United States Department of the Interior

BUREAU OF LAND MANAGEMENT
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IN REPLY REFER TO:
6842/1610(WORP)(OR-930)

OCT 06 2008

Mr. Bob Lohn
Regional Administrator
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115-0070

Dear Mr. Lohn:

This letter documents the actions taken by the Bureau of Land Management (BLM) regarding compliance with Section 7 of the Endangered Species Act (ESA) for the Western Oregon Plan Revisions (Plans) and briefly summarizes the plan-level guidance we anticipate will be included in the proposed Plans.

When approved, the Plans will provide management direction for 2.6 million acres of land administered by the BLM through six individual, coordinated Resource Management Plans (RMP) covering the Salem, Eugene, Coos Bay, Roseburg, and Medford Districts and the Klamath Falls Resource Area of the Lakeview District. These RMPs will describe:

- objectives for the management of BLM-administered lands and resources;
- land use allocations;
- allowable uses; and
- types of actions to achieve objectives, including actions to restore or protect land health and actions to guide on-the-ground activities.

Section 7(a)(1) of the ESA authorizes agencies, working with the United States Fish and Wildlife Service or the National Marine Fisheries Service (Services), depending on the species involved, to use their authorities to carry out programs for the conservation of listed species. Cooperative consultation under the ESA began in the summer of 2005 when the Services received cooperating agency status under National Environmental Policy Act (NEPA) for the development of the environmental impact statement (EIS) supporting the Plans. Since that time, the BLM has coordinated extensively with the Services through numerous discussions, formal and informal feedback sessions, face-to-face meetings, and official correspondence. During the same time, the BLM and the Services also cooperated in the development of draft and final recovery plans and proposed and final designations of critical habitat for certain listed species within the planning area. The information provided by the Services during this period of cooperative consultation has been used by the BLM to make the changes from the preferred alternative in the Draft EIS into what has

become the current Proposed RMP (PRMP) alternative that will be described and analyzed in the Final EIS. As intended by the consultation approach prescribed in the Services' March 1998 Section 7 Consultation Handbook[1], the BLM and the Services' cooperative efforts have resulted in substantially improved provisions in the PRMP regarding the conservation of listed species. These provisions are described in the enclosure.

In accordance with section 7(a)(2) of the ESA, the BLM has analyzed whether the adoption of the revised Plans "may affect" listed species or critical habitat. As a result of this analysis, the BLM has concluded that the adoption of the revised Plans will have no effect to listed species or critical habitat. First, the Plans are not self-executing and do not authorize any on-the-ground action; do not create any legal right or obligation; and do not grant, withhold, or modify any legal license, power, or authority. As such, further Federal decision-making is required before the BLM or any third party can conduct ground-disturbing activity. As a result, the Plans will have no "direct effect" under the ESA on listed species or critical habitat.

Second, the BLM also considered if approval of the Plans would have indirect effects to threatened and endangered species or critical habitat. "Indirect effects" are defined in the ESA regulations as effects that are "caused by" the proposed action and "reasonably certain to occur." In assessing whether the effects of future actions are "reasonably certain to occur," one must bear in mind the economic, administrative, or legal hurdles that remain to be cleared before actions implementing the Plans can occur. While the BLM acknowledges that it intends to develop and carry out a program of work consistent with the management guidance in the future as described in the Plans, the specific details of the scope and extent of that program of work are unknown at this time. The timing, size, location, and design of future actions are too uncertain and so widely variable that it is impossible to conduct an assessment of the effects of future actions that would allow the BLM or the Services to determine a level of the potential "take" of a listed species or changes to the environmental baseline. Before those future actions can take place, many things must happen; including appropriations, the design of project proposals, and completion of the analysis of environmental consequences under NEPA for those actions. Given the number of steps that must occur between adoption of the Plans and implementation of any future Federal site-specific actions that involve discretionary decisions by Federal agencies, the "reasonably certain to occur" threshold cannot be met at this time in and level of the decision process. Thus, the action of adopting the Plans has no indirect effects on listed species or critical habitat.

In furtherance of the BLM's obligations under Section 7 to cooperate with the Services to assure that its actions will not jeopardize or adversely modify the habitat of a listed species and consistent with the Consultation Handbook, the BLM will consult on projects when they are actually proposed and when sufficient information is available at the appropriate scale to definitively demonstrate effects will be "caused by" the action and "reasonably certain to occur"

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[1] This handbook was primarily developed to aid Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) biologists implementing the section 7 consultation process. The purpose of the handbook is to provide information and guidance on the various consultation processes outlined in the regulations. Additionally, the handbook will ensure consistent implementation of consultation procedures by those biologists responsible for carrying out section 7 activities.

when carried out and those effects have a defined linkage with the action subject to consultation. At that project scale, there will be a sufficient level of information to conduct an analysis to conclude with reasonable certainty what effects will occur and whether a biological opinion will be necessary. Through this project-level consultation, we will ensure that future actions taken to carry out the Plans' management guidance will not jeopardize the continued existence of a listed species or adversely modify critical habitat.

