



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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Memorandum

To: Manager, Washington Fish and Wildlife Office

From: William Vogel, Fish and Wildlife Biologist, Washington Fish and Wildlife Office

Subject: Statement of Findings: Safe Harbor Agreement and Application for an Enhancement of Survival Permit (Permit # TE212229-0)

The U.S. Fish and Wildlife Service's Washington Fish and Wildlife Office has assisted Port Blakely Tree Farms, L.P. (Landowner/Applicant) in developing this Safe Harbor Agreement (Agreement) and application for an enhancement of survival permit (Permit), in accordance with the Service's Safe Harbor Policy, section 10(a)(1)(A) of the Endangered Species Act, and associated implementing regulations. The purpose of the 60-year Agreement and Permit is twofold: to enhance and restore habitat benefiting the northern spotted owl and marbled murrelet and to provide certain regulatory assurances to the Landowner. The Permit would allow the Landowner to take northern spotted owls and marbled murrelets on the enrolled property associated with conduct of management activities and as a consequence of the Landowner returning to baseline conditions. The Agreement, Biological Opinion, and the National Environmental Policy Act determination were reviewed by personnel in the Division of Conservation and Hydropower Planning.

Our findings and recommendations are contained in the Statement of Findings attached to this memorandum. Based on those findings, we recommend approval of the requested Agreement and issuance of the associated enhancement of survival permit.

STATEMENT OF FINDINGS

FINDINGS AND RECOMMENDATIONS FOR ISSUANCE OF AN ENHANCEMENT OF SURVIVAL PERMIT (TE212229-0) FOR NORTHERN SPOTTED OWLS AND MARBLED MURRELETS RESULTING FROM A SAFE HARBOR AGREEMENT WITH PORT BLAKELY TREE FARMS, L.P., REGARDING THE MORTON BLOCK IN LEWIS AND SKAMANIA COUNTIES, WASHINGTON

This document assesses the subject proposal against the mandatory components of and the issuance criteria for a Safe Harbor Application, as well as the Safe Harbor Policy, and other factors to determine whether it is appropriate for us to exercise our discretion and issue this enhancement of survival permit. Based on our findings stated below, we recommend issuance of the requested permit and approval of the associated Safe Harbor Agreement (Agreement).

I. DESCRIPTION OF PROPOSAL

Introduction

Port Blakely Tree Farms, L.P., (Port Blakely)(Landowner/Applicant) has requested that the U.S. Fish and Wildlife Service (Service or USFWS) approve the document entitled: Safe Harbor Agreement, Landowner Option Plan, and Cooperative Habitat Enhancement Agreement: Port Blakely Tree Farms, Morton Block (ICF Jones and Stokes 2009) and issue a permit under Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*). Under this voluntary Agreement, Port Blakely would implement conservation measures that are expected to provide a net conservation benefit to northern spotted owls (*Strix occidentalis caurina*)(owl) and marbled murrelets (*Brachyramphus marmoratus marmoratus*)(murrelet). Port Blakely is also applying to the Washington State Department of Natural Resources for a Landowner Option Plan and a Cooperative Habitat Enhancement Agreement under Washington State Rules.

This project is described in greater detail in the Agreement, Final Environmental Assessment (USFWS 2009a), associated Finding of No Significant Impact (USFWS 2009b), and the Biological Opinion (USFWS 2009c), which are herein incorporated by reference. The term of the Agreement would be 60 years. The Agreement contains an Implementation Agreement (IA)(Appendix A of the Agreement) which describes the roles and responsibilities of the Applicant and Service, and also provides for contingencies. The IA provides terms for termination of the Agreement by either party and for possible addition to the enrolled lands. Removal of lands from the Agreement is limited by the IA. The ability for the Service and Landowner to cooperatively modify the Agreement is also addressed.

Location

This Agreement would address Port Blakely's James G. Eddy Tree Farm (also known as the Morton Block). Appendix B of the Agreement provides legal descriptions of these lands. These lands occur within and adjacent to a State-defined area known as the Mineral Block/Link Spotted Owl Special Emphasis Area (SOSEA). The Morton Block encompasses approximately 45,306 acres, of which 26,878 acres fall within the SOSEA. The final recovery plan for the owl identified this SOSEA as a Conservation Support Area (USFWS 2008a). The recovery plan for the murrelet (USFWS 1997) identified this area as lying within either murrelet Conservation Zone 1 or 2. Private lands are identified in the murrelet recovery plan as being able to contribute to nesting habitat. The Agreement (section 3.1) provides a more-detailed description of the covered area.

