Oregon
John A. Kitzhaber, MD, Governor

Received 11/22/11 SD

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"STEWARDSHIP IN FORESTRY"

November 16, 2011

Robyn Thorson
Regional Director, Pacific Region
U.S. Fish and Wildlife Service
911 NE 11th Avenue
Portland, OR 97232

Dear Ms. Thorson,

Despite our collective best efforts including a decade-plus investment in negotiation to achieve a multi-agency agreement on revising the 1995 Elliott State Forest Habitat Conservation Plan (HCP), the State of Oregon (State) regretfully must notify you of our intent to terminate the 1995 HCP effective January 1, 2012. This letter is the State's official notice of termination per paragraph N of the Implementation Agreement executed on October 3, 1995. Paragraph N is quoted below:

> *"The parties agree that either party may terminate the HCP by providing 30 days written notice to the other party. The State shall provide a statement regarding the number and location of listed species taken under the permit up to the time of the termination, and a statement of the extent of mitigation accomplished to offset such take. The parties agree that, in the event of termination, mitigation in accordance with the requirements of the ESA will be provided for any take that has occurred."*

Statement Regarding the Number and Location of Listed Species Taken

The State does not have information documenting any instances of incidental take that occurred because of timber harvest under the HCP. The HCP does not require annual field surveys for northern spotted owls. As a result, the State is not able to provide a statement of a specific number and location of northern spotted owls that are known to have been incidentally taken under the Incidental Take Permit (ITP). The best numeric estimate available to the State is based on an application of the U.S. Fish and Wildlife Service's (Service) 1990 guidelines on avoiding incidental take of northern spotted owls. Although the Service rescinded those guidelines, updated guidelines have not been issued, and thus those previous guidelines remain the best source of information on what constitutes incidental take of northern spotted owls. To generate a numeric estimate, the State has applied the Service's previous guidelines to the number of known northern spotted owl sites associated with certain harvests of northern spotted owl nesting, roosting, foraging habitat as defined in the HCP (NRF), as described below.

Applying the Service's previous guidelines to timber harvests conducted under the HCP, the State projects that, from the time the ITP became effective on October 3, 1995, through December 31, 2011, harvest of NRF habitat under the HCP could potentially have affected 10 northern spotted owl sites. Each of these sites is a home range circle with a 1.5 mile radius, consisting of 4,525 acres, that was considered to be active based on surveys conducted before and after the submission of the HCP. (That figure includes sites associated with harvests occurring during 2011, but after the date of this letter.) The State characterizes these 10 sites as having been potentially affected because harvest of NRF habitat occurred within the home range circle and within a management basin that either already consisted of less than 40% NRF habitat, or consisted of less than 40% NRF habitat following harvest. Harvesting in those areas might have resulted in incidental take as defined in the federal Endangered Species Act (ESA), federal regulations and as described in the Service's previous guidelines. All management basins where this occurred are short rotation basins where basin NRF percentages under the HCP were intended to be below 40 percent; no long rotation basins were affected in this manner.

The location of the 10 owl sites described above and acres of NRF habitat removed are as follows:

- Cougar Creek 10, Pair status – Basin 13 harvest in 2010 and 2011 totaling 23 acres.
- Footlog Creek 10, Pair status unknown - Basin 13 harvest in 2011 totaling 114 acres.
- Fourmile Creek 04-09, Pair status – Basin 10 harvest in 2005 totaling 41 acres.
- Lower W. Fk. Millicoma 95-10, Pair status – 10 acres of Basin 10 harvest in 2002 and 24 acres of Basin 9 in 1999 and 2008 totaling 34 acres.
- Marlow Ridge 10, Pair status - Basin 9 harvest in 2011 totaling 17 acres.
- Nesika Park 96-09, Pair status – Basin 10 harvest in 2001 and 2005 totaling 10 acres.
- Panther Creek 03-10, Resident single status – 30 acres of Basin 13 in 2011 and 20 acres of Basin 12 in 2011 totaling 50 acres.
- Upper Millicoma 10, Pair status – Basin 12 harvest in 2011 totaling 50 acres.
- Upper Roberts 95-06, Resident single status – Basin 11 harvest in 2000 totaling 25 acres.
- West Glenn Creek 03-10, Pair status – Basin 16 harvest in 2004 totaling 65 acres.