Thank you for providing excellent advice and counsel throughout the planning process. We invite your continued participation in future project-level planning and subsequent consultation efforts.

Sincerely,

Edward W. Shepard
State Director
Oregon/Washington

Enclosure

cc: Ren Lohoefener
Regional Director
US Fish and Wildlife Service
911 NE 11th Ave.
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Changes to the Proposed Action in the Draft Environmental Impact Statement (EIS).

Alternative 2 was identified as the preferred alternative in the Draft. As a result of public, cooperator, and science committee comments and informal consultation with the Fish and Wildlife Service and the National Marine Fisheries Service (Services), the Bureau of Land Management (BLM) made modifications to the preferred alternative. Rather than changing Alternative 2 from the draft, we added a modified version of Alternative 2 to the final EIS as the Proposed Resource Management Plan (PRMP) alternative. The changes included:

- Incorporated the Riparian Management Area land use allocation from Alternative 1. Added an exclusion of thinning and silvicultural treatments within 60 feet of perennial and intermittent fish-bearing streams and within 35 feet of intermittent streams.

- Refined the boundaries of several Late-Successional Management Areas and added stands within boundaries of the new proposed marbled murrelet critical habitat units that contain one or more primary constituent elements.

- Added the Eastside Forest Management Area land use allocation for forested lands east of Highway 97 in the Klamath Falls Resource Area of the Lakeview District.

- Added the Uneven-Age Timber Management Area land use allocation in a part of the Medford District and Klamath Falls Resource Area.

- In the Timber Management Areas, deferred harvest of substantially all stands that are currently older and more structurally complex, multi-layered conifer forests through the year 2023.

- Extended application of the BLM Special Status Species policy to all land use allocations.

- Applied Visual Resource Management (VRM) II to certain public domain lands in the Molalla Block of the Salem District.

- Added a requirement to include marbled murrelet nest sites found in the future to the Late-Successional Management Area land use allocation and to survey prior to habitat-disturbing activities.

- Dropped the Management Area Adjacent to the Coquille Forest land use allocation.

- Provided for the Medford District to manage seven new Special Recreation Management Areas (Off-Highway Vehicle emphasis areas) to accommodate focused off-highway vehicle management.

- The list and acres for Areas of Critical Environmental Concern, Visual Resource Management Classes, and areas open or closed to energy and mineral developments were updated to correct errors and reflect the changes caused by revised land use allocations.

Provisions in the PRMP regarding conservation of listed species.

Federally-listed Wildlife Species

Northern Spotted Owl

- Fifty-seven percent of BLM-administered land in the planning area (1,202,933 acres) would be outside of the harvest land base. These lands would be delineated mostly as Late-Successional Management Areas (LSMA) or Riparian Management Areas (784,803 acres), with additional acres in Congressional Reserve Areas or administrative withdrawals (410,683 acres).

- The proposed actions would be consistent with the 2008 *Final Recovery Plan for the Northern Spotted Owl.*

- In accordance with Recovery Action 5 of the Recovery Plan, the proposed action would delineate LSMAs (637,439 acres) to overlay the Managed Owl Conservation Areas that occur on BLM-administered land outside of Congressional Reserve Areas. LSMAs would be managed to maintain or promote the development of structurally-complex forest.

- The proposed action would delineate LSMA-11 (Oregon Managed Owl Conservation Area (OMOCA)-11from recovery plan) and LSMA-28 (OMOCA-28 from recovery plan) to support spotted owl movement and survival in, respectively, the South Willamette-North Umpqua and Umpqua-Rogue areas of concern.

- In accordance with Recovery Action 8 of the Recovery Plan, the PRMP would increase the quantity of spotted owl habitat in the low and mixed fire severity regimes on BLM-administered lands throughout the planning area and implement uneven-aged management prescriptions on BLM-administered lands in portions of the Medford District and in the western Klamath Falls Resource Area to improve the fire resiliency of treated stands.

- In accordance with Recovery Action 32, the PRMP would defer, for 15 years, the harvest of 183,123 acres of older and more structurally complex forest on BLM-administered lands in the planning area that are outside of Managed Owl Conservation Areas.

- To avoid adverse effects from disturbance to northern spotted owls and their young at known nest sites, the BLM would restrict activities within threshold distances of known, active spotted owl nest sites identified through consultation from March 1 through September 30. The BLM anticipates that such restrictions usually would not be needed to avoid adverse effects when known spotted owl nest sites are located near roads or other areas of permanent human activity.

