

Testimony to the House Natural Resources Committee Hearing on “*Crisis of Confidence: The Political Influence of the Bush Administration on Agency Science and Decision-Making*”

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Chairman Rahall and Committee members: thank you for holding this oversight hearing regarding the political influence of the Bush Administration on agency science and decision-making. I am especially appreciative of this opportunity to submit testimony regarding one of the numerous mishandlings by this administration of the Endangered Species Act, as previously documented in the May 9 hearing in this Committee on the “*Endangered Species Act Implementation: Science or Politics?*” At that time, I testified in front of the House Natural Resources Committee (“Committee”) on how interference in the draft northern spotted owl recovery plan by a “Washington D.C. Oversight Committee” led to a scientifically flawed and politically motivated recovery plan. I understand that my testimony was challenged by the Forest Service and Fish and Wildlife Service (FWS) in response to issues raised by members of this Committee. Thus, I am submitting additional testimony to respond to these assertions and to contribute to this oversight hearing. Since June 2006, I have served as a member of the FWS-appointed spotted owl recovery team. During this process, I witnessed numerous instances of distortions of science by the recovery team and FWS, and a shift in the process under which the recovery team operated from consensus to responding to direction from the Washington Oversight Committee.

In this testimony, I emphasize four main points:

- (1) the draft recovery plan for the spotted owl was interfered with by a Washington Oversight Committee, which included Deputy Assistant Interior Secretary Julie MacDonald and Deputy Secretary Lynn Scarlett among others, as documented in the excerpts of recovery team meeting notes, emails, and personal meeting notes that were submitted into the congressional record on May 9th;
- (2) the much needed re-examination of Ms. MacDonald’s involvement in ESA decisions should be opened up to a broader range of ESA related issues, especially the draft spotted owl recovery plan;
- (3) the flawed draft spotted owl recovery plan is tied to several related forest policy decisions, including the recently proposed critical habitat exemptions for the northern spotted owl and the soon-to-be released Western Oregon Plan Revisions (WOPR) of the Bureau of Land Management (BLM); and
- (4) these decisions should be placed on hold while an investigation is conducted into the draft owl recovery plan and a new recovery team assembled that includes independent scientists.

Although Deputy Interior Secretary Scarlett recently stated “*Secretary Kempthorne and I are strongly committed to scientific integrity at the Department of the Interior - I believe we are taking positive steps in this regard,*” the commitment to examine ESA decisions does not extend to the draft spotted owl recovery plan that also may have been tampered with by Ms. MacDonald and other high-ranking officials. The draft owl recovery plan is a key document that could trigger rollbacks in old-growth forest and wildlife protections, including the recently proposed critical habitat determination for the spotted owl and the BLM WOPR among others. A weak owl recovery plan could result in irretrievable and irremediable losses of remaining old-growth forests not only for owls but in some cases salmon and other wildlife species. It could also trigger the future need to up-list the owl to endangered status.

Prior to September 29, 2006 the recovery team was operating under a consensus charter in reaching decisions on the spotted owl recovery plan. After that draft was submitted to Washington D.C. for internal review, the recovery team was moved out of consensus decision-making and into a lesser defined “advisory role,” increasingly responding to direction from the Oversight Committee. At that time, the amount of official agency note taking declined precipitously and meeting summaries became superficial. Therefore, the materials noted in my testimony were derived from the few detailed emails and recovery team meeting notes that contained relevant information and from my personal notes taken during recovery team meetings. These excerpts are backed by letters from scientists and lengthier documents should the Committee require further proof.

Issues raised by Committee Members, FWS Response, and My Response

Issue #1: Dr. DellaSala asserted that there was a lack of consensus for decision making.

FWS response: The recovery team fully complied with their charter; they worked hard to reach consensus, and most decisions were achieved through the consensus process. When consensus was not reached, it was only a few individuals who dissented, after much discussion and efforts to accommodate all points.

My response: The recovery team operated under a consensus charter until September 29 when the recovery team’s initial draft recovery plan was submitted to D.C. for internal review. While that draft plan did not receive the consensus support of the entire recovery team, for example, several of us expressed reservations or disagreement with the level of habitat protection for the owl, the path to resolving this disagreement – scientific peer review by qualified owl experts – did not appear to be objectionable. Unfortunately this approach to address our disagreements was not followed.

