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**U.S. Department of Agriculture
Office of the Assistant Secretary
Natural Resources and Environment
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TO: Will Stelle

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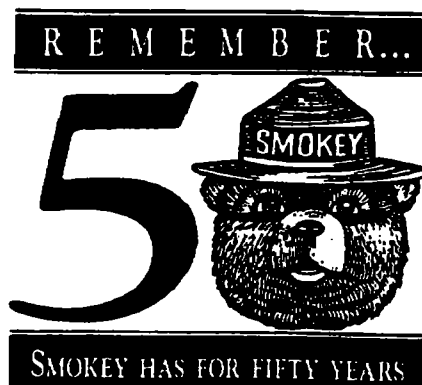
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Language For Inclusion in ROD (USDA 4/8/94 2:00 pm)

a. Diversity Provision and Viability Provision of Fish and Wildlife Resource Regulation

The National Forest Management Act requires the Secretary of Agriculture to promulgate regulations to guide Forest Service planning that "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple use objectives." In accord with this requirement, the Secretary promulgated a regulation for fish and wildlife resources, which provides in part: "Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area."

The Committee of Scientists that provided scientific advice to the Forest Service on the crafting of NFMA regulations stated that "it is impossible to write specific regulations to 'provide for' diversity" and that "there remains a great deal of room for honest debate on the translation of policy into management planning requirements and into management programs" (44 Fed. Reg. 26,600-01 & 26,608).

The courts have recognized that NFMA does not create a concrete standard for diversity within multiple use objectives. (footnote 2) In fact, the court in *SAS v. Mosley* stated that the Forest Service must use common sense and apply its fish and wildlife expertise to prevent the adoption of an owl protection strategy that would extirpate other vertebrate species. The court also stated that, "The Forest Service argues that it should not be required to conduct a viability analysis as to every species. There is no such requirement. As in any administrative field, common sense and agency expertise must be applied." Seattle Audubon Society v. Moseley, 798 F. Supp. at 1490.

Relevant factors include the life history of species, the current amount and distribution of habitat, the amount and distribution of species' ranges within the planning area, and other reasonably foreseeable protective measures. Our approach involves highly technical and complex projections as to which certainty is not possible. There is no way to avoid all risk to the continued persistence of species. Even absent any human-induced effects, the likelihood that habitat will continue to support species' persistence can vary among species. For example, the continued persistence of local rare endemic species whose entire range may comprise only a few acres is intrinsically insecure. Thus, compliance with the fish and wildlife resource regulation is not subject to precise numerical interpretation and cannot be fixed at any one single threshold.

By its own terms, the regulation applies only to vertebrate species. Nevertheless, consistent with the statutory goals of providing for diversity of plant and animal communities and the long-term health of federal forests, as well as the agencies'

conservation policies, our decision satisfies a similar standard with respect to non-vertebrate species to the extent practicable.

Although NFMA regulations apply to lands administered by the Forest Service, the fish and wildlife resource regulation was used as a criterion in the development of the alternative we select today, which includes direction for management of BLM lands. Use of the regulation's goals in developing alternatives served the important policy goal and public interest in protecting the long-term health of all of the forests under federal management within the range of the owl, and the species which inhabit them, in accordance with direction and authority provided in NFMA, the Multiple-Use Sustained-Yield Act, the Federal Land Policy and Management Act, the Oregon and California Lands Act, and the Endangered Species Act. *for BLM*

In making our determination of compliance with the NFMA fish and wildlife resource regulation, we considered all existing or reasonably foreseeable conservation measures. This follows because no one strategy or decision, can for all time provide for the habitat needs of all species that exist in the planning area, especially in light of the dynamic nature both of ecosystems and of our understanding of them. Measures that may be considered include analyses and activities undertaken pursuant to internal policy directives (e.g., the Forest Service's sensitive species program) and steps taken at differing layers of planning. Regardless of the measures in place, actual on-the-ground conditions also should be considered to the extent practicable given available data.

The fish and wildlife resource regulation does not require species-specific assessments to support a finding that a proposal is consistent with its terms. Rather, in accord with the theme of ecosystem management, in making such a finding a decision-maker may place reasonable reliance upon assessments of (1) species with habitat needs that are essentially the same; (2) a group of species generally thought to perform the same or similar ecosystem functions; and/or (3) the continued integrity and function of ecosystem(s) in which a species is found. Flexibility in selecting methodology is especially appropriate in this context, given the expertise and knowledge of local forest officials concerning the lands they manage, the variety of complex issues involved, and the often-limited resources available. For example, the Assessment Team's approach to evaluating the alternatives, while sound, is not a controlling precedent for how such assessments need to be conducted in the future. Such an approach, which endeavored to identify and assess impacts on more than one thousand species associated with late-successional forest ecosystems, has been unique, in part because it was designed to address specific court-identified deficiencies in previous planning efforts. *A useful tool*

Based on the statute, regulation, case law, and examination of the record, we find that this decision satisfies the requirement of the statute and its implementing regulation because it will provide an amount and distribution of habitat adequate to support the

will *findings and all of the*

continued persistence of the vertebrate species in the planning area. [We also found that the standards and guidelines do not jeopardize the continued existence of any listed species.] We also find that our adoption of these standards and guidelines will not jeopardize the continued existence of any listed pursuant to Section 7 of the Endangered Species Act. We base our *findings* *altern* on the following evidence contained in the record.

First, our decision results in approximately 80 percent of the approximately 8.5 million acres of medium and large late-successional conifer forests in the planning area being within land allocations that do not allow for programmed timber harvest (FSEIS at 3&4-41). In addition, some forty-two percent of the areas within the LSRs to be designated under our decision are dominated by such forest types. LSRs provide for large contiguous blocs in which silvicultural treatments are severely limited, and thus, protect against potential adverse effects thought to result from fragmentation and edge effects on species associated with late-successional and old-growth forest habitat. The Assessment Team gave strong marks to the original version of Alternative 9 regarding the projected likelihood that it would provide for late-successional forest ecosystem conditions representative of a hypothesized long-term average. Our decision contains measures in addition to those in the original Alternative 9 that are likely to further enhance the attributes of late-successional and old-growth forest ecosystems (FSEIS at 3&4-49). Thus, we find our decision provides for the maintenance of a functional and inter-connected late-successional forest ecosystems within the planning area.

Second, the aquatic and riparian subsystems within the range of the owl also receive significant protection under our decision. It places all riparian areas -- including rivers, streams, wetlands, lakes, and ponds -- within variously-sized reserves (FSEIS at 3&4-66). The minimum widths of the reserves range from 100 to 300 feet on each side of the applicable riparian area depending upon the type of area they are designed to protect, and total approximately 2.6 million acres in the aggregate (FSEIS at 2-39). The standards and guidelines for Riparian Reserves do not allow proposed projects to proceed within reserve boundaries unless they will serve the goal of restoring or maintaining the ecological function and processes of watersheds and aquatic ecosystems within natural disturbance criteria. The Assessment Team concluded that Alternative 9 as originally designed would work to reverse the trend of degradation and begin recovery of aquatic ecosystems on federal lands within the range of the owl (FSEIS at 3&4-65). Our decision provides even greater protection to aquatic ecosystems.

Third, our decision provides habitat of an amount and distribution to support the continued persistence of the northern owl. The owl is particularly important to our analysis because its range defines the planning area for our decision, it is a threatened species under ESA, and more data exist concerning it than for any other species in the planning area. Of the nearly 7.5 million acres of extant suitable owl

habitat on federal lands within the planning area, the selected alternative protects all but about fifteen percent from programmed timber harvest (FSEIS at 3&4-222). Our decision also contains elements that provide for owl dispersal habitat, including the widest riparian reserves of those considered and allocation of Managed Late-Successional Areas, which protect the activity centers of known owl pairs and resident single owls in the matrix (FSEIS at 3&4-242).

We acknowledge that our decision does not prohibit all harvest of suitable owl habitat. Approximately two and one-half percent of the extant amount of habitat likely will be harvested per decade in light of the matrix lands allocated under our decision. Some have opined that this level of harvest of owl habitat -- indeed, any level of harvest of owl habitat -- ought not be permitted and take the view that Alternative 9 inadequately supports the owl's continued persistence. We have considered carefully such views, and the data upon which they are based. While some recent results call for a certain amount of caution, they do not compel a moratorium on all further harvest of suitable owl habitat (FSEIS at 3&4-229 - 3&4-235). Our decision today reflects a conservative approach, allowing for a limited amount of harvest of owl habitat in matrix lands while protecting large reserve areas from programmed timber harvest.

There is one other ESA-listed species directly associated with late-successional and old-growth forests that exists in the planning area, and thus, deserves special mention: the marbled murrelet. Under our decision, less than ten percent of the more than 2.5 million acres of suitable murrelet nesting habitat is in the matrix (FSEIS at 3&4-222). Even that habitat in the matrix will be protected from harvest as an LSR under our decision if determined to be occupied in mandatory pre-project surveys (FSEIS at 2-28).

A variety of vertebrate species that use early-successional forests as primary habitat also exist in the planning area (FSEIS at 3&4-203). Although our decision primarily provides standards and guidelines for management of habitat of species associated with late-successional forests, it provides for the continued persistence of species that use early-successional habitat. The amount of early-successional forest in the planning area probably is greater now than at any time in the past (FSEIS at 3&4-203). Our decision provides for additional early-successional forest through allowance of harvest of some late-successional forest stands in the matrix.

Eighty-seven other vertebrate species, races, or groups were assessed in addition to the owl and murrelet in the process leading up to this decision. The Assessment Team projected that, with just three exceptions, Alternative 9, as originally designed, would have a high likelihood of providing habitat to support stable populations of each of these vertebrates, either well-distributed when measured against their historic range on federal lands or with significant gaps in that range (FSEIS at 3&4-174, 3&4-179, 3&4-184, 3&4-188, & 3&4-197). That gaps may exist in species' historic distributions under our decision does not render the decision inconsistent with the fish and wildlife

resource regulation, especially because most such gaps are already present. Distribution cannot be evaluated on a monolithic scale for all species.

The three vertebrates that do not fit within the category described above are all amphibians: (1) the Columbia torrent salamander; (2) the Coastal and Olympic Peninsula populations of the Van Dyke's salamander; and (3) the Shasta salamander (FSEIS at 3&4-174). The first two of these exist almost exclusively on nonfederal land. Our decision meets the objective of the fish and wildlife resource regulation with respect to these three species because, of the amount and distribution of habitat to support their continued persistence on all lands, the decision provides a portion that is roughly commensurate with, or greater than, the fraction of the species' range in the planning area.

The Shasta salamander is an extremely local endemic whose habitat sites are essentially fully protected by our decision. Given its limited range, there is no way our decision can minimize the risk of extirpation of this species from federal lands. In the context of the natural bounds on the range of this salamander and in light of research showing that the presence of rare local endemic species generally is consistent with diverse ecosystems, we find that our approach complies with the fish and wildlife resource regulation.

April 8, 1994

Will Stelle

Some additional points requiring confirmation or change:

- Ski areas (for S&Gs, not ROD). SEIS team has proposal. Lyons will have counter -- today, we are told.
- Sweet Home. We used DOJ language. Leshy looking at it.
- Timber sales. Lisa F. and timber staffs preparing language re sales under consultation. Apparently 318 sales will be dealt with separately from ROD.
- Comment on p. 69 of ROD with blank. Language coming from SEIS over weekend.
- FWS letter re reinitiation of consultation. DOJ working with Cay Ogden and Ron Swann on draft.
- FACA letter. Leshy will have draft Monday.
- Attachment B. Check with timber sale people as to whether there will be a list of sales.
- Justice does not like simple conclusory statements on interim watershed analysis and arthropod change re S&M. Monday we will discuss with SEIS team whether we can improve.

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1. WABURY

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ROD

NFMA is an amendment to the Forest and Rangeland Renewable Resources Planning Act. In NFMA Congress established a comprehensive notice and comment process for adopting, amending and revising land and resource management plans ("forest plans") for units of the National Forest System. At the time of enactment of NFMA, ecological concepts and practices did not address ecosystem scales of the magnitude dealt with in this decision. The 24.5 million acres of land administered by the federal government within the range of the northern spotted owl is far beyond the "planning unit" focus of NFMA. 16 U.S.C. §§ 1604 and 1611.

The approval of a forest plan establishes direction so that all future decisions in the planning area will include an "interdisciplinary approach to achieve integrated consideration of physical, biological, economic and other sciences." 16 U.S.C. § 1604. The forest plan provides direction to assure coordination of multiple-uses (outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness) and sustained yield of products and services.

Within the range of the northern spotted owl there are lands that will be administered pursuant to two regional guides and nineteen forest plans. Under Forest Service planning regulations, National Forest planning and decision-making occurs at four levels: nationwide, regionwide, forest plan, and project.

Planning is continuous at each level and between the levels rather than sequential. Continuous monitoring, evaluation and adjustment through amendment and revision is required by NFMA for forest plans. Despite the multiple levels of disclosure, all activities remain subject to site-specific and continuing compliance with federal environmental law such as the Endangered Species Act, National Environmental Policy Act, Clean Water Act, Clean Air Act and others.

**a. Diversity Provision and Viability Provision
of Fish and Wildlife Resource Regulation**

(b)(3)(B) The National Forest Management Act requires the Secretary of Agriculture to promulgate regulations to guide Forest Service planning that "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives." 16 U.S.C. § 1604. In accord with this requirement, the Secretary promulgated a regulation for fish and wildlife resources, which provides in part: "Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area." 36 C.F.R. § 219.19. We find that this decision satisfies the requirement of the statute and its implementing regulation because it will provide an amount and distribution of habitat adequate to support the continued persistence of the vertebrate species in the planning area.

One of the statutory requirements is "specifying guidelines for land management plans developed to achieve the goals of the Program which

to address this diversity requirement,

Because of the enormous complexity and dynamic nature of the ecosystems managed under the NFMA, there is no specific or precise standard or technique for satisfying these requirements, as recognized by the scientific community and

The Committee of Scientists that provided scientific advice to the Forest Service on the crafting of NFMA regulations stated that "it is impossible to write specific regulations to 'provide for' diversity" and "there remains a great deal of room for honest debate on the translation of policy into management planning requirements and into management programs" (44 Fed. Reg. 26,600-01 & 26,608). Flexibility is needed in the manner by which the fish and wildlife resource regulation is implemented, and the use of different approaches is appropriate depending upon the particular context of its application.

