STATEMENT OF FINDINGS AND RECOMMENDATIONS

U.S. Department of Interior, U.S. Fish and Wildlife Service, Pacific Southwest Region

Findings and Recommendations on Issuance of an Incidental Take Permit (TE232253-0) to the Fruit Growers Supply Company based on the Multi-Species Habitat Conservation Plan and associated Implementing Agreement

This Statement of Findings and Recommendations documents the conclusions of the U.S. Fish and Wildlife Service (USFWS) with respect to issuance of an Incidental Take Permit (ITP) under Section 10(a)(1)(B) of the Endangered Species Act of 1973 (ESA), as amended, in response to an application from Fruit Growers Supply Company (FGS). Based on the findings in this document, USFWS recommends the approval of FGS's Multi-Species Habitat Conservation Plan (HCP) and associated Implementing Agreement (IA), and issuance of the ITP to FGS, subject to the conditions described later in this document.

1. DESCRIPTION OF THE PROPOSAL

In the fall of 2009, FGS applied to the U.S. Fish and Wildlife Service (USFWS) for authorization to allow for the incidental take of the northern spotted owl (*Strix occidentalis caurina*), listed as threatened under the ESA, on the company's lands within the HCP plan area. 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 HCP. FGS has also submitted an application to the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NMFS) for authorization to incidentally take three species of both listed and unlisted salmon and steelhead. The application to USFWS addresses the potential for take that may result from the applicant's otherwise lawful activities, which are described in the FGS HCP. The permit would cover forest management activities on approximately 152,178 acres of forestland owned by FGS. The duration of the proposed ITP is 50 years.

FGS's ITP application to USFWS, if approved, would allow the incidental take of northern spotted owls that may be impacted by otherwise lawful timber harvesting and forest management activities conducted on FGS's lands. Issuance of an ITP would be conditioned on implementation of the HCP, which is designed to provide conservation benefits to the species for which incidental take would be authorized and to minimize and mitigate the effects of such incidental take to the maximum extent practicable.

The requested permit is expected to: (1) provide long-term regulatory stability for FGS's forest management activities, (2) result in the protection of the covered species, and (3) provide a regulatory climate and structure more conducive to long-term conservation planning and habitat protection while taking into account the economic needs of FGS.

1.1 Covered Lands

The permit area boundary for the ITP covers FGS's Hilt/Siskiyou ownership located in Siskiyou County in northern California. Covered lands include three management units: Klamath River, Scott Valley, and Grass Lake. The Klamath River and Scott Valley Management Units are located west of Interstate 5 (I-5), and the Grass Lake Management Unit is located east of I-5, north of Mt. Shasta. Covered lands consist of fee lands owned by FGS on which the company owns timber harvesting rights. The HCP Initial Plan Area is estimated to currently include 152,163 acres on FGS's ownership. The addition of commercial timberlands to or removal of commercial timberlands from the Initial Plan Area may be allowed within the area ("Adjustment Area") analyzed in the Environmental Impact Statement prepared in connection with the ITP application provided that neither additions nor reductions exceed approximately 10 percent of the Initial Plan Area over the term of the ITP. This 10 percent allowance will permit FGS to obtain ITP coverage for a limited amount of timberlands in the area that it buys or sells as part of its normal business operations over the 50-year permit term. These transactions are included as covered activities since buying and selling land is a routine part of industrial timber management. Together, the IPA and Adjustment Area comprise the "Eligible Plan Area" for the ITP.

1.2 Covered Activities

Activities covered by the proposed ITP include: timber harvest and transportation of harvested trees, road construction and maintenance, silviculture, stand regeneration and improvement, the harvest of minor forest products (e.g., Christmas trees, firewood, fenceposts) and other activities compatible with timber management, including fish and wildlife habitat improvement projects and rock quarry activities. Timber operations and related management activities include, but are not limited to, harvesting timber under a variety of silvicultural prescriptions, yarding timber, loading and other landing operations, salvaging timber products, transporting timber and rock products, rock pit construction and use, water drafting for dust abatement and fire suppression, equipment maintenance, site preparation, planting, prescribed burning, and slash treatment. Grazing on HCP covered lands is not a covered activity. A complete list of covered activities is provided in Chapter 2 of the Final HCP.

