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INCLUSION OF NON-FEDERAL (PRIVATE AND STATE) LANDS IN THE ADMINISTRATION'S NW FOREST STRATEGY

The federal government is already engaged in de facto, stringent regulation of private and state lands to protect the northern spotted owl. Yet, the government's principal scientific studies and owl management strategies (ISC, "Gang of Four," and SAT) do not assume, and choose not to recognize, the non-federal lands' contribution to owl protection. At the same time, as the stringent regulation of the non-federal lands by the government has removed massive acreages from the timber base, their owners are rapidly running out of harvesting options and will not be able to maintain present levels of timber supply. Well designed inclusion of these non-federal lands in the NW Forest Strategy would have multiple advantages; it would provide regulatory relief and greater certainty to, and assure continued production from, private landowners and the states, and accord more flexibility to the federal land management agencies.

Background

1. Private lands are required by both federal and state regulators to provide protection for the northern spotted owl and other species.

- Fish And Wildlife Service (FWS) And National Marine Fisheries Service (NMFS) Regulate Through § 9 Of The Endangered Species Act (ESA) -- All persons -- including non-federal landowners -- are required to adhere to the "take" and other prohibitions of ESA § 9 or suffer civil and criminal sanctions. The FWS and NMFS enforce these requirements. For example, the FWS's "voluntary" 1990 Owl Guidelines impose large buffer zones around owl nests and activity sites on private and state land (circles of up to 2.2 mile radii) and threaten prosecution for any deviation. Although the Guidelines were purportedly rescinded to moot a lawsuit in 1991 and smaller owl circles (500 acres) were adopted as a matter of enforcement discretion in 1992, the FWS continues to apply the Guidelines' larger buffer zones as "the best science."

- States Regulate Through Forest Practices Acts -- State forest practices acts impose constraints on the methods and locations of timber harvesting on non-federal lands that benefit spotted owl habitat.

2. The federal owl management strategies' failure to recognize and "credit" the contribution of non-federal forest lands to owl protection and their demand that full owl protection be supplied solely by federal lands impose unnecessarily

burdensome constraints on timber harvesting on both non-federal and federal lands and undermine the concept of ecosystem management.

3. The NW Forest Strategy could resolve this situation by providing for modest but explicit reliance on non-federal lands to assist in the effort to protect the owl.[1/] Reasonable geographic limitations and refinements of the "take" concept should be included.

Recommendations

A. ADMINISTRATIVE ACTIONS

Several administrative steps could be taken to incorporate non-federal lands in the NW Forest Strategy:

1. General Habitat Conservation Plan (HCP)

The FWS (and, perhaps, NMFS) should prepare a general or model HCP and offer to issue "incidental take" permits to all non-federal landowners who voluntarily agree to comply with it.

- If the model HCP were less restrictive (geographically and in application of the "take" prohibition) than the Guidelines and, like the Guidelines, included differing requirements based on varying regional conditions, a significant number of private landowners would likely sign. Small landowners could sign without the expense or time of preparing and negotiating their own HCPs. Large landowners who have greater flexibility with a larger land base could negotiate specific provisions tailored to their circumstances. All landowners who sign up would gain regulatory certainty, immunity from the "rescinded" Guidelines' severe strictures and threatened sanctions, and a more reasonable approach to owl protection. It may be possible to encourage one major landowner to serve as the "guinea pig," if you will, and work with the FWS and NMFS in the development of the model HCP.

- Although preparation of and subscription to a model HCP would take time (1 to 1½ years), assumptions about participation in such a program (with a safeguard of an automatic "opener" or policy change for federal lands if these assumptions about the degree of non-federal land

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protection are not met by a date certain) could be built into the NW Forest Strategy.

2. Interim Protection

Non-federal landowners likely will insist on some measure of protection from ESA enforcement during the model HCP preparation and sign-up process and will not subscribe to continued de facto application of the rescinded Guidelines. Likewise those preparing the NW Forest Strategy will also require some level of guaranteed owl protection during this interim period.

There are three options for this interim protection. All three options would require clarification and relaxation of the "take" prohibition of ESA § 9 to cover only activities where evidence of current physical injury is present. This action is particularly appropriate for the northern spotted owl given its relatively large population and the primary focus on federal lands for its protection.[2/]

The three options are:

- Interim HCP. The FWS and NMFS would issue an "interim HCP" similar to that issued by the FWS to apply to the desert tortoise near Las Vegas while a full HCP on the species was being prepared. The interim HCP would sunset at the end of the sign-up period for the model HCP.

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3/ ESA § 9 applies the "take" and other statutory prohibitions only to endangered species; ESA § 4(d), however, permits application of these prohibitions, in whole or part, to threatened species by rulemaking. In a blanket rulemaking (50 C.F.R. § 17.31(a)), the FWS applied ESA's prohibitions to all threatened species, but provided that, for any specific species, the agency could remove or tailor the prohibitions by promulgating a special rule. The northern spotted owl, the marbled murrelet, and a number of the salmon stocks are all listed as "threatened" and, therefore, could be addressed in such a special rule.

be made attractive to landowners if it includes restrictions less severe than the Guidelines, and also sunsets at the conclusion of the sign-up period for the model HCP.

- Voluntary Consultation. Instead of or in addition to promulgating a special rule or issuing an interim HCP, the FWS could offer to engage in a voluntary "consultation" process with non-federal landowners. FWS could model this 90-day review of non-federal activities on its ESA § 7 process for consulting on federal agency actions. Without a change in the statute, this voluntary consultation process would not be as advantageous to private landowners as the ESA § 7 consultation process is to federal agencies,[4/] but would still be an improvement.

3. Eliminate Enforcement Threats Against States

The NW Forest Strategy and ESA should reject the FWS's current practice of threatening prosecution of state regulatory agencies which issue state forest practices permits in full compliance with state law. Applying the "rescinded" Guidelines, the FWS has threatened each of the three states containing spotted owls with prosecution. This is unsupported in law and unnecessary to ensure compliance with the ESA.[5/] A rejection of this practice would relieve state agencies of the threat of criminal prosecution for following state law, facilitate issuance of necessary state permits, and make it easier for private timber to be timely supplied to the mills, but would not affect the FWS's ability to take ESA enforcement action against unlawful conduct (violation of the "take" prohibition) on non-federal lands.

B. LEGISLATIVE ACTIONS

To make the NW Forest Strategy for non-federal lands work several legislative steps should be taken:

4/ Non-federal landowners' activities would have to be reviewed under the more stringent "take" any member of the species standard rather than the "jeopardize the continued existence" of the entire species standard applicable to federal agency actions. And the landowners would not receive the immunizing "incidental take" statements to which federal agencies are entitled at the end of a successful consultation.

5/ In 1992, the Supreme Court held that the federal government has no authority to compel states to regulate private citizens, particularly where, like here, the federal government interest is sufficient for it to directly regulate the conduct. New York v. United States, 112 S. Ct. 2408, 2429 (1992).

1. All Species Covered

Legislation must be passed that would allow the model HCP to cover all species within the same ecosystem that are listed after, as well as before, its preparation. This would mean the NW Forest Strategy would not be invalidated each time a new species is listed. Representative Studds proposed a similar concept in his ESA reauthorization bill last Congress. We expect the same concept to be featured in both Mr. Studds' and Senator Baucus' bills to be introduced this week or next.

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T t INDUSTRY
LABOR-MANAGEMENT
COMMITTEE

United Brotherhood of Carpenters and Joiners of America

Western Council of Industrial Workers

International Woodworkers of America, U.S.

American Forest Resource Alliance

National Forest Products Association

April 30, 1993

Ms. Kathleen McGinty
Office of Environmental Policy
The White House
Washington, D.C. 20500

Dear Katie:

In some of our previous conversations, you asked us for some information and analysis of the relationship of existing sawmill, plywood and pulp and mill capacity and federal timber supply in the Northwest. We are pleased to provide this information since any resolution to the timber supply gridlock affecting northwest forest lands will clearly have economic impacts which must be accurately assessed, understood, and accounted for. Attached is an analysis of alternative fiber supply scenarios from forest lands in western Montana, Idaho, Washington, Oregon, and northern California. We chose this geographic area because of the interrelated fiber supply dynamics that occur in this area that affects all components of our integrated industry. This includes the flow of chips and other residual products as well as logs. As you can see from this analysis, a timber sale level of 8.2 billion board feet per year from federal forest lands in these five states would be necessary to maintain the forest products industry as it exists today.

Please understand that it is not our intent to expand the scope of the work your team is doing beyond the federal lands currently affected by court ordered injunctions regarding the northern spotted owl. However, the outcome of the post-Forest Conference resolution process that will resolve the gridlock on lands affected by the spotted owl will have implications and consequences for all of the firms located in this five state area. Thus, the enclosed analysis provides an economic benchmark from which it is possible to measure the economic and social consequences of various alternative solutions.

As you will see, nearly 40,000 direct jobs are in jeopardy if the current gridlock is not broken. Approximately twice as many indirect service and trade jobs could be eliminated bringing the total to almost 120,000 jobs. This would be an economic catastrophe that simply doesn't have to happen. We know you will examine every possible legislative and administrative option to prevent such an outcome. However, it is important to be mindful of the current employment situation in our industry in order to measure and comprehend the magnitude of the job loss that will occur under different alternatives.

P.O. Box 33246
Washington, D.C.
20033-0246

Obviously, a federal timber sale level of 8.2 billion board feet annually in this five state region would avoid any job losses and allow this region's industry to contribute to the nation's forest product demands as it has in the past. Equally obvious is that alternatives that produce less timber will clearly have economic consequences, including job losses, that must be mitigated to the extent possible. During most of the 1980's, federal forest lands in this region did, in fact, produce 8.2 billion feet of timber per year. Under the management plans in place at that time, the prescriptions described in those plans and the assumptions inherent in those plans, 8.2 billion feet was a sustainable timber sale level. However, we appreciate that many changes have occurred since the mid 1980's. The degree to which we as a society move forward to break the current gridlock and codify these changes into long-term policy will determine the magnitude of economic disruption and job losses that will occur and must be addressed by mitigation measures.

We hope you will find this information useful in analyzing the various alternatives under consideration. Should you wish to meet to discuss any aspect of this economic model in further detail, we would be delighted to meet with you.

Sincerely,

Mark Rey
American Forest & Paper Association

Denny Scott
United Brotherhood of Carpenters & Joiners of America

Solving the Northwest Timber Supply Crisis

In attempting to end the timber supply crisis that has been precipitated by efforts to protect the Northern Spotted Owl, it is essential to understand that the forest products industry in the Northwest depends on wood fiber from public and private forests -- not only from the "owl forests" in western Washington, western Oregon, and northern California -- but from forests in eastern Washington, eastern Oregon, and parts of Idaho and Montana as well. This Northwest "wood basket" supplies logs to regional producers of wood products, who in turn supply wood residues, such as chips, to regional producers of pulp and paper (see attached table).

Using a broadscale Timber Assessment Market Model similar to that utilized by the Forest Service, a group of analysts led by Boise Cascade Corporation looked at the implications of restricting timber supply from federal lands in this region. For the forest products industry in the Northwest to approximate even today's depressed levels of production and employment (first column) on a sustainable basis (far-right column), federal forests in these five states must be the source of 8.2 billion board feet of timber annually.

If federal forests in the Northwest wood basket fail to be the source of 8.2 billion board feet of timber on an ongoing basis and the harvest on private forests returns to a sustainable level from its present price-induced high (first column), then production of wood products and pulp and paper will have to be curtailed to balance the region's manufacturing capacity, with its diminished supply of wood and fiber. Production declines of up to 47 percent for lumber, 25 percent for plywood, and 36 percent for pulp and paper can be expected.

The only alternative to shutting down the production of wood products and pulp and paper to compensate for the shortfall in federal timber would be to accelerate harvest of the region's private forests.

Either action is undesirable. In the first instance, up to 39,000 people now working in wood products plants and pulp and paper mills would lose their jobs, entire communities would be devastated, and high prices for lumber and plywood would slow the construction of affordable housing and restrain the nation's economic recovery.

In the second instance, it would be simply a matter of time before private forest harvests could not be sustained and production of wood products and pulp and paper would plummet to compensate for the shortfall of not only federal timber but private timber as well. The economic and environmental impact would be catastrophic.

NORTHWEST WOOD BASKET

OREGON, WASHINGTON, IDAHO, WESTERN MONTANA, NORTHERN CALIFORNIA

(PNW Chip Supply Area)

All data from public sources or calculated from listed assumptions.

