

Record of Decision

Proposed Issuance of a Multiple Species Incidental Take Permit for the Fruit Growers Supply Company Multi-Species Habitat Conservation Plan

U.S. Fish and Wildlife Service

November 2, 2012

Appendices

Appendix A Public Comments Pertaining to the Final HCP and Final EIS

This document should be cited as follows:

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1. INTRODUCTION

This Record of Decision (ROD) was developed by the U.S. Fish and Wildlife Service (USFWS) in compliance with its decision-making requirements, pursuant to the National Environmental Policy Act (NEPA). The purpose of this ROD is to document the USFWS's decision in response to an application submitted by the Fruit Growers Supply Company (FGS) under Section 10 of the federal Endangered Species Act (ESA or Act) for an Incidental Take Permit (ITP) for take of the northern spotted owl, listed as threatened under the ESA, and for regulatory assurances for impacts to the Yreka phlox, listed as endangered under the Act, resulting from FGS's timber operations. Information contained in this ROD is based on the ITP application and supporting Final Multi-Species Habitat Conservation Plan (HCP) dated March, 2012, the Final Environmental Impact Statement (EIS) dated June, 2012, and all other supporting materials. In conjunction with the company's ITP application to the USFWS, FGS has applied to the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NMFS) for an ITP for the threatened Southern Oregon/Northern California coho salmon, and the currently unlisted Klamath and Trinity rivers Chinook salmon and Klamath Mountains Province steelhead, also relying on the supporting HCP and joint NMFS and USFWS (together "the Services") Draft and Final EIS. The NMFS has prepared a separate Record of Decision, Statement of Findings, and Biological and Conference Opinion with regard to issuance of its ITP.

This ROD is designed to: (1) state USFWS' decision and present the rationale for that decision; (2) identify the alternatives considered in the Final EIS in reaching the decision and discuss the factors considered in making the decision; and (3) state whether all means to avoid or minimize environmental harm from implementation of the selected alternative have been adopted, and if not, why they were not (40 CFR §1505.2).

2. PROPOSED ACTION

2.1 Purpose and Need

The purpose and need of USFWS' action are 1) to respond to FGS's application for an incidental take permit under the ESA to allow incidental take of listed species resulting from commercial timberland operations conducted on the FGS lands in accordance with the proposed HCP, and 2) to provide broad protection and conservation for listed and unlisted species and their habitats during the applicant's timber management activities to ensure compliance with the ESA. The applicant's needs and goals are to 1) provide cost-effective measures to minimize and mitigate the incidental take of listed species that may occur on or near its lands as a result of its timber operations in compliance with the ESA, and 2) ensure long-term economically feasible timber operations.

2.2 Project Description

In the fall of 2009, FGS applied to USFWS for authorization to allow the incidental take of the threatened northern spotted owl (*Strix occidentalis caurina*). Although take of plant species is not prohibited under the ESA, and therefore cannot be authorized under an ITP, the application

also listed the endangered Yreka phlox (*Phlox hirsuta*) as a Covered Species in recognition of the conservation benefits provided to the species under the FGS HCP¹. The ITP application includes an HCP that addresses the potential for take that may result from FGS's lawful timber management activities under the HCP and specifies measures FGS will undertake to minimize and mitigate the impacts of such take and provide for the conservation of listed species. The permit would cover forest management activities on approximately 152,178 acres of forestland owned by FGS located in Siskiyou County, California. The requested permit is expected to (1) provide long-term regulatory stability for forest management activities; (2) result in minimization and mitigation of the impacts of take of the covered species to the maximum extent practicable; and (3) provide a regulatory climate and structure that provides for ESA assurances to FGS while incorporating a terrestrial species conservation strategy that protects, maintains, and improves northern spotted owl and Yreka phlox habitat over time.

Approval of FGS's ITP application by USFWS would allow the incidental take of northern spotted owl as a result of otherwise lawful timber harvesting and forest management activities conducted on FGS's lands in accordance with the HCP and Implementing Agreement (IA). FGS developed its HCP with technical assistance from the Services. The duration requested for the ITP is 50 years.

The following is an expanded description of the lands, species, and activities proposed for coverage under the ITP and the associated protection measures to be implemented by FGS.

2.3 Plan Area

The permit area boundary for the ITP covers FGS's Hilt/Siskiyou ownership located in Siskiyou County in northern California. The ownership consists of three management units defined by FGS: Klamath River, Scott Valley, and Grass Lake, covering 65,339, 39,153, and 47,686 acres, respectively for a total of 152,178 acres. FGS's Klamath River and Scott Valley management units are located west of Interstate 5, adjacent to and intermixed with Klamath National Forest (KNF) lands. FGS's Grass Lake management unit (also adjacent to the KNF) lies east of Interstate 5 and predominantly north of State Highway 97. These areas constitute the "Initial Plan Area." As commercial timber management often includes buying and selling of small parcels of land as part of a routine business practice, the HCP allows for a 10 percent reduction in or addition to the Initial Plan Area over the permit term accordance with certain restrictions in the IA. Any addition of lands to the ITP is restricted to lands acquired by FGS within the three management units analyzed in the HCP and EIS (the "Adjustment Area"). Additions or contractions to the plan area beyond the conditions stated above would require an amendment of the HCP and ITP.

2.4 Covered Species

The species proposed for coverage by the USFWS ITP are the threatened northern spotted owl and the endangered Yreka phlox. The NMFS ITP would apply to three ESUs: threatened Southern Oregon/Northern California Coast (SONCC) coho salmon, unlisted Klamath and Trinity rivers Chinook salmon, and unlisted Klamath Mountains Province steelhead.

¹ "Take" as used in the ROD in reference to the Yreka phlox refers to impacts to the species.