1.3 Protection Measures and Conservation Strategies

The HCP includes species protection measures for the northern spotted owl and Yreka phlox. Section 5.3 of the HCP describes the Terrestrial Species Conservation Program, which includes provisions to minimize, mitigate, and monitor impacts of incidental take of northern spotted owl caused by covered activities, and measures to survey, monitor, and avoid disturbance of Yreka phlox populations. Chapter 7 of the HCP and section 8 of the IA address the monitoring program under the HCP and the HCP modification and amendment processes.

Northern Spotted Owl

Under the HCP's Terrestrial Conservation Strategy, FGS will establish Conservation Support Areas (CSAs) on its ownership to support northern spotted owls associated with 24 strategic activity centers located 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. These 24 mitigation sites contribute disproportionately to overall spotted owl population stability and recovery compared to the activity centers proposed for incidental take because they are more likely to support long-term occupancy and reproductive success by owl pairs, in accordance with the Revised Recovery Plan's strategy to conserve occupied and high quality owl habitat (USDI FWS 2011). 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 the CSAs 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. The HCP's Aquatic Conservation Strategy will also provide foraging and dispersal opportunities for the northern spotted owl across the landscape by establishing Watercourse and Lake Protection Zones (WLPZs) that promote stand development 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. In addition, the HCP is expected to contribute to a general trend of increased quality and quantity of northern spotted owl dispersal and foraging habitat due to a decrease in clearcutting and other even-aged management practices across the FGS ownership over the term of the ITP, as modeled by the company's Maximum Sustainable Production (MSP) analysis described in section 2.2.1 of the Final EIS.

In addition to these habitat commitments, the HCP's Terrestrial Conservation Strategy contains provisions to avoid direct take of northern spotted owls resulting from authorized timber harvesting operations through a combination of seasonal timing restrictions, pre-harvest surveys, and on-site monitoring by a qualified biologist. The HCP will also help manage known threats to the northern spotted owl by surveying for, monitoring, and, if authorized, facilitating barred owl control measures within the Plan Area; and reducing the potential for catastrophic wildfire on FGS ownership by implementing stocking control and fuel maintenance measures within the CSAs.

Yreka phlox

The HCP's Terrestrial Conservation Strategy contains provisions to avoid direct and indirect adverse effects to, or destruction of known or discovered populations of, Yreka phlox resulting from timber harvesting operations. This will be accomplished through a combination of 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, establishment of equipment exclusion zones (EEZs) around known and discovered populations, and 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. The HCP will also 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. PUBLIC INVOLVEMENT

USFWS involved two respected biologists and statisticians who were chartered and paid as the "Independent Science Panel" to assist in the development of the HCP. USFWS began its solicitation of views from the public and other entities when it formally initiated environmental review of the project on February 22, 2008 through a Notice of Intent (NOI) to prepare an EIS published in the *Federal Register* (73 FR 9776). This NOI announced a 45-day public scoping period, during which other agencies, Tribes, and the public were invited to provide comments and suggestions regarding issues and alternatives to be included in the EIS. Public scoping meetings were also announced in the NOI and held at two locations in the Klamath River basin. The public meetings involved a mix of informal and formal presentations, and a variety of informational material related to the proposed action was made available to attendees. A public scoping report was produced from this public scoping effort. The scoping report is available in the USFWS's administrative record for this action.

A Draft EIS and Draft HCP were subsequently produced after scoping and made available for a 90-day public comment period, announced in the *Federal Register* on November 13, 2009 (74 FR 58602). During the comment period 283 oral and written comments were received from Federal and State agencies, private landowners, environmental organizations, and the general public. The majority of individual comments were of the "postcard" e-mail type prompted by action alerts on the websites of two environmental organizations. The primary issues raised in the comments related to the ESA, EIS process and alternatives, technical issues about the proposed action, and economic issues. All of the comments and suggestions were considered, and many were incorporated into the Final HCP and Final EIS. Volume II of the Final EIS contains a summary of comments received on the draft documents and USFWS's responses, including a description of changes made to the Draft HCP and Draft EIS.

