



Chapter 1

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1.1 INTRODUCTION

The State of Washington (hereinafter referred to as the State) has submitted applications to the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) (collectively referred to as the Services) for authorizations that would allow for otherwise-prohibited take of aquatic species under the Endangered Species Act (ESA). The applications are based on the Washington Forest Practices Rules and regulations presently governing forest practices on non-Federal and non-tribal land in Washington State. The State is applying to the Services either for two separate Incidental Take Permits (ITPs) under ESA Section 10(a) (1) (B), or for slightly different types of qualification under ESA Section 4(d) "protective rules." ESA Section 4(d) provides the Services discretion, through the Secretaries of Commerce and Interior, to develop protective regulations deemed necessary and advisable for the conservation of threatened species.

1.1.1 Structure of the Endangered Species Act

The "take" of a species listed by the Federal government as endangered is prohibited under Section 9 of the ESA. For species listed as threatened, the USFWS has an existing protective regulation that automatically extends the Section 9 take prohibition to



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1 threatened species when they are listed. In contrast, NMFS uses rulemaking to extend the
2 take prohibition to threatened species after they are listed. NMFS also uses the Section
3 4(d) rulemaking process to limit and define the extent of the take prohibition. NMFS
4 accomplishes this by describing specific programs that, although they might result in some
5 harm, are found to contribute to the conservation of the affected species. Similarly,
6 USFWS uses Section 4(d) rulemaking to create exemptions to the extension of the take
7 prohibition to specific threatened species.

8 The term “take” is defined under the ESA to mean harass, harm, pursue, hunt, shoot,
9 wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct
10 (16 United States Code 1532 [19]). Harm is further defined by the USFWS to include
11 significant habitat modification or degradation where it actually kills or injures wildlife by
12 significantly impairing essential behavioral patterns, including breeding, feeding, and
13 sheltering (50 Code of Federal Regulations (CFR 17.3)). The NMFS definition of harm
14 includes significant habitat modification or degradation where it actually kills or injures
15 fish or wildlife by significantly impairing essential behavioral patterns, including breeding,
16 feeding, spawning, migrating, rearing, and sheltering (50 CFR 222.102; U.S. Federal
17 Register, Vol. 64, No. 215, November 8, 1999, pages 60727-60731).

18 The Services may bring civil and criminal proceedings against persons for violation of
19 Section 9 and the ESA. In addition, Section 11(g) of the ESA allows any third party to
20 enforce Section 9 (or any other provision of the ESA) through civil action.

21 The ESA provides mechanisms by which the Services may authorize incidental take (i.e.,
22 take of listed fish or wildlife species that results from, but is not the purpose of, carrying
23 out an otherwise lawful activity conducted by a Federal agency or applicant (50 CFR
24 402.02)). One mechanism is a take authorization that can be obtained under ESA Section
25 10(a) (1) (B) through an ITP for endangered, threatened, proposed, and other species that
26 may be listed in the future. Another mechanism is through findings made by one or both
27 of the Services that activities are consistent with a rule adopted pursuant to Section 4(d) of
28 the ESA. Section 4(d) applies only to species listed as threatened at the time of
29 Section 4(d) rule issuance, and only to the species specifically addressed in any particular
30 Section 4(d) rule. It can be obtained from NMFS for certain salmon and steelhead
31 populations through a limit from take prohibitions (referred to as a take limit) under an
32 existing NMFS ESA Section 4(d) rule, or through an exemption defined in a new
33 Section 4(d) rule. It can be obtained from USFWS only through an exemption defined in a
34 new ESA Section 4(d) rule (because no existing USFWS 4(d) rules apply to forest
35 practices in Washington State). Throughout this document, each of these mechanisms is
36 referred to as “take authorization.” To provide take authorization, generally, the Services
37 must find that the activities in question are incorporated into a conservation plan or other
38 similar program that minimizes and mitigates its impacts on the species addressed in the
39 plan.

40 Enforcement actions for prohibited take brought under Section 9 are generally, but not
41 exclusively, viewed to be associated with the specific facts surrounding particular, site-

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1 specific actions. A successful Section 9 enforcement action must attribute take to a
2 specific action. The usual remedy under Section 9 includes cessation of the activity that
3 takes the listed species, but does not typically include any requirement that action
4 benefiting the species be taken. Incidental take authorization under ESA Section
5 10(a)(1)(B) or Section 4(d), on the other hand, is viewed to be associated with proactive
6 and broad-scale actions that combine conservation measures with otherwise lawful
7 activities, such as implementation of the Washington’s Forest Practices Rules that are
8 applicable across a large landscape. As a result, the Services anticipate greater
9 conservation benefits accruing through use of ESA Section 10(a) (1) (B) or than Section 9
10 because of the greater breadth, duration, and scope of the conservation initiative when
11 compared to the focus and outcome of a Section 9 enforcement action. For those
12 conducting forest practices, the regulatory certainty provided by take authorization comes
13 at a cost, including forgone revenue, and time and management costs that are associated
14 with implementing a conservation plan that meets ESA requirements. That cost must be
15 weighed against the risks, such as penalties and legal fees, associated with a potential
16 Section 9 enforcement action for particular forest practices (presumably less conservation-
17 oriented practices) that are not covered by a take authorization.

18 Although ITPs under ESA Section 10(a)(1)(B) and take limits or exemptions developed
19 under ESA Section 4(d) protective regulations are different in their procedural
20 requirements and substantive incidental take coverage, each provides an assurance that
21 certain activities can occur despite their effects on listed species, if the activities are carried
22 out under a plan or program that meets certain requirements in the ESA. For the purposes
23 of this Draft Environmental Impact Statement (DEIS), the take authorizations are expected
24 to: 1) provide regulatory stability for forest management activities that are regulated by the
25 Washington Forest Practices Regulatory Program (an ITP, in particular, provides such
26 stability for the long-term); 2) allow for the protection of species addressed in the ITP or
27 Section 4(d) rule across a broad landscape (approximately 9.1 million acres); and 3)
28 provide a regulatory climate and structure more likely to keep landowners in commercial
29 forestry rather than converting forestlands to other uses that may be less desirable for
30 salmon recovery.

31 **1.1.2 Washington State’s Forest Practices Habitat Conservation Plan** 32 **(FPHCP)**

33 Discussion and negotiation of issues that would ultimately culminate in the State’s FPHCP
34 described under Alternative 2 of this DEIS began in the spring of 1997, through the efforts
35 of the Timber, Fish, and Wildlife (TFW) collaboration. TFW was a forum of private forest
36 landowners, Native American Indian Tribes, State (and later Federal) resource agencies,
37 the governor's office, and the environmental community. The 1997 TFW discussions
38 focused on forest practices and existing and pending salmonid species listings under the
39 ESA and the inclusion of more than 300 stream segments on Washington forestlands
40 considered impaired under the Clean Water Act 303(d) list.

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1 The environmental community participants withdrew from the discussions in September
2 1998, and the work was renamed by the evolving documentation of its work, the Forests and
3 Fish Report (FFR) (FPHCP Appendix B). The remaining five TFW stakeholders continued
4 to work together to develop the final FFR, April 1999, and proposed legislation for the 1999
5 State legislative session. The State Legislature passed the Forests and Fish Law (Engrossed
6 Substitute House Bill [ESHB] 2091; DEIS Appendix C) which was included in Title 76 of
7 the Revised Code of Washington. The Forest Practices Board adopted permanent rules (Title
8 222 Washington Administrative Code [WAC]) implementing new forest practices
9 regulations on May 17, 2001 (subsection 1.3.1, Washington Forest Practices Regulatory
10 Program).

11 The State's application for ESA take authorization is a major step towards achieving the
12 goals of the FFR. The four goals identified by this broad-based report are:

- 13 1. to provide compliance with the ESA for aquatic and riparian dependent species on
14 non-Federal forestlands;
- 15 2. to restore and maintain riparian habitat on non-Federal forestlands to support a
16 harvestable supply of fish;
- 17 3. to meet the requirements of the Clean Water Act for water quality on non-Federal
18 forestlands; and
- 19 4. to keep the timber industry economically viable in the State of Washington.

20 Because the applications from the State seek take authorizations for species under the
21 jurisdiction of NMFS and species under the jurisdiction of USFWS, NMFS and the
22 USFWS are acting as joint lead agencies for the preparation of this DEIS.

23 The species that would be addressed by issuance of an ITP include all threatened and
24 endangered fish listed at the time of this application, and occurring on the covered lands in
25 Washington, plus other native fish and seven stream-associated amphibians. Most
26 anadromous fish species fall within the jurisdiction of NMFS, while non-anadromous fish,
27 some anadromous fish, and amphibians fall within the jurisdiction of USFWS. The species
28 that would be addressed by issuance of an ESA Section 4(d) rule limit (NMFS) or
29 exemption (NMFS or USFWS) include only the salmonids addressed in the Section 4(d)
30 rule. A breakdown of the covered species under the jurisdiction of each agency and under
31 each authorization is provided in Table 1-1.

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Table 1-1. Species Potentially Covered by an ITP under ESA Section 10(a) or Take Authorizations under ESA Section 4(d) (Note that only threatened species are covered by Section 4(d)).