2.5 Covered Activities

FGS's seeks take authorization for forest practices and related land management activities occurring within the Plan Area, and those activities necessary to carry out all mitigation and conservation measures identified in the HCP and/or the ITPs (e.g. terrestrial monitoring). These include activities associated with timber harvest, road construction and maintenance, silviculture, stand regeneration, harvest of minor forest products, and fire prevention. Collectively, these are referred to as 'covered activities.' All covered activities will be implemented in accordance with the HCP and ITPs, the California Forest Practice Rules (CFPRs), and other applicable federal and state regulations. A complete list of covered activities is provided in Chapter 2 of the Final HCP. FGS did not include the application of herbicides or pesticides as covered activities in the HCP or ITP; however, FGS remains subject to federal and state herbicide and pesticide regulations.

2.6 Protection Measures and Conservation Strategies

The HCP includes species protection measures for the Yreka phlox and northern spotted owl. Section 5.3 of the HCP describes the Terrestrial Species Conservation Program, which includes measures to survey, monitor, and avoid disturbance of Yreka phlox populations, and provisions to minimize, mitigate, and monitor impacts of incidental take of northern spotted owl caused by covered activities.

Northern Spotted Owl

The overall biological goal for northern spotted owl is to contribute to the sustainable maintenance of the local and regional populations of owls through both species and habitat objectives. Five specific objectives were developed to meet this biological goal:

Objective 1: Demographic Support. FGS will establish Conservation Support Areas (CSAs) on its ownership to provide demographic support to northern spotted owls associated with 24 strategic activity centers located on or within 1.3 miles of the FGS ownership, and whose home ranges are in close proximity to Critical Habitat Units (CHUs) located on federal lands. FGS will adhere to habitat commitments for each CSA identified in Appendix D of the FGS HCP in addition to maintaining or creating general habitat conditions and features associated with owl habitat, such as a multi-layered mature forest, large trees, hardwoods, large down woody material, and snags. Selected nesting/roosting and foraging habitat in these areas will be maintained, and strategic locations with the potential to grow into suitable habitat will be managed to promote use by northern spotted owls in the future.

Objective 2: Riparian Management. The HCP will provide foraging and dispersal opportunities for the northern spotted owl across the landscape by establishing Watershed and Lake Protection Zones (WLPZs) that promote growth in stands toward a more mature state with a high level of overstory canopy coverage and legacy structures, such as old large trees, snags, and downed wood.

Objective 3: Dispersal Habitat. The HCP will contribute to a general trend of increased quality and quantity of northern spotted owl dispersal habitat across the ownership over the term of the ITP. Dispersal habitat, at a minimum, consists of stands with adequate tree size and canopy closure to provide protection from avian predators and at least minimal foraging opportunities.

Objective 4: Incidental Take Minimization. The HCP will avoid and minimize take of northern spotted owls resulting from authorized timber harvesting operations through a combination of: (1) seasonal timing restrictions; (2) pre-harvest surveys; and (3) on-site monitoring by a qualified biologist.

Objective 5: Threat Management. The HCP will help manage known threats to the northern spotted owl, including actions that: (1) survey, monitor, and control barred owls through management actions within the Plan Area; and (2) reduce the potential for catastrophic wildfire on the FGS ownership by implementing stocking control and fuel maintenance measures within the CSAs.

Yreka phlox

The overall biological goal for Yreka phlox is to contribute to the sustainable maintenance of the local and regional populations of Yreka phlox through both species and habitat objectives. Two specific objectives were developed to meet this biological goal:

Objective 1: Avoidance of Adverse Effects. The HCP will avoid direct or indirect adverse effects to, or destruction of known or discovered populations of, Yreka phlox resulting from timber harvesting operations through a combination of: (1) botanical surveys on FGS lands with soils derived from ultramafic parent material that are within the area of high to moderate likelihood of occurrence of Yreka phlox to identify undiscovered populations; (2) establishment of equipment exclusion zones (EEZs) around known and discovered populations; and (3) pre-activity surveys prior to Covered Activities that could adversely affect Yreka phlox as required by the State of California during timber harvest plan (THP) review.

Objective 2: Sustainability. The HCP will contribute to the conservation and recovery of the Yreka phlox by development and implementation of a monitoring program for known and discovered populations of Yreka phlox on FGS lands that will provide information on species status, distribution, and threats to the populations in the Plan Area.

2.7 Monitoring and Adaptive Management

Chapter 7 of the HCP and sections 8 and 11 of the IA address the integrated monitoring and reporting programs under the proposed action. These sections describe how FGS and the Services will evaluate uncertainties in the HCP to ensure that the conservation measures in the HCP are being implemented adequately and are meeting the plan's goals and biological objectives. While they do not constitute a formal adaptive management strategy, the monitoring and reporting programs described in these sections will assist in determining if and when it is necessary to change the plan's conservation measures to achieve the plan's biological objectives.

3. ALTERNATIVES

Four alternatives were analyzed in the EIS, including a no action alternative and three action alternatives. The alternatives included (1) No Action; (2) Issuance of separate ITPs by the USFWS and NMFS and implementation of the HCP (Preferred Alternative and Proposed Action); (3) Issuance of a USFWS ITP for northern spotted owl and NMFS ITP for Chinook salmon, coho salmon, and steelhead based on conservation strategies derived from the Northwest Forest Plan (NWFP) for protecting late-successional reserves (LSRs) and aquatic habitats (Alternative A), respectively); and (4) Issuance of a USFWS ITP for northern spotted owl, with spotted owl conservation based on management of foraging and dispersal habitat across the Plan Area (Alternative B). Under this alternative the applicant's operations and activities would be subject to the terms and conditions of an owl HCP as well as existing regulatory standards. Salmonid conservation would be based on CFPR requirements (14 CCR 916.9, 936.9), but NMFS would not issue an ITP for coho salmon, Chinook salmon, and steelhead (Alternative B).

The following is a brief description of the four alternatives that were analyzed in detail.

3.1 No Action Alternative

Under the No Action Alternative, the Services would not issue take authorization to FGS under ESA Section 10(a)(1)(B). Instead, FGS would remain subject to the ESA's prohibition on unauthorized take, and the Services would enforce the prohibition against take of listed species through Section 9 of the ESA by prosecuting violations of the ESA. As appropriate, FGS would remain subject to State regulatory requirements to avoid or mitigate adverse effects of timber harvesting on all wildlife, including species listed or proposed for listing under the Federal and State ESAs.

