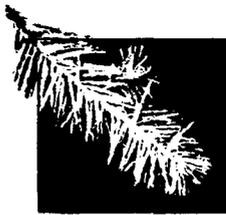


Appendix 4 - Implementation Agreement



Appendix 4. Implementation Agreement

IMPLEMENTATION AGREEMENT FOR THE WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES HABITAT CONSERVATION PLAN

THIS AGREEMENT is made and entered into as of the ___ day of _____, 1996, by and between the Secretary of the Interior acting through the United States Department of the Interior, as represented by the UNITED STATES FISH AND WILDLIFE SERVICE ("USFWS"), an agency of the federal government, the Secretary of Commerce acting through the NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION as represented by the NATIONAL MARINE FISHERIES SERVICE ("NMFS"), an agency of the federal government, and the WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES, ("DNR"), an agency of the State of Washington, which includes the WASHINGTON STATE BOARD OF NATURAL RESOURCES ("BOARD").

BACKGROUND

- 1.0 DNR manages approximately 2.1 million acres of forest lands within the State of Washington.
- 2.0 Approximately 1.6 million acres of DNR-managed forest lands are within the range of the Northern Spotted Owl (*Strix occidentalis caurina*), ("the Owl").
- 3.0 The Marbled Murrelet (*Brachyramphus marmoratus*), Bald Eagle (*Haliaeetus leucocephalus*), Grizzly Bear (*Ursus arctos*), Gray Wolf (*Canis lupus*), Peregrine Falcon (*Falco peregrinus*), Columbian White-tailed Deer (*Odocoileus virginianus leucurus*), Aleutian Canada Goose (*Branta canadensis leucopareia*), and Oregon Silverspot Butterfly (*Speyeria zerene hippolyta*) (hereafter known collectively as "other federally listed species") occur or may occur on the PERMIT LANDS.
- 4.0 The aforementioned species are listed as threatened or endangered under the Federal Endangered Species Act, 16 U.S.C. § 1531, *et seq.*, ("ESA"), and any taking, as that term is used in the ESA, of these species is prohibited, except as permitted by the ESA.

5.0 Incidental takings in accordance with an Incidental Take Permit ("ITP") issued by the SERVICES in conjunction with approval of a Habitat Conservation Plan ("HCP") are authorized by the ESA.

6.0 DNR, with technical assistance from the SERVICES and others, has prepared an HCP for the Owl and other species that may use the types of habitat that occur on the PERMIT LANDS.

7.0 DNR has applied to have the ITP include the Owl and other federally listed species that may currently use the types of habitats that occur on PERMIT LANDS; and to have the ITP, as amended from time to time, include every species that becomes listed after the effective date of this Implementation Agreement ("Agreement") and that may now or hereafter use the types of habitats that occur within the five Westside Planning Units of the PERMIT LANDS and the Olympic Experimental State Forest (OESF).

8.0 The SERVICES require an Implementation Agreement to be signed by all PARTIES associated with issuance of an ITP for a long-term HCP.

9.0 The purposes of this Agreement are to obtain an approved HCP and ITP covering DNR-management activities on the PERMIT LANDS; to implement the HCP; to commit the PARTIES to fulfill and faithfully perform their respective obligations, responsibilities, and tasks to the extent consistent with their respective authorities; to identify remedies and recourse should any of the PARTIES fail to perform such obligations, responsibilities, and tasks; and to provide for regulatory relief, stability, and species conservation.

10.0 The SERVICES have given full consideration to the HCP and this Agreement and found them to meet the requirements for issuance of an ITP under the ESA.

11.0 DNR has given full consideration to the HCP, its alternatives, the ITP, and this Agreement and found the HCP, the ITP, and this Agreement to be in the best interest of each of the trusts.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained below, the PARTIES agree as follows:

AGREEMENT

12.0 Definitions. The terms of the HCP, and this Agreement shall be interpreted as supplementary to each other, but in the event of any direct contradiction between the terms of the HCP and this Agreement, the terms of this Agreement shall control. Terms capitalized in this document shall have the meanings set forth in this section.

12.1 The terms "PARTY" and "PARTIES" shall mean one or all of the following: the Secretary of the Interior acting through the United States Department of the Interior, as represented by the USFWS, the Secretary of Commerce acting through the National Oceanic

and Atmospheric Administration, as represented by NMFS, and DNR, including the BOARD.

12.2 The terms "SERVICE" and "SERVICES" shall mean the USFWS and/or the NMFS acting on behalf of their respective Secretaries.

12.3 The terms "ITP" and "PERMIT" shall mean an incidental take permit issued to DNR pursuant to Section 10(a) of the ESA to authorize any incidental take of listed species which may result from otherwise lawful DNR-management activities on PERMIT LANDS, which are conducted in accordance with the HCP and this Agreement.

12.4 The term "PERMIT LANDS" shall mean the lands covered by the ITP and HCP, as referred to in section 15.1 of this Agreement.

12.5 The term "HCP" shall mean the Habitat Conservation Plan prepared by DNR, and as amended.

12.6 The term "SPECIES ADDRESSED IN THE HCP" includes all species currently listed as threatened or endangered that may use the types of habitat found on the PERMIT LANDS, and all species hereafter listed as threatened or endangered that may use the types of habitat found within the five Westside Planning Units and the OESF. These species include species listed under the ESA or afforded similar status or protection by federal law or regulation applicable to or affecting the PERMIT LANDS during the term of the HCP.

12.7 The term "DAYS" shall mean calendar days.

12.8 The term "COMPLIANCE" shall mean substantial compliance with the commitments of the HCP, ITP, and this Agreement.

12.9 The terms "DEMONSTRATES" and "DEMONSTRATING" shall mean to establish the existence of a condition or development by use of the best scientific and/or commercial data available.

12.10 The term "PEER REVIEWED" shall mean that consistent with section B(1) of the Interagency Cooperative Policy for Peer Review in Endangered Species Activities (59 Fed. Reg. 34,270), the SERVICES will provide for peer review of the scientific data on which the agencies base any finding requiring peer review in this Agreement to ensure that any such findings are based on the best scientific and commercial data available. The SERVICES will request peer review so that the reviews will be completed within seventy-five (75) DAYS of DNR's request. In the event peer review of such data is not available in time to enable the SERVICES to meet their obligations established by statute, regulation, or this Agreement, the required finding or decision based on such data will be effective, but will be reconsidered by the SERVICES as soon as that information becomes available.

13.0 Incorporation by Reference. The HCP is intended to be, and by this reference is, incorporated herein.

14.0 Responsibilities of the PARTIES. The PARTIES agree to be bound by and to the commitments of the HCP, the ITP, and this Agreement, subject to amendment, renewal, or termination as provided herein.

15.0 PERMIT LANDS.

15.1 PERMIT LANDS Description. Contained in Map I.1 of the HCP, and incorporated herein by reference, are Geographic Information Systems (GIS) data describing the PERMIT LANDS subject to the HCP, the ITP, and this Agreement. Said lands are referred to in the HCP, the ITP, and this Agreement variously as the "DNR-managed lands in the area covered by the HCP," "PERMIT LANDS," the "DNR forest lands," the "DNR-managed lands," the "lands within the planning units," and other similar terms. All such terms, unless otherwise indicated, used in the HCP, the ITP, or this Agreement refer to those lands identified in Map I.1 of the HCP as "DNR-managed HCP lands."

15.2 Natural Area Preserves and Natural Resource Conservation Areas. DNR manages approximately 45,000 acres of Natural Area Preserves ("NAPs") and Natural Resource Conservation Areas ("NRCAs") that lie within the range of the Owl. Approximately 14,765 acres of these lands have been designated as important for achieving the commitments of the HCP. It is expected that the designated lands will continue to provide this habitat in the future and this habitat will count as mitigation so long as such habitat remains present. DNR will notify the SERVICES if the designated lands, or a portion thereof, will no longer be managed consistent with the commitments of the HCP. While not subject to the commitments of the HCP or this Agreement, so long as they are managed consistent with the commitments of the HCP, the SERVICES will give DNR credit for the habitat provided by the designated lands in terms of meeting the commitments assigned to DNR in the HCP, the ITP, and this Agreement. Whether the designated lands continue to provide this habitat, and the mitigation if they do not, will be considered by the SERVICES at the time the SERVICES are notified by DNR that the designated lands will no longer be managed consistent with the commitments of the HCP. Take incidental to DNR-management activities on the designated lands is authorized by the ITP so long as such take is in COMPLIANCE with the HCP, the ITP, and this Agreement.

16.0 Forest Product Sales and Other Management Activities Other Than Land Sales, Purchases, and Exchanges.

16.1 Management Activities Subject to this Agreement. DNR has an active management program for its PERMIT LANDS, including but not limited to forest practices, forest product sales, other valuable material sales, licenses, permits, leases, rights-of-way, and public uses. So long as the SERVICES have not suspended or revoked the ITP under section 26.0 of this Agreement or DNR has not terminated the ITP under section 27.0, the ITP will authorize any incidental take otherwise prohibited by the ESA which may result from otherwise lawful DNR-management activities that are conducted in accordance with the HCP and this Agreement.

