

**APPENDIX M**

**BIOLOGICAL OPINIONS**

*This page left intentionally blank.*





**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
 NATIONAL MARINE FISHERIES SERVICE  
 Northwest Region  
 7600 Sand Point Way N.E., Bldg. 1  
 Seattle, WA 98115

Refer to:  
 2003/00674

July 8, 2003

RECEIVED  
 JUL 10 2003  
 ROGUE RIVER N.F.

Scott Conroy  
 Forest Supervisor  
 Rogue River and Siskiyou National Forests  
 333 W 8<sup>th</sup> Street  
 Medford, OR 97501-0209

Re: Endangered Species Act Section 7 Informal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Mt. Ashland Ski Area Expansion Project, Rogue River and Klamath River Basins, Jackson County, Oregon

Dear Mr. Conroy:

This correspondence is in response to your May 27, 2003, request for consultation under the Endangered Species Act (ESA) for the proposed Mt. Ashland Ski Area Expansion project in the Bear Creek and Cottonwood Creek watersheds. Additionally, this letter serves to meet the requirements for consultation under the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

**ENDANGERED SPECIES ACT**

On June 2, 2003, NOAA's National Marine Fisheries Service (NOAA Fisheries) received a complete biological assessment (BA) describing the project and its effects, maps detailing the project location, and a written request for concurrence with a determination that the proposed action is "not likely to adversely affect" (NLAA) Southern Oregon/Northern California (SONC) coho salmon (*Oncorhynchus kisutch*), or their designated critical habitat.

NOAA Fisheries listed SONC coho salmon as threatened under the ESA on May 6, 1997 (62 FR 24588), with critical habitat designated on May 5, 1999 (64 FR 54049). Interim protective regulations for SONC coho salmon were issued under section 4(d) of the ESA on July 18, 1997 (62 FR 38479). This consultation is undertaken under section 7(a)(2) of the ESA, and its implementing regulations, 50 CFR Part 402.

The proposed action occurs in the Neil Creek sub-watershed of the Bear Creek watershed in the Rogue River Basin and the Cottonwood Creek, above Mill Creek, sub-watershed of the Cottonwood Creek watershed in the Klamath River Basin. SONC coho salmon critical habitat ends in Neil Creek 4.5 miles downstream from the project area at a longstanding natural barrier.

No record of coho salmon within Neil Creek exists, and the closest observation of coho salmon is 9.5 miles from the project area in Bear Creek. In Cottonwood Creek, SONC coho salmon critical habitat ends 3.5 miles downstream from the project area where gradient prevents access to all fish. No observations of coho salmon exist within Cottonwood Creek within 10 miles of the project area.

The Siskiyou National Forest (USFS) is proposing a total of 17.66 acres of ski and innertube run construction and expansion, 3.29 acres of road and parking lot expansion, construction of a two-stall vault toilet, a yurt pad, an arrival services building, and nine restoration projects such as seeding, mulching, gully restoration, and riparian planting. Four ski runs will be expanded (14.86 acres) and an innertube facility (2.8 acres) will be built. Some power poles, chairlift poles, and night lighting poles will be installed which will impact a total 0.35 acres. The restoration projects are designed to keep sediment mobilized on the ski runs from being transported into and downstream of the ephemeral channels of the project area.

Four of the restoration projects and a portion of the parking lot expansion will occur within riparian reserves. Two of the watershed restoration projects are gully restoration, and seeding and mulching. The other two are instream wood placement and riparian planting. The parking lot expansion includes 0.2 acres within a riparian reserve. This expansion is 130 feet from an ephemeral water course, and will remove 10 trees over 0.05 acres.

Based on information provided by the USFS and developed during informal consultation, NOAA Fisheries concurs with the USFS's determination that the proposed project is NLAA for the following reasons: (1) The nearest SONC coho salmon critical habitat is 3.5 miles from the project area, and 9.5 miles from the nearest observed coho salmon; (2) a total of about 23 acres will be disturbed, primarily on upper ridges and their slopes; (3) only overstory vegetation will be removed from the ski and tubing runs, understory and low growing vegetation will be maintained; (4) sediment carried in runoff from parking lots will be retained and removed to a stable upslope site; and (5) the watershed restoration projects, as well as, upslope erosion control measures, are expected to arrest any sediment mobilized on the ski and tubing slopes. Therefore, the proposed project is not reasonably certain to cause incidental take of SONC coho salmon.