Activities

The covered activities are described in the Agreement. These activities are generally those associated with managing, harvesting, and replanting trees for timber production, and also include other associated actions such as road construction and maintenance needed to manage such timber, and administration and maintenance of existing structures and facilities. A description of the activities addressed by this Agreement, as well as associated conservation measures, can be found within the Agreement (section 4.1).

Species

The Agreement addresses the owl and the murrelet. A description of these species and their requirements can be found within the Agreement (section 3.2), and also within the respective species' recovery plans.

Time Period

The Enhancement of Survival Permit (Permit) addresses a period of 60 years. Provisions for extension, termination, suspension, and revocation are contained within the IA and the Agreement.

Summary of Conservation MeasuresBaseline

The importance of the conservation measures is particularly clear in the context of the current Baseline Conditions. Baseline Conditions are described in the Agreement (section 3.3). In general, the tree farm is industrial forest land. The majority of this land is considered to be operable either by ground-based equipment or cable-based systems. The property is well-stocked and is highly productive timberland.

The composition of the forest lands is primarily Douglas-fir (*Pseudotsuga menziesii*) with lesser amounts of western hemlock (*Tsuga heterophylla*), red alder (*Alnus rubra*), and other species. Nearly all the forest stands have been harvested at least once. The current age structure is relatively diverse with the majority of management units composed of 20- to 60-year-old timber.

Only very small amounts of the existing land would be considered either foraging habitat for owls or nesting habitat for murrelets. The exact amounts are arguable and estimated amounts depend on definitions applied to and measured against biologically marginal habitat quality. For purposes of definition of Baseline Conditions, stand ages were used as a surrogate metric to actual habitat conditions. We estimate that 8,360 acres of owl dispersal habitat may be present within the enrolled areas, of which 4,100 acres are within the SOSEA. For murrelets, we estimate that 498 acres are potentially suitable based upon stand age, tree species composition, and stand size; however, we expect that the majority of these acres do not currently support the actual stand characteristics needed for nesting murrelets.

Conservation Measures

In order to improve these Baseline Conditions in terms of habitat quality and quantity, Port Blakely is proposing a series of conservation measures that would not be available in the absence of a Permit, which include:

- Landscape-level amounts of owl dispersal habitat would improve and eventually be 50 percent to 100 percent greater than the Baseline (8,360 acres). Within the SOSEA portion of the enrolled area, owl dispersal habitat will be maintained above 7,500 acres (approximately 3,400 acres more than the Baseline of 4,100 acres within the SOSEA).
- Areas with predicted potential of being or becoming murrelet habitat (based on stand-inventory data) would be retained for the term of the Agreement.
- Rotation age for regeneration harvest would be extended from an average of 45 years (40 to 50) to an average of 60 years (50 to 70). Stands would be retained for an average of 15 years longer under the Agreement than without the Agreement.
- A program to conserve and develop snags during commercial thinning and regeneration harvest would be established.
- A series of prescriptions for forest thinning designed to enhance habitat conditions would be implemented. The prescriptions depend on slope steepness and whether ground-based equipment can be used.
- A series of prescriptions for regeneration harvest aimed at maintaining wildlife trees (snags), snag-recruitment trees, and downed logs would be implemented.
- A series of prescriptions for salvage harvests aimed at maintaining structures in the understory and new developing stand would be implemented.
- Additional protection of forested wetlands with priority retention of wildlife trees and snag-recruitment trees would be implemented.
- Special Management Sites and Areas would be retained for the term of the Agreement.

- Special Set-Aside Areas would be deferred from harvest for the term of the Agreement.
- Nest-site protection would occur for 3 years, for up to 3 nest sites per species. It should be noted that in the absence of this Permit, nest-site protection requirements might be more expansive or persistent, but nest-site occurrence would be much less likely.
- Monitoring activities, including marking a sample of snags and defective trees to be used in studies for effectiveness of snag-creation methods.

