



Chapter 1

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1.1 INTRODUCTION

The State of Washington (hereinafter referred to as the State) has submitted applications to the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) (collectively referred to as the Services) for authorizations that would allow for otherwise-prohibited take of aquatic species under the Endangered Species Act (ESA). The applications are based on the Washington Forest Practices Rules and regulations presently governing forest practices on non-Federal and non-tribal land in Washington State. The State is applying to the Services either for two separate Incidental Take Permits (ITPs) under ESA Section 10(a) (1) (B), or for slightly different types of qualification under ESA Section 4(d) "protective rules." ESA Section 4(d) provides the Services discretion, through the Secretaries of Commerce and Interior, to develop protective regulations deemed necessary and advisable for the conservation of threatened species.

1.1.1 Structure of the Endangered Species Act

The "take" of a species listed by the Federal government as endangered is prohibited under Section 9 of the ESA. For species listed as threatened, the USFWS has an existing protective regulation that automatically extends the Section 9 take prohibition to threatened species when they are listed. In contrast, NMFS uses rulemaking to extend the take



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1 prohibition to threatened species after they are listed. NMFS also uses the Section 4(d)
2 rulemaking process to limit and define the extent of the take prohibition. NMFS
3 accomplishes this by describing specific programs that, although they might result in some
4 harm, are found to contribute to the conservation of the affected species. Similarly,
5 USFWS uses Section 4(d) rulemaking to create exemptions to the extension of the take
6 prohibition to specific threatened species.

7 The term “take” is defined under the ESA to mean harass, harm, pursue, hunt, shoot,
8 wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct
9 (16 United States Code 1532 [19]). Harm is further defined by the USFWS to include
10 significant habitat modification or degradation where it actually kills or injures wildlife by
11 significantly impairing essential behavioral patterns, including breeding, feeding, and
12 sheltering (50 Code of Federal Regulations (CFR 17.3)). The NMFS definition of harm
13 includes significant habitat modification or degradation where it actually kills or injures
14 fish or wildlife by significantly impairing essential behavioral patterns, including breeding,
15 feeding, spawning, migrating, rearing, and sheltering (50 CFR 222.102; U.S. Federal
16 Register, Vol. 64, No. 215, November 8, 1999, pages 60727-60731).

17 The Services may bring civil and criminal proceedings against persons for violation of
18 Section 9 and the ESA. In addition, Section 11(g) of the ESA allows any third party to
19 enforce Section 9 (or any other provision of the ESA) through civil action.

20 The ESA provides mechanisms by which the Services may authorize incidental take (i.e.,
21 take of listed fish or wildlife species that results from, but is not the purpose of, carrying
22 out an otherwise lawful activity conducted by a Federal agency or applicant (50 CFR
23 402.02)). One mechanism is a take authorization that can be obtained under ESA Section
24 10(a) (1) (B) through an ITP for endangered, threatened, proposed, and other species that
25 may be listed in the future. Another mechanism is through findings made by one or both
26 of the Services that activities are consistent with a rule adopted pursuant to Section 4(d) of
27 the ESA. Section 4(d) applies only to species listed as threatened at the time of
28 Section 4(d) rule issuance, and only to the species specifically addressed in any particular
29 Section 4(d) rule. It can be obtained from NMFS for certain salmon and steelhead
30 populations through a limit from take prohibitions (referred to as a take limit) under an
31 existing NMFS ESA Section 4(d) rule, or through an exemption defined in a new
32 Section 4(d) rule. It can be obtained from USFWS only through an exemption defined in a
33 new ESA Section 4(d) rule (because no existing USFWS Section 4(d) rules apply to forest
34 practices in Washington State). Throughout this document, each of these mechanisms is
35 referred to as “take authorization.” To provide take authorization, generally, the Services
36 must find that the activities in question are incorporated into a conservation plan or other
37 similar program that minimizes and mitigates its impacts on the species addressed in the
38 plan.

39 Enforcement actions for prohibited take brought under Section 9 are generally, but not
40 exclusively, viewed to be associated with the specific facts surrounding particular, site-
41 specific actions. A successful Section 9 enforcement action must attribute take to a
42 specific action. The usual remedy under Section 9 includes cessation of the activity that



1 takes the listed species, but does not typically include any requirement that action
2 benefiting the species be taken. Incidental take authorization under ESA Section
3 10(a)(1)(B) or Section 4(d), on the other hand, is viewed to be associated with proactive
4 and broad-scale actions that combine conservation measures with otherwise lawful
5 activities, such as implementation of the Washington’s Forest Practices Rules that are
6 applicable across a large landscape. As a result, the Services anticipate greater
7 conservation benefits accruing through use of ESA Section 10(a) (1) (B) or than Section 9
8 because of the greater breadth, duration, and scope of the conservation initiative when
9 compared to the focus and outcome of a Section 9 enforcement action. For those
10 conducting forest practices, the regulatory certainty provided by take authorization comes
11 at a cost, including forgone revenue, and time and management costs that are associated
12 with implementing a conservation plan that meets ESA requirements. That cost must be
13 weighed against the risks, such as penalties and legal fees, associated with a potential
14 Section 9 enforcement action for particular forest practices (presumably less conservation-
15 oriented practices) that are not covered by a take authorization.

16 Although ITPs under ESA Section 10(a)(1)(B) and take limits or exemptions developed
17 under ESA Section 4(d) protective regulations are different in their procedural
18 requirements and substantive incidental take coverage, each provides an assurance that
19 certain activities can occur despite their effects on listed species, if the activities are carried
20 out under a plan or program that meets certain requirements in the ESA. For the purposes
21 of this Final Environmental Impact Statement (FEIS), the take authorizations are expected
22 to: 1) provide regulatory stability for forest management activities that are regulated by the
23 Washington Forest Practices Regulatory Program (an ITP, in particular, provides such
24 stability for the long-term); 2) allow for the protection of species addressed in the ITP or
25 Section 4(d) rule across a broad landscape (approximately 9.1 million acres); and 3)
26 provide a regulatory climate and structure more likely to keep landowners in commercial
27 forestry rather than converting forestlands to other uses that may be less desirable for
28 salmon recovery.

29 **1.1.2 Washington State’s Forest Practices Habitat Conservation Plan** 30 **(FPHCP)**

31 Discussion and negotiation of issues that would ultimately culminate in the State’s FPHCP
32 described under Alternative 2 of this FEIS began in the spring of 1997, through the efforts
33 of the Timber, Fish, and Wildlife (TFW) collaboration. TFW was a forum of private forest
34 landowners, Native American Indian tribes, State (and later Federal) resource agencies, the
35 governor's office, and the environmental community. The 1997 TFW discussions focused
36 on forest practices and existing and pending salmonid species listings under the ESA and
37 the inclusion of more than 300 stream segments on Washington forestlands considered
38 impaired under the Clean Water Act 303(d) list.

39 The environmental community participants withdrew from the discussions in September
40 1998, and the work was renamed by the evolving documentation of its work, the Forests and
41 Fish Report (FFR) (FPHCP Appendix B). The remaining five TFW stakeholders continued
42 to work together to develop the final FFR, April 1999, and proposed legislation for the 1999



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1 State legislative session. The State Legislature passed the Forests and Fish Law (Engrossed
2 Substitute House Bill [ESHB] 2091; FEIS Appendix C) which was included in Title 76 of
3 the Revised Code of Washington. The Forest Practices Board adopted permanent rules (Title
4 222 Washington Administrative Code [WAC]) implementing new forest practices
5 regulations on May 17, 2001 (subsection 1.3.1, Washington Forest Practices Regulatory
6 Program).

7 The State's application for ESA take authorization is a major step towards achieving the
8 goals of the FFR. The four goals identified by this broad-based report are:

- 9 1. to provide compliance with the ESA for aquatic and riparian dependent species on
10 non-Federal forestlands;
- 11 2. to restore and maintain riparian habitat on non-Federal forestlands to support a
12 harvestable supply of fish;
- 13 3. to meet the requirements of the Clean Water Act for water quality on non-Federal
14 forestlands; and
- 15 4. to keep the timber industry economically viable in the State of Washington.

16 Because the applications from the State seek take authorizations for species under the
17 jurisdiction of NMFS and species under the jurisdiction of USFWS, NMFS and the
18 USFWS are acting as joint lead agencies for the preparation of this FEIS.

19 The species that would be addressed by issuance of an ITP include all threatened and
20 endangered fish listed at the time of this application, and occurring on the covered lands in
21 Washington, plus other native fish and seven stream-associated amphibians. Most
22 anadromous fish species fall within the jurisdiction of NMFS, while non-anadromous fish,
23 some anadromous fish, and amphibians fall within the jurisdiction of USFWS. The species
24 that would be addressed by issuance of an ESA Section 4(d) rule limit (NMFS) or
25 exemption (NMFS or USFWS) include only the salmonids addressed in the Section 4(d)
26 rule. A breakdown of the covered species under the jurisdiction of each agency and under
27 each authorization is provided in Table 1-1.

28 In addition to the species covered by the FPHCP, other federally listed and candidate
29 species are found on FPHCP covered lands. Table 1-4 of the FPHCP shows federally
30 listed and candidate animal species that are not covered by the FPHCP but are known to
31 occur on covered lands.