The USFS must reinitiate this consultation if: (1) New information reveals that effects of the action may affect listed species in a way not previously considered; (2) the action is modified in a way that causes an effect on listed species that was not previously considered; or (3) a new species is listed or critical habitat is designated that may be affected by the action (50 CFR 402.16).

**MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT**

Federal agencies are required, under §305(b)(2) of the MSA and its implementing regulations (50 CFR 600 Subpart K), to consult with NOAA Fisheries regarding actions that are authorized,





(ROD) (USDA and USDI 1994b); the Service's biological opinion for Alternative 9 (USDI 1994) of the FSEIS; Rogue River National Forest's (RRNF) August 28, 1998 biological assessment (BA); the RRNF's 1996 Mt. Ashland Late-successional Reserve (LSR) Assessment (USDA 1996); the RRNF's request for conferencing on the project's impacts to the lynx (*in litt.*); the Service's proposed rule to list the lynx as threatened (USDI 1998); the U.S. Forest Service's 1998 survey protocol for the lynx (*Lynx canadensis*) (USDA 1998); and informal discussions and correspondence between Linda Duffy, Joel Pagel, Fred Way, Dave Clayton, Brent Hastey, George Arnold, Lee Webb, Joe Burns, Larry Reigel, Camryn Lee, Brendan White and Nancy Lee. A complete administrative record of this consultation is on file at the OSO.

#### CONSULTATION HISTORY

The Service issued a no-jeopardy biological opinion under section 7 of the Act on the adoption of the Northwest Forest Plan (NFP) on February 10, 1994, for all listed species within the range of the spotted owl. However, sufficient project specificity was not available to the Service to assess incidental take of spotted owls or murrelets; impacts to spotted owl or murrelet critical habitat; or impacts to spotted owl dispersal outside of the Late-Successional Reserves (LSRs). These specific assessments were deferred to future consultations where more specific information would be available on baseline conditions and proposed projects/actions would be more refined.

The Service followed up the NFP range-wide consultation with a regional consultation to address the entire forest management program for the Medford BLM and the Siskiyou and Rogue River National Forests. This regional consultation effort addressed the impacts of two years of the timber sale program and the impacts of a 10-year program for all other forest management activities that may affect listed species. The agencies' Programmatic BA and the Service's subsequent BO includes the effects of all projects within the defined action area, that are implemented within the defined fiscal years, that are consistent with the standards and guidelines of the NFP, and that meet the descriptions of actions contained in the BO.

The Mt. Ashland Ski Area Expansion project required reinitiation of the BO for several reasons: the proposed project involves two acres outside of the Rogue Basin and within the Klamath Basin; there were questions regarding the project's consistency with part of the NFP; the proposed project will impact suitable habitat for the lynx, a species proposed for listing that was not included in the BO's effects analysis; and the listed species impacts of the proposed action are greater than those analyzed for recreation management projects in the Service's BO on the NFP.

The Service makes every effort to complete informal consultations within 30 days of receiving a completed biological assessment and formal consultation/conferences within 60 days of receiving a finalized BA. The Service received the RRNF's biological assessment on August 31, 1999, although it did not include all of the information needed to make an effects determination. After working with the RRNF to obtain the relevant data, changes were undertaken to the proposed project that resulted in a change of the acreage of harvested timber. After the final acreages were reported, the RRNF requested to conference on the proposed action's impacts to the proposed lynx, extending the timeframe needed to obtain the information required to make

that determination. All information necessary to complete this consultation/conference was submitted to this office on April 6, 1999, at which time the consultation time line was officially initiated.