Additional Voluntary Conservation Measures

Port Blakely may exercise a number of additional voluntary actions at their own discretion. At their option, Port Blakely may:

- Request an alternate plan for management of riparian areas under Washington State Forest Practices Rules. In doing so, they may manage those riparian areas for additional benefits for owls and/or murrelets, but with equivalent protection of aquatic resources.
- Elect to protect discovered nest sites for longer than the 3-year period, or may elect to protect additional nest sites.
- Upon discovery of occupied murrelet nest sites, elect to discuss potential conservation sales or easements with Federal and/or State agencies.

Results of Conservation Measures

Implementation of the combination of these measures is reasonably expected to benefit owls and murrelets. Probable outcomes include:

- Greater amount of owl dispersal habitat and greater opportunities for foraging or roosting would be provided in an important connectivity area. This should lead to greater potential connectivity between blocks of Federal lands for owls.
- Older, more-complex stands (498 acres) that will be retained for the term of the Agreement may provide potential low quality murrelet nesting habitat through the term of the Agreement. These stands may support potential murrelet habitat that would be distributed along the east-west continuum of the enrolled lands.
- Forest thinning would facilitate the more-rapid development of forest structure, complexity and tree size. This should accelerate the development of habitat for owl dispersal and foraging. It will also improve the quality of stands which are considered habitat as well as those not yet considered habitat by definition. Together, with extended rotations, thinning operations will benefit owls by contributing to landscape-level amounts of habitat.
- Variable-density stocking as a result of thinning would contribute to stand complexity and flying spaces for owls.

- More snags and defective trees will be distributed across the landscape and retained for the life of the Agreement. These trees are intended to promote owl prey and would benefit many species of wildlife with small home ranges, including northern flying squirrels (*Glaucomys sabrina*) which are an important source of prey for owls.
- More downed wood and understory structure within stands would be developed. This structure would support a higher level of prey species.

Summary of Effects due to Permit Issuance

Measures to be implemented by Port Blakely to achieve net conservation benefits for both species are fully described in the Agreement. The effects of continued forest management, conservation measures, and return to Baseline are also addressed in detail in the Biological Opinion.

The effects of Permit issuance are the effects that result from the activities that are done differently because of the Permit. The Service considers that activities involving the cutting or harvest of trees (including precommercial thinning, commercial thinning, regeneration harvest, and salvage) could be direct results of Permit Issuance. Even though this would not be the case in most instances, and the net effect would be a reduction in harvest frequency, the Service analyzes all such harvest activities as direct effects of the Agreement and permit issuance. Port Blakely would continue to operate in compliance with the Forest Practices Habitat Conservation Plan (HCP) and associated State Rules. This will result in a network of riparian buffers, retention patches to address slope stability, and proper management of forest roads. Benefits associated with those actions are not considered benefits associated with this Agreement. However, as we look to the future, we do anticipate that some of these areas will contribute to landscape conditions that may also attract owls and murrelets to the enrolled lands.

The major effect of this Agreement for owls is the presence of dispersal habitat above Baseline Conditions for a period of time. In the absence of this Agreement, much if not all of the habitat now included in the Baseline Conditions would be available for timber harvest. The habitat amounts projected in the Agreement would likely not otherwise occur. The elevated levels of dispersal habitat may result in greater use of the enrolled property by owls; and therefore, in some effects from both normal management activities and activities associated with the return to Baseline that could rise to the level of take of owls at some minimized level.

The effects on murrelets are considered to be very small. The Service believes it is possible that murrelets might colonize a portion of the enrolled lands during the term of the Agreement. The Agreement identifies the 498 acres of stands that are most likely to be occupied on the enrolled lands, and protects those stands for the term of the Agreement. Some other lands, such as riparian areas or adjacent ownerships, could conceivably develop into habitat during the term of the Agreement. It may also be possible that management activities on the enrolled lands may result in effects to those murrelets. While the probability of distinct benefits is relatively low under this Agreement, the Service believes the probability of take occurring is even lower.

