Programmatic Safe Harbor Agreement
for the
Northern Spotted Owl

between

U.S. Fish and Wildlife Service
Oregon Department of Forestry
and
USDA Natural Resources Conservation Service

July 2010

Summary

Many private landowners are reluctant to grow older forest stands or provide habitat for the federally-listed northern spotted owl (*Strix occidentalis caurina*) on their properties because they are concerned that additional regulatory restrictions will be imposed on their land as a result of the increase in habitat for listed species. This Programmatic Safe Harbor Agreement (Agreement) between the Oregon Department of Forestry (ODF), the Natural Resources Conservation Service (NRCS), and the U.S. Fish and Wildlife Service (Service) is intended to address that concern and help recover the northern spotted owl by encouraging additional conservation efforts on private lands. This Agreement will streamline the delivery of regulatory and financial assistance to private landowners seeking to voluntarily maintain and enhance older forest habitats in Oregon that will also benefit the northern spotted owl. Landowners that implement site-specific Stewardship Agreements providing a 'net conservation benefit' for northern spotted owls will receive formal assurances that if they fulfill the conditions of those plans, the Service will not require any additional or different management activities without their consent. The programmatic approach in this Agreement will streamline the application and approval process for two Federal and one State voluntary habitat conservation programs, and is expected to increase northern spotted owl conservation efforts on private lands.

This Agreement combines the objectives of three programs to better promote voluntary conservation of forest habitat in Oregon:

- **ODF Stewardship Agreement (SA) Program.** The Stewardship Agreement program implements ORS 541.423 which reflects and depends upon Oregonian's characteristic spirit of volunteerism and stewardship. The Stewardship Agreement rules provide the means for ODF to implement a voluntary and flexible conservation incentives program that recognizes and rewards forest landowners who choose to exceed regulatory criteria for conservation, restoration, and improvement of fish and wildlife habitat or water quality while managing land to meet their objectives. Stewardship agreements will be long-term and consider conservation from a property wide perspective, rather than at the scale of single localized projects.
- **NRCS Healthy Forest Reserve Program (HFRP).** The HFRP is a voluntary Federal program that was reauthorized under the 2008 Farm Bill. The purpose of this program is to provide financial assistance for landowners in restoring and enhancing forest ecosystems to: promote the recovery of threatened and endangered species; improve biodiversity; and enhance carbon sequestration. Under the Oregon HFRP, two enrollment options are available:
    - A 10-year restoration agreement for which the landowner may receive 50 percent of the average cost of the approved conservation practices
    - A permanent easement option for which landowners may receive 100 percent of the easement value of the enrolled land plus 100 percent of the average cost of the approved conservation practices.
- **Service Programmatic Safe Harbor Program.** The Safe Harbor Policy was developed to encourage landowners to voluntarily enhance and maintain habitat for listed species on their properties by providing assurances that the FWS will not impose additional restrictions because of their voluntary conservation efforts. A programmatic Safe Harbor Agreement and associated permits authorize other entities such as ODF to enter into an agreement and hold the associated permit. ODF can then enroll individual property

owners, and convey the permit authorization and assurances to them through a "certificate of inclusion." This programmatic approach is an efficient mechanism for encouraging multiple private property owners to engage in the Safe Harbor program. If issued a certificate of inclusion, the landowner is authorized to return the property to pre-agreement conditions (baseline conditions). In other words, a landowner can create habitat for the northern spotted owl, and then remove the created habitat at the end of the Agreement if they choose to do so; however, landowners would not be authorized to go below baseline conditions.

Participation in this Agreement, and receipt of the Safe Harbor regulatory assurances, requires participation in the ODF Stewardship Agreement Program. ODF will be the programmatic permit holder, and will work with the Service and the Oregon Department of Fish and Wildlife (as described later in this Agreement) to review Stewardship Plans for issuance of certificates of inclusion to landowners. Landowners participating in the NRCS HFRP must also participate in the Stewardship Agreement Program and obtain a certificate of inclusion under this Agreement.

Certificates of Inclusion will only be issued to landowners with Stewardship Plans demonstrating that a "net conservation benefit" would be achieved for the northern spotted owl on the enrolled property. The following will be analyzed to make the net conservation benefit determination:

1. The beneficial activities proposed by the landowner, such as restoration, enhancement, and beneficial management practices.
2. The potential impacts from routine and ongoing activities proposed for incidental take coverage.
3. The potential impacts from returning the property to baseline conditions at the end of the agreement.

To provide a net conservation benefit, the beneficial activities must outweigh the potential impacts from routine and ongoing activities and the potential return to baseline conditions.

For those landowners interested in pursuing a stewardship agreement, Forest management activities encouraged by this Agreement will be those that maintain or create potential habitat where and when it would not likely otherwise occur due to fear of regulatory restrictions. The majority of lands enrolled are expected to have a zero baseline, meaning the properties are not currently providing any suitable habitat, and forest management activities that initially take place under this Agreement are not likely to result in any incidental take of spotted owls nor have any adverse effects. It may typically take a few decades of management before spotted owls are attracted to some enrolled properties. Any potential incidental take that might occur if spotted owls are attracted to these properties will not occur until after such time and/or toward the end of the enrollment term. In addition, not all enrolled lands are likely to return to their original baseline conditions, especially those that chose the permanent easement option in the Healthy Forest Reserve Program.

1.0 Introduction

1.1 Need for Safe Harbor Agreement

Many private landowners are willing to maintain or enhance habitat for listed species on their land; however, fear of the Endangered Species Act restrictions may compel some people to manage their land to prevent endangered species from occupying their property (Wilcove and Lee 2004). In the case of the Preble's meadow jumping mouse, a federally listed species in the Rocky Mountains, researchers learned through landowner surveys and interviews that the percentage of private lands managed to the detriment of the Preble's Meadow Jumping Mouse was about equal to the percent managed to help it (Brook et al. 2003). Red-cockaded woodpeckers are a federally listed species in the Southeastern United States that require mature stands of southern pine. Lueck and Michael (2003) studied the extent to which timber harvest was affected by proximity to red-cockaded woodpecker nests by reviewing over 1,000 timber plots for a 6-year period. Their results empirically determined that fear of ESA land-use restrictions lead private foresters to preemptively harvest timber and choose shorter timber rotations. According to Gidari (1994) a landowner in Washington state specifically clearcut harvested his timber because he believed that his family's forest management practice of thinning that had occurred over decades was creating older forest characteristics that might result in costly future restrictions to protect the spotted owl.

We are aware of similar issues for northern spotted owl conservation in Oregon. Specifically, the issue of regulatory disincentives for northern spotted owl habitat on private lands was highlighted by the Committee for Family Forestlands, a group that advises the Oregon Board of Forestry and State Forester in matters relating to family forestlands. In a letter providing comments on the draft Recovery Plan for the northern spotted owl (ODF 2007), the Committee for Family Forestlands highlighted that ESA regulatory disincentives leads to the risk-avoidance behavior of cutting of stands before they reach a habitat stage for northern spotted owls. As a result, high quality habitat never develops and family forest landowners play only a limited role in providing spotted owl habitat. With the removal of the threat of additional regulations and restrictions on activities, landowners would be encouraged to hold stands for longer rotations and provide better habitat for northern spotted owls.

The Recovery Plan for the northern spotted owl (USFWS 2008) contains the following two Recovery Actions:

- ***Recovery Action 13: Encourage applicants to develop Habitat Conservation Plans/Safe Harbor Agreements that are consistent with the recovery objectives.*** Habitat Conservation Plans (HCPs) and Safe Harbor Agreements (SHAs) are important tools that non-Federal landowners can voluntarily use to assist in the recovery of the spotted owl. Although HCPs do not require recovery standards, voluntary Recovery Actions included in an HCP can promote recovery.
- ***Recovery Action 15: Streamline the process of a landowner gaining approval of an HCP and SHA.*** The Service should reduce processing time and make the HCP and SHA processes more easily implemented.

This Programmatic Safe Harbor Agreement (Agreement) is designed to address both needs articulated above: the risk-avoidance behavior of cutting stands before they provide habitat for northern spotted owls, and to streamline the process for obtaining the regulatory assurances as noted in the Recovery Plan.

1.2 Scope

This Agreement addresses non-federal lands throughout the range of the spotted owl in Oregon. While the intent of the Agreement is to encourage non-federal landowners to maintain and manage for future spotted owl habitat, which may contribute to the recovery of the spotted owl, it is not intended as the sole or primary mechanism to ensure recovery of the spotted owl in Oregon. This Agreement does not preclude other potential safe harbor agreements in Oregon that may benefit the spotted owl, nor does it prevent any landowner from maintaining or developing spotted owl habitat on their properties independent of this or any other agreement with ODF, the Service, or NRCS.

Increasing the numbers of private landowners willing to provide habitat for spotted owls, and eliminating the use of pre-emptive habitat alterations to preclude use by spotted owls for fear of regulatory restrictions can make a significant contribution to spotted owl recovery throughout Oregon. The actions taken under this Agreement will provide a net conservation benefit that contributes to the recovery of the spotted owl. The contribution toward recovery will vary from case to case, and the Certificates of Inclusion do not have to provide permanent conservation for the enrolled property. The benefit to the species depends on the nature of the activities to be undertaken, where they are undertaken, and their duration. Examples of conservation benefits include:

- reduced habitat fragmentation;
- maintenance, restoration, or enhancement of existing habitats;
- increases in habitat connectivity;
- stabilized or increased numbers or distribution;
- the creation of buffers for protected areas; and
- opportunities to test and develop new habitat management techniques.

The programmatic nature of the Agreement provides eligible landowners with a streamlined process for obtaining ESA regulatory assurances in conjunction with their commitment to implement the conservation measures identified in this Agreement which will benefit the spotted owl by creating, maintaining or enhancing its habitat. Without the regulatory assurances provided under the Agreement and permit, landowners may otherwise be unwilling or reluctant to engage in activities that would benefit the spotted owl on their properties. As an additional incentive, cost-share and conservation easement monies may be available to qualified landowners through NRCS's Healthy Forest Reserve Program (HFRP) when appropriated by Congress. Similar to safe harbor agreements, the HFRP is also a voluntary program whose purposes include restoration and enhancement of ecosystems to promote the recovery of threatened and endangered species coincident with the retention of working forests.

NRCS specifically targeted counties in southwestern Oregon for HFRP funding because of the importance of this area for spotted owl dispersal between the Cascade Province, and the Coastal

and Klamath Provinces. There currently is very limited habitat connectivity for successful dispersal. Connectivity is needed to allow for genetic exchange and to allow areas that lose spotted owls due to natural and man-made causes to be repopulated through dispersal. Additionally, NRCS was interested in enrolling properties that either had known or potential spotted owl use, or that was near forested lands managed for that purpose, especially Federal lands.

Private landowners who undertake voluntary management activities that provide a net conservation benefit to spotted owls, as described in this Agreement, will receive Safe Harbor assurances. The Agreement will provide assurances to landowners that Federal regulatory obligations, with respect to spotted owls, will not increase as a result of conducting management activities designed to benefit spotted owls. These assurances will be provided by an ESA section 10(a)(1)(A) enhancement of survival permit (Permit) issued to ODF by the Service. Participating private landowners in Oregon will be covered under this Permit through a Certificate of Inclusion issued by ODF.

Landowners who do not wish to participate in this Agreement may still work with ODF to develop Stewardship Agreements as an alternative means of complying with the Oregon's Forest Practices Act. However, these landowners would not receive the ESA regulatory assurances provided through the Agreement. Landowners participating in the NRCS HFRP must also participate in the Stewardship Agreement Program and obtain a certificate of inclusion under this Agreement. Since ODF is the permit holder, the only means of obtaining regulatory assurances under this Agreement is to sign a Stewardship Agreement with ODF. The existence of this Agreement does preclude landowners from pursuing separate, individual safe harbor agreements. While we encourage landowners to participate in these state and Federal programs, their participation is voluntary.