For purposes of this numerical incidental take statement, the State makes several conservative assumptions. First, the State assumes that the Footlog Creek 10 site was actually a pair. The State also assumes that each of the sites were still active at the time of harvest, despite the fact that some of the surveys were done before the HCP took effect. Finally, although the State does not have information documenting any instances of take, the State uses a conservative approach and assumes that all owls associated with those 10 sites were incidentally taken.

Having made those assumptions, the State estimates that there were at most 18 northern spotted owls potentially incidentally taken because of timber harvest under the HCP.

The State notes that "take" does not necessarily mean death of an owl. Take under the ESA includes harm, which may include significant impairment of essential behavioral patterns, including breeding, feeding or sheltering (50 CFR §17.3). It is not known how much habitat removal or modification, or the proximity of that disturbance, is necessary to impair essential behavioral patterns. The State has no information, either positive or negative, to support a conclusion that there was significant impairment of essential behavioral patterns of northern spotted owls.

Statement of the Extent of Mitigation Accomplished to Offset Take

The HCP provides specific measures that are intended to ensure that the impacts of any incidental take will be minimized and mitigated to the maximum extent practicable. The State has been in full compliance with the HCP and has implemented those measures as intended. The State believes that its accomplishment of the specific minimization and mitigation measures listed below offsets and fully mitigates any potential incidental take under the HCP and ITP, and that no further mitigation will be required after termination.

Minimization Measures

Although the Implementation Agreement does not require an accounting of the minimization measures accomplished, they are included here to the extent that they are relevant to the mitigation accomplished. Under the HCP, the minimization measures related to owls include the following:

- Protect many spotted owl centers through creation of permanent reserves called Habitat Conservation Areas (HCAs).
  - 21 HCAs totaling 6,367 acres were created and protected through the length of the HCP.

- Protect known spotted owl activity centers outside reserves, as identified by field surveys conducted up to the submission of the HCP, with 70-acre cores and 1/4 mile protection from disturbance during the breeding season for the first five years of plan implementation.
  - All known spotted owl activity centers outside reserves were protected with 70-acre cores and 1/4 mile protection from disturbance during the breeding season for the first five years of the HCP.

- Reduce habitat fragmentation through the location of individual timber sales.
  - Habitat fragmentation was minimized to the degree possible when planning timber sales. Harvest units were first chosen on the edge of fragmented blocks, rather than in the middle of suitable habitat.

Mitigation Measures

Under the HCP, the mitigation measures related to owls include the following:

- Increase the amount of superior habitat through development of long-rotation basins. Reduce forest fragmentation through basin management.
    - The State projects that, from the time the ITP became effective on October 3, 1995, through December 31, 2011, it will have maintained 43,136 acres, including 2,465 acres of in-growth, of NRF habitat on the Elliott State Forest. These 43,136 acres of NRF habitat were maintained in large blocks in long-rotation basins, HCAs, Marbled Murrelet Management Areas (MMMAs), Riparian Management Areas (RMAs) and other areas off limits to harvest for public safety or other reasons, thereby contributing to the survival and recovery of northern spotted owl populations within both forest and regional contexts.

    - Long-rotation basins were designated and little harvest occurred in these basins. Where long-rotation basins had NRF habitat (80-year plus age class) in excess of the required basin target some harvest occurred. Basins 1 and 14 had NRF habitat in excess of the basin target. 125 acres were harvested in Basin 1 (160-year rotation) and 883 acres were harvested in Basin 14 (135- year rotation). 197 acres were harvested in basins 6 and 17. Basins 6 and 17 did not have habitat in excess but were units that were carried over into year 1 of the HCP by agreement with the Service. Four acres of right-of-way timber were harvested in basins 5 and 7. 70 acres of young stands (non-NRF habitat) were harvested in Basin 17.

