

RECORD OF DECISION

for the

Proposed Issuance of an Endangered Species Act

Section 10(a)(1)(B) Incidental Take Permit

to

Oregon Department of State Lands

for the

Elliott State Research Forest Habitat Conservation Plan

U.S. Fish and Wildlife Service

Cooperating Agencies:

National Marine Fisheries Service

Oregon Department of Fish and Wildlife

Oregon Department of Forestry

RECORD OF DECISION FOR THE PROPOSED
ISSUANCE OF A SECTION 10(A)(1)(B)
INCIDENTAL TAKE PERMIT

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Introduction

The U.S. Fish and Wildlife Service (Service) prepared this Record of Decision (ROD) to document the decision of the Service in response to an application submitted by the Oregon Department of State Lands (DSL, or applicant) for an incidental take permit (permit or ITP) addressing species listed under the Endangered Species Act of 1973, as amended (ESA) (16 USC 1531 *et seq.*). Our decision is based on the ITP application and the supporting Elliott State Research Forest Habitat Conservation Plan (HCP), the Final Environmental Impact Statement (EIS) addressing this action, and other information in the decision record.

This ROD was prepared in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA) (42 United States Code [USC] 4321 *et seq.*), as amended and the Department of the Interior's NEPA regulations (43 Code of Federal Regulations [CFR] 46).

Executive Order (EO) 14154, *Unleashing American Energy* (Jan. 20, 2025), and a Presidential Memorandum, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (Jan. 21, 2025), repeal EO 12898, *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations* (Feb. 11, 1994) and EO 14096, *Revitalizing Our Nation's Commitment to Environmental Justice for All* (Apr. 21, 2023). While environmental justice was considered in the final EIS, it is not required, or necessary to make a reasoned decision under ESA section 10, and in light of the EO and Presidential Memorandum, was not considered further by the Service in this decision.¹

EO 14154 and EO 14148, *Initial Rescissions of Harmful Executive Orders and Actions* (Jan. 20, 2025) repeal EO 13990, *Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis* (January 20, 2021) and related guidance and estimates based on the disbanded Interagency Working Group on Social Cost of Greenhouse Gases. While the social cost of greenhouse gases was considered in the final EIS, those estimates were not required or necessary to make a reasoned decision under ESA section 10, and in light of the EOs, were not considered further by the Service in this decision.

EO 14154 also rescinded EO 11991, *Relating to Protection and Enhancement of Environmental Quality*. As a result, on February 25, 2025 (90 *Federal Register* 10610), the Council on Environmental Quality (CEQ) issued an interim final rule, effective April 11, 2025, removing its NEPA implementing regulations. As noted in that interim final rule, agencies retain the discretion to continue to follow similar procedures, such as those in agency implementing regulations (90 *Federal Register* 10610 at 10614). The Service conducted its NEPA review of the proposed action consistent with NEPA, as amended, the CEQ NEPA regulations in effect at the

¹ Executive Order 14154, *Unleashing American Energy* (Jan. 20, 2025), and a Presidential Memorandum, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (Jan. 21, 2025), require the Department to strictly adhere to the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.* Further, such Order and Memorandum repeal Executive Orders 12898 (Feb. 11, 1994) and 14096 (Apr. 21, 2023). Because Executive Orders 12898 and 14096 have been repealed, complying with such Orders is a legal impossibility. The Service verifies that it has complied with the requirements of NEPA, including the Department's regulations and procedures implementing NEPA at 43 C.F.R. Part 46 and Part 516 of the Departmental Manual, consistent with the President's January 2025 Order and Memorandum. The Service has also voluntarily considered the Council on Environmental Quality's rescinded regulations implementing NEPA, previously found at 40 C.F.R. Parts 1500–1508, as guidance to the extent appropriate and consistent with the requirements of NEPA and Executive Order 14154.

time it was initiated (40 CFR 1500–1508, May 2022), and the Department of the Interior’s current NEPA regulations.

This ROD presents the Service’s decision and the rationale supporting the decision, identifies the reasonable range of alternatives considered in the EIS and the environmentally preferable alternative, and discusses whether all practicable means to avoid or minimize environmental harm from implementation of the selected alternative have been adopted. The Service also reviewed input from Tribes; federal, state, and local agencies; and public comments. All applicable laws, regulations, executive orders, and local government plans were considered in evaluation of alternatives. Further, the Service determined, and our Biological Opinion demonstrates, that the issuance of the ITP is not likely to jeopardize listed species or adversely modify or destroy critical habitat (16 USC 1536 (a)(2)). This ROD completes the NEPA process.