Relevant factors include the life history of species, the current amount and distribution of habitat, the amount and distribution of species' ranges within the planning area, and other reasonably foreseeable protective measures. Our approach involves complex projections regarding the likely fate of species over the next 50 to 100 years, or more; certainty is not possible. There is no way to avoid all risk to the continued persistence of species. Even absent any human-induced effects, the likelihood that habitat will continue to support species' persistence can vary among species. For example, the continued persistence of local rare endemic species whose entire range may comprise only a few acres is intrinsically insecure. Thus, compliance with the regulation is not subject to precise numerical interpretation and cannot be fixed at any one single threshold.

By its own terms, the regulation applies only to vertebrate species. Nevertheless, consistent with the statutory goals of providing for diversity of plant and animal communities and the long-term health of federal forests, as well as the agencies' conservation policies, our decision satisfies a similar standard with respect to non-vertebrate species to the extent practicable.

Although NFMA regulations apply to lands administered by the Forest Service, the fish and wildlife resource regulation was used as a criterion in the development of the alternative we select today, which includes direction for management of BLM lands. Use of the regulation's goals in developing alternatives served the important policy goal of protecting the long-term health of all of the federal forests within the range of the owl and the species that inhabit them. This is in accordance with direction and authority provided in ~~NFMA~~, the Multiple-Use Sustained-Yield Act, the Federal Land Policy and Management Act, the Oregon and California Lands Act, and the Endangered Species Act.

In making a determination of compliance with the NFMA fish-and-wildlife resource regulation, we ~~may consider~~ existing or reasonably foreseeable conservation measures. No one strategy or decision can for all time provide for the habitat needs of all species that exist in the planning area, especially in light of the dynamic nature both of ecosystems and of our understanding of them. Measures that may be considered include analyses and activities undertaken pursuant to internal policy directives (e.g., the Forest Service's sensitive species program) and

Relevant factors include the life history of species, the current amount and distribution of habitat, the amount and distribution of species' ranges within the planning area, and other reasonably foreseeable protective measures. Our approach involves highly technical and complex projections as to which certainty is not possible. There is no way to avoid all risk to the continued persistence of species. Even absent any human-induced effects, the likelihood that habitat will continue to support species' persistence can vary among species. For example, the continued persistence of local rare endemic species whose entire range may comprise only a few acres is intrinsically insecure. Thus, compliance with the fish and wildlife resource regulation is not subject to numerical interpretation and cannot be fixed at any single threshold.

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Although NFMA regulations apply to lands administered by the Forest Service, the fish and wildlife resource regulation was used as a criterion in the development of the alternative we select today, which includes direction for management of BLM lands. Use of the regulation's goals in developing alternatives for BLM served the important policy goal and public interest in protecting the long-term health of all of the forests under federal management within the range of the owl, and the species which inhabit them, in accordance with direction and authority provided in NFMA, the Multiple-Use Sustained-Yield Act, the Federal Land Policy and Management Act, the Oregon and California Lands Act, and the Endangered Species Act.

In making our determination of compliance with the NFMA fish and wildlife resource regulation, we considered all existing or reasonably foreseeable conservation measures. ~~This follows because~~ no one strategy or decision can for all time provide for the habitat needs of all species that exist in the planning area, especially in light of the dynamic nature both of ecosystems and of our understanding of them. Measures that may be considered include analyses and activities undertaken pursuant to internal policy directives (e.g., the Forest Service's sensitive species program) and steps taken at differing layers of planning. Regardless of the measures in place, actual on-the-ground conditions also should be considered to the extent practicable given available data.

The fish and wildlife resource regulation does not require species-specific assessments to support a finding that a proposal is consistent with its terms. Rather, in accord with the theme of ecosystem management, in making such a finding a decision-maker may place reasonable reliance upon assessments of (1) species with habitat needs that are essentially the same; (2) a group of species generally thought to perform the same or similar ecosystem functions; or (3) the continued integrity and

proceed within reserve boundaries unless they will serve the goal of restoring or maintaining the ecological function and processes of watersheds and aquatic ecosystems within natural disturbance criteria. The Assessment Team concluded that Alternative 9 as originally designed would work to reverse the trend of degradation and begin recovery of aquatic ecosystems on federal lands within the range of the owl (FSEIS at 3&4-65). Our decision provides even greater protection to aquatic ecosystems.

Third, our decision provides habitat of an amount and distribution to support the continued persistence of the northern owl. The owl is particularly important to our analysis because its range defines the planning area for our decision, it is a threatened species under ESA, and more data exist concerning it than for any other species in the planning area. Of the nearly 7.5 million acres of extant suitable owl habitat on federal lands within the planning area, the selected alternative protects all but about fifteen percent from programmed timber harvest (FSEIS at 3&4-222). Our decision also contains elements that provide for owl dispersal habitat, including the widest riparian reserves of those considered and allocation of Managed Late-Successional Areas, which protect the activity centers of known owl pairs and resident single owls in the matrix (FSEIS at 3&4-242).

→ We acknowledge that our decision does not prohibit all harvest of suitable owl habitat. Approximately two and one-half percent of the extant amount of habitat likely will be harvested per decade in light of the matrix lands allocated under our decision. Some have opined that this level of harvest of owl habitat -- indeed, any level of harvest of owl habitat -- ought not be permitted and take the view that Alternative 9 inadequately supports the owl's continued persistence. We have considered carefully such views, and the data upon which they are based. While some recent results call for a certain amount of caution, they do not compel a moratorium on all further harvest of suitable owl habitat (FSEIS at 3&4-229 - 3&4-235). Our decision today reflects a conservative approach, allowing for a limited amount of harvest of owl habitat in matrix lands while protecting large reserve areas from programmed timber harvest.

There is one other ESA-listed species directly associated with late-successional and old-growth forests that exists in the planning area, and thus, deserves special mention: the marbled murrelet. Under our decision, less than ten percent of the more than 2.5 million acres of suitable murrelet nesting habitat is in the matrix (FSEIS at 3&4-222). Even that habitat in the matrix will be protected from harvest as an LSR under our decision if determined to be occupied in mandatory pre-project surveys (FSEIS at 2-28).

A variety of vertebrate species that use early-successional forests as primary habitat also exist in the planning area (FSEIS at 3&4-203). Although our decision primarily provides standards and guidelines for management of habitat of species associated with late-successional forests, it provides for the continued persistence of species that

use early-successional habitat. The amount of early-successional forest in the planning area probably is greater now than at any time in the past (FSEIS at 3&4-203). Our decision provides for additional early-successional forest through allowance of harvest of some late-successional forest stands in the matrix.

Eighty-seven other vertebrate species, races, or groups were assessed in addition to the owl and murrelet in the process leading up to this decision. The Assessment Team projected that, with just three exceptions, Alternative 9, as originally designed, would have a high likelihood of providing habitat to support stable populations of each of these vertebrates, either well-distributed when measured against their historic range on federal lands or with significant gaps in that range (FSEIS at 3&4-174, 3&4-179, 3&4-184, 3&4-188, & 3&4-197). That gaps may exist in species' historic distributions under our decision does not render the decision inconsistent with the fish and wildlife resource regulation, especially because most such gaps are already present. Distribution cannot be evaluated on a monolithic scale for all species.

The three vertebrates that do not fit within the category described above are all amphibians: (1) the Columbia torrent salamander; (2) the Coastal and Olympic Peninsula populations of the Van Dyke's salamander; and (3) the Shasta salamander (FSEIS at 3&4-174). The first two of these exist almost exclusively on nonfederal land. Our decision meets the objective of the fish and wildlife resource regulation with respect to these three species because, of the amount and distribution of habitat to support their continued persistence on all lands, the decision provides a portion that is roughly commensurate with the portion of the species' range in the planning area.

The Shasta salamander is an extremely local endemic whose habitat sites are essentially fully protected by our decision. Given its limited range, there is no way our decision can minimize the risk of extirpation of this species from federal lands. In the context of the natural bounds on the range of this salamander and in light of research showing that the presence of rare local endemic species generally is consistent with diverse ecosystems, we find that our approach complies with the fish and wildlife resource regulation.

AG OGC

Language For Inclusion in ROD (USDA 4/8/94 5:00 pm)

a. Diversity Provision and Viability Provision
of Fish and Wildlife Resource Regulation

The National Forest Management Act requires the Secretary of Agriculture to promulgate regulations to guide Forest Service planning. *One of the statutory requirements is "specifying guidelines for land management plans developed to achieve the goals of the program which provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple use objectives."* ..(B) 16 USC § 1604 (g)(3)(B). In accord with NFMA, the Secretary promulgated regulations which address the diversity provision. ~~this requirement, the Secretary promulgated a regulation for fish and wildlife resources, which provides in part: "Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area."~~ *that*

The Committee of Scientists that provided scientific advice to the Forest Service on the crafting of NFMA regulations stated that "it is impossible to write specific regulations to 'provide for' diversity" and that "there remains a great deal of room for honest debate on the translation of policy into management planning requirements and into management programs" (44 Fed. Reg. 26,600).

We agree with the courts that have recognized that NFMA does not create a concrete standard for diversity.¹ In fact, the court in Seattle Audubon Society v. Moseley (W.D. Wash. 1992) stated that the Forest Service must use common sense and apply its fish and wildlife expertise to prevent the adoption of an owl protection strategy that would extirpate other vertebrate species. The court also stated that, "The Forest Service argues that it should not be required to conduct a viability analysis as to every species. There is no such requirement. As in any administrative field, common sense and agency expertise must be applied."

¹ See also Sierra Club v. Robertson, 784 F. Supp. 593, 609 (W.D. Ark. 1991); Sierra Club v. Robertson, 810 F. Supp. 1021, 1027-28 (W.D. Ark. 1992, on appeal to Eighth Circuit); ONRC v. Lowe, 836 F. Supp. 727 (D. Ore. 1993, on appeal to the Ninth Circuit); Glisson v. USFS (S.D. Ill. August 26, 1993, on appeal to the Seventh Circuit); Sierra Club v. Marita (E.D. Wisc. February 9, 1994, on appeal to the Seventh Circuit); Kirchbaum v. Kelly (W.D. Va., February 9, 1994); Sierra Club v. Robertson (E.D. Wisc. March 7, 1994, on appeal to the Seventh Circuit), Sierra Club v. Robertson (S.D. Ohio, March 11, 1994).

Relevant factors include the life history of species, the current amount and distribution of habitat, the amount and distribution of species' ranges within the planning area, and other reasonably foreseeable protective measures. Our approach involves highly technical and complex projections as to which certainty is not possible. There is no way to avoid all risk to the continued persistence of species. Even absent any human-induced effects, the likelihood that habitat will continue to support species' persistence can vary among species. For example, the continued persistence of local rare endemic species whose entire range may comprise only a few acres is intrinsically insecure. Thus, compliance with the fish and wildlife resource regulation is not subject to numerical interpretation and cannot be fixed at any single threshold.

By its own terms, the regulation applies only to vertebrate species. Nevertheless, consistent with the statutory goals of providing for diversity of plant and animal communities and the long-term health of federal forests, as well as the agencies' conservation policies, our decision satisfies a similar standard with respect to non-vertebrate species to the extent practicable.

Although NFMA regulations apply to lands administered by the Forest Service, the fish and wildlife resource regulation was used as a criterion in the development of the alternative we select today, which includes direction for management of BLM lands. Use of the regulation's goals in developing alternatives for BLM served the important policy goal and public interest in protecting the long-term health of all of the forests under federal management within the range of the owl, and the species which inhabit them, in accordance with direction and authority provided in NFMA, the Multiple-Use Sustained-Yield Act, the Federal Land Policy and Management Act, the Oregon and California Lands Act, and the Endangered Species Act.

In making our determination of compliance with the NFMA fish and wildlife resource regulation, we considered all existing or reasonably foreseeable conservation measures. This follows because no one strategy or decision can for all time provide for the habitat needs of all species that exist in the planning area, especially in light of the dynamic nature both of ecosystems and of our understanding of them. Measures that may be considered include analyses and activities undertaken pursuant to internal policy directives (e.g., the Forest Service's sensitive species program) and steps taken at differing layers of planning. Regardless of the measures in place, actual on-the-ground conditions also should be considered to the extent practicable given available data.

The fish and wildlife resource regulation does not require species-specific assessments to support a finding that a proposal is consistent with its terms. Rather, in accord with the theme of ecosystem management, in making such a finding a decision-maker may place reasonable reliance upon assessments of (1) species with habitat needs that are essentially the same; (2) a group of species generally thought to perform the same or similar ecosystem functions; or (3) the continued integrity and

function of ecosystems in which a species is found. Flexibility in selecting methodology is especially appropriate in this context, given the expertise and knowledge of local forest officials concerning the lands they manage, the variety of complex issues involved, and the often-limited resources available. For example, the Assessment Team's approach to evaluating the alternatives, while sound, is not a controlling precedent for how such assessments need to be conducted in the future. Such an approach, which endeavored to identify and assess impacts on more than one thousand species associated with late-successional forest ecosystems, has been unique, in part because it was designed to address specific court-identified deficiencies in previous planning efforts.

Based on the statute, regulation, case law, and examination of the record, we find that this decision satisfies the requirement of the statute and its implementing regulation because it will provide an amount and distribution of habitat adequate to support the continued persistence of the vertebrate species in the planning area. We also find that our adoption of these standards and guidelines will not jeopardize the continued existence of any listed under the Endangered Species Act. We base our determinations on the following findings and all of the evidence contained in the record.

First, our decision results in approximately 80 percent of the approximately 8.5 million acres of medium and large late-successional conifer forests in the planning area being within land allocations that do not allow for programmed timber harvest (FSEIS at 3&4-41). In addition, some forty-two percent of the areas within the LSRs to be designated under our decision are dominated by such forest types. LSRs provide for large contiguous blocs in which silvicultural treatments are severely limited, and thus, protect against potential adverse effects thought to result from fragmentation and edge effects on species associated with late-successional and old-growth forest habitat. The Assessment Team gave strong marks to the original version of Alternative 9 regarding the projected likelihood that it would provide for late-successional forest ecosystem conditions representative of a hypothesized long-term average. Our decision contains measures in addition to those in the original Alternative 9 that are likely to further enhance the attributes of late-successional and old-growth forest ecosystems (FSEIS at 3&4-49). Thus, we find our decision provides for the maintenance of a functional and interconnected late-successional forest ecosystems within the planning area.

Second, the aquatic and riparian subsystems within the range of the owl also receive significant protection under our decision. It places all riparian areas -- including rivers, streams, wetlands, lakes, and ponds -- within variously-sized reserves (FSEIS at 3&4-66). The minimum widths of the reserves range from 100 to 300 feet on each side of the applicable riparian area depending upon the type of area they are designed to protect, and total approximately 2.6 million acres in the aggregate (FSEIS at 2-39). The standards and guidelines for Riparian Reserves do not allow proposed projects to

proceed within reserve boundaries unless they will serve the goal of restoring or maintaining the ecological function and processes of watersheds and aquatic ecosystems within natural disturbance criteria. The Assessment Team concluded that Alternative 9 as originally designed would work to reverse the trend of degradation and begin recovery of aquatic ecosystems on federal lands within the range of the owl (FSEIS at 3&4-65). Our decision provides even greater protection to aquatic ecosystems.