	SITUATION BASED ON AVERAGE OF 1983-87	CURRENT SITUATION (based on 1992 federal cut of 3.9 BBF)	Federal Cut of 3.9 BBF AND Reduced Private	Federal Cut Required for jobs 8.2 BBF
Sources for logs (BBF Scribner scale - net merch. softwood)				
All Federal	8.2	3.9	3.9	8.2
State and Other Public	1.4	0.7	0.7	0.7
Total Public	9.6	4.6	4.6	8.9
Private (including nonindustrial)	9.3	11.3	6.9 *	6.9 *
TOTAL Domestic Harvest	18.9	15.9	11.5	15.8
Log Imports	0.05	0.03	0.04	0.04
Log Exports	(2.9)	(2.2)	(2.2)	(2.2)
Total Logs Consumed in Pacific Northwest	16.1	13.8	9.3	13.6
Lumber Production (BBF)	18.5	16.6	8.9	16.6
Plywood Production (BSF)	10.3	7.4	5.6	7.4
Sources for chips (MMBDU'S)				
Residual Softwood Chips (from Lumber & Plywood)	10.8	9.6	5.6	9.8
Sawdust & Hardwood Chips	1.4	1.8	2.2	2.2
Whole Log Chips and Other Wood Fiber	2.5	3.4	2.8	3.7
Chip Imports	0.8	0.4	0.8	0.8
Chip Exports				
- Softwood	(1.5)	(1.5)	(1.5)	(1.5)
- Hardwood	(0.4)	(0.8)	(0.8)	(0.8)
Total Wood Fiber Available for PNW Pulp/Paper	13.6	12.9	9.1	14.2
Wood Fiber Consumed by PNW Pulp/Paper	13.6	12.9	14.2	14.2
Shortfall of Wood Fiber for PNW Pulp/Paper	0.0	0.0	5.1	0.0

Direct jobs lost at 8750 per billion board feet log scale: 38,846

* The private harvest levels are assumed to be reduced by additional regulations.

Assumptions:

% of Domestic Logs used for Lmbr...	79%	84%	80%	84%
Lmbr Recovery (mbf)/ Log (mbf)...	1.460	1.450	1.200	1.470
Plywd Recovery (msf)/ Log (mbf)...	3.010	3.200	3.000	3.200
Sustainable Private Harvest (MMBF-net merch. conifer) is....			6.90	6.90
Net Log Imports/Exports are...	(2.8)	(2.2)	(2.2)	(2.2)
Net Chip Imports/Exports are...	(1.1)	(1.9)	(1.5)	(1.5)
Change in Domestic Fiber Consumption from 1992 is...	0.7		1.3	1.3
BDU's Chips/mbf Lumber is...	0.45	0.47	0.50	0.50
BDU's Chips/msf Plywood is...	0.24	0.24	0.20	0.20
MMBDU of Sawdust & Hwds Used for Pulp	1.35	1.30	2.20	2.20
Per Cent WTC of Total Domestic Harvest Consumed	6%	10%	10%	11%

Recycle Feasibility Test

MMBDU Chip incremental volume needed to replace WTC increase	0.0	0.0	5.1	0.0
Western BDU's per ton of pulp - RISI Dec. 92	1.6	1.6	1.6	1.6
Million Tons of pulp needed to replace WTC increment	0.0	0.0	3.2	0.0
Recycled fiber yield	75%	75%	75%	75%
Million Tons of recycled fiber needed per year	0.0	0.0	4.3	0.0
Percent of Current Recycle Production @ 3.690 tons/year	0%	0%	115%	0%
Percent of 1995 Projected Recycle Production @ 5.690	0%	0%	75%	0%
Operating days per year	360	360	360	360
Tons per day needed	0	0	11,806	0
Average daily production per deink plant	250	250	250	250
Number of plants needed to replace WTC increment	0	0	35	0
Cost per deink plant (millions)	$70.00	$70.00	$70.00	$70.00
000 Investment for the PNW paper industry for fiber supply	$0	$0	$2,479	$0

† from page 80 footnote of Future Prospects for Western Washington Timber Supply, Oct. 1992 College of Forest Resources, University of Washington

Jack Shipley
Dwayne Gross
Danny Ford
Dick Barnes

MAY 1993 THE FOREST SUMMIT CHART FS 1

THE FOREST SUMMIT

A FOLLOW UP PROGRAM

May 1993

MAY 1993 OUTLINE CHART FS 2

FOREST SUMMIT
- ISSUES
- THEMES

ADMINISTRATION OBJECTIVES RELATED TO THEMES

A PROGRAM
- THE COMMUNITY PROJECT
- FOREST AND PROJECT MANAGEMENT
- INDUSTRY
- THE NORTHWEST

RESPONSIBILITIES : COMMUNITY AND GOVERNMENT

MAY 1993

FOREST SUMMIT
SUMMARY OF ISSUES

CHART FS 3

QUALITY IN THE FOREST ENVIRONMENT

JOBS IN FOREST-DEPENDENT COMMUNITIES

CHANGE IN THE TIMBER SUPPLY

CHANGES IN THE FOREST PRODUCTS INDUSTRY

MAY 1993

FOREST SUMMIT
THEMES

CHART FS 4

DIRECTIONS	→	IMPLICATIONS
ECOSYSTEM MANAGEMENT		•LESS TIMBER VOLUME
COMMUNITY PROGRAMS		•LOCAL MANAGEMENT
VALUE ADDED MANUFACTURING		•PLANT INVESTMENTS
TRAINING AND EDUCATION		•IMPROVED SKILLS
ECONOMIC SUPPORT		•RISK MANAGEMENT

MAY 1993

ADMINISTRATION OBJECTIVES - THEMES

CHART FS 5

REINVENTING GOVERNMENT

- COMMUNITY PROJECT CONCEPT

ENVIRONMENTAL PROTECTION / ECONOMIC DEVELOPMENT

- COMMUNITY PROJECT STRUCTURE

GENERAL TECHNOLOGY INITIATIVE

- ADDED VALUE AND MATERIAL HANDLING TECHNOLOGY

ENVIRONMENTALLY EFFICIENT MANUFACTURING

- ADDED VALUE NO-WASTE MANUFACTURING

WORK OF NATIONS/NEXT FRONTIER THEMES

- CHANGE FROM HIGH VOLUME TO HIGH VALUE INDUSTRY

JOB QUALITY IMPROVEMENT

- ADDED VALUE MANUFACTURING AND MARKETING SKILLS

MAY 1993

THE COMMUNITY PROJECT CONCEPT

CHART FS 6

FOREST MANAGEMENT AND COMMUNITY DEVELOPMENT
ARE DIRECTLY RELATED

A FOREST MANAGEMENT PROGRAM IS THE
MOST POWERFUL **COMMUNITY DEVELOPMENT TOOL**
AVAILABLE
TO THE FEDERAL GOVERNMENT

COMMUNITY PROJECTS OFFER A WAY TO COMBINE
FOREST MANAGEMENT WITH COMMUNITY DEVELOPMENT

MAY 1993

COMMUNITY RESOLUTION OF THE ISSUES

CHART FS 7

FOREST MANAGEMENT PRINCIPLES FOR QUALITY FOREST
REVIEWED AND DEVELOPED AT THE COMMUNITY LEVEL

ADAPTATION AND INNOVATION IN LOCAL INDUSTRY
VALUE ADDED MANUFACTURE AND IMPROVED JOBS

COMMUNITY ECONOMIC DEVELOPMENT PLAN
FOREST INDUSTRIES BUSINESS PLAN AND INVESTMENTS

COLLABORATION AT THE COMMUNITY LEVEL
"REINVENTION OF GOVERNMENT"

MAY 1993

COMMUNITY PROGRAM CHECKLIST

CHART FS 8

"REINVENTING GOVERNMENT" THE TEN PRINCIPLES

1	COMPETITION	BETWEEN SERVICE PROVIDERS
2 *	EMPOWER	COMMUNITY CONTROL
3	OUTCOMES	PERFORMANCE OF GOVERNMENT
4 *	MISSIONS	GOALS - NOT REGULATIONS AND RULES
5	CUSTOMERS	MARKETS - NOT DEPENDENT "CLIENTS"
6	PREVENTION	STOP PROBLEMS RATHER THAN REPAIR
7 *	EARN MONEY	DON'T BUDGET AND SPEND BUT MAKE $
8	DECENTRALIZE	USE PARTICIPATORY MANAGEMENT
9	MARKET	USE FREE CHOICE NOT BUREAUCRACY
10*	CATALYZE	PULL SECTORS AND INTERESTS TOGETHER

* EMPHASIS IN COMMUNITY PROJECTS

MAY 1993

THE CHALLENGE OF THE SUMMIT

CHART FS 9

REVITALIZE THE FOREST-RELATED ECONOMY OF THE NORTHWEST
RAPIDLY INCORPORATE CHANGE TO HELP THE PEOPLE
DEVELOP A NEW BASIS FOR THE LOCAL FOREST PRODUCTS INDUSTRY

DESIGN A **PROGRAM** TO MEET THE ABOVE OBJECTIVES
DEFINE A **PROCESS** TO CARRY OUT THE PROGRAM

MOBILIZE THE SCIENTIFIC COMMUNITY TO SUPPORT THE PROGRAM
MOBILIZE SMALL BUSINESS RESOURCES TO SUPPORT THE PROGRAM

DEFINE AND COMMIT **BUDGETS** TO SUPPORT THE ABOVE
EXPRESS ADMINISTRATION **POLICIES** AS GUIDANCE AMD SUPPORT

MAY 1993

COMMUNITY PROJECT PLANNING AND ANALYSIS

CHART FS 10

PLANNING AND ORGANIZATIONAL SUPPORT
FOR COMMUNITY PROGRAMS

DEVELOP OPERATING AND BUSINESS PLANS BASED UPON
WORKING KNOWLEDGE OF FOREST AND ITS PRODUCTS

- FOREST CONTENT RELATED TO COMMERCIAL PRODUCTS
  RELATE TO NATIONAL BIOLOGICAL SURVEY
- HARVESTING TECHNIQUES FOR THOSE PRODUCTS
- CONVERSION AND VALUE MANUFACTURING METHODS
- SKILLS BASE REQUIRED TO IMPLEMENT PROGRAM
- ECONOMIC ANALYSIS OF LOCAL PROGRAM
- BUSINESS PLAN TO IMPLEMENT PROGRAM

MAY 1993

THE OPPORTUNITY FOR INDUSTRY

CHART FS 11

ENVIRONMENTAL AND FOREST MANAGEMENT ISSUES
- ARE CHANGING FOREST PRODUCT MARKETPLACE
  - TO ACCEPT HIGH VALUE PRODUCTS AT HIGH PRICES

ADDED VALUE MANUFACTURING ALLOWS
- HIGHER MARGINS
- BETTER JOBS
- HIGHER REVENUES USING MUCH LESS MATERIAL

ADDED VALUE MANUFACTURING REQUIRES TECHNICAL INVESTMENT
- BUT NATIONAL POLICY WILL SUPPORT THAT INVESTMENT
- COMMUNITY WILL PROTECT THAT INVESTMENT
- ENVIRONMENTAL MOVEMENT WILL SUPPORT INVESTMENT

MAY 1993

COMMUNITY RESPONSE TO THE CHALLENGE

CHART FS 12

COMMUNITIES ORGANIZE PROJECTS WITHIN REGIONAL PROGRAM
- USING PROTOTYPE PROJECTS (APPLEGATE) AS GUIDANCE
  - MANAGEMENT STRUCTURE
  - PROGRAM ELEMENTS
  - PARTNERSHIP CONCEPTS
- USING GENERIC PLAN FOR GUIDANCE
- USING SUPPORT FROM UNIVERSITY EXTENSION PROGRAM
- USING GOVERNMENT EDUCATION/TRAINING SUPPORT

GOVERNMENT SET UP PROGRAMS TO ASSIST THE ABOVE ELEMENTS
- PLANNING AND ADMINISTRATIVE SUPPORT PROJECTS
- TECHNICAL DEVELOPMENT AND SUPPORT

MAY 1993

A PROGRAM FOR THE NORTHWEST

CHART FS 13

A REGIONAL PROGRAM BASED UPON
- INDIVIDUAL COMMUNITY PROJECTS THROUGHOUT NORTHWEST

INDIVIDUAL PROJECTS TAILORED TO
- LOCAL CHARACTERISTICS AND NEEDS

LOCAL INITIATIVE PROVIDES BASE OF LEVERAGE FOR
- RAPID MULTIPLICATION OF RESULTS THROUGH NORTHWEST

BUILD UPON EXISTING PROTOTYPE COMMUNITY PROJECTS
- ASHLAND AND APPLEGATE

MAY 1993

COMMUNITY RESPONSIBILITY

CHART FS 14

MANUFACTURE AND MARKET
- IMPROVED RANGE OF FOREST PRODUCTS THAT ARE
  - ENVIRONMENTALLY EFFICIENT
  - ADD VALUE TO SUPPORT TRADITIONAL REVENUES
  - UPGRADE COMMUNITY JOBS

PROTECT INVESTMENTS IN LOCAL INDUSTRIES

PROVIDE MANAGEMENT AND QUALITY OVERSIGHT

COLLABORATE WITH BEST SCIENCE IN MANAGING FORESTS

RESPECT NATIONAL PRINCIPLES FOR ECOSYSTEM PROTECTION

MAY 1993

GOVERNMENT RESPONSIBILITY

CHART FS 15

SCIENTIFIC SUPPORT THROUGH UNIVERSITIES AND AGENCIES
LAND MANAGEMENT WHICH SUPPORTS ECOSYSTEM PRINCIPLES

TRAINING GRANTS FOR FOREST MANAGEMENT AND INDUSTRY
ADVANCED TECHNOLOGY PROGRAM FOR INDUSTRY

REVISED SMALL BUSINESS PROGRAM FOR COMMUNITIES
RESTORATION AND FOREST HEALTH MANAGEMENT PROGRAMS
TIMBER PROGRAMS FOR COMMUNITY BASED INDUSTRY
- USING ADDED VALUE MANUFACTURING
- WITH IMPROVED "DESIRED FOREST CONDITION" CONTRACTS