Common Name	Scientific Name	Potentially Covered by an ITP under Section 10(a)	Potentially Covered by Take Authorizations under Section 4(d)
<u>Species under the Jurisdiction of NMFS</u>			
Endangered Species			
Upper Columbia River spring-run chinook salmon	<i>Oncorhynchus tshawytscha</i>	X	
Snake River sockeye salmon	<i>O. nerka</i>	X	
Upper Columbia River steelhead	<i>O. mykiss</i>	X	
Threatened Species			
Puget Sound chinook salmon	<i>Oncorhynchus tshawytscha</i>	X	X ^{1/}
Lower Columbia River chinook salmon	<i>O. tshawytscha</i>	X	X ^{1/}
Upper Willamette River chinook salmon	<i>O. tshawytscha</i>	X	X ^{2/}
Snake River spring/summer chinook salmon	<i>O. tshawytscha</i>	X	X ^{2/}
Snake River fall chinook salmon	<i>O. tshawytscha</i>	X	X ^{2/}
Columbia River chum salmon	<i>O. keta</i>	X	X ^{1/}
Hood Canal summer-run chum salmon	<i>O. keta</i>	X	X ^{1/}
Ozette Lake sockeye salmon	<i>O. nerka</i>	X	X ^{1/}
Lower Columbia River steelhead	<i>O. mykiss</i>	X	X ^{1/}
Middle Columbia River steelhead	<i>O. mykiss</i>	X	X ^{1/}
Upper Willamette River steelhead	<i>O. mykiss</i>	X	X ^{1/}
Snake River steelhead	<i>O. mykiss</i>	X	X ^{2/}
Unlisted Fish Species			
Pink salmon (all ESUs ^{3/})	<i>Oncorhynchus gorbuscha</i>	X	
Coho salmon (all ESUs)	<i>O. kisutch</i>	X	
Chinook salmon (all unlisted ESUs)	<i>O. tshawytscha</i>	X	
Chum salmon (all unlisted ESUs)	<i>O. keta</i>	X	
Sockeye salmon (all unlisted ESUs)	<i>O. nerka</i>	X	
Steelhead/rainbow trout (all unlisted ESUs)	<i>O. mykiss</i>	X	
White sturgeon (marine fish)	<i>Acipenser tranmountanus</i>	X	
Green sturgeon (marine fish)	<i>Acipenser medirostris</i>	X	
Eulachon (marine fish)	<i>Thaleichthys pacificus</i>	X	
Shiner perch (marine fish)	<i>Cymotagaster aggregata</i>	X	
Pacific staghorn sculpin (marine fish)	<i>Leptocottus armatus</i>	X	
Starry flounder (marine fish)	<i>Platichthys stellatus</i>	X	
Surf smelt (marine fish)	<i>Hypomesus pretiosus</i>	X	
Pacific sandlance (marine fish)	<i>Ammodytes hexapterus</i>	X	
Pacific herring (marine fish)	<i>Clupea pallasii</i>	X	

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Table 1-1. Species Potentially Covered by an ITP under ESA Section 10(a) or Take Authorizations under ESA Section 4(d) (Note that only threatened species are covered by Section 4(d)) (continued).

Common Name	Scientific Name	Potentially Covered by an ITP under Section 10(a)	Potentially Covered by Take Authorizations under Section 4(d)
<u>Species under the Jurisdiction of USFWS</u>			
Endangered Species			
None covered			
Threatened Species			
Bull trout	<i>Salvelinus confluentus</i>	X	X ^{2/}
Unlisted Fish Species			
Cutthroat Trout	<i>Oncorhynchus clarki</i>	X	
Rainbow/Interior Redband Trout	<i>O. mykiss</i>	X	
Kokanee	<i>O. nerka</i>	X	
Pacific lamprey	<i>Lampetra tidentata</i>	X	
River lamprey	<i>L. ayerst</i>	X	
Western brook lamprey	<i>L. richardsoni</i>	X	
Pygmy whitefish	<i>Prosopium coulteri</i>	X	
Mountain whitefish	<i>P. williamsoni</i>	X	
Olympic mudminnow	<i>Novumbra hubbsi</i>	X	
Chiselmouth	<i>Acrocheilus alutaceus</i>	X	
Redside shiner	<i>Richardsonius balteatus</i>	X	
Longnose dace	<i>Rhinichthys cataractae</i>	X	
Speckled dace	<i>R. osculus</i>	X	
Leopard dace	<i>R. falcatus</i>	X	
Umatilla dace	<i>R. umatilla</i>	X	
Northern pikeminnow	<i>Ptychocheilus oregonensis</i>	X	
Unlisted Fish Species			
Tui chub	<i>Gila bicolor</i>	X	
Lake chub	<i>Cauesius plumbeus</i>	X	
Peamouth	<i>Mylocheilus caurinus</i>	X	
Largescale sucker	<i>Catostomus macrocheilus</i>	X	
Bridgelip sucker	<i>C. columbianus</i>	X	
Longnose sucker	<i>C. catostomus</i>	X	
Mountain sucker	<i>C. platyrhynchus</i>	X	
Salish sucker	<i>C. carli</i> (species pending)	X	
Three-spine stickleback	<i>Gasteroseius aculeatus</i>	X	
Sandroller	<i>Percopsis transmontana</i>	X	
Coastrange sculpin	<i>Cottus aleuticus</i>	X	
Prickly sculpin	<i>C. asper</i>	X	
Reticulate sculpin	<i>C. perplexus</i>	X	

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Table 1-1. Species Potentially Covered by an ITP under ESA Section 10(a) or Take Authorizations under ESA Section 4(d) (Note that only threatened species are covered by Section 4(d)) (continued).

Common Name	Scientific Name	Potentially Covered by an ITP under Section 10(a)	Potentially Covered by Take Authorizations under Section 4(d)
Species under the Jurisdiction of USFWS (continued)			
Unlisted Fish Species (continued)			
Riffle sculpin	<i>C. gulosus</i>	X	
Shorthead sculpin	<i>C. confusus</i>	X	
Torrent sculpin	<i>C. rhotheus</i>	X	
Slimy sculpin	<i>C. cognatus</i>	X	
Paiute sculpin	<i>C. beldingi</i>	X	
Margined sculpin	<i>C. marginatus</i>	X	
Mottled sculpin	<i>C. bairdi</i>	X	
Longfin smelt	<i>Spirinchus thaleichthys</i>	X	
Burbot	<i>Lota lota</i>	X	
Unlisted Amphibian Species			
Columbia torrent salamander	<i>Rhyacotriton kezeri</i>	X	
Cascade torrent salamander	<i>R. cascadae</i>	X	
Olympic torrent salamander	<i>R. olympicus</i>	X	
Dunn's salamander	<i>Plethodon dunni</i>	X	
Van Dyke's salamander	<i>P. vandykei</i>	X	
Pacific tailed frog	<i>Ascaphus truei</i>	X	
Rocky Mountain tailed frog	<i>A. montanus</i>	X	

1/ Potentially covered under Limit 13 of the existing NMFS ESA Section 4(d) rule.

2/ Requires a new ESA Section 4(d) rule for coverage.

3/ ESU = Evolutionarily Significant Unit, a term used by NMFS to describe a distinctive group of salmon or steelhead.

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1 A breakdown of the ownership of these lands is presented in Table 1-2, and a map showing
 2 the distribution of these lands is provided in Figure 1-1. The geographic area that would
 3 be addressed by this action includes existing and future non-Federal and non-tribal
 4 forestlands in Washington State, excluding those forestlands that are covered by existing
 5 ITPs for aquatic species.¹

Table 1-2. Acreage and Ownership Breakdown of Forestlands Subject to the Washington Forest Practices Regulatory Program.^{1/}

Ownership Category	Western Washington	Eastern Washington	State Total
State Lands (not including State Parks and Wildlife Recreation Areas)	1,715,912	745,035	2,460,947
County Lands	55,793	5,530	61,323
City Lands	139,778	1,137	140,916
Private Lands	6,093,732	2,613,069	8,706,800
Total Lands	8,005,215	3,364,771	11,369,986

^{1/} While the Forest Practices Act applies to 11.4 million acres, approximately 2.3 million of these acres are covered under existing HCPs, Washington DNR State Trust Lands HCP being the largest at approximately 1.6 million acres (Washington DNR 1997d). Existing HCP holders are exempt from many of the Washington Forest Practices Rules, but must still file a forest practices application describing which Washington Forest Practices Rules are replaced by their approved HCP prescriptions.

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¹ One set of such ITPs is held by the Washington Department of Natural Resources (DNR) associated with a Habitat Conservation Plan (HCP) (Washington DNR State Trust Lands HCP) developed for certain Washington DNR-managed lands in western Washington and portions of eastern Washington within the range of the northern spotted owl (Washington DNR 1997d). The provisions of Washington DNR's State Trust Lands HCP applicable to western Washington also address aquatic species and, therefore, results in those lands being excluded from coverage under this conservation plan (i.e., the coverage is already provided in the State Trust Lands HCP). However, because Washington DNR's owl HCP does not cover aquatic species in eastern Washington, coverage for aquatic species would be provided on those lands under ITPs (if issued) associated with the proposed FPHCP evaluated in this DEIS. Washington DNR's State Trust Lands HCP is not to be confused with the proposed FPHCP under consideration here. Washington DNR's State Trust Lands HCP was developed by DNR as proprietor of those particular lands covered under the HCP, not as regulator of forest practices on all lands. That distinction is, among other things, fundamental to different approaches taken in the DNR's State Trust Lands HCP and in the FPHCP proposal, respectively. Washington DNR's State Trust Lands HCP is not analyzed here.

