

IMPLEMENTATION AGREEMENT
for the
PLUM CREEK TIMBER COMPANY, L.P.,
MULTI-SPECIES HABITAT CONSERVATION PLAN

This Implementation Agreement is entered into between Plum Creek Timber Company, L.P., ("Plum Creek"), the United States Fish and Wildlife Service ("USFWS"), and the National Oceanic & Atmospheric Administration ("NOAA") through the National Marine Fisheries Service ("NMFS") (collectively, the "Services"), on this 27th day of June, 1996.

1.0 BACKGROUND INFORMATION

Capitalized terms used herein are defined in Section 2.0 of this Agreement.

- 1.1 Plum Creek owns approximately 169,177 acres in the 1-90 corridor of the central Cascades Mountain Range in Washington State, the boundaries of which are described more fully in Appendix 1 of the HCP. Plum Creek manages those lands primarily for commercial timber production with some minor collateral uses such as rock quarries and electronic transmission sites.
- 1.2 Plum Creek's ownership is intermingled in a checkerboard pattern with approximately 249,513 acres of lands managed by the U.S. Forest Service and other private owners. Thus, the total planning area for purposes of this Implementation Agreement encompasses approximately 418,690 acres.
- 1.3 Under the ESA, it is unlawful for any person to "take" a species listed as endangered. Under Federal regulations, the same prohibition applies to species listed as threatened. However, under Section 10(a) of the ESA, the Services may issue an incidental take permit authorizing the take of threatened or endangered species incidental to the carrying out of otherwise lawful activities if certain statutory requirements are met by the applicant and such take would not appreciably reduce the likelihood of the survival and recovery of the species in the wild. To obtain an incidental take permit, the applicant must submit a habitat conservation plan describing, among other things, the steps the applicant will take to minimize and mitigate the impact of such taking to the maximum extent practicable.
- 1.4 Congress also intended that a habitat conservation plan submitted under Section 10(a) of the ESA could cover species not listed at the time of permit issuance. The legislative history indicates that if the conservation needs of such unlisted species are addressed adequately in the habitat conservation plan, should such species become listed during the life of the incidental take permit, no mitigation other than that provided in the habitat conservation plan itself should normally be imposed on the applicant. In such instances, the Services can amend the incidental take permit to cover such species promptly provided doing so would not appreciably reduce the likelihood of the survival and recovery of the species in the wild. Thus, coverage of multiple listed and unlisted species within a habitat conservation plan area can provide long-term conservation commitments from an applicant and long-term assurances from the Services to the applicant.

- 1.5 The Planning Area provides habitat for approximately 285 vertebrate species of fish and wildlife, including 77 mammals, 178 birds, 13 reptiles, 13 amphibians, and 4 fish. There are four species listed under the ESA that could occupy some portions of the Planning Area, but only the northern spotted owl has a confirmed presence. The gray wolf, which is listed as endangered and the threatened grizzly bear are not known to reside currently in the Planning Area; and Plum Creek presently is surveying for threatened marbled murrelets to confirm their absence or presence. There are also two Candidate 1 species and twenty-one Candidate 2 species; and nine other species have been identified by Washington State's Department of Fish and Wildlife as having special status (locally rare or considered endangered).
- 1.6 Pursuant to Section 10(a) of the ESA, Plum Creek has prepared and submitted an ecosystem, habitat-based HCP that adequately covers and mitigates for all vertebrate species that use the habitat types found within the Planning Area. The HCP uses accepted scientific principles for classification of wildlife into terrestrial lifeform groups plus fish and then displays the stand structural stages that constitute the primary and secondary habitat for each lifeform. Based on this information, the HCP contains target percentage ranges for each of eight structural stages throughout the life of the HCP. In this way, all species dependent on these habitat types should be adequately protected. The mitigation described above also includes specific habitat measures for currently listed species as well as for some candidate species and other species of concern, which are analyzed individually in the HCP.
- 1.7 Plum Creek's landscape approach also relies on a riparian habitat strategy and watershed analysis because of the benefit to fish and fish habitat, the high occurrence of other lifeforms and wildlife in these areas, and the benefit to spotted owls, which concentrate their home ranges in habitats with proximity to streams. Riparian habitat areas will be identified, designed and maintained through an accelerated watershed analysis process across Plum Creek ownership in the Planning Area. Where the terms of the HCP are determined through the operation of existing State law and regulation, such as the provisions for watershed analysis pursuant to WAC Chapter 222-22, the parties find the resulting prescriptions, based upon current standards and practices, are adequate and necessary for the purposes of this Agreement and the parties expect a comparable level of protection to be provided through the term of this Agreement.
- 1.8 Plum Creek's comprehensive, habitat-based approach reflected in the HCP is a mitigation strategy for species and the ecosystems upon which they depend. The incidental take permit issued by the Services to Plum Creek would authorize immediately any incidental take of the four listed species that might result from Plum Creek's otherwise lawful forest management and related land use activities conducted within the Project Area as discussed in Section 1.1 of the HCP. This Agreement also provides for amendment of the incidental take permit should any other species covered in the HCP be listed under the ESA in the future and if doing so would not appreciably reduce the likelihood of the survival and recovery of the species in the wild.
- 1.9 The HCP, Permit and this Agreement run concurrently for a period of fifty (50) years during Phase I. The HCP also addresses, the Permit provides and this Agreement implements, a Phase II incidental take authorization as an additional incentive to Plum Creek to improve