Under the No Action Alternative, no ITP would be issued for aquatic or terrestrial species. FGS would not establish CSAs on its ownership to provide habitat for northern spotted owls associated with the 24 strategic activity centers. Northern spotted owl habitat management and nest site protection measures would be implemented through CAL FIRE's THP review process, which would require every proposed THP located within the range of the northern spotted owl to follow one of the procedures required in Subsections 14 CCR 919.9 [939.9] (a)-(g) to avoid "take" of northern spotted owls. In order to make a "take" determination and to assure compliance with the disclosure requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Forest Practice Act) and California Environmental Quality Act (CEQA), CAL FIRE ensures that all THPs incorporate sufficient THP level information related to the occurrence of northern spotted owls, their associated habitats, and enforceable protection measures. The THP take evaluation would be based on the current habitat standards in the CFPRs, which specify less quantity and lower quality habitat within the core area and home range around owl activity centers to avoid take of northern spotted owls compared to protections under the Proposed Action. The USFWS's experience with interior California THP review from 2000-2009 indicates that the CFPRs regulating timber harvest during the 1990s did not necessarily prevent significant effects to activity centers resulting from the continual reduction of habitat quality within owl home ranges overlapping timber harvest plans. Extensive review has suggested that

in many cases, the cumulative effects of repeated entries within spotted owl home ranges reduces habitat quality and leads to reduced occupancy rates and apparent site abandonment (USFWS 2008). Under the current CFPRs, if an activity center is determined to be unoccupied following established protocols, all habitat within the home range can be removed without compensatory mitigation. The No Action Alternative would not require habitat associated with unoccupied activity centers to be maintained and would not require habitat associated with either unoccupied or occupied activity centers to be allowed to grow into higher quality habitat. Also under the No Action Alternative, FGS would not participate in management of threats to the northern spotted owl, including actions to survey, monitor, and control barred owls.

Under the No Action Alternative, FGS has indicated that in order to achieve its timber harvest goals, company would need to harvest more intensively across a larger area to compensate for timber volume rendered unavailable due to the prohibition on take of northern spotted owls. Although restricted within spotted owl activity centers, this widespread intensive harvest would result in more disturbance in a larger extent of upland and riparian forests. This would result in both short- and long-term changes to the forest structure that would be likely to adversely alter habitat conditions for the northern spotted owl. The landscape over time would become younger and more fragmented, thereby resulting in forest conditions that are less favorable to spotted owls.

Under the No Action Alternative, FGS would incorporate site-specific measures into THPs as necessary for the purpose of avoiding significant adverse impacts to Yreka phlox. FGS would perform detailed pre-activity surveys at the THP-level as required under the State THP review process for Yreka phlox prior to operations that could directly (e.g. removal, destruction) or indirectly (e.g., changes in hydrology, introduction of invasive weeds) impact Yreka phlox. FGS would protect known and discovered occurrences on its ownership by establishing an equipment exclusion zone (EEZ) with a minimum width of 150 feet around each known or discovered occurrence to reduce external influences and allow for expansion of populations. There would be no heavy equipment operations within the EEZs established around Yreka phlox occurrences, except for on existing roads. FGS would avoid potential indirect impacts from road construction near known and discovered populations through placement/deposition of fill material and culverts in such a manner and in areas that will not adversely affect Yreka phlox populations. Road design and specifications will consider and avoid indirect impacts to known and discovered populations caused by compaction and alteration of slope drainage.

Under the No Action Alternative, FGS would not be required to conduct botanical surveys to identify undiscovered phlox populations, use certified weed-free mulch within the EEZs established around Yreka phlox occurrences, or place restrictions on the felling and yarding of trees within the EEZs. There would be no monitoring program to provide information on species status, distribution, and threats to the populations in the area. FGS would not be required to notify USFWS about invasive weed detections or facilitate implementation of invasive weed control measures.

Under the No Action Alternative, continued collaboration between USFWS and FGS will likely be less than under the Proposed Action because there would be no requirement of a comprehensive terrestrial monitoring and reporting program under the No Action Alternative, and USFWS would not have a role in reviewing monitoring results or participating in informal

adaptive management. In addition, under this alternative, a greater probability of timberland conversion to development or agricultural uses would exist because FGS would possess less regulatory certainty regarding the long term viability of timber production on its ownership. Such conversions could result in the loss of spotted owl habitat, and adverse impacts to listed and unlisted species.

3.2 Proposed Action (Preferred Alternative): Issuance of an Incidental Take Permit by USFWS and Implementation of the Proposed HCP

Under the Proposed Action, the Services would issue ITPs to FGS based on implementation of the proposed HCP. The USFWS would issue FGS an ITP with a term of 50 years covering northern spotted owl and Yreka phlox, two listed terrestrial species. NMFS would issue FGS an ITP, also with a 50-year term, for listed SONCC coho salmon and currently unlisted Upper Klamath and Trinity Rivers Chinook, and Klamath Mountains Province steelhead. The HCP incorporates conservation programs developed through extensive discussions with the Services.

In general, the types of timber harvest and associated activities would be similar to those described for the No Action Alternative. However, FGS would establish CSAs on its ownership to provide habitat for northern spotted owls associated with 24 strategic activity centers. Within these carefully selected CSAs, which would encumber approximately 23,000 acres of FGS' ownership, timber harvest would be restricted beyond the requirements of the CFPRs. FGS would be allowed to harvest within the currently suitable northern spotted owl habitat on its ownership outside of the CSAs under the Proposed Action. However, even in the absence of the ITP, it is likely that FGS would be able to harvest much of this habitat over time under existing regulations. This is because much of the habitat classified as "suitable" is of low quality and has a low probability of supporting spotted owls over time, and take avoidance guidelines under the CFPRs only protect currently occupied habitat. Under the Proposed Action, an overall reduction of intensive even-aged regeneration harvest of suitable habitat is anticipated in comparison with the No Action Alternative, which would somewhat reduce the effects of harvesting suitable habitat. Under the Proposed Action, it is anticipated that there would be about a 10 percent decrease in acres harvested each decade, including as much as a 25 percent decrease in even-age regeneration harvest compared to the No Action Alternative. This reduction in clearcutting of moderate-complexity stands would allow these and other stands to grow into suitable northern spotted owl habitat over the FGS ownership throughout the duration of the permits.