16.2 Management Activities in Progress or Under Way.

a. **Timber Sales.** DNR will incorporate the relevant commitments of the HCP into all timber sales sold on or after January 1, 1999. DNR may, but is not required to, incorporate the commitments of the HCP into timber sales sold prior to January 1, 1999.

b. **Nontimber Resource Activities.** Excepting designations and leases under subsection 25.3.a(2) of this Agreement, DNR will incorporate the relevant commitments of the HCP into all nontimber resource transactional documents pertaining to PERMIT LANDS including, but not limited to, leases, licenses, permits, contracts, and sales, executed on or after January 1, 1999. DNR may, but is not required to, incorporate the commitments of the HCP into nontimber resource transactional documents pertaining to PERMIT LANDS including, but not limited to, leases, licenses, permits, contracts, and sales, executed prior to January 1, 1999. As leases, licenses, contracts, and permits of PERMIT LANDS are renewed, DNR shall alter such leases, licenses, contracts, and permits, to the extent permitted by law, to ensure compatibility with the commitments of the HCP. The level of nontimber resource activity and associated take, if any, of SPECIES ADDRESSED IN THE HCP will be reviewed annually in conjunction with the annual meeting under subsection 17.2 of this Agreement. The annual review meetings will be used by the PARTIES to ensure that any expansion in the level of DNR's nontimber resource activities, as described in Chapter IV of the HCP, that occur on PERMIT LANDS do not result in increased incidental take of SPECIES ADDRESSED IN THE HCP. If increased incidental take will result, DNR will initiate the amendment process under subsection 25.3(b)-(c) of this Agreement. At the annual meeting, DNR will provide the SERVICES with the results of the nontimber resource monitoring efforts as described in the HCP.

16.3 Severability. Management activities on DNR lands are often accomplished through an agent, lessee, licensee, contractor, permittee, right-of-way grantee, or purchaser. Take incidental to otherwise lawful activities of these entities is authorized by the ITP so long as such take is authorized by DNR and is in COMPLIANCE with the HCP, the ITP, and this Agreement. A violation of the ITP by an agent, lessee, licensee, contractor, permittee, right-of-way grantee, or purchaser, which was not authorized by DNR, shall not result in the suspension, revocation, or termination of the ITP, nor shall it affect other benefits, rights, or privileges under the ITP, except as to that agent, lessee, licensee, contractor, permittee, right-of-way grantee, or purchaser.

17.0 Land Transfers, Purchases, Sales, and Exchanges. DNR has an active program of land acquisition and disposition, including but not limited to land transfers, sales, purchases, and exchanges. This program includes intergrant transactions. The HCP provides for continuation of this program.

17.1 Conservation Objectives of the HCP. The HCP and this Agreement recognize that it is necessary for DNR to continue to pursue an active land disposition program. In carrying out such an active land disposition program, DNR commits to maintaining the conservation objectives described in Chapter IV of the HCP in the course of its land disposition program. DNR may dispose of PERMIT LANDS, including PERMIT LANDS within any Watershed Administrative Unit ("WAU"), or any quarter-township in eastern

Washington, even though such a disposition is not in accord with the habitat goals for a particular WAU, or quarter-township, so long as the conservation objectives described in Chapter IV of the HCP are maintained. Annual and other meetings held under section 17.2 will address whether disposition of PERMIT LANDS would have a significant adverse effect on the conservation objectives described in Chapter IV of the HCP.

17.2 Notification and Annual Review of Land Transactions. The PARTIES will hold annual meetings in December of each year, unless otherwise mutually agreed upon by the PARTIES, to review proposed and completed land transactions involving PERMIT LANDS. At such meetings, DNR will notify the SERVICES in writing of any known proposed land transfers, purchases, sales, or exchanges expected to occur within the upcoming year involving PERMIT LANDS. A follow up meeting will be held within sixty (60) DAYS after the annual meeting, if needed. Additional meetings may be convened on a more frequent basis or incorporated into the scheduled comprehensive reviews contemplated under section 21.0 with the mutual consent of the PARTIES. DNR will mail to the SERVICES preliminary transactional documents at the time such documents are mailed to the BOARD for all land transactions involving PERMIT LANDS that were not discussed during the annual meetings. DNR will also mail the closing documents to the SERVICES within thirty (30) DAYS of closing for all transactions involving PERMIT LANDS. Neither SERVICE, however, shall have the power to veto any land transaction. DNR will amend annually, or more frequently if it desires, the HCP pursuant to section 25.3 of this Agreement to reflect lands added to or removed from the PERMIT LANDS. In no event will DNR conduct management activities that will result in take on lands that will be added to the ITP prior to amendment of the HCP.

17.3 Land Acquisition by Transfer, Purchase, or Exchange. The PARTIES shall, upon request by DNR, add lands acquired by transfer, purchase, or exchange within the range of the Owl to the HCP, ITP, and this Agreement. DNR will incorporate the relevant commitments of the HCP into the management of these new PERMIT LANDS. No additional mitigation will be required unless the management of these new PERMIT LANDS increases take beyond the level authorized in the ITP. If the management of these new PERMIT LANDS increases take beyond the level authorized in the ITP, then any additional mitigation will be determined through amendment of the HCP based on mutual agreement among the PARTIES. DNR, at its sole discretion, may at any time add acquired lands to the WAU or quarter-township base referred to in Chapter IV of the HCP, but is not required to do so. So long as land DNR seeks to add to the HCP in accordance with this paragraph does not increase the level of take, it shall be the subject of a minor amendment to the HCP pursuant to section 25.3 and shall thereafter be PERMIT LANDS.

17.4 Land Disposition by Transfer, Sale, or Exchange. DNR, at its sole discretion, may voluntarily dispose of PERMIT LANDS by transfer, sale, or exchange. DNR, at its sole discretion, may require that the recipient of the disposed land commit to managing the disposed land in accordance with the HCP and this Agreement. DNR is not required by the HCP, the ITP, or this Agreement to require continuation of the commitments of the HCP or this Agreement on the disposed land. If DNR sells or exchanges DNR-managed lands, NAPs, or NRCAs, and the acquiring entity commits in writing to the SERVICES that the lands disposed by DNR will be managed in a manner which maintains the commitments of

the HCP, DNR will continue to be given credit for such lands for the purpose of determining whether DNR is in COMPLIANCE with the HCP, the ITP, and this Agreement. If land disposed of by DNR does not remain subject to the provisions of the HCP, and the cumulative impact of the land disposition would have a significant adverse effect on the affected species, the PARTIES, based on the best scientific and commercial data available at the time, shall amend the HCP, this Agreement, and the ITP to provide replacement mitigation for the affected species pursuant to the standards and processes outlined in the extraordinary circumstances provisions of section 24 herein.

17.5 Federal Condemnation. In the event of condemnation of DNR-managed lands, NAPs, or NRCAs by the federal government, the PARTIES shall not be required to replace mitigation lost due to condemnation. The PARTIES' obligations relating to the condemned lands under the HCP and this Agreement shall be terminated.

17.6 Rights and Authorities Preserved. Except as otherwise specifically provided in this Agreement, nothing herein contained shall be deemed to restrict the rights, privileges, and powers of the State of Washington or DNR to manage the use of, or exercise all of the rights incident to, land ownership associated with the PERMIT LANDS. Nothing herein contained shall be interpreted to restrict the authority of the SERVICES to administer the ITP with respect to the PERMIT LANDS in accordance with this Agreement and the ESA.

18.0 Funding. DNR shall submit to the Washington State Legislature, on at least a biennial basis, an agency operating and capital budget for asset management that will be adequate to fulfill DNR's obligations under the HCP, ITP, and this Agreement. Failure by DNR to ensure adequate funding is provided to implement the HCP shall be grounds for suspension or partial suspension of the ITP.

The SERVICES shall include in their annual budget requests sufficient funds to fulfill their respective obligations under the HCP, ITP, and this Agreement.

19.0 Duration.

19.1 Term of PERMIT. The HCP, ITP, and this Agreement shall remain in full force and effect for a period of seventy (70) years from the effective date, or until revocation under section 26.0 or termination under section 27.0 of this Agreement, whichever occurs sooner. Amendments to the HCP, the ITP, or this Agreement shall be in full force and remain in effect for the then remaining term of this Agreement or until revocation under section 26.0 or termination under section 27.0 of this Agreement, whichever occurs sooner.

19.2 PERMIT Renewal. Unless revoked under section 26.0 or terminated under section 27.0 of this Agreement, DNR may renew the PERMIT, HCP, and this Agreement on the existing terms or other mutually agreeable terms three (3) times for a period of up to ten (10) years per renewal, provided:

- (a) DNR is in COMPLIANCE with the HCP and this Agreement;

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- (b) the PARTIES have met approximately three (3) years prior to the scheduled PERMIT or renewal period expiration date to discuss the renewal of the PERMIT, HCP, and this Agreement, and DNR provides the SERVICES with at least eighteen (18) months notice of its intent to renew the PERMIT;
 - (c) DNR finds that renewal of the PERMIT, HCP, and this Agreement would be in the best interest of each of the trusts; and
 - (d) the sum of the original PERMIT term and any continuation or renewal periods does not exceed one hundred (100) years.