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Table 1-1. Species Potentially Covered by an ITP under ESA Section 10(a) or Take Authorizations under ESA Section 4(d) (Note that only threatened species are covered by Section 4(d)).

Common Name	Scientific Name	Potentially Covered by an ITP under Section 10(a)	Potentially Covered by Take Authorizations under Section 4(d)
<u>Species under the Jurisdiction of NMFS</u>			
Endangered Species			
Upper Columbia River spring-run chinook salmon	<i>Oncorhynchus tshawytscha</i>	X	
Snake River sockeye salmon	<i>O. nerka</i>	X	
Upper Columbia River steelhead	<i>O. mykiss</i>	X	
Threatened Species			
Puget Sound chinook salmon	<i>Oncorhynchus tshawytscha</i>	X	X ^{1/}
Lower Columbia River chinook salmon	<i>O. tshawytscha</i>	X	X ^{1/}
Upper Willamette River chinook salmon	<i>O. tshawytscha</i>	X	X ^{2/}
Snake River spring/summer chinook salmon	<i>O. tshawytscha</i>	X	X ^{2/}
Snake River fall chinook salmon	<i>O. tshawytscha</i>	X	X ^{2/}
Columbia River chum salmon	<i>O. keta</i>	X	X ^{1/}
Hood Canal summer-run chum salmon	<i>O. keta</i>	X	X ^{1/}
Ozette Lake sockeye salmon	<i>O. nerka</i>	X	X ^{1/}
Lower Columbia River steelhead	<i>O. mykiss</i>	X	X ^{1/}
Middle Columbia River steelhead	<i>O. mykiss</i>	X	X ^{1/}
Upper Willamette River steelhead	<i>O. mykiss</i>	X	X ^{1/}
Snake River steelhead	<i>O. mykiss</i>	X	X ^{2/}
Unlisted Fish Species			
Pink salmon (all ESUs ^{3/})	<i>Oncorhynchus gorbuscha</i>	X	
Coho salmon (all ESUs)	<i>O. kisutch</i>	X	
Chinook salmon (all unlisted ESUs)	<i>O. tshawytscha</i>	X	
Chum salmon (all unlisted ESUs)	<i>O. keta</i>	X	
Sockeye salmon (all unlisted ESUs)	<i>O. nerka</i>	X	
Steelhead/rainbow trout (all unlisted ESUs)	<i>O. mykiss</i>	X	
White sturgeon (anadromous marine fish)	<i>Acipenser transmontanus</i>	X	
Green sturgeon (marine fish)	<i>Acipenser medirostris</i>	X	
Eulachon (marine fish)	<i>Thaleichthys pacificus</i>	X	
Shiner perch (marine fish)	<i>Cymotagaster aggregata</i>	X	
Pacific staghorn sculpin (marine fish)	<i>Leptocottus armatus</i>	X	
Starry flounder (marine fish)	<i>Platichthys stellatus</i>	X	
Surf smelt (marine fish)	<i>Hypomesus pretiosus</i>	X	
Pacific sandlance (marine fish)	<i>Ammodytes hexapterus</i>	X	
Pacific herring (marine fish)	<i>Clupea pallasii</i>	X	



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Table 1-1. Species Potentially Covered by an ITP under ESA Section 10(a) or Take Authorizations under ESA Section 4(d) (Note that only threatened species are covered by Section 4(d)) (continued).

Common Name	Scientific Name	Potentially Covered by an ITP under Section 10(a)	Potentially Covered by Take Authorizations under Section 4(d)
<u>Species under the Jurisdiction of USFWS</u>			
Endangered Species			
None covered			
Threatened Species			
Bull trout	<i>Salvelinus confluentus</i>	X	X ^{2/}
Unlisted Fish Species			
Cutthroat Trout	<i>Oncorhynchus clarki</i>	X	
Rainbow/Interior Redband Trout	<i>O. mykiss</i>	X	
Kokanee	<i>O. nerka</i>	X	
<u>Dolly Varden</u>	<u><i>Salvelinus malma</i></u>	<u>X</u>	
Pacific lamprey	<i>Lampetra tridentata</i>	X	
River lamprey	<i>L. ayresii</i>	X	
Western brook lamprey	<i>L. richardsoni</i>	X	
Pygmy whitefish	<i>Prosopium coulteri</i>	X	
Mountain whitefish	<i>P. williamsoni</i>	X	
Olympic mudminnow	<i>Novumbra hubbsi</i>	X	
Chiselmouth	<i>Acrocheilus alutaceus</i>	X	
Redside shiner	<i>Richardsonius balteatus</i>	X	
Longnose dace	<i>Rhinichthys cataractae</i>	X	
Speckled dace	<i>R. osculus</i>	X	
Leopard dace	<i>R. falcatius</i>	X	
Umatilla dace	<i>R. umatilla</i>	X	
Northern pikeminnow	<i>Ptychocheilus oregonensis</i>	X	
<u>White sturgeon (freshwater)</u>	<u><i>Acipenser transmontanus</i></u>	<u>X</u>	
Tui chub	<i>Gila bicolor</i>	X	
Lake chub	<i>Couesius plumbeus</i>	X	
Peamouth	<i>Mylocheilus caurinus</i>	X	
Largescale sucker	<i>Catostomus macrocheilus</i>	X	
Bridgelip sucker	<i>C. columbianus</i>	X	
Longnose sucker	<i>C. catostomus</i>	X	
Mountain sucker	<i>C. platyrhynchus</i>	X	
Salish sucker	<i>C. carli</i> (species pending)	X	
Three-spine stickleback	<i>Gasterosteus aculeatus</i>	X	
Sandroller	<i>Percopsis transmontana</i>	X	
Coastrange sculpin	<i>Cottus aleuticus</i>	X	
Prickly sculpin	<i>C. asper</i>	X	
Reticulate sculpin	<i>C. perplexus</i>	X	

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Table 1-1. Species Potentially Covered by an ITP under ESA Section 10(a) or Take Authorizations under ESA Section 4(d) (Note that only threatened species are covered by Section 4(d)) (continued).

Common Name	Scientific Name	Potentially Covered by an ITP under Section 10(a)	Potentially Covered by Take Authorizations under Section 4(d)
Species under the Jurisdiction of USFWS (continued)			
Unlisted Fish Species (continued)			
Riffle sculpin	<i>C. gulosus</i>	X	
Shorthead sculpin	<i>C. confusus</i>	X	
Torrent sculpin	<i>C. rhotheus</i>	X	
Slimy sculpin	<i>C. cognatus</i>	X	
Paiute sculpin	<i>C. beldingi</i>	X	
Margined sculpin	<i>C. marginatus</i>	X	
Mottled sculpin	<i>C. bairdi</i>	X	
Longfin smelt	<i>Spirinchus thaleichthys</i>	X	
Burbot	<i>Lota lota</i>	X	
Unlisted Amphibian Species			
Columbia torrent salamander	<i>Rhyacotriton kezeri</i>	X	
Cascade torrent salamander	<i>R. cascadae</i>	X	
Olympic torrent salamander	<i>R. olympicus</i>	X	
Dunn's salamander	<i>Plethodon dunni</i>	X	
Van Dyke's salamander	<i>P. vandykei</i>	X	
Pacific tailed frog	<i>Ascaphus truei</i>	X	
Rocky Mountain tailed frog	<i>A. montanus</i>	X	

1/ Potentially covered under Limit 13 of the existing NMFS ESA Section 4(d) rule.

2/ Requires a new ESA Section 4(d) rule for coverage.

3/ ESU = Evolutionarily Significant Unit, a term used by NMFS to describe a distinctive group of salmon or steelhead.



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1 A breakdown of the ownership of these lands is presented in Table 1-2, and a map showing
 2 the distribution of these lands is provided in Figure 1-1. The geographic area that would
 3 be addressed by this action includes existing and future non-Federal and non-tribal
 4 forestlands in Washington State, excluding those forestlands that are covered by existing
 5 ITPs for aquatic species.¹

Table 1-2. Acreage and Ownership Breakdown of Forestlands Subject to the Washington Forest Practices Regulatory Program.^{1/}

Ownership Category	Western Washington	Eastern Washington	State Total
State Lands (not including State Parks and Wildlife Recreation Areas)	1,715,912	745,035	2,460,947
County Lands	55,793	5,530	61,323
City Lands	139,778	1,137	140,916
Private Lands	6,093,732	2,613,069	8,706,800
Total Lands	8,005,215	3,364,771	11,369,986

^{1/} While the Forest Practices Act applies to 11.4 million acres, approximately 2.3 million of these acres are covered under existing HCPs, Washington DNR State Trust Lands HCP being the largest at approximately 1.6 million acres (Washington DNR 1997d). Existing HCP holders are exempt from many of the Washington Forest Practices Rules, but must still file a forest practices application describing which Washington Forest Practices Rules are replaced by their approved HCP prescriptions.

