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Memorandum

To: Project Manager, Western Oregon Plan Revisions
Bureau of Land Management

From: Assistant Regional Director, Ecological Services, Region 1
Portland, Oregon

Theresa E. Rabot

Subject: Comments on the Western Oregon Plan Revisions

The Fish and Wildlife Service (Service) has reviewed the August 2007 Draft Environmental Impact Statement (DEIS) for the Western Oregon Plan Revisions (WOPR). Our review has focused on important trust resources including species listed under the Endangered Species Act (ESA). In our role as a cooperating agency on the WOPR, we have been involved for the last 3 years in discussing and advising Bureau of Land Management (BLM) on the development of the DEIS. We have continued to work with the BLM following release of the DEIS and have made progress in offering recommendations for a final action. We have focused our attention on identifying important conservation needs of listed species and possible management actions to address those needs.

We recognize that BLM must balance a number of goals and objectives as they move forward with revised land management plans. Our comments reflect our mandate to comment on concerns with fish and wildlife resources as addressed in the DEIS, especially those associated with the Late-successional Reserve (LSR) network established via the Northwest Forest Plan.

The LSR network provided a conservation strategy for many old grow dependent species, including marbled murrelets and northern spotted owls (spotted owls), federally listed species under the ESA. The Service's Draft Recovery Plan for the northern spotted owl relies on a smaller footprint of management areas than is currently provided for with LSR, although management of the areas would be similar. The Service received a number of comments from scientists and the public on the draft recovery plan. Based on the concerns raised, we have requested a science panel to review the scientific basis of the plan in addition to the science relevant to the ecology of the owl. We recognize that the BLM relied on the same science relevant to the owl, including the draft recovery plan, and will keep BLM informed as to the results of the science panel.

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General Comments:

1. We believe Alternative 1 provides a protected network of large blocks of late-successional forest habitat that contains the greatest level of conservation among the action alternatives.
2. The landscape management outcomes produced from Alternative 3 do not appear favorable for achieving a viable conservation strategy for spotted owls, marbled murrelets and fisher (a candidate species). The alternative does not provide large blocks of habitat, removes and degrades current habitat through partial harvests, increases fragmentation, thereby reducing overall habitat quality over the planning horizon, and only provides temporary protection to known sites of listed species. Additionally, Alternative 3 does not specifically provide any special management direction in designated critical habitat for listed species.
2. We believe the retention of structural legacies including green trees, snags, and down wood is a fundamental component of providing for wildlife and ecological diversity and should be incorporated as a strategy in the preferred/final alternative. Without a robust strategy to provide for structural legacies there is concern that these older forest characteristics will be lost in future stands produced from regeneration harvest. The incorporation of structural legacies in young stands provides those elements needed to more quickly accelerate the development of habitat for species associated with late-successional forest. We recommend that green tree and snag retention be representative of the average stand diameter or larger.
3. In August 2007, the Service, BLM, and Forest Service signed a Conservation Agreement for the Siskiyou Mountains salamander (*Plethodon stormi*). The agreement and associated Conservation Strategy are intended to promote the conservation of the species. We suggest acknowledging the implementation of this Agreement in the final EIS and RMP.
4. For the purposes of jeopardy analyses under section 7 of the ESA, the Service must address the effect of an action, in this case the BLM's selected alternative of the WOPR, on a species numbers, distribution, and reproduction. While we have commented on a broader scale, information needed to address these parameters is included in species specific comments.

Below are more specific comments on particular species or species groups.

Northern Spotted Owl

Population Issues

BLM has contributed to supporting the Northern Spotted Owl Effectiveness Monitoring Plan as part of the regional monitoring strategy developed under the NWFP. The purpose of this monitoring effort is to assess trends in spotted owl populations and habitat. Monitoring efforts have provided integral information on northern spotted owls since inception of the NWFP. We recommend that the DEIS state whether BLM will continue to participate in this monitoring

effort in Western Oregon and whether any changes to that monitoring effort will be proposed under the selected alternative.

