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**FOR YOUR
INFORMATION**

Memorandum

July 16, 1996

To: Chief, Division of Conservation Planning, Region 1, Portland, Oregon

From: *act* Supervisor, North Pacific Coast Ecoregion, Western Washington Office, Olympia, Washington

Subject: Intra-Service Biological/Conference Opinion Regarding Issuance of a Section 10(a)(1)(B) Incidental Take Permit (PRT-813744), and Approval of Unlisted Species Agreements Proposed by Port Blakely Tree Farms, L.P. for the Robert B. Eddy Tree Farm, Pacific and Grays Harbor Counties, Washington (FWS Reference 1-3-96-FW-593)
1-3-95-SP-836, 1-3-95-HCP-SP-008

This Biological/Conference Opinion (BCO) responds to your June 14, 1996, request for consultation pursuant to section 7 of the Endangered Species Act of 1973, as amended (Act). At issue are the effects on the threatened northern spotted owl (*Strix occidentalis caurina*) (owl), marbled murrelet (*Brachyramphus marmoratus marmoratus*) (murrelet), bald eagle (*Haliaeetus leucocephalus*) the endangered peregrine falcon (*Falco peregrinus*) and the "candidate" bull trout (*Salvelinus confluentis*), from issuing a section 10(a)(1)(B) incidental take permit and approval of an agreement that contains provisions affecting both listed and unlisted species to Port Blakely Tree Farms, L.P. (Port Blakely) of Seattle, Washington by the U.S. Fish and Wildlife Service (USFWS). The USFWS has determined that bull trout may warrant listing, but is precluded by other higher priority listing actions. Even though it has not been proposed for listing, the USFWS has included bull trout in this Biological Opinion (BO) as if it were proposed for listing in order to fully assess effects of the proposed action on the species, and identify any potential problems. Also at issue are the effects to unlisted species from the proposed approval of an Implementation Agreement (IA), which includes an agreement for unlisted species, for the Habitat Conservation Plan (HCP) between Port Blakely, USFWS and the National Marine Fisheries Service (NMFS); collectively referred to as the Services. This document represents the USFWS's biological and conference opinions on the effects of that action on the above listed and candidate species in accordance with section 7 of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 et seq.). Effects to anadromous fishes under NMFS's purview are analyzed in a separate assessment (NMFS 1996).

This BCO is based on information provided in the following sources: the HCP for the Robert B. Eddy Tree Farm (Port Blakely 1996a), the Environmental Assessment (EA) (USFWS and NMFS 1996) and the IA (Port Blakely 1996b) for the proposed action; personal observations on the plan area by USFWS staff; A Conservation Strategy for the Northern Spotted Owl prepared by the

Interagency Scientific Committee (ISC Report; Thomas et al. 1990); Recovery Plan for the Northern Spotted Owl-Draft (Owl Recovery Plan) (USDI 1992a); the Report of the Forest Ecosystem Management Assessment Team (FEMAT Report) (USDA et al. 1993); the Final Supplemental Environmental Impact Statement on Management of Habitat for Late Successional and Old-Growth Forest-Related Species within the Range of the Northern Spotted Owl (FSEIS) (USDA and USDI 1994a); the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents within the Range of the Northern Spotted Owl (Northwest Forest Plan; USDA and USDI 1994a); the final rule designating the owl as a threatened species (USDI 1990); the final rule designating critical habitat for the owl (USDI 1992b); the final rule listing the murrelet as a threatened species (USDI 1992c); the final rule designating critical habitat for the murrelet (USDI 1996a); Inland Habitat Associations Marbled Murrelets in Western Washington (Hamer in Ralph et al. 1995); the Pacific Seabird Group (PSG) Methods for Surveying for Marbled Murrelets in Forests Murrelet Survey Protocol; Ralph et al. 1993-1996; the Ecology and Conservation of the Marbled Murrelet (Ralph et al. 1995); Draft Recovery Plan for Marbled Murrelet (USDI 1995a); Recovery Plan for the Pacific Bald Eagle (USDI 1986); 12-month Petition Finding on the Bull Trout (USDI 1994); 12-Month Recycled Petition Finding to List Bull Trout as Threatened or Endangered (USDI 1995); and information contained in USFWS files. This BCO was prepared by the USFWS's Field Office in Olympia, Washington. The complete administrative record of this consultation is on file at that office.

The initial draft of the HCP was provided to the Services on October 31, 1995, following lengthy technical discussions with Port Blakely. The Services provided comments to the applicant on this draft during November 1995. At that time, the Services requested technical reviews on the conservation measures proposed in the HCP from the Washington Department of Fish and Wildlife (WDFW) and Northwest Indian Fisheries Commission. Comments from these entities were submitted to the Services on November 28, 1995, and November 22, 1995, respectively. A second draft of the HCP was provided to the Services on November 31, 1996. Ongoing discussions with the applicant continued until application on April 17, 1996. A 30-day public comment period was initiated by Federal Register Notice on April 26, 1996 (USDI 1996b). Application packages were mailed to 43 interested parties during the public comment period.

DESCRIPTION OF PROPOSED ACTION

Port Blakely has filed an application with the USFWS for an Incidental Take Permit (ITP), under section 10(a)(1)(B) of the Act, to authorize incidental take of northern spotted owls, marbled murrelets, bald eagles and peregrine falcons. Port Blakely has also requested that the Services engage in an unlisted species agreement for all species that exist now, or may occur in the future, in habitats on the Robert B. Eddy Tree Farm (Tree Farm). As specified in the IA, should any currently unlisted species subsequently become listed, Port Blakely may request an amendment to the ITP to include such species. If such an amendment request is received, the USFWS and/or NMFS will reinstate consultation under section 7 of the Act and initiate an amendment to the HCP. Before such species would be added to the Permit, the Services must find that adding the species to the Permit would not

appreciably reduce the likelihood of survival and recovery of the affected species in the wild and that adding the species to the Permit would be consistent with their responsibilities under the Act and other laws and regulations. Port Blakely proposes to manage the Tree Farm for 50 years pursuant to the HCP and IA that were developed as part of their permit application.

Port Blakely requests concurrence from the Services that if they decide to terminate the Permit and IA early, no further mitigation will be required for certain species (see HCP page 1-1 and the IA section 7c(ii) for further description). Port Blakely proposes that this advance or concurrent mitigation concept apply to 42 listed, candidate and "management emphasis" species listed in Appendix E of the HCP. In the EA, section 4, the Services have described impacts to the 42 species listed in Appendix E. Discussion of the four listed species and the candidate bull trout contained in section 4 of the EA is incorporated by reference. Further rationale for the Service's ability to consider this request is provided in the EA, section 1.5, page 1-5.