#### BIOLOGICAL and CONFERENCE OPINION

##### DESCRIPTION OF THE PROPOSED ACTION

The proposed action would expand the number of ski runs and ski lifts at the Mt. Ashland Ski Area during Fiscal Years 99/00. This action will consist of the harvest of trees within and adjacent to designated ski runs, the construction of two new ski lifts adjacent to the proposed ski run, and a two-acre expansion of the existing parking lot. The proposed action is entirely within the Administratively Withdrawn Area land allocation as described in the ROD (USDA and USDI 1994b). Administratively Withdrawn Areas are those locations that were identified, at the time the ROD was signed, in "forest and district plans or draft plan preferred alternatives and include recreational and visual areas, back country, and other areas not scheduled for timber harvest (ROD p. 7)."

The action area, defined as "all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action [50CFR 404.02]," includes the entire Administratively Withdrawn Area which is approximately 1,014 acres in size, 336 of which are not capable of becoming forested. The Service and the U.S. Forest Service chose this scale for the action area since the proposed action could influence the biological integrity of the entire administrative boundary of the Administratively Withdrawn Area.

##### STATUS OF THE SPECIES/CRITICAL HABITAT

###### Spotted Owl

###### Range-wide and Rogue Basin

There are 8.1 million acres of suitable spotted owl habitat across the species' range and 1.053 million acres of suitable habitat on Federal lands within the Rogue Basin and South Coast watersheds. For a discussion of the range-wide and Rogue Basin status of the spotted owl, refer to the July 6, 1998 programmatic biological assessment from the Rogue River and Siskiyou National Forests and the Medford District BLM (USDA and USDI 1998) and the Service's resultant September 18, 1998 biological opinion (USDI 1998).

###### Action Area

The action area consists of 1,014 acres, 87 percent of which is above 6,000 feet elevation where spotted owls generally do not nest. Within the action area there are 621 acres of suitable spotted owl habitat, an additional 160 acres of dispersal habitat and 233 acres that are unforested. Winter roosting by spotted owls in the area of the ski run expansion was documented by Frank Wagner (Oregon State University) and involved the up-elevation movement of spotted owls (mostly the

male) during winter days when the angle of the sun was low. Spotted owls roost in the high elevation canopy to, presumably, bask in the available sunlight for warmth (Wagner, pers. comm.).

There are four known spotted owl pairs with home ranges that include part of the action area. The home range of owl pair 2052 reaches the base of the proposed ski runs and is the only home range that will experience habitat removal as a result of the proposed action. This pair currently has 2,600 acres of suitable habitat within its 1.3 mile radius home range which equals 77.8 percent of the home range's acreage.

The action area is adjacent to the Mt. Ashland LSR on the Rogue River National Forest to the west and is approximately 8 miles from the Soda Mountain/Jenny Creek LSR on the Medford District of the BLM. The bridge between these two LSRs is a dispersal connection of concern connecting the Oregon Klamath Province and the Western Cascades Province (USDI 1990).

#### Spotted Owl Critical Habitat

The status of spotted owl critical habitat within the Rogue Basin and the South Coast drainages is provided in the July 6, 1998 programmatic biological assessment from the Rogue River and Siskiyou National Forests and the Medford District BLM (USDA and USDI 1998) and the Service's resultant September 18, 1998 biological opinion (USDI 1998). Critical Habitat Unit (CHU) OR-76 overlays the entire action area and includes all 781 acres of forested habitat within the action area. Critical habitat is designated to identify "(I) The specific areas within the geographic area occupied by a species on which are found those physical and biological features (i) essential to the conservation of the species, and (ii) that may require special management considerations or protection; and (II) specific area outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species (USDI 1992)." The essential biological features are called primary constituent elements, which, in the case of the spotted owl, includes habitat features that support spotted owl nesting, roosting, foraging and dispersal. This CHU totals 56,465 acres, 22,094 of which (39%) is suitable spotted owl habitat. In addition, 37 percent of the CHU (20,832 acres) is shared by the Mt. Ashland LSR which is comprised of 57 percent (29,904 acres) suitable spotted owl habitat with an additional 22 percent (11,758 acres) spotted owl dispersal habitat.