Proposed Federal Action and Decisions to be Made

The Service proposes to issue an ITP to DSL, under the authority of section 10 of the ESA (16 USC 1539(a)(2)(B)) and the implementing regulations (50 CFR 17.32(b)), for a period of 80 years. Documents used in the preparation of this ROD include the following:

- Final Elliott State Research Forest HCP (DSL 2024)
- Final EIS for the Elliott State Research Forest HCP (Service 2025a)
- The Service’s Biological Opinion for the Elliott State Research Forest HCP (Service 2025b)
- Service Findings and Recommendations for the Proposed Issuance of an ESA section 10(a)(1)(B) ITP for the Elliott State Research Forest HCP (Service 2025c)

Purpose and Need for Proposed Federal Action

The purpose and need for the proposed federal action is to process DSL’s request for an ITP and fulfill legal and conservation obligations under section 10(a)(1)(B) of the ESA in response to the applicant’s HCP and permit request addressing the covered activities. The applicant has determined that operation of the Elliott State Research Forest as proposed would likely result in take of ESA-listed species and seeks a long-term solution that assures compliance with the ESA.

Any permit issued by the Service must meet all applicable ESA issuance criteria (16 USC 1539(a)(2)(B); 50 CFR 17.32(b)(2)). As discussed further in the Service’s Findings, issuance criteria under the ESA include that the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking, that the applicant will ensure that adequate funding for the HCP will be provided, that the applicant has provided procedures to deal with unforeseen circumstances, and that the taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild. The Service will also ensure that issuance of the ITP complies with other applicable federal laws, regulations, treaties, and applicable executive orders, as appropriate.

The permit is conditioned on implementation of the HCP and compliance with permit terms and conditions.

Alternatives Considered

The Service analyzed four alternatives in detail in the EIS, including the proposed action, the no action alternative, and two action alternatives. The Service identified a reasonable range of alternatives to consider for detailed study in the EIS through a structured screening process, which was informed by the comments received during the scoping process. As described further in the EIS, all four alternatives were determined to be technically and economically feasible (43 CFR 46.420(b)). All alternatives analyzed in detail include forest management activities (i.e., timber harvest and reforestation, thinning, and supporting management activities and infrastructure), but the implementation of these activities would vary as described in the following subsections. Chapter 2, *Proposed Action and Alternatives*, describes additional alternatives that the Service considered but eliminated from detailed study.

Alternative 1: No Action

Under the no action alternative, the Service would not issue an ITP to DSL, and DSL would not implement the HCP. DSL would continue to manage the Elliott State Research Forest consistent with the Oregon Forest Practices Act (FPA) (Oregon Revised Statutes [ORS] Chapter 527 and Oregon Administrative Rules [OAR] Chapter 629), complying with the ESA through a take avoidance approach consisting of the species-specific restrictions summarized below.

- Northern spotted owl (*Strix occidentalis caurina*): DSL would implement the habitat protections included in the *Revised Recovery Plan for Northern Spotted Owl* (FWS 2011), *FWS Protocol for Surveying Proposed Management Activities that May Impact Northern Spotted Owls* (FWS 2012), and *Biological Opinion on Northwest Oregon District, Bureau of Land Management Harvest and Routine Activities* (Service 2020).
- Marbled murrelet (*Brachyramphus marmoratus*): DSL would comply with OAR 635-100-0137, *Survival Guidelines for Marbled Murrelet*.
- Oregon coast coho (*Oncorhynchus kisutch*): DSL would comply with the riparian protection requirements in the Oregon FPA (ORS 527; OAR 629) and the steep slope protections in ORS 629-630-0900 through 629-630-0925.

In areas where harvest is not prohibited by take avoidance restrictions, the no action alternative assumes that DSL would conduct clearcut harvest. Further assumptions regarding forest management practices under the no action alternative are identified in Final EIS Section 2.1.1, *Alternative 1: No Action*.

Alternative 2: Elliott State Research Forest HCP—Proposed Action (Preferred Alternative)

Under the Preferred Alternative, the Service and the National Marine Fisheries Service (the Services), in accordance with applicable law, would issue ITPs to DSL for incidental take of the covered species from the covered activities in the permit area for 80-year permit terms, and DSL would implement the HCP. This ROD reflects the Service's decision on the applied-for permit; the National Marine Fisheries Service will provide its own record of decision.