Third, our decision provides habitat of an amount and distribution to support the continued persistence of the northern owl. The owl is particularly important to our analysis because its range defines the planning area for our decision, it is a threatened species under ESA, and more data exist concerning it than for any other species in the planning area. Of the nearly 7.5 million acres of extant suitable owl habitat on federal lands within the planning area, the selected alternative protects all but about fifteen percent from programmed timber harvest (FSEIS at 3&4-222). Our decision also contains elements that provide for owl dispersal habitat, including the widest riparian reserves of those considered and allocation of Managed Late-Successional Areas, which protect the activity centers of known owl pairs and resident single owls in the matrix (FSEIS at 3&4-242).

We acknowledge that our decision does not prohibit all harvest of suitable owl habitat. Approximately two and one-half percent of the extant amount of habitat likely will be harvested per decade in light of the matrix lands allocated under our decision. Some have opined that this level of harvest of owl habitat -- indeed, any level of harvest of owl habitat -- ought not be permitted and take the view that Alternative 9 inadequately supports the owl's continued persistence. We have considered carefully such views, and the data upon which they are based. While some recent results call for a certain amount of caution, they do not compel a moratorium on all further harvest of suitable owl habitat (FSEIS at 3&4-229 - 3&4-235). Our decision today reflects a conservative approach, allowing for a limited amount of harvest of owl habitat in matrix lands while protecting large reserve areas from programmed timber harvest.

There is one other ESA-listed species directly associated with late-successional and old-growth forests that exists in the planning area, and thus, deserves special mention: the marbled murrelet. Under our decision, less than ten percent of the more than 2.5 million acres of suitable murrelet nesting habitat is in the matrix (FSEIS at 3&4-222). Even that habitat in the matrix will be protected from harvest as an LSR under our decision if determined to be occupied in mandatory pre-project surveys (FSEIS at 2-28).

A variety of vertebrate species that use early-successional forests as primary habitat also exist in the planning area (FSEIS at 3&4-203). Although our decision primarily provides standards and guidelines for management of habitat of species associated with late-successional forests, it provides for the continued persistence of species that

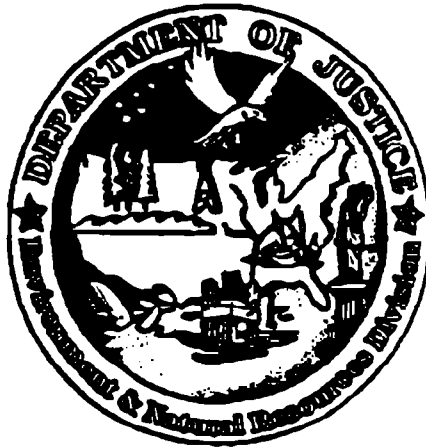
use early-successional habitat. The amount of early-successional forest in the planning area probably is greater now than at any time in the past (FSEIS at 3&4-203). Our decision provides for additional early-successional forest through allowance of harvest of some late-successional forest stands in the matrix.

Eighty-seven other vertebrate species, races, or groups were assessed in addition to the owl and murrelet in the process leading up to this decision. The Assessment Team projected that, with just three exceptions, Alternative 9, as originally designed, would have a high likelihood of providing habitat to support stable populations of each of these vertebrates, either well-distributed when measured against their historic range on federal lands or with significant gaps in that range (FSEIS at 3&4-174, 3&4-179, 3&4-184, 3&4-188, & 3&4-197). That gaps may exist in species' historic distributions under our decision does not render the decision inconsistent with the fish and wildlife resource regulation, especially because most such gaps are already present. Distribution cannot be evaluated on a monolithic scale for all species.

The three vertebrates that do not fit within the category described above are all amphibians: (1) the Columbia torrent salamander; (2) the Coastal and Olympic Peninsula populations of the Van Dyke's salamander; and (3) the Shasta salamander (FSEIS at 3&4-174). The first two of these exist almost exclusively on nonfederal land. Our decision meets the objective of the fish and wildlife resource regulation with respect to these three species because, of the amount and distribution of habitat to support their continued persistence on all lands, the decision provides a portion that is roughly commensurate with the portion of the species' range in the planning area.

The Shasta salamander is an extremely local endemic whose habitat sites are essentially fully protected by our decision. Given its limited range, there is no way our decision can minimize the risk of extirpation of this species from federal lands. In the context of the natural bounds on the range of this salamander and in light of research showing that the presence of rare local endemic species generally is consistent with diverse ecosystems, we find that our approach complies with the fish and wildlife resource regulation.

**DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES DIVISION**



GENERAL LITIGATION SECTION

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272-5775 (8th floor)
724-5836 (5th floor)

DATE 4/13/94 Confirmation # (202) 272-8056

PLEASE DELIVER TO: WILL STELLER 456-2710
Jim Pipkin 219-1220

FROM Ellen Athas

NUMBER OF PAGES (INCLUDING COVER SHEET): 3

TELEFAX #: _____

CONFIRMATION#: _____

MESSAGE: _____

TO: JIM PIPKIN
WILL STELLE

FROM: ELLEN ATHAS

RE: FINAL DRAFT VERSION OF ROD

PAGE 14, "Sold but unawarded" references under C. and I. should be changed to "auctioned, but unawarded" for clarity. If that can't be accomplished, we'll make the arguments in our briefs at a future time.

PAGE 43, footnote 3: proposition for which cases are cited is so general and innocuous that it is probably not a problem to say that ~~cases~~ support it; nevertheless, we recommend deleting footnote because string citations are out-of-place in ROD and unnecessary because the point is made for purposes of the ROD whether the cases are cited to or not.

PAGE 44, fourth paragraph, line 5: please insert "and sustainability" after "long-term health" (to be consistent with and lend support to O&CLA argument)

PAGE 64, third paragraph under response to comment 10: please replace sentence beginning with "The results generally support . . ." with "The results are consistent with and generally lend support to the hypothesis that the owl reasonably may be expected to achieve population stability across much of its range notwithstanding additional loss of its habitat at a conservative rate such as that projected to occur under our decision."

PAGE 70-71, on response to comment on paper by Lande et al., please make following changes:

(1) Replace third sentence with "some scientists, including those who have been involved with this planning initiative, continue to express confidence that the owl population is in a condition that will allow it to survive the transition period until it reaches a new, stable equilibrium under a constrained level of timber harvest."

(2) Replace fourth sentence with following: "While not immune to the fact that the results of demographic analyses indicate the owl faces some degree of risk, including that of extirpation, they nevertheless take the view that strong reasons exist to believe that owl populations will stabilize at adequate levels of wide distribution across federal lands under our decision."

(3) Add following sentence after previous sentence: "A useful and thoughtful analysis of the relevant factors is set forth at pages 3&4 - 229, 3&4 - 235 of the Final SEIS."

(4) Delete last sentence of draft response beginning "This will provide adequate time. . . ."

(b) Change "lower timber harvest" to "timber harvest" in 1st line of p.71.

Thanks for considering these.

From: K.Denton 3/28/94

To: Tom Tuchmann

Regarding: Nature Conservancy letter of March 7, with your 4 questions attached.

Tom: I've discussed each of your four questions below, and also attached a letter and maps from the Forest to the Nature Conservancy which already answers most of their questions and points out substantial errors in the Nature Conservancy maps. I've also enclosed our official SEIS land allocation map for this area, which supports the Forest's letter. At the end of this document, I suggest wording for a letter back to the Nature Conservancy.

I am wondering, however, how this letter is different from the 130-odd other letters received during the 30 days following publication of the FSEIS, and for which a process was discussed on the conference call today. The public is invited to write to the decision-maker during this period, and certainly this falls into that category. These should be channeled into one process for consideration, rather than being pursued by each addressee and staff.

Questions:

1. Can you find out status of this area?

The enclosed letter from the Forest does an excellent job of explaining this, and their letter is supported by the GIS map enclosed (34"X48"). The Nature Conservancy map contains numerous factual errors, and has the acreage wrong.

2. Can you find out [if there are] any additional protections?

Again the enclosed letter from the Forest deals with this point. Also, my answer to #3 below addresses this question as well. Yes, there are substantial protections for this area, as well as Wild and Scenic River planning processes in place. The Conservancy's depiction that the choices are only 36,000 acres of clearcuts or Alternative 9 Reserves is cheap scare tactics and insulting to current forest plans and managers.

3. Can you find out why the area wasn't included?

The public has had a difficult time understanding that Alternative 9 Standards and Guidelines overlay existing Forest Plan direction, and provide standards and guidelines specific to habitat for old-growth and late-successional forest related species only. This document does not replace Forest plans and other management direction, but rather it amends that direction. It is not a planning document to do all Forest Plan decisions, but rather simply to add standards and guidelines for management of habitat for late-successional and old-growth forest related species. To go farther would be outside the scope of the analysis, outside the scope of the SEIS, outside the range of alternatives considered, and certainly outside what we told the public they were commenting upon. The "reserves" of Alternative 9 cannot be used to "protect" trails, roadless areas, viewsheds, etc. etc.

The particular proposal by the Nature Conservancy relative to the Skagit River area appears

inappropriate for an Alternative 9 "reserve" because:

a) Bald Eagles are not typically regarded as a species most favored by undisturbed old-growth. The inclusion of a bald eagle management area within a reserve brought forth an outcry from the Winema National Forest for example, who said they could not manage the nest stands of open-grown, large trees in accordance with the bald eagle recovery plan, if they were restricted to Late-Successional Reserve standards and guidelines. Another Forest similarly suggested that Late-Successional Reserve standards and guidelines restricted exercise of the purpose of Research Natural Areas. For this reason, the standards and guidelines now say "Research Natural Areas and activities required by recovery plans for listed threatened and endangered species take precedence over Late-Successional Reserve standards and guidelines" (FSEIS 2-23).

b) A system of Key Watershed was identified under Alternative 9 where those watersheds contributed to fish stocks of concern, or were sources of high quality water. Watershed protection was also accorded ALL OTHER WATERSHEDS through the use of wide Riparian Reserves, matrix standards and guidelines, watershed analysis, and so forth, not to mention already existing protections which in this case includes all the protection and planning accorded a Wild and Scenic River. Expansion of Key Watersheds to this area for the reasons given in the March 7 letter is not justified nor consistent with the objectives, analysis, or balance in Alternative 9, and would be to ignore existing protections as well as current management efforts by the Forest.

c) The Wild and Scenic River designation, if it permits continued timber harvest as prescribed under the Forest Plan, is likely for the Wild and Scenic River category of "Recreation". It is not appropriate to say that because this river has this classification, it should receive additional protection under Alternative 9.

d) Note that the nature Conservancy letter talks about 36,000 acres "immediately adjacent to" the Skagit River Bald Eagle Natural Area. There is no case presented why lands "immediately adjacent" should be protected. Everywhere is "immediately adjacent" to something. If we assume the Skagit River Bald Eagle Natural Area was appropriately analyzed and designated when it was created, certainly "immediately adjacent" lands were considered, but excluded for a reason. Inclusion now simply because they are "immediately adjacent" is illogical.

4. Can you find out what would the PSQ impact be if it was included?

The Forest letter addresses this point, although not with numbers. The entire Mt. Baker-Snoqualmie National Forest had an ASQ of 108 MMBF under their Forest Plan prior to the ISC Owl Plan, and it has an estimated ASQ of 12 MMBF under Alternative 9. That the Conservancy proposal would further decrease ASQ (PSQ) another quarter or half million board feet is academic. I think what's considerably more at issue here is whether we're going to use the land allocations of Alternative 9 to make other types of management decisions for us, rather than continue with site-specific, resource-specific, Forest-level planning that is most appropriately responsive to each situation. To make the change requested by the Conservancy limits the ability of the Forest to meet the intent of the Wild and Scenic River and meet other land management plan objectives, *other* than timber.

I suggest this letter be given to the SEIS Team as a comment received between Final SEIS and the ROD. If you feel it must be responded to, I suggest the following wording:

Dear Maggie B. Coon

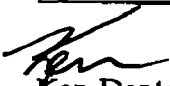
Your letter to Jim Lyons of March 7 regarding the Skagit River Area on the Mount Baker Snoqualmie National Forest has been forwarded to me for consideration. I currently head the President's west coast office for.....

I appreciate your interest in the Final SEIS and the direction offered under Alternative 9, the preferred alternative. Your letter contains substantive comments about this alternative, and we are examining your comments and will forward them and the results of our analysis to the decision-maker prior to the signing of the Record of Decision.

I have read the letter the Forest sent to you on March 18 regarding this subject, and believe it does a good job of describing the current management situation in that area, and how it would be managed under Alternative 9 as presented in the Final SEIS. I can only add that we need to keep in mind that Alternative 9 has the specific objectives of managing for old-growth forest related species and at risk fish stocks, and that the standards and guidelines of the selected alternative will amend, (aka be added to), existing Forest Plan and other management direction. That an area does not need protection under Alternative 9 does not negate the need to manage for specific other resource objectives under existing direction, and certainly, as explained in the Forest letter, doesn't mean that the area will become open to inappropriate timber harvest levels. And as existing direction is implemented, and further area and project planning in this area takes place, we look forward to your continued involvement.

Again, we will forward your concerns and suggestions to the decision-maker.

Sincerely,



Ken Denton 326-2967

Enclosures:

March 18 letter from Forest to Nature Conservancy, with maps (8X10)
GIS Map

United States	Forest	Mt. Baker-Snoqualmie	21905 - 64th Avenue West
Department of	Service	National Forest	Mountlake Terrace, WA 98043
Agriculture			

Reply to: 1920

Date: March 18, 1994

Ms. Maggie B. Coon
Director of Government Relations
The Nature Conservancy
Washington Field Office
217 Pine Street, Suite 1100
Seattle, WA 98101

Dear Ms. Coon:

Thank you for sending us a copy of your letter to Assistant Secretary Lyons concerning the Upper Skagit. As you noted in the letter, the Mt. Baker-Snoqualmie National Forest supported key watershed status for the Skagit. We do not know how the lack of key watershed status will affect our ability to target the Skagit for watershed restoration. The Final Supplemental Environmental Impact Statement (FSEIS) directs us to give priority to key watersheds but, as happened in the 1994 appropriations bill, Congress may set other priorities.