DIVERSIFIED NON-TIMBER FOREST PRODUCT INDUSTRIES

MAY 1993

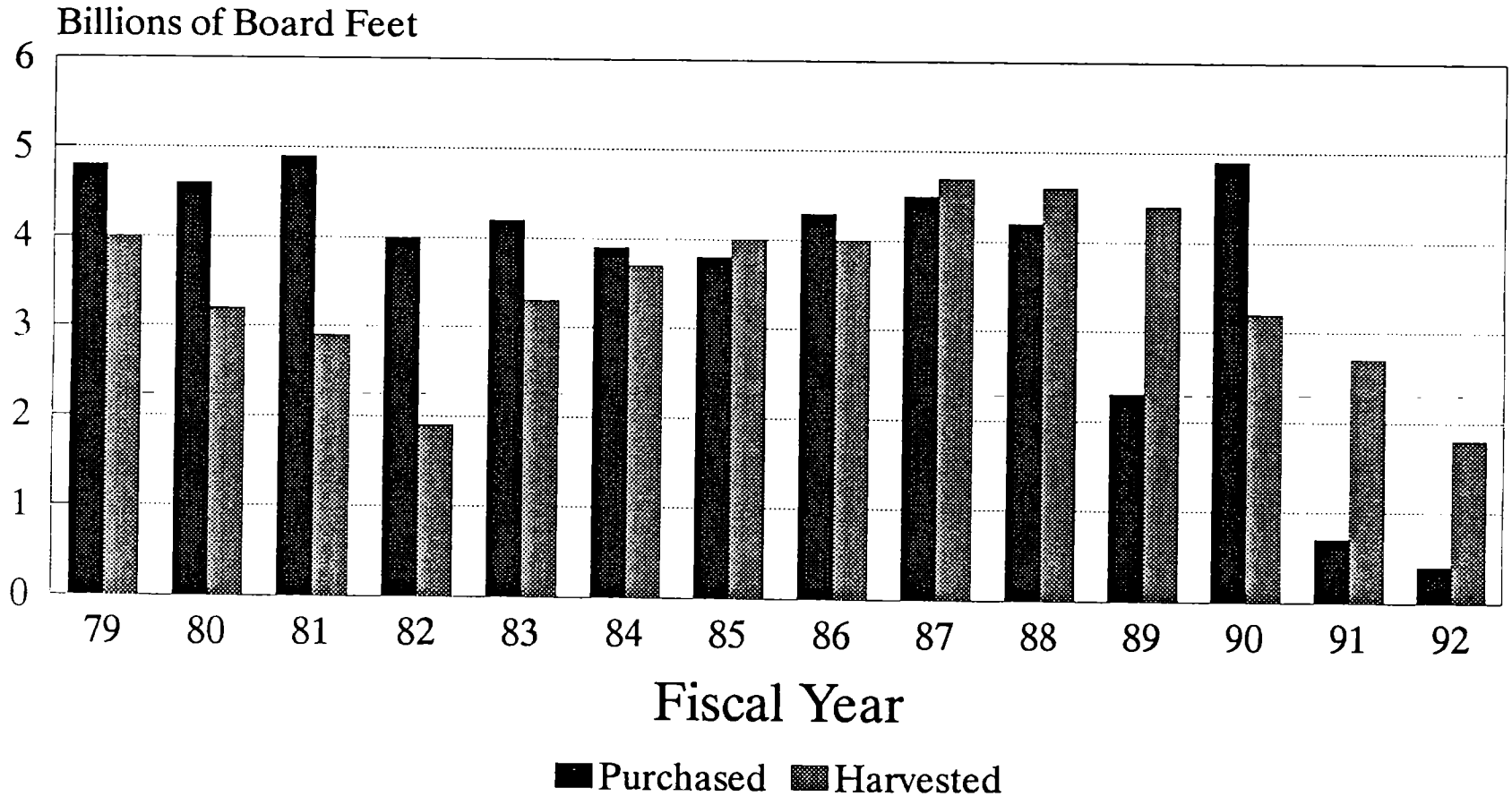
FOREST PRODUCTS INDUSTRY THE FUTURE

CHART FS 16

SMALLER, PROFITABLE FACILITIES
DIVERSIFIED FOREST PRODUCTS COMMUNITY BASE

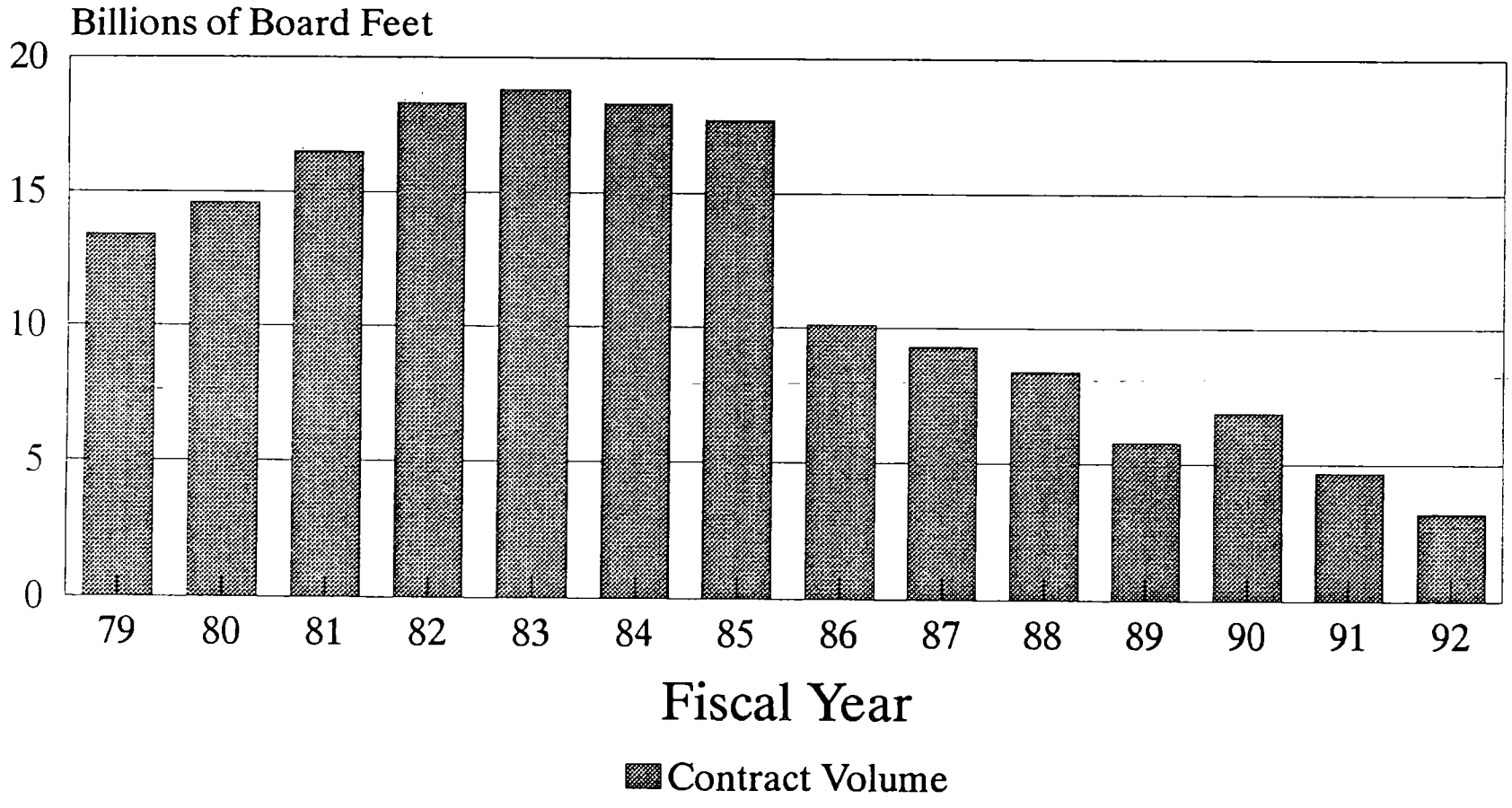
- HIGH REVENUES
- ATTRACTIVE JOB OPPORTUNITIES
- PROTECTED IN THE MARKETPLACE BY
  - US LEAD IN INFORMATION TECHNOLOGY BASE
  - ENVIRONMENTAL COMMUNITY
  - WORLD LEADERSHIP POSITION FROM ENVIRO-TECH
  - NEW RESPECT FOR INDUSTRY
- FOREST-RELATED COMMUNITIES
  - QUALITY OF LIFE AND QUALITY OF JOBS
  - INTERNAL COMMUNITY AND GOVERNMENT SUPPORT