We analyzed potential negative effects to determine their probability and whether they were likely to rise to the level of take for the covered species. We assessed effects that might occur as a result of management activities to benefit the species, as a result of normal operations, or activities and outcomes associated with a return to Baseline, which may occur at the conclusion of the Agreement. Removal of habitat may also occur at a site-specific level while maintaining landscape levels of habitat associated with the Baseline. This could occur dynamically over space and time during the life of the Agreement, and was therefore also assessed.

Take potentially could occur through a variety of mechanisms. Therefore, the Service carefully assessed all potential avenues of take to determine the possibility of and potential magnitude of take. Possible avenues assessed in the Biological Opinion included harm through habitat modification or removal on the enrolled lands, habitat degradation on the enrolled lands (both within the managed portions of the property, as well as a result of management activities adjacent to reserves), and habitat degradation of adjacent property through direct and indirect effects. We also considered potential harassment that could occur from activities that occur within managed stands, along roads, adjacent to reserves or neighboring properties, as well as activities that may occur within reserves. We also considered the potential for direct injury or killing. Lastly, we considered the other indirect effects that may emanate from the covered activities.

The primary potential negative effects that may rise to the level of take include:

- Degradation of habitat that could result from regeneration harvest on the enrolled lands. Removal of adjacent stands could facilitate effects from windthrow within reserves on the enrolled lands and adjacent Federal and nonfederal lands.
- Degradation of habitat that could result from regeneration harvest on the enrolled lands. Removal of adjacent stands could result in a loss of interior conditions and increased risk of predation (primarily for murrelets) within reserves on enrolled lands and adjacent Federal and nonfederal lands.
- Removal of potential habitat that may contain known or unknown owl or murrelet sites on the enrolled lands. Removal of habitat could reduce nesting ability for murrelets and may have more subtle effects for owls that rely on a larger home range area. Removal of habitat would be most likely to have effects upon owls when located in proximity to a site center.
- Harassment from regeneration harvest or commercial thinning that occurs adjacent to potential habitat. Such harassment could affect owls and or murrelets at times and locations where these species are nesting in proximity to activities.

II. COORDINATION AND PUBLIC COMMENT

Throughout the process of developing this Agreement, the Service and Landowner have worked in cooperation with the Washington Department of Fish and Wildlife and Washington State Department of Natural Resources. The result of this cooperation is an Agreement that can be used for both Federal and State purposes, and meets the needs of the Landowner.

Early in the conceptual stage of this project, the Landowner contacted the Cowlitz Indian Tribe to consult regarding their level of interest and concerns. The Service also contacted the Cowlitz Indian Tribe during the development of the Agreement. We also contacted the Confederated Tribes of the Chehalis Reservation, Puyallup Tribe of Indians, Quinault Indian Nation, and the Confederated Tribes and Bands of the Yakama Nation to extend opportunities for Government-to-Government discussions in advance of seeking public comment.

The Service published a Notice of Availability for the draft Environmental Assessment (USFWS 2008b) and Notice of Receipt of the Permit Application and Draft Agreement (ICF Jones and Stokes 2008), in the Federal Register on December 17, 2008 (73 FR 76680). Publication of the notice initiated a comment period which closed on January 16, 2009. The only comments received were from the Washington Department of Fish and Wildlife (USFWS 2009b). The comments were generally supportive with some constructive suggestions in the form of requests for clarification. Summaries of those comments and the Service responses to those comments are contained within the Finding of No Significant Impact (USFWS 2009b).

III. ISSUANCE CRITERIA FOR PERMIT - ANALYSIS AND FINDINGS

Section 10(a)(1)(A) of the Endangered Species Act authorizes the issuance of Permits for listed species. This document assesses a number of criteria to determine the appropriateness of the Service's decision to issue or deny this Permit.

Application Requirements

Port Blakely Tree Farms has submitted an application to the Service for a Permit which identified owls and murrelets as the requested species. They have also described how incidental take of these listed species pursuant to the Agreement is likely to occur, both as a result of management activities and as a result of the return to Baseline Conditions. The type and source of incidental take expected was further described in the Service's Biological Opinion. Accompanying their application, Port Blakely submitted an Agreement that complies with the requirements of the Service's Safe Harbor Policy.