The 7,486-acre Tree Farm, located in Pacific and Grays Harbor Counties, Washington, has been used for commercial timber production since the turn of the century, and will continue to be used as such under the proposed action. For this BCO, the action area is defined as the headwaters of the North River and Rock, Independence and Lincoln Creeks, an area of about 100,000 acres. Surrounding lands are primarily comprised of State or corporately-owned commercial forest land. Flood plains in the larger valley bottoms are smaller privately-owned tracts, and are in forestry and agricultural production (hay land and pasture land). Further description of the plan area can be found in HCP section 2.1-2.2, and in Chapter 3 of the EA. The HCP addresses structural attributes important to indigenous fish and wildlife, especially those attributes known to be limiting in managed forests in southwest Washington's Coast Ranges Physiographic Province. Prescriptive measures in the HCP are designed to increase the quantity, quality, and/or distribution of these habitat structures during the 50-year term of the HCP and Permit, and provide conservation benefits to species that use those habitat structures. Further description of minimization and mitigation measures for the four currently listed species and bull trout is in the Effects of the Proposed Action section of this BCO.

STATUS OF THE SPECIES - LISTED SPECIES AND CRITICAL HABITAT

There is no critical habitat designated for any listed species on the Tree Farm, nor in the action area.

Four currently listed species are known to exist within, or have a high likelihood of occasionally using, habitat types existing on the Tree Farm. These are the northern spotted owl, marbled murrelet, bald eagle and peregrine falcon.

Northern Spotted Owl

A thorough account of the ecology and life history of the northern spotted owl is found in the Interagency Scientific Committee's "A Conservation Strategy for the Northern Spotted Owl (Thomas et al. 1990)," the final rule listing the northern spotted owl as a threatened species (USDI 1990), and

the final rule designating critical habitat for the owl (USDI 1992). Relevant information regarding the landscape characteristics of the northern spotted owl habitat is found in Carey et al. (1992), Lehmkuhl and Raphael (1993), Carey and Peeler (1995), Zabel et al. (1995) and the USFWS's Biological Opinion for Alternative 9 of the Final Supplemental Environmental Impact Statement on the Management of Habitat for Late-Successional and Old-Growth Forest Related Species within the Range of the Northern Spotted Owl (USDA 1994a). The relationship between northern spotted owls and their prey is documented in Carey et al. (1992), Carey and Johnson (1995) and Zabel et al. (1995).

A Final Draft Recovery Plan for the spotted owl was prepared but never released (USDI 1992a). As of July 1, 1994, there were 5,431 known locations or site centers of pairs or resident single owls in Washington, Oregon, and California. Currently, 1,319 owl site centers are located on non-Federal lands. In Washington, 140 of 851 sites are located on non-Federal lands. In addition to the site centers located on non-Federal lands, preliminary analysis indicates that there are 151 site centers in Washington located on Federal lands that are dependent upon some percentage of suitable owl habitat on adjacent non-Federal lands. Non-Federal lands in certain portions of the owl's range are considered necessary to support and supplement the current owl conservation strategy, which is based on Federal lands providing the majority of the habitat and supporting the majority of the owls (USDA and USDI 1994a). In the Western Washington Lowlands Province, which is the Province in which the plan area lies, there are only 19 owl sites known (mostly singles) in an area of about 6.5 million acres [USFWS 4(d) data base, 1996]. This is indicative of the extremely small amount of suitable habitat in the province. Nearly all the Province is in private or State ownership.

On January 15, 1992, (USDI 1992b) the USFWS designated 6,887,000 acres of owl critical habitat on Federal lands. This designation provided additional protection to the species. Additional information regarding current status of the species was presented in the February 17, 1995, Federal Register document (USDI 1995b) that proposed a special rule under section 4(d) of the Act in recognition of the contribution made by the Northwest Forest Plan.

Marbled Murrelet

A draft recovery plan (USDI 1995a) has been developed and is currently being finalized by the recovery team. The draft plan recommends that: 1) all occupied habitat be maintained and protected, 2) the loss of unoccupied, but suitable, habitat be minimized, 3) potential and suitable habitat be maintained in larger contiguous blocks and 4) historic distributions be maintained. Long-term recommendations include increasing the amount and quality, as well as the distribution, of habitat available for nesting. One of the mechanisms proposed to meet these objectives is the development of HCPs. The recovery plan also identified six marbled murrelet conservation zones, which were described based on common management issues.

When the Northwest Forest Plan (USDA and USDI 1994b) is implemented as originally designed and intended, Federal lands are expected to carry the major burden of conservation and recovery of both the murrelet and owl. While contributions from non-Federal land remain important in many areas,

proper implementation of the Northwest Forest Plan would allow greater flexibility in the management of these non-Federal lands.

On July 27, 1995, the President signed the 1995 Rescission Bill (P.L. 104-19). Section 2001(k) of this law directed the Secretaries of Agriculture and the Interior to allow the harvest of certain timber sales for which contracts were "offered or awarded before [July 27, 1995] in any unit of the National Forest System or district of the Bureau of Land Management subject to section 318 of Public Law 101-121 (103 Stat. 745)." The vast majority of these timber sales were developed in accordance with Section 318 of P.L. 101-121, the Fiscal Year 1990 Interior and Related Agencies Appropriations Act. Most have been harvested during the last 5 years, but several sales have not been harvested due to compliance with various environmental laws. There are no sales that have been or are likely to be harvested in or near the action area as a result of this statute.

The marbled murrelet population in Washington has been estimated at 5,000 individuals (Speich and Wahl 1992) based on surveys in the early 1980s. In the Western Washington Coast Range Zone (Zone 2), which is where the plan area occurs, approximately 516,000 acres of "suitable" habitat are present. "Suitable" habitat is defined as old growth mapped by WDFW using 1988 LANDSAT imagery (Eby and Snyder 1990). However, several potential sources of error exist which affect the estimates of old growth. Most importantly, Eby and Snyder's (1990) evaluation overestimates suitable nesting habitat for marbled murrelets, since not all old growth is actually suitable murrelet habitat. Almost all of the habitat in Zone 2 occurs north of the plan area, in the Olympic National Park and Olympic National Forest. The southern half of Zone 2, which includes the plan area, from the Chehalis River south to the Columbia River, contains almost no murrelet habitat, due to forest harvesting practices since the turn of the century (see Effects section below for quantification).

