

**SAFE HARBOR AGREEMENT
WITH FORSTER-GILL, INC.
FOR VOLUNTARY ENHANCEMENT/RESTORATION ACTIVITIES
BENEFITTING NORTHERN SPOTTED OWL
AT BLUE LAKE, CALIFORNIA
Permit No. TE057898-0**

1. INTRODUCTION

This Safe Harbor Agreement (Agreement) is made and entered into as of the day June 10, 2002 by and among Forster-Gill, Inc.(Permittee); and the U.S. Department of the Interior, Fish and Wildlife Service (Service); hereinafter collectively called the "Parties." The purpose of this Agreement is to facilitate the development of high quality northern spotted owl habitat and provide regulatory assurance that in doing so the landowner will not be subject to additional regulation related to the northern spotted owl on his property. This Agreement follows the Service's Safe Harbor Agreement final policy (64 FR 32717) and final regulations (64 FR 32706), and implements the intent of the Parties to follow the procedural and substantive requirements of section 10(a)(1)(A) of the Endangered Species Act (ESA).

This Agreement covers proposed management activities affecting lands owned by the Permittee, and covers only the northern spotted owl (*Strix occidentalis caurina*). The Agreement will cover the entire 236 acre property (Enrolled Lands). The Permittee will enhance and maintain the baseline of approximately 216 acres of forested northern spotted owl habitat currently on the property by managing his property through a succession of silvicultural treatments designed to convert a young even-aged timber stand into a multi-storied uneven aged condition with a large tree component recognized by the Service as having the characteristics of high quality northern spotted owl habitat. This Safe Harbor Agreement encourages proactive conservation efforts by the Permittee while providing him certainty that future property-use restrictions will not be imposed if those efforts attract northern spotted owls to his enrolled property. In return for voluntary conservation commitments, the Permittee is afforded assurances through the 10(a)1(A) permit allowing future alteration or modification of the Enrolled Lands during the 80 year term of the Agreement and down to a baseline condition described in this Agreement. The permit term is 90 years, allowing the Permittee ten years to return to baseline conditions. Without this cooperative government/private effort the Enrolled Lands would not otherwise be converted to and sustained at as high a quality of habitat for utilization by the species in the foreseeable future.

When signed, this Agreement will serve as the basis for the Service to issue a permit under ESA section 10(a)(1)(A) for the take of covered, listed species associated with operations conducted during the Agreement and the potential future return of the Enrolled Lands to the baseline condition described in this Agreement. The permit will authorize the Permittee to take all individuals of the species, and their progeny, that have increased in numbers and/or distribution on those lands, as a result of the Permittee's voluntary conservation activities. Permit issuance

will not preclude the need for the Permittee to abide by all other applicable Federal, State, and local laws and regulations that may apply.

2. LIST OF COVERED SPECIES

Northern spotted owl (*Strix occidentalis caurina*), federally listed as threatened on July 23, 1990.

3. BACKGROUND

Species Recovery

The northern spotted owl was federally listed as a threatened species throughout its range in Washington, Oregon and northern California effective July 23, 1990 (USDI 1990a). The owl was listed in response to widespread habitat loss across its entire range and to the inadequacy of existing regulatory mechanisms to provide for its conservation. The owls' biology and ecology are well known and are described in numerous publications and, therefore, this information is not repeated here. For examples, see Forsman et al. (1984), the Interagency Scientific Committee (ISC) report (Thomas et al. 1990), the 1990 status review (USDI 1990b), the final rules for listing and critical habitat (USDI 1990a and 1992a), the final draft spotted owl recovery plan (USDI 1992b), the report of the Scientific Analysis Team (SAT; Thomas et al. 1993), the Forest Ecosystem Management Assessment Team report (FEMAT; USDA 1993), and recent demographic reports (Forsman et al. 1996 and Franklin et al. 1999).

Suitable spotted owl habitat is generally described as: forest stands with multiple canopy layers and a variety of tree species; moderate to high canopy closure; substantial decadence in the form of live trees with deformities (e.g., cavities, broken tops) and snags; and a large accumulation of logs and woody debris (Thomas et al. 1990). Habitat suitability generally increases with increased tree diameter and canopy closure. Moderate and high quality nesting and roosting habitats within the redwood forest type are generally found in stands with trees greater than 11 inches diameter breast height (DBH).

The subject property is located in the northern portion of the Coast Province of northern California as described in the Final Draft Recovery Plan for the Northern Spotted Owl (USDI 1992b). The California Coast Province contains all or portions of Del Norte, Humboldt, Mendocino, Trinity, Sonoma, Napa, and Marin Counties, and encompasses approximately 40 percent of the northern spotted owl range in California (USDI 1992a).

Importance of Private Lands

Since the listing of the northern spotted owl, all large-scale conservation efforts have recognized that contributions from non-federal lands were important to the goal of achieving its conservation and recovery (Thomas et al. 1990 and 1993, USDI 1992a). Non-federal lands provide core areas

and habitat throughout the species range, but are particularly important in areas where public lands are lacking. Private lands can play several roles in owl conservation, such as: helping reduce the risk of local or widespread extirpation of owl populations by maintaining owl pairs and the variety of habitat conditions throughout their range; providing for the survival and movement of local populations by protecting core areas and maintaining habitat conditions and spacing between local populations.

