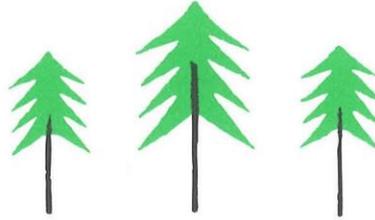


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August 20, 2015

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Re: Western Oregon Draft Resource Management Plan/EIS Comments

Dear Mr. Perez:

As you know, the Association of O&C Counties (AOCC) represents the interests of Counties in Western Oregon within which lie the BLM managed O&C lands and Coos Bay Wagon Road lands. AOCC member Counties include the 15 Counties that are formal cooperating agencies in the BLM's plan revision process. The AOCC has represented County interests in the management of these lands for nearly 90 years.

As you are also aware, the AOCC has participated extensively in this planning process. One or more AOCC representatives attended every meeting of the Cooperating Agency Advisory Group (CAAG), were members of the CAAG working groups, and attended every public outreach meeting held by the BLM. We participated in a meeting with National Director Kornze and multiple meetings with you. The AOCC commented orally or in writing at every opportunity and in some instances when no opportunity was being afforded. We requested and eventually obtained BLM planning process data that might give us better insight into the BLM's modeling and Alternatives. The AOCC has done its very best to contribute constructively. The comments in this letter are offered in that spirit of cooperation.

We have now reviewed the Draft Resource Management Plan/Environmental Impact Statement (DRMP/EIS) for western Oregon. The summary provided in it was of limited use in understanding the 1500+ pages of content of the DRMP/EIS. In order for the public and elected officials in AOCC member Counties to better understand and compare the Alternatives in the DRMP/EIS, the AOCC commissioned the preparation of our own Side By Side Comparison and

Synthesis of Alternatives, which is attached as Encl. 1. That and all other attached documents are incorporated herein and should be considered part of our comments in response to the DRMP/EIS. Additional comments are as follows:

### **A. Comment Period.**

The public was initially given 90 days from the time the DRMP/EIS was published to analyze the contents. This Association requested an additional 120 days in order to fully analyze and adequately comment on the 1500+ pages of the DRMP/EIS. Similar requests were submitted to the BLM from Oregon's two Senators and three of Oregon's Members of the House of Representatives, more than half the members of the Oregon Legislature, several individual Counties, timber industry trade groups, and an unknown number of others. This outpouring of dissatisfaction with the 90 day comment period by the elected representatives of the citizens who would be affected by the BLM's plans was met with indifference by the BLM until 9 days before the comment deadline, at which point the BLM announced it would allow an additional 30 days to comment, for a total of 120 days (instead of the 210 days requested). The AOCC and all others similarly situated are therefore forced to comment in a time period that is inadequate for the task. We object, but offer comments to the best of our ability.

### **B. The O&C Act Requires Sustained Yield Management as the Dominant Use.**

The O&C Act requires that O&C Lands

“which have heretofore or may hereafter been classified as timberlands, and power site lands valuable for timber, shall be managed . . . for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principal of sustained yield . . . .” 43 USC §1181a. (Emphasis added.)

The Act identifies two mandatory actions over which the BLM has no discretion: (1) If it is timberland, it must be included in the timber production base; and (2) if it is in the timber base, it must be managed for sustained yield timber production. There remains, of course, at least some discretion in how the BLM implements the second of these requirements - - - there are a variety of ways to satisfy the requirement for sustained yield timber production. The timing and intensity of sustained yield practices may vary and the BLM may choose how to implement such practices, provided such practices are designed to meet the objectives of the O&C Act.

The 9<sup>th</sup> Circuit Court of Appeals decision in Headwaters v. BLM, 914 F.2d 1174 (9<sup>th</sup> Cir. 1990) is the controlling interpretation of the O&C Act and the BLM must follow it. The opinion in that case identifies the purposes, goals and objectives of the O&C Act, which are the guideposts for identifying the extent of the BLM's management discretion. The opinion in that case at pages 1183-84 provides as follows:

- The term “forest production” in the O&C Act means “timber production.” Timber production is the “dominant use” for O&C lands.

- “Exempting certain timber resources from harvesting to serve as wildlife habitat is inconsistent with the principle of sustained yield.” (Emphasis added.)
- “The purposes of the O&C Act were two-fold. First, the O&C Act was intended to provide the counties with the stream of revenue which had been promised but not delivered . . . Second, the O&C Act intended to halt previous practices of clear-cutting without reforestation, which was leading to a depletion of forest resources.” \* \* \* “Nowhere does the legislative history suggest that wildlife habitat conservation or conservation of old growth forest is a goal on a par with timber production, or indeed that it is a goal of the O&C Act at all.” (Emphasis added.)

This ruling could not be more clear about the goals and objectives for management of the O&C lands. First and foremost, Congress intended for the O&C lands to produce revenue for the 18 Counties in which the lands are located.

The O&C Act says that timber on the O&C lands shall be managed with the timber thereon sold, cut and removed on a sustained yield basis “for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities.” The Headwaters decision makes clear, through reference to the legislative history, that protecting watersheds, regulating stream flows, and providing recreation facilities are the intended outcomes from sustained yield timber management rather than separate goals that can compete with sustained yield timber management. In this regard, Headwaters only confirmed what the Courts had already said on multiple occasions.

For example, recreation is identified in the Act as one of the expected outcomes of sustained yield timber management. Recreation is not a goal independent of, or in competition with, timber production, nor can recreation be achieved at the expense of timber production. In O’Neal v. U.S., 814 F2d 1285, 1287 (9th Cir. 1987), the Ninth Circuit Court of Appeals held:

“\*\*\* The provisions of 43 U.S.C. §1181a make it clear that the primary use of the revested lands is for timber production to be managed in conformity with the provision of sustained yield, and the provision of recreational facilities as a secondary use. No duty is thereby established to provide for recreational use.” (Emphasis added).

In a case involving a dispute over access to timberlands made difficult because of the checkerboard pattern of private and public ownership that is characteristic of the areas that include the O&C lands, the Ninth Circuit said the following about the secondary benefit of protecting watersheds through sustained yield timber production:

“\*\*\* In 1937, Congress declared that these lands were to be managed as part of a ‘sustained yield timber program’ for the benefit of dependent communities. \*\*\* In order to protect watersheds and maintain economic stability in the area, long-term federal timber

yields were guaranteed by limiting the maximum harvest to the volume of new timber growth.” United States v. Weyerhaeuser Co., 538 F2d 1363, 1364-65 (9<sup>th</sup> Cir. 1976) (Emphasis added; citation omitted).

The O&C Lands are not traditional multiple use lands. Instead, the O&C Act makes timber production to produce revenue for Counties the overriding management objective for the lands. Secondary uses, such as recreation and the protection of watersheds and wildlife habitat, are permitted, but they must be accomplished *simultaneously*, in coordination with and not at the expense of, timber production to benefit local communities.

The limits of BLM’s discretion are ascertained by reference to the terms of the O&C Act, on its face and as interpreted in the Headwaters decision, as well as by historic interpretations given the O&C Act by the BLM itself. For example, in a 1939 press release, less than two years after the O&C Act became the management mandate, the BLM’s predecessor agency had a Chief O&C Forester, the equivalent of the BLM State Director, who described the newly adopted sustained yield forestry program in these words:

“This assures the continuous production of timber for the employment of Oregon industries without the danger of exhausting the timber supply and without the danger of destroying the tax base of the counties.” Press Release, March 31, 1939, W. H. Horning, O&C Chief Forester.

In 1940 the O&C Chief Forester elaborated, saying that “[a]ll the lands best suited for the growing of timber will be retained in public ownership and kept at work producing crops of timber. Continuous production of timber of commercial quality in the largest possible amount is the goal.” W. H. Horning, The O&C Lands and their Management, an Important Advance in Forest Conservation (1940).

All of these authorities make clear that the BLM’s discretion when implementing sustained yield management is narrowly bounded. The limited discretion under the O&C Act was preserved by Congress in 1976, when Congress passed the Federal Land Policy and Management Act (“FLPMA”), which redefined the management direction for nearly all lands in the United States under the jurisdiction of the BLM, with the telling exception of lands managed under the O&C Act. FLPMA, P.L. 94-579, is a multiple use statute under which all uses for the land are given equal consideration, and the BLM has broad discretion in choosing the mix of uses it will adopt for lands managed under FLPMA. But, Congress specifically preserved the dominance of timber production on the O&C lands by adopting section 701(b) of FLPMA, which says that “[n]otwithstanding any provision of this Act [FLPMA], in the event of conflict with or inconsistency between this Act and the . . . [O&C Act and Coos Bay Wagon Road Acts], insofar as they relate to management of timber resources, and the disposition of revenues from lands and resources, the latter Acts shall prevail.”

In 1986 the Interior Solicitor was asked if the BLM had authority to implement a plan for the protection of spotted owls, which then were not listed under the Endangered Species Act. The legal opinion differentiated between lands managed by the BLM pursuant to FLPMA, and

lands managed pursuant to the O&C Act. The Solicitor’s opinion describes the difference as follows:

“The freedom conferred on the Secretary under FLPMA is limited in one important way on certain federally-owned timberlands in western Oregon. There, any decision about managing northern spotted owls must be measured against the dominant use of timber production. \* \* \* In deciding whether to establish a program for managing northern spotted owls on O&C timberlands, the Secretary, then, must decide if it is possible to do so without creating a conflict with the dominant use there—timber production. If the Secretary can manage northern spotted owls and still produce timber on a sustained yield basis in the O&C timberlands, the O&C Act in no way will preclude him from making that choice. \* \* \* The converse, of course, also obtains. If a program for managing northern spotted owls conflicts with producing timber on a sustained yield basis in O&C timberlands, the O&C Act will preclude the program’s application to that realty.” Gale Norton and Constance Harriman, Associate Solicitors, Memorandum to James Cason, Deputy Assistant Secretary for Land and Minerals Management (October 28, 1986).

The northern spotted owl was listed as threatened under the Endangered Species Act (ESA) in 1990 and prior to 2007, it was presumed that the ESA “trumped” the O&C Act in some respects. Specifically, it was presumed that the O&C Act mandate to manage all timberlands for sustained yield had to stand aside to the extent such management might be inconsistent with the ESA’s section 7(a)(2) requirement that “each Federal Agency shall, in consultation with . . . [the Secretary of Interior or Commerce] insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined . . . to be critical . . . .” 16 USC §1536(a)(2). Prior to 2007 it was presumed that the creation of permanent reserves from which timber was not harvested, otherwise impermissible under the O&C Act, might be permitted if necessary to avoid jeopardy to a listed species. The corollary presumption was that O&C lands, if designated as critical habitat under the ESA, could be withdrawn from timber production and placed in reserves for the benefit of listed wildlife species. All of these presumptions were wrong.

In June 2007, the United States Supreme Court reversed the 9<sup>th</sup> Circuit Court of Appeals in a case that limits the scope of the ESA. The case did not involve the O&C Act, but its holding directly affects the extent to which the BLM may respond to the “no jeopardy” and “no adverse modification” requirements of the ESA. The key holding in the case is as follows:

“§7(a)(2)’s no-jeopardy duty covers only discretionary agency actions and does not attach to actions . . . that an agency is required by statute to undertake once certain specific triggering events have occurred. This reading not only is reasonable, inasmuch as it gives effect to the ESA’s provision, but also comports with the canon against implied repeals [of other, earlier, conflicting legislation] because it stays §7(a)(2)’s mandate where it would override otherwise mandatory statutory duties.” Natl. Ass. of Homebuilders v. Defenders of Wildlife, 551 U.S. 664, XXX (2007). (Emphasis in original.)

This holding specifically controls the scope of the ESA’s “no jeopardy” requirement, but it should also be read to control the scope of the “no adverse modification” requirement, since both requirements are in the same sentence of ESA §7(a)(2).

This Supreme Court decision affects the legal framework for the development and selection of alternatives by the BLM. Since the O&C Act says all timberlands must be managed for sustained yield timber production, the BLM may not create permanent reserves on O&C or CBWR lands to avoid jeopardizing a listed species, or to avoid adversely modifying critical habitat, since section 7(a)(2) of the ESA does not impliedly repeal the O&C Act’s nondiscretionary mandate to implement sustained yield forestry on all timberlands.

What remains subject to §7(a)(2)’s “no jeopardy/no adverse modification” requirement is the BLM’s exercise of discretion in choosing the particulars and timing of the sustained yield timber management it will employ. The BLM can and must seek to avoid jeopardy and adverse modification, but its effort in that regard must be consistent with the discretion allowed it under the O&C Act. Similarly, the BLM may only use its discretionary authority in contributing to the recovery of listed species pursuant to §7(a)(1) of the ESA. Thus, the limitations on the BLM are the same for both contributing to recovery and avoiding jeopardy under the ESA---the scope of discretion under the O&C Act limits and defines the BLM’s obligations under the ESA. The BLM must *simultaneously* seek to achieve the goals of the ESA and the O&C Act. The DRMP/EIS shows the BLM has ignored this obligation.

### **C. The O&C Lands are Subject to a Mandatory Minimum Harvest Level.**

There is a continuing debate about the O&C Act’s minimum harvest level. The O&C Act, 43 U.S.C. §1181a says the following:

“The annual productive capacity for such lands shall be determined and declared as promptly as possible after August 28, 1937, but until such determination and declaration are made the average annual cut therefrom shall not exceed one-half billion feet board measure: *Provided, That timber from said lands in an amount not less than one-half billion feet board measure, or not less than the annual sustained yield capacity when the same has been determined and declared, shall be sold annually, or so much thereof as can be sold at reasonable prices on a normal market.*” (Italics in original, underlining added.)

This language equates the “sustained yield capacity” with the “annual productive capacity”---the two terms refer to the same thing. “Sustained yield capacity”---the annual productive capacity---is determined primarily by reference to biological factors associated with tree growth and mortality on all lands classified as timber lands. In 2008, the BLM determined that the sustained yield capacity of the O&C lands was 1.2 billion board feet per year. As discussed below in these comments, the BLM has failed to make a determination regarding the current sustained yield capacity of the O&C lands, but it is nevertheless clear it is in excess of 1.2 billion board feet per year. Thus, the language of the Act states that minimum harvest level is either one-half billion (500 million) board feet per year, or such greater amount as indicated by the sustained yield capacity of the lands.

In Portland Audubon v. Babbitt, 998 F.2d 705 (9th Cir. 1993), one question presented was whether an injunction on timber sales pending compliance with NEPA was appropriate. The BLM argued that a temporary injunction to remedy a NEPA violation would prevent it from achieving the minimum harvest level of 500 mmbf, which the BLM argued was compelled by statute. The 9<sup>th</sup> Circuit said that the O&C Act “has not deprived the BLM of all discretion with regard to either the volume requirements of the Act or the management of the lands entrusted to its care.” The Court rejected the BLM’s argument that an injunction pending NEPA compliance should not be imposed, based on the Court’s understanding that NEPA “applies to all government actions having significant environmental impacts, even though the actions may be authorized by other legislation.” Id. at 709. That interpretation of NEPA may no longer be correct with regard to nondiscretionary actions or where there is lack of authority to act on information that an EIS might reveal. See Dept. of Transportation v. Public Citizen, 541 U.S. 752 (2004). Moreover, the 9<sup>th</sup> Circuit’s statement in Portland Audubon about the BLM having at least some discretion under the O&C Act does not answer the question about how much discretion exists, nor does it answer the question about minimum harvest levels that the BLM must achieve under the Act. The Portland Audubon case only stands for the narrow and unremarkable proposition that, in achieving the goals of the O&C Act, the BLM must comply with NEPA.

As acknowledged above in these comments, the BLM has discretion to determine the nature of sustained yield management it will employ to achieve the objectives of the O&C Act, the foremost of which is to produce revenue that is shared with Counties pursuant to 43 U.S.C 1181f. The O&C Act sets an absolute limit to the BLM’s discretion to lower annual harvest levels in order to achieve the secondary uses identified in the O&C Act and to achieve the goals of the ESA. The BLM must seek to *simultaneously* achieve these sometimes competing goals, but in no event may the BLM lower harvest levels below 500 million board feet (mmbf) per year.

#### **D. The BLM Failed to Calculate the Annual Productive Capacity of O&C Timberlands.**

For the first time since 1937 in planning for management of the O&C lands, the BLM has refused to calculate the annual productive capacity of the O&C lands. During the course of the planning process the AOCC requested numerous times that such a calculation be made. The BLM’s refusal is a violation of the O&C Act, and of NEPA. The AOCC now demands that such a calculation be made with the results and an analysis of them published in a supplemental draft EIS.

The AOCC does not contend that the BLM must adopt a plan that would harvest the annual productive capacity of the lands, but information about the capacity of the lands is essential to the measuring the environmental impacts of that level of harvest, as compared to the environmental impacts of less intensive management that may be within the discretion of the BLM. The BLM and the public cannot know the environmental value of incremental departures from the maximum without calculating and analyzing the capacity of the lands, and likewise are unable to determine if the forgone economic values might outweigh marginal environmental benefits.

The 2008 reference analysis to “manage most commercial lands for maximizing timber production” reported an annual harvest level of 1.2 billion board feet and this figure is cited in the DRMP/EIS. (DRMP/EIS, page 262.) The 2008 reference analysis was based on 2006 forest inventory data and obviously did not consider the most recent forest inventory data and other relevant new information and did not utilize harvest calculations that are commensurate with the methods applied in the current BLM Alternatives. The 2008 projection of 1.2 billion board feet per year is no longer accurate---the current number is almost certainly greater.

The 2008 reference analysis applied Culmination of Mean Annual Increment standards to limit the minimum harvest age to between 85-155 years of age. The current modeling applied a minimum harvest age of 50 years in most Alternatives. The 2008 reference analysis used scenario based modeling which uses average prescriptions/yield curves in a deterministic method. The current optimized modeling seeks the highest possible volume output from a range of prescriptions/yields. Personal communications with the current modeling team indicate the method for estimating site productivity employed new methods that increased the overall productivity, especially in the northern Districts. The District-by-District percentage by site class was reported in the DRMP/EIS, but it was not disclosed how this new methodology resulted in an increase of this very important inventory variable. (DRMP/EIS, page 997.) The limited time allowed by the comment period did not permit explorations of the BLM data to quantify the magnitude of this change. Increases in productivity alone would increase the outcomes of the 2008 reference analysis. Applying optimization in the modeling and allowing lower minimum harvest ages would further increase this estimate.

This DRMP/EIS did report even aged timber production rates, board feet/acre/year, for the Northern and Coastal Districts and the Southern Interior Districts. (DRMP/EIS, page 263.) A conservative simplistic estimation applying these rates to the land base and excluding Congressionally and Administratively Reserved lands plus an additional 10% in the north and 15% in the south for lands not suitable for timber production, existing recreation sites, etc., results in an estimate of 1.33 billion board feet – over a 10% increase. Modeled results with current methods and agreement of what is counted as “Timber Lands” would likely be higher than this simplistic estimate.

The determination of the sustained yield capacity is an important base line to be used in assessing Alternatives for management of the O&C lands. It provides a key baseline to judge each sustained yield unit for the percentage of the capacity that a proposed strategy provides and the degree conservation objectives constrain that capacity. Given the draft Alternatives are shifting the regional distribution of the harvest, this baseline is needed to fully understand this change. Constructing a model requires assembling information on the productivity of the land, the current state of the inventory, and how that forest grows over time. In constructing the model it would be a normal quality control step to let the model run with a maximum implementation of the prescriptions/yields. It is very likely this was performed by the BLM but they have not disclosed this key base line, which was requested by AOCC on multiple occasions.

### **E. A Defective Purpose and Need Statement Illegally Restricts the Range of Alternatives.**

The AOCC repeatedly objected to the BLM's Purpose and Need Statement (PNS) at earlier stages in this planning process. In spite of revenue for Counties being the primary purpose of Congress in adopting the O&C Act, the PNS fails to even identify revenue production as an objective. Among numerous examples of the AOCC's objections, attached hereto as Encl. 2 is a letter dated June 27, 2013, in which the AOCC sought a meeting to voice its objections to the then draft PNS. The letter outlined the basis for the objections and concludes:

“Wildlife-related and recreation objectives must be achieved in *coordination* with producing revenue for the Counties, and not at the expense of that primary objective. Instead of seeking *simultaneous* satisfaction of objectives, however, the BLM PNS gives wildlife-related and recreation objectives precedence in every conceivable way.” (Italics added.)

