

**Testimony to the U.S. House Committee on Natural Resources for the Hearing on
“Endangered Species Implementation: Science or Politics?”**

**Dominick A. DellaSala, Ph. D.
Chief Scientist and Executive Director
National Center for Conservation Science & Policy**

May 9, 2007

Chairman Rahall and committee members - thank you for this opportunity to testify on scientific integrity and the Endangered Species Act. My name is Dominick DellaSala. I am Executive Director of the National Center for Conservation Science & Policy, a science-based conservation organization in Ashland, OR. Since last June, I have served as a member of the U.S. Fish & Wildlife Service (USFWS) appointed recovery team for the threatened Northern Spotted Owl.

There are three key points I will make today in my response to the draft recovery plan for the Northern Spotted Owl published in the Federal Register on April 26, 2007:

- (1) what was supposed to be a science-based plan was derailed by a pattern of political interference (see Exhibit A);
- (2) the recovery plan includes habitat provisions recommended for the owl that are considerably less than currently afforded the owl under the NWFP; and
- (3) while oversight of agency documents by department officials in itself is not unusual, in this case political interference clearly allowed the Forest Service and Bureau of Land Management (BLM) to have an inappropriate amount of influence that resulted in a recovery plan that is not based on the best available science.

Throughout my testimony I will be referring to options 1 and 2 of the draft plan. For simplicity, Option 1 is based, in part, on the fixed network of mapped habitat reserves – called Late-Successional Reserves or LSRs - initially established under the NWFP. Option 2 does not rely on fixed reserves but rather lets the Forest Service and BLM decide where blocks of habitat will be located according to a “rule set” detailed in the recovery plan (see Appendix B of the plan). Both options are inadequate to recover the owl.

(1) Spotted owl recovery plan and process was derailed by political interference

Distinguished Members, in 1991 one of the Northwest’s most famous judges, the Honorable William Dwyer said that the debate over the Northern Spotted Owl is about more than this one species. As he recognized, under the law, the owl was the indicator species of the remaining old-growth forest; all but a small fraction of which is now gone (Seattle Audubon v. Evans, 777 F. Supp. 1081, 1088 (1991). Judge Dwyer’s ruling set the stage for the adoption of the landmark Northwest Forest Plan.

In April 2006, under pressure of lawsuits by both the timber industry and conservation groups, the USFWS agreed to prepare an updated recovery plan for the threatened Northern Spotted Owl (an early draft was published in 1992 but it was never officially adopted because the Secretary of

Interior assumed at the time that the NWFP would serve as a *de facto* recovery plan). The agency assembled a multi-stakeholder team consisting of representatives from federal and state agencies, timber industry, and conservation groups to develop an updated recovery plan. This team did not include *any* of the many well-recognized, independent scientists with expertise in owl biology. The USFWS charter document under which the recovery team made decisions emphasized that “*recommendations for recovery actions from the Team will be made in a collaborative manner, striving for the highest level of consensus possible.*”

In late September of 2006, the recovery team forwarded its draft plan to USFWS headquarters in Washington D.C. for internal review. The team recommended a recovery strategy that was anchored mostly in the existing LSR network. We reached consensus on this approach because it was the most scientifically credible way to recover the owl. The recovery team also agreed it was the most efficient way to integrate the NWFP and the recovery plan. The scientific rationale for using fixed reserves for conserving spotted owls and other old-growth dependent species has been repeatedly reaffirmed in the scientific literature (e.g., Courtney and Franklin 2004, Thomas et al. 2006, Noon and Blakesley 2006, Strittholt et al. 2006). For instance in a USFWS-commissioned five-year “status review” of the Northern Spotted Owl in 2004, two scientists, Drs. Steven Courtney and Jerry Franklin concluded that:

:

- “*the Reserve and Matrix strategy of the NWFP has been successful and is performing as expected*” (Chapter 9, page 9); and
- *the NWFP has made important contributions to protect and recover the endangered owl and without the plan the situation of Northern Spotted Owls would be far bleaker*” (Chapter 9, page 15).

In addition, the latest analyses of demography of spotted owls (Anthony et al. 2006) has shown that owls are reproducing and surviving better on federal land managed under the NWFP than on non-federal lands where logging is much greater (i.e., the annual rate of owl population declines on nonfederal lands was more than twice that on federal lands).

Although the recovery team agreed that a network of protected LSRs would be the foundation of the spotted owl recovery strategy, we did not reach consensus on specific habitat provisions for the owl, particularly in the southern part of its range. The team agreed to forward our science-based recommendations to USFWS headquarters on the condition that the draft plan undergo rigorous scientific peer review, and that substantive revisions be made, if necessary, pending results of peer review. The USFWS initially rejected this request for peer review, citing insufficient time as a constraint, although more than five months elapsed during which the agency prepared the draft for publication. The recovery team was notified on April 24, 2007 (two days before public release of the draft plan) that the peer review process is finally underway.

In late September, the Pacific Regional Director of the Fish & Wildlife Service, Ren Lohofener, notified the recovery team of the existence of a “Washington [DC] Oversight Committee,” consisting of high-ranking officials from the departments of Agriculture and Interior, who would scrutinize the draft recovery plan (detailed in attached Exhibit A). At the time, the oversight committee included Julie MacDonald, who was under investigation for political interference in other ESA matters and recently resigned from her position. On October 17, the recovery team

was told that the Oversight Committee rejected the September draft recovery plan, in part, because it was based on the NWFP's network of LSRs and therefore did not provide enough "flexibility." The Oversight Committee instead directed the recovery team and federal agency staff to rewrite the plan, and to include a second alternative – Option 2 - that does not rely on fixed habitat reserves.

I want to emphasize that Option 2 is not a product of the recovery team. In fact, on February 7, Mr. Ren Lohofener, Pacific Regional Director of USFWS, gave direction to the team to "*don't spend any more time on Option 1, the majority opinion of the Washington oversight committee is they prefer Option 2.*" This new direction was not based on sound science but was designed to give the Forest Service and the BLM the discretion to exempt public forests from the NWFP in response to "friendly" lawsuits filed by the timber industry (known as the "global settlement agreement" – see attached Exhibit B) to triple the amount of logging in the region. The USFWS also received direction from the Oversight Committee to do the following.

- *De-emphasize past science and rely on "new science"* – we were told to base habitat recommendations on a handful of studies in the southern part of the owl's range. Two of those studies point to the owl's reliance on a mixture of forest age classes (Franklin et al. 2000 – northern California Klamath province, Olson et al. 2004 – Oregon Coast Range). However, the authors of both of the studies specifically cautioned against using the results to guide forest management actions for spotted owls. A third study, also in the southern range near Roseburg, Oregon did not conclusively confirm spotted owl use of younger forests. Unfortunately, the USFWS ignored these warnings and wrote a draft plan that inappropriately recommended region-wide habitat criteria that significantly underestimate the old growth habitat needs of the owl. The clear intent of this directive was to downplay the importance of old growth habitat to allow additional old growth logging on federal lands (detailed below).
- *"Flip and switch" the presentation of threats to the spotted owl in the draft plan by minimizing the importance of habitat loss and placing more emphasis on Barred Owls* – An October 25 memo directed the recovery team to "*indicate [the Barred Owl] was [the] only threat given priority number 1...and summarize the habitat threats discussion into less than a page.*" An untitled document dated October 27 and distributed to the team at a meeting in Portland by Dave Wesley, recovery team leader, contained instructions from Lynn Scarlett, Deputy Director of Interior, directing the recovery team to make the new option (Option 2) "*less focused on habitat preservation.*" Although Barred Owls have emerged as a recent threat to spotted owls (Kelly et al. 2003, Crozier et al. 2006), the science of conservation biology and endangered species management is clear on this point – when a species is faced with multiple threats it is best to conserve more habitat for it, not less.
- *"De-link the recovery plan from the Northwest Forest Plan"* – On October 18, we received notice from the USFWS to "*de-link the owl plan from the Northwest Forest Plan*" to provide the Forest Service and BLM with more "flexibility" (see attached Exhibit A). On October 26, Mr. Lohofener admitted that the Forest Service and BLM were driving the recovery plan revisions demanded by the Oversight Committee, and