Issuance Criteria

According to the Act, the Secretary may permit, under such terms and conditions as he shall prescribe, any act otherwise prohibited by section 9 for scientific purposes, or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment, and maintenance of experimental populations. The issuance criteria for a Permit are contained in the Act's implementation regulations. These regulations, contained in 50 CFR 17.22(c)(2) and 17.32(c)(2), state "Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a Permit. The Director shall consider the general issuance criteria in Section 13.21(b) of this subchapter, except for Section 13.21(b)(4), and may issue the Permit if he or she finds..." See items 1 through 6 below for issuance criteria and our respective findings.

1. The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Agreement.

The Service finds that the proposed take will be incidental to otherwise lawful land-use activities. The Agreement addresses take that may arise from management activities that would normally occur on the enrolled lands, the conduct of conservation measures implemented under this Agreement, and, in the case of owls, the return to Baseline habitat conditions. In the case of murrelets, the commitments within the Agreement (protection of the 498 acres) restrict a return to Baseline during the term of the Agreement. The areas identified as the most-likely places where murrelets could establish during the next 60 years are protected for the life of the Agreement. To return to Baseline Conditions, according to the terms of the Agreement and Permit, the Landowner must demonstrate that Baseline Conditions were maintained and that beneficial management practices were accomplished.

Activities that will or could result in incidental take include, but are not limited to, any authorized activity occurring within a stand of habitat that may degrade or remove key features of habitat or make that habitat unusable, or any timber harvesting or other management activity adjacent to or in proximity of habitat that could degrade the adjacent habitat through indirect effects or could result in harassment of the species.

Purposeful take, such as take associated with banding or nest monitoring, is not incidental and therefore, is not authorized by this Agreement or the associated Permit. The Landowner will be required to apply for separate permits or other necessary authorizations to undertake any such activities and to ensure that its agents obtain the necessary permits and authorizations prior to engaging in such activities.

2. The implementation of the terms of the Agreement is reasonably expected to provide a net conservation benefit to the affected listed species by contributing to the recovery of listed species included in the permit, and the Agreement otherwise complies with the Safe Harbor policy available from the Service.

The conservation measures that the Landowner will undertake to accomplish the expected net conservation benefit for the owl and murrelet consist of a combination of protection and enhancement measures on the enrolled property. These activities were summarized above and are detailed in the Agreement. Considering the roles that this portion of the respective species ranges are expected to provide in conservation of the species, the results of those conservation measures are expected to contribute to the recovery of the owl and murrelet.

Additional measures that may be undertaken by the Landowner were mentioned above and may include, but are not limited to, proposing Alternate Plans under the Forest Practices rules that could be used to enhance owl and/or murrelet habitat within riparian areas. These additional conservation measures may be implemented at the sole discretion of the Landowner.

In assessing the net conservation benefits, as described in the Biological Opinion, the Service considered the effects of the beneficial management minus the effects of incidental take that would occur under this Agreement, and weighed those resulting conditions against the status of the species on the Landowner's property without the effects of the management activities set forth in the Agreement. We do not herein consider the additional conservation measures which may be conducted at the sole discretion of the Landowner, but only consider those conservation measures contained as commitments in the Agreement in our determination of a net conservation benefit. In our Biological Opinion, which is incorporated herein by reference, we concluded that a net conservation benefit to both species would occur by implementation of the Agreement.

Without implementation of the Agreement, habitat would further decline in quality and abundance due to the absence of measures to require its development. The net effect of the Agreement is that the species habitat will be restored and enhanced. This may result in a corresponding increase in the populations of the covered species, but actual population responses are highly dependent on factors external to this Agreement such as climatic conditions and the interaction of barred owls (*Strix varia*) with northern spotted owls, as well as factors such as forage fish availability for, and pioneering ability of, marbled murrelets. Without this Agreement, there may be additional protective measures required for known nesting sites; however, such sites would be far less likely to without the Agreement.

As this Agreement can be terminated and discontinued, we also considered the potential that Port Blakely would operate under the Agreement for a period of time shorter than 60 years. Our conclusion was that the presence of the species is highly dependant on the benefits that would accrue from this Agreement. Early in the Agreement, habitat conditions are still improving at the site-specific and landscape scales. Occupancy by either of the two species is unlikely during the early portion of this Agreement, and therefore, effects that rise to the level of take are similarly unlikely. As the Agreement is implemented over time, the benefits begin to accrue, as does the probability of occupancy and, by association, possibility of take. Regardless of the time frame over which this Agreement is implemented, it is our opinion that the benefits accrued continue to outweigh the potential negative effects that could possibly affect the species.