Approximately 92 percent of the California Coast Province is in non-Federal ownership (USDI Fish and Wildlife Service 1992a). Gould (1995) reported that 978 northern spotted owl activity centers were known in the three California coastal counties of Del Norte, Humboldt, and Mendocino. Sixty-seven percent of these sites were on privately-owned timberlands that had been subject to timber management for decades.

Private timberland management in California can be divided into two categories: industrial and non-industrial. Industrial timberland within the California Coastal Province is managed, with few exceptions, on an even aged basis. Even aged management targets the older timber age classes and through regeneration timber harvest, usually clearcutting, creates plantations resulting in a loss or severe degradation of suitable spotted owl habitat. Non-industrial timberland, when managed under State of California approved Non-industrial Timber Management Plans (NTMPs) is managed on an uneven aged basis. Uneven aged management creates multiple age classes within timber stands, usually through individual tree or small group selection silviculture, and provides the opportunity for the development and maintenance of high quality northern spotted owl habitat.

4. DESCRIPTION OF ENROLLED LANDS

The Enrolled Lands for this Agreement are owned by Forster-Gill Inc.; total 236 acres and are located in portions of Sections 17, 20, and 21, Township 6 North, Range 2 East, Humboldt Base and Meridian; Humboldt County Assessors Parcel numbers 312-042-61, 312-042-62, and 312-042-63. The property is situated on a south facing slope approximately 1 mile north of the town of Blue Lake within the Mad River basin and Powers Creek drainages.

Soils within the Enrolled Lands are classified predominantly as forest soils in type and are comprised predominantly of Atwell, Hugo and Mendocino series. These soils tend to be good to excellent in terms of timber production.

The subject property has been harvested several times, including in the early to mid 1970's using an overstory removal silvicultural prescription. The most recent entry was in 1998 after the development of the NTMP. The majority of the subject property is now forested with young growth coastal redwood (over 91%) with the dominant age class being approximately 30-35 years of age. On average, the 216 forested acres of the Enrolled Lands currently meet the California Wildlife Habitat Relationship System (WHR) type 4D (12"- 24" DBH and 60 - 100 percent canopy closure) with tree diameters closer to the lower end of the 12 to 24 inch DBH

range and canopy closure that exceeds 60%.

5. BASELINE DETERMINATION

For the purpose of this Agreement and the associated permit the baseline conditions will be measured in nest site protection and habitat retention (WHR type).

Nest Site Protection

Field surveys performed between 1996 and 2001 by private biologists employed by both the Permittee as well as adjacent timberland owners determined two active NSO nest sites exist adjacent to the Enrolled Lands. The nest sites are associated with a single pair of NSOs that have utilized the area since at least 1996. In the spring of 2001, the NSO pair moved from a location approximately 100 feet northeast of the property to a nest site located approximately 60 feet north of the subject property. Please refer to attached NSO location map Attachment A.

Entering this Agreement 11.2 acres of no harvest nesting habitat associated with the above two adjacent nest sites are located on the Enrolled Lands and shall constitute the nest site protection baseline. Regardless of the presence of an active nest site on or within 300 feet of the Enrolled Lands, at each proposed harvest during the permit term an 11.2 acre no harvest nest site protection baseline polygon will be identified. If an active nest site is present, the 11.2 acre no harvest polygon shall include the site with a buffer of no less than 300 feet.

Habitat Condition

The baseline habitat condition applies to the 216 forested acres (as of March 2002) of the Enrolled Lands and shall be established as WHR 4D. These forested acres will always average 12"- 24" DBH with a canopy closure of 60-100 percent, when averaged within a maximum of a 54 acre polygon (see Reporting and Monitoring Section). Initially, the 216 acres are at the lower end of this scale. By the end of the Agreement it is anticipated that the baseline acres will average toward the upper end of the WHR 4D diameter and canopy closure scale.

6. RESPONSIBILITIES OF THE PARTIES

In addition to the following stipulations, the Parties will work cooperatively on other issues as necessary to further the purposes of the Agreement. Moreover, nothing in this Agreement shall limit the ability of Federal and State conservation authorities to perform their lawful duties, and conduct investigations as authorized by statute and by court guidance and direction.

Permittee shall:

1. Manage the enrolled lands in compliance with; 1) this Agreement, 2) his NTMP (1-97NTMP-017 HUM)(Appendix A) for the 80 year term of the Agreement and, 3) the

modifications to the NTMP (Appendix B) to address salmonid issues resulting in the National Marine Fisheries Service's (NMFS) anticipated concurrence with the Service's determination that operations under the NTMP with the modifications would be not likely to adversely affect listed salmonids.