stated that the end product would have to be flexible enough “*to be acceptable to the Forest Service and BLM.*” Under intense questioning from recovery team members, both Dave Wesley, USFWS recovery team leader, and Cal Joyner, the Forest Service representative on the recovery team, explained that “*flexibility*” meant giving the Forest Service and BLM discretion to alter or eliminate Managed Owl Conservation Areas (or MOCAs as in Option 1 of the draft recovery plan) from the recovery plan. Notably, the BLM is currently revising its forest plans on ~2.4 million acres in western Oregon and is considering alternatives that do not include fixed reserves (see Exhibit B) and the Forest Service recently excluded from NEPA its forest plan revisions (Federal Register Vol. 71, No. 241, Friday, December 15, 2006, pp 75481-75495.). It should be noted that one of the primary reasons why the owl was listed in 1990 was “*inadequacy of regulatory mechanisms.*”

2) The recovery plan includes habitat provisions recommended for the owl that are considerably less than currently afforded the owl under the NWFP

Option 1 vs. NWFP – a comparison of the habitat provisions in Option 1 vs. the habitat provisions in the NWFP for the LSRs (Tables F1 and F2 in Appendix F (errata copy) of the draft recovery plan vs Table F1 and Table 3-8 in Lint 2005) indicates that Option 1 could reduce the estimated amount of habitat capable for owls by ~27%.

This is mainly because the Option 1 reserve network (MOCAs) does not include all of the existing LSRs. Option 1 also lowers the habitat bar for owls in two additional ways: (1) setting delisting thresholds for suitable owl habitat at 50-70% within the reserve network (instead of the 100% late-successional goal for LSRs under the NWFP), and (2) allowing delisting to be considered when an arbitrary 80% of the MOCAs in the Option 1 reserve network meet the low regional habitat criterion. Both of these provisions could result in premature delisting of the owl if habitat is judged to be sufficient based on this standard.

Option 1 vs. Option 2 – Option 2 could result in even greater reductions than Option 1 because the rule set allows the Forest Service and BLM to consider smaller reserves by limiting the size of owl habitat blocks relative to Option 1. When applying the rule set for Option 2, the recovery team estimated that ~823,000 acres of old-growth habitat could be left out of the network of habitat blocks compared to Option 1 (unpublished recovery team exercise). In particular, because Option 2 does not include fixed habitat reserves, only includes an “example” of possible habitat block locations (Appendix B), and does not include total acreage figures, it may not meet the requirements of the Endangered Species Act regarding “*measurable, objective*” standards for delisting criteria.

I would like to point out that only about 7 million acres of the 24.4 million acres of public forests in the PNW is currently old growth (Strittholt et al. 2006) and not all of this is protected (e.g., ~1 million acres of old forest can be logged in the “matrix”). This represents but a fraction (15%) of historic conditions (all ownerships) and therefore every acre of old growth is important. Conversely, the vast majority of public and non-federal lands include younger forest age classes.

I would also like to point out that recent demography studies of spotted owls found that that 9 of 13 study areas across the range of the owl had declining populations and the rate of decline was accelerating (Anthony et al. 2006). The bottom line here is that the owl is declining from multiple causes at a time when the USFWS is proposing a recovery plan that lowers the bar on habitat protections under both options.

The *flexibility* the administration desires cuts both ways – in fact – there is an even stronger scientific case to be made for *enlarging* reserves for the spotted owl due to the increased threats posed by Barred Owls and loss of habitat from fire. I and other team members mentioned this repeatedly during recovery team meetings, yet this science-based recommendation was rejected by the USFWS. Unfortunately, the habitat provisions in both options could result in the need to up-list the owl to endangered status in the future should populations continue to decline and habitat be further reduced by logging facilitated by inadequate regulatory mechanisms. This could eventually result in less flexibility not more.

3). While oversight of agency documents by department officials in itself is not unusual, in this case political interference clearly allowed the Forest Service and BLM to have an inappropriate amount of influence that resulted in a recovery plan based more on the timber objectives of land managers than on the best available science.

In closing, I want to underscore the unusual makeup of the recovery team and the change in process under which it operated when the Oversight Committee took charge late in the process. Typically, recovery plans are developed by recognized experts in the ecology and management of the listed species to ensure that recovery objectives and delisting criteria are based on best available science (Department of Interior and Department of Commerce 1994). Under the ESA, the purpose of recovery plans is to get listed species to recover to the point where delisting is warranted and protection under the ESA is no longer needed. In order for a listed species to move from the “intensive care unit” to a viable population, recovery plans must be based on best available science. Obviously, that was not the case here as the USFWS did not include the highly recognized owl experts on the recovery team whose seminal work was cited and, in some cases, misrepresented.

The political interference documented in this case led to misapplication of habitat provisions under both options and the creation of Option 2, which is by no means a recovery team product nor was it generated out of consensus. In fact, according to a news story in the *Land Letter* on May 3, Dave Wesley, leader of the agency's spotted owl recovery team, stated “*the less-defined second option was requested by Interior Department political appointees and other high-level officials in Washington, D.C.*”

Therefore, in spite of nearly a year of participation as a recovery team member, I cannot stand by this document. The agency, however, did eventually and only recently agree to conduct peer review of the plan. Should peer review confirm the scientific flaws noted in my testimony, the recovery plan should be rewritten by working closely with recognized owl scientists to ensure it is based on the best available science without further political interference. Clearly, in the case of the draft spotted owl recovery plan science took a back seat to politics.

Literature Cited

Anthony, R.G. and several others. Status and trends in demography of Northern Spotted Owls. Wildlife Monographs 163. 48 pp.

Courtney, S., and J.F. Franklin. 2004. Chapter 9: Conservation Strategy. *In*: S.P. Courtney, J.A. Blakesley, R.E. Bigley, M.L. Cody, J.P. Dumbacher, R.L. Fleischer, A.B. Franklin, J.F., R.J. Gutierrez, J.M. Marzluff, and L. Sztukowski (eds). 2004. Scientific evaluation of the status of the Northern Spotted Owl. Sustainable Ecosystems Institute, Portland, OR.

Crozier, M.L., and several others. 2006. Does the presence of barred owls suppress the calling behavior of spotted owls. *The Condor* 108:760-769.

Department of Interior and Department of Commerce. 1994. Endangered and threatened wildlife and plants: notice of interagency cooperative policy on information standards under the Endangered Species Act. Friday, July 1, 1994 (34271).

Dugger, K.M., F. Wagner, R.G. Anthony, and G.S. Olson. 2005. The relationship between habitat characteristics and demographic performance of Northern Spotted Owls in Southern Oregon. *The Condor* 107:863-878.

Franklin, A.B., D.R. Anderson, R.J. Gutierrez, and K.P. Burnham. 2000. Climate, habitat quality, and fitness in Northern Spotted Owl populations in northwestern California. *Ecological Monographs* 70:539-590.

Kelly, E.G., E.D. Forsman, and R.G. Anthony 2003. Are barred owls displacing spotted owls? *The Condor* 105:45-53.

