Cascadia Wildlands
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CENTER for BIOLOGICAL DIVERSITY
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May 8, 2023

Via Electronic and Certified Mail

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Re: Supplemental Notice of Intent to Sue FEMA for Violating Section 7 of the ESA Regarding the Cook Creek Road Segment Relocation Project, FEMA-DR-4258-OR PW342

Dear Secretary Haaland, Secretary Mayorkas, Officer Kilner, and Administrator Criswell:

Cascadia Wildlands and the Center for Biological Diversity intend to sue the Federal Emergency Management Agency ("FEMA"), the U.S. Fish and Wildlife Service ("FWS"), and you (in your official capacity) for violations of the Endangered Species Act[1] ("ESA"), related to the Cook Creek Road Segment Relocation Project, FEMA-DR-4258-OR PW342 (the "Project"). Specifically, FEMA arbitrarily concluded that the Project will have "no effect" on the Oregon Coast coho salmon (*Oncorhynchus kisutch*) and, as a result, failed to consult with the National Marine Fisheries Service ("NMFS"), in violation of section 7 of the ESA. FEMA also unlawfully ignored effects to both the Oregon Coast coho and the marbled murrelet (*Brachyramphus marmoratus*) from at least two timber sales that are reasonably certain to occur if Cook Creek Road is rebuilt. Accordingly, FEMA's conclusion that the Project was "not likely to adversely affect" marbled murrelets violated section 7 of the ESA by ignoring the best available science and by failing to ensure that the Project will not cause jeopardy to the marbled murrelet or destroy or adversely modify its critical habitat.

We previously provided notice of our intent to sue with comments on FEMA's draft Environmental Assessment ("EA") for the Project, attached hereto as Attachment A. In this letter, we informed FEMA that its failure to consult with NMFS and FWS violated the ESA. On November 17, 2022, FEMA released its final EA and Finding of No Significant Impact ("FONSI") approving the Project without consulting NMFS, and instead issuing an unlawful "no

[1] 16 U.S.C. §§ 1531-1544.

effect" determination for Oregon Coast coho salmon. FEMA also concluded that the Project was not likely to adversely affect marbled murrelets, and FWS issued a letter of concurrence on September 16, 2022. Due to FEMA's failure to analyze Project impacts on both coho and murrelets—including from planned timber sales and related road activities that are connected to and dependent on FEMA's funding of the Project—FEMA and FWS are in violation of section 7 of the ESA. Accordingly, Notifying Parties intend to file suit in federal district court on or after the 60th day from the date of this notice unless the violations set forth in this letter and Attachment A are addressed.

LEGAL BACKGROUND

The ESA requires all federal agencies to "seek to conserve endangered species and threatened species and . . . utilize their authorities in furtherance of the purposes of" the ESA.[2] The ESA's purposes are to provide a program for the conservation of endangered species and threatened species and a means to conserve the ecosystems upon which they depend.[3] Congress enacted the ESA "to halt and reverse the trend towards species extinction, whatever the cost."[4] Thus, federal agencies must "to afford first priority to . . . saving endangered species."[5]

Accordingly, section 7(a)(2) of the ESA requires each federal agency to consult with FWS or NMFS (collectively, the "Services"), as appropriate, to ensure that any federal action is not likely to (1) jeopardize the continued existence of any endangered or threatened species or (2) result in the destruction or adverse modification of critical habitat.[6] During consultation, agencies must use the best "scientific and commercial data available."[7] Jeopardy results when it is reasonable to expect "directly or indirectly" that the action would appreciably reduce "the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species."[8] Destruction or adverse modification means "a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species."[9]

Federal agencies must consult the Services for "all actions in which there is discretionary Federal involvement or control."[10] Actions requiring consultation are broadly defined by regulation to mean "all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies" and include "actions directly or indirectly causing modifications to the land, water, or air."[11] The action agency must request from the Services a determination of whether any listed or proposed species "may be present" in the area of the proposed action.[12] If listed or proposed species may be present, the action agency

[2] 16 U.S.C. § 1531(c)(1).
[3] *Id.* § 1531(b).
[4] *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 184 (1978).
[5] *Id.* at 188.
[6] 16 U.S.C. § 1536(a)(2).
[7] 16 U.S.C. § 1536(a)(2).
[8] 50 C.F.R. § 402.02.
[9] *Id.*
[10] *Id.* § 402.03.
[11] *Id.* § 402.02.
[12] 16 U.S.C. § 1536(c)(1).

must prepare a biological assessment to determine whether the listed species may be affected by the proposed action.[13] In a biological assessment, the action agency describes the proposed action and evaluates its potential effects on listed species and their designated critical habitats.[14] If the action agency determines that the action "may affect" any listed species, it must engage in "formal consultation" with the Services.[15]

The threshold for a "may affect" determination is low.[16] The "may affect" threshold is met if "a proposed action may pose *any* effects on listed species or designated critical habitat."[17] ESA regulations require consultation to examine the potential effects of the action, which are defined as "all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action" and effects that "may occur later in time" or "occurring outside the immediate area involved in the action."[18] Therefore, an agency must consult in every situation except when a proposed action will have "no effect" on a listed species or critical habitat.

If the action agency concludes in a biological assessment that the activity is not likely to adversely affect the listed species or adversely modify its critical habitat, and FWS or NMFS concurs with that conclusion, consultation is complete.[19] If the action agency determines, however, that the activity is likely to adversely affect listed species or critical habitat, then the Services must prepare a biological opinion to determine whether the action will jeopardize the species or result in destruction or adverse modification of critical habitat.[20] If the Services determine that an action will jeopardize the species or adversely modify critical habitat, they may propose reasonable and prudent alternative actions intended to avoid such results.[21]

FACTUAL BACKGROUND

1. Oregon Coast Coho Salmon (*Oncorhynchus kisutch*)

The Oregon Coast coho salmon is listed as threatened with extinction under the ESA.[22] Critical habitat is designated throughout Oregon's coast range, including Cook Creek.[23] As do most salmon, Oregon Coast coho begin their life cycle rearing in freshwater streams and small tributaries, spend their adult life in estuarine and marine waters, and return to natal streams to spawn at the end of their lives. As a result, Oregon Coast coho require navigable passage back

[13] *Id.*; 50 C.F.R. § 402.12.
[14] 16 U.S.C. § 1536(c)(1); 50 C.F.R. §§ 402.02 (defining "biological assessment"), 402.12.
[15] 50 C.F.R. § 402.14.
[16] *See* 51 Fed. Reg. 19926, 19949 (June 3, 1986) (explaining that "may affect" broadly includes "[a]ny possible effect, whether beneficial, benign, adverse or of an undetermined character").
[17] U.S. Fish and Wildlife Serv. & Nat'l Marine Fisheries Serv., *Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act*, page xvi (1998) (emphasis in original).
[18] 50 C.F.R. § 402.02.
[19] *Id.* §§ 402.12, 402.14(b).
[20] *Id.* § 402.14.
[21] 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(g)(5).
[22] 73 Fed. Reg. 7816 (Feb. 11, 2008) (designating as "threatened" all naturally spawned populations of coho salmon in Oregon coastal streams south of the Columbia River and north of Cape Blanco, including Cow Creek Hatchery).
[23] *Id*.

to natal streams; stable gravel substrates for spawning and redd (nest) building; clear, clean water for spawning and feeding; pools for sheltering and feeding; and cool water temperatures.

Oregon coast coho salmon populations have declined steeply since the 1950s largely due to habitat degradation from logging, roads, and log-hauling.[24] In the final recovery plan for Oregon Coast coho, NMFS reiterated ongoing concerns about the inadequacy of the Oregon Department of Forestry's ("ODF") rules to protect coho salmon from logging and road maintenance on state forest lands.[25] Indeed, NMFS issued a rule specifying the types of activities that result in "take" of coho, in violation of the section 9 of the ESA, including "logging" and "road construction in areas that are susceptible to mass wasting and surface erosion," and the "removal of large woody debris and 'sinker logs' or riparian shade canopy."[26] As noted in comments on ODF's 2023 Annual Operations Plan, attached hereto as Attachment B, the Cook Creek project and ODF's connected timber sales occur in areas with steep, convergent terrain that is prone to mass wasting and surface erosion. *See* Attachment B at 9-13.

2. Marbled Murrelet (*Brachyramphus marmoratus*)

The marbled murrelet is a small sea bird found only on the west coast of North America, from Alaska to Santa Cruz, California.[27] Murrelets spend most of their lives offshore, foraging for small fish and invertebrates, but nest inland in mature and old-growth forests.[28] Murrelets do not build nests but instead lay their eggs on thick, flat tree branches with natural depressions and a blanket of moss.[29] As the availability of these naturally occurring platforms "is the most important characteristic of their nesting habitat," marbled murrelets are "closely associated with old-growth and mature forests for nesting."[30] Murrelets do not nest every year,[31] but when they do, they return to the same forest stand and often the same nest tree. Nesting occurs between mid-April and September, and nests can be as far as 50 miles from the ocean.[32] The female lays a single egg, and the male and female incubate the egg by switching shifts once a day while the other bird flies back and forth to the ocean to feed, typically at dawn or dusk.[33] The adult birds feed the chick at least once per day, carrying fish back from the ocean.[34]

The murrelet's reliance on intact old-growth forests has resulted in large declines in the species' abundance, as logging of old coastal forests has removed most of the murrelet's historic breeding habitat. In 1992, marbled murrelets in Oregon, Washington, and California were listed as threatened with extinction due to "loss and modification of nesting habitat (older forests)

[24] *See*, *e.g.*, 60 Fed. Reg. 38011 (July 25, 1995) (proposed Oregon coastal coho listing); 65 Fed. Reg. 42422 (July 10, 2000) ("past and ongoing destruction of freshwater and estuarine habitats" are key factors for the decline of coho); NOAA Fisheries, Final ESA Recovery Plan for Oregon Coast Coho Salmon (*Oncorhynchus kisutch*) (Dec. 2016).
[25] Coho Recovery Plan at 3-22–3-24.
[26] 73 Fed. Reg. at 7830.
[27] 75 Fed. Reg. 3424, 3425 (Jan. 21, 2010).
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] 57 Fed. Reg. 45328, 45329 (Oct. 1, 1992).
[32] *Id.* at 45,328-29.
[33] *Id.* at 45,329.
[34] *Id.*

primarily due to commercial timber harvesting."[35] "[T]he main cause of population decline has been the loss of older forests and associated nest sites."[36] Extensive logging over the past 150 years has resulted in the loss of "at least 82 percent of the old-growth forests existing in western Washington and Oregon."