The requested meeting was held after which the BLM refused to modify the draft PNS. As a result, the PNS has it all backwards. Instead of requiring the *simultaneous* achievement of the primary purposes of the O&C Act and the secondary objectives of promoting wildlife and recreation, it seeks satisfaction of secondary objectives first and without regard to timber production, relegating the Congressionally mandated goal of timber and revenue production to the last, on whatever land might be left over.

This was followed by a letter dated March 26, 2014, attached as Encl. 3, in which the AOCC expressed its objections to the planning criteria and the then proposed, very narrow range of alternatives, which were the inevitable result of a defective PNS. It includes the following:

“The preliminary alternatives outlined with the Planning Criteria do not include any option that is consistent with the O&C Act, nor is the range of alternatives broad enough to test the extent to which potentially conflicting outcomes can be reconciled. This is a predictable consequence of the Purpose and Need statement, which has turned the O&C Act upside down, leaving economic considerations to the last, after every other consideration has been satisfied. Sustained yield of timber, under both the Purpose and Need and the Planning Criteria, is treated as a residual from lands that are left over after all other objectives are met. There appears to be no intent to try to optimize all values *simultaneously*. As a consequence, economic concerns will inevitably be given short shrift.

“With all action alternatives clustered around preservation-oriented outcomes, there will be no examination of a reasonable range of alternatives that would disclose how to efficiently produce acceptable levels of environmental protections, while *simultaneously* producing economic benefits required by the O&C Act. This skewed and limited range of alternatives deprives the agency and the public of both information and meaningful choices, in violation of the National Environmental Policy Act. The Association of O&C Counties asks the BLM to stop and reconsider, as the path chosen is one of inevitable conflict between the BLM and the Counties that are intended by law to benefit from management of the O&C lands.” (Italics added.)

The PNS is inconsistent with the BLM's Notice of Intent to Revise Resource Management Plans (NOI) (Fed. Reg. Vol. 77, No. 47, pp. 14,414-416, March 9, 2012). The NOI got it right, in that it says BLM planning for these lands must "conform" with the O&C Act, and at the same time it must "comply" with the ESA and other regulatory statutes:

"The Federal Land Policy and Management Act of 1976 (FLPMA) requires the development, maintenance, and revision of land use plans. The vast majority of the BLM-administered lands in the planning area are Revested Oregon and California Railroad (O&C) lands, or Reconveyed Coos Bay Wagon Road (CBWR) lands, and are managed under the statutory authority of the Oregon and California Revested Railroad Lands Act of 1937 (O&C Act, Pub. L. 75-405) and FLPMA (43 U.S.C. 1701 et seq.). Preparation of the RMPs and EIS will *conform* to the above land management laws and will also *comply* with other Federal laws, including, but not limited to the Endangered Species Act (ESA), the Clean Water Act, and the National Environmental Policy Act." (Italics added.)

The choice of words in the NOI is not random, it is a correct expression of the approach to planning that is legally required: The O&C Act is the overarching authority with which the BLM planning for these lands must conform, and the ESA and other statutes provide compliance objectives that should be achieved within that overarching authority. The tail must not wag the dog. Nevertheless, the PNS reverses the order, and renders the O&C Act a near nullity, giving sustained yield timber production only begrudging acknowledgement as a remnant, and not even mentioning the production of revenue for counties as an objective.

The AOCC renews its objections to the PNS and renews its request that the BLM include revenue production as an objective in the PNS and expand the range of alternatives analyzed and considered so that they include alternatives that are consistent with the law and these comments.

#### **F. BLM's Description of the Dispute and the Position of the Counties is Incorrect.**

At page 868 of the DRMP/EIS, the BLM attempts to describe the extant disagreement between it and the Counties, and in the process mistates the position of the Counties. The Counties reject the BLM's description. Among other things, the BLM says the Counties insist on having the minimum harvest level of 500 mmbf produced first, before other objectives are considered: "The Association of O&C Counties maintains that the O&C Act and legal opinions that have stemmed from it mandate that the BLM should first provide a minimum of 500 million board feet of sustained yield timber harvest per year, then balance all other needs after that has been provided." That is not a correct statement of the AOCC's position. The AOCC on behalf of the Counties has consistently and repeatedly asserted that the BLM must *simultaneously* achieve all objectives. It is not timber first and everything else later, it should be a *coordinated* effort to satisfy sometimes competing goals.

Attached hereto as Encl. 4 is a statement that was delivered orally to the BLM at a meeting of the Coordinating Agency Advisory Group on February 19, 2015. A hard copy was then provided to the BLM with a request that it be retained in the administrative record of the planning process. The statement was a summary of the points the Counties had previously

expressed on many occasions and it three times calls for analysis of alternatives that seek to *simultaneously* achieve objectives. It goes considerably further and offers multiple examples of specific strategies for seeking *simultaneous* satisfaction of objectives, none of which the BLM analyzed or considered in the DRMP/EIS. The BLM and the public do not know the extent to which these strategies will work, because the BLM made no attempt to find out.

## **G. General Comments Regarding the DRMP/EIS.**

### **1. Overlay of Excessive Owl Protections on Top of USF&W Critical Habitat and Recovery Plan Without Determination of Need.**

#### **a. Summary and Key Points.**

“The challenge of managing public lands can reveal significant disagreements in jurisdictions and mandates, not only among Federal, State, local, and tribal governments but also among different Federal or State agencies. The Cooperating Agency relationship offers a forum in which to discuss and, if possible, reconcile divergent policies and plans for the common good.” (BLM Desk Guide to Cooperating Agency Relationships.)

It is unlikely any of the BLM’s Alternatives will provide the harvest levels projected for them given the spotted owl Recovery Plan and Critical Habitat designation, which are likely to result in restrictions greater than disclosed in the DRMP/EIS. Below is a brief history and summary of information on the overlay of Critical Habitat that is not disclosed in the DRMP/EIS. The DRMP/EIS did reveal the significant potential effects of some Recovery Plan actions particularly related to management of owl sites. The Preferred Alternative B does not protect spotted owl sites as recommended in the Recovery Plan. Recent rule making related to incidental take at the plan level will not provide certainty in the likely event that additional restrictions on harvest are applied during project level consultation. These multiple layers of regulations and restrictions prevent the predictably BLM has claimed will result from the planning process.

#### **b. Context.**

##### **i. RMP and Spotted Owl Critical Habitat /Recovery Plan.**

In 2008 the BLM’s RMPs and USF&WS’s spotted owl recovery plan and designation of spotted owl critical habitat were in alignment, providing consistency with one set of management guidelines for the O&C forest lands. This consistency was never allowed to be implemented.

A revised Recovery Plan (RP) was issued in 2011. The RP recommended significant changes to the framework of the Northwest Forest Plan (NWFP) by recommending single species management of owl sites and retaining substantially all of the older more structurally complex forest. This was a significant departure from the “Ecosystem Management” approach upon which the NWFP was based. There was no public disclosure of the potential economic implications of these significant changes. The RP Recovery Actions are “advisory recommendations” but the Federal Agencies have followed them in the design of projects

through avoidance of occupied sites and older forest to move projects through the USF&WS consultation process.

Spotted Owl Critical Habitat (CH) was designated on 53% of the BLM forest in western Oregon in 2012. There was an economic analysis conducted on the “incremental effect” of this designation. This analysis was based on the assumption that RP Recovery Actions were in place as part of the “Without CH Baseline” and thus were not part of the incremental effect. Using the baseline of the NWFP with the RP, the economic analysis indicated the “Negative Impact Scenario” (most pessimistic) would have an annual harvest reduction of 25 mmbf for all federal lands. No specific agency breakdowns were provided. BLM administered lands are 10% of federal lands under the NWFP. In the designation of CH there was no recognition of or consideration for the unique mandate of the O&C Act applicable to the O&C lands.

- “Our analysis indicates that the proposed revision of critical habitat, as informed by the Revised Recovery Plan for the Northern Spotted Owl (76 FR 38575; July 1, 2011), is anticipated to have little incremental effects above and beyond the conservation measures already required as a result of its threatened status, and thus is expected to impose minimal additional regulatory burden.” (CH Economic Analysis, ES-3.)
- “The potential impact of the designation of critical habitat on timber harvest levels, and whether that change will be positive or negative, is uncertain. Therefore, how critical habitat designation—and the adoption of ecological forestry practices—may impact the timber industry in terms of future harvest levels, employment, and revenue-sharing payments to counties is also uncertain.” (CH Economic Analysis, 6-10 #319.)
- “According to the Revised Recovery Plan, unoccupied and non-structurally complex NSO habitat in the matrix is still expected to be managed for timber production. For these areas the Revised Recovery Plan recommends implementing ecological forestry techniques, including avoidance, to retain and develop structurally complex forests in the future to benefit the NSO, which represents a potential incremental effect of the proposed designation. As stated previously, the only legal obligation of the land managing agencies is to avoid the destruction or adverse modification of critical habitat on a project-by-project basis.” (CH Economic Analysis, 4-4.)

#### **ii. Presidential Memorandum – Proposed Revised Habitat for the Spotted Owl: Minimizing Regulatory Burdens (February 28, 2012).**

- Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), explicitly states that our "regulatory system must protect public health, welfare, safety, and our environment while **promoting economic growth, innovation, competitiveness, and job creation.**" (Emphasis added). Consistent with this mandate, Executive Order 13563 requires agencies to tailor "regulations to impose the **least burden on society**, consistent with obtaining regulatory objectives." (Emphasis added.)

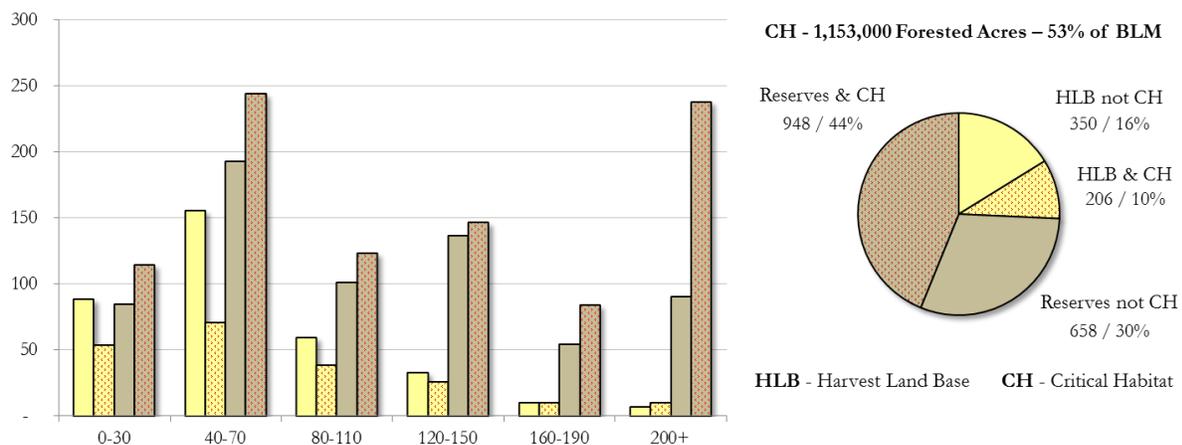
- “Consistent with the ESA and Executive Order 13563, today's proposed rule emphasizes the importance of flexibility and pragmatism. The proposed rule notes the need to consider "the economic impact" of the proposed rule.”
- “Develop clear direction, as part of the final rule, for evaluating logging activity in areas of critical habitat, in accordance with the scientific principles of active forestry management and to the extent permitted by law.”
- Executive Order 13563 states that our regulatory system "must promote predictability and reduce uncertainty."
- “Uncertainty on the part of the public may be avoided and public comment improved, by simultaneous presentation of the best scientific data available and the analysis of economic and other impacts.”

The directions provided by this Executive Order were not fulfilled by the USF&WS and continue to be unresolved by the BLM in this planning process.

**c. DEIS Alternatives – Spotted Owl Critical Habitat.**

The BLM DEIS failed to disclose basic information on the overlay of spotted owl CH with the allocations of the Alternatives to inform the public on the magnitude of the potential area that could be affected by this dual layer of regulations.

**Graphic 1 - Preferred Alternative B – Age Classes by Allocations**  
(Thousands Acres)



206,000 acres of the Harvest Land Base (HLB) is designated as CH, which is 35% of the land base allocated for sustained yield timber production.

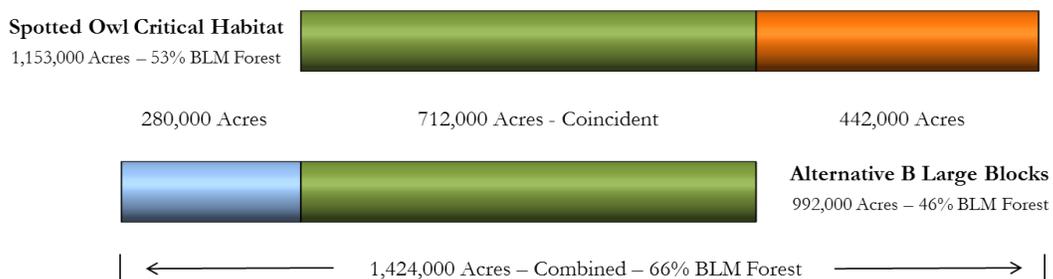
83,000 acres of the HLB designated as CH are in stands 80 years and older and is both owl habitat and the source of mature forest for the near term harvest. Much of this acreage is in

southwest Oregon. Under the ecological forestry management guidelines described in the CH rule it is questionable if these lands will be managed under the principles of sustained yield after resiliency treatments are performed.

123,000 acres of the HLB designated as CH are in stands less than 80 years. Much of this forest is located in the northern and coastal Districts in which the 70-year age class is a major source of the harvest in the early decades under the BLM Alternatives. BLM has adopted retention levels of 15-30%, similar to Johnson and Franklin ecological forestry under Alternative B for these lands. There is no basis for concluding this higher level of retention would have a positive outcome for owls at the landscape scale, at the extent to which such retention would be implemented by the BLM.

- “In our proposed rule, we provided a description of ecological forestry management actions that are compatible with both northern spotted owl recovery and timber harvest, as recommended in the Revised Recovery Plan for the Northern Spotted Owl (76 FR 38575; July 1, 2011), which, in some areas, may actually increase harvest relative to recent realized levels (but not necessarily to planned levels under the NWFP). While it is outside the purview of the Service to direct forestry management, we will consult with Federal action agencies and make recommendations on the best measures to provide protections for the owl and have minimal negative economic impacts.” (CH Economic Analysis, ES-3.)
- “The final rule provides no descriptive or quantitative link between “ecological forestry” practices and “those physical and biological features” that are both essential to northern spotted owl conservation and can be evaluated across the planning area. The BLM determined that its evaluations of northern spotted owl Issues 1 through 4 are more relevant to the question of northern spotted owl conservation, than a separate analysis of the means it would use (specific ecological forestry prescriptions) to foster conservation.” (DRMP/EIS, Page 825.)

**Graphic 2 - Comparison of Critical Habitat and Alternative B Large Blocks**



Comparing the gross area of CH and Alternative B large Block network illustrates significant differences in the designs of these two designations.

The modeling work done by USF&WS, in development of the CH rule, utilized static current vegetation conditions and did not utilize the data on BLM lands that incorporated the effects of habitat developing over time. The Service did not apply the long-standing size and spacing criteria in the design of CH; thus it is more extensive than the Alternative B design.

The modeling work done by the BLM is superior to the work done by the Service because it incorporates the projection of habitat over time. The BLM also used sophisticated GIS analysis to design networks where blocks of the highest quality habitat will develop on the checkerboard in the shortest amount of time consistent with size and spacing criteria.

Although not to be considered an endorsement of the Alternative B Large Block design, the BLM design has demonstrated an effective spotted owl network that is smaller than the CH designation.

BLM's Alternative B design and modeling has identified 280,000 acres of land where large blocks can develop most rapidly that were not incorporated into the CH design. Conversely, the BLM design has identified 442,000 acres that were included in the CH design that is not essential for an effective large block network.

The combined area encompassing the CH designation on top of the BLM Large Block design under Alternative B would be 1,424,000 acres or 66% of BLMs forest.

#### **d. DEIS Analytical Results Related to Critical Habitat – All Alternatives**

- “Under all alternatives, the BLM would manage its lands, including those in critical habitat, in a manner that contributes to a landscape in the planning area that meets northern spotted owl recovery goals and long-term ecosystem restoration and conservation.” (DRMP/EIS, page 824.)
- “BLM-administered lands in the planning area, including those in critical habitat units, currently contribute to a western Oregon landscape that supports large blocks of contiguous late-successional forest... in all areas except the northern half of the Oregon Coast Range Physiographic Province. In addition, under all alternatives, during the next 50 years, the BLM would continue to contribute to the support and expansion of these large habitat blocks.” (DRMP/EIS, page 824.)

**Alternative A** - The large block network was based on all CH designations, which was the major reason the lands allocated to sustained yield was only 14%. If the effects of Recovery Action 10 were incorporated under this Alternative it is presumed the sustained yield land base would be approximately 7-9% of BLM lands. This Alternative illustrates why the extensive nature of the spotted owl CH designation combined with the restrictions of the Recovery Actions result in unacceptably low amount of the O&C forest allocated to sustained yield.

**Alternative B** – Described in detail above.

**Sub Alternative B** - This sub-alternative precluded harvest of suitable habitat within all known and historic spotted owl sites (median home range). This illustrates the general magnitude effect of adhering to Recovery Action 10. Alternative B allocated 26% of the BLM forest to sustained yield management, which would be reduced to 14% by protecting all sites. Harvest levels would correspondingly be cut in half. This sub-alternative illustrates why application of single species management on top of an extensive reserve network result in unacceptably low amount of the O&C forest allocated to sustained yield.

**Alternative C** – Spotted Owl Critical Habitat encompasses 44% of the HLB under Alternative C. BLM assessed the number of spotted owl sites within Critical Habitat that would meet or exceed Recovery Action 10 thresholds under the Alternatives. The trend for both Alternative C and B is upward. After 100 years ~ 1,210 sites under Alt C would meet Recovery Action 10 Thresholds as compared with ~1,275 under Alternative B. This reflects two approaches for positive change with Alternative B being only 5% higher. The Large Block design under Alternative C is 835,000 acres, 28% smaller than CH. The BLM analysis of Alternative C indicate that positive outcomes for conservation objectives can be met independent of the additional restrictions of the Recovery Plan and Critical Habitat. Current regulatory restrictions at the project level consultation would not likely approve the extent of clear cuts under Alternative C despite the BLM analytical findings at the plan level scale.

**Alternative D** – Alternative D reduces the intensity of sustained yield management based largely on the area within CH under an “Owl Habitat Timber Area” that focuses on maintaining owl habitat on all acres at all times in this designation. Not only is the harvest level unacceptably low it is combining the excessive extent of CH with a very broad based definition of older forest to be reserved, a full site potential tree riparian reserve applied on all streams, and single species management of existing spotted owl sites. This is not consistent with the Notice of Intent for the RMP where meeting ESA objectives would be based on a compliance standard. This Alternative far exceeds needs for compliance with ESA and it ignores court-approved interpretation of the term “dominant use.”

#### **e. Incidental Take - Consultation at the Plan level.**

A rule published on May 4, 2015, clarified that the USF&WS and National Marine Fisheries Service do not need to issue an incidental take statement for some federal planning decisions that anticipate future harm to protected species, but do not authorize any specific projects that would cause impacts. This leads to greater uncertainty as to the level of restrictions that will be placed during project level consultation and increased avoidance by the BLM in the design of projects before project consultation occurs. The declaration of the sustained yield harvest level is only valid if all constraints have been incorporated. It is unknown what level of constraint will result at project level consultation in terms of avoidance, reduced acreage available for harvest, or harvesting at lower intensity than assumed in the RMP.

#### **f. Lack of Certainty**

- “The BLM will develop action alternatives to provide a high degree of predictability and consistency about implementing land management actions and a high degree of certainty of

achieving management objectives (desired outcomes), especially those outcomes related to discrete statutory mandates.” (DRMP/EIS, page 12.)