Instead, after September 29, our recovery team was instructed to change its approach. The following direct quotes were extracted from FWS recovery team meetings notes that demonstrate how the process shifted from consensus to the team increasingly responding to direction from the Oversight Committee:

On October 19, 2006 the recovery team received a memo via e-mail from the FWS Pacific Region Office containing a new set of rules for making decisions. The memo recommended “**the team no longer make decisions by consensus.**” At the same time, the recovery team received a second memo, identifying topics for discussion at future meetings and teleconferences. Among the topics listed were “**coordination with decision makers**” (i.e. the Oversight Committee), and the need to “**ensure we are exploring the options described by the decision makers.**” [emphasis added]

Source: October 26-27, 2006 recovery team meeting notes taken by FWS – “NSO Recovery Team Meeting”

“The team discussed moving away from consensus decision making in order to meet our timeline and more fully capture scientific uncertainty associated with the options.”

Source: January 12, 2007 email from Dave Wesley to the recovery team

“Here is our plan – the IST will also draft the provincial Option, Option 2, using the best information from our last meeting and guidance (direction/questions) we received from DC.

The noted shift in the decision making underscores how the recovery team, primarily operating through the IST (Interagency Support Team), was responding to direction/questions from the Oversight Committee in D.C. rather than proposing recovery plan options based on the best available science.

From my personal notes taken during a recovery team meeting on February 7, 2007, the recovery team was instructed by Paul Phifer that “*consensus is not the purpose – we need to evaluate options based on criteria*” and by Dave Wesley “*the new direction from the oversight committee changed things – the paradigm has shifted – we need to make Option 2 as best as we can.*”

It was more than a few individuals that expressed concerns regarding this shift in decision-making. There were misgivings from other recovery team members, including the Washington State governor’s office, the Washington Department of Natural Resources, and the Washington Audubon Society (per my meeting notes).

Issue #2: Dr. DellaSala asserted that the FWS did not or would not do peer review, while maintaining that the FWS should conduct peer review because the habitat percentages for various provinces the owl occupies are inaccurate.

FWS response: The habitat percentages in the draft plan were developed by the entire recovery team. The recovery team, including Dr. DellaSala, agreed these percentages were at a point in which they could be peer reviewed, and the team agreed the appropriate time for that review was during the public comment period. In its Notice of Availability published in the Federal Register, the FWS specifically asks for comment on these

percentages. Furthermore, the FWS has initiated peer review by contracting with 2 professional societies for independent review and is seeking additional review from the three scientists whose data were used to develop these habitat percentages.

My response: According to my notes from the August 22, 2006 recovery team meeting, we had considerable discussion over a technique for developing habitat thresholds (i.e., how much habitat to include in the reserves) initially proposed by Ed Murphy of Sierra Pacific Industries, during which I and others raised significant objections that he misrepresented data from two studies in the southern part of the owls' range (Franklin et al 2000, and Olson et al. 2004) and was "low balling" the habitat thresholds. My notes go on to say that because there were disagreements over the habitat thresholds, the recovery team reached consensus to send them out for peer review. This came up again on August 23, after the discussion was re-opened, and the recovery team agreed a second time to send the thresholds out for peer review rather than hold the plan up over this disagreement. During a September 7, 2006 recovery team conference call with leading owl scientists (Drs. Robert Anthony and Alan Franklin), the scientists supported my concerns that the proposed habitat thresholds appeared too low. However, when higher habitat thresholds were proposed, they were dismissed by the recovery team and FWS refused to consider alternative proposals to expand the reserve network or increase the habitat thresholds. In an October 18, 2006 email to the FWS, I stated that one of the conditions for moving forward with the draft recovery plan was to "*convene a science panel with owl scientists and others to discuss the applicability of "new science" and the validity of the assertion that "past" science should be de-emphasized. The panel should also evaluate whether non-reserve strategies are scientifically sound.*" In particular, the so-called new science the recovery plan purports to be based on pertained primarily to the disputed habitat thresholds in the recovery plan initially proposed by industry.