2. At all times during the Agreement term maintain the 216 forested acres of the Enrolled Lands in a condition that meets the WHR type 4D (12"- 24" DBH and 60 - 100 percent canopy closure) averaged over a maximum of a 54 acre forested (as of March 2002) polygon as measured by an inventory of trees six inches DBH and greater showing that 60 percent of the basal area is comprised of trees 12 inches DBH or larger (see Notification Requirements Section).
3. Retain all snags not constituting a hazard under the California Forest Practice Rules (CFPR) and down cull logs wherever feasible during harvest operations.
4. Conduct annual spotted owl surveys/monitoring and report to the Service at the conclusion of each annual survey/monitoring effort. Due to the subject property having been surveyed to protocol every year since 1996, and the known location of the adjacent resident owls, annual survey/monitoring for this Agreement may commence March 1st and be completed no sooner than April 1st of each year. The surveys/monitoring shall be for the purpose of determining nesting behavior within, and within a 500 foot radius around, the property.
5. Ensure that all additional active nest sites identified during the permit term will be protected by a 300 foot radius (~6.5 acre) no cut buffer. In the event that there is more than one equally current active nest site, the Service will provide technical assistance in the determination of which site will be buffered by the 11.2 acres and which site will be buffered by the ~6.5 acres.
6. Ensure that no harvest operations will occur, except for the use of existing haul roads, within 1,000 feet of any active northern spotted owl nest site (i.e., location where nesting behavior observed within the previous three years) unless reviewed and approved by the Service through technical assistance in advance (see Service Responsibility #2 below).
7. Ensure that any harvest conducted between 300 and 500 feet from any active northern spotted owl nest site shall: 1) be conducted only under single tree selection, 2) retain a minimum of 80 percent canopy closure of trees at least 12 inches in diameter, and 3) is reviewed and approved by the Service through technical assistance in advance (see Service Responsibility #2 below).
8. Conduct timber stand inventories in accordance with his NTMP and provide the Service with the year 2006 timber stand inventory data and all subsequent stand inventory data generated by the Permittee (approximately every ten years) to document the anticipated

accretion of average basal area per acre and the anticipated accretion of average tree diameter (see Reporting and Monitoring Section).

9. Allow access by the Service, or other agreed-upon party to the enrolled lands for purposes of carrying out monitoring and management activities. In the event of an emergency, the Service may enter the premises to care for and protect listed species at any time.

Service shall:

1. Upon execution of the Agreement and satisfaction of all other applicable legal requirements, the Service will issue a permit to the Permittee in accordance with ESA section 10(a)(1)(A), authorizing take of the covered species as a result of lawful activities in compliance with this Agreement within the Enrolled Lands. The term of the permit will be 90 years.
2. Provide written technical assistance within 30 days of notification of operations under the NTMP and this Agreement if operations other than the use of existing haul roads are proposed within 1,000 feet of any active northern spotted owl nest site. If the Service does not respond within 30 days, the Permittee may consider his proposal approved and may commence operations.
3. Monitor compliance with the terms of the Agreement and provide technical assistance to the Permittee when requested.
4. Provide information on Federal funding programs.

7. NOTIFICATION REQUIREMENTS

1. The Permittee shall survey/monitor the enrolled lands annually for northern spotted owls in accordance with the strategy described in the Reporting and Monitoring Section, and provide that information annually to the Service.
2. The Permittee shall provide the Service a copy of all Notice of Timber Operations under the NTMP at least 30 days in advance of any planned harvest operations (as defined by the CFPR) to allow the Service to monitor compliance with this Agreement. A cover letter explaining how the proposed harvest complies with this Agreement will accompany the NTO.
3. The Permittee shall notify the Service of any change to the Enrolled Land's management, including prior notification for returning the Enrolled Lands to baseline conditions; and identify the actions that would result in changed management or return to baseline.

8. MANAGEMENT ACTIVITIES FOR COVERED SPECIES

The Permittee may continue current land-use practices, undertake new ones, or make any other lawful use of the property. The objective of the Permittee is to manage the Enrolled Lands for wildlife habitat, aesthetics and long term timber production. The Permittee intends to enter the subject property under the guides and constraints outlined in the approved NTMP (Appendix A), the modifications to the NTMP to address salmonid issues (Appendix B), and this Agreement for the purpose of harvesting timber.

The harvest entries under this NTMP will employ a selection type harvest. The first harvest entry under the permit is expected to occur within the next 1 to 5 years, or as market conditions allow. This harvest would remove approximately 15% to 25% of the volume within the harvested areas. Harvest activities will focus on removing primarily the suppressed and intermediate classes with a lesser component of dominant stems as well as competitive hardwoods. Harvest will be focused on increasing growth and productivity on individual trees as well as establishing conifer stocking within stand types.

The criteria for targeting harvest trees under this silviculture is not based on tree sizes but rather tree growth and the individual effect on the surrounding stand. Therefore, given this type of silviculture, the majority of trees being removed will be in the lower to mid diameter range (12 to 18 inches dbh) with a lesser component of larger trees being harvested. All snags not meeting the definition of a hazard under the CFPRs shall be retained as shall all down cull logs wherever feasible.

After the initial harvest, subsequent entries will be expected to occur at 8 to 10 year intervals and would remove additional trees in order to increase growth of the remaining trees and to provide more light for the developing conifer regeneration. It is expected to take 30 to 40 years to reach maximum sustainable productivity. Once this level is reached, entries will continue to be made in 8 to 10 year intervals to harvest volumes equal to or less than the growth for that period. At the conclusion of each harvest period, there should be approximately the same or more volume remaining in the standing timber inventory than there was at the conclusion of the previous entry. This will continue to maintain or increase the timber inventory of the property. The stand will be re-inventoried at least once during every 8 to 10 year cutting cycle in order to assess the accuracy of the projected growth. Additionally, a system of continuing inventories will aid in determining if any unexpected occurrences will require a change in the allowable cut (damage to timber from weather, bears, disease, fire, etc., greater or lessor amounts of growth). As defined by the NTMP process, timber harvest will not exceed growth over any rolling ten year cycle.

Under the NTMP, each planned harvest is preceded by the submission of a Notice of Timber Operations (NTO) to the California Department of Forestry and Fire Protection (CDF). Under this Agreement, a copy of the Permittee's Enhancement of Survival permit will accompany the NTO submittal to the CDF, and a letter of technical assistance will only be generated by the Service at the request of the Permittee. The Permittee is encouraged to seek technical assistance

from the Service prior to the submittal of any NTO to reduce the possibility of conflicts in determining compliance with this Agreement.

