

RECORD OF DECISION

for the
Proposed Issuance of Section 10(a)(1)(B) Incidental Take Permits
to
J.L. Storedahl & Sons, Inc.
for the
Daybreak Mine Expansion and Habitat Enhancement Project
Habitat Conservation Plan

U.S. Fish and Wildlife Service
National Marine Fisheries Service

April 2004

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Introduction

This Record of Decision (ROD) was developed by the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS), (together termed the Services), in compliance with both agencies' decision-making requirements, pursuant to the National Environmental Policy Act of 1969, as amended (NEPA). The purpose of this ROD is to document the decision of the Services, in response to applications for Incidental Take Permits (Permits) (USFWS-PRT-TE064055-0, NMFS-PRT-1483) for species listed under the Endangered Species Act of 1973, as amended (Act), based on the submission of a Habitat Conservation Plan (HCP) by J.L. Storedahl & Sons, Inc. (Storedahl), Clark County, Washington. Storedahl's Permit applications and supporting Daybreak Mine Expansion and Habitat Enhancement Project HCP were submitted to the Services pursuant to section 10(a)(1)(B) of the Act.

This ROD: (1) states the Services' decision and presents the rationale for this decision; (2) identifies the alternatives considered in the Environmental Impact Statement (EIS) in reaching the decision; and (3) states whether all means to avoid or minimize environmental harm from implementation of the selected alternative have been adopted (40 CFR 1505.2).

Project Description

The proposed action is needed because Storedahl made application to the Services for two Permits, one from the USFWS for species under its jurisdiction and one from NMFS for species under its jurisdiction. The Services' *proposed action* is to issue Permits for the expansion of the Daybreak Mine, gravel processing, mine reclamation, and habitat enhancement under the final HCP. The *purpose of the action* is to provide incidental take coverage for species addressed by the HCP as Storedahl operates and expands gravel mining at the project site, while ensuring the implementation of conservation measures that minimize and mitigate potential adverse effects to covered species in both the near and long term.

The Permits would apply to lands adjacent to the East Fork Lewis River, in Clark County, Washington. The NMFS Permit would apply to steelhead, chum salmon, and Chinook salmon which are all listed as threatened under the Act, as well as to one currently unlisted species (coho salmon), should it become listed (as endangered or threatened) in the future (Table 1). The USFWS Permit would apply to threatened bull trout, and to four currently unlisted species

(coastal cutthroat trout, Pacific lamprey, river lamprey, Oregon spotted frog), should they become listed in the future (Table 1). The HCP would, to the maximum extent practicable, minimize and mitigate for incidental take of all nine species. Duration of the proposed Permits would be 25 years.

Table 1. Species Covered by the Storedahl HCP.

USFWS Species	NMFS Species
Threatened Bull Trout, <i>Salvelinus confluentus</i>	Chinook Salmon, <i>Oncorhynchus tshawytscha</i> Steelhead, <i>Oncorhynchus mykiss</i> Chum Salmon, <i>Oncorhynchus keta</i>
Candidate Oregon Spotted Frog, <i>Rana pretiosa</i>	
Other Coastal Cutthroat Trout, <i>Oncorhynchus clarki clarki</i> Pacific Lamprey, <i>Lampetra tridentatus</i> River Lamprey, <i>Lampetra ayresi</i>	Coho Salmon, <i>Oncorhynchus kisutch</i>

Issuance of the Permits would be conditioned on implementation of the HCP. Storedahl developed its HCP with technical assistance from the Services. Activities proposed for coverage under the Permits are the following, and would all occur on the lands proposed for coverage (approximately 300 acres).