We recommend the DEIS contain an evaluation of the effect of the alternatives on known spotted owl sites. BLM has some of the best and most extensive spotted owl databases; apparently there is no use of this information in the DEIS beyond describing the 2001 to 2004 occupancy, including no analysis specific to the alternatives. In addition, the description of occupancy would be more useful if addressed by District and/or physiographic province.

With respect to the key points on page 282, the DEIS states that populations have been stable since 1985 on Roseburg, Coos Bay, and Medford Districts, and the Klamath Falls Resource Area. What is the basis for this conclusion on Coos Bay, Medford, and Klamath Falls? We are unaware of demographic studies addressing these Districts, and therefore assume that BLM extrapolated from data on other study areas, which carries uncertainties of comparability. The statement does not indicate the source of the information, nor does it seem to acknowledge the uncertainty potentially involved. We recommend that BLM cite the information used for this statement, including the basis for this extrapolation and indicate which demographic study areas are being used in this portion of the document.

Other Non-habitat Factors

The analysis of the effect of the alternatives on spotted owls is generally limited to habitat conditions and does not address non-habitat effects to populations that may operate on BLM lands. There appears to be an implicit assumption that habitat (at appropriate distribution and levels) will be occupied by spotted owls. However, this does not acknowledge the effect of non-habitat factors, in particular barred owls. The Service acknowledges that there are information gaps regarding the effects of barred owls on spotted owls and habitat usage, and that research is underway to address these information needs. The DEIS should acknowledge these uncertainties over barred owl effects on spotted owl populations and describe the manner in which BLM intends to respond to future changes in spotted owl numbers. A final Recovery Plan should assist BLM in developing an adaptive management response to an unacceptable decline in spotted owl numbers.

Habitat Issues

Page 634 states that both quantity and *quality* of habitat is analyzed. However, the rest of the section does not address quality, but simply shows the quantity for each alternative and the change over time. We recommend including a discussion of the quality of the various forest classes. This is particularly important given that the increase in younger forest habitat acres is used to offset the loss of “152,400 acres of existing old forest under Alternative 1 [sic]...” (should read Alt. 2 on page 507 assuming Table 151 is correct). Figure 201 also displays a reduction of old-growth forests on BLM lands and an increase of younger forest habitat over the 100 year analysis time frame (page 589). The impact of replacing existing old forest with younger habitat needs to be fully analyzed since not all spotted owl habitat provides equal benefits to spotted owls. Younger replacement habitat may not provide the full range of benefits to spotted owl survival and reproduction.

Dispersal habitat analysis

The current analysis addresses the total amount of dispersal habitat in general and by 6th field watershed, but is not as clear on how the distribution of the 6th field watersheds with lower amounts of habitat effects the potential dispersal. Furthermore, the maps in the DEIS (pages 664-665) demonstrate the current status and no harvest scenario, but lack a similar visual for the other alternatives, including the preferred alternative. Without a similar spatial representation of dispersal habitat for the preferred alternative, we have insufficient information to provide specific comments. Some type of landscape-level discussion of the pattern is important to the understanding of dispersal.

Stand Level Management Issues

Neither Alternative 1 nor Alternative 2 provides any leave trees in regeneration harvest units. This would likely, over time, reduce the quality of harvested units to provide for spotted owl dispersal across the landscape between the Late-successional Management Areas (LSMAs) by depleting the majority of the prey-base and structural cover in harvested units. The Service recommends adding green tree retention and snag creation/retention guidelines at levels that will increase the likelihood of spotted owl prey species persisting in harvested areas until habitat develops again.

Down wood is a critical component of spotted owl habitat, in particular for spotted owl prey. There are no down wood requirements for Alternative 1 and 2 in timber management areas other than leaving noncommercial wood. We recommend adding requirements that would establish a base level of retained wood, requiring larger wood be left to meet the target if noncommercial wood is insufficient.