Bald Eagle

A detailed account of the taxonomy, ecology, and reproductive characteristics of the bald eagle is presented in the Pacific States Bald Eagle Recovery Plan (USDI 1986), and the final rule to reclassify the bald eagle from endangered to threatened in all of the lower 48 states (USDI 1995c).

On February 14, 1978, the bald eagle was Federally listed throughout the lower 48 States as endangered except in Michigan, Minnesota, Wisconsin, Washington, and Oregon, where it was designated as threatened (USDI 1978). The listing was required due to declines in the eagle population throughout the lower 48 states. The decline was largely attributed to use of DDT and other organochlorine compounds. DDT was found to accumulate in individual bald eagles after ingesting contaminated food. The result was impaired calcium release for egg shell formation, thus inducing thin shells and reproductive failure. In the 17 years since it was listed, the bald eagle population has improved nationwide as a direct result of the ban of DDT and other persistent organochlorines and from other recovery efforts. The species has doubled its breeding population every 6-7 years since the late 1970s. Because of the improved bald eagle population, the USFWS has reclassified the bald eagle from endangered to threatened in the lower 48 states (USDI 1995c).

Peregrine Falcon

A detailed account of the taxonomy, ecology, and reproductive characteristics of the peregrine falcon is presented in the Pacific Coast Recovery Plan for the American Peregrine Falcon (USDI 1982), and the Advanced Notice of a Proposal To Remove the American Peregrine Falcon from the List of Endangered and Threatened Wildlife (USDI 1995d).

Due to population declines of American peregrine falcons, the USFWS listed this subspecies as endangered in 1970 under the Endangered Species Conservation Act of 1969. The subspecies was subsequently listed under the Endangered Species Act of 1973, as amended. During the period of DDT use in North America, shell thinning and nesting failures were widespread in peregrine falcons, and in some areas successful reproduction virtually ceased. DDT was found to accumulate in individual falcons after ingesting contaminated food. The result was impaired calcium release for egg shell formation, thus inducing thin shells and reproductive failure.

Recently, the population has improved as a direct result of the ban of DDT and other persistent organochlorines and from recovery efforts. As a result of the improved population, the USFWS has published in the Federal Register (USDI 1995d), an Advanced Notice of a Proposed Rule to Remove the American Peregrine Falcon from the List of Endangered and Threatened Wildlife.

Candidate Species and Critical Habitat:

There is no critical habitat proposed on the Tree Farm, nor in the action area.

Bull Trout

Bull Trout were deemed "warranted but precluded" for listing by the USFWS on June 10, 1994 (USDI 1994b). Twelve months later, in 1995, the petition finding was reviewed, and the USFWS maintained its decision of "warranted but precluded". This finding was published in the Federal Register (USDI 1995e). This species status is being reviewed annually, and for the purposes of this BCO is considered as though it were listed or proposed for listing.

Bull trout are members of the char family, which also includes the arctic char and Dolly Varden. Like other char, bull trout have numerous life-history habits (morphologies), complex age structures, behavior, and maturation schedules. Resident and migratory forms exist throughout the range. Resident populations are generally found in small headwater streams where they spend their entire lives. Migratory forms live in tributary streams for several years before migrating downstream into a larger river (fluvial) or lake (adfluvial or lacustrine morph). Anadromy has also been demonstrated for bull trout, though it is not common. Migratory bull trout spend several years in larger rivers or lakes before returning to tributaries to spawn.

Bull trout occupy a variety of habitat types during their life, but are strongly associated with pools

and large woody debris in the stream. As bull trout mature, they move from slow backwater areas with large woody debris into deeper and faster water, such as runs and mainstream pools, but these pools are typically associated with Large woody debris. Preferred bull trout rearing habitat occurs in small headwater and tributary streams.

ENVIRONMENTAL BASELINE - LISTED SPECIES

Northern Spotted Owl

Surveys for northern spotted owls have been completed in the plan area for 4 years following survey protocols endorsed by the USFWS. There are currently no known northern spotted owl nests within the plan area (USFWS and NMFS 1996); however, one known reproductive pair (Status 1) is centered on lands managed by the Washington Department of Natural Resources (DNR) about 1.5 miles north of the plan area boundary, and may be using the habitat found on the Tree Farm. This site center has been moving north and east every year, further away from the plan area. Further, one resident single bird (Status 3) is located on the plan area; no pair activity has been documented to date at this site center. Several widely-spaced detections resulted in initial establishment and subsequent movement of a single spotted owl activity center. These detections and the movement of the single spotted owl activity center suggests that the plan area is not currently suitable for supporting a nesting pair of owls, but does serve as roosting and foraging habitat for one or more single owls. There are no other owl sites known within the action area. At present, there is no true old growth on the plan area, nor in the action area. However, there are relict old growth stems, and patches of older timber that contain late successional characteristics in the plan area and action area. The plan area is currently about 37 percent (about 2,750 acres) low quality owl habitat, or Young Forest Marginal (YFM), as defined in Hanson et al. (1993), and summarized in section 4.1 of the HCP. All of the YFM is currently in one or both of the existing owl circles. Data on quantification of "old growth" habitat within the region is presented below in the marbled murrelet discussion.

Marbled Murrelet

There are no occupied murrelet stands known within the plan area, nor within the action area (USFWS and NMFS 1996).

As stated above, the plan area is within Zone 2, as described in the draft Murrelet Recovery Plan (USDI 1995). In the two Water Resource Inventory Areas (WRIAs; i.e. drainage basins) that encompass the plan area, Washington State WRIA 23 and WRIA 24, there is little suitable habitat present, and few occupied stands are known. The region is comprised primarily of State and privately-owned commercial forest land. There is little likelihood of substantial recruitment of nesting stands within these WRIAs, due to ongoing timber harvesting which occurs well before the age at which stands become suitable for murrelet nesting. Using survey results and Eby and Snyder's 1988 data, updated through 1993 (Doretta Collins, Washington Department of Natural Resources, unpublished reports to Forest Practices Board, 9-9-93 and 10-18-95), out of 1,474,351 acres, there

were 247 acres known to be occupied by murrelets within these two WRIAs, and about 2,350 additional acres that were classified as "old growth," which may or may not be suitable as murrelet habitat. These results are also indicative of the amount of suitable nesting habitat available to owls within these WRIAs. The "old growth" definition used by Eby and Snyder (1990) roughly corresponds to suitable nesting habitat for owls as well. Status of murrelet use is unknown in the 2,350 acres (i.e. no surveys). The total acreage of potentially suitable habitat within these two WRIAs, then, is about 2,600 acres (247 + 2350), or about 0.002 percent of the 1,474,351 acres encompassed by WRIAs 23 and 24. Presumably, Eby and Snyder's classification did not capture all potentially suitable habitat in the area, but the results are indicative of the general condition of the region as regards nesting habitat for owls and murrelets.