The Final EIS and Final HCP were subsequently produced, and were made available to the public on June 22, 2012, concurrent with the publication of a Notice of Availability in the *Federal Register* (77 FR 37656). During a 45-day waiting period, three comment letters were received. These letters, and the comments contained within them, are summarized in Appendix A of the Record of Decision (ROD). A review of the comments revealed that most of the issues had already been raised in prior public comments on the Draft EIS and Draft HCP, and had been addressed in the Final EIS and Final HCP. The remaining comments were taken into consideration during USFWS's final decision-making process, and responses are provided in the ROD. The Preface of Volume 1 of the Final EIS describes the public involvement for this action in detail.

3. INCIDENTAL TAKE PERMIT ISSUANCE CRITERIA

USFWS must make findings pursuant to the issuance criteria for an ITP. These criteria are contained in ESA section 10(a)(2)(B) and its implementing regulations (50 C.F.R. § 17.32). According to the ESA, the Secretary shall issue the requested permit, if the Secretary finds that the issuance criteria are being met. These criteria are:

> (i) the taking will be incidental;
> (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
> (iii) the applicant will ensure that adequate funding for the HCP and procedures to deal with unforeseen circumstances will be provided;
> (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;
> (v) the applicant will ensure that other measures that the Services may require as being necessary or appropriate will be provided; and
> (vi) the Services have received such other assurances as may be required that the HCP will be implemented.

USFWS makes the following finding under Section 10(a)(1)(B) regarding issuance of the proposed ITP to FGS based upon implementation of the final HCP.

3.1 The taking will be incidental

The proposed ITP and IA do not authorize any intended, directed, or purposeful take of proposed ITP covered species. Any take of northern spotted owls will be incidental to, and not the purpose of, otherwise lawful forest management and related land-use activities that are conducted by FGS and specified in the HCP. Similarly, although take of listed plant species is not prohibited under the ESA, any adverse effects to Yreka phlox resulting from lawful forest management activities covered under the ITP would not be intended, directed, or purposeful; rather such effects would also be incidental to such lawful forest management activities.

The proposed ITP would only authorize incidental take in connection with covered activities on lands currently owned by FGS, or acquired by FGS during the permit term in accordance with the conditions established in the IA, within the Eligible Plan Area in Siskiyou County in northern California. The covered activities consist of commercial timber management and harvest activities and those additional activities required as a condition of the ITP (e.g., monitoring).

3.2 FGS will, to the maximum extent practicable, minimize and mitigate the impacts of such taking

Chapter 5 of the HCP contains prescriptive activities and measures to minimize and mitigate the impacts of take of northern spotted owl and avoid adverse effects to Yreka

phlox. In order for USFWS to issue an ITP under section 10(a)(1)(B) of the ESA, we must evaluate whether FGS has met their obligation to minimize and mitigate impacts to the maximum extent practicable. In making this evaluation, USFWS considered whether (1) the minimization and mitigation measures contained in the conservation plan are rationally related to the level of take authorized, and (2) the mitigation is the maximum that can be practically implemented by the applicant.

The impacts of incidental take expected to occur from timber management and other activities covered under the HCP, IA, and ITP are described and analyzed in detail in USFWS's BO and in the FEIS, both of which are hereby incorporated by reference. Baseline environmental conditions and status of the northern spotted owl are also analyzed in detail in the BO. The HCP's conservation measures are designed to provide demographic support to northern spotted owls in accordance with the Revised Recovery Plan (USDI FWS 2011), promote improved habitat conditions for the owl across the FGS ownership, avoid direct take of owls through incidental take avoidance and minimization measures, and manage known threats (see Protection Measures and Conservation Strategies, above).