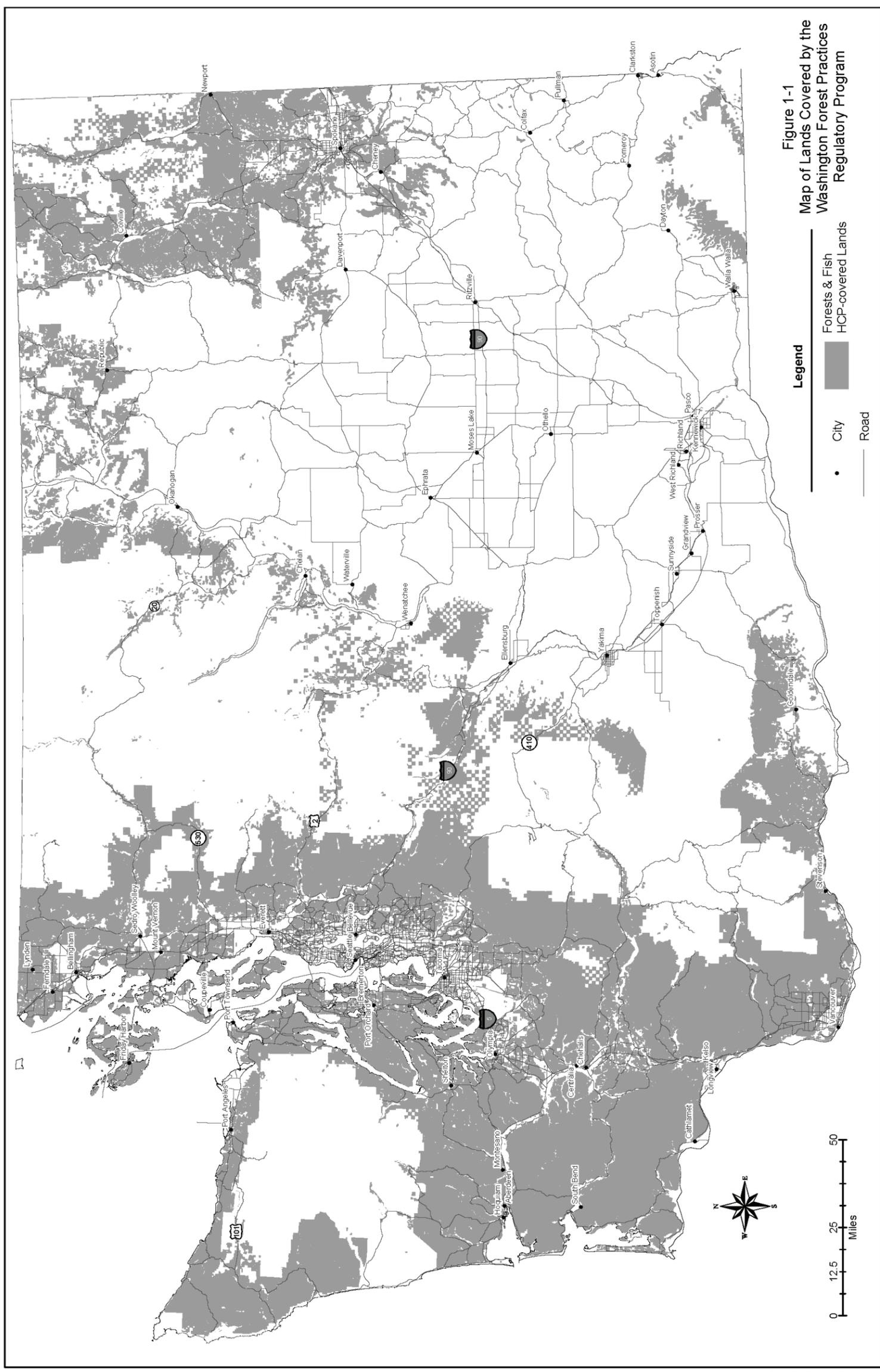
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¹ One set of such ITPs is held by the Washington Department of Natural Resources (DNR) associated with a Habitat Conservation Plan (HCP) (Washington DNR State Trust Lands HCP) developed for certain Washington DNR-managed lands in western Washington and portions of eastern Washington within the range of the northern spotted owl (Washington DNR 1997d). The provisions of Washington DNR's State Trust Lands HCP applicable to western Washington also address aquatic species and, therefore, results in those lands being excluded from coverage under this conservation plan (i.e., the coverage is already provided in the State Trust Lands HCP). However, because Washington DNR's owl HCP does not cover aquatic species in eastern Washington, coverage for aquatic species would be provided on those lands under ITPs (if issued) associated with the proposed FPHCP evaluated in this FEIS. Washington DNR's State Trust Lands HCP is not to be confused with the proposed FPHCP under consideration here. Washington DNR's State Trust Lands HCP was developed by DNR as proprietor of those particular lands covered under the HCP, not as regulator of forest practices on all lands. That distinction is, among other things, fundamental to different approaches taken in Washington DNR's State Trust Lands HCP and in the FPHCP proposal, respectively. Washington DNR's State Trust Lands HCP is not analyzed here.



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Figure 1-1. Map of Lands Covered by the Washington Forest Practices Regulatory Program¹



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¹Lands managed under existing HCPs are shown along with covered lands. These lands are not part of the FPHCP. See FPHCP Section 1-5 for a detailed description of FPHCP covered lands.



1 **1.1.3 Process for Obtaining Take Assurances**

2 To obtain ITPs, under ESA Section 10(a)(1)(B), the State must prepare a conservation plan
3 (commonly referred to as a Habitat Conservation Plan [HCP]) that meets the issuance
4 criteria established by the Services (subsection 1.2.3.1, Decisions to be Made, ESA Section
5 10). For the State to obtain take authorizations under ESA Section 4(d), the State must
6 prepare information similar to that contained in an HCP, with some modifications specific
7 to a Section 4(d) application (e.g., covered species only include those species listed as
8 threatened under ESA). Accordingly, the State has prepared a programmatic conservation
9 plan that incorporates the requirements of both ESA Section 10(a)(1)(B) and Section 4(d).
10 This conservation plan addresses all aspects of the Washington Forest Practices Regulatory
11 Program that may affect aquatic species.

12 The proposed Federal actions of issuing ITPs or take authorizations under ESA Sections
13 10(a)(1)(B) or 4(d) have the potential to affect the human environment and, therefore, are
14 actions subject to review under the National Environmental Policy Act (NEPA). The
15 Services are required to prepare NEPA review documents and to circulate the
16 environmental review package (NEPA document and HCP) for public review. In this case,
17 the Services have determined that there is a need to prepare an Environmental Impact
18 Statement (EIS).

19 This FEIS analyzes the environmental consequences of the proposed action and
20 alternatives to the proposed action. The alternatives include: 1) no action, in which the
21 Services would not issue either ITPs or ESA Section 4(d) take authorizations; 2) an
22 alternative in which the Services would issue ITPs for incidental take of covered species
23 that may result from activities under the Washington Forest Practices Regulatory Program
24 in accordance with an HCP prepared by the State; 3) an alternative in which a limit on the
25 application of the prohibition against take would be issued by NMFS under the existing
26 ESA Section 4(d) rule, and take exemptions would be issued by USFWS under new ESA
27 Section 4(d) rules to cover the take of threatened species that may result from activities
28 regulated by the Washington Forest Practices Regulatory Program; 4) and an alternative in
29 which the Services would issue ITPs based on more protective Washington Forest
30 Practices Rules than are currently in place. Following a 90-day public comment period on
31 the FEIS, the Services will review and respond to comments in writing and/or as changes
32 in a Final EIS. The Services may also suggest the State make changes to the proposed
33 FPHCP as a result of comments received. Following a 30-day review period, the Services
34 will prepare a Record of Decision that will formally document their take authorization
35 decisions.

36 This chapter of the FEIS describes the purpose and need for the proposed action, describes
37 the context for action, and identifies the decisions to be made. It summarizes the scoping
38 activities that have been conducted and describes the relevant issues that have been
39 identified as related to the action. It also identifies the relationship to other plans,
40 regulations, and laws, and then summarizes the organization of the FEIS.



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1.2 PURPOSE AND NEED FOR ACTION

1.2.1 Purpose for Action

The State has prepared a conservation plan covering forest practices activities on non-Federal and non-tribal land in Washington State. The prescriptive elements of the plan are based on the State's Forests and Fish law (i.e., Forest Practices Salmon Recovery Act of 1999) (FEIS Appendix C) and the State's Forest Practices Regulatory Program implementing that law. The State has submitted the conservation plan with applications to the Services for take authorizations available in the ESA (i.e., FPHCP). The Services' purpose for this action is to respond to the State of Washington's applications for ESA take authorizations. These authorizations can be through ITPs, issued by each agency under ESA Section 10(a)(1)(B), or through take authorizations under ESA Section 4(d). If ITPs are granted, they would allow for incidental take of the threatened and endangered species identified in Table 1-1. Provisions for take authorization of proposed and unlisted species would also be made by the Services if the ITPs are granted, so that incidental take authorization would be included for all species listed in Table 1-1, should they become listed under the ESA in the future. If Section 4(d) take authorizations are issued, they would only apply to those threatened species addressed in the relevant ESA Section 4(d) rules.

1.2.2 Need for Action

The need for this action is to provide the broader protection and conservation for listed species under ESA Section 10(a)(1)(B) and Section 4(d) than would occur under Section 9, while providing for long-term management of forest resources on non-Federal and non-tribal lands under the Washington Forest Practices Rules (subsection 1.3, Background and Context).