19.3 PERMIT Continuation. Unless revoked under section 26.0 or terminated under section 27.0 of this Agreement, the SERVICES may require DNR to continue implementing the HCP, PERMIT, and this Agreement for up to three (3) periods of up to ten (10) years apiece, provided that:

- (a) at the end of the original PERMIT term or the continuation periods under this subsection, the SERVICES DEMONSTRATE that DNR has failed to achieve its commitments under the HCP as described in Chapter IV of the HCP;
- (b) the PARTIES have met approximately three (3) years prior to the scheduled expiration date to discuss the potential for continuation or renewal of the HCP, PERMIT, and this Agreement, and the SERVICES provide DNR with at least eighteen (18) months notice of their intent to require continuation of the HCP, PERMIT, and this Agreement; and
- (c) the sum of the original PERMIT term and any continuation or renewal periods does not exceed one hundred (100) years.

20.0 Reporting and Inspections. DNR will provide the SERVICES with two (2) copies of each report described in Chapter V of the HCP, at the addresses designated by the SERVICES, and any readily available existing information requested by either SERVICE to verify the information contained in such reports. Either SERVICE may inspect PERMIT LANDS in accordance with its then applicable regulations. Except as provided in its regulations, the inspecting SERVICE will notify DNR thirty (30) DAYS prior to the date they intend to make such inspections and allow DNR representatives to accompany SERVICE personnel when making inspections. To assist DNR in meeting its obligations under this Agreement, the SERVICE will brief DNR in writing on the factual information learned during any inspection within thirty (30) DAYS of such inspection, except as provided in its regulations.

21.0 Comprehensive Reviews. The PARTIES to this Agreement will conduct periodic reviews of the HCP, the ITP, and this Agreement, consulting with one another in good faith to identify any amendments that might more effectively and economically mitigate any incidental take. The PARTIES shall conduct comprehensive reviews within one month of the first, fifth, and tenth, anniversaries of the effective date and every tenth anniversary

thereafter for the full term that this Agreement is in effect. Upon mutual agreement of all the PARTIES, additional reviews may be scheduled at any time.

22.0 Adequacy and Certainty.

22.1 Assurances. The HCP provides habitat conservation for all SPECIES ADDRESSED IN THE HCP, while providing regulatory relief, certainty, flexibility, and stability for DNR. Specifically, the conservation strategies afforded all habitat types, and the species specific measures of the HCP and this Agreement, adequately provide for all SPECIES ADDRESSED IN THE HCP and contain measurable criteria for the biological success of the HCP. Unless the SERVICES have suspended or revoked the ITP under section 26.0 of this Agreement or have not added a newly listed species to the PERMIT under subsection 25.1(b) of this Agreement, DNR is assured by this Agreement that any incidental taking of a SPECIES ADDRESSED IN THE HCP in the course of its otherwise lawful management activities will be authorized under the ESA. The SERVICES are assured by this Agreement that the incidental taking authorized by the ITP is consistent with the conservation of the species under the ESA.

22.2 Findings by the SERVICES. Based upon the best scientific and commercial data available and after careful consideration of all comments received, the SERVICES have found that with respect to all SPECIES ADDRESSED IN THE HCP:

- (a) that any take on PERMIT LANDS under the HCP will be incidental;
- (b) the impacts of any incidental take under the HCP will, to the maximum extent practicable, be minimized and mitigated;
- (c) that DNR will ensure that adequate funding for the HCP will be provided in accordance with this Agreement and the HCP;
- (d) that any taking of a SPECIES ADDRESSED IN THE HCP will not appreciably reduce the likelihood of the survival and recovery of such species in the wild; and
- (e) that other measures and assurances required by the SERVICES as being necessary or appropriate for the purposes of the HCP are met.

23.0 Unforeseen Circumstances.

23.1 Unforeseen Circumstances Consultation. In the event of unforeseen circumstances arising in connection with the HCP, the ITP, or this Agreement, the appropriate SERVICE may request consultation with DNR regarding those circumstances and may suggest modifications to the commitments of the HCP, the ITP, or this Agreement. DNR shall consult with the SERVICE to explore whether there is a mutually acceptable means for adjusting the commitments of the HCP, the ITP, and this Agreement that maintains the interests of all PARTIES. If the cost of a mutually acceptable adjustment would be significant to DNR, then the PARTIES must strive to find further or different

voluntary adjustments that would avoid or minimize the cost to DNR. The SERVICES shall not seek from DNR without its consent a commitment of additional land or financial undertaking beyond the level of mitigation which is provided under the commitments of the HCP, the ITP, and this Agreement.

23.2 Findings of Unforeseen Circumstances. The SERVICES shall have the burden of DEMONSTRATING that unforeseen circumstances have arisen. If DNR, after consultation and in its sole discretion, does not agree voluntarily to implement the requested changes, then the SERVICE must look to section 24.0 regarding extraordinary circumstances if it wishes to continue to pursue changes, and must satisfy the provisions of section 24.0 regarding such desired changes. The SERVICES agree that so long as DNR is in COMPLIANCE with its commitments under the HCP, ITP, and this Agreement, they will not impose on DNR any nonconsensual additional land-use restrictions, financial obligations, or any other form of additional mitigation for any SPECIES ADDRESSED IN THE HCP except under extraordinary circumstances as addressed in section 24.0.

24.0 Extraordinary Circumstances.

24.1 Extraordinary Circumstances Defined. Additional mitigation requirements shall not be imposed upon DNR without its consent provided DNR is in COMPLIANCE with the HCP, the ITP, and this Agreement, and the HCP is properly functioning, except under extraordinary circumstances. Extraordinary circumstances shall mean that continued DNR-management activities in accordance with the HCP, the ITP, and this Agreement would result in a substantial and material adverse change in the status of a species that was not foreseen on the effective date of this Agreement which can be remedied by additional or different mitigation measures on the PERMIT LANDS. The SERVICES shall have the burden of DEMONSTRATING that extraordinary circumstances exist.

24.2 Findings of Extraordinary Circumstances. Findings of extraordinary circumstances must be clearly documented in writing and based upon reliable, PEER REVIEWED technical information regarding the status and habitat requirements of the affected species. Furthermore, in deciding whether any extraordinary circumstances exist with respect to a particular SPECIES ADDRESSED IN THE HCP, which might warrant additional mitigation, the SERVICES shall consider, but not be limited to the following factors:

- (a) the size of the current range of the affected species;
- (b) the percentage of range adversely affected by the HCP;
- (c) the percentage of range conserved by the HCP;
- (d) the ecological significance of that portion of the range affected by the HCP;
- (e) the level of knowledge about the affected species and the degree of specificity of the species conservation program under the HCP;

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- (f) whether the HCP was originally designed to provide an overall net benefit to the affected species and contained measurable criteria for assessing the biological success of the HCP; and
 - (g) whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the particular species in the wild.

Upon a finding of extraordinary circumstances, the SERVICES will have ninety (90) days to determine any additional mitigation necessary, during which time DNR will use its best efforts to avoid a substantial and material adverse change in the status of the affected species. If the SERVICES are unable to achieve appropriate additional mitigation, the SERVICES shall work with DNR to find the least disruptive method of continuing DNR-management activities.

24.3 Effect of Additional Mitigation Measures on the HCP. Any additional mitigation measures approved under this section shall change the original terms of the HCP only to the minimum extent necessary and shall be limited to modifications on the PERMIT LANDS, and any additional mitigation requirements under this Agreement shall not involve additional financial commitments by DNR or land use restrictions on DNR without its express written consent. The SERVICES may seek additional funding for mitigation from other sources.

24.4 SERVICES Free to Take Independent Action. Nothing in this Agreement shall be construed to limit or constrain either SERVICE from carrying out lawful additional mitigation actions at their own cost with respect to the protection of any listed species, or endeavoring to provide mitigation by means of other resources or financial assistance to DNR to the fullest extent possible in accordance with law and available appropriations.

24.5 Adaptive Management. Adaptive management provides for ongoing modifications of management practices to respond to new information and scientific developments. The monitoring and research provisions of the HCP are in part designed to identify modifications to existing management practices. The following adaptive management practices shall be implemented by DNR as reasonably necessary to respond to the following changes of circumstances and are not subject to subsections 23.1, 23.2, 24.1, 24.2, and 24.3:

- (a) the best available scientific and commercial data indicate that an increase in the percentage of ground cover of dead and down wood is required for the support of the Owl in the definition of sub-mature habitat in Chapter IV section A of the HCP, provided DNR's responsibility shall be limited to 15 percent ground cover averaged over a stand;
- (b) the best available scientific and commercial data indicate that the model used to delineate mass wasting on a site-specific basis under

Chapter IV section D of the HCP can be reasonably improved to increase its accuracy;

- (c) the best available scientific and commercial data indicate that the landscape-based road network management process described in Chapter IV section D of the HCP can be reasonably and practically improved, considering both the costs and benefits of implementing the improvement;
- (d) the necessity for continued provision of nest patches has changed as a result of conducting research to determine the biological feasibility of using silvicultural techniques to create spotted owl nesting habitat;
- (e) with specific reference to the marbled murrelet, the habitat definitions will be refined for each planning unit as a result of DNR's habitat relationships study;
- (f) with specific reference to the marbled murrelet, the interim conservation strategy will be replaced with a long-term management plan upon completion of the inventory survey phase;
- (g) management activities allowed within the riparian management zones will be refined within the first decade of the HCP;
- (h) wind buffer management is refined as this priority research item is addressed;
- (i) a long-term conservation strategy for forest management along Type 5 Waters is developed and incorporated into the HCP at the end of the first ten years of the HCP; and
- (j) prescriptions resulting from a completed watershed analysis call for additional measures than those specified in the HCP.