Given these discrepancies, recovery team members, including myself, the Washington Audubon Society, and the Washington DNR requested that peer review be conducted by FWS of the habitat percentages *prior to* public release of the draft owl plan. This request was repeated in recovery team meetings and conference calls with FWS on September 11, October 20, November 17, and March 2. In response, the recovery team was instructed by FWS that we needed a decision from D.C. on how they wanted us to proceed before we bring scientists in to discuss the habitat percentages. FWS did not agree to release the habitat provisions for peer review until the March 2 conference call when the Washington DNR and I repeated our request. However, peer review did not take place until *after* release of the draft plan in the Federal Register on April 26. This seven-month delay in peer review resulted in the incorporation of habitat thresholds into the draft recovery plan that were not based on rigorous scientific standards and were in direct opposition to warnings by researchers whose seminal work was incorrectly used in the recovery plan. I have included the following statements from these researchers that underscore my concerns:

- "...we do not recommend that forest managers use our modeling results as a prescription for managing habitat either within the Oregon Coast Range or elsewhere until other similar studies are conducted." (Olson et al. 2004)

- *“I reiterate my concerns that interior older forest and other landscape characteristics, rather than just amounts of older forest, should be considered in developing optimal landscape configurations (as was suggested in the Ecological Monograph). In addition, my co-authors and I have repeatedly noted that the monograph represents just a first approximation of these relationships, which form the basis for future studies, but in itself should not be considered definitive.”* (November 21, 2006 letter to Paul Phifer from Dr. Alan Franklin).

Also attached is a letter from Dr. Olson to Congressman Inslee. Dr. Olson identified five key areas where her work was misapplied in the draft recovery plan by the recovery team noting “...my general impression with respect to the use of my research is that the Recovery Team lacked an understanding of the methodologies used and deliberately ignored warnings against using it to write management prescriptions.

Thus, the draft recovery plan contains a number of fatal flaws that could allow habitat levels for the spotted owl to be managed at unscientifically low levels at a time when the species is facing multiple threats and an accelerated decline (Anthony et al. 2006). A scientifically sound recovery plan would never recommend low habitat levels at a time when the owl is facing multiple threats.

Issue #3: Dr. DellaSala asserted that the Washington Oversight Committee directed the Recovery Team to rewrite the plan.

FWS response: The Oversight Committee, after reviewing the initial draft, asked the Recovery Team to do three things: (1) reorganize how the plan was presented in order to improve readability and emphasize new science; they did not ask it to be substantively changed; (2) address the barred owl threat more directly, as this threat was assigned the highest recovery priority number by the recovery team - while loss of habitat continues to be a concern, the original draft as prepared by the recovery team included increased concern about the impact of barred owls; however, when the Washington Oversight Committee looked at the actions to address this threat, the actions did not appear substantial; and (3) provide one or more options that provide equal protection for the owl, but do not rely on static reserves.

In recognition of adaptive management principles and some of the science presented in the 5-year review, the Committee asked if owl reserves could be established at the local land manager level, either range-wide or on a provincial basis. At no time did the Committee provide specific direction to change any of the science, ask the measures needed to recovery the owl be changed or diluted, nor did they edit or write any portion of the document.

My response: The following are excerpts from recovery team meeting notes and emails taken by or sent by the FWS reporting to the recovery team on discussions with the Oversight Committee. These excerpts demonstrate that the recovery team was directed by the Oversight Committee in more substantial ways than FWS admits.

Source: October 18 “Northern Spotted Owl Recovery Plan Options”

- “Emphasize the new science indicating habitat variability across the range, and de-emphasize the past....
-Note change of name from “mapped” to “managed” owl reserves
- Eliminate the MOCA [*Managed Owl Conservation Areas*] concept and instead establish provincial habitat targets.”
- **“We also need to do a “reorganization and emphasis” rewrite of the existing draft...”** [emphasis added].

Source: October 25, 2006 “NSO Options” (this direction was repeated in an October 30, 2006 Northern Spotted Owl Recovery Plan Options – Concept Paper)

- “Option 2: flip and switch.... Strengthens references to flexibility for land management agencies....
- ...and summarize the habitat threats discussion into less than a page.
- Revise how we reference the NWFP [*Northwest Forest Plan*] throughout the document...and then eliminate reference to the NWFP....”

Source: January 12, 2007 email from Dave Wesley to the recovery team

- “We just received new direction from Lynn Scarlett, Deputy Secretary of the Interior concerning the NSO Recovery Plan. We have been asked to provide 2 independent options of the Recovery Plan... These options are to address the recent direction we received from DC.”
- “Here is our plan – the IST will “delink” Option 1 from the combined draft as it exists now and review it to insure it represents the Teams’ best efforts as of September 29th...The IST will also draft the provincial Option, Option 2...”