Port Blakely has done an assessment of the stands on the Tree Farm to determine quantity and location of suitable murrelet habitat. According to their inventory, about 332 acres of potentially suitable murrelet habitat occur on the Tree Farm, in six distinct stands. Port Blakely defined suitable habitat as any stand having at least two platforms per acre, over an area of at least 5 acres in size. Note that this is second growth, low quality murrelet habitat (B. Bogaczyk, USFWS pers. obs.). Surveys, according to Pacific Seabird Group's protocol (Ralph 1993-1996), were initiated in 1993, and to date, at least one 30-acre survey station has been monitored at least 1 year (four visits) in all six of the six stands identified as potentially suitable. No presence had been detected through the 1995 survey season in any of the six stands. Approximately 120 acres of the 332 potentially suitable acres have been surveyed to 2-year protocol, with no detections.

Bald Eagle

The WDFW maintains a bald eagle database of bald eagle nest locations, winter concentration areas and communal night roosts. There are no bald eagle nests or winter roost sites known to exist on Port Blakely's ownership (see EA, Section 3). There are no water bodies or fish-bearing streams traversing the ownership of sufficient size to entice eagles to nest. However, the tree farm likely does provide foraging opportunities for eagles; e.g. streams that contain sizeable fish populations, and scavenging opportunities in clearcuts or along roadsides. Non-territorial birds may occasionally use the plan area for foraging.

Peregrine Falcon

The WDFW also maintains a database (Heritage Database) of other species of concern, including peregrines. There are no known peregrine nests in or nearby the HCP area (see EA, Section 3). The geography is largely rolling, uniformly forested hills, with bedrock outcrops being very rare; therefore, there is little likelihood of future nesting in the HCP area due to the lack of cliffs, large bluffs, or large rock outcrops. However, non-territorial birds may occasionally use the plan area for foraging, especially during the spring and fall migrations.

Candidate Species:

Bull Trout

Surveys for bull trout have been done in the Chehalis River drainage and bull trout are reported to exist there (Mongillo 1992). About 2 percent of the plan area drains into the Chehalis Basin, and this acreage is located above any fish bearing streams. The majority of the plan area (98 percent) drains into North River, which has no known bull trout. In fact, bull trout have never been found south of the Chehalis River in coastal Washington. No occurrences of bull trout are on record for the plan area. This may be a function of survey efforts not covering this area, however. Some small tributary streams on the plan area are likely suitable habitat, and may currently contain or may in the future harbor bull trout. The WDFW is currently compiling information and preparing a status report.

EFFECTS OF THE PROPOSED ACTION - LISTED SPECIES

Northern Spotted Owl

As described in the Environmental Baseline, there are two owl home ranges on the plan area. Under the HCP mitigation plan, development of suitable owl habitat is projected to exceed harvest of suitable owl habitat for the first 15 years of the plan (HCP 4.11, figure 4-4). After 2010, there will be a net decrease in existing suitable habitat, resulting in possible incidental take of resident owls. Port Blakely proposes to modify known spotted owl habitat within both owl home ranges, including one activity center on their lands. At present, about 37 percent or about 2,750 acres, of the plan area is suitable as low quality owl habitat (YFM or better, as described in section 4.11 of the HCP). All this habitat is currently in one or both of the owl circles, and will be harvested at some point under the HCP. This potential loss of habitat on the plan area will likely result in negative effects to the two owl sites known to be dependent on the plan area at present, and may even result in loss of these two sites. This loss, if it occurs, would be a negative effect to the species.

Both of these site centers are well below the threshold amount of acreage the USFWS considers necessary to enable an owl pair to regularly reproduce (40 percent or greater in suitable habitat within the 2.7-mile diameter home range radius and are not expected to have consistent occupancy in the long term, even if all the area landowners followed a take avoidance scenario. For example, both these site centers move on a frequent basis, even annually. Further, the Report, Holthausen et al. (1995), stated that owls in southwest Washington were not necessary to maintain the Olympic Peninsula population of owls, which is far more robust, and considered a source population of owls. Therefore, the USFWS believes the potential loss of these two low quality owl sites, out of a total of 5,431 known sites in the range of the listed species (851 in the State alone) is not likely to jeopardize the continued existence of the species in the wild.

Nonetheless, current paucity of resident owls in southwest Washington (less than 20 sites known at this time in the entire Province) increases the importance of the owls using the Port Blakely

ownership. Apparently, based on the proximity of the two home ranges in question, there is enough suitable habitat in the local area to provide some life requisites for owls. There are no other site centers in the vicinity, which indicates there is little available habitat. There is little likelihood of substantial colonization of surrounding lands in southwest Washington in the foreseeable future, and therefore, maintaining all current sites is important. However, the transient nature of the owls in southwest Washington, and the very sporadic reproduction from the resident birds found there indicates that these birds are a “sink” population, subject to high mortality, and are largely dependent on immigrating juveniles from the larger Olympic or Cascades owl populations for replenishment. Results of the re-analysis report notwithstanding, the southwest Washington owls are important to maintaining the current distribution of the listed species. However, loss of these two sites, if it occurs, will not result in a constriction of the species range. Further, as discussed below, there will be a net increase in YFM by the end of the plan period (HCP Figure 4-4) which should result in the same or greater level of owl use than presently observed. Taking all these factors into consideration leads the USFWS to conclude that loss of these two owl sites, assuming it happens, will not jeopardize the species in the Western Washington Lowlands Province.