wildlife and fish habitat so that the HCP may yield benefits after Phase I beyond those anticipated at the time this Agreement is executed. To the extent that habitat conditions exceed the Phase II Baseline, the Permit would continue after Phase I to authorize incidental take of certain Permit Species and Plan Species listed after Phase I associated with that habitat during Phase II. In addition, Section 5.3.3 of the HCP and Sections 2.0, 7.0-8.0 and 11.0-16.0 of this Agreement remain in effect throughout Phase II.

- 1.10** The purpose of this Agreement is to implement the HCP on which the Permit is based; to contractually bind the parties to the terms of the HCP; to describe the remedies and recourse in the event of a breach of the terms hereof; to obtain assurances that, to the extent the ESA and this Agreement provide, the Permit will be amended to add any species dependent on the various habitat types analyzed in the HCP should such species be listed as threatened or endangered after the effective date of this Agreement; and to implement Phase II.
- 1.11** The Services are authorized to enter into this Agreement pursuant to the ESA and by the Fish and Wildlife Coordination Act (16 U.S.C. §§ 661-666c). Under the ESA, the Secretary of the Interior, through the USFWS, and the Secretary of Commerce, through NOAA and NMFS, share the responsibilities for the statute's implementation, including the issuance of incidental take permits. Reorganization Plan No. 4 of 1970 governs the allocation of their respective responsibilities. It is the intent of the Services to coordinate their respective responsibilities under this Agreement to achieve maximum administrative efficiencies.

2.0 DEFINITIONS

- 2.1** The term "Agreement" shall mean this Implementation Agreement, as the same may be amended from time to time.
- 2.2** The term "critical habitat" has the same meaning as the term is defined in 16 U.S.C. § 1532(5) and implementing regulations.
- 2.3** The term "ESA" means the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 *et seq.*
- 2.4** The term "Endemic Species" means Plan Species approximately 80% or more of the members of which are thought to exist within the Planning Area based on the best scientific information available.
- 2.5** The term "Extraordinary Circumstances" means a substantial and material adverse change in the status of a species.
- 2.6** The term "HCP" means Plum Creek's habitat conservation plan and associated documents, as the same may be amended from time to time.
- 2.7** The terms "Peer Review" or "peer reviewed" mean that consistent with Section B(1) of the Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 Fed. Reg. 34,270), the Services will provide for peer review of the scientific data on which the agencies base any finding requiring peer review in this Agreement to ensure that any

such findings are based on the best scientific data available. In the event Peer Review of such data is not available in time to enable the Services to meet their obligations established by statute, regulation and this Agreement, the required finding or decision based on such data will be effective but may be subject to reconsideration by the Services as soon as that information becomes available.

- 2.8** The term "Permit" means, collectively, the incidental take permit, and any future amendments made thereto, issued pursuant to 50 C.F.R. §§ 13.21-1.29, 17.22(b), 17.32(b) by USFWS and 50 C.F.R. Part 220 and § 222.22 by NMFS. The Services will coordinate between themselves to obtain the necessary determinations if and when Plum Creek requests Permit amendments in accordance with this Agreement.
- 2.9** The term "Permit Species" means those species covered by the Permit, as the same may be amended from time to time.
- 2.10** "Phase I" means the fifty (50) year period during which the HCP, Permit and this Agreement run concurrently unless sooner terminated under Section 11.0 of this Agreement.
- 2.11** "Phase II" means that period of up to fifty (50) years after Phase I during which the Permit would continue to authorize certain incidental take of Permit Species and Plan Species that become listed after Phase I to the extent habitat conditions exceed the Phase II Baseline for such species.
- 2.12** The term "Plan Species" means all of the vertebrate species dependent on the various habitat types analyzed in the HCP, whether or not such species currently are found within the Planning Area.
- 2.13** The term "Planning Area" means those lands depicted in Figure 1 of the HCP.
- 2.14** The term "Project Area" means those portions of the Planning Area owned by Plum Creek as described in Appendix 1 of the HCP.
- 2.15** "Phase II Baseline" means those habitat conditions existing on lands within the Project Area as described in Section 5.3.3 of the HCP, as the same may be amended from time to time.
- 2.16** The term "take" as used in this Agreement has the same meaning as the term is used in the ESA, 16 U.S.C. § 1533(19), and implementing regulations, as they may be amended from time to time.
- 2.17** The term "Unforeseen Circumstances" means a change in circumstances or information that might give rise to the need to revise a habitat conservation plan prepared under Section 10(a) of the ESA or a Phase II Baseline. The listing of any Plan Species or the designation of critical habitat are not Unforeseen Circumstances.

