



United States Department of the Interior

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Memorandum

To: Chief, Division of Consultation and Conservation Planning, Regional Office,
Portland, Oregon

From: *Acting* State Supervisor/Deputy State Supervisor, Oregon State Office, Portland, Oregon

Subject: Biological Opinion on the Proposed Issuance of an Endangered Species Act
Incidental Take Permit (PRT-TE004366-0) for the Northern Spotted Owl to the
City of The Dalles, Oregon (1-7-99-F-276)

This biological opinion responds to your May 17, 1999 request for intra-Service consultation pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536), as amended (Act). At issue are the effects that the issuance of an incidental take permit for the City of The Dalles, Oregon (City) by the U.S. Fish and Wildlife Service (Service) in accordance with section 10(a)(1)(B) of the Act, may have on the threatened northern spotted owl (*Strix occidentalis caurina*).

This opinion is based on information provided in the following sources: the Habitat Conservation Plan for the Northern Spotted Owl with the City of The Dalles (HCP) (in progress), the Memorandum of Understanding (MOU) between the Forest Supervisor, Mt. Hood National Forest and City of The Dalles, (February 9, 1998) the Forest Ecosystem Management Assessment Team report (USDA et al.1993) (FEMAT), the Final Supplemental Environmental Impact Statement on Management of Habitat for Late Successional and Old Growth Related Species within the Range of the Northern Spotted Owl (USDA/USDI 1994) (FSEIS), and our files.

BIOLOGICAL OPINION

DESCRIPTION OF THE PROPOSED ACTION

The permit area is a portion of City-owned land in the South Fork Mill Creek Watershed of Wasco County, Oregon, as depicted on the attached map. The ownership is an access-restricted watershed managed for the purposes of water supply and quality. Other activities compatible

with those purposes are undertaken by the City. Measures implemented through the HCP, and the associated Incidental Take Permit, will apply only to the approximately 1,432 acres defined in the City's Timber Management Plan (City of The Dalles 1995) as suitable for potential forest management activity. The permit will cover timber harvest and physical silvicultural activities associated with forest management.

The permit area occurs in a narrow, linear distribution along the South Fork Mill Creek, nearly surrounded by adjacent Federal land. The U.S. Forest Service and the City are the dominant landowners in the upper watershed in which the permit area occurs. The productive forest lands include mostly Douglas-fir-white fir and ponderosa pine-white fir stands. Much of the forested area in the permit area is in young or degraded stand types that are unsuitable for use by spotted owls. Only 849 of the 1,432 forested acres are classified as useable by spotted owls. Nearly 500 of the 849 acres are lower quality habitat that may provide dispersal opportunities but is of limited value for foraging or nesting.

The permit area is nearly surrounded by National Forest lands. The Northwest Forest Plan (USDA 1994) for management of Federal forests was designed to carry the major burden for conservation and recovery of the northern spotted owl. However, nonfederal lands play a critical role in supplementing and supporting the Federal habitat-based conservation strategy. Federal ownership surrounding the area covered by this agreement is designated as matrix lands and should function primarily to provide dispersal and connectivity opportunities for the spotted owl.

The proposed action is a set of guidelines applicable to timber harvest activities on City property. These guidelines are designed to provide increased certainty regarding management relative to the spotted owl. Management will be consistent with and supplement the conservation strategies being implemented on adjacent Federal land. Implementation of these measures will ensure that impacts to spotted owls from harvest activities are minimized and mitigated to the maximum extent practicable by coordinating City activities with the Forest Service to manage the land on an ecosystem-wide basis.

The City has entered into a MOU with the Forest Service, Mt. Hood National Forest, to provide for coordinated and consistent management across the watershed. Standards and guidelines established for management of Federal lands designated as Matrix under the Northwest Forest Plan will be applied to the municipal ownership for a period of twenty years.

Phase I of the HCP is a commitment by the City to abide by the terms of the MOU for a period of twenty years. For the purposes of the HCP, the terms of the City's obligations are further refined as follows:

1. Five year Timber management plans will be provided to the Forest Service and the Fish and Wildlife Service and will be specific enough to allow the Forest Service and Fish and Wildlife Service to assess impacts of City actions.