The following are summaries from recovery team meeting notes that I took:

- Ren Loehefner (10/17/06) – the Washington Oversight Committee objected to: (1) mapped owl areas – too restrictive and too much of a reserve system; (2) the emphasis on the NWFP and the 1992 draft final spotted owl recovery plan; (3) not enough actions on barred owls; and (4) not enough flexibility.
- Paul Phifer (12/15/06) –the oversight committee has decision-making authority and is telling the recovery team what they want – this is a shift in our approach – we are being moved into an advisory role.

In sum, the Oversight Committee directed the recovery team to: (1) place the barred owl above habitat loss (e.g., by reducing the discussion of habitat to a single page and – “flip and switch” – the presentation of materials so barred owls are ranked higher than habitat losses); (2) deemphasize past science and emphasize new science; (3) delink the recovery plan from the NWFP; (4) develop an option that does not depend on fixed reserves; (5) eliminate the MOCAs; and (6) change “mapped owl conservation areas” to “managed”

owl conservation areas. It should be noted that the September 29 draft submitted by the recovery team to D.C. assigned equal priority to the barred owl and ongoing habitat loss.

I have attached a letter from Dr. James Tate, Science Advisor to the Office of the Secretary, Water and Science. Dr. Tate states *“the draft recovery plan for the Northern Spotted Owl [NSO] is needlessly bureaucratically complicated, and fails to address the basic biology of the listed species and the threats to its survival or recovery.....I suggest that some of the other actions, especially those that related to the habitat needs of the two species, deserve a much higher priority than lethal control of BAOWL (barred owl – sic – emphasis added).”* .

When this letter was discussed during a subsequent recovery team conference call on January 18, 2007 the recovery team was instructed by FWS to ignore it.

Issue #4: Dr. DellaSala asserted that the habitat criteria were directed by the Washington Oversight Committee.

FWS response: In fact, the habitat criteria were established by the Recovery Team, as described above and with which Dr. DellaSala agreed (pending peer review as previously described). These criteria were developed for both options. In fact, these habitat criteria were developed before the initial plan was ever sent to the Washington Oversight Committee. These criteria are very technical, and at no time did the Washington office inquire about them.

My response: To clarify, nowhere in my May 9 testimony did I state, or even imply, that the Oversight Committee directed adoption of specific habitat criteria. However, as stated in my May 9, 2007 testimony to the Committee, the Washington Oversight Committee, and, in particular, Deputy Interior Secretary Lynn Scarlett, directed the FWS to *“start with newer science, how it works, de-emphasize the reference to the NWFP (Source: October 27 meeting notes distributed to the recovery team by FWS) and to “summarize the habitat threats discussion into less than a page” (source: November 15 recovery team meeting notes – FWS)*. The so-called new science primarily included two studies in the southern range of the owl misrepresented in the draft recovery plan (see response #2 above). In addition, there were numerous other new studies that the recovery plan omitted, including those documenting the impacts of post-fire logging on forest structure and ecosystem processes of importance to the owl (e.g., Beschta et al. 2004, Lindenmayer et al. 2004, Noss and Lindenmayer 2006) and others demonstrating that habitat loss and barred owls are interrelated [equivalent] threats to the spotted owl (Pierce et al. 2005). The 2007 draft owl recovery plan is a significant step backward from the 1992 draft owl recovery plan, which included much stronger restrictions on post-fire logging.

Issue #5: Dr DellaSala asserted that Dr. Lohofener, Mr. Wesley and Mr. Joyner after meeting with the oversight committee all stated that the Forest Service and BLM were to receive special treatment and were really in charge of the Recovery Plan.

FWS response: Mr. Joyner, Deputy Regional Forester of the U.S. Forest Service in Portland responded to Dr. DellaSala. In his response he states, “I categorically deny making such a statement nor did I imply that the oversight committee intended to reduce protection to the Northern Spotted Owl, when the committee provide the guidance for Option 2. In a broader context, I disagree with your general assertion that the Forest Service and BLM exceeded an appropriate role in the development of the recovery plan. [Letter from Calvin Joyner to Dr. DellaSalla – sic – dated 5/8/07].” Dr. Lohofener and Mr. Wesley also deny ever making statements indicating preferential treatment in developing the recovery plan. Because recovery plans are only effective if they are implemented, we did strive to develop a plan that was responsive the ESA (sic) and would be useable by the U.S. Forest Service and Bureau of Land Management, who manage the vast majority of the land included in the recovery plan.