This Agreement was developed to facilitate the accrual of conservation benefits for the spotted owl on non-Federal lands in Oregon and address the needs of private landowners who wish to manage their forest lands in a productive, cost-effective manner. Although recovery of the spotted owl is primarily dependent on Federal forest lands being managed for this purpose, private lands can provide demographic support to spotted owl populations within federally-managed habitat blocks and facilitate dispersal of juvenile owls among habitat blocks, especially where habitat connections between blocks of Federal land do not exist on the landscape.

2.0 Authority and Purpose

2.1 Authority

This Agreement was developed pursuant to the Service's Safe Harbor Agreement policy (64 FR 32717) and regulations (64 FR 32706) under section 10(a)(1)(A) of the ESA. Because this Agreement and Permit are programmatic in nature, ODF will have the authority to issue Certificates of Inclusion to qualified private landowners in Oregon that elect to participate. Each enrollee's land management plan will specify the conservation measures, consistent with this Agreement, which must be carried out in order for ESA regulatory assurances to apply. The land

management plan is a required component of the Stewardship Agreement. Land management plans will contain an overview of the property, information on any individual forest management units such as their past management histories and current condition, and management objectives and activities for the individual units. The plan will describe the activities leading to an expected net conservation benefit for spotted owls, and at a minimum, will span the duration of the property's enrollment.

Stewardship Agreements will be the mechanism for individual landowners to enroll into the Agreement. Stewardship Agreements will be developed under the authority of Oregon Revised Statute 541.423 and Oregon Administrative Rule 629-021-0100. These Stewardship Agreements shall include a description of baseline conditions, management actions that will benefit spotted owls, and monitoring requirements that are consistent with the provisions set forth below in this Agreement. Based on a determination that a land management plan is expected to achieve a net conservation benefit for the spotted owl, a Certificate of Inclusion will be issued to the participating landowner under the Permit issued to ODF. The Certificate of Inclusion is subject to all of the terms and conditions of this Agreement and the Permit.

Title V of the Healthy Forests Restoration Act of 2003 (Pub. L. 108–148) authorizes the establishment of the HFRP. NRCS published an interim final rule on the implementation of the HFRP on May 17, 2006 (71 FR 28548). The Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246) has authorized funding for each of the fiscal years 2009 through 2012 to carry out the HFRP in those states determined to be eligible for such funding by the NRCS. Oregon has been approved for funding for federal Fiscal Years 2009 and 2010, and may be approved for funding in subsequent years, although funding is not guaranteed. Programs offered by NRCS may change through the term of this Agreement, but future programs with similar objectives and conservation practices could also be included under this Agreement. The primary role the HFRP provides under this Agreement is to offer a financial incentive for landowners to enroll under the Agreement. The purpose and requirements of the Agreement as they relate to the spotted owl conservation actions do not change as a result of any landowner who participates under this Agreement and also enrolls in the HFRP.

2.2 Purpose

The purpose of this Agreement between the Service, ODF, and NRCS (hereinafter referred to collectively as the Parties), and the Stewardship Agreements between ODF and private landowners, is to encourage the implementation of forest management activities that include conservation measures beneficial to spotted owls that would otherwise not occur. Through this Agreement, the Parties seek to conserve and maintain spotted owls in Oregon by facilitating the development and maintenance of forest habitat features that could be used by spotted owls on enrolled properties. Landowners that commit to manage their forest land in a manner that benefits spotted owls under a Stewardship Agreement with ODF would be eligible to "opt in" to the Safe Harbor Agreement and Permit to obtain regulatory assurances under the ESA. To accomplish those objectives, ODF will actively coordinate with forest landowners in Oregon within the known range of the spotted owl and encourage them to incorporate forest management practices that create, maintain, and/or enhance spotted owl habitat on their properties. Through the Certificate of Inclusion eligible landowners may receive regulatory assurances and incidental

take authority for impacts to any spotted owls and/or their habitat above each landowner's initially established baseline responsibilities, which we expect will most often be none as far as spotted owl habitat.

The statutory provisions at 16 U.S.C. 6571 state that the purpose of NRCS's HFRP is to restore and enhance forest ecosystems in order to: 1) Promote the recovery of threatened and endangered species, 2) improve biodiversity, and 3) enhance carbon sequestration. Nothing in this Agreement precludes the selling of credits on the carbon credit market. The authorizing statute further provides at 16 U.S.C. 6572(c) that the Secretary of Agriculture will give additional consideration to enrollment of eligible land that will improve biological diversity and increase carbon sequestration. NRCS will work cooperatively with ODF on the development of Stewardship Agreements for landowners who intend to participate in HFRP or other financial assistance programs and who seek regulatory assurances through this Agreement.

This Agreement has the following goals:

1. To provide a net conservation benefit to spotted owls and,
2. To provide safe harbor assurances to private landowners.

This Agreement has the following objectives:

1. To increase the number of spotted owls in Oregon;
2. To increase the amount of spotted owl habitat on private land in Oregon;
3. To increase the number of landowners who manage their forest land in a manner that will increase suitable spotted owl habitat;
4. To provide regulatory certainty to forest landowners who manage their forest land in a manner that will benefit spotted owls; and
5. To provide incentives to landowners to manage for older, more structurally complex forests by reducing the regulatory risk and uncertainty from spotted owls being attracted to their land.
6. To provide and support additional, incentive-based opportunities to reduce the potential for carbon loss and increase biological carbon sequestration on non-federal lands, particularly when such efforts coincide with related species recovery and habitat conservation.

Notwithstanding the anticipated net conservation benefit, this Agreement is not intended to function as the sole mechanism to recover spotted owls on non-federal lands in Oregon as there are other available means which may be preferred and more effective. We also do not want to discourage any forestland owner from participating in this Agreement since we believe that any contribution to providing spotted owl habitat across the landscape in Oregon may benefit owls and other species that depend on similar habitats. No Certificate of Inclusion will be issued under this Agreement unless proposed activities are sufficient to meet the Agreement's above described goals and objectives.

3.0 Agreement

This Agreement, effective on the date of last signature contained in Section 9.0, is between the Service, ODF and NRCS:

Permittee: Marvin Brown, State Forester
Oregon Department of Forestry
2600 State Street
Salem, OR 97310
Phone: (503) 945-7211
Fax: (503) 945-7212

NRCS: Ron Alvarado, State Conservationist
USDA Natural Resources Conservation Service
1201 NE Lloyd Blvd., Suite 900
Portland, OR 97232
Phone: (503) 414-3200
Fax: (503) 414-3103

Service: Paul Henson, State Supervisor
U.S. Fish and Wildlife Service
Oregon Fish and Wildlife Office
2600 SE 98th Avenue, Suite 100
Portland, OR 97266
Phone: (503) 231-6179
Fax: (503) 231-6195

This Agreement applies within the limits of the following: All non-federal lands, including Tribal lands, within the State of Oregon and within the range of the spotted owl (covered lands) are eligible to be a part of this Agreement. The property of each landowner enrolled by the ODF under this Agreement is considered the "enrolled property" as defined in the Service's Safe Harbor Policy. Furthermore, this Agreement may enroll a maximum of 50,000 acres. At such time as we approach this limit, we may consider modifications, an extension of the agreement, and renewal of the Permit through the laws and regulations in effect at that time. We may also consider including additional properties from those outlined above.

The focus of the Agreement will be to enroll nonindustrial or family forestlands (i.e., forestland owners of 5,000 acres or less). Enrollment of any single landowner's acreage above 5,000 acres may have additional requirements before being enrolled under the Agreement, including but not limited to sustainable forestry certification, baseline spotted owl surveys, and permanent set-asides. These additional requirements may be necessary to assure that a net conservation benefit is likely to be achieved over the term of enrollment of the property.

This Agreement covers the following species: Northern Spotted Owl (*Strix occidentalis caurina*). The spotted owl, a federally-listed as threatened species, is the only species for which incidental take coverage is being provided.

Agreement and Permit Duration: The duration of this Agreement and Permit is 50 years. Each individual property will be assessed as to whether the individual land management plans will provide a net conservation benefit over the duration of their enrollment. Properties may be enrolled for as little as 10 years. The Service believes a net conservation benefit is achievable under this time frame, in particular for properties with existing habitat where management actions improve the quality of the habitat. However, we anticipate the majority of the properties are likely to be enrolled for a longer term in order for a greater net conservation benefit to be accrued. The 50-year Agreement term allows the flexibility for enrolling property owners over a period of decades while still allowing a net conservation benefit to be achieved by the enrollees. The enhancement of survival permit that the Service will issue ODF in association with this Agreement will have the same duration of 50 years. By mutual consent of the Parties, this Agreement and Permit may be extended to preserve and enhance the benefits to both landowners and spotted owls, provided the issuance criteria in the Service's Safe Harbor regulations continue to be met and Service permit regulations in force at that time are followed.

3.1 Description of Covered Species

The northern spotted owl (spotted owl) inhabits structurally complex forests from southwest British Columbia through the Cascade Mountains and coastal ranges in Washington, Oregon, and California, as far south as Marin County. The spotted owl was listed under the ESA as threatened on June 26, 1990, because of widespread loss of suitable habitat across the spotted owl's range and the inadequacy of existing regulatory mechanisms to conserve the spotted owl. Past habitat loss and current habitat loss are also threats to the spotted owl, even though loss of habitat due to timber harvest has been greatly reduced on Federal lands for the past 2 decades. Many populations of spotted owls continue to decline, especially in the northern parts of the subspecies' range, even with extensive maintenance and restoration of suitable habitat in recent years. The spotted owl has become rare in British Columbia, southwestern Washington, and the northern coastal ranges of Oregon. Managing sufficient habitat for the spotted owl now and into the future is essential for its recovery. However, securing habitat alone may not recover the spotted owl. Based on recent scientific information, competition from the barred owl (*S. varia*) poses a significant and complex threat to the spotted owl that will need to be further investigated.

Scientific research and monitoring indicate that spotted owls generally rely on mature and old-growth forests because these habitats contain the structures and characteristics required for nesting, roosting, and foraging. Forested stands with high canopy closure also provide thermal cover and protection from predators. Although spotted owls can disperse through highly fragmented forested areas, the stand-level and landscape-level attributes of forests needed to facilitate successful dispersal have not been thoroughly evaluated or described.

Spotted owls are territorial and usually monogamous, forming long-term pair bonds. Home-range sizes vary geographically, generally increasing from south to north, which is likely a response to differences in habitat quality. Estimates of median size of their annual home range vary from 2,955 acres in the Oregon Cascades to 14,211 acres on the Olympic Peninsula. The

Service generally uses a 0.7-mile-radius circle (984 acres) from the activity center to delineate the most heavily used area during the nesting season. Forest stand characteristics, the amount of forest fragmentation, breeding status, and time of year can influence provincial home range size.

Courtship behavior usually begins in February or March, and females typically lay eggs in late March or April. After they leave the nest in late May or June, juvenile spotted owls depend on their parents until they are able to fly and hunt on their own. Parental care continues after fledging into September. By late summer, the adults are rarely found roosting with their young and usually only visit the juveniles to feed them at night.

The composition of the spotted owl's diet varies geographically and by forest type. Generally, flying squirrels are the most prominent prey for spotted owls in Douglas-fir and western hemlock forests in Washington and Oregon, while dusky-footed wood rats are a major part of the diet in the Oregon Klamath, California Klamath, and California Coastal Provinces. Depending on location, other important prey include deer mice, tree voles, red-backed voles, gophers, snowshoe hare, bushy-tailed wood rats, birds, and insects, although these species comprise a small portion of the spotted owl diet.

3.2 Description of Existing Conditions

Due to the loss of older forests across the landscape, spotted owl populations have declined throughout their historic range. The spotted owl population has declined due to forest harvest, alteration, fragmentation, increased intensity and frequency of forest fires, lack of beneficial habitat management, and the effects of demographic isolation. More recently, competition from the barred owl has been recognized as potentially posing a significant and complex threat to the spotted owl. The decline of spotted owls on non-federal lands has resulted primarily from timber harvest, shorter-rotation silviculture, and fragmentation of older forest stands. Loss of remaining habitat due to timber harvest has been greatly reduced on Federal lands for the past two decades.