3.0 INCORPORATION OF HCP

The HCP and each of its provisions are intended to be, and by this reference are, incorporated into this Agreement. In the event of any direct contradiction between the terms of this Agreement and the terms of the HCP, the terms of this Agreement shall control. In all other cases, the terms of this Agreement and the terms of the HCP shall be interpreted to be supplementary to each other.

4.0 TERM

This Agreement, the HCP, and the Permit will remain in effect until fifty (50) years from the original date of issuance of the Permit unless sooner terminated under Section 11 of this Agreement. In addition, following written confirmation by the Services that the Phase II provisions of Section 12 of this Agreement are available, the Permit, Sections 5.3.3 of the HCP and Sections 2.0, 7.0-8.0 and 11.0-16.0 of this Agreement remain in effect during Phase II to authorize certain incidental take associated with activities within the Project Area as is more fully described in Section 12.0 of this Agreement.

5.0 FUNDING

As discussed in Sections 3.7 and 5.3.6 of the HCP, Plum Creek has sufficient financial resources to, and by this Agreement does commit to, fund its affirmative obligations under the HCP. To ensure notification of any material change in the financial ability of Plum Creek to discharge its obligations during the life of the Permit, Plum Creek will provide the Services with a copy of its annual report each year of the Permit or other reasonably available financial information as mutually agreeable.

6.0 RESPONSIBILITIES OF THE PARTIES

6.1 In consideration of the Services' authorization of any incidental takes that may result from activities conducted consistent with the HCP, Plum Creek will perform all obligations assigned to it in the Permit, HCP, and this Agreement.

6.2 Plum Creek's HCP is an ecosystem, habitat-based, habitat conservation plan that relies upon measures developed by means of a number of scientifically proven, peer-reviewed processes and strategies as described in Section 3 of the HCP that alone or in combination result in adequate conservation for the ecosystem upon which the Plan and Permit Species depend. The processes and strategies are based upon adaptive management concepts and it is anticipated that refinements will take place over the life of the HCP pursuant to pertinent amendment procedures specified in Section 7.0 of this Agreement. The parties intend that adaptive management will minimize the likelihood that there will be Unforeseen or Extraordinary Circumstances that must be addressed through Section 8.0 of this Agreement.

6.3 Special Mitigation

Special consideration has been given to the needs of certain listed species, candidate species or species of concern as follows:

6.3.1 **Northern Spotted Owl:** See Section 3.2.1.1 of the HCP.

6.3.2 Marbled Murrelet: See Section 3.2.1.2 of the HCP.

6.3.3 Grizzly Bear: See Section 3.2.1.3 of the HCP.

6.3.4 Gray Wolf: See Section 3.2.1.4 of the HCP.

6.3.5 Other Species: See Section 3.2.2 of the HCP.

7.0 AMENDMENT

7.1 Amendment of Permit

7.1.1 Generally

Amendment of the Permit may be made in accordance with regulations in existence at the time the amendment is proposed. If the Federal regulations that govern Permit amendment have been modified from those codified at 50 C.F.R. §§ 13.23, 220.11, 222.25 and 222.26, as of the date of original execution of this Agreement, the modified regulations will apply only to the extent the modifications were required by subsequent action of Congress or court order.

7.1.2 Amendment of Permit upon Listing

- (a) Notice by the Services. The Services shall notify Plum Creek in a timely manner if they become aware of any Plan Species that is likely to be the subject of any listing, emergency or otherwise. The Services and Plum Creek shall share available scientific and commercial information, subject to proprietary protections, related to such species so that Plum Creek may determine whether or not to give notice to the Services to have such species added to the Permit pursuant to subsection (b) and (c) of this Section.
- (b) Non-Emergency Listings.
 - (1) Notice by Plum Creek. If any of the Plan Species are proposed for listing after initial execution of this Agreement, Plum Creek may give notice to the Services under Section 16.4 of this Agreement at any time thereafter of its desire to have the Permit amended to include that species in the Permit.
 - (2) Preliminary Determination. USFWS or NMFS shall notify Plum Creek that it:
 - (A) has made a preliminary determination that, absent new information, the Permit will be amended upon the date of such listing without further action by Plum Creek; or

- (B) has made a preliminary determination that, absent new information, the Permit may be amended on the date of listing, but due to Extraordinary Circumstances, additional mitigation will be required from Plum Creek under Section 8.0 of this Agreement prior to such amendment; or
- (C) has made a preliminary determination that, absent new information, the Permit will not be amended because such action cannot be taken without appreciably reducing the likelihood of the survival and recovery of the affected species in the wild.