What old-growth forest remains is scattered in small patches.[37] Murrelets are particularly harmed by the fragmentation of old-growth forests because they depend on large blocks of interior habitat—*i.e.,* habitat that is far from forest edges—for protection from predators, microclimate changes, and windthrow of nest trees.[38] Habitat fragmentation from logging reduces "interior or core habitat" and "increases the amount of forest edge, isolates remaining habitat patches, and creates 'sink' habitats."[39] This can harm murrelets by causing "effects on population viability and size, local or regional extinctions, displacement, fewer nesting attempts, failure to breed, reduced fecundity, reduced nest abundance, lower nest success, increased predation and parasitism rates, crowding in remaining patches, and reductions in adult survival."[40] Predation and nest failure are substantial threats to marbled murrelets.[41] Murrelet predation "increases with the fragmentation of older-aged forests," and nest success "is lower in small forest fragments."[42] Due to these risks, marbled murrelet habitat should be maintained "in relatively large contiguous blocks."[43]

In 2012, FWS's Recovery Implementation Team reviewed the continued declines in murrelets and, with high confidence, reconfirmed that loss of terrestrial habitat was the number one cause of decline and that the Oregon population had an increased extinction risk due to small population size. The reasonably certain effects of ongoing timber harvest will add to this risk. In 2021, the Oregon Fish and Wildlife Commission uplisted the murrelet from threatened to endangered under the Oregon ESA,[44] reflecting that despite nearly three decades of protection under the state and federal ESAs, the marbled murrelet has moved closer to extinction.[45]

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[35] *Id.* at 45,328.
[36] *Id*. at 45,330.
[37] *Id.* at 45,329 ("[s]tand size is also an important factor for marbled murrelets").
[38] 76 Fed. Reg. 61604 (Oct. 5, 2011); 75 Fed. Reg. at 3425 (nesting habitat is "positively associated with the presence and abundance of mature and old- growth forests, large core areas of old-growth, low amounts of edge habitat, reduced habitat fragmentation, proximity to the marine environment, and forests that are increasing in stand age and height").
[39] U.S. Fish and Wildlife Serv., Marbled Murrelet Five-Year Status Review, at 30 (2009).
[40] *Id*. at 29.
[41] *See* 75 Fed. Reg. at 3432 ("Nest failure rates of 68 to 100 percent due to predation in real nests, and 81 to 95 percent in artificial nests have been reported").
[42] 57 Fed. Reg. at 45,334 (internal citations omitted).
[43] U.S. Fish and Wildlife Serv., Marbled Murrelet Recovery Plan, at 50 (1997).
[44] ORS 496.171-496.192. The EA improperly identifies marbled murrelets as "State Threatened" in the table on page 28. ODFW, Threatened, Endangered, and Candidate Fish and Wildlife Species in Oregon (revised July 2021), https://www.dfw.state.or.us/wildlife/diversity/species/threatened_endangered_candidate_list.asp.
[45] ODFW, Status Review of the Marbled Murrelet (*Brachyramphus marmoratus*) in Oregon and Evaluation of Criteria to Reclassify the Species from Threatened to Endangered under the Oregon Endangered Species Act (Jan. 2018).

3. The Cook Creek Road Segment Relocation Project (FEMA-DR-4258-OR PW342)

The Cook Creek Road Segment Relocation Project is located along Cook Creek in Oregon's Tillamook State Forest, approximately 4 miles east of Foss County Road within a non-motorized recreational use zone. The Project proposes to relocate approximately 500 feet of Cook Creek Road roughly 130 feet upslope from its previous location, which was completely washed-out during storms in December 2015. FEMA is providing a majority of the funding for ODF to rebuild the road.

Cook Creek Road is a one-lane gravel road with steep side slopes and turn outs, and is intended for heavy vehicles and equipment associated with forestry operations. The average width of Cook Creek Road, excluding turn outs, is 16 feet. It primarily provides access in the basin for logging. After the December 2015 storms, however, only Clammer Road provided access above the washed-out segment. Clammer Road is 12 feet wide and only open to passenger vehicles and downhill loaded log truck haul. Logging trucks cannot use Clammer Road to drive out of the Cook Creek basin due to steep grades. As a result, there has been no timber harvest in the area for over six years.

ODF is seeking FEMA funding for the Project to increase upper basin access and resume logging operations for at least two planned timber sales: South Side timber sale, which would clearcut 272 acres, and Tin Pants timber sale, which would clearcut 407 acres. These two timber sales are also planned to occur on steep slopes and entail constructing more than 3 miles of new roads and reconstructing or improving more than 21 miles of roads.

The Cook Creek Project itself aims to construct at least 1,900 feet of new road along a steep slope above Cook Creek, including the rerouted 500-foot section, and will disturb at least 2.9 acres of soil along the road. The Project's construction activities include clearing, grubbing, and brushing. These activities will involve removing all snags, down timber, and brush; installing culverts; excavating cutbanks; filling, grading, and laying gravel surface; and seeding, fertilizing, and mulching disturbed areas. Although the Project's clearing and brushing would range from 25 feet to 130 feet in cut slope locations, the Project's EA limited its analysis to a clearing width of only 50 feet. Despite this cursory analysis, FEMA admitted that the Project will cause and contribute to short-term and long-term sedimentation, which are likely to affect Oregon Coast coho salmon and critical habitat in Cook Creek. Although the Project will undoubtedly affect Oregon Coast coho salmon that spawn and rear in Cook Creek, FEMA nevertheless concluded "no effect" and did not engage in consultation with NMFS under section 7 of the ESA.

Analyzing only the impacts from rebuilding the road itself and not the effects of the connected timber sales or related road work—which are not likely to occur if the washed-out segment of Cook Creek road is not rebuilt—FEMA also wrongly concluded that the Project "is not likely to adversely affect" marbled murrelets. FWS issued a letter of concurrence on September 16, 2022, based only on analysis of effects in the Project area itself and not the connected effects of logging or road use.

VIOLATIONS OF SECTION 7(A)(2) OF THE ENDANGERED SPECIES ACT

Despite the Project's significant impacts, FEMA failed to consult with NMFS on the Project's effects to Oregon Coast coho salmon and arbitrarily concluded that the Project is "not likely to adversely affect" marbled murrelets. Accordingly, FEMA has violated the substance and procedures set forth in section 7 of the ESA. FEMA's failures to follow the best available science and to ensure that the Project does not jeopardize Oregon Coast coho salmon and marbled murrelets or destroy, or adversely modify their critical habitat, violate section 7 of the ESA. FWS's concurrence letter agreeing with FEMA's inadequate analysis similarly ignored the best available science, is arbitrary and capricious, and violates section 7 of the ESA.

As noted in both the Recovery Plan and 4(d) rule, logging and road construction threaten the continued existence of Oregon coast coho salmon, as well as the species' ability to recover.[46] Far from having no effect, the Project will adversely affect Oregon Coast coho by increasing sedimentation, providing an additional long-term source of erosion, removing woody debris, and constructing a road in an area that is susceptible to mass wasting, all of which have been identified as activities which cause "take" of Oregon Coast coho salmon.[47] FEMA itself acknowledged that there would be negative effects from the Project's "short-term construction and long-term use impacts."[48] FEMA arbitrarily failed to analyze these negative effects by only focusing on wrongly assumed long-term benefits.[49]

The Project will also affect Oregon Coast coho salmon by enabling timber sales to proceed with clearcutting nearly 700 acres on steep slopes that would not occur but for reconstructing and reopening Cook Creek Road. As FEMA recognized in the "Cumulative Impacts" section in the EA, these logging projects are likely to have "major" adverse impacts on water quality, fish, and birds. For example, the Project will allow for timber harvest and new haul routes and roads that will adversely affect water quality by increasing fine sediment to streams designated as critical habitat for Oregon Coast coho.

Thus, there can be no question that the Project, which authorizes road reconstruction and logging within Oregon coast coho salmon critical habitat, *may affect* the Oregon Coast coho and its critical habitat. FEMA's conclusion to the contrary—that the Project will have *no effect*—violates the best available science and is arbitrary and capricious, in violation of the ESA. By relying on its faulty "no effect" determination for Oregon Coast coho to evade consultation with NMFS, FEMA has violated both its substantive duty to ensure against jeopardy and adverse modification and the required process mandated in section 7 of the ESA.

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[46] *See*, *e.g.*, 60 Fed. Reg. at 38,011 (proposed Oregon coastal coho listing); 65 Fed. Reg. at 42,422 ("past and ongoing destruction of freshwater and estuarine habitats" are key factors for the decline of coho); Coho Recovery Plan at 3-22–3-24.

[47] 73 Fed. Reg. at 7816.

[48] EA at 22.

[49] *See Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 524 F.3d 917, 934 (9th Cir. 2008) (invalidating a biological opinion that failed to adequately consider short-term negative effects and relied on uncertain long-term benefits); *Pac. Coast Fed'n of Fishermen's Ass'ns v. U.S. Bureau of Reclamation*, 426 F.3d 1082, 1094 (9th Cir. 2005) (rejecting "no jeopardy" finding that failed to provide adequate, reasoned analysis of short-term impacts).

Relatedly, FEMA failed to adequately analyze the effects on marbled murrelets of the timber sales and road activities that would not occur but for the reopening of Cook Creek Road. Such adverse effects include disturbance from noise, loss of suitable habitat, increased exposure to predation, and habitat fragmentation. FEMA itself admitted in the EA that the timber harvests that will occur as a result of the Project, "especially clearcut harvest, retention cutting, and thinning" in unoccupied habitat, would adversely affect marbled murrelet habitat by reducing habitat quality and quantity, and that habitat connectivity and murrelet presence in the area are likely to be adversely affected.[50] Although FEMA noted these effects in its EA, the agency failed to analyze them when it concluded that the Project is not likely to adversely affect murrelets. FEMA's failure to do so is arbitrary and capricious, contrary to the best available science, and violates section 7 of the ESA. Additionally, by ignoring these impacts while authorizing the funding of the Project, FEMA has failed to ensure against jeopardy to marbled murrelets and the destruction or adverse modification of their critical habitat, in violation of section 7 of the ESA. FWS's concurrence in FEMA's faulty analysis similarly violates section 7.

CONCLUSION

If FEMA proceeds with funding the Cook Creek Project without a lawful analysis of the Project's impacts to Oregon Coast coho salmon and marbled murrelets, Cascadia Wildlands and Center for Biological Diversity intend to file suit to compel compliance with the ESA.

During the 60-day notice period, we will be available to discuss effective remedies and actions that will assure FEMA's compliance with the ESA, and all other applicable state and federal environmental laws. If you wish to avail yourself to this opportunity and avoid the need for litigation, or if you have questions about this letter, please contact the undersigned. If you are or will be represented by an attorney, please have that attorney contact the undersigned instead.

Sincerely,

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[50] EA at 41.

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Attachments

Attachment A

CENTER for BIOLOGICAL DIVERSITY Because life is good.

June 15, 2022

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Dear Mr. Kilner, Administrator Criswell, Secretary Mayorkas and Secretary Haaland,

Please accept these comments from the Center for Biological Diversity, Cascadia Wildlands, and our tens of thousands of members in Oregon on the Federal Emergency Management Agency's (FEMA) proposal to fund the reconstruction of Cook Creek Road in the Tillamook State Forest. In accordance with Section 11(g) of the Endangered Species Act ("ESA"), these groups also provide 60-day notice of intent to sue Secretary Mayorkas, Administrator Criswell and FEMA for failing to consult over the impacts of re-opening Cook Creek Road on Oregon Coast coho salmon and marbled murrelets as required by 16 U.S.C. § 1536(a)(2) as well as improper project segmentation and failure to account for cumulative impacts of the proposed road relocation.