My response: For clarification, nowhere in my May 9 testimony did I state that the Forest Service and BLM “were really in charge of the Recovery Plan.” I merely stated that the land management agencies had disproportionate influence as documented in both of my testimonies. As an addendum to my May 9 testimony and in response to Mr. Joyner’s letter regarding my testimony, I submitted the following materials to this Committee and resubmit them here again in support of my ongoing concerns that the Forest Service and BLM inappropriately pressured the FWS during the development of the recovery plan. These materials are excerpts from recovery team meetings notes taken by FWS, an unsigned memo from the Pacific Northwest Regional Forester and BLM State Director (Oregon), and response emails from the FWS.

Source: January 12, 2007 email from Dave Wesley to the recovery team

“As there is a bit of ambiguity in these directions/questions [*i.e. from the oversight committee*], the IST will be consulting with the FS and BLM to ensure we address their concerns.”

Source: Draft Direction (unsigned) memo received on January 16, 2007 from BLM State Director (Oregon) and Forest Service Regional Director (Portland) attached to a cover email from Paul Phifer.

“We appreciate the continued commitment and hard work of the Recovery Team (RT). The Recovery Plan (RP) for the Northern Spotted Owl (NSO) will identify and prioritize recovery actions to guide monitoring, research, project planning and on-the-ground management actions by the federal agencies and describe recovery goals to be considered in developing future land use plans. The northwest forests are dynamic systems that will change considerably over the 30 year recovery period. Our knowledge of the Barred Owl, now the single biggest threat to NSO recovery, will improve dramatically over the same time.

Over the life of the RP, the BLM and US Forest Service will periodically revise the land use planning documents of the nineteen National Forests and six BLM districts covered by the Northwest Forest Plan (NWFP). The RP will provide long term goals for

recovery, with both short and long term recovery actions, but it must also provide a reasonable level of flexibility to enable the agencies to continue to adapt and revise land use plans based on new information and observed results.

Therefore, we request the RT proceed as follows:

1. Fully develop Option 2 (province level rule set) independent of Option 1. Use the Interagency Scientific Committee (ISC) report, the 1992 Draft Recovery Plan, and more recent peer reviewed scientific publications, like the 10-Year Status Review, to develop the rule set. Drop rule #1 that carries over the MOCA acres by province from Option 1 and clarify rule #5 that calls for “as much high quality habitat as possible.” Clearly describe the goals and objectives of each rule so the agencies can determine, in consultation with the FWS, how best to achieve the goals and objectives of the RP while providing for other goals identified in land use plans. The RP should place primary emphasis on identifying the quality and characteristics (size and spacing) of necessary habitat based on the best information available, including historic occurrence data and describe objective, measurable recovery criteria. Provide to the FWS a final draft by March 1, 2007 for public release by April 1, 2007.
2. Provide additional emphasis on actions to reduce the loss of important NSO habitat by wildfires and to address the threat of Barred Owls. To the extent possible, identify priority areas in need of treatment and describe the goals of such treatments.
3. Rather than assume continued management of the federal lands according to the NWFP, assume the federal agencies will continue to manage federal lands per a land use plan which will be based, in part, on the RP. Also, assume actions to implement federal land use plans will be accompanied with either plan or project level consultations to ensure management actions align with recovery goals.
4. As you prepare the RP, include applicable actions or strategies from the NWFP as specific goals, objectives or recovery actions when necessary to contribute to recovery, but de-link the action or strategy from the NWFP and describe it in independent terms. Any element of the 12 year-old NWFP brought forward into the RP should be re-evaluated based on current knowledge of threats to ensure continued applicability. For federal lands outside the areas to be managed for NSO, assume those lands will continue to represent habitat capable acres. Though nesting, roosting, foraging and dispersal habitat will continue to be available on federal lands outside the areas to be managed for owls, and will continue to contribute to recovery, the amount and locations of such habitats will vary over time based on implementation of land use plans and naturally occurring events.
5. Recognizing that size and spacing of habitat blocks will be a key element of any RP, a rule set that identifies either the minimum or a reasonable range for each variable will provide both the most flexibility and most responsive management direction. When a range of values is provided, explain the basis for the values that define the range.”