Information shall be specific enough to allow the Forest Service to include and consider City actions as cumulative effects in Biological Assessments prepared by that agency and submitted to the Service for consultation under section 7 of the Act.

Applicable Terms and Conditions developed for Forest Service activities by the Fish and Wildlife Service following consultation between those agencies will be applied by the City to its own activities. The City understands that these annual consultations may require mitigation measures more conservative than those proposed in this HCP.

2. Revisions to the MOU, as they relate to the HCP, must be approved by the Service.
3. Provide the Service with information (beyond that described in 1 above) necessary to assess the current and future environmental baselines relative to spotted owls and the potential impacts of planned management activities to the species. This additional information will be required at the end of permit term or upon early termination and shall include:
 - a. The results of any survey information for northern spotted owls developed by the City for areas within the permit area,
 - b. Habitat conditions for the northern spotted owl on City-owned lands within the permit area and mapped to the best of the City's ability.
4. If the MOU between the Forest Service and the City is terminated prior to twenty years, or other conditions exist which prevent the Service from monitoring harvest activities through section 7 consultations with the Forest Service, the City and the Service will devise an equivalent approval process and appropriate methods of monitoring and reporting.

Phase II of the HCP will last for a period of ten years, during which the City would either continue conditions spelled out in the MOU or ensure that the following conditions are met:

1. Either 79 acres of nesting, roosting or foraging (NRF) habitat and an additional 730 acres of dispersal or better habitat is maintained on the permit lands or 100 acres of NRF habitat and an additional 590 acres of dispersal or better habitat is maintained on the permit area.

The above habitat requirements must be within the Permit Area, but need not be the same habitat currently existing on the permit area.

2. Impacts to any known occupied sites on or adjacent to the ownership would be minimized through: the avoidance of the 70-acre core area surrounding site centers until the sites have been determined by the Service to be vacant for three years based on

surveys done by the Forest Service or the City; and no harvest activities within 1/4 mile of a known, active nest site between 1 March and 30 June.

Incidental take of the spotted owl during Phase II may occur as authorized by the permit provided the above conditions are met.

Information requirements described in section 3 will be applicable at the end of Phase II or upon termination of the HCP requested by the City prior to the end of phase II.

In addition to the City's obligations, the Service shall:

1. Review issuance of the proposed permit in a biological opinion prepared in accordance with section 7 of the Act. In order to issue the proposed permit, the Service must find the taking associated with this action is not likely to jeopardize the continued existence of the northern spotted owl.
2. Provide to the City technical assistance as may be necessary to determine the environmental conditions relative to the spotted owl within the watershed.
3. Conduct an annual consultation with the Forest Service that addresses proposed City management activities to be included in the cumulative effects section of the consultation package submitted by the Forest Service.

The Service shall identify the specific Terms and Conditions, if any, which result from its consultation with the Forest Service, that are applicable to activities undertaken by the City on its ownership and for which the City is responsible for implementing.

If the MOU between the Forest Service and the City is terminated prior to twenty years, or other conditions exist which prevent the Service from monitoring harvest activities through section 7 consultations with the Forest Service, the City and the Service will devise an equivalent process and appropriate methods of monitoring and reporting.

4. Within 60 days of written notice by the City of its desire to terminate or extend the term of the permit and this HCP, provide written notice of the information the City must provide for the Service to determine the impacts of such extension or termination.

STATUS OF THE SPECIES

Northern Spotted Owl

A detailed account of the taxonomy, ecology, and reproductive characteristics of the spotted owl is found in 1987 and 1990 Service status reviews (USDI 1987, 1990a); a 1989 status review supplement (USDI 1989); the Interagency Scientific Committee (ISC) Report (Thomas et al. 1990); and the final rule designating the spotted owl as a threatened species (USDI 1990b).

There are approximately 5,608 pairs of spotted owls and resident singles (activity centers), and approximately 8.1 million acres of suitable habitat currently estimated across the range of the species (L. Reigel, U.S. Fish and Wildlife Service, pers comm. 1999). Recent demography studies (Forsman et al. 1996) indicate that the population is declining. While such a decline is expected to continue as spotted owl sites with severely degraded habitat conditions become inactive, implementation of the Plan is expected to abate the decline by protecting all vegetatively sustainable spotted owl sites within LSRs. The Plan should provide for the conservation of the species on Federal land by allowing currently non-suitable habitat to regenerate within the LSRs which will allow the population to increase and stabilize across its range.