Extensive research, monitoring, and management are currently directed toward habitat on Federal lands, where the majority of habitat and spotted owls currently exist. In Oregon, about 85 percent of known spotted owl activity centers occur on Federal lands and about 15 percent occur on non-federal lands. However, while many occurrences on private lands likely remain unknown, numerous reported historic occurrences on both Federal and non-federal lands might represent inactive or abandoned site centers. Some spotted owls that may nest on Federal lands utilize adjacent non-federal lands as part of their overall home range. There may be about 4 million acres of Federal forest land that currently provides good quality nesting habitat, which is about 60 percent of Federal forest land within the range of the spotted owl in Oregon. Non-federal lands may have about 3.5 million acres of potential spotted owl habitat, or about 30 percent of the potential forest land. These estimates do not account for smaller forested parcels that may be less likely to actually support spotted owls due to habitat fragmentation and isolation from other suitable parcels.

Geographically and demographically isolated spotted owls in fragmented habitats that are not managed for the species' benefit have a low probability of persistence. The probability of

persistence is affected not only by habitat condition and demographic uncertainty, but also by proximity and connectedness to other populations to facilitate dispersal between populations.

It is anticipated that through the involvement of non-federal landowners in this Agreement, a greater contribution to the conservation status of spotted owl populations in Oregon will be achieved. Oregon forest landowners and ODF have expressed an interest in, and support for, a mechanism that will provide long-term management flexibility and conservation benefits for spotted owls, as well as ESA regulatory assurances.

4.0 Agreement Implementation

Implementation of this Agreement is initiated by the Service's issuance of an enhancement of survival permit to ODF that authorizes ODF's issuance of Certificates of Inclusion under their Permit to participating landowners that are party to a Stewardship Agreement and whose land management plan (developed in accordance with this Agreement) has been approved by ODF. Implementation and enrollment of landowners will be a joint effort between ODF and the Service. The agencies will work together in partnership to review plans and ensure that enrollment of landowners is consistent with the intent of this Agreement.

4.1 Enrollment Procedures

The property of each landowner enrolled by ODF under this Agreement is considered the "enrolled property" as defined in the Service's Safe Harbor Policy. However, each property applying for enrollment must comply with the terms of this Agreement in order to be able to demonstrate a net conservation benefit for spotted owls. Eligible landowners will be those that have: lands within the range of the spotted owl; forest conditions that have the potential to be spotted owl habitat or already are suitable; and, planned forest management strategies that are consistent with this Agreement and will likely result in a net conservation benefit for spotted owls. ODF, NRCS, and the Service will work with all willing and eligible landowners. If personnel or financial constraints limit our ability to enroll properties, we will prioritize interested landowners based on evaluation of relative potential net conservation benefit, including consideration of acreage involved; juxtaposition to known spotted owls, large blocks of habitat, and lands reserved for the benefit of spotted owls; the amount of time above-baseline conditions are likely to remain on the property; and the anticipated time needed to enroll the property.

In order to enroll a property under the terms of this Agreement, ODF and the participating landowner must enter into a Stewardship Agreement, and sign a Certificate of Inclusion which transfers the terms and conditions and the ESA regulatory assurances of the Permit to the owner of the enrolled property. The Certificate of Inclusion will provide regulatory assurances to the landowner based on the baseline condition(s) of the landowner's property (See Section 4.5 below). The Stewardship Agreement will contain the specific plans on how landowners will meet the specifications for inclusion in the Safe Harbor Agreement and Permit.

The term of the Certificate of Inclusion will be no longer than the remaining term of ODF's Permit, which is 50 years. The Stewardship Agreement of a participating landowner may serve as the basis for determining the term of the Certificate of Inclusion, however, landowners and ODF may enter into Stewardship Agreements that extend beyond the term of the Certificate of Inclusion in order to maintain regulatory certainty under Oregon's Forest Practices Act. Landowners that receive funding through HFRP or other NRCS programs may have additional requirements for length of sign-up. A minimum period of 10 years is anticipated for Stewardship Agreements in order to allow enough time for a net conservation benefit to be achieved. In many cases, the duration of Stewardship Agreements will be longer to allow for the development of suitable habitat conditions and the retention of those conditions for a long enough period of time to potentially benefit spotted owls.

A landowner wishing to enroll their property under this Agreement with ODF will be required to follow the steps below:

- Meet with ODF to discuss the terms and conditions of this Agreement;
- Develop a Stewardship Agreement that includes a land management plan sufficient to meet the requirements of this Safe Harbor Agreement;
- Both ODF and the landowner must sign the Stewardship Agreement for it to be valid; for projects funded through NRCS programs, NRCS may need to also sign the Stewardship Agreement, as applicable;
- Both ODF and the landowner must sign the Certificate of Inclusion.

The Parties agree to provide assistance to landowners in the enrollment process.

4.1.1 Stewardship Agreements

ORS 541.423 gives authority to ODF to enter into Stewardship Agreements with landowners who wish to voluntarily improve fish and wildlife habitat and water quality. One of the intended benefits of Stewardship Agreements is regulatory certainty for enrolled landowners.

Landowners who wish to receive Safe Harbor assurances relative to forest management activities for spotted owls will include a land management plan in their Stewardship Agreement that specifically addresses the requirements of this Agreement.

All Stewardship Agreements must include:

a) Landowner name, contact information, property location, total acres, county;
b) The name of the watershed in which the property is located;
c) A map and description of the property, existing land uses, habitats and water features present;
d) The name of any plans and programs the landowner is implementing or participating in, including a copy of any current certification or other conservation agreements. For participants who are utilizing NRCS funding, this will include a plan that meets NRCS program specific criteria;

e) Identification of state, regional, and local conservation goals that the Stewardship Agreement is implementing; and
f) A description of any conservation efforts for fish, wildlife, and water quality that are being used or proposed;
g) Identification of the management plan subject to application review and subsequent audits.

Stewardship Agreements used for inclusion in this Safe Harbor Agreement must include:

a) A description of baseline conditions for the spotted owl and its habitat (see section 4.4 for baseline discussion) based on best available information, and a description of the methods used to determine the baseline.
b) A description of the management actions to be implemented that are likely to result in a net conservation benefit to spotted owls and the timeframe within which these benefits are likely to be achieved;
c) A description of the activities that would be expected to return the enrolled property to baseline conditions and the extent of incidental take of the spotted owl, if any, that would likely result from such activities;
d) A description of monitoring to be conducted, including: a schedule for monitoring the baseline conditions and any incidental take as authorized in the permit likely to occur or that has occurred as a result of management activities; and the parties responsible for conducting such monitoring activities;
e) A procedure for notifying and transferring the Certificate of Inclusion to any successor in interest, giving the Service and ODF at least 30 days notice prior to any sale or transfer of interest in the covered lands; and
f) The term of the Stewardship Agreement.

The term of the Stewardship Agreement should provide for a net conservation benefit to be achieved for spotted owls. For landowners with a baseline of zero spotted owl habitat, the term should be sufficient for habitat to develop and be maintained for sufficient time to accrue benefits for spotted owls.

A written land management plan is required as part of the Stewardship Agreement. Plans may include confidential landowner information and are generally not subject to public disclosure. Information necessary to support the Certificate of Inclusion must be included in the Stewardship Agreement, or the landowner must voluntarily disclose their land management plan. Stewardship Agreements will be developed by the participating landowner in cooperation with ODF, along with Service participation in the process. The Service will provide review and technical assistance on individual land management plans.

Stewardship Agreements require a 21-day public notice and comment period. After any comments are addressed and ODF determines the Stewardship Agreement to be adequate, ODF will proceed to finalize the Stewardship Agreement and sign a Certificate of Inclusion with the landowner. ODF will make available to the Service, upon request, records and materials in its possession relating to the implementation of the program, including newly executed Stewardship Agreements on an on-going basis.

ODF will designate an Agreement Manager and will provide: oversight of baseline property assessments of lands enrolled in the Agreement; implementation of management actions; compliance monitoring (as further described below); effectiveness (biological) monitoring; and technical assistance to the maximum extent practicable in developing and implementing these Agreements.

4.2 Certificate of Inclusion

Upon execution of each Stewardship Agreement, and enrollment in the Safe Harbor Agreement, individual landowners will be given a Certificate of Inclusion (see Appendix A). The Certificate of Inclusion provides the regulatory assurance (i.e. incidental take coverage) to the participating landowner that the enrolled property can be returned to the established baseline condition at the end of the term of the Certificate of Inclusion or sooner, provided a net conservation benefit has already been achieved. The term of the Certificate of Inclusion will generally extend to the end of the Permit term in order to provide the participating landowner with sufficient time to return to their original baseline conditions while also allowing them to voluntarily extend the amount of time that the conservation benefits accrue. The Certificate of Inclusion identifies the property owner for whom incidental take is authorized, references the issued permit number that authorizes the take, and includes a concise legal description of the enrolled property. The Certificate of Inclusion provides the mechanism to commit the enrolling landowner to the terms of the Safe Harbor Agreement and Permit.

4.3 Conservation Strategy/Measures

There are a variety of forest management actions that a private landowner can implement to create or improve suitable spotted owl nesting, roosting, foraging and/or dispersal habitat. The Service's 2008 final Recovery Plan for the Northern Spotted Owl (pp. 50-53) provides a description of spotted owl habitat that can guide forest management actions. Stewardship Agreements that include silvicultural practices (e.g., uneven-aged stand treatments, individual tree selection, thinning from below, patch cuts, snag creation, increasing downed wood retention) likely to achieve the characteristics of spotted owl habitat on the enrolled property, taking into account the landscape context in which the site is located, are likely to provide for a net conservation benefit to the spotted owl. Mixed conifer/hardwood stands may require additional measures to balance the tree species composition so as to best meet the needs of spotted owls while also reflecting more natural stand conditions. Past harvest or fire suppression may have resulted in stands dominated by hardwoods or conifers, when under more natural conditions they may have been dominated by conifers or hardwoods, respectively.

In some cases, a deferral of harvest alone may produce future, desirable habitat conditions. One of the purposes of the Agreement is to remove a disincentive to manage for longer harvest age intervals and silvicultural methods that could otherwise result in additional restrictions on a property due to the potential harm to spotted owls from future harvest. Under this Agreement, the potential incidental take that may occur over the term of an individual participants' coverage is weighed against the benefits accrued prior to harvest activities. This Agreement can provide the needed incentive to generate these benefits that would otherwise not occur. We expect that

most landowners who wish to participate under this Agreement will have a zero spotted owl baseline. Landowners will have to maintain any existing, initial baseline above zero for the term of their enrollment. We will encourage landowners to commit to an elevated baseline where and when practicable. An elevated baseline would mean a long-term commitment to maintain spotted owl habitat in excess of what would otherwise be required based on the initial baseline determination.

The silvicultural practices utilized should result in a net increase in tree diameters and potentially increased stand diversity at the end of the Stewardship Agreement at a minimum. Management for a diversity of tree species, large snags, and multiple canopy layers should be included in the plans where feasible. Stewardship Agreements will offer important benefits to spotted owl populations and to landowners who choose among the management actions listed below. ODF and the Service will review each Stewardship Agreement to ensure that the management actions taken will be reasonably expected to provide a net conservation benefit to spotted owls.

1. Forest Management - ODF may enroll a landowner under a Certificate of Inclusion if the landowner agrees to maintain or implement a forest management strategy or plan on the enrolled property that would provide habitat for spotted owls. An eligible forest management strategy or plan would include either of the following circumstances:

    a) For enrolled properties with existing spotted owl habitat, the landowner agrees to implement or continue a forest management strategy that maintains or enhances that habitat. Examples include the use of uneven-aged silvicultural treatments, thinning from below, snag creation, increases in downed wood retention, etc. This will provide an immediate net conservation benefit.

    b) For enrolled properties that do not have suitable spotted owl habitat at the time of enrollment, the landowner agrees to implement or maintain a forest management strategy or plan that promotes the development of habitat to a condition that will, in the future, provide potentially suitable spotted owl habitat. The net conservation benefit will not be achieved until the area where the forest management strategy is implemented or maintained either becomes occupied by spotted owls or becomes potentially suitable habitat, for a sufficient time for the benefit to accrue.