Lint, J. 2005. Status and trends of Northern Spotted Owls populations and habitat. USDA PNW-GTR-648.

Noon, B.R., and J.A. Blakesley. 2006. Conservation of the Northern Spotted Owl under the Northwest Forest Plan. *Conservation Biology* 20:288-296.

Olson, G.S., and several others. 2004. Modeling demographic performance of Northern Spotted Owls relative to forest habitat in Oregon. *J. Wildlife Management* 68:1039-1063.

Strittholt, J.R., D.A. DellaSala, and H. Jiang. 2006. Status of mature and old-growth forests in the Pacific Northwest. *Conservation Biology* 20:263-374.

Thomas, J.W., J.F. Franklin, J. Gordon, and K. N. Johnson. 2006. The Northwest Forest Plan: origins, components, implementation experience, and suggestions for change. *Conservation Biology* 20:277-286.

Exhibit A
Political Interference and Manipulation of the Best Available Science in Developing the Northern Spotted Owl Recovery Plan

Chronology of Manipulation and Interference

April 2006: The U.S. Fish and Wildlife Service (FWS) assembled a multi-stakeholder recovery team, consisting of state, federal, tribal, timber industry, and conservation representatives. The team operated under a charter that called for making decisions by consensus. The composition of the recovery team was unconventional, as it did not include any well-published spotted owl scientists from academia or government, as has been the norm in past recovery teams.

September 21: After five months and 30 meetings, the recovery team authorized the Interagency Support Team (IST - composed of federal agency staff members assigned to assist in the development of the recovery plan) to finish writing the draft recovery plan and send it to FWS headquarters in Washington DC for agency review. Although all members are professional scientists, only one is widely regarded as a spotted owl expert.

There was agreement by all members that the recovery strategy should be based on fixed late-successional reserves (LSRs) linked to the Northwest Forest Plan (NWFP). Scientific assessments conducted in 1990, 1992, 1993, and 2004 all concluded that this reserve-based management strategy is the most scientifically credible approach for recovering the threatened Northern Spotted Owl.

September 27: Dave Wesley, Deputy Regional Director of the FWS and recovery team leader, notified the recovery team of the existence of an “Oversight Committee,” consisting of federal government officials that would review and revise the draft recovery plan. A memo distributed to the recovery team by the FWS Pacific Region office on October 27 listed the following members of the Oversight Committee:

- Lynn Scarlett, Deputy Secretary of Interior
- Jim Cason, Assistant to the Deputy Secretary of Interior
- David Verhy, Assistant Secretary for Parks, Fish and Wildlife
- Julie McDonald, Deputy Assistant Secretary For Parks, Fish and Wildlife
- David Bernhardt, Solicitor to Secretary of Interior
- Kathleen Clarke, Director, BLM
- Jim Hughes, Deputy Director of BLM
- Julie Jacobson, Deputy Assistant Secretary for Lands and Minerals, USDI
- Ed Shepard, BLM
- Dale Hall, Director, Fish and Wildlife Service
- Mark Rey, Undersecretary of Agriculture
- Dave Tenney, Deputy Secretary of Agriculture
- Fred Norbury, Assoc. Deputy Chief, Forest Service

Mr. Wesley described “very difficult discussions” he had with the Oversight Committee the previous week, and warned that the recovery team’s product might not be well received. Recovery plan project manager Paul Phifer (FWS) told the recovery team that the Oversight Committee might order plan revisions that would be unacceptable to the team, and that the

recovery team would *not* be in a position to negotiate. The draft recovery plan was forwarded to FWS headquarters (and thence to the Oversight Committee) for review on September 29.

October 6: Dave Wesley and FWS Pacific Region director Ren Lohofener briefed the Oversight Committee in Washington D.C. The Oversight Committee made it clear that the recovery team's draft was unacceptable, and ordered the FWS Pacific Region office to extensively revise the draft recovery plan and to develop one or more alternative plans that would *not* rely on mapped habitat reserves.

October 17: Ren Lohofener notified the recovery team that the September 29 draft was not acceptable to the Oversight Committee. He asked the recovery team to reconvene and to develop alternatives or "options" for the recovery plan based on the "Oversight Committee's directives." Mr. Lohofener reported that the Oversight Committee objected to the draft plan because it was based on a mapped reserve system, and was therefore too "*restrictive*" for the Forest Service and Bureau of Land Management (BLM). A majority of the recovery team members objected to this new direction, citing the lack of a sound scientific foundation for a recovery strategy that excludes mapped reserves. Mr. Lohofener stated that the recovery team was expected to obey the Oversight Committee ("*we are working for the Secretary of Interior*"), and offered to arrange for a coach from the Oversight Committee to attend recovery team meetings, to ensure that the team did not deviate from Oversight Committee's directives.

October 18: The recovery team received written directions stemming from the Oversight Committee meetings, instructing the recovery team to conduct a "*reorganization and emphasis rewrite*" of the September 29 draft recovery plan, and to develop new options for a recovery plan that would exclude the use of mapped habitat reserves. The directions specified that the reorganized, rewritten draft should:

- "*Emphasize the new science...and de-emphasize the past.*" The intent of this instruction was to downplay the vast body of scientific evidence demonstrating the spotted owl's association with old-growth forests and rely instead on a few recently published papers suggesting that a mix of old growth and forest openings in the southern end of the owl's range provides better habitat. These recent publications are being used to justify a reduction in old-growth habitat range-wide, despite the authors' warnings not to base management decisions on their conclusions.
- "*Clarify language relating to the Northwest Forest Plan, with emphasis on Forest Service and BLM Land and Resource Management Plan (LRMPs) revisions.*" This was apparently a reference to attempts by the Bush Administration to dissociate the recovery plan from the NWFP. More elaborate instructions were given to the recovery team in a memo that followed on October 25.
- "*State the plan's recognition of management flexibility, including the potential for a mosaic approach.*" This directive essentially instructs the recovery team to recognize the validity of wildlife conservation strategies that do not make use of fixed reserves. These are often called "*shifting mosaic*" strategies. The recovery team had the opportunity to adopt this approach early in the recovery planning process, but chose instead to base the spotted owl recovery strategy on the more scientifically credible mapped reserve model. This instruction was a clear attempt by the Oversight Committee to ignore the

preponderance of scientific evidence and force the recovery team to base its recovery strategy on untested assumptions.

The written directions went on to describe in more detail the additional options the recovery team was directed to develop, both of which “*eliminate the MOCA [i.e. mapped reserve] concept.*” Finally, the directions stated the expectation that the Oversight Committee would closely supervise the recovery team: “*Reasonable coordination with decision-makers [i.e. the Oversight Committee] will help ensure the team is having the desired discussions.*”

October 19: The FWS Pacific Region Office recommended “*the [recovery] team no longer make decisions by consensus*” and notified the team of the need to “*ensure we are exploring the options described by the decision makers.*” This clearly indicated that the recovery team was no longer in charge of developing the recovery strategy.

October 26-27: In a recovery team meeting in Portland, Ren Lohofener admitted that the Forest Service and BLM were driving the recovery plan revisions demanded by the Oversight Committee, and stated that the end product would have to be flexible enough “*to be acceptable to the Forest Service and BLM.*” Dave Wesley revealed that at the October 6 Oversight Committee meeting, he was told to “*remember that this is a Bush plan, not a Clinton plan.*” Both Dave Wesley and Cal Joyner, the Forest Service representative on the recovery team, explained that the “*flexibility*” demanded by the Oversight Committee was intended to give the Forest Service and BLM the discretion to unilaterally alter or eliminate MOCAs [reserves] from the recovery plan. Mr. Joyner admitted that the Oversight Committee was actually telling the recovery team to *reduce protection* for the spotted owl, not merely provide more flexibility for managers.