Historic Timber Sale Volumes
Region 6 - Forest Service
Purchased and Harvested



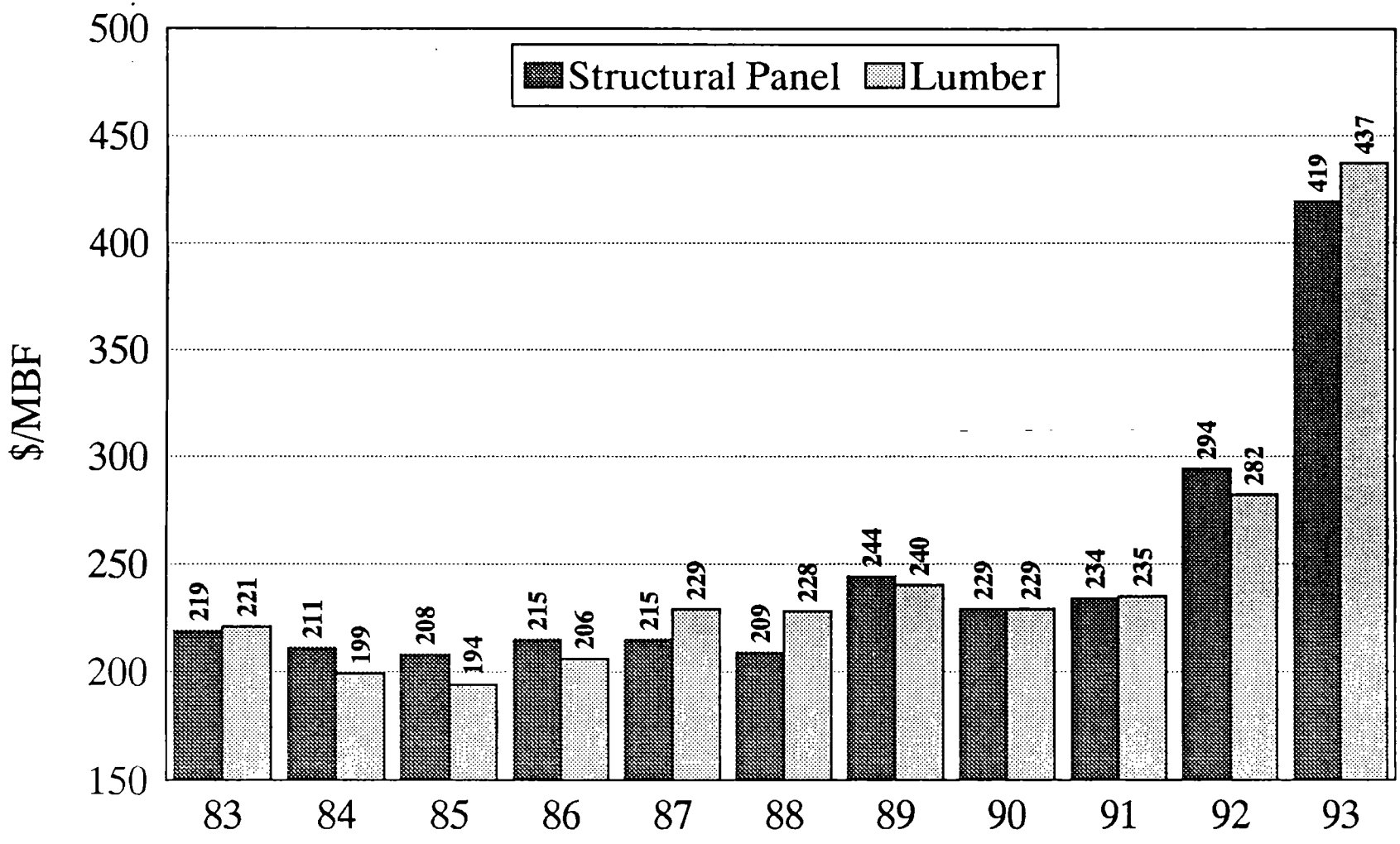
Source: Timber Data Company

Historic Timber Sale Volumes
Region 6 - Forest Service
Volume Under Contract



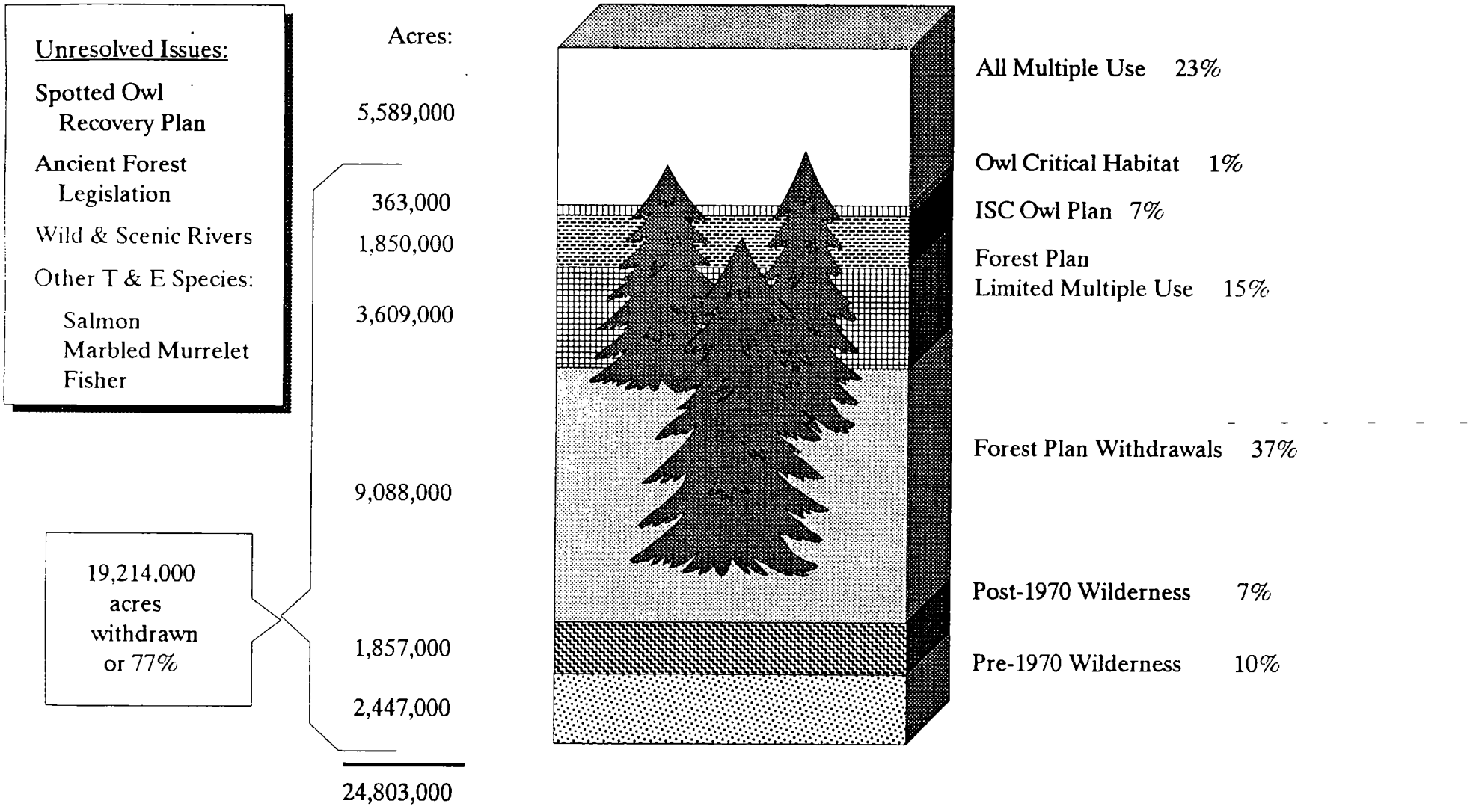
Source: Timber Data Company

U.S. Softwood Lumber & Structural Panel Prices
1983 to 2/12/93



Source: Random Lengths

Chronology of Compromise
A History of Land Withdrawals



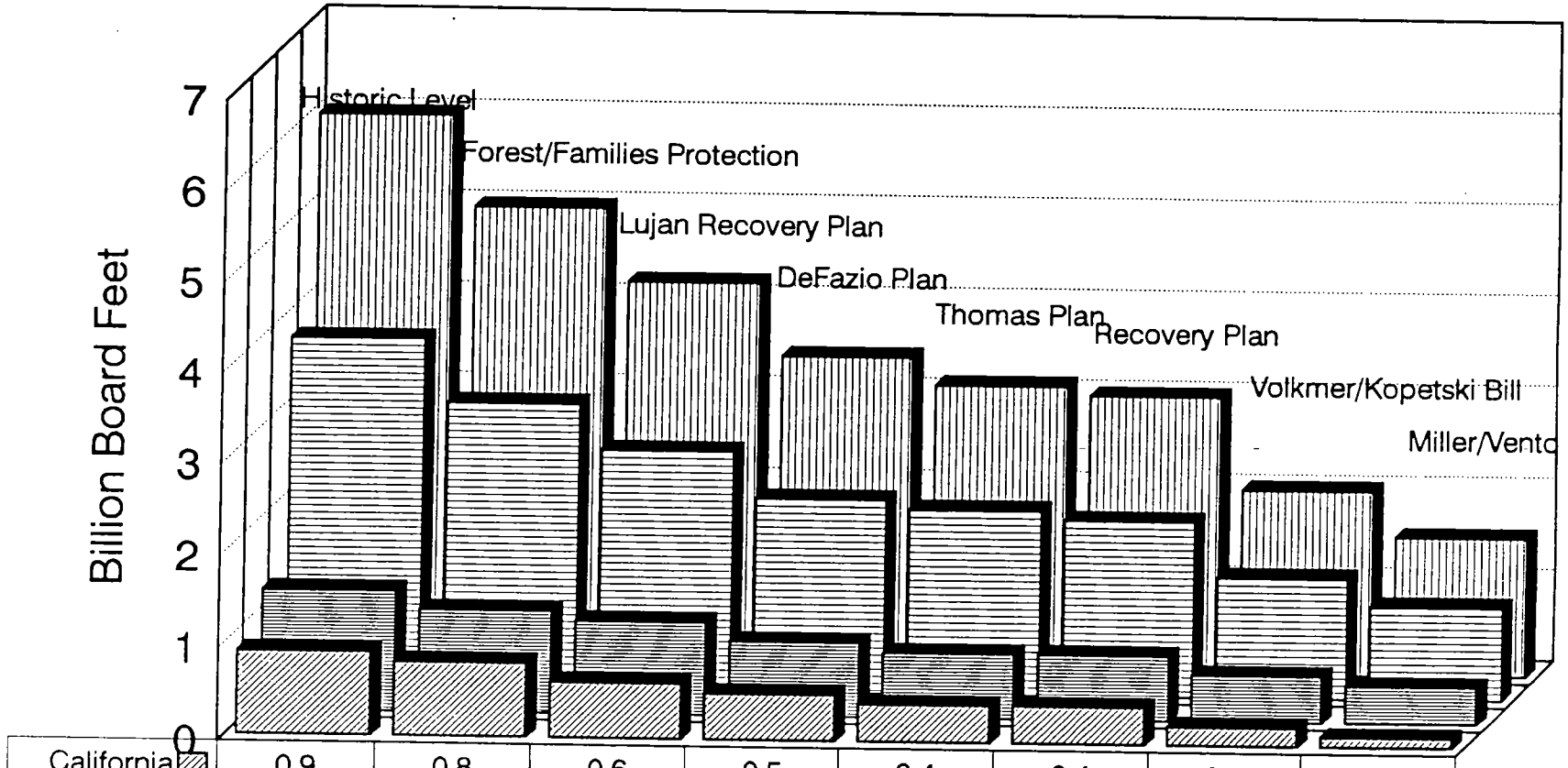
Oregon & Washington National Forests

Northwest Forestry Assoc. 3/93

Source: Forest Plan FEIS's

Federal Harvest Under Various Legislative Proposals & Spotted Owl Management Plans

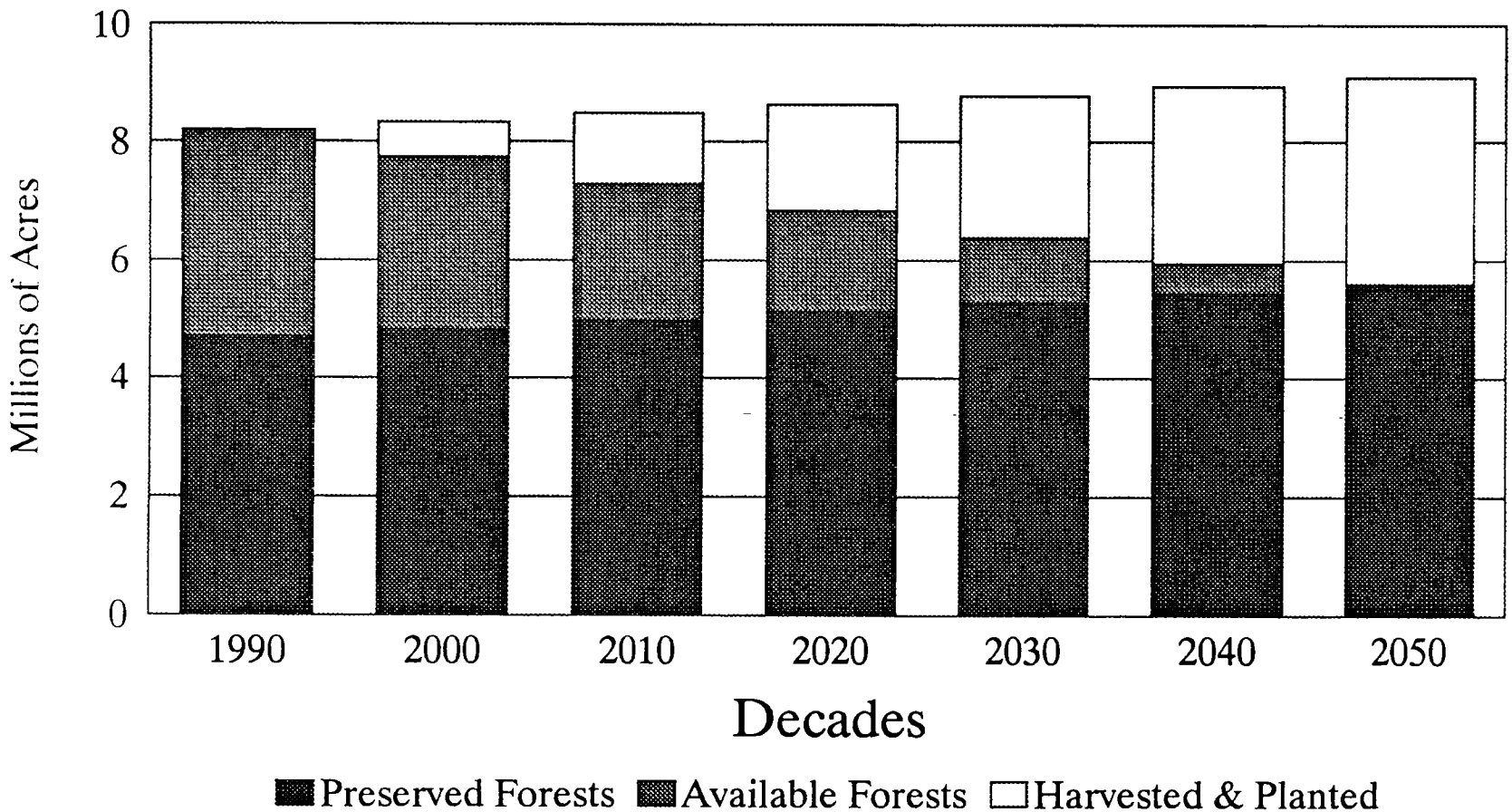
On USFS & BLM lands in Washington, Oregon & California



	Historic Level	Forest/Families Protection	Lujan Recovery Plan	DeFazio Plan	Thomas Plan	Recovery Plan	Volkmer/Kopetski Bill	Miller/Vento Bill
California	0.9	0.8	0.6	0.5	0.4	0.4	0.2	0.1
Washington	1.3	1.1	1	0.8	0.7	0.7	0.5	0.4
Oregon	3.8	3.1	2.6	2.1	2	1.9	1.3	1
Total	6	5	4.2	3.4	3.1	3	2	1.5

July, 1992

MANAGEMENT OF NATIVE OLD GROWTH FORESTS
On Federal Forests Lands In The Pacific Northwest



Source: USFS, BLM, NPS

Norm Dicks 5/6

INCLUSION OF NON-FEDERAL (PRIVATE AND STATE) LANDS IN THE ADMINISTRATION'S NW FOREST STRATEGY

The federal government is already engaged in de facto, stringent regulation of private and state lands to protect the northern spotted owl. Yet, the government's principal scientific studies and owl management strategies (ISC, "Gang of Four," and SAT) do not assume, and choose not to recognize, the non-federal lands' contribution to owl protection. At the same time, as the stringent regulation of the non-federal lands by the government has removed massive acreages from the timber base, their owners are rapidly running out of harvesting options and will not be able to maintain present levels of timber supply. Well designed inclusion of these non-federal lands in the NW Forest Strategy would have multiple advantages; it would provide regulatory relief and greater certainty to, and assure continued production from, private landowners and the states, and accord more flexibility to the federal land management agencies.

Background

1. Private lands are required by both federal and state regulators to provide protection for the northern spotted owl and other species.

- Fish And Wildlife Service (FWS) And National Marine Fisheries Service (NMFS) Regulate Through § 9 Of The Endangered Species Act (ESA) -- All persons -- including non-federal landowners -- are required to adhere to the "take" and other prohibitions of ESA § 9 or suffer civil and criminal sanctions. The FWS and NMFS enforce these requirements. For example, the FWS's "voluntary" 1990 Owl Guidelines impose large buffer zones around owl nests and activity sites on private and state land (circles of up to 2.2 mile radii) and threaten prosecution for any deviation. Although the Guidelines were purportedly rescinded to moot a lawsuit in 1991 and smaller owl circles (500 acres) were adopted as a matter of enforcement discretion in 1992, the FWS continues to apply the Guidelines' larger buffer zones as "the best science."