Most of the 36,000 acres your map shows as Matrix is not allocated to Matrix in the FSEIS. It is administratively withdrawn because it is designated as Primitive or Semi-primitive Nonmotorized in the Mt. Baker-Snoqualmie (MBS) Forest Plan. Neither of these allocations allow timber harvest. All areas which have been withdrawn from timber harvest in the MBS Forest Plan are also administratively withdrawn in the FSEIS. Only about one third of the area you show as Matrix is allocated as Matrix in the FSEIS.

Management of the area that is designated as Matrix would be based on the direction for that area in the MBS Forest Plan. Of the area shown on your map, approximately 800 acres is allocated to Timber Management Emphasis. However, standards and guidelines in FSEIS covering Riparian Reserves and other protective buffers and reserves would make the management of this area much different than the what was envisioned in the Forest Plan. Approximately 10,000 acres is allocated for Deer and Elk Winter Range and/or Scenic Viewshed. Both of these allocations allow timber harvest if the primary objectives are met. Harvest rotations are generally 140 to 170 years. FSEIS standards and guidelines would also apply, unless those in the MBS Forest Plan were more restrictive.

I would like to emphasize that because timber harvest is permitted in these two allocations it does not mean that harvest will take place on all, or even most, of the area. Much of this area is Roadless and it would require a watershed analysis and an EIS before building roads or harvesting timber. There are many social, economic, and ecological issues which would have to be considered before a harvest could take place. Similarly, if the area were placed in a Late-Successional Reserve, thinning in stands under 80 years would be permitted but would not necessarily be implemented in these stands.

Your continued interest in the management of the Mt. Baker-Snoqualmie National Forest is appreciated.

Sincerely,

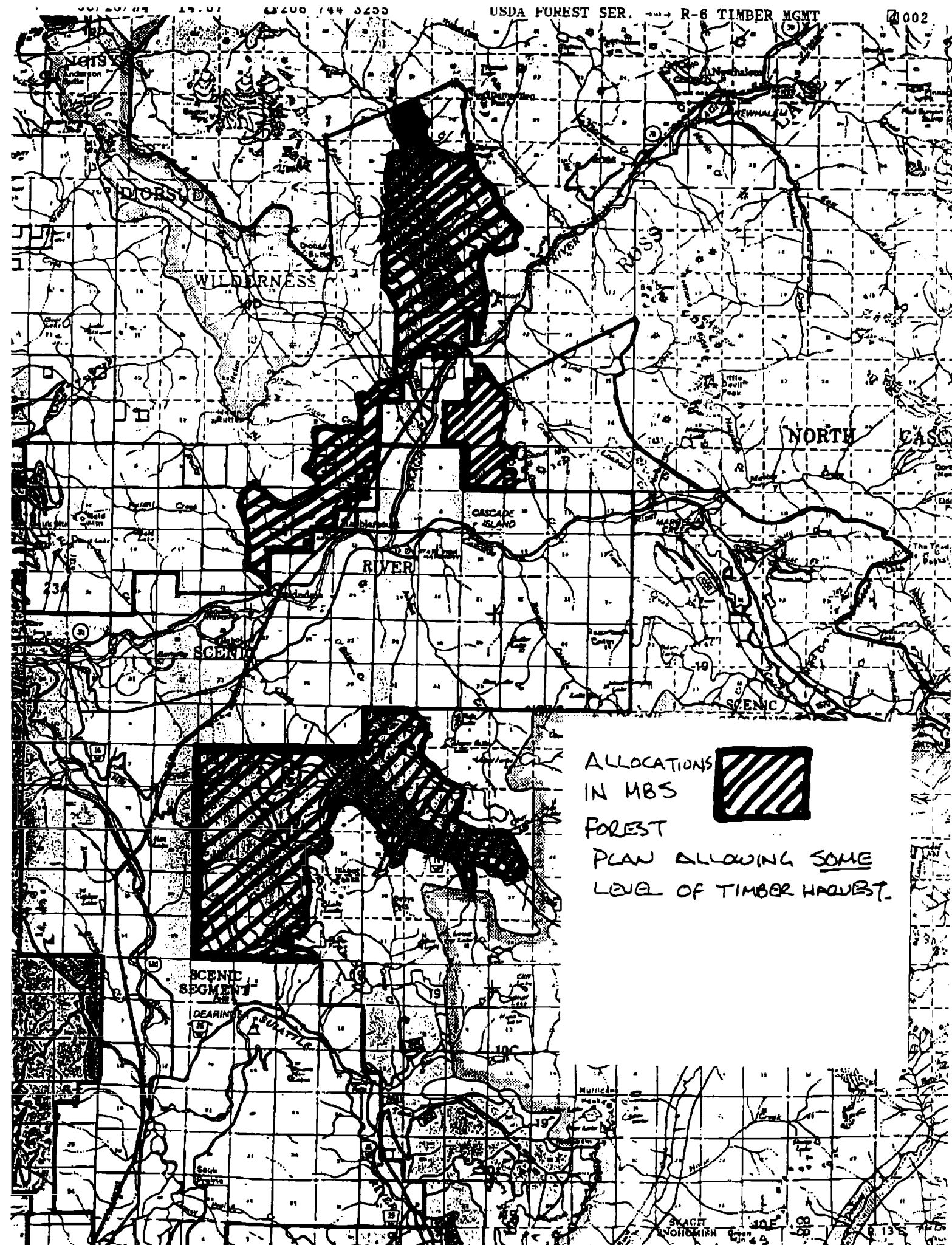
/s/ Dennis E. Bschor

DENNIS E. BSCHOR
Forest Supervisor

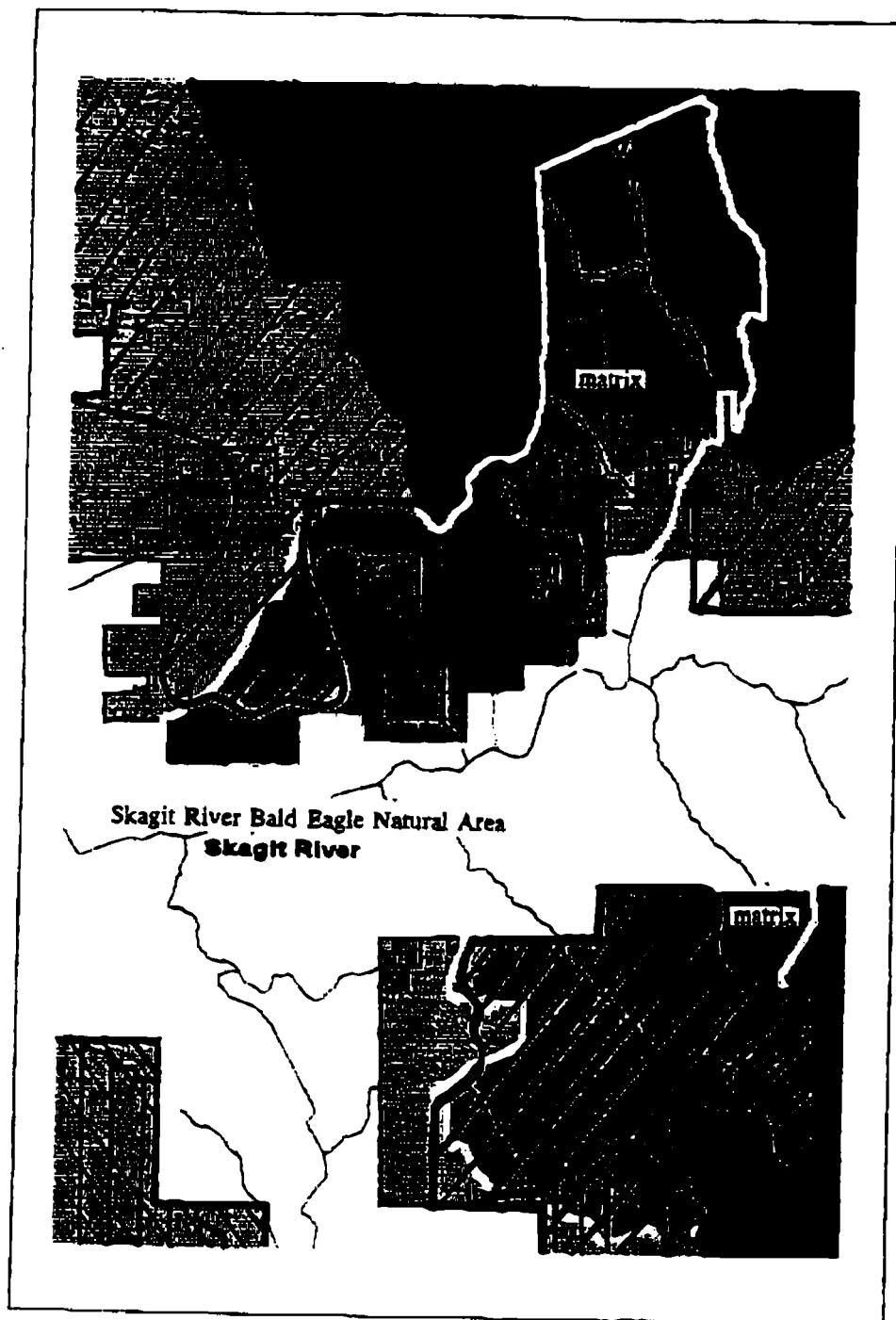
I CONCUR: Robert Dunblazier 3/17/94

USDA FOREST SER. →→→ R-6 TIMBER MGMT

4002



Map 1



- Late Successional Reserve
- Adaptive Management Area
- Tier 1 Key Watersheds
- Overlap with Reserve/Tier 1
- Overlap with Adaptive/Tier 1

- Proposed Late Successional Reserve
- National Forest Land
- State and Private (holdings)
- National Park Service Land
- Wilderness Areas
- State and Private Lands

- FOREST BOUNDARY
- RIVERS AND STREAMS
- WILDERNESS BOUNDARY
- RESERVE BOUNDARY

Scale: 0 5 10 mi

SKAGIT RIVER PROPOSED ADDITIONS TO LATE SUCCESSIONAL RESERVE 1993

THE NATURE CONSERVANCY

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages 2

To: KEN DENTON
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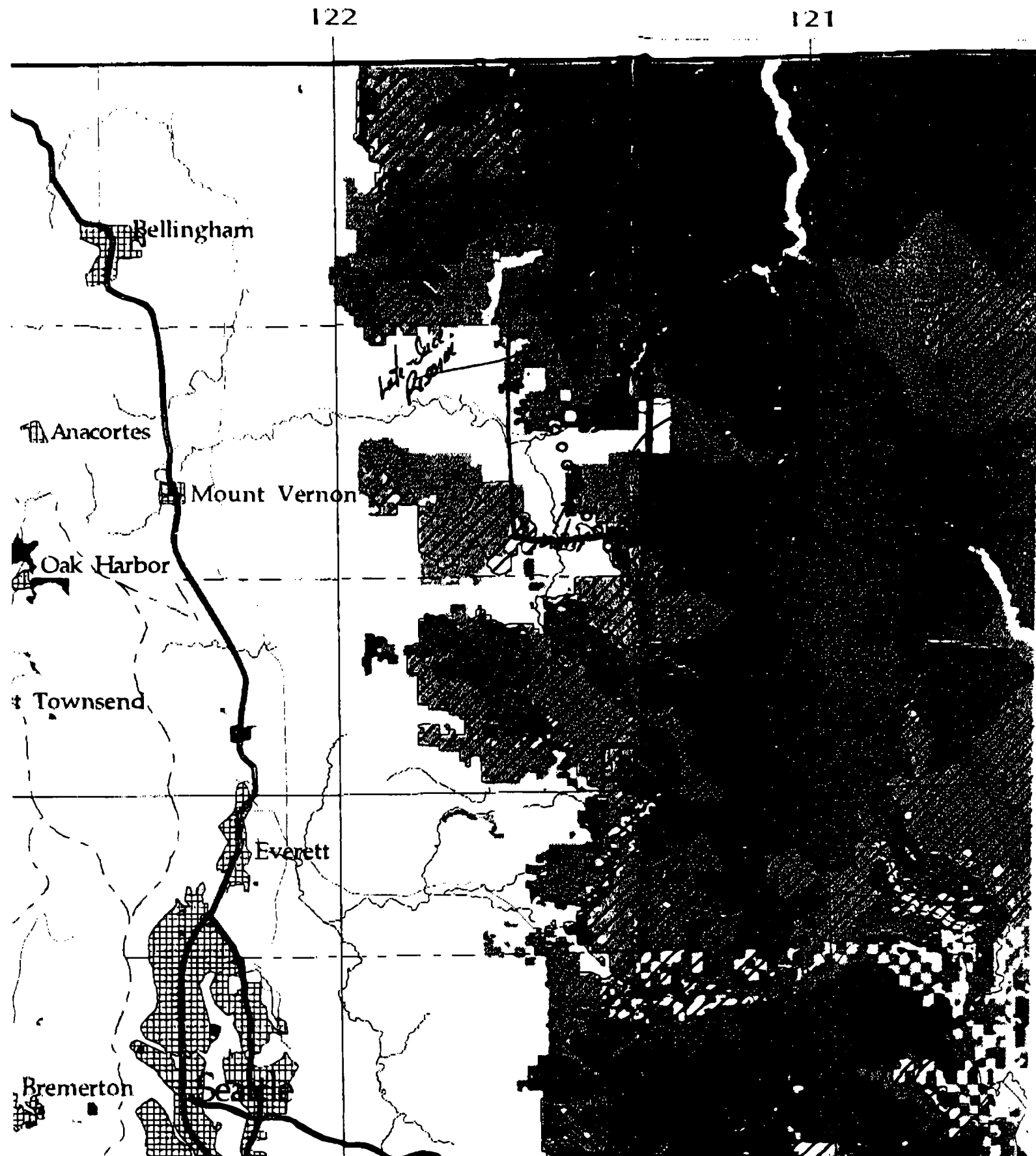
From: BOB DUNN
Phone #

Fax # 503-326-2469

Fax #

206-744-3270

alt 9 FSEIS map (X 200%)





United States
Department of
Agriculture

Forest
Service

Washington
Office

14th & Independence SW
P.O. Box 96090
Washington, DC 20090-6090

Date: April 14, 1994

TO: SEIS Team

SUBJECT: Consideration of "Long Rotation" Option

I have been asked to comment on the extent to which the FEMAT team considered a "long rotation" option. Members of the FEMAT arranged for briefings by two proponents of alternate approaches that involved long rotation treatments. These were assumed to provide higher timber volumes than other options under consideration. However, it did not seem likely, at least to some of those present at the meetings, that such an approach would meet the requirements of law--particularly as related to late-successional species, with emphasis on northern spotted owls and marbled murrelets. Indeed, I specifically asked one of the proponents, Mr. Gus Kuehne, whether the approach would comply with the law. Mr. Kuehne replied that it would not, that the law would have to be changed. After that discussion, the decision was made not to pursue the option presented by Mr. Kuehne, since our instructions included compliance with existing law.

