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## 5. Alternatives

The Forest Practices Habitat Conservation Plan (FPHCP) is the basis for the state of Washington's application for two Incidental Take Permits (ITPs) that would authorize the incidental take of aquatic species under Section 10(a)(1)(B) of the Endangered Species Act (ESA). The state's application addresses incidental take that may occur as a result of otherwise lawful forest practices regulated under the Washington State forest practices rules.

Issuing an ITP is a Federal action that must comply with the National Environmental Policy Act (NEPA). NEPA requires full public disclosure and analysis of the environmental impacts of proposed Federal actions with the potential to significantly affect the quality of the human environment.

In this case, the proposed action is the issuance of two ITPs (each issued by the Federal agency for the species under its jurisdiction) and the implementation of the FPHCP. The United States Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Administration (NOAA) Fisheries (collectively the Services) developed an Environmental Impact Statement (EIS) that analyzed the impacts the proposed action—and a range of reasonable alternatives to it—would have on the environment. In the EIS, four alternatives were considered; the FPHCP is referred to as Alternative 2.

The proposed action—the issuance of two ITPs and the implementation of the FPHCP—is a major step toward achieving the goals of the Forests and Fish Report (FFR) (April 1999):

- 1) To provide compliance with the Endangered Species Act for aquatic and riparian-dependent species on non-Federal forestlands;
- 2) To restore and maintain riparian habitat on non-Federal forestlands to support a harvestable supply of fish;
- 3) To meet the requirements of the Clean Water Act for water quality on non-Federal forestlands; and
- 4) To keep the timber industry economically viable in the state of Washington.

The ITPs would extend incidental take authorization for the aquatic species addressed by the FPHCP to all forest landowners conducting forest practices activities in compliance with the state Forest Practices program and rules. The benefits of this include:

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- Long-term Federal regulatory stability for forest management activities that are regulated by the state Forest Practices program,
  - Protection of covered species to the maximum extent practicable consistent with maintaining commercial forestry as an economically viable industry, and
  - A regulatory climate and structure more likely to support landowners in keeping their forestlands in commercial forestry rather than converting them to other uses that may be less desirable for salmon recovery.

The other three alternatives to the proposed action that were considered, and their development, are briefly described in the remainder of this chapter.

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## 5-1 Development of alternatives

Beginning in late 2002 and continuing through late 2003, a series of meetings was held to discuss the anticipated application(s) from the state for incidental take authorization under the ESA. Representatives from the Services, the Environmental Protection Agency, the state (including the governor's office, Washington Departments of Natural Resources, Ecology and Fish and Wildlife), the Northwest Indian Fisheries Commission, the Washington Forest Protection Association, the Washington Farm Forestry Association and the EIS consultant (Tetra Tech FW) attended the meetings. Discussions at these meetings resulted in four possible alternatives for the Services to consider—the proposed action and the following:

- **Alternative 1—No Action.** Under this alternative the Services would not issue Incidental Take Permits. This action could result in one of two scenarios:
  1. **Scenario 1**—The state would continue to implement the current Forest Practices program and rules.
  2. **Scenario 2**—The state would revert to implementing the Forest Practices program and rules that were in place before January 1, 1999.

Two no-action scenarios were identified because the state is currently implementing forest practices rules consistent with FFR, but legislative language provides for rescinding the current rules and reverting back to the rules in place before January 1, 1999.

- **Alternative 3—Implement a conservation plan with a NOAA Fisheries 4(d) Limit 13 Approval and USFWS Take Exemption.** NOAA Fisheries would issue a limit on take prohibitions to the state under Limit 13 in the existing NOAA Fisheries 4(d) rule (65 FR 42422) to the forest practices regulatory program. Under this alternative, USFWS would develop and adopt a 4(d) rule to limit take prohibitions on bull trout.
- **Alternative 4—Increased Protections Compared to Alternative 2 (the FPHCP) or Alternative 3 (the 4(d) Take Authorization).** The Services would issue Incidental Take Permits based on more restrictive forest practices rules.