Port Blakely’s intent is to improve the condition of habitat found on the plan area during the planning period, and therefore, it is likely that owls will move into the plan area. Due to the net increase in suitable owl habitat from 1996 to 2010, the potential exists for one or more nesting owl pairs to be located within the plan area before 2010 (see Figure 4-4 in the HCP, and discussion in section 4 of the EA for further details). As habitat improves and more nesting habitat is available, it is possible that the single owl may attract a mate and produce offspring. If nesting owls do exist, the reduction in suitable habitat during the period from 2010 to 2035 would likely result in loss of any reproductive pair. After the year 2035, until the end of the planning period, there would be an increase in the amount of roosting and foraging habitat. The carrying capacity of the plan area may improve; however, the small size of the ownership (7,486 acres at present) will probably only allow for a maximum of two owl pairs to find and establish suitable nest sites. In the early years of the plan (first 15 years), acreage of YFM on the plan area is expected to increase by 19 percent and owls may find suitable habitat for nesting. Harvesting operations during the permit period could constitute take in the form of harm from removal of habitat. By the end of the plan period, about 70 percent of the plan area will be in YFM, compared to about 37 percent currently. This habitat will likely provide for one or two site centers for colonizing owls at that time. Therefore, there should be about the same level of owl use of the plan area at the end of the period as at present, and potentially even more owl use.

The remainder of this effects discussion will briefly summarize the effects of the owl mitigation package described in the HCP. For more in-depth discussion, see section 4 of the HCP and section 4 of the EA, Effects of the Proposed Action on Fish and Wildlife.

Port Blakely’s silvicultural and harvest scheduling approach will maintain a variety of successional stages throughout the planning period. Rotation age will vary widely for forests within the plan area, with a mean rotation age of 70 years (range 50-100). Seventy-year rotations in the highly productive sites in the plan area should allow development of many structural characteristics required for suitable habitat for spotted owls and other late-successional wildlife. Large Douglas fir trees will develop,

providing the material required for large standing dead, and recruitment of large woody debris onto the forest floor and into streams. Young forests will be managed to provide for late-successional wildlife species (see HCP, sections 3.1 and 4.1). The structures (live and dead) that will develop in the young forests in combination with the percentage of old forest retained on the plan area will increase the acreage of YFM by 90 percent over the plan period (from 37 percent currently to 70 percent by 2045). Mature conifer stands will have snags recruited continuously through suppression mortality. Older stands will also have individual trees die or topple to the forest floor--the space formed by a windthrown tree will become quickly occupied by understory vegetation and conifer seedlings. This understory vegetation will develop into secondary canopy layers and provide forage habitat for the primary prey species of the owl (northern flying squirrels) as well as perch sites for owls. Thinning is planned for 2,011 acres (31 percent of plan area); these thinnings will also hasten the development of secondary canopy layers and understory shrub layers. Snags, cavity trees and defective live trees will be retained and protected in thinned stands (HCP 4.21) and may contribute to the landscape strategy of creating and maintaining wildlife habitat in young stands (Oliver 1992). Habitat development following thinning should increase the amount of YFM by 19 percent during the first 10-15 years.

To further minimize likelihood of take, Port Blakely will investigate any incidental sightings of spotted owls verified during the nesting season; note there is no commitment for on-going owl surveys through the permit term. Suitable habitat within .5 mile of the sighting will be surveyed to detect any nesting activity. Further, any nest sites found to be occupied by spotted owls will be maintained with a no harvest zone of the best 70 acres, and a .25 mile seasonal disturbance buffer from March 31 to July 31. The proposed HCP submitted by Port Blakely will minimize and mitigate impacts to owls and should increase the likelihood of providing suitable owl habitat in the near term and long term, based on the conservation measures of the HCP.

Port Blakely has asked for assurances from the USFWS that in the event of early termination of the permit, they will not be required to provide mitigation for take that has already occurred to that point in time. This was analyzed in detail in the EA, section 4. Briefly, this analysis concluded that due to the net increase in suitable owl habitat for the first 10-15 years, from 37 percent to about 45 percent, Port Blakely would have paid the mitigation "up front" for take that might occur. Further, the silvicultural practices conducted early in the permit period, designed to hasten development of habitat features important to owls, should enable ingrowth of suitable habitat at a rapid rate after about 2025.

Marbled Murrelet

Under the HCP, Port Blakely does not propose to modify known occupied murrelet habitat, and they have committed to survey all potential habitat for murrelets prior to harvest. Surveys are to be complete within 5 years of permit issuance. If any habitat anywhere is found to be occupied, it will be reserved from harvest, plus a 300-foot buffer, for the duration of the permit. However, they do not intend to harvest all of the currently suitable, surveyed and unoccupied habitat immediately. Portions of six stands on the plan area are potentially suitable habitat today, totaling about 332 acres. Portions of two of the six stands (about 120 acres) will be harvested in the first 5 years of the HCP,

after surveys are complete. Due to HCP minimization and mitigation measures the approximately 210 acres remaining will be reserved from harvest for 15-30 years (see figures 3-1 and 4-7 in the HCP). Port Blakely has requested in their application that they not be required to resurvey these deferred stands again in the future, immediately prior to harvest. It is possible, therefore, that these stands could be colonized by nesting murrelets, and harvested later in the HCP term. In a worst case scenario, it is possible, though unlikely, that all the remaining habitat could become colonized, and could be harvested. It is important to note, however, that unless current survey efforts show potential habitat on the tree farm is occupied, none of this habitat would have persisted on the ownership but for the existence of the HCP; therefore, harvest deferrals of currently suitable habitat is a potential benefit to murrelets.

Assuming no colonization of the six stands of suitable habitat occurs in the next 50 years, there will be a loss of about 332 acres of suitable, unoccupied habitat. This represents a loss of potential breeding habitat for murrelets in the plan area, an area which is already extremely deficient in murrelet habitat when compared with historic levels. This loss, if it occurs, will be a negative effect to murrelets, because suitable nesting habitat appears to be the major limiting factor for murrelets at this time. Due to the relatively small acreage involved (about 332 acres), the effect of harvesting this habitat is not likely to jeopardize the continued existence of murrelets. It should also be noted that potential benefits of the deferred habitat would not have occurred but for the existence of the assurances provided to the landowner via this HCP.