2. Future Conservation Measures/Adaptive Management - There may be a time in the future when a conservation measure is identified, based on future spotted owl research, that may be determined to be critical to the recovery of the spotted owl. Enrolled landowners may voluntarily modify their conservation measures to include new conservation measures if the landowner, the Service, and ODF determine that these modifications are necessary or appropriate to achieve a greater benefit to the spotted owl and still meet the landowner's objectives.

Due to the diversity of forest conditions and individual landowner constraints, we do not provide specific management prescriptions in this Agreement. Management prescriptions will be developed on a property by property basis to meet landowner goals and objectives in a manner

expected to provide a net conservation benefit to spotted owls. Forest management activities encouraged by this Agreement will be those that create potential habitat where and when it would not likely otherwise occur. Since the majority of lands enrolled are expected to have a zero baseline, any forest management activities that initially take place under this Agreement are not likely to result in any incidental take of spotted owls nor have any adverse effects. It may typically take a few decades of management before spotted owls are attracted to some enrolled properties. Any potential incidental take that might occur if spotted owls are attracted to these properties will not occur until after such time and/or toward the end of the enrollment term. Furthermore, not all enrolled lands are likely to return to their original baseline conditions, especially those that participate in the Healthy Forest Reserve Program (see below), such that conservation measures for spotted owls may continue indefinitely on some properties.

4.3.1 Healthy Forest Reserve Program

The purpose of the HFRP in Oregon is to provide additional suitable habitat for the spotted owl. The goals of the program are to:

1) Provide financial incentives that support the connection between spotted owl habitat, biodiversity, carbon sequestration and sustainable timber harvest;
2) Promote mutual benefits of spotted owl habitat and sustainable timber harvest practices;
3) Provide long-term protections for spotted owl habitat on forestlands in Oregon; and
4) Provide direct incentives to forest landowners willing to extend their harvest rotations and increase biodiversity on their land for the improvement of spotted owl habitat.

In Oregon, the HFRP offers two enrollment options:

1. A 10-year restoration agreement for which the landowner may receive 50 percent of the average cost of the approved conservation practices;

2. A permanent easement option for which landowners may receive 100 percent of the easement value of the enrolled land plus 100 percent of the average cost of the approved conservation practices. HFRP easement holders will be required to re-enroll in this Agreement when their certificate expires, or participate in another similar safe harbor-like assurance if the Agreement is no longer in existence.

It is important to note that landowners are not required to enroll under this Agreement if they wish to participate in ODF's Stewardship Agreement without specific consideration for spotted owls, or accept NRCS financial assistance other than HFRP. Participating in this Agreement is at the discretion of the landowner. However, HFRP participants will be required to work with ODF and NRCS to develop a Stewardship Agreement and to enroll under this Agreement as a condition of their participation in the program. The Stewardship Agreement and land management plan will have to meet the requirements for both the HFRP and the Safe Harbor Agreement-related ESA Permit and Certificate of Inclusion.

4.4 Baseline Conditions

The Service's Safe Harbor Policy defines "baseline conditions" as "population estimates and distribution and/or habitat characteristics and determined area of the enrolled property that sustain seasonal or permanent use by the covered species at the time the Safe Harbor Agreement is executed." ODF and the participating landowner are responsible for determining the spotted owl baseline on a proposed enrolled property as part of a land management plan by evaluating the following forest characteristics: the size of the stand, the stand age, canopy cover, tree species composition, the presence of suitable spotted owl nest trees, the proximity of the covered lands to other suitable habitat, and the proximity of the covered lands to known spotted owl activity centers or non-resident single locations. The assessment of baseline conditions should be expressed in terms of the acres of spotted owl habitat, with some description of the existing habitat characteristics (see below).

The Service will, at times, assist with the determination of baseline conditions, particularly in the early phase of implementing this Safe Harbor Agreement. This participation will ensure a coordinated approach in implementing technical aspects of the Agreement such as establishing baseline. The Service and/or ODF will also confer with the Oregon Department of Fish and Wildlife in assessing baseline conditions and the development of suitable habitat (see 5.4), especially in those circumstances where forest stand conditions are not clearly indicative of either being spotted owl habitat or not being spotted owl habitat. This situation can occur, for example, when younger stands contain remnant older forest components to degrees that make it difficult to determine if the components occur in sufficient quantity and/or quality to attract and be utilized by spotted owls.

The first step in determining the baseline is to identify what variables or parameters will be used that can be measured and/or monitored and that will reflect upon the potential benefits to be achieved under the Agreement. For the purposes of this Agreement, the presence of spotted owls and/or the presence of forest conditions conducive to spotted owl breeding (i.e. suitable habitat) will be used to describe the baseline condition. Under this Agreement, baseline conditions will be primarily based upon acreage. A baseline of greater than zero will generally be established for acreage of enrolled properties that possesses: older trees (> 80 years old); more structurally complex, multi-layered conifer forest containing some large diameter trees (> 30 inches dbh); high amounts of canopy cover (> 60 percent); sufficient space below the canopy for spotted owls to fly; broken-topped live trees; large snags, trees with large cavities; and fallen trees (downed wood). Because of the complexity of evaluating potential spotted owl habitat conditions, baseline conditions will be established on a case-by-case basis using the above referenced forest qualities.

If no suitable spotted owl habitat is present on the landowner's enrolled acres, then the baseline will be zero. ODF will seek information from existing databases or knowledgeable sources on the presence of spotted owls in the vicinity of a landowner's property to assess whether there could be any potential impacts to these spotted owls as a result of the landowner's proposed management activities (due to disturbance for example).

However, a landowner with suitable spotted owl habitat may elect to have surveys conducted on their property following established protocols if recent information is otherwise not available about the presence of spotted owls in the area. If surveys indicate no spotted owls within 1.5 miles of the enrolled lands, then the baseline will be zero. In these circumstances, it is likely spotted owls would not be harmed (i.e. incidentally taken) by harvest operations within such lands.

Accurate suitable habitat assessments or spotted owl surveys are essential for determining baseline conditions. Personnel experienced in forestry and spotted owl surveying should be used to conduct baseline surveys. Baseline condition characterization, if not done with the assistance of ODF or the Service, is subject to approval by ODF and the Service and may require ODF and/or the Service to visit the property. All baseline determinations require the Service's review and concurrence. The Service will review the baseline conditions prior to submission of the Stewardship Agreement for public review and comment. If ODF and/or the Service determine that inspection of the enrolled property is necessary in order to establish the baseline conditions, ODF and/or the Service will obtain the participating landowner's permission prior to entering the property for this purpose or for any other purposes related to this Agreement.

4.4.1 Maintaining Baseline Conditions Greater than Zero

For enrolled properties whose baseline conditions are greater than zero, the landowner's responsibilities are:

1. Protect all suitable spotted owl habitat for the term of the Certificate of Inclusion. Forest management activities that enhance the value of that habitat are allowed as described in the approved land management plan. However, forest management activities that are likely to cause disturbance to nesting spotted owls cannot occur on enrolled lands during the spotted owl nesting season from March 1 through September 30. Timing restrictions may be lifted to allow harvest operations after July 15 if it is determined that: (1) no spotted owls are present; (2) the owls are not nesting; (3) the nesting attempt failed; or (4) the young have fledged and are capable of sustained flight. If there is a request to conduct forest management activities within 1000 feet of an activity center from July 15 through September 30, the enrolled landowner shall notify ODF 60 days in advance of the desired starting harvest date. ODF shall determine whether or not harvesting operations can proceed based upon whether adverse impacts to nesting spotted owls will reduce the likelihood of maintaining a net conservation benefit.

2. Implementation of forest management activities described in the land management plan that are intended to enhance spotted owl habitat conditions in the long-term but may temporarily degrade suitable spotted owl habitat conditions in the short-term are allowed, but not to an extent that the affected habitat is likely to be non-functional. Spotted owl habitat must be maintained on-site and the management actions should not eliminate spotted owl use after treatment. For example, light to moderate thinning that maintains at least 40 percent canopy closure would continue to provide some habitat benefits while accelerating development of habitat complexity in the long term. The average tree sizes of stands and potential for habitat development should always increase over the term of the Stewardship Agreement, regardless of the management

regime. Snag retention and creation, and downed wood retention are encouraged as a component of the forest management plan.

3. New roads can be constructed on an enrolled property as described in the land management plan. However, no new roads can be constructed within spotted owl habitat areas from March 1 through September 30, unless adequate surveys indicate spotted owls have not nested or their nest failed, then construction can occur after July 15. If roads are to be constructed within baseline habitat, they must be needed for access to those stands whose management will result in enhancement of the baseline habitat.

4. Avoid activities that may result in disturbance and incidentally cause injury or death to spotted owls on or adjacent to the enrolled property.

4.5 Providing a Net Conservation Benefit

The primary objective of this Agreement is to encourage private landowners to undertake voluntary conservation measures that will benefit the spotted owl by creating, maintaining, or enhancing its habitat. A safe harbor agreement does not have to provide permanent conservation or recovery benefits; however, the conservation measures need to be sufficient to provide a net conservation benefit to the covered species. Conservation benefits can include, but are not limited to: maintaining, restoring, or enhancing habitat; increasing habitat connectivity/reducing fragmentation; maintaining or increasing species population numbers; buffering protected areas; testing conservation strategies; and reducing the potential effects of catastrophic events.

For enrolled properties whose baseline conditions are zero, actions taken under the Stewardship Agreement will be expected to generate habitat conditions for spotted owls to potentially use and thus a net increase in habitat (greater than the initial zero baseline). For enrolled properties whose baseline conditions are greater than zero, specific actions taken under the Stewardship Agreement are also expected to generate a net increase in habitat. In some cases, the net increase may be able to occur by simply not engaging in activities that would remove existing habitat and allowing forest stands to age so as to increase the quality of the available habitat. In other cases, in addition to not harvesting existing habitat, additional habitat acreage will be developed through silvicultural practices, which may include deferring harvest of young stands so they can develop into spotted owl habitat. There will likely be a need to manage younger stands to more quickly develop into suitable habitat (e.g., encouraging more rapid tree growth through thinning), create additional forest layers, downed wood, tree species diversity, large snags, etc. Under these circumstances there could be a net increase in habitat quality and quantity.

Many property owners are willing to voluntarily manage their property to benefit listed fish and wildlife, provided these beneficial actions do not result in new restrictions being placed on the future use of their property. Without the types of assurances provided in this Agreement, landowners are reluctant to manage their forest lands to attract and maintain federally-listed species like the spotted owl, since additional limitations could be placed on harvest within suitable habitat if spotted owls moved onto their properties. For landowners with an existing baseline of spotted owl habitat, the Agreement provides assurances that habitat will be maintained since the baseline condition must be maintained at a minimum over the Agreement

term. Because individual spotted owl pairs do not nest every year, may not always be detected through surveys, and known nest sites may not be used for several years before being re-occupied, landowners can potentially survey sites until they become unoccupied and harvest the habitat acreage without being in violation of the incidental take prohibitions of the ESA. By having a property owner sign on to an Agreement and agreeing to certain management activities, habitat can be maintained on the landscape even if temporarily not used by nesting spotted owls.

Some conservation benefits that are expected to result from this Agreement include:

1. Suitable habitat will be enhanced, restored, and/or created on all enrolled properties through forest management.
2. Some management actions (e.g., thinning, road building, etc.) may temporarily degrade spotted owl habitat provided those actions are intended to increase the quality of available habitat over the term of the Stewardship Agreement and Certificate of Inclusion.
3. Spotted owl populations may expand through an increased amount of available habitat and an improved distribution of habitat.
4. Forest fragmentation will decrease and habitat connectivity will increase as a result of habitat enhancement, restoration, and creation efforts.
5. Information on population productivity and demographics in Oregon may be obtained through any surveys that are conducted.
6. Landowners' concern for spotted owls on their forest lands will be reduced via the regulatory assurances provided under the Permit and Certificate of Inclusion, which should minimize the number of landowners intentionally managing their forest lands to preclude the development of suitable spotted owl habitat.