Our primary concern with the project and with FEMA's environmental assessment (EA) is the limited focus solely on the road reconstruction itself to the exclusion of consideration of impacts from activities facilitated by opening the road, most notably logging. This point is underscored by the fact that the Oregon Department of Forestry (ODF) has planned three timber sales (Tin Pants, East Cook Creek and Cook Creek Overlook) dependent on opening of the road, involving clearcutting of more than 800 acres (see https://www.oregon.gov/odf/Documents/aboutodf/2023-aop-tillamook-district.pdf). These are undoubtedly the first of many sales that will be facilitated by opening of the road. In providing funding for the road, FEMA needs to consider the impacts

of these timber sales and other future logging under both the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA), in the latter case in consultation with the National Marine Fisheries Service and U.S. Fish and Wildlife Service.

Improper Project Segmentation and Failure to Consider Cumulative Impacts

The road reconstruction and the timber sales specifically enabled by opening the road need to be considered together for NEPA purposes. CEQ regulations describe how the agency should determine the scope of NEPA reviews, including connected actions, cumulative actions, and similar actions. Connected actions include actions that "[c]annot or will not proceed unless other actions are taken previously or simultaneously." 40 CFR §1508.25(a)(1)(ii). Such actions "are closely related and therefore should be discussed in the same impact statement." Id. And as noted in the EA, cumulative impacts "are those that result from the incremental impact of a proposed action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions." EA at 36 (citing 40 CFR 1508.7).

The EA specifies that foreseeable future actions include "timber harvesting, recreation, fire suppression, and maintenance of the ODF road network," but then provides a less than cursory analysis of the impacts from these actions. The sum of FEMA's cumulative impacts analysis is that the above activities "would continue to contribute minor incremental adverse impact to cumulative impacts on physical and biological resources," and ultimately that these impacts "will be negligible" when considered in relation to the impacts of logging, recreation and climate change across the Tillamook State Forest. EA at 36 and 37. By improperly segmenting the project, the agency creates a false impression that a larger project with more significant impacts appears smaller with less significant impacts, thus thwarting the legal requirements of NEPA.

Project segmentation is improper because it inhibits proper consideration of connected actions and cumulative effects. See *Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985) (finding improper segmentation, where environmental analysis of timber haul road was segmented from analysis of timber sale road was designed to facilitate). One review of project segmentation and cumulative impacts requirements stated:

> ... environmental analysis is intended to evaluate the entire scope of a single and complete project. However, when a federal action is divided and analyzed into smaller separate components it is known as "segmentation." Since all projects must start and end somewhere, project components may have independent utility and can be considered individually under NEPA. However, when an agency intentionally attempts to circumvent NEPA by dividing a federal action into smaller components in order to allow those smaller components to avoid studying the overall impacts of the single project then "improper segmentation" has occurred. Thus, it is unlawful for agencies to evade their responsibilities under NEPA by artificially dividing a major federal action into smaller components, each without significant impact. To permit non-comprehensive consideration of a project divisible into smaller parts, each of which taken alone does not

> have a significant impact, but which taken as a whole has significant impact, would provide a clear loophole in NEPA.[1]

Just considering the three timber sales already planned it's clear that, contrary to FEMA's conclusion, opening the road will have more than negligible impacts on an important area. In recent comments on ODF's annual operations plan (AOP) for 2023, which are attached to these comments and discuss the timber sales in question, a coalition of conservation groups recognized Cook Creek as "an important tributary to the lower Nehalem River that provides habitat for Oregon Coast coho (Endangered Species Act-listed as threatened), chum, fall chinook, winter steelhead, and sea-run cutthroat." Indeed, Cook Creek is designated critical habitat for Oregon Coast coho. 73 FR 7815; February 11, 2008. The comments also note that Cook Creek is one of 11 ODF-designated Aquatic Anchor streams on the Tillamook State Forest, meaning it is to be "managed in accordance with a strategy that prioritizes salmonid recovery" (State Forests Division, Species of Concern Operational Policy Number 1.3.0, effective September 9, 2010, p. 9), with relatively intact forests and that the three timber sales would clearcut 4.7% of the drainage. The coalition concluded, "We have serious concerns about risks to coho salmon and other species in Cook Creek under the operations proposed as part of the 2023 Tillamook AOP." Given these serious concerns from a broad coalition of conservation groups about clearly connected actions that pose potentially significant environmental impacts, FEMA should prepare a full environmental impact statement (EIS) and consider these three timber sales, as well as other serious impacts associated with re-opening this road.

Endangered Species Act Consultation is Required

FEMA's myopic focus on just the immediate impacts of the road also led it to miss clear impacts to ESA-listed Oregon Coast coho salmon and consequently, to fail to consult with the National Marine Fisheries Service (NMFS) as required by the ESA. 16 U.S.C. § 1536(a)(2). Considering only the immediate impacts of the road, the EA concludes that it will have "no effect on Coho salmon or its designated Critical Habitat." As an initial matter, this conclusion is in part based on the incorrect conclusion that there is no critical habitat for coho in the project area (EA at 24) when in fact there is designated critical habitat in Cook Creek, including in the improperly narrowly defined project area. This alone should have triggered consultation with NMFS.

Consultation is also clearly required because the effects of opening Cook Creek Road extend beyond just the immediate proposed construction, including the three timber sales discussed above. Under regulations put in place under the Trump administration,[2] the effects of an action include "the consequences of other activities that are caused by the proposed action" if those activities "would not occur but for the proposed action," including "consequences occurring outside the immediate area involved in the action." 84 FR 44976; August 27, 2019. The EA

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[1] Elijah Veenendaal 2012. Avoiding Improper Segmentation and Accounting for Cumulative Impacts During Deployment of a Broadband Infrastructure. Available at https://dukespace.lib.duke.edu/dspace/bitstream/handle/10161/5755/E.%20Veenendaal%20NEPA%20CAPSTONE%20PAPER%20%28Final%29.pdf.

[2] Note that these regulations are currently under litigation in which the Services have asked for voluntary remand and are thus likely to be reconsidered potentially resulting in an even more expansive definition of "effects of the action."

makes clear that these and other timber sales cannot occur without opening of the road because other roads into the watershed are not suitable for logging trucks, leading FEMA to conclude that were it not for the proposed action "ODF will simply retain the current conditions by abandoning this section of road and restricting access." EA at 7.

There also can be no question that the "other activities," namely the three timber sales, are "reasonably certain to occur," which is another requirement of the regulations. One criteria for reasonably certain to occur is that there are existing plans for the activity (84 FR 44981; August 27, 2019), which is clearly the case for these three timber sales.

It is also clear that the three timber sales in question meet the threshold for consultation, which is that they "may affect" the Oregon Coast coho salmon. 50 C.F.R § 402.14. Indeed, NMFS issued a rule specifying the types of activities that would result in "take" of coho, stating that "[a]ctivities that . . . could potentially 'harm' salmon"—like "logging" and "road construction in areas that are "susceptible to mass wasting and surface erosion," and the "removal of large woody debris and 'sinker logs' or riparian shade canopy"—will "result[ ] in a violation of the section 9 take and other prohibitions." 73 FR 7816, 7830; Feb. 11, 2008. As noted in our comments on ODF's 2023 AOP, the three timber sales in question all occur in areas with steep, convergent terrain that is prone to mass wasting and surface erosion. As such, FEMA is required to consult with NMFS over its funding of construction to re-open Cook Creek Road.

Additionally, by narrowly focusing on the immediate impacts of the road relocation, FEMA's analysis of impacts to ESA-listed marbled murrelets is inadequate. In 2021, the Oregon Fish and Wildlife Commission uplisted the marbled murrelet from threatened to endangered under the State of Oregon ESA,[3] reflecting the fact that despite nearly three decades of protection under the state and federal ESAs, the marbled murrelet has moved closer to extinction. In its status report written to inform the uplisting decision, Oregon Department of Fish and Wildlife noted the following:

> "Based on Northwest Forest Plan estimates, higher-suitability nesting habitat declined in Oregon from approximately 853,400 acres in 1993 to 774,800 acres in 2012, a net loss of 78,600 acres (-9.2% change). Losses were greatest on nonfederal lands during this period; 59,200 acres (21.1%) of higher-suitability habitat were lost on nonfederal lands compared to 19,400 acres (3.4%) on federal lands…
>
> The threat posed by inadequate state and federal programs and regulations has decreased since state listing of the Marbled Murrelet in 1995 and federal listing in 1992. For example, implementation of the Northwest Forest Plan greatly reduced the rate of habitat loss due to timber harvest on federal lands. Nonetheless, existing state and federal programs and regulations have failed to prevent continued high rates of habitat loss on nonfederal lands in Oregon."[4]

[3] This uplisting is improperly reflected in the EA, which identifies marbled murrelets as "State Threatened" in the table on page 24. ODFW Threatened, Endangered, and Candidate Fish and Wildlife Species in Oregon (revised July 2021), https://www.dfw.state.or.us/wildlife/diversity/species/threatened_endangered_candidate_list.asp.

[4] Status Review of the Marbled Murrelet (Brachyramphus marmoratus) in Oregon and Evaluation of Criteria to Reclassify the Species from Threatened to Endangered under the Oregon Endangered Species Act (January 2018)

Betts et al. (2020) described murrelets as "squeezed" between two habitats under threat: loss of older forest habitat and warming ocean conditions.[5] It is crucial that any potential risks to murrelet habitat are fully considered.

The EA acknowledges that there is documented nest activity and potentially suitable marbled murrelet habitat near the project site as well as trees that "could still be utilized by marbled murrelets even though there are better habitat options nearby." EA at 24, 26. The EA proceeds to draw conclusions solely about the project's noise levels, stating "it is unlikely that any noise generated from the project will affect any undetected nesting marbled murrelet." Id. This leads to the ultimate conclusion that the road relocation "will have no effect on Marbled Murrelet or its designated Critical Habitat as defined under Section 7(a)(3) of the ESA."

As discussed above in regard to coho, this conclusion was based on an inadequate NEPA analysis due to improper project segmentation and FEMA's failure to consider the cumulative impacts both of planned timber sales and other subsequent projects or uses that rely on or will be enabled by the road relocation and reopening. FEMA's analysis must go beyond the immediate noise impacts of the road relocation to consider how the planned timber sales and restored access to the area will impact the imperiled marbled murrelets. As such, FEMA is required to consult with U.S. Fish and Wildlife Service (FWS) over its funding of construction to re-open Cook Creek Road.

If FEMA does not remedy this violation within 60-days by initiating consultation with NMFS and FWS, we intend to file suit. Please do not hesitate to contact us if you would like to discuss this matter.

Sincerely,

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https://www.dfw.state.or.us/agency/commission/minutes/18/02_Feb/Exhibit_D/2%20ODFW%20Marbled%20Murrelet%20Status%20Review%201.18.18.pdf.

[5] Betts MG, Northrup JM, Guerrero JAB, et al. Squeezed by a habitat split: Warm ocean conditions and old-forest loss interact to reduce long-term occupancy of a threatened seabird. Conservation Letters. 2020;13:e12745. https://doi.org/10.1111/conl.12745.