It is possible that over the 50-year term of the permit, forests left unharvested (e.g. riparian zones, mass wasting areas) due to the measures in the HCP, may be colonized by murrelets. Port Blakely has requested that they not be required to survey these stands prior to operating in or near these stands at a future date. To minimize the likelihood of take, however, Port Blakely has committed to investigate any substantive reports of murrelet sightings in and around the Tree Farm during the period March 1 to July 31 of each year. Follow-up surveys will consist of a protocol Pacific Seabird Group Survey in the nearest suitable stand to the incidental sighting(s). If these follow-up surveys determine a stand is occupied, that stand will be retained through the remainder of the permit period. Nevertheless, since surveys will not be required in areas that subsequently develop into habitat, there is the possibility to unknowingly modify occupied murrelet habitat. It is difficult to quantify the amount of habitat that would become suitable over the course of the HCP, but it is unlikely to be over 500 acres, most of which would occur in permanent no-harvest zones, such as riparian management zones (RMZs) and steep slope set-asides. At present, narrow linear patches are not considered suitable for murrelet nesting. Therefore, impacts associated with harvesting this ingrowth would likely be limited to forest in the harvest units, and this would likely be less than 250 acres. Loss of 250 acres of known occupied murrelet nesting habitat in southwest Washington would be a substantial negative effect to the species. However, due to the fact that this habitat has provided murrelet benefits that would not have occurred otherwise, but for the provisions of the HCP, it is not appropriate to deduce that this impact would jeopardize the continued existence of the species. Without the HCP, the landowner would likely operate under State forest practices rules, and these stands would not grow into habitat, thus providing no opportunity for murrelet use.

Another effect of the HCP would be disturbance associated with harvesting unsuitable habitat next to a patch of potentially occupied suitable habitat. Since the landowner will not be surveying habitat as it grows into suitability for murrelet nesting, this situation might arise; if it does, take in the form of disturbance, could ensue. Nonetheless, this effect, if it happens, is not likely to jeopardize the continued existence of the species, since this would be a temporary and limited effect. Furthermore, the situation would not have occurred but for the provisions of the HCP.

Port Blakely has asked for assurances from the USFWS that in the event of early termination of the permit that they will not be required to provide mitigation for take that has already occurred to that point in time. This was analyzed in detail in the EA, section 4. Briefly, this analysis indicated that there is no take of known occupied murrelet habitat anticipated under the HCP, and any and all take that may occur would occur late in the plan period and be in habitat that would occur only as a result of the HCP. Therefore, there is no possibility that Port Blakely would incur a mitigation debt for murrelets in the event of early termination.

Bald Eagle

The HCP area is not known to contain nests or communal roost sites, nor are these likely to occur in the future, for reasons stated earlier in the Environmental Baseline section. Therefore, these sites are not likely to be affected under the HCP. However, foraging activities of non-territorial eagles may be affected by prescriptions of the HCP, via disturbance. These actions, though they may be detrimental, will not jeopardize the continued existence of eagles, since use of the plan area by foraging eagles is low, and instances of disturbance will be rare, if it occurs at all. Nonetheless, the applicant has requested that all currently listed species that do, or may in the future, use habitat types on the Tree Farm be included on their ITP. The USFWS has determined that take may occur, though unlikely, in the form of harassment of foraging non-territorial birds, and hence is including this species on the Permit.

Management prescriptions under the HCP should serve to improve the function of riparian forests, and serve to improve water quality parameters such as temperature and suspended solids. Therefore, there should be concomitant positive effects upon fish populations on the plan area. Fish are the primary food item for bald eagles in the Coast Ranges Physiographic Province; hence the prey base for eagles should improve over the term of the Permit. Given that forests along fish-bearing streams are going to be managed to a target condition of late-successional conifer forest with an average diameter of 24" (HCP, section 4.343), it is possible, though unlikely, that eagles could establish a communal winter roost site on the plan area. This likelihood increases if anadromous fish runs are restored to historic levels. Port Blakely could harvest that portion of a stand outside of the RMZ that is being used as a communal winter roost site, but the USFWS expects that this would affect only a small (less than 25) number of eagles, if any. Further, as riparian forests on the plan area age, more prominent hunting perches should become available to eagles. The net effect of the HCP, then, should be positive for eagles.

Peregrine Falcon

The HCP area is not known to contain nests, nor are these likely to occur in the future, for reasons stated earlier in the Baseline section. Therefore, these sites should not be affected under the HCP. However, it is possible that migrating birds could use the plan area in the spring and fall. These birds would be hunting over beaver ponds, or in large clearcuts, and therefore, could be affected by on-going forest management actions under the HCP, via disturbance. These actions, though they be detrimental, will not jeopardize the continued existence of peregrines because use of the plan area by foraging peregrines is probably very low, and instances where harassment may occur under the HCP would be even more rare, if it will occur at all. Nonetheless, the applicant has requested that all currently listed species that do, or may in the future, use habitat types on the Tree Farm be included on their Incidental Take Permit. Therefore, the USFWS has determined that take may occur, though unlikely, in the form of harassment of foraging non-territorial birds, and hence is including this species on the Permit.

Management prescriptions under the HCP should actually serve to improve prey populations for the peregrine, should it hunt there. Prescriptions under the HCP should serve to provide cavities for cavity nesting waterfowl, and this prey base would increase hunting opportunities for falcons. Further, leave tree provisions in the harvest units, as prescribed in the HCP, could provide additional hunting perches for peregrines. The net effect of the HCP, then, should be positive for falcons. As with eagles, if Port Blakely terminates the Permit early, they would not incur a mitigation debt because the positive effects of HCP described above offset any take that may have occurred.

Port Blakely has asked for assurances from the USFWS that in the event of early termination of the permit, they will not be required to provide mitigation for take that has already occurred to that point in time. This was analyzed in detail in the EA, section 4. The conclusion was that there is only a remote chance that take of eagles could occur under the HCP, and this take is likely only going to be in the form of harassment. Further, positive effects of the HCP to eagles described above should more than offset any negative effects that might occur under the HCP. Therefore, Port Blakely would not incur a mitigation debt for either of these species in the event of early termination.

Candidate Species:

Bull Trout

Port Blakely has requested that bull trout be added to the Permit in the event that it is proposed for listing. Therefore, the USFWS has analyzed this species as though it were proposed at this time.

The HCP area is not known to contain bull trout. However, this may be an artifact of sampling effort, and future surveys may find bull trout. If bull trout are found in the North River, it is possible that take could occur to this species via actions of the HCP. When developing the conservation measures of the HCP, the Services and the applicant assumed bull trout were present, and designed riparian and

road management facets of the HCP accordingly. Therefore, it is the Services' belief that if bull trout are in the area, the HCP would provide suitable habitat conditions and maintain the low water temperature necessary to support bull trout via the following means; 1) Actions under the HCP will provide large woody debris recruitment into all DNR Type 1-3 streams by maintaining a riparian management zone up to 122 feet slope distance (equal to 100 feet horizontal distance), minimum width being 50 feet horizontal distance, and 2) Port Blakely's Road Construction and Maintenance Plan which is to be completed in the first 5 years following permit issuance (HCP 3.33) and their provisions for partial harvest and no harvest zones in areas of mass-wasting (HCP 3.31) should restrict the amount of sediments moving into streams, thus providing the high water quality required by bull trout. It is the Services' belief that implementing prescriptions of the HCP should enhance or maintain high quality bull trout habitat.