- Executive Order 13563 states that our regulatory system "must promote predictability and reduce uncertainty."

If BLM were to adopt a management plan that merely conformed to the existing regulatory policies of the spotted owl RP and CH, the levels of sustainable harvest would be lower than any alternative BLM has analyzed. The BLM analysis has established that the RP, if fully adhered to, will have a substantial impact on sustained yield management on the O&C lands that was not previously revealed publicly. The BLM analysis indicates smaller large block designations can provide for effective networks for conservation needs of the spotted owl than prescribed by the current CH designation. The BLM data and analytical methods, specific to the O&C forest, are superior to the methods utilized by USF&WS in designing CH.

Plan level consultation is likely to leave many fundamental questions on what levels and types of management practices will be permitted in project level consultation. On the very small sustained yield land base of the BLM Alternatives, any departure from the assumptions on the lands available for harvest or the intensity of harvest will quickly undermine the declared harvest levels. The USF&WS leaned heavily on poorly defined ecological forestry principles for management guidelines related to the RP and CH, which the BLM has dismissed in not providing a quantitative link between management and the physical and biological features that are essential to northern spotted owl conservation.

#### **g. Conclusions Regarding Excessive Owl Protections.**

The BLM analysis demonstrates there are sustained yield strategies that are more clearly defined and that can produce good conservation outcomes with less regulatory burden than current USF&WS policies. The BLM's current range of Alternatives has not assessed the full range of sustained yield strategies to define what is possible for both economic and conservation objectives. The directions from the President in Executive Order 13563 (discussed above at pages 12-13) were not fulfilled by the USF&WS and those failures are perpetuated in the DRMP/EIS by piling one excessively protective plan on top of another.

The regulatory policy changes and land use planning since 2009 are leading to an administrative repeal of the O&C Act and treating sustained yield management as a byproduct. The combination of the extensive designation of CH, restrictions imposed by the RP, and the extensive application of reserves under the BLM Alternatives do not recognize the basic premise in law that the O&C forest shall be managed for permanent forest production under the principles of sustained yield. It is up to either Congress or the Secretary of Interior to redirect the current planning process so that one clear set of management guidelines based on actual conservation needs for compliance with ESA can be applied. The O&C Forest can be managed to promote economic growth and job creation at much higher levels and still meet the conservation objectives than the current regulatory environment will permit.

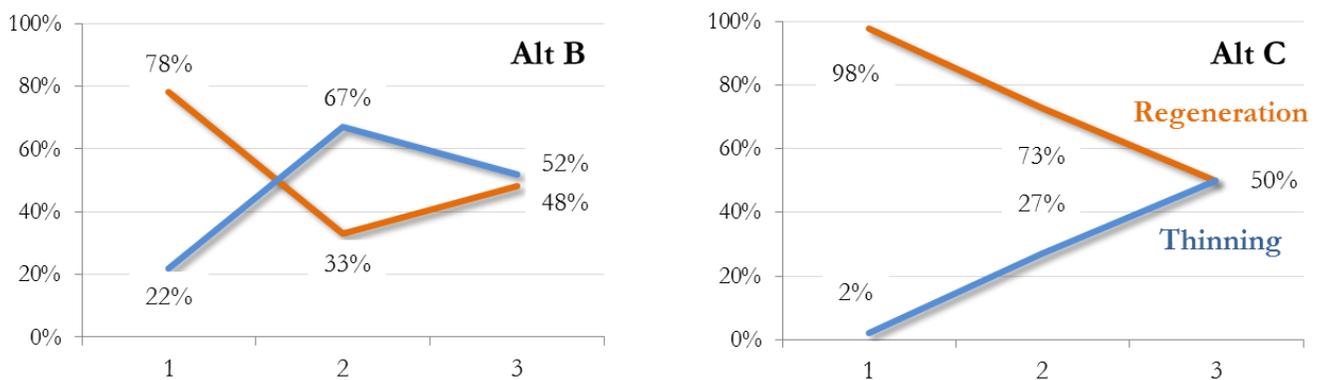
## H. Modeling and Harvest Estimation Concerns.

AOCC has concerns regarding the BLM’s modeling of the Alternatives to estimate harvest acreage and volume by various harvest types. The way the modeling was conducted, similar Alternatives by design had different ratios of thinning and regeneration harvest applied to them, which can sway subsequent analysis. The use of optimization is resulting in large swings decade to decade in the mix of thinning and regeneration harvest, which unless rigorously followed in implementation would undermine the basis for the projected harvest levels. The design of the Alternatives has resulted in very little mature forest being available for harvest in the near term. This has caused a departure from long standing policy to conduct harvest at or above maturity criteria. This results in conducting regeneration harvest of more acres of younger stands, which is not readily revealed in the DRMP/EIS. The BLM failed to disclose maps of the modeled harvest. These maps provide context to make visual comparison between the Alternatives on the extent of harvest. Transition to implementation will begin within a year under the current BLM schedule. The modeling and subsequent analyses assume full implementation the day the Record of Decision is signed. Realistic transition assumptions need to be incorporated into the harvest modeling because they affect all the subsequent analysis and the outcomes in the near term.

### 1. Comparability - Alternatives B and C.

The basic design of these two alternatives is similar, with un-even aged management, plus a mix of regeneration harvest, with and without retention, and thinning prescriptions. Outside of the uneven aged management areas the percentage mix of regeneration harvest and thinning varies between these alternatives. This area is the source for the majority of the timber volume projected for these Alternatives.

**Graphic 3 – First Three Decades Mix of Modeled Harvest Types**



This difference in the ratio of harvest types between two similar designs in Alternatives B and C influences the outcomes of the subsequent analysis for economics, spotted owls and any other analysis relying on the vegetation modeling. This difference in the approach to the modeling is not revealed in the DEIS and may have significant influence on the projected outcomes.

Previous modeling for the development of earlier BLM RMPs attempted to project an even ratio over time of the harvest types. Previous alternatives using this standard in the modeling projected a mix of generally 80% regeneration to 20% thinning. The optimization within the modeling used by the BLM for this DRMP/EIS “produced a solution with the highest possible level of timber volume production” by selecting from hundreds of different prescriptions to be applied to an individual stand. (RMP/DEIS, page 1026.) The harvest projections are reliant on the assumptions used in the modeling. If implementation does not follow these shifts in the ratio of regeneration and thinning and optimal prescriptions, it undermines the sustained yield strategy and will result in different outcomes for all of the other resources that are based on the vegetation modeling. BLM has no recent history demonstrating it can or will follow modeling in implementation, let alone modeling that shifts in emphasis so dramatically over time.

## **2. Harvest Below Maturity Standards.**

The design of the Alternatives reserving most of the mature forest has resulted in BLM departing from long standing policy of harvesting at or above Culmination of Mean Annual Increment (CMAI). This has the effect of forcing the harvest of younger stands, that are not mature, as the source of the near term volume. It takes more acres of harvest of younger stands than it would if the harvest is based on reaching a maturity standard. Alternative C and the 2008 RMP have similar designs but the latter had mature forest available for the near term decades and applied CMAI for maturity criteria. Alternative C modeled regeneration harvest is 94,000 acres during the first decade, while the 2008 RMP was 77,000 acres. A sub alternative analysis in the 2008 EIS examined no harvest of stands 80 years and older and determined a sustainable harvest level, with CMAI maturity criteria, would be 96 mmbf. In the DRMP/EIS, modeling of sub Alternative C with no harvest of stands 80 years and older projects a sustainable harvest level of 332 mmbf. The short timeframe to submit comments did not permit a complete analysis of this differential, and it is assumed that this dramatic increase in the harvest level could only be sustained by a repeated short cycle of harvest of young stands below maturity.

Maturity criteria related to CMAI was not reported in this DRMP/EIS. In previous BLM EISs, CMAI based maturity criteria was determined by species group and site productivity, which ranged from a low of age 85 up to a high of 155 years. (2008 FEIS, page 702.) The new information that has been generated on the increase of productivity would likely extend the timeframes to reach CMAI yet BLM did not recalculate this important baseline. Under Alternative B, one third of the regeneration harvest acres will be in stands in the 50-70 age class during the first three decades. Under Alternative C between 36 and 54% of the harvest acres would come from stands in the 50-70 year age class. Data related to the specific ages of the modeled harvest were not revealed in this DRMP/EIS to inform the public on the degree of harvest of young forest for many decades.

The lack of mature forest available in the short term has additional consequences - “Reserving older forests in the action alternatives would force the BLM to harvest stands less than 80 years old for up to 100 years before transitioning completely to longer rotations.” (DRMP/EIS, page 255.) Long rotations allow for the lands allocated to sustained yield management to simultaneously provide spotted owl habitat conditions for many decades while at

the same time producing high value timber. The failure to design any of the Alternatives with enough mature forest to support longer rotations from the onset has limited the understanding of the effects of such an approach. This approach has been tested in previous EISs, is an effective approach, and is certainly a reasonable alternative that was not considered due to artificial constraints in the PNS. The design of the Alternatives has prevented the HLB from serving simultaneous achievement of both habitat and timber production. Alternative D attempted this but failed on an acceptable level of timber production. The design of the current Alternatives produces mostly lower grade logs, which private industrial lands produce in abundance. Longer rotations increase the portion of the harvest of high value grade 1 logs, which has a substantial positive effect on revenue and jobs. The BLM can fill a unique market niche in management of the O&C forest that produces both high quality habitat and high quality and value logs through long rotations. This approach has not been explored in this DRMP/EIS.

### 3. Maps of Modeled Harvest not Disclosed.

For each of the last three cycles of RMP development, maps were produced to show the modeled harvest for the Alternatives. These maps give simple visual comparison to understand, between Alternatives, the general extent and types of harvest. It is understood these are only a “modeled scenarios” and did not represent the actual location of harvest units for implementation. Such maps do, however, illustrate the assumptions built into the modeling and provide comparable spatial context which simple tabular reporting of acres or volume do not provide. Numerous spotted owl condition maps were provided which are based on this same vegetation modeling data but none were produced of the harvest in the DRMP/EIS.

**Graphic 4 Modeled Harvest Map**



These scenario maps in previous RMP development were used for review by District implementation staff as a quality control measure of how the alternatives were modeled. Unlike previous efforts, in this planning process, these kinds of maps were not provided even to District staff for review and comment on the modeling. These maps were created – “The Modeling Team took the results from the strata-based models and allocated them back into the spatially explicit GIS polygons that represent the decision area,” (RMP/DEIS, page 1026), but never revealed to the public or even the BLM’s own District personnel. At the only modeling review meeting provided to the Cooperating Agency Advisory Group, in November 2014, AOCC requested to see these maps and BLM said they would not be provided because they would cause confusion and be interpreted as portraying where harvest was to occur. In the previous 30 years of RMP development, no such confusion has ever presented itself as an issue. The AOCC is certainly not subject to confusion regarding what the maps would represent, nor would be any of the other cooperating agencies.

The modeled scenario maps also can be used to inform on issues related to policy level modeling and the transition to tactical implementation. Under the Alternative B modeling, the

regeneration harvest is comprised of 1,995 individual stands in the first decade. Of this total 38% of the stands are small areas of 5 acres or less. When assessed at the section level, 19% of the modeled regeneration harvest units are 200 acres or larger within individual sections. Woodstock is not a spatial model by design but it can have constraints placed on it for minimum and maximum acreage to reflect what is likely in implementation based on these scenario maps.

The failure to disclose these maps has limited both the public's and BLM staff's understanding of how the modeled harvest compares spatially between Alternatives. It is also allows unrealistic assumptions to be built into the modeling with regard to very small stands of doubtful operational feasibility, and concentrations of harvest that exceed what could likely be implemented.

#### **4. Incorporating Transition Assumptions.**

Under BLM's current schedule, implementation under the RMPs would commence in the summer of 2016. BLMs recent timber sales continue to rely on unsustainable levels of commercial thinning. Three of the current ecological forestry projects have been delayed to correct NEPA shortfalls by the BLM. Those unfinished projects were intended to demonstrate silvicultural practices similar to the Preferred Alternative B. The current vegetation modeling assumes full implementation levels immediately. Realistically, there will be a transition period to achieve full implementation no matter what strategy BLM adopts. This transition period needs to be incorporated into the vegetation modeling not only for illustrating the volume outcomes but the economic forecasts related to generation of revenue and jobs. Transition strategies may have varied based on Alternatives, but this was not analyzed or disclosed in the DRMP/EIS.

Given the continued decline of Secure Rural Schools payments to Counties and return to timber sale receipts in 2016, the BLM's current modeling that assumes immediate full implementation is not realistic and is harmfully misleading. These forecasts for the next 5 years are critical for the O&C counties as well as the timber industry.

The issues identified above highlight how the current modeling has not provided full disclosure of the harvest strategies of the Alternatives, nor does it provide an accurate portrayal of the outcomes to be expected with implementation. This is both a violation of NEPA and, if not corrected, would defeat the predictability the BLM has claimed the next RMP would provide.

### **I. Specific Points of Failure and Questions Regarding the DRMP/EIS.**

#### **1. Failure to Disclose Issues in the DEIS.**

##### **a. Gross Area of Allocations – Hierarchy.**

The hierarchical accounting methods for reporting the acreage of the allocations under the Alternatives were not disclosed. BLM data used in the vegetation modeling, obtained through the Freedom of Information Act (FOIA), indicates the following hierarchical order was used in determining the acreage of the allocations:

LUA_B2_HIER	LUA_B2_LBL
1	Congressionally Reserved
2	Administratively Reserved
3	Riparian Reserves
4	Late Successional Reserves
5	East Side Management Lands
6	Harvest Land Base

The description of the Alternatives in the EIS displayed the data as follows, which is different than the hierarchy and is displayed in two different implied orders. (Figure 2-4 and Table 2-5.)

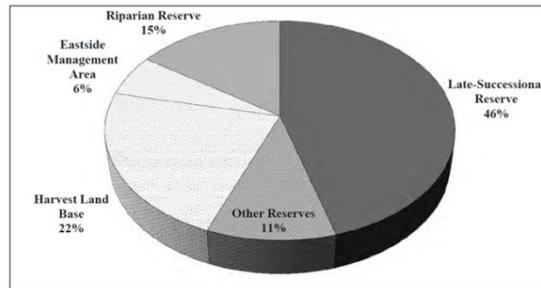


Figure 2-4. Alternative B land use allocations.

Table 2-5. Alternative B land use allocations.

Allocation	Acres	Total Acres (%)	Sub-Allocation	Acres	Total Acres (%)
Late-Successional Reserve	1,127,320	46%	Structurally-Complex Forest	463,910	19%
			Late-Successional Reserve (Moist)	371,303	15%
			Late-Successional Reserve (Dry)	223,399	9%
			Occupied Marbled Murrelet Sites	41,633	2%
			Predicted Marbled Murrelet Sites	13,738	<1%
			Occupied Red Tree Vole Sites	297	<1%
Riparian Reserve	382,805	15%	Riparian Reserve (Moist)	215,231	9%
			Riparian Reserve (Dry)	167,574	7%
Other Reserves	260,510	11%	Congressionally Reserved	40,537	2%
			District Designated Reserves	219,973	9%
			Moderate Intensity Timber Area	210,087	8%
Harvest Land Base	556,335	22%	Low Intensity Timber Area	72,358	3%
			Uneven-Aged Timber Area	273,890	11%
Eastside Management Area	151,885	6%	-	151,885	6%
<b>Totals</b>				<b>2,478,856</b>	<b>-</b>

This is both a failure to disclose basic information on the size of the allocations and is misleading on the actual extent. For example:

- Riparian Reserves** – In the DRMP/EIS and many of the BLM outreach materials, riparian reserves under Alternatives B and C are both portrayed as 15% of the planning area. According to the BLM data used in modeling the gross area (excluding non-commercial forest lands east of Hwy 97), Alternative B is 552,764 acres /24% of western Oregon BLM. Alternative C is 413,158 acres /18% of western Oregon BLM.
- Large Block Reserves** – It appears that riparian reserves and stand level late-successional reserves were taken out of the hierarchy before reporting the large block late-successional reserves. Reflecting this, BLM outreach materials reported Alternative B large blocks as 594,000 acres and Alternative C as 480,000 acres. According to the BLM data used in modeling the gross area, (excluding non-commercial forest lands east of Hwy 97) Alternative B is 1,052,164 acres /42% of western Oregon BLM. Alternative C is 885,804 acres /38% of western Oregon BLM.

The BLM modeling data obtained by AOCC by FOIA was not part of the data released to the general public. The BLM interactive mapping tools provide no quantification of the data layers for the allocations for the Alternatives.

#### b. Spotted Owl Critical Habitat.

The extent of the spotted owl CH and the degree it overlays the HLB were not disclosed. Some analysis of the relationship of CH and the HLB was performed by AOCC and is described in section G.1 of these comments. The amount of modeled harvest in CH in the early decades of

the plan was not disclosed. Understanding the overlay of critical habitat with the HLB and modeled harvest is essential for understanding the extent of additional restrictions that may occur during project consultation and implementation.

#### **c. Modeled Harvest Scenario Maps.**

As discussed above in section H.3, no maps were made available to the public to show the modeled harvest for the Alternatives. The modeled harvest maps are essential for understanding landscape context, distribution, and intensity of harvest in comparing Alternatives.

#### **d. Access Study.**

The BLM has performed a spatial analysis that illustrates the extent to which there is no legal public access to BLM lands in the checkerboard of ownerships. This information identifies lands on which BLM has no capability to provide recreation opportunities. The BLM has highlighted the expansion of recreational opportunities as a primary objective in this planning process and has this information internally, but has not shared it publicly.

### **2. Data Issues.**

The AOCC made reasonable requests for data developed by the BLM for its vegetation modeling once that work was completed. At the CAAG November 3, 2014, modeling results meeting it was noted that the “BLM will meet internally regarding product outputs it is required and planning to produce, and the potential for CAAG input on products and timing for communicating out data and outputs from the modeling. A discussion with CAAG may follow.” At the subsequent three CAAG meetings all the way to the release of the DRMP/EIS, the BLM would not say if the data AOCC had requested would be provided. There was no discussion on the kinds of products that would be developed for public release in the CAAG forum. The specific data AOCC requested was not made available with what BLM provided to the public with the release of the DRMP/EIS.

The State Director instructed AOCC to make a FOIA request, which was submitted on April 29, 2015, and the first set of data was provided on May 8, 2015. The first dataset did not contain the Access database requested and that was used by the BLM modeling team. A second dataset was provided on May 20th.

BLM provided more data than was requested and comprised over 1,500 files many of which contained multiple databases with 5-600,000 records. The documentation on the requested information was very sparse, often just a listing of field names and data format with no descriptive text. Some data elements by their names appeared to have a common basis, but upon evaluation of the information they were different with no documentation to explain why. Other data elements were not consistent with reported information in the DRMP/EIS. The data for timber volume needed to have formulas applied to them to derive actual values but this was not explained in any of the documentation. The documentation on the Access databases that were provided indicate the data provided by the BLM was not the same as used by the Inter-Disciplinary Team (IDT) that had been requested. Much of the data and documentation provided

by the BLM was in Arc GIS personal geodatabase format. Most of these datasets are so large that the Arc GIS viewing software that is free for public use cannot read this format due to the size of the data. BLM could have provided this data in more common shape file format that can be read by many free use GIS software packages but did not. The basic software license to read the format in which the BLM provided the data costs over \$7,000. That is beyond the budget of AOCC and most of the public. The format in which the BLM provided the DRMP/EIS data precludes most of the public from using it.

The BLM's executive summary lacked even the most basic information on the Alternatives, such as the timber volume by district, revenue, and jobs. It forces the reader to go through the 1,500 page DRMP/EIS to find these basic facts. Substantial time was invested by AOCC working through large databases and the DRMP/EIS to create the Side-by-Side Summary (Encl. 1 to these comments). The FOIA data was essential for creating this summary for elected officials in the affected Counties. It also received wide distribution among the public by other organizations. The AOCC summary received favorable feedback as an appropriate size and comprehensive summary of key facts to inform the public. As noted in these comments, the BLM failed to disclose data on key issues such as spotted owl critical habitat. AOCC's work with the FOIA data provided a deeper understanding of the Alternatives than is revealed in the DRMP/EIS. The limited comment period and costs required do the work the BLM should have done in the DRMP/EIS have not permitted full exploration of the data to reveal additional issues. The data AOCC was forced to obtain by FOIA was essential to making the constructive suggestions for new Alternatives in these comments. The "transparency" BLM has claimed for this process was not fulfilled by their actions in providing basic supporting data used in developing the DRMP/EIS.