The Permittee will submit to the Service each NTO, with a cover letter explaining how the proposed operations comply with this Agreement, no less than 30 days in advance of proposed harvest operations. The notification will allow the Service the opportunity to monitor compliance with the Agreement and to propose reasonable modifications to the NTO to minimize potential adverse impacts of the operations to the covered species, including noise disturbance.

Operations conducted between 300 and 500 feet of any active nest site shall: 1) be reviewed and approved by the Service in writing prior to operations (see Service Responsibility #2); 2) be conducted only under single tree selection; and 3) retain a minimum of 80 percent canopy closure of trees at least 12 inches DBH.

All additional active nest sites identified during the permit term will be protected by a 300 foot radius (approximately 6.5 acre) no cut buffer. In the event that there is more than one equally current active nest site, the Service will provide technical assistance in the determination of which site will be buffered by the 11.2 acres and which site will be buffered by the approximately 6.5 acres.

This Agreement will grant to the Service, after reasonable prior notice, the right to enter the Permittee's property for the purpose of ascertaining compliance with the Agreement and for censusing, banding, and in certain circumstances relocating species, as well as other measures that may be necessary. In addition, the Permittee will annually survey/monitor the property for northern spotted owls and report the results to the Service along with any Notice of Timber Operations.

At the conclusion of the Permit term, the landowner will no longer be required to comply with the terms of the permit.

9. RETURN TO BASELINE

At the conclusion of the Agreement the Permittee will have ten years remaining on the Permit to return the Enrolled Lands to the two baseline conditions. During this time, the Permittee may, harvest this property in any legal manner he chooses, provided 216 acres of the Enrolled Lands are maintained in a tree diameter size class and canopy closure range (averaged within a maximum 54 acre polygon) of WHR type 4D.

During the final ten year term of the Permit, the most current active northern spotted owl nest site within the Enrolled Lands or within 300 feet of the Enrolled Lands will be protected at each entry by the nest site protection 11.2 acre no harvest baseline polygon that shall buffer the nest site by no less than 300 feet. If there are no active nest sites on or within 500 feet of the Enrolled Lands

during the final ten year term of the Permit, an 11.2 acre no harvest polygon will be identified at each harvest entry.

For more information regarding the return to baseline conditions see Section 16.3. Termination of the Agreement.

10. NET CONSERVATION BENEFIT

This Safe Harbor Agreement between the Service and the Permittee provides a net conservation benefit to the northern spotted owl, primarily through the assurances associated with the section 10(a)1(A) permit of no additional regulatory requirements. The assurances provide incentive for the Permittee to retain a larger, older tree component on the property thus increasing the quantity and quality of the spotted owl habitat over what would be provided and developed without the Agreement.

Absent this Agreement, the Enrolled Lands would still experience uneven-aged management under the NTMP, but there would be no incentive to retain the large, old tree component of the stand. The removal of the large, old tree component would keep the stand in a relatively younger age class and reduce the structural diversity commonly associated with high quality spotted owl habitat.

The retention of the larger, older tree component in the development of a multi-aged timber stand provides an important element to the structural diversity of the canopy. Structural diversity provides multiple perch sites at varying canopy heights, facilitates the species' thermo regulation, and affords an additional measure of protection from predators. A larger, older tree component can provide cavities for nest sites, cover for the broken tops of younger trees (also potential nest sites), and habitat for prey species.

The development of 216 acres of higher quality habitat under this Agreement shall be demonstrated by the continual increase in average basal area per acre and increased average tree diameters and will be documented throughout the Agreement by the timber stand inventory results provided to the Service every 8 to 10 years.

The 80 year term of the Agreement also provides benefits to the covered species as it allows ample time for the development and use of the high quality spotted owl habitat. It is anticipated that through the application of the described silvicultural practices the Enrolled Lands will develop into a condition closer to the upper diameter and canopy closure range of WHR 4D. In addition, the 80 year Agreement term indicates the Permittee has no intention of returning the Enrolled Lands to the baseline condition during his lifetime.

Agreements such as this encourage private timberland owners in California to manage under NTMPs and provides incentives to those NTMP owners for management that creates high quality northern spotted owl habitat, thereby contributing to the recovery of the northern spotted owl.

This Agreement contains additional benefits to uncovered species. The Permittee has proposed measures not required by his NTMP (Appendix B) that allow the Service to determine the proposed action (issuance of the ESA section 10 permit) will be not likely to adversely affect listed salmonids. The NMFS is expected to concur. This voluntary commitment on the part of the Permittee assists the NMFS in the recovery of the threatened coho salmon (*Oncorhynchus kisutch*), California Coastal chinook salmon (*O. tshawytscha*), and West Coast steelhead (*O. mykiss*).

Permit coverage continues for an additional ten years beyond the Agreement term to allow the Permittee to capture the available timber volume in any legal manner he chooses provided he maintains the property at baseline conditions described in Section 5. In the event of an early termination, subsequent harvests would be conducted under the incidental take avoidance strategies employed by the Service at that time.

The Parties anticipate this Agreement will result in an increased number and/or an increase in quality of suitable habitat, within the enrolled lands. The Agreement will also provide an example of a mutually beneficial relationship between government agencies and a private landowner to benefit endangered and threatened species, and evidence that such species can coexist with current land-use practices. Therefore, the cumulative impact of this Agreement and the activities it covers, which are facilitated by the authorized take, will provide a net conservation benefit to the species.