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The alternatives differ in two main areas:

- 1) Type of ESA take authorization that would be issued by the Services:
  - No ESA take authorizations; or
  - Issuance of ITPs by both Services and implementation of an habitat conservation plan (HCP) under ESA Section 10(a)(1)(B); or
  - Issuance of a take limit (NOAA Fisheries) or take exemption (USFWS) under ESA Section 4(d).
- 2) Components of the forest practices regulatory program that would be implemented and the level of implementation.

The impact of each alternative on ten specific components of the Forest Practices program was analyzed in the EIS: water typing, riparian habitat, wetlands, hydrology, forest pesticides, unstable slopes, forest roads, watershed analysis, cultural resources and adaptive management.

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## **5-2 Alternative 1—no action**

Under Alternative 1—the No-Action alternative—the Services would not issue take authorization to the state of Washington for the forest practices regulatory program, under ESA Section 10(a)(1)(B) or Section 4(d). Instead, the state would regulate non-Federal and non-tribal forestlands to avoid take where possible, and the Services would enforce the prohibition against “take” of listed species through Section 9 of the ESA by prosecuting violations of the ESA, as appropriate.

Defining the No-Action alternative is somewhat complicated by the fact that the state of Washington is already implementing the program for which it is seeking take authorization and has been directed by the state legislature to apply for and receive take authorization from the Services by June 30, 2005. The Washington State Legislature has indicated that the changes it made to Laws of 1999, Special Session Ch. 4 (1999 Forest Practices Salmon Recovery Act) were made on the assumption that take authorization would be obtained (RCW 77.85.190(1)). If take authorization is not granted, the legislature indicated it shall “review chapter 4, Laws of 1999 sp. sess., all rules adopted by the forest practices board, the department of ecology, or the department of fish and wildlife at any time after January 1, 1999, that were adopted primarily for the protection of one or more aquatic resources and affect forest practices and the terms of the Forests and Fish report, and shall take such action, including the termination of funding or the modification of other statutes, as it deems appropriate” (RCW 77.85.190(2)).

If the legislature reviewed and rescinded the 1999 Forest Practices Salmon Recovery Act, statutes could be modified and the forest practices rules could revert back to the rules that were in place prior to 1999. The legislature could also reduce or terminate funding for forests and fish programs, which could result in reduced support for the Adaptive Management program and a reduction in staff to implement and enforce the rules.

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With any of the outcomes, it is likely that the FFR and the forest practices rules consistent with FFR would not continue to be supported by many of the stakeholders who participated in the process. While the precise range of outcomes is difficult to predict, two scenarios serve as the reasonable endpoints of a continuum of possible outcomes under Alternative 1. Scenario 1 depicts a static point in time with the current Forest Practices program and rules in place without receiving an ITP. This scenario is used as a comparison point for all other alternatives, and is considered one end of the continuum. Scenario 2 is an outcome of the Services in not issuing an ITP and represents the other end of the continuum with the Forest Practices program and rules reverting back to that, which was in place prior to 1999.

- **Scenario 1** is represented by the current Forest Practices program and rules.
- **Scenario 2** involves reverting back to the Forest Practices program and rules that existed prior to January 1, 1999. This scenario would require action by the Washington State Legislature as described above.

### **No-Action Scenario 1—Current Forest Practices Program**

Scenario 1 assumes that the No-Action alternative would be the same as Alternative 2, the current Forest Practices program and rules as described in this HCP. However, Scenario 1 represents a static point in time and, in the state’s opinion, is not likely to hold true for very long following a no-action decision by the Services. However, for the purposes of the EIS and evaluating alternatives, Scenario 1 does represent the program the state is currently implementing.

### **No-Action Scenario 2—Forest Practices Rules in Place before January 1, 1999**

Scenario 2 contains a temporal element and does represent a likely outcome should the Services not issue ITPs for the FPHCP. As described earlier, Scenario 2 assumes the Washington State Legislature would direct the Forest Practices Board (the Board) to repeal the state rules that resulted from FFR. Therefore, Scenario 2 assumes the end of the Forest Practices program and rules consistent with FFR and re-adoption of the specific forest practices rules that were in place before January 1, 1999.

### **Reasons For Not Selecting Alternative 1**

Scenario 1 is not preferred because it does not provide the long-term regulatory stability being sought by the state and would likely lead to Scenario 2.