#### Peregrine Falcon and Bald Eagle

Peregrine falcons and bald eagles are known to nest within approximately 10 miles of the action area. No habitat for nesting for either bird exists in the ski area. The RRNF determined the project would have "no effect" to peregrine falcons and bald eagles.

#### Lynx

##### Range-wide

The historical and present North American range of the lynx includes Alaska and that part of Canada that extends from the Yukon and Northwest Territories to New Brunswick and Nova Scotia; the Cascade Range of Washington and Oregon; the Rocky Mountains from Montana, Idaho, and Oregon south to Utah and Colorado; the western Great Lakes region; and the northeastern United States region from Maine, south to New York and Pennsylvania, and east to Massachusetts (USDI 1998). Recent studies have detected lynx in the Oregon Cascades as far south as the Deschutes National Forest, the southern extent of the survey effort (C. Lee, U.S. Fish and Wildlife Service, 1998), and individuals are suspected in the vicinity of the California/Oregon border. An unconfirmed lynx sighting was reported on the California side of the Applegate Watershed, within 20 miles of the action area (C. Lee, pers. comm.).

In the contiguous United States, lynx inhabit a mosaic between boreal forests and subalpine coniferous forest or northern hardwoods. Lynx are specialized predators that are highly dependent on the snowshoe hare (*Lepus americanus*) for food. Snowshoe hare prefer diverse, early successional forests with stands of conifers and shrubby understories that provide feeding and cover to hide from predators and protection during extreme weather. Lynx usually concentrate their foraging activities in areas where hare activity is high (USDI 1998). The Washington State Department of Natural Resources (WDNR) (1996) estimates that forage habitat should comprise at least 20 percent of the landscape to increase the probability of lynx recruitment.

Lynx utilize late successional forests with large woody debris, such as downed logs and windfalls, to provide denning sites with security and thermal cover for kittens. In Washington, lynx used lodgepole pine (*Pinus contorta*), spruce (*Picea* spp.), and subalpine fir (*Abies lasiocarpa*) forests older than 200 years for denning. Sites selected for denning must also provide for minimal disturbance by humans and proximity to foraging habitat (early successional forests), with denning stands at least 1 hectare (ha) (2.471 acres) in size (USDI 1998). Lynx generally occur at and above elevations that maintain approximately two feet of snow for three months of the winter annually (C. Lee, pers. comm.).

Lynx require adequate travel cover (they frequently use intermediate successional forest stages), to provide connectivity within a forest landscape, for security, movement within home ranges, and access between den sites and foraging areas. Such areas also may provide foraging opportunities. The size and shape of lynx home ranges appear related to the availability of prey, and the density of lynx, and may range from 5-94 square miles and larger (USDI 1998).

Snowshoe hare provide the prey quality necessary to support high density lynx populations. Lynx also prey opportunistically on other small mammals and birds, particularly when hare populations decline. However, a shift to alternate food sources may not compensate for the decrease in hares consumed as the lower quality diet can cause sudden decline in the productivity of adult females and decreased survival of young (USDI 1998).

Resident lynx populations were historically low in Oregon with historic records from nine counties. The Service concludes that a self-sustaining resident population does not exist in Oregon, but individual animals are present. The primary threats to the species are the reduction and modification of habitat and the impacts from historic and recent trapping (USDI 1998). Additional information on lynx biology and ecology is provided in the Service's 1998 proposed rule to list the lynx as a threatened species (USDI 1998).

#### *Rogue-basin and Action Area*

Lynx are not known to currently occur in the Rogue Basin or within the action area, but habitat does exist within both geographic ranges and sightings have been reported as recently as 1992. Lynx habitat exists on all the Rogue Basin's administrative units, except the Coos Bay BLM, although the majority of habitat will likely be found on the Cascade portion of the Rogue River National Forest. The Forest Service is currently in the planning stages of designing a project to survey for lynx in the Rogue Basin which will include the mapping of suitable habitat throughout the basin. Until that time, estimates of acres of habitat will be approximate.