All other adaptive management strategies are subject to subsections 23.1, 23.2, 24.1, 24.2, 24.3, and 24.4.

25.0 Amendments and Modifications.

25.1 PERMIT Amendments and Modifications. The ITP may be amended or modified as follows:

a. General Amendments to the ITP. The ITP can be amended or modified in accordance with SERVICE regulations as provided in this Agreement. If the federal regulations that govern PERMIT amendment have been modified from those codified at 50 C.F.R §§ 13.23, 220.11, 222.25, and 222.26, as of the effective date of this Agreement, the modified regulations will apply only to the extent the modifications are required by

subsequent enactment of the Congress or court order, or upon a determination by DNR that application of the modifications is in the best interests of the relevant trusts.

b. New Listings. The ITP for the Owl and other federally listed species that may currently use the types of habitats that occur on the PERMIT LANDS will be issued contemporaneously with the signing of this Agreement. In the future, the SERVICES shall add to the ITP, within sixty (60) DAYS of receipt by the appropriate SERVICE of a written request by DNR, each species that may use the types of habitats that occur within the five West Side Planning Units and the OESF that is listed as a threatened or endangered species during the term of this Agreement at the level of take requested by DNR and supported by the HCP without requiring additional mitigation, unless, within the specified sixty-day period, the SERVICE DEMONSTRATES that extraordinary circumstances under section 24.0 exist. If such extraordinary circumstances are found to exist, the SERVICE shall provide the appropriate additional mitigation or other amendments in a timely manner and amend the ITP to include the affected species if appropriated funds are available. If appropriated funds are not available, the SERVICES shall use all lawful means, including soliciting nongovernmental sources of funds and other alternative methods of mitigation or amendment, to endeavor to achieve the appropriate additional mitigation and amend the ITP to cover the particular species.

25.2 Amendments to the Agreement. This Agreement may be amended only with the written consent of each of the PARTIES.

25.3 HCP Amendments. The HCP may be amended as follows:

a. Minor HCP Amendments.

(1) The following types of minor amendments may be made to the HCP without notification, provided that the conservation objectives of the HCP are being maintained, there is no increase in the level of incidental take, and appropriate mitigation is provided. Amendments allowable under this subsection include the following:

- (a) land acquisition and disposition as described in section 17.0, which provides for periodic notice and review of DNR land transactions involving PERMIT LANDS;
- (b) corrections of typographic and grammatical errors and similar editing errors, which do not change the intended meaning of the HCP; and
- (c) corrections to any maps, GIS data, or exhibits to reflect previously approved changes in the HCP or other new information.

(2) So long as appropriate mitigation is provided, the alteration of an HCP commitment or commitments, the formal designation of urban lands pursuant to state law, and the leasing of PERMIT LANDS for commercial, residential, or industrial purposes, or the implementation of one or more of the adaptive management strategies described in Chapter IV of the HCP or subsection 24.5 of this Agreement, that does not increase the level

of take authorized by the ITP is a minor amendment effective sixty (60) DAYS after the SERVICES receive written notice from DNR, unless the appropriate SERVICE responds in writing with specific concerns during the sixty-day notification period.

b. Major HCP Amendments. For other amendments of the HCP, including those amendments that would increase the level of take, proposed by DNR, DNR shall provide a written description of the proposed amendment, the effects of the proposal on the HCP, and any alternative ways in which the objectives of the proposal might be achieved. The proposed amendments shall become effective upon written approval by the appropriate SERVICE. The SERVICE shall approve or disapprove the proposed amendment within 180 DAYS after receipt of the DNR proposal.

c. HCP Amendments and the ITP. HCP amendments that will result in an increased level of incidental take will require amendment to the ITP under subsection 25.1.a of this Agreement. HCP amendments that do not increase the level of incidental take will not require amendment to the ITP under subsection 25.1.a of this Agreement so long as appropriate mitigation is provided.

26.0 ITP Suspension or Revocation. The SERVICES maintain the right to suspend or revoke the ITP in accordance with federal law and this Agreement. The SERVICES agree, however, that so long as DNR is in COMPLIANCE with the HCP, the ITP, and this Agreement, they will not suspend or revoke the ITP, or otherwise sanction DNR except to the extent that the sanction, suspension, or revocation of the ITP is required by applicable federal law or the terms of this Agreement. Any revocation of the ITP, in whole or in part, automatically terminates the relevant commitments of the HCP and this Agreement, and subjects activities no longer covered by the ITP to all applicable provisions of the ESA and SERVICE regulations relating to the taking of a listed species. If federal regulations should be modified from those codified at 50 C.F.R. §§ 13.26-13.29, and/or § 222.27, as of the effective date of this Agreement, the modified regulations will apply only to the extent the modifications are required by subsequent enactment of the Congress or court order, or upon a determination by DNR that application of the modifications is in the best interests of the relevant trusts.

27.0 Termination and Mitigation after Termination.

27.1 Generally. DNR reserves the right to terminate for any reason the HCP and this Agreement with thirty (30) DAYS written notice to the SERVICES. For listed species, the written termination notice shall contain a statement describing the species taken, the level of take, and the species mitigation provided prior to termination. DNR management activities not resulting in incidental take may continue after termination. Unlisted species are treated in subsection 27.5. The PARTIES agree that DNR may terminate the HCP and this Agreement in whole, or in part.

27.2 Effect of Termination. Subject to the provisions of this section and subsection 29.1 of this Agreement, any termination of the HCP and this Agreement, in whole or in part by DNR under section 27, automatically terminates the relevant commitments of the HCP, the ITP and this Agreement, except as otherwise provided in this section 27, and subjects

activities no longer covered by the ITP to all applicable provisions of the ESA and SERVICE regulations relating to the taking of a listed species.

27.3 Mitigation After Termination for listed species. Subject to the provisions of subsection 29.1, if the HCP and this Agreement are terminated by DNR, in whole or in part, the appropriate SERVICE may require DNR to mitigate any incidental take of a listed species affected by the termination that occurred during the term of the HCP and this Agreement to the effective date of the termination. Such mitigation may require DNR to continue relevant mitigation measures of the HCP as to some or all of the PERMIT LANDS for some or all of the period which would have been covered by the HCP and this Agreement. The SERVICES shall not extend mitigation requirements to non-PERMIT LANDS, nor shall mitigation requirements be extended beyond the term of this Agreement. Mitigation requirements, if any, shall not exceed the difference between mitigation already provided under the HCP and that required by the HCP for listed species at the time of termination. Unlisted species are treated in subsection 27.5.

27.4 Delisting of a Species. In the event that a species is delisted under the ESA, the commitments of the HCP and this Agreement regarding such species shall be terminated. Mitigation measures designed primarily to benefit the delisted species need not be continued after delisting due to another species unless the appropriate SERVICE DEMONSTRATES that failure to continue those measures would not maintain the conservation objectives of the HCP for the other species, or DNR determines that continuation of such measures is in the best interest of the relevant trusts. The SERVICES shall have the burden of DEMONSTRATING that failure to continue the measures in question would not maintain the conservation objectives of the HCP for another species.

27.5 Unlisted Species. The PARTIES agree that DNR may terminate, in whole or in part, the commitments of the HCP and this Agreement regarding unlisted species upon seventy-five (75) DAYS written notice to the SERVICES. Termination of the commitments of the HCP with regard to an unlisted species relieves the SERVICES from their obligations under subsection 25.1.b to add the species to the ITP if it becomes listed.

Within said seventy-five (75) DAYS the SERVICES shall notify DNR in writing if they will require any mitigation as a result of such termination and, if so, the mitigation to be required. In order to require any mitigation after termination, the SERVICES shall DEMONSTRATE that termination would result in a substantial and material adverse change in the biological status of the affected species. Said DEMONSTRATION shall be based upon reliable, PEER REVIEWED technical information as to the species affected by the proposed termination.

To DEMONSTRATE whether the termination might warrant mitigation after termination and what mitigation might be required, the SERVICES shall consider, but not be limited to, the following factors:

- (a) the size of the current range of the affected species;
- (b) the percentage of range adversely affected by the termination of the HCP;

-
- (c) the percentage of range conserved by the HCP;
 - (d) the ecological significance of that portion of the range affected and conserved by the HCP;
 - (e) the level of knowledge about the affected species and the mitigation provided to the species under the HCP; and
 - (f) whether the HCP was originally designed to provide an overall net benefit to the affected species.

During the said seventy-five (75) DAYS, DNR will use its best efforts to avoid a substantial and material adverse change in the status of the affected unlisted species. If the PARTIES are unable to agree on the necessity for or the amount of such mitigation, the SERVICES and DNR shall work to resolve any such dispute by using the interagency science team and non-binding mediation provisions under subsection 29.4 prior to final determination. The SERVICES shall not extend mitigation requirements to non-PERMIT LANDS, nor shall mitigation requirements be extended beyond the term of this Agreement. Requirements for such mitigation, if any, shall not exceed the difference between mitigation already provided under the HCP and that required by the HCP for unlisted species at the time of termination.

After the PARTIES mutually agree on a final determination of the potential mitigation to be provided after termination, if any, as to an unlisted species, DNR shall send final notice of such termination, or withdraw the notice of termination. Final notice of termination for an unlisted species shall be effective thirty (30) DAYS after written notice to the SERVICES.