Permit and Plan Areas

The HCP permit area includes 83,326 acres of DSL-managed lands in Douglas and Coos Counties and is the location where all covered activities and conservation actions would occur. The HCP plan area includes the permit area, 8,897 acres of Board of Forestry lands overseen by the State Board of Forestry and managed by the Oregon Department of Forestry, 124 acres of State Land Board lands managed by the Oregon Department of Forestry, and 161 acres of private inholdings. Lands in the plan area that are outside of the permit area are included in the plan area to accommodate any future land exchanges between DSL and adjacent landowners.

Covered Activities

The covered activities represent all projects and activities for which DSL is requesting authorization for incidental take. Broadly, the covered activities include forest management activities (i.e., timber harvest and supporting management activities), infrastructure, research activities, and implementation of the HCP's conservation strategy. HCP Chapter 3, *Covered Activities*, describes the covered activities in more detail.

- Stand-level treatments and allocations: The permit area is subdivided into two general areas—the conservation research watersheds (CRW) and management research watersheds (MRW). The CRW would be managed as a contiguous reserve where restoration thinning would be allowed in some areas. The MRW would be managed for multiple outcomes (e.g., timber production, conservation) and would be available for a range of treatment types—intensive, extensive, and restoration thinning—applied in varying proportions by subwatershed. Riparian conservation areas (RCAs) would be applied to streams throughout the permit area, with varying widths based on stream type and location. Treatment types by allocation are summarized below.
- Supporting management activities: Supporting management activities are activities conducted as a part of harvest regimes (e.g., tree planting, landing construction, precommercial thinning and pruning, slash removal), those required for infrastructure construction and maintenance (e.g., mechanical vegetation control, heavy equipment use, hazard tree removal) and those necessary for research or restoration projects (e.g., small fixed-wing aircraft or helicopter use, tree climbing, tree felling). Prescribed fire, including single or multiple controlled burns that incorporate Indigenous Knowledge, may be used to manage fuels and increase or maintain suitable conditions for species of cultural value to local tribal communities.
- Supporting infrastructure: Supporting infrastructure is needed to facilitate the research platform and programs and includes roads and related facilities, quarries, and communication sites/lookouts.
- Road system management: Construction, use, maintenance, daylighting, and vacating of roads and related facilities are covered activities. The HCP caps the construction of new permanent roads to 40 miles, at a rate of up to 1 mile per year. Any new temporary roads not vacated within 5 years of construction would count toward the cap.
- Quarries: The HCP caps the construction of new quarries to two, located only in the MRW and outside of Reserves and RCAs.

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- Communication site/lookout maintenance: The HCP covers the maintenance of two existing communication sites and one lookout in the permit area.
- Potential research projects: This covered activity includes active research that would occur as part of stand-level treatments. This research would include physical manipulation of the landscape or resources that may alter habitat for covered species and involve direct contact with the covered species.
- Indigenous cultural use of cedar trees: This covered activity includes removal or selective use of individual cedar trees over 65 years of age (as of 2020) over the course of the permit term for Indigenous cultural practice.
- Covered activities related to conservation measures and implementation.

Covered Species

The covered species are the Oregon coast coho, northern spotted owl, and marbled murrelet. Table 1 lists the covered species and their state and federal listing statuses.

Table 1. Covered Species

Species	Status ^a		Federal Jurisdiction
	State	Federal	
Fish			
Oregon Coast coho (<i>Oncorhynchus kisutch</i>)	--	FT	NMFS
Birds			
Northern spotted owl (<i>Strix occidentalis</i>)	ST	FT	FWS
Marbled murrelet (<i>Brachyramphus marmoratus</i>)	SE	FT	FWS

^a SE = state-listed as endangered; ST = state-listed as threatened; FT = federally listed as threatened.

NMFS = National Marine Fisheries Service; FWS = U.S. Fish and Wildlife Service

Conservation Strategy

The HCP conservation strategy includes biological goals and objectives for each covered species, which broadly describe desired future conditions and how they will be achieved. It also includes conservation measures, actions that DSL would implement to avoid, minimize, and mitigate (or offset) impacts on covered species from covered activities such that the impact of the taking is minimized and mitigated to the maximum extent practicable, as required under section 10 of the ESA (16 USC1539(a)(2)(B)) and the implementing regulations (50 CFR 17.32(b)). Lastly, it includes conditions that DSL would apply to covered activities to avoid and minimize potential effects on covered species.