ENVIRONMENTAL BASELINE (In the Action Area)

Regulations implementing the Act (50 CFR §402.02) define the environmental baseline as the past and present impacts of all Federal, state, or private actions and other human activities in the action area. Also included in the environmental baseline are the anticipated impacts of all proposed Federal projects in the action area which have undergone section 7 consultation, and the impacts of state and private actions which are contemporaneous with the consultation in progress.

The action area is defined at 50 CFR §402 to mean "all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action". For the purposes of this consultation, the Service recognizes the action area to include the City owned parts of the South Fork Mill Creek Watershed of Wasco County, Oregon and the surrounding land of the Mt. Hood National Forest within portions of the Cascade mountain range of the Eastern Oregon Cascades physiographic province (for spotted owls, a north-south range line delineates the easternmost boundary of their range within the specific analysis area.) This area is predominantly forested ponderosa pine and mixed conifer plant associations. The major riparian system is the South Fork Mill Creek and its tributaries. Forest Service lands are located primarily around the upper half of the watershed with some intermingled Bureau of Land Management (BLM) and private lands surrounding the lower parts of the watershed. This analysis area enables the Service to more fully understand the interrelated and interdependent and cumulative effects of the action on such a wide-ranging species as spotted owls within a more appropriate landscape context.

Surveys have indicated that City-owned habitat occurs within the likely home ranges around two owl activity centers: one, occupied by a pair of owls, the other occupied by a territorial single owl. Neither of these likely home ranges contain habitat quantities sufficient to support the long-term viability and occupancy of the resident owls. Currently, approximately 79 acres of City forest land within these likely home ranges function as suitable NRF habitat for owls. The remaining 230 acres of suitable NRF habitat is considered unoccupied by owls and subject to lawful harvest (pursuant to other applicable regulations.)

Several factors affect the ability of remaining potential habitat to support long-term occupation in the future:

- The watershed is located on the extreme edge of the species range.
- The habitat in this portion of the Oregon Eastern Cascades province is of marginal quality.
- City-owned habitat occurs in a narrow, linear distribution which limits its functional value and is of insufficient quantity to support occupation without supplementation from habitat on adjacent Federal land.

EFFECTS OF THE PROPOSED ACTION

Northern Spotted Owl

Direct and indirect effects are described below.

Application of matrix standards to City lands for twenty years, subsequent phase II habitat conditions and other aspects of the HCP will minimize negative effects and provide additional benefits in the following ways:

1. Since municipal lands in this area exist as an inholding within the larger Federal ownership, the consistent and coordinated management approach facilitated through the HCP will supplement the Federal management strategy in place for the owl and enhance connectivity for owls across the watershed as a whole. This approach represents a move towards ecosystem management which will, in the long-term, benefit the spotted owl and other species and resources associated with the watershed.
2. Inclusion of City-owned land in maintenance of the 100 - "best acres" core areas surrounding owl nest sites will minimize the immediate impact to currently occupied owl sites. Under the current state regulatory regime, City land would need to be included only within the 70 - "best acres" core area. Since the Forest Service remains obligated, under the Northwest Forest Plan to maintain a total of 100 acres of its ownership around each owl site, should City land occur with the best 100 acres, the size of the actual core area maintained by both parties would exceed 100 acres.
3. The combination of habitats managed to matrix standards on both Federal and municipal land during Phase I should be conducive to the dispersal of owls. While matrix standards may not necessarily apply during Phase II, the alternative conditions maintained during that time shall provide the same functional benefits to the spotted owl in terms of providing for effective connectivity. Therefore, through the course of the permit term, habitat conditions will be roughly equivalent to those currently on the ownership in terms of amounts of dispersal habitats and suitable habitat known to be presently occupied.
4. Removal of the potential limitations on management flexibility represented by continuing prohibitions against incidental take of owls will increase the likelihood that sound

management practices relative to owls, water quality and other resources will be continued and that these practices will be complementary to Northwest Forest Plan implementation on adjacent Federal ownership. For instance, the selective harvest methods preferred by the City may not eliminate the ability of some forest stands to function as habitat. First and second selective entries are relatively benign in terms of degradation to the stand. Thus, the actual amount of habitat occurring in the future may be greater than estimated, resulting in somewhat greater potential for short-term occupation than described above.