Potential benefits to listed species under the Proposed Action would generally be greater than under the No Action Alternative. The Terrestrial Species Conservation Program's species protection measures for the Yreka phlox and northern spotted owl are described above under section 2.6 (Protection Measures and Conservation Strategies).

The Proposed Action would require retention of a greater quantity and higher quality habitat within the core areas and home ranges of the 24 mitigation sites than is currently required under the CFPRs, and requires retention of specific amounts of nesting/roosting habitat and foraging habitat in each core and home range area. Unlike the CFPRs, the habitat retention standards under the Proposed Action clearly define nesting/roosting and foraging habitat using common forest metrics such as basal area and number of trees in specific diameter classes and specify what proportion of the total amount of nesting/roosting and foraging habitat in the core area and

home range will be high- and moderate-quality habitat. The Proposed Action is an improvement over the current CFPRs because it requires habitat within CSAs to be maintained and allowed to grow into higher quality habitat throughout the permit term, regardless of occupancy status of the mitigation site.

Incidental take of listed plant species on private lands is not prohibited under the ESA and is therefore not authorized under an ITP. However, under the Proposed Action, Yreka phlox would be a covered species in recognition of the conservation benefits provided for the species by the HCP and to extend assurances to that species under the “No Surprises” rule. The conservation measures for Yreka phlox under the Proposed Action are similar to and consistent with the species protection measures described above in Section 3.1 for the No Action Alternative, with the addition of botanical surveys to identify undiscovered phlox populations, use of certified weed-free mulch within the EEZs established around Yreka phlox occurrences, and restrictions on the felling and yarding of trees within the EEZs. Detailed pre-activity surveys to avoid adverse impacts to Yreka phlox would be conducted at the THP level as under the No Action Alternative. Under the Proposed Action, a monitoring program would be developed and implemented for known and discovered populations of Yreka phlox on the ownership to provide information on species status, distribution, and threats to the populations in the area. Monitoring would focus on habitat conditions and threats to known populations within the occupied habitat and the EEZ established around each known or discovered occurrence. Invasive weeds have specifically been identified as a threat to Yreka phlox. If invasive weeds with the potential to harm Yreka phlox are detected in the monitoring areas, FGS would notify USFWS within 10 days and would help to facilitate (e.g., through providing access to and across the ownership) implementation of invasive weed control measures deemed appropriate by the USFWS.

Another benefit of the Proposed Action compared to the No Action Alternative is that the HCP would implement a comprehensive terrestrial monitoring and reporting program upon permit issuance. Data gathered through HCP terrestrial monitoring can be used to make prescriptive changes to the HCP through informal adaptive management, if necessary, and USFWS would remain in a position to continue to work collaboratively with FGS through review of its monitoring data and implementation of adaptive management. Under current CFPRs, this level of monitoring and reporting is not required.

Finally, issuance of ITPs would provide greater regulatory certainty to FGS, which in turn may prevent conversion of timberland to other uses. Conversions could result in the loss of species habitat, resulting in potentially negative impact to listed and unlisted fish and wildlife. Thus, issuance of ITPs would result in long-term protections for listed species by protecting their habitats, and ensuring such habitats remain intact for the duration of the permits.

3.3 Alternative A: Conservation Strategies for Aquatic and Terrestrial Species Based upon the Framework Established in the Northwest Forest Plan

Under Alternative A, the USFWS would issue an ITP for northern spotted owl; NMFS would issue an ITP for Chinook salmon, coho salmon, and steelhead. The applicant’s operations and activities would be subject to the terms and conditions of the modified HCP as well as existing regulatory standards. Northern spotted owl conservation areas would be based on the Northwest Forest Plan (NWFP) system of late-successional reserves (LSRs) and the Aquatic Species

Conservation Program would be based on concepts outlined in the NWFP for the protection of aquatic habitats.

In general, the types of timber harvest and associated activities would be similar to those described for the No Action Alternative. However, similar to the Proposed Action, timber harvest would be constrained in CSAs, which would encumber approximately 23,000 acres. FGS would be allowed to harvest within the currently suitable northern spotted owl habitat on its ownership outside of the CSAs. However, even in the absence of an ITP, it is under existing likely that FGS would be able to harvest much of this habitat over time under existing regulations. This is because much of the habitat classified as suitable is of low quality and has a low probability of supporting spotted owls over time, and take avoidance guidelines under the CFPRs only protect currently occupied habitat

In addition, timber harvest would be prohibited in Riparian Reserves, which would preclude harvest on approximately 14,000 acres of timberland. There is some overlap between the riparian reserves and the CSAs, but collectively, timber harvest would be constrained on at least 30,000 acres of timberland under Alternative A. FGS has indicated that it would harvest more intensively on its remaining timberlands because of the constraints on harvest in CSAs and riparian reserves. FGS would increase the amount of even-aged regeneration harvest each year to make up for the timber volume encumbered in riparian reserves and CSAs, leading to at least a 10 percent increase in the acreage subject to clearcutting compared to the No Action Alternative.

The conservation strategy for northern spotted owls under Alternative A would follow a similar approach as the Proposed Action, but the approach to meeting Objective 1 (Demographic Support) would change. Under both the Proposed Action and Alternative A, demographic support would be provided by establishing a series of CSAs across FGS's ownership designated around high conservation value owl activity centers located on or within 1.3 miles of the ownership. Timber harvest consistent with the CFPRs and other conservation measures in the HCP would be allowed within 1.3 miles of owl activity centers that are not supported by designated CSAs. In contrast to the Proposed Action, CSAs would be established based on proximity of activity centers to the adjacent LSRs identified in the 1994 NWFP rather than on proximity to designated CHUs in the 2008 Designation of Critical Habitat for the Northern Spotted Owl. Proximity to LSRs results in a slightly different set of activity centers supported by CSAs. Within each of the 25 designated CSAs, allowable harvest conditions for both the core area and home range would be the same as described for the Proposed Action. Under Alternative A, the conservation and mitigation measures to meet the other biological objectives for northern spotted owl would be implemented in the same manner as the Proposed Action.