Source: January 25, 2007 response from Dave Wesley to the recovery team

The following memo details a point-by-point account of how the FWS incorporated direction from the Forest Service and BLM detailed in the “draft direction” above (only the relevant issues are cited here – the reference to “*incorporated*” means it was included in the draft recovery plan by FWS).

Fully develop Option 2 (emphasis added) (province level rule set) independent of Option 1. Clearly describe the goals and objectives of each rule so the agencies can determine, in consultation with the FWS, how best to achieve the goals and objectives of the RP while providing for other goals identified in land use plans.

- A fully-developed, stand-alone Option 2 Recovery Plan has been developed with a rule set for deriving habitat blocks that does not include a lower acreage limit. The IST has added purpose statements for each rule in the rule set.
- The rule set has been modified to include a better process for reaching an acceptable spatial extent by connecting most habitat blocks with three other habitat blocks.
- A new Recovery Action (now #35, both options) describing the spotted owl needs on those lands between MOCAs/Habitat Blocks has been created and incorporated into both options.

Rather than assume continued management of the federal lands according to the NWFP (emphasis added), assume the federal agencies will continue to manage federal lands per a land use plan which will be based, in part, on the RP. Also, assume actions to implement federal land use plans will be accompanied with either plan or project level consultations to ensure management actions align with recovery goals.

- Incorporated

As you prepare the RP, include applicable actions or strategies from the NWFP as specific goals, objectives or recovery actions when necessary to contribute to recovery, but **de-link the action or strategy from the NWFP** (emphasis added) and describe it in independent terms.

- Incorporated

Recognizing that size and spacing of habitat blocks will be a key element of any RP, a rule set that identifies either the **minimum** (emphasis added) or a reasonable range for each variable will provide both the most flexibility and most responsive management direction. When a range of values is provided, explain the basis for the values that define the range.

- Incorporated

Source: NSO Recovery Team Meeting October 26-27, 2006

Key Points

- 1) “The RT will attempt to draft a concept paper (see Draft Concept Paper) for review by the oversight committee by December 15, 2006. **The intent is to**

provide some useful information to the BLM’s Western Oregon Plan Revision process (emphasis added).”

** Note – the above incorporation of direction from the Forest Service and BLM by FWS is significant as it led to creation of Option 2 and the emphasis in the recovery plan on de-linking from the NWFP. By de-linking from the NWFP, BLM, in particular, can begin eliminating reserves created for the owl under the NWFP as part of its WOPR. Option 2 was not a product of the recovery team but was an outcome of direction received from the Washington Oversight Committee acting through direction from the Forest Service and BLM.*

Issue #6: Dr. DellaSala asserted that the recovery plan includes habitat protection strategies that are less than those currently afforded the owl under the Northwest Forest Plan

FWS response: The Northwest Forest Plan included provisions for hundreds of species other than the northern spotted owl and did not contain the specific criteria and recovery actions and recommendations for the owl included in the recovery plan. Nothing in the recovery plan changes the Northwest Forest Plan and nothing in the recovery plan changes the full protection the owl receives under the ESA.

My response: From the draft direction memo cited in issue #5 – *“Rather than assume continued management of the federal lands according to the NWFP, assume the federal agencies will continue to manage federal lands per a land use plan which will be based, in part, on the RP. Also, assume actions to implement federal land use plans will be accompanied with either plan or project level consultations to ensure management actions align with recovery goals.”*

By de-linking the 2007 draft owl recovery plan (Option 2) from the NWFP, the FWS proposes a recovery plan with lower levels of habitat protections for the owl than the NWFP, which has been recognized as the bare minimum for the owl by the courts. Based on the best available science, however, as well as core Endangered Species Act (ESA) principles for species protection and recovery, the habitat provisions of the NWFP are a “floor” or starting point for any legally adequate spotted owl recovery plan. While some parts of the NWFP also benefit other late-successional species, the ecological assessment of the plan (FEMAT) never considered the parts of the NWFP inseparable. Nor did it indicate which parts could be omitted or reduced and still attain a viability rating for the owl. Greater protection of the owl and its habitat is almost surely needed to provide adequate regulatory assurances for recovering the owl.

Finally, by de-linking the draft owl recovery plan from the NWFP, the recovery plan has opened the door for the Forest Service and BLM to increase logging of old-growth forests in response to the “global settlement agreement” with the timber industry as detailed in my May 9 testimony. The draft owl recovery plan is especially significant to the timber settlement agreement as federal agencies will cite the recovery plan during Section 7 consultations involving forest plan revisions (such as the WOPR).