Dr. Chad Oliver presented his concepts to the FEMAT on how long-rotation silviculture could achieve the objectives being pursued and produce more timber. When asked if this approach--in the absence of significant old-growth reserves--would meet the requirements of law, Dr. Oliver said that that might be unlikely. Upon questioning, Dr. Oliver said that the approaches he suggested should not be used as an excuse to cut late-successional old-growth (LS/OG) stands if they were in short supply. However, it seemed clear to me and other members of FEMAT that unless significant amounts of such stands were cut over the next several decades, the cut levels would be even lower than in some of the more restrictive options under consideration. It was also clear to me that there was no evidence that "managed stands" could or would fill the ecological role of the extant late-successional/old-growth stands. It seemed likely that such an approach, given the current state of knowledge, would not hold up well under scrutiny for viability of LS/OG-associated species over the 100-year assessment criteria if LS/OG stands were cut. Conversely, I concluded that if sufficient LS/OG were retained until the suggested systems were proven to provide LS/OG habitat equal to such extant habitat, the timber cut levels would be lower than for other options being considered by FEMAT.

OPTIONAL FORM 99 (7-90)

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To: *Well Steele*
Dept./Agency

From: *Jack*
Phone #

Fax #

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5089-101

GENERAL SERVICES ADMINISTRATION



Caring for the Land and Serving People

SEIS Team

2

As a result, these alternatives were removed from consideration as full-blown alternatives. However, aspects of long-rotation silviculture and stand manipulation were partially incorporated into some options, including Alternative 9.

/s/ Jack Ward Thomas

JACK WARD THOMAS
Chief

*U.S. Department of Agriculture
Office of the Assistant Secretary
Natural Resources and Environment
(202) 720-7173 - Phone
(202) 720-4732 - Fax*

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TO:

Will Stelle

URGENT

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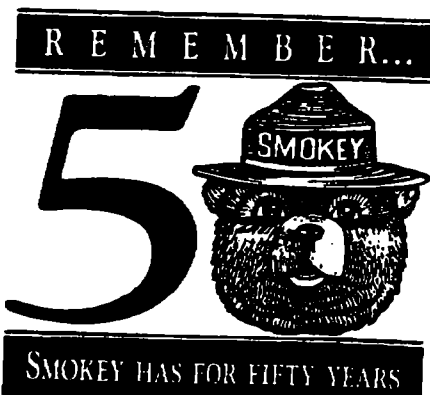
FROM:

Mark Gaede

REMARKS:

Please call

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DEPARTMENT OF AGRICULTURE
OFFICE OF THE ASSISTANT SECRETARY
FOR NATURAL RESOURCES AND ENVIRONMENT
WASHINGTON, D.C. 20250

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Date: April 12, 1994

From: Mark Gaede Phone: (202) 720-7173

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To:		Fax	Speed
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Will Stelle	OEP	456-2710	[048]

Message:

We have redrafted our 4/8 viability language in accord with the discussion you had with Jim Gilliland, which included the Secretary's two principles that we understand you are in agreement with. For purposes of the government's argument on judicial review the two principles are:

- (1) no quantifiable standard;
- (2) continued persistence is the standard.

For purposes of judicial review, it would be a matter of discretion for the Secretaries to decide how far to go beyond the standard in their multiple use discretion. In this ROD we have gone far beyond the judicial review standard.

Please note that we have underlined the phrase "an amount and distribution" on page 3. We would like to delete these words if that is O.K. with you because it suggests a quantifiable standard.

I have sent two versions of the same language with one version highlighting the changes made.

DETERMINED TO BE AN ADMINISTRATIVE

MARKING INITIALS: M' DATE: 2/15/14

202-0761-f

prevent listing of species under the Endangered Species Act and avoid extirpation of species from its actions.

We agree with the view courts have taken of the NFMA diversity provision and 36 CFR 219.19 that "Diversity is not the controlling principle in forest planning. The NFMA diversity provision and the fish and wildlife resource regulation establish a goal to provide habitat for the continued persistence of vertebrate species in the planning area. The goal is met by following the provisions of 36 CFR 219.19(a)(1) through (a)(7), although it is an important goal to be pursued in the context of overall multiple-use objectives." Sierra Club v. [The Court concluded that the Wayne National Forest Plan] provides diversity of plant and animal communities while balancing a mix of multiple uses. Sierra Club v. Robertson, S.D. Ohio, Slip Opinion pp. 33-39, (March 11, discussing diversity and viability (March 11, 1994). Eight cases have upheld Forest Plans or project decisions from challenges on NFMA diversity and the fish and wildlife resource regulation grounds. Eight cases have upheld Land and Resource Management Plans (Forest Plans) or project decisions from challenges on NFMA diversity and the fish and wildlife resource regulation grounds.² The courts have recognized that NFMA does not create a concrete standard for diversity within multiple use objectives.

The court addressed compliance with 36 CFR 219. The courts have recognized that NFMA does not create a concrete standard for diversity within multiple use objectives and no court has overturned a Forest Service finding of compliance with the NFMA diversity and the fish and wildlife resource regulation. Judge Dwyer addressed compliance with 36 CFR 219.19 regarding the northern owl ("owl") Regional Guide and Forest Plan protection amendments in Seattle Audubon v. Moseley, 798 F. Supp. 1473 (W.D. Wash. 1992). The court stated that the Forest Service must use common sense and apply its fish and wildlife expertise to prevent the adoption of an owl protection strategy that would extirpate other vertebrate species. The court also stated that, "He stated that the Forest Service must use common sense and apply its fish and wildlife expertise to prevent the adoption of an owl protection strategy that would extirpate other vertebrate species. Judge Dwyer also stated that, "The Forest Service

² See also Sierra Club v. Robertson, 784 F. Supp. 593, 609 (W.D. Ark. 1991); Sierra Club v. Robertson, 810 F. Supp. 1021, 1027-28 (W.D. Ark. 1992, on appeal to Eighth Circuit); ONRC v. Lowe, 836 F. Supp. 727 (D. Ore. 1993, on appeal to the Ninth Circuit); Glisson v. USFS (S.D. Ill. August 26, 1993, on appeal to the Seventh Circuit); Sierra Club v. Marita (E.D. Wisc. February 9, 1994, on appeal to the Seventh Circuit); Kirchbaum v. Kelly (W.D. Va., February 9, 1994); Sierra Club v. Robertson (E.D. Wisc. March 7, 1994, on appeal to the Seventh Circuit).

argues that it should not be required to conduct a viability analysis as to every species. There is no such requirement. As in any administrative field, common sense and agency expertise must be applied." Seattle Audubon Society v. Moseley, 798 F. Supp. at 1490.

~~THE FOLLOWING TEXT WAS MOVED~~

Viability assessments of all vertebrate species are not required.—

~~The NFMA diversity provision and 36 CFR 219.19 have been interpreted by court rulings to be goals within the context of multiple use. "Diversity is not the controlling principle in forest planning,~~

~~THE PRECEDING TEXT WAS MOVED~~

~~THE FOLLOWING TEXT WAS MOVED~~

The bottom line is that the Forest Service may not adopt a plan that it knows or believes would through its actions extirpate a vertebrate species.

~~THE PRECEDING TEXT WAS MOVED~~

NO The Ninth Circuit in Seattle Audubon Society v. Evans, 952 F.2d 297, 300 (9th Cir. 1991) recognized the multiple use context of 36 CFR 219.19. The Ninth Circuit cited 36 CFR 219.19(a) "shall establish objectives for maintenance and improvement of habitat...to the degree consistent with overall multiple use objectives..." as one of three major components of the regulation. The next sentence of 36 CFR 219.19(a) provides, "To meet this goal, management planning shall meet the requirements set forth in paragraphs (a)(1) through (a)(7) of this section."

Based on the statute, regulation, case law, and examination of the record, we find that this decision satisfies the requirement of the statute and its implementing regulation because it will provide an amount and distribution of habitat adequate to support the continued persistence of the vertebrate species in the planning area. As noted by these courts, the NFMA diversity and the fish and wildlife resource regulation are goals within the context of multiple use.

NO We find that no species will have to be listed under ESA or be extirpated by the standards and guidelines we adopt today. The Fish and Wildlife Service has also found that the standards and guidelines do not jeopardize the continued existence of any listed species.

Relevant factors include the life history of species, the current amount and distribution of habitat, the amount and distribution of species' ranges within the planning area, and other reasonably foreseeable protective measures. Our approach involves highly

technical and complex projections as to which certainty is not possible. There is no way to avoid all risk to the continued persistence of species. Even absent any human-induced effects, the likelihood that habitat will continue to support species' persistence can vary among species. For example, the continued persistence of local rare endemic species whose entire range may comprise only a few acres is intrinsically insecure. Thus, compliance with the fish and wildlife resource regulation is not subject to precise numerical interpretation and cannot be fixed at any one single threshold.

By its own terms, the regulation applies only to vertebrate species. Nevertheless, consistent with the statutory goals of providing for diversity of plant and animal communities and the long-term health of federal forests, as well as the agencies' conservation policies, our decision satisfies a similar standard with respect to non-vertebrate species to the extent practicable.

~~THE FOLLOWING TEXT WAS MOVED~~

In the FSEIS the Forest Service has joined with BLM and produced a study that exceeds what is required by the diversity and fish and wildlife resource regulation. Over 1000 species were evaluated. Protection measures have been designed to completely fulfill the regulations provisions and meet the multiple use mandates of Forest Service and BLM.

~~THE PRECEDING TEXT WAS MOVED~~

Although NFMA regulations apply to lands administered by the Forest Service, the fish and wildlife resource regulation was used as a criterion in the development of the alternative we select today, which includes direction for management of BLM lands. Use of the regulation's goals in developing alternatives served the important policy goal and public interest in protecting the long-term health of all of the forests under federal management within the range of the owl, and the species which inhabit them, in accordance with direction and authority provided in NFMA, the Multiple-Use Sustained-Yield Act, the Federal Land Policy and Management Act, the Oregon and California Lands Act, and the Endangered Species Act.

In making our determination of compliance with the NFMA fish and wildlife resource regulation, we considered all existing or reasonably foreseeable conservation measures. This follows because no one strategy or decision, can for all time provide for the habitat needs of all species that exist in the planning area, especially in light of the dynamic nature both of ecosystems and of our understanding of them. Measures that may be considered include analyses and activities undertaken pursuant to internal policy directives (e.g., the Forest Service's sensitive species program) and steps taken at differing layers of planning.

to the BLM

of which the fish regulation is a part.

Language For Inclusion in ROD (USDA 4/8/94 2:00 pm)

a. Diversity Provision and Viability Provision
of Fish and Wildlife Resource Regulation

The National Forest Management Act requires the Secretary of Agriculture to promulgate regulations to guide Forest Service development and revision of Forest Plans. One of the statutory requirements is "specifying guidelines for land management plans developed to achieve the goals of the Program which...(B) provide for a diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple use objectives,..." 16 USC 1604(g)(3)(B). The diversity provision in one of ten subsections of direction from Congress regarding the promulgation of planning regulations for Forest Plans to provide for multiple use and sustained yield. In accord with NFMA, the Secretary promulgated regulations which address the diversity provision.¹

to not commit
The Committee stated that "it is impossible to write specific regulations to 'provide for' diversity" and that "there remains a great deal of room for honest debate on the translation of policy into management planning requirements and into management programs" (44 Fed. Reg. 26,6000-01 & 26,608). Diversity is a concept at the frontiers of ecological science and the use of different approaches is appropriate depending upon the particular context of its application.

?
The fish and wildlife resource regulation, 36 CFR 219.19, is one part of the planning regulation to provide for diversity within multiple use objectives. The fish and wildlife resource regulation has seven provisions. Through 36 CFR 219.19 and other provisions of the planning regulations Forest Plans provide for diversity of plant and animal communities within multiple use objectives. The Forest Service uses the planning process and ongoing monitoring, evaluation and adjustment of fish and wildlife standards to prevent listing of species under the Endangered Species Act and avoid extirpation of species from its actions.

We agree with the view courts have taken of the NFMA diversity provision and 36 CFR 219.19 that "Diversity is not the controlling principle in forest planning, although it is an important goal to be pursued in the context of overall multiple-use objectives." Sierra Club v. Robertson, S.D. Ohio, Slip Opinion pp. 33-39, (March 11, 1994). Eight cases have upheld Forest Plans or project decisions from challenges on NFMA

¹ 36 CFR 219.3, 219.19, 219.26, 219.27(a)(5), 219.27(a)(6) and 219.27(g).

diversity and the fish and wildlife resource regulation grounds.² The courts have recognized that NFMA does not create a concrete standard for diversity within multiple use objectives.

WMDH
The court addressed compliance with 36 CFR 219.19 regarding the northern owl ("owl") Regional Guide and Forest Plan protection amendments in Seattle Audubon v. Moseley, 798 F. Supp. 1473 (W.D. Wash. 1992). The court stated that the Forest Service must use common sense and apply its fish and wildlife expertise to prevent the adoption of an owl protection strategy that would extirpate other vertebrate species. The court also stated that, "The Forest Service argues that it should not be required to conduct a viability analysis as to every species. There is no such requirement. As in any administrative field, common sense and agency expertise must be applied." Seattle Audubon Society v. Moseley, 798 F. Supp. at 1490. Viability assessments of all vertebrate species are not required. The bottom line is that the Forest Service may not adopt a plan that it knows or believes would through its actions extirpate a vertebrate species.

The Ninth Circuit in Seattle Audubon Society v. Evans, 952 F.2d 297, 300 (9th Cir. 1991) recognized the multiple use context of 36 CFR 219.19. The Ninth Circuit cited 36 CFR 219.19(a) "shall establish objectives for maintenance and improvement of habitat...to the degree consistent with overall multiple use objectives..." as one of three major components of the regulation. The next sentence of 36 CFR 219.19(a) provides, "To meet this goal, management planning shall meet the requirements set forth in paragraphs (a)(1) through (a)(7) of this section."

Based on the statute, regulation, case law, and examination of the record, we find that this decision satisfies the requirement of the statute and its implementing regulation because it will provide an amount and distribution of habitat adequate to support the continued persistence of the vertebrate species in the planning area. ~~We find that no species will have to be listed under ESA or be extirpated by the standards and guidelines we adopt today.~~ The Fish and Wildlife Service has also found that the standards and guidelines do not jeopardize the continued existence of any listed species.