Documents distributed to the recovery team at this meeting provided greater detail regarding the demands of the Oversight Committee. The directions specified that the recovery team should “*flip and switch*” the structure of the draft recovery plan, and include the following revisions:

- *Downplay the threats posed by habitat loss and emphasize the role of the barred owl as the highest priority threat to spotted owls.* Although the Recovery Team’s September 29 draft identified both threats as equally important, these documents gave specific instructions to “*summarize the habitat threats discussion into less than a page*” in the final recovery plan.
- *Avoid references to the Northwest Forest Plan in the recovery plan. Refer only to National Forest and BLM Land and Resource Management Plans throughout the revised recovery plan.* These documents leave little doubt that the intent of the Oversight Committee is to set the stage for broad-scale changes in the LRMPs on National Forests and BLM lands, to meet the provisions of the global settlement agreement with the timber industry. It should be noted that on December 15, 2006 the U.S. Forest Service adopted a new regulation exempting its LRMPs from environmental and public review under the National Environmental Policy Act (NEPA). (Federal Register Vol. 71, No. 241, Friday, December 15, 2006, pp 75481-75495.)
- *Develop a recovery plan option that would not include a provision for mapped habitat reserves or minimum amounts of habitat.* This directive reflects attempts by the Oversight

Committee to shift the conservation focus away from protection of spotted owl habitat in mapped reserves, and to permit the federal land management agencies to revise their land and resource management plans to allow accelerated logging of old-growth forests.

One of the documents distributed to the recovery team at the October 26-28 meeting contains specific instructions from Deputy Secretary of Interior Lynn Scarlett to “*start with newer science...de-emphasize the reference to the NWFP*” and to make the new recovery plan option “*less focused on habitat preservation.*”

November 9: The IST completed preliminary revisions of the draft recovery plan to comply with the Oversight Committee’s directives. This included both the reorganized reserve-based option (Option 1) and a new proposal for an option without mapped reserves (Option 2). Both of the new options downplayed the threats to the spotted owl caused by loss of habitat. Both gave broad discretion to the Forest Service and BLM to alter or eliminate mapped reserves designated by the recovery team.

December 15: The recovery team was notified that henceforth, the Oversight Committee would be “*directing the approach,*” and that much of the guidance would be new. This apparently was a reference to the Oversight Committee’s continued dissatisfaction with the level of habitat protection in both options proposed by the IST and FWS regional office. Furthermore, due to the increasing involvement by the Oversight Committee and the reduced authority of the recovery team, the FWS proposed that the recovery team be relegated to an “*advisory role*” only.

Mid-January, 2007: Lynn Scarlett, Deputy Secretary of Interior, for the third time gave new direction to recovery team leader Dave Wesley, stating that the IST, and not the recovery team, would develop the next draft of the recovery plan. A memo from Mr. Wesley to the recovery team acknowledged the new level of guidance being received “*from DC*” and noted that the “*IST will be consulting with the Forest Service and BLM to ensure we address their concerns.*”

January 16: The recovery team obtained a memo written by the Regional Forester of the Forest Service and the Oregon State Director of the BLM and passed through Deputy Assistant Secretary of Interior Julie Jacobson, which directed that “*the RP [recovery plan] ...must also provide a reasonable level of flexibility to enable the agencies to continue to adapt and revise land use plans.*” The memo directed the IST to write a recovery plan that would:

- *Eliminate any provisions specifying minimum amounts of habitat that must be maintained at the regional or physiographic province scale to provide for spotted owls.*
- *Not assume continued management of the federal lands according to the NWFP.*
- *“De-link” recovery actions and Late Successional Reserves from the NWFP.*
- *Re-evaluate any owl conservation element of the NWFP “based on current knowledge of threats to ensure continued applicability.”*
- *Assume that all federal lands “will continue to contribute to recovery,” but recognize that “the amount and locations of such habitats will vary over time based on implementation of land use plans.”*

Events between mid-December and mid-January made it clear that the Forest Service and BLM, and not the FWS, were in charge of the recovery plan. Not only was the recovery team relieved

of its authority to decide the content of the recovery plan, but also the FWS was put in a position of taking orders from the Forest Service and BLM at both the regional and national levels. Essentially, the FWS was being directed to ensure that the recovery plan would not interfere with LRMP revisions. By stripping mapped reserves and minimum habitat acreages out of the draft recovery plan, the Forest Service and BLM would no longer have to commit to maintaining old-growth forest habitat for spotted owls at the levels mandated by the NWFP. The order to dissociate the recovery plan from the NWFP could trigger unsustainable logging that led to the listing of the spotted owl as a threatened species in the first place. Notably, one of the primary reasons for listing the species was “*inadequacy of regulatory mechanisms.*”

January 18: The recovery team was informed that IST would write the next draft of the plan to include both revised options 1 and 2, incorporating the instructions from the Forest Service and BLM as described above. The recovery team insisted again that scientific peer review be conducted and the results incorporated into the recovery plan. The FWS responded that there was not sufficient time to conduct a peer review before the publication of the draft plan in the Federal Register.

February 2: The recovery team was notified that the FWS would no longer ask for consensus, or even a vote, on the content of the draft plan. FWS confirmed that the recovery team was officially in an advisory role only.

February 7: The recovery team was instructed that it was no longer operating under consensus and would henceforth be responding directly to the Washington DC Oversight Committee and the Secretary of Interior. Ren Lohofener advised the recovery team not to spend additional time on Option 1, as it was the “*majority opinion of the Oversight Committee that Option 2 [the option with no mapped reserves and no minimum required amounts of spotted owl habitat] is preferred.*” He also revealed that the Oversight Committee was “*responding to outside influences.*” In response to questions from the recovery team, Mr. Lohofener stated that these outside influences included the timber industry and environmental groups. Upon further questioning, however, he admitted that he knew of no environmental groups consulted by the Oversight Committee during the recovery planning process.

March 2: The Recovery team was notified that a rewritten draft recovery plan, including both options, would be forwarded to the Oversight Committee on March 5. At this point the FWS would not commit to sending both options out for public review, citing “*uncertainty*” about decisions the Oversight Committee might make. The recovery team once again pressed the FWS to begin the peer review process, but the FWS resisted. After a long and contentious discussion, the FWS committed only to appoint two staff members to begin developing a “*plan*” to start the peer review process.

March 8: Ren Lohofener reported that the regional office of the FWS sent the most recent draft of the recovery plan to the Oversight Committee on March 5. Thus the Oversight Committee received a single document containing two options, primarily written by the IST at the direction of the Oversight Committee rather than by the recovery team. In summary, the alternatives in this document were:

1. Option 1: An extensively re-organized and rewritten version of the draft recovery plan submitted by the recovery team in late September 2006. This new version reflected the changes ordered by the Oversight Committee, which included downplaying threats to the spotted owl caused by habitat loss, exaggerating the *relative* level of threat posed by the barred owl, nearly eliminating references to the Northwest Forest Plan, and allowing broad discretion for the Forest Service and BLM to eliminate or alter mapped reserve boundaries.
2. Option 2: This alternative also downplayed threats caused by habitat loss and dissociated itself from the NWFP, but it also eliminated all mapped reserves, did not contain any thresholds for minimum amounts of habitat at the regional or provincial scale, and it gave complete authority to the Forest Service and BLM to decide the size, spacing, and locations of places to manage for the recovery of the spotted owl. Notably, recovery plans are supposed to be based on “*measurable, objective criteria*” before a species can be considered for delisting.

