

to the southern tip of the Holgate Peninsula.

Dated: June 27, 2000.

Mamie A. Parker,

Acting Regional Director, Fish and Wildlife Service, Hadley, Massachusetts.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Beaver Creek Tract, Lincoln County, Oregon

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt of application.

SUMMARY: This notice advises the public that Coast Range Conifers, LLC (CRC or applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA). The application has been assigned permit number TE-028956-0. The proposed permit would authorize the incidental take, in the form of habitat modification (harm) and disturbance (harass), of the bald eagle (*Haliaeetus leucocephalus*) which is federally listed as threatened.

The Service announces the receipt of the applicant's incidental take permit application and the availability of the Coast Range Conifers Beaver Tract Habitat Conservation Plan (Beaver Tract Plan) and draft Implementation Agreement, which accompany the incidental take permit application, for public comment. The Beaver Tract Plan describes the proposed project and the measures the applicant will undertake to minimize for project impacts to the bald eagle. These measures and associated impacts are also described in the background and summary information that follow. The Service is presently conducting the National Environmental Protection Act (NEPA) process and will announce the availability of NEPA compliance documentation soon.

DATES: Written comments on the permit application and Plan should be received on or before August 7, 2000.

ADDRESSES: Individuals wishing copies of the permit application or copies of the full text of the Beaver Tract Plan, should immediately contact the office and personnel listed below. Documents also will be available for public inspection, by appointment, during

normal business hours at the address below. Comments regarding the permit application, draft Implementation Agreement or the Beaver Tract Plan should be addressed to State Supervisor, Fish and Wildlife Service, Oregon State Office, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon 97266. Please refer to permit number TE-028956-0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Rich Szlemp, Fish and Wildlife Service, Oregon State Office, telephone (503) 231-6179.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulation prohibits the "taking" of a species listed as endangered or threatened. However, the Service, under limited circumstances, may issue permits to "incidentally take" listed species, which is take that is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

Summary of the Beaver Tract Plan

The applicant is proposing to harvest about 12 acres of mature forest approximately 80 to 140 years old within a 40-acre parcel of land. There are approximately 5 to 10 old growth Sitka spruce and Douglas-fir trees present in the proposed harvest area. The surrounding ownership consists of commercial timber lands containing forests of various age classes. The Beaver Tract Plan area contains one known bald eagle nest tree and several other trees that could be utilized as nest or roost trees. Other listed species that may also be affected by the proposed Beaver Tract Plan, but potentially may not be fully addressed, include the threatened marbled murrelet (*Brachyramphus marmoratus*) and northern spotted owl (*Strix occidentalis caurina*) (spotted owl). Please refer to "Summary of Service's Concerns and Recommendations" below for additional discussion on this topic.

The Beaver Tract Plan contains two alternatives: preferred and no action. Under their preferred alternative, the applicant would harvest 12 acres of mature timber to the extent allowed by the Bald and Golden Eagle Protection Act (Eagle Act), Migratory Bird Act, and Oregon Forest Practice Act (OFPA) Rules. Under the no action alternative, the subject timber would be left standing to provide bald eagle habitat. The applicants rejected the no action alternative because they believe it would deny them of all economically productive use of the subject timber.

The applicants propose the following minimization and mitigation measures:

- Retaining the bald eagle nest tree and two snags or green trees per acre, 30 feet or greater in height and 11 inches or greater in diameter.
- Conducting harvest activities outside of the period March 1 to September 15, except for road building.
- Replant Douglas-fir, western red cedar, and/or western hemlock over the harvest units. As per OFPA Rules, this planting will take place within 12 months after completion of harvest.
- Meet the current OFPA Rules to leave all snags and standing dead trees unharvested until they have fallen to the ground and rotted away, except when they represent a safety hazard for the logging operation.

Additional Background

CRC submitted a written plan on or about June 30, 1998, to the Oregon Department of Forestry to harvest the Beaver Tract to within 330 feet of the bald eagle nest site. The State Forester rejected that written plan on the basis that it did not provide adequate protection for the bald eagle nest site. The State Forester required that a forested buffer of 400 feet around the nest tree and an additional 100 foot band in which 50 percent of the live trees would be retained. CRC proceeded to harvest the 28 acres surrounding the bald eagle nest site, which retained the 12 acres (400 foot radius circle) that are the subject of this incidental take permit application. Oregon law allows (but does not require) the State Forester to approve logging within these protected 12 acres if a landowner receives an Federal incidental take permit.

Summary of Service's Concerns and Recommendations

The Service received the Plan and application on December 28, 1999. Unlike most Plans, the Beaver Tract Plan was prepared without any opportunities for the Service to provide technical assistance prior to the submission of the application. A revised Beaver Tract Plan was received on May 18, 2000, in response to the Service's April 18, 2000, request for clarification of items in the original Beaver Creek Tract Plan. The revised Beaver Tract Plan lacks much of the biological analysis and information routinely provided by other applicants to expedite processing an incidental take permit.

The Service has reviewed the Beaver Tract Plan and has some concerns with the adequacy of the proposed minimization and mitigation measures. We specifically invite the public to

provide comments on the measures proposed by the applicant.