It is likely that most Stewardship Agreements resulting from this Agreement will provide more than one of the conservation benefits listed above. Each Stewardship Agreement will identify the net conservation benefits that will be achieved through the implementation of the conservation measures identified under the land management plan in order to demonstrate it's consistency with the Agreement and the Service's Safe Harbor Policy.

4.5.1 Expected Changes to Available Spotted Owl Habitat

We expect much of the enrolled lands to function as spotted owl dispersal habitat at the time of enrollment, since most will be composed of forest stands at least 20-30 years of age. We will likely enroll new properties for at least the first 25 years of the Agreement, but not greater than 40 years in order to accommodate for habitat to be established and allow sufficient time for a net conservation benefit to accrue. Because most management will be intended to develop nesting quality habitat characteristics, we anticipate that the Agreement will slowly increase available habitat quantity and quality as landowners sign on to the Agreement and enrolled properties' stands age. Because the Agreement is limited to 50,000 acres, and because we do not anticipate enrolling anyone past 40 years from the beginning of the Agreement, we will assume that an average of 1,250 acres per year may be enrolled over this time period.

Landowners seeking to enroll under this Agreement are more likely to be near Federal lands with existing spotted owl habitat since they are most likely to be concerned about attracting spotted owls to use their properties and be interested in the assurances provided by this Agreement. The juxtaposition of enrolled lands to Federal lands with spotted owl use will increase the value of the habitat developed on the non-federal lands because it will more likely be used by owls and will more likely be supplementing the available habitat on Federal lands. Not all Federal lands being managed for spotted owls currently contain spotted owl habitat. Over time, habitat will develop on Federal lands as it will on non-federal lands under this Agreement. This Agreement will provide additional spotted owl habitat support until the larger blocks of habitat on Federal lands can fill in with habitat as the stands age. An advantage of Federal land management for spotted owls is that singular ownership with large blocks of forest land across the landscape provides a better basis for long-term management of forest dependent species such as the spotted owl. Non-federal lands can still contribute to spotted owl recovery, especially where Federal lands are lacking, but the many dispersed ownerships with smaller relative acreages cannot be unified in under a management plan as readily as Federal lands have been.

While the Agreement is capped at 50,000 acres, the enrolled acres will be part of a much larger forested mosaic of spotted owl habitat. Thus, the number of spotted owls to be benefited by this Agreement is greater than the number that could reside within 50,000 acres alone. Benefits to spotted owls can occur from the day a landowner enrolls their property because the landowner is committing to retain forest conditions that would not have to be otherwise retained and providing some benefit to spotted owls. As habitat grows, and enrollments accumulate, the benefits to spotted owls will also accumulate on a yearly basis. While safe harbor agreements such as this one allow for a return to baseline conditions, the negative effects of habitat removal generally occur at one point at the time of harvest (see 4.6). The benefits of improving and retaining forest conditions that provide suitable habitat for spotted owls will occur for many years while the Agreement is in effect as long as the habitat is available. During those years, spotted owls will be able to use these lands as part of their nesting territories and produce offspring. Spotted owls will be able to disperse to and from the enrolled lands. The enrolled lands will provide spotted owl habitat for decades to come. Some small portions of the habitat will be removed throughout the Agreement and eventually much of the habitat may be removed if landowners choose to return to baseline conditions. This removal would most likely occur in the last decade of this 50 year Agreement. By that time many generations of spotted owls will have been supported on the enrolled lands, and there should be much more suitable habitat on Federal lands available for spotted owls that may be displaced by landowners returning their properties to baseline conditions. For every spotted owl that may be incidentally taken when landowners return to baseline conditions, there will be several that will have been supported, produced off-spring, and dispersed to other areas to establish additional nesting territories over the 50 years of this Agreement. Properties will not be returned to baseline conditions during the breeding season so as to not interfere with reproductive efforts. Spotted owls will be afforded the opportunity to adjust to the altered habitat conditions at a time of year when they typically occupy a larger area, are less territorial, and have more habitat resources available to utilize.

Thus, when evaluating the net conservation benefit of this Agreement over the 50-year time frame, it is reasonable to conclude that more owls will benefit from the intended forest management actions than will be adversely affected.

4.6 Incidental Take

The authorization for a participating landowner to incidentally take spotted owls under the Permit associated with this Agreement is contingent upon the landowner maintaining the agreed upon baseline conditions for spotted owls and their habitat present on the enrolled property at the time the Stewardship Agreement and Certificate of Inclusion is signed. The only take authorized is incidental take of spotted owls associated with loss of above-baseline habitat (i.e., the amount of habitat will remain at or above the baseline level) and approved enhancement activities in existing habitat. The voluntary habitat enhancement activities undertaken through this Agreement will likely increase the number of spotted owls and the total area of suitable, actively managed spotted owl nesting, roosting, and foraging habitat in Oregon. Above-baseline habitat would include newly developed habitat that did not exist at the time the landowner enrolled or habitat that existed at the time of enrollment, but was unoccupied by spotted owls. While landowners will be permitted to carry out activities that could result in the incidental take of above-baseline spotted owls and their habitat, they may choose not to do so, or not to do so for many years.

The participating landowner under a Stewardship Agreement and Certificate of Inclusion will be allowed to develop, harvest trees upon, or make any other lawful use of his/her property, even if such use results in the incidental take of spotted owls associated with above-baseline habitat, provided all of the following qualifications are met:

1. The enrolled landowner must be in compliance with the Stewardship Agreement;
2. The enrolled landowner must have maintained their spotted owl baseline as specified in the Stewardship Agreement;
3. The take is incidental to otherwise lawful activities;
4. Forest management activities that are likely to cause disturbance to nesting spotted owls cannot occur on enrolled lands during the spotted owl nesting season from March 1 through September 30. Timing restrictions may be lifted to allow harvest operations after July 15 if it is determined that: (1) no spotted owls are present; (2) the owls are not nesting; (3) the nesting attempt failed; or (4) the young have fledged and are capable of sustained flight. If there is a request to conduct forest management activities within 1000 feet of an activity center from July 15 through September 30, the enrolled landowner shall notify ODF 60 days in advance of the desired starting harvest date; and,
5. The landowner should provide as much advance notification to ODF as possible, but not less than 30 days in advance, prior to any planned activity which may result in the incidental taking of above-baseline spotted owls through habitat removal or disturbance. The enrolled landowner must notify ODF at least 30 days in advance, unless an emergency prohibits such advance notification in which case the notification should occur as soon as possible prior to the activity. This only applies to landowners that have successfully created new (i.e., above baseline) spotted owl habitat on their property. The report to ODF shall include information necessary to assess the level of incidental take that is anticipated from the proposed activity.

The landowner will not be responsible for loss of spotted owls or their habitat due to actions beyond their control (e.g. fire, wind, etc.).

4.6.1 Estimating potential incidental take

The incidental take estimate is a reflection of successful implementation of this Agreement because it largely represents the potential number of spotted owls that are provided habitat under this Agreement. This Agreement will enroll a maximum of 50,000 acres although some acreage may not be spotted owl habitat capable but will be inclusions (e.g., roads, rock outcrops, streams, buildings, etc.) within property boundaries. While it is impossible to predict how many acres will actually be enrolled and the future locations of spotted owls associated with the enrolled acres, we can provide a gross estimate of potential number of spotted owls that may be impacted. Most of the anticipated take will only potentially occur after habitat is created on the enrolled properties at some point in the future. As forest stands age, there may be some incidental take associated with management prior to the enrollee's Certificate of Inclusion expiration.

We expect the majority of incidental take will be associated with timber harvest activities such as thinning and clearcutting. Since the majority of the enrolled properties are likely to have a baseline of zero spotted owls/spotted owl habitat, incidental take, if it is going to occur at all, is most likely to occur decades into the future when spotted owl habitat is created and towards the end of the enrollment commitment when the landowner decides whether to return to baseline conditions. We anticipate that at least 25 percent of the enrolled properties will not be returned to their original baseline condition because they are either limited by the requirements under the Healthy Forest Reserve Program, or they voluntarily decide to continue to maintain older forest conditions for personal reasons, including aesthetic and environmental values.

Several studies, that are relevant to this analysis, have documented spotted owl densities. Thomas and others (1990, App. G) reported that in old growth study areas across northern California, Oregon, and Washington containing 19-73 percent of forests with trees greater than 160 years of age, there was a range of 2 to 36 owl pair sites per 100 square miles (64,000 acres) and a mean of 12.75 pairs. In Oregon, the Tyee Density Study Area northwest of Roseburg provides a reasonable example of the forested landscape to use as a reference because it includes a mixture of Federal lands interspersed with private lands. The total size of the area is approximately 253,280 acres and it has been monitored since 1985 (Forsman et al. 2009). In 2009, there were 44 pairs and 28 singles documented (Forsman et al. 2009) in this study area covering about 396 square miles.

In order to place the potential 50,000 acres of enrolled lands in a landscape setting, we will assume an affected area of 200,000 acres in order to account for the fact that the 50,000 acres will not be enrolled as a single block of contiguous land. Using the above studies to provide a rough density estimate we get approximately 80 individual spotted owls per 200,000 acres using the mean from Thomas and others (1990, App. G)and about 92 individual owls per 200,000 acres from Forsman and others (2009). We will use the higher value for our estimates. We also need to account for the quality of habitat likely to be generated under the Agreement and the likelihood of landowners returning to baseline conditions. We will assume that up to 25 percent of the habitat will not support nesting owls but will provide benefits to dispersing owls through foraging and roosting opportunities. This assumption is based upon the likely initial ages of enrolled forest stands (20-60 years old) and the duration of the Agreement for which the stands

will be allowed to develop improved spotted owl habitat characteristics. We will also assume that at least 25 percent of the enrolled lands will not be returned to baseline conditions at the end of their Agreement term in part because of those landowners who participate in the Healthy Forest Reserve Program and in part because some landowners are specifically interested in maintaining the aesthetic and environmental values of older forest conditions on their properties. This then equates to about 46 spotted owls that may be incidentally taken.

The incidental take will be in the form of harm or harassment. We do not anticipate death of adult owls associated with timber harvest activities, but we do anticipate impairment of breeding from temporary removal of suitable habitat conditions under the Agreement and potential removal of habitat at the ending years of the Agreement. We anticipate that in 50 years time, there will be additional suitable habitat generated across the landscape for spotted owls to utilize, especially on Federal lands, such that any loss of habitat under the Agreement will be minimized.

4.7 Monitoring and Reporting

Compliance Monitoring and Reporting. ODF will conduct compliance monitoring to determine if activities were carried out in accordance with this Agreement and the Stewardship Agreement. An annual report describing any covered activities taking place within the year of reporting shall be due no later than December 31 of each year, and shall include the following:

1. The number, locations, and total acres of enrolled properties;

2. Baseline conditions of newly enrolled properties;

3. Change in baseline conditions of any enrolled property due to a request by the landowner or a change that reflects going below established baseline conditions that was beyond the control of the landowner;

4. Current status of enrolled properties, including: (i) management actions implemented and outcomes if known; (ii) description of activities undertaken pursuant to this Agreement or related to forest management; and (iii) description of any activities that resulted in or may have resulted in incidental take of spotted owls, such as habitat modification or destruction, burning, etc.; and,

5. Expired or terminated Stewardship Agreements and Certificates of Inclusion.

ODF will contact each enrolled landowner annually to evaluate the landowner's implementation and maintenance of the conservation measures specified in the landowner's Stewardship Agreement, to identify any modifications of the conservation measures that may be necessary, and to discuss other spotted owl issues with the landowner.