11. CHANGED CIRCUMSTANCES

Nothing in this Agreement prevents the Permittee from implementing management activities not described in the Agreement, as long as such actions comply with the requirements of the Agreement and do not affect the benefit for the covered species expected under this Agreement.

Emergency situations such as natural disasters (e.g., hurricanes, excessive rainfall, extreme drought, insect infestations, or epidemic disease) may require initiation of certain management actions such as salvage or sanitation harvesting within less than 30 days prior notification. The Permittee will notify the Service within 10 days of discovering such a situation, and will make reasonable accommodations to the Service for; 1) review of timber harvest actions in response to emergency situations, and 2) survey and/or relocation of species individuals prior to the action. The Parties acknowledge that survey and translocation may be precluded by certain urgent situations.

12. AGREEMENT DURATION

The Agreement, including any commitments related to funding under Service programs, will be in effect for a duration of 80 years following its approval and signing by the Parties. The section 10(a)(1)(A) permit authorizing take of the species will have a term of 90 years from the effective date of the permit. The permit and Agreement may be extended beyond the specified terms

through amendment, upon agreement of the Parties.

13. TAKE

Under this Agreement, the Permittee can make use of the enrolled property in any legal manner that does not result in a violation of this Agreement. The permit will authorize take of species and their progeny, or alteration of occupied habitat, resulting from lawful activities in compliance with this Agreement within the Enrolled Lands, from the time this Agreement is signed until permit expiration. The following are activities which are covered under this Agreement and may result in incidental take of the species covered under this Agreement:

- 1) Long term timber management and related activities to include but not limited to the felling, skidding and transport of timber and other related forest products, and
- 2) The occupation, operation, and maintenance of two inhabited dwellings located in the southwest portions of the enrolled lands as well as the related use and maintenance of any supporting infrastructure including but not limited to outbuilding, barns, sewer and water systems. Occupation, operation, maintenance and use of existing inhabited dwellings and supporting infrastructure is not likely to incidentally take owls who move onto the property while this activity is ongoing, but is covered under the permit regardless.

Incidental take during the Permit term may occur through timber harvest related noise disturbance or alteration of the micro climate in proximity of an active nest site.

Noise Disturbance

The Service has determined that timber harvest related noise that significantly exceeds ambient levels has the potential to incidentally take northern spotted owls when conducted within 0.25 mile of an active nest site. The impacts of this type of incidental take range from a potential loss of reproduction due to nest abandonment, to increased risk of adult predation. This Agreement requires annual northern spotted owl surveys/monitoring and does not allow timber harvest operations, other than use of existing haul roads, within 1,000 feet of an active nest site during the breeding season (February 1 - August 31) without prior review and approval of the Service through the technical assistance process. While this restriction may not avoid noise disturbance related incidental take altogether, it does reduce the likelihood as much as practicable given the configuration of the property.

Microclimate

Absent an incidental take permit, private land timber harvest is restricted in California within 500 feet of an active nest site due to the likelihood of incidental take within a core area that totals only 72 acres (1,000 foot radius). This Agreement allows for single tree selection silviculture between 300 and 500 feet of an active nest site outside the breeding season, an action that may

result in incidental take through the degradation of the habitat, e.g. alteration of the microclimate within this proximity of the nest site. The impacts of this type of incidental take range from the abandonment of an historic nest site to loss of reproduction due to an increased risk of exposure to both predators and inclement weather. In allowing operations between 300 and 500 feet, this Agreement requires a post harvest canopy closure of a minimum of 80 percent comprised of trees at least 12 inches DBH. This limits the harvest to essentially selection of understory trees which should have a minimum effect on the microclimate. Combined with the relatively infrequent planned harvest entries, this type of timber harvest in this proximity to an active nest site when undertaken within a 216 acre block of WHR 4D results in a relatively low risk of incidental take.

In the event that incidental take does result from this activity, the Permittee would be covered by the enhancement of survival permit. Regardless of whether any incidental take actually occurs as a result of this activity, this Agreement results in a benefits to the species through the creation and maintenance of higher quality northern spotted owl habitat.

14. REPORTING AND MONITORING

Compliance/Biological Monitoring

The Permittee will be responsible for monitoring and reporting related to implementation of the Agreement and fulfillment of its provisions, including verification of baseline maintenance, implementation of agreed-upon conservation measures, and take authorized by the permit.

Inventory methodology for the verification of habitat baseline maintenance shall be as measured by an inventory of trees six inches DBH and greater showing that 60 percent of the basal area is comprised of trees 12 inches DBH or larger within a maximum of a 54 acre polygon.

Annual spotted owl surveys/monitoring shall be conducted and reported to the Service at the conclusion of each annual survey/monitoring effort. Due to the subject property having been surveyed to protocol every year since 1996, and the known location of the adjacent resident owls, annual survey/monitoring for this Agreement may commence March 1st and be completed no sooner than April 1st of each year. The surveys/monitoring shall be for the purpose of determining nesting behavior within, and within a 500 foot radius around, the property.