Attachment B

To: The Oregon Department of Forestry—Public Affairs
2600 State St.
Salem, OR 97310

By electronic submission to: odf.sfcomments@odf.oregon.gov; Jason.R.COX@oregon.gov

From: Wild Salmon Center, Guido Rahr
Trout Unlimited, James Fraser
Association of Northwest Steelheaders, Ian Fergusson
Center for Biological Diversity, Noah Greenwald
350.PDX, Brenna Bell and Felice Kelly
Coast Range Association, Chuck Willer
Oregon Coast Alliance, Mike Manzulli
Beyond Toxics, Lisa Arkin
Native Fish Society, Jennifer Fairbrother
The Conservation Angler, Dave Moskowitz
Cascadia Wildlands, Grace Brahler
Oregon Wild, Sean Stevens
Portland Audubon, Bob Sallinger
Audubon Society of Lincoln City, Joe Youren
Salem Audubon Society
North Coast Communities for Watershed Protection, Nancy Webster
Northwest Guides and Anglers Association, Bob Rees
Josie Koehne (Josephine.koehne@gmail.com)
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Betsy Herbert, Ph.D. (betsyherbert4trees@gmail.com)

Cc: Oregon Board of Forestry

Date: May 05, 2022

Re: Comments on ODF's 2023 Proposed Annual Operations Plans.

On behalf of our members and the many Oregonians who support state forest conservation, we submit these comments on Oregon Department of Forestry's (ODF) FY2023 Annual Operations Plans (AOPs) as organizations and individuals. We appreciate the opportunity to provide and discuss comments on these AOPs, and ODF staff's prompt sharing of GIS data and other materials needed for these comments.

As detailed in these comments, our concerns with the proposed AOPs fall into four key areas and corresponding comment sections below.

1. **Unsustainability:** we are not confident that the proposed harvest levels are sustainable under current Forest Management Plan commitments.
2. **Performance Measure Non-Compliance:** ODF continues to clearcut layered and older stands despite being a long way from Board and legislatively-approved complex / old forest performance measures.
3. **Unique Area Impacts:** the AOPs promote logging related impacts in unique areas valuable for habitat and recreation. The proposed Habitat Conservation Areas, Cook Creek and Salmonberry River watersheds are our prime concerns.
4. **Steep Slopes, Road-system Expansion and Restoration:** the AOPs advance clearcut logging on steep slopes as well as expand an excessive existing road network, which in turn poses landslide and related risks to already compromised water and habitat quality. The AOPs promote those impacts while providing insufficient and vague commitments to habitat restoration work.

Section 1: Unsustainability—Context justifies a more conservative approach

We remain committed to long-term, sustainable management of publicly-owned state forest lands. But the AOPs promote continued unsustainable harvest levels that are not in keeping with balance.

As stated in our previous years' comments, according to the analysis completed by ODF as part of the exploration of a new FMP, current restrictions on harvestable areas were presented to the Board in a document entitled "Planning Area Constraints."[1] That document concluded 49% of the state forest land base was constrained, which in practice leaves 51% available for clearcutting (on average across the planning area).[2] Cumulative clearcut acres in recent years across this available 51% of the forest provide an estimate of the rate of final harvest, or rotation age, which reveal ODF is currently managing the areas available for clearcutting on an approximately 55 year rotation.

A 55-year rotation is more typical of an industrial forest, and it is troubling for several reasons. First, the majority of the stands clearcut by ODF are over 55 years of age, with many in the 80-year range. These older stands are relatively less common across the forest and produce much higher volumes that, once clearcut, will not be available under a shorter rotation in the future, creating an unsustainable forward-looking volume and revenue picture. Second, intensive harvests at this rate are not consistent with developing complex forest structure relevant to supporting biodiversity or with the advancement of climate smart forestry.

Current age structure on ODF-managed state forest lands is non-uniform (i.e., a diversity of age classes exist) but relatively lacking in stands over 80-years old and very scarce with respect to stands over 100-years old. This pattern is even more pronounced in the Coast Range and ODF's large blocks of state forest lands there (see adjacent and below figures[3]).

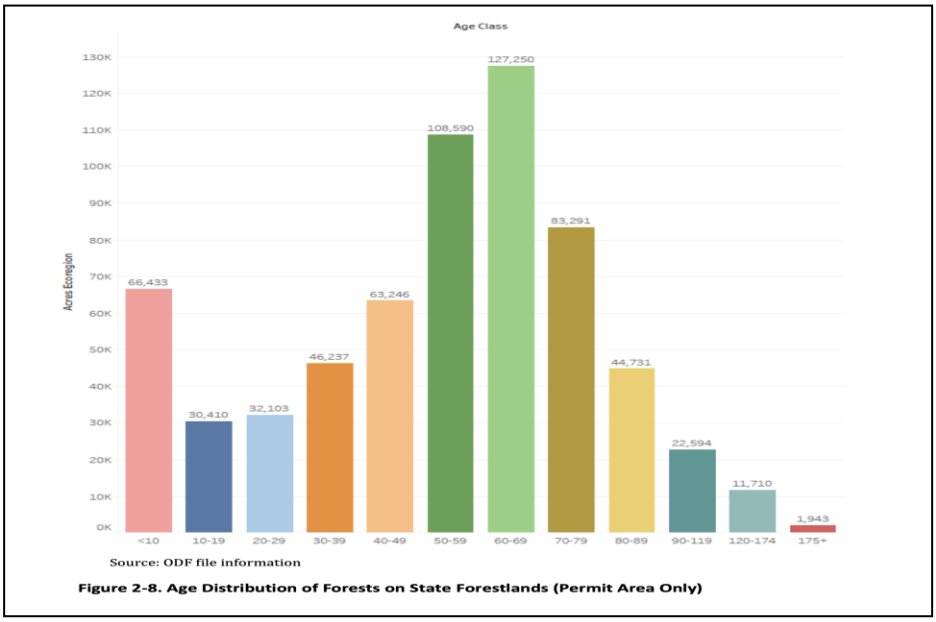


Figure 2-8. Age Distribution of Forests on State Forestlands (Permit Area Only)

[1] https://www.oregon.gov/ODF/Board/Documents/AFMP/15%20-%20Constraints.pdf

[2] Only some of these constraints relate to conservation values. For example, road surfaces are "constrained" from clearcutting as they have no trees, and the roads generally represent a threat to many conservation values, and rarely a benefit.

[3] These figures are from ODF's Public Draft W.OR State Forest HCP (Ch. 2—Environmental Setting, pp. 2-36, 2-43)

While not the only factor influencing forest condition, as stated in ODF's draft proposed HCP, *"Stand age is a major indicator of current forest condition and this non-uniform age distribution has significant implications related to forest management planning."* (see Public Draft W. OR State Forests HCP, p.2-35). We are glad state forests are not a monoculture, but the age classes that do exist are relatively young compared to the potential of these western Oregon forests. And, the "significant implication" for us is that, given past and current practices reflected in these AOPs, we see the opposite of a sustainable, on-target approach to realizing older structure across this landscape so as to meet performance measures, plan goals, or public demand (see Section 2 below) much less the habitat and growth potential of these forests. If ODF continues to drive down towards a 55-year rotation, how will complex and older age structure emerge across the forest in the future, as called for by performance measures, plan goals and public demand? Current condition and this trend are a big part of the reason we remain so concerned with clearcuts of Layered habitat as well as relatively older stands (80+ years).

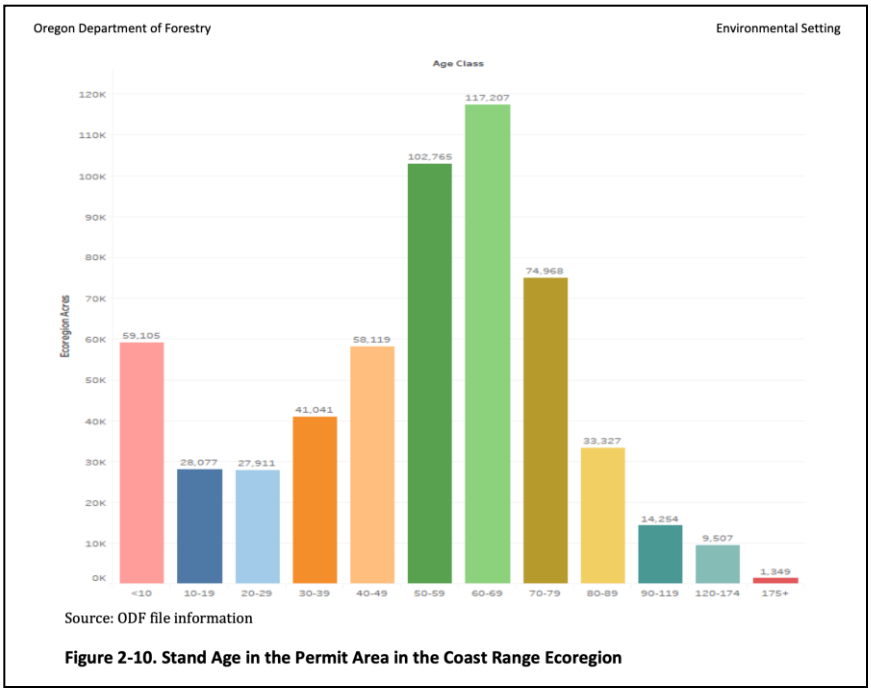


Figure 2-10. Stand Age in the Permit Area in the Coast Range Ecoregion

This pattern is incongruous with the Climate Change and Carbon Plan adopted by the Board, which commits ODF to leadership in climate smart forestry on state forest lands. Short rotation management results in a net output of carbon dioxide to the atmosphere, which is especially severe from private lands commonly managed on rotations of 35 to 45 years. It can also have detrimental impacts on instream flows and hydrographs (see western Oregon-based forest research by Perry & Jones[4]), which during a time of climate change, need conservation attention in coastal streams flowing through state forest lands. Finally, the level of risk of total stand loss to wildfire is increased by a 55 year rotation. In a future where fire frequency is likely to be much greater, longer rotations and older forests offer a significant financial and ecological advantage.

As a result of circa 2010 direction, ODF is operating at the high-end of harvest levels (lower end of complex forest habitat range) under its current Forest Management Plan. This round of AOPs marks the final year under the current Implementation Plan for this FMP and the Annual Harvest Objectives it establishes.

Two sets of recent remote-sensed satellite data modeling (both LEMMA and EMAPR / produced by The Environmental Monitoring, Analysis and Process Recognition Lab at Oregon State University in 2018) highlight ongoing concerns over the sustainability of past and current harvest levels. They indicate downward above-ground carbon biomass trends on three ODF state forest districts. A declining trend emerges in the mid-2000s, which trails (perhaps not coincidentally) an earlier increase in timber harvest in the early 2000's in response to a new FMP and later policy decisions to manage to the higher end of harvest ranges. This forest-

[4] Perry TD, Jones JA. "Summer streamflow deficits from regenerating Douglas-fir forest in the Pacific Northwest, USA." *Ecohydrology*. 2017;10:e1790. *https://doi.org/10.1002/eco.1790*

carbon satellite data is not the only source of data relevant to forest inventory measures on state forests, but they are relevant and credible sources, have not been refuted, and are cause for concern.