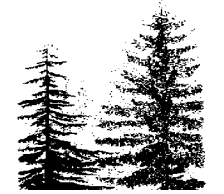
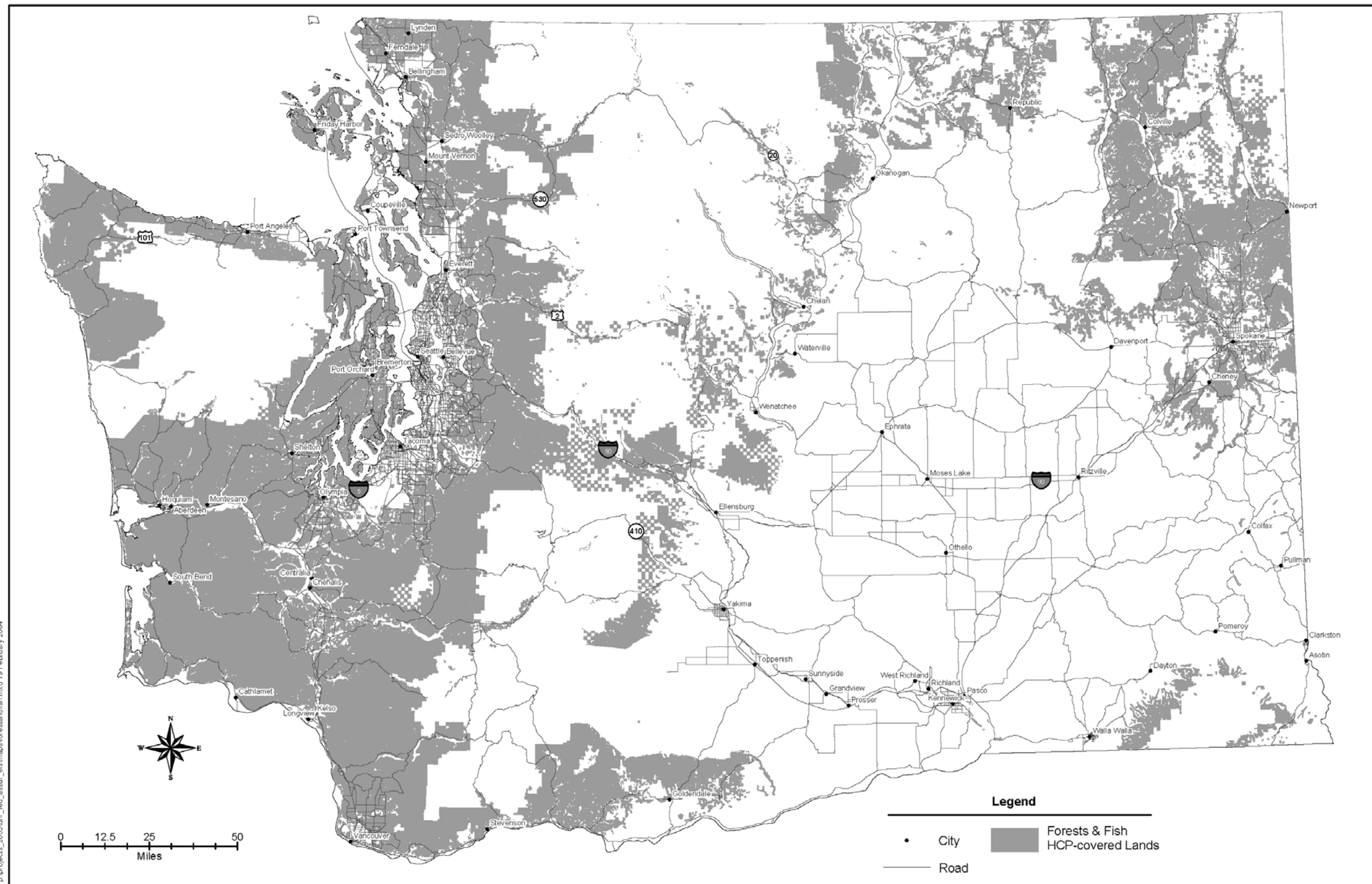


Figure 1-1. Map of Lands Covered by the Washington Forest Practices Regulatory Program





1 **1.1.3 Process for Obtaining Take Assurances**

2 To obtain ITPs, under ESA Section 10(a)(1)(B), the State must prepare a conservation
3 plan (commonly referred to as a Habitat Conservation Plan [HCP]) that meets the issuance
4 criteria established by the Services (subsection 1.2.3.1, Decisions to be Made, ESA
5 Section 10). For the State to obtain take authorizations under ESA Section 4(d), the State
6 must prepare information similar to that contained in an HCP, with some modifications
7 specific to a 4(d) application (e.g., covered species only include those species listed as
8 threatened under ESA). Accordingly, the State has prepared a programmatic conservation
9 plan that incorporates the requirements of both ESA Section 10(a)(1)(B) and Section 4(d).
10 This conservation plan addresses all aspects of the Washington Forest Practices
11 Regulatory Program that may affect aquatic species.

12 The proposed Federal actions of issuing ITPs or take authorizations under ESA Sections
13 10(a)(1)(B) or 4(d) have the potential to affect the human environment and, therefore, are
14 actions subject to review under the National Environmental Policy Act (NEPA). The
15 Services are required to prepare NEPA review documents and to circulate the
16 environmental review package (NEPA document and HCP) for public review. In this case,
17 the Services have determined that there is a need to prepare an Environmental Impact
18 Statement (EIS).

19 This DEIS analyzes the environmental consequences of the proposed action and
20 alternatives to the proposed action. The alternatives include: 1) no action, in which the
21 Services would not issue either ITPs or ESA Section 4(d) take authorizations; 2) an
22 alternative in which the Services would issue ITPs for incidental take of covered species
23 that may result from activities under the Washington Forest Practices Regulatory Program
24 in accordance with an HCP prepared by the State; 3) an alternative in which a limit on the
25 application of the prohibition against take would be issued by NMFS under the existing
26 ESA Section 4(d) rule, and take exemptions would be issued by USFWS under new ESA
27 Section 4(d) rules to cover the take of threatened species that may result from activities
28 regulated by the Washington Forest Practices Regulatory Program; 4) and an alternative in
29 which the Services would issue ITPs based on more protective Washington Forest
30 Practices Rules than are currently in place. Following a 90-day public comment period on
31 the DEIS, the Services will review and respond to comments in writing and/or as changes
32 in a Final EIS. The Services may also suggest the State make changes to the proposed
33 FPHCP as a result of comments received. Following a 30-day review period, the Services
34 will prepare a Record of Decision that will formally document their take authorization
35 decisions.

36 This chapter of the DEIS describes the purpose and need for the proposed action, describes
37 the context for action, and identifies the decisions to be made. It summarizes the scoping
38 activities that have been conducted and describes the relevant issues that have been
39 identified as related to the action. It also identifies the relationship to other plans,
40 regulations, and laws, and then summarizes the organization of the DEIS.



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1 1.2 PURPOSE AND NEED FOR ACTION

2 1.2.1 Purpose for Action

3 The State has prepared a conservation plan covering forest practices activities on non-
4 Federal and non-tribal land in Washington State. The prescriptive elements of the plan are
5 based on the State's Forests and Fish law (i.e., Forest Practices Salmon Recovery Act of
6 1999) (DEIS Appendix C) and the State's Forest Practices Regulatory Program
7 implementing that law. The State has submitted the conservation plan with applications to
8 the Services for take authorizations available in the ESA (i.e., FPHCP). The Services'
9 purpose for this action is to respond to the State of Washington's applications for ESA
10 take authorizations. These authorizations can be through ITPs, issued by each agency
11 under ESA Section 10(a)(1)(B), or through take authorizations under ESA Section 4(d). If
12 ITPs are granted, they would allow for incidental take of the threatened and endangered
13 species identified in Table 1-1. Provisions for take authorization of proposed and unlisted
14 species would also be made by the Services if the ITPs are granted, so that incidental take
15 authorization would be included for all species listed in Table 1-1, should they become
16 listed under the ESA in the future. If Section 4(d) take authorizations are issued, they
17 would only apply to those threatened species addressed in the relevant ESA Section 4(d)
18 rules.

19 1.2.2 Need for Action

20 The need for this action is to provide the broader protection and conservation for listed
21 species under ESA Section 10(a)(1)(B) and Section 4(d) than would occur under Section 9,
22 while providing for long-term management of forest resources on non-Federal and non-
23 tribal lands under the Washington Forest Practices Rules (subsection 1.3, Background and
24 Context).