28.0 Authority, Remedies and Enforcement. Each of the PARTIES to this Agreement shall have all remedies available in equity or at law to enforce the commitments of the HCP, the ITP, and this Agreement including specific performance. No PARTY shall be liable for damages to any other PARTY or person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement. The HCP, this Agreement, and the ITP shall be interpreted and administered in accordance with the ESA. Nothing contained in this Agreement is intended to unlawfully limit the authority or responsibility of the United States government or DNR to invoke penalties or otherwise fulfill their respective responsibilities as public agencies in accordance with law.

29.0 Informal Dispute Resolution Procedures.

29.1 Termination of the PERMIT. A SERVICE receiving a termination notice under section 27.0 of this Agreement shall notify DNR within sixty (60) DAYS after receipt of the notice if it disagrees with the statement of take or mitigation contained therein. Failure by a SERVICE to disagree with the statement of take or mitigation within sixty (60) DAYS shall constitute agreement with and approval of the statement. If the PARTIES cannot agree on the statement of take, or on necessary mitigation, if any, within sixty (60) DAYS after

receiving the notice of disagreement, the PARTIES shall endeavor in good faith to resolve their disagreement through nonbinding mediation.

29.2 In the Event of a Possible Violation. If either SERVICE has reason to believe that DNR may have violated the commitments of the HCP, the ITP, or this Agreement, written notice must be provided to DNR regarding the specific provisions which may have been violated and the mitigation that the responsible federal agency proposes to correct the alleged violation. DNR will have sixty (60) DAYS from the date of receipt of notice, or such longer period of time as may be mutually agreed upon, to respond. If the PARTIES cannot agree on the violation or necessary mitigation within thirty (30) DAYS after receiving DNR's response, the PARTIES shall endeavor in good faith to resolve their disagreement through nonbinding mediation.

29.3 Minor HCP Amendments Under Subsection 25.3.a(2). In the event that DNR receives timely notice from the appropriate SERVICE regarding a proposed minor HCP amendment under subsection 25.3.a(2), the proposed minor amendment shall not be effective and the PARTIES shall have thirty (30) DAYS from DNR's receipt of the notice within which to reach mutual agreement through discussion. DNR may convene an interagency science team to provide technical assistance on the disputed issue. If the issue is not resolved within the thirty (30) DAY time period, the PARTIES shall endeavor in good faith to resolve their disagreement through nonbinding mediation, unless an extension is mutually agreed upon by all PARTIES.

29.4 Scheduled Reviews. In the event that a dispute arises at one of the scheduled reviews under section 17.0 of this Agreement, the PARTIES shall have thirty (30) DAYS from receipt of the notice of disagreement to reach mutual agreement through discussion. DNR may convene an interagency science team to provide technical assistance on the disputed issue. If the issue is not resolved within the thirty (30) DAY time period, the PARTIES shall endeavor in good faith to resolve their disagreement through nonbinding mediation, unless an extension is mutually agreed upon by all PARTIES. For land transactions not discussed at the scheduled reviews referenced above, the PARTIES shall endeavor to reach mutual agreement through discussion; the convening of an interagency science team by DNR or other dispute resolution procedures described above will not occur until a scheduled review, absent mutual consent of the PARTIES.

29.5 Other Disputes. In the event of other significant disputes involving the HCP, the ITP, or this Agreement, any PARTY shall provide the other PARTIES with a written notice of disagreement. Within thirty (30) DAYS of receiving the notice of disagreement, the PARTIES shall endeavor in good faith to resolve the dispute through nonbinding mediation.

29.6 Termination of Mediation. Nothing in this Agreement shall prevent any PARTY from terminating nonbinding mediation at any time and seeking any remedy or enforcement procedure available by law or regulation.

30.0 General Provisions.

30.1 No Partnership. Except as otherwise expressly set forth herein, neither the commitments of the HCP, the ITP, nor this Agreement shall make or be deemed to make any PARTY to this Agreement the agent for or the partner of any other PARTY.

30.2 Not a Covenant Running With the Land. Neither the HCP, ITP, or this Agreement shall be construed to establish a covenant that runs with the land.

30.3 Severability. If any of the commitments of the HCP, the ITP, or this Agreement are found to be invalid or unenforceable, or this Agreement is terminated in part, all other commitments shall remain in effect to the extent they can be reasonably applied in the absence of such invalid, unenforceable, or terminated commitment or commitments.

30.4 Congressional Officials Not to Benefit. No member of or delegate to Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

30.5 Availability of Funds. Implementation and ongoing adherence to the HCP and this Agreement by all PARTIES shall be subject to the availability of appropriated funds. Failure by DNR to ensure adequate funding to implement the HCP shall be grounds for suspension or partial suspension of the ITP.

30.6 No Third Party Contract Beneficiaries. The commitments of the HCP, the ITP, and this Agreement are not intended to create, and do not create, any third-party beneficiary interest herein in the public or in any member thereof, nor shall it authorize anyone not a PARTY to this Agreement to maintain a suit based in whole or in part on any provision of this Agreement, the HCP, or ITP. The rights of the public under the ESA are set forth in 16 U.S.C. §1540(g) and nothing in this Agreement expands or otherwise alters the rights of citizens thereunder.

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

30.8 Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, among the PARTIES hereto with respect to the subject matter hereof, and contains all of the covenants and agreements among them with respect to said matters except for The 1979 Cooperative Agreement for Endangered Plants and The Agreement for Establishment and Operation of the Washington Cooperative Fish and Wildlife Research Unit. Further, each PARTY to this Agreement acknowledges that no representation, inducement, promise, or agreement has been made by another PARTY or anyone acting on behalf of another PARTY that is not embodied herein.

30.9 Contents Not Binding in Other Litigation. The contents of the HCP, ITP, and this Agreement shall not be construed as statements against interest or admissions and are not binding in litigation except in matters related to enforcement by the PARTIES of the

HCP, ITP, and this Agreement. In addition, DNR reserves the right to assert that its activities do not require an ITP.

31.0 Notices. The names, addresses, and telephone and facsimile numbers of the designated representatives may be changed at any time by written notice to the other PARTIES. Notices under this Agreement will be deemed received when delivered personally, on electronic confirmation that a facsimile message has been received at the "FAX" number most recently provided by the recipient representative, or five (5) DAYS after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as above.

32.0 Designated Representatives. Each PARTY to this Agreement will designate a representative through whom notices under this Agreement shall originate and to whom notices under this Agreement shall be directed. The initial designated representatives are:

for DNR:

Department of Natural Resources
Administrator
Washington State Department of
Natural Resources
1111 Washington Street SE
P.O. Box 47000
Olympia, Washington 98504-7000
Telephone: (360) 902-1000
FAX: (360) 902-1796

for NMFS:

Regional Administrator
National Marine Fisheries Service
7600 Sand Point Way, N.E.
Seattle, Washington 98115-0070
Telephone: 206-526-6150
FAX: 206-526-6426

for USFWS:

Assistant Regional Director
U.S. Fish and Wildlife Service
911 N.E. 11th Avenue
Portland, OR 97232-4181
Telephone: (503) 231-6159
FAX: (503) 872-2771

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementation Agreement to be in effect as of the date last signed below.

WASHINGTON DEPARTMENT OF NATURAL RESOURCES
including THE BOARD OF NATURAL RESOURCES:

By _____

Title _____

Date _____

Approved as to Form Only:

by _____

Assistant Attorney General

THE SECRETARY OF THE INTERIOR as represented
by the U.S. FISH AND WILDLIFE SERVICE:

By _____

Title _____

Date _____

THE SECRETARY OF COMMERCE as represented by
THE NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION
through the NATIONAL MARINE FISHERIES SERVICE:

By _____

Title _____

Date _____

Comparison of HCP Implementation Agreements (Selected Provisions)

ISSUE	WDNR	PLUM CREEK	MURRAY PACIFIC	OREGON
Species covered	<p>§12.6: All species currently listed under the ESA found within the range of the spotted owl, and all species hereafter listed that are found within the five westside planning units and the OESF.</p>	<p>§2.9: "Permit Species" (spotted owl, marbled murrelet, grizzly bear, and gray wolf) are subject to incidental take;</p> <p>§2.12: "Plan Species" other presently unlisted vertebrate species subject to an unlisted species agreement. If a plan species were listed the permit could be amended.</p>	<p>II.I: Permit covers all currently listed species within permit area; species listed under the ESA after effective date added to permit within 60 days of MP request unless jeopardy found based on several extraordinary circumstances factors.</p>	<p>Spotted owl and marbled murrelet only; no unlisted species</p>
Activities covered by Agreement	<p>§16.1: "forest practices, forest product sales, other valuable material sales, licenses, permits, leases, rights-of-way, and public uses."</p> <p>§16.2: HCP commitments must be incorporated into all transaction documents by 1/1/99.</p>	<p>§1.1: "commercial timber production with some minor collateral uses such as rock quarries and electronic transmission sites."</p>	<p>II.I: "commercial forest management"</p>	<p>II.B: "lawful land use activity"</p>