² See also Sierra Club v. Robertson, 784 F. Supp. 593, 609 (W.D. Ark. 1991); Sierra Club v. Robertson, 810 F. Supp. 1021, 1027-28 (W.D. Ark. 1992, on appeal to Eighth Circuit); ONRC v. Lowe, 836 F. Supp. 727 (D. Ore. 1993, on appeal to the Ninth Circuit); Glisson v. USFS (S.D. Ill. August 26, 1993, on appeal to the Seventh Circuit); Sierra Club v. Marita (E.D. Wisc. February 9, 1994, on appeal to the Seventh Circuit); Kirchbaum v. Kelly (W.D. Va., February 9, 1994); Sierra Club v. Robertson (E.D. Wisc. March 7, 1994, on appeal to the Seventh Circuit).

Relevant factors include the life history of species, the current amount and distribution of habitat, the amount and distribution of species' ranges within the planning area, and other reasonably foreseeable protective measures. Our approach involves highly technical and complex projections as to which certainty is not possible. There is no way to avoid all risk to the continued persistence of species. Even absent any human-induced effects, the likelihood that habitat will continue to support species' persistence can vary among species. For example, the continued persistence of local rare endemic species whose entire range may comprise only a few acres is intrinsically insecure. Thus, compliance with the fish and wildlife resource regulation is not subject to precise numerical interpretation and cannot be fixed at any one single threshold.

By its own terms, the regulation applies only to vertebrate species. Nevertheless, consistent with the statutory goals of providing for diversity of plant and animal communities and the long-term health of federal forests, as well as the agencies' conservation policies, our decision satisfies a similar standard with respect to non-vertebrate species to the extent practicable.

In the FSEIS the Forest Service has joined with BLM and produced a study that exceeds what is required by the diversity and fish and wildlife resource regulation. Over 1000 species were evaluated. Protection measures have been designed to completely fulfill the regulations provisions and meet the multiple use mandates of Forest Service and BLM.

Although NFMA regulations apply to lands administered by the Forest Service, the fish and wildlife resource regulation was used as a criterion in the development of the alternative we select today, which includes direction for management of BLM lands. Use of the regulation's goals in developing alternatives served the important policy goal and public interest in protecting the long-term health of all of the forests under federal management within the range of the owl, and the species which inhabit them, in accordance with direction and authority provided in NFMA, the Multiple-Use Sustained-Yield Act, the Federal Land Policy and Management Act, the Oregon and California Lands Act, and the Endangered Species Act.

In making our determination of compliance with the NFMA fish and wildlife resource regulation, we considered all existing or reasonably foreseeable conservation measures. This follows because no one strategy or decision, can for all time provide for the habitat needs of all species that exist in the planning area, especially in light of the dynamic nature both of ecosystems and of our understanding of them. Measures that may be considered include analyses and activities undertaken pursuant to internal policy directives (e.g., the Forest Service's sensitive species program) and steps taken at differing layers of planning.

Memorandum



ATTORNEY-CLIENT PRIVILEGED

Subject

Douglas County v. Babbitt
Ninth Cir. No. 93-36013

Date

March 14, 1994

From

Will Stelle

Peter Coppelman

On March 4, 1994, the government filed its opening brief as appellant in Douglas County v. Babbitt. The district court in that case set aside the designation of critical habitat for the northern spotted owl "until the [Fish and Wildlife Service] complies with the provisions of [NEPA]," but stayed the order pending appeal. The primary issue in our brief to the Ninth Circuit addresses the applicability of NEPA to designation of critical habitat under the ESA. The brief also addresses the proper scope of injunctive relief to remedy the NEPA violation. We offer this Memorandum to you to outline several potential risks presented by Douglas County to the immediate success of Option Nine.

1. The government's ability to prevail on the merits of the NEPA issue is quite problematic. Courts have been quite reluctant to allow federal agencies, other than EPA, to escape compliance with NEPA in final decisions on major statutory programs. Unlike the requirements imposed by the ESA on the listing of a species as threatened or endangered, the requirements imposed by the ESA in determining critical habitat offer no clear conflict with the requirements imposed by NEPA. No one in this Department is optimistic about our chances of obtaining a reversal.

2. The simple existence of the litigation could present an escape-proof trap to the government's efforts to restore timber harvesting in the area. Any challenge to the interagency ROD on Option Nine is likely to include an allegation that the decision is flawed because of the uncertainty over the critical habitat designation. This argument is attractive because it is independent of the merits of the issues in Douglas County itself. The mere existence of the case and the related uncertainty over the critical habitat designation provides a simple vehicle to a district court judge to continue or impose new injunctions

against timber harvesting pending the final designation of critical habitat.

3. When the Douglas County issue arises, the government would be put in the position of arguing that the critical habitat designation is irrelevant to Option Nine. The only alternative argument available to the government is that, because the district court stayed the effect of its judgment setting aside the critical habitat designation pending appeal, the agencies did not abuse their discretion in using the current critical habitat designation in their analysis of Option Nine. This argument, however, begs the question of what happens if, as is likely, the Ninth Circuit affirms the judgment in Douglas County.

If Judge Dwyer or another Judge refuses to dissolve the existing injunctions or to enter a new injunction, pending resolution of Douglas County, that action is virtually unassailable on appeal. Under the abuse of discretion standard of review, it is doubtful that the Ninth Circuit would reverse a district court's decision simply to stay further proceedings under Option Nine, pending resolution of Douglas County. Nor is it likely that the Ninth Circuit will reverse an injunction preventing the implementation of Option Nine. Under either scenario, any decision on the merits of Option Nine would be delayed pending resolution of Douglas County. Moreover, should the Ninth Circuit affirm Douglas County, not an unlikely event, then Option Nine could be further delayed pending NEPA compliance on critical habitat designation.

Under the current schedule, it is unlikely that the court of appeals will reach a decision in this case before the end of 1994. Douglas County's brief is due to be filed on April 4. The Government's reply brief is due on April 18. Oral argument has not yet been scheduled. Presently, there is approximately a nine to ten month delay between the last brief and oral argument in the Ninth Circuit. The delay between oral argument and decision can last for an undetermined length of time. Nor does expedition of the appeal affect the timing of the decision. In one recent expedited case, there was a delay of ten months between oral argument and decision. (Earth Island v. Christopher (the shrimp-turtle case)).

A potential solution to this problem is to attempt to moot Douglas County by issuing an EA and a FONSI on the designation of critical habitat. It may be possible for FWS to tier the EA off of the Option Nine EIS. We could make clear that the EA was prepared only to resolve this particular litigation. To avoid the problem in the future, FWS could propose to issue a regulation which establishes that designation of critical habitat is a categorical exclusion from NEPA. That would constitute an admission that critical habitat listings are subject to NEPA, but should remove critical habitat from the NEPA litigation landscape.

WMC:EMathas
90-1-4-3806
(202) 272-8236

~~RECEIVED + CONFIDENTIAL~~

March 31, 1994

MEMORANDUM

To: Lois J. Schiffer
Acting Assistant Attorney General

Peter D. Coppelman
Deputy Assistant Attorney General

From: Ellen M. Athas
Assistant Section Chief
General Litigation Section

Re: Proposed Draft Record of Decision, Dated March 30, 1994

We have received and reviewed the latest version of the proposed draft Record of Decision ("ROD"). It represents a fine effort to satisfy the legal requirements for a ROD and lay the groundwork for future defense of the action. Nonetheless, in several general and specific ways, it requires further revision to meet fully those goals.

Interim, Short-Term Standards and Changes From the FSEIS

The greatest litigation risk is posed by the first-time adoption of relaxed, "interim" protections in order to increase timber harvest levels. The standards for "survey and manage" have been revised; likewise, relaxation of the watershed analysis process is adopted for FY 1994-1996. These slackened standards have never been presented in any of the alternatives, and no opportunity to comment on them has ever been provided. Indeed, the record does not appear to support different standards for the short-term period. The current explanations, therefore, should be buttressed, at a minimum.

As a general matter, we require: (1) a rationale for each change; (2) an explanation as to why the changes do not alter the conclusions as to viability of the species and ecosystem persistence; (3) explanation of why the changes do not require a supplemental EIS; and (4) a supportable rebuttal to any dissenting opinions by FEMAT members, panelists or other government scientists.

DETERMINED TO BE AN ADMINISTRATIVE

MARKING INITIALS: N¹ DATE: 2/15/18

2017-0764-f

1

The FSEIS sets out "survey and manage" standards and guidelines in four components (FSEIS, App. B. at B-143-144). The first, managing known sites, is not altered (ROD at 32). The second component in the FSEIS requires survey prior to ground-disturbing activities in 1997 for numerous species, including mollusks, vascular plants, fungi, lichens and arthropods. The ROD now only requires such surveys for listed vertebrates prior to ground disturbing activities (ROD at 32). For other species, surveys will be developed and implemented "as soon as possible" (*id.*). The ROD further provides that surveys must be completed prior to ground disturbing activities that will be implemented "in FY 1999 or later," which represents a change from the 1997 date in the FSEIS. ROD at 32; FSEIS, App. B. at B-143. As explanation, the ROD states that these "changes acknowledge the magnitude of the task, coupled with the lack of species information, skilled personnel, and assured funding" (ROD at 33). As to environmental effects, however, the Decision merely states that the effects of changing these timelines "will depend on the actual rate of agency progress" and further encourages agencies to move "as promptly as practicable within this schedule" (*id.*). Thus, the justification for going forward without the full survey and manage protections appears weak. We note that Headwaters, a plaintiff in SAS v. Moseley, has raised this very issue in comments on the FSEIS.

2

Despite the general guidelines set forth in the record, the ROD now permits projects in areas that require watershed analysis to go forward with "less detailed" analyses than previously discussed (ROD at 49). Thus, existing information can be used "to the greatest extent possible", with information collected "to the maximum extent practicable" to fill "crucial data gaps" (ROD at 49-50). Again, these proposed new standards were never considered during the NEPA process. More importantly, the explanation in the Decision for this change is a bald conclusion that "environmental effects of the first 2-1/2 years of implementation . . . are expected to vary little, if any, from those described in the Final SEIS" (ROD at 49). Further explanation includes a statement that the effects of the proposed projects and activities "will be disclosed through appropriate NEPA analyses" (*id.*). This rationale is not sufficient to support this Decision at this time.

3

In addition to the above, green tree retention requirements and late-successional reserve assessments have been modified during the initial implementation of the Decision (ROD at 50). Without explanation, the ROD states that timber sales "already laid out at the time of the ROD" may implement the earlier green tree retention requirements "if this eliminates the need to rework, redesign, or recruise a sale." A full explanation for this -- beyond administrative ease -- is required, together with consideration of the environmental effects.

Similarly, "initial late-successional reserve assessments" are sufficient to permit thinning and salvage in LSRs in FY 1994-1996 (ROD at 50). This is the first reference to such "initial" LSR assessments, and they are simply required to be "done at a level of detail sufficient to assess whether the activities are consistent with the objectives of the late-successional reserves" (*id.*). This definition sounds circular, at best, and a better definition, together with the rationale, should be included.

Statutory Authority

A paragraph setting forth the statutory authority, as opposed to compliance, for the ecosystem approach should appear near the beginning of the ROD as follows:

In setting forth our mission to develop a strategy for management of federal old-growth and late-successional forests that we adopt today in this ROD, the President charged us to use an ecosystem management approach. In this vein, we asked our biologists to assess not only effects on individual species of each of the alternatives, but also the likelihood that the alternatives would provide for a functional and interconnected old-growth forest ecosystem. We involved all the relevant federal agencies at an early point in the planning process and asked them to coordinate their efforts to the extent possible. Finally, we defined the planning area for this strategy as the federally administered lands within the range of the northern spotted owl. This approach recognizes that, ecologically speaking, it often is wiser to look to the range of a species that approximates a particular kind of ecosystem in defining a planning area than it is to simply rely on pre-existing jurisdictional boundaries with little, if no, relation to ecosystem parameters.

Such an approach proceeds from our statutory authority as set forth in statutes such as the Forest Service Organic Act, the Multiple-Use Sustained-Yield Act, and the Federal Land Policy and Management Act. Conjunctively, these statutes invest in our Departments broad discretion to rely upon their expertise to manage the lands under their administrative authority in a manner deemed to best meet the purposes Congress has delineated. One such purpose, of course, is to provide for the long-term sustainability of all of the forest's many natural resources, including the species which inhabit them. Through its utilization of ecosystem management principles, our decision is designed to meet this purpose more effectively and efficiently than have previous planning efforts associated with management of federal old-growth forests. Statutes such as the Forest and

Rangeland Renewable Resources Planning Act, the National Forest Management Act, and the Federal Land Policy and Management Act, which outline various procedures to follow in federal public land planning, also authorize the employment of principles intrinsic to ecosystem management. For example, they call for planning to be interdisciplinary, coordinated among agencies, and based on the best available science. The National Forest Management Act explicitly directs that diversity of plant and animal species be considered in planning. Thus, our decision, while emergent in some important and exciting respects, is nevertheless firmly grounded in the authority reflected in our statutory schemes as well as the best federal land management agency tradition of crafting innovative approaches that meld dynamic concepts with the legal duties under which we are charged to carry out our stewardship responsibilities.

Finally, the National Environmental Policy Act, while not imposing substantive duties on the agencies, recognizes "the interrelations of all components of the natural environment", "the critical importance of restoring and maintaining environmental quality", and "the responsibilities of each generation as trustee of the environment for succeeding generations". 42 U.S.C. § 4331. Further, the cumulative impacts analysis required under NEPA's regulations supports a planning approach which proceeds from an ecosystem perspective.

FACA Discussion

The discussion of the FACA decision (ROD at 46) goes too far in characterizing Judge Jackson as "refusing to grant" the injunctive relief sought because such a "draconian remedy of an outright prohibition" was not warranted. Instead, the Court really held that such an injunction would be "premature" and left it to another court and/or case to reach that issue. We recommend substituting the following language:

A primary source of information upon which the SEIS relies is the Report of the Forest Ecosystem Management Team ("FEMAT Report"). That report contains a description of options for managing federal old-growth forests that formed the basis of the ten alternatives analyzed in detail in the SEIS. It also provides a technical assessment of ecological, economic, and social impacts associated with these alternatives.

On March 21, 1994, the United States District Court for the District of Columbia ruled that the process by which FEMAT prepared its report violated the Federal

Advisory Committee Act ("FACA"). Northwest Forest Resources Council v. Espy, No. 93-1621 (D.D.C. Mar. 21, 1994) (Memorandum Decision and Order). The Court found that FEMAT was an "advisory committee" under FACA, and the decision then correctly sets forth FEMAT's failure to comply with the Act's strictures concerning open hearings, a public process and balanced representation.