The DRMP/EIS electronic version did not provide hyperlinked capabilities so the table of contents can be used to navigate this long and complex 1,500-page document. That is standard publication practice in electronic versions of large documents. The lack of a hyper linked table of contents makes the electronic version actually more difficult to navigate than the paper copy, in which the reader can earmark particular sections.

### **3. Socio Economics.**

For the past 20 years the BLM has not managed O&C lands for the economic benefit of counties and communities as mandated by the O&C Act. Consequently, for many years Counties have experienced the painful effects of significant losses in family wage jobs and hundreds of millions of dollars in lost income, resulting in communities failing to sustain local businesses and economic growth. In addition, the substantial reduction in revenues from timber harvests, only partially and temporarily offset by "safety net" payments to Counties, has resulted in very significant reductions in County services such as sheriff patrols, criminal prosecutions, jail operations, health and social services, libraries, etc. Many communities are at a crossroads for continuing to meet public needs. The DRMP/EIS socioeconomic analysis is misleading. It fails to analyze the socioeconomic impacts that have occurred to O&C Counties that directly resulted from significant changes in Federal policies for managing O&C and CBWR lands.

**a. Increased Activities on BLM and County Budgets.**

Increasing levels of activities on BLM lands has a corresponding effect on levels of services that must be provided by county government such as roads, sheriff patrols and search and rescue. For example, expanded recreation brings visitors from outside a County who use county-provided services but do not pay taxes to support those services. The BLM's social economic analysis did not address this issue, which has direct economic effects on County budgets.

**b. 2012 Comparison Standard.**

The socioeconomic section's key points state: "The annual harvest value of timber, compared to \$23 million in 2012, would increase under all alternatives." (DRMP/EIS, page 472.) The baseline for comparison under NEPA is the current plan, which in the DRMP/EIS is the "No Action Alternative as written." Using the correct baseline, only Alternative C would have an increase in value of the timber. The current implementation, as reflected in the 2012 baseline, represents a substantial departure from the current plan and reflects an unsustainable harvest of relatively low value timber with high associated logging costs. This expression as a "Key Point" is very misleading and does not reflect how the Alternatives compare with the existing plan.

BLM used 2012 as a baseline for analyzing how jobs, earnings, and County revenues would be affected by the Alternatives. This analysis provides no context, as it did not analyze the full effect of how federal government forest management policies have affected O&C Counties under the current plan. Demonstrating the ill effects of federal policies since 1995, however, would fully disclose how jobs, incomes, and revenues were affected by the NWFP and more fully inform the public about the context for evaluating the probable effects from the next RMP. Trends are important to understanding current and future conditions, and the socio economic trends in the O&C Counties over the last 20 years have been decidedly down. The public deserves to have its government at least acknowledge and discuss the effects of past government actions as part of making decisions about where to go from here.

**c. Cost of Implementation.**

"The BLM will develop action alternatives to simplify implementation of management actions and reduce the costs of implementation." (DRMP/EIS, page 12.) Across all alternatives the analysis for the cost of BLM to prepare timber sales was held constant at \$200/mbf, which is based on implementation over the last decade. (DRMP/EIS, page 548.) The timber sale program in recent years has consisted largely of thinning sales, which produce much lower volume per acre than most of the Alternatives. It is not logical to assume that the cost to develop timber sales, especially under Alternatives that include harvest at higher volume per acre, would be a constant. The range of silviculture practices described under the Alternatives should have a range of timber sale preparation costs. The BLM preferred Alternative B indicates a 16% increase in budget would be required over the current budget. (DRMP/EIS, page 602.) BLM's cost to prepare timber sales seems to be higher than private and state, as reflected historic stumpage prices. (DRMP/EIS, figure 3-142.) These lower stumpage values for BLM sales since

the adoption of the 1995 RMP, when compared to state and private, has a direct effect on the generation of revenue and ultimately payments to Counties. The economic analysis has not demonstrated how the BLM's Alternatives will "reduce the costs of implementation."

**d. Market and Non Market Values.**

The inclusion of non-market valuation is a new approach that has not been used in previous EISs for the BLM lands in western Oregon. In both the DRMP/EIS and the outreach the BLM has not attempted to clarify several key points and that failure has resulted in clouding the public's understanding of this new information. The BLM reported that the timber valuation ranged "from \$37 million under Alternative D to \$135 million under Alternative C." In the next Key Points the BLM states the "value of recreation on BLM-administered lands at \$223 million and the annual value of net carbon storage at \$99 million." (DRMP/EIS, page 472.) The way this is expressed implies they are in common dollar terms when in fact timber dollars are real dollars paid by real purchasers, rather than estimates based on concepts such as hypothetical willingness to pay. The purpose of the O&C Act to generate revenue for Counties is achieved with real dollars, not conceptual ones. Even more misleading is the way the information is presented and has been interpreted by some, as though timber production is at odds with recreation opportunities and carbon storage. The BLM recreation IDT member has stated that other than areas designated for remoteness values all other recreation opportunities are largely compatible with forest management. The BLM analysis indicates no significant difference in carbon stored over the range of forest management Alternatives. BLM's failure to adequately describe and connect these key components in the analysis has not fostered full understanding of the market versus non-market valuations.

**e. Payments to Counties.**

BLM failed to disclose appropriate context for the levels of payments in relation to historic averages that has been derived from the management of the O&C forest. The design of the Alternatives has resulted in unacceptably low levels of projected payments to the Counties. See the AOCC Side by Side Summary attached as Encl. 1 with these comments for the appropriate context.

**f. Jobs.**

The current plan provides for relatively even regional distribution of jobs between the Northern and Coastal BLM Districts and the Southern Interior Districts. The preferred Alternative B reduces the harvest from the current plan for Medford, Roseburg and Coos Bay Districts. All Alternatives would shift the harvest substantially to the Northern Districts. Harvest distribution that is proportional to the inherent productivity of the forest is important for jobs and wood products to support the milling infrastructure. See AOCC Side-by-Side Summary for additional information on this topic.

**g. Distressed Areas.**

The DRMP/EIS did not analyze or reach any conclusions about how BLM's Alternatives would affect Distressed Area issues raised by the State of Oregon. (DRMP/EIS, pages 477-478.) The Oregon Business Development Department identifies distressed areas based on unemployment rates, per capita personal income, and related criteria. As of 2014, the Department identified 14 of the 18 O&C Counties as distressed. Within the few non-distressed Counties, the Department also identified a number of individual communities that are distressed. Most of these rural communities were at one time very dependent on O&C timber production and thrived during the decades when the BLM followed the mandates of the O&C Act-- examples include Estacada in Clackamas County and Willamina in Yamhill County. In addition, in 2012 the Oregon Secretary of State identified 8 O&C Counties whose financial condition is at a higher risk of distress (Coos, Curry, Douglas, Jackson, Josephine, Klamath, Lane, and Polk Counties.)

The AOCC requests additional analysis that answers a key question: "Will BLM's proposed RMP change the distressed status of any of the O&C Counties and its communities to a non-distressed status or will the status remain the same or get worse?" Additional alternatives based on managing O&C lands under the principles of sustained yield will be necessary to fully test possible changes in County and community status.

#### **h. Market Impacts of Changes in BLM Harvests.**

"The BLM might expect the full employment impacts associated with an increase in harvest, but the net change in employment would be reduced by reductions in private harvests. At the same time, expected revenues would be less than expected, as stumpage prices are reduced by the net increase in harvest volumes." (DRMP/EIS, page 472.) Similar statements are made on pages 516, 517 and 548. These statements are questionable in the face of an ever-growing demand for forest products. The limited time allowed for the comment period did not permit further investigation of true market elasticity in light of growing, long-term demand.

One factor of significant importance that was largely ignored in the BLM's analysis is the opportunity for the BLM to offer timber for sale that the private sector cannot supply in the quantities the market desires. The BLM is in a position to offer the market a perpetual supply of larger, older, higher quality timber that private growers no longer produce in significant quantities. Instead of taking advantage of this substantial and unoccupied market niche, the BLM's Alternatives are largely focused on joining the private growers by emphasizing harvest of smaller, younger and less desirable timber. The AOCC requests that the BLM perform a market analysis that is driven by optimization of revenue from timber harvests on a per mmbf basis. The public is entitled to see the extent to which the BLM might be able to avoid the market response that the DRMP/EIS says will occur and at the same time increase revenues for Counties without increasing acres treated.

#### **4. Management for Endangered Species.**

In addition what has been said in other sections of these comments, we offer the following brief points:

**a. Management of Owl and Marbled Murrelet Sites.**

Following AOCC's recommendations for new Alternative(s) in section J. below, extensive amounts of late-successional forest habitat would persist across the landscape and increase over time. AOCC prefers an ecosystem-based approach rather than a return to single species management that results in a constant erosion of the lands allocated to sustained yield.

**b. Plan Level Decisions for Certainty.**

“The BLM will develop action alternatives to provide a high degree of predictability and consistency about implementing land management actions and a high degree of certainty of achieving management objectives (desired outcomes), especially those outcomes related to discrete statutory mandates.” “Working closely with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, the BLM will develop the action alternatives to provide sufficient detail in the analysis to facilitate RMP level Endangered Species Act consultation, as well as eventual project-level consultation for management actions implementing the RMP.” (DRMP/EIS, page 472.)

The BLM has developed the best available information and conducted state of the art analysis that is specific to the O&C landscape. The assessment of the Alternatives was allegedly based on the “conservation needs” of the spotted Owl. Unfortunately, the design of the Alternatives far exceeds a “need” based standard. There is deep concern that the spotted owl CH and RP, which were developed with far more generalized data and analysis than the BLM has available, will add additional constraints beyond what are described in the DRMP/EIS. The BLM analysis indicated not all of the measures recommended in the RP are warranted, and the extensive nature of CH is not the only way to achieve favorable ESA outcomes. These regulatory rules were developed by the USF&WS absent a full evaluation of the potential to apply sustained yield management. These regulatory rules were developed without due consideration of economic implications specific to the O&C forest. Consultation should make decisions based on the BLM analysis at the plan level to provide certainty in the outcomes that are established under the statutory authority under the O&C Act and actual needs for ESA species. In practice, the USF&WS is likely to ignore the available BLM analysis during consultation.

**c. Barred Owl.**

It is a conundrum that barred owl effects appear to eclipse the effects of any approaches to management in modeled population outcomes, particularly in the Coast Range. As previously requested in the AOCC planning criteria comments (see Encl. 3), the BLM should conduct a reference analysis on all Alternatives without any barred owl influences. This reference analysis is to isolate and reveal the degree management of the BLM forest has an impact on population response, if any. Absent this reference analysis there cannot be an informed discussion on the degree to which BLM management matters---or if it matters at all. BLM authorities are for management of the forest, not managing the barred owl population. BLM should focus on their responsibilities in selecting a management approach.

#### **d. Alternative B Large Blocks – Coast Range.**

“In the Coast Range, the BLM has no opportunity, through habitat management, to reduce risks to the northern spotted owl during the next 50 years, and there are no substantive differences among the alternatives in their potential effects on those risks.” (DRMP/EIS, page 746.) No rationale was provided why the BLM selected the Preferred Alternative B large block network that far exceeds the size and spacing standards for large blocks. (See AOCC's Side by Side Summary, Encl. 1, page 12.) If it was in relation to the overriding effects of the barred owl, that rationale is not supported by the BLM analysis.

### **5. Forest Management.**

#### **a. Reforestation.**

The DRMP/EIS at page 265 says the following:

“The LITA would produce an average of 18 percent less timber yield per acre than the MITA in Alternative B, because of the higher level of retention and projected reforestation failures after regeneration harvest. Based on evaluation of past natural reforestation, the BLM concludes that an average of 10 percent of each regeneration harvest unit in the LITA would fail to reforest, 30 percent would reforest at very low levels of stocking, and 60 percent would reforest at target stocking levels... Reforestation failures would eliminate future timber harvest opportunities; reforestation at very low levels of stocking would preclude commercial thinning opportunities. In addition to reductions in timber yield from reforestation failures in the LITA, the reliance on natural reforestation would limit the ability to manage the species composition of the regenerating stand. This would also preclude replanting stands with disease-resistant trees, such as rust-resistant sugar pine or root disease-resistant Port-Orford-cedar. This reliance on natural reforestation would also preclude the ability of the BLM to shift tree species composition or tree genotypes within stands to adapt to changing climate conditions.”

Because of all of the effects stated above, natural regeneration is not appropriate given the statutory responsibilities to manage the O&C forest under the principles of sustained yield.

#### **b. Salvage.**

After major natural disturbances salvage should be conducted to the standards of the post-harvest tree retention standards related to the Allocation. Salvage issues have delayed BLM decision making after past natural disturbances, which has resulted in loss of economic values simply by delay in decision making. The RMP should be clear that salvage will be conducted along with prompt reforestation consistent with the principles of sustained yield and capture the economic values the same as a timber sale action.

### **6. Special Recreation Areas, Wilderness Study Areas, Potential Wild & Scenic Rivers.**

All of the Alternatives allocate some O&C land as Special Recreation Management Areas, Wilderness Study Areas and rivers suitable for Wild & Scenic River designation. The primary land use focus for these allocations is management and protection of these values that in many cases preclude managing the O&C lands under the principles of sustained yield. These land uses cannot be permanently allocated on O&C and CBWR lands as these designations do not have a statutory imperative apart from the O&C Act and are not permitted under the O&C Act. The AOCC does acknowledge that the BLM can choose to avoid certain areas for the life of any plan, so long as the mandatory minimum harvest level (discussed above at pages 6-7) is satisfied and so long as the temporary avoidance of selected areas does not materially detract from satisfying the objective of the O&C Act to produce revenue for the O&C Counties. The BLM should revise the DRMP/EIS to make clear that areas within Special Recreation Areas, Wilderness Study Areas and Potential Wild & Scenic River designations are allocated only for the life of the plan. The BLM must acknowledge that it is without authority to permanently withdraw these areas from sustained yield timber management absent further Congressional action.

#### **J. AOCC's Requests for Design of New Alternative(s).**

The BLM's PNS (discussed above in section E of these comments) uses the phrase "provide a Sustained Yield of Timber" rather than the plain language under the O&C Act: "timberlands... shall be managed... in conformity with the principal of sustained yield." Providing for "a" sustained yield implies a byproduct outcome rather than a fundamental guiding principle for management. There is much more latitude within the PNS for the application of sustained yield management than BLM utilized in the design of its Alternatives. The term "reserved" in the BLM DEIS/RMP means sustained yield management is precluded as an upfront decision, before any analysis justifying the designation. Sustained yield strategies can *simultaneously* maintain desired habitat conditions at the landscape level and at the same time produce timber. AOCC requests additional Alternative(s) be developed to fully test how the O&C timberlands can more fully be managed under the principles of sustained yield. Suggested components of new Alternative(s) include:

##### **1. Increase the Land Base for Sustained Yield Management.**

###### **a. Standard for Size of Large, Contiguous Blocks of Late-Successional Forest.**

BLM cites a number of previous studies that considered a range of sizes of large blocks, based on the number of pairs of owls to be supported in each block (DRMP/EIS, page 750). BLM adopted the upper end of that range, to support at least 25 pairs, as the standard for the size of large blocks based on the rationale that the PNS - "is to contribute to the conservation and recovery of the northern spotted owl, which requires more than self-sustaining populations." (DRMP/EIS, page 750.) This pre-judgement by the BLM of using the upper end of the number of pairs, and thus the size of the large blocks, has not revealed if a lower standard would provide for self-sustaining populations that meet Conservation Need #1 ("a landscape that creates large blocks of nesting, roosting and foraging habitat that are capable of supporting clusters of reproducing owls, distributed across a variety of ecological conditions and spaced to facilitate

owl movement between the blocks”). The BLM 2008 FEIS analysis utilized large blocks based upon 20 pairs of spotted owls that met Conservation Need 1. The BLM should have at least one alternative that uses a 20-pair standard for designing the size of the large blocks, thus increasing the lands allocated to sustained yield.

#### **b. Landscape Context for Older and More Structurally-Complex Forests.**

The PNS states that maintaining older and more structurally-complex multi-layered conifer forest is a necessary part of the purpose of contributing to the conservation and recovery of the northern spotted owl. It also states that the alternatives would explore differing approaches to defining older and more structurally-complex multi-layered conifer forest, by such criteria as stand age, structure, size, or landscape context. For most of the Alternatives, simple age-based definitions were used and none of them applied landscape context.

USF&WS’s owl recovery plan Recovery Action 32 is a broad recommendation to restore and maintain substantially all high quality spotted owl habitat stands. This does not recognize the varying level of biological contribution that individual stands provide in the landscape context of the BLM checkerboard in which not all stands are capable of making a meaningful conservation contribution based on functionality. It was a pre-judgement by BLM to apply broad definitions for amount of forest to be reserved and have sustained yield precluded.

There are a number of criteria that can be used by the BLM to apply landscape context to reduce the amount of older forest to be reserved for the life of the plan that would not likely result in measurable adverse effects on owls but would have positive effects on sustained yield timber production. BLM should use the dispersal capability analysis and reallocate older forest reserves in those areas that have limited dispersal capabilities. In addition, the BLM should evaluate the relative habitat suitability (RHS) rankings and develop a sustained yield strategy for older forest reserves for those stands that have low RHS scores. The BLM owl analysis has demonstrated that in the northern Cascades the Forest Service lands are the primary driver for the spotted owl. BLM should test sustained yield strategies on older forest areas that are not directly adjacent to the Forest Service Lands in this area. These potential increases in the amount of land available for sustained yield will have a substantial effect because they contain mature forest that can be a source of high value, near-term harvest. The lack of mature forest in the BLM’s current HLB is what is causing the harvest below maturity standards. Adding some mature forest into the HLB will reduce the amount of acres harvested and allow for longer rotations to be implemented sooner.

#### **c. Extent of Riparian Reserve.**

The BLM analysis indicates that all of the strategies considered comply with the Clean Water Act and the PNS. As described in the DRMP/EIS, the riparian reserves overlay all other allocations and are up to nearly a third of the entire landscape. Given all strategies met the objectives, AOCC recommends the use of the Alternative C strategy. The Alternative B strategy addition of modeled debris prone areas is an unnecessary overdesign that would preclude sustained yield management. In practice, the BLM’s Timber Productivity Capability Classification policy would determine at the project level any areas that are debris prone and take

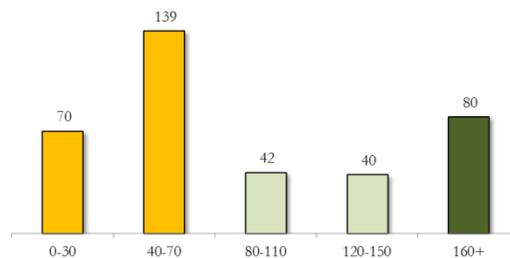
appropriate protection measures. Of the approximately 370,000 acres under the Alternative C riparian strategy only 80,000 (22%) acres are available for harvest to advance riparian objectives alone. The BLM modeling indicated in the first decade only ~ 7,150 acres would be treated which less than 2% of the Riparian Reserve. In other words 96% of the riparian reserve would not be subject to change by management over the 20-year life of the plan. Given this strategy is effective for meeting the stated objectives, the area treated within the reserve under Alternative C is very modest, there is no reason to expand the area in the riparian reserve and further preclude sustained yield.