The RRNF has mapped lynx habitat within the Administratively Withdrawn Area and within the Ashland Watershed. The Ashland watershed contains 639 acres of lynx foraging habitat and 2,179 acres of lynx denning habitat out of 10,811 acres that are capable of developing lynx habitat. These data are based on GIS runs that the RRNF executed using the U.S. Forest Service's 1998 Survey Protocol for the lynx (*Lynx canadensis*) (USDA 1998). This survey protocol identifies those areas where the lynx are most likely to be found and do not necessarily identify all of the lynx habitat in an area. The survey protocol identifies elevations in Oregon above 4,500 feet as the areas where late summer and early fall surveys are most likely to detect lynx (USDA 1998), but during the winter individuals may go substantially lower in elevation depending on the amount of snowpack. Therefore, the forest's estimation of lynx habitat in the Ashland Watershed is conservative and may not be corrected until the forest is able to determine specific snowpack information on its land. Within the action area there are 49 acres of foraging habitat and 108 acres of denning habitat which comprise 7.2 percent and 15.9 percent of the action area's capable acres. Data for lynx habitat within the action area should be accurate as the entire Administratively Withdrawn Area is above 4,500 feet elevation and would not be biased by elevation parameters in the survey protocol.

#### **EFFECTS OF THE ACTION**

##### **Spotted owl**

The proposed action will remove 54 acres of suitable spotted owl habitat and 16 acres of spotted owl dispersal habitat in and around the expanded ski runs. The parking lot expansion involves the extension of an existing parking lot into a 22-acre meadow that is dominated by grasses, forbs and shrubs. The proposed action would fill two acres of this meadow and remove a small stand of adjacent trees that do not serve as spotted owl habitat.

#### *Rogue Basin*

The removal of 54 acres of NRF habitat and 16 acres of spotted owl dispersal habitat represents a reduction of 0.0051 percent of the suitable habitat and 0.0010 percent of the dispersal habitat, respectively, within the Rogue Basin and South Coast watersheds. These percentages are extremely small and are not likely to impact spotted owls at the provincial scale.

#### *Action Area*

The most serious impact that this project could have at the provincial scale would be to impede the ability for spotted owls to move from the Mt. Ashland LSR through the action area to the Soda Mt./Jenny Creek LSR to the east of the I-5 corridor. The proposed loss of 16 acres of dispersal habitat would reflect a 10 percent decrease in dispersal habitat within the action area resulting in 144 acres of spotted owl dispersal habitat remaining within the action area, although the remaining 605 acres of suitable habitat also serve as high quality dispersal habitat.

While this is a substantial percentage reduction of the dispersal habitat within this Administratively Withdrawn Area, the ability of spotted owls to successfully move through an area may not correlate directly with the total acreage of dispersal habitat. The amount of surrounding dispersal habitat and the configuration of dispersal habitat within the action area and adjacent to the action area influence the ability of spotted owls to move across the terrain. The proposed ski runs are long and narrow and would not likely be wide enough to preclude spotted owls from flying across them. In addition, the Mt. Ashland LSR is directly adjacent to the action area and is comprised of 57 percent (29,904 acres) suitable spotted owl habitat with an additional 22 percent (11,757 acres) spotted owl dispersal habitat. The Mt. Ashland LSR is approximately equidistant from the Soda Mt./Jenny Creek LSR as the action area and, so, likely aids spotted owl dispersal across the I-5 corridor. As a result of the amount and distribution of spotted owl dispersal habitat in the vicinity of the action area, the Service does not expect the proposed action to hinder the movement of spotted owls between the Mt. Ashland LSR and the Soda Mt./Jenny Creek LSR.

The Rogue River National Forest estimates that there will be an increase in traffic of up to 125 cars per day at the peak of the season which will all use the expanded parking lot. There are no projected listed species impacts associated with the removal of trees and the filling of the meadow for the construction of the parking lot or associated with the traffic increase.

The proposed removal of 54 acres of suitable spotted owl habitat within owl pair 2052's home range equates to about 2.0 percent of the NRF habitat within this home range that contains nearly 78 percent suitable habitat. In a home range that has such a high percentage of suitable habitat, the proposed habitat loss is not likely to have more than a negligible effect on any individual spotted owl or spotted owl pair. Due to continued and constant human use of the ski area, spotted owls will likely be disturbed by the human activities and will not be able to use the habitat as they have historically. Due to the removal of suitable spotted owl habitat the Service believes that this project is likely to adversely affect the spotted owl.