- (1) Gravel mining, processing, and attendant activities inclusive of: clearing and stockpiling topsoil; mining of aggregate; transport of aggregate; aggregate sorting, washing, moving, and storage; and other activities common to rock mining and processing.
- (2) Processing and management of stormwater, and treatment of processing water.
- (3) Site reclamation, habitat enhancement, and conservation activities inclusive of: restoration and/or enhancement of open water, wetland, and riparian habitats; riparian irrigation and low flow augmentation; facilities construction to support future incorporation of the project site into open space/greenbelt reserve; water rights transfer; conservation easement development; and property transfer.
- (4) Implementation, maintenance, and monitoring of conservation measures inclusive of: activities described in item 3 above; fish habitat surveys; groundwater monitoring; rock surfacing and large woody debris installation along the pit road; berm reinforcement;

filling of ponds with fines from off-site mines; instream habitat enhancement; educational signage; structural public access control; and establishment of financial assurances.

Services' Decision

The Services' decision is to adopt Storedahl's proposed HCP Alternative (Action Alternative B) and issue Incidental Take Permits to Storedahl pursuant to section 10(a)(1)(B) of the Act for the take of listed steelhead, bull trout, chum salmon, and Chinook salmon, and for five currently unlisted species under specific provisions of the Permits, should these species be listed under the Act during the term of the 25-year Permits pursuant to the Services' joint "No Surprises" Rule (50 CFR Parts 17 and 22). The Services' decision is based upon the review of the alternatives and their environmental consequences described in the draft EIS (DEIS) and final EIS (FEIS), and a review of Storedahl's final HCP (Storedahl 2003), the Implementation Agreement (IA) between the Services and the Applicant, each Service's Biological Opinion (NMFS 2004, USFWS 2004a), and each Service's Statement of Findings (NMFS 2004, USFWS 2004b) (all herein incorporated by reference).

Alternatives

Four alternatives were analyzed in the DEIS and FEIS, including two no action alternatives and two action alternatives. The no action alternatives include (1) continued processing of imported mineral resources, but no additional mining on the project site and partitioning it into rural residential or agricultural tracts, and (2) expanded mining and processing with subsequent partitioning into rural residential tracts. Two no action alternatives were analyzed because both were options that the Applicant could undertake under current zoning. The first no action alternative could involve the take of listed species as a result of individual or cumulative actions by landowners. However, it is not expected that incidental take coverage would be sought by those landowners. The second no action alternative would involve no take of listed species during Storedahl's operations as Storedahl would mine but avoid take, and would not seek incidental take coverage. After residential development, this alternative could result in effects to the Covered Species similar to the first no-action alternative.

The action alternatives are (1) expanded mining of the project site and reclamation of it according to the proposed HCP, and (2) expanded mining of the project site and reclamation of it according to an earlier draft HCP. Both action alternatives would provide incidental take coverage for the same nine fish and wildlife species.

Two additional alternatives (No Action Alternative A-1a and Action Alternative D) were identified during the EIS scoping process but were not analyzed in detail. This was primarily because Alternative A-1a would not meet Storedahl's objectives of mining and processing, and would therefore not meet the purpose and need for the Service's proposed action, and Alternative

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D would not achieve the Service's purpose and need either, because it would not minimize and mitigate listed species take to the maximum extent practicable, as required for permit issuance by the Services.

Following is a brief description of the no action alternatives that were analyzed in detail.

No Action Alternative A-1: Rural Residential Outcome

Alternative A-1 would result in the partitioning of the 300-acre site into approximately 14 rural residential/agricultural tracts consistent with underlying county zoning. The Services would not issue Permits, and there would be no expansion of gravel mining and no implementation of the habitat enhancement program described in the final HCP. The property would be partitioned into 20-acre tracts (which would not require county, state or federal regulatory review). These tracts would be sold, and would most likely be used for further residential development and as "hobby farms". The water rights attendant to the property and certificated under Washington State water rights law, would also be sold or apportioned for irrigation, and would not be transferred to the State for augmentation of instream flows in Dean Creek and the East Fork Lewis River as proposed in the final HCP. Aggregate processing, which occurs intermittently throughout the year, would continue at the existing plant until the supply of imported material was exhausted. The existing ponds and processing area would then be reclaimed and included in the partitioned tracts.