The underlying purposes of FACA are to ensure open procedures, full opportunity for comment, and public participation, so as to avoid undue influence of special interest groups. These are, indeed, important goals. Fortunately, in the context of this decision, those goals have been achieved through the public participation afforded under the NEPA process. Here, the public, including the plaintiffs in the NFRC case, had a full 90 days to comment on all elements of the FEMAT Report and to offer new alternatives, or ideas for new alternatives, during the comment period on the Draft SEIS. That opportunity was fully taken advantage of by plaintiffs and the other affected members of the public, and all such input has been considered and responded to in the Final SEIS. In addition, the public was advised through two Federal Register notices of an opportunity to provide comments on the Final SEIS. Plaintiffs in the NFRC case have submitted their comments under this process, as well.

We have considered carefully the implications of the NFRC decision for our decision in light of the role the FEMAT Report played in describing the alternatives considered in detail in the SEIS and providing valuable information on their likely impacts. In balance, we had determined to proceed with the decisional process based on the fulfillment of the underlying purposes of FACA, as set forth above.

In addition, the Forest Service is under Court order to promulgate by April 14, 1994 guidelines for the management of the northern spotted owl curing defects found in the NEPA process by the Court in Seattle Audubon Soc'y v. Moseley, 798 F. Supp. 1473 (W.D. Wash. 1992).

Since 1991 the public lands in the Pacific Northwest have been under injunctions precluding the auction or award of timber sales in old growth areas of 17 National Forests and the BLM lands of Western Oregon for violation of various environmental and land management laws. Lifting these injunctions in a manner that complies with the affirmative mandates of these Courts regarding compliance with these laws is essential for the ecological health of these lands, and the social and economic well-being of the people of the Pacific Northwest. Further delay in this

process will necessarily cause hardship to those it is intended to help.

We believe the range of alternatives considered in the DSEIS and the FSEIS, and the treatment of comments made during the public comment period, to be consistent with the law. Finally, we have redoubled our efforts to ensure that the various groups that will play a role in implementing our decision will not violate FACA.

In addition, several other sentences raise questions of FACA compliance. The ROD announces the establishment of the "Regional Interagency Executive Committee, the Regional Ecosystem Office and province teams" to conduct monitoring and research (ROD at 4). Indeed, the Regional Interagency Executive Committee must "approve" thinning or other silvicultural activities (ROD at 7). We should be certain that each of these committees and teams is composed of all federal employees.

Title

The title has been altered to reference amendments to planning documents. This new title ignores the larger ecosystem framework and does not track the language of the DSEIS and FSEIS. We recommend returning to the full title: Record of Decision for on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl.

Decision

✓ The ROD maintains that it "is not intended to cover aspects of the Standards and Guidelines" and further states that if inconsistencies exist between the ROD and the Attachment, the "latter is intended to control" (ROD at 4). The ROD is the decision document, and, as such, must control. We simply need to be certain that there are no conflicts between the Decision and the Appendix. We recommend completely deleting the last sentence of the first paragraph of the Decision section (ROD at 4), and replacing it with the following:

The primary purpose of Attachment A is to assist land managers in both agencies, by providing them a synopsis of the relevant standards and guidelines. It is not intended to replace or supersede this Decision.

Changes From the FSEIS

Several changes raise questions of litigation risk. First, Green Tree Retention in the matrix has been altered based on dispersed and aggregated green tree retention, which "should be addressed in watershed and project analyses" (ROD at 31). It

appears that the interim change to watershed analysis will create a change in the ability to assess the optimal mix of dispersed and aggregated retention. Therefore, a discussion of the short-term implications would be helpful.

Second, the litter dwelling arthropods were deleted from the standard and guideline to protect sites from livestock grazing as "not implementable" and because "other provisions of Attachment A adequately provide for this species group" (ROD at 32). Both explanations need clarification. It appears that removing livestock from the sites would make the standard and guideline "implementable." Therefore, we need a definition of "implementable." Also, specific references to the provisions of Attachment A, which is the compendium of standards and guidelines, should be included.

NEPA Discussion

We need to discuss how other timber industry supported alternatives were addressed. Therefore, at the conclusion of the second full paragraph on page 35, the following should be added:

Notwithstanding our finding in this regard, we recognize that the likely timber volume associated with each of the alternatives considered in detail in the SEIS represents a large diminution from levels during the 1980s. Alternatives that provided for greater timber volume output were examined (e.g., the "No-Action" alternative), but were dropped from consideration in detail because they plainly failed to meet the purpose and need of the proposed action. Much of the volume that remains in the planning area represents old-growth and late-successional forests, and the need to support the functions and processes of the unique and vanishing old-growth ecosystem constrained against detailed consideration of alternatives which would have provided timber sale levels similar to those attained during the previous decade. As the recent listing of the northern spotted owl and marbled murrelet demonstrate, such levels are not truly sustainable in the long term and could only continue to be achieved at unacceptably high risks to the integrity of the late-successional and old-growth forests in the planning area and increased likelihood of additional "train-wreck" listings under ESA that it is our policy to seek to avoid. Nevertheless, our decision provides for experimental silviculture in an endeavor to determine whether ecological and timber volume needs can be served simultaneously in a more effective manner. In this and other respects, we will continue to evaluate alternative planning approaches for these lands as new information continues to unfold.

NFMA Discussion

We recommend the following changes to the section beginning on p. 42 titled b. Regional Guide and Forest Plan Amendments in the interests of decreasing litigation risks:

In the second paragraph, delete the first sentence and add a last sentence reading:

We believe that utilizing a single decision to effect multiple plan amendments is consistent with the applicable statutes and is sound policy.

In first full paragraph on page 43, revise the first sentence to read:

In the context of the ecosystem approach to the northern spotted owl and other old growth related species, the NFMA planning processes were fulfilled.

and insert "determination of" between the first two words of the last sentence.

The second full paragraph on page 43 repeats assertions made in the preceding two paragraphs and only highlights our difficulty in addressing the particularized regulatory requirements. We recommend deleting that paragraph in its entirety.

ESA Discussion

The section on ESA compliance still contains no reference to the decision the action agencies must make, with the concurrence of the Fish and Wildlife Service, regarding whether new information or modification of the action has resulted in effects not previously considered by FWS in developing its biological opinion on Alternative 9. The Wildlife Section recommends the following language as a placeholder:

The Endangered Species Act requires reinitiation of consultation if new information reveals effects of the action in a manner or to an extent not previously considered or if the identified action is modified in a manner that causes effects not previously considered. Due to the existence of certain information, including **[INSERT: RESULTS OF MCKELVEY MODEL, OTHER NEW INFO]**, and in view of certain changes made to Alternative 9 since issuance of the FSEIS, including **[INSERT: IMPLEMENTATION DIRECTION, OTHER CHANGES]**, a determination was made that reinitiation of consultation **["WAS" OR "WAS NOT"]** required because **[EXPLAIN RATIONALE]**. In response the FWS **["CONCURRED WITH THIS DETERMINATION BECAUSE (EXPLAIN RATIONALE)"]** --

OR -- "ISSUED A REVISED BIOLOGICAL OPINION CONCLUDING THAT THE ACTION AS MODIFIED WOULD NOT LIKELY JEOPARDIZE THE CONTINUED EXISTENCE OR DESTROY OR ADVERSELY MODIFY THE CRITICAL HABITAT OF LISTED SPECIES BECAUSE (EXPLAIN RATIONALE)."]

Further, in order to address the Sweet Home decision, the Wildlife Section recommends adding the following at the end of the ESA discussion:

We note the recent decision of the Court of Appeals for the District of Columbia in Sweet Home Chapter of Communities for a Greater Oregon v. Babbitt, No. 92-5255, ___ F.3d ___ (D.C. Cir. March 11, 1994). The Secretary of the Interior has filed a motion seeking to stay issuance of the mandate in this matter. It is the Secretary's position that the case is wrongly decided and is contrary to the law in the Ninth Circuit. Thus, we have determined that the Sweet Home decision has no impact on Alternative 9.

Other Suggested Changes

We further set forth a list of other suggested changes:

- Add "proposed" in the second paragraph on page 1, so the sentence provides, "President Clinton announced his proposed 'Forest Plan for a Sustainable Economy'"

- In the section on Court Injunctions, the following corrections should be made: (1) in the first sentence of the first paragraph, replace "procedural and substantive standards" with "various requirements"; (2) delete the first bullet re: interagency coordination because it was never a part of a court holding; (3) in the fourth bullet, replace "put the owl strategy out for public comment" with "develop revised standards and guidelines for management of northern spotted owl habitat in a manner that allowed for public participation and response to outside experts' concerns"; (4) delete the fifth bullet because it never formed part of a court holding; and (5) delete the fourth sentence of the first paragraph on page 34 because it is out-of-place given the lack of a ruling against the agencies on the issue of monitoring.

- On page 38, in the first sentence of the first full paragraph, please change "relevant" to "conservation-related."

Conclusion

Subsequent work will be required on the section on new information and final comments (ROD at 59) in order to address new information received in the final comments, as well as new information generated by our own scientists. The most important

of this new information (e.g., results of plaintiff's McKelvey Model computer runs) probably should be discussed in the NEPA and NFMA findings section to demonstrate that it has been considered, found not to require preparation of a supplemental NEPA document and satisfactory to meet the NFMA viability provision. Additional work will also be required on the Appendix A Standards and Guidelines to assure that the Appendix fully comports with the ROD itself. In any event, this process should be completed soon, and then we can turn our full attention to the litigation.

**JERRY F. FRANKLIN
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will

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FAX COVER SHEET

If there is a problem with the transmission of this fax, please call (206) 685-0954.

DATE: March 28, 1994

NUMBER OF PAGES (including this sheet): 6

TO: K. McGinty

FAX: (202) 456-2710

To: Tom Tuchmann
Office of Forestry & Economic Development

March 29, 1994

FAX 503 326 6254

From: Jerry Franklin
University of Washington

Subject: Discussion on Final SEIS on Management . . . within the
Range of the Northern Spotted Owl

Enclosed is a copy of the letter that I sent to Bob Jacobs regarding the direction on structural retention on harvested areas within the matrix. As noted in my letter, the direction provided in the FSEIS I view as being based on poor scientific rationale with the potential to actually reverse the substantial progress that is being made in the field in designing ecologically desirable harvest cutting practices. The direction will not be a positive contribution to ecosystem management.

I am also concerned about the practical impacts of the "Survey and Manage" guides that have been developed (pages B143-B144) in the FSEIS. For a variety of reasons--including the lack of essential scientific expertise, lack of survey protocols, and costs of surveys--I predict that the guidelines will provide an endless source for litigation. I would certainly be able to find a scientific basis for continuing challenges to timber sale or other activities in the guidelines and the commitment implicit in their adoption. I am certain that others will find this basis as well.

It appears to me that an effort has been made to create a "challenge-proof" decision document from a species perspective. As a biological scientist I have to say that I believe that to be impossible short of complete closure of the federal timberlands to timber harvest. Meanwhile, the current guidelines have significantly moved the philosophy and content of Alternative 9 from ecosystem management to the preservation of individual species.

FAX cc/cc letter to:

N. Johnson, OSU
J. Lyons, Asst. Sec., USDA
K. McGinty, White House
J. Pipkin, USDI
J. Thomas, Chief, USFS

Jerry J. Franklin

UNIVERSITY OF WASHINGTON

OFFICE OF

FOREST
RESOURCESEcosystem Science and
Conservation Division

March 20, 1994

Mr. Robert T. Jacobs
Interagency SEIS Team Leader
P. O. Box 3623
Portland, Oregon 97208

Subject: Matrix management prescription in "Final Supplemental Impact Statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl"

Dear Mr. Jacobs:

As a principal author of the matrix management prescriptions under Option 9 of the FEMAT report, I am extremely concerned about a significant and ecologically undesirable change that has been made in the matrix prescriptions in the "Final Supplemental Impact Statement. . ." issued in February. The revised prescription does not reflect our best current scientific knowledge of microclimates and edge effects in small forest patches or optimal strategies to attain ecosystem objectives through green-tree retention. Potentially it could slow or reverse the development and application of innovative, ecologically-desirable retention strategies currently being implemented in the field.

The original matrix management prescription in FEMAT reads:

"Management of the Matrix under Option 9 consists of the retention of 15 percent of the volume of each cutting unit. This can be individual green trees, but one-half the amount must include some small (1/2 to 4 acre) late-successional stands that are intact." (FEMAT, p. III-22)

The revised statement on matrix management directs managers to favor larger patches:

"For many species, benefits will be greatest if trees are retained in patches rather than singly. Because very small patches do not provide suitable microclimates for many of these organisms, patches should generally be larger than 1 hectare (about 2.5 acres, unit size permitting)." (FSEIS, p. B146)

Further, in providing specific standards and guidelines (S&G) for green-tree retention:

"Of the total area to be retained, **at least** [my emphasis] 70 percent should be in patches greater than 1 hectare (unit size permitting), with the remainder [if any] as single trees or smaller patches dispersed across the cutting unit." (FSEIS, p. B146)

Apparently, the revised prescription was written with the notion of creating retention patches with the most forest-like environment possible. Perhaps there was even the notion that managers could create retention patches that contained microclimates comparable to interior forest conditions by requiring that patches be "greater than 1 hectare." There is even the implication that a 1-hectare patch is not a "very small patch" and, so, **will** "provide suitable microclimates for many of these [late-successional] organisms."

If so, this represents a gross misunderstanding of microclimate and edge effects within small forest patches or aggregates isolated within harvested tracts. Specifically, this S&G seems to be based on the notion that microclimate responds in a linear fashion to forest patch size; i.e., microclimatic conditions in the forest patch will show a gradual and regular change as the patch size is systematically increased from 1/2 to 5 or 10 acres.

Microclimatic conditions in forest patches simply do **not** show that kind of regular response at the small patch sizes under consideration here. Most of the research on microclimatic conditions associated with forest patches has been conducted by Drs. Chen Jiquan (Michigan Technological University) and Thomas Spies (PNW Station) and myself. This has included intensive research on edge influences on the microclimate of large forested patches and on the microclimate of small aggregates (small patches and strips) retained on clearcut areas. Copies of several publications on microclimatic edge influences are enclosed for the consideration of your team; the research on microclimate within the small aggregates is, unfortunately, not yet published but we do know the results and can provide data to your team.