Northern Spotted Owl Critical Habitat

- The BLM proposes to delineate LSMAs to overlay all Critical Habitat Units on BLM-administered lands in the planning area that occur outside of Congressional Reserve Areas.

- LSMAs would be managed to support the development of the primary constituent elements of spotted owl critical habitat.

Marbled Murrelet

- Within Marbled Murrelet Zones 1 and 2:
  - LSMAs – ≈ 470,000 acres – 51 percent of area (includes 51,000 acres of stands outside of large block LSMA but within marbled murrelet critical habitat that are 80+ years of age and 16,000 acres adjacent to occupied marbled murrelet sites) to be managed for the development of late-successional characteristics.

  - 15 year deferment of 30,000 acres of stands greater than 160 years of age (6,400:23,600).

  - 115,000 acres of riparian management areas within TMA that will be managed for development of late-successional characteristics.

- All marbled murrelet critical habitat would be retained in Land Tenure Zone 1, making it unavailable for sale or exchange. All lands in Land Tenure Zone 2 and 3 that are included in future critical habitat designations will automatically be added to Land Tenure Zone 1.

- Projects within the range of the marbled murrelet that degrade or remove suitable marbled murrelet habitat would be surveyed, to approved protocol standards, prior to implementation. The Pacific Seabird Groups' *Method for surveying marbled murrelets in forests: a revised protocol for land management and research* (Mack *et al.* 2003) is the currently approved protocol. If surveys indicate that habitat is occupied (Mack *et al.* 2003), all contiguous suitable habitat and recruitment habitat (i.e., stands that are capable of becoming marbled murrelet habitat within 25 years) within a 0.5 mile radius will be protected.

- Activities would be restricted during nesting season in areas where marbled murrelets have been found to be currently nesting.

Fender's Blue Butterfly

- Management of non-forest habitat for maintenance and restoration of natural processes.

- Areas of critical environmental concern would be managed to maintain or restore important and relevant values.

Vernal Pool Fairy Shrimp

- Management of non-forest habitat for maintenance and restoration of natural processes.

- Areas of critical environmental concern would be managed to maintain or restore important and relevant values.

Federally-listed Plant Species

- Habitat and occurrences would be managed for the conservation and recovery of the species on BLM-administered lands. These measures are prescribed by recovery plans, biological opinions, or conservation agreements and would contribute to the recovery of species.

- Management of plant species that are listed under the Endangered Species Act would be consistent with recovery plans and designated critical habitat. Plant species with currently approved recovery plans include: McDonald's rockcress, Applegate's milk-vetch, Golden paintbrush, Gentner's fritillary, Western lily, Bradshaw's desert parsley, Rough popcorn flower, and Nelson's checker-mallow.

- Conservation actions included in two Conservation Agreements for Cook's desert parsley and Kincaid's Lupine would be applied on all BLM-administered lands described in the agreement.

- Similar types of conservation measures would be applied for Federally-listed species and Federally proposed species without recovery plans and for candidate species.

- The BLM special status plant species would be managed to maintain or restore populations and habitat consistent with species conservation needs. Protection measures include altering the type, timing, extent, and intensity of actions and other strategies designed to maintain populations of species. Restorative measures would include establishing new populations or augmenting existing populations.

- Designation of Off-highway-vehicle areas:
  - Gentner's fritillary and Cook's lomatium. Designation would change from "open" to "limited to designated roads and trails" on Medford District.

Federally-listed Fish Species

- Salmon, Steelhead, Bull trout, Lost River Sucker, Shortnose Sucker

- The Riparian Management Area Land Use Allocation widths and the water quality Best Management Practices for program activities are designed to protect and maintain water quality for temperature and sedimentation.

- Riparian Management Areas are designed to provide for the development of complex instream structures within stream channels over time (a current major limiting habitat feature for many anadromous fish species). Large wood contribution from the Riparian Management Areas and other Land Use Allocations will increase over time.

- Management direction within Riparian Management Areas includes silvicultural practices to speed the development of large trees to provide an eventual source of large woody debris to stream channels and reduce the potential for uncharacteristic wildfire.

- Management direction for restoration of instream habitat and fish passage. The PRMP has a restoration component to meet current and long-term active restoration needs for listed fish species; e.g., placement of instream complex structures with whole trees, logs, or boulders with a priority on restoration along high intrinsic potential streams. BLM expects restoration efforts to continue at the same level as they have in the past ten years.

- The BLM will continue to identify and improve or decommission roads with chronic sedimentation problems and replace culverts with access problems for listed fish species.

- The PRMP has defined criteria for identifying watersheds for priority restoration treatments.