
Elliott State Forest Management Plan Public Comments Reponses:December 2005

Topic <i>General Planning</i>

Sub-topic**Scope** **FMP**

Comment Number *23*

The decision to go through with the FMP/HCP is already been set. Public input does not really matter at this point.

Response

There have been a number of opportunities to provide public input throughout the plan's development. Relevant suggestions from commenters were incorporated into the plan as the plan was being developed. Many of the comments have been consistent with the plan's strategies. Public input on the plan is important at this stage so the Board of Forestry and the State Land Board can weigh the public's comments as it makes its decision on plan approval.

Comment Number *38*

Concerns: USFWS and NOAA continue to "raise bar" with respect to protections, is the new "bar" reasonable? The tendency is to overprotect.

Response

Negotiations with the federal services includes the need to produce revenue and meet the legal mandates for the forest. Before the HCP is approved, the State Land Board and Board of Forestry will make a business decision on how well the HCP meets their fiduciary responsibilities.

Comment Number *40*

If the BLM eliminates Late Succession reserves in 2008, will the Elliott State Forest management plan be changed?

Response

We are not anticipating changes to the proposed Elliott FMP because of this possibility. The possible change in management of BLM lands will be addressed in the EIS for the HCP.

Comment Number *42*

Why isn't there a map of the sub-basins in the Forest management plan?

Response

There is a map of the 13 management basins in Chapter 2 of the FMP. These basins are based on watershed boundaries.

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Comment Number 47

Clarify commonly used roads versus uncommonly used roads, specify difference.

Response

These terms are defined in Chapter 7 of the HCP. See the key terms box on page 7-15 in the August 2005 draft of the HCP.

Comment Number 63

Reduce "red tape" to accelerate process.

Response

We agree that forest planning on public lands is a complicated and time consuming process. However, there are many interests involved in the process including the State Land Board, Board of Forestry, several state and federal agencies, the public and other stakeholders. To make sure that all input is heard and incorporated takes a considerable amount of time and effort.

Comment Number 73

Need maps for FMP-only one in the "map" section.

Response

These will be added in the final version.

Comment Number 126

ODFW commends ODF for the hard work that went into developing the DFMP, and believes the DFMP presents a balanced, comprehensive, multi-resource approach to forest management.

Response

We appreciate the comment as well as the help from ODFW staff that have been involved in and essential to development of the plan.

Comment Number 193

Why are Stewardship Classes defined in the 10-year IP, and not the FMP. Are they expected to change every decade?

Response

The administrative rule process regarding approval of the FMP and the land management (stewardship) classification process for the ESF are scheduled to take place simultaneously. The IP and locations of the Stewardship Classes are still in draft status. There will be an opportunity for the public to comment during the land management classification process. The classification for a particular area could change in future IP's but they are not expected to change.

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Comment Number 194

The FMP often refers to the stand level inventory (SLI) data. Is this data available to the public, perhaps on-line? Will it be?

Response

The SLI data is stored in a Microsoft Access database. The data is managed, accessed, analyzed and reported on using a custom application developed in Microsoft Access (SLIP). It is not currently available on-line but the SLI data can be requested.

Comment Number 199

The State has an opportunity to develop a plan that places equal value on community as it does on perceived threats to wildlife. The lack of management on Federal lands throughout our state exemplify the outcomes of overly precautionary management-wildlifeas well as communities suffer. Mimicking such a strategy is a poor choice for the Elliott. The forest and its dependent communities-both man and animal-deserve better.

Response

The proposed Elliott FMP takes a different approach than that used on federal or private land. The plan attempts to meet the constitutional mandate to maximize revenue for the Common School Fund and to comply with the federal ESA. The plan tries to achieve an appropriate balance among economic, social and environmental benefits.

Comment Number 1E+09

Douglas County also has a proprietary interest in the management plan given that part of the lands comprising the Elliott State Forest are county trust lands managed by the State Board of Forestry for Douglas County. As recently stated by Judge Barron in Tillamook County et al v. State of Oregon et al (Tillamook Co. Case No.04 2118), these lands were conveyed to the Board of Forestry under the assurances that the lands would be used to produce revenue (id p. 6) .Judge Barron reaffirmed the earlier decision in Tillamook County v. State, 302 Or 404 (1986).

Whether the relationship between Douglas County is considered a trust or a contract the Board of Forestry is to manage the trust lands conveyed by Douglas County to the Board of Forestry solely for the benefit of Douglas County.

Response

Tillamook Co. Case No. 04 2118 was in regard to HB 2148 enacted by the 2003 Legislature, which transferred \$10 million from the State Forestry Department Account from monies available to the state under ORS 530.110, to the General Fund. The court found that the revenues going to the State under ORS 530.110 (10)(c) cannot be transferred to the General Fund without the consent of the Counties. The court found that the State is contractually bound to the Counties by the statutory scheme and by deeds entered into by the Counties pursuant to the statutes, which the State "sought and bargained for" and gave "assurances that the lands would be used to produce revenue."