Conservation measures include:

- Targeted Restoration and Stream Enhancement
- Expand RCAs on Select MRW Streams
- Reduce Density and Negative Impacts of the Forest Road Network in the Permit Area
- Barred Owl Management and Research
- Harvest and Thinning Adjacent to Occupied Marbled Murrelet Habitat

Conditions on covered activities include:

- Seasonal Restrictions around Northern Spotted Owl Nest Sites
- Retention of Northern Spotted Owl Nesting Core Areas
- Retention of Northern Spotted Owl Core Use Areas
- Retention of Habitat in Northern Spotted Owl Home Ranges
- Maintenance of Northern Spotted Owl Dispersal Landscape
- Seasonal Restrictions in Marbled Murrelet Occupied Habitat
- Survey Requirements for Modeled Potential Marbled Murrelet Habitat
- Limits on Harvest and Designation Changes in Occupied and Modeled Potential Marbled Murrelet Habitat
- Maintaining Aggregate Amount of Marbled Murrelet Occupied Habitat Over Time
- Management on Steep Slopes
- Road Construction and Management

Monitoring and Adaptive Management

The HCP also includes a monitoring and adaptive management program intended to ensure compliance with the HCP, assess the status of covered species habitat, and evaluate the effects of management actions such that the conservation strategy, including the biological goals and objectives, is achieved.

Alternative 3: Increased Conservation

Alternative 3 would include the same permit and plan area, covered species, permit term, and monitoring and adaptive management program as the Preferred Alternative but would modify the covered activities and conservation strategy to increase conservation of the covered species. Additional stands would be put in Reserves to increase protections for marbled murrelet and northern spotted owl, northern spotted owl conditions would be applied to future activity centers, and RCA widths, restrictions on thinning in RCAs, and road vacating requirements would be increased to further protect coho.

Alternative 4: Increased Harvest

Alternative 4 would include the same permit and plan area, covered activities, covered species, permit term, and monitoring and adaptive management program as the Preferred Alternative but the covered activities and conservation strategy would provide for an increase in harvest potential. This would be done by allowing stands allocated to Reserves under the Preferred Alternative that are outside of designated occupied and modeled potential marbled murrelet habitat to be available for more intensive treatments, and RCA widths would be reduced.

Environmentally Preferable Alternative(s)

The Department of the Interior's implementing regulations for NEPA at 43 CFR 46.450 require that the ROD identify the environmentally preferable alternative and define the environmentally preferable alternative as the alternative(s) "that causes the least damage to the biological and

physical environment and best protects, preserves, and enhances historical, cultural, and natural resources” (43 CFR 46.30). This is not necessarily the agency-preferred alternative, which the Final EIS identifies as Alternative 2 due to that action meeting the statutory requirements for permit issuance under 16 USC 1539(a)(1)(b).

The Service identifies Alternative 3, Increased Conservation, as the environmentally preferable alternative. Alternative 3 provides the greatest protection for covered and noncovered fish and wildlife, water quality, stream processes, floodplains, climate change, wetlands, rare and imperiled plants and fungus, and tribal resources.

Public Involvement

Scoping

The Service published the Notice of Intent to prepare an EIS in the *Federal Register* on May 5, 2022 (87 *Federal Register* 26778). The Service also provided additional information (news releases, factsheets, and frequently asked questions) on our project website and held a virtual scoping meeting on May 16, 2022. The meeting included a presentation and a question-and-answer session. Seventy comment letters were received during the scoping period. The Service considered all comments received and best available information to prepare the Draft EIS. Final EIS Appendix 1-B, *Scoping*, and Chapter 5, *Summary of Submitted Alternatives, Information, and Analyses*, summarize comments received during the scoping period. Copies of all comments received during scoping can be viewed at regulations.gov under docket ID FWS-R1-ES-2022-0029.

Draft EIS

The Service published a Notice of Availability of the Draft EIS and HCP on November 18, 2022 (87 *Federal Register* 69291). The notice requested public comments on the Draft EIS and HCP and announced a public meeting. The original comment period was from November 18, 2022, to January 3, 2023, which the Service extended to January 10, 2023, in response to commenter requests (87 *Federal Register* 77877). FWS hosted a virtual public meeting on December 13, 2022. The Draft EIS and a recording of the public meeting were made available on the project website.