1.2.3 Decisions to be Made

This subsection describes how the Services determine whether the need is met with respect to species protection and conservation. Discussions between the applicant and the Services during the development of a conservation plan in support of an application for ESA take authorization are conducted with the knowledge and understanding that specific criteria must be met before take coverage can be issued. The decision as to whether the criteria have been met will be made after this FEIS and the FPHCP are finalized following consideration of public input. The decision as to whether the criteria have been met will be documented in the Services' decision documents at the end of the process. These documents consist of: 1) ESA Section 7 biological opinions, 2) ESA Section 10 findings documents if ITPs are issued under ESA Section 10(a)(1)(B), 3) an announcement in the Federal Register if ESA Section 4(d) take limits or exemptions are granted, and 4) a NEPA decision document (Record of Decision).

1.2.3.1 Endangered Species Act, Section 10

Section 10(a)(1)(B) of the ESA provides a mechanism by which the Services may permit incidental take through the issuance of an ITP for otherwise lawful activities. The issuance

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1 criteria for an ITP are contained in Section 10(a)(2)(B) of the ESA and again in the
2 Services' implementing regulations for the ESA (50 CFR 17.22(b)(2) and 17.32(b)(2) for
3 the USFWS; 50 CFR 222.22 for NMFS). The issuance criteria are:

- 4 1. The taking will be incidental;
- 5 2. The applicant will, to the maximum extent practicable, minimize and mitigate the
6 impacts of such taking;
- 7 3. The applicant will ensure that adequate funding for the conservation plan and
8 procedures to deal with unforeseen circumstances will be provided;
- 9 4. The taking will not appreciably reduce the likelihood of survival and recovery of
10 the species in the wild; and
- 11 5. Such other measures the Services may require as necessary or appropriate for the
12 purposes of the HCP.

13 An applicant must prepare and submit to the Services for approval an HCP containing the
14 mandatory elements of ESA Section 10(a)(2)(A) before an ITP can be issued. As such, the
15 HCP must specify:

- 16 1. The impact that will likely result from the taking;
- 17 2. What steps the applicant will take to monitor, minimize and mitigate such impacts,
18 the funding available to implement such steps, and the procedures to be used to
19 deal with unforeseen circumstances;
- 20 3. What alternative actions to such taking the applicant considered, and the reasons
21 why such alternatives are not proposed to be used; and
- 22 4. Such other measures that the Director may require as being necessary or
23 appropriate for the purposes of the plan.

24 The evaluation of the State's ESA Section 10(a)(1)(B) application would be documented in
25 Section 10 findings documents, which are produced at the end of the process. The results
26 of the assessments will determine whether or not ITPs will be issued.

27 **1.2.3.2 Endangered Species Act, Section 4**

28 When the Services promulgate protective regulations under ESA Section 4(d), each can use
29 the rulemaking process to describe limitations on or exemptions to the general application
30 of the ESA Section 9 take prohibition to threatened species. Under such limits or
31 exemptions, activities that kill or injure threatened species do not violate Section 9,
32 because Section 9 does not apply. On July 10, 2000, NMFS promulgated and published an
33 ESA Section 4(d) rule for threatened salmon and steelhead on the Pacific coast (50 CFR
34 222.203; U.S. Federal Register, Vol. 65, No. 132, July 10, 2000, pages 42421-42481). In
35 addition to establishing take prohibitions, the rule provides that certain specified activities
36 or conservation plans may qualify for a limit from the rule's take prohibitions provided that
37 such activities or programs qualify for one of 13 categories known as "limits." Limit 13 of
38 this rule applies to forest management in Washington and could become effective if NMFS
39 finds that the State's program for non-Federal forest management activities is at least as
40 protective as the elements of the FFR. This rule does not apply to the four Snake and



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1 Upper Willamette River groups of salmon and steelhead that are currently listed as
2 threatened because the ESA Section 4(d) rule did not address these species (Table 1-1).

3 USFWS has not issued a comparable ESA Section 4(d) rule, but could exempt the take of
4 threatened bull trout that may occur through implementation of the Washington Forest
5 Practices Rules by adopting a new ESA Section 4(d) rule. A USFWS Section 4(d) rule for
6 bull trout could be structured to exempt take that might occur as a result of implementing
7 the Washington Forest Practices Regulatory Program, provided that the Program is
8 consistent with the conservation needs of the species. USFWS could adopt similar ESA
9 Section 4(d) rules for other threatened species. However, under ESA Section 4(d), a rule
10 can only address take of species listed as threatened, and not species listed as endangered.
11 As a consequence, and in contrast to ESA Section 10, the take of endangered species or
12 unlisted species would not be authorized by any ESA Section 4(d) rule.

13 The evaluation of the State's ESA Section 4(d) application under the existing NMFS
14 Section 4(d) rule would be documented in an announcement in the Federal Register, if an
15 ESA Section 4(d) take limit is granted. If new NMFS or USFWS Section 4(d) rules are
16 issued, the exemptions would also be published in the Federal Register.

17 **1.2.3.3 Endangered Species Act, Section 7**

18 ESA Section 7(a)(2) provides that Federal agencies shall consult with the Services to
19 ensure any action authorized, funded, or carried out by such agency (i.e., action agencies)
20 is not likely to jeopardize the continued existence of any endangered or threatened species
21 or result in the adverse modification or destruction of designated critical habitat. Service
22 actions under ESA Section 10(a)(1)(B) and ESA Section 4(d) are Federal actions. Since
23 the Services are the action agencies, they must consult with themselves to ensure the
24 decisions made will not jeopardize any listed species (not just those addressed in the HCP)
25 or adversely modify or destroy critical habitat. The results of these consultations are
26 documented in biological opinions developed by the Services for the species under their
27 jurisdiction. Biological opinions are produced near the end of the process and document
28 conclusions regarding the likelihood of jeopardizing the continued existence of any listed
29 species or adversely modifying designated critical habitat for any listed species.

30 **1.2.3.4 National Environmental Policy Act**

31 The purpose of NEPA is to promote analysis and disclosure of the environmental issues
32 surrounding a proposed Federal action to reach a decision that reflects NEPA's mandate to
33 strive for harmony between human activity and the natural world. Although NEPA
34 requirements include an analysis of impacts to the same species as does the ESA, the scope
35 of NEPA goes well beyond that of the ESA by considering the impacts of a Federal action
36 not only on all fish and wildlife resources (not just those listed under the ESA), but also on
37 non-wildlife resources such as water quality, air quality, and cultural resources.

38 An EIS is required when the project or activity that would occur is a major Federal action
39 with the potential to significantly affect the quality of the human environment. Issuance,
40 of ITPs under ESA Section 10(a)(1)(B) or take authorizations under Section 4(d), is a
41 Federal action subject to NEPA compliance. An EIS culminates in a Record of Decision.



1 The Record of Decision will document the alternative selected for implementation, as well
2 as any conditions that may be required, and summarize the impacts expected to result from
3 the action.

4 **1.3 BACKGROUND AND CONTEXT**

5 The State’s purpose for this action is to obtain take authorization for species that are listed,
6 and an agreement for species that might become listed in the future under ESA, to provide
7 regulatory certainty and to promote long-term management of forest resources on non-
8 Federal and non-tribal lands in Washington State in accordance with the Washington
9 Forest Practices Rules. To carry out the purpose, the State is seeking ITPs under ESA
10 Section 10(a)(1)(B) or take authorizations under Section 4(d) for take that may occur as a
11 result of forest practices regulated under the Washington Forest Practices Rules.

12 **1.3.1 Washington Forest Practices Regulatory Program**

13 In 1974, the State Legislature passed the Forest Practices Act. The Act was designed to
14 provide protection to forest soils, fisheries, wildlife, water quality and quantity, air quality,
15 recreation, and scenic beauty, while at the same time maintaining a viable forest products
16 industry, by regulating forest practices such as timber removal, road construction and
17 maintenance, reforestation, and the use of forest chemicals. The Washington Forest
18 Practices Rules, which are embodied in the WAC (Title 222 WAC), were first adopted in
19 1976 and apply to non-Federal and non-tribal forestlands in the state.

20 **1.3.1.1 The Formation of the Timber, Fish, and Wildlife Collaboration**

21 During the early years of the Washington Forest Practices Act implementation, the Forest
22 Practices Board and other state policy makers repeatedly weighed conflicting interests of
23 timber industry representatives, Indian tribes, environmental groups, and government
24 regulators in making, amending, and implementing regulations. The Forest Practices
25 Board dealt with contentious rule-making. The Legislature amended the Forest Practices
26 Act several times to review procedures for forest practices applications and change the
27 membership of the Forest Practices Board.

28 Litigation over forest practices resulted in, among other things, an increase in the review of
29 forest practices under the State Environmental Policy Act (SEPA). Also, Indian tribes, and
30 the United States on their behalf, pursued litigation that sought to establish a specific duty
31 to protect habitat as a consequence of tribal treaty rights to a share of harvestable salmon
32 and steelhead, including habitat on commercial forestlands.

33 By 1986, forest stakeholders representing the tribes; the Washington Departments of
34 Natural Resources (DNR), Game (now Department of Fish and Wildlife), Fisheries (now
35 Department of Fish and Wildlife), and Department of Ecology (Ecology); the timber
36 industry and non-industrial private forest landowners; and environmental interests, each for
37 their own reasons, possessed a level of frustration with the then-existing regulatory
38 process. Threshold meetings were held to determine if these disparate interests could
39 negotiate a cooperative approach to management and regulation of forest practices.