Issue #7: Dr. DellaSala asserted that the Washington Office oversight on this plan was inappropriate and interfered with science.

FWS response: The northern spotted owl has been a controversial species since before its listing in 1990. Because of the possibility of the species having a huge effect on the economy of the region, it is reasonable Administrations (sic) to have interest in how this resource issue is addressed. In the early 1990s, both the President and Vice President of the United States were directly involved in dealing with this issue. The current political appointees in the Department actively reviewed the recovery plan and suggested that the team explore management alternatives. This review was not unusual or inappropriate, as no factual information was changed or asked to be changed. At no time did the oversight team interfere with the underlying science of the recovery plan, or ask that any changes be made to that underlying science. The team: 1) asked that the recovery plan document be reorganized for greater clarity and readability; 2) asked if the team, which identified the barred owl as a threat to the spotted owl, had any measures to suggest in order to address that threat; and 3) asked if the team, while maintaining the recovery management option in the first draft, could also develop any other options based on adaptive management and performance measures. The team indicated that the initially proposed option was just one possible management option and that they believed it was possible to develop an additional option for consideration and review by the public.

My response: President Clinton directed federal agencies to develop a forest plan that was “*scientifically sound, ecologically credible, and legally responsible.*” The President did this in an open and transparent manner that included the public and scientists at the Forest Conference in Portland and also assembled a team of nationally recognized scientists known as the Forest Ecosystem Management Assessment Team (FEMAT). The NWFP, in particular, was developed in response to Judge Dwyer’s 1991 ruling that previous management of federal lands was inadequate to maintain the viability of the owl and hundreds of species associated with old-growth forests in the Pacific Northwest. In contrast, the process used by the Bush Administration to develop the draft spotted owl recovery plan was neither transparent nor based on the best available science as developed by career agency biologists and independent owl scientists. Our recovery team did not include any of the well recognized, independent owl scientists. Further, on February 7, 2007, Mr. Loehefner instructed the recovery team to “*don’t spend any more time on Option 1, the majority opinion of the oversight committee is they prefer Option 2* (source - my meeting notes – emphasis added). Additional direction from the Oversight Committee included a “*reorganization and emphasis*” rewrite of the September 29 draft (see above), which resulted in inappropriately placing the barred owl above habitat loss and the development of scientifically unsound habitat provisions and recovery plan options. This occurred while the recovery team’s decision making process shifted from consensus to responding to direction from the Oversight Committee.

FWS’s assertion that the Oversight Committee merely “asked if the [recovery] team... could also develop any other options based on adaptive management and performance measures” is false. The recovery team was informed that a non-reserve-based option

would be included in the plan, with or without the cooperation of the recovery team. Furthermore the statement “the team indicated that the initially proposed option was just one possible management option and that they believed it was possible to develop an additional option” is also incorrect. The majority of the recovery team objected to the heavy-handed interference by the Oversight Committee. That is the primary reason the recovery team was demoted to a poorly-defined “advisory” role. Option 2 was entirely a product of the Oversight Committee and the IST. The recovery team instead was asked to develop performance measures to evaluate Option 2. This option would never have existed if the recovery team had been allowed to work independently.

While FWS has assumed protections for endangered species like the owl are likely to have a “huge effect on the economy of the region,” the agency exaggerates this effect. Widespread economic losses were initially predicted as a result of federal reductions in timber harvests, however, the regional economy actually expanded in the decade or so since the NWFP (Niemi et al. 1999a, Power 2006). This is because the economic importance of timber in the Northwest diminished markedly due to many factors, and the regional economy shifted and diversified due, in part, to the many outdoor amenities, clean water, and regional beauty that serve to attract new businesses. FWS has consistently relied on biased economic loss estimators that do not include economic benefits associated with natural resource protections in general (Southwick Associates 2000) and with protecting natural resources that the public holds in high regard such as salmon (Niemi et al. 1999b), presenting one-sided arguments and worse case scenarios.

Issue #8: Dr. DellaSala cites a quotation attributed to Mr. Wesley, published in the Land Letter stating “...the less-defined second option was requested by Interior Department political appointees and other high-level official in Washington, D.C.”