- States Regulate Through Forest Practices Acts -- State forest practices acts impose constraints on the methods and locations of timber harvesting on non-federal lands that benefit spotted owl habitat.

2. The federal owl management strategies' failure to recognize and "credit" the contribution of non-federal forest lands to owl protection and their demand that full owl protection be supplied solely by federal lands impose unnecessarily

burdensome constraints on timber harvesting on both non-federal and federal lands and undermine the concept of ecosystem management.

3. The NW Forest Strategy could resolve this situation by providing for modest but explicit reliance on non-federal lands to assist in the effort to protect the owl.[1/] Reasonable geographic limitations and refinements of the "take" concept should be included.

Recommendations

A. ADMINISTRATIVE ACTIONS

Several administrative steps could be taken to incorporate non-federal lands in the NW Forest Strategy:

1. General Habitat Conservation Plan (HCP)

The FWS (and, perhaps, NMFS) should prepare a general or model HCP and offer to issue "incidental take" permits to all non-federal landowners who voluntarily agree to comply with it.

- If the model HCP were less restrictive (geographically and in application of the "take" prohibition) than the Guidelines and, like the Guidelines, included differing requirements based on varying regional conditions, a significant number of private landowners would likely sign. Small landowners could sign without the expense or time of preparing and negotiating their own HCPs. Large landowners who have greater flexibility with a larger land base could negotiate specific provisions tailored to their circumstances. All landowners who sign up would gain regulatory certainty, immunity from the "rescinded" Guidelines' severe strictures and threatened sanctions, and a more reasonable approach to owl protection. It may be possible to encourage one major landowner to serve as the "guinea pig," if you will, and work with the FWS and NMFS in the development of the model HCP.

- Although preparation of and subscription to a model HCP would take time (1 to 1½ years), assumptions about participation in such a program (with a safeguard of an automatic "opener" or policy change for federal lands if these assumptions about the degree of non-federal land

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1/ It must be emphasized that this recommendation should in no way be read as an acceptance of the FWS's highly expansive reading of ESA authority over private landowners, or serve as an invitation to validate the rescinded Guidelines or engage in similar overregulation of non-federal lands.

protection are not met by a date certain) could be built into the NW Forest Strategy.

2. Interim Protection

Non-federal landowners likely will insist on some measure of protection from ESA enforcement during the model HCP preparation and sign-up process and will not subscribe to continued de facto application of the rescinded Guidelines. Likewise those preparing the NW Forest Strategy will also require some level of guaranteed owl protection during this interim period.

There are three options for this interim protection. All three options would require clarification and relaxation of the "take" prohibition of ESA § 9 to cover only activities where evidence of current physical injury is present. This action is particularly appropriate for the northern spotted owl given its relatively large population and the primary focus on federal lands for its protection.[2/]

The three options are:

- Interim HCP. The FWS and NMFS would issue an "interim HCP" similar to that issued by the FWS to apply to the desert tortoise near Las Vegas while a full HCP on the species was being prepared. The interim HCP would sunset at the end of the sign-up period for the model HCP.

- Special rule. Alternatively, the agencies could promulgate a special rule under ESA § 4(d).[3/] Although not voluntary like a model HCP, the special rule could

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2/ Although the FWS's own rules defining "take" refer to habitat modification that "actually kills or injures" a listed species, and two courts in the last year have ruled that "take" requires actual injury or death, the FWS's "rescinded," but still used 1990 Owl Guidelines threaten "take" prosecutions for any habitat modification within the owl circles without evidence of any current physical injury.

3/ ESA § 9 applies the "take" and other statutory prohibitions only to endangered species; ESA § 4(d), however, permits application of these prohibitions, in whole or part, to threatened species by rulemaking. In a blanket rulemaking (50 C.F.R. § 17.31(a)), the FWS applied ESA's prohibitions to all threatened species, but provided that, for any specific species, the agency could remove or tailor the prohibitions by promulgating a special rule. The northern spotted owl, the marbled murrelet, and a number of the salmon stocks are all listed as "threatened" and, therefore, could be addressed in such a special rule.

be made attractive to landowners if it includes restrictions less severe than the Guidelines, and also sunsets at the conclusion of the sign-up period for the model HCP.

- Voluntary Consultation. Instead of or in addition to promulgating a special rule or issuing an interim HCP, the FWS could offer to engage in a voluntary "consultation" process with non-federal landowners. FWS could model this 90-day review of non-federal activities on its ESA § 7 process for consulting on federal agency actions. Without a change in the statute, this voluntary consultation process would not be as advantageous to private landowners as the ESA § 7 consultation process is to federal agencies,[4/] but would still be an improvement.

3. Eliminate Enforcement Threats Against States

The NW Forest Strategy and ESA should reject the FWS's current practice of threatening prosecution of state regulatory agencies which issue state forest practices permits in full compliance with state law. Applying the "rescinded" Guidelines, the FWS has threatened each of the three states containing spotted owls with prosecution. This is unsupported in law and unnecessary to ensure compliance with the ESA.[5/] A rejection of this practice would relieve state agencies of the threat of criminal prosecution for following state law, facilitate issuance of necessary state permits, and make it easier for private timber to be timely supplied to the mills, but would not affect the FWS's ability to take ESA enforcement action against unlawful conduct (violation of the "take" prohibition) on non-federal lands.

B. LEGISLATIVE ACTIONS

To make the NW Forest Strategy for non-federal lands work several legislative steps should be taken:

4/ Non-federal landowners' activities would have to be reviewed under the more stringent "take" any member of the species standard rather than the "jeopardize the continued existence" of the entire species standard applicable to federal agency actions. And the landowners would not receive the immunizing "incidental take" statements to which federal agencies are entitled at the end of a successful consultation.

5/ In 1992, the Supreme Court held that the federal government has no authority to compel states to regulate private citizens, particularly where, like here, the federal government interest is sufficient for it to directly regulate the conduct. New York v. United States, 112 S. Ct. 2408, 2429 (1992).

1. All Species Covered

Legislation must be passed that would allow the model HCP to cover all species within the same ecosystem that are listed after, as well as before, its preparation. This would mean the NW Forest Strategy would not be invalidated each time a new species is listed. Representative Studds proposed a similar concept in his ESA reauthorization bill last Congress. We expect the same concept to be featured in both Mr. Studds' and Senator Baucus' bills to be introduced this week or next.

2. Elimination Of Redundant ESA Steps

Although species' listings should continue where warranted, further management planning under the ESA should be deferred in favor of the model HCP (and its counterpart federal lands strategy). Therefore, the legislation should excuse the FWS and NMFS from the requirements of writing recovery plans and undertakings consultations for species covered by the model HCP (and its counterpart federal lands strategy).

3. Focusing Judicial Review

If the model HCP strategy is to work and non-federal lands are to contribute to the Northwest timber supply, the legislation must provide reasonable protections against injunctions without foreclosing access to the courts entirely (e.g., limit citizen suits, bar preliminary injunctions against the model HCP or actions consistent with it (allowing non-federal lands activities to continue and avoiding paralysis while the legal validity of the model HCP is determined), etc.).

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May 1993

PROPOSED SOLUTION

As a result of the Forest Conference on April 2nd of this year, it is clear that the direction from President Clinton is for federal agencies involved to come together and craft a solution to the federal forest management crisis that has gripped the Pacific Northwest for the last five years.

President Clinton made it clear that the solution had to be within the guidelines of existing law, scientifically credible and balance the needs and requirements of people and communities with those of endangered species and ecosystems. It is within the context of those guidelines that the Association of O&C Counties submits the following proposal.

The proposal basically is in the form of a petition for a Section 10 incidental take permit as provided for in the Endangered Species Act (ESA). The petition will, of course, be accompanied by a comprehensive habitat conservation plan (HCP).

Why This Proposal for the O & C Lands?

I. As the attached document entitled "A Brief Description of a Unique Category of Federal Lands" clearly points out, the O&C lands are not, nor were they ever intended to be public lands as defined by the federal government. The O&C lands are special purpose lands and have been so recognized in federal statutes and in federal court rulings.

II. The receipts from the O&C lands are used for general county purposes such as law enforcement, health and social services, veterans service offices, libraries and a host of other county services. This is an important contrast to the dedicated funds received by counties from the federal forest service. Those funds can be used only for the county road

fund and for aid to education. In many counties in Oregon, O&C receipts literally run county government.

How Does a Section 10 Exemption Work?

The incidental take permit provisions of the ESA specify that:

> "(1) The Secretary may permit, under such terms and conditions as he shall prescribe-
> (B) any taking otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity." 16 USCA 1539(a)

The Section 10 process is one of three balancing provisions within the ESA. The other two are the Section 4 Exemption Process and the Section 7 Endangered Species Committee process.

The Legislative History notes that Congress intended the Secretary to use this provision to encourage creative partnerships between the public and private sectors in the interest of species and habitat conservation. 1982 U.S. Code Cong & Adm. News 2871 - 2873.

Congress also recognized that in order to provide sufficient incentives for the private sector to participate in the development of long tern and expensive conservation plans, there must be adequate assurances that the incidental take permit will be available for the length of the project. 1982 U.S. Code Cong & Adm. News 2872.

As a requirement for each permit, the applicant must submit to the Secretary a conservation plan ("Habitat Conservation Plan") that specifies:

> "(i) the impact will likely result from such taking;
> (ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;
> (iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized;

(iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan." 16 USCA 1539(a)(2)(A).

Once the Secretary has received an application and habitat conservation plan, he must provide a public hearing on the plan and make specific findings that:

"(i) the taking will be incidental;
(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
(iii) the applicant will ensure that adequate funding for the plan will be provided;
(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
(v) the measures, if any, required under subparagraph (A)(iv) will be met." 16 USCA 1539(a)(2)(B).

The permit is to include any terms and conditions the Secretary deems necessary or appropriate including reporting requirements. In addition, during development of the San Bruno Mtn (San Mateo County) habitat conservation plan an environmental assessment under NEPA was developed. Friends of Endangered Species v. Jantzen 760 F2d 976, 980 (1985).

In adopting this provision, Congress intended that the Secretary utilize this provision to approve habitat conservation plans that provide long term commitments to conserving listed as well as unlisted species. In the event an unlisted species that is addressed in an approved conservation plan is subsequently listed, no further mitigation requirements should be imposed if the conservation plan covered the conservation of the species and its habitat.

The HCP will provide for the management of the O&C lands on a basis that emphasizes the perpetuation of a forest with old growth characteristics. The plan will incorporate three main elements to achieve this result:

1. Extending the rotation age to a point at which the old growth characteristics of the forest are established for the benefits of the dependent old growth species and ecosystem.

2. Increase the size of the riparian protection corridors to address the concerns of fish and help implement the proposal of connectivity.

3. Reduce the amount of timber harvested to achieve the first two goals and yet still provide for the economic base necessary to sustain the timber dependent communities an counties for which the O&C lands were originally created.

We believe that this proposal follows closely the necessary elements of a solution as presented by the President as he closed the Forest Conference: #1 - a solution should be community based and not driven from the top down, #2 - any solution must meet the guidelines of existing laws, #3 - the solution must be based on credible science and #4 - any solution must address the human dimension of this problem as well as the economic consideration of the region and the entire nation.

Thank you for your consideration.

Sincerely,

Rocky McVay

Rocky McVay
President

fax 503/945-7212

Cotton

THE PACIFIC FOREST TRUST

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Facsimile Cover

DATE: April 23, 1993 TOTAL PAGES: 7

TO: Katie McGinty, Office of Environmental Policy
Jim Lyons, Assistant Secretary, U.S. Dept. of Agriculture
Tom Tuchmann, Special Assistant to the Secretary,
Dept. of the Interior

FROM: Constance Best, President
Laurie A. Wayburn, Executive Director

RE: **Proposal Summary for Federal Sustainable Forestry Program: Restoration and Enhancement of Private Productive Forestland**

In follow up to the Forest Conference we would like to submit the following suggestions toward improving federal programs designed to protect and improve the stewardship of private forestlands.

c.c. Hon. Dan Hamburg
Sierra Club
WAFC
MEC

THE PACIFIC FOREST TRUST

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Memorandum via Facsimile

DATE: April 23, 1993

TO: Katie McGinty, Office of Environmental Policy
Jim Lyons, Assistant Secretary, U.S. Dept. of Agriculture
Tom Tuchmann, Special Assistant to the Secretary,
Dept. of the Interior

FROM: Constance Best, President
Laurie A. Wayburn, Executive Director

RE: **Proposal Summary for Federal Sustainable Forestry Program: Restoration and Enhancement of Private Productive Forestland**

The Pacific Forest Trust is non-profit public benefit corporation dedicated to the preservation and restoration of private productive forestland in the Pacific Northwest region (including northern California, Oregon and Washington). The Pacific Forest Trust provides private forestland owners with technical assistance, information, planning tools and land conservation programs to assist them in the ecologically sound, long-term management of the multiple resources of their land. We are familiar with the range of federal programs available to private landowners for forestland stewardship: **Forest Legacy**, the **Forest Incentives Program** (FIP), and the **Stewardship Incentive Program** (SIP). These programs, which offer technical services, information and protection through conservation easements, are a necessary complement to regulatory reform if we are to successfully influence the stewardship of private forestlands. We would like to make the following suggestions which we feel would greatly enhance the effectiveness of these programs.