### Spotted Owl Critical Habitat

All of the habitat that will be removed or degraded is within CHU-OR-76. The proposed action would reduce the amount of spotted owl suitable acres and dispersal acres in this CHU by 0.0095 percent and 0.0028 percent, respectively. As previously mentioned, the habitat removal will be in thin, linear ski runs which are less likely to reduce the ability of spotted owls to disperse through the action area than thicker clearings of the same acreage. The removal of suitable habitat will, however, preclude the use of those 54 acres for nesting, roosting and foraging, although it is not likely to preclude the nesting, roosting and foraging capabilities of the CHU as a whole. During the winter it is likely that the disturbance of owls from Mt. Ashland skiers will preclude the use in and around the harvested acres by spotted owls for any purpose other than dispersal.

This localized impact to spotted owls is not expected to hinder the function of CHU-OR-76 or the function of the Critical Habitat network in southwest Oregon or as a whole. Nor are the project impacts expected to preclude spotted owl dispersal across the I-5 corridor from the Mt. Ashland LSR and the action area to the Soda Mountain/Jenny Creek LSR.

### Lynx

The Mt. Ashland Ski Area expansion will remove timber stands of varied ages, including early successional (lynx foraging habitat) and late-successional (lynx denning habitat) forests. The proposed project is expected to remove 8.5 acres of lynx foraging habitat and 17 acres of denning habitat, which equals 16 percent and 16 percent of the action area's foraging and denning habitat, respectively, and 0.15 percent and 0.078 percent of the Ashland watershed's suitable lynx foraging and denning habitats, respectively. After the implementation of the proposed action, the action area will be comprised of 5.97 percent and 13.4 percent foraging and denning condition, respectively, and the Ashland watershed be comprised of 5.8 percent and 19.9 percent of the capable lynx habitat in foraging and denning condition, respectively.

Assessing the impacts of this habitat removal is difficult given the dearth of information on lynx in southern Oregon. It is unknown if lynx inhabit the action area or the RRNF, but for the purposes of this consultation the Service assumes that lynx are present on the forest and within the Ashland watershed. Much of the Forest Service land in the Ashland watershed is included within the Mt. Ashland LSR which encompasses a total of 51,512 acres. According to the Mt. Ashland LSR Assessment, 29 percent of the LSR (14,990 acres) is in late-successional condition while another 8.6 percent (4,430 acres) are early-successional (USDA 1996). It is likely that the late-successional acres that get and retain two to three feet of snow for several months each year serve as denning habitat and that much of the early-successional stands provide lynx foraging habitat, although the elevation of this snowpack influence is unavailable at this time.

Lynx home ranges can be from 5 square miles to greater than 100 square miles which makes the determination of impacts difficult given our lack of evidence of lynx presence in the area. The amount of foraging habitat within the action area, watershed, and LSR, however, is very low; certainly lower than would be expected to support a reproducing population of lynx (WDNR

1996). Because this project proposes to remove lynx foraging habitat when there is so little on the landscape, the Service anticipates that this project is likely to adversely affect the lynx.

### CUMULATIVE EFFECTS

Cumulative effects are defined in the Service's consultation handbook as "those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation." As defined, the action area for the proposed project is entirely within the Administratively Withdrawn Land allocation on Federal land. It is, therefore, unlikely that any impacts will occur that will not be analyzed under Section 7 of the Endangered Species Act.

Private property management in and around the action area may have implications for the quality of spotted owl dispersal habitat between the Mt. Ashland and Soda Mountain/Jenny Creek LSRs. The Rogue River National Forest predicts that there is very little spotted owl habitat on private lands. While any remaining dispersal habitat would be useful for spotted owl movement, clear cutting will likely remove most habitat of value in the near future.