At least one third of all enrolled properties will be visited annually by ODF to verify the landowner is in compliance with the Stewardship Agreement. All properties where incidental take was likely to occur will be visited to determine permit compliance. ODF shall maintain

accurate records for each property enrolled in this Agreement, and shall make these records available to the Service upon request.

4.7.1 Monitoring and Reporting for Individual Property Owners

Each landowner shall submit a monitoring checklist to ODF on an annual basis for the term of their Stewardship Agreement. A template for the monitoring report shall be provided to the landowner as part of their Stewardship Agreement (Appendix B). The landowner will be required to submit a completed template to ODF annually by November 30th.

It is also important for ODF and/or the Service to make occasional field visits to make certain the Stewardship Agreement is being properly implemented, to identify any unanticipated benefits or deficiencies, and to assist enrolled landowners in developing corrective actions when necessary.

The landowner shall allow the Parties or persons designated by any Party to enter the enrolled property for the general purposes specified in State Administrative Rule OAR 629-021-0800 and Federal regulations at 50 CFR § 13.21(e)(2). Agreed upon persons designated by a Party shall be allowed to enter upon the enrolled property at reasonable hours and times.

4.8 Unplanned Harvests

Emergency situations, such as natural disasters (wildfire, blowdown events, or insect infestations), or personal circumstances such as illness or death, may require harvesting. For above-baseline conditions, the enrolled landowner will notify ODF of their harvest as soon as possible and document the circumstances and actions taken in their annual report.

For emergency situations involving spotted owl nest sites/activity centers, the landowner will notify ODF before harvesting begins. ODF will consult with the Service and evaluate each case on an individual basis and will provide the landowner with direction as to how to maintain compliance with the Agreement and permit.

5.0 Responsibilities

5.1 The Service

The Service agrees to provide technical assistance and funding, if available, to ODF and/or enrolled landowners to assist with implementation of the Agreement and/or Stewardship Agreements. The Service will provide review and technical assistance on individual land management plans in advance of ODF's 21-day public comment period on the Stewardship Agreement.

Prior to ODF issuance of a Certificate of Inclusion, the Service will have 30 days to review the Stewardship Agreement and associated management plans, concurrent with ODF's 21-day public comment period, and inform ODF of any issues regarding inconsistency with the Safe Harbor Agreement. If these issues are not resolved, the Service will advise that the issuance of the

Certificate of Inclusion is not consistent with the Safe Harbor Agreement. If the Service does not respond by the close of ODF's public comment period, then ODF can assume the Service has no objections and issue the Certificate of Inclusion to the landowner.

The Service will evaluate the monitoring results and reports submitted by ODF, and coordinate closely with ODF after permit issuance, to insure compliance with the permit's terms and conditions.

5.2 ODF

ODF will be responsible for execution of this Agreement. ODF, the Service, and/or their respective agents will obtain the enrolled landowner's permission prior to entering the enrolled property for the purpose of ascertaining accuracy of the baseline conditions, compliance with the Stewardship Agreement, and for surveying spotted owls.

ODF will work with the Service in development of individual land management plans for landowners that wish to enroll under the Safe Harbor Agreement, including establishment of baseline conditions and ensuring a net conservation benefit is expected. Proposed baseline condition determinations and projected net conservation benefits will be reviewed and approved by qualified staff. If needed, ODF may request assistance from other potentially available sources such as the Oregon Department of Fish and Wildlife, NRCS, or the Service on matters regarding spotted owl habitat characterization. If surveys are not planned to determine baseline, ODF will use the best available information in determining suitable habitat that will become baseline. ODF will not issue Certificates of Inclusion if it is determined by ODF and/or the Service that the land management plan is not consistent with the Safe Harbor Agreement.

ODF will increase the public's awareness of this Agreement through a combination of public meetings, workshops, press releases, and direct consultations with landowners.

ODF is under no affirmative obligation to enroll a landowner during a particular time period when it does not have the financial or personnel resources to do so. ODF reserves the right to enroll landowners at a later date once sufficient financial or personnel resources are available. ODF shall be responsible for meeting all of its obligations under this Agreement relating to Stewardship Agreements for enrolled landowners (e.g., providing annual report templates and monitoring of the enrolled properties). ODF also agrees to notify the Service of any inability to meet the financial provisions of this Agreement. ODF will provide the Service with monitoring reports as required by the permit and Section 4.7 of the Agreement.

5.3 NRCS

NRCS will make funding available to qualified and competitively selected applicants under HFRP upon approval of Stewardship Agreements and site management plans. Funding is contingent upon annual appropriations from Congress and upon the State of Oregon being determined to be eligible to receive funding on an annual basis within any fiscal year. NRCS may also provide funding through other assistance programs under the terms of this Agreement.

NRCS will work cooperatively with ODF on the development and implementation of individual Stewardship Agreements/habitat restoration plans for those landowners who participate in NRCS programs. In the case of HFRP related agreements (restoration agreements or easements), NRCS will provide funding to ODF for enrollment of properties into the Agreement.

5.4 Oregon Department of Fish and Wildlife

The Oregon Department of Fish and Wildlife (ODFW), while not a signatory to this Agreement, has agreed to provide technical support to the Parties regarding spotted owl habitat characterization. The Parties may request the assistance of ODFW on matters relating to defining the baseline and determining the net conservation benefit.

5.5 Participating Landowner

The participating landowner is responsible for complying with all terms set forth by the Safe Harbor Agreement, Stewardship Agreement, and Certificate of Inclusion, including any requirements associated with receiving funding under the HFRP. The participating landowner will be responsible for any costs associated with baseline surveys and agreed upon management practices (however, see 5.6). The participating landowner will meet on an as-needed basis with ODF, the Service and/or NRCS to discuss any matters related to their Stewardship Agreement and Certificate of Inclusion. The parties involved will mutually agree upon the date, time, and location of these meetings.

It is the sole responsibility of the participating landowner to inform their successor(s) in interest or potential buyers about enrollment of the listed property under this Agreement. The participating landowner will be asked to provide ODF written notice, by certified letter, of a transfer of ownership within 30 days after closing. Upon transfer of the property to another owner, ODF will attempt to contact the new owner, explain the baseline responsibilities applicable to the property, and seek to interest the new owner in signing a new Stewardship Agreement to benefit spotted owls on the property with the same commitments as the original Stewardship Agreement. Upon change of ownership, the baseline will remain the same as originally determined, unless the Service advises that a revised baseline determination is needed. The new landowner will then have the opportunity to voluntarily enter into a new Stewardship Agreement with either the same commitments as the prior one, or revised commitments to meet the needs of the new landowner.

5.6 Shared Responsibilities of the Parties Regarding the Agreement

The Parties will meet on an as-needed basis to review the information contained in the monitoring reports or to discuss any matters related to this Agreement or the permit. Those meetings will provide an opportunity for resolutions of disputes regarding the implementation of this Agreement, compliance with the permit and to discuss amendments or modifications to this Agreement or the permit. The date, time, and location of these meetings will be mutually agreed upon by the Parties, as will a list of potential attendees and potential discussion topics.

If funding or staffing limits the ability to enroll landowners in a timely manner, the Parties will

prioritize the processing of potential enrollees based on evaluation of relative potential net conservation benefit, including consideration of acreage involved; juxtaposition to known spotted owls, large blocks of habitat, and lands reserved for the benefit of spotted owls; the amount of time above-baseline conditions are likely to remain on the property; and the anticipated time needed to enroll the property. Every effort will be made to enroll all interested property owners in a timely manner.

This Agreement shall be implemented consistent with applicable Federal, State, local, and Tribal laws and regulations. The Parties will ensure that the terms of the Agreement will not be in conflict with any ongoing conservation or recovery programs for the covered species.

5.7 Shared Responsibilities of the Parties Regarding Stewardship Agreements

The Service, ODF, and NRCS at their own discretion and with an enrolled landowner's permission, can provide technical, financial, and other assistance to the landowner in order to facilitate implementation of the conservation measures covered by a Stewardship Agreement.

5.8 Additional Conservation Measures

Nothing in this Agreement will be construed to limit or constrain any Party or any other entity from taking additional actions at its own expense, or through funding provided by NRCS or another source to protect or conserve the covered species.

6.0 Assurances to Enrolled Landowners

Safe Harbor assurances are assurances provided by the Service to a non-federal property owner that enters into a safe harbor agreement and is issued an enhancement of survival permit for the covered species. These assurances allow the property owner to alter or modify enrolled property back to the agreed upon baseline conditions if desired, even if such alteration or modification results in the incidental take of a listed species.

Through this Agreement and its associated permit, the Service provides ODF and the enrolled landowners with these regulatory assurances. These assurances are provided by enrollment in the Agreement through each Stewardship Agreement and Certificate of Inclusion issued by ODF. These assurances are also contingent on the enrolled landowner's compliance with the specific obligations contained within the Stewardship Agreement and Certificate of Inclusion. Further, the assurances apply only if the Stewardship Agreement is being properly implemented, and only with respect to species covered by the Stewardship Agreement.

7.0 Agreement Management

7.1 Safe Harbor Agreement Termination

This Agreement and the associated section 10(a)(1)(A) permit will be for the duration of 50 years. However, this Agreement may be terminated by ODF by providing the Service with at least 60 days advance written notice. ODF acknowledges that terminating this Agreement will result in a corresponding termination of the permit, which will lead to a loss of the regulatory assurances and spotted owl incidental take authority provided by the permit for both ODF and any enrolled landowners. ODF further agrees to relinquish the permit to the Service as soon as possible after terminating this Agreement. The Service will provide the enrolled landowners an opportunity to receive individual permits, or allow the enrolled landowners to be covered under the same Permit, with the Service as a permit holder, through Certificate of Inclusion if they so choose. The terms of the Permit and Certificate of Inclusion would not change.

The Service will not terminate this Agreement for any reason except for those set forth in 50 CFR §13.28(a)(1) through (5) and §17.32 or, unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied in a timely fashion.

7.2 Landowner's Stewardship Agreement Termination

The participating landowner may terminate their Stewardship Agreement with a written notice to ODF. In the case of HFRP related agreements (restoration or easements), any request for termination must be coordinated with NRCS as termination may violate the terms of the HFRP enrollment.

As provided for in Part 12 of the Service's Safe Harbor Policy (64 FR 32717), the landowner may terminate their Certificate of Inclusion for circumstances beyond the landowner's control. In such circumstances, the landowner may return the enrolled property to baseline conditions even if the management activities identified in Section 4.1.1 have not been fully implemented, provided that the landowner gives ODF the notification required by Section 4.7 above prior to carrying out any activity likely to result in the incidental taking of the covered species. If a landowner cancels a Stewardship Agreement without returning the enrolled property to the baseline conditions, and baseline conditions have increased, the above baseline conditions will be protected by the ESA's section 9 take prohibitions because the landowner's take authorization (via the Certificate of Inclusion) becomes invalid. If the landowner terminates the Stewardship Agreement for any other reason, the Certificate of Inclusion shall immediately cease to be in effect.

ODF has the right to cancel any Stewardship Agreement where the landowner is found to be in non-compliance with the terms and conditions of their Stewardship Agreement. If any landowner with a Certificate of Inclusion is found to be in non-compliance with the Safe Harbor components of their Stewardship Agreement identified in Section 4.1.1, ODF will notify the Service and issue a written letter of non-compliance to the landowner. The landowner shall have 60 days upon receipt of the letter to rectify the non-compliance issue. If the issue is not sufficiently resolved to the satisfaction of ODF by the end of the 60-day period, ODF shall

terminate the landowner's Certificate of Inclusion and all assurances granted under the Certificate of Inclusion.

If a landowner is in non-compliance with a Stewardship Agreement that is also funded through any of the NRCS financial assistance programs, NRCS will determine if additional programmatic actions need to be taken.

7.3 Agreement Amendments

Any party may propose modifications to this Agreement or the Permit by providing notice to the other parties. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on operations under this Agreement and permit and on the Covered Species. Minor modifications are deemed approved if all Parties are in agreement. However, the Service may give written notice that the proposed modification must be processed as a formal amendment because the Service has determined that such modifications would result in operational changes and/or greater adverse effects of incidental take not analyzed in connection with the original Agreement or that are new or significantly different from those analyzed in connection with the original Agreement.