Reserve Design – Size and Location

It is our understanding that Alternative 2 was developed based on the guidelines for Options 2 in the Draft Recovery Plan for the Northern Spotted Owl (USFWS 2007) As previously stated, peer review of the draft plan identified issues regarding the scientific foundation of the plan, particularly Option 2. The Service is undertaking an independent, scientific review to address these criticisms. The Service will continue to work with BLM as we identify ways to resolve the issues raised by the peer review.

Page 652 of the DEIS states that in Alternative 2 LSMAs “were allocated explicitly to create spacing of no more than 12 miles between blocks large enough to support 20 pairs (defined in Table 187), and to create spacing of no more than 7 miles between blocks large enough to support 10-19 pairs” with the support of Forest Service lands. We concur with the inclusion of Forest Service LSRs in your analysis of future habitat blocks, but question the size of some blocks. Some of the Alternative 2 LSMAs, as described in Table 190, appear to rely on the inclusion of adjacent non-federal acres to achieve the large block size needed to maintain 20 pairs. This is problematic because of the low likelihood that these lands will provide significant contributions of suitable habitat in the long-term. We agree with the assessment on page 639 that most non-federal lands are unlikely to provide suitable habitat and these lands should not be relied upon for significant contributions for long-term planning. We suggest this assessment be considered in the block size and spacing analysis of Alternative 2.

Reserve Management

The Service believes thinned stands in the LSMA allocation should follow a variable density thinning prescription in an effort to create stands with a greater diversity of canopy heights, tree size, species diversity and openings, among other characteristics. We recommend adding this specifically to the thinning management action for this allocation in Alternatives 1 and 2. Currently, there is not enough specificity for us to understand how thinning in LSMAs will allow or accelerate owl habitat development.

As described above, down wood is very important to northern spotted owl prey. The legacy snags and downed wood created by stand replacing events are important components of high-quality spotted owl habitat, and the landscape distribution of pockets with high quantities of snags and down wood are likely the most difficult to mimic through silvicultural actions. Retaining some percentage of these components in LSMAs would help meet BLM objectives for this allocation. If salvage is allowed in LSMAs, we recommend that the DEIS include standards specific to the minimum amount of leave trees (burned and not) to meet the ecological development needs, with the remainder available for harvest.

Marbled Murrelet

The marbled murrelet recovery plan (USFWS 1997) relies on the LSR network of the Northwest Forest Plan (USDA and USDI 1994) to achieve recovery and describes any suitable habitat in LSRs within Zone 1 as essential nesting habitat for the species (USFWS 1997, page 131). These areas are also currently designated and proposed critical habitat for murrelets (USFWS 1996 and 2006). Alternative 1 is consistent with the murrelet recovery plan in providing a network of well distributed, large blocks of protected habitat. Alternative 1 projects a gradual increase in murrelet habitat in Zone 1 (0-35 miles inland) during the first 50 years and additional increases out to 100 years. In addition, Alternative 1 would maintain and improve habitat quality and possibly reduce nest predation.

We believe the strategy for Alternative 2 overlooks key recommendations of the marbled murrelet recovery plan and its guidance for achieving the recovery needs of the species. Alternative 2 projects a continual decrease in the amount of murrelet habitat for the first 50 years, and excludes important areas from habitat protection in LSMAs. Although the Alternative projects habitat will increase from 50-100 years, this has uncertain value to the species if the preceding 50 years of habitat declines produces population impacts that result in fewer murrelets occupying BLM administered lands. Alternative 2 holds the potential to decrease habitat quality and increase nest predation. Nest predation is a major threat to the species and increased predation resulting in reduced reproductive success of murrelets could forestall recovery. The Service believes the LSMA network of Alternative 2 and projected loss of habitat during the first 50 years does not provide an effective strategy to address the conservation and recovery needs of the marbled murrelet.