What the microclimatic research has shown is that very substantial modification of the microclimate--primarily temperature, moisture, and light conditions--occurs close to the forest edge or with the initial development (first 1/4 to 1 acre) of forest aggregates. After this initial rapid response to the presence of forest cover, the rate of microclimatic change with either increased aggregate size or increased distance from edge drops rapidly; i.e., it reaches an asymptote with only very gradual microclimatic change associated with increased size or distance. Some aspects of forest microclimate, such as relative humidity and wind speed, may require penetration of 300 to 400 meters (1000 feet or more) into a forest stand from the nearest edge before conditions comparable to that of an undisturbed forest are obtained. Attaining true interior-forest climatic conditions in a patch surrounded by a recent clearcut requires a very large forest patch--a minimum of 15 to 20 hectares and more in some circumstances. There is no way that you can create interior forest conditions or anything like them in small aggregates within harvested units; interior forest microclimatic conditions are why we created the Late-Successional Reserves under Option 9! **The 1-hectare aggregate is a "very small forest patch" and is unlikely to provide significant microclimatic or other habitat advantages over the 1/4 to 1/2 hectare aggregate.**

In effect, initial creation of a small aggregate has a powerful influence on local microclimate but, thereafter, the microclimate changes only very slowly in response to increased aggregate size. The smaller aggregate gives you a much bigger habitat "bang-for-the-buck" than a larger, even a much larger, aggregate. The use of small aggregates, as proposed in the original matrix prescription, takes advantage of this to encourage provision of several (preferably numerous) aggregates well distributed across harvested unit.

The revised standards and guidelines for aggregated retention in the matrix have the very real potential to create several negative ecological consequences. This is extremely serious because I know by experience that the published standards and guides are likely to become very hard and fast rules for managers laying out timber sales in the field; they will be followed slavishly in most cases and anyone deviating will have to provide extensive justification. Few are likely to have either the knowledge or the energy to do so.

What are some of the negative consequences? First, the S&G is based upon poor ecological science and allows some of the biological community to continue in their erroneous views about patch environments. Second, the S&G encourage managers to think that one large aggregate is ecologically much better than several smaller aggregates, clearly a dubious proposition. Third, the S&G is likely to result in most retention being aggregated into a single patch of 1 hectare or larger; it is certainly much easier for a manager to do and is encouraged by the S&G indicating that "at least 70 percent" should be in large patches. A 1-hectare patch is essentially **all** of the retention in a 20-acre harvest unit. Fourth, with the retention aggregated in a single patch it will be much more vulnerable to loss; its all in one spot and if that is the "wrong" spot with regards to wind, slash fire, or whatever--all can be lost.

Finally, concentrating all of the retention in one aggregate--which is almost certainly going to be a common consequence of the S&G--clearly does not recognize the reduced effectiveness of this strategy for species and processes that need a more dispersed source. In addition to the potential for loss, putting all or most of the retention in a single aggregate eliminates or drastically reduces the probability that there will be additional aggregates elsewhere on the harvested units. This will mean that fewer populations of forest-related species will be protected and these populations will not be as well distributed across the landscape. This could have serious consequences for some groups of species, such as those with very limited dispersal capabilities or with strong territorial behaviors.

One critically important process that retention was intended to assist was to improve overall connectivity in the harvested environment--to facilitate the movement of late-successional and other species across the matrix and among suitable habitat patches within the matrix. Creating a single large aggregate largely ignores this important potential functional contribution of retention.

In summary, the proposed standards and guidelines for retention in the FSEIS are not based upon sound ecological science. The S&G encourages managers favor a larger aggregate over several smaller well-distributed aggregates even though the large aggregate is unlikely to provide additional habitat and other functional benefits. A 1 hectare patch is "a very small patch [and does] not provide suitable microclimates for many [late-successional] organisms" (to paraphrase the FSEIS, p. B146). The S&G could result in a retreat from the more advanced practices which are already developing on the ground. The S&G reduces the efficiency and probable success of a retention strategy even for species at which it is supposedly directed. The current S&G does not reflect an ecosystem perspective and is not appropriate to a strategy based on the principles of ecosystem management.

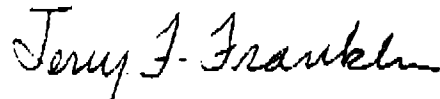
The standards and guidelines for aggregated retention in the FSEIS should be dropped in favor of a revised S&G that encourages both aggregated and dispersed retention and explicitly recognizes that several small, well-distributed aggregates of 0.1 to 0.6 hectares should be preferred over a single large aggregate.

Unfortunately, there is not time prior to your March 25, 1994 deadline to obtain concurring signatures from other forest ecologists on this letter. I am confident that several colleagues who participated in writing the FEMAT prescription, including Drs. John Tappeiner and Tom Spies,

would agree with my concerns. With additional time I am sure that I could obtain endorsements of my views from many other ecosystem scientists, such as Drs. Chen Jiquan (Michigan Tech), Norman Christensen (Duke University), Dale Thornburgh (Humboldt State), and William Ferrell (Oregon State), and Loren Hicks (Plum Creek Timber Co.).

I sincerely hope that this very serious ecological error in the FSEIS can be corrected in the final decision statement. I would not like to be associated with Option 9 as it is currently represented in the FSEIS.

Sincerely yours,



Jerry F. Franklin
Professor of Ecosystem Analysis
Member, Forest Ecosystem Management
Assessment Team

Enclosures: Reprints on edge effects (4)

Copies of letter:

Nancy Graybeal
Chen Jiquan
Norman Johnson
Thomas A. Spies
John Tappeiner
Jack W. Thomas
Tom Tuchman

March 25, 1994

To: ROD Drafting Group

From: Jim Pipkin

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FAX

Will Stelle	456-2710
Mark Gaede	720-4732
Tim Obst	690-2730
Ellen Athas	272-6815

(please get copy to Steve Odell)

DETERMINED TO BE AN ADMINISTRATIVE

MARKING INITIALS: N DATE: 2/15/18

2012-0769-1

Memorandum

Attached is a new draft of the ROD. Comments came from all directions -- often more than one set per agency -- and were extensive. We have done our best to incorporate them, at least when they were consistent with the suggestions of others, and changes occur throughout the draft. To focus your review:

1. Survey and manage. We have worked hard to bridge the gap between biologists and land managers on this extremely difficult issue. We are optimistic that we may have done so. The new material is on page 29.

2. Similarly, we have tried to walk a tightrope on initial watershed analyses. New material is on page 42.

3. Viability remains unresolved. I have included in this draft the changes requested by USDA OGC (pp. 34-38). Steve Odell is revising his alternative approach. I hope to arrange a small meeting on Monday of Messrs. Odell, Gippert and Barry -- hopefully to put this issue to bed.

4. New description of Standards and Guidelines is on pages 6-9.

5. Timber Sales. Will discuss further with USDA. How do 318 sales fit in?

6. New description of Alternative 9 is on page 19.

7. The Selected Alternative -- has been rewritten and expanded (pp. 21-24).

8. The Mitigation section (pp. 24-27) is now separate from changes since the FSEIS. I have separated the mitigation measures not adopted into vertebrates and invertebrates. They are handled differently, with specific responses being given for each vertebrate mitigation measure but with the responses for invertebrates and plants being generalized. The reason is that we simply did not have separate responses for each suggested mitigation. If separate responses are desired, that will take some work.

9. Court injunctions (pp. 29-30). Section has been modified per Gippert changes. Are they sufficient for DOJ?

10. I added change requested by EPA re the inclusion of small wetlands and unstable areas in riparian reserves (p. 8).

11. Changes requested by Tuchmann or behalf of tribes re consultation have been included (p. 41).

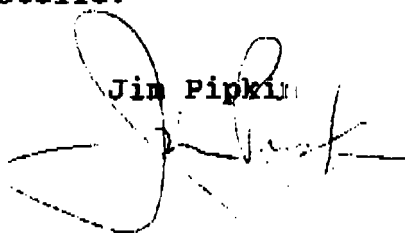
12. Ellen Athas has suggested some additional materials, including: an explanation of the origin and purpose of the Standards and Guidelines; additional materials on "higher timber yield alternatives" that were rejected and reasons for rejection; and a description of the requirements of law re planning regulations and what was done here. I have not had time to do any of these but would welcome volunteers.

13. The numbers for PSQ and employment seem inconsistent. Alternatives 9 and 10 have the same PSQ but 10 produces more jobs. Alternative 9 produces more PSQ than 8 but less jobs. Alternative 6 produces more PSQ than 3 and 4 but less jobs. Etc. Mark Gaede volunteered to track this down.

14. ROD reflects the approach suggested by the SEIS team -- that the Appendix is the governing document, not the text of the ROD. This makes Ken Denton's job critical -- making changes in the Appendix to correspond to the ROD. It is particularly important that the new material on "survey and manage" and "initial watershed analyses" be included in the Appendix.

On Monday, I will revise the NFMA section following our discussion of viability. I think the draft will then be in shape to distribute more broadly, but I leave that to your collective judgment and to that of Papa Stelle.

Jin Pipkin





LITTLEFOOT
Expeditions-

March 22, 1994

To: Mike Penfold
Assistant Director, BLM
FAX 202/208-5902

From: Dave Willis 503/482-0526, -2307 FAX 503/482-8660

Re: USFS Ecologist's Report -- Soda Mountain/ROD

COVER FOR 3 PAGES TO FOLLOW

Dear Mike,

I have never seen this USFS Area Ecologist, normally mellow and concerned only with geologic time, so concerned about a piece of land and its allocation. This is the USFS Area Ecologist for all three national forests in SW Oregon. He sees a bigger picture than a BLM Medford District Manager might -- and is concerned about key connections between those national forests (and the bioregions they represent) that may be on BLM land.

Please especially see his note at the top (written today) of his 3/3/94 letter to me about ecological significance: "The Soda Mountain area is more than just botanically interesting, it is an important link for migration, dispersion, and the process of evolution in the northwest. In the short term, there would be less risk for the area as a LSR."

"Short term" usually has to do with a geologic context of time in Tom Atzet's vernacular. Also see paragraph 3 -- "central significance" and "hinge point" (Whittaker).

The FSEIS says, "All land allocations except the matrix contribute to connectivity between Late-Successional-Reserves" (II F-14). So how does the current matrix allocation here meet underlying purpose and need?

Why so much resistance to LSR for this small, low-timber-value area of such extremely high ecological significance?

Again, Mike -- sorry to be back at you with more. But, not hearing from you, I can only imagine what others are telling you based on what I hear is now in the ROD. LSR for this area seems so simple -- and so important. I continue to be baffled by the difficulty.

Thanks, again --

Dave Willis 503/482-0526, 482-2307 FAX 503/482-8660

Will - Congratulations on
your new baby! What timing!
Is he named "Forest" or is
she named "Foresta"?
CAN YOU FIX THIS ??? Dave W.

FAX COVER PAGE

Date: Tue Mar 22 12:41:00 GMT 1994

Destination Fax: +1 503 482 8660

From: mhs!fswa/S=T.ATZET/OU1=R06F11A

Subject: Short note on top.

Number of pages: 3
(including cover page(s))

UA-Message ID: C-MHBXKP

Addressed To:

fax!503-482-8660

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Just a note to reemphasize: The Soda Mtn area is more than just botanically interesting, it is a important link for migration, dispersion, and the process of evolution in the northwest. In the short term, there would be less risk for the area as a LSR.

United States
Department of
Agriculture

Forest
Service

Siskiyou
National
Forest

200 NE Greenfield Road
PO Box 440
Grants Pass, OR 97526-0242

Reply to: Ecosystem management

Date: March 3, 1994

Subject: Information on Soda Mtn/Pilot Rock area

To: Dave Willis

Dear Mr. Willis,

Thank you for your request for information. We appreciate your interest in ecosystem management and the welfare of all species.

First, let me say that I have no ecology plots in the Pilot Rock area; nor have I personally studied it intensively. My response relates to the area in general and it's context within the southwest Oregon, northern California area, often called the Klamath Bioregion. Secondly, because time and space are limited, a detailed answer is not possible. Lastly, I avoid opinion as much as possible. My clients, both agency and public, expect unbiased information, untainted by advocacy.

The Siskiyou were first recognized by Whittaker as the most floristically diverse range in the western United States. He also illustrated how they have been a sink and source for both plant and animal genetic diversity for millions of years. In his words they are of "central significance" to the northwest since they act as a meeting place for species from different bioregions. The Pilot Rock area is a "hinge point" or connection.

The Siskiyou mountains join the California Coast Range and the Oregon Coast Range at their western extent, providing north/south migratory pathways. At their eastern end, they join the Cascade backbone which joins with the California Sierra range south of Mt. Lassen. Thus, the Siskiyou range forms the cross-bar of an "H" at a continuous high elevational band. Both Axelrod and Detling have commented on this high elevation continuum as migratory pathways between the four mountain provinces. Detling also felt that the Siskiyou Pass allowed California lowland species to migrate into the Rogue Valley when temperatures were higher.

There are only two places in the northwest where major rivers breach the Cascade Range, allowing an east-west flow or mixing of east-side and west-side species. The Columbia River is the northern breach; the Klamath River at the south end allows east-side species to merge into the Pilot Rock area and westward along the Klamath River.

Generally the unique mix of geology, climate, floristic history, and unusual east/west orientation is responsible for the high diversity. The Klamath Bioregion (Siskiyou Mountains) is also a transition between the northern

Temperate forests and the Mediterranean forests of California. As such, they contain elements of both zones and unique endemics.

Page 2

The preceding discussion should give some indication of the area's role in migration, species evolution, and adaptation. A quantitative evaluation of the significance of the Pilot Rock hinge point would be impossible. Long-term studies would be required. Axelrod and Detling used fossils as evidence for their estimations.

My concern about these connections dates to well before the "Gang of Four" work, where I emphasized process, not structure, as the more important ecosystem need. Both Axelrod and Detling make a compelling argument for migration across the hinge point of the "H" crossbar, a process that allows adaptation, evolution, and dispersal. Late Seral Reserves were designed to provide structure and connectivity for such processes, matrix was not; but there is flexibility in how its managed.

I have worked with the BLM on designing reserves during the "Gang of Four" effort and again during the delineation of the Reserves for the Presidents Plans. We have talked about the "hinge points" and their importance. Mike Lunn and Dave Jones have communicated specifically about the Pilot Rock area. The District is aware of the area's values. They designated it the Siskiyou/Cascade Special Ecological Management Area. Rob Lewis, Medford District ecologist, and I have shared ideas on how the area could be managed for connectivity with a matrix designation, if specific guidelines were met. The difference between the two designations is a matter of short-term relative risk. In the long run we have to learn to work with the total ecosystem and its processes. Human populations will continue to affect all the land regardless of the designations. The Presidents Plan is a interim corrective measure giving us time to progress to a prevention/maintenance mode with equal opportunity for all species.

Regardless of what decisions are made in the ROD, I feel the best course of action is to continue to communicate with all partners your thoughts about the management needs of the area.

Thanks for your interest.

Sincerely,

Thomas Atzet
Area Ecologist
Southwest Oregon Area