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1 The stakeholder¹ negotiation process became known as Timber, Fish, and Wildlife (TFW)
2 and resulted in the Timber, Fish, and Wildlife Agreement (FPHCP Appendix L).
3 Reflecting the collaboration, the final report of TFW states that “[a]ll parties have agreed to
4 a set of goals which have guided the discussions.” These are as follows:

5 *The wildlife resource goal is to provide the greatest diversity of habitats*
6 *(particularly riparian, wetlands, and old growth), and to assure the*
7 *greatest diversity of species within those habitats for the survival and*
8 *reproduction of enough individuals to maintain the native wildlife of*
9 *Washington forestlands.*

10 *The fishery resource goals are long-term habitat productivity for natural*
11 *and wild fish, and the protection of hatchery water supplies.*

12 *The water quantity and quality goals are protection of water needs of*
13 *people, fish, and wildlife.*

14 *The archeological and cultural goals are to develop a process to inventory*
15 *archaeological/cultural spaces in managed forests; and to inventory,*
16 *evaluate, preserve, and protect traditional cultural and archeological*
17 *spaces and assure tribal access.*

18 *The timber resource goal is the continued growth and development of the*
19 *State’s forest products industry, which has a vital stake in the long-term*
20 *productivity of both the public and private forestland base.*

21 *In summary, the TFW participants recognize that there now exists a*
22 *cooperative attitude among the participants that must continue if this*
23 *agreement is to proceed.*

24 In 1987 and 1988, the Forest Practices Board adopted new Washington Forest Practices
25 Rules resulting from the TFW collaborative negotiations. Another major rule package
26 developed under the TFW collaboration was adopted in 1992.

27 Concurrently, in the early 1990s, regional litigation under the Federal ESA related to the
28 northern spotted owl significantly raised the effect of Federal law on regulatory certainty as
29 it related to state and private lands in Washington State. Seeking to restore that regulatory
30 certainty, TFW addressed owl conservation by making a recommendation, developed in
31 concert with the Northwest Forest Plan owl strategy, to the Forest Practices Board that the
32 Forest Practices Board later incorporated into regulations in 1996 (USDA Forest Service
33 and USDI Bureau of Land Management 1994). The Forest Practices Board then adopted
34 TFW-based regulations for the ESA-listed marbled murrelet in 1997. During this decade,
35 TFW activities maintained significant levels of financial support, not only from
36 participants, but also from the Washington State Legislature and the U.S. Congress. Most

¹ Original participants included representatives of a number of Indian Tribes, the Northwest Indian Fisheries Commission; the Columbia River Intertribal Fish Commission; Washington Environmental Council and Audubon Society; Washington Forest Protection Association and Washington Farm Forestry Association; Weyerhaeuser, Georgia Pacific, Plum Creek and Simpson Timber companies; and the State Departments of Natural Resources, Ecology, Fisheries, and Game.



1 of this funding was devoted to monitoring ecological functions within riparian zones and
2 adaptive management.

3 **1.3.1.2 The Forests and Fish Report**

4 Beginning in late 1996, faced with the imminent listing under the ESA of several salmon
5 species in Washington, TFW participants agreed to address emerging riparian habitat
6 issues. Because of the regulatory implications of the ESA, representatives from Federal
7 agencies accepted an invitation to join the original TFW collaborators in the discussions.

8 After almost 2 years of negotiation, representatives of environmental interests and some
9 tribes withdrew from negotiations. The remaining participants continued negotiating and
10 eventually agreed to the FFR, April 1999 (FPHCP Appendix B). The groups contributing
11 to the development of the report included State agencies (Washington DNR, Washington
12 Department of Fish and Wildlife, and Washington Department of Ecology (Ecology),
13 Governor’s Office), Federal agencies (USFWS, NMFS, and Environmental Protection
14 Agency [EPA]), the Colville Confederated tribes, other Washington tribes, the Northwest
15 Indian Fisheries Commission, the Washington State Association of Counties, the
16 Washington Forest Protection Association, and the Washington Farm Forestry Association.

17 During the same time period, the Washington Legislature addressed ESA salmon and
18 steelhead listings with passage of the 1998 Salmon Recovery Planning Act (ESHB 2496).
19 In this legislation, the Legislature made clear its intent to immediately begin the work
20 required to recover salmon and created the Governor’s Salmon Recovery Office to
21 coordinate the State salmon recovery strategy. The following year, the Washington
22 Legislature passed the 1999 Salmon Recovery Funding Act (ESHB 5595). In it, the
23 Legislature established guiding principles for the statewide salmon recovery strategy,
24 which emphasized collaborative, incentive-based approaches. The statewide salmon
25 recovery strategy identified forest practices as a critical component for salmon recovery.
26 The Legislature recognized the FFR as responsive to its policy directive for a collaborative,
27 incentive-based approach to support salmon recovery; ESA coverage and regulatory
28 certainty being key incentives of implementation.

29 Also in 1999, the Washington Legislature passed ESHB 2091 (FEIS Appendix C), which
30 directed the Forest Practices Board to adopt new rules, encouraging the Forest Practices
31 Board to follow the recommendations of the FFR. To further the purpose of regulatory
32 stability, ESHB 2091 also limited future changes to the new rules so that outside of a court
33 order or legislative directive, new rules could be adopted by the Forest Practices Board
34 “only if the changes or new rules are consistent with the recommendations resulting from
35 the scientifically based adaptive management process” included in the FFR. The language
36 further solidified the adaptive management process as a key component of the conservation
37 program.

38 In its rulemaking procedures, the Forest Practices Board conducted an evaluation of the
39 FFR, as well as alternatives to the Report. This evaluation included an EIS under SEPA.
40 The Final State EIS, entitled *Alternatives for Forest Practices Rules for Aquatic and*
41 *Riparian Resources*, was published in April 2001.



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1 The Forest Practices Board adopted new permanent rules in May 2001 based on the FFR.
2 Effective July 2001, these rules cover a wide variety of forest practices and include a new,
3 more functional classification of rivers and streams on non-Federal and non-tribal
4 forestland; improved plans for properly designing, maintaining, and upgrading existing and
5 new forest roads; additional protections for unstable slopes; and greater protections for
6 riparian areas intended to restore or maintain properly functioning habitat conditions. In
7 addition to these substantive provisions, the rules adopt the procedural recommendations of
8 the FFR that address adaptive management, training, and other features. The State
9 Legislature and Congress continued to support the collaboration with significant funding
10 for the research, monitoring, and adaptive management activities called for in the FFR.

11 **1.3.2 Washington State Legislative Directive Regarding Federal Assurances**

12 The 1999 Salmon Recovery Act (ESHB 2091) was enacted “on the assumption that the
13 Federal assurances described in the forests and fish report . . . will be obtained” by June 30,
14 2005 (Revised Code of Washington (RCW) Chapter 77.85.190(1)). The primary
15 component of these Federal assurances is relief from any claim that forest practices would
16 constitute an impermissible “take” of threatened or endangered aquatic species. The State
17 Legislature’s goal in passing ESHB 2091 included: 1) the protection of water quality
18 consistent with the Clean Water Act, 2) the protection of aquatic species to the maximum
19 extent practicable consistent with maintaining commercial forest management as an
20 economically viable use of forestlands, and 3) providing a regulatory climate and structure
21 more likely to keep landowners from converting forestlands to other uses less desirable for
22 salmon recovery (RCW Chapter 77.85.180).

23 The Legislature authorized the Governor to appoint a representative to negotiate on behalf
24 of its agencies and subdivisions to obtain these Federal assurances. In January 2003,
25 Governor Gary Locke designated the Commissioner of Public Lands, Doug Sutherland, to
26 negotiate on behalf of the State of Washington with the relevant Federal agencies to obtain
27 Federal assurances pursuant to RCW Chapter 77.85.190(3).

28 **1.4 SCOPING AND THE RELEVANT ISSUES**

29 The first step in preparing an EIS is to conduct scoping of the issues regarding the
30 proposed action and alternatives. The purpose of scoping is to identify the relevant human
31 environmental issues, to eliminate insignificant issues from detailed study, and to identify
32 the alternatives to be analyzed in the FEIS. Scoping can also help determine the level of
33 analysis and the types of data required for analysis.

34 **1.4.1 Scoping Process**

35 The scoping process for this FEIS involved a number of activities that included both public
36 and internal scoping. These activities are described in the following paragraphs. A
37 scoping report was developed to document the scoping process, summarize scoping
38 comments, and identify preliminary issues. This report is maintained in the Services’
39 administrative record, and is available for review upon request to either NMFS or USFWS.



1 **1.4.1.1 Notice of Intent**

2 Scoping was officially initiated with the publication of the Notice of Intent to prepare a
3 Draft EIS in the Federal Register on Monday, March 17, 2003 (U.S. Federal Register, Vol.
4 68, No. 51, March 17, 2003, pages 12676-12678). This notice stated that there would be a
5 30-day public comment period for the purpose of gathering information on the scope of the
6 issues and the range of alternatives to be analyzed in the FEIS.