No Action Alternative A-2: Mining and Reclamation and Avoid Take Without Implementation of HCP/ITP(Permits)

Alternative A-2 would result in the excavation of 114 acres during gravel mining which would be reclaimed together with the existing ponds and processing area and then be partitioned into 7 to 10 rural residential homesites of approximately 30 acres each. Mining would proceed through seven sequential phases according to a mining and reclamation plan that would be prepared to meet the standards of the Washington Surface Mining Act, the requirements of a National Pollutant Discharge Elimination System permit issued by the Washington Department of Ecology, and the various land development standards of Clark County. Mining and reclamation design activities would also include any mitigation measures required as a result of Washington State Environmental Policy Act review. Take of listed species would be avoided and there would be no issuance of an ITP. The sequence of mining phases would be common among the three mining alternatives, i.e., A-2, B, and C, with the exception that under Alternative B there would be no mining southwest of Bennett Road.

Following is a brief description of the action alternatives that were analyzed in detail.

Action Alternative B: Mining, Reclamation and Habitat Enhancement with Implementation of HCP/ITP(Permits) (preferred alternative)

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Alternative B is the preferred alternative. It would include issuance of Permits by the Services for incidental take associated with expanded mining, continued processing and reclamation, and habitat enhancement and management of the site as proposed in the final HCP (excavation on approximately 101 acres and backfilling and reconfiguring about 26 acres of existing ponds). Mining would take place under a comprehensive program that entails 18 conservation measures, including an endowment to facilitate site management and preservation in perpetuity. Habitat created would be comprised of a mosaic of open water, emergent wetlands, and valley bottom forest created from gravel mining and natural features of the project site. At completion of mining and reclamation (approximately the first 10-15 years of the 25-year permit period), a conservation easement prohibiting future uses that would conflict with fish and wildlife habitat values would be placed on the property, together with the fee simple title conveyed to one or more public or nonprofit conservation organizations. This provision would ultimately make the property available for inclusion in Clark County's ongoing lower East Fork Lewis River greenbelt.

As with the "no-action" mining alternative, excavation would proceed in seven phases, with reclamation and habitat enhancement sequenced concurrently with mining. The conservation measures proposed within the context of the HCP are designed to minimize and mitigate the impact of potential take. The measures address water quality, water quantity, channel avulsion, and species and habitat conservation. Four mitigation and conservation measures included in the final HCP are unique to this preferred alternative, and are not components of the other alternatives. These measures are CM-03 (Donation of Water Rights), CM-05 (Conservation and Habitat Enhancement Endowment), CM-11 (Off-Site Floodplain Enhancement), and CM-12 (Conservation Easement and Fee-Simple Transfer).

An irrevocable endowment of \$1 million would be created and would accompany the conveyance in fee of the property at time of transfer or completion of the term of the Permits. The funds would be earmarked for habitat monitoring, adaptive management, and responding to changed circumstances within the HCP area. In-kind contributions of labor and/or materials, with a minimum value of \$25,000 per year, would be managed in cooperation with the Lower Columbia Fish Recovery Board (LCFRB) to enhance floodplain and habitat functions within the East Fork Lewis River basin in locations outside the Applicant's property boundaries. Storedahl would post a bond to cover avulsion contingency upon initiation of the Permits, and to ensure that funds are available for appropriate responses to an avulsion threat, should it develop. A perpetual conservation easement would be established on portions of the property not proposed for mining. A similar conservation easement would be established on the remainder of the property after completion of reclamation and prior to the fee simple transfer of the entire site to one or more public or private nonprofit organizations.

Certificated water rights in excess of the amount necessary to conduct operations using a proposed "closed loop" process water clarification system (the majority of currently held rights) would be donated to the Washington State Water Trust. At the completion of processing

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operations or the term of the Permits, whichever comes first, the balance of the water rights would be transferred to the State Trust.

Under the final HCP, Storedahl would be responsible for implementing the measures and monitoring the site over the 25-year life of the Permits to assess whether conservation goals were being achieved. Alternatively, responsibility for monitoring and adaptive management in response to changed conditions during monitoring would transfer to the fee simple recipients at the conclusion of mining and reclamation/enhancement activities or the term of the Permits. These responsibilities would be funded with the investment proceeds from the endowment and/or the corpus of the endowment.