ODF staff and Board Members Justice and McComb are involved in an ongoing process to further understand whether inventory has been declining on state forest lands due to past and/or ongoing harvest levels. Instead of continuing to forge ahead with aggressive harvest levels at the high-end of the current FMP as the current AOPs do, the sustainable approach to take now would be ratchet back while this effort to understand and address inventory concerns plays out. This is especially true with respect to layered stands, where ODF should reverse its movement toward a 55 year rotation on "unencumbered acres" by ending clearcutting of layered stands or those in the 80 year and older range.

Section 2: Performance Measure Non-compliance

In recent years, ODF and the Board have abandoned a metric-driven and indicator-based approach to state forest management. Of course, metrics are available to assess progress on aspects of forest management, such as those found in the Performance Measures adopted by the Board to guide state forest management.[5] The Performance Measures contain useful and specific targets for forest management goals, including on such topics as hydrologic connectivity of roads. There are also Key Performance Measures on which the Board and ODF report to the legislature, including the amount of complex forest habitat on state lands, which has been in steady decline under ODF's stewardship despite clear direction to increase complex forest. The only metric we see regarding justification of current AOP harvest levels are harvest projections tied to a decade old IP.

In 2007, the Board adopted state forest management Performance Measures that included a goal of reaching 17-20% complex forest condition by 2027. Fifteen years later, and just under five years away from the goal's target compliance date, ODF is well short (approx. 11% is our understanding of the current compliance level, with the Astoria District being closest at approx. 15%). Despite being well short of the 2027 goal, ODF continues to propose clearcutting in complex stands instead of prioritizing progress towards goal attainment.

Continued clearcutting of complex, layered or older stands is particularly alarming because of the sharp decrease in overall complex forest that has occurred in recent years, largely due to corrections in modeling and partly due to ODF elimination of such stands.[6] Clearcutting layered stands while already short of performance measure goals and while operating at an effective 55-year rotation on the available acres contravenes Board direction and the mandates of the current FMP. In 2019, ODFW discouraged destruction of these forests in their comments on the 2020 AOP for the Astoria District:

> "Layered Stands: ODFW also noticed several examples where layered stands with larger diameter trees have a proposed treatment of modified clear-cut (MC). We recognize the financial situation of ODF, but **these habitats provide some of the highest quality wildlife habitat on the district**. We encourage modified clear cuts to be focused in closed single canopy (CSC) or understory development (UD) stands." (E*mphasis added*)[7]

[5] The 2013 Board of Forestry State Forests Performance Measure Report (84pp) identifies only 3 of 9 performance measures tied to revenue production. It can be found here: https://digital.osl.state.or.us/islandora/object/osl:29613 (But not on ODF's website).

[6] Supporting information was formerly found here but the current ODF website indicates "page not found" and that it may have been moved or removed: https://www.oregon.gov/ODF/Board/Documents/BOF/20190904/D1_BOFATTCH_20190904_D_01_Annual%20Performance%20Progress%20Report%202019.pdf

[7] Astoria District AOP 2020, Appendix C.

The recent Oregon Court of Appeals decision in the *Linn County* litigation affirms a broad understanding of Greatest Permanent Value, which is ODF's north-star directive for management outcomes on state forest lands. (see *County of Linn v. State of Oregon*, 319 Or App 288 (2022)). This legal decision directly renounces the contention that ODF must place timber harvest above other values in order to maximize revenue to local counties and taxing districts, even if in tension with conservation or other values. (see *Id.*)[8] When this decision is combined with existing underperformance on performance measures tied to roads, complex forest habitat and other values, ODF should be taking a step back from further clearcutting of Layered or older stands (the forest condition that would otherwise grow into older, complex habitat) and expanding a road network that is already excessively costly in terms of its impacts as well as dollars to maintain. There are other pathways that should be pursued, as articulated after the bulleted sales below.

The following proposed timber sales reflect concerns over complex, layered or older stand management:

Astoria District:

- **Grand Ball:** Of the 167 total acres of this project, approx. 73 are in Layered condition (17 acres in Unit 1; 56 acres in Unit 3), including trees in the 80-year and above range. The majority of Unit 3 is within a spotted owl circle, and Units 1 and 3 are in the Buster Creek Aquatic Anchor designation.
- **Cattle Drive:** This project would clearcut 50 acres (Unit 2) of currently Layered stands between the ages of 73-81 years old.
- **Mill Shack** (Alt): This project would convert 56 acres (Unit 3) of currently Layered stands to regeneration / clearcut status. Of the 290 total acres of this project, approximately 73 are in currently Layered condition (17 acres in Unit 1; 56 acres in Unit 3),

Forest Grove District:

- **Hog Heaven:** This clearcut would include 3 acres of current condition Layered in order to facilitate a logical sale boundary.
- **Nor Scogg:** a modified clearcut in current Understory condition stands that calls out a 6 acre stand of 88 year old forest a distinct from the other 100 acres, but there is no commitment to avoid or take a different logging approach in this stand.
- **CE Junction** (Alt)—This 117 acre modified clearcut contains 5 acres of DFC complex designation that would be removed and changed to non-complex in order to create logical clearcut boundaries.
- **Triple Crown** (Alt): Mixed conifer and red alder stands in Units 1 and 2 (totaling 140 acres) are 83 years old, and the 9 acre stand in Unit 3 is 92 years old. Despite these relatively older ages, the stands within this sale have a current condition of Understory with a DFC of non-complex stands.
- **Wolfs End** (Alt): This 115 acre modified clearcut of stands between 82 and 84 years old would remove 91 acres of current condition Layered forest.

[8] Counties in the *Linn County* lawsuit argued the existence of a "statutory contract" between them and the State / ODF that translates the statutory Greatest Permanent Value management standard into a requirement of timber revenue maximization from state forests. The Oregon Court of Appeals disagreed and overturned an underlying County Circuit Court opinion. The Court of Appeals determined GPV is not part of any contract between the state and the counties who transferred land to ODF and "does not contain a promise to the counties", whether one of timber revenue maximization or otherwise. (*Id.* at 307).

While the Court did not "conclusively construe the phrase" GPV (*Id.* at 309), the Court rejected the county argument that GPV means "maximization of revenue at the expense of other kinds of value", stating the notion that the term "value" in GPV means revenue maximization "is, at the very least, ambiguous" (*Id.* at 311) and also that the term has "myriad definitions, some of which could relate to revenue production and others that do not relate to revenue production." (*Id.* at 310). Importantly, the court noticed that the Oregon legislature referred to "value to the state" when creating the GPV language, not "value to the counties" (*Id.* at 312), and in so doing, chose the state not the counties as "the reference point for 'value'" such that "it was the state, as a whole, and not the counties, that was intended to be the beneficiary of the management standard… ." (*Id.* at 307).

N. Cascades District:

- **Captain Kirk**: This 59-acre modified clearcut is in currently 80 to 84-year-old Douglas-fir and western hemlock Understory condition stands. It includes 5 acres of DFC Complex designated stands that will be reduced to General in order to make Unit 1 operationally feasible ("minor modification is necessary to construct a road and yarder settings to make Unit 1 operationally feasible.").
- **Crab Kake:** This 97 acre sale would clearcut 84 year-old stands of Douglas-fir and western hemlock trees currently designated as Understory condition.
- **Last West** (Alt): This is a 67 acre modified clearcut of 85 year-old Douglas-fir forest currently designated as Understory condition.
- **Kaupper Top** (Alt): This 79 acre sale would clearcut a 95 year-old Douglas-fir and western hemlock stands currently designated as Understory condition.
- **Mad Merrill** (Alt): This 111 acre sale would clearcut 87 year-old Douglas-fir and western hemlock stands currently designated as Understory condition.

West Oregon District

- **Doe a Deer:** This Common School Fund land timber sale contains 3 clearcut units across 55 acres of 61- 87-year-old stands, half of which is designated as current Understory condition, and the other half is Layered. In addition, Unit 3 is adjacent to a Type F stream that serves as a domestic water source (with no registered point of diversion or domestic water site is shown on the Water Resources Department Layer). During sale layout, foresters will look for the presence of a water intake within the sale boundary. Finding the intake is one thing; the water quality flowing into the intake is another. Does ODF intend to modify Unit 3 or logging practices in any way other than the required Type F buffers, given the domestic water source issue?

Western Lane District:

- **North Pat:** This two unit sale would clearcut clearcut 120 acres of 71-year-old Douglas-fir stands currently designated as Layered condition.
- **Roughage Final:** This is a 108 acre modified clearcut of 90-year-old Douglas-fir trees currently designated as Understory condition.
- **Druggs Creek** (Alt): This two unit sale would clearcut 97 acres of 90-year-old Douglas-fir stands currently designated as Understory condition.
- **Speed Walker** (ALT): This sale would clearcut 95 acres of 76-82-year-old Douglas-fir stands , of which 47 acres are current Layered condition (Unit 2). The AOP states that this "sale is not within the mapped landscape design for developing desired future condition complex stands." Does this mean that is designated as DFC non-complex, or just that it is not designated?

Tillamook District:

- **Tin Pants:** contains 21 acres of what is currently designated as future Layered habitat (Unit 202), which would be changed to General habitat and clearcut.
- **Diamond Wallow:** contains 14 acres of what is currently designated for future Layered habitat (Unit 344), which would be changed to General habitat and clearcut.
- **Schmeagle Hill:** contains 22 acres of what is currently designated for future Layered habitat (Unit 630), which would be changed to General habitat and clearcut.
- **North Miami** (Alt): this project includes three clearcut units totaling 251 acres, with age ranges between 67-91 years old. The stands are located in the Miami River Aquatic Anchor, designated as

current Understory or Closed Single Canopy condition, and have not had any previous management. Although the AOP language says "Efforts will be made to ensure that the residual green trees are generally comprised of the oldest available." (i.e., through pre-sale marking), there is no proposal to increase leave tree retention above base levels despite the relatively older ages in this proposed project. We would like to know roughly what proportion of the trees are within the 80-91 year old age range, and why increased retention levels should not occur.

- **Edwards Butte** (Alt): contains 24 acres of future-designated Old Forest Structure (Unit 348), which would be converted to General and clearcut. The AOP says, "The acres will be relocated to a more appropriate location adjacent to a larger existing block of DFC complex." But it does not state where or when. And given the current scarcity of this condition on the state forest landscape, ODF should clarify this commitment before going ahead with this designation change and timber sale.

The above timber sales raise several key concerns that we would like ODF to address prior to AOP adoption:

(A) Layered Stands: Given ODF's ongoing failure to meet Key Performance Measures for older, complex forests, we oppose continued clearcutting of Layered habitat. We continue to endorse the 2019 ODFW recommendation to avoid clearcuts in layered stands and are disappointed it has not been better reflected in the 2023 AOPs. We believe ODF should remove layered stands from proposed modified clearcut units (i.e., either draw sale boundaries to exclude them, retain them in their entireity, or convert to a strategy of thinning to promote older structure within these stands).