The Service has specifically assessed this proposed Agreement with each of the components of our Safe Harbor Policy and found this Agreement to be consistent with and in compliance with that Safe Harbor Policy (USFWS 2009d).

3. The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species.

The effect of the Service's proposed issuance of the Permit was evaluated as a formal intra-Service consultation, in accordance with section 7(a)(2) of the Act. In the Biological Opinion, associated with this matter and incorporated herein by reference, the Service concluded that the Agreement and Permit will not likely jeopardize the continued existence of or appreciably reduce the likelihood of survival and recovery of the owl or murrelet or other listed species. We also determined that the Agreement was not likely to result in destruction or adverse modification of designated critical habitat for the owl or murrelet.

4. Implementation of the terms of the Agreement is consistent with applicable Federal, State, and Tribal laws and regulations.

Washington State Forest Practices Rules provide an exemption for activities that are addressed through a Section 10(a)(1)(A) Permit or through a section 7 consultation, provided that the State and Tribes have been included in the process as part of a good-faith effort. Washington Department of Fish and Wildlife and Washington State Department of Natural Resources participated in the development of this Agreement, which has been written as a joint document to address both Federal and State processes. Rather than rely on the exemption within State law, the Applicant chose to apply to the State for equivalent agreements. This Agreement was also the subject of contacts to the affected Native American Tribes. There are no other applicable State or Tribal laws and regulations applicable to implementation of the terms of the Agreement on the enrolled property.

The Service concluded that implementation of the conservation measures of the Agreement as conditioned by the Permit are consistent with the Nation Historic Preservation Act. We hereby determine that, pursuant to 36 CFR 800.3(a)(1) that issuance of this Permit presents no potential to affect historic properties. The Service may only condition Permits issued under Section 10 for concerns associated with listed species. We have no authority to require Permittees to protect historic properties. The Permit would not authorize the activities themselves, only the take of the covered species. Because Washington State Forest Practices Rules already address protection of cultural and historic resources, those provisions would not change with the approval of this Agreement. The vast majority of timber harvest under this Agreement would occur in stands typically not much older than 50 years, so the likelihood that harvest might affect previously-undisturbed historic sites is low. Additionally, without this Agreement, harvest would be more frequent.

The Service has ensured and will continue to ensure that the Agreement will be consistent with all applicable laws and regulations.

5. Implementation of the terms of the Agreement will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit.

The Service has reviewed ongoing conservation and recovery programs for the owls and murrelets. The terms of the Agreement are consistent with the recovery plans for these two species. The Agreement is neither in conflict with these programs, nor is it in conflict with conservation or recovery programs for any other listed species. Any additional voluntary actions that the Landowner might propose would be consistent with the Forest Practices Rules and the Forest Practices HCP, and would likewise be expected to be consistent with other conservation and recovery programs.

6. The applicant has shown capability for and commitment to implementing all of the terms of the Agreement.

The terms of the Agreement for habitat establishment and management involve the manipulation of forest conditions using thinning or harvests based on silvicultural needs. There are also set-aside areas which will be managed for the benefit of the species.

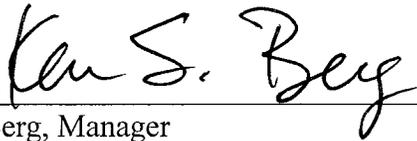
The Applicant has been managing timber resources on other properties in Washington and Oregon, and other locations, for many decades. Through the operation of their HCP on the Robert B. Eddy Tree Farm in Southwest Washington, they have demonstrated competence, capability, and commitment in the arena of silvicultural management for a wide range of listed and unlisted species under conservation plans and agreements involving the Endangered Species Act. The Applicant employs biological staff as well as foresters to ensure that their actions are conducted in compliance with all laws, regulations, and agreements, and also that they further meet their stewardship responsibilities that are consistent with their own corporate ethic. Port Blakely has demonstrated their leadership in environmental issues within the timber industry on numerous occasions. Furthermore, the Applicant's forest-management objective is to restore mature forests to the landscape, which is compatible with the needs of the owl and the murrelet. Thus, the Applicant is knowledgeable, capable, and committed to implementing the terms of the Agreement.