The majority of non-federal land in the Ashland watershed and in the vicinity of the proposed Mt. Ashland Ski Area expansion are too low in elevation to provide habitat for the lynx. Those parcels that maintain enough snow to be of competitive value to lynx are likely to be harvested on a short rotation, which would preclude the development of denning habitat, but may hasten the development of foraging habitat. It is unknown if lynx utilize these private parcels, but given the lack of reported sightings by landowners it is unlikely that lynx depend heavily on this type of private land within the Ashland watershed.

### CONCLUSION

#### Spotted Owl

After reviewing the status of the spotted owl and the status of spotted owl critical habitat, the location of the project in relation to the Mt. Ashland and Soda Mountain/Jenny Creek LSRs, and the effect of the proposed action on spotted owl dispersal, the Service has concluded that the proposed project is likely to adversely affect but is not likely to jeopardize the continued existence of the spotted owl. Furthermore, the Mt. Ashland Ski Area Expansion, as proposed, will not result in the take of any spotted owls.

#### Spotted Owl Critical Habitat

After reviewing the status of spotted owl critical habitat, the location of the project in relation to the Mt. Ashland and Soda Mountain/Jenny Creek LSRs, and the effect of the proposed action on spotted owl dispersal, the Service has concluded that the proposed project is not likely to adversely modify spotted owl critical habitat.

#### Lynx

After reviewing the status of the lynx, the location of the project in relation to the Mt. Ashland LSR and the effect of the proposed action on denning and foraging habitat or the lynx, the

Service has concluded that the proposed project is likely to adversely affect but is not likely to jeopardize the continued existence of the lynx.

#### INCIDENTAL TAKE STATEMENT

Section 9 of the Act prohibits taking (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct) of listed species of fish or wildlife without a special exemption. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. Harass is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. Incidental take is any take of listed animal species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency(ies) or the applicant. The prohibitions against the taking of lynx found in section 9 of the Act do not apply until the lynx is listed.

#### AMOUNT OF TAKE

##### Spotted Owl

Because the proposed project will not reduce the amount of suitable spotted owl habitat within a 1.3 mile radius provincial home range to below 40 percent, the Service does not anticipate that the proposed project will incidentally take any spotted owls.

##### Lynx

In determining whether the removal of 8.5 acres of lynx foraging habitat within the action area constitutes the "take" of one or more lynx, the Service was influenced by several fundamental factors. Until landscape level surveys for lynx are conducted in, or a specimen is collected from, Southwest Oregon questions will remain about whether lynx actually occur in this portion of the RRNF. If the action area is within the range of the lynx, it is likely on the very edge of the species' range where population densities are generally more sparse than in other parts of a species' range. In addition, lynx are solitary animals that generally avoid human activity centers such as ski areas. Given these factors, the possibility that the removal of this 8.5 acre stand of lynx foraging habitat will have an impact that causes the injury or death of an individual lynx is so small that it does not meet the likelihood standard of anticipating take. Therefore, the Service does not anticipate that the proposed action, as designed, will incidentally take any lynx.

[Note: The Service will not refer the incidental take of any bird covered under this take statement for prosecution under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703-712) or the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. 668-668d), if such take is in compliance with the terms and conditions (including amount and/or number) specified herein. However, the take prohibitions of these statutes still apply in full to non-listed migratory birds and golden eagles. Proposed Federal actions, including those by

applicants, should, through appropriate means, avoid, reduce, or otherwise minimize such take, which is subject to prosecution under these statutes.]

#### CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

The Service believes the following conservation recommendations would reduce the impact of the proposed action on listed species within the action area:

1. Follow the Project Design Criteria as outlined in the July 6, 1998, Rogue River/South Coast BA for spotted owls.
2. Surveys for lynx in the southern portion of the RRNF could provide an immense amount of information about the status of this species in southern Oregon. The Service suggests that the RRNF initiate broad surveys that utilize hair collection and DNA analysis to determine the status of lynx in the Ashland and Applegate Ranger Districts.

In order for the Service to be kept informed of actions minimizing or avoiding adverse effects or benefiting listed species or their habitats, the Service requests notification of the implementation of any conservation recommendations.