Minor modifications to this Agreement processed pursuant to this subsection include but are not limited to the following: (a) corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning; (b) correction or updating of any maps or exhibits or to reflect previously approved amendments to the permit or modifications to this Agreement; (c) minor changes to survey, monitoring, or reporting protocols; and (d) conservation measures modified through the adaptive management provisions outlined in Section 4.4 of this Agreement.

Formal amendments may necessitate further review and analysis, including a Federal Register notice, public comment period, and other administrative compliance actions as required by the ESA and applicable laws, policies, and directives.

7.4 Agreement Renewal

This Agreement can be renewed or extended at any time during the life of the Agreement with or without modification upon the approval of all Parties, and upon compliance with all existing laws and regulations as appropriate.

7.5 Stewardship Agreement Renewal

An individual landowner's Stewardship Agreement can be renewed with or without modification with the approval of ODF and the consent of the participating landowner. If the renewed Stewardship Agreement will exceed the duration of this Agreement, the Certificate of Inclusion will expire at the end of this Agreement, unless both are renewed or extended.

7.6 Succession and Transfer

If the landowner transfers his or her interest in the enrolled property to a non-federal party, ODF

will regard the new owner as having the same rights and responsibilities with respect to the enrolled property as the landowner possessing a Stewardship Agreement and Certificate of Inclusion, if the new property owner agrees and commits in writing to become a party to a Stewardship Agreement and Certificate of Inclusion referenced in Section 4.1.1 and/or 4.1.2 above in place of the previous landowner.

7.7 Baseline Adjustment

In spite of management and protection efforts, there may be circumstances, through no fault of the landowner, where the landowner's environmental baseline is reduced or ceases to exist on the enrolled property. If the environmental baseline ceases to exist on the enrolled property, the enrolled landowner will not be held accountable for the loss if it is caused by a natural event (e.g., wildfire, windstorm, landslide) that has eliminated or rendered the habitat unsuitable.

The landowner must request a baseline reduction from ODF. The landowner must allow ODF access to the enrolled property to conduct a survey, if ODF so chooses. If ODF determines that the environmental baseline should be adjusted downward, ODF will seek the advice of the Service. The Service will have 60 days to respond to such a request. Based on the Service's advice regarding the proposal for a revised baseline, ODF may modify the Stewardship Agreement and Certificate of Inclusion to reflect the change in baseline responsibilities.

7.8 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.

7.9 Dispute Resolution

The Parties agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by all parties.

8.0 Additional Measures

8.1 Availability of Funds

This Agreement is large in geographic scope and long in duration. Therefore, precise funding requirements for the Agreement are difficult to predict. 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 and NRCS will not be required under this Agreement to expend any Federal agency's

landowners for potential take of northern spotted owls that occupy an area due to the efforts of enrolled landowners.

8.5 National Historic Preservation Act - Section 106

Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. 470 *et seq.*) requires Federal agencies to take into account the effects of their undertakings on properties eligible for inclusion in the National Register of Historic Places (NRHP). An undertaking is defined as a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency, those carried out with Federal financial assistance, those requiring a Federal permit, license or approval, and those subject to state or local regulation administered pursuant to a delegation or approval by a Federal agency. The Service's issuance of an enhancement of survival permit to ODF to support implementation of this Agreement may be considered a Federal undertaking subject to section 106 of the NHPA. ODF, NRCS and/or the Service have decided to consult with the State Historic Preservation Officer (SHPO) and federally recognized Native American Tribes, consider their comments on the potential impacts to historic properties resulting from the undertaking, and endeavor to incorporate their comments into project planning. NRCS will perform the necessary reviews and evaluation in conjunction with the HFRP.

Enrolled lands on which management activities are to occur and where incidental take is anticipated are the Area of Potential Effects (APE) for this Agreement. This definition of the APE is based on the fact that, before enrolling in a Stewardship Agreement, landowners can conduct any type of ground-disturbing activity outside of any potential environmental baseline associated with spotted owls. Activities within existing spotted owl habitat are significantly restricted due to the protections afforded listed species by the ESA. Therefore, any environmental baseline responsibilities identified at the time of signing the Stewardship Agreement are the only areas in which adverse effects to historic properties, such as archaeological sites, could increase as a result of implementation of the Agreement. Any archaeological surveys conducted for NHPA compliance will be restricted to the area inside the APE, unless the enrolled landowner consents in writing to ODF, NRCS or the Service to expand the survey boundaries.

ODF will utilize the following processes to determine the enrolling landowner's responsibilities relative to NHPA:

1. Enrolling landowners with no environmental baseline responsibilities on their property at the time of enrollment in a Stewardship Agreement will have no responsibility relative to NHPA, because there is no APE (i.e., no baseline spotted owls). Therefore, no archaeological surveys or further consultation between ODF and the Service will be required.

2. Enrolling landowners, whose environmental baseline responsibilities are known to not contain sites that are eligible or potentially eligible for the NRHP based on archaeological survey work conducted prior to or concurrent with the enrollment in the Stewardship Agreement, will have no responsibility relative to NHPA, because there will be no adverse effects to NRHP eligible

appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

8.2 No Third-Party Beneficiaries

This Agreement and associated Stewardship Agreements do 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 and associated Stewardship Agreements to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement and associated Stewardship Agreements. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

8.3 Other Federally Listed Species

The possibility exists that other listed species may occur in the future on the enrolled property as a direct result of the management actions specified in Section 4.1.1 and 4.1.2 above. If that occurs and the landowner so requests, the Parties may agree to amend the Agreement and associated Stewardship Agreements to cover additional species and to establish appropriate baseline conditions for such other species.

According to section 9 of the ESA, landowners will be subject to restrictions against "take" of any federally-listed species not covered by the permit. The term "take" as defined by the ESA, means to harass, harm, pursue, hunt, kill, trap, capture, or collect, or to attempt to engage in any such conduct. If other federally-listed species are known to exist on the enrolling property, then ODF and the Service will consult with and assist the landowner in tailoring their management actions to avoid take and to minimize any disturbance of these species. In the future, ODF and the Service may develop similar Safe Harbor Agreements for other listed species which landowners may choose to participate in individually or in combination

8.4 Neighboring Landowners

The Parties recognize the implications to neighboring landowners of the successful implementation of management actions on enrolled lands. Further, the Parties recognize and acknowledge that some landowners may be reluctant to initiate management actions that may have land, water, and/or natural resource use implications to neighboring landowners. The implications to neighboring landowners with non-enrolled lands will be assessed on a case-by-case basis. When the Parties believe that occupation of non-enrolled neighboring lands is likely, the Parties will make every effort to include the neighboring landowner in the Agreement through a Stewardship Agreement and Certificate of Inclusion using the procedures detailed in Section 4.1.1, thus extending the Safe Harbor assurances.

Safe Harbor policy allows the Service to use flexibility in addressing neighboring properties not covered under Safe Harbor Agreements. Safe Harbor policy also allows flexibility with regard to associated incidental take authorizations, including, but not limited to, granting of incidental take to neighboring landowners where occupation of their lands is expected as a result of a SHA. The Service may also exercise its prosecutorial discretion and not seek prosecution of adjoining

properties. The enrolling landowner shall provide ODF and/or the Service proper documentation of the finding of the archaeological survey. Consequently, no archaeological surveys or further consultation between ODF and/or the Service will be required. The enrolling landowner could undertake any management actions within the APE, including those that result in ground disturbance, provided that all other obligations in this Agreement and the enrolling landowner's Stewardship Agreement have been satisfied.

3. In cases where enrolling landowners agree in the Stewardship Agreement to avoid ground-disturbing activities within spotted owl habitat will have no responsibility relative to NHPA, because there will be no likely effects on historic properties even if they were present within the APE. Therefore, no archaeological surveys or further consultation between ODF and/or the Service would be required until and unless ground disturbing activities were planned in the APE. The voluntary limitation on ground-disturbing activities by the landowner would only apply to baseline responsibilities.

4. In cases where activities identified in the Stewardship Agreement will include unavoidable ground-disturbing activities within the APE enrolling landowners must determine, with the assistance of the SHPO, ODF, and the Service, whether sites eligible, potentially eligible, or are on the NRHP exist within the APE. The initial step in this determination will be a query by ODF of the SHPO archaeological sites files to determine whether archaeological surveys of the APE have been conducted and, if so, whether or not any NRHP potentially eligible or eligible sites are located within the APE. If no archaeological surveys have been conducted within the APE, the landowner will contact ODF to initiate consultation with the Service or SHPO who shall determine whether archaeological surveys are necessary (i.e., in some cases surveys may not be necessary due to the location of the APE on a landform that is unsuitable for historic properties) and, if surveys are necessary, discuss the survey requirements and other options (e.g., avoidance or protection) available with the enrolling landowner. Any necessary archaeological surveys must be conducted prior to implementation of the landowner's ground-disturbing activities.

All historic properties identified during surveys of the APE that are determined to be potentially eligible or eligible for the NRHP will be protected from ground-disturbing activities by the enrolled landowner pending an evaluation of the landowner's activities by ODF and/or the Service relative to NHPA. The enrolled landowner will submit to ODF and/or the Service a document or letter that outlines the landowner's planned activities within the APE, including the specific measures and/or silvicultural practices that would be conducted. This document will be used in the evaluation conducted by ODF and/or the Service to make a determination of effect concerning the planned activities to the relevant historic property, which will include the identification of proposed measures to avoid or minimize adverse effects to the historic property. The determination of effect would then be sent to the SHPO for comment. ODF and/or the Service will consult with the SHPO on their determination of effect, and, if either receives concurrence from the SHPO, ODF and/or the Service will provide the enrolled landowner and/or their agent with recommendations to minimize adverse effects to the historic property within the APE.

A list of activities that 1) have little to no potential to affect cultural resources and thus no further need for Section 106 review 2) have the potential to affect cultural resources and will need

further Section 106 consideration, and those that 3) have the potential to adversely affect significant cultural resources and will need further Section 106 review is provided below:

A. Activities that have negligible potential to affect historic properties. For these activities, no further Section 106 review is necessary.

1. Planting or seeding in disturbed areas such as harvest units, skid trails, landings, hotburned streamside areas, degraded meadows, cable corridors, and understory planting.
2. Pre-commercial thinning of trees less than 6" diameter.
3. Creation of snags.
4. Removal of single trees or other vegetation by manual felling, mowing, or use of herbicides with manual removal.
5. Timber harvest operations (such as cutting, skidding, yarding) that provide full suspension of logs, or operation on snow with minimum conditions of no less than 20 inches of snow cover, and daytime temperatures low enough to preclude thawing conditions.
6. Encroachment thinning using hand methods to lop branches and cut small trees, and leaving debris on the ground.
7. Use of existing material source sites where no expansion of the source or the existing footprint will occur.
8. Non-mechanized post and pole harvesting or pre-commercial thinning firewood cutting. Non-mechanized refers to the absence of conventional logging equipment. These projects, such as post and pole, pre-commercial thinning, and firewood cutting, could involve the use of a pick-up truck and a chainsaw.
9. Post harvest chipping operations on existing landings.
10. Maintenance of existing roads, such as grading, cleaning ditches, brushing, replacing culverts, guards, and gates, if the maintenance occurs within the existing road profile (i.e., in the same location and maintaining the same width).
11. Other activities which are non-ground disturbing, such as pest control.
12. Project activities which are entirely within areas previously surveyed by professional archaeologists for cultural resources and where no cultural resources were found.

B. Activities that may have some limited potential to affect historic properties. For these activities, the landowner will submit to ODF the legal description of the project location (township, range, section), a USGS 7.5' map of the project area, and a description of the proposed activities. Upon SHPO review, a letter to proceed or not will be issued.