USFWS or NMFS shall provide Plum Creek with its preliminary determination 90 days after notice by Plum Creek of its desire for a Permit amendment, unless the Service notifies Plum Creek that additional time is required, in which case the Service may have up to 60 additional days to provide its preliminary determination.

- (3) Final Determination. If Plum Creek provides notice of its desire for a Permit amendment at least 195 days prior to the end of the one year period described in 16 U.S.C. § 1533(b)(6)(A), the Service will make a final decision on the Permit amendment concurrent with the publication of the final listing regulation.

(c) Emergency Listings.

- (1) Notice by Plum Creek. If a Plan Species covered in the HCP is the subject of an emergency listing, Plum Creek may give notice to the Services under Section 16.4 of this Agreement at any time of its desire to have the Permit amended to include that species.
- (2) Interim Determination. If Plum Creek provides notice of its desire for a Permit amendment to include a Plan Species that is the subject of an emergency listing, the appropriate Service will make an interim determination whether such species may be added to the Permit for a period not to exceed the duration of the emergency listing. If Plum Creek provides such notice regarding a non-Endemic Species at least 30 days before the effective date of the emergency listing, the Service will make its interim determination concurrent with the effective date of such listing. In any event, the appropriate Service will make an interim determination regarding such non-Endemic Species not later than 30 days after notice by Plum Creek. The Service will make an interim determination regarding an Endemic Species as soon as possible after notice by Plum Creek.
- (3) Final Determination. If Plum Creek provides notice of its desire for a Permit amendment to include a Plan Species that is the subject of an emergency listing no later than 45 days after the date of publication of the emergency listing, the appropriate Service will make a final decision on the

Permit amendment concurrent with the effective date of any final listing regulation. Such final decision may be to:

- (A) amend the Permit without further action by Plum Creek;
 - (B) require additional mitigation from Plum Creek under Section 8.0 of this Agreement prior to such amendment due to Extraordinary Circumstances; or
 - (C) not amend the Permit because such action cannot be taken without appreciably reducing the likelihood of the survival and recovery of the affected species in the wild.
- (d) With regard to non-Endemic Species, if Plum Creek (i) provides notice under subparagraph (b) no later than 195 days prior to the end of the one year period described in 16 U.S.C. § 1533(b)(6)(A), or under subparagraph (c) no later than 30 days prior to the effective date of the emergency listing, and (ii) is in compliance with the terms and conditions of this Agreement, the Permit, and the HCP, Plum Creek may continue its activities in accordance with the Permit until the appropriate Service has made a decision on the requested Permit amendment unless that Service notifies Plum Creek that its activities may appreciably reduce the likelihood of the survival and recovery of such species. In such case, the Service will specify those activities which are not expected to have such an impact and which can proceed until the Service makes its determination under subparagraph (b) or (c). In addition, the Service will coordinate with Plum Creek to modify other activities where necessary to avoid such an impact.

7.2 Amendment of Implementation Agreement

This Agreement may be amended only with the written consent of each party.

7.3 Amendment or Modification of the HCP

Either the Services or Plum Creek may propose amendments or modifications to the HCP at any time.

7.3.1 Material Modifications

Material changes to the HCP proposed after the effective date of the Permit shall be processed under Section 7.1 above.

7.3.2 Other Modifications

- (a) Generally. Minor changes in the HCP may be initiated by written notice from Plum Creek or the Services. Such notice must contain a full description of the change and factual analysis that demonstrates the expected effect of the change on any Plan or Permit species or habitat types and the basis for the conclusion that the change is

minor. Minor changes are deemed approved and become effective 60 days after receipt of written notice unless the responding party provides written disapproval of the proposed change or written notice that the proposed modification must be processed as an amendment under paragraph 7.3.1 of this Agreement. Minor changes under this paragraph include, but are not limited to, minor modifications to the mitigation program described in Section 5.3 of the HCP, changes by the Services in the Phase II Baseline in accordance with Section 12.3.2 of this Agreement, or any reporting requirements; correction of typographical, grammar, or editing errors in the HCP; and correction of any maps or exhibits to reflect previously approved changes in the HCP or other new information.