**IV. GENERAL CRITERIA AND DISQUALIFYING FACTORS
- ANALYSIS AND FINDINGS**

The Service has no evidence that the Permit Application should be denied on the basis of the criteria and conditions set forth in 50 CFR 13.21(b) (excluding 13.21(b)(4)), and 50 CFR 13.21(c)(1-4). Section 13.21(b)(4) is not applicable to section 10 permits; and, in Agreements, this concept is addressed in the issuance criteria contained in section 17.22(c)(2)(iii) and 17.32(c)(2)(iii). The Service has also reviewed the suspension and revocation regulations at section 13.27 (a) and 13.28 (a) 1 through 4, and found no reason to deny issuance of the Permit based upon those factors. The Applicant has met the criteria for the issuance of the Permit and does not have any disqualifying factor that would prevent the Permit from being issued under current regulations.

V. RECOMMENDATION ON PERMIT ISSUANCE

Based on the foregoing findings with respect to the proposed action, Permit application, and adequacy of the Agreement, I recommend issuance of a section 10(a)(1)(A) Permit to authorize incidental taking of northern spotted owls and marbled murrelets by Port Blakely Tree Farms, and approval of the proposed Safe Harbor Agreement and Implementation Agreement.



Ken S. Berg, Manager
Washington Fish and Wildlife Office



Date

REFERENCES

- ICF Jones & Stokes. 2008. Draft Safe Harbor Agreement, Landowner Option Plan, and Cooperative Habitat Enhancement Agreement: Port Blakely Tree Farms, Morton Block. September 2008. Olympia, Washington. (ICF J&S 00209.07). Prepared for Port Blakely Tree Farms, L.P.
- ICF Jones & Stokes. 2009. Final Safe Harbor Agreement, Landowner Option Plan, and Cooperative Habitat Enhancement Agreement: Port Blakely Tree Farms, Morton Block. February 2009. Olympia, Washington. (ICF J&S 00209.07). Prepared for Port Blakely Tree Farms, L.P.
- USFWS. 1997. Recovery Plan for the Threatened Marbled Murrelet (*Brachyramphus marmoratus*) in Washington, Oregon, and California. U.S. Fish and Wildlife Service, Portland, Oregon. 203 pp.
- USFWS. 2008a. Final Recovery Plan for the Northern Spotted Owl, *Strix occidentalis caurina*. U.S. Fish and Wildlife Service, Portland, Oregon. xii + 142 pp.
- USFWS. 2008b. Draft Environmental Assessment. Port Blakely Tree Farms Morton Block Safe Harbor Agreement. November 2008. U.S. Fish and Wildlife Service, Lacey, Washington. (ICF J&S 00209.07)
- USFWS. 2009a. Final Environmental Assessment. Port Blakely Tree Farms Morton Block Safe Harbor Agreement. February 2009. U.S. Fish and Wildlife Service, Lacey, Washington. (ICF J&S 00209.07)
- USFWS. 2009b. Finding of No Significant Impact for Issuance of an Enhancement of Survival Permit in association with Safe Harbor Agreement, Landowner Option Plan, and Cooperative Habitat Enhancement Agreement: Port Blakely Tree Farms, Morton Block. U.S. Fish and Wildlife Service, Lacey, Washington. March 2009.
- USFWS. 2009c. Biological Opinion and letter of concurrence for effects to marbled murrelets, northern spotted owls, and designated critical habitat for marbled murrelets and northern spotted owls from issuance of an enhancement of survival permit in association with the Safe Harbor Agreement, Landowner Option Plan, and Cooperative Habitat Enhancement Agreement: Port Blakely Tree Farms, Morton Block. U.S. Fish and Wildlife Service, Lacey, Washington. Reference number 13410-2009-F-0240, 98 Pages
- USFWS. 2009d. Assessment of Consistency with Safe Harbor Policy: Port Blakely Tree Farm – Morton Block Agreement. U.S. Fish and Wildlife Service, Lacey, Washington.