In our role as a Cooperator, the Service has worked with the BLM to review the murrelet recovery plan actions along with BLM's most recent survey and habitat information to develop a potential strategy that recognizes BLM's timber management needs as well as the recovery needs of the murrelet. The outcome of the team was a mapped LSMA network that focused on

conservation in Zone 1. We recommend this work be further refined and considered as a basis for a final strategy in the WOPR.

Currently, BLM management under the RMPs implements murrelet surveys prior to timber harvest in suitable habitat. When surveys identify murrelet occupied sites, those areas are protected from harvest. This is an important management action in determining where occupied murrelet sites occur on the landscape and is emphasized in the recovery plan under recovery action 4.1.6. The plan states, "all aspects of marbled murrelet recovery in the terrestrial environment depend on identification of nesting habitat". Surveys are the only practical means of identifying marbled murrelet nesting areas (i.e. occupied sites). Alternative 1 proposes to maintain surveys prior to habitat-disturbing activities and the DEIS projects that surveys would lead to the discovery of 601 new occupied marbled murrelet sites. Alternative 2 does not propose to maintain surveys prior to habitat-disturbing activities, and using the same projection from Alternative 1, approximately 600 occupied murrelet sites would be available to timber harvest impacts. Furthermore, the number of murrelet sites that could be impacted would likely be higher under Alternative 2 because of its smaller LSMA network compared to Alternative 1. The DEIS does not contain an analysis of the population effects from the loss of occupied murrelet sites due to discontinuing surveys and protection of additional sites under Alternative 2. The Service believes that surveys prior to removal of suitable habitat that result in protection of occupied nest sites are a critical component in providing for adequate conservation of nesting habitat and breeding sites. We recommend the final EIS/RMPs include direction to continue surveys prior to timber harvest and protect areas where occupied behaviors are observed.

Aquatic Species and Riparian Habitat

The designation of Riparian Management Areas relies heavily on the information contained in the document "Northwest Forest Plan Temperature TMDL Implementation Strategies" dated September 9th 2005. The Service was asked by the BLM and Forest Service to comment on the TMDL Implementation Strategies and did so in a letter addressed to Kathryn J. Silverman and Michael J. Haske dated July 24, 2007 (attached). In the letter, the Service comments on several items in the TMDL Implementation Strategy that could benefit from further description or explanation. Given the significant role of the TMDL Implementation Strategies document/SHADOW model in regard to the designation of riparian buffer widths/management areas, clarity in the DEIS could be provided by addressing our previous set of comments.

The information provided in the DEIS chapter 3, affected environment, stream temperature section, heavily cites the Northwest Forest Plan Temperature TMDL Implementation Strategies document in regard to describing solar physics and relationships between shade zones and temperature changes. The TMDL Implementation Strategies document is specific in regard to a narrow/focused evaluation of solar radiation delivery to water bodies and the resultant temperature change. The TMDL Implementation Strategy document acknowledges that the strategy only pertains to temperature related issues and does not address other important riparian functions such as hydrologic, geomorphic, and ecologic processes that affect riparian condition. The DEIS relies on shade zones to set Riparian Management Area widths, but the DEIS does not resolve issues associated with reduced riparian area widths as it pertains to hydrologic, geomorphic, and ecologic processes that affect riparian condition and ultimately fish resources (listed or not).

The TMDL Implementation Strategy document acknowledges that stream orientation, sinuosity, aspect, bank and channel stability, channel migration, and the potential for sediment loading must also be considered in determining the width of the primary shade zone. The DEIS needs to explain how these factors are accounted for in delineating the width of the Riparian Management Areas across the broad landscape of the WOPR area.