25 1.2.3 Decisions to be Made

26 This subsection describes how the Services determine whether the need is met with respect
27 to species protection and conservation. Discussions between the applicant and the Services
28 during the development of a conservation plan in support of an application for ESA take
29 authorization are conducted with the knowledge and understanding that specific criteria
30 must be met before take coverage can be issued. The decision as to whether the criteria
31 have been met will be made after this DEIS and the FPHCP are finalized following
32 consideration of public input. The decision as to whether the criteria have been met will be
33 documented in the Services' decision documents at the end of the process. These
34 documents consist of: 1) ESA Section 7 biological opinions, 2) ESA Section 10 findings
35 documents if ITPs are issued under ESA Section 10(a)(1)(B), 3) an announcement in the
36 Federal Register if ESA Section 4(d) take limits or exemptions are granted, and 4) a NEPA
37 decision document (Record of Decision).

38



1 **1.2.3.1 Endangered Species Act, Section 10**

2 Section 10(a)(1)(B) of the ESA provides a mechanism by which the Services may permit
3 incidental take through the issuance of an ITP for otherwise lawful activities. The
4 issuance criteria for an ITP are contained in Section 10(a)(2)(B) of the ESA and again in
5 the Services' implementing regulations for the ESA (50 CFR 17.22(b)(2) and 17.32(b)(2)
6 for the USFWS; 50 CFR 222.22 for NMFS). The issuance criteria are:

- 7 1. The taking will be incidental;
- 8 2. The applicant will, to the maximum extent practicable, minimize and mitigate the
9 impacts of such taking;
- 10 3. The applicant will ensure that adequate funding for the conservation plan and
11 procedures to deal with unforeseen circumstances will be provided;
- 12 4. The taking will not appreciably reduce the likelihood of survival and recovery of
13 the species in the wild; and
- 14 5. Such other measures the Services may require as necessary or appropriate for the
15 purposes of the HCP.

16 An applicant must prepare and submit to the Services for approval an HCP containing the
17 mandatory elements of ESA Section 10(a)(2)(A) before an ITP can be issued. As such, the
18 HCP must specify:

- 19 1. The impact that will likely result from the taking;
- 20 2. What steps the applicant will take to monitor, minimize and mitigate such impacts,
21 the funding available to implement such steps, and the procedures to be used to
22 deal with unforeseen circumstances;
- 23 3. What alternative actions to such taking the applicant considered, and the reasons
24 why such alternatives are not proposed to be used; and
- 25 4. Such other measures that the Director may require as being necessary or
26 appropriate for the purposes of the plan.

27 The evaluation of the State's ESA Section 10(a)(1)(B) application would be documented in
28 Section 10 findings documents, which are produced at the end of the process. The results
29 of the assessments will determine whether or not ITPs will be issued.

30 **1.2.3.2 Endangered Species Act, Section 4**

31 When the Services promulgate protective regulations under ESA Section 4(d), each can
32 use the rulemaking process to describe limitations on or exemptions to the general
33 application of the ESA Section 9 take prohibition to threatened species. Under such limits
34 or exemptions, activities that kill or injure threatened species do not violate Section 9,
35 because Section 9 does not apply. On July 10, 2000, NMFS promulgated and published an
36 ESA Section 4(d) rule for threatened salmon and steelhead on the Pacific coast (50 CFR
37 222.203; U.S. Federal Register, Vol. 65, No. 132, July 10, 2000, pages 42421-42481). In
38 addition to establishing take prohibitions, the rule provides that certain specified activities
39 or conservation plans may qualify for a limit from the rule's take prohibitions provided
40 that such activities or programs qualify for one of 13 categories known as "limits."

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1 Limit 13 of this rule applies to forest management in Washington and could become
2 effective if NMFS finds that the State’s program for non-Federal forest management
3 activities is at least as protective as the elements of the FFR. This rule does not apply to
4 the four Snake and Upper Willamette River groups of salmon and steelhead that are
5 currently listed as threatened because the ESA Section 4(d) rule did not address these
6 species (Table 1-1).

7 USFWS has not issued a comparable ESA Section 4(d) rule, but could exempt the take of
8 threatened bull trout that may occur through implementation of the Washington Forest
9 Practices Rules by adopting a new ESA Section 4(d) rule. A USFWS 4(d) rule for bull
10 trout could be structured to exempt take that might occur as a result of implementing the
11 Washington Forest Practices Regulatory Program, provided that the Program is consistent
12 with the conservation needs of the species. USFWS could adopt similar ESA Section 4(d)
13 rules for other threatened species. However, under ESA Section 4(d), a rule can only
14 address take of species listed as threatened, and not species listed as endangered. As a
15 consequence, and in contrast to ESA Section 10, the take of endangered species or unlisted
16 species would not be authorized by any ESA Section 4(d) rule.

17 The evaluation of the State’s ESA Section 4(d) application under the existing NMFS 4(d)
18 rule would be documented in an announcement in the Federal Register, if an ESA Section
19 4(d) take limit is granted. If new NMFS or USFWS Section 4(d) rules are issued, the
20 exemptions would also be published in the Federal Register.

21 **1.2.3.3 Endangered Species Act, Section 7**

22 ESA Section 7(a)(2) provides that Federal agencies shall consult with the Services to
23 ensure any action authorized, funded, or carried out by such agency (i.e., action agencies)
24 is not likely to jeopardize the continued existence of any endangered or threatened species
25 or result in the adverse modification or destruction of designated critical habitat. Service
26 actions under ESA Section 10(a)(1)(B) and ESA Section 4(d) are Federal actions. Since
27 the Services are the action agencies, they must consult with themselves to ensure the
28 decisions made will not jeopardize any listed species (not just those addressed in the HCP)
29 or adversely modify or destroy critical habitat. The results of these consultations are
30 documented in biological opinions developed by the Services for the species under their
31 jurisdiction. Biological opinions are produced near the end of the process and document
32 conclusions regarding the likelihood of jeopardizing the continued existence of any listed
33 species or adversely modifying designated critical habitat for any listed species.

34 **1.2.3.4 National Environmental Policy Act**

35 The purpose of NEPA is to promote analysis and disclosure of the environmental issues
36 surrounding a proposed Federal action to reach a decision that reflects NEPA’s mandate to
37 strive for harmony between human activity and the natural world. Although NEPA
38 requirements include an analysis of impacts to the same species as does the ESA, the
39 scope of NEPA goes well beyond that of the ESA by considering the impacts of a Federal
40 action not only on all fish and wildlife resources (not just those listed under the ESA), but
41 also on non-wildlife resources such as water quality, air quality, and cultural resources.



1 An EIS is required when the project or activity that would occur is a major Federal action
2 with the potential to significantly affect the quality of the human environment. Issuance,
3 of ITPs under ESA Section 10(a)(1)(B) or take authorizations under Section 4(d), is a
4 Federal action subject to NEPA compliance. An EIS culminates in a Record of Decision.
5 The Record of Decision will document the alternative selected for implementation, as well
6 as any conditions that may be required, and summarize the impacts expected to result from
7 the action.

8 **1.3 BACKGROUND AND CONTEXT**

9 The State’s purpose for this action is to obtain take authorization for species that are listed,
10 and an agreement for species that might become listed in the future under ESA, to provide
11 regulatory certainty and to promote long-term management of forest resources on non-
12 Federal and non-tribal lands in Washington State in accordance with the Washington
13 Forest Practices Rules. To carry out the purpose, the State is seeking ITPs under ESA
14 Section 10(a)(1)(B) or take authorizations under Section 4(d) for take that may occur as a
15 result of forest practices regulated under the Washington Forest Practices Rules.

16 **1.3.1 Washington Forest Practices Regulatory Program**

17 In 1974, the State Legislature passed the Forest Practices Act. The Act was designed to
18 provide protection to forest soils, fisheries, wildlife, water quality and quantity, air quality,
19 recreation, and scenic beauty, while at the same time maintaining a viable forest products
20 industry, by regulating forest practices such as timber removal, road construction and
21 maintenance, reforestation, and the use of forest chemicals. The Washington Forest
22 Practices Rules, which are embodied in the WAC (Title 222 WAC), were first adopted in
23 1976 and apply to non-Federal and non-tribal forestlands in the state.

24 **1.3.1.1 The Formation of the Timber, Fish, and Wildlife Collaboration**

25 During the early years of the Washington Forest Practices Act implementation, the Forest
26 Practices Board and other state policy makers repeatedly weighed conflicting interests of
27 timber industry representatives, Indian Tribes, environmental groups, and government
28 regulators in making, amending, and implementing regulations. The Board dealt with
29 contentious rule-making. The Legislature amended the Forest Practices Act several times
30 to review procedures for forest practices applications and change the membership of the
31 Board.

32 Litigation over forest practices resulted in, among other things, an increase in the review of
33 forest practices under the State Environmental Policy Act (SEPA). Also, Indian Tribes,
34 and the United States on their behalf, pursued litigation that sought to establish a specific
35 duty to protect habitat as a consequence of tribal treaty rights to a share of harvestable
36 salmon and steelhead, including habitat on commercial forestlands.

37 By 1986, forest stakeholders representing the Tribes; the Washington Departments of
38 Natural Resources (DNR), Game (now Department of Fish and Wildlife), Fisheries (now
39 Department of Fish and Wildlife), and Department of Ecology (Ecology); the timber

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1 industry and non-industrial private forest landowners; and environmental interests, each for
2 their own reasons, possessed a level of frustration with the then-existing regulatory
3 process. Threshold meetings were held to determine if these disparate interests could
4 negotiate a cooperative approach to management and regulation of forest practices.