### 3. Expand the Application of Sustained Yield Management.

#### a. Moist Forest Large Blocks

The PNS states: “Overall, these previous analyses demonstrated that large, contiguous blocks of late-successional forest would not have developed under these alternatives, further demonstrating that reserving a network of large blocks of forest from programmed timber harvest is a necessary part of the purpose of contributing to the conservation and recovery of the northern spotted owl.” This is a true statement to the extent that these previous strategies did not result in the development of large continuous blocks of late-successional forest. The reason these strategies failed in creating large blocks is that no specific allocation was made. Designation of a large block network boundary is essential to meet that objective. It is a false presumption to conclude that a reserve is the only way to develop continuous blocks of late-successional forest. Sustained yield strategies with a focus on developing and maintaining late-successional forest conditions as the primary objectives can likely meet the need for a network of large blocks of late-successional forest. Sustained yield strategies are likely to provide a wider range of appropriate ecological conditions over time than a reserve based strategy.

**Graphic 5 – Alt C Age Class Distribution - Moist Large Blocks – Thousands Acres**



- Younger Forest - 56% of these large blocks are under age 80 and are not currently spotted owl habitat. (yellow)
- Mid Aged Forest – 22% of the large blocks are between age 80 and 150. (light green)
- Structurally Complex Forest - 22% of these large blocks are 160 years and older. (dark green) Note - the BLM data hierarchy required a reasoned estimation for this category.

- Late- Successional Forest - 44% of these large blocks are currently 80 years and older. (light and dark green)

Once an area is designated to be managed as a contiguous large block of late successional forest the largest factor for achieving that goal is the passage of time. Using Alternative C's moist forest large blocks as an example, we make the following suggestions for sustained yield management. This is not an endorsement of the size of the area designated as large blocks in Alternative C (see 20 v. 25 pair discussion above in section I.1.a).

- The forest 160 years and older represents high quality habitat and no management is suggested for this forest during the 20-year life of the plan, except for salvage to recover economic value following wildfire or other catastrophic event. In addition, prompt rehabilitation and reforestation management is required after such an event.
- Lands under age 160 would constitute the land base to allocate to sustained yield management for the purpose of developing a range of complex multi layered forest conditions on the landscape within the designated large blocks.
- Currently over half of the large blocks are not late-successional forest condition (yellow). Thinning of this forest for the objective of increasing structural complexity and advancing the development of late-successional forest should continue.
- Over the next 20 years approximately 50,000 acres of what is currently under aged 80 will advance into the mid aged forest category increasing the overall late-successional forest to ~ 60%. As this mid aged forest increases it creates an opportunity to let a portion of this continue to advance towards structural complexity and a portion to be harvested to make multi canopy diverse stands through sustained yield management. This is building from the concepts developed by Johnson & Franklin (2009) where this mid aged older forest has large individual tree structures expressed which though management can be used to create complex early seral with high levels of older forest retained after harvest. The sustained yield cycle can be based on long rotations that will produce very high quality logs of high value and simultaneously maintain late-successional habitat conditions on the landscape within the large blocks.

#### **b. Fire Resiliency Treatments in SW Oregon**

The BLM's Alternatives designated varying extent of un-even aged management areas to increase fire resiliency in response to the PNS objective to restore fire-adapted ecosystems. This approach is one way to address the restoration need, but the BLM has not fully explored what is possible through sustained yield management and other approaches.

Wildland Fire Potential (WFP) depicts the relative probability of experiencing extreme fire behavior with torching and crowning and difficulty of containment during weather conditions favorable for fire growth (DRMP/EIS, pages 205-207). Currently, there are 399,605 acres of Very High WFP and 499,709 acres of High WFP within the interior/south BLM management area. This is a total of ~ 900,000 acres. On a decadal basis selection harvest

within the uneven aged area under Alternative B is ~ 53,000 acres and under Alternative C it is ~34,000 acres. These BLM Alternatives would restore only 4 to 6 percent of what is ranked as high and very high WFP.

It is understood that the BLM administered land is small portion of the overall southern interior area and has limited capabilities to improve resiliency at the landscape level. What is within BLM control is the level of resiliency treatments that are conducted on BLM lands and protection of its resources from loss to fire, and the threat that untreated BLM lands pose to adjacent lands owned by others. The un-even aged HLB under Alternative B is 274,000 acres and under Alternative C is 185,000 acres. The HLB designations are dwarfed in comparison of the reserve designations. The BLM approach in designing its Alternatives did not start with defining the magnitude of the fire resiliency problem. Instead, the BLM's approach to addressing fire effects is a response to allocations made primarily for ESA objectives. A more effective approach would be based on resiliency needs, with the allocations and treatment intensities as upfront decisions in the design features of the Alternatives, along with ESA objectives.

An alternative approach would start with an assessment of the forest condition, at the stand level, to rank them for need based on risk for loss to fire and need for resiliency treatments prior to making allocations. The BLM was asked if this type of assessment had been done and the response was as follows: "The Draft RMP/EIS does not specifically classify forest stands as "at high risk to loss by fire."" (6/26/2015 Mark Brown email.) Assessment of level of risk at the stand level and prioritization for need for treatment would better define the magnitude and spatial extent of the needs rather than defining broad dry forest areas. In combination with information on owl habitat and site locations this assessment could provide a framework to design a strategy that emphasizes improving fire resiliency in the short term while providing long-term conservation and timber production.

The rate and scale of treatment specifically in the HLB will only treat ~36-38% of those lands over the 20 year life of the plan. The uneven aged HLB is only a minor portion of the landscape in southwest Oregon. On the BLM ownership as a whole, including the reserves, the overall treatment is far less. Alternatives to increase the rate and scale of treatment across the landscape should be considered to respond to the need more effectively. This should be a design objective rather than a byproduct analysis from a design that does not address the magnitude of the problem. Departure from even flow in the HLB, if needed, should be considered to respond to the need for improving resiliency and minimizing loss of resources to fire.

The board feet harvest on a per acre basis for the interior southern Districts under the currently used uneven aged management prescription is 38% of what can be produced under even aged management (DRMP/EIS, page 262). The current design of the BLM alternatives for un-even aged management is based on a continued application of this low yielding prescription. The economic implications in terms of generating revenue, wood supply, and jobs, given the relatively small diameter material with high logging costs under the current and proposed uneven aged management prescription is a concern. A mix of silvicultural prescriptions should be developed. After broad scale resiliency objectives have been achieved, in the high resiliency

needs areas, higher volume production prescriptions could be applied. In those areas with lower resiliency needs higher production prescriptions could be applied now.

This suggested approach would more directly and promptly address the immediate need to restore fire-adapted ecosystems. These suggestions would also improve the regional distribution of wood products, infrastructure and jobs over the current BLM Alternatives in southwest Oregon.

### **c. Mature Forest in the HLB - Longer Rotations and Maturity Criteria.**

It is agreed that older more structurally complex older forest as habitat for the spotted owl is important. The design of the BLM Alternatives, to the degree this mature forest has been reserved and precluded from sustained yield, has resulted in HLBs that are mostly young forest that have not reached maturity. This has consequences: “Reserving older forests in the action alternatives would force the BLM to harvest stands less than 80 years old for up to 100 years before transitioning completely to longer rotations.” (DRMP/EIS, page 255.) All of the Action Alternatives depart from the longstanding policy of observing maturity criteria and not harvest below the Culmination of Mean Annual Increment (CMAI).

Harvest below CMAI results in harvesting more acres of immature forest than would occur if mature forest was available. Over the first three decades under Alternative B, over 30% of the acres harvested are in ages below CMAI. Under Alternative C it varies between 36% and 54%. The lack of mature forest in the HLB prevent the Action Alternatives from testing immediate application of longer rotations that are at or above CMAI, which has been the standard practice prior to this planning process. Under Alternative B only 18% of the near term harvest comes from grade 1 logs and that declines to 6% over time. The value of grade 1 logs is significantly higher, which effects revenues. Adding more mature forest in the HLB is likely to reduce the acres harvested and improve the economic outcomes. Since longer rotations on a HLB with higher levels of mature forest were not incorporated in the Alternatives and analyzed, the environmental effects are not disclosed under this EIS.

The BLM PNS limited the application of sustained yield management that is the guiding principle in law for the O&C lands. The suggestions above are an attempt to more fully apply sustained yield management within the premise of the PNS as it was adopted by the BLM. There are other approaches that go further to conform to the O&C Act while complying with ESA and CWA as stated in the Notice of Intent for this planning process. The BLM’s Alternatives applied many conservation standards that exceed compliance standards and have unnecessarily constrained sustained yield management. More is possible if the BLM had established need-based thresholds for compliance with ESA and CWA and permitted sustained yield management considering those compliance thresholds. BLM needs to analyze new alternatives to address these suggestions.

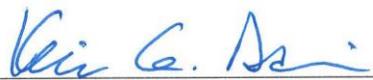
### **K. Conclusion.**

The BLM planning process began on the right track with the NOI but went off the rails with publication of the PNS. What has come after, as expressed in the DRMP/EIS, is

inconsistent with requirements of the O&C Act and in many respects is inconsistent with NEPA. We request that the BLM conduct further analysis on additional alternatives as described above in these comments, and publish the results in a supplemental draft RMP/EIS

Thank you for considering our comments. We request that these and all comments submitted by others be posted on the BLM's website within five days following the close of the comment period.

THE ASSOCIATION OF O&C COUNTIES

By:   
Kevin Q. Davis, Attorney for the Association

cc: Oregon Congressional Delegation  
DOI Secretary Sally Jewell  
BLM Director Neil Kornze  
Mark Brown  
Mike Haske  
AOCC Member Counties



# **Side by Side Comparison & Synthesis of Alternatives**

## **RMPs for Western Oregon Draft Environmental Impact Statement - DEIS**

May 14, 2015

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Prepared by Chris Cadwell (C Cadwell Consulting LLC) for the Association of O&C Counties.

## Sustained Yield & Reserve Definitions – O&C Act - DEIS Alternatives

**Sustained Yield** - The rate of harvest that is in balance with, and does not exceed, the growth rate of the forest.

**Reserves** - *“In the context of these land use allocations, the term “reserve” indicates that the BLM or Congress have reserved lands within the allocation from sustained-yield timber production.”*<sup>1</sup>

The O&C Act states that timber lands shall be managed for permanent forest production and the timber thereon shall be sold cut, and removed in conformity with the principles of sustained yield. The annual sustained yield capacity shall be sold annually.

The Alternatives in the DEIS were all designed with high levels of reserves as a threshold decision, before any analysis was done to determine the necessity of withdrawing lands from sustained yield management. This upfront decision to reserve large percentages of forest results in a failure to consider and analyze a reasonable range of approaches for managing the lands under the principles of sustained yield. Sustained yield management can take many forms, some of which can simultaneously provide a wide range of forest landscape conditions, including late-successional and complex older forest, while simultaneously producing timber.

### Introduction to the Alternatives

The Alternatives have categories of “Reserves” that include: Congressionally Reserved, District Defined Reserves, Riparian Reserves, and Late Successional Reserves that consist of large blocks and individual older stands. Harvest within in some Reserve categories is permitted but is generally limited to thinning of younger stands. Opportunities for harvest within Reserves will therefore eventually be exhausted and is not sustainable. The remaining, non-reserved lands are referred to as the Harvest Land Base and are the lands allocated to sustained yield timber production.

#### **No Action Alternative**

The 1995 RMP currently in effect is based on the Northwest Forest Plan (NWFP). The BLM’s management of the Harvest Land Base under the 1995 RMP has not conformed to the sustainable management strategy in that plan. The BLM timber sale offerings were intended to be a mix of thinning and regeneration harvests, but instead have been mostly thinning harvest. The eventual depletion of the thinning opportunities and absence of regeneration harvest cannot be sustained. The No Action Alternative is based upon the 1995 RMP “As Written”, not as it has been actually implemented.

There are four “Action Alternatives” (A-D) which are described in the DEIS Chapter 2 pages 40-75. A high level comparison of key elements follows:

### **Late Successional Reserves – Large Blocks**

No Action – NWFP reserve block design. Alt A uses all designated Critical Habitat. Alt B is similar in size to Alternative A but in a different configuration on the landscape. Alt C is based on scientific standards for size and spacing of large blocks for spotted owls. Alt D did not designate specific blocks but relies on individual stand based Late-Successional Reserves.

### **Late Successional Reserves – Stand Based – Structurally Complex Forest**

No Action – None. Alt A - stands 120 Years and older. Alt B - District Defined (varies). Alt C - stands 160 years and older. (A sub-Alternative C reserved all stands 80 years and older.) Alt D Stands 120/140/160 years and older based on high/moderate/ low productivity sites.

### **Riparian Reserves**

No Action – 2 Site Potential Tree Heights (SPTH) on fish bearing streams, 1 SPTH on non- fish bearing. Alt A - 1 SPTH on all streams. Alt B - 1 SPTH fish bearing streams, 50-100' on non-fish bearing streams. Alt C 150' on fish bearing streams, 50' on non-fish bearing streams. Alt D 1 SPTH on all streams. There is also an inner zone that will receive no treatment and that ranges from 50-120' in the Action Alternatives.

### **Marbled Murrelet - Survey and Protection of Sites**

No Action – Survey in zones 1&2<sup>2</sup> and protect within ½ mile of sites. Alt A – none. Alt B survey in zone 1 and protect habitat within 300' of sites. Alt C survey stands 120 years and older and protect habitat within 300' of sites. Alt D survey in zones 1&2 and protect habitat within ½ mile of sites.

### **Protection of Spotted Owl Sites Within the Harvest Land Base**

No Action – 100 acres for known sites as of 1994. Alt A, B, and C – None. Alt D – protect habitat within median home ranges of all known and existing sites. A sub-Alternative B protects all known and historical sites.

### **Harvest Land Base – Tree Retention**

No Action – Mostly 6-8 trees per acre (TPA) with some areas at 12-18 or 16-25 TPA. Alt A – None. Alt B, two levels: 15-30% and 5-15%. Alt C – none. Alt D - Inside spotted owl critical habitat maintain spotted owl habitat, outside 5-15% retention.

### **Harvest Land Base – Intensity of Management**

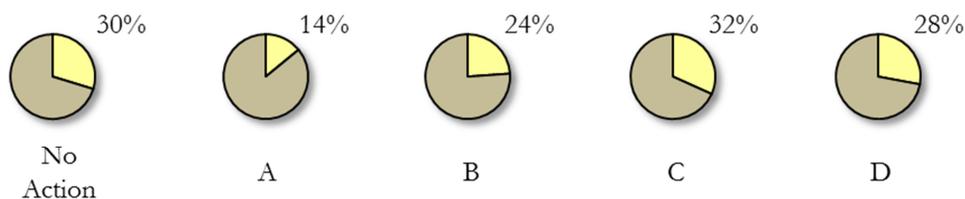
Alt A – Uneven Aged Management and High Intensity. Alt B - Uneven aged management and a mix of Low and Moderate intensity. Alt C - Uneven Aged Management and High Intensity. Alt D - Uneven Aged Management, Moderate Intensity, and maintenance of spotted owl habitat. The intensity of management is directly related to the tree retention standards. Alt A and C would plant trees after harvest for prompt reforestation. Alt B would use natural regeneration in the Low intensity area and maintain early seral conditions for many decades in the Moderate intensity area.

## Land Allocations

At the highest level the Alternatives allocate land into:

- 1) **Reserves** – “*In the context of these land use allocations, the term “reserve” indicates that the BLM or Congress have reserved lands within the allocation from sustained-yield timber production.*”<sup>3</sup> Timber harvest is limited to thinning of younger forest and will not contribute to sustained yield timber production in the future.
- 2) **Harvest Land Base (HLB)** – lands allocated to sustained yield timber production. The types of harvest prescribed under the Alternatives conducted on these lands form the basis of the declared Allowable Sale Quantity (ASQ).

**Graphic 1 - Reserves (Brown) & Harvest Land Base (Yellow) by Alternative<sup>4</sup>.**

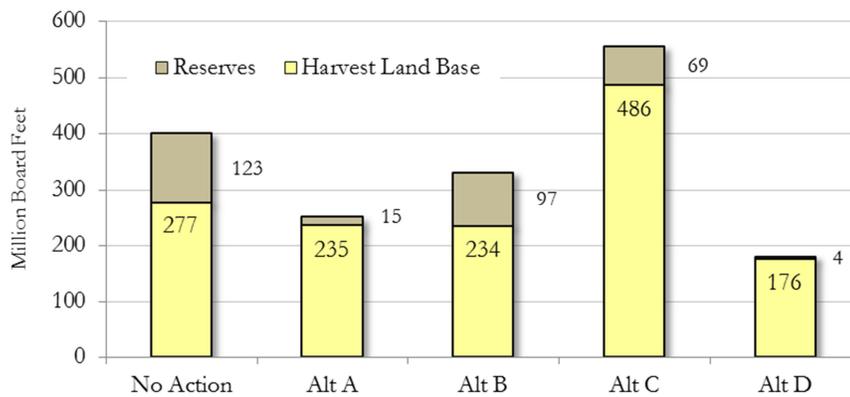


### Key Points

- The O&C Act directs that “*timberlands... shall be managed... for permanent forest production... under the principles of sustained yield.*”
- The design of the BLM Alternatives made up front decisions to “Reserve” vast acreage without exploring the application of sustained yield strategies, such as long rotations on a broader land base, with the objective of maintain high levels of older forest while still allowing some entry for sustained yield management..
- Purpose and Need – “*The purpose of contributing to the conservation and recovery of the northern spotted owl necessarily includes maintaining a network of large blocks of forest to be managed for late-successional forests and maintaining older and more structurally-complex multi-layered conifer forests.*” (Underlining added.) Reserves are not specifically required by the Purpose and Need to “maintain” these conditions. Maintaining these conditions may be possible with sustained yield management, but it was not explored in the DEIS.
- This range of lands allocated to sustained yield, in the DEIS, sets the outer bounds for what BLM will consider for the size of the sustained yield land base when formulating the Proposed RMP.

## Harvest Volume – Harvest Land Base & Reserves

**Graphic 2 – Annual Harvest Volumes for the Alternatives by Allocation**



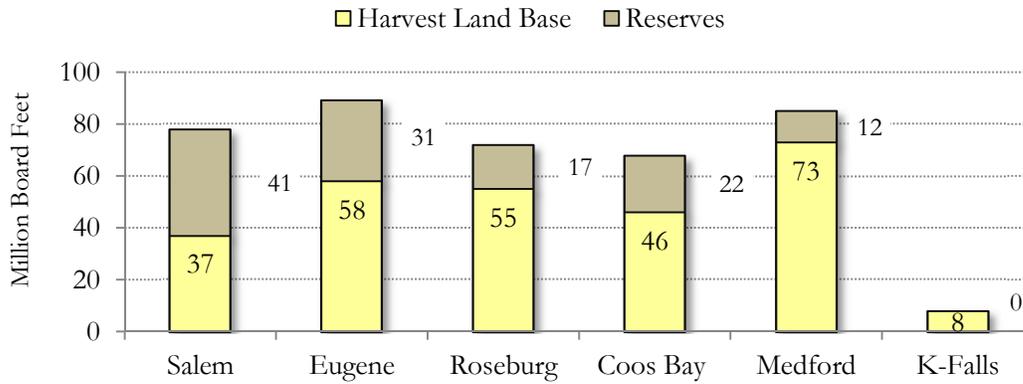
- 1) **Reserves** - This volume is associated with one-time thinning of younger stands for reserve land objectives. As the reserves age these thinning opportunities will be depleted and are not a sustainable source of volume. This smaller diameter harvest volume is generally of lower value and generates less revenue than regeneration harvest of larger diameter trees.
- 2) **Harvest Land Base** – These volumes reflect the sustainable harvest level that can be derived from the harvest land base following the management prescriptions of each Alternative.