Under Alternative A, management and conservation measures for Yreka phlox would be the same as under the No Action Alternative.

3.4 Alternative B: Issuance of an ITP by the USFWS for Northern Spotted Owl and no ITP Issued for Aquatic Species

Under Alternative B, the USFWS would issue an ITP for northern spotted owl, with spotted owl conservation based on management of foraging and dispersal habitat across the Plan Area. FGS would provide foraging and dispersal habitat at the landscape-level rather than preserving

specific high-quality owl habitat within CSAs as under the Proposed Action and Alternative A. Because high-quality nesting and roosting habitat would not be conserved, this Alternative would be unlikely to retain occupied spotted owl territories on FGS's ownership through time. FGS's operations and activities would be subject to the terms and conditions of an owl HCP as well as existing regulatory standards. The terrestrial conservation program under Alternative B would not include conservation measures for Yreka phlox; species protection for the phlox would be similar to that described under the No Action alternative above. Salmonid conservation would be based on CFPR requirements, and NMFS would not issue an ITP for SONCC coho salmon, Klamath and Trinity rivers Chinook salmon, or KMP steelhead. Effects of Alternative B for aquatic species would be similar to that described under the No Action alternative above.

In general, the types of timber harvest and associated activities would be similar to those described for the No Action Alternative. Timber harvest would be distributed across the entire ownership because CSAs would not be established around specific activity centers as under the Proposed Action and Alternative A. Because high-quality nesting and roosting habitat would not be conserved, Alternative B would be unlikely to retain occupied spotted owl territories on FGS's ownership through time. FGS has indicated that it would be able to maintain financial viability with less harvest than under the No Action Alternative because it would be able to harvest more of the ownership currently considered habitat for northern spotted owl. Areas of habitat generally have more and larger trees and provide more timber volume per acre than non-habitat areas. The amount of even-aged regeneration harvest would likely be reduced by up to 20 percent compared to the No Action Alternative.

4. PUBLIC INVOLVEMENT

The Services formally initiated public review of the action under consideration (development of an HCP and issuance of ITPs) through publication of a Notice of Intent (NOI) to prepare an EIS and announcement of public scoping meetings in the Federal Register on February 22, 2008 (73 FR 9776). The NOI provided information on the background and purpose of the proposed action, and provided preliminary information about the public scoping meetings. The official scoping comment period began with publication of the NOI and ended April 7, 2008. The public meetings also were advertised in local newspapers, as well as through mailings to members of the public who had previously expressed interest in the process. The public scoping meetings were held in March 2008 to inform the public and interested agencies about the planning process and to solicit meaningful input related to the scale, scope, and issues associated with the proposed action. The meetings also afforded the public an opportunity to communicate issues and concerns at the onset of the planning process to help develop alternatives. The public scoping meetings were held on March 11–12, 2008, in Yreka and Happy Camp, California. A public scoping report was produced from this public scoping effort. This report is available in USFWS' administrative record for this action.

A Draft EIS, proposed HCP, and Draft IA were subsequently produced and made available for a 90-day public comment period, announced in the Federal Register on November 13, 2009 (74 FR 58602). The Services issued a news release and held a public meeting to provide information about the HCP goals and objectives and explain the public review process for the Draft EIS on

December 2, 2009, in Yreka, California. The Draft EIS public comment period closed February 11, 2010. During the comment period of the Draft EIS public review process, oral comments and comment letters were received from Federal and local agencies, environmental organizations, and the general public. During the public comment period, 28 individualized comments including verbal comments, letters, and mass e-mail comments from two environmental organizations were received. Responses to comments were included in Volume II Appendix F: Responses to Comments in the Final EIS.

The Final EIS and Final HCP were subsequently produced, and made available to the public on June 26, 2012 (77 FR 37656). Three comment letters were received and are summarized in Appendix A of this ROD. A review of the comments revealed that most of the issues had already been raised in public comments on the Draft EIS and proposed HCP, and they had been addressed in the preparation of the Final EIS and Final HCP. The remaining comments were considered during USFWS' decision-making process. The Final EIS, subsection ES-5, describes the public involvement for this action in detail.

5. DECISION, RATIONALE, AND CONDITIONS

5.1 Decision and Rationale

The USFWS' decision is to adopt the Proposed Action and issue an ITP based upon the measures described in the HCP and IA which are incorporated as terms and conditions of the ITP and the additional conditions specified in the permit. See Conditions Section below. Issuance of the ITP authorizes the incidental take of the northern spotted owl in compliance with the HCP, IA, and other specific provisions and conditions of the ITP. The rationale for this decision is based on the following:

(1) The USFWS' Biological and Conference Opinion and Section 10 Findings indicate that by imposing the requirements described in the Conditions Section of this ROD the proposed action is not likely to jeopardize the continued existence of the northern spotted owl, and the ESA Section 10 statutory issuance criteria have been met (including the requirement for the ITP to minimize and mitigate the impacts of take of covered species to the maximum extent practicable).

(2) The USFWS has identified habitat-based surrogates that will be monitored over the duration of the proposed permit to ensure the level of authorized take is not exceeded without amendment of the HCP and reinitiation of ESA Section 7 consultation. Specifically, the plan analyzes habitat-altering activities that may result in take, and describes the causal link between such activities and harm to the northern spotted owl. The Plan's Terrestrial Species Conservation Program includes specific measures that address those causal links and minimize and mitigate the impacts of taking the northern spotted owl.

(3) The Draft EIS and Final EIS (NMFS and USFWS 2009, NMFS and USFWS 2011) demonstrate that, through a review of alternatives and environmental consequences, and after consideration of public comments, the Proposed Action would provide a level of conservation not achievable through the other alternatives, while also providing federal

assurances to FGS. This combination of conservation and federal assurances will provide the greatest certainty that commercial timber operations will remain viable for the term of the ITP (50 years).