7 The Notice of Intent also identified the dates, times, and locations of four public scoping
8 meetings that were held (Table 1-3). Public notice of these meetings was also made
9 through issuance of a press release by the Services on March 10, 2003, as well as
10 electronic mail and notices to individuals listed on the Washington DNR Forest Practices
11 Division “Meeting Agenda” and “Meeting Notices” lists. At least one newspaper article
12 was written and published (The (Aberdeen) Daily World, March 13, 2003) describing the
13 background and intent of the meetings. This article is available online at:
14 <http://www.thedailyworld.com/daily/2003/Mar-13-Thu-2003/news/news6.html>.

15 **Table 1-3. Schedule and Locations of Public Scoping Meetings.**

Date	Time	Place	City
March 18, 2003	5-8 p.m.	Tacoma Sheraton Hotel	Tacoma, Washington
March 20, 2003	5-8 p.m.	Red Lion Hotel	Port Angeles, Washington
March 25, 2003	5-8 p.m.	Red Lion Hotel at the Park	Spokane, Washington
March 26, 2003	5-8 p.m.	Central Washington University Grupe Center	Ellensburg, Washington

16 Each public scoping meeting began at 5 p.m. with a 1-hour open house to accommodate
17 informal discussion and questions. At 6 p.m., a presentation was made by Federal and
18 State representatives followed by a public comment period in which attendees could ask
19 questions and state their scoping comments for the record. A variety of informational
20 materials related to the proposed action, was made available to the public at the meetings.

21 **1.4.1.2 Written Comments**

22 In addition to the oral comments provided at the scoping meetings, 30 formal comment
23 letters were received, along with a number of written comments submitted at the scoping
24 meetings (see Appendix F of Scoping Report for a listing of the letters). The 30 letters
25 consisted of 238 pages of original input. In addition, they included many hundreds of
26 pages of attachments. The oral and written comments have been considered in the
27 formulation of the issues to be considered in this FEIS (subsection 1.4.2, Issues Identified
28 During Scoping).

29 **1.4.1.3 Internal Scoping Meetings**

30 During and following public scoping, a number of internal FEIS team meetings were held
31 to discuss the following subjects:

- 32 1. FEIS outline,
33 2. public scoping comments received,



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- 1 3. issues to be analyzed in the FEIS,
- 2 4. draft alternatives to be analyzed in the FEIS, and
- 3 5. analyses and methods to be used to assess the effects of the alternatives relative to
- 4 the issues.

5 The FEIS team consists of representatives from NMFS, USFWS, EPA, Governor’s Office,
6 Washington DNR, Ecology, Washington Department of Fish and Wildlife (WDFW),
7 Northwest Indian Fisheries Commission, Tetra Tech ~~ECFW~~ (the EIS contractor), and
8 others. At least six key project EIS team meetings that covered scoping, the issues, the
9 alternatives, and the analysis methods took place in mid-2003. In addition, project team
10 members independently conducted reviews of public scoping comments, analyzed the
11 issues, and considered alternatives in preparation for the team meetings.

12 **1.4.1.4 Future Scoping and Public Involvement**

13 This FEIS has been issued for a 90-day public review period, previously announced in
14 newspapers, through letters to interested parties, and in the Federal Register. Following
15 this public review period, responses to public comments will be prepared and included in
16 an FEIS. The FEIS will include any changes resulting from consideration of public
17 comments. A 30-day “cooling off” period (as defined by the Council on Environmental
18 Quality) will be announced through the same venues used for the FEIS. Following the
19 “cooling off” period, the Services will conduct a final review of the FEIS and proposed
20 FPHCP to decide whether or not to issue the requested take authorization. The final
21 decision-making process will involve analyses by NMFS and USFWS in ESA Section 7
22 biological opinions and an ESA Section 10 or Section 4(d) findings documents, and a
23 NEPA Record of Decision.

24 **1.4.2 Issues Identified During Scoping**

25 The following issues were identified during both public and internal scoping. Detailed
26 discussions of many of these issues occur in Chapter 4 (Environmental Effects).

27 **1.4.2.1 Soils and Erosional Processes**

- 28 • Protection of managed lands from mass wasting and surface erosion, particularly
29 relative to unstable slopes and road maintenance and abandonment, including the Road
30 Maintenance and Abandonment Plan (RMAP) process.
- 31 • Effectiveness of the Road Maintenance and Abandonment Plan process, the
32 recommended road maintenance and abandonment changes for small forest
33 landowners, and the length of time required for full implementation.

34 **1.4.2.2 Water Quality**

- 35 • Protection of surface and groundwater quality, including temperature, sediment and
36 turbidity, and forest chemicals.
- 37 • The ability of affected streams to meet applicable basin plan limitations, water quality
38 standards, and limits established in Water Cleanup Plans or Total Maximum Daily
39 Load (TMDL) studies over the life of the conservation plan.



- 1 **1.4.2.3 Water Quantity**
- 2 • The effects of forest management on State and private lands in Washington on
- 3 watershed hydrology, including effects on peak and low flows, water yield, floodplain
- 4 function, and ultimately on fish habitat.
- 5 **1.4.2.4 Riparian Habitat**
- 6 • Protection of riparian vegetation and processes.
- 7 • The adequacy of the proposed riparian buffer widths and the degree of management
- 8 permitted within the buffers, with regard to large woody debris production, delivery,
- 9 and recruitment; maintenance of shade for water temperature protection; maintenance
- 10 of streambank stability; detrital production (See Glossary); and microclimate
- 11 protection.
- 12 • The adequacy and accuracy of the stream-typing model.
- 13 **1.4.2.5 Wetlands**
- 14 • Protection of wetlands and their functions.
- 15 **1.4.2.6 Vegetation**
- 16 • Effects of forest management on wildfire risk.
- 17 • Effects of forest management on other forest vegetation disturbance agents, the spread
- 18 of noxious weeds, vegetative structure and diversity in riparian corridors, and
- 19 threatened/endangered plants.
- 20 **1.4.2.7 Fish**
- 21 • Effects of forest management on the recovery and long-term viability of listed fish
- 22 species.
- 23 • Specific concerns related to fish passage; effects on water quality parameters including
- 24 temperature, turbidity, and forest chemicals; fish habitat elements including pool size
- 25 and frequency, spawning gravel quality and quantity, substrate embeddedness, and
- 26 channel conditions and dynamics; the degree of “refugia” protection; and the effect on
- 27 fish and fish habitat on adjacent Federal lands (e.g., Olympic National Park).
- 28 • The identification of activities that may result in take and the feasibility of quantifying
- 29 take.
- 30 • Protection of habitat for currently unlisted species covered by the conservation plan.
- 31 **1.4.2.8 Amphibians**
- 32 • Protection of amphibian habitat, including: water quality, water quantity, riparian and
- 33 wetland habitat, increased sedimentation, changes in water temperature, changes in
- 34 large woody debris recruitment and microclimate, and other factors.
- 35 **1.4.2.9 Other Wildlife**
- 36 • The quality and quantity of habitats for other wildlife species (especially unique
- 37 habitats, known to be priority habitats for certain aquatic or riparian species).



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1 1.4.2.10 Land Ownership and Use

- 2 • The rate of conversion of forestlands to non-forestland uses, including urban land uses.
- 3 • Potential for landowners to opt out of their existing HCPs, which contain provisions to
- 4 reduce the likelihood of conversion, in favor of the new Forest Practices Regulatory
- 5 Program conservation plan.
- 6 • The potential for lands to be withdrawn from participation in the conservation plan.

7 1.4.2.11 Cultural, Archeological, and Historic Resources

- 8 • Identification and protection of archaeological and historic sites, particularly regarding
- 9 sites important to Northwest Indian tribes and their cultural and religious beliefs.

10 1.4.2.12 Social and Economic Factors

- 11 • Identification and measurement of the positive and the negative economic effects of
- 12 the alternatives on recovering salmonids, water quality, and other resources, including
- 13 non-market costs and values.
- 14 • The potential for companies to locate in the State because of the quality of life and
- 15 desirability of living here, as well as benefits to businesses directly dependent on the
- 16 resources, such as fishing and recreation.
- 17 • Environmental justice relative to Indian tribes who depend on harvestable supplies of
- 18 salmon.
- 19 • Economic impacts to property owners and others who make a living from the land.
- 20 • The effect on the economy of the State.
- 21 • The effects of the Washington Forest Practices Rules on the economic position of
- 22 Washington timber managers within global markets.
- 23 • The effects on economic and social structures of rural areas, which have suffered from
- 24 changing economic conditions, relative to environmental justice.
- 25 • Effects on small landowners and the potential for disproportionate costs of ESA
- 26 protections.

27 1.4.2.13 Cumulative Effects

- 28 • The adequacy of Washington Forest Practices Rules for addressing cumulative effects;
- 29 especially given the lack of continuing Watershed Analysis efforts, potential for
- 30 conversion, and the limited rules specifically addressing cumulative effects.
- 31 • The potential for cumulative effects in watersheds with a large proportion of small
- 32 landowners.
- 33 • The amount of incidental take already authorized by existing take permits in
- 34 conjunction with the current project.

35 1.4.2.14 Monitoring and Adaptive Management

- 36 • The adequacy of proposed programs for monitoring and adaptive management,
- 37 including the adequacy and degree of assurance that full funding will be achieved, the
- 38 degree of independence of the programs, and the need for measurable performance and
- 39 effectiveness monitoring indicators.



- 1 • The appropriateness of the “no surprises” guarantee and a 50-year term given the
2 State’s adaptive management program.