The conservation strategy for northern spotted owls is specifically designed to protect high quality habitat, and habitat that will mature into high quality habitat on the FGS ownership. This is the habitat most likely to support long-term occupancy and reproductive success by owl pairs. By focusing conservation on habitat of disproportionate value to northern spotted owls, and limiting take to lower quality habitat areas that are unlikely to support northern spotted owls over time, the FGS HCP is expected to effectively avoid, minimize, and to the extent take is likely to occur, mitigate the impacts of take of northern spotted owl and contribute to the recovery of northern spotted owl populations in the vicinity of the Plan Area.

USFWS has determined that the proposed mitigation measures for the northern spotted owl, which require protection and improvement of habitat supporting owl activity centers that are most likely to provide long-term occupancy and reproductive success, are consistent with the conservation strategy set forth in the Revised Recovery Plan (USDI FWS 2011). Analyses contained in the BO and FEIS demonstrate that the level of mitigation provided in the HCP is rationally related to and adequately compensates for the impacts of take that would occur under the HCP. This conclusion is based on the following:

1) The conservation value of the areas conserved under the HCP outweighs the conservation value of the areas subject to harvest. As described in the "Protection Measures and Conservation Strategies" section above, FGS would mitigate the impact of the taking by establishing 24 CSAs, focusing primarily on activity centers with the highest conservation value, to provide demographic support to owl populations on nearby federal lands in close proximity to designated critical habitat consistent with the northern spotted owl conservation strategy outlined in the Revised Recovery Plan (USDI FWS 2011). High conservation value activity centers are those in close proximity to designated critical habitat that include high

amounts of federal land in their core and home ranges, have consistent occupancy and productivity and contain relatively high quality habitat. These sites are most likely to support long-term occupancy and reproductive success and contribute disproportionately to northern spotted owl stability and recovery. Based on the above criteria, the activity centers protected by CSAs contribute approximately 55 percent of the total conservation value of all activity centers in the Area of Impact. In contrast most of the activity centers where take would be authorized are generally lower quality sites that contribute little to the survival and recovery of the species because of the reduced quantity and quality of their habitat and their low rates of occupancy and reproduction. The activity centers where take would be authorized represent only 18 percent of the total conservation value of activity centers in the Area of Impact. The conservation value of the conserved CSAs is three times higher than the conservation value of the activity centers where take would be allowed (55:18 percent). In addition, incidental take under the ITP is unlikely at several activity centers because their home ranges include only small areas of the applicant's ownership; these activity centers account for an additional 27 percent of the total conservation value of all activity centers in the Area of Impact. Overall, 82 percent of the total conservation value of all activity centers in the Area of Impact would be retained and conserved under the HCP.

2) Many of the activity centers where take would be authorized under the ITP are likely not occupied and contribute little to the survival and recovery of the northern spotted owl. Our analysis of take under the proposed permit conservatively assumes occupancy at the highest historical level of the 43 activity centers where take would be authorized and assumes incidental take of all individual northern spotted owls at those activity centers. However, many of the 43 activity centers have no evidence of recent occupancy or, due to poor habitat conditions, are unlikely to support owls into the future. USFWS's take evaluation analysis (see section 4.1.3.1 of the BO) strongly indicates that 11 of these 43 historic activity centers (representing 20 owls) are no longer occupied because the home ranges contain extremely low amounts of suitable habitat due to repeated timber harvest entries and wildfire, and several consecutive years of protocol surveys have not detected owls at most of these sites. Incidental take of owls associated with a 12th activity center is unlikely because FGS owns only three percent of the remaining suitable habitat in the home range of the activity center. Among the 31 activity centers where take is conservatively assumed to occur, the likelihood of take at 21 of the centers is considered either "moderate/low" or "very low" based on the lower quantity and quality of habitat and lack of recent survey data showing occupancy. Thus actual take is not likely to be as high as the conservatively estimated incidental take of up to 61 northern spotted owls, which represents assumed occupancy by an owl pair at each of the 31 sites.