(B) Re-designations: Backtracking from future complex forest performance measure and goal compliance is furthered not only when ODF clearcuts layered, older stands but when it re-designates DFC from Layered to General (or, complex to non-complex). Shifting future Layered designations to General habitat is a common ODF practice (i.e., this year is no exception), and cumulatively over the years, they can add up to meaningful acreage. ODF often rationalizes these re-designations as "a minor modification, in order to facilitate a logical harvest boundary." (see e.g., Tillamook AOP, Diamond Wallow, Schmeagle Hill, Edwards Butte projects). We don't doubt that these kinds of changes facilitate easier or more logical harvest boundaries. Our concern is that these designation changes rarely seem to go in the other direction (i.e., it is a reduction rather than an increase in Layered or complex habitat on the landscape) at a time when performance measures argue for that.

At the very least, subtractions of designated future Layered habitat should be offset by movement of other habitat areas into Layered, OFS, or other DFC complex designation elsewhere. ODF has done this for the proposed removal / re-designation of OFS acres on the Edwards Butte project, and apparently the Schmeagle Hill project. The Schmeagle Hill AOP language states, "*DFC complex acres will be shifted south into a more appropriate location adjacent to a large block of existing DFC complex.*" We assume this refers to the 22 acres of DFS Layered habitat in this project, and as with our Edwards Butte comments above, ODF should clarify the specific location of Schmeagle Hill's re-designated DFC complex acreage. Moreover, this offsetting or re-designation of complex habitat should be done, with relevant clarity, as part of the AOP commitments for all projects that propose either clearcutting current Layered habitat and/or changing Layered habitat DFC designations into General or other designations that facilitate harvest.

(C) Older Stands: Despite a current designated condition as Understory and a DFC of General, many of the 2023 proposed clearcuts are located in relatively older stands. Is the current Understory or DFS General designation appropriate given the age of these stands (e.g., should they be candidates for re-designation to current or future complex forest structure, either as part of or in addition to the offsetting

process requested in (B) above)? This examination could and should also entail potential opportunities for thinning instead of clearcuts in these relatively older stands in order to promote future complex forest (and associated DFC re-designation), or incorporation into HCAs (as part of any next steps in the revision process for the draft state forest HCP's development). This kind of approach would be responsible in light of current complex forest performance measure and goal non-compliance, and it would help to promote future achievement instead of deviation from these measures and goals. Sales that seem to merit particular attention here include:

- Forest Grove: Triple Crown; Nor Scogg (older stands in select portions of certain units)
- Tillamook: North Miami
- Western Lane: Druggs Creek; Roughage Final
- N. Cascades: Captain Kirk; Crab Kake; Kaupper Top; Last West; Mad Merrill

(D) Tracking stand structure goal progress: In addition to deferring harvest of Layered / complex stands, offsetting removal of Layered / complex stands or their designations, and/or taking a different approach than clearcuts in older stands, ODF should track (by district) the progress it is or isn't making toward the stand structure goals and disclose this in the AOPs. It is a relatively easy thing to do and is important baseline work relevant to accountability. Beyond just helping us understand how ODF plans to meet its complex / OFS goals and performance measures in light of continued Layered or older stand clearcuts as well as re-designation DFC from complex to non-complex, it would help the public's understanding of the trajectory of forest development and its confidence in ODF as a manager.

Section 3: Unique Area Impacts—HCAs, Cook Creek and Salmonberry River

This section addresses concerns over certain unique areas (i.e., HCAs, Cook Creek and Salmonberry River watersheds). Some of the concerns noted below are part of larger concerns related to steep slopes, road system expansion, and habitat restoration needs, but we have identified specific issues tied to proposed Cook Creek and Salmonberry River watershed clearcuts that we believe merit ODF's particular attention and response.

Unique Area: Proposed Habitat Conservation Areas (HCAs) under the draft HCP

Unlike last year's AOPs, ODF has not proposed FY '23 clearcuts within proposed Habitat Conservation Areas associated with the draft Western Oregon State Forest Habitat Conservation Plan (HCP). Recognizing the long-term conservation-intentions tied to the proposed Habitat Conservation Areas (HCAs) with FY '23 AOPs that avoid clearcutting them is responsible, appropriate, and appreciated. Of the FY '23 AOP partial cut / thinning projects identified within proposed HCAs (e.g., Jesters Boot, Larkin, and East Wall thins), we would more information from ODF on how those prescriptions will reflect the intended HCA conservation outcomes.

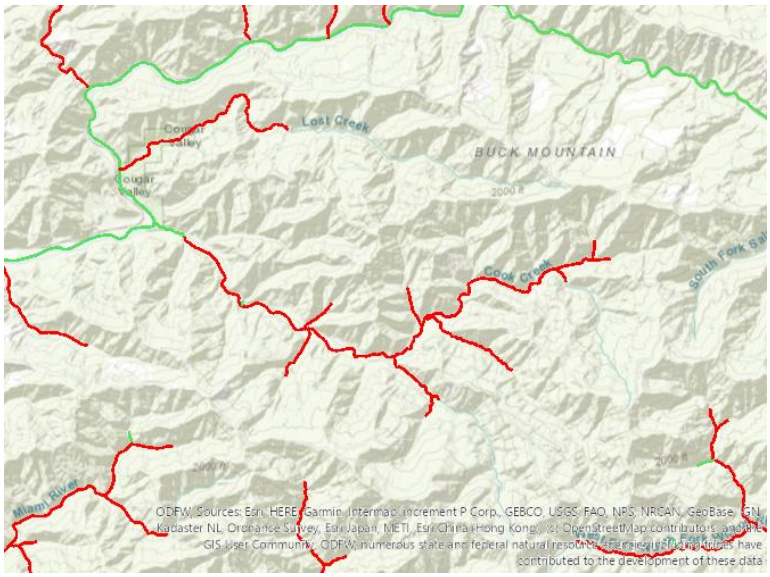
We recognize most of the AOP-proposed partial cuts state, "*The intent of this thinning is to promote habitat to preserve and enhance the existing structure within the stand. …*" and that "*Thinning prescriptions for these stands will be developed to create more complex structure and improve habitat*." (see e.g., Astoria AOP, Jesters Boot project). We look forward to working with ODF on these prescriptions and wish to clarify that wildlife biologists will be leading the shaping of prescription elements. Given the importance of HCAs for old forest species, including spotted owls, murrelets and red tree voles that are barely hanging on in the Tillamook and Clatsop, we ask that ODF seek outside peer review of the prescriptions from a qualified forest ecologist such as Norm Johnson or his colleagues. We also request a tour of the sales once marking is complete.

Unique Area: Cook Creek Timber Sales

Cook Creek is an important tributary to the lower Nehalem River that provides habitat for Oregon Coast coho (Endangered Species Act-listed as threatened), chum, fall chinook, winter steelhead, and sea-run cutthroat (*see* Oregon Department of Fish & Wildlife "Fish Habitat Distribution and Barriers" web map and image below). The mouth of Cook Creek is part of Cougar Valley State Park and serves as the downstream boundary of the recently-designated Nehalem River state scenic waterway. There is no hatchery program and no private land in the watershed. The forest is generally intact, and relatively few timber harvests have occurred in the basin recently. Cook Creek is one of 11 designated Aquatic Anchor (AA) streams on the Tillamook State Forest.

The Draft 2023 Tillamook District AOP proposes three Primary timber sales that would clearcut 4.7% of the Cook Creek AA acreage: Cook Creek Overlook (2 units), East Cook Creek (3 units), and Tin Pants (4 units). There is also an Alternate sale: Dry Creek (2 harvest units in the Cook Creek watershed; 1 harvest unit in the McPherson Creek watershed that flows directly into the Nehalem River).

We have serious concerns about risks to coho salmon and other species in Cook Creek under the operations proposed as part of the 2023 Tillamook AOP. We also note numerous deficiencies in the planning documents for the Cook Creek basin that inhibit the public's ability to understand what the agency is proposing for the FY 2023 operations, as further detailed below:



Oregon Fish Habitat Distribution and Barriers, showing coho spawning habitat (red) and coho rearing habitat (green) in the Cook Creek watershed.

a. Cook Creek is designated as "Aquatic Anchor," and clearcutting 4.7% of that habitat is not consistent with the governing Implementation Plan.

The Tillamook District Implementation Plan (2009) guides management activities in the Tillamook District until June 30, 2023, pursuant to a May 5, 2021 letter signed by State Forester Peter Daugherty. The 2009 IP provides that management activities conducted under it will be consistent with the Salmon Anchor Habitat Strategies (Tillamook District IP, p. 4), which expired June 30, 2013 and was replaced by the "Aquatic Anchor" (AA) strategy (Draft 2023 Tillamook AOP, p. 11).

AAs are defined as "the core of salmon recovery efforts on the Clatsop and Tillamook state forests" that are "managed in accordance with a strategy that prioritizes salmonid recovery" (State Forests Division, Species of Concern Operational Policy Number 1.3.0, effective September 9, 2010, p. 9). And at a high level, we commend ODF for proposing very limited FY '23 harvest operations within its Tillamook District AAs (eight of the eleven designated Tillamook Dist. AAs have no proposed FY '23 harvest operations; Draft 2023 Tillamook AOP, p. 12).

Accordingly, we are concerned that ODF proposes to clearcut an additional 4.7% of the AA acreage in a watershed as important as Cook Creek in FY 2023. The Cook Creek watershed has already had 9.3% of its AA acreage clearcut since fiscal year 2014 – in addition to partial cuts in 1.7% of its AA acreage. ODF should significantly reduce the acreage of harvests planned for Cook Creek – and thereby the amount of new road-building, road maintenance, and quarry development – by treating Cook Creek similarly to other AAs that have received minimal harvest since FY 2014 (e.g., Coal Creek, Foley Creek, Miami, Middle Kilchis, S Fork Salmonberry).

b. Cook Creek Road-washout and Road-building: The AOP and timber sale Pre-Operation Reports for the Cook Creek watershed raise concerns and provide insufficient detail.

<u>Cook Creek Road Wash-Out</u>

Cook Creek Road is washed out approximately 2.1 miles upstream of Anderson Grade Road (45°41'06.0"N 123°43'15.6"W), and the AOP and Pre-Operations Reports do not explain how, where, or when this will be rebuilt (see below):

Google Earth, Cook Creek Road wash-out looking north. The outside bend of the stream (near the top of the image) is against the hillside and directly underneath the former road location.

Cook Creek Road has been in this condition for over five years. Currently, road segments are perched on a south facing slope with a gap of approximately 50 yards (or longer) hanging above Cook Creek. The adjacent reach of the Creek appears to be highly mobile and likely to continue meandering across the valley bottom in the foreseeable future. Rebuilding this road portion appears to be a significant effort that would require either entirely re-routing it up the hillside, constructing a large span bridge, or something else. However, none of the AOP materials describe ODF's plan for where the road or bridges will be built, or when, and how timing (incl. permitting and construction windows) affects the viability of the proposed FY '23 timber sales. If ODF intends to rebuild the road in its most recent location, that would likely require removal and fill activities in the active stream channel. We cannot evaluate the environmental effects or feasibility of ODF's plans because the planning documents do not provide any information on how ODF plans to address this engineering issue.