5 The stakeholder¹ negotiation process became known as Timber, Fish, and Wildlife (TFW)
6 and resulted in the Timber, Fish, and Wildlife Agreement (FPHCP Appendix L).
7 Reflecting the collaboration, the final report of TFW states that “[a]ll parties have agreed to
8 a set of goals which have guided the discussions.” These are as follows:

9 *The wildlife resource goal is to provide the greatest diversity of habitats*
10 *(particularly riparian, wetlands, and old growth), and to assure the*
11 *greatest diversity of species within those habitats for the survival and*
12 *reproduction of enough individuals to maintain the native wildlife of*
13 *Washington forestlands.*

14 *The fishery resource goals are long-term habitat productivity for natural*
15 *and wild fish, and the protection of hatchery water supplies.*

16 *The water quantity and quality goals are protection of water needs of*
17 *people, fish, and wildlife.*

18 *The archeological and cultural goals are to develop a process to inventory*
19 *archaeological/cultural spaces in managed forests; and to inventory,*
20 *evaluate, preserve, and protect traditional cultural and archeological*
21 *spaces and assure tribal access.*

22 *The timber resource goal is the continued growth and development of the*
23 *State’s forest products industry, which has a vital stake in the long-term*
24 *productivity of both the public and private forestland base.*

25 *In summary, the TFW participants recognize that there now exists a*
26 *cooperative attitude among the participants that must continue if this*
27 *agreement is to proceed.*

28 In 1987 and 1988, the Forest Practices Board adopted new Washington Forest Practices
29 Rules resulting from the TFW collaborative negotiations. Another major rule package
30 developed under the TFW collaboration was adopted in 1992.

31 Concurrently, in the early 1990s, regional litigation under the Federal ESA related to the
32 northern spotted owl significantly raised the effect of Federal law on regulatory certainty as
33 it related to state and private lands in Washington State. Seeking to restore that

34

¹ Original participants included representatives of a number of Indian Tribes, the Northwest Indian Fisheries Commission; the Columbia River Intertribal Fish Commission; Washington Environmental Council and Audubon Society; Washington Forest Protection Association and Washington Farm Forestry Association; Weyerhaeuser, Georgia Pacific, Plum Creek and Simpson Timber companies; and the State Departments of Natural Resources, Ecology, Fisheries, and Game.



1 regulatory certainty, TFW addressed owl conservation by making a recommendation,
2 developed in concert with the Northwest Forest Plan owl strategy, to the Forest Practices
3 Board that the Forest Practices Board later incorporated into regulations in 1996 (USDA
4 Forest Service and USDI Bureau of Land Management 1994). The Forest Practices Board
5 then adopted TFW-based regulations for the ESA-listed marbled murrelet in 1997. During
6 this decade, TFW activities maintained significant levels of financial support, not only
7 from participants, but also from the Washington State Legislature and the U.S. Congress.
8 Most of this funding was devoted to monitoring ecological functions within riparian zones
9 and adaptive management.

10 **1.3.1.2 The Forests and Fish Report**

11 Beginning in late 1996, faced with the imminent listing under the ESA of several salmon
12 species in Washington, TFW participants agreed to address emerging riparian habitat
13 issues. Because of the regulatory implications of the ESA, representatives from Federal
14 agencies accepted an invitation to join the original TFW collaborators in the discussions.

15 After almost 2 years of negotiation, representatives of environmental interests and some
16 Tribes withdrew from negotiations. The remaining participants continued negotiating and
17 eventually agreed to the FFR, April 1999 (FPHCP Appendix B). The groups contributing
18 to the development of the report included State agencies (Washington DNR, Washington
19 Department of Fish and Wildlife, and Washington Department of Ecology, Governor’s
20 Office), Federal agencies (USFWS, NMFS, and Environmental Protection Agency [EPA]),
21 the Colville Confederated Tribes, other Washington Tribes, the Northwest Indian Fisheries
22 Commission, the Washington State Association of Counties, the Washington Forest
23 Protection Association, and the Washington Farm Forestry Association.

24 During the same time period, the Washington Legislature addressed ESA salmon and
25 steelhead listings with passage of the 1998 Salmon Recovery Planning Act (ESHB 2496).
26 In this legislation, the Legislature made clear its intent to immediately begin the work
27 required to recover salmon and created the Governor’s Salmon Recovery Office to
28 coordinate the State salmon recovery strategy. The following year, the Washington
29 Legislature passed the 1999 Salmon Recovery Funding Act (ESHB 5595). In it, the
30 Legislature established guiding principles for the statewide salmon recovery strategy,
31 which emphasized collaborative, incentive-based approaches. The statewide salmon
32 recovery strategy identified forest practices as a critical component for salmon recovery.
33 The Legislature recognized the FFR as responsive to its policy directive for a
34 collaborative, incentive-based approach to support salmon recovery; ESA coverage and
35 regulatory certainty being key incentives of implementation.

36 Also in 1999, the Washington Legislature passed ESHB 2091 (DEIS Appendix C), which
37 directed the Forest Practices Board to adopt new rules, encouraging the Forest Practices
38 Board to follow the recommendations of the FFR. To further the purpose of regulatory
39 stability, ESHB 2091 also limited future changes to the new rules so that outside of a court
40 order or legislative directive, new rules could be adopted by the Forest Practices Board
41 “only if the changes or new rules are consistent with the recommendations resulting from

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1 the scientifically based adaptive management process” included in the FFR. The
2 language further solidified the adaptive management process as a key component of the
3 conservation program.

4 In its rulemaking procedures, the Forest Practices Board conducted an evaluation of the
5 FFR, as well as alternatives to the Report. This evaluation included an EIS under SEPA.
6 The Final State EIS, entitled *Alternatives for Forest Practices Rules for Aquatic and*
7 *Riparian Resources*, was published in April 2001.

8 The Forest Practices Board adopted new permanent rules in May 2001 based on the FFR.
9 Effective July 2001, these rules cover a wide variety of forest practices and include a new,
10 more functional classification of rivers and streams on non-Federal and non-tribal
11 forestland; improved plans for properly designing, maintaining, and upgrading existing
12 and new forest roads; additional protections for unstable slopes; and greater protections
13 for riparian areas intended to restore or maintain properly functioning habitat conditions.
14 In addition to these substantive provisions, the rules adopt the procedural
15 recommendations of the FFR that address adaptive management, training, and other
16 features. The State Legislature and Congress continued to support the collaboration with
17 significant funding for the research, monitoring, and adaptive management activities called
18 for in the FFR.

19 **1.3.2 Washington State Legislative Directive Regarding Federal Assurances**

20 The 1999 Salmon Recovery Act (ESHB 2091) was enacted “on the assumption that the
21 Federal assurances described in the forests and fish report . . . will be obtained” by June
22 30, 2005 (Revised Code of Washington (RCW) Chapter 77.85.190(1)). The primary
23 component of these Federal assurances is relief from any claim that forest practices would
24 constitute an impermissible “take” of threatened or endangered aquatic species. The State
25 Legislature’s goal in passing ESHB 2091 included: 1) the protection of water quality
26 consistent with the Clean Water Act, 2) the protection of aquatic species to the maximum
27 extent practicable consistent with maintaining commercial forest management as an
28 economically viable use of forestlands, and 3) providing a regulatory climate and structure
29 more likely to keep landowners from converting forestlands to other uses less desirable for
30 salmon recovery (RCW Chapter 77.85.180).

31 The Legislature authorized the Governor to appoint a representative to negotiate on behalf
32 of its agencies and subdivisions to obtain these Federal assurances. In January 2003,
33 Governor Gary Locke designated the Commissioner of Public Lands, Doug Sutherland, to
34 negotiate on behalf of the State of Washington with the relevant Federal agencies to obtain
35 Federal assurances pursuant to RCW Chapter 77.85.190(3).

36 **1.4 SCOPING AND THE RELEVANT ISSUES**

37 The first step in preparing an EIS is to conduct scoping of the issues regarding the
38 proposed action and alternatives. The purpose of scoping is to identify the relevant human
39 environmental issues, to eliminate insignificant issues from detailed study, and to identify



1 the alternatives to be analyzed in the DEIS. Scoping can also help determine the level of
2 analysis and the types of data required for analysis.

3 **1.4.1 Scoping Process**

4 The scoping process for this DEIS involved a number of activities that included both
5 public and internal scoping. These activities are described in the following paragraphs. A
6 scoping report was developed to document the scoping process, summarize scoping
7 comments, and identify preliminary issues. This report is maintained in the Services’
8 administrative record, and is available for review upon request to either NMFS or
9 USFWS.

10 **1.4.1.1 Notice of Intent**

11 Scoping was officially initiated with the publication of the Notice of Intent to prepare a
12 Draft EIS in the Federal Register on Monday, March 17, 2003 (U.S. Federal Register, Vol.
13 68, No. 51, March 17, 2003, pages 12676-12678). This notice stated that there would be a
14 30-day public comment period for the purpose of gathering information on the scope of the
15 issues and the range of alternatives to be analyzed in the DEIS.