(4) The USFWS has concluded that the Proposed Action is the environmentally preferred alternative because it provides the most long-term and extensive protection and conservation of terrestrial habitat for covered species. Although under Alternative A an additional activity center would be protected as a mitigation site, it was not selected as the Preferred Alternative because FGS indicated that it would harvest more intensively on its remaining timberlands because of the additional constraints on harvest in the riparian reserves under Alternative A. Under Alternative A, there would be an estimated 10 percent increase in the acreage subject to clearcutting compared to the No Action Alternative, versus an approximately 25 percent decrease in even-age regeneration harvest compared to the No Action Alternative under the Proposed Action. This reduction in clearcutting of moderate-complexity stands under the Proposed Action would allow these and other stands to grow into suitable northern spotted owl habitat over the FGS ownership throughout the duration of the permits. Alternative B is not the environmentally preferred alternative because it would not require conservation of specific areas of high-quality nesting and roosting habitat and is therefore unlikely to result in the retention of occupied spotted owl territories on FGS's ownership through time. However, the amount of even-aged regeneration harvest under Alternative B would likely be reduced by up to 20 percent compared to the No Action Alternative. The protections for Yreka phlox would be reduced under Alternative B in comparison with the Proposed Action.

(5) The proposed HCP minimizes and mitigates the effects of authorized take to the maximum extent practicable, and it contains substantial conservation measures that will assist in the recovery of listed covered species. The HCP will accomplish this because its implementation will result in an overall improvement in habitat conditions for the covered species in comparison to the other alternatives and current conditions. The HCP will contribute to the development and maintenance of properly functioning habitat and reduce existing and future adverse impacts expected to occur under the No Action and other alternatives. The proposed alternative – issuance of an ITP based on the HCP - incorporates all practicable means to avoid or minimize harm from the covered activities. The USFWS concludes that aside from HCP implementation carried out in accordance with the specific conditions incorporated into the incidental take permit, no additional conservation or mitigation measures are required.

(6) The National Historic Preservation Act (NHPA) requires federal agencies to take into account the effects of a proposed undertaking on cultural resources listed or eligible for listing on the National Register of Historic Places. The Services concluded that the level of effort that was taken for identifying historic properties in the EIS process was a reasonable and good faith approach as per 36 CFR 800.4(b)(1) and requested that the California State Historic Preservation Office (SHPO) concur with a determination that the identification efforts were adequate and that the undertaking will be a No Historic Properties Affected outcome. The consultation package to SHPO included a copy of the HCP and Draft EIS pre-public review draft, Plan Area location maps, map of the Area of Potential Effects, a general map of areas surveyed for cultural resources, copies of Tribal consultation correspondence, and the requirements for cultural resources under CFRs.

The SHPO responded in March, 2010, with a request for additional information. Although the SHPO's request was beyond the 30-day response period as per 36 CFR 800.4(d)(i), the Services provided additional survey coverage and site location maps, an overview map and a list of known sites in a table format to SHPO on July 1, 2010. Given the timeframes for the ITPs and that SHPO did not respond within 30 days of receipt of the consultation request, the Services determined that the responsibilities under Section 106 were fulfilled and thus moved forward with the finding of a No Historic Properties Affected outcome. In order to ensure this finding of no historic properties affected, the process that the applicant will follow for cultural resources was stipulated in the IA for the FGS HCP. Given the nature of the undertaking (issuance of ITPs) and the degree of federal involvement (limited degree of control on non-federal lands), the Services determined that issuing the ITPs under the guidelines established within the HCP and corresponding IA, will not affect historic properties based on the following factors:

1. FGS will continue to submit THPs to California Department of Forestry and Fire Protection (CALFIRE) for approval of its proposed timber harvest, and these THPs will still be subject to the state regulations for cultural resources.
2. Following CALFIRE requirements, the proposed projects are designed to avoid impacts to cultural resources or are subjected to mitigation measures.
3. In the event that cultural resources are discovered during timber operations, the licensed timber operator will immediately stop operations within 100 feet of the discovery site and will notify CALFIRE.

(7) The USFWS has concluded that implementation of the Proposed Action would not be in conflict with any ongoing conservation programs, and that the terms of its implementation are consistent with applicable Federal and State laws and regulations. FGS operates its timberlands under multiple regulatory controls. Commercial timber operations in California are governed by the Z'berg-Nejedly Forest Practice Act of 1973, and implemented through CFPRs. The California Forest Practices Act mandates the sustained production of high quality timber products and consideration of other significant values, including protection of fish, wildlife, and water quality, and regional economic vitality and employment. The CFPRs also incorporate other significant requirements contained in other State laws, including Porter-Cologne Water Quality Control Act, the California Environmental Quality Act, and the California Endangered Species Act. Pursuant to California Fish and Game Code sections 1600-1603, the Department of Fish and Game (CDFG) regulates the alteration of streambeds through streambed alteration agreements. Some elements of the conservation plan contribute towards the achievement of the Clean Water Act identified special uses.

5.2 Conditions

As required by ESA 10(a)(1)(B), the ITP requires implementation of the HCP dated March 2012 and Final IA along with other specific conditions to ensure that the impacts of take of the northern spotted owl and any impacts to Yreka phlox are minimized and mitigated to the maximum extent practicable. These conditions are also incorporated into the USFWS Biological and Conference Opinion and ESA Section 10 Findings. Any changes to the HCP shall be subject to the provisions of the IA for the Final HCP, section 11 on Modifications and Amendments.

6. REFERENCES

U.S. Fish and Wildlife Service. 2008. Final Environmental Impact Statement for Fruit Growers Supply Company Multi-Species Habitat Conservation Plan. Yreka, California.