3 **1.5 RELATIONSHIP TO OTHER PLANS, REGULATIONS, AND LAWS**

4 Many Federal, State, and local statutes, regulations, and policies govern the activities
5 proposed for ITPs or take authorizations under the FPHCP. While many regulations
6 require issuance of environmental permits prior to project implementation (Table 1-4,
7 found at end of Chapter 1), others require agency consultation (Table 1-5, found at end of
8 Chapter 1). It should be noted that the activities to be covered by ITPs or take
9 authorizations are varied and extensive and, as a result, the requirements of the non-Federal
10 and non-tribal landowners for permits, environmental review, and consultation are variable
11 and dependent on the specific activities involved. A brief summary of those regulations
12 that are most relevant to forest practices activities governed by the State is provided and
13 summarized in Tables 1-4 and 1-5 at the end of this section. See also Chapter 5, subsection
14 5.2.2 (Statutes, Regulations, Plans, and Programs), for more discussion of additional plans
15 (e.g., existing HCPs and the Northwest Forest Plan).

16 **1.5.1 Federal Regulations**

17 Development of the FPHCP and related EIS are regulated by two primary pieces of Federal
18 legislation: the ESA and NEPA. The State also intends that compliance with the
19 conservation plan will achieve compliance with the Clean Water Act. The three laws are
20 described below.

21 **1.5.1.1 Endangered Species Act**

22 The ESA is intended to protect and conserve species listed as endangered or threatened and
23 to conserve the habitats upon which they depend (ESA Section 2(b)). Furthermore, the
24 ESA mandates that all Federal agencies seek to conserve endangered and threatened
25 species and use their resources and authorities to further such purposes (ESA Sections
26 2(c)(1),7(a)(1)). The USFWS, acting on behalf of the Secretary of the Interior, oversees
27 administration of the ESA for terrestrial species and resident and some anadromous fish
28 species. NMFS, acting on behalf of the Secretary of Commerce, oversees administration of
29 the ESA for marine mammals and most anadromous fish. Thus, both agencies function in
30 tandem to administer the ESA.

31 A species is considered endangered if it is determined that the species is in danger of
32 extinction throughout all or a significant portion of its range (ESA Section 3(6)). A species
33 is considered threatened if it is found that the species is likely to become endangered
34 within the foreseeable future (ESA Section 3(19)). Several federally listed species
35 potentially occur in areas that could be directly and/or indirectly affected by forest
36 practices in Washington State (Table 1-1).

37 ESA sections related to the State’s development of a conservation plan include the
38 following (for further detail, see subsection 1.1.1, Structure of the ESA):



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- 1 • **Section 4:** Sets forth procedures and criteria for proposing, identifying, and listing
2 threatened and endangered species; identifying candidate species; and identifying,
3 designating, and revising critical habitat for species. It also provides for extension of
4 Section 9 take prohibitions to threatened species through adoption of rules under ESA
5 Section 4(d), which allows regulations “necessary and advisable to provide for the
6 conservation” of threatened species. Such rules can include provisions that limit or
7 exempt particular activities from the Section 9 take prohibitions under certain
8 circumstances.
- 9 • **Section 7:** Requires Federal agencies to consult with the Services to ensure that
10 activities they authorize, fund, or carry out are not likely to jeopardize the continued
11 existence of a listed species or result in the destruction or adverse modification of
12 designated critical habitats and provide for measures or alternatives to minimize take of
13 listed species or their habitat.
- 14 • **Section 9:** Prohibits the take of an endangered species, defined in the ESA to mean
15 “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt
16 to engage in any such conduct.”
- 17 • **Section 10:** Allows the Services to issue ITPs that authorize the take of listed species
18 by non-Federal entities. The Services define “incidental take” as take that is
19 “incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.”
20 To obtain an ITP, applicants must submit an HCP and have the permit issuance criteria
21 met before approval is given by the USFWS, NMFS, or both agencies, as appropriate.
- 22 • **Section 11:** Provides civil and criminal penalties for violation of the ESA and allows
23 third parties to bring civil actions to enforce ESA provisions.

24 **1.5.1.2 National Environmental Policy Act**

25 See subsection 1.2.3.4 (Decisions to be Made, National Environmental Policy Act).

26 **1.5.1.3 Clean Water Act**

27 The Clean Water Act, administered by the EPA and Ecology is the principal Federal
28 legislation directed at protecting water quality. Ecology establishes standards and
29 regulations, subject to approval by the EPA, by which waters of the state must be managed
30 to meet Federal requirements. The relationship between the Clean Water Act and ESA
31 creates the primary regulatory context within which the State developed its conservation
32 plan (See also subsection 1.5.2.5, Washington State Water Pollution Control Act).

33 **1.5.2 State Regulations**

34 Major State regulations that are relevant to forest practices activities in Washington are
35 summarized below to assist the reviewer by providing additional context for the proposed
36 action. They include the State Forest Practices Act, the State Shoreline Management Act,
37 SEPA, regulations pertaining to state listing of species, the Washington State Water
38 Pollution Control Act, the State Hydraulic Code, and the State Growth Management Act.



1 **1.5.2.1 State Forest Practices Act**

2 The Forest Practices Board was created by the Forest Practices Act (RCW Chapter 76.09).
3 The Forest Practices Act directs the Forest Practices Board to adopt rules where necessary
4 to accomplish the purposes and policies established by the Washington Legislature and to
5 implement other provisions of the forest practices chapter of the Revised Code of
6 Washington. Specifically, the Forest Practices Board establishes minimum standards for
7 forest practices and adopts rules pursuant to the Administrative Procedure Act
8 (RCW Chapter 34.05), SEPA (RCW Chapter 43.21), and the Regulatory Fairness Act
9 (RCW Chapter 19.85).

10 **1.5.2.2 State Shoreline Management Act**

11 The Shoreline Management Act (RCW Chapter 90.58) applies to all marine waters,
12 submerged tidelands, lakes over 20 acres, and all streams with a mean annual flow greater
13 than 20 cubic feet per second. Wetlands associated with the above waters are also
14 included, as is a 200-foot-wide shoreline area landward from the water’s edge and all or a
15 portion of the 100-year floodplain on rivers and streams. The primary intent of the
16 Shoreline Management Act is to “provide for the management of the shorelines of the State
17 by planning for and fostering all reasonable and appropriate uses.” This policy is designed
18 to ensure the development of these shorelines in a manner that, while allowing for limited
19 reduction of rights of the public in the navigable waters, will promote and enhance the
20 public interest. The Act directs that this goal shall be attained through the protection of
21 natural shorelines, and through encouragement of water-related and water-dependent uses.
22 Washington Forest Practices Rules are related to the Shoreline Management Act because
23 they address specific forest practices along Type 1 streams, which are defined as
24 “shorelines of the State,” and are also regulated by the Shoreline Management Act.

25 **1.5.2.3 State Environmental Policy Act**

26 Washington State’s fundamental environmental law ensures that governmental agencies
27 consider environmental factors in the decision-making process, and that these
28 considerations would help maintain and improve environmental quality.

29 Prior to adopting new Washington Forest Practices Rules or making significant
30 amendments to its prior rules, the Forest Practices Board typically prepares programmatic
31 State EISs to analyze the environmental effects of the proposed rules and alternatives to
32 those rules and to help inform both the public and the decision-makers. This was most
33 recently done as directed by the State Legislature in ESHB 2091 as a result of the FFR.
34 The Forest Practices Board conducted an evaluation of the Forests and Fish proposal, and
35 alternatives to the proposal. This evaluation included preparation of an EIS under the
36 SEPA. The State’s Final EIS, entitled “Alternatives for Washington Forest Practices Rules
37 for Aquatic and Riparian Resources” was published in April 2001. Specific information
38 about the purpose and procedural requirements of the Act is available in the SEPA, RCW
39 Chapter 43.21C; SEPA Rules, WAC Chapter 197-11 (implementing rules); and the SEPA
40 Handbook (guidance provided by Ecology).



Chapter 1

1.5.2.4 State Listing of Endangered, Threatened, and Sensitive Species

In 1990, the Washington Fish and Wildlife Commission adopted listing procedures that identify how species are listed by the State, the criteria for listing and de-listing, and the requirements for recovery and management plans (WAC Chapter 232-12-297). The State lists are distinct from the Federal ESA lists; they include species status relative to Washington State jurisdiction only. Critical wildlife habitats associated with State or federally listed species are identified in WAC Chapter 222-16-080. The WDFW maintains a list of endangered, threatened, and sensitive species (WAC Chapters 232-12-014 and 232-12-011).

1.5.2.5 Washington State Water Pollution Control Act

As discussed in subsection 1.5.1.3 (Clean Water Act), the Washington State Water Pollution Control Act, codified as RCW Chapter 90.48, designates Ecology as the agency responsible for carrying out provisions of the Federal Clean Water Act within Washington. Ecology is responsible for establishing water quality standards, making and enforcing water quality rules and operating waste discharge permit programs. Washington State's Forest Practices Act was enacted to create and maintain a comprehensive statewide system of laws and forest practices rules for non-Federal lands that foster the commercial timber industry while protecting the environment. One of the purposes of the act is to "achieve compliance with all applicable requirements of Federal and State law with respect to non-point sources of water pollution from forest practices" (RCW Chapter 76.09.010(2)(g)). The Washington Forest Practices Rules establish the permit program for non-point sources of pollution arising from forest practices (RCW Chapter 90.48.240(1)(3)). Adoption of the Washington Forest Practices Rules "shall be accomplished so that compliance with such rules will achieve compliance with water pollution control laws" (RCW Chapter 90.48.420(1)). A representative from Ecology, which is the State agency empowered with enforcing Federal water quality requirements on behalf of EPA for the State of Washington, serves on the Forest Practices Board. This representative's role is to facilitate the Ecology's co-adoption of all Washington Forest Practices Rules affecting water quality to ensure that all current and future forest practices rules are consistent with State and Federal water quality standards, including antidegradation.