16 The Notice of Intent also identified the dates, times, and locations of four public scoping
17 meetings that were held (Table 1-3). Public notice of these meetings was also made
18 through issuance of a press release by the Services on March 10, 2003, as well as
19 electronic mail and notices to individuals listed on the Washington DNR Forest Practices
20 Division “Meeting Agenda” and “Meeting Notices” lists. At least one newspaper article
21 was written and published (The (Aberdeen) Daily World, March 13, 2003) describing the
22 background and intent of the meetings. This article is available online at:
23 <http://www.thedailyworld.com/daily/2003/Mar-13-Thu-2003/news/news6.html>.

24 Each public scoping meeting began at 5 p.m. with a 1-hour open house to accommodate
25 informal discussion and questions. At 6 p.m., a presentation was made by Federal and
26 State representatives followed by a public comment period in which attendees could ask
27 questions and state their scoping comments for the record. A variety of informational
28 materials related to the proposed action, was made available to the public at the meetings.

29 **1.4.1.2 Written Comments**

30 In addition to the oral comments provided at the scoping meetings, 30 formal comment
31 letters were received, along with a number of written comments submitted at the scoping

32 **Table 1-3. Schedule and Locations of Public Scoping Meetings.**

Date	Time	Place	City
March 18, 2003	5-8 p.m.	Tacoma Sheraton Hotel	Tacoma, Washington
March 20, 2003	5-8 p.m.	Red Lion Hotel	Port Angeles, Washington
March 25, 2003	5-8 p.m.	Red Lion Hotel at the Park	Spokane, Washington
March 26, 2003	5-8 p.m.	Central Washington University Grupe Center	Ellensburg, Washington



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1 meetings (see Appendix F of Scoping Report for a listing of the letters). The 30 letters
2 consisted of 238 pages of original input. In addition, they included many hundreds of
3 pages of attachments. The oral and written comments have been considered in the
4 formulation of the issues to be considered in this DEIS (subsection 1.4.2, Issues Identified
5 During Scoping).

6 **1.4.1.3 Internal Scoping Meetings**

7 During and following public scoping, a number of internal DEIS team meetings were held
8 to discuss the following subjects:

- 9 1. DEIS outline,
- 10 2. public scoping comments received,
- 11 3. issues to be analyzed in the DEIS,
- 12 4. draft alternatives to be analyzed in the DEIS, and
- 13 5. analyses and methods to be used to assess the effects of the alternatives relative to
14 the issues.

15 The DEIS team consists of representatives from NMFS, USFWS, EPA, Governor's Office,
16 Washington DNR, Ecology, Washington Department of Fish and Wildlife (WDFW),
17 Northwest Indian Fisheries Commission, Tetra Tech FW (the EIS contractor), and others.
18 At least six key project EIS team meetings that covered scoping, the issues, the
19 alternatives, and the analysis methods took place in mid-2003. In addition, project team
20 members independently conducted reviews of public scoping comments, analyzed the
21 issues, and considered alternatives in preparation for the team meetings.

22 **1.4.1.4 Future Scoping and Public Involvement**

23 This DEIS has been issued for a 90-day public review period, previously announced in
24 newspapers, through letters to interested parties, and in the Federal Register. Following
25 this public review period, responses to public comments will be prepared and included in
26 an FEIS. The FEIS will include any changes resulting from consideration of public
27 comments. A 30-day "cooling off" period (as defined by the Council on Environmental
28 Quality) will be announced through the same venues used for the DEIS. Following the
29 "cooling off" period, the Services will conduct a final review of the FEIS and proposed
30 FPHCP to decide whether or not to issue the requested take authorization. The final
31 decision-making process will involve analyses by NMFS and USFWS in ESA Section 7
32 biological opinions and an ESA Section 10 or Section 4(d) findings documents, and a
33 NEPA Record of Decision.

34 **1.4.2 Issues Identified During Scoping**

35 The following issues were identified during both public and internal scoping. Detailed
36 discussions of many of these issues occur in Chapter 4 (Environmental Effects).

37



- 1 **1.4.2.1 Soils and Erosional Processes**
- 2 • Protection of managed lands from mass wasting and surface erosion, particularly
- 3 relative to unstable slopes and road maintenance and abandonment, including the Road
- 4 Maintenance and Abandonment Plan (RMAP) process.
- 5 • Effectiveness of the Road Maintenance and Abandonment Plan process, the
- 6 recommended road maintenance and abandonment changes for small forest
- 7 landowners, and the length of time required for full implementation.
- 8 **1.4.2.2 Water Quality**
- 9 • Protection of surface and groundwater quality, including temperature, sediment and
- 10 turbidity, and forest chemicals.
- 11 • The ability of affected streams to meet applicable basin plan limitations, water quality
- 12 standards, and limits established in Water Cleanup Plans or Total Maximum Daily
- 13 Load (TMDL) studies over the life of the conservation plan.
- 14 **1.4.2.3 Water Quantity**
- 15 • The effects of forest management on State and private lands in Washington on
- 16 watershed hydrology, including effects on peak and low flows, water yield, floodplain
- 17 function, and ultimately on fish habitat.
- 18 **1.4.2.4 Riparian Habitat**
- 19 • Protection of riparian vegetation and processes.
- 20 • The adequacy of the proposed riparian buffer widths and the degree of management
- 21 permitted within the buffers, with regard to large woody debris production, delivery,
- 22 and recruitment; maintenance of shade for water temperature protection; maintenance
- 23 of stream bank stability; detrital production (See Glossary); and microclimate
- 24 protection.
- 25 • The adequacy and accuracy of the stream-typing model.
- 26 **1.4.2.5 Wetlands**
- 27 • Protection of wetlands and their functions.
- 28 **1.4.2.6 Vegetation**
- 29 • Effects of forest management on wildfire risk.
- 30 • Effects of forest management on other forest vegetation disturbance agents, the spread
- 31 of noxious weeds, vegetative structure and diversity in riparian corridors, and
- 32 threatened/endangered plants.
- 33 **1.4.2.7 Fish**
- 34 • Effects of forest management on the recovery and long-term viability of listed fish
- 35 species.
- 36 • Specific concerns related to fish passage; effects on water quality parameters including
- 37 temperature, turbidity, and forest chemicals; fish habitat elements including pool size
- 38



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1 and frequency, spawning gravel quality and quantity, substrate embeddedness, and
2 channel conditions and dynamics; the degree of “refugia” protection; and the effect on
3 fish and fish habitat on adjacent Federal lands (e.g., Olympic National Park).

- 4 • The identification of activities that may result in take and the feasibility of quantifying
5 take.
- 6 • Protection of habitat for currently unlisted species covered by the conservation plan.

7 **1.4.2.8 Amphibians**

- 8 • Protection of amphibian habitat, including: water quality, water quantity, riparian and
9 wetland habitat, increased sedimentation, changes in water temperature, changes in
10 large woody debris recruitment and microclimate, and other factors.

11 **1.4.2.9 Other Wildlife**

- 12 • The quality and quantity of habitats for other wildlife species (especially unique
13 habitats, known to be priority habitats for certain aquatic or riparian species).

14 **1.4.2.10 Land Ownership and Use**

- 15 • The rate of conversion of forestlands to non-forestland uses, including urban land uses.
- 16 • Potential for landowners to opt out of their existing HCPs, which contain provisions to
17 reduce the likelihood of conversion, in favor of the new Forest Practices Regulatory
18 Program conservation plan.
- 19 • The potential for lands to be withdrawn from participation in the conservation plan.

20 **1.4.2.11 Cultural, Archeological, and Historic Resources**

- 21 • Identification and protection of archaeological and historic sites, particularly regarding
22 sites important to Northwest Indian Tribes and their cultural and religious beliefs.

23 **1.4.2.12 Social and Economic Factors**

- 24 • Identification and measurement of the positive and the negative economic effects of
25 the alternatives on recovering salmonids, water quality, and other resources, including
26 non-market costs and values.
- 27 • The potential for companies to locate in the State because of the quality of life and
28 desirability of living here, as well as benefits to businesses directly dependent on the
29 resources, such as fishing and recreation.
- 30 • Environmental justice relative to Indian Tribes who depend on harvestable supplies of
31 salmon.
- 32 • Economic impacts to property owners and others who make a living from the land.
- 33 • The effect on the economy of the State.
- 34 • The effects of the Washington Forest Practices Rules on the economic position of
35 Washington timber managers within global markets.



- 1 • The effects on economic and social structures of rural areas, which have suffered from
2 changing economic conditions, relative to environmental justice.
- 3 • Effects on small landowners and the potential for disproportionate costs of ESA
4 protections.

5 **1.4.2.13 Cumulative Effects**

- 6 • The adequacy of Washington Forest Practices Rules for addressing cumulative effects;
7 especially given the lack of continuing Watershed Analysis efforts, potential for
8 conversion, and the limited rules specifically addressing cumulative effects.
- 9 • The potential for cumulative effects in watersheds with a large proportion of small
10 landowners.
- 11 • The amount of incidental take already authorized by existing take permits in
12 conjunction with the current project.

13 **1.4.2.14 Monitoring and Adaptive Management**

- 14 • The adequacy of proposed programs for monitoring and adaptive management,
15 including the adequacy and degree of assurance that full funding will be achieved, the
16 degree of independence of the programs, and the need for measurable performance and
17 effectiveness monitoring indicators.
- 18 • The appropriateness of the “no surprises” guarantee and a 50-year term given the
19 State’s adaptive management program.