Aquatic species of high interest to the Service include bull trout, shortnose and Lost River suckers, coastal cutthroat trout, and Pacific lamprey, in addition to anadromous salmonids. These species would benefit from management that provides for recovery or conservation measures that would preclude the need to list under the ESA. In addition to fish-bearing streams, the riparian buffers for non fish-bearing streams are equally important for the needs of sensitive species, including amphibians such as the tailed frog and torrent salamanders (BLM sensitive or assessment species). These amphibians rely on cold, clear water and adjacent riparian areas with late-successional forest characteristics. The buffers in Alternative 2 provide little forest retention that maintains these characteristics, and in the case of small streams, no conifer forest buffer is retained. On page 345 the DEIS states, “a small portion of the headwater stream network is important in producing landslides and debris flows that can provide large wood to streams”, however, this rationale does not recognize that the majority of watershed area is adjacent to intermittent and low order headwater streams, so cumulatively, these areas may be disproportionately important in creating and maintaining aquatic habitats. We recommend the DEIS include more clarity and specificity on how the reduced buffer widths in the action alternatives adequately address the conservation and recovery needs of listed and sensitive aquatic and riparian species.

Botany

Federally Listed Plants

The DEIS on page 594 describes all alternatives as having no loss of occupied habitat, individual plants, or populations as a result of management activities because species recovery measures would be applied. We understand that Appendix E provides an abbreviated summary of recovery plan actions, but we are unclear how these actions relate to management commitments in WOPR that lead to protecting plants as intended. For example, if plant surveys were a key action to ensuring no loss of plants or populations prior to management, they should be identified as a management action. It would be helpful to provide more specificity on which recovery actions would be implemented. This is particularly important for listed plants that do not have completed recovery plans.

On page 46, Table 19, we note an error in the inclusion of Kincaid’s lupine as a species with a completed recovery plan. The Service anticipates a draft recovery plan available for review in the summer of 2008.

BLM Sensitive and Assessment Species

There are 134 species identified as BLM special status species that occur in the planning area. Under BLM’s Special Status Species Policy conservation measures would be applied for many of these species. According to the DEIS, conservation measures would not be applied to special status species in the conifer habitat group that occur on O&C lands unless 20 or fewer

populations were known to exist. On page 46, it states that where species conflict with sustained yield management, protections on O&C lands will only be applied to prevent extinction. The Service is concerned that managing species populations to only prevent extinction could reduce species numbers or populations to a point where conservation measures are applied too late to be effective. This could present a high risk of local extirpation and contribute to the need to list species under the ESA. Page 604, states, "Any population losses from management activities to species with 20 or fewer populations would contribute to the trend toward local extirpation or extinction of the species within the planning area (Ellstrand and Elam 1993, USFWS 2003, Kaye pers. com. 2007, Friedman, pers com, 2007)." The total number of populations needed for species persistence may depend on many factors including the health or robustness of the individual populations, distribution, rate of decline, and the degree of threats affecting those populations. For example, eight plant species in Oregon were listed under the ESA with greater than 20 populations. We recommend the DEIS acknowledge that the health of individual populations, the threats to those populations as well as the total number of populations need to be examined when considering whether to provide conservation measures. There may be concern for species persistence when greater than 20 populations exist.

We recommend the final EIS provide more clarity as to whether BLM management presents a risk of extirpation or extinction of any sensitive and assessment species in the conifer habitat group, and whether certain species may need additional conservation measures. In the interest of complete information, we suggest a table of the Special Status Species in the conifer forest habitat group that would be provided with conservation measures and those species that would not be protected. The table should include number of populations, the population size in areas, and respective number of individuals in the populations. The final EIS should also acknowledge the Conservation Agreement for the Wayside Aster (*Euchephalis vialis*) recently completed in 2006 between the Service, BLM, and Forest Service.