3) The proposed HCP will provide for the protection and expansion of higher quality habitat on FGS ownership that would likely not occur under existing regulatory mechanisms governing timber harvest on FGS ownership. Most of the activity centers where take would be authorized are deficient in nesting/roosting and

foraging habitat as a result of multiple harvest entries over the past 25 year. These poor habitat conditions, combined with USFWS's review of survey records, were the basis for our conclusion that occupancy rates at many of these sites are low and our expectation is that the observed pattern of site abandonment by northern spotted owls at these centers will continue into the future. Existing regulatory mechanisms governing timber harvest, such as the California Forest Practice Rules, require retention of suitable habitat within the core and home range of an occupied activity center; however the rules do not specify how much of the total habitat within the core and home range must be maintained as nesting, roosting and foraging habitat. As a consequence, the rules allow for retention of low quality foraging habitat that is unlikely to support northern spotted owls over time and lead to nest abandonment. Under CFPRs, if owls are not detected at a center after three years of surveys, the center may be harvested. Thus, current regulatory mechanisms are unlikely to reverse the pattern of habitat loss and nest abandonment at activity centers that are strongly influenced by FGS ownership. In contrast, under the HCP, habitat of disproportionate conservation value on FGS's ownership will be maintained and improved as CSAs to provide demographic support to existing higher-quality activity centers on adjacent federal lands that are most likely to contribute to occupancy, survival and reproduction of the owl population in the vicinity of the Plan Area. The habitat retention requirements for CSAs under the proposed permit exceed those specified to avoid take under the CFPRs and the Service's 2008 Take Avoidance Guidance –Interior Region, USDI FWS 2008c).

4) The changes in timber management practices identified in the proposed HCP are expected to result in an increase in northern spotted owl foraging and dispersal habitat across FGS ownership over the permit term due to a decrease in clearcutting and other even-aged management practices. In addition, the proportion of FGS ownership in mid to late seral stands with high canopy cover, which is preferred habitat of northern spotted owls, is expected to be nearly twice as high by the end of the permit term as would result if harvesting proceeded under existing regulations.

5) The higher costs to the applicant of conserving additional activity centers on the FGS ownership is not necessary to minimize and mitigate the impacts of take and would provide little additional conservation value for the northern spotted owl. The Service conducted a "benefit-cost" analysis to evaluate each activity center's conservation value compared to the applicant's "cost" in terms of the amount of acreage necessary to support the site (see section 9.2.2 of the HCP). As shown in Figure 9-1 of the HCP, the mitigation sites (CSAs) generally provide the highest benefit-cost ratio (high conservation value per the applicant's acres in the home range); the ratio decreases rapidly once the highest value activity centers are protected. Results of this benefit-cost analysis indicate that protecting additional activity centers by establishing more CSAs would provide little additional conservation value for northern spotted owls and would entail progressively

higher costs to the applicant in terms of land (acres) encumbered by harvest restrictions.

We find that the impacts of take we have conservatively assumed to occur under the HCP will be offset by the conservation of high quality northern spotted owl habitat capable of supporting an expanding population of northern spotted owls in the vicinity of the Plan Area and by the increase across the FGS ownership of foraging and dispersal habitat and of higher quality mid to late seral stands with high canopy cover of particular habitat value to northern spotted owls. We also find that the restrictions on timber operations required under the HCP's LOP requirements effectively minimize or avoid the potential for direct take of northern spotted owls. Because we consider the take minimization and mitigation measures required under the HCP to be commensurate with the impacts and level of take of northern spotted owls anticipated under the HCP, we also find that the HCP minimizes and mitigates the impacts of take "to the maximum extent practicable." Because the mitigation and minimization measures under the plan are not deficient, it is not necessary to analyze whether the mitigation provided in the HCP is the most that the applicant could practicably provide. A finding that minimization and mitigation measures effectively offset the level of take expected under the plan by definition means that the impacts of take have been minimized and mitigated to the maximum extent practicable. Nevertheless, we considered the progressively higher costs to the applicant that would result from additional harvest restrictions on the FGS ownership in light of the minimal additional conservation value such restrictions would provide for northern spotted owls. We conclude that such additional restrictions are unnecessary to mimimize and mitigate the impacts of take and exceed what is practicable to the applicant from an economic perspective. We find that the minimization and mitigation required under the HCP is rationally related to and compensates for the impacts of take of northern spotted owls under the proposed permit. Therefore, we that the FGS HCP minimizes and mitigates the impacts of take of northern spotted owl to the maximum extent practicable.