March 19: Dave Wesley forwarded to the recovery team an update from Ren Lohofener, who stated that the March 5 draft had been reviewed by the Oversight Committee, which decided to publish *both* options for public review. FWS tentatively expressed the intent to have a 60-day public comment period, and four public hearings in the three-state region, although several recovery team members pressed for an extension that was denied.

April 25: Two days before the release of the final draft recovery plan, the recovery team was notified that the FWS had enlisted the assistance of two professional societies to conduct the formal peer review of the draft.

April 27: The draft recovery plan approved by the Oversight Committee was released for a 60-day public comment period. The FWS held a press conference to announce the release of the plan and to answer questions from the news media. The press release and other materials distributed to reporters by the FWS did not mention anything about the Oversight Committee or its role in the development of the draft recovery plan. Upon further questioning from the press, Mr. Lohofener would not reveal the make up of the Oversight Committee (this was referred to Hugh Vickery, a spokesman for the Interior Department) nor could he remember who came up with Option 2.

Exhibit B

“Global Settlement Agreement” to Rollback Northwest Forest Protections

Beginning in late 2001, the timber industry mounted an aggressive timber industry campaign to increase the amount of timber cut from Northwest federal forests by weakening protections for salmon, clean water, and old-growth forests. In December 2001, Jim Connaughton, Director of the Council on Environmental Quality, Mark Rey, Undersecretary of Agriculture, Ann Klee, Counselor to Secretary Gale Norton, and other government officials flew to Oregon to meet with timber industry lobbyists.

The timber industry, led by American Forest Resource Council, demanded that the amount of timber cut from Northwest forests triple to 1.1 billion board feet of timber and identified five environmental safeguards that had to be weakened or eliminated to get to this goal. In the end, the Bush Administration agreed to all of industry’s demands, including: (1) sweeping changes in Northwest forest management in sweetheart settlements of “friendly” industry lawsuits; and (2) weaken salmon and clean water protections in order to undo court rulings that require greater protection. It has since been implementing its promises, allowing politics to trump science at every turn.

The industry negotiations are revealed in documents released on April 18, 2003 in response to a Freedom of Information Act (“FOIA”) lawsuit brought by Earthjustice on behalf of Conservation Northwest, Oregon Wild, and Biodiversity Northwest, and obtained through discovery in subsequent litigation challenging one of the rollbacks. The documents are available upon request from Earthjustice.

Five Specific Timber Industry Demands to Weaken or Eliminate Environmental Safeguards:

1. **Weaken the Aquatic Conservation Strategy** by amending the Northwest Forest Plan (NWFP) to eliminate the requirement that timber sales must protect salmon habitat and change Endangered Species Act consultations to make it easier for logging that harms salmon watersheds to occur.
2. **Eliminate the survey and manage program** by amending the NWFP to discontinue the surveys for rare species, remove protection for them, and “*return management discretion to local managers.*”
3. **Weaken Northern Spotted Owl Endangered Species Act Protections** by completing a status review of the Northern Spotted Owl and re-designating critical habitat based on economic effects analysis and on the new theory that Northern Spotted Owl habitat extends to younger stands, which are more plentiful than old-growth, and “[w]ith more habitat available, less of it can justifiably be considered critical.”
4. **Weaken Marbled Murrelet Endangered Species Act Protections** by completing a status review and re-designating critical habitat based on economic effects analysis.
5. **Weaken Ecosystem and Species Protections on BLM O&C Lands** by amending the NWFP to eliminate old-growth and riparian reserves on O&C lands unless needed to avoid

jeopardy to threatened and endangered species and revert to pre-1994 position that timber production is the dominant use of those lands. O&C lands are Oregon and California Railroad lands that reverted in the United States in 1916 when the railroad failed to comply with the terms of its land grant.

The Process: At first, the Bush Administration agreed to only two of industry's demands. On August 14, 2002, the timber industry submitted a response, declaring that the federal settlement offer is not sufficient to produce 1.1 billion board feet per year.

- The timber industry calls the government's **survey and manage** offer "*satisfactory*" and indicates that it could lead to a settlement of the industry survey and manage challenge.
- The timber industry "*applauds the offer by the Administration to pursue*" a NWFP amendment to weaken the ACS and a refinement of the ESA consultation for logging affecting salmon and other aquatic species.
- "*Welcome as the [proposals in the government] letter are, the coalition is unable to conclude that these initiatives alone will achieve the coalition's goal of 1.1. bbf per year of Northwest Forest Plan timber sales. . . . [A]dditional measures are required to achieve the 1.1. bbf goal.*"

The timber industry insisted on weakening three other aspects of the Northwest Forest Plan.

- **Northern Spotted Owl** – Eliminate critical habitat in the matrix lands where logging may occur to "*significantly expedite timber sales throughout the region.*" Revise critical habitat based on economic analysis and review the owl listing based on scientific studies the industry believes call for less protection for the owl. "*Any reduction in acres protected for the Northern Spotted Owl increases the timber production of the Northwest Forest Plan.*"
- **Marbled Murrelet** – Revise critical habitat based on economic analysis and re-evaluate the murrelet listing. "*Freeing matrix lands from murrelet critical habitat consultations, and any reduction in the acres protected for the benefit of the murrelet, would increase the timber production potential of the Northwest Forest Plan.*" . . . "*a 5 year status review and a reexamination of critical habitat for the Northern Spotted Owl and the Marbled Murrelet are essential to achieving the 1.1 bbf timber sale goal.*"
- **BLM O&C Lands** – Amend the Northwest Forest Plan to make timber production the dominant use of BLM O&C lands and to eliminate most old-growth and riparian reserves on such lands. The timber industry called this "*a potent tool for achieving the 1.1.bbf goal*" and asserted that it would be impossible to produce the desired timber volumes without reducing reserves on O&C lands.

The Administration Delivers: The Administration agreed to pursue all the weakening actions demanded by the timber industry.

1. In March, 2002, the Forest Service and BLM entered into a settlement of an industry lawsuit in which it agreed to propose amending the NWFP to drop the **Survey and Manage** program. Pursuant to this settlement agreement, the Forest Service and BLM adopted an amendment that eliminated the program. In August 2005, a federal district court held that the environmental impact statement on the amendment failed to analyze the impacts to species exempted from protections and whether the old-growth reserves would sufficiently protect those species (*Northwest Ecosystem Alliance v. Rey*, 380 F. Supp.2d 1175 [W.D. Wash. 2005]). The agencies are completing a new EIS on the amendment to eliminate the program.
2. In February 2003, Mark Rutzick, the lead attorney for the timber industry in the litigation and settlement negotiations, became senior adviser to the general counsel of the National Oceanic and Atmospheric Administration, where he played a major role in implementing the deal to weaken the ACS. In March 2004, the Forest Service and BLM amended the NWFP to weaken the **Aquatic Conservation Strategy** and the Services issued biological opinions that eliminated the requirement that each timber sale must promote attainment of the ACS objectives. In March 2006, the magistrate judge ruled that the amendment violated the ESA. The matter is awaiting a decision by the district court judge.
3. In January 2003, the timber industry reached a settlement (approved by the district court in April 2003) in which the FWS agreed to complete a **Northern Spotted Owl** status review and to revise the critical habitat designation. FWS agreed to the critical habitat deal even though it recognized that the lawsuit could not be heard because the 6-year statute of limitations had already run. While some in FWS argued against revising critical habitat to appease the industry, one dismayed individual noted “*as Bob Dylan said, “you don’t have to be a weatherman to know which way the wind is blowing.”* Conservation groups had intervened in the industry lawsuit, which led FWS to refuse to eliminate existing critical habitat protections during the revision process. In 2005, FWS completed the status review, and the agency is developing a critical habitat proposal in conjunction with its owl recovery plan scheduled for June 2007.
4. In January 2003, the timber industry entered into a settlement (approved by the court in September 2003), in which FWS agreed to conduct a **Marbled Murrelet** status review and to finalize new critical habitat by August 30, 2007. Conservation groups had intervened in the industry lawsuit, which resulted in FWS refusing to vacate critical habitat during the revision process. In 2004, the scientific team completed the status review and concluded that the Washington, Oregon, and California murrelets still need ESA protection, and the regional FWS office concurred. Subsequently, the FWS office in D.C. announced that it believed the tri-state murrelet population should be delisted. In September 2006, the agency proposed to shrink murrelet habitat by 94%, excluding the NWFP area among others that are necessary for murrelet survival and recovery.
5. In August 2003, the timber industry entered into a settlement in which BLM agreed to revise the resource management plans for western Oregon by December 31, 2008. BLM committed that: “*At least one alternative to be considered in each proposed revision will be an alternative which will not create any reserves on O&C lands except as required to avoid*

