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Via email FamilyForest.nwr@noaa.gov, Facsimile

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Re: Scoping Comments for The Family Forest HCP – EIS

Dear Mr. Ostwald and Ms. Hamilton:

## I. INTRODUCTION.

Thank you for the opportunity to present scoping comments addressing the National Environmental Policy Act (NEPA) review of a proposed incidental take permit under the Endangered Species Act for Lewis County's proposed Family Forest Habitat Conservation Plan (FFHCP). We are responding to the notice published in the Federal Register on July 15, 2005. The following comments are being submitted jointly by Friends of Grays Harbor and the Black Hills Audubon Society.

Friends of Grays Harbor (FOGH) is a broad-based 100% volunteer tax-exempt 501(c)(3) citizens group made up of crabbers, fishers, oyster growers and caring citizens. The mission of FOGH is to foster and promote the economic, biological, and social uniqueness of a healthy Grays Harbor estuary. The goal of FOGH is to protect the natural environment and human health in Grays Harbor and vicinity through science, advocacy, law, activism and empowerment.

Black Hills Audubon Society (BHAS) is a grass roots volunteer organization. BHAS's goals are to maintain and protect the ecosystems in Lewis, Mason, and Thurston counties in Washington for future generations, and promote environmental education and recreation.

We believe the proposed FFHCP will directly affect the interests of both FOGH and BHAS. We appreciate the opportunity to comment on the scope of the EIS for the proposed FFHCP. We hope that the FFHCP can proceed with consideration for the long term interests of natural resource conservation along with the desires of the non-industrial forest land owners in Lewis County.

## II. COMMENTS.

The scoping notice lists a number of subject areas for consideration and response:

We request information regarding: direct, indirect, and cumulative impacts that implementation of the

proposed HCP or other alternatives could have on endangered and threatened and other covered species, and their communities and habitats; other possible alternatives that meet the purpose and need; potential adaptive management and/or monitoring provisions; funding issues; existing environmental conditions in the plan area; other plans or projects that might be relevant to this proposed project; permit duration; maximum acreage that should be covered; limited entry time-frame for issuing certificates of inclusion; specific species that should or should not be covered; specific