7. SIGNATURE



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Date: 11.27.2012

APPENDIX A
Public Comments Pertaining to the Habitat Conservation Plan (HCP) and Final Environmental Impact Statement (FEIS)

During the 45-day “cooling off” (i.e. no decision) period announced in the Federal Register Notice of Availability of Final Environmental Impact Statement, Multi-Species Habitat Conservation Plan, and Implementing Agreement (77 FR 37656), the National Marine Fisheries Service and the U.S. Fish and Wildlife Service (the “Services”) received three comment letters on the Final Environmental Impact Statement for the Aquatic Habitat Conservation Plan/Candidate Conservation Agreement with Assurances proposed by FGS Resource Company (“FGS”). Letters were received from Jim Wells, the Washington Forest Law Center on behalf of the Klamath-Siskiyou Wildlands Center, Environmental Protection Information Center, Klamath Forest Alliance, and the Center for Biological Diversity, and the United States Environmental Protection Agency (“EPA”).

Comments that were submitted that focused on conclusions reached in the Services’ Biological Opinions are addressed indirectly in this ROD only to the extent they are relevant to the FEIS. The Services made the Opinions available during this “cooling off” period for informational purposes. The Services address comments raised by each party below:

Commenter: Jim Wells

- 1) Mr. Wells believes HCPs are a means by which landowners successfully “get around the ESA.” **Response:** HCPs are an important regulatory tool that facilitates lawful uses of private land while ensuring that impacts to listed species and their habitats are avoided or minimized and mitigated to the maximum extent practicable. By ensuring that impacts to species and their habitats are fully considered during activities carried out on private lands, HCPs can play an important role in the recovery of listed species. Refer to Themes 3 and 6 in Volume II of the FEIS. Habitat conservation plans and an incidental take permit programs were authorized by Congress nearly 30 years ago when it was clear the Services needed a tool to work with private landowners who were unintentionally taking listed species or harming their habitat during the conduct of otherwise lawful activities.
- 2) Mr. Wells questioned who will pay for monitoring required under the multi-species HCP. **Response:** FGS will be responsible for the cost of the monitoring program outlined in the HCP. This is further clarified in the draft Implementing Agreement associated with the HCP. In response to Mr. Wells’ concerns that the agencies will not have the resources to ensure accuracy of monitoring reported by FGS, the Services are required to monitor the implementation of an HCP, and any permits issued, under our governing regulations. While agency resources are subject to Congressional appropriation, currently the Services have the resources to review any monitoring conducted by FGS and to verify the accuracy of the information reported and expect to have such resources throughout the permit term, if the permit is granted.

- 3) Mr. Wells questioned what will happen if FGS' management fails to adequately contribute to the recovery of the species of concern and whether the ITPs could be revoked. **Response:** Refer to Theme's 6 and 7 in Volume II of the FEIS for clarification on FGS's future role in recovery of the species, the role of this HCP in the recovery of the listed covered species, and criteria for permit revocation Mr. Wells expressed concern that the FGS HCP will not contribute towards the recovery of northern spotted owl and that the FEIS should reflect that HCP will only "slow the decline" of the NSO. **Response:** Refer to Theme 2 of the FEIS regarding the role of this HCP in the recovery of NSO.

Commenter: Washington Forest Law Center

- 1) The Washington Forest Law Center ("Law Center") states on behalf of their clients that they are opposed to issuance of ITPs to FGS. **Response:** The Services acknowledge the group's opposition to issuance of the ITPs.
- 2) The Law Center refers to the case *Northwest Env't. Def. Ctr. V. Brown*, 640 F.3d 1063, 1080 (9th Cir. Or. 2011) as support for their position that pipes, ditches, and channels used for drainage on logging roads are point source discharges and asserts that the Services cannot issue a federal permit without FGS first obtaining a Section 401 water quality certification from the North Coast Regional Water Quality Control Board (NCRWQCB) for Clean Water Act (CWA) compliance purposes. The Law Center asserts that issuance of ITPs would violate the CWA. **Response:** FGS must comply with the CWA and all other applicable federal and state laws and the issuance of ITPs to FGS under the ESA does not affect obligations the company may have under other law(s). We note that in EPA's May 23, 2012 Notice of Intent (NOI) referred to by the Law Center, EPA states that it is their intent not to regulate logging roads as NPDES point sources; that the NOI is seeking public comment on how to evaluate discharges from logging roads. Additionally, the Services received no comment from the NCRWQCB that issuance of the ITPs would constitute a violation of the CWA, nor do comments from the EPA indicate as such. Please refer to Theme 8 in Volume II of the FEIS for further clarification of the Services position regarding compliance with the CWA. Finally, we note that ultimately it is the responsibility of FGS to comply with the CWA. Issuance of incidental take permits under the ESA does not address or affect FGS's obligations under the CWA.
- 3) The Law Center states that both the NCRWQCB and the EPA "clearly state that the activities carried out under the HCP will lead to conditions that do not meet California water quality standards." **Response:** During the 45-day "cooling off" period after the FEIS was made public, the Services received no comments such as those expressed by the Law Center from the NCRWQCB after changes to the Road Management Plan were made in response to their comments on the Draft EIS and HCP. Additionally, EPA's letter on the FEIS does not state that EPA believes carrying out activities under the HCP will violate California water quality standards. We point out that the ITP does not authorize timber harvest activities; the permit would authorize the incidental take of covered species under the ESA resulting from timber harvest activities.

- 4) The Law Center asserts that the HCP poses a significant risk to covered species due to significant data or information gaps, and asserts that the Services must require adaptive management. **Response:** In the Services Notice of Availability of a Final Addendum to the Handbook for Habitat Conservation Planning and Incidental Take Permitting Process (also known as the five-point policy; 65 FR 35242), the Services state:

“Not all HCPs or all species covered in an incidental take permit need an adaptive management strategy. However, an adaptive management strategy is essential for HCPs that would otherwise pose a significant risk to the species at the time the permit is issued due to significant data or information gaps. Possible significant data gaps that may require an adaptive management strategy include, but are not limited to, a significant lack of specific information about the ecology of the species or its habitat (*e.g.*, food preferences, relative importance of predators, territory size), uncertainty in the effectiveness of habitat or species management techniques, or lack of knowledge on the degree of potential effects of the activity on the species covered in the incidental take permit.”

“A practical adaptive management strategy within the operating conservation program of a long-term incidental take permit will include milestones that are reviewed at scheduled intervals during the lifetime of the incidental take permit and permitted action.”