Land Birds

Appendix A of the DEIS lists various major legal authorities relevant to the proposed plan revisions, but does not include the Migratory Bird Treaty Act (MBTA)(1918). The MBTA makes it unlawful, "by any means or manner, to pursue, hunt, take, capture [or] kill" any migratory bird except as permitted by regulation (16 U.S.C. 703-704). On July 18, 2000, the United States Court of Appeals for the District of Columbia held in *Humane Society v. Glickman*, 217 F. 3d 882 (D.C. Cir. 2000), that the MBTA applies to Federal agencies. As all Federal agencies are subject to the jurisdiction of the D.C. Circuit, the Service implements the MBTA consistent with this decision. Therefore, take of migratory birds by Federal agencies is prohibited unless authorized pursuant to regulations promulgated under the MBTA. The DEIS analyzes effects on land birds (i.e. migratory birds), but it is not clear how those effects comport with the BLM's obligations under the MBTA. We suggest adding the MBTA to the list of major legal authorities that are relevant to the planning process.

In concert with the MBTA and other relevant legal authorities, we recommend adding Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds), which states that each Federal agency taking actions that have, or are likely to have, a measurable negative effect on migratory bird populations is directed to develop and implement a Memorandum of Understanding with the Fish and Wildlife Service that shall promote the conservation of migratory bird populations, with special emphasis on management for Birds of Conservation

Concern. We suggest some analysis on whether such an MOU is necessary to address any negative effects to migratory bird populations, especially in eastside conifer forests where the analysis predicts significant negative trends in habitat.

In the DEIS, we support the use of the Partners in Flight (PIF) bird conservation plans, structural features of the habitat classes, and focal species that indicate those desired conditions. In particular, we emphasize support for retention of legacy components of green trees and snags (in clumps) in regeneration harvest units. We note that none of the focal habitats in Altman's Lowlands and Valleys bird conservation plan is incorporated (see Table 103) despite the overlap with BLM lands, and your reference to this bird conservation plan (Altman 2000b on p. 327). This could be addressed by including plant groups called Riparian, Oak, & Chaparral, and choose focal species that represent habitat conditions as with the other analytical groups adopted in the DEIS from the other PIF plans.

On page 328, the habitat objectives are general, but no link is provided to the Focal Species in Table 103. Focal species are responsive to the habitat conditions listed in Table 103, and their abundances indicate success in achieving desired habitat conditions. Monitoring abundance of focal species should be mentioned here, as the path to evaluating the effectiveness of management. Since they are 'analytical groups' of land birds, the DEIS should explain how they will be analyzed. It should be noted that several species in Table 100 should occur in more than one group. For example, Purple Martin and Lewis's Woodpecker under the 'snag-dependent' group, Yellow-breasted Chat under the 'riparian' associates, and White-headed Woodpecker and Flammulated Owl should be under the 'older forest' associates.

The analysis of effects on land birds from the alternatives concludes that all alternatives meet objectives for mature and structurally complex forests. While this may be the case at 100-year projections, the analysis does not evaluate the effects to species in the near term (10-50 years) where some alternatives exhibit a decline of structurally complex forests prior to later increases (50-100 years out). The consequences for some birds of concern would be improved with retention of structural legacies including green trees, snags, and down wood well distributed in regeneration harvest units. Lacking a strategy for retention of structural legacies is likely to add to the declining status of some Birds of Conservation Concern.

Summary

In closing, these comments are intended to assist the BLM in developing a final management plan that addresses late-successional and old-growth forest resources and complies with the ESA. We have significant concerns that the preferred alternative would undermine current efforts to provide conservation and recovery of currently listed species, in particular the northern spotted owl and marbled murrelet. However, we believe the DEIS has analyzed the building blocks for a strategy that would fully meet the BLM's obligations. We are currently working with your agency to address these issues and value our role as a cooperator in the development of the final Resource Management Plans. We appreciate the opportunity to review the DEIS and look forward to continued collaboration. If you have questions regarding these comments, please contact Lee Folliard or Miel Corbett at (503) 231-6179.

References:

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USFWS (U.S. Fish and Wildlife Service). 1996. Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the Marbled Murrelet; Final Rule. Fed. Reg. Vol. 61. 102:26256-26320. May 24, 1996.

USFWS (U.S. Fish and Wildlife Service). 1997. Final recovery plan for the marbled murrelet. U.S. Fish and Wildlife Service. Portland, Oregon.

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