FWS response: Although the entire quote is not shown, nor is there any context to the quote, it is essentially accurate that the oversight team requested that the recovery team see if it were possible to develop a second option based on the principles of adaptive management. There is nothing in this quote to indicate the option was less biologically sound, or that the Washington committee asked the Recovery Team to reduce protection for the owl or abdicate their responsibility to use the best available science. Both options rely entirely on the same underlying science and the same recovery objectives and criteria.

My response: The conservation foundation of the NWFP, which is rooted in fixed reserves, is broadly supported in the scientific literature (see Courtney et al. 2004, Thomas et al. 2006, DellaSala and Williams 2006 for reviews). In a five-year status review of the owl, researchers (Courtney et al. 2004) concluded that there was no reason to depart from the NWFP and that the situation for the spotted owl would be bleaker today if not for the NWFP. During a July 12, 2006 recovery team conference call with several well-respected owl scientists (Drs. Robert Anthony, Rocky Gutierrez, Alan Franklin, Barry Noon), the scientists stated that (1) the fixed reserves of the NWFP were the best plan for the owl at this time; (2) the foundation of the NWFP reserves has yet to be proven false; and (3) maintaining the fixed reserves of the NWFP is critical to the

owl's recovery (my personal meeting notes). The draft recovery plan for the owl (page 59) states that the conservation reserve strategy under the NWFP was based on sound scientific principles that have not substantially changed since the species was listed. Yet it does a complete reversal by proposing Option 2, which includes non-fixed reserve approaches that have neither been modeled nor tested. It should be noted that Judge Dwyer in 1994 determined that the NWFP was both the backbone to owl viability throughout the region and the bare minimum necessary to satisfy the viability requirements of the National Forest Management Act (NFMA). Both options (and especially Option 2) would drop habitat levels below the bare minimums of the NWFP and in doing so do not meet either the viability provisions of NFMA or, more to the point, the recovery plan standards of the ESA pertaining to best available science. In a related decision, FWS recently proposed to exempt 1.5 million acres of owl critical habitat from protections. As a scientist, I know of no science that would recommend lower habitat levels at a time when the species faces multiple threats and is declining precipitously (Anthony et al. 2006). Consequently, the draft owl recovery plan departs significantly from the habitat protections afforded the owl under the NWFP.

Closing Remarks and Recommendations

I have provided the Committee with excerpts of emails and recovery team meetings notes from the FWS supplemented with letters and quoted statements from well-respected scientists, the administration's own science advisor, and personal meeting notes from recovery team meetings. In spite of my many misgivings about the recovery plan, I have remained a member of the recovery team primarily to ensure that the peer review now underway is responded to openly by FWS and to daylight the political interference with the draft owl recovery plan. Recovery plans are meant to provide guidance to move a listed species to a future where the protections of the ESA are no longer warranted. They are linked to delisting decisions and agency consultations and therefore are required to be based on the best available science. Unfortunately, the draft recovery plan includes numerous scientific flaws, key misrepresentations and omissions of science, and avoidance of warnings from owl scientists and the administration's own science advisor. The process by which the draft recovery plan was handled by FWS has eroded the public's confidence in the ability of the agency to meet its obligation to protect the nation's threatened and endangered wildlife.

The draft owl recovery plan is already being used by federal agencies in related, proposed forest management decisions, including an equally flawed proposed critical habitat determination for the owl and a soon-to-be released BLM WOPR. These pending decisions are collectively tied to the global timber settlement agreement designed to weaken protections for old-growth forests strongly supported by the public.

Consequently, I recommend the following remedial actions be taken by Congress:

- Investigate the influence of the global timber settlement agreement on the draft owl recovery plan, proposed critical habitat determination for the owl, BLM WOPR, and other related forest policy rollbacks (e.g., Survey and Manage and Aquatic Conservation Strategy of the NWFP).

- Place the spotted owl recovery plan and related decisions (e.g., critical habitat, BLM WOPR) on hold and convene a panel of independent scientists to redo the draft owl recovery plan.
- Request that the Interior Inspector General, the Government Accountability Office, or the Justice Department's Division of Natural Resources (public integrity section) conduct an investigation into the entire decision chain involved in the draft owl recovery plan and its relation to the global timber settlement agreement in driving the forest planning decisions of this administration.
- Oversee the soon-to-be completed peer review of the draft recovery plan and how FWS responds to it. Given the pattern of political interference in this recovery plan, a credible peer review should be part of the ethical changes and department reviews recently initiated by Secretary Kempthorne.

Thank you again for allowing me to submit this testimony into the congressional record.

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