Each planned harvest under this Agreement will be preceded by the submission to the Service, no less than 30 days in advance of proposed harvest operations, of a NTO with a cover letter explaining how the proposed operations comply with this Agreement. This notification, in conjunction with the survey/monitoring information, will allow the Service the opportunity to monitor compliance with the Agreement (retention of baseline habitat conditions and the application of the no harvest buffer(s)) and to propose, within the 30 days, any reasonable modifications to the NTO the Service feels are necessary to minimize potential adverse impacts of the operations to the covered species, including noise disturbance. As part of that review, the Agreement will grant the Service, after reasonable prior notice to the Permittee (10 days), the

right to enter the enrolled lands to ascertain compliance with the Agreement.

Net Benefit Monitoring/Reporting

As part of fulfilling his responsibilities under the Permittee's NTMP, the property is inventoried at 8 to 10 year intervals and reported to CDF, and under this Agreement, provided concurrently to the Service. This report will provide the data to indicate the development and/or maintenance of the characteristics of high quality northern spotted owl habitat and shall be indicated by the maintenance or increase of the average basal area per acre and average tree DBH by species.

15. FUNDING

Funding of this Agreement will be provided by Forster-Gill, Inc. through operations and reinvested profits as needed, and through attempts to obtain Grant monies to help in defraying the cost of the development and implementation of this Agreement. However, funding of this Agreement is not dependent on the receipt of Grant monies.

16. MODIFICATIONS

After approval of the Safe Harbor Agreement, the Service may not impose any new requirements or conditions on, or modify any existing requirements or conditions applicable to, a landowner or successor in interest to the landowner, to mitigate or compensate for changes in the conditions or circumstances of any species or ecosystem, natural community, or habitat covered by the Agreement except as stipulated in 50 CFR 17.22(c)(5) and 17.32(c)(5).

16.1. Modification of the Agreement. Any party may propose modifications or amendments to this Agreement, as provided in 50 CFR 13.23, by providing written notice to, and obtaining the written concurrence of, the other Parties. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The Parties will use their best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon the other Parties' written concurrence.

16.2. Amendment of the Permit. The permit may be amended to accommodate changed circumstances in accordance with all applicable legal requirements, including but not limited to the ESA, the National Environmental Policy Act, and the Service's permit regulations at 50 CFR 13 and 50 CFR 17. The party proposing the amendment shall provide a statement describing the proposed amendment and the reasons for it.

16.3. Termination of the Agreement. As provided for in Part 12 of the Service's Safe Harbor Policy (FR 64:32717), the Permittee may terminate implementation of the Agreement's voluntary management actions prior to the Agreement's expiration date, for circumstances beyond the Permittee's control. In such circumstances, the Permittee may return the enrolled lands to baseline conditions even if the expected net conservation benefits have not been realized. If the

Permittee is unable to continue implementation of the plans and stipulations of the Agreement, whether due to catastrophic destruction of the species population numbers or habitat or due to unforeseen hardship, the Permittee would relinquish the permit to the Service. Species management on the Permittee's lands would return to its status prior to the signing of the Safe Harbor Agreement (i.e., original baseline). Such termination will not affect the Permittee's authorization under the permit to take any species individual or occupied habitat that is not part of the Permittee's baseline at the time of termination. The Permittee may terminate this Agreement due to uncontrollable circumstances upon 30 days prior written notice to the other Parties, provided that the baseline conditions have been maintained and the Service is provided an opportunity to relocate affected species within 30 days of that notice. The Permittee also may terminate the Agreement at any time for any other reason, but termination for reasons other than uncontrollable circumstances such as those associated with a *force majeure* event shall extinguish the Permittee's authority to take species or occupied habitat under the permit.

16.4. Permit Suspension or Revocation. The Service may suspend or revoke the permit for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. The Service also, as a last resort, may revoke the permit if continuation of permitted activities would likely result in jeopardy to covered species (50 CFR 13.28(a)). Prior to revocation, the Service would exercise all possible measures to remedy the situation.

16.5. Baseline Adjustment. Unforeseen circumstances could involve habitat impacts resulting from catastrophic (*force majeure*) events such as hurricanes, rainstorms, severe drought, lethal forest fires, or insect/disease epidemics. Such events are beyond the reasonable control of, and did not occur through, the fault or negligence of the Permittee, including but not limited to "acts of God" or sudden actions of the elements such as those described above. Such catastrophes could either locally destroy the species population or render the habitat unsuitable, thereby reducing population numbers or occupied acreage below the original baseline conditions. For such circumstances beyond the control of the Permittee, the Parties may agree to revise the Agreement's baseline conditions to reflect the new circumstances, rather than terminate the Agreement.

16.6. Remedies. Each party shall have all remedies otherwise available to enforce the terms of the Agreement and the permit, except that no party shall be liable in damages for any breach of this Agreement, any performance or failure to perform an obligation under this Agreement or any other cause of action arising from this Agreement.

16.7. Dispute Resolution. The Parties agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by all Parties. In the event of a dispute over the retention of habitat baseline characteristics, the Service agrees to utilize the same inventory methodology described in this Agreement and accepted by the Service to make a determination of not likely to adversely affect listed salmonids, and the CDF for compliance with the NTMP.

17. ADDITIONAL MEASURES

17.1. Neighboring Lands.

Non-participating private landowners are not covered under the take permit associated with this Agreement. The Permittee's property contributes habitat to a known northern spotted owl nest site on an adjacent landowners property. This adjacent landowner has an Enhancement of Survival Permit for northern spotted owls and is the main reason the Permittee seeks this Safe Harbor Agreement. There are three other adjacent landowners with approved NTMPs. The Service will make every effort to include these neighboring landowners in separate agreements and permits.