Take that would occur if bull trout are present on the plan area would be slight, for the reasons stated above, and therefore, would not be likely to jeopardize the existence of bull trout in the wild. Further, after the first 5 years of the permit, Port Blakely should have completed the Road Improvement Plan, which is in effect up-front mitigation. Also, riparian buffers described in the HCP should provide for gradually increasing habitat quality in the riparian zone, and the level of take would be very low, if it occurs at all. Therefore, after this initial 5-year period for the road maintenance plan to be completed, if Port Blakely terminates the permit early, they would not incur a mitigation debt for take that occurred to that point in time. During the first 5 years of the plan term, however, there may be a mitigation debt as the backlog of roads to be upgraded is gradually addressed. Further analyses of the effects of the HCP upon fish habitat and water quality can be found in NMFS's document prepared to assess effects of the proposed action on anadromous salmonids inhabiting the plan area (NMFS 1996).

CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, local or private actions that are reasonably certain to occur in the action area considered in this BCO. Future Federal actions that are unrelated to the proposed action are not considered cumulative to the proposed action because they require separate consultation pursuant to section 7 of the Act.

Port Blakely's HCP area is bordered primarily by private industrial timberlands, with State-owned commercial forest land located to the north and east (Lower Chehalis State Forest). State and private industrial timberlands are managed for commercial timber production. The private industrial timberlands can be expected to continue to be managed for early successional forests with a 40 to 50-year timber rotation age. Unless additional HCPs are developed with adjacent landowners, it is likely that timber harvest activity on these timberlands will adhere to the basic requirements of Washington Forest Practices Rules and Regulations. These requirements, which include provisions for establishing riparian management zones, and retention of snags and green trees, are not adequate to provide habitat for listed species analyzed in this BCO, except for the bald eagle. Under State regulations, riparian management zones for most Type 1, 2, and 3 streams are 50 to 75 feet wide. However, these

may be managed to extract the timber leaving only 75 to 100 trees per every 1,000 feet along a stream. Bald eagle nest trees may be protected in these riparian management zones.

The Act's section 9 take prohibitions apply to these adjacent private and State lands, therefore, landowners who want authorization for incidental take of listed species in the future may apply for permits pursuant to section 10 of the Act. In these cases, effects of the action will be analyzed in accordance with future consultations under section 7 of the Act. Adjacent landowners may also request agreements with the USFWS or NMFS with respect to unlisted species similar to the request by Port Blakely. Such agreements would also be subject to consultation under section 7 of the Act. At present, the Services are engaged in HCP negotiations with the DNR encompassing all the lands under their management within the range of the owl. Additionally, discussions are ongoing with Weyerhaeuser Corporation regarding a 100,000-acre tract they own and manage south of the plan area, in Pacific and Lewis Counties. Effects of these actions would be analyzed in future section 7 consultations.

The majority of private industrial forest land adjacent to the HCP area is used for timber production, and very little owl and murrelet habitat remains on these lands. The cumulative effect to owls and murrelets is expected to be minor because very little owl and murrelet habitat remains in the HCP area and on adjacent lands.

Western Washington is enduring an unprecedented influx of new residents (about 100,000 per year), and habitat loss is occurring rapidly, at a rate of about 30,000 acres per year (Washington Office of Financial Management, 1995). This growth rate is projected to continue for the next few decades. Therefore, it is reasonable to assume that some of the forest land in and around the plan area will be taken out of forest land and converted to other uses over the 50 year plan. These projected changes in land use, which produce fragmentation and removal of habitat, will likely have the greatest effect on fish and wildlife populations in the physiographic province over the 50 year permit period. This transition will likely occur with or without an HCP for the Eddy Tree Farm. However, it is possible that management certainty Port Blakely acquires as a result of this agreement could make them decide to maintain the ownership in forestry and timber production instead of selling to a developer, or developing the land themselves.

CONCLUSION

The Service has reviewed the current status of the owl, murrelet, bald eagle, peregrine falcon and bull trout, the environmental baseline for the action area, the effects of the proposed timber harvest, road construction and maintenance associated with the HCP, and the cumulative effects. It is the Service's biological and conference opinion that proposed activities associated with the HCP, issuance of the ITP, and execution of the IA, are not likely to jeopardize the continued existence of the owl, murrelet, bald eagle, peregrine falcon or bull trout. This conclusion is based, in part, on the low numbers of individuals of each of these species occupying the proposed HCP area and the condition and extent of the habitat to be modified. Additionally, the net result of the HCP is expected to be beneficial to

fish and wildlife habitat over the life of the plan, when compared to the no-action alternative of not issuing the Permit. If any currently unlisted species are subsequently listed under the Act, and Port Blakely requests that those species be added to the ITP, the species will be added to the Permit as provided in the IA (Port Blakely, 1996b). Reinitiation of section 7 consultation will elucidate impacts that would result if those newly listed species were added to the permit. Critical habitat for the owl and murrelet has been designated, however, neither occurs in the action area. Therefore, no destruction or adverse modification of critical habitat is anticipated. No critical habitat has been designated for the bald eagle or peregrine falcon and therefore none will be affected. No critical habitat has been proposed for bull trout, and therefore none will be affected.

INCIDENTAL TAKE STATEMENT

Sections 4(d) and 9 of ESA, as amended, prohibit 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 (ITS).

Amount or Extent of Take:

Northern Spotted Owl

As described in the Effects section, about 37 percent, or about 2,750 acres, of the plan area is suitable as low quality owl habitat YFM. All this habitat is currently in one or both of the owl circles on the plan area, and will be harvested at some point under the HCP. This could result in loss of these two owl sites, or a total of three owls. The USFWS anticipates take of these owls via timber harvest and road construction and maintenance activities conducted as per the HCP. Take would be in the form of harm. Note that a 70-acre polygon of habitat surrounding a site center must be retained until 3 years of surveys determine that it is no longer occupied, and the disturbance guidelines in the HCP must be followed at all times.