An overarching federal program encouraging and supporting sustainable forestry on private forestland is urgently needed. More than 70% of the 347 million acres of productive forestland in the U.S. today is privately owned. Even in our region of the Pacific Northwest (including northern

California, Oregon and Washington), with its vast expanses of public lands, close to 50% of forestland is in private hands. Much of this is owned in large tracts by industrial and non-industrial owners, and has been aggressively managed for the production of timber without adequate regard for future productivity or ecological integrity. Tremendous ecological and social damage has been suffered in this process. The Federal government can play a key role in facilitating the restoration and long-term enhancement of this critical forestland through implementation of a **Sustainable Forestry Program**. This can be accomplished efficiently through gathering the existing forest improvement programs cited above under the umbrella of the Sustainable Forestry Program and recasting them as described below.

The central element of the proposed Sustainable Forestry Program is the creation of a public-private partnership to rebuild America's private forestlands on an ecologically and economically sustainable basis. Such "infrastructure investment" will pay off both immediately and for years to come through increased biological diversity and productivity of this key natural resource, as well as improved economic stability for timber-dependent communities.

The existing Federal programs for the preservation and restoration of private forestland could be effectively expanded to deal with a very pressing issue: **ensuring that the prime productive forestland held by larger industrial and non-industrial landowners is restored, enhanced and maintained as ecologically healthy and economically productive forestland, and is not converted to other uses due to the combined pressures of resource depletion and urbanization.** These programs are voluntary and directed to willing landowners, and could be powerfully reinforced through tax-based incentives as well. No landowner would be required to participate, however the economic benefits could be compelling. The Sustainable Forestry Program proposed herein serves as an appropriate complement to the vigorous enforcement of current environmental regulations, such as the Clean Water act and the Endangered Species Act.

The threat of conversion is increasingly critical as huge tracts of private forestland across the country are overcut, with resulting low inventories of very young trees and diminishment of future productivity due to a history of poor logging practices. Under these conditions, many private landowners consider alternate land uses, not having the patient capital to allow for the maturation of another "crop" of trees. A corollary and equally threatening problem is the degradation of soil quality, fertility and watershed functioning due to one hundred-plus years of high-impact forest practices. These losses in site productivity mean that the understocked conditions of many hundreds of thousands of acres of forestland will be difficult to overcome. Therefore **the loss of private productive forestland to non-forest uses is looming** -- and with it a myriad of public benefits, from water quality and air quality to fisheries and wildlife habitat, to the jobs in timber, value-added forest products, fishing, recreation, tourism and wildlife management that flow from a healthy, productive forest. Aside from the economic impacts, the result would be man-made ecosystem conversion on a massive scale in the Pacific northwest.

Briefly, **Forest Legacy** is a recently initiated program only available on a limited basis in New England and Washington State. The current goal is to prevent conversion of private forestland to residential and other uses by providing for the Federal government's acquisition of conservation easements which include at a minimum the development (sub-division) rights of the property. No change in forest practices, or other overlay of environmental protection, are required currently, though the program seeks protection of "environmentally sensitive areas" if the landowner is willing.

This program should be expanded to all major timber producing regions and fully funded to reach all threatened properties. However, in return for receiving this benefit of selling off the development value to the Federal government, and therefore subsidizing the maintenance of the property as forestland, **the landowners participating in Forest Legacy should be required to adhere to a set of best management practices that will improve the long-term productivity of their forestland and ensure the ecological**

sustainability of the harvest of timber from their property. These best management practices should be included in the same conservation easement so that this requirement would become part of the title to the property. In this fashion, future property owners who will reap the benefits of the public investment in this private forestland will be bound by the same terms of forest practices (and therefore won't be able to improperly exploit the renewed forest inventory and biological productivity that has been enhanced at public expense).

The definition of best management practices should be regional in nature, reflecting different sites and species; and could be established by joint USFS, EPA, FWS, NMFS scientific panels. Such best management practices would include prohibitions on clear-cutting, harvesting in riparian zones and steep slopes, removal of an unsustainable volume of trees, maintenance of a diversity of age classes, establishment of leave stands with natural forest structural features that will enhance the regeneration of the harvested area, etc. (A central program of the Pacific Forest Trust is the design, implementation and monitoring of similar conservation easements on private working forestland in our region.)

A more fully realized Forest Legacy program dovetails with the next suggestion: **An expansion of the existing FIP and SIP programs to include properties greater than 5000 acres.** As these programs are currently designed, they are targeted to reach smaller, non-industrial landowners. FIP and SIP provide for site preparation, reforestation, stand improvement, soil and water improvement, riparian and wetland restoration, fisheries habitat enhancement, and forest recreation/aesthetics. These are cost-share programs, with the participating landowners provided 25-35% of the costs, either through cash or in-kind contribution.

Due to the degradation of industrial forestlands, combined with growing development pressures in most prime forest producing regions, industrial landowners would be better persuaded to restore, maintain and enhance their lands from the current depleted state if they were subsidized. The Forest Legacy program is one such subsidy. FIP and SIP are others. This

is not "free money", however: Participation in these programs requires a corresponding long-term investment by the landowners. In return for the expansion of these programs, again, the participating landowners would agree, through the use of conservation easements, to adhere to clearly defined best management standards. The SIP program is currently based on the development of a "Stewardship Plan." Under this proposed expansion, this plan would be prepared to implement the terms of the conservation easement and would be updated and renewed every ten years. Under the new program, the Stewardship Plan would genuinely provide for the long-term sustainability of the forestland.

Such a Sustainable Forestry Program could be complemented and made even more effective by a range of tax-based incentives. These include the following programs that would be available to owners of forestland encumbered by conservation easements as above: (1) graduating the capital gains tax for timber harvest receipts to encourage the holding of forestland for longer than average periods, thereby providing an incentive for longer rotations and the maintenance of older age classes of trees on forestland; (2) eliminating estate taxes for such encumbered forestland; and (3) providing investment tax credits for forest infrastructure investments, e.g., stream restoration, road removal and revegetation, other major erosion control projects, reforestation.

As part of our **national commitment to reducing carbon emissions,** another key incentive to forestland owners to achieve reforestation and longer rotations could come from **investments by utilities and other carbon producers for the purpose of carbon sequestration.** Participation by utilities and others in such a carbon sequestration program could be coordinated with the Administration's other carbon reduction efforts so as to offset taxes or other costs that may be required of these carbon producers. The Pacific Forest Trust has begun a program to help accomplish these goals.

The essence of the Sustainable Forestry Program is a deal between the Federal government and private forestland owners: The government will contribute significantly to the preservation and restoration

of prime private forestland if the landowner agrees to abide by ecologically sustainable forest stewardship practices in perpetuity. Public monies would be made available, through purchase of development rights, cost-share for forest improvements and tax incentives; so as to provide public benefits, such as the protection of public trust resources of water, air, fish and wildlife, as well as maintenance of forest ecosystems for ecologic and economic values. This infrastructure investment is matched by the landowner's agreement to maintain the value of that investment by improved management practices, preventing the liquidation of an improvement provided by public monies. No one is compelled to participate. Yet the incentive to participate will be strong for those owners committed to being long-term producers of forest products.

The Pacific Forest Trust would be pleased to discuss further with you the Sustainable Forestry Program or any of these ideas to increase federal effectiveness in promoting stewardship on private forestlands.

# # # #

American Rivers

April 30, 1993

BY FAX

Post-It™ brand fax transmittal memo 7671 | # of pages ▸ 8

To David Cottingham	From Tom Cassidy
Co. President's	Co. American Rivers
Dept. Office	Phone # 547-6900
Fax # 456-2710	Fax # 543-6142

Kathleen McGinty, Director
President's Office on
Environmental Policy
Room 360
Old Executive Office Building
Washington, DC 20501

Dear Katie:

American Rivers looks forward to working with you and other members of the Administration as you develop a set of coordinated strategies to address and correct the Northwest forest crisis, including the management of salmon habitat on federal lands.

American Rivers has been deeply involved in forest planning issues for many years. Earlier this year, we completed a comprehensive compilation of the existing planning direction for management of anadromous fish habitat in Forest Service and Bureau of Land Management land management plans throughout the Northwest, Northern California, and Alaska. This project was undertaken in cooperation and with the support of the Forest Service and Bureau of Land Management. We have enclosed a summary of the project, including recommendations for actions.

Since we completed our project, the Scientific Analysis Team (SAT) has released its report. The report includes a progressive, science-based strategy for managing the habitat for "At-Risk" fish stocks on National Forest lands. SAT Report, Appendix 5-K. Implementation of the "5-K strategy" is designed to have a "high" probability of providing for the viability of "at-risk" fish stocks on Forest Service lands. SAT Report at 20. As American Rivers' report detailed, existing Forest Plans and RMPs fail to assure that the high-quality aquatic and riparian habitat necessary for the protection and restoration of Pacific salmon will be available on federal lands.

The strength of the "5-K strategy" is its emphasis upon a series of Riparian Management Objectives and a set of prescriptive Standards and Guidelines designed to conserve and restore habitat for at-risk fish stocks. The elements of "5-K" represent a marked improvement over existing agency planning direction.

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The "5-K strategy," however, needs to be supplemented by the establishment of measurable and time-specific objectives for anadromous fish stocks and habitat conditions. Quantifiable objectives for the primary environmental factors that influence the productivity of fish habitat, including sediment, water quality and quantity, channel morphology and riparian vegetative cover, are necessary to provide a baseline against which the prescriptive standards and guidelines can be measured. For example, Grazing Management standard GM-1, specifies that grazing practices will be adjusted "to eliminate adverse effects" of grazing upon riparian resources. SAT Report at 451. However, the failure to specify quantifiable standards precludes management accountability.

Further, quantitative objectives are the only reliable standard to evaluate the cumulative effects of land management activities throughout the watershed, and not merely within the proposed "Riparian Habitat Conservation Areas," upon fish habitat conditions.

Amending the "5-K strategy" to include the development of a quantitative and qualitative analysis of past, present and predicted resource use and condition will provide the basis for formulating measurable objectives and quantitative standards and guidelines to provide watershed level planning for the maintenance and recovery of "at-risk" fish stocks in the Pacific Northwest.

We would be pleased to meet with you and other members of the Administration to discuss these issues with you in greater detail.

Sincerely,

Tom Cassidy

Thomas J. Cassidy, Jr.
General Counsel

enclosure

cc: Jim Lyons, Assistant Secretary-Designate for Natural Resources and the Environment, U.S. Department of Agriculture
Tom Tuchman, Special Assistant to the Secretary, U.S. Department of the Interior
David Cottingham, Associate Director for Natural Resources, President's Office on Environmental Policy

FOCUS ON THE FOREST CONFERENCE:

FEDERAL LAND MANAGERS FAIL TO PROTECT NORTHWEST SALMON

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F. Lorraine Bodi
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American Rivers Northwest Office
Seattle, Washington

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April 30, 1993

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FOCUS ON THE FOREST CONFERENCE: FEDERAL LAND MANAGERS FAIL TO PROTECT NORTHWEST SALMON

Introduction: Salmon at the Crossroads

Northwest salmon are in terrible trouble. In the Columbia/Snake basin alone, historic runs of 16 million adult salmon now number fewer than 2 million, only a few hundred thousand of which are wild. Oregon Trout has estimated that 200 Columbia Basin salmon and steelhead stocks are already extinct. The American Fisheries Society (AFS) has identified 214 native stocks of Pacific salmon and related anadromous fish that are at risk of extinction, and more stocks are expected to be added to its list.

Salmon are an essential part of the life, culture and economy of the Northwest. Even though salmon runs are disappearing at alarming rates, they still support as many as 60,000 jobs and net the regional economy as much as $1 billion annually. Sustainable salmon populations are also fundamental to fulfilling the federal government's treaty commitments to Tribal governments.

Improved federal land management is absolutely necessary if Northwest salmon are to survive. Nearly two-thirds of the stocks identified by AFS utilize habitat managed by the U.S. Forest Service and the Bureau of Land Management (BLM). The BLM Salem District in Oregon manages habitat for 33 of the AFS listed stocks.

The Forest Service and BLM have not acted with sufficient urgency or leadership to protect endangered salmon runs. The Forest Service's 1991 Columbia Basin Program Implementation Guide ("PIG") is a case in point. This policy, designed to provide improved and consistent management of anadromous fish habitat throughout the Columbia River Basin contains management objectives that describe the physical, biological, and chemical characteristics necessary to protect and restore salmonid habitats throughout the Columbia Basin. Yet the PIG has never been formally incorporated into forest plans and regulations, and thus does not bind Forest Service activities.

The Forest Conference and Fish

Forest Service and BLM land management plans fail to protect Northwest salmon. American Rivers has recently completed a comprehensive review of Forest Service and BLM management of Pacific anadromous fish habitat. We evaluated twenty-five forest plans and 20 BLM management plans in Oregon, Washington, California, Idaho and Alaska. The project was undertaken in cooperation and with the support of the Forest Service and BLM.