Scenario 2 is not preferred due to the following reasons:

- 1) Three of the four goals of the Forests and Fish Report may not be reached under Alternative 1:
  - To provide compliance with the ESA for aquatic and riparian-dependent species on non-Federal and non-tribal forestlands;
  - To restore and maintain riparian habitat on non-Federal and non-tribal forestlands to support a harvestable supply of fish; and

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- To meet the requirements of the Clean Water Act (CWA) for water quality on non-Federal and non-tribal forestlands.

The fourth goal, to keep the timber industry economically viable in state of Washington may be met with Alternative 1.

- 2) The No-Action alternative does not provide protection and conservation for listed, proposed and unlisted species to the extent intended under ESA Section 10(a)(1)(B) and Section 4(d), while providing for long-term management of forest resources on state and private lands under the Washington State forest practices rules.
- 3) Funding and stakeholder participation in the Forest Practices program, and particularly in the Adaptive Management program, would likely be reduced under this alternative.
- 4) The FFR deferred until 2009 the Total Maximum Daily Load (TMDL) process for waters not meeting water quality standards (FPHCP Section 2-3.5). Under Alternative 1, establishment of TMDLs may be reprioritized, and may occur sooner.
- 5) Without regulatory certainty provided by take authorizations, there may be an increase in conversions of forestlands to non-forest uses that are less compatible with salmon recovery.

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### **5-3 Alternative 3—implement a conservation plan with NOAA Fisheries 4(d) Limit 13 approval and USFWS take exemption**

Under Alternative 3, the Forest Practices program and rules currently described in chapter 222 WAC would continue to be implemented and NOAA Fisheries would issue a limit on take prohibitions to the state, under Limit 13 in the existing NOAA Fisheries 4(d) rule (65 FR 42422). The NOAA Fisheries 4(d) rule is described in more detail in Section 1-2 of this HCP. Alternative 3 would also include the development and adoption of a 4(d) rule by USFWS to limit take prohibitions on bull trout. This process could take between one and two years to complete.

Take authorization under this alternative differs from Alternatives 2 and 4 in terms of species covered and duration. Take coverage under ESA Section 4(d) can only extend to species currently listed as threatened. Unlike Alternatives 2 or 4, fish and amphibian species not listed as threatened at the time of 4(d) rule issuance would not be covered. In addition, this alternative would not cover endangered species (e.g., Upper Columbia River Spring Chinook salmon, Upper Columbia River steelhead and Snake River sockeye salmon), or Snake River steelhead, Snake River Spring/Summer Chinook and Snake River Fall Chinook, which are listed as threatened but not included under NOAA Fisheries' Limit 13. Also, in contrast to ITPs, which can have a term of many decades, take authorization provided by the Services under ESA Section 4(d) can be terminated at any time.

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It is expected that Alternative 3 would result in decreased stakeholder support and participation relative to Alternative 2 because of lack of take authorization for endangered species and the indefinite term of the authorization, but greater support and participation relative to Alternative 1. Due to reduced stakeholder support and participation, funding for implementation of the FFR would be more uncertain than under Alternative 2, but more certain than under Alternative 1.

Compared with Alternative 1, there would be a less immediate need for identifying forestry-related TMDLs, as required by the Federal CWA. The forest practices rules would likely remain as the TMDL implementation mechanism on state and private forestlands in mixed-use watersheds. However, there is the possibility of the 4(d) rule limit on take prohibitions being revoked due to uncertainties resulting from the above outcomes or other reasons determined by the Services.

The Adaptive Management program under Alternative 3 would be part of the rules, as described in WAC 222-12-045. However, the Adaptive Management program may lose some of its functional effectiveness. This reduction would again be a result of decreasing stakeholder participation and funding, caused by less regulatory certainty offered under Alternative 3. However, it is reasonable to assume the reductions in participation and funding would not be as severe as under Alternative 1—Scenario 1. Therefore, the Adaptive Management program would be able to function at some level in between Alternative 1—Scenario 1 and Alternative 2. A reasonable assumption would be that a few more effectiveness and validation projects and/or rule tool projects might be funded, or that an intensive monitoring project could be done. Again, the timelines for accomplishing these projects would likely be longer due to less funding and fewer people willing to participate.