jeopardy under the Endangered Species Act. All plan revisions shall be consistent with the O&C Act as interpreted by the 9th Circuit Court of Appeals.” BLM has begun the process of revising the resource management plans in accordance with the settlement. In developing possible alternatives, it is taking the view that timber is the dominant purpose for the O&C lands and that reserves must be accordingly limited.

Documents

“Administrative Tools to Fix the Northwest Forest Plan,” Dec. 2001.

“A Global Framework for Settlement of Litigation Challenging Federal Agency Actions Relating to the Northwest Forest Plan,” April 2002.

Letter Acceding to Two Industry Demands from Department of Justice Attorney Wells Burgess to Timber industry Lobbyist Mark Rutzick, Aug. 1, 2002.

Timber industry August 14, 2002, response to the federal settlement offer entitled: “The proposals to eliminate the survey and manage program and fix the “Rothstein” problem are not sufficient to produce 1.1 Billion Board Feet Per Year of Timber Sales Under the Northwest Forest Plan.”

Exhibit C:
**Documentation of interference in the draft recovery plan of the Northern Spotted Owl by
the “Washington Oversight Committee” and the Forest Service and BLM**

It was brought to the attention of the House Natural Resources Committee that the US Forest Service did not agree with my claims that they had disproportionate influence in the drafting of the owl recovery plan. To respond to the agencies’ assertion, this exhibit includes some of the documents that were submitted to the recovery team at recovery team meetings (emails and meeting notes) by the U.S. Fish & Wildlife Service detailing the level of influence the Washington oversight committee, Forest Service, and BLM had in directing the draft recovery plan.

Source 1 (Northern Spotted Owl Recovery Plan Options): notes taken by the Interagency Support Team (IST) at the October 18 meeting of the recovery team and distributed to the recovery team. Items **1A-3 below**, in particular, are based on direction from the Washington Oversight Committee requesting a redo of an earlier draft submitted under consensus by the recovery team on September 29. Also note the request to **eliminate the “MOCA” concept**, which eventually became the basis for Option 2, which is not based on fixed reserves.

Northern Spotted Owl Recovery Plan Options

October 18, 2006

General concept

The Recovery Team will develop 2 options that tier off the existing draft recovery plan. Each of the options may require revision of the introduction section (though we could write a generic one for each option), recovery strategy, criteria, and actions, and implementation schedule and cost estimates. The current concept is to have one larger document with the background section unchanged, and include the current option along with the 2 new options. The options would need to develop the recovery strategies, criteria and actions.

We also need to do a “reorganization and emphasis” rewrite of the existing draft – which would not be a new option. A separate group can likely do this task with approval by the recovery team.

The time we have to do these tasks is undefined, but we need to assume time will be short. From the perspective of the team, this may be acceptable since many team members are pressed for time.

Also, the options below do not build in time for conducting a risk assessment. Such a risk assessment, though, could be conducted during the public comment period.

Decision process

Consensus: It will need to be decided if the team continues with consensus decision-making. This decision will obviously be influenced by our given timeline.

Coordination with decision-makers: Reasonable coordination with decision-makers will help ensure the team is having the desired discussions. The method and timing of coordination should be outlined as early as possible.

Options

1: Keep plan as submitted September 29, 2006

1A: Reorganize the September 29, 2006 plan

- Emphasize the new science indicating habitat variability across the range, and de-emphasize the past
- Reorganize the plan to bring the habitat targets to the fore
- Clarify language relating to the Northwest Forest Plan, with emphasis on Forest Service and BLM land and resource management plan (LRMPs) revisions
- Clarify language relating to barred owl and fire
- More clearly state the plan's recognition of management flexibility, including the potential for a mosaic approach (should also provide some context here – fact that this effort has not been undertaken before)
- Retain the Managed Owl Conservation Areas (MOCAs) – Note change of name from “Mapped” to “Managed”

Timeline: 2 weeks, no new analysis would be included

2: Provincial habitat targets

- **Eliminate the MOCA concept** (emphasis added) and instead establish provincial habitat targets
- Describe in narrative the rule set for distribution and size of either habitat or the spotted owl population
- Revise the habitat criterion to describe provincial targets
- Would require revision of the population distribution recovery criterion
- Would require revision of some of the recovery actions

Timeline: Minimum of 4 weeks. It is unclear if new analysis is required, or can we just build off of the information existing in the September 29th plan. For example, can we just aggregate the MOCA acreage within each province, set a provincial habitat target and eliminate the individual MOCA boundaries, and then describe a habitat distribution and size rule set? If this is what needs to be done, do we need new analysis?

3: Range-wide habitat targets with some sub-range-wide delineations

- **Eliminate the MOCAs** (emphasis added) and provincial boundaries and establish range-wide habitat targets
- Establish some sub-range-wide delineations (e.g., north, south, east and west) that will allow us to discuss variation across the range
- Would require revision of the population distribution and habitat recovery criteria
- Would require revision of some of the recovery actions

Timeline: Minimum of 8 weeks. It is unclear what this option fully entails, yet it is assumed new analysis will be required given the option's scope.

Source 2 (What is meant by additional flexibility?): meeting notes distributed to the recovery team on October 27 by USFWS staff summarizing direction from the Washington Oversight Committee, including the identity of the oversight committee members and the role of Deputy Secretary Lynn Scarlett. Note the request to the recovery team regarding additional "flexibility" and the need for a non-reserve based option (Option 2). The conservation science literature, including scientific assessments of the Northwest Forest Plan (see Courtney et al. 2004 cited in my testimony), strongly support fixed (mapped) reserve approaches for conserving declining species; shifting mosaic approaches that do not rely on fixed reserves have never been tested or modeled, particularly at the scale of range of the Northern Spotted Owl, and are unlikely to provide regulatory assurances for eventually delisting the owl (the owl was listed in 1990 because of declining populations attributed to logging of old-growth forests and "*inadequacy of regulatory mechanisms*").

What is meant by additional flexibility?

Desire to explore alternatives to reserve-based approach (emphasis added)

Why is there political sensitivity to this document as it does not have regulatory authority?

Concern is that it would provide material for lawsuits (emphasis added)

Does the provincial option focus only on federal lands?

There was no discussion of this issue, though it is assumed we would still focus on federal lands

If we are asked to produce an option, what are the ground rules for supporting/not supporting an option?