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ISSUE	WDNR	PLUM CREEK	MURRAY PACIFIC	OREGON
<p>Land Transfers</p>	<p>§17.1: DNR commits to maintaining the conservation objectives found in Chap.IV of the HCP; for riparian and uncommon habitats, DNR will maintain objectives on undisposed habitat areas within 5 westside units and OESF.</p> <p>§17.2: Parties will review proposed and completed land transactions on an annual basis; DNR will provide Services with closing documents within 30 days of closing; Services do not have power to veto any land transaction.</p> <p>(cont.)</p>	<p>(see next page)</p> <p>(cont.)</p>	<p>II.O: Agreement constitutes a covenant running with the land; binding upon all successors.</p>	<p>II.M: State must give 90 days written notice to Services. Must include: description of land; whether new owner will become party to HCP; statement of take; mitigation to offset take; and necessary changes to mitigation to offset effect of conveyance.</p> <p>II.S.(3): Either party may request mediation if unable to reach agreement on mitigation to offset the effect of the conveyance; Service may use any legal remedy or enforcement if necessary to protect endangered or threatened species.</p>

ISSUE	WDNR	PLUM CREEK	MURRAY PACIFIC	OREGON
<p>Land Transfers (Cont.)</p>	<p>§17.3: Service will add land to HCP upon DNR request; DNR will incorporate commitments of HCP into management of lands; so long as land DNR seeks to add does not increase the level of take, it will be considered a minor amendment.</p> <p>§17.4: DNR may dispose of lands at its discretion; DNR is not required to continue HCP commitments on disposed land; if no longer subject to HCP, Services may suspend permit where land disposition conflicts with HCP conservation objectives.</p>	<p>§7.3.2(b): May add lands within Planning Area to HCP unless Service finds that doing so would result in additional incidental take not analyzed in the HCP.</p> <p>§7.3.2(d): May sell or exchange lands within Project Area provided: lands sold/exchanged will be managed consistent w/the HCP objectives; parcels of land less than 640 acres may be sold provided cumulative total of transactions does not exceed 5% of acreage covered by permit; total of all transactions in any township does not exceed 1,920 acres.</p>		
<p>Land Transfers -Condemnation</p>	<p>§17.5: In the event of condemnation, all HCP obligations to the condemned land are terminated.</p>	<p>§7.3.2(c): Exchange with Feds will remove lands from permit; services may review to ensure no compromise to HCP.</p>		

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ISSUE	WDNR	PLUM CREEK	MURRAY PACIFIC	OREGON
Term of Permit	§19.0: 70 years fixed initial maximum term (subject to 30 day termination clause). Option of Services to require continuation for up to 30 additional years if DNR is not in compliance with HCP; if in compliance, DNR may renew at its option for up to 30 additional years.	§4.0: 50 years and a Phase II extension (additional 50 years).	II.E: 100 years	II.G: 60 years

ISSUE	WDNR	PLUM CREEK	MURRAY PACIFIC	OREGON
<p>Unforeseen Circumstances</p>	<p>§23.1: Parties shall consult in the event of unforeseen circumstances to explore mutually agreeable means for adjusting the HCP commitments; the Services shall not seek w/o DNR consent additional land or financial undertaking beyond level of mitigation provided in HCP.</p> <p>§23.2; Services have burden of demonstrating that unforeseen circumstances exist; cannot impose nonconsensual land-use restrictions or financial obligations except under extraordinary circumstances.</p>	<p>§2.17 (definition): "change in circumstances or information that might give rise to the need to revise a [HCP] The listing of any Plan Species or the designation of critical habitat are not unforeseen circumstances."</p> <p>§§8.0(a)&(b): Services find that requirements of the "No Surprises Policy" have been met by agreement; Services will not seek further mitigation from PC to address unforeseen circumstances so long as PC is in compliance with the HCP.</p>	<p>II.J: If additional mitigation measures are necessary and MP is in compliance with the HCP, MP does not have the primary obligation to provide such mitigation; good faith consultation to find mutually acceptable means of adjusting terms; Services shall not seek commitment of additional land or financial obligation from MP beyond level provided in HCP.</p>	<p>II.K: Limitation on further mitigation - "except as otherwise provided by law or the term of this agreement, no further mitigation or compensation for the Owl or Murrelet will be required of the State within the Forest during the term of this Agreement."</p>

ISSUE	WDNR	PLUM CREEK	MURRAY PACIFIC	OREGON
<p>Extraordinary Circumstances</p>	<p>§24.1: Extraordinary circumstances shall mean that continued DNR-management activities would result in a substantial and material adverse change in the status of a species that was not foreseen as of the effective date.</p> <p>§24.2: Findings of extraordinary circumstances.</p> <p>§24.3: Additional mitigation resulting from extraordinary circumstances will change the terms of the HCP only to the extent necessary and will occur only on permit lands.</p> <p>§24.4: Services are free to take independent action at their own expense or effort.</p>	<p>§§8.0(c)&(d): Services' burden to demonstrate that extraordinary circumstances exist based upon peer reviewed data; factors that Services must consider are outlined; if additional mitigation is required, such mitigation shall be provided on federal land to the maximum extent possible; any additional mitigation required of PC will not include additional compensation or apply to harvest lands w/o PC consent.</p> <p>Peer review of basis for findings is to be completed within 30 days.</p>	<p>II.K: Definition: "the best scientific and commercial data available demonstrates that continued operation of the tree farm by [MP] in accordance with the amended HCP . . . would result in a major adverse impact to a species that was not foreseen on the effective date . . . and would result in the appreciable reduction of the likelihood of the species' survival and recovery in the wild. . . . "</p> <p>The Services have the burden of demonstrating that extraordinary circumstances exist.</p> <p>Services are free to take independent action at their own expense or effort, including reasonable compensation to MP.</p>	<p>See limit on further mitigation outlined under Unforeseen Circumstances section.</p>

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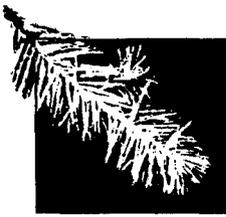
ISSUE	WDNR	PLUM CREEK	MURRAY PACIFIC	OREGON
Adaptive Management	§24.5: Ten specific issues outlined in detail to respond to new information and scientific developments.	§7.3.3: Section 5.4 of the HCP provides for adaptive management activities across project area.		
Termination of the Permit	<p>§27.1: DNR has right to terminate in whole or in part with 30 days notice.</p> <p>§27.2: Termination by DNR terminates the relevant commitments of the HCP and IA.</p> <p>§27.3: Following termination, DNR may be required to mitigate for take that occurred during the term of the permit. Services cannot extend mitigation to non-permit lands, nor beyond the term of the agreement.</p>	<p>§11.0: Any party may terminate in accordance with regulations in force on the date of termination; PC reserves right to terminate in accordance with regulations in effect at the time of permit issuance; PC must provide 90 days written notice of termination; mitigation for take prior to termination is required; termination of the permit as to a particular species also terminates relevant provisions of the HCP and IA; any party may terminate the HCP/IA for an unlisted species.</p>		<p>II.N: Either party may terminate with 30 days written notice; mitigation will be provided for the take that has occurred.</p>

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ISSUE	WDNR	PLUM CREEK	MURRAY PACIFIC	OREGON
Termination (Cont.)	<p>§27.4: If a species is delisted, the commitments of the HCP and IA regarding such species shall be terminated unless the Services demonstrate that failure to continue such measures would not maintain the conservation objectives as to another listed species.</p> <p>§27.5: DNR may terminate, in whole or in part, the HCP commitments as to an unlisted species upon 30 days notice.</p>			

ISSUE	WDNR	PLUM CREEK	MURRAY PACIFIC	OREGON
<p>General Provisions</p>	<p>§30.0: - agreement does not form a partnership - HCP is not a covenant running with the land - agreement is severable - Congressional officials not to benefit - dependent on availability of funds - no third party beneficiaries - agreement constitutes entire agreement - not binding in other litigation</p>	<p>§16.0: - no third party beneficiaries - agreement constitutes entire agreement - agreement is severable - agreement does not limit authority of the Services to fulfill responsibilities under ESA - implementation of the HCP and IA by the Services is subject to the availability of funds</p>	<p>- no third party beneficiaries - venue - inspections - Permit is binding on all successors and assigns - agreement is covenant running with the land</p>	<p>- no third party beneficiaries - severability</p>

Appendix 5 - Economic Information



Appendix 5. Economic Information

Harvest Projections and Economic Analysis

Appendix 5 provides background information regarding the process used by DNR in formulating harvest projections and conducting economic analysis of the proposed HCP. Results of this analysis formed the basis for the economic analysis conducted by the Service and included in the DEIS and modified in this FEIS. Material in this appendix is from two sources. First, text from a "Fact Sheet" prepared in May 1996 by DNR is reproduced for reference. Second, pages 30 through 36 from a report, *Background and Analytical Framework for the Proposed Draft Habitat Conservation Plan*, prepared by DNR for the Board of Natural Resources in October 1996 is included.

Economic Analysis Procedure for DNR's Habitat Conservation Plan

A habitat conservation plan (HCP) is a long-term land management plan authorized under the Endangered Species Act to conserve threatened and endangered species. For the Washington Department of Natural Resources (DNR), it means a comprehensive plan for state trust lands within the range of the northern spotted owl, that will allow timber harvesting and other management activities while emphasizing species conservation and ecosystem health as the basis for prudent trust management.

Overview of Analysis

DNR developed a sustainable harvest simulation program that was used in western Washington to forecast timber production capacity for each option of the proposed HCP conservation strategies. Simulations were designed to produce a "nondeclining even-flow" of timber. That is, timber is produced at a constant level until timber stocking levels allow an increase in harvest volume that can be sustained without a decline in the future.