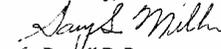
#### REINITIATION NOTICE-CLOSING STATEMENT

This concludes formal consultation and the formal conference on the actions outlined in your BA and during the informal consultation process. You may ask the Service to confirm the conference opinion as a biological opinion issued through formal consultation if the lynx becomes listed. The request must be in writing. If the Service reviews the proposed action and finds that there have been no significant changes in the action as planned or in the information used during the conference, the Service will confirm the conference opinion as the biological opinion on the project and no further section 7 consultation will be necessary.

Reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been maintained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agencies' action that may affect the species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agencies' action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In the case of the listing of the lynx, the agency may choose to reinitiate formal consultation or request confirmation of the conference opinion as a biological opinion if the lynx is listed, as outlined above. In instances

where the amount or extent of anticipated incidental take is exceeded, any operations causing such take must cease pending reinitiation of formal consultation. If you have any questions regarding this opinion, please contact Brendan White or Nancy Lee at (503) 231-6179.

Sincerely,

  
 Russell D. Peterson  
 State Supervisor

cc: Lee Webb-Siskiyou National Forest  
 George Arnold-Medford BLM  
 John Hamilton-Yreka FWS  
 Craig Tuss-Roseburg FWS  
 Kate Benkert-Olympia FWS  
 David Solis-Arcata FWS  
 Larry Salata-RO FWS

#### Literature Cited

- U.S. Department of Agriculture. 1996. Mt. Ashland late-successional reserve assessment. Ashland Ranger District, Rogue River National Forest; Oak Knoll District, Klamath National Forest.
- U.S. Department of Agriculture. 1998. Survey protocol for the lynx (*Lynx canadensis*). Region 6, U.S. Forest Service; Portland, OR.
- U.S. Department of Agriculture, U.S. Department of the Interior, U.S. Department of Commerce and the Environmental Protection Agency. 1993. Forest ecosystem management: an ecological, economic, and social assessment. Report of the Forest Ecosystem Management Assessment Team. U.S. Forest Service, U.S. Fish and Wildlife Service, National Marine Fisheries Service, National Park Service, Bureau of Land Management, and the Environmental Protection Agency, Portland, OR.
- U.S. Department of Agriculture and U.S. Department of the Interior. 1994a. Final supplemental environmental impact statement on management of habitat for late-successional and old-growth forests related species within the range of the northern spotted owl. U.S. Forest Service, Bureau of Land Management, Portland, OR.
- U.S. Department of Agriculture and U.S. Department of the Interior. 1994b. Record of decision for amendments to Forest Service and Bureau of Land Management planning documents within the range of the northern spotted owl. U.S. Forest Service, Bureau of Land Management, Portland, OR.
- U.S. Department of Agriculture and U.S. Department of the Interior. 1998. Rogue river/south coast FY 99/00 timber sale projects biological assessment. U.S. Forest Service and Bureau of Land Management, Grants Pass, OR.
- U.S. Department of the Interior. 1990. Formal Consultation on the Bureau of Land Management Section 318 timber sale program (1-7-90-F-236). U.S. Fish and Wildlife Service Portland, OR.
- U.S. Department of the Interior. 1992. Endangered and threatened wildlife and plants; determination of critical habitat for the northern spotted owl; final rule. Federal Register, 50 CFR 17: 1796-1838.
- U.S. Department of the Interior. 1994. Biological opinion for the preferred alternative (Alternative 9) of the supplemental environmental impact statement on management of habitat for late successional and old-growth forest related species on federal lands within the range of the northern spotted owl. U.S. Fish and Wildlife Service; Portland, OR.

- U.S. Department of the Interior. 1998. Endangered and Threatened Wildlife and Plants; Proposal to List the Contiguous United States Distinct Population Segment of the Canada Lynx as a Threatened Species, and the Captive Population of Canada Lynx within the Coterminous United States (lower 48 States) as Threatened due to Similarity of Appearance, with a Special Rule. Federal Register, 50 CFR 17.
- Washington State Department of Natural Resources. 1996. Lynx habitat management plan for DNR managed lands. WDNR; Olympia, WA.