- (b) Land Acquisition. Pursuant to subparagraph (a) of this paragraph, and as analyzed in the HCP, Plum Creek may acquire lands within the Planning Area and add them to the HCP. Activities on such lands may also be covered by the Permit pursuant to subparagraph (a) unless the Services find during the 60-day notice period that such addition would result in additional incidental take of Permit Species not analyzed in connection with the original HCP.
- (c) Land Sale or Exchange to the Federal Government. Pursuant to subparagraph (a) of this paragraph, and as analyzed in the HCP, Plum Creek may sell or exchange lands within the Project Area to any agency of the U.S. Government. Such a sale or exchange will result in removal of such lands from Permit coverage. The Services may review the proposed sale or exchange during the 60-day review period provided in subparagraph (a) to ensure that such sale or exchange will not compromise the effectiveness of the HCP.
- (d) Land Sale or Exchange to Non-Federal Parties. Pursuant to subparagraph (a) of this paragraph, and as analyzed in the HCP, Plum Creek may sell or exchange lands within the Project Area to non-federal parties, subject to the following limitations: (1) any lands may be sold or exchanged to a nonprofit organization or other private entity, provided appropriate covenants or assurances have been given by the acquiring party to the Services that such lands will be managed consistent with the goals and objectives of the HCP; and (2) parcels of land not in excess of 640 acres other than those lands subject to the HCP's twenty (20) year harvest deferral period only may be sold to any private party without restriction so long as the cumulative total of all such transactions does not exceed 5 percent of the acreage covered by the Permit and the cumulative total of all such transactions in any township does not exceed 1,920 acres. During the 60-day review period provided in subparagraph (a), the Services will review any proposed sale or exchange pursuant to this subparagraph to ensure that the conditions of this subparagraph are met and, with respect to sales or exchanges of 640 acres or less, that Plum Creek can continue to meet the mitigation requirements of the HCP with respect to its remaining lands as if the lands to be sold or exchanged were still covered by the HCP.

7.3.3 Anticipated Modifications through Adaptive Management

Section 5.4 of the HCP analyzes and provides for on-going, active and adaptive management activities across the Project Area. Adaptive management will yield site-specific prescriptions that may vary over time. Such changes are provided for in the HCP and do not require modification of the HCP or amendment of the Permit. Plum Creek will report the results of adaptive management activities to the Services as provided in Section 5.4 of the HCP.

8.0 UNFORESEEN AND EXTRAORDINARY CIRCUMSTANCES

- (a) The Services' policy regarding Unforeseen Circumstances is reflected in the "No Surprises" guidance document published by the Secretary of Interior and Secretary of Commerce titled "Assuring Certainty for Private Landowners in Endangered Species Act Habitat Conservation Planning." The Services find that the HCP and Permit meet the requirements of the No Surprises policy and intend to implement it fully through this Agreement.
- (b) Because the HCP has adequately covered the conservation needs of the Plan species, consistent with the No Surprises policy, the Services agree that they will not seek further mitigation from Plum Creek to address Unforeseen Circumstances related to a Plan Species so long as Plum Creek is in compliance with the terms and conditions of this Agreement, the Permit, and the HCP. Changes in operational or management prescriptions resulting from watershed analysis, aquatic monitoring as it was designed to support watershed analysis, and other adaptive management as addressed in Section 5.4 of the HCP are neither Unforeseen nor Extraordinary Circumstances even though such changes may require more or less restrictions on operations than were provided for under the original HCP.
- (c)
 - (1) Only in the case of Extraordinary Circumstances may the Services seek additional mitigation from Plum Creek. The Services have the burden of demonstrating that Extraordinary Circumstances actually exist using the best scientific and commercial data available. The Services' findings of Extraordinary Circumstances must be clearly documented and based upon reliable, peer reviewed, technical information regarding the status and habitat requirements of the affected species. Peer review will be conducted pursuant to paragraph (d) of this Section.
 - (2) In determining whether Extraordinary Circumstances exist, the Services will consider, but not be limited to, the following factors: the size of the current range of the affected species; the percentage of the range adversely affected by the HCP; the percentage of range conserved by the HCP; the ecological significance of that portion of the range affected by the HCP; the level of knowledge about the affected species and the degree of specificity of the species' conservation program under the HCP; and whether the HCP was originally designed to provide an overall net benefit to the affected species and contained measurable criteria for assessing the biological success of the HCP.
 - (3) If the Services determine that additional mitigation is required due to Extraordinary Circumstances such mitigation shall be provided on Federal land to the maximum extent possible. Only if the protective measures available on then-existing Federal land are

insufficient may the Services seek additional mitigation from Plum Creek, which in any event shall be limited to the original terms of the HCP to the maximum extent possible. Additional mitigation requirements shall not involve the payment of additional compensation or apply to parcels of land available for harvest or other uses under the HCP without the consent of Plum Creek.

- (4) If the Services make a finding of Extraordinary Circumstances, during the period necessary to determine whether additional mitigation can be provided on Federal land or to seek additional mitigation from Plum Creek if necessary, consistent with subparagraph (c)(3) of this paragraph, the parties will use their best efforts to avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected species.
- (d) The Services will provide for Peer Review of the scientific data on which the agencies base a finding of Extraordinary Circumstances to ensure that any such finding is based on the best scientific data available. The Services will request Peer Review in a timely manner so that the reviews will be completed within 30 days. In the event Peer Review is not available in time to enable the Services to meet their obligations established by statute, regulation and this Agreement, a finding of Extraordinary Circumstances made without peer reviewed data will be effective although it may be subject to reconsideration by the Services as soon as that information becomes available.