The AOP provides that ODF will "reroute a portion of Cook Creek Road out of the river channel" and the Tin Pants Pre-Operations Report states that "there is a bridge to install on a fish stream, on Cook Creek" (*see* Draft Tillamook AOP at p. 33; Tin Pants Pre-Operations Report at p. 4). This doesn't satisfactorily inform the public of how the agency proposes to address this washout problem, or when the work would occur. These vague descriptions imply that there may be a road re-routing project and a bridge construction project, but due to the imprecise summaries and lack of information, we cannot discern whether these comments regard the same work or different projects entirely.

Further, the costs of undertaking this work seem under-estimated. The AOP references a "Cook Creek Reconstruction" road project costing $700,000 for 0.3 miles of work (*see* "Forest Roads Summary" on p. 46), but we cannot tell from the documents whether that regards the wash-out or something else. Given the complexity of the wash-out site shown in the satellite image above, we also question whether $700,000 is an accurate or realistic project cost estimate to remedy the wash-out. All of the above deficiencies need to be corrected before ODF approves this AOP and harvests relying on new bridges, new roads, or this washed-out portion of Cook Creek Road.

The significant time likely necessary to fix the wash-out suggests that the East Cook Creek and Tin Pants harvests will not be conducted until several years from now. Those operations will presumably rely on the washed-out road at some point, since the East Cook Creek Pre-Operations Report states "due to the Cook Creek washout, brushing is needed on all roads in the Cook Creek drainage system." The likely delay in washout-repair presents the likelihood that the East Cook Creek and Tin Pants sales will not be harvested until after the new proposed HCP is in effect, effectively "grandfathering" those operations into planning periods that will likely require more conservative forest management.

New Roads and increased Road Density

We are also concerned about the AOP's proposal to build approximately 4.25 miles of new road and 6.5 miles of road improvement in the Cook Creek basin alone (see Draft 2023 Tillamook AOP, p. 13-14). The AOP and related materials appear to show the locations of only a fraction of the 4.25 miles of new road and do not show the area of road improvement or maintenance at all. For example, the Cook Creek Overlook Pre-Operations Report notes that 1.78 miles of road will be constructed, 2.06 miles of road will be improved, and 5.22 miles of road will be maintained. The Cook Creek Overlook map shows approximately 3,000 feet of "New Road Construction" segments (in a very difficult to discern shading), but that is only about 1/3 of the new road referenced in the report. The improvement and maintenance work is not mapped.

We oppose further road densification in the Cook Creek watershed, which is very important to salmonids, largely intact, and has experienced relatively recent road washouts. We request that ODF

document what the current road density is for the Cook Creek watershed and provide an analysis of how increasing that road density as part of this AOP is consistent with ODF's AA policy, related Strategic Action Plans and other planning efforts by local watershed councils and other interests. At the very least, ODF needs to more clearly show where it is planning road activities – especially for new road construction – so the public can evaluate potential effects of that work.

c. Significant quarry development for the Cook Creek harvests, but almost no detail on where that work will occur or how it will be conducted.

The AOP provides that "quarry developments are planned" for four Tillamook District timber sales, including all three in the Cook Creek basin (Draft 2023 Tillamook AOP, p. 22). The Pre-Operations Reports for the Cook Creek sales reference the following rock sources: Fire Break 3 Pit, Jetty Pit, Cook Creek Pit, "Pits on Cook Creek," stockpiles, "local sources," and "onsite rock." This suggests there may be a new quarry (or quarries) or other sources developed in the Cook Creek watershed, but we cannot determine where those are located or how much material might be sourced from them. Accordingly, we cannot evaluate the potential effects on AA habitat, water quality, and other environmental factors. ODF must include that information in an AOP and Pre-Operations Reports if the public is expected to evaluate these types of proposals and provide meaningful input on them.

d. The Pre-Operation Reports for harvests in the Cook Creek basin inadequately describe the planned Stream Enhancement Projects

We appreciate that ODF looks for opportunities to conduct stream enhancement work in connection with its harvests. However, the agency must commit to that work if a related harvest operation is approved. The Pre-Operations Report form asks "Is there a Stream Enhancement Project planned?" with possible answers being "yes" or "no," with room for explanation. However, the Pre-Operations Reports do not provide commitments one way or another on this question.

Here, the Cook Creek Overlook report checks the "yes" box, but then explains "the Aquatic and Riparian Specialist has indicated that there is the potential for stream enhancement along *Creek Creek* [*sic*] and will be further evaluated." This typo about which stream will be enhanced needs to be fixed so readers can confirm where work will occur, but more importantly, the explanation should commit to whether the work will occur in connection with the Cook Creek Overlook operation (or not). Otherwise, decisionmakers and stakeholders might consider the stream enhancement as an important factor in determining a position on a harvest operation, only for the harvest to occur but the stream enhancement work not to be pursued or completed.

Each of the Pre-Operations Reports provides detailed information on harvest locations, volumes, etc. We request that ODF provide the public better information – and firmer commitments – for related stream enhancements in Pre-Operations Reports too, if stream enhancement potential is to be a meaningful factor in these decisions. Cook Creek is designated as AA (a "strategy that prioritizes salmonid recovery" as referenced above), and ODF must make firmer assurances about what Stream Enhancement Projects *will* get done in connection with a related harvest operation.

e. The proposed Cook Creek clearcuts will be visible from the recently designated state scenic waterway section of the Nehalem River.

The Nehalem River between Henry Rierson Spruce Run Campground (upstream end) and the mouth of Cook Creek (downstream end) is a designated state scenic river area. OAR 736-040-0120(1)(a). At

least one unit of the Cook Creek Overlook harvest would be visible from the scenic waterway. However, the Pre-Operations Report for Cook Creek Overlook does not mention this, even though Section X asks whether there are scenic resources in the vicinity. ODF should address the proximity of its proposed clearcuts to the designated waterway, including evaluation and disclosure of visual or other impacts on state scenic waterway values. This has further relevance since the AOP and related materials do not indicate where all new road construction tied to the Cook Creek sales will be located.

f. The proposed Cook Creek clearcuts seem to present significant likelihood of causing landslides, but that risk is not addressed in the agency's planning documents.

Slopes exceed 65% for all 9 Primary harvest units proposed in the Cook Creek basin (*see* Pre-Operation Reports for Cook Creek Overlook, East Cook Creek, and Tin Pants). Harvesting those slopes would seem to present significant likelihood of causing landslides, but the planning documents provide very little analysis on this issue. We are concerned about this minimal analysis and discussion of landslide risk because most of the Cook Creek watershed is mapped by ODFW as coastal coho spawning habitat, and designated by ODF as Aquatic Anchor, and those coho habitats are vulnerable to landslide disruptions. Oregon Coast coho salmon are listed as threatened under the Endangered Species Act, and based on the information presented by ODF for the Cook Creek operations, it seems reasonably likely that road or harvest-related landslides will occur and "take" that listed species.

<u>Unique Area:</u> Salmonberry Watershed Timber Sales

We have specific concerns over the following proposed timber sales in the Salmonberry drainage, which is another important habitat stronghold for salmonids: Front Nine (Units 1 and 3), CE Junction, and Wolf's End.

a. <u>Front Nine</u>

- Unit 1: ODF's geotech identified aquatic adjacent unstable slopes. The AOP pre-op report note says "see recommendations"; however, there is no indication what the recommendations are other than saying the sale prep forester will need to review and follow the directions given.

- Unit 3:
    - Trees at the unofficial campsite known as "Camp 9" should be excluded, leaving enough buffer around the campsite to limit hazards due to potential windthrow. This popular campsite has a long history of use, and clearcutting it would not be well received by recreational users.

    - The report calls for minor road improvements to the haul route (Salmonberry Road). However, on the northwest side of Unit 3 there are potential culvert issues on North Fork Salmonberry Road that could be exacerbated by increased runoff after clearcutting above the road. The culvert at 45.72414, -123.47508 should be inspected for potential blockage and to be sure it is sized adequately. This culvert does a poor job of drainage; it has allowed formation of a pond on the uphill side of the road. This pond has been there for many years.

      In addition, this site should be evaluated: by virtue of its long life as a pond, is it considered a wetland? Conversely, a pond on the uphill side of a road, created by an inadequate culvert, presents a potential road failure/debris slide on steep terrain. If the drainage problem is not addressed by culvert replacement, then the default should be to consider the area a small wetland and provide appropriate buffering. Either way, a conscious decision should be made.

b. **CE Junction** (Alt):

We appreciate that the cut is limited to the uphill side of the road and leaves a reasonable buffer between the road and the upper Salmonberry River. "No Harvest" shading on the stream on the east side of the unit appears to anticipate increased buffers for inner gorges, but once again we are asked to "see recommendations", which appear to be lacking. In addition, as noted earlier in this document, the District proposes changing five acres of DFC OFS to General in order to provide a logical harvest boundary, partially offset by two-acre change of General to Layered. ODF should designate at least an additional three acres from General to Layered.

c. **Wolf's End** (Alt):

The entire unit is listed with a slope >65%, without any slope stability issues noted, and involves a fish-bearing stream. This general area is categorized by DOGAMI as exhibiting very high landslide susceptibility. The south side of the Salmonberry drainage has a history of landslides, and the streams draining the area, including Wolf, Kinney, Belding, and Bathtub Creeks, have experienced severe debris torrents recently (1990, 1996, and 2007). This operation is bounded by a road along its entire upper edge. We wonder how ODF arrived at the determination that there are no slope stability issues. We disagree and believe this sale should be tabled until this concern is addressed.

Section 4: Steep Slopes, Road-system Expansion and Restoration

The AOPs advance clearcut logging on steep slopes as well as expand an already excessive existing road network, which in turn poses landslide and related risks to already compromised water and habitat quality. These impacts are promoted by the AOPs, while habitat restoration commitments remain vague or lacking.

a. <u>Roads</u>—proposed timber sales would increase already excessive state forest road density, and exacerbate current and future costs, impacts, and performance measure noncompliance

As with past AOPs, the FY 2023 AOPs would construct many miles of new roads in Oregon's state forests, adding to the several thousand miles of roads with impacts and costs that ODF already struggles to manage sustainably. In addition to concerns about specific units with construction of roads on steep, unstable slopes (see item on specific sales, below), we have two overarching concerns about roads.

First, ODF has a specific performance measure regarding roads that sets targets for hydrologic connectivity across watersheds. There is little sign in the plans that ODF is tracking or pursuing this target in a systematic way. Instead, the attention to roads in AOPs is generally related to maintenance and construction needed to facilitate timber sales. Second, given the extensive existing road network owned by ODF, we are concerned that disinvestment in non-revenue-producing activities could be leading to insufficient road maintenance. Roads are expensive to build and expensive to maintain and repair. While new roads built to current standards may create less environmental impacts relative to the past, they unavoidably create an ongoing financial liability for the maintenance necessary to ensure standards are met and continue to cause environmental harm.