1.5.2.6 Hydraulic Project Approval

Under the Hydraulic Code (RCW Chapter 77.55), a Hydraulic Project Approval from the WDFW is required for any construction activity in or near State waters. A Hydraulic Project Approval (also known as an "HPA") is also required for the performance of other work that will use, divert, obstruct, or change the natural flow or bed of any waters of the State. This permit allows the WDFW to condition these activities, such as road crossings, to protect fish, shellfish, and their habitats.

1.5.2.7 Growth Management Act

The Growth Management Act was passed by the State Legislature in 1990 and amended in 1991. It addresses the consequences of population growth in Washington State. The Growth Management Act requires all cities and counties in the State to protect critical areas and designate resource lands of long-term commercial significance. The Growth



1 Management Act also requires the largest and fastest growing counties and cities in the
2 State to prepare comprehensive land use plans. For cities, comprehensive plans also
3 address urban growth areas beyond the city limits. Pursuant to the Growth Management
4 Act, urban growth must occur in designated urban growth areas. Most forest practices
5 regulated under the Forest Practices Act occur in areas classified as “forestland” of “long-
6 term commercial significance” under the Growth Management Act, and thus are
7 considered “natural resource lands” that receive additional protection from residential,
8 commercial, and industrial development. However, some forest practices also occur on
9 other lands both outside and inside urban growth boundaries.

10 **1.6 ORGANIZATION OF THIS EIS**

11 This EIS has been prepared in accordance with NEPA and with the NEPA guidelines
12 adopted by the NMFS and USFWS. The EIS is a stand-alone document, but it should be
13 reviewed in conjunction with the State’s FPHCP, which contains more detailed
14 background information and an explanation of the Washington Forest Practices Regulatory
15 Program. Chapter 1 provides the background and context leading to the development of
16 the proposed action. It describes the purpose and need for action; describes the decisions
17 to be made; describes scoping and the relevant issues; and explains the relationship of this
18 action to other plans, regulations, and laws. Chapter 2 describes each of the alternatives
19 and lists their major components. Chapter 3 describes the environment that would be
20 affected under each of the alternatives, including the biological, physical, sociological, and
21 economic aspects of each alternative. Chapter 4 contains analyses of the potential direct
22 and indirect effects of each alternative on the issues and resources identified in Chapter 3
23 and compares alternatives to “no action.” Chapter 5 addresses cumulative effects.

24 The following information is included in this EIS, prior to Chapter 1: a list of acronyms
25 (inside front cover), a preface, a cover sheet, a glossary, and a summary. After Chapter 5,
26 these additional sections are included in this EIS: a list of references, a distribution list, a
27 list of preparers, and appendices.



Chapter 1

1 **Table 1-4.** Federal and State Permits, Approvals, or Processes that may be
 2 Required for Forest Practices Activities Governed by the State.

Permit, Approval or Process (Oversight Agency)	Project Activities that Trigger Permit, Approval, or Process Requirements
Federal Permits, Approval, or Process	
ESA Section 10 ITP (USFWS)	Potential incidental take of federally listed threatened and endangered species.
ESA Section 4(d) Take Limits or Exemptions (USFWS and NMFS)	Limit or exemption on take prohibitions for threatened species specifically addressed in a Section 4(d) rule.
NEPA (EPA)	A NEPA EIS must be prepared for every major Federal action (project or programmatic) with the potential to significantly affect the quality of the environment.
Clean Water Act, NPDES Permit (EPA, Delegated to Ecology in Washington State)	Discharge of a pollutant or pollutants directly into surface waters of the United States from any point source. EPA rules define water pollution from commercial forestlands as nonpoint except for four specific types of “silvicultural” point sources: truck washes, gravel crushing/washing facilities, log storage yards, and log ponds.
Clean Water Act Section 404 Permit [U.S. Army Corps of Engineers (Corps)]	Discharge of dredged or fill material into waters of the United States, including wetlands. Permits are issued following public review and completed analyses as required by the EPA’s Section 404(b)(1) guidelines. “Normal silviculture,” maintenance of currently serviceable structures and drainage ditches and, where consistent with Best Management Practices, construction and maintenance of forest roads generally are exempt from these permit requirements under Section 404(f)(1) unless “recaptured” under 404(f)(2).
Rivers and Harbors Act Section 10 Permit (Corps)	(1) Construction of any structure in or over any navigable water of the United States, (2) excavation, dredging, or deposition of material in navigable waters, or (3) creation of any obstruction or alteration in a navigable water.
Stevens Treaties with several Sovereign Indian Nations	U.S. v Washington, The United States of America through treaties with several sovereign Indian Nations in Washington, has a trust responsibility to ensure that Treaty Indian tribes are afforded 50 percent of harvestable fish, and that the right to harvest fish is additionally respected by ensuring that habitat degradation does not impede the supply of fish.
Secretarial Order 3206 “American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act”	This Order clarifies the responsibilities of the agencies, bureaus, and offices of the Department of the Interior and the Department of Commerce when actions taken under authority of the ESA and associated implementing regulations affect, or may affect, Indian lands, tribal trust resources, or the exercise of American Indian tribal rights, as defined within the Order.

Chapter 1



1 **Table 1-4.** Federal and State Permits, Approvals, or Processes that may be
2 Required for Forest Practices Activities Governed by the State
3 (continued).

Permit, Approval or Process (Oversight Agency)	Project Activities that Trigger Permit, Approval, or Process Requirements
State Permits, Approval, or Process	
SEPA (Ecology)	A SEPA EIS must be prepared on proposals for legislation and other major actions having a probable significant, adverse environmental impact. “Planned actions” are defined under RCW Chapter 43.21C.031 (2). A SEPA EIS may be needed for Class IV forest practices as defined by the Legislature and by Forest Practices Board rules. RCW Chapter 76.09.050(1); RCW Chapter 43.21C.037.
Hydraulic Project Approval (WDFW)	Construction activities within or affecting State waters trigger the Hydraulic Code of 1949, which requires that an Hydraulic Project Approval be obtained prior to commencing construction.
State Shoreline Management Permit (Local County or Ecology)	Applies to activities taking place within 200 feet of “shorelines of the State” (Type 1 waters) and within associated wetlands. Limits the amount of harvest in this zone within a 10-year period.



Chapter 1

1 **Table 1-5.** Other Federal and State Environmental Review and Consultation
2 Requirements.

Consultation Requirement (Oversight Agency)	Description of Consultation Required	Project Activities Initiating Review and Consultation
Federal Requirements		
ESA Section 7 Consultation and Section 10 Permits (USFWS and NMFS)	Federal agencies must consult with the USFWS and/or NMFS under Section 7 when their actions may affect species listed under the ESA. Intra-Service consultation is also required for Service-proposed actions.	If the Services determine that the project may affect ESA-listed species, then consultation is required (Section 7). To obtain an ITP, non-Federal entities must prepare an approved HCP under Section 10.
Magnuson-Stevens Fishery Management and Conservation Act	Federal agencies must consult with NMFS if project activities will adversely affect “essential fish habitat.”	Consultation recommendations for impacts on EFH, combined with Section 7 consultations when ESA species are affected.
Clean Water Act and NEPA (EPA)	EPA has oversight responsibility to ensure that Federal and State agencies comply with the provisions of the Clean Water Act and NEPA.	Application for U.S. Army Corps of Engineers’ permit under Clean Water Act Section 404 and for preparation of a NEPA EIS.
National Historic Preservation Act	Federal agencies must consider the effects of their actions on properties eligible for the National Register of Historic Places.	Federally funded action or application for any Federal permit.
Archaeological Survey Review Pursuant to Archaeological Resource Protection Act and National Historic Preservation Act (Washington State Office of Archaeology and Historic Preservation)	The State Historic Preservation Officer reviews and comments on archaeological surveys performed on site. If resources are identified that could be affected by forest practices, the State Historic Preservation Officer is consulted for ways to avoid affecting resources or to determine eligibility for nomination to the National Register of Historic Places. The Advisory Council on Historic Preservation must concur.	Archaeological survey conducted and determinations of eligibility and effect prepared; a management plan is circulated and signed by the project applicant, State lead agency, Federal lead agency, the State Historic Preservation Officer, and the Advisory Council on Historic Places.
State Requirements		
Growth Management Act Critical Areas Ordinances	Must designate and protect.	Assumed valid upon adoption by local governments.
Growth Management Act Designation of Resource Lands	Must designate and protect.	Assumed valid upon adoption by local governments.
Growth Management Act Comprehensive Land Use Plans	Planning counties and cities must plan and regulate land use.	Assumed valid upon adoption by local governments.