Action Alternative C: Development Under July 2000 Working Draft HCP with ITP

Alternative C would result in the issuance of Permits by the Services for expanded mining, continued processing, and habitat enhancement and reclamation under an HCP less extensive than the preferred alternative. This alternative is similar to the preferred alternative, but with fewer and less intensive conservation measures.

A total of 114 acres would be excavated within the proposed 178-acre expansion area. Processing would continue as in the other alternatives. Post-mining uses of the property would be similar to those in the other mining-expansion alternatives. Open water ponds, wetlands, and valley-bottom forest would be created to provide fish and wildlife habitat as well as open space for low impact recreation. When reclamation is complete, and prior to the end of the 25-year permit period, the property would become a conservation reserve with limited public access.

As with Alternatives A-2 and B, the two other mining outcomes under consideration, the expected life of the project ranges from 10 to 15 years. Mining would progress in the same seven phases previously described, with reclamation and habitat enhancement implemented sequentially. The 14 conservation measures proposed under this alternative are intended to provide a benefit for the recovery and survival of the identified species and avoid take as defined in the ESA. They can be grouped into the same four categories as outlined under Alternative B, and share some similarity.

Rationale for Decision

Decision. Storedahl's proposed final Habitat Conservation Plan, (*Action Alternative B: Mining, Reclamation and Habitat Enhancement with Implementation of HCP/ITP (preferred action)*) was adopted because it meets the statutory criteria for issuance of an ESA Section 10 Incidental Take Permit (USFWS 2004b; NMFS 2004). In addition, Alternative B meets the Applicant's needs, provides for an extensive set of conservation measures to be implemented, entails conservation of the project site into perpetuity, and keeps the Applicant onsite and responsive to site problems during the permit term. No other alternative considered would result in this level of financial commitment or conservation by the Applicant.

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Conditions. Since the Storedahl final HCP was found to meet the statutory criteria for issuance of a Permit, the Services concluded it was not necessary to condition the permits using features of the other feasible alternatives.

Environmentally Preferred Alternative. Alternative B is the environmentally preferred alternative for a number of reasons. While Alternative B has similarities to the other alternatives, particularly Alternative C, the preferred action is also the environmentally preferred alternative because it would result in the following elements, which would not result under any of the other alternatives.

- *Elements to reduce avulsion potential and address avulsion effects should avulsion occur:*
 - 1) Implementation of actions with the least likelihood of inducing a river channel avulsion;
 - 2) Implementation of actions that will likely result in the lowest magnitude and duration of impacts from avulsion --should it occur-- to aquatic habitat and fishes;
 - 3) Importation of materials to infill and reconfigure existing ponds to encourage a preferred river channel in the event of an avulsion;
 - 4) Provisions for controlled redirection of potential avulsion flow back to the main channel, reduced potential for headcutting, and a more stable channel downstream of the site;
 - 5) Reclamation actions for the existing ponds (once they are no longer in use), that are intended specifically to ameliorate the potential effects of an avulsion through the ponds, should it occur; and
 - 6) Posting of a bond to cover costs associated with implementing avulsion contingencies.

- *Elements to enhance aquatic resource function and provide long-term guarantees:*
 - 7) Site restoration that will facilitate inclusion of the area into County open-space greenbelt and funding for its management;
 - 8) Donation of groundwater rights for instream flow enhancement;
 - 9) Provision of floodplain terraces to allow increased meander opportunities, rather than restriction of lateral movement of Dean Creek, along with instream structural enhancement;
 - 10) Emphasized bioengineering techniques for erosion control;
 - 11) Assurance that annual efforts to enhance floodplain habitat function in the East Fork Lewis River watershed are either physically and/or financially supplemented (Storedahl would provide materials, labor, and equipment up to \$250,000 in value, over 9 years, to groups chosen in cooperation with the LCFRB to improve habitat for Covered Species);
 - 12) Establishment of an endowment fund to ensure that mitigation measures are maintained in perpetuity; and
 - 13) Donation of a conservation easement to limit future use of the property to habitat enhancement in perpetuity.