1. Rocking non-native road surfaces (to armor against road surface erosion and maintain design drainage configuration against traffic impacts, especially where roads must remain open during wet periods).
2. Road decommissioning including ripping, culvert removal, out sloping, water barring, stabilization (following analysis) of potentially unstable fills, and seeding and planting native vegetation, and mulching, if needed.
3. Designated road or trail closures accomplished with gates, barricades, berms, and waterbars.
4. Seeding and planting, blading or the ripping of native or nonnative-surfaced roadways or trailways.

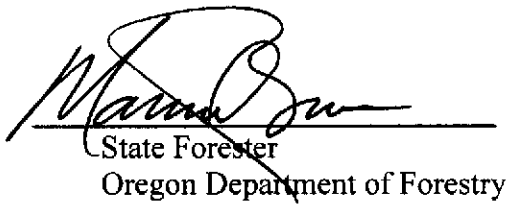
5. Mechanized single-tree salvage, post and pole harvesting, pre-commercial thinning and road maintenance where historic properties are not affected.
6. Prescribed burns where burning, line construction, or mop-up will not impact historic properties that consist of wooden structures or other fire sensitive features, or where special and proven protective measures are taken (e.g. wrapping, sprinklers) to preserve such features from fire effects.
7. Hazard tree removal using existing skid trails, roads, or other hardened surfaces.

C. Activities that may have the potential to adversely affect historic properties. For these activities, the landowner will contact ODF. ODF will consult with qualified archaeologists from the FWS and/or SHPO who will determine the appropriate level of archaeological survey that may be needed.

1. Mechanized logging.
2. Prescribed burns in areas where it will adversely affect historic properties. In general, low intensity burns are likely to have negligible effects to cultural resources. Thus, fire effects to cultural resources vary depending on temperature and duration (i.e., higher temperatures and/or longer duration of exposure to heat increase the potential for damage; other variables to consider include fuel type, fuel load/distribution, moisture content of fuels, soil type, soil moisture, weather and terrain).
3. Construction of new roads.

9.0 Authorizing Signatures

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 referred to in Section 2.1 above



7/19/10

State Forester
Oregon Department of Forestry — Date

07/13/10

State Conservationist
Natural Resources Conservation Service — Date

7/26/10

State Supervisor
U.S. Fish and Wildlife Service — Date

Appendix A. Safe Harbor Agreement Landowner Certificate of Inclusion Template

CERTIFICATE OF INCLUSION

This certifies that the property described as follows [**(description of property enrolled under Safe Harbor permit)**] owned by [**Cooperator's name**], is included within the scope of Permit No. [**(permit number)**], issued by the U.S. Fish and Wildlife Service to the Oregon Department of Forestry, on [**(date)**], and expiring on [**(date)**] under the authority of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539(a)(1)(A). Such Permit authorizes activities, consistent with the Safe Harbor Agreement, by participating landowners (Cooperators) which is expected to provide habitat for northern spotted owls or otherwise restore natural habitat occupied by the species. Pursuant to that Permit and this Certificate of Inclusion, the holder of this Certificate is authorized to engage in any otherwise lawful activity that is consistent with the Agreement on the above described property which may result in the incidental taking of northern spotted owls. Management activities are subject to the terms and conditions of said Permit and the terms and conditions of the Safe Harbor Agreement entered into pursuant thereto by the Service, the Oregon Department of Forestry, and the USDA Natural Resources Conservation Service on [**(date)**], that becomes binding upon [**Cooperator's name**], on the date and signature herein.

_____ _____

Name of Permittee Date

_____ _____

Participating Landowner Date

Appendix B. Landowner Monitoring Checklist.

1. Were surveys conducted for spotted owls? If so, list protocol used, if any measures were taken to address the potential effects of the presence of barred owls, surveyors' names with contact information, and summarize results.

2. Did you conduct any forest management activities or forest operations? If so, review the check-list below and report regarding activities that applied to you.

In Baseline Habitats

Forest Management Activities	**Quantity**	**Notes**
Thinning *(acres)*		
Snag Creation *(number)*		
Downed Log Creation *(number)*		
Group selection harvest *(acres treated, size of openings)*		
Single tree selection harvest *(acres)*		
Road De-commission *(miles)*		
Planting, release, retention of mast-producing trees *(list treatment type—number treated)*		
Other—list and describe any other forest management activities that occurred		

Safe Harbor Landowner Annual Monitoring Checklist

In Non-baseline Habitats

Activity	Quantity	Notes
Thinning (acres)		
Snag Creation (number and size)		
Downed Log Creation (number and size)		
Group selection harvest (acres treated, size of openings)		
Single tree selection harvest (acres)		
Road De-commission *(miles)*		
Planting, release, retention of mast-producing trees *(list treatment type—number treated)*		
Retention of clumps or scattered live trees in clearcut harvests		
Retention of wide, well-stocked stream buffers in or adjacent to clearcuts		
Other—list and describe any other forest management activities that occurred		

Appendix C.

Site specific Management Measures

The Service, ODF, and NRCS have worked cooperatively to identify conservation activities necessary to provide a net conservation benefit for the northern spotted owl. These include both intensive and passive management. The specific management activities that will be identified in the Stewardship Plan and implemented by the landowner will vary on a case-by-case basis due to site-specific factors, which include, but are not limited to, whether or not spotted owls are present on the enrolled property, stand age and quality of suitable habitat, context from surrounding lands, and the landowner's management goals and objectives.

The following description of habitat elements is taken from the final critical habitat rule for the northern spotted owl (Federal Register 2008) and should be used as a reference for future habitat development:

Nesting habitat. Nesting habitat is essential to provide structural features for nesting, protection from adverse weather conditions, and cover to reduce predation risks. It includes a moderate to high canopy closure (60 to 80 percent); a multi-layered, multi-species canopy with large (generally greater than 30 inches (in) (76 centimeters (cm) diameter at breast height (dbh)) overstory trees; a high incidence of large trees with various deformities (e.g., large cavities, broken tops, mistletoe infections, and other platforms); large snags; large accumulations of fallen trees and other woody debris on the ground; and sufficient open space below the canopy for northern spotted owls to fly. Patches of nesting habitat, in combination with roosting habitat (see below) must be sufficiently large and contiguous to maintain northern spotted owl core areas and home ranges, and must be proximate to foraging habitat (see below). Nesting habitat can also function as roosting, foraging, and dispersal habitat.

Roosting habitat. Roosting habitat is essential to provide for thermoregulation, shelter, and cover to reduce predation risk while resting or foraging. It differs from nesting habitat in that it need not contain those specific structural features used for nesting (such as cavities, broken tops, mistletoe platforms, and other platforms), but does contain moderate to high canopy closure (60 to 80 percent); a multi-layered, multi-species canopy; large accumulations of fallen trees and other woody debris on the ground; and open space below the canopy for northern spotted owls to fly. Roosting habitat will also function as foraging and dispersal habitat, but not as nesting habitat due to lack of nesting structures.

Foraging habitat. Foraging habitat is essential to provide a food supply for survival and reproduction. It contains some roosting habitat attributes but can consist of more open and fragmented forests, especially in the southern portion of the range where some younger stands may have high prey abundance and structural attributes similar to those of older forests, such as moderate tree density, subcanopy perches at multiple levels, multi-layered vegetation, or residual older trees. Foraging habitat can also function as dispersal habitat.

Potential Management Measures:

As discussed above, we do not provide specific management prescriptions in this Agreement due to the diversity of forest conditions and individual landowner constraints. Management prescriptions will be developed on a property by property basis to meet landowner goals and objectives in a manner expected to provide a net conservation benefit to spotted owls. The following list provides examples of management measures that would be expected to produce net conservation benefit for spotted owls.

1. Forests can just be allowed to grow with no management during the term of the Agreement (no entry).

2. Even-aged stands can be thinned to provide increased growth opportunities and to encourage the development of additional canopy layers in the understory. Thinning should include removal of co-dominants to open up the canopy to provide enough sunlight to encourage natural regeneration or green up of suppressed sub-canopy trees. In stands that are primarily composed of a single species from initial stocking of previously harvested areas, and where there are insufficient seed sources or seedlings of other species that are typical of the area, additional seedlings should be planted so as to add species and canopy height diversity. Typical underplantings could include Douglas-fir, western hemlock, western red cedar, Sitka spruce, and silver fir. Hardwood species, especially outside of riparian areas, should not be targeted for removal since they can add important diversity for both spotted owls and their prey. Variable density thinning and the creation of small gaps are optional thinning variations that are encouraged. Thinnings should maintain at least 40 percent canopy to allow for growth and temporary light enhancement while also maintain habitat conditions that spotted owls can use immediately post harvest.

   As guidance to uneven-aged management (individual tree selection), no more than 15 percent of the basal area of any diameter class (>6 inches dbh) should be cut in any 10-year period. Trees >28 inches dbh are removed from (i.e., allowed to grow out of) the diameter-class harvesting pool and are retained for spotted owl habitat and candidates for snags and large down wood. Trees less than 6 inches dbh may be thinned to eliminate tree-to-tree crowding with provisions to maintain a species mix. "Take" trees are defined as those with desirable wood product characteristics (e.g. straight and free of defect) but includes other trees to achieve a balanced diameter class distribution over time. "Leave" trees will include a sufficient number with wildlife value (e.g. cavities, crotches, perch limbs, candidates for snags). On-site field selection of trees will be a critical step, particularly in initial entries. If prescribed, patch cuts will retain 15 percent of the basal area of conifer trees with residual trees chosen based on wildlife value (e.g., cavities, crotches, candidates for snags, large diameter), including at least 2-4 of the largest diameter conifer trees.

   Patch cuts of less than 2 acres and preferably less than 1.2 acres can be used to add diversity to even-aged stands and to allow for timber revenue, provided no more than 10 percent of any stand is removed.

3. Main skid trails will be designated and reused to reduce site impacts from repeated entries.

4. If standing dead or partially dead trees of appropriate species, diameter, spacing and decay class are not present, live trees will be recruited to mimic older forest conditions that support spotted owls. Retain all snags greater than 10 inches dbh. Create additional snags and downed wood, if needed. Conifer trees (a running long-term average of at least 4 trees/ac) ideally greater than 20 inches dbh, and preferably greater than 24 inches dbh, if present, can be girdled at the base or topped by either hand or machine, depending on slope/equipment constraints. If larger diameter candidate snags cannot be recruited due to being in an even aged young stand, then the minimum diameter will be at least 12 inches. The minimum height of snags will be at least 30 feet (or as high as thinning equipment will reach).

5. Most stands of younger age classes (<35 years), lack large down wood, which is important for small mammal (prey) habitat. Recruiting or importing large wood to be placed in direct contact with the forest floor will put managed stands on an improved trajectory for spotted owl habitat conditions until later stand development creates a more natural input of larger diameter wood from retained snags and legacy trees. The ideal target diameter would be 20 inches or greater. Given the smaller average diameters currently present, logs could be dropped near one another to simulate larger downed wood. Larger cull logs, if available from nearby properties, could be imported. Running long-term average numeric targets would be at least seven conifer down logs per acre that are at least 12 inches dbh and 16 feet long, or an equivalent amount of smaller logs dropped near one another (small logs at least 16 feet long) per acre that simulate large wood. As these stands mature, larger diameter (>20 inches) down wood should be recruited. The spatial distribution of downed wood should be varied, i.e., non-uniform across the treated area.

6. Currently, many even-age managed stands lack species diversity and often have low numbers of trees that have the potential to help produce the more valued habitat provided by multi-storied, multi-species canopies. Ideally, the long term management practices of thinning or uneven aged management with retention of legacy trees will help improve diversity and multiple canopies and tree ages. This practice would either plant (if stocking is low) or under-plant (in stocked but thinned stands) a diversity of native trees (including e.g., western red cedar, western hemlock) that will help to form a multi-storied canopy in the future. Site clearing for each tree and post-planting vegetation management are important components of this practice if they are to be successful. Underplanting will typically be at a lesser rate than planting of open areas. Clustering and clumping of planting/underplanting will incorporate a variable density to create diversity in the resulting stand.

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