American Rivers analyzed the plans for consistency with planning criteria specified by the Forest Service and BLM. The criteria

were based upon existing agency policies and other program guidance for management of anadromous fish habitat.

American Rivers concluded that the plans generally fail to comply with agency policy. As a result, the plans fail to protect high-quality aquatic and riparian habitat on federal lands, habitat that is vital for Pacific salmon.

The Forest Conference will provide the Administration and the Congress information on strategies to improve forest management and halt the salmon's slide into extinction. Our research demonstrates that reform of Forest Service and BLM management of salmon habitat on federal lands must be a cornerstone of both legislative and administrative strategies designed to recover threatened and endangered salmonid stocks.

American Rivers' Findings

American Rivers' evaluation of Forest Service and BLM plans resulted in the following findings:

1. Cumulative Effects

Forest Service and BLM land management plans do not adequately address the cumulative effects of land management practices on fisheries and other aquatic resources.

Agency management plans do not describe existing fish habitat in quantitative terms, nor is the relationship between existing and historic habitat conditions adequately evaluated.

The result is that managers are unable to predict the response of aquatic ecosystems to land management practices, including timber harvest and road construction.

The increasing scientific consensus that land management plans should identify the relationship between the cumulative effects of land management activities on watershed conditions and fish habitat has not been integrated into federal land planning.

2. Measurable Fisheries Objectives

Forest Service and BLM land management plans only rarely establish measurable, quantitative objectives for fisheries resources, such as instream flows, pool depths, water temperature, and pool/riffle ratios. Most plans provide only general and qualitative objectives for fish habitat conditions.

In addition, few plans adopt any standards for evaluating the use of anadromous fish as management indicator species ("MIS").

3. Monitoring and Evaluation of Management Activities

Few plans incorporate comprehensive monitoring programs to determine the effects of land management activities on aquatic and riparian habitats, or to evaluate whether the monitoring program itself is valid.

Where there are monitoring programs, they do not identify thresholds that, if exceeded, would trigger modification or revision of the plans.

Integration of monitoring between agencies, even in the same watershed, is almost nonexistent.

4. Watershed Level Planning

Forest Service and BLM land management plans generally do not use watershed and ecological boundaries as management areas.

Rather, plans divide the landscape into various "management areas," each of which emphasize particular -- and different -- land uses, such as timber production, riparian protection or highlighting areas for scenic viewsheds.

Few plans adopt any standards for the conservation of aquatic and biological biodiversity.

5. Riparian Management Areas

The treatment of Riparian Management Areas ("RMAs") in Forest Service and BLM land management plans is inconsistent and widely divergent.

Any consistency that may exist between the selection, identification and application of administrative guidance to riparian area management appears to be random.

6. Interagency Coordination of Fisheries Management

The decentralized character of Forest Service and BLM planning has resulted in a confusion of planning direction and criteria that is inconsistent from forest to forest and/or resource area.

This is true even for adjacent forests which manage fish habitat in the same drainage.

Although plans acknowledge the importance of coordinating forest planning with other related federal, state and Tribal planning

efforts, there is very little, if any, effort to integrate management strategies.

RECOMMENDATIONS FOR THE FOREST CONFERENCE

Recommendation: The Administration and the Congress should make protection and restoration of Pacific Northwest ecosystems a national priority. Salmon habitat in the Northwest has already suffered tremendous damage. Preservation of Ancient Forest ecosystems is essential to provide the high quality habitat necessary for long-term restoration and protection of salmonid stocks throughout the Northwest.

Action: Ancient Forest Reserves should be considered salmon protection areas, and should be added to existing Wilderness Areas, Wild and Scenic Rivers and other special management areas to provide one key part of an ecologically-based watershed restoration program.

Recommendation: Land management plans must ensure protection and restoration of aquatic and riparian ecosystems. Existing Forest Service and BLM land management plans are inadequate to protect and restore salmon runs. Even the Forest Service and BLM acknowledge that major revisions to existing land management plans must be initiated to meet this objective.

Action: The Administration should direct the immediate revision of existing Forest Service and BLM land management plans to reflect the status of threatened, endangered and sensitive salmon. In keeping with our findings, we recommend that amended plans incorporate the following changes:

* A quantitative and qualitative analysis of cumulative impacts -- the past, present, and expected future resource use and conditions -- should be the starting point for all management planning.

* Desired physical, biological, and chemical conditions for fish habitat -- including instream flow levels, temperature, pool depth and pool-riffle ratios -- should be established as quantitative standards for each plan.

* Scientifically based monitoring of plan implementation to meet these standards should be established, and should be an internally enforceable limit on management activities. When standards are exceeded, management should change immediately.

* Plans should reflect a watershed/ecosystem approach rather than arbitrary land boundaries or "management areas."

Management objectives, indicator species and monitoring programs should be consistent within a particular watershed. Plans should shift from strategies based on mitigation of poor management practices to programs of watershed protection.

* Salmon stocks depressed by non-forest management factors should not be used as management indicator species to indicate the condition of forest aquatic habitats. In such cases, the health of aquatic habitats should be monitored by utilizing surrogates for healthy salmon populations, such as macro-invertebrate populations or resident fish.

* Riparian management areas should be established based on new national guidance that is ecologically sound (rather than the typical, arbitrary 100 foot riparian management area).

* Federal land mangers should ensure coordination of fisheries management on federal, state and tribal lands. Management objectives and management indicator species should be common to lands within a particular watershed.

Recommendation: If future generations are to enjoy salmon in the Northwest, federal land managers must be accountable for conserving salmon and their aquatic habitats. Land management activities such as timber harvest and road construction must be designed to be compatible with sustainable riparian and aquatic ecosystems.

Action: American Rivers supports comprehensive legislation to preserve Ancient Forest ecosystems in the Northwest and improve federal land management of salmon habitat, consistent with the recommendations above.

AMERICAN
FOREST &
PAPER
ASSOCIATION

April 21, 1993

Katie McGinty
Office of Environmental Policy
360 Old Executive Office Building
Washington, D.C. 20501

Dear Katie:

On behalf of all of the "owl biologists" and one "fish squeezer," I want to thank you for your and Tom Collier's time and attention to our discussions yesterday. I firmly believe that private forest landowners have much to offer in the formulation of alternatives to the forest management crisis in the Pacific Northwest.

Enclosed are the list of questions Tom requested, and a second set of the questions with associated background discussion for each question. If you have any questions regarding any of these, please do not hesitate to call me.

As we expressed in our closing remarks, we hope it is possible to have one or more of our scientists fully involved with the Forest Ecology Team. We believe there is much to be gained by the day-to-day participation with the Forest Ecology Team in the drafting of alternatives. It will increase information transfer and minimize conflicting debate.

I look forward to hearing from you as you move forward in setting the course for the Forest Ecology Team. If I can be of help on this or any other forest wildlife concerns, please feel free to give me a call.

Sincerely,

JAMES M. SWEENEY, Ph.D.
Director, Wildlife Ecology

cc: Tom Collier

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HABITAT

1. What is the habitat assessment (amount of habitat by type, within the median annual home range areas or "circles") of all known owl sites on Federal land? How has this assessment changed in the last three years, or how has this assessment guided the development of recovery strategies?

2. Recognizing the high frequency of northern spotted owls occurring and successfully reproducing in younger managed forests, what is the current definition of "suitable habitat," what definition was used in the formulation of past and current management and recovery strategies, and what management flexibility is offered for new alternatives with the new, broader, definition of suitable habitat?

3. What is the current definition of dispersal habitat, its technical basis, and what proposals exist to test or clarify that definition?

4. It is generally accepted that there are regional differences in owl habitat and habitat use. What management flexibility might be crafted from this variable habitat/use pattern and incorporated into a new set of conservation strategies?

SURVEYS

1. How current are your data on northern spotted owl locations and habitat associations? On federal lands? On other public (State, Municipal, etc.) lands? On private lands?

2. What is the current survey and monitoring effort for northern spotted owls on federal lands? How does this compare with past (3 to 5 years) survey and monitoring efforts? How does the federal survey effort compare to that on State lands, and on private lands?

3. What portion of federal lands has been surveyed? What portion of State and private lands has been surveyed? Is there a forest type(s) or administrative land classification(s) that represent the majority of unsurveyed lands? (i.e., Has one type been more heavily surveyed in the past?)

SILVICULTURE

1. How will the probability of forest health declines and fire risks be integrated into alternative conservation strategies?

2. What silvicultural treatments have been considered, and what personnel (silviculturists) or data have been consulted to arrive at silvicultural strategies?

RESEARCH/ECOLOGY

1. Recent studies and ecological theory show that wildlife populations in reserved areas are buffered against random demographic failure by sub-populations that exist in habitats outside of the reserved areas. How will these non-reserved (i.e., managed) habitats be recognized in future conservation alternatives?

2. What assumptions were used in calculating estimates of known pairs from all site records, and in the projection of total population estimates from known owls?

3. How has the use of contemporary methods for estimating home range size, such as the adaptive kernel technique, and the core-area concept been explored in locating the most-important habitat within home ranges?

4. To what extent has the USFS and/or BLM implemented adaptive management concepts, that is, simultaneously implementing more than one option to probe for scientific information? Examples would include testing precepts of conservation strategies or testing silvicultural options for creating owl habitat.

5. To what extent were terrain features used in the definition of suitable habitat and home range interpretations?

ANADROMOUS FISH

1. What assurance is there that proposed stream protection actions will:

    a) Restore at-risk fish stocks?
    b) Maintain at-risk fish stocks at present levels?

    Can/will the stream protection actions on federal lands achieve maintenance and/or restoration of at-risk fish stocks without other actions in other portions of the total watershed, estuary, and ocean?

HABITAT

1. What is the habitat assessment (amount of habitat by type, within the median annual home range areas or "circles") of all known owl sites on Federal land? How has this assessment changed in the last three years, or how has this assessment guided the development of recovery strategies?

We know where a lot of owls occur. We have Federal guidance as to the amount and type of habitat thought to be needed to maintain productive spotted owl pairs based on studies of only Federal old growth habitats. Several private landowners have assessed habitat conditions occurring in "circle" areas that affect their lands, and have determined that habitat definition and quantity are extremely variable and not necessarily consistent with federal guidance. Owls are now known to occur in areas not thought likely only a few years ago. The "search image" for likely owl habitat has become younger and more diverse than that previously expected. It would be enlightening to know the extent of change in habitat search image as the result of federal experiences.

2. Recognizing the high frequency of northern spotted owls occurring and successfully reproducing in younger managed forests, what is the current definition of "suitable habitat," what definition was used in the formulation of past and current management and recovery strategies, and what management flexibility is offered for new alternatives with the new, broader, definition of suitable habitat?

In the last three or more years, private-land surveys have documented increasing numbers of successfully reproducing pairs of owls in young managed forests. The definition of "suitable habitat" has therefore been documented to be broader than previously thought, yet reluctance appears to exist in acceptance of this broader definition. Specific forest stand structural criteria used for defining suitable habitat could be useful to establish mutual understanding, and acceptance of habitat variation.

The definition of "suitable habitat" has apparently been unyielding to change. Historically, it was originally believed that few or no owls lived in private, managed forests. When many were found, instead of a broadening of the habitat definition, the claim was made that these birds were not breeding. When these owls were shown to be breeding successfully, the assumption was forwarded that

survivorship in managed stands was likely poor. Since numerous, successfully breeding pairs of owls have been located in young managed, private forests, the definition of suitable habitat commands revision irrespective of the assumption of survivorship.

3. What is the current definition of dispersal habitat, its technical basis, and what proposals exist to test or clarify that definition?

Establishment of a "dispersal matrix" between Designated Conservation Areas is recommended in several owl recovery strategies. Prescribing "50-11-40" as a matrix habitat formula appears to lack technical foundation. There also appears to be no proposal being put forward to test or refine this guideline. A dispersal habitat obligation could prove highly encumbering to land management depending upon its definition. Clarification, technical elaboration, and validation are needed.

4. It is generally accepted that there are regional differences in owl habitat and habitat use. What management flexibility might be crafted from this variable habitat/use pattern and incorporated into a new set of conservation strategies?

While most biologists readily recognize there exist significant differences in northern spotted owl habitat on a regional basis (both on a vegetation/forest type basis and management history basis), which are reflected in differential habitat use by the northern spotted owl, all conservation strategies developed to date apply one fixed set of management protocols across the full range of the owl. Such a fixed solution does not take advantage of the variability demonstrated by the owl.

SURVEYS

1. How current are your data on northern spotted owl locations and habitat associations? On federal lands? On other public (State, Municipal, etc.) lands? On private lands?

2. What is the current survey and monitoring effort for northern spotted owls on federal lands? How does this compare with past (3 to 5 years) survey and monitoring efforts? How does the federal survey effort compare to that on State lands, and on private lands?

3. What portion of federal lands has been surveyed? What portion of State and private lands has been surveyed? Is there a forest type(s) or administrative land classification(s) that represent the majority of unsurveyed lands? (i.e., Has one type been more heavily surveyed in the past?)

The importance of this set of questions is:

1) to determine what data (how current and of what origin) are being used as a basis for formulating alternatives,

2) to demonstrate the declining effort in federal survey efforts, while also determining if the team is fully aware of the extensive survey efforts being conducted by the private sector on its lands and on federal lands.

3) to document previous biases in surveys, and determine the total, as well as habitat specific, areas that remain to be surveyed.