Any occupation that does occur in the future is likely to be unstable and have low reproductive potential; the amounts and quality of habitat that will be available are not considered sufficient to support long-term viability of sites.

Due to the low quality of this area for habitat suitability and occupation by owls and the minimization measures contained in the HCP, the amount of take likely to occur is low; loss of owls associated with less than one occupied site per decade. This would result in take of approximately two owl pairs or resident singles over the thirty year permit duration. This level of loss would likely have occurred absent this proposed action due to management actions undertaken on adjacent Federal land.

Critical habitat for the northern spotted owl has not been designated within the permit area (USDI 1992).

Other Species

In its lower two miles, South Fork Mill Creek supports anadromous steelhead that are part of the middle Columbia River basin population listed as threatened under the ACT. However, since a 90-foot high waterfall exists as a natural barrier to anadromous fish use one mile below the Permit Area, the species does not occur on City-owned lands. The issuance of this Incidental Take Permit is not anticipated to result in any impacts to downstream anadromous fish due to the maintenance of FEMAT riparian buffers and the City's primary management objective of protecting water resources. No other species of wildlife listed as threatened or endangered are known to occur on the permit lands.

No Threatened or Endangered plants are known to exist in the permit area. Three sensitive plants, *Ranunculus reconditus*, *Arabis sparsiflora v. atrorubens*, and *Lomatium watsonii*, exist on Forest Service property, within the Mill Creek Research Natural Area, and adjacent to the permit area; no adverse impacts to these plants are anticipated through City activities.

Interdependent and Interrelated Effects

Regulations implementing the Endangered Species Act of 1973, as amended, require that the Service consider the effects of activities which are interrelated and interdependent to the proposed Federal action (50 CFR §402.02). The Act defines interrelated activities as those

which are part of a larger action and depend upon the larger action for their justification, and interdependent activities as those projects which have no independent utility apart from the action that is under consideration. Both interrelated and interdependent activities may be assessed by applying the "but for" test, which asks whether any action and its associated impacts would occur "but for" the proposed action. No interdependent and interrelated effects were identified for this action.

CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, local or private activities that are reasonably certain to occur within the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act. Cumulative effects resulting from activities on City-owned land in the watershed will be included in consultations between the Forest Service and the Service. No other information on future State, local, or private activities is available at this time.

CONCLUSION

After reviewing the current status of the spotted owl, the environmental baseline for the action area, the effects of the proposed action and the cumulative effects, it is the Service's biological opinion that the City of The Dalles HCP is not likely to jeopardize the continued existence of the spotted owl. Critical habitat for the spotted owl has been designated at various locations within the range of the species, however, this action does not affect those areas and no destruction or adverse modification of critical habitat is anticipated.

The Service reached these conclusions for the following reasons:

1. The HCP provides guidelines which will help maintain nesting, roosting, and foraging and dispersal habitat for connectivity over the life of the HCP similar to the Standards and Guidelines pertaining to matrix land under the Northwest Forest Plan.
2. The proposed HCP will not preclude the recovery contributions afforded the affected species by the Plan.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act, as amended, prohibits taking (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct) of listed species of fish or wildlife without a special exemption. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. Harass is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. Incidental take is any take of listed animal species that results from, but is not the

purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or the applicant. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered a prohibited taking provided that such taking is in compliance with the terms and conditions of this incidental take statement.