As stated in the Beaver Tract Plan, the impacts from the proposed harvest would likely eliminate the site as bald eagle habitat, other than the retention of the nest tree. While it is not specifically stated, we believe that few if any of the existing old growth trees would likely be retained under the proposed mitigation (*i.e.*, retaining two trees per acre greater than 11 inches in diameter). Based upon the proposed harvest and the above assumption regarding tree retention, the ability of the site to continue to provide a suitable nest site for bald eagles post-harvest is difficult to accurately assess. However, the harvest is likely to increase the likelihood of the nest tree and any other large standing trees to be subject to blowdown or windthrow due to exposure. Furthermore, it is not uncommon for bald eagles to have more than one nest site and multiple roosting sites in an area. The proposed harvest would diminish the availability of roost sites and alternate nest sites. We believe that the harvest proposed in the Plan would violate the Bald and Golden Eagle Protection Act.

The Service believes that other practicable minimization measures exist. In our April 18, 2000, letter to CRC we suggested adding the following alternative under which we believe we could likely issue an incidental take permit and comply with both the ESA and the Bald and Golden Eagle Protection Act. This alternative protects the bald eagle nest tree from harvest and likely damage associated with harvest in the Beaver tract. The prescription is as follows: the nest tree would not be harvested. All trees that could come in contact with and damage the nest tree if they were felled, would not be harvested. (Directional felling would not exclude any trees from this component). For example, if a tree is 100 feet tall and is located less than 100 feet from the nest tree, then the tree would not be cut. If a tree is 100 feet tall and is located greater than 100 feet from the nest tree, then that tree is eligible to be cut pending a risk analysis for windthrow (see next criteria). The applicant would have to consider whether the removal of any trees in the tract would increase the likelihood of windthrow of the bald eagle nest tree, or any other nearby trees that could be windthrown and result in damage to the bald eagle nest tree. While we understand that windthrow can occur within any stand, regardless of its composition, we know that certain harvest prescriptions can predictably lead to a much greater likelihood of susceptibility to windthrow. Measures

can be taken when devising a harvest prescription to limit the increased likelihood of windthrow. We believe this alternative would retain a sufficient area around the nest tree to maintain the integrity of the nest site, alternate nest trees, and multiple roost sites and perches. The intent of this prescription is to maintain a sufficiently sized patch of habitat that is likely to provide important structural components for bald eagle breeding habitat, while also providing some level of confidence that timber operations and future weather events are not likely to effect the existing nest tree and the area immediately surrounding the nest tree. CRC responded through their legal counsel that no further changes would be made to the Beaver Tract Plan. We believe that other alternatives are available. However, these alternatives are likely to require an examination of the stand or a detailed stand inventory, and a discussion with the landowner and/or their legal representative. Because bald eagles are presumed to be nesting as of the date of this notice, we would not suggest visiting the site until after nesting activities are completed for the season.

Any alternative we recommend or consider would have to incorporate a seasonal restriction. We consider the breeding season for bald eagles to be anytime from January 1 through August 31 which is based upon their breeding biology. The seasonal restriction being proposed by the applicant is from March 1 through September 15. This time period does not capture the important period of time in January and February when bald eagles engage in breeding activities that may include establishing territories, pair bonds, and nest construction.

The Service has not made a determination as to whether the proposed Beaver Tract Plan may affect spotted owls or marbled murrelets. The Beaver Tract Plan concludes that the plan area is not sufficient to support spotted owls and that take of spotted owls was previously addressed in a section 7 consultation under the ESA that was conducted on the exchange of this parcel from the U. S. Forest Service to CRC and was completed on February 13, 1996. The Beaver Tract Plan states that no marbled murrelets have been seen in the area and that incidental take of murrelets was also addressed in the above referenced section 7 consultation.

The land exchange section 7 consultation was based upon protocol-based surveys conducted in 1995 and 1996. At that time, it was determined that no spotted owls were using the area. Also at that time, it was

determined that marbled murrelets were not using the area, although there was one detection of murrelets. The nature of this detection did not lead to a determination of occupancy or warrant additional surveys. The "Protocol for Surveying Proposed Management Activities that may Impact Northern Spotted Owls", dated March 17, 1992, and endorsed by the Service, states that 2-year surveys (which were done for the Beaver Tract in 1994-1995) are valid for 2 additional years before resurveying would be required. The "Methods for Surveying Marbled Murrelets in Forests: An Update to the Protocol for Land Management and Research", dated April 15, 2000, by the Pacific Seabird Group, states that for areas surveyed and not determined to be occupied, resurveying is recommended after 5 years. Because 5 years has elapsed since the last known spotted owl and murrelet surveys covering the Beaver Tract, there is some uncertainty as to the likelihood of this property currently providing habitat for either of these two species. Because of this uncertainty, we request that the results of any surveys conducted for spotted owls or murrelets that were completed within the past 5 years and that covered the general vicinity of the Beaver Tract be submitted to the Service and CRC.

The Beaver Tract Plan calls for the harvest of approximately 12 acres. However, the Oregon State Forester required that a 400-foot no-cut buffer (12 acres) with an additional 100-foot buffer in which only 50 percent of the live trees could be removed. A 500-foot radius circle is approximately 18 acres. Therefore, there is some confusion as to what amount of forest is currently left standing on the Beaver Tract and potentially what 12 acres are being proposed for harvest.

This notice is provided pursuant to section 10(c) of the Act. The Service will evaluate the permit application, Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the bald eagle.

Dated: June 29, 2000.

David L. McMullen,

Acting Regional Director, Region 1, Portland, Oregon.

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