We have the option to say the RT does not want to pursue an option

We need an explanation about why an option would not work

Are we required to do new population modeling given the desire not to look backwards? There is not the assumption that we need new modeling, maybe we need to discuss certainty/uncertainty
Describe amount, quality and distribution of habitat

Oversight Committee

Jim Cason - Asst to the Dep Secretary,

Lynn Scarlett Lynn Scarlett - Dep Sec of DOI

David Verhy - Asst Sec of Parks and FW

Julie McDonald - Dep Asst of Parks and FW DOI

Julie Jacobson - DOI BLM

Kathleen Clarke - Director, BLM

Dale Hall- Director, FWS

Jim Hughes - Dept Director, BLM

Mark Rey - Under Sec of Ag

Dave Tenney - Dept to Rey

David Bernhardt - Solicitor to Sec of DOI
Fred Norbury - Associate Dep Chief Forest Service
Ed Shepard - Vice Elaine Brong, BLM

Can we modify the options?

- After multiple approaches are described and commented upon, there may be the option to combine approaches

Do we go out to the public with multiple options or just to the decision makers? What do we gain with giving the public multiple options?

- According to the oversight committee, what is the purpose of the public comment?

- Could we outline our process of exploring the options in the intro or NOA?

Should the team identify a preferred alternative?

-Delay this question .

-Develop options to a similar level, discuss with oversight committee

How do we integrate BDOW management and monitoring into these different alternatives?

Are we going to conduct a d (*sic*) of the options? If so, when would we do this? What are the performance measures?

What are the performance measures

- management flexibility

- risk vs. cost

- likelihood of achieving recovery - is it implementable?

Option 2 should entail:

Points from Dep Sec Scarlett (emphasis added)

- Start with newer science, how it works, de-emphasize the reference to the NWFP
- Presentation, framework, and process issues (i.e., should we provide options or variations on a theme rather than a single approach, we should look at the opposite approach)
- More outcome focused, **less focused on habitat preservation** (emphasis added)- this is a presentation issue, the substance does not change

Points made to the Oversight Committee

. 80% of MOCAs allow 20% flexibility

. 50-70% of habitat-capable acres provides flexibility

. Should the R T just describe these as intended and see what feedback we get

Questions from the RT

. Is there new science that applies across the range?

How will we make decisions?

- Resurrect original decision document
- Uncertainties/weaknesses/pros/cons noted
- Greater/lesser confidence

Source 3 (NSO Recovery Team Meeting October 26-27, 2006): notes taken by USFWS staff at October 26-27 meeting of the recovery team. Note the reference to the BLM WOPR. The BLM is currently revising its forest plans under the settle agreements reached with the timber industry by the administration whereby the agency must consider an alternative that minimizes reserves providing that the alternative complies with the ESA and Clean Water Act (see Exhibit B of my testimony). These notes also illustrate the shift from consensus to responding to direction from the Washington Oversight Committee.

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).
- 2) The concept paper will outline the options, what they would entail, if new analysis is needed, and the pros and cons of each option.
- 3) The Recovery Team would first assess which options it thinks are doable within the timeframe and which have at least a reasonable likelihood of achieving recovery. The team would only pursue those options it believes are doable, describing how it came to this decision.
- 4) 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.
- 5) The team will meet again in November and December, and has tasked the support team to begin drafting elements of the concept paper.
- 6) After December 15 our next key deadline is February 1st. By the 1st we would like to have all the agreed to options described to a similar level of detail and submitted to the FWS.

Key Remaining Questions

- 1) Finalize how the team makes decisions
- 2) Will we be asking the public to review multiple options or will the oversight choose a single option for public review?
- 3) Can we describe sufficient options using the population modeling assumptions of the 1992 Draft Recovery Plan? If not, do we need to create a new model to assess whatever approaches we describe? Do we have the time to create a new model?
- 4) Do we have the time and desire to conduct (or have someone conduct) an analysis of the different options in relation to some agreed to performance measures?

Schedule and tasks

- Comments on options, including pros and cons, to IST by November 3
- Review decision document for next meeting
- Provide any questions for Ren ASAP
- Face-to-face meetings:

- o Nov 15 (4-6pm), Nov 16, 17 (8-12pm)
 - o Finalize concept paper by the large group
 - o Draft concept paper from the IST to the RT by Nov 9
 - o Discussion of pros and cons of each option
 - o Dec 6 (4-6pm), 7, 8 (8-12pm) on calendars
 - o Keep January dates on the calendar, 8 (4-6pm), 9, 10, 11 (8-12pm)
 - o Face-to-face January 23 (4-6pm), 24, 25 (8-12pm)
- Teleconferences:
- o December 15 (10-12pm)
 - o January 18 (10-12pm)

Source 4 (Changes made to make *(sic)* Option 1 of the Draft NSO Recovery Plan November 15, 2006): Interagency Support Team notes of recovery team meeting on November 15– note reference to limit habitat discussion to a single page and eliminate references to the Northwest Forest Plan. Also note the reference to “shifting mosaic models,” which became the foundation for Option 2.

Changes made to make *(sic)* Option 1 of the Draft NSO Recovery Plan November 15, 2006

The following are the instructions given to make Option 1. The Option 1 you have as of today includes these changes.

Maintain all essential elements of the current draft (e.g., the MOCAs) and clean up any editorial mistakes. This is reformatting with no new analysis.

Including:

- 1) Move recovery criteria and actions up front, right after the introduction.
- 2) Move all of the background section, except the threats discussion into an appendix. Clarify the significance of the BDOW threat (e.g., indicate it was only threat given priority number 1) and **summarize the habitat threats discussion into less than a page** (emphasis added). Add all of the threats discussion into the appropriate listing factors (so there won't be a separate threats discussion in the main body, only in the appendix).
- 3) Revise how we reference the NWFP throughout the document. For example, use this language up front -

"The plan uses the science underlying the Northwest Forest Plan (NWFP), which was published in 1994, as the federal contribution to the recovery of the spotted owl. The NWFP amended the 19 national forest and 7 BLM district land and resource management plans (LRMPs) that guide management of individual national forests and BLM districts. The LRMPs adopted a set of reserves and standards and guidelines described in the Record of Decision (ROD) for the NWFP. The plan uses the guidance from the existing LRMPs as the baseline of existing management direction for the conservation of the spotted owl.

Throughout this plan, use of the term "LRMPs" references the entire 18 LRMPs that were amended by the NWFP."

And then eliminate reference to the NWFP (emphasis added) and put in something like "In accordance with the LRMPs..." throughout the rest of the document.

4) Revise intro to highlight our incorporation of new science and importance of BDOW threat. Also quote SEI 9-20, 2nd paragraph, "shifting mosaic models for owls persistence on the landscape are less well-developed than reserve based models. There has been no analysis evaluating the efficacy of the shifting mosaic model. However, we have no reason at this point to feel the scientific evidence negates this as a plausible conservation strategy." Also state we chose to follow the conservation strategy more fully analyzed in existing peer-reviewed literature.

5) Include list of flexibility to modify the MOCAs -- put into sentences these ideas

- o Asking for input on draft boundaries
- o 5% loss of habitat-capable acres is OK
- o Only need to have 80% of MOCAs in habitat condition by province
- o Habitat target in MOCAs is 50-70%, not 100% as in LSRs
- o Only 10 of 12 provinces with MOCAs

6) Change "mapped" to "managed" in MOCA

7) Insert paragraph indicating the variability of fire across the range as either a threat or benefit to the owl. Where it is a threat, indicate the support for efforts to reduce risk.