The proposed Habitat Conservation Plan for the Spotted Owl by the City of The Dalles and its associated documents clearly identify anticipated impacts to affected species likely to result from the proposed taking and the measures that are necessary and appropriate to minimize those impacts. All conservation measures described in the proposed HCP, together with the terms and conditions described in any associated Implementing Agreement and any section 10(a)(1)(B) permit or permits issued with respect to the proposed HCP, are hereby incorporated by reference as reasonable and prudent measures and terms and conditions within this Incidental Take Statement pursuant to 50 CFR 402.14(I). Such terms and conditions are non-discretionary and must be undertaken for the exemptions under such section 10(a)(1)(b) and section 7(o)(2) of the Act to apply. If the permittee fails to adhere to these terms and conditions, the protective coverage of the section 10(a)(1)(B) permit and section 7(o)(2) may lapse. The amount or extent of incidental take anticipated under The City of The Dalles HCP, associated reporting requirements, and provisions for disposition of dead or injured animals are as described in the HCP and its accompanying section 10(a)(1)(B) permit.

AMOUNT OR EXTENT OF TAKE

Due to the low quality of this area for habitat suitability and occupation by owls and the minimization measures contained in the HCP, the amount of take likely to occur is low; loss of owls associated with less than one occupied site per decade. This would result in take of approximately two owl pairs or resident singles over the thirty year permit duration.

Several factors lead the Service to determine that this level of anticipated take is not likely to result in jeopardy to the species:

- Local, regional or range-wide population numbers, reproductive output or distribution will not be significantly reduced;
- Impacts resulting from management of adjacent Federal land would have resulted in loss or impairment of the owls regardless of actions undertaken by the City;
- The owls are not associated with a Late Successional Reserve or other land classification designated to provide long-term support of occupied, productive owl sites, and;
- Management of the City lands will continue to support and supplement the long-term conservation objectives for adjacent and proximal Federal land.

Reasonable and Prudent Measures

The Service believes the following reasonable and prudent measures are necessary or appropriate to minimize the impact of the incidental take authorized by the section 10(a)(1)(B) permit:

- Any incidental take of spotted owls must comply with all of the terms and conditions of the incidental take permit and its supporting HCP.

Terms and Conditions

- Applicable terms and conditions developed for Forest Service activities by the Service, following consultation between those agencies, will be applied by the City to its own activities. The City understands that these annual consultations may require mitigation measures more conservative than those proposed in the HCP.

The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize incidental take that might otherwise result from the proposed actions. If additional spotted owls are affected by either disturbance or the removal of suitable habitat as part of the proposed action, this minimized level of incidental take may be exceeded; such incidental take would represent new information requiring review of the reasonable and prudent measures provided. If take is exceeded, the Federal agency must provide an explanation of the causes of the additional taking and review with the Service the need for possible modification of the reasonable and prudent measures.

The Service analyzed the impact of the above reasonable and prudent measures on the proposed action and believe that these measures comply with the minor change requirement as defined by 50 CFR §402.14(I)(2). If at any point during project implementation your agency determines that these reasonable and prudent measures are more than a minor change, please contact John Davis or Robin Bown at (503) 231-6179.

If a dead, injured, or sick endangered or threatened species specimen is located, initial notification must be made to the nearest Fish and Wildlife Service Law Enforcement Office, located at 9025 SW Hillman Court, Suite 3134, Wilsonville, OR 97070; phone: 503-682-6131. Care should be taken in handling sick or injured specimens to ensure effective treatment and care or the handling of dead specimens to preserve biological material in the best possible state for later analysis of cause of death. In conjunction with the care of sick or injured endangered and threatened species or preservation of biological materials from a dead animal, the finder has the responsibility to carry out instructions provided by Law Enforcement to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities designed

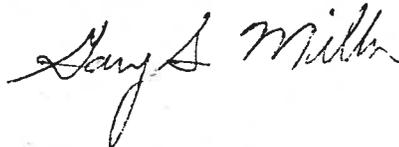
to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

The Service recommends that the following conservation measures be implemented:

- The Service is encouraged to assist the City during project implementation. The Service should provide the City with technical assistance on monitoring and other biological issues.

REINITIATION-CLOSING STATEMENT

This concludes formal consultation on the actions outlined in your HCP. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been maintained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation of formal consultation. If a project falls outside of the PDC's guidelines, then only that specific project needs to be reinitiated for consultation, not the entire array of projects originally brought forth for consultation. If you have any questions regarding this opinion, please contact John Davis or Robin Bown at (503) 231-6179.



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