The simulation looked at least 200 years into the future, time enough to assure that simulated harvests were unlikely to deplete the timber inventory to such an extent that timber production would have to be reduced in the future. Management activities and timber growth were simulated for 10-year periods.

Although the process aimed at calculating a sustainable level of timber harvest, it was not a sustainable harvest calculation as specified in the Forest Resource Plan, which sets forth DNR's current policies for managing forest resources. The Forest Resource Plan calls for

separate sustainable harvest calculations for each of several groups of trust land. However, with the number of HCP options that had to be analyzed, there would have been an inordinate number of simulator runs needed to calculate results under the Forest Resource Plan specification. Instead, the harvest simulation was run for each option in each HCP planning unit.

This approach to timber harvest calculation provided a satisfactory basis for comparing HCP alternatives in western Washington, even though the numbers would not be exactly the same as those produced by the calculation for the Forest Resource Plan.

Eastern Washington forest inventory data currently available did not support a sustainable harvest simulation. Instead, the eastern Washington analysis started with the sustainable harvest volume determined before protection of spotted owl habitat affected the amount of timber available. That volume was adjusted by estimating the proportion of land on which spotted owl habitat would be protected and the proportional impact on timber yields of protecting habitat.

In order to project sales revenues for DNR-managed trust lands covered by the HCP, the projected flow of timber over 200 years into the future in both western and eastern Washington was then analyzed by determining present net worth. Present net worth is calculated by valuing, in terms of current dollars, all future income minus all future costs.

Sustainable harvest simulator

The sustainable harvest simulator started with current forest inventory data as recorded in DNR's geographic information system. The simulator then made adjustments for planned silvicultural practices, including timber harvest, over the first 10 years and "grew" the inventory for 10 years.

The result of the first 10-year simulation formed the beginning inventory for the next 10-year period. The cycle was repeated for succeeding 10-year periods. If, at any time, the inventory showed that it would not support the simulated volume of timber harvest, the amount of harvest was reduced and the process was repeated. If, at the end of the simulation, an excessive amount of inventory was indicated, the harvest level was adjusted upward and the process was repeated. The condition of the inventory was judged by the amount of timber at harvest age or older.

When an acceptable level of ending inventory was achieved without the harvest volume declining between 10-year periods, the simulation was complete. The harvest volumes shown for each period are the amounts that the land is capable of producing.

Growth models

The sustainable harvest simulator used growth models to "grow" the forest for each 10-year period. In western Washington the simulator used:

- For Douglas fir — DFSIM, a widely used Douglas fir growth model developed by Robert Curtis of the Olympia Forest Sciences Laboratory, USDA Forest Service

■ For western hemlock — the Forestry Canada western hemlock growth model developed by James Flewelling

■ For red alder — DNR empirical yield functions developed by Charles Chambers

Outside review of DNR's analysis

DNR's methods for deriving the projected harvest levels and sales revenues were reviewed by an outside independent expert in resource economics and environmental analysis, who found the assumptions and methodology to be appropriate. A sensitivity analysis was subsequently done by the outside resource economist to provide additional information for the Board of Natural Resources, the policy-making body that will ultimately decide whether to adopt the HCP. In addition, a consulting firm performed a decision analysis that looked at the likely occurrence of future regulatory constraints that would govern DNR forest land management.

Harvest Volume and Financial Analysis

Introduction

DNR uses present net worth (PNW) analysis to demonstrate the economic value of the No Action and the HCP options. Economic analyses commonly use PNW as a tool in evaluating which alternative to select as financially preferable. PNW is calculated by valuing, in terms of 1995 dollars, all future income minus all future costs.

The calculation of Present Net Worth involves several steps. The land base within the boundaries of the northern spotted owl range is identified. Non-forest lands are excluded from the analysis as are off-base forest lands, such as genetic reserves, Natural Area Preserves and Natural Resource Conservation Areas.

The data within the starting land base include information about the age class of the trees, current and projected volume per acre by site class, expected management regime, the proximity to recently harvested lands, roads, streams, slope, unique habitat or landscape features, etc. These items reflect legal, regulatory and operational constraints on contemporary land managers. These data are further categorized by trust and region.

After establishing the starting land base, the No Action and the HCP options can be evaluated. The No Action option includes adjustments based on riparian management, limitations due to managing for the northern spotted owl, i.e. owl circles, the marbled murrelet, and other factors reflecting the full implementation of the 1992 Forest Resources Plan. For the HCP option a similar process is followed using alternative assumptions regarding riparian buffer widths, unstable slope constraints, protection for special habitat areas, harvesting constraints within designated nesting, roosting, foraging habitat and dispersal habitat, etc.

Once the data for each alternative are incorporated into the computer, a simulation can be performed to calculate the expected harvest for each trust and in total. The output comes in the form of estimated harvest level by decade over the next 20 decades.

Assumptions

Table 3 summarizes the assumptions used in determining the PNW and the estimated harvests, including management assumptions used on the OESF. The OESF is described to demonstrate the differences in management measures, which differ from the other lands due to the emphasis in the OESF on experimentation.

The model used to calculate future harvests uses existing policy; harvests are calculated for ten year time periods with the model seeking the highest harvest allowable without declining from one decade to another. In order to determine the value, during the harvest calculations the cost and timing of the management activities are projected. Based on knowledge of current costs and stumpage prices and assumptions of increase in future cost and prices, the present net value of the harvest is determined. (In the analysis costs and prices increased at 1% per year above inflation. A discount rate of 5% was used to calculate the present value of future costs and revenues.)

**Table 1: Draft Habitat Conservation Plan Assumptions
Riparian Strategy**

No Action	HCP Option	OESF No Change	OESF Option
Unstable Slopes			
No timber harvest on areas identified by geomorphological model as “most susceptible to mass wasting”.	No timber harvest on areas identified by geomorphological model as “most susceptible to mass wasting”.	No timber harvest on areas identified by geomorphological model as “most susceptible to mass wasting”.	No timber harvest on areas identified by geomorphological model as “most susceptible to mass wasting”.
Upgraded Type 4 Streams			
Assume that the 45% of Type 4 streams will be upgraded to Type 3.	Assume that the 45% of Type 4 streams will be upgraded to Type 3.	Not applicable.	Not applicable.
Unclassified (Type 9) Streams			
<p>Untyped (Type 9) stream reaches between typed stream reaches are of the same type as the downstream reach.</p> <p>All other untyped (Type 9) streams are Type 5.</p>	<p>Untyped (Type 9) stream reaches between typed stream reaches are of the same type as the downstream reach.</p> <p>All other untyped (Type 9) streams are Type 5.</p>	<p>Untyped (Type 9) stream reaches between typed stream reaches are of the same type as the downstream reach.</p> <p>All other untyped (Type 9) streams are Type 5.</p>	<p>Untyped (Type 9) stream reaches between typed stream reaches are of the same type as the downstream reach.</p> <p>All other untyped (Type 9) streams are Type 5.</p>

No Action		HCP Option			OESF No Change		OESF Option		
RIPARIAN PROTECTED AREA									
Width of Riparian Protected Area									
Water Type	Width (Feet)	Width (feet)			Water Type	Wind (feet)	Width (feet)		
		Water Stream Type	Buffer	Wind Buffer			Water Type	Int. Core	Ext. Buffer
1	196	1	150	100	1	150	1	150	150
2	196	2	150	100	2	150	2	150	150
3	85	3	150	50	3	100	3	150	150
4	55	4	100	0	4	100	4	100	50
5	0	5	0	0	5	100	5	100	50
		*80% of Type 1 and 2 streams, and 40% of Type 3 streams need wind buffers							
Timber Harvest in Riparian Protected Area									
No timber removed or timber management activity.		7% of conifer and 18% of alder will be harvested from riparian buffers and wind buffers at each entry.			No timber removed or timber management activity.		No timber harvest in the interior core 30% partial timber harvest in external buffers.		
WETLANDS									
Width of Wetland Buffers									
Wetland Size (acres)	Buffer Width (feet)	Wetland Size (acres)	Buffer Width (feet)	Wetland Size (acres)	Buffer Width (feet)	Wetland Size (acres)	Buffer Width (feet)	Wetland Size (acres)	Buffer Width (feet)
0.25-1	100	0.25-1	100	0.25-1	100	0.25-1	100	0.25-1	100
>1	150	>1	150	>1	150	>1	150	>1	150
Timber Harvest in Wetlands and Wetland Buffers									
Remove 40% of volume at each entry		Remove 40% of volume at each entry			Remove 40% of volume at each entry		Remove 40% of volume at each entry		

No Action	HCP Option	OESF No Change	OESF Option
HYDROLOGIC MATURITY/RAIN ON SNOW			
Harvest calculations need not be concerned with hydrologic maturity	Hydrologic maturity can be attained on at least 2/3 of DNR-managed lands within the rain on snow zone in 1000 acre basins when following current silvicultural practices of timber harvest is delayed until age 75 years.	Harvest calculations need not be concerned with hydrologic maturity	No provision for hydrologic maturity

Assumptions for Riparian Strategy

ALL OPTIONS

Assume that requirements for wildlife reserve trees, including additional trees provided under DNR policy, are met as follows:

- ┆ Associated with riparian areas and wetlands - No reduction factor for yields is required.
- ┆ Not associated with riparian areas and wetlands - Reduce yields by 5%.