During the comment period, comments were accepted on both the Draft EIS and the HCP. A total of 66 individual letters and 104 copies of a form letter were received during the comment period from federal, state, and local agencies; governments; organizations; businesses; and the general public. Copies of comment letters received during the comment period can be viewed at regulations.gov under docket ID FWS-R1-ES-2022-0029.

Comments received during the comment period on the Draft EIS included the following topics:

- Extent of the permit area
- Protections for covered and noncovered species
- Protections for other resources
- Clarification of details of covered activities

- Suggestions to ensure a complete analysis in the Final EIS
- Other information for consideration in the NEPA process

Final EIS

The Final EIS was prepared to address substantive comments received on the Draft EIS and HCP, reflect updated data and changes to the HCP, provide clarification, correct inadvertent errors, and provide additional information for the impact analysis. No substantial new circumstances or information about the significance of adverse effects that bear on the analysis were identified as a result of these changes. Appendix 1-C, *Responses to Comments on the Draft EIS*, describes the public review process in more detail and provides responses to the substantive comments received, including noting where appropriate clarifications were made to the Final EIS.

The Final EIS was announced in the *Federal Register* on January 10, 2025 (90 *Federal Register* 2013). After publication of the FEIS, the Service received and considered a comment letter from the EPA. In the letter, EPA provided a recommendation to increase shade in the Riparian Conservation Areas to further reduce potential adverse impact from management proposed within the RCA. This recommendation has been passed on to the applicant. The Service determined EPA's comments did not represent new or substantive information that had not been raised during previous comment periods on the Draft EIS and responded to in the Final EIS.

Decision and Rationale for Decision

The Service's decision is to select the Preferred Alternative (Alternative 2, described above) to issue an ITP that is consistent with the conservation measures, conditions, and monitoring and adaptive management program described above and in more detail in the HCP, and to include terms and conditions in the ITP that the Service deems necessary to ensure that HCP take limits, monitoring, mitigation, financial assurance, and other applicant commitments are met. Issuance of the ITP authorizes the incidental take of two of the covered species identified in Table 1, marbled murrelet and northern spotted owl, subject to incidental take limits, other requirements of the HCP, and the terms and conditions of the ITP. The term of the ITP is 80 years. Assurances would be provided to DSL in the case of changed and unforeseen circumstances (50 CFR § 17.32(b)(5)).

Based on the findings in the Final EIS (Service 2025a), our Biological Opinion (Service 2025b), our ESA section 10 Findings and Recommendations (Service 2025c), this ROD, and other information in the administrative record, the Preferred Alternative meets the statutory criteria for issuance of an ITP under section 10 of the ESA (16 USC 1539(a)(2)(B)) and Service's implementing regulations (50 CFR 13; 50 CFR 17.32). Issuance of the of the ITP meets the purpose and need identified for the proposed action and fulfills the Service's statutory mission and responsibilities.

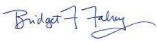
Measures intended to minimize and mitigate the impact of the potential taking of covered species to the maximum extent practicable are incorporated into the Preferred Alternative, as required under section 10 of the ESA (16 USC 1539(a)(2)(B)(ii)), as a condition of ITP issuance. The

analysis of effects in Final EIS Chapter 3, *Affected Environment and Environmental Consequences*, considers these measures as well as additional protections that may be required in compliance with existing laws, policies, and regulations presented in Final EIS Appendix 3.1-A, *Regulatory Environment*. The analysis also considers best management practices that may be implemented to mitigate or reduce adverse effects on other resource areas, where applicable and in accordance with existing regulatory requirements. Potential effects associated with the Preferred Alternative are largely beneficial compared to the no-action alternative for the majority of other resources evaluated. In some cases, adverse impacts can be reduced but not eliminated and were therefore determined to be unavoidable.

Decision on Permit Issuance

The Service certifies that we have considered all of the alternatives, information, analyses, and objections submitted by State, Tribal, and local governments and public commenters in developing the EIS and this ROD.

Based on the foregoing findings with respect to the Preferred Alternative, the Service will issue an incidental take permit to DSL supported by the Elliott State Research Forest HCP.



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Bridget Fahey
Acting Regional Director
Pacific Region
U.S. Fish and Wildlife

May 21, 2025

Date

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REFERENCES

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