- Create late successional forest conditions and connections between suitable habitat by establishing a distributed reserve network consisting of HCAs, riparian buffers, and other reserve sites.
    - This was accomplished by designating 18,060 acres of HCAs, RMAs and other reserves at the beginning of the HCP. In addition, 5,320 acres of MMMAs were designated at the beginning of the HCP. Other reserves include scenic conservancy, protective conservancy, non-commercial forest and other land management classifications totaling 5,667 acres. Some of the reserve acres are overlapping.

- Maintain regional connectivity among private and federal forests through reserves and 50% or more dispersal habitat in each management basin.
    - This was accomplished by designating the HCAs, MMMAs, RMAs and other reserves described above, and by maintaining fifty percent or more dispersal habitat in all management basins throughout the HCP.

- Conduct demographic research on northern spotted owls on the Elliott State Forest and northwest Oregon.

- This was completed on July 18, 2000, with a summary of three multi-year studies examining spotted owl populations and habitat on ODF lands in the northern Coast Range and on the Elliott State Forest. Overall, ODF committed approximately $957,000 to this research:
    - Glenn, E., R.A. Anthony, A. Ellingson, J. Tappeiner, and T. Nierenberg. 2000. Summary of northern spotted owl research on Oregon Department of Forestry Lands in the Coast Range. Report to the Oregon Department of Forestry. 44 pages.

- Create and accelerate development of suitable habitat characteristics for northern spotted owls through silvicultural techniques, using adaptive management guided by ongoing monitoring and research.
    - Monitoring and research included the five-year review of the HCP, which was completed on February 18, 2002, and the July 18, 2000 demographic study described above. Information in the demographic study was used to minimize effects to owls to the degree possible during sale planning, and was used along with the five-year review of the HCP to inform the proposed revision of the HCP.
    - Annual monitoring reports containing owl habitat status were completed and submitted each year of the HCP.
    - Thinning was conducted in some dense mature stands and legacy components (live trees, snags, down wood) were retained in clearcut areas.
    - Approximately 5,000 acres of young stands were thinned to accelerate dispersal habitat.
    - Though not an HCP requirement, one or two units out of each annual sale plan were selected as wildlife emphasis units. Wildlife emphasis units were planned with at least five green trees retained per acre, and five pieces of down wood per acre. When topography allowed, green trees were arranged in a scattered pattern.

Conclusion

The State has abided by all terms of the HCP, ITP and Implementation Agreement and has stayed within the harvest level and anticipated in-growth described in the HCP. The State believes that its accomplishment of the minimization and mitigation measures described in this letter offsets and fully mitigates any potential incidental take under the HCP and ITP, and that accordingly, all mitigation in accordance with the requirements of the ESA has already been accomplished for any potential incidental take under the HCP and ITP. The State believes that no further mitigation is required following the State's termination of the HCP.

The State requests the Service's concurrence by written response to this letter that all mitigation in accordance with the requirements of the ESA has already been accomplished for any potential incidental take under the HCP and ITP, and that no further mitigation is required following the State's termination of the HCP.

Despite this termination, as we implement take avoidance strategies under the new Forest Management Plan, the State fully expects that its management strategies not only will provide compliance with the ESA, but also will ensure that the Elliott State Forest will continue to provide quality northern spotted owl and marbled murrelet habitat into the future. The State anticipates that the significant northern spotted owl nesting, roosting and foraging habitat that the Elliott State Forest provides will contribute to the recovery efforts for the northern spotted owl. We look forward to working with the Service to better understand and define the State's role in regard to the northern spotted owl recovery plan.

We have appreciated our cooperative relationship with the Service's staff over the years and look forward to continuing that relationship in the future. Thank you for your consideration of this letter. We look forward to your response.

Sincerely,

Doug Decker
State Forester

Louise Solliday
Director, Department of State Lands