17.2. Succession and Transfer. This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and transferees, in accordance with applicable regulations (50 CFR 13.24 and 13.25). The rights and obligations under this Agreement shall run with the ownership of the enrolled property and are transferable to subsequent non-Federal property owners pursuant to 50 CFR 13.25. The enhancement of survival permit issued to the Permittee also will be extended to the new owner(s). As a party to the original agreement and permit, the new owner(s) will have the same rights and obligations with respect to the enrolled property as the original owner. The new owner(s) also will have the option of receiving Safe Harbor assurances by signing a new Agreement and receiving a new permit. The Permittee shall notify the Service of any transfer of ownership, so that the Service can attempt to contact the new owner, explain the baseline responsibilities applicable to the property, and seek to interest the new owner in signing the existing Agreement or a new one to benefit listed species on the property. Assignment or transfer of the permit shall be governed by Service regulations in force at the time.

17.3. Availability of Funds. Implementation of this Agreement is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The Parties acknowledge that the Service will not be required under this Agreement to expend any Federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

17.4. Relationship to Other Agreements. There are currently no other Agreements with the Service associated with the Enrolled Lands.

17.5. No Third-Party Beneficiaries. This Agreement does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

17.6. Other Listed Species, Candidate Species, and Species of Concern. The possibility exists that other listed, proposed, or candidate species, or species of concern may occur in the future on lands enrolled in the Agreement as a direct result of the Permittee's voluntary conservation actions. If biological surveys determine this Agreement will provide a net conservation benefit to any such species or their potential habitat, the Parties may agree to amend the Agreement and permit to cover additional species, at the Permittee's request.

If Federally designated candidate species should occur on the property, the Service will recommend measures for including them in a joint Safe Harbor Agreement/Candidate Conservation Agreement with Assurances to contribute toward the conservation of those species. If appropriate measures are included in such an agreement, the Service, consistent with its "No Surprises" policy, will not impose additional requirements on the Permittee as a result of any such species later being listed as threatened or endangered.

17.7. Notices and Reports. Any notices and reports, including monitoring and annual reports, required by this Agreement shall be delivered to the persons listed below, as appropriate:

Permittee	Service
Tim Gill Forster-Gill Inc. 738 Higuera Street, Suite B San Luis Obispo, CA 93401	Bruce Halstead Field Supervisor, U.S. Fish and Wildlife Service 1655 Heindon Road Arcata, CA 95521

18. REFERENCES CITED

- Forsman, E.D., S. DeStefano, M.G. Raphael, and R.J. Gutierrez, Editors. 1996. Demography of the northern spotted owl. Studies in avian biology no. 17, Cooper Ornithological Society. Fort Collins, Colorado. 122 pp.
- Forsman, E.D., E.C. Meslow, and H.M. Wight. 1984. Distribution and biology of the spotted owl in Oregon. Wildlife Monographs 87:1-64.
- Franklin, A.B., K.P. Burnham, G.C. White, R.J. Anthony, E.D. Forsman, C. Schwarz, J.D. Nicols and J. Hines. 1999. Range-wide status and trends in northern spotted owl populations. Colorado Coop. Fish and Wildl. Res. Unit, Fort Collins, Colorado and Oregon Coop. Fish and Wildl. Res. Unit, Corvallis, Oregon. Unpublished report. 71pp.
- Gould, G.I. Jr. 1995. Distribution and numbers of known northern spotted owl sites in northern California. Paper presented at the "Symposium on the Status and Management of the Northern Spotted Owl in California," at Ukiah, CA., on August 16, 1995. 11 pp.
- Thomas, J.W., E.D. Forsman, J.B. Lint, E.C. Meslow, B.R. Noon, and J. Verner. 1990. A

conservation strategy for the northern spotted owl. A report by the Interagency Scientific Committee to address the conservation of the northern spotted owl. U.S. Department of Agriculture, Forest Service, and U. S. Department of the Interior, Fish and Wildlife Service, Bureau of Land Management, and National Park Service. Portland, Oregon. 427 pp.

Thomas, J.W., M.G. Raphael, R.G. Anthony, E.D. Forsman, A.G. Gunderson, R.S. Holthausen, B.G. Marcot, G.H. Reeves, J.R. Sedell, and D.M. Solis. 1993. Viability assessments and management considerations for species associated with late-successional and old-growth forests of the Pacific Northwest. Portland, Oregon. U. S. Department of Agriculture, Forest Service. 523 pp.

USDA Forest Service; USDC National Marine Fisheries Service; USDI Bureau of Land Management, Fish and Wildlife Service, and National Park Service; and Environmental Protection Agency. 1993. Forest Ecosystem Management: An Ecological, Economic, and Social Assessment, Report of the Forest Ecosystem Management Assessment Team.

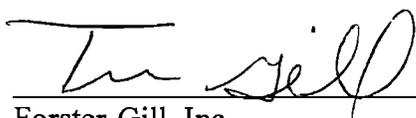
USDI. 1990a. Endangered and Threatened Wildlife and Plants; determination of threatened status for the northern spotted owl. Fed. Reg. Vol. 55, No. 123: 26114-26194. June 26, 1990.

USDI. 1990b. 1990 status review: northern spotted owl; *Strix occidentalis caurina*. Report to the U.S. Fish and Wildlife Service, Portland, Oregon. 95 pp.

USDI. 1992a. Endangered and Threatened Wildlife and Plants; determination of critical habitat for the northern spotted owl. Fed. Reg. Vol. 57, No. 10:1796-1838. January 15, 1992.