Roads are a major source of adverse impacts to the many rivers and streams on the state forests, which serve as salmon habitat and provide drinking water to a number of Oregon communities. This concern is amplified during a time of climate change, where more precipitation is expected to fall as rain instead of snow, and rapid runoff or flood events are expected to occur at a higher rate than historically. Decommissioning of roads needs to be more clearly considered and integrated in ODF's planning and management commitments in order to reduce water impacts. As we noted last year, a third-party assessment of ODF's short and long-term road-maintenance challenges is urgently needed.

The following timber sales highlight excessive road building under the proposed AOPs, many of which are on the relatively steep ground of the Tillamook District and within in existing designated Aquatic Anchor habitats:

Tillamook District

- Kilchis Company (Alt)—3 miles new road
- Diamond Wallow—2.4 miles new road
- Breaking Boundary—3 miles new road
- Coast Range South (Alt)—2 miles
- N. Miami (Alt)—1 mile new road
- Edwards Butte (Alt)—2 miles
- Pothole Murphy—2 miles
- Schmeagle Hill—4 miles
- Cook Creek Overlook—2 miles new roads
- Tin Pants—2 miles new roads

Forest Grove District:

- Nor Scogg—over 1 mile of new spur road construction

- Back Track (Alt)—Approximately 2.14 miles of new spur road. Unit 2 is a moderate partial cut within a proposed Habitat Conservation Area and the Lousignont Ck. / Upper Nehalem River AA. We appreciate that the thinning prescription will be developed to create more complex structure and improve habitat, but how much of the road building will be within Unit 2 / within the proposed HCA?

- Lou's Stew—Approximately 1.46 miles of new spur road. Unit 6 is a partial cut within a proposed HCA in the Lousignont Ck. / Upper Nehalem River AA. How much of the new road building will occur in Unit 6 / in the draft HCA?

N. Cascades District:

- Crab Kake—1.2 miles of new road construction
- Turnidge Creek Thin—1.3 miles of new road construction

Western Lane District:

- North Pat—1.6 miles
- Roughage Final—1.1 mi of new road construction.
- Speed Walker—1.7 mi. of new road construction.

Although this significant amount of new road construction is proposed, the summary section information in each of the district AOPs largely speaks to road maintenance and improvement. For example:

> Astoria District: "Maintaining approximately 95 miles of road and improving approximately 76 miles of road to ensure ditch water is dispersed and filtered as much as possible, keeping runoff from entering streams."
>
> Tillamook District: "Maintaining 300 miles of road and improving approximately 12 miles of road to ensure ditch water is dispersed and filtered, keeping runoff from entering streams. These roads provide access to timber harvest as well as various recreational opportunities."

This summary information belies the significant amount of new road construction will occur under these AOPs. Only the Western Lane AOP seems to disclose this new road construction (see Western Lane District AOP Summary: "Constructing 3.1 miles of new road, and improving 1.5 miles of existing road.").

For the other districts, where is the accounting for new road construction? Is it rolled up in the summary numbers for "maintaining" or "improving"? The AOPs rightly categorize and disclose proposed timber sales by watershed / basin boundaries. But not with respect to roads. We request that ODF account for new road construction as a distinct activity, tallied individually and disclosed as part of a larger context disclosure of the current / pre-AOP road density (by basin, as is done with timber sales) versus the projected post-AOP density. In addition, while ODF discloses the road mileage that will be improved or maintained through a given AOP, receiving this information in the abstract does not indicate how many other road miles in a given basin are in need of maintenance. The public should know how much road density exists, how much is in need of attention, and whether ODF is exacerbating or improving this situation in a given AOP year.

Finally, several AOPs indicate that ODF will be "Reviewing District roads to develop plans to block

or vacate roads to help manage trash dumping and target shooting." (see e.g., Tillamook and N. Cascades AOPs). Why is ODF not also reviewing district roads in order to develop plans to vacate or relocate certain roads to help address water quality, habitat concerns, or hydrologic connectivity performance measure targets?

b. <u>Steep Slopes:</u> proposed AOP clearcuts (and related road work) on steep slopes will further harm already concerning conditions for landslides, habitat, and water quality.

Our concerns about the construction of new roads and existing roads are amplified by proposed clearcut logging, as well as road construction, on steep slopes. As in past years, we have used high resolution Lidar and the SHALSTAB model to identify terrain where landslides initiate, primarily steep, convergent terrain (herein referred to as "landslide terrain"). We then looked at whether a landslide initiated in such terrain had the potential to reach streams with spawning and rearing habitat for Oregon Coast coho as identified by ODFW. We identified a total of twelve (12) FY '23 AOP timber sales with problematic areas. Maps showing the problematic terrain are included with these comments (Appendix A). In some cases, relatively small adjustments to buffers could be made to include problematic terrain, whereas in others large proportions of the sales have landslide initiating terrain with the potential to deliver harmful sediments to streams with listed coho.

The following FY 2023 AOP timber sales have the potential to generate landslides that harm coho and streams based on their steep slope and road impacts, as well as their proposed approach to logging layered, complex forest and impacting recreation trail experiences in the area:

- **Back Track.** This is the only sale on the Forest Grove District (i.e., the other sales below are all on the Tillamook District) with steep slope concerns, and those are relatively minor. On the northeast edge of the sale, one of 4 areas that have the potential for a landslide to deposit harmful sediments into Reliance Creek, which is a coho stream, is buffered. We would like to see buffers added to the other three.
- **Bob Hembre.** The westside of this sale contains extensive landslide terrain with high potential to deliver to Hembre Creek, which is a coho bearing stream, including extensive areas steeper than 45 degrees both above and below steep, channelized terrain that generates landslide and debris flows. None of this terrain is buffered. We recommend dropping the portion of the unit west of the ridge and in the Hembre Creek Basin. Otherwise, the problematic terrain should all be buffered.
- **Clear Creek.** The western unit of this sale contains extensive landslide terrain above Michael Creek, a coho bearing stream. We recommend dropping this unit.
- **Cook Creek Overlook.** This north unit of this sale contains extensive landslide terrain adjacent to Cook Creek, a salmon bearing stream, only a portion of which is buffered. The buffering in the south unit is better, but could be slightly expanded. For the reasons stated above, we think this sale should be canceled. If ODF does proceed with this sale, these additional areas should be buffered.
- **Diamond Wallow.** The buffers in the southwestern unit need to be expanded uphill to avoid risk to the coho bearing unnamed tributary of Cedar Creek.
- **East Cook Creek.** As with Cook Creek Overlook, we would like to see this sale canceled. If not, all three units need to have extensive landslide terrain is buffered to avoid impacts to the

South and East Forks of Cook Creek.

- **Ed Sheridan.** Extensive landslide terrain in this sale needs to be buffered to avoid impacts to Edwards Creek, a coho bearing stream.
- **Edwards Butte.** The northern unit of this sale needs buffering to avoid risk to coho bearing Edwards Creek.
- **Kilchis Company.** All three units in this sale have extensive unbuffered landslide terrain with potential to deliver to coho bearing streams. This sale needs extensive additional buffering or to be canceled.
- **Musial Chairs.** This sale has extensive unbuffered landslide terrain over the Wilson River.
- **North Miami.** This sale has extensive unbuffered landslide terrain over a coho bearing fork of the Miami River. This doesn't appear to be a sale that can be buffered sufficient to remove risk and should be considered for cancellation. If not, extensive buffering needs to be added.
- **Tin Pants.** This sale has extensive unbuffered landslide terrain over the East Fork of Cook and Hoevet Creeks, which are both coho bearing. This doesn't appear to be a sale that can be buffered sufficient to remove risk and should be considered for cancellation. If not, extensive buffering needs to be added.

We request that ODF make the needed adjustments to proposed timber sale layouts and boundaries that would eliminate or significantly reduce the risk of landslide initiation resulting from human activity tied to the above timber sales.

c. Stream / Habitat Restoration: The AOPs lack commitment to restoration work.

The AOPs contain generalized language related to stream restoration work, along the lines of: *"There are stream enhancement opportunities identified in association with the sales in this AOP. Before determining if these potential projects will go into a full planning process, more field review is needed. The ODF Aquatic and Riparian Specialist will be consulted to help identify these candidates and may consult with ODFW fish biologists as needed."* (Astoria Dist. AOP, p.31).

Or, with respect to the pre-operations reports tied to specific proposed timber sales, ODF states something along the lines of, ""the Aquatic and Riparian Specialist has indicated that there is the potential for stream enhancement along *Creek Creek* [*sic*] and will be further evaluated." (*see*, Tillamook District AOP, pre-op. report for Cook Creek Overlook project; emphasis added).

Whether this Cook Creek timber sale example or others, ODF's AOPs and pre-op reports are very clear on the commitments made for timber volume production (i.e., where, when, how much, harvest type, roads, etc.) while generally containing very little commitment to actually doing anything during their timeframe for habitat restoration. In other words, although road-building and clearcut logging will occur in specific areas of a given basin as a result of an AOP's signing / approval, the habitat restoration commitments in these areas are left to a level of "potential" or "further evaluation" or consultation and future possibility.

ODF's AOPs should commit to whether habitat restoration work will occur in connection with a

given timber sale (or not). Decisionmakers and stakeholders might consider a stream enhancement project as an important factor in determining their position on a harvest operation. While they might appreciate that ODF looks for opportunities to conduct stream enhancement work in connection with its harvests, they should have clarity and confidence about whether the non-timber / stream restoration component associated with a given timber sale will actually occur. Many timber sales and associated potential stream restoration projects are in designated Aquatic Anchor habitats (i.e., a "strategy that prioritizes salmonid recovery" as referenced above). We request that ODF give the public firmer assurances as to whether (or when) a stream enhancement project *will* get done in connection with a related harvest operation approved by an AOP.

Conclusion:

For the reasons we have noted, the 2023 AOPs are inconsistent with Board direction and current plans (i.e., the Forest Management Plan and the Climate Change and Carbon Plan) and present significant concerns regarding performance measures, climate change and sustainability.

We are acutely aware of the tradeoffs that ODF and Oregon face in the management of its state public lands. It is ODF and the Board's job, on behalf of the public, to make decisions with the public's interest at center. The recent Court of Appeals decision in the *Linn County* case confirms this. But while the FY 2023 AOPs propose an approach more consistent with the proposed Habitat Conservation Area planning under the draft HCP, the AOPs continue to reflect direction that emphasizes near-term timber revenue from clearcuts while disregarding Board and FMP direction, longer-term impacts to future strategies, and negative consequences for non-revenue related public values.

We believe ODF should be reducing harvest levels proposed under the 2023 AOPs in light of the concerns raised in these comments. This includes avoiding entry into the Cook Creek basin, not cutting layered stands, removing units that pose a steep slope and landslide concern, and addressing road density and restoration issues more proactively.

Thank you for your consideration of these comments and we look forward to ODF's response. On behalf of the signatories listed at the outset of these comments, we would look forward to further discussion.

Appendix A: Map series relevant to Comment Section 4(b)—Steep Slopes and Landslide Risk

See separate pdf. Document submitted on 4/06 at 12:40pm