9.0 FINDINGS

After opportunity for public comment with respect to the Permit application and the HCP, the Services find that:

a. **Incidental Take**

Any taking of Permit or Plan Species will be incidental to the carrying out of otherwise lawful activities;

b. **Minimize and Mitigate**

The HCP will, to the maximum extent practicable, minimize and mitigate the impacts of such incidental taking on Permit and Plan Species;

c. **Adequate Funding**

Plum Creek has sufficient financial resources to adequately fund its affirmative obligations under the HCP.

d. **No Jeopardy**

As long as measures to minimize/mitigate taking are implemented consistent with the HCP and this Agreement, any incidental taking of Permit Species will not appreciably reduce the likelihood of the survival and recovery of such species in the wild. Any incidental taking of Plan Species would not appreciably reduce the likelihood of the survival and recovery of such species in the wild if such species were listed as of the date of this Agreement.

e. Other Measures

Any other measures set forth in the HCP and required by the Services as being necessary or appropriate for the purposes of the HCP will be fulfilled. The Services shall issue the Permit to Plum Creek upon execution of this Agreement.

10.0 MONITORING AND REPORTING

Plum Creek will evaluate and report to the Services the percentages of the landscape containing each stand structure grouping and whether targets are met or exceeded as specified in Sections 3.5 and 5.1 of the HCP.

11.0 TERMINATION

The Permit may be terminated by either the Services or Plum Creek in accordance with the Services' regulations in force on the date of such termination; however, in addition, Plum Creek reserves the right to terminate the Permit in accordance with regulations in effect at the time of Permit issuance, now codified at 50 C.F.R. §§ 13.26 and 220.31 (1994 ed.) and incorporated herein by reference. In the event Plum Creek elects to terminate the Permit before the end of Phase I, Plum Creek agrees to provide the Services with 90-days advance notice of the proposed termination and a termination report as described in Section 5 of the HCP. Early termination under this Section is subject to compliance with the Permit condition requiring that any past incidental take has been sufficiently mitigated by conservation measures under the HCP implemented by Plum Creek prior to termination. The Services agree that Plum Creek may invoke the dispute resolution procedures of Section 14.2 of this Agreement to pursue resolution of any technical disagreement concerning the necessity or amount of such additional mitigation.

Termination of the Permit with respect to any species would also automatically terminate this Agreement and the HCP with respect to such species. This Agreement and HCP may be terminated by any party with respect to any unlisted species, not covered by the Permit, for any material breach of this Agreement and HCP with respect to that species. Any termination under this Section is subject to and limited by the Phase II provisions of Section 12.0 of this Agreement.

12.0 PHASE II

12.1 General

The HCP has addressed, the Permit provides and this Agreement implements, additional incidental take authorization during Phase II . Pursuant to such authorization, Plum Creek may incidentally take certain Permit Species and Plan Species listed after Phase I to the extent that habitat conditions for that species exceed the Phase II Baseline described in Section 5.3.3 of the HCP on lands within the Project Area, subject to the conditions and criteria set forth below in this Section. In the event a Phase II Baseline is established, the Permit, Section 5.3.3 of the HCP and Sections 7.0-8.0 and 11.0-16.0 of this Agreement remain effect throughout Phase II .

12.2 Phase II Baseline

The baseline at the end of Phase I shall be the Phase II Baseline as defined in Section 2.15 of this Agreement.

12.3 Phase II Procedures

12.3.1 Plum Creek Notice

In its 40-year report to the Services as required by Section 5 of the HCP, or as part of its 90-day advance notice for early termination under Section 11.0 of this Agreement, Plum Creek shall provide notice of any Phase II incidental take authorization it anticipates may be available after Phase I. Plum Creek's notice shall include the technical data and analysis that Plum Creek has relied upon in determining the availability of a Phase II Baseline, what actions, if any, Plum Creek will take to minimize incidental take of known species pursuant to Section 12.6 and an explanation of the extent to which the habitat conditions exceed the Phase II Baseline for each Permit Species. Nothing in this Section precludes a subsequent notice by Plum Creek to the Services as part of any amendment pursuant to Section 7.0 of this Agreement initiated after the 40-year report.

12.3.2 Services' Response

- (a) 40 Year Report. In response to any Phase II notice in Plum Creek's 40-year report, or subsequent Phase II notice, the Services will advise Plum Creek in writing within one (1) year with respect to notices given prior to the end of Phase I and within 90 days with respect to notices given within Phase II after receipt of such notice that, for each Permit Species,
 - (1) the Services confirm Plum Creek's ability to enter Phase II so long as Plum Creek remains in compliance with the terms and conditions of the HCP throughout the remainder of Phase I; or
 - (2) the Services have determined, based on reliable, peer reviewed, technical information that the Phase II Baseline requires adjustment to adequately protect such species prior to the exercise of any Phase II incidental take authorization. In such a case, the Services will use the amendment procedures in Section 7.3.2 to effectuate the adjustment. Any disputes regarding the proposed adjustment will be resolved under the dispute resolution procedures in Section 14.0 of this Agreement; or
 - (3) the Services have determined, based on reliable, peer reviewed, technical information, that the Phase II incidental take authorization is not available because such action would appreciably reduce the likelihood of the continued survival and recovery of such species in the wild.
- (b) Early Termination. In the event that Plum Creek includes a Phase II notice as part of its 90-day advance notice for early termination under Section 11.0 of this Agreement, the Services will advise Plum Creek in writing within 60 days after receipt of such notice that, for each Permit Species,
 - (1) the Services confirm Plum Creek's ability to enter Phase II; or