The HCP's conservation measures for Yreka phlox require avoidance of all known Yreka phlox occurrences and any additional occurrences discovered through pre-harvest surveys required under the plan. These measures are expected to effectively avoid and minimize any adverse effects to Yreka phlox within the Plan Area. Because the FGS HCP will avoid all known populations of Yreka phlox and all new populations of this species discovered through pre-harvest surveys required under the HCP, the USFWS finds that the plan minimizes and mitigates the impacts of any adverse effects to Yreka phlox to the maximum extent practicable.

The HCP contains a monitoring program that is commensurate with the scope of covered activities and their associated impacts. The focus of the monitoring program is to determine 1) compliance with the HCP's conservation measures, and 2) evaluate the program's effectiveness in relation to the plan's biological goals and objectives. The HCP's monitoring program includes compliance monitoring of CSAs with proposed timber operations, including fuels management or salvage, to ensure the habitat commitments for the CSA within the core and home range of the activity center are met before and following completion of timber operations. FGS will also conduct forest stand inventories at 10-year intervals throughout the term of the ITP to monitor the expected

increase in spotted owl foraging and dispersal habitat. Compliance monitoring for the incidental take avoidance and minimization objective consists of documenting that pre-harvest surveys have been conducted, seasonal restrictions have been implemented as necessary, and personnel have been trained. To demonstrate compliance with the barred owl management measures, FGS will apply for a Depredation Permit from USFWS to authorize control of barred owls, notify the USFWS immediately if barred owls are detected, and submit an annual report to the USFWS of the results of barred owl surveys and control actions.

Monitoring the effectiveness of the northern spotted owl conservation measures is necessary to evaluate whether the biological goals and objectives established in the HCP for the species are being met, and whether the effects of HCP implementation on northern spotted owls and their habitats are exceeding the levels anticipated by the USFWS in the BO. To assess the effectiveness of the HCP in maintaining or improving habitat in the CSAs, habitat conditions for northern spotted owls within the core and home range of each activity center supported by a CSA on the FGS ownership will be monitored and compared to the habitat standards described in section 5.3.1.1 of the HCP over the term of the ITP. Protocol surveys will also be conducted to monitor northern spotted owl occupancy and reproductive status at activity centers supported by CSAs on the FGS ownership. The monitoring program is designed to measure the effectiveness of the Terrestrial Conservation Strategy, and if necessary make changes to the strategy in order to meet the biological goals and objectives of the HCP.

3.3 FGS will ensure that adequate funding for the plan will be provided

The proposed ITP would incorporate by reference the HCP and the associated IA, which summarizes FGS's commitments under the HCP, and require compliance by FGS with both the HCP and IA. Under the IA, FGS warrants that it has, and shall expend, such funds as are necessary to fulfill its obligations under the Aquatic and Terrestrial Species Conservation Programs. FGS is required to promptly notify USFWS of any material change in FGS's financial ability to fulfill its financial obligations.

FGS is required to submit annually to the USFWS for review and approval, a detailed Yearly Expenditure Report that sets forth those HCP measures that require out-of-pocket expenditures (e.g., road assessment, surveys, monitoring) that FGS will implement in the subsequent calendar year. USFWS review and concurrence is required in order to ensure that FGS has provided an adequate budget to carry out HCP requirements for each year.

FGS is also required to provide a Letter of Credit with a principal sum in the amount of $258,210, which sum represents the estimated initial annual cost of THP related and other out-of-pocket expenditures to implement the HCP, as outlined in section 7.3 of the IA. The amount of such LOC must be replenished if USFWS, NMFS or CDFG calls on the LOC. The LOC must also be adjusted for inflation and to account for any changes in out-of-pocket costs at least once every five years. USFWS finds that these requirements are sufficient to ensure adequate funding for implementation of the HCP, IA, and ITP.