Additionally, there will be forest growing into habitat suitable for use by owls over the course of the Permit period. This habitat may entice additional owls to colonize the plan area, and timber harvest and road construction and maintenance activities conducted under the HCP could result in take of

these owls as well. The USFWS anticipates take of all owls that might be associated with habitat that will become suitable over the next 50 years of the plan. Again, a 70-acre polygon of habitat surrounding a site center must be retained until 3 years of surveys determine that it is no longer occupied, and the disturbance guidelines in the HCP must be followed at all times.

It is important to note that most owls that inhabit the Tree Farm in the future would not have been likely to occupy the plan area if not for the HCP, and that suitable habitat will increase over the life of the plan. The USFWS has determined that opportunity for colonization, if it occurs, would be beneficial to the survival and recovery of owls, and never would have arisen but for the HCP.

Marbled Murrelet

No modification of habitat known to be occupied by murrelets is authorized under this HCP, nor will any disturbance of known occupied sites be authorized under the HCP. However, the possibility exists that habitat surveyed in the first 5 years of the plan could become occupied in the future, and due to the fact that the HCP would not require Port Blakely to resurvey habitat in the future, could unknowingly be harvested. The USFWS has determined that the opportunity for this colonization, if it occurs, would be beneficial to the survival and recovery of the species in the wild, and the opportunity would likely not have arisen but for the HCP. Therefore, the USFWS anticipates take that may occur as a result of harvesting approximately 210 acres of deferred habitat. Take is expected to be in the form of harm.

It is possible that about 500 acres of habitat could develop in RMZs, steep slope set-asides, etc., over the course of the Permit term. It is possible that up to about 250 acres of this habitat would be colonized by murrelets. The USFWS is not authorizing harvest of any known occupied murrelet habitat under the ITP. However, the USFWS has determined that the opportunity for this colonization, if it occurs, would be beneficial to the survival and recovery of the species and the opportunity would not have arisen but for the HCP. Therefore, the USFWS anticipates take of all murrelets that might occur from harvest of all suitable habitat that develops over the course of the 50-year permit, as long as that habitat is not found to be occupied via other means previously described in this BCO. This take is expected to be in the form of harm.

Further take, in the form of harassment, could occur due to harvesting unsuitable habitat adjacent to a deferred stand which has been colonized by murrelets, without Port Blakely's knowledge. Note that there are seasonal disturbance dates delineated in the HCP, and these will be followed if a set-aside is known to be occupied. Again, the USFWS has determined that the opportunity for murrelets to colonize these set-asides, which would likely not have existed if not for the HCP, is beneficial to the species. At present, few of these set-asides are in suitable habitat, and none are known to be occupied.

Bald Eagle, Peregrine Falcon

Based on the analysis of effects impacts provided above, the USFWS anticipates that take of bald eagles and peregrine falcons will be avoided, but may occur in the form of harassment, with no direct mortality expected. Take of the species is expected to be avoided or be of minor significance when all measures included in the plan are implemented. Therefore, the USFWS anticipates take of non-territorial foraging bald eagles or peregrines that may occur as a result of timber harvest and roading activities under the HCP.

Bull Trout

Based on the status of the species in the plan area (not known to occur), the USFWS anticipates that no take of bull trout will occur as a result of the proposed action. However, if the species is subsequently found in the plan area, either through more thorough surveys or by the species colonizing the plan area, the USFWS believes the conservation prescriptions designed to address habitat and water quality needs of salmonids would minimize and mitigate the impacts of the HCP to the species. Nonetheless, take could occur in the form of habitat modification, via timber harvest, road construction or maintenance. The USFWS anticipates take in the form of harm, if it occurs, under the HCP. This ITP Statement does not become effective unless the species is listed. The USFWS believes the HCP will have positive effects, relative to the no-action alternative, on habitat features important to bull trout.

Effect of the Take:

As analyzed in the Effects section and immediately above, the USFWS has determined that this level of anticipated take is not likely to result in jeopardy to any of the above-listed species or destruction or adverse modification of critical habitat. Additionally, the overall effect of the HCP will be to increase and improve habitat for all the above-listed species.

Reasonable and Prudent Measures:

The Service believes the following reasonable and prudent measure is necessary and appropriate to minimize take of the owl, murrelet, bald eagle, peregrine falcon or bull trout:

Any incidental take of the owl, murrelet, bald eagle, peregrine falcon and bull trout must comply with all of the terms and conditions of the ITP proposed to be issued under section 10(a) of the Act and its supporting HCP and IA.

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3. The USFWS should be prepared to monitor Port Blakely's implementation of the HCP provisions, and ensure the enforceable prescriptions of the agreement.

REINITIATION NOTICE

This concludes formal consultation on the proposed issuance of a section 10(a)(1)(B) ITP to Port Blakely. 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 BCO; (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 BCO; 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.

If you have any questions concerning this Biological/Conference Opinion, please contact Brian Bogaczyk of the USFWS's Olympia Field Office at (360) 534-9330.

Nancy J. Gloman
for
David C. Frederick

bb/jkp

TERMS AND CONDITIONS

The measures described below are nondiscretionary, and must be implemented by the agency so that they become binding conditions of any grant or permit issued to the applicant, as appropriate, in order for the exemption in section 7(o)(2) to apply. The USFWS has a continuing duty to regulate the activity covered by this ITS. If the USFWS (1) fails to require the applicant to adhere to the terms and conditions of the ITS through enforceable terms that are added to the permit or grant document, and/or (2) fails to retain oversight to ensure compliance with these terms and conditions, the protective coverage of section 7(o)(2) may lapse.

In order to be exempt from the prohibitions of section 9 of the Act, the USFWS must comply with the following terms and conditions, which implement the reasonable and prudent measure described above. These terms and conditions are non-discretionary.

1. A section 10(a)(1)(B) ITP, as evaluated in this BCO, must be issued by the USFWS, the HCP and IA for the ITP must be approved by the USFWS, and the Permit conditioned upon implementation of the HCP and IA.
2. The Permit must include provisions for disposition of dead or injured owls, murrelets, bald eagles, peregrine falcons and bull trout.

While the ITP Statement provided in this consultation satisfies the requirements of the Act, it does not constitute an exemption from the prohibitions of take of listed migratory birds and the bald eagle under the provisions of the Migratory Bird Treaty Act, and the Bald and Golden Eagle Act, respectively.

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 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 USFWS recommends that the following conservation measures be implemented:

1. The USFWS should provide technical assistance to Port Blakely throughout the term of the Permit.
2. The USFWS should be prepared to provide technical advice on monitoring and other biological issues associated with implementation of the HCP.

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