The Services do not consider the FGS HCP to place covered species at significant risk due to significant data or information gaps. The Services have considerable information about the covered species as well as experience working with timber companies who have approved HCPs on the effects of timber management on NSOs and Pacific salmonids in addition to the vast body of knowledge gained from working with the U.S. Forest Service on the effects of timber management. This work has allowed the Services to reduce, but not eliminate, uncertainty associated with timber management effects on these species. Therefore, and because the FGS HCP has a straightforward conservation strategy for the conservation of NSOs and covered salmonids, the Services do not consider a formal adaptive management strategy to be a necessary component of the FGS HCP. The Services will continue to review data collected through the HCP’s monitoring program throughout the permit term. Changes to timber management are not precluded if data point to harmful effects on covered species that weren’t previously recognized.

- 5) The Law Center expresses concern regarding FGS’s financial standing and their ability to carry out the HCP. **Response:** Refer to Theme 1 in Volume II of the FEIS regarding funding of the HCP. Before issuing permits, we will consider whether or not FGS has provided adequate assurances of funding.
- 6) The Law Center asserts that the Services must base analysis of an HCP on the level of take, not what FGS asserts that it can afford. **Response:** The Services do evaluate an HCP based on the level of take anticipated under the permit. The five permit issuance criteria are:
- (i) taking will be incidental;

- (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking;
- (iii) the applicant will ensure that adequate funding for the plan will be provided;
- (iv) taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- (v) other measures, as required by the Secretary, will be met.

The Services will carefully consider whether or not the FGS ITP application has met each of the permit issuance criteria.

- 7) The Law Center believes that over the next 50 years, the Services should require additional mitigation from FGS should timber prices rise. **Response:** The Services disagree. The appropriate inquiry for the Services under Section 10(a)(2)(B)(ii) is whether the impacts of the take have been minimized and mitigated to the maximum extent practicable. In evaluating the Fruit Growers HCP, we properly focus on whether the mitigation provided is commensurate with the level and impacts of take anticipated under the plan; not on the theoretical ability of the applicant to provide additional mitigation under future financial conditions. The mitigation provided in FGS's HCP should be commensurate with impacts of take expected from FGS's timber management activities outlined in the HCP. Just as timber prices may rise over the next 50 years, the cost of carrying out HCP will also rise (e.g. personnel costs, equipment costs, fuel costs, etc.). That is why the IA at section 7.3 requires adjustments for inflation in the required funding instruments every five years.
- 8) The Law Center requests that the Services explain "what economic analysis they perform, the independent basis for that analysis, whether that analysis is based on reliable indicators of future prices, and how FGS will "to the maximum extent practicable" minimize and mitigate incidental take if timber prices rise in the future." **Response:** The Services have performed an independent analysis of FGS's ability to fund the HCP and have concluded FGS is capable of implementing the HCP in an environment where timber prices rise and fall. See Theme 1 in Volume II of the FEIS for further clarification.
- 9) The Law Center believes the Services should "reject the FGS application and require FGS to submit alternatives with greater minimization and mitigation." **Response:** The Services' role in review of the FGS ITP applications, as with all ITP applications, is to determine whether the HCP will minimize and mitigate the impacts of take to the maximum extent practicable. As stated above, we have concluded that the measures included in the FGS HCP to minimize and mitigate take anticipated under the permit are commensurate with the impacts of such take and therefore meet the standard at 16 U.S.C. 1539(a)(2)(B)(ii). We note that the Services evaluated four (4) different alternatives in the EIS.
- 10) The Law Center asserts that the Services should make FGS' business models and plans available to the public to support approving the HCP and issuing the ITPs. **Response:** FGS' business models and plans are subject to protection from disclosure by the

government to the public under Exemption 4 of the Freedom of Information Act. The Service's responsibility under Section 10 is to determine whether FGS has provided assurances of adequate funding for the HCP. Refer to Theme 1 in Volume II of the FEIS.

- 11) The Law Center believes the timing of mitigation should occur at the time take occurs, believing that there is insufficient mitigation for the first ten years of activity. **Response:** We disagree with this premise because the primary mitigation measures for NSO (conservation sites) are all established upon implementation of the HCP and therefore will pre-date any take of NSO that may occur during the permit period. The Services have determined that the long-term conservation strategy outlined in the HCP will minimize and mitigate the effects of take on the covered species over all periods of the permit term.
- 12) The Law Center states the Services must separately analyze impacts to unlisted species covered in an ITP and cannot combine analyses with that of coho. **Response:** NMFS has analyzed impacts to unlisted species in our EIS, Biological and Conference Opinion on issuance of an ITP to FGS. NMFS disagrees with the Law Center that our analysis of impacts to Chinook and steelhead is without basis. The three species of salmonids covered in the HCP have some variations in life histories, but do share many of the same freshwater habitat requirements such as a need for cool water temperatures, well-developed riparian habitat, large woody debris as habitat structures, and streams with sediment levels that are adequate for successful spawning, incubation, and emergence of juveniles. NMFS analyzed how the HCP would affect these habitat conditions for the three covered salmonids in an effort to be efficient in our analysis so as to not repeat the same information for each species. NMFS considers this approach is adequate to analyze whether implementation of the HCP would jeopardize the continued existence of all three covered salmonids.
- 13) The Law Center believes there is insufficient information for NMFS to make a non-jeopardy determination for unlisted salmonids. **Response:** NMFS disagrees. NMFS has substantial information on Klamath/Trinity Rivers Chinook ESU, as well as Klamath Mountains Province steelhead ESU to make a determination regarding the FGS HCP and these species.

Commenter: U.S. Environmental Protection Agency, Region IX

- 1) EPA urges FGS and the Services to engage the NCRWQCB staff on how the HCP operations can come into compliance with the water quality laws for the State of California. **Response:** The Services are ready to assist FGS to work with the NCRWQCB in the development of sediment source inventories (e.g. roads) and a prioritization scheme for repair that is both consistent with the HCP and acceptable to the NCRWQCB. See Theme 8 in Volume II of the FEIS and Law Center responses 2 and 3 above