3.4 The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild

USFWS has analyzed the effects of issuance of the ITP on the northern spotted owl in the BO, which is incorporated by reference into these Findings. We determined that the taking will not appreciably reduce the likelihood of the survival or recovery of the species in the wild. At the regional scale, spotted owl activity centers located on FGS lands constitute a very small proportion of the regional population and, due to their low quality, contribute little to reproductive output and population stability. In contrast, federal lands constitute about 60 percent of the area within the region and support the majority of high-quality territories that contribute disproportionately to the local population. At the provincial scale, the FGS HCP area is located within two physiographic provinces that support a fairly large, well-distributed, and genetically robust population of northern spotted owls. The estimated take of owls will not occur within a small, isolated population area, or contribute significantly to genetic isolation. At the range-wide scale, given that recent population modeling suggests that roughly 5,000 to 6,000 owl sites may currently exist (USDI FWS 2011)[1] across the species range, the estimated incidental take of up to 61 owls resulting from issuance of an ITP to FGS is not likely to jeopardize the continued existence or impede recovery of the northern spotted owl across its range because it represents a less than one percent reduction in activity centers range-wide. Additionally, the majority of activity centers where take is likely to occur do not substantially contribute to the Federal conservation strategy outlined in the Revised Recovery Plan because the sites exhibit low occupancy rates, poor overall habitat quality, and/or are not in close proximity to the Federal conservation reserve network. In contrast, most of the activity centers designated as mitigation sites contribute disproportionately to overall population stability and recovery because they are more likely to support long-term occupancy and reproductive success by owl pairs, in accordance with the Revised Recovery Plan.

Although take of plant species is not prohibited under the ESA, and therefore cannot be authorized under an ITP, the Yreka phlox would also be included on the permit for purposes of extending "no surprises" assurances to FGS and in recognition of the conservation benefits provided to the species under the FGS HCP. USFWS concludes that the HCP is not likely to adversely affect Yreka phlox because, although suitable habitat for this species exists on FGS's ownership, currently there are no known populations on their property. Additionally, Yreka phlox will benefit from the conservation measures described in section 5.3.2 of the HCP, which include survey and monitoring efforts on FGS property, and equipment exclusion zones to avoid direct adverse impacts to the plants. USFWS has therefore determined that the impacts of the covered activities on the Yreka phlox and issuance of the ITP will not appreciably reduce the likelihood of the survival or the recovery of this species in the wild.

[1] USDI Fish and Wildlife Service (USFWS). 2011. Revised recovery plan for the northern spotted owl. USDI Fish and Wildlife Service, Portland, OR.

3.5 Other measures that USFWS may require as being necessary or appropriate for the purposes of the HCP

USFWS and FGS have entered into an IA, which clarifies the provisions of the HCP and the processes the parties intend to follow to ensure successful implementation of the HCP in accordance with the ITP and applicable law. The IA is incorporated by reference as a condition of the ITP. Along with any additional specific conditions set forth in the ITP, the IA and HCP incorporate measures determined by USFWS to be necessary or appropriate for purposes of the HCP.

3.6 USFWS has received the necessary assurances that the plan will be implemented

FGS has made a significant investment in time and money over many years toward the development of the HCP. This investment includes the development and application of extensive monitoring programs and the collection and analysis of data describing the environmental conditions and function of HCP covered and surrounding lands. FGS's past commitment to develop the HCP in combination with the avoidance, minimization and mitigation measures and associated funding commitments made by FGS under the HCP provide the necessary assurances that FGS will implement the HCP.

4. GENERAL CRITERIA AND DISQUALIFYING FACTORS

USFWS has no evidence that the ITP should be denied on the basis of the criteria and conditions set forth in 50 C.F.R. section 222.303(e)(1). The applicant has met the criteria for the issuance of the ITP and does have any disqualifying factors that would prevent the ITP from being issued under current regulations.

5. RECOMMENDATION ON PERMIT ISSUANCE

Based on the foregoing findings, USFWS recommends the issuance of the ITP to the Fruit Growers Supply Company for its land holdings described in their HCP and located in Siskiyou County, California. The ITP would authorize the incidental take of the northern spotted owl.

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Deputy Regional Director

11.27.2012
Date