### Key Points

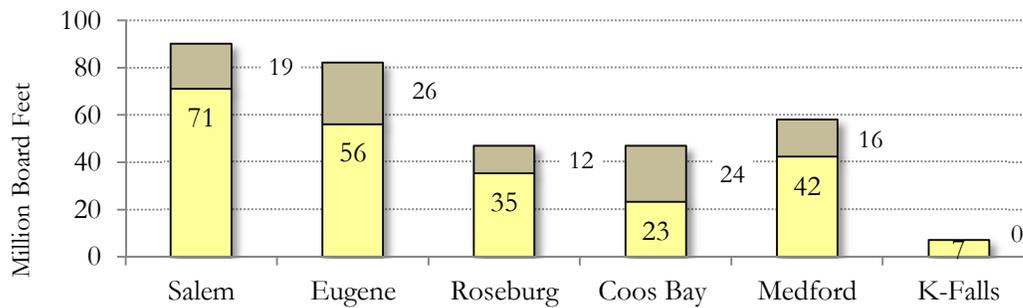
- With the exception of Alternative C, all of the Action Alternatives project lower harvest levels than the No Action / 1995 RMP.
- Alternative A Reserve treatments are based on “non-commercial” activities. Any thinning harvest for Reserve land objectives would be left on site.
- Alternative D Late-Successional Reserves are based on individual older forest stands in which no thinning is projected to occur. The volume from reserves reflects the thinning within Riparian Reserves alone.
- The thinning from the Reserves is not sustainable and will decline over time. The Reserve harvest volume under Alternative B, the Preferred Alternative, represents approximately 30% of the projected total harvest volume.
- In Alternative B, the preferred Alternative, sustainable harvest is 28% of the 1.2 billion board feet reported as the maximum level<sup>5</sup> of sustained yield as calculated in 2008. It is likely the maximum sustained yield is now significantly higher based on updated forest inventory data yet BLM did not re-evaluate this important reference point in the DEIS.

## Harvest Volume – Distribution by District

**Graphic 3 – No Action Alternative - Harvest Volume by District and Allocation**



**Graphic 4– Preferred Alternative B - Harvest Volume by District and Allocation**

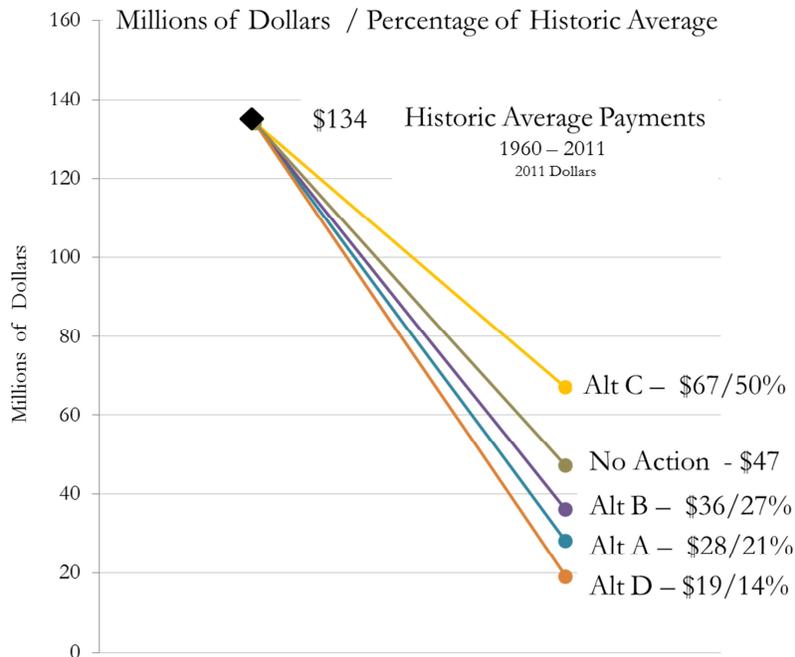


### Key Points

- The thinning from the Reserves (brown) is not sustainable and will decline over time.
- The harvest volume from the Harvest Land Base (yellow) is based on sustained yield management and will be the source of harvest volume, jobs, and revenue for the long term.
- The sustainable harvest levels under the Proposed Alternative B would be substantially lower in Roseburg, Coos Bay, and Medford when compared to the No Action Alternative /1995 RMP.

## Payments to Counties

**Graphic 5 – Payments to Counties by Alternative with Historic Average**

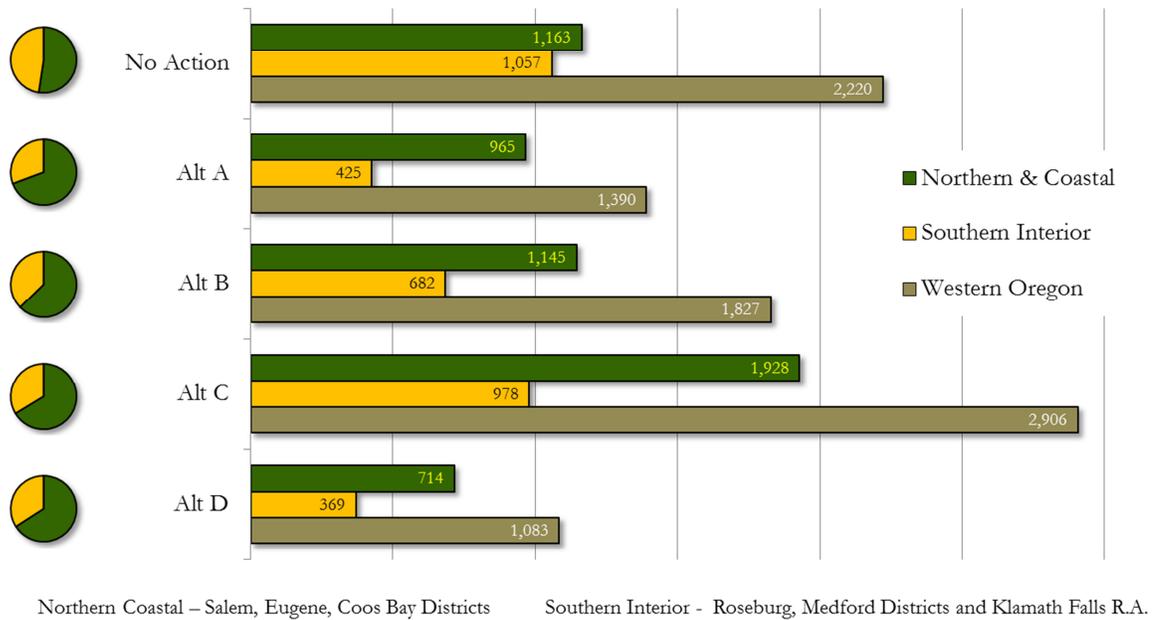


### Key Points

- Stated in 2011 value dollars, historic payments<sup>6</sup> to counties from 1960-2011 averaged \$134 million per year from 1960 to 2011.
- Renewal of the Secure Rural Schools (SRS) program has been an almost yearly struggle and payments have declined substantially over time. It is likely the SRS payments to Counties will end and Counties will again rely on revenue generated from timber sales.
- The BLM Purpose and Need did not recognize the generation of revenue for the Counties as a planning objective despite this explicit purpose under the O&C Act.
- Even under Alternative C, payments to Counties would only provide 50% of the historic average. Alternative B, the Preferred Alternative, would be just 27% of the historic average.
- As the non-sustainable thinning of Reserves is depleted payments will decline over time.
- Payments to counties, if based on fiscal year 2012 timber sales, would provide \$11.7 million dollars, 9% of the historic average.

## Jobs – Regional Distribution

Graphic 6 – Jobs - Timber Related Industries<sup>7</sup> by Alternative

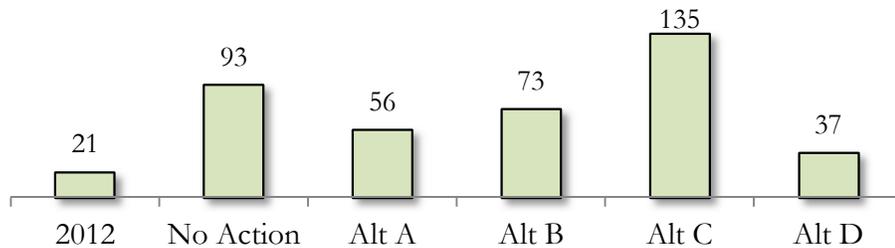


### Key Points

- The No Action Alternative / 1995 RMP projected a fairly equal distribution of jobs in timber related industries between the Northern & Coastal and Southern Interior regions.
- Under all of the Action Alternatives there is a shifting of the distribution of jobs to the northern Districts, a result of where the harvest would be planned to occur.
- With the exception of Alternative C, all of the Action Alternatives projects lower levels of jobs than the current plan.
- The jobs reflect the total harvest volume, which will decline as the thinning of the Reserves is depleted. In Alternative B, the Preferred Alternative, the reserve volumes comprise approximately 30% of the total projected volume.

## Socioeconomics – Market and Non Market Valuations

**Graphic 7 – Total Harvest Values** (Millions \$ Annually)<sup>8</sup>

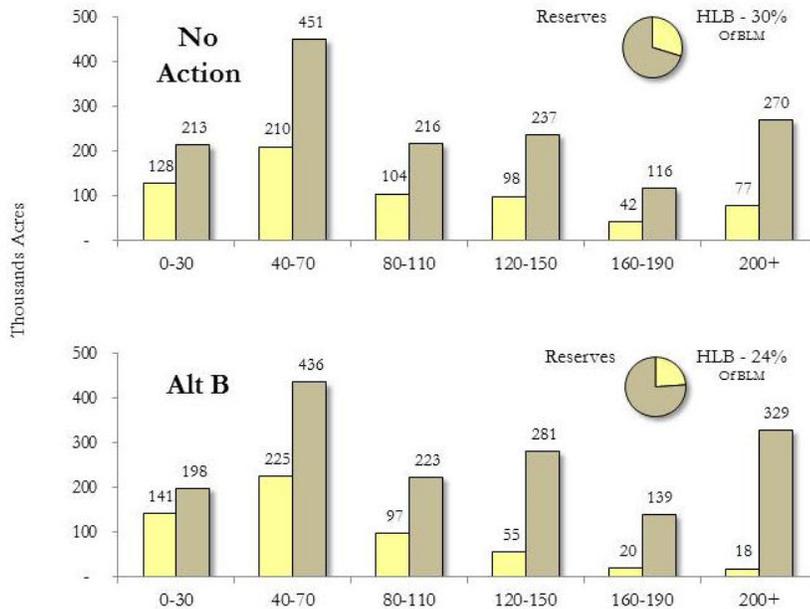


### Key Points

- The Socioeconomic section uses the value of the fiscal year 2012 harvest as the benchmark to state that annual harvest value “*would increase under all alternatives*”. The current implementation does not conform to the 1995 RMP “As Written”. Using the No Action Alternative as the benchmark only Alternative C will produce an increase in annual harvest value.
- The total harvest values include the harvest from Reserves (~30% Alt B) which is not sustainable. Harvest values will decline as the thinning of the Reserves is exhausted.
- Grade 1 logs, sawlogs or peelers, represent the “highest value logs”. Under Alternative B, the preferred Alternative, only 18% of the harvest comes from Grade 1 logs and over time declines to a low of 6%<sup>9</sup>. This is a reflection of the type of tree retention and the harvest of stands below maturity standards.
- The “Non Market” valuation of recreation is \$223 annually. The largest valuation is associated with camping, picnicking, and hunting, which will continue to occur on BLM lands under all of the Alternatives.
- *“There are large differences between compensation for timber-related jobs compared to recreation-related jobs in western Oregon. The average forest products industry job-holder earns approximately \$58,000 while the average recreation-based employee earns approximately \$22,000, roughly a third of timber related industries.”<sup>10</sup>*
- The “Non Market” valuation of carbon storage is \$99 million dollars. The projection of net carbon storage does not vary substantially across the range of Alternatives.
- While there are many non-market values associated with the O&C forest it is only the market based valuation associated with harvest of timber that results in payments to the Counties as described under Title II of the O&C Act. Most of the non-market values are consistent with sustained yield management.

## Forest Conditions Available for Harvest

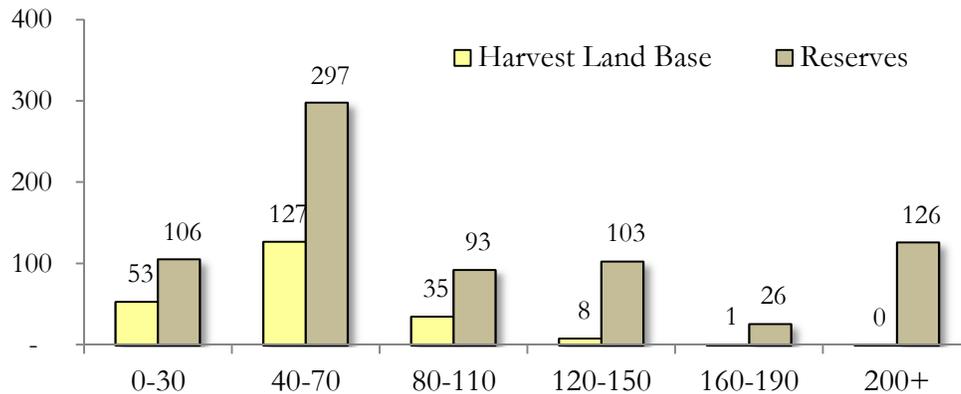
**Graphic 8 - No Action and Alternative B - Age Class Distribution – Reserves/HLB**



### Key Points

- The No Action Alternative Harvest Land Base contains a full range of stand conditions, including mature age classes. The sustained yield strategy is based on stands being harvested when they reached maturity or later. Under this longer cycle of harvest these lands will contribute high value habitat conditions for many decades while being managed for timber production. The logs produced under the longer harvest cycle are of higher quality and value than harvest from younger forest conditions.
- The Action Alternatives generally use aged-based criteria to designate the individual stand based Reserves outside of the Large Block Reserves. The biological capability of these individual older stands to contribute to spotted owl habitat varies widely based on context of the checkerboard ownership, degree of surrounding private land, concentration of other older forest, and stand size. Many individual stands of older timber have very low habitat functionality. The BLM Planning Criteria indicated that “landscape context” would be applied in the designation of older forest but only broad-brush rules were applied. The BLM analysis has several classifications that indicate relative habitat suitability and dispersal capabilities that could be used to designate only those stands that have biological capability and are needed for spotted owl recovery.
- The older age classes that are in the Harvest Land Base under Alternative B are in SW Oregon mostly in the Uneven Aged Management Area.

**Graphic 9 – Alternative B for the Northern & Coastal Districts** - (Salem, Eugene, Coos Bay)



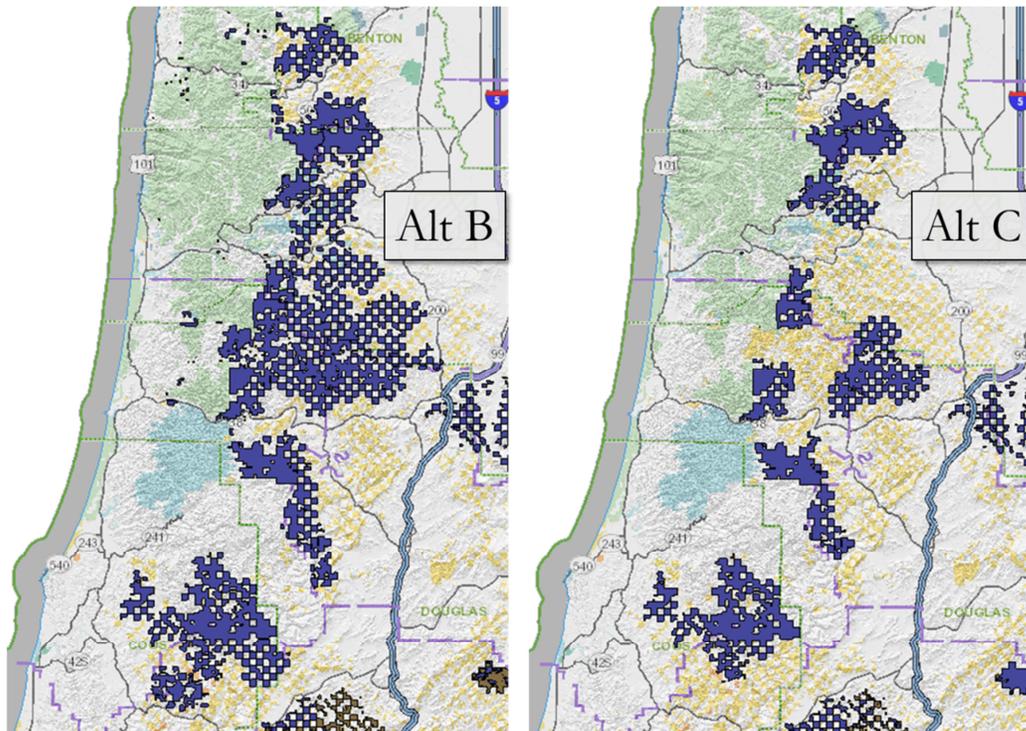
***Key Points Continued***

- Of the 234 million board feet of sustainable harvest under Alternative B nearly 65% comes from the Northern and Coastal Districts and is derived from the age classes displayed above.
- The Action Alternatives “Reserve” much of mature forest. BLM estimation of the harvest levels for the Action Alternatives departed from using maturity criteria for determining the minimum harvest age and cycle of harvest. *“Reserving older forests in the action alternatives would force the BLM to harvest stands less than 80 years old for up to 100 years before transitioning completely to longer rotations.”*<sup>11</sup>
- The Reserves contain substantial amounts of younger forest. It will be many decades before these younger stands could potentially contribute habitat for spotted owls. BLM has applied the upfront premise that all of this younger forest needs to develop into spotted owl habitat. The BLM Alternatives did not explore how sustained yield strategies could be applied to this younger forest to provide a range of forest conditions over time and understand the effects of such strategies on spotted owls.

## Large Block Reserves

The design of the Preferred Alternative B large block Reserves for spotted owls does not apply the scientific standards for size and spacing in the Coast Range. A visual comparison with Alternative C, which does apply the science-based size and spacing criteria, is illustrated below.

**Graphic 9 – Large Block Reserve Comparison**



Green – Forest Service, Yellow - BLM, Light Blue – State, Dark Blue – BLM Reserves

### *BLM's Northern Spotted Owl Key Points<sup>12</sup>*

- *“The northern spotted owl population is under severe biological stress in much of western Oregon and has an even chance of being extirpated from the Coast Range within 35 years. This population risk is predominately due to competitive interactions between northern spotted owls and barred owls.”*
- *“In the Coast Range, the BLM has no opportunity, through habitat management, to reduce risks to the northern spotted owl during the next 50 years, and there are no substantive differences among the alternatives in their potential effects on those risks.”*

## Spotted Owl Critical Habitat and Recovery Actions

In 2008 the Federal government had developed a spotted owl Recovery Plan, Critical Habitat, and a BLM Resource Management Plan that were coordinated and consistent. Those plans were withdrawn by the government and a new Recovery Plan and a Critical Habitat designation of approximately 53% of the BLM was made prior to starting the RMP revision.

### Key Points

- Data on the amount of spotted owl Critical Habitat that overlay the Harvest Land Base has not yet been compiled for all Alternatives. Under Alternative C approximately 44% of the Harvest Land Base is within spotted owl Critical Habitat. It is uncertain if further restrictions on the Harvest Land Base within Critical Habitat will be applied during project level consultation.
- Recovery Action 10 – “*Conserve spotted owl sites and high value spotted owl habitat*”<sup>13</sup>. The BLM analyzed a Sub-Alternative B that protected habitat within the home ranges of all known and historic sites. The result was an approximately 50% reduction in the sustainable harvest level. Alternative B does not provide specific protection of sites within the Harvest Land Base.
- Recovery Action 32 – “*land managers should work with the Service*”... “*to maintain and restore*”... “*high quality spotted owl habitat stands are characterized as having large diameter trees, high amounts of canopy cover, and decadence components such as broken-topped live trees, mistletoe, cavities, large snags, and fallen trees.*”<sup>14</sup> The Alternatives use age based and District defined criteria to Reserve substantial amounts of older forest that precludes sustained yield management. The definitions of the stand characteristics for Recovery Action 32 are somewhat subjective. It is uncertain if further restrictions on the Harvest Land Base will be applied during project level consultation. Neither the development of the Recovery Action nor the BLMs designation of reserves applied any landscape context related to need and biological capability of these individual stand based Reserves.
- Under Alternative B the portion of the Harvest Land Base within spotted owl Critical Habitat will rely on natural regeneration (no replanting) after harvest. Outside Critical Habitat reforestation will rely on natural regeneration and/or planting but will intentionally maintain early seral conditions for several decades after harvest.
- Land management restrictions with the Recovery Plan’s “Advisory” Recovery Actions and Critical Habitat designations do not result in clear direction and will not provide the “certainty” BLM has claimed will result from this planning process. The USF&WS development of the Recovery Actions and designation of Critical Habitat did not consider

the data specific to the BLM lands on how habitat will develop over time. The USF&WS policies were developed over the range of the NWFP and did not account for the unique circumstances of the O&C checkerboard or economic objectives for these unique lands. The BLM's analytical capabilities to determine what is needed for spotted owl recovery on the O&C checkerboard and the Federal Government issuing one set of clear management guidelines has not been adequately exercised in this planning process. This inconsistency is likely to be exploited in litigation by those who want to thwart land management by the BLM.

