessitate reconsultation and suggest that additional mitigation measures are required to protect listed species. See supra section 5. While we support an effort to re-examine whether the existing HCP provides sufficient protections to prevent the take of listed species, we do not support any proposal to increase logging beyond already unsustainable levels when no effort has been made to address existing inadequacies of the “incidental take” permitted by the USFWS.

## **16. Elliott forest must contribute to recovery of endangered species.**

The position of the ODF is that the Elliott State Forest HCP does not have to contribute to the recovery of species listed under the Endangered Species Act.<sup>142</sup> This is incorrect. The ESF HCP must contribute to the recovery of listed species.

The purpose of the ESA is to “provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved,” and “to provide a program for the conservation of endangered species.” 16 U.S.C. § 1531(b). “Conservation” is defined as the “use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which” the species no longer needs to be protected under the Act. *Id.* at § 1532(3). The principal responsibilities for implementing the Act are imposed on the Secretary of the Interior and the Secretary of Commerce, who have delegated their responsibilities to the Fish and Wildlife Service and the National Marine Fisheries Service. 50 C.F.R. § 402.01(b).

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<sup>142</sup> ODF response to Draft Elliott SF FMP public comments. 1/22/03.

[www.odf.state.or.us/DIVISIONS/management/state\\_forests/elliott/Response\\_to\\_2002\\_comments.htm](http://www.odf.state.or.us/DIVISIONS/management/state_forests/elliott/Response_to_2002_comments.htm).

“Meeting state and federal Endangered Species Acts does not require the Elliott State Forest to contribute to the survival and recovery of threatened and endangered (T & E) species... There is no federal or state requirement for state lands to provide for recovery of T&E species”.

The Services are charged with listing imperiled species as either “threatened” or “endangered,” and with designating critical habitat for listed species. See 16 U.S.C. §§ 1533, 1536, 1538. The ESA also requires the Secretary to develop and implement recovery plans for listed species. See 16 U.S.C. 1533(f).

Listed species are entitled to protection under several other key provisions of the ESA. Under Section 7(a)(1), the Secretary must “review other programs administered by h[er] and utilize such programs in furtherance of the purposes of this chapter.”<sup>143</sup> Also, under Section 7(a)(1), all other federal agencies must, “in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation” of listed species.<sup>144</sup>

Under Section 7(a)(2), every federal agency must “insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary . . . to be critical” to the survival of the species. 16 U.S.C. § 1536(a)(2). “Jeopardize the continued existence of” means to “engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.” 50 C.F.R. § 402.02. These consultations conclude with the Service issuing a “biological opinion” that “must address both the jeopardy and critical habitat prongs of Section 7 by considering the current status of the species, the environmental baseline, the effects of the proposed action, and the cumulative effects of the proposed action.”<sup>145</sup> If the biological opinion concludes that jeopardy is not likely and that there will not be adverse modification of critical habitat, or that there is a “reasonable and prudent alternative” to the agency action that avoids jeopardy or adverse modification, the Service can issue an “incidental take statement” which, if followed, exempts the action agency from the prohibition on takings found in Section 9 of the Act. 16 U.S.C. § 1539(b)(4). Pending completion of the formal consultation process, the action agency is prohibited from irreversibly or irretrievably committing resources so that any “reasonable and prudent alternatives” that the Service might recommend are precluded.

In *Gifford Pinchot Task Force*, the Ninth Circuit followed decisions from the Fifth and Tenth Circuits, and held that the Service’s definition of “adverse modification,” 50 C.F.R. § 402.02, is unlawful. *Gifford Pinchot*, 378 F.3d at 1069. Section 402.02 defines “adverse modification” to mean a “direct or indirect alteration that appreciably diminishes the value of critical habitat for *both* the survival *and* recovery of a listed species.” 50 C.F.R. § 402.02 (emphasis added). According to the Ninth Circuit, this “definition sets the bar too high because the adverse modification threshold is not triggered by a proposed action until there is an appreciable diminishment of the value of

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<sup>143</sup> 16 U.S.C. § 1536(a)(1).

<sup>144</sup> *Id.*; see also *Sierra Club v. Glickman*, 156 F.3d 606, 618 (5th Cir. 1998) (holding that Section 7(a)(1) “contains a clear statutory directive . . . requiring the federal agencies to consult and develop programs for the conservation of each” listed species).

<sup>145</sup> *Gifford Pinchot Task Force v. United States Fish and Wildlife Serv.*, 378 F.3d 1059, 1063 (9th Cir. 2004) (citing *Ariz. Cattle Growers’ Assoc. v. USFWS*, 273 F.3d 1229, 1239 (9th Cir. 2001)).

critical habitat for both survival and recovery.” *Id.* This “reads the ‘recovery’ goal out of the adverse modification inquiry. *Id.*; *see also id.* (noting that “a proposed action ‘adversely modifies’ critical habitat” under the definition “if, and only if, the value of the critical habitat for *survival* is appreciably diminished”) (citing *N.M. Cattle Growers Ass’n v. United States Fish and Wildlife Serv.*, 248 F.3d 1277, 1283 & n. 2 (10th Cir. 2001)) (emphasis in original); *Sierra Club v. United States Fish and Wildlife Serv.*, 245 F.3d 434, 441-42 (5th Cir. 2001)). The Court noted that “the ESA was enacted not merely to forestall the extinction of species (i.e., promote a species[’] survival), but to allow a species to recover to the point where it may be delisted.” *Id.* at 1070; *see also id.* (“it is clear that Congress intended that conservation and survival be two different (though complementary) goals of the ESA”). Critically, the definitions for “adverse modification” and “jeopardize the continued existence of” are similar in this key way. Both require a finding that the activity will diminish or reduce *both* the species’ survival *and* recovery.<sup>146</sup>

### **In Conclusion:**

When wildlife biologist Eric Forsman reviewed the Elliott’s Resource Management Strategies of the draft FMP, he said it sounded optimistic. “I question whether it is possible to “maximize” revenue to the Common School Fund and also manage forests to maintain healthy populations of species like Red Tree Voles, Murrelets, Spotted Owls and salmon. It sounds too good to be true, kind of like having our cake and eating it too.”<sup>147</sup> The DEIS for the HCP must consider if Eric Forsman is be right.

The ODF has consistently said they need a new HCP to increase revenue because of their mandate for Common School Forest Lands. But isn’t the ODF already meeting the legal mandate for Common School Forest Lands? ODF is not saying their current plan is illegal, right? If they are already meeting their legal mandate for Common School lands, why is a new HCP necessary to meet that mandate? The USFWS should resolve this confusion when responding to these comments.

The ODF has also stated they need a new HCP for an “Adaptive Management” response to the rapid decline of the NSO and other findings in the 5-year review, such as misplaced HCAs. The Purpose and Need of the DEIS must reflect these dual purposes and needs, to increase logging and to increase protections. If the DEIS finds it is not possible to have our cake and eat it too, logging must be scaled back. We can always cut old trees later, but we can never put the native, natural forests of the Elliott back once they are cut.

We wish to incorporate by reference the comments submitted by Oregon Natural Resource Council on June 20, 2005.

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<sup>146</sup> 50 C.F.R. § 402.02.

<sup>147</sup> Scientific Review of the Elliott State Forest Management Strategies. ODF. May 2004. page 14.

Sincerely

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