Tillamook County v. State, 302 Or 404 (1986) found that the county is entitled to a percentage of the revenue derived from lands that were transferred from the county to the Board of Forestry, and that the state cannot avoid its obligation to the county by conveying the property to a third person.

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Comment Number 2E+09

Prior to designating any of the Douglas County trust lands as conservation areas, or legacy areas, the Board of Forestry should meet with and receive the approval of the Douglas County Board of Forestry. If Board of Forestry elects to manage the lands other than for the purposes for which Douglas County conveyed the land to the Board, then the lands should be reconveyed to Douglas County.

Response

Some of the acres of Elliott Board of Forestry (BOF) lands in Douglas County contain conservation areas. Of the 1,783 acres of Elliott BOF lands in Douglas County, 147 acres are in conservation areas due to the presence of federally listed species. Another 90 acres are in conservation areas because of steep terrain. Douglas County, as is the case with other trust land counties, has a protected and recognizable interest in receiving revenues from BOF lands located in the county, however, the Board and the State Forester are not required to manage these forestlands to maximize revenues, exclude all non-revenue producing uses on these forestlands, or to produce revenue from every acre.

In relation to the comment about transferring land back to Douglas County: In response to a question by Josephine County in 1993, legal advice from the Department of Justice concluded that the Board of Forestry does not have legal authority to reconvey county-deeded lands back to the county.

Scope **HCP**

Comment Number 10

Extra species in multi-species HCP will complicate the plan in the end, and may not give us desired results.

Response

Coverage for species that are at risk for future listing is expected to provide long-term management certainty and the greatest benefit for the citizens of Oregon. It is expected that coverage for species that are not currently listed can be obtained for little or no additional strategies or cost.

Comment Number 195

Please consider and respond to all our 6-23-05 comments. Especially consider comments on: Structure Based Management, page 7, Aquatic Habitats, page 11, New Information on the marbled murrelet, page 13, Herbicides and Fertilizers, page 24, Other species to consider, page 26; Public Participation in the Steering Committee, page 28; Violations of the current FMP, page 31, and the Elliott's responsibility to contribute to recovery of endangered species, page 37.

Umpqua Watersheds Inc. document.

Response

These were scoping comments for the EIS. The purpose of scoping comments is to make sure that pertinent issues that are raised by the public are analyzed in the EIS. A scoping report was produced by the EIS contractor but no specific responses were made to comments.

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Sub-topic Planning above FPA standards

Scope FMP

Comment Number 71

Why is the Elliott State Forest managed with a higher level of restrictions than Forest Practices Act?

Response

The plan is designed to be implemented along with a Habitat Conservation Plan (HCP). An HCP is one way to comply with the federal Endangered Species Act (ESA). ODF believes that a multi-species HCP will provide the greatest long-term benefit for the people of Oregon through management certainty. The strategies in the plan are designed to meet the constitutional mandate to maximize revenue to the Common School Fund, and to obtain an approved HCP to comply with the federal ESA,

Comment Number 198

The Oregon Forest Practices Act has stringent rules and regulations for the protection of wildlife and water resources valued by all Oregonians. While designed to promote active forest management it is not exclusive of other forest values. Implementing a plan that so greatly exceeds the FPA standards with no evidence of benefit to wildlife is inappropriate considering the obligation of the Elliott State Forest to the Common School Fund.

Response

Different landowners have different goals for their lands. One of the reasons the proposed plan uses some strategies that exceed the Forest Practices Act is to obtain a Habitat Conservation Plan. Oregon Department of Forestry's responsibility in regard to listed species, as it is for other forest landowners, is to manage the forest in compliance with the federal Endangered Species Act. Under the federal ESA, this can be accomplished by avoiding take, or through an approved HCP that allows incidental take in exchange for minimizing and mitigating for this incidental take. The Land Board has directed the Department of Forestry to develop a multi-species HCP to comply with the federal ESA. A multi-species HCP for the Elliott is expected to provide the greatest long-term benefit to citizens of Oregon by facilitating a sustainable even-flow harvest of timber, and by providing management certainty.

Comment Number 200

The State is pursuing a multi-species habitat conservation plan that will inevitably place unacceptable constraints on management of the Elliott.

Response

ODF believes that a multi-species HCP will provide the greatest long-term benefit for the citizens of Oregon by providing dependable and sustainable harvests and management certainty. The Land Board and Board of Forestry have been briefed on various options for managing the forest and will be provided additional information before being asked to approve the Forest Management Plan and the HCP. The FMP approval is contingent upon a successful HCP process which is expected to conclude in early 2007. During this time, both the Land Board and Board of Forestry will be able to evaluate how well an HCP will meet the legal mandates and their responsibilities.