## More is Possible

The Notice of Intent for the development of RMP stated:

*“The vast majority of the BLM-administered lands in the planning area are Revested Oregon and California Railroad (O&C) lands, or Reconveyed Coos Bay Wagon Road (CBWR) lands, and are managed under the statutory authority of the Oregon and California Revested Railroad Lands Act of 1937 (O&C Act, Pub. L. 75-405) and FLPMA (43 U.S.C. 1701 et seq.). Preparation of the RMPs and EIS will conform to the above land management laws and will also comply with other Federal laws, including, but not limited to the Endangered Species Act (ESA), the Clean Water Act, and the National Environmental Policy Act.” (underline add).*

The BLM Purpose & Need did not fully recognize the statutory authority for managing these lands under for permanent forest production under the principles of sustained yield. The Alternatives Reserved vast acreage of the O&C without fully exploring how, under sustained yield management, all of the objectives in the Purpose and Need could be met.

The Association of O&C Counties will do an in-depth review of the DEIS with the focus on making reasonable recommendations on how to honor the requirements for sustained yield management on the O&C lands. More is possible under expanded sustained yield strategies, which have yet to be explored, that will simultaneously achieve sustainable economic outcomes as well as providing clean water and endangered species objectives.

## Notes and References

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<sup>1</sup> DEIS Chapter 2 - page 35

<sup>2</sup> Zone 1 – within 35 miles of the coastline, Zone 2 – 35-50 miles of the coast line with an excluded area in SW Oregon.

<sup>3</sup> DEIS Chapter 2 - page 35

<sup>4</sup> The land base excludes the Eastside Management Lands and are based on gross ownership.

<sup>5</sup> DEIS Chapter 3 – Table 3-60

<sup>6</sup> Payments – Combination of timber sale receipts, Safety Net, and Secure Rural Schools.

<sup>7</sup> DEIS Chapter 3 – Table 3-186

<sup>8</sup> DEIS Chapter 3 - Table 3-164 – values in 2012 dollars but at projection point of 2023.

<sup>9</sup> DEIS Chapter 3 - Table 3-162

<sup>10</sup> DEIS Chapter 3 – Socioeconomics - Page 537

<sup>11</sup> DEIS Chapter 3– Page 255

<sup>12</sup> DEIS Chapter 3 – Page 746

<sup>13</sup> DEIS Chapter 3 – Page 748

<sup>14</sup> DEIS Chapter 3 – Page 748

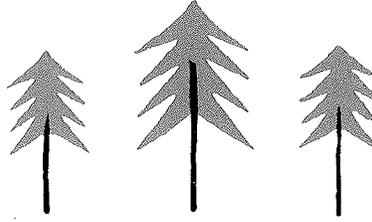


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June 27, 2013

Jerome Perez, Oregon State Director  
Bureau of Land Management  
333 S.W. 1<sup>st</sup> Avenue  
Portland, Oregon 97204

Re: Request for Meeting Regarding Purpose and Need Statement

Dear State Director Perez:

I am writing to request a meeting with you to discuss the recently released Purpose and Need Statement (“PNS”) for the Western Oregon planning effort. The Association of O&C Counties, on behalf of the 15 counties participating as cooperating agencies in the planning process, would like to meet with you to highlight our concerns. We hope to find a time during the month of July that is convenient for you to spend an hour with Commissioner Doug Robertson, President of the Association, Rocky McVay, the Association’s Executive Director, and three of the Association’s representatives in the BLM planning process: Van Manning, Chris Cadwell, and Kevin Davis (undersigned). We will be calling you soon to check your availability.

The PNS has turned the O&C Act upside down, leaving economic considerations to the last, after every other consideration has been satisfied. “Sustained yield” of timber is mentioned numerous times, but only as a residual, from lands that are left over after all other objectives are met. There appears to be no intent to try to optimize all values simultaneously. As a consequence, economic concerns will be given short shrift, and the range of alternatives the BLM will consider in the planning process will apparently not include any alternative focused on the primary purpose of the O&C Act. On the few residual acres that will be available for it, sustained yield management is meaningless, providing certainty, but only certainty of failure to support jobs and the economies of the O&C Counties.

We believe the PNS has it backwards. Sustained yield timber production is the means by which the purpose of the O&C Act was to be achieved. The Ninth Circuit Court of Appeals has clearly and unambiguously stated that the overriding purpose of the O&C Act is to provide the O&C Counties with revenues through the sale of timber:

“\*\*\* The purposes of the O&C Act were twofold. First, the O&C Act was intended to provide the counties in which the O&C land was located with the stream of revenue which had been promised but not delivered by the Chamberlain-Ferris Revestment Act \*\*\*. \*\*\* The counties had failed to derive appreciable revenue from the Chamberlain-Ferris Act primarily because the lands in question were not managed as so to provide a significant revenue stream; the O&C Act sought to change this. \*\*\* Second, the O&C Act intended to halt previous practices of clear-cutting without reforestation, which was leading to a depletion of forest resources.” Headwaters, Inc. v. BLM, Medford Dist., 914 F2d 1174, 1183-84 (9<sup>th</sup> Cir. 1990) (citations omitted, emphasis added).

In Headwaters, the Ninth Circuit made clear that sustained yield timber production and harvest was the way Congress intended to achieve the revenue stream to the counties and support of local economies and industries. In responding to the plaintiffs’ argument in that case that the O&C lands should be managed for the discretionary protection of owl habitat, the court stated that:

“\*\*\* Nowhere does the legislative history suggest that wildlife habitat conservation or conservation of old growth forest is a goal on a par with timber production, or indeed that it is a goal of the O&C Act at all.” Headwaters, 914 F2d at 1184.

Other objectives mentioned in the O&C Act, such as recreation, and watershed protection, are secondary, and are not to be achieved at the expense of the primary purpose of the Act. In O’Neal v. U.S., 814 F2d 1285, 1287 (9<sup>th</sup> Cir. 1987), the Ninth Circuit Court of Appeals held:

“\*\*\* The provisions of 43 U.S.C. §1181a make it clear that the primary use of the revested lands is for timber production to be managed in conformity with the provision of sustained yield, and the provision of recreational facilities as a secondary use. No duty is thereby established to provide for recreational use.” (Emphasis added).

Wildlife-related and recreation objectives must be achieved in coordination with producing revenue for the counties, and not at the expense of that primary objective. Instead of seeking simultaneous satisfaction of objectives, however, the BLM PNS gives wildlife-related and recreation objectives precedence in every conceivable way. We would appreciate an opportunity to meet with you to emphasize our concerns, and to discuss possible modifications to the PNS to bring it into conformity with the O&C Act's requirements.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kevin Q. Davis". The signature is fluid and cursive, with a prominent "K" and "D".

Kevin Q. Davis

KQD

cc: Mike Haske  
Mark Brown

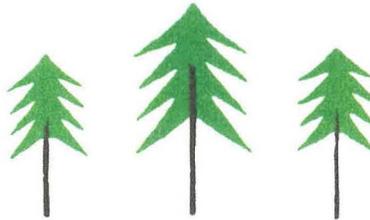


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March 26, 2014

Mark Brown, Project Manager  
RMPs for Western Oregon  
Bureau of Land Management  
P.O. Box 2965  
Portland, Oregon 97208

By Regular Mail and Email  
BLM\_OR\_RMPs\_WesternOregon@blm.gov

Re: Comments Regarding Planning Criteria

Dear Project Manager:

The O&C Act requires that all lands biologically capable of producing timber

“\* \* \* shall be managed \* \* \* for permanent forest production, and the timber thereon shall be sold, cut and removed in conformity with the principal [sic] of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities \* \* \*.” 43 USC §1181a.

The BLM planning process is currently on a course 90 degrees off of this statutory direction. If the course is not changed very soon, the process has no chance of reaching a legally defensible conclusion.

At a recent meeting to take comments on the Planning Criteria from elected officials, the BLM asked: “Do we have the range of alternatives right?” The answer is simply----no! By comparison with the range of alternatives that, after four intense years of study, produced the 2008 RMP, the range of preliminary alternatives outlined with the Planning Criteria is badly skewed and much too narrow. The EIS for the 2008 RMP looked at options in excess of 700 mmbf and eventually adopted an alternative that would have produced 502 mmbf of sustained yield harvest. The range of alternatives now under consideration does not appear to include any option that would sustainably produce much more than half of that amount. The 2008 RMP had a procedural defect, not a substantive flaw with regard to resource protection or timber production. There has been no change since 2008 that justifies the BLM making such drastic reductions in planned harvest levels.

The preliminary alternatives outlined with the Planning Criteria do not include any option that is consistent with the O&C Act, nor is the range of alternatives broad enough to test the extent to which potentially conflicting outcomes can be reconciled. This is a predictable consequence of the Purpose and Need statement, which has turned the O&C Act upside down, leaving economic considerations to the last, after every other consideration has been satisfied. Sustained yield of timber, under both the Purpose and Need and the Planning Criteria, is treated as a residual from lands that are left over after all other objectives are met. There appears to be no intent to try to optimize all values simultaneously. As a consequence, economic concerns will inevitably be given short shrift.

With all action alternatives clustered around preservation-oriented outcomes, there will be no examination of a reasonable range of alternatives that would disclose how to efficiently produce acceptable levels of environmental protections, while simultaneously producing economic benefits required by the O&C Act. This skewed and limited range of alternatives deprives the agency and the public of both information and meaningful choices, in violation of the National Environmental Policy Act. The Association of O&C Counties asks the BLM to stop and reconsider, as the path chosen is one of inevitable conflict between the BLM and the Counties that are intended by law to benefit from management of the O&C lands.

The Association of O&C Counties represents 17 counties in Western Oregon in connection with O&C lands management. These Counties contain 85 percent of the population of the State. Even if one excludes Multnomah County, which is a member of the Association, the remaining 16 member Counties have a combined population of 2,507,000. These citizens have elected Boards of Commissioners that choose for their Counties to be represented by the Association and speak for them in connection with their Federal statutory interest in the O&C Lands. The Association is not just one more voice among the public, it is an entity with substantial standing that is entitled to have its concerns given the greatest possible deference.

A history lesson concerning the O&C lands seems a poor way to excite sympathetic attention, but a reminder of legislative history is essential: There is no other way to fully appreciate what it is the BLM is supposed to be doing with the O&C lands----**which is, first and foremost, generating revenue for the 18 O&C Counties by growing and selling timber.**

A. History of the O&C Lands.

Between 1866 and 1870, Congress granted nearly 4,000,000 acres of land to the Oregon and California Railroad Company in exchange for a commitment to build a railroad through Western Oregon from Washington to the California border. The lands were conveyed to the Railroad Company with the proviso that they be sold in 160-acre parcels to “actual settlers” in order to promote the settlement and development of Western Oregon. The railroad was built, but the Railroad Company failed to honor its obligations to sell O&C lands to settlers as required by the grant.

Dissatisfaction festered and grew for 40 years until finally, under pressure from Oregon’s citizens and local governments, Congress directed the Attorney General to enforce the terms of the grant against the Railroad Company. The litigation reached the U.S. Supreme Court, which

invited Congress to frame a remedy. Congress responded with the Chamberlain-Ferris Act of June 9, 1916, which declared that all grant lands still held by the Railroad Company were revested and provided for compensation to the Railroad for the O&C Lands thus returned to the United States.

Had the lands not been taken back by the federal government, they would have remained in private ownership, providing an economic base for private industry and a tax base for local governments. Congress recognized that revestment deprived Western Oregon of part of its economic foundation. The Chamberlain-Ferris Act therefore established the "Oregon and California Land-Grant Fund" within the United States Treasury, and provided a method for distribution of income from the lands. Once certain debts were paid, funds were to be distributed 25 percent to the O&C Counties, 25 percent to the State of Oregon and the remainder to the United States. The distribution method was designed to compensate the state and county governments for the fact that they derived no tax benefits from the revested lands.

“\* \* \* [T]he people in [the] State [of Oregon] were bitter in blaming the Federal Government for inaction in this situation for over fifty years. Moreover, the proposed revesting of title in the United States would remove from the tax rolls of the State these huge tracts of land, theretofore taxable, and in this transition, the schools and roads of the State would suffer. Congress recognized the justice of these claims, and it was for this purpose that it directed a division of the proceeds from the lands among the state, the counties, and the Federal Government.” Clackamas County, Oregon v. McKay, 219 F.2d 479, 483 (9<sup>th</sup> Cir. 1954), judgment vacated as moot 349 U.S. 909 (1955).

Unfortunately, the Chamberlain-Ferris Act distribution method did not work. Between 1916 and 1926, very little revenue was derived from the O&C Lands. As a result, payments to Counties never materialized.

To assist the O&C Counties, Congress passed the Stanfield Act of July 13, 1926, which provided for payments from the general fund of the U.S. Treasury to the O&C Counties. The payments were in lieu of taxes which the O&C Counties could have collected had the O&C Lands been privately owned. The Stanfield Act provided that in lieu payments would be reimbursed from the O&C Counties' share of funds subsequently deposited in the O&C Land-Grant Fund from land and timber sales. To the extent that the Stanfield Act in-lieu payments exceeded the O&C Counties' share of the Fund, the excess became a reimbursable charge against the O&C Counties' share of the Fund. Between 1926 and 1936, the O&C Counties' share of revenues from the O&C Lands was insufficient to reimburse the United States for its Stanfield Act payments. There was therefore an ever-increasing reimbursable charge against the O&C Counties' share of the Fund. The system was not working to provide the Counties with revenues the way it was intended. Congress tried a third time.

In 1937 Congress passed the O&C Act. Prior inconsistent legislation was repealed and the system for distributing revenues from the O&C Lands was restructured. Once certain debts were satisfied, the O&C Counties were entitled to a total of 75 percent of all revenues from the O&C Lands. The remaining 25 percent was to be available for the costs of administering the

sustained-yield program under which the lands were to be managed by the Department of the Interior.

In 1953, the O&C Counties began to receive their full 75 percent share. After 1953, varying amounts to which the O&C Counties were otherwise entitled were retained by the federal government with the cooperation of the O&C Counties under annual Department of the Interior appropriation acts. After 1960, the O&C Counties received 50 percent of the revenues. An additional 25 percent was used for the administration of the O&C Lands and spent, in large part, within the O&C Counties. The remainder was deposited in the U.S. Treasury. By “plowing back” a portion of the revenue to which they were otherwise entitled, the O&C Counties raised the productivity of the lands.

It is evident from the history of the O&C Act that the O&C Lands are to be managed for the sustained yield production of timber, and therefore, revenue, to support the O&C Counties. Congress was critical of the policy under the Stanfield Act, which provided for liquidation of timber assets and sale of the land without regard to long-term benefits to local economies.

“No provision was made for the administration of the land on a conservation basis looking toward the orderly use and preservation of its natural resources. The [Stanfield] act provided that the timber should be sold ‘as rapidly as reasonable prices can be secured therefore on a normal market,’ and the cut-over lands disposed of for agricultural purposes. Clean cutting was contemplated. Seed trees were not to be preserved, nor was an provision made for the protection of stream flow. The probable effect of such a cutting policy on community industries was not considered.” Report to accompany H.R. 7618, 75<sup>th</sup> Cong. 1<sup>st</sup> Sess., No. 1119 at 2.

Congress looked to the O&C Act to provide authority to manage the lands on the basis of the then-emerging forestry science known as “sustained yield:”

Only those lands classified as valuable for agricultural purposes will be open to homestead entry or purchase. Lands valuable for forage production will be devoted to grazing under adequate grazing regulations. All land classified as timber in character will continue in federal ownership and be managed for continued forest production on what is commonly known as sustained yield basis. Under such a plan the amount of timber which may be cut is limited to a volume not exceeding new growth thereby avoiding depletion of the forest capital. This type of management will make for a more permanent type of community, contribute to the economic stability of local dependent industries, protect watersheds, and aid in regulating stream flow.” Report to accompany H.R. 7618 75<sup>th</sup> Cong., 1<sup>st</sup> Sess. No. 1119 at 2.

The above-quoted report concludes that the O&C Act “establishes a vast, self-sustaining timber reservoir for the future, an asset to the Nation and the State of Oregon alike. All of which is financed by the Lands themselves [sic].” *Id.* at 4.

B. The Purposes of the O&C Act.

The O&C Act has been interpreted many times by the courts as making timber production the dominant use for the O&C Lands. The other uses for the lands identified in the O&C Act are secondary uses, to be achieved through sustained-yield management. The O&C Lands are unlike most other federal lands, which are managed under multiple-use mandates where all possible uses are to receive equal consideration in the planning process. The O&C Act provides for a dominant use, timber production, not unlike legislation setting aside other lands for particular purposes such as wilderness, parks, scenic areas or historic preservation.

A 1990 Ninth Circuit Court of Appeals case states clearly and unambiguously that the overriding purpose of the O&C Act is to provide the O&C Counties with revenues through the sale of timber:

“ \*\*\* The purposes of the O&C Act were twofold. **First, the O&C Act was intended to provide the counties in which the O&C land was located with the stream of revenue which had been promised but not delivered** by the Chamberlain-Ferris Revestment Act \*\*\*. \*\*\* The counties had failed to derive appreciable revenue from the Chamberlain-Ferris Act primarily because the lands in question were not managed as so to provide a significant revenue stream; the O&C Act sought to change this. \*\*\* Second, the O&C Act intended to halt previous practices of clear-cutting without reforestation, which was leading to a depletion of forest resources.” Headwaters, Inc. v. BLM, Medford Dist., 914 F2d 1174, 1183-84 (9<sup>th</sup> Cir. 1990) (citations omitted, emphasis added).

In Headwaters, the Ninth Circuit made clear that timber production and harvest was the way Congress intended to achieve the goals of a sustained revenue stream to the counties and support of local economies and industries. Just as important, the court identified what the O&C Act did NOT intend: In responding to the plaintiffs’ argument that the O&C lands should be managed for the discretionary protection of owl habitat, the court stated that:

“ \*\*\* **Nowhere does the legislative history suggest that wildlife habitat conservation or conservation of old growth forest is a goal on a par with timber production, or indeed that it is a goal of the O&C Act at all.**” Headwaters, 914 F2d at 1184.

The O&C Act does not give BLM authority to manage for discretionary protection of owl habitat or old growth if it is at the expense of timber production. If the BLM manages for owl habitat or old growth timber at the expense of timber and revenue production, it must demonstrate it is acting under compulsion of other statutory authority, and it must take all possible steps to reconcile the conflicting obligations.

Nor does the O&C Act oblige the BLM to provide opportunities for recreation, even though the provision of recreation facilities is explicitly mentioned in the O&C Act. Recreation was one of the expected outcomes of sustained yield timber management. Recreation is not a goal independent of, or in competition with, timber production. Recreation cannot be achieved at the expense of timber production and “balancing” is neither required nor permitted. In O’Neal v. U.S., 814 F2d 1285, 1287 (9<sup>th</sup> Cir. 1987), the Ninth Circuit Court of Appeals held:

“ \*\*\* The provisions of 43 U.S.C. §1181a make it clear that the primary use of the revested lands is for timber production to be managed in conformity with the provision of sustained yield, and **the provision of recreational facilities as a secondary use. No duty is thereby established to provide for recreational use.**” (Emphasis added.)

To summarize: The law requires the BLM to manage the O&C lands for sustained yield timber production for the purpose of generating revenue for the 18 O&C Counties. The BLM may NOT manage the lands for wildlife habitat, may NOT manage to produce stands of old growth timber, may NOT manage for wilderness characteristics and may NOT manage for recreational uses, if any such uses conflict with the production and sale of timber to produce revenue for the Counties. If the BLM chooses to manage any part of its lands for these non-timber purposes, it must be prepared to demonstrate that it is acting under compulsion of other legal requirements, and that it has no means of simultaneously satisfying the requirements of the O&C Act and the conflicting legal requirements.