SILVICULTURE

1. How will the probability of forest health declines and fire risks be integrated into alternative conservation strategies?

Recent information from the East-side Cascades and elsewhere indicate that northern spotted owl habitat has developed as a result of 50 years of fire suppression; and that this habitat is highly susceptible to catastrophic fire (25 to 50 year fire cycle; 125 to 150 year catastrophic, stand replacing, fire cycle). Given this information, two management strategies are possible. One is to use prudent, conservative harvest techniques to reduce fuel loadings in these areas while maintaining viable owl habitat post treatment. The other is simply to set aside more land in the hopes not all will burn.

2. What silvicultural treatments have been considered, and what personnel (silviculturists) or data have been consulted to arrive at silvicultural strategies?

Experimentation on private and tribal forest lands is now underway to develop appropriate silvicultural techniques for the manipulation of spotted owl habitat. These techniques have three objectives:

1) To accelerate development of second growth stands to desired future habitat conditions for spotted owl using thinning, pruning, fertilizing, and other proven silvicultural techniques. Since these treatments have been applied to millions of acres of forest lands in the past 25 years, there are data and predictive models available which may be used reliably to predict future stand conditions to assure they are suitable for spotted owl recovery. For example, the combination of thinning, fertilization, and pruning can create stands with the necessary flyways and crown development believed to be necessary for owl dispersal.

2) To provide for at least limited economic opportunities for harvest of merchantable timber in spotted owl areas, while maintaining habitat conditions using partial cutting practices such as "New Forestry," green tree retention, snag retention, and/or coarse woody debris conservation in a conservative harvest prescription.

RESEARCH/ECOLOGY

1. Recent studies and ecological theory show that wildlife populations in reserved areas are buffered against random demographic failure by sub-populations that exist in habitats outside of the reserved areas. How will these non-reserved (i.e., managed) habitats be recognized in future conservation alternatives?

All natural populations are composed of loosely associated sub-populations. The entire set is described as a "metapopulation". Some sub-populations exist in very good habitat conditions, where animal densities are expected to be greatest. Such "source" populations may produce the largest number of juveniles for colonizing vacancies in other sub-populations in poorer habitats, which are called "sinks". Although absolute densities are greater in the habitats for source populations, individual reproductive success within all sub-populations may be equal, due to the equalizing effects of within-population competition for food or other resources. Therefore, sub-populations outside of reserved areas can buffer those in the reserved habitats during occasional periods of poor productivity there.

2. What assumptions were used in calculating estimates of known pairs from all site records, and the projection of total population estimates from known owls?

Sites where owls are detected are not always occupied by owl pairs. For example, some observations, such as in young-forest sites in coastal California, suggest that about 70-80% of "known" owl sites (i.e, locations where 1 or more owls respond to night-time calling) are occupied by territorial pairs. Thus, the total number of known sites might be reduced by 20-30% to estimate the number of sites occupied by pairs. On the other hand, occupancy rates of mixed-conifer forests in Oregon and Washington are over 80%. Further, many sites where single birds respond to calls actually contain pairs in which a non-breeding female may not respond to calls. Thus, using a single rate of occupancy to estimate the total number of pairs across the entire range of the owl may be quite conservative.

Also, some population estimates are made on the basis of survey effort relative to the amount of ostensibly suitable habitat. Such estimates clearly depend upon the definition of habitat used. If the definition of suitable habitat is restrictive, which apparently is the case, then only a conservative estimate of total population is possible from the proportion of habitat surveyed.

3. How has the use of contemporary methods for estimating home range size, such as the adaptive kernel technique, and the core-area concept been explored in locating the most-important habitat within home ranges?

Owl biologists were informed in 1986 that the common method of "minimum convex polygons" (or MCP) to estimate home-range areas was considered obsolete by the scientific community. Several scientific publications have pointed out that MCP consistently over-estimates the total area actually occupied. This occurs because a small percentage of peripheral points cause the estimated home range to increase by as much as 50%. The current recommended methods now include the adaptive kernel technique, which conforms more closely to the areas actually used by animals.

Such methods also provide estimates of areas that contain differing proportions of areas used. For example, adaptive kernel techniques can identify "core areas", which are relatively small areas of intensive use within home ranges. Core areas may contain the habitat conditions that most closely accord with habitat requirements.

4. To what extent has the USFS and/or BLM implemented adaptive management concepts, that is, simultaneously implementing more than one option to probe for scientific information? Examples would include testing precepts of conservation strategies or testing silvicultural options for creating owl habitat.

The prevailing opinion holds that 60-80 years are required to test silvicultural options in currently occupied habitat. Thus, the conservative approach is to preserve old-growth habitats until it is proven that forestry treatments can result in habitat occupied by a viable population of owls. On the other hand, empirical observations have located breeding owl populations in managed forests that were regenerated as little as 30 years ago.

Also, many untested options exist to manipulate 20- or 30-year old forests, which occupy several million acres in the Pacific Northwest and California. For example, pruning and thinning may improve forests in a few years, by making prey available. And under-planting could increase vegetative diversity important to the owl's prey.

Further, the ISC Report recommended <u>active</u> adaptive management, so as to test the 5 basic precepts for the conservation strategy (bigger is better, etc.). Such testing was to provide a rapid means for modifying the strategy with new

information. Several studies have developed information indicating silvicultural intervention is required to maintain owl habitats in some areas (e.g., reduce risk of extensive crown fires). However, there appears to be no modification of the conservation strategy.

5. To what extent were terrain features used in the definition of suitable habitat and home range interpretations?

Any map-based strategy for protecting wildlife associated with late-successional forests must account for the effects of terrain. For example, placing lines around stands of old forests risks failure because it does not recognize that ecosystem productivity and wildlife diversity decrease with increasing elevation. Other examples of this phenomenon are shown by recent scientific studies that were unable to correlate owl reproductive success with amounts of mature and old-growth forest. In those cases, topographic variation was thought to be involved. Thus, using old-growth only to specify wildlife conservation areas constitutes an hypothesis to be tested via adaptive management experiments.

ANADROMOUS FISH

1. What assurance is there that proposed stream protection actions will:

    a) Restore at-risk fish stocks?
    b) Maintain at-risk fish stocks at present levels?

    Can/will the stream protection actions on federal lands achieve maintenance and/or restoration of at-risk fish stocks without other actions in other portions of the total watershed, estuary, and ocean?

Additional actions are needed for significant at-risk fish restoration. It is physically and biologically impossible to increase salmonid survival values for life stages that live within streams on federal forest land (or on federal, state and private forest land) enough to mitigate for more significant mortality factors that occur elsewhere in their life cycles. Proposed actions must relate to realistic limiting factors analyses for fish stocks at-risk. Otherwise we are wasting very limited resources that could better be applied elsewhere.

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PROPOSED SOLUTION

As a result of the Forest Conference on April 2nd of this year, it is clear that the direction from President Clinton is for federal agencies involved to come together and craft a solution to the federal forest management crisis that has gripped the Pacific Northwest for the last five years.

President Clinton made it clear that the solution had to be within the guidelines of existing law, scientifically credible and balance the needs and requirements of people and communities with those of endangered species and ecosystems. It is within the context of those guidelines that the Association of O&C Counties submits the following proposal.

The proposal basically is in the form of a petition for a Section 10 incidental take permit as provided for in the Endangered Species Act (ESA). The petition will, of course, be accompanied by a comprehensive habitat conservation plan (HCP).

Why This Proposal for the O & C Lands?

I. As the attached document entitled "A Brief Description of a Unique Category of Federal Lands" clearly points out, the O&C lands are not, nor were they ever intended to be public lands as defined by the federal government. The O&C lands are special purpose lands and have been so recognized in federal statutes and in federal court rulings.

II. The receipts from the O&C lands are used for general county purposes such as law enforcement, health and social services, veterans service offices, libraries and a host of other county services. This is an important contrast to the dedicated funds received by counties from the federal forest service. Those funds can be used only for the county road

fund and for aid to education. In many counties in Oregon, O&C receipts literally run county government.

How Does a Section 10 Exemption Work?

The incidental take permit provisions of the ESA specify that:

> "(1) The Secretary may permit, under such terms and conditions as he shall prescribe-
> (B) any taking otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity." 16 USCA 1539(a)

The Section 10 process is one of three balancing provisions within the ESA. The other two are the Section 4 Exemption Process and the Section 7 Endangered Species Committee process.

The Legislative History notes that Congress intended the Secretary to use this provision to encourage creative partnerships between the public and private sectors in the interest of species and habitat conservation. 1982 U.S. Code Cong & Adm. News 2871 - 2873.

Congress also recognized that in order to provide sufficient incentives for the private sector to participate in the development of long tern and expensive conservation plans, there must be adequate assurances that the incidental take permit will be available for the length of the project. 1982 U.S. Code Cong & Adm. News 2872.

As a requirement for each permit, the applicant must submit to the Secretary a conservation plan ("Habitat Conservation Plan") that specifies:

> "(i) the impact will likely result from such taking;
> (ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;
> (iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized;

(iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan." 16 USCA 1539(a)(2)(A).

Once the Secretary has received an application and habitat conservation plan, he must provide a public hearing on the plan and make specific findings that:

"(i) the taking will be incidental;
(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
(iii) the applicant will ensure that adequate funding for the plan will be provided;
(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
(v) the measures, if any, required under subparagraph (A)(iv) will be met." 16 USCA 1539(a)(2)(B).

The permit is to include any terms and conditions the Secretary deems necessary or appropriate including reporting requirements. In addition, during development of the San Bruno Mtn (San Mateo County) habitat conservation plan an environmental assessment under NEPA was developed. Friends of Endangered Species v. Jantzen 760 F2d 976, 980 (1985).

In adopting this provision, Congress intended that the Secretary utilize this provision to approve habitat conservation plans that provide long term commitments to conserving listed as well as unlisted species. In the event an unlisted species that is addressed in an approved conservation plan is subsequently listed, no further mitigation requirements should be imposed if the conservation plan covered the conservation of the species and its habitat.

The HCP will provide for the management of the O&C lands on a basis that emphasizes the perpetuation of a forest with old growth characteristics. The plan will incorporate three main elements to achieve this result:

1. Extending the rotation age to a point at which the old growth characteristics of the forest are established for the benefits of the dependent old growth species and ecosystem.

2. Increase the size of the riparian protection corridors to address the concerns of fish and help implement the proposal of connectivity.

3. Reduce the amount of timber harvested to achieve the first two goals and yet still provide for the economic base necessary to sustain the timber dependent communities an counties for which the O&C lands were originally created.

We believe that this proposal follows closely the necessary elements of a solution as presented by the President as he closed the Forest Conference: #1 - a solution should be community based and not driven from the top down, #2 - any solution must meet the guidelines of existing laws, #3 - the solution must be based on credible science and #4 - any solution must address the human dimension of this problem as well as the economic consideration of the region and the entire nation.

Thank you for your consideration.

Sincerely,

Rocky McVay

Rocky McVay
President

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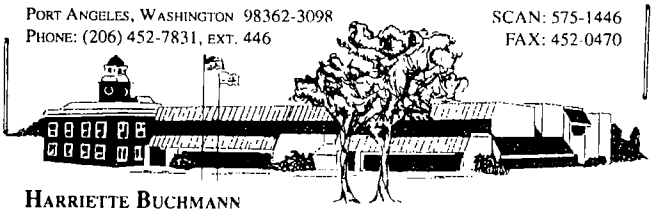

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SKAMANIA COUNTY
TIMBER IMPACTS AND NEEDS

Skamania County is located in southwest Washington State along the Columbia River. It is a rural, timber-based county with a population of 8500. Nearly 80 percent of the county is national forest. Eight percent of the land is in state timber land and 11 percent is in private timberlands. Much of the limited private land in Skamania County is included in the Columbia River Gorge National Scenic Area.

The National Forests have been our lifeblood for decades. They used to provide nearly half the jobs in our workforce, raw materials for our mills, and revenues to local governments and schools. This is now changing.

Skamania County timber industry employment has been reduced from 700 jobs to 200 jobs since the late 1980's. Several mills have closed, including our largest employer, Stevenson Co-Ply. Only one mill remains in operation. Many small logging companies and independent loggers and haulers are also without work. They have been forced to sell their equipment or are struggling to make payments.

The Gifford Pinchot National Forest sold over an average 350 million board feet per year prior to the current forest controversy. While the national forest plans reduced the sale of timber by about 20 percent in the Pacific Northwest, the impact of the environmental decisions reduced the sale of timber in the Gifford Pinchot National Forest to only 25 million board feet in 1992. Mills in the mid-Columbia region of the Pacific Northwest are forced to purchase logs from as far away as Utah.

Historically, Skamania County received an average of 45 percent of its revenues to provide public services and facilities from the Federal Forest. A substantial reduction in timber sales and harvest will significantly reduce county and school revenues. A 50 percent reduction in funds from the federal forest is equal to our total budget for law enforcement, jail services and courts.

Skamania County needs a stable base of revenue to operate County government and the opportunity to diversify its economy. With the large federal and state ownership and the economic restrictions imposed by the National Scenic Area, we have limited opportunity to increase public revenues and diversify. Given these restraints, our economic diversification efforts must be high impact and productive.

We seek minimum federal forest payments to provide adequate public services and funds for infrastructure in our urban areas to build a sufficient economy to provide family-wage employment opportunities for Skamania County citizens.