- (2) the Services have determined, based on reliable, peer reviewed, technical information, that the Phase II incidental take authorization is not available because such action would appreciably reduce the likelihood of the continued survival and recovery of such species in the wild.

Phase II incidental take authorization does not take effect until completion of any dispute resolution under Section 14.0 of this Agreement. Nothing in this Section should be construed to preclude Plum Creek forest management activities after Phase I so long as such activities otherwise are in accordance with existing law.

12.4 Phase II Monitoring

As provided in Section 5.3.3 of the HCP, Plum Creek will report the status of the Phase II Baseline and minimization efforts accomplished during Phase II every 10 years to the Services.

12.5 Phase II Termination

If at any time during Phase II the Services determine, based on reliable, peer reviewed, technical information, that Plum Creek's continued exercise of a Phase II incidental take authorization for a given species will appreciably reduce the likelihood of the continued survival and recovery of such species in the wild, they may terminate the Phase II incidental take authorization for such species. While any dispute resolution under Section 14.0 of this Agreement is pending, the Services may suspend such incidental take authorization for that species.

12.6 Minimization of Incidental Take during Phase II

Plum Creek will minimize the incidental take of species listed as of the date of this Agreement by undertaking the measures described in Section 5.3.3 of the HCP. In order to minimize any incidental take of species listed and added to the Permit subsequent to the signing of this Agreement that might occur during Phase II, Plum Creek will design and conduct its forest management activities during Phase II to the maximum extent practicable to avoid directly causing actual physical injury to or death of a known member of a listed species, as described in section 5.3.3 of the HCP. Plum Creek will also avoid unauthorized incidental take of other listed species (e.g. harvesting of safe-harbor owl habitat which may also be murrelet habitat for which there might not be Phase II protection under the Permit). The Services will provide Plum Creek with guidance regarding the methods to avoid such direct physical injury or death. The parties acknowledge and agree that it is not the intent of the parties to require Plum Creek to either survey for the presence or absence of a listed species or to manage to avoid all incidental take of listed species, but rather to minimize such effects by limited operations during the breeding season for a given listed species in areas immediately adjacent to nesting and breeding sites. The parties further agree that if an area is subject to two or more seasonal restrictions or take-minimization methods simultaneously, and if these restrictions would otherwise preclude economic operations in the Project Area, then Plum Creek may develop site-specific plans in conjunction with the Services which would minimize the risk of death or injury to a known member of a listed species to the maximum extent practicable while at the same time, allow economic operations to continue. If the parties cannot agree upon the

methods necessary to avoid or minimize directly causing actual physical injury or death to a known member of a listed species, then the parties will use the dispute resolution process set forth in Section 14.0 of this Agreement.

13.0 SUSPENSION, REVOCATION AND RE-INSTATEMENT

The procedures and criteria for suspension, revocation, and re-instatement of the Permit shall be in accordance with regulations in existence at the time such action is taken. If the Federal regulations that govern should be modified from those codified at 50 C.F.R. §§ 13.26 to 13.29, and/or § 222.27, as of the date of original execution of this Agreement, the modified regulations will apply only to the extent the modifications were required by subsequent action of Congress or court order. Such procedures and criteria shall also apply to suspension, revocation and reinstatement of this Agreement and the HCP whether or not the species of concern is the subject of the Permit.

14.0 ALTERNATIVE DISPUTE RESOLUTION

Plum Creek and the Services recognize that disputes concerning implementation of, compliance with, or termination of the Permit, HCP or this Agreement may arise from time to time. It is the intention of the parties to use the alternative dispute resolution procedures in this Section and to work together in good faith to resolve all such issues. However, if at any time either party determines that circumstances warrant, they may utilize any remedy provided in Section 15 of this Agreement without waiting to complete this informal dispute resolution process. The Services specifically reserve the right to use whatever enforcement powers and remedies are available by law or regulation, including but not limited to, suspension or revocation of the Permit.

14.1 General Procedures

Any party having reason to believe that the other party has failed to meet its obligations under the Permit, HCP or this Agreement, must notify that party of the specific provisions which may have been violated, the reasons they believe a violation has occurred, and any remedies they propose to correct the alleged violation.