MARBLED MURRELET HABITAT

NO ACTION

There would be no timber harvest on 2/3 of the stands with the following characteristics:

- ┆ Within 52 miles of salt water; and,
- ┆ At least eight conifer trees per acre which are at least 32 inches DBH.

HCP OPTION

There would be no timber harvest on 1/3 of the stands with the following characteristics:

- ┆ Within 50 miles of salt water, and,
- ┆ At least eight conifer trees per acre which are at least 32 inches DBH.

Table 2: Draft Habitat Conservation Plan Assumptions for Spotted Owl Strategy

NO ACTION	HCP OPTION	OESF ALTERNATIVE
<p>NUMBER OF OWL CIRCLES - An additional 46 spotted owls not yet located will be located on state land.</p> <p>ADDITIONAL HABITAT FOR OWLS IN CIRCLES WITH LESS THAN 40% HABITAT - All the non-habitat forest land located in a circle that is below 40% requirement for habitat will be managed so that no additional forest land will become habitat.</p> <p>OWL CIRCLES INCLUDING DNR AND PRIVATE OWNERSHIP - When a circle is located on both DNR and private land, the private landowner will have removed all habitat, leaving DNR trust land to supply 100% of the required habitat in the circle.</p>	<p>Entire HCP Area</p> <p>No timber harvest from NRF habitat devoted to providing the target amount.</p> <p>Area selected to provide target amount of NRF for a watershed administrative unit can move around within the WAU.</p> <p>Western Washington</p> <p>300-acre nesting areas are off base permanently.</p> <p>No new nesting habitat will be created.</p> <p>The 200-acre buffers will have the same impact on timber harvest as 200 acres of NRF habitat in addition to the target amount.</p> <p>HABITAT DEFINITIONS</p> <p>High quality nesting habitat is currently unattainable.</p> <p>The snag requirement is the limiting factor in providing sub-mature habitat.</p> <p>Sub-mature habitat can be achieved at age 70.</p>	<p>Definitions:</p> <p>Old forest - At least 100 years old.</p> <p>Spotted Owl Habitat - At least 70 years old, including old forest.</p> <p>Transition Period - The transition period lasts until stands on at least 40% of the state forest land in each landscape planning unit are at least 70 years old. Stands which are off base for riparian areas and marbled murrelet habitat count towards the 40% threshold. During the transition period the forest will be managed to meet the following standards:</p> <p>Maintain 20% of each landscape planning unit in old forest.</p> <p>Stands initially 31 to 99 years old are subject to final harvest when they reach harvest age.</p>

NO ACTION	HCP OPTION	OESF ALTERNATIVE
<p>(continued)</p> <p>OWL CIRCLES INCLUDING DNR AND FEDERAL OWNERSHIP - When a circle is located on both DNR and federal land, the DNR land will supply required habitat only when the federal land doesn't supply the habitat.</p> <p>OWL CIRCLES OVERLAP ON DNR LANDS - When 2 or more circles overlap, habitat enclosed by both circles will be counted as part of each circle's 40%.</p>	<p>(continued)</p> <p>20% of merchantable volume will be left on the ground at each commercial thinning operation and 25% at each regeneration harvest to meet the down wood requirement for sub-mature habitat.</p> <p>The tree size requirement is the limiting condition for dispersal habitat.</p> <p>The size requirement for dispersal habitat can be achieved at age 40.</p> <p>10% of merchantable volume will be left on the ground at each commercial thinning and 5% at each regeneration harvest to meet the down wood requirement for dispersal habitat.</p> <p>Eastern Washington</p> <p>Timber harvest for risk reduction will not affect sustainable harvest levels.</p> <p>Salvage logging will not affect sustainable harvest levels.</p>	<p>(continued)</p> <p>Commercial thinnings may be taken in these stands which are age 30 or younger at the time the plan is adopted. Final harvest may be taken in those stands as long as it does not delay reaching the 40% spotted owl habitat threshold or the 20% old forest threshold.</p> <p>After Transition - When stands on at least 40% of the state forest land in each landscape planning unit are at least 70 years old:</p> <p>Maintain in each landscape planning unit a minimum of 20% in old forest and 40% in spotted owl habitat.</p> <p>Stands off base for riparian areas and marbled murrelet habitat count toward the 20% and 40% thresholds.</p>

Appendix 6 - No Surprises Policy



Appendix 6. No Surprises Policy

The following is a reproduction of the U.S. Department of the Interior's and U.S. Department of Commerce's 1994 No Surprises Policy.

08/09/94

NO SURPRISES

ASSURING CERTAINTY FOR PRIVATE LANDOWNERS IN ENDANGERED SPECIES ACT HABITAT CONSERVATION PLANNING

“The Committee intends that the Secretary may utilize this provision [on HCPs] to approve conservation plans which provide long-term commitments regarding the conservation of listed as well as unlisted species and long-term assurances to the proponent of the conservation plan that the terms of the plan will be adhered to and that further mitigation requirements will only be imposed in accordance with the terms of the plan. In the event that an unlisted species addressed in an approved conservation plan is subsequently listed pursuant to the Act, no further mitigation requirements should be imposed if the conservation plan addressed the conservation of the species and its habitat as if the species were listed pursuant to the Act.”

“It is also recognized that circumstances and information may change over time and that the original plan might need to be revised. To address this situation the Committee expects that any plan approved for a long-term permit will contain a procedure by which the parties will deal with unforeseen circumstances.”

H. Rep. No. 835, 97th Cong., 2nd Sess. 30-31 (1982)

PURPOSE:

The purpose of this policy is to provide assurances to non-federal landowners participating in Endangered Species Act Habitat Conservation Planning (HCP) that no additional land restrictions or financial compensation will be required for species adequately covered by a properly functioning HCP in light of unforeseen or extraordinary circumstances.

SUPPLEMENTARY INFORMATION:

The HCP process promotes endangered species conservation and habitat protection within the context of land use or development. Ideally, HCPs contribute to the long-term conservation of federally listed and unlisted species, while providing predictability and economic stability for non-federal landowners.

Species receive a variety of benefits under a properly functioning HCP. Private financial resources supplement limited federal funding, essential habitat areas are often preserved, and comprehensive conservation programs are developed and promptly implemented. Although landowners must ultimately demonstrate that a species has been covered adequately under an HCP, the major benefit from the HCP process from the perspective of the development community is certainty. In exchange for adherence to long-term conservation commitments, an HCP permittee is provided assurance that development may move forward despite the incidental taking of protected species.

Significant development projects often take many years to complete, therefore adequate assurances must be made to the financial and developmental communities that an HCP permit will remain valid for the life of the project. In authorizing the HCP process, Congress recognized that permits of 30 years or more may be necessary to trigger long-term private sector funding and land use commitments for species conservation. Congress also recognized that circumstances may change over time, generating pressure to reconsider the mitigation commitments in an HCP agreement. Often referred to as "unforeseen" or extraordinary circumstances, Congress intended that additional mitigation requirements not be imposed upon an HCP permittee who has fully implemented his or her conservation commitments except as may be provided for under the terms of the HCP itself.

POLICY:

In negotiating "unforeseen circumstances" provisions for HCPs, the FWS shall not require the commitment of additional land or financial compensation beyond the level of mitigation which was otherwise adequately provided for a species under the terms of a properly functioning HCP. Moreover, FWS shall not seek any other form of additional mitigation from an HCP permittee except under extraordinary circumstances.

A. General Assurances Provided to Landowners

- * If additional mitigation measures are subsequently deemed necessary to provide for the conservation of a species that was otherwise adequately covered under the terms of a properly functioning HCP, the primary obligation for such measures shall not rest with the HCP permittee.
- * FWS shall not seek additional mitigation for a species from an HCP permittee where the terms of a properly functioning HCP agreement were designed to provide an overall net benefit for that particular species and contained measurable criteria for the biological success of the HCP which have been or are being met.
- * If extraordinary circumstances warrant the requirement of additional mitigation from an HCP permittee who is in compliance with the HCP's obligations, such mitigation shall limit changes to the original terms of the HCP to the maximum extent possible and shall be limited to modifications within Conserved Habitat areas or to the HCP's operating conservation program for the affected species. Additional mitigation requirements shall not involve the payment of additional compensation or apply to parcels or land available for development under the original terms of the HCP without the consent of the HCP permittee.

B. Determination of Extraordinary Circumstances

- * FWS shall have the burden of demonstrating that such extraordinary circumstances exist, using the best scientific and commercial data available. FWS findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species.
- * In deciding whether any extraordinary circumstances exist which might warrant requiring additional mitigation from an HCP permittee, the FWS shall consider, but not be limited to, the following factors:
 - the size of the current range of the affected species
 - the percentage of range adversely affected by the HCP
 - the percentage of range conserved by the HCP
 - the ecological significance of that portion of the range affected by an HCP
 - the level of knowledge about the affected species and the degree of specificity of the species' conservation program under the HCP
 - whether the HCP was originally designed to provide an overall net benefit to the affected species and contained measurable criteria for assessing the biological success of the HCP
 - whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild

C. Additional Conservation Authority

- * Nothing in this policy shall be construed to limit or constrain FWS or any other governmental agency from taking any additional actions at its own cost with respect to the conservation or enhancement of a species which is included under an HCP.