### **Reasons For Not Selecting Alternative 3**

- 1) FFR stakeholders would likely provide less support and participation, particularly in the research and monitoring efforts of the Adaptive Management program.
- 2) Alternative 3 does not provide ESA coverage for all listed, proposed and unlisted species. The Section 4(d) rule limit on take prohibitions only applies to threatened species.
- 3) Alternative 3 does not offer long-term regulatory certainty. The Section 4(d) rule limit on take prohibitions can be terminated at any time.
- 4) The development of a 4(d) rule by USFWS to limit take prohibitions on bull trout could take between two years to complete, more time than the state legislature has allowed to obtain federal assurances.
- 5) The “No Surprises” rule is not an option in Section 4(d). The “No Surprises” rule is a provision of the Section 10 process that means no additional restrictions or protective measures will be imposed on an HCP permit holder beyond those indicated in the HCP, Permits and associated Implementation Agreement as long as the permittee is implementing the terms and conditions of the HCP, Permits and other associated documents, in good faith.



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## **5-4 Alternative 4—increased protections compared to Alternative 2 (the FPHCP) or Alternative 3 (the 4(d) Take Authorization)**

The Forest Practices program and rules under Alternative 4 would be more restrictive than those approved under Alternatives 2 and 3. This alternative was developed based on public comments and internal scoping discussions that identified the need for an alternative that would offer greater protections than Alternatives 2 or 3. Many aspects of this alternative are based on Pollack and Kenard (1998), Forest Ecosystem Management Assessment Team (1993), and other recommendations from the public (Draft EIS, Chapter 2, Section 2.3.4).

Under Alternative 4, the Services would issue ITPs to the state of Washington for a more protective set of forest practices rules than are represented by the current Forest Practices program and rules. Alternative 4 is the same as Alternative 3 in the *Final Environmental Impact Statement on Alternatives for Forest Practices Rules for Aquatic and Riparian Resources (State Environmental Policy Act EIS)*. Consistent with Alternative 2 in the NEPA EIS for the FPHCP, Alternative 4 would include issuance of two ITPs that would be valid for a term of 50 years.

Alternative 4 would require action by the Washington State Legislature or a court order to initiate additional rule making by the Board to increase protective measures in the forest practices rules. By current statute, the Board can only modify the current forest practices rules pertaining to aquatic resources by one of the following methods:

- consensus recommendations resulting from the Adaptive Management program
- state legislative direction
- court order (RCW 76.09.370(6))

Because this alternative would effectively negate the FFR and the resulting regulatory program, the near-term and long-term outcomes would likely include a decrease in the collaboration and participation among Forests and Fish stakeholders—particularly landowner participation—in the implementation of the FFR. This could result in a decrease in funding for implementation. A decrease in funding and participation, and the subsequent effect on the Adaptive Management program, could result in less certainty with regard to rule effectiveness at protecting public resources.

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## Reasons for Not Selecting Alternative 4

- 1) This alternative would result in significant economic impacts on both industrial and small forest landowners including: higher operating costs for complying with more restrictive riparian management zones (RMZs), road maintenance and stream crossing rules; foregone sale of timber within more restrictive RMZs; and lost employment resulting from lower timber harvests. For example, approximately 15,000 jobs would be foregone under this alternative, resulting in annual losses of approximately \$476 million in income (NMFS and USFWS 2004; Perez-Garcia et al. 2001).
- 2) The increased RMZ restrictions, with higher operating costs and decreased timber revenue, are more likely to have a greater negative impact on small forest landowners and may result in forestland conversion to non-forest uses (NMFS and USFWS 2004).
- 3) Because FFR was a consensus-based, collaborative process, it ensures broad stakeholder participation and supports in implementing the FPHCP (Alternative 2), including strong support for an effective and successful Adaptive Management program. This broad base of support among stakeholders also allows the Washington Department of Natural Resources to compete favorably for funding to implement the FPHCP. More restrictive rules and associated higher costs may result in reduced funding and stakeholder participation in the Forest Practices program, particularly in the Adaptive Management program.