The party alleged to be in violation will then have 60 days, or such other time as may be mutually agreed, to respond. If any issues cannot be resolved within 30 days after such response was due, the parties will consider non-binding mediation and other alternative dispute resolution processes.

In the event that these procedures fail to result in a resolution of the dispute, the parties may seek their remedies under Section 15.0 of this Agreement.

14.2 Dispute Resolution Procedures for Early Termination

Plum Creek and the Services recognize that if Plum Creek exercises its termination rights under Section 11.0 of this Agreement prior to the end of the full fifty (50) year HCP Phase, or if the Permit is terminated by the Services, there may be some imbalance between the mitigation that has been provided under the HCP and the amount of incidental take of Permit Species that has occurred up to the date of termination.

If the Services believe that some continued mitigation is required to correct such an imbalance, the Services shall notify Plum Creek within 60 days of receipt of any early termination notice under Section 11 of this Agreement or concomitant with Permit termination by the Services of the basis for such belief and provide a detailed description of the mitigation they believe necessary. Plum Creek will then have 60 days, or such other time as may be mutually agreed, to respond. If any issues cannot be resolved within 30 days after the Services' receipt of Plum Creek's response, the parties will consider non-binding mediation and other alternative dispute resolution processes.

In the event that these procedures fail to result in a resolution of the dispute, the parties may seek their remedies under Section 15.0 of this Agreement. In no event may the Services seek to extend mitigation to new lands or beyond the original Permit Term without the consent of Plum Creek.

15.0 REMEDIES

The parties to this Agreement shall have all remedies at law and in equity available to them except that no party shall be liable in damages to any party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement.

16.0 MISCELLANEOUS PROVISIONS

16.1 Third Party Beneficiaries

This Agreement shall not create third party beneficiary rights in the public or any member thereof. The rights of the public under the ESA are set forth in 16 U.S.C. § 1540(g) and nothing in this Agreement expands or otherwise alters the rights of citizens thereunder.

16.2 Integration and Severability

This Agreement, together with the HCP and the Permit, constitute the entire agreement between the parties. If any provision of this Agreement is found invalid or unenforceable, all other provisions shall remain in effect to the extent they can be reasonably applied in the absence of such invalid or unenforceable provision. This Agreement supersedes any and all other Agreements, either oral or in writing between the parties hereto with respect to the subject matter hereof and contains all of the agreements among them with respect to said matters, and each party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other party or anyone acting on behalf of any party which are not embodied herein.

16.3 Counterparts

This Agreement may be executed in counterparts with each copy constituting an original. A complete original of this Agreement shall be maintained in the official records of each of the parties.

16.4 Services' Authority

Nothing in this Agreement is intended to limit the authority or responsibility of the Services to invoke the penalties or otherwise fulfill their responsibilities under the ESA. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligation and responsibility of the Services as agencies of the Federal government.

16.5 Appropriations

Implementation of this Agreement and the HCP by the Services is subject to the availability of appropriated funds. Nothing in this Agreement will be construed by the parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The parties acknowledge that the Services will not be required under this Agreement to expend any Federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

16.6 Notice

Each party will designate a representative to whom notices under the Agreement shall be directed. The initial designated representatives are:

for Plum Creek:	for USFWS:	for NMFS:
William R. Brown V.P., Resource Management 999 Third Avenue, #2300 Seattle, Washington 98104 Tel.: (206) 467-3600 Fax: (206) 467-3794	Regional Director U.S. Fish and Wildlife Service 911 N.E. 11th Avenue Portland, Oregon 97232-4181 Tel.: (503) 231-6118 Fax: (503) 872-2716	Regional Director National Marine Fisheries Service 7600 Sand Point Way, N.E. Seattle, Washington 98115-0070 Tel.: (206) 526-6150 Fax: (206) 526-6426

The names, addresses, telephone and facsimile numbers of the designated representative may be changed at any time by notice to the other party. Notice will be deemed received when delivered personally to the office of the designated representative, on electronic confirmation that a facsimile message has been received at the FAX number most recently provided for the recipient representative, or 5 days after deposit in the United States registered mail, addressed to the recipient representative at the address most recently provided by the party being notified. Any authorized employee of the Services or Plum Creek may send or respond to any notice under this Agreement. The Services shall be responsible for coordination and notification between themselves. Delivery of notice by Plum Creek upon USFWS will constitute receipt by both Services for purposes of this Agreement.

Executed on the dates indicated below:

PLUM CREEK TIMBER COMPANY, L.P.
By Plum Creek Management Company, L.P.

By 
Title Vice President General Counsel and Secretary
Date June 24, 1996

UNITED STATES DEPARTMENT OF INTERIOR
through the U.S. FISH AND WILDLIFE SERVICE

By 
Title Deputy Regional Director
Date 6/24/96

UNITED STATES DEPARTMENT OF COMMERCE
through the NATIONAL MARINE FISHERIES SERVICE

By 
Title Assistant Secretary
Date June 25, 1996