### C. The Limits of BLM Discretion and Minimum Harvest Levels.

The O&C Act requires that O&C Lands “which have heretofore or may hereafter been classified as timberlands, and power site lands valuable for timber, shall be managed . . . for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principal of sustained yield . . .” 43 USC §1181a. The Act makes clear: If it is timberland, it must be managed for sustained yield timber production. There remains, of course, at least some discretion in how the BLM implements this requirement - - - there are many ways to satisfy the requirement for sustained yield timber production. Such discretion in implementation does not, however, permit the BLM to withdraw lands from the land base dedicated to sustained yield timber production.

The BLM’s limited discretion under the O&C Act was maintained by Congress in 1976, when Congress passed the Federal Land Policy and Management Act (“FLPMA”), which redefined the management direction for nearly all lands in the United States under the jurisdiction of the BLM, with the telling exception of lands managed under the O&C Act. FLPMA is a multiple use statute under which all uses for the land are given equal consideration, and the BLM has broad discretion in choosing the mix of uses it will adopt for lands managed under FLPMA. But Congress specifically preserved the dominance of timber production on the O&C lands by adopting section 701(b) of FLPMA, which says that “[n]otwithstanding any provision of this Act [FLPMA], in the event of conflict with or inconsistency between this Act and the . . . [O&C Act and Coos Bay Wagon Road Acts], insofar as they relate to management of timber resources, and the disposition of revenues from lands and resources, the latter Acts shall prevail.”

1986 the Interior Solicitor was asked if the BLM had discretion to implement a plan for the protection of spotted owls. This was prior to the listing of the spotted owl, and therefore the Opinion does not address the tension between the ESA and the O&C Act. Rather, it addresses the limits of discretion under the O&C Act to manage for the benefit of unlisted species. The

legal opinion differentiated between lands managed by the BLM pursuant to FLPMA, and lands managed pursuant to the O&C Act. The Solicitor's opinion describes the difference as follows:

“The freedom conferred on the Secretary under FLPMA is limited in one important way on certain federally-owned timberlands in western Oregon. There, any decision about managing northern spotted owls must be measured against the dominant use of timber production. \* \* \* In deciding whether to establish a program for managing northern spotted owls on O&C timberlands, the Secretary, then, must decide if it is possible to do so without creating a conflict with the dominant use there—timber production. If the Secretary can manage northern spotted owls and still produce timber on a sustained yield basis in the O&C timberlands, the O&C Act in no way will preclude him from making that choice. \* \* \* The converse, of course, also obtains. If a program for managing northern spotted owls conflicts with producing timber on a sustained yield basis in O&C timberlands, the O&C Act will preclude the program's application to that realty.” Gale Norton and Constance Harriman, Associate Solicitors, Memorandum to James Cason, Deputy Assistant Secretary for Land and Minerals Management (October 28, 1986).

This 1986 Opinion has continuing relevance for any species that is not formally listed under the ESA. In the current planning process, the BLM must be prepared to explain its authority for departing from sustained yield timber production for the benefit of unlisted species, since the O&C Act does not provide such authority.

What about listed species, such as the spotted owl and marbled murrelet? Until 2007, the Counties assumed the ESA “trumped” the O&C Act in some respects. Specifically, it was assumed that the O&C Act mandate to manage all timberlands for sustained yield had to stand aside if such management was inconsistent with the ESA's section 7(a)(2) requirement that “each Federal Agency shall, in consultation with . . . [the Secretary of Interior or Commerce] insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined . . . to be critical . . .” 16 USC §1536(a)(2). The Counties assumed that the creation of reserves, otherwise impermissible under the O&C Act, were appropriate if necessary to avoid jeopardy to a listed species, and that O&C lands, if designated as critical habitat, could be withdrawn from timber production for the benefit of listed species. That assumption changed in 2007, when the United States Supreme Court reversed the Ninth Circuit Court of Appeals in a decision that limits the scope of the ESA.

The Homebuilders v. Defenders of Wildlife case did not involve the O&C Act, but its holding directly affects the extent to which the BLM may respond to the “no jeopardy” and “no adverse modification” requirements of the ESA. The key holding in the case is as follows:

“§7(a)(2)'s no-jeopardy duty covers only discretionary agency actions and does not attach to actions . . . that an agency is required by statute to undertake once certain specific triggering events have occurred. This reading not only is reasonable, inasmuch as it gives effect to the ESA's provision, but also comports with the canon against implied repeals [of other, earlier, conflicting legislation] because it stays §7(a)(2)'s

mandate where it would override otherwise mandatory statutory duties.” Natl. Ass. of Homebuilders v. Defenders of Wildlife, 551 U.S. 644, 669 (June 25, 2007). (Emphasis in original.)

The Homebuilders decision is part of the legal framework for the development of alternatives in the BLM’s planning process. Since the O&C Act says all timberlands must be managed for sustained yield timber production, the BLM may not create reserves to avoid jeopardizing a listed species or to avoid adversely modifying critical habitat, since section 7(a)(2) of the ESA does not impliedly repeal the O&C Act’s nondiscretionary mandate to implement sustained yield forestry on all timberlands. What remains subject to §7(a)(2)’s “no jeopardy/no adverse modification” requirement is the BLM’s exercise of discretion in choosing the particulars of the sustained yield timber management that it will employ. The BLM can and must seek to avoid jeopardy and adverse modification, short of withdrawing timberlands from sustained yield production.

How far can the BLM go in its choice of management techniques selected for the benefit of listed species, or for other purposes that might diminish timber production and revenues for counties? In fact, the O&C Act has a floor below which the BLM may not go with its timber sale program. The O&C Act, 43 U.S.C. §1181a says the following:

“The annual productive capacity for such lands shall be determined and declared as promptly as possible after August 28, 1937, but until such determination and declaration are made the average annual cut therefrom shall not exceed one-half billion feet board measure: *Provided, That timber from said lands in an amount not less than one-half billion feet board measure, or not less than the annual sustained yield capacity when the same has been determined and declared*, shall be sold annually, or so much thereof as can be sold at reasonable prices on a normal market.” (Italics in original, underlining added.)

This language clearly mandates a harvest range. The range has a rock-bottom minimum of one-half billion board feet per year, but may be up to the sustained yield capacity of the lands. The statute equates the “sustained yield capacity” with the “annual productive capacity”---the two terms refer to the same thing. “Sustained yield capacity” relates to tree growth and harvest rotation ages, it is not something that is administratively determined by application of discretion to withdraw lands or dedicate them to purposes other than timber production. It is a measurement, not a choice.

This range, then, defines the BLM’s decision space----the BLM has discretion to adopt management practices that result in harvest levels of between 500 mmbf and the maximum sustained yield capacity of the lands, but in no event can it plan for harvest of less than 500 mmbf. This decision space defines the limits of the BLM’s discretion to respond to the requirements of the ESA with respect to listed species. It also defines the limits of discretion under the O&C Act to manage the O&C (and Coos Bay Wagon Road) lands for unlisted species, provide for recreation and to produce other non timber benefits. The range of discretion is actually quite broad: The sustained yield capacity of the lands was previously determined by the BLM to be approximately 1.2 bbf per year, and a lower boundary of 500 mmbf means the BLM

is permitted to devote almost 60 percent of the productive capacity of the lands to purposes other than timber production that produces revenue for the counties.

To summarize: The BLM has a mandatory, nondiscretionary obligation to manage all lands for sustained yield and to offer for sale minimum volumes of timber. The BLM may not create reserves to avoid jeopardizing a listed species or to avoid adversely modifying critical habitat, since, under the Homebuilders decision, section 7(a)(2) of the ESA does not impliedly repeal the O&C Act's nondiscretionary mandates. Furthermore, the O&C Act contains a mandatory minimum harvest level (500 mmbf) that may not be sacrificed in order to comply with ESA section 7(a)(2). However, to the extent the BLM has discretion in choosing the silvicultural practices or rotation ages it will employ in sustained yield timber production and to achieve the minimum harvest level, section 7(a)(2) does apply.

If the BLM chooses to manage any part of its lands for non-timber purposes, and as a consequence the planned harvest level would fall below the mandatory minimum of 500 mmbf, the BLM must be prepared to demonstrate that it is acting under compulsion of legal requirements other than the ESA, and that it has no means of simultaneously satisfying the requirements of the O&C Act and the alleged conflicting legal requirements. When this planning process is done, the BLM will be held to account for any departures from the O&C Act. The agency would serve itself and the public best by confronting that reality now, and adjust the course of its planning process to align with requirements of the O&C Act.

D. A Flawed Purpose and Need Statement Infects All that Comes After.

The Counties identified the fundamental flaw in the process early, and County representatives met with State Director Perez and Mark Brown, the Planning Project Manager in July, 2013, to express grave reservations about the path the BLM had chosen. Following that meeting, the Counties reiterated their concerns in a letter sent to Mr. Perez in early August. We now restate the concerns previously made, by quoting from the letter to the BLM of August 7:

“Thank you for meeting with the representatives of this Association on July 19, 2013, to hear our concerns about the Purpose and Need Statement (“PNS”) for the Western Oregon planning effort. The Association of O&C Counties continues to have serious reservations about how the PNS will be used to limit the scope of alternatives that will be analyzed in the planning process. If this process proceeds as indicated in the PNS, the result will be failure to analyze a reasonable range of alternatives, a violation of one of the most fundamental planning obligations of the agency.

“The PNS is a significant departure from the Notice of Intent (NOI) published in the Federal Register on March 9, 2012. The NOI acknowledges that the vast majority of the BLM administered lands in the planning area are O&C and CBWR lands, managed under the statutory authority of the O&C Act of 1937. The NOI further states that the RMPs and EIS will conform to this statutory requirement and will comply with the Endangered Species Act, Clean Water Act, NEPA and other Federal laws. The PNS, however, emphasizes meeting regulatory compliance objectives first, prior to meeting BLM’S

statutory obligations under the O&C Act. The PNS provided no discussion about how the statutory requirements and the regulatory requirements should be met simultaneously.

\* \* \*

“The PNS guides the development of plans by establishing sideboards for the development of alternatives to be considered. It also has the potential for creating false expectations and outcomes. The PNS appears to limit the range of alternatives in a way that forecloses consideration of any alternative designed to simultaneously comply with the O&C Act and meet regulatory constraints imposed by the ESA, the Clean Water Act, and other legislation. Failure to include such an alternative means that the BLM will not even evaluate the possibility of accomplishing what we believe is required by the law. The BLM’s 2008 RMPs proved that it is possible to achieve the required outcomes by seeking the most efficient means of achieving otherwise competing values simultaneously, rather than serially, as it appears is being required by the PNS. Limiting evaluation of alternatives in this manner is rigging the process in a way that assures an outcome completely unacceptable to the intended beneficiaries of the O&C Act, the O&C Counties.

“At the meeting Mark Brown stated that many things are not expressed in the PNS that will further evolve in the Planning Criteria. We suggest that the changed economic circumstances of the counties and the implications of returning to timber sale receipts as the source of revenue be acknowledged. That would form the basis for adding the generation of revenue as an objective of the plan as intended under the O&C Act. The Planning Criteria could also establish clearer standards that reflect the NOI for compliance standards for ESA and CWA.”

The BLM did not respond to this letter and, based on what has been published in the Planning Criteria, the BLM has so far chosen to ignore the Counties’ concerns.

#### E. Specific Comments.

1. The barred owl encounter rate for the northern spotted owl is a significant factor in determining the effectiveness of any management strategy, and that factor should be assessed using each alternative’s modeled owl population response. A reference analysis should be performed to illustrate the extent to which the encounter rate affects the outcomes. Such a reference analysis would also inform the BLM how barred owl control measures might potentially be part of a management solution.

2. The BLM’s 2008 Resource Management Plan should be added as an alternative. That plan met most of the Counties concerns and could be incorporated as an alternative without burdening the planning process:

- It is an on the shelf Alternative with management direction that meets the 500 mmbf minimum of the O&C Act.
- It reflects four years of study at the cost of \$18 million of the taxpayers’ dollars.

- It was withdrawn based on a procedural defect, not because it was flawed in any way as a management strategy.
- It is a significant benchmark that should be tested with the spotted owl analytical procedures described in the Planning Criteria.

3. Utilize criteria to limit retention of older more structurally complex forest that is tied to owl use, need for recovery, and effectiveness in the checkerboard context. If by definition designated critical habitat is “essential” for owl conservation then there should be no reason to retain older forest outside of what has been deemed essential.

4. Analyze retention of older, more structurally complex forest as a sub alternative to each alternative. There is no legal basis for retaining older, more structurally complex forest under the O&C Act and any such action must be justified parcel by parcel with reference to other statutory requirements. The broadbrush approach now contemplated is based on the advisory “Recovery Action 32” and lacks a firm foundation of analysis of effectiveness and need on these specific lands for recovery of the spotted owl. Addressing the need and effectiveness question would best be served through comparative “with and without” analyses under each alternative.

5. “Dry” forest and uneven aged management should be tied directly to actual forest conditions where there is need to improve fire resiliency. Accepting the lower sustained yield related to uneven aged management should be tied to actual, observed forest needs.

6. Eliminate Alternative D. There is no legal basis to manage all of the O&C for NSO habitat.

7. Alternative B is excessive in not applying scientifically-based size and spacing criteria to the large block design. Alternative C arbitrarily expands the size of the large blocks from their original managed owl conservation area design without a rationale that would support the resulting diminishment of timber available for harvest. Determining where large blocks are capable of forming should be a sensitivity analysis applied to the requested 2008 RMP alternative.

8. O&C forest lands allocated for uses associated with regulatory compliance (ESA, Clean Water Act, etc.) that preclude sustained yield timber production can be held in such allocations only for so long as the statutory justification (ESA, Clean Water Act, etc) applies. For that reason, those lands should not also receive a land use allocation for management for wilderness characteristics or as special recreation management areas, as those designations do not have a statutory imperative. Any consideration of managing for wilderness characteristics or as special recreation areas as indicated on pages 9 and 10 of the Planning Criteria must be either deleted, or it must be specifically acknowledged that such a management overlay can exist only for so long as the underlying statutory support (based on the ESA, Clean Water Act, etc.) continues to be valid.

F. Conclusion.

The Association of O&C Counties is the representative of Counties that are the direct and intended beneficiaries of economic benefits produced from the O&C lands. The BLM has been in retreat from its obligations under the O&C Act for 20 years, and in this planning process is on the verge of complete abandonment, without even a pretense of compliance. The financial support from the separate Secure Rural Schools and Community Self Determination Act legislation that made it possible for the Counties to overlook violations of the O&C Act is now gone. Communities are crumbling under the combined destructive influences of severely diminished volume available to support jobs in the wood products sector of the economy, and drastically reduced revenues to support public services supplied by the Counties. The Counties request that the direction of the planning process be corrected before the BLM proceeds further on the collision course it is now following.

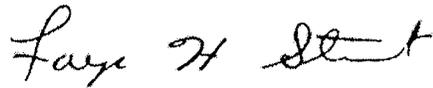
Very truly yours,



Doug Robertson, President



Tony Hyde, Vice President



Faye Stewart, Secretary-Treasurer

cc: Sally Jewell, Secretary, DOI  
Neil Kornze, Principal Deputy Director, BLM  
Steve Ellis, Deputy Director for Operations, BLM  
Jerry Perez, Oregon State Director, BLM  
Mike Haske, Oregon Deputy State Director  
BLM O&C Land District Managers  
Senator Ron Wyden  
Representative DeFazio  
Representative Schrader  
Representative Walden



**Statement by AOCC – Range of Alternatives**

February 19, 2015 CAAG

We all need to remember that the O&C lands are unique amongst the Federal lands. The Federal government does not pay taxes yet owns the majority of the land in the rural counties of western Oregon. They are unique because of the direction to manage the forest under the principles of sustained yield as a means to generate revenue for the 18 O&C counties. This is the foundation of why they were designated as O&C lands and distinguishes them from other Federal lands.

The BLM's Purpose & Need focused on a range of strategies based largely on terrestrial and aquatic objectives. The land base for sustained yield management resulted from what remained after all of these reserve designations were made. These "Reserve" based conservation strategies were informed by previous work that was likely to have good outcomes. From what has been shared to date, and as anticipated, the results for those objectives show a relative narrow range of positive outcomes that are in fine degrees.

The design of the alternatives resulted in a very narrow range on the size of the lands allocated to sustained yield, which are similar to or smaller than the NWFP. The degree sustained yield management can simultaneously provide for conservation and economic objectives has not been rigorously explored and objectively evaluated by the BLM with this limited range of alternatives.

When the "Reserve" label is assigned to the land base by definition it precludes sustained yield management and the opportunity for those lands to contribute to sustainable economic benefits for future generations. The same is not true when the "Sustained Yield" label is assigned to the land base. The use of extended rotations and retention has demonstrated that simultaneous achievement of sustainable timber production and habitat conditions are possible. In all of the Action Alternatives BLM has departed from long standing minimum harvest age of at or above culmination of mean annual increment (CMAI). The Alternative C sub alternative of no harvest of 80+ resulted in a harvest of 334 MMBF when earlier analysis based on CMAI indicated 96 MMBF. Is sustained yield management departing from CMAI and using optimization in the modeling tending towards a management style closer to private industrial lands? Has BLM fully explored longer sustained yield rotations on large land bases under these alternatives? – No.

The Maxtent model assigns "Relative Habitat Suitability" based on concentration, structural stage, position on the landscape, and other factors. BLM has placed upfront "Reserves" for older more structurally complex forest based on simplistic broad brush age based criteria for the most part. This ignores the reality that it is more than age of an individual stand which indicates the degree it contributes biologically for owl conservation. The Planning Criteria stated the "alternatives would explore differing approaches to defining older and more structurally complex multi-layered conifer forest, by such criteria as stand age, structure, size, or landscape context." The alternatives do not reflect exploring the relative landscape context in the need for establishing these reserves and precluding sustained yield.

Other questions remain unanswered by this narrow range of Alternatives.

- Could long rotations, with creating complex early seral conditions on a limited scale, be applied to younger and middle age portion of the large block reserves to create a range of habitat conditions? Does the entire large block need to go to older forest? Would not a mix of complexity and seral stages and structural complexity be beneficial for overall ecological diversity?
- Can the existing older forest stand reserves be managed under a regime with legacy retention on a long rotation but still be managed on a Sustained Yield basis? The Alternatives reserve between 655-429,000 acres of older more structurally complex forest. Regeneration harvest levels under the NWFP and 2008 RMP ranged between 60-76,000 acres over a decade – a fraction of what is reserved. Older more structurally complex forest across the landscape will be increasing in the large blocks and riparian reserves. Are the additional reserves necessary or could timing of harvest and silviculture regimes achieve similar outcomes on a sustained yield basis? We don't know by these Alternatives.
- It appears uneven aged management areas were defined by various geographic determinations of “dry forest” loosely tied to a need to improve forest resiliency. To date we have not seen where there has been an assessment of the actual forest conditions to rank the level of need, and extent of the forest for resiliency treatments. Uneven aged management is an effective approach for improving resiliency but it comes at a cost of the sustainable harvest level. Is it not reasonable that a stand condition based needs approach should be evaluated as an alternative? How would this compare to predefined geographic conditions?

The BLM in the Purpose & Need did not identify revenue as an objective despite that it is foundational as why these lands were designated as O&C. The range of revenue outcomes for rural Oregon counties has a much wider range than most other outcomes and a direct effect on the rural communities and industries. At best it is 50% of historic payments and in most Alternatives 14-27%.

AOCC has concern that the upfront decisions to limited range on the amount of land allocated to sustained yield has artificially limited the understanding what is possible by a fuller expression of the range of how sustained yield could be conducted, and the range of revenue outcomes.

The planning process is a very unique opportunity which brings together the BLM professional expertise, the knowledge of the Cooperators, and data/models to build this understanding of how the BLM can simultaneously make significant contributions to both conservation and economic objectives. Evaluation of a broader range of sustained yield approaches, on a broader land base, is essential to the understanding of what is possible.