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Sub-topic Relationship of HCP and FMP

Scope FMP

Comment Number 16

What happens if the Elliott can't get an HCP?

Response

The proposed FMP could not be implemented without an accompanying HCP. In the event a suitable HCP can not be agreed upon. The Land Board would need to make a decision on a future management approach that would meet legal mandates.

Comment Number 44

What happens if species is delisted?

Response

The Implementing Agreement for the HCP will address this possibility. If there is an approved HCP in place and a species is delisted, ODF and the federal services would evaluate whether the species-specific strategies are needed to keep the species from being relisted. If they are not needed for that purpose, then the strategies would be evaluated in relation to their effect on other species that are included as covered species in the HCP. Depending on the evaluation, some strategies could be modified.

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Scope

HCP

Comment Number

21

Economically HCP opposition should deal with individual species separately because we do not know economical value.

Response

Coverage for species that are at risk for future listing is expected to provide long-term management certainty and the greatest benefit for the citizens of Oregon. It is expected that coverage for species that are not currently listed can be obtained for little or no additional strategies or cost.

Comment Number

137

struggle with why going for the multi-species HCP. I believe this will be the biggest burden to the forest in the future, rather than the current dilemma that you feel you are in now. As the ESA changes, you will find yourself more trapped by the HCP, rather than covered.

Response

ODF believes that a multi-species HCP will provide the greatest long-term benefit for the citizens of Oregon by providing dependable and sustainable harvests and management certainty. The Land Board and Board of Forestry have been briefed on various options for managing the forest and will be provided additional information before being asked to approve the Forest Management Plan and the HCP. The FMP approval is contingent upon a successful HCP process which is expected to conclude in early 2007. During this time, both the Land Board and Board of Forestry will be able to evaluate how well an HCP will meet the legal mandates and their responsibilities.

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Sub-topic Relationship of LSR planning and FMP/HCP

Scope FMP

Comment Number 117

Lastly, it should be noted that the draft HCP for the Elliott depends heavily on near-by federal land "Late Successional Reserves" (LSRs) to recover endangered species, while the Elliott HCP attempts to protect only existing nesting sites. Unfortunately, the BLM is planning to eliminate its current LSR system. How is it possible to rely on a Reserve system that likely won't exist within the next few years? There is a very real risk that removal of LSRs on nearby BLM land may throw the Elliott Forest Plan into turmoil and legal gridlock. On that note, it would be wise for the Elliott to withdraw the current plan to double logging levels in the Elliott and plan for a long term sustained yield to generate revenue from its existing plantations, instead of cutting thousands of acres of forests currently with Advanced forest structure.

Response

The possibility that the BLM may change the management of some of its existing LSRs will be addressed in the EIS. ODF believes the proposed plan will result in a better landscape design than currently exists on the forest and will result in better habitat connectivity for species that depend on older forests. Managing only the existing plantations would not meet the constitutional mandate to maximize revenue to the Common School Fund.

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Comment Number 155

The ODFs draft HCP depends heavily on near-by federal land “Late Successional Reserves” (LSR) to recover endangered species, so that weaker protections can be implemented on the Elliott. For instance, the draft FMP team “concluded that forest management on adjacent forest lands should be considered at the level of district implementation plans.” And so, “If the adjacent ownership emphasizes late successional forests [such as BLM LSR], location of smaller patches along the boundary can increase the effective size of the patch”.

We have warned the ODF several times (with no response yet) that the BLM is in the planning process of reducing wildlife protections on LSRs, and will make final district plan revisions by 2008. The BLM is implementing a settlement agreement that requires “an alternative which will not create any reserves on O&C Lands except as required to avoid jeopardy under the Endangered Species Act”. This alternative will consider removing most of the LSRs and Riparian Reserves that contribute to the recovery of the NSO and MM’s. Additionally, the BLM is also required to make a final decision based on a court ruling that is not friendly to wildlife conservation on O&C lands. If the settlement agreement goes as planned, the LSRs that the Elliott is depending on will be stripped of most of their permanent protections for the northern spotted owl.

The Federal Register beginning this process was published on September 7, 2005 with a target decision by 2008. That is only one year into this new HCP, with 54 years left to implement, based on erroneous assumptions. The state of Oregon has been designated as a cooperating agency. There is adequate warning to correct inaccurate assumptions about LSRs now. Adaptive Management will not work quickly enough or efficiently enough to correct the situation later (see section 17 below).

The draft HCP could be attempting to take care of this with a “no surprises” clause that can be invoked “due to events outside the control of a permittee”. This won’t work because this is a reasonably foreseeable action that must be considered now.

Response

This type of comment about the effect of the HCP will be addressed in the EIS process.