8) Modify actions accordingly, e.g., Recovery Action 9 would be modified as such (underlined text is new)

"In the MOCAs, apply the implement the applicable silviculture principles/guidelines for Late-successional Reserves listed in the NVIFP to accelerate development of spotted owl habitat to achieve Recovery Criterion A.I."

9) Recommend to target key areas-if BDOW experiments show negative effects

10) Emphasize that 50-70% are not habitat targets to cut down to

11) Identify questions for Alan Franklin regarding his new information and note in text that the information needs to be analyzed during our peer review

Source 5 (January 16 email from Dave Wesley detailing direction from Deputy Secretary Lynn Scarlett): email from Paul Phifer, USFWS, to the recovery team summarizing direction from Lynn Scarlett, Deputy Secretary of Interior. Note - Option 2 was not a product of the recovery team but was specifically designed by the IST in response to the Washington Oversight Committee and direction coming especially from the BLM and Forest Service (also see sources 6 and 7).

From: Paul_Phifer@fws.gov [mailto:Paul_Phifer@fws.gov]

Sent: Tuesday, January 16, 2007 9:00 AM
To: cullinant@olympus.net
Subject: Fw: NSO Recovery Team Information

----- Forwarded by Paul Phifer/RO/R1/FWS/DOI on 01/16/2007 11:58 AM -----

Dave Wesley/RO/R1/FWS/DOI
01/12/2007 07:07 PM

To

Dave Wesley/RO/R1/FWS/DOI@FWS, Michael Haske/ORSO/OR/BLM/DOI@BLM, Calvin Joyner/R6/USDAFS@FSNOTES, Scott Gremel/OLYM/NPS@NPS, tcullinan@audubon.org, ldiller@greendiamond.com, john.mankowski@ofm.wa.gov, jpaul@odf.state.or.us, jsiperek@dfg.ca.gov, dwooten@softcom.net, Paul Phifer/RO/R1/FWS/DOI@FWS, emurphy@spi-ind.com, Lenny.young@wadnr.gov, dominick@nccsp.org, lori@nccsp.org, Ren Lohofener/RO/R1/FWS/DOI@FWS, Mike.J.Cafferata@state.or.us

cc

Kent Livezey/WWO/R1/FWS/DOI@FWS, Brendan White/OSO/R1/FWS/DOI@FWS, Joseph Lint/RBFO/OR/BLM/DOI@BLM, Kath Collier/ORSO/OR/BLM/DOI@BLM, Elaine N Rybak/R6/USDAFS@FSNOTES, Kristi Young/RO/R1/FWS/DOI@FWS

Subject

NSO Recovery Team Information

All:

Happy New Year! I hope everyone had a great holiday season and the new year has been a joyous one so far!

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. **Option 1 is the reformatted Sept 29 version we have discussed on several occasions and Option 2 is the provincial goals version** (emphasis added). Both options are due in Washington by February 5. **These options are to address the recent direction we received from DC (there are 2 Word files attached below)** (emphasis added).

Given the short timeframe, we are cancelling the Jan 23-25 Recovery Team meeting. We are still planning on having the 1/18 telecon (10-12 pm PST) to discuss these issues.

I apologize for cancelling another meeting with little notice. I understand some of you may incur cancellation fees. If this is the case, let Paul know and we will see what we can do to reimburse you those fees.

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, including the organizational modifications and changes we previously discussed. The IST will also draft the provincial Option, Option 2, using the best information from our last meeting and the guidance (direction/questions) we have received from DC.

As there is a bit of ambiguity in these directions/questions, the IST will be consulting with the FS and BLM to ensure we address their concerns (emphasis added).

Although this new timeline will necessitate most of the additional work will be done by the IST, with agency oversight, we want to keep the Recovery Team involved as much as possible. Therefore, as soon as the drafts are completed, we will send them to the RT for review and comment. We aim to get the RT the draft of Option 1 by 1/18, and the draft of Option 2 by 1/26. This leaves us with an extremely short timeframe for review, so we will need your comments by close of business on 1/31 in order for us to make any final changes by the 2/5 deadline. I know this will be difficult, but we want to give you the opportunity to submit comments for FWS consideration before a final Draft is sent to the Washington office.

The Recovery Team obviously still has considerable ownership of this plan, especially of Option 1 as it best represents the RT's thinking on September 29th. We understand there are concerns about both options. Our plan is to have some type of structured review of both options during the public comment period. That's our goal.

We'll discuss these issues on the 1/18 call. Feel free to call me (503.231.6118) or Paul (503.724.1886) anytime before then.

DAVE
David J. Wesley
Deputy Regional Director

Source 6 (email from Paul Phifer with specific direction from the FS and BLM on the recovery plan): January 16, 2007 email from Paul Phifer, USFWS, to the recovery team including an unsigned memo (titled draft direction – see source) from the BLM State Director (Oregon) and Regional Forest Service Director (Portland) illustrating the level of inappropriate influence the Forest Service and BLM had in structuring the recovery plan.

From: Paul_Phifer@fws.gov [mailto:Paul_Phifer@fws.gov]
Sent: Tuesday, January 16, 2007 8:10 AM
To: Paul_Phifer@fws.gov
Cc: Brendan_White@fws.gov; cjoyner@fs.fed.us; Dave_Wesley@fws.gov; dominick@nccsp.org; dwooten@softcom.net; erybak@fs.fed.us; emurphy@spi-ind.com; john.mankowski@ofm.wa.gov; Joseph_Lint@or.blm.gov; jpaull@odf.state.or.us; jsiperek@dfg.ca.gov; Kath_Collier@or.blm.gov; Kent_Livezey@fws.gov; Kristi_Young@fws.gov; ldiller@greendiamond.com; Lenny.young@wadnr.gov; lori@nccsp.org; Michael_Haske@or.blm.gov; Mike.J.Cafferata@state.or.us; Ren_Lohofener@fws.gov; Scott_Gremel@nps.gov; Steven_Morey@fws.gov; tcullinan@audubon.org
Subject: Re: NSO questions from oversight committee

FROM BLM Staff in Oregon:

Attached is a draft set of directions to the recovery team that reflect the comments of the BLM State Director in coordination with the FS Regional Forester. (**note - the attachment here refers to source 7 below**)

Additional comments:

1. FWS should ensure the estimates for the cost of recovery reflect reasonable interagency contributions and that cost estimates include labor for federal agency personnel.

Source 7 (draft direction memo from the FS and BLM): Unsigned memo (received on January 16, 2007) from BLM State Director (Oregon) and Forest Service Regional Director (Portland) attached to the cover email from Paul Phifer in source 6. **This memo, in particular, illustrates the degree of influence exerted on the recovery plan by the Forest Service and BLM** (also see source 8 for additional Forest Service and BLM influence).

Draft Direction

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.

4. 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 8 (response from USFWS to FS and BLM direction memo): January 25, 2007
response from Dave Wesley, USFWS, to the recovery team detailing a point-by-point description of **how the USFWS followed direction from the Forest Service and BLM initially detailed in the “draft direction”** document from January 16, 2007.

FS and BLM Draft Direction Ongoing Responses

January 25, 2007

1) Revise cost estimates and review inclusion of FWS into responsibility parties category.

- In cooperation with the FS/BLM we are currently deriving cost estimates for all “on-going” Recovery Plan actions and those “continuous” Recovery Plan actions without associated costs. Upon completion the updated Implementation Schedule will be incorporated into both options.

2) **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.
- 3) 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.
- In Recovery Action 6 a prioritization of where barred owl control efforts should be initiated has been added.
 - In Recovery Action 25 a description of how to prioritize areas for fuel reduction based on spotted owl habitat values and fire risk has been added.
- 4) **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
- 5) 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
- 6) 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