USDI. 1992b. Recovery plan for the northern spotted owl. Final draft. U.S. Department of the Interior, U.S. Fish and Wildlife Service. Portland, Oregon. 2 Volumes.

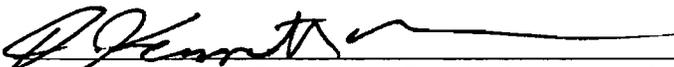
IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Safe Harbor Agreement to be in effect as of the date that the Service issues the permit.



Forster-Gill, Inc.

7/11/2002

Date

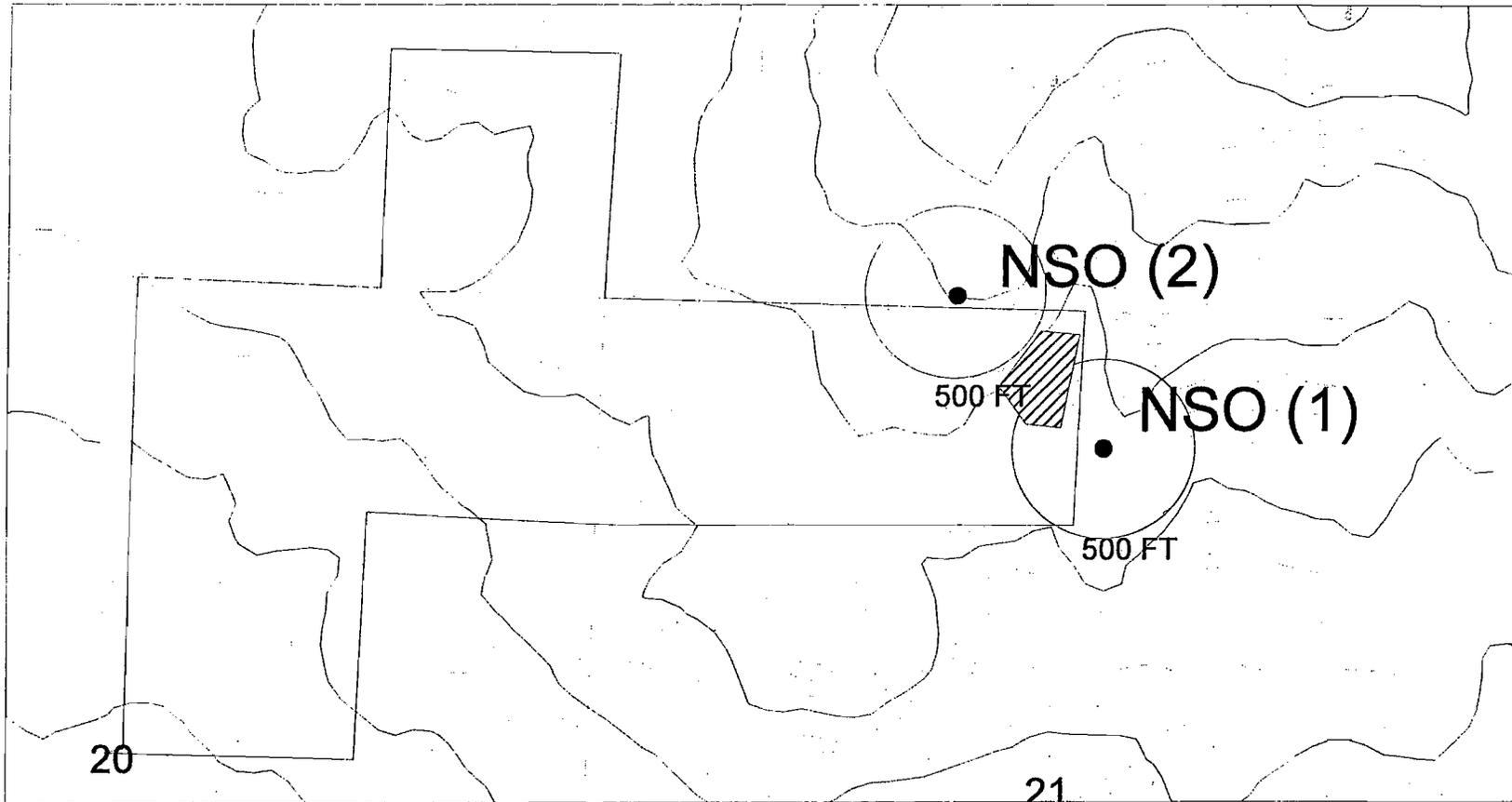


Deputy Manager, California/Nevada Operations Office
U.S. Fish and Wildlife Service

JUN 18 2002

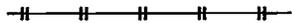
Date

**FORSTER-GILL
NSO ACTIVITY CENTER MAP
POR. SECTION 17, 20, 21 T6N R2E H.B.& M.**



LEGEND

PROPERTY (NTMP) BOUNDARY



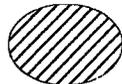
NSO ACTIVITY CENTER, NSO (1) (CORE OVERLAP 5.8 ACRES)

STATUS: 1996 SINGLE MALE, 1997 NESTING PAIR, 1998 NESTING PAIR, 1999 NON NESTING PAIR, 2000 NON NESTING PAIR

NSO ACTIVITY CENTER, NSO (2) (CORE OVERLAP 6.8 ACRES)

STATUS 2001 NESTING PAIR

INHOLDING (CORE OVERLAP 1.4 ACRES)



NORTH

SCALE 1" : 1000'

Attachment A