20 **1.5 RELATIONSHIP TO OTHER PLANS, REGULATIONS, AND LAWS**

21 Many Federal, State, and local statutes, regulations, and policies govern the activities
22 proposed for ITPs or take authorizations under the FPHCP. While many regulations
23 require issuance of environmental permits prior to project implementation (Table 1-4,
24 found at end of Chapter 1), others require agency consultation (Table 1-5, found at end of
25 Chapter 1). It should be noted that the activities to be covered by ITPs or take
26 authorizations are varied and extensive and, as a result, the requirements of the non-
27 Federal and non-tribal landowners for permits, environmental review, and consultation are
28 variable and dependent on the specific activities involved. A brief summary of those
29 regulations that are most relevant to forest practices activities governed by the State is
30 provided and summarized in Tables 1-4 and 1-5 at the end of this section. See also
31 Chapter 5, subsection 5.2.2 (Statutes, Regulations, Plans, and Programs), for more
32 discussion of additional plans (e.g., existing HCPs and the Northwest Forest Plan).

33 **1.5.1 Federal Regulations**

34 Development of the FPHCP and related EIS are regulated by two primary pieces of
35 Federal legislation: the ESA and NEPA. The State also intends that compliance with the
36 conservation plan will achieve compliance with the Clean Water Act. The three laws are
37 described below.



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1.5.1.1 Endangered Species Act

The ESA is intended to protect and conserve species listed as endangered or threatened and to conserve the habitats upon which they depend (ESA Section 2(b)). Furthermore, the ESA mandates that all Federal agencies seek to conserve endangered and threatened species and use their resources and authorities to further such purposes (ESA Sections 2(c)(1),7(a)(1)). The USFWS, acting on behalf of the Secretary of the Interior, oversees administration of the ESA for terrestrial species and resident and some anadromous fish species. NMFS, acting on behalf of the Secretary of Commerce, oversees administration of the ESA for marine mammals and most anadromous fish. Thus, both agencies function in tandem to administer the ESA.

A species is considered endangered if it is determined that the species is in danger of extinction throughout all or a significant portion of its range (ESA Section 3(6)). A species is considered threatened if it is found that the species is likely to become endangered within the foreseeable future (ESA Section 3(19)). Several federally listed species potentially occur in areas that could be directly and/or indirectly affected by forest practices in Washington State (Table 1-1).

ESA sections related to the State’s development of a conservation plan include the following (for further detail, see subsection 1.1.1, Structure of the ESA):

- **Section 4:** Sets forth procedures and criteria for proposing, identifying, and listing threatened and endangered species; identifying candidate species; and identifying, designating, and revising critical habitat for species. It also provides for extension of Section 9 take prohibitions to threatened species through adoption of rules under ESA Section 4(d), which allows regulations “necessary and advisable to provide for the conservation” of threatened species. Such rules can include provisions that limit or exempt particular activities from the Section 9 take prohibitions under certain circumstances.
- **Section 7:** Requires Federal agencies to consult with the Services to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitats and provide for measures or alternatives to minimize take of listed species or their habitat.
- **Section 9:** Prohibits the take of an endangered species, defined in the ESA to mean “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.”
- **Section 10:** Allows the Services to issue ITPs that authorize the take of listed species by non-Federal entities. The Services define “incidental take” as take that is “incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.” To obtain an ITP, applicants must submit an HCP and have the permit issuance criteria met before approval is given by the USFWS, NMFS, or both agencies, as appropriate.



1 • **Section 11:** Provides civil and criminal penalties for violation of the ESA and allows
2 third parties to bring civil actions to enforce ESA provisions.

3 **1.5.1.2 National Environmental Policy Act**

4 See subsection 1.2.3.4 (Decisions to be Made, National Environmental Policy Act).

5 **1.5.1.3 Clean Water Act**

6 The Clean Water Act, administered by the EPA and Ecology is the principal Federal
7 legislation directed at protecting water quality. Ecology establishes standards and
8 regulations, subject to approval by the EPA, by which waters of the state must be managed
9 to meet Federal requirements. The relationship between the Clean Water Act and ESA
10 creates the primary regulatory context within which the State developed its conservation
11 plan (See also subsection 1.5.2.5, Washington State Water Pollution Control Act).

12 **1.5.2 State Regulations**

13 Major State regulations that are relevant to forest practices activities in Washington are
14 summarized below to assist the reviewer by providing additional context for the proposed
15 action. They include the State Forest Practices Act, the State Shoreline Management Act,
16 SEPA, regulations pertaining to state listing of species, the Washington State Water
17 Pollution Control Act, the State Hydraulic Code, and the State Growth Management Act.

18 **1.5.2.1 State Forest Practices Act**

19 The Forest Practices Board was created by the Forest Practices Act (RCW Chapter 76.09).
20 The Forest Practices Act directs the Forest Practices Board to adopt rules where necessary
21 to accomplish the purposes and policies established by the Washington Legislature and to
22 implement other provisions of the forest practices chapter of the Revised Code of
23 Washington. Specifically, the Forest Practices Board establishes minimum standards for
24 forest practices and adopts rules pursuant to the Administrative Procedure Act
25 (RCW Chapter 34.05), SEPA (RCW Chapter 43.21), and the Regulatory Fairness Act
26 (RCW Chapter 19.85).

27 **1.5.2.2 State Shoreline Management Act**

28 The Shoreline Management Act (RCW Chapter 90.58) applies to all marine waters,
29 submerged tidelands, lakes over 20 acres, and all streams with a mean annual flow greater
30 than 20 cubic feet per second. Wetlands associated with the above waters are also
31 included, as is a 200-foot-wide shoreline area landward from the water's edge and all or a
32 portion of the 100-year floodplain on rivers and streams. The primary intent of the
33 Shoreline Management Act is to "provide for the management of the shorelines of the
34 State by planning for and fostering all reasonable and appropriate uses." This policy is
35 designed to ensure the development of these shorelines in a manner that, while allowing
36 for limited reduction of rights of the public in the navigable waters, will promote and
37 enhance the public interest. The Act directs that this goal shall be attained through the
38 protection of natural shorelines, and through encouragement of water-related and water-
39 dependent uses. Washington Forest Practices Rules are related to the Shoreline

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1 Management Act because they address specific forest practices along Type 1 streams,
2 which are defined as “shorelines of the State,” and are also regulated by the Shoreline
3 Management Act.

4 **1.5.2.3 State Environmental Policy Act**

5 Washington State’s fundamental environmental law ensures that governmental agencies
6 consider environmental factors in the decision-making process, and that these
7 considerations would help maintain and improve environmental quality.

8 Prior to adopting new Washington Forest Practices Rules or making significant
9 amendments to its prior rules, the Forest Practices Board typically prepares programmatic
10 State EISs to analyze the environmental effects of the proposed rules and alternatives to
11 those rules and to help inform both the public and the decision-makers. This was most
12 recently done as directed by the State Legislature in ESHB 2091 as a result of the FFR.
13 The Forest Practices Board conducted an evaluation of the Forests and Fish proposal, and
14 alternatives to the proposal. This evaluation included preparation of an EIS under the
15 SEPA. The State’s Final EIS, entitled “Alternatives for Washington Forest Practices
16 Rules for Aquatic and Riparian Resources” was published in April 2001. Specific
17 information about the purpose and procedural requirements of the Act is available in the
18 SEPA, RCW Chapter 43.21C; SEPA Rules, WAC Chapter 197-11 (implementing rules);
19 and the SEPA Handbook (guidance provided by Ecology).

20 **1.5.2.4 State Listing of Endangered, Threatened, and Sensitive Species**

21 In 1990, the Washington Fish and Wildlife Commission adopted listing procedures that
22 identify how species are listed by the State, the criteria for listing and de-listing, and the
23 requirements for recovery and management plans (WAC Chapter 232-12-297). The State
24 lists are distinct from the Federal ESA lists; they include species status relative to
25 Washington State jurisdiction only. Critical wildlife habitats associated with State or
26 federally listed species are identified in WAC Chapter 222-16-080. The WDFW maintains
27 a list of endangered, threatened, and sensitive species (WAC Chapters 232-12-014 and
28 232-12-011).

29 **1.5.2.5 Washington State Water Pollution Control Act**

30 As discussed in subsection 1.5.1.3 (Clean Water Act), the Washington State Water
31 Pollution Control Act, codified as RCW Chapter 90.48, designates Ecology as the agency
32 responsible for carrying out provisions of the Federal Clean Water Act within Washington.
33 Ecology is responsible for establishing water quality standards, making and enforcing
34 water quality rules and operating waste discharge permit programs. Washington State’s
35 Forest Practices Act was enacted to create and maintain a comprehensive statewide system
36 of laws and forest practices rules for non-Federal lands that foster the commercial timber
37 industry while protecting the environment. One of the purposes of the act is to “achieve
38 compliance with all applicable requirements of Federal and State law with respect to non-
39 point sources of water pollution from forest practices” (RCW Chapter 76.09.010(2)(g)).
40 The Washington Forest Practices Rules establish the permit program for non-point sources
41 of pollution arising from forest practices (RCW Chapter 90.48.240(1)(3)). Adoption of

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1 the Washington Forest Practices Rules “shall be accomplished so that compliance with
2 such rules will achieve compliance with water pollution control laws” (RCW Chapter
3 90.48.420(1)). A representative from Ecology, which is the State agency empowered with
4 enforcing Federal water quality requirements on behalf of EPA for the State of
5 Washington, serves on the Forest Practices Board. This representative’s role is to
6 facilitate the Ecology’s co-adoption of all Washington Forest Practices Rules affecting
7 water quality to ensure that all current and future forest practices rules are consistent with
8 State and Federal water quality standards.