The above elements are Storedahl's mitigation commitments in the proposed action, Alternative B, and would mitigate potential effects to the maximum extent practicable (NMFS 2004 and USFWS 2004b), as required in Section 10(a)(2)(B)(ii) of the ESA.

Alternative B is Storedahl's proposal and the proposed action in the FEIS, and it is the alternative selected for implementation by the Services.

Public Involvement

The Services formally initiated an environmental review of the project through publication of a Notice of Intent to prepare an EIS in the Federal Register on December 27, 1999 (64 FR 72318). The notice also announced a 30-day public scoping period during which interested parties were invited to provide written comments expressing their issues or concerns relating to the proposal.

A second Federal Register notice was published on November 22, 2002 (67 FR 70408), announcing a 60-day public comment period for a DEIS, draft HCP with appendices, and a draft Implementing Agreement. The comment period was extended an additional 30 days in direct response to requests from the public; the public was notified of this extension via a postcard mailing to all DEIS recipients. This resulted in a total comment period of 90 days.

Forty-five comment letters were received by the Services pertaining to the draft HCP and DEIS: 12 from government agencies and elected officials, 1 from an Indian tribe, 11 from public organizations, and 21 from individuals. The Response to Comments section of the FEIS contains copies of all of those comment letters and the Services' responses. Many of the comments and suggestions were incorporated into the final HCP and FEIS. A summary of changes between the draft HCP and DEIS and their final versions is included in Appendix A of this document.

The FEIS was noticed in the Federal Register on November 28, 2003 (68 FR 66820), for a 30-day public review and comment period. That period was extended for 30 days in response to requests from the public; the public was notified of this extension via a postcard mailing to all FEIS recipients. Comment letters regarding the FEIS were received from 5 non-governmental organizations, 13 individuals, and 3 state agencies; these are contained in Appendix B of this document. A listing of those comment letters and the Services' responses to comments are contained in Appendix C of this document.

As a result of public comment received on the final documents, changes have been made to the final HCP through an addendum sheet that will be specifically itemized on the Permits (see Exhibit 1 of Appendix C). These changes include an additional measure to minimize the possibility of avulsion (*i.e.*, rocking the Daybreak Pit Road), and a provision requiring groundwater temperature monitoring and reporting (*i.e.*, weekly monitoring from June through October and yearly reporting in conjunction with NPDES requirements).

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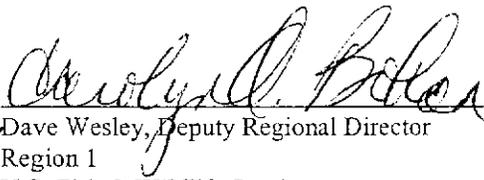
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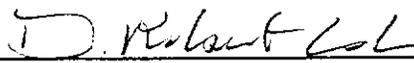
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- U.S. Fish and Wildlife Service. April 2004a. Biological and Conference Opinion for the Proposed Issuance of a Section 10 (a)(1)(B) Incidental Take Permit to J.L. Storedahl and Sons, Inc. for the Daybreak Mine Expansion and Habitat Enhancement Project Habitat Conservation Plan. Lacey, Washington.
- U.S. Fish and Wildlife Service. April 2004b. Findings and Recommendations For Issuance of a Section 10(a)(1)(B) Incidental Take Permit Associated with the Daybreak Mine Expansion and Habitat Enhancement Project Habitat Conservation Plan, J.L. Storedahl & Sons, Inc., Clark County, Washington. Lacey, Washington.
- U.S. Fish and Wildlife Service and National Marine Fisheries Service. November 2003. Final Environmental Impact Statement for the Proposed Issuance of a Multiple Species Incidental Take Permit for the Daybreak Mine Expansion and Habitat Enhancement Project Habitat Conservation Plan, Clark County, Washington. Lacey, Washington.

Signatures


for Dave Wesley, Deputy Regional Director
Region 1

U.S. Fish & Wildlife Service

APR 16 2004



D. Robert Lohn, Regional Administrator
Northwest Region
National Marine Fisheries Service

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