9 **1.5.2.6 Hydraulic Project Approval**

10 Under the Hydraulic Code (RCW Chapter 77.55), a hydraulic project approval from the
11 WDFW is required for any construction activity in or near State waters. A Hydraulic
12 Project Approval (also known as an “HPA”) is also required for the performance of other
13 work that will use, divert, obstruct, or change the natural flow or bed of any waters of the
14 State. This permit allows the WDFW to condition these activities, such as road crossings,
15 to protect fish, shellfish, and their habitats.

16 **1.5.2.7 Growth Management Act**

17 The Growth Management Act was passed by the State Legislature in 1990 and amended in
18 1991. It addresses the consequences of population growth in Washington State. The
19 Growth Management Act requires all cities and counties in the State to protect critical
20 areas and designate resource lands of long-term commercial significance. The Growth
21 Management Act also requires the largest and fastest growing counties and cities in the
22 State to prepare comprehensive land use plans. For cities, comprehensive plans also
23 address urban growth areas beyond the city limits. Pursuant to the Growth Management
24 Act, urban growth must occur in designated urban growth areas. Most forest practices
25 regulated under the Forest Practices Act occur in areas classified as “forestland” of “long-
26 term commercial significance” under the Growth Management Act, and thus are
27 considered “natural resource lands” that receive additional protection from residential,
28 commercial, and industrial development. However, some forest practices also occur on
29 other lands both outside and inside urban growth boundaries.

30 **1.6 ORGANIZATION OF THIS EIS**

31 This EIS has been prepared in accordance with NEPA and with the NEPA guidelines
32 adopted by the NMFS and USFWS. The EIS is a stand-alone document, but it should be
33 reviewed in conjunction with the State’s FPHCP, which contains more detailed
34 background information and an explanation of the Washington Forest Practices Regulatory
35 Program. Chapter 1 provides the background and context leading to the development of
36 the proposed action. It describes the purpose and need for action; describes the decisions
37 to be made; describes scoping and the relevant issues; and explains the relationship of this
38 action to other plans, regulations, and laws. Chapter 2 describes each of the alternatives
39 and lists their major components. Chapter 3 describes the environment that would be
40 affected under each of the alternatives, including the biological, physical, sociological, and

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1 economic aspects of each alternative. Chapter 4 contains analyses of the potential direct
 2 and indirect effects of each alternative on the issues and resources identified in Chapter 3
 3 and compares alternatives to “no action.” Chapter 5 addresses cumulative effects.

4 The following information is included in this EIS, prior to Chapter 1: a list of acronyms
 5 (inside front cover), a cover sheet, a glossary, and a summary. After Chapter 5, these
 6 additional sections are included in this EIS: a list of references, a distribution list, a list of
 7 preparers, and appendices.

8 **Table 1-4. Federal and State Permits, Approvals, or Processes that may be**
 9 **Required for Forest Practices Activities Governed by the State.**

Permit, Approval or Process (Oversight Agency)	Project Activities that Trigger Permit, Approval, or Process Requirements
Federal Permits, Approval, or Process	
ESA Section 10 Incidental Take Permit (USFWS)	Potential incidental take of federally listed threatened and endangered species.
ESA Section 4(d) Take Limits or Exemptions (USFWS and NMFS)	Limit or exemption on take prohibitions for threatened species specifically addressed in a Section 4(d) rule.
NEPA (EPA)	A NEPA EIS must be prepared for every major Federal action (project or programmatic) with the potential to significantly affect the quality of the environment.
Clean Water Act, NPDES Permit (EPA, Delegated to Ecology in Washington State)	Discharge of a pollutant or pollutants directly into surface waters of the United States from any point source. EPA rules define water pollution from commercial forestlands as nonpoint except for four specific types of “silvicultural” point sources: truck washes, gravel crushing/washing facilities, log storage yards, and log ponds.
Clean Water Act Section 404 Permit [U.S. Army Corps of Engineers (Corps)]	Discharge of dredged or fill material into waters of the United States, including wetlands. Permits are issued following public review and completed analyses as required by the EPA’s Section 404(b)(1) guidelines. “Normal silviculture,” maintenance of currently serviceable structures and drainage ditches and, where consistent with Best Management Practices, construction and maintenance of forest roads generally are exempt from these permit requirements under Section 404(f)(1) unless “recaptured” under 404(f)(2).
Rivers and Harbors Act Section 10 Permit (Corps)	(1) Construction of any structure in or over any navigable water of the United States, (2) excavation, dredging, or deposition of material in navigable waters, or (3) creation of any obstruction or alteration in a navigable water.
Stevens Treaties with several Sovereign Indian Nations	U.S. v Washington, The United States of America through treaties with several sovereign Indian Nations in Washington, has a trust responsibility to ensure that Treaty Indian Tribes are afforded 50 percent of harvestable fish, and that the right to harvest fish is additionally respected by ensuring that habitat degradation does not impede the supply of fish.

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1 **Table 1-4.** Federal and State Permits, Approvals, or Processes that may be
2 Required for Forest Practices Activities Governed by the State
3 (continued).

Permit, Approval or Process (Oversight Agency)	Project Activities that Trigger Permit, Approval, or Process Requirements
Secretarial Order 3206 “American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act”	This Order clarifies the responsibilities of the agencies, bureaus, and offices of the Department of the Interior and the Department of Commerce when actions taken under authority of the ESA and associated implementing regulations affect, or may affect, Indian lands, tribal trust resources, or the exercise of American Indian tribal rights, as defined within the Order.
State Permits, Approval, or Process	
SEPA (Ecology)	A SEPA EIS must be prepared on proposals for legislation and other major actions having a probable significant, adverse environmental impact. “Planned actions” are defined under RCW Chapter 43.21C.031 (2). A SEPA EIS may be needed for Class IV forest practices as defined by the Legislature and by Forest Practices Board rules. RCW Chapter 76.09.050(1); RCW Chapter 43.21C.037.
Hydraulic Project Approval (WDFW)	Construction activities within or affecting State waters trigger the Hydraulic Code of 1949, which requires that an Hydraulic Project Approval be obtained prior to commencing construction.
State Shoreline Management Permit (Local County or Ecology)	Applies to activities taking place within 200 feet of “shorelines of the State” (Type 1 waters) and within associated wetlands. Limits the amount of harvest in this zone within a 10-year period.

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1 **Table 1-5.** Other Federal and State Environmental Review and Consultation
2 Requirements.

Consultation Requirement (Oversight Agency)	Description of Consultation Required	Project Activities Initiating Review and Consultation
Federal Requirements		
ESA Section 7 Consultation and Section 10 Permits (USFWS and NMFS)	Federal agencies must consult with the USFWS and/or NMFS under Section 7 when their actions may affect species listed under the ESA. Intra-Service consultation is also required for Service-proposed actions.	If the Services determine that the project may affect ESA-listed species, then consultation is required (Section 7). To obtain an ITP, non-Federal entities must prepare an approved HCP under Section 10.
Magnuson-Stevens Fishery Management and Conservation Act	Federal agencies must consult with NMFS if project activities will adversely affect “essential fish habitat.”	Consultation recommendations for impacts on EFH, combined with Section 7 consultations when ESA species are affected.
Clean Water Act and NEPA (EPA)	EPA has oversight responsibility to ensure that Federal and State agencies comply with the provisions of the Clean Water Act and NEPA.	Application for U.S. Army Corps of Engineers’ permit under Clean Water Act Section 404 and for preparation of a NEPA EIS.
National Historic Preservation Act	Federal agencies must consider the effects of their actions on properties eligible for the National Register of Historic Places.	Federally funded action or application for any Federal permit.
Archaeological Survey Review Pursuant to Archaeological Resource Protection Act and National Historic Preservation Act (Washington State Office of Archaeology and Historic Preservation)	The State Historic Preservation Officer reviews and comments on archaeological surveys performed on site. If resources are identified that could be affected by forest practices, the State Historic Preservation Officer is consulted for ways to avoid affecting resources or to determine eligibility for nomination to the National Register of Historic Places. The Advisory Council on Historic Preservation must concur.	Archaeological survey conducted and determinations of eligibility and effect prepared; a management plan is circulated and signed by the project applicant, State lead agency, Federal lead agency, the State Historic Preservation Officer, and the Advisory Council on Historic Places.
State Requirements		
Growth Management Act Critical Areas Ordinances	Must designate and protect.	Assumed valid upon adoption by local governments.
Growth Management Act Designation of Resource Lands	Must designate and protect.	Assumed valid upon adoption by local governments.
Growth Management Act Comprehensive Land Use Plans	Planning counties and cities must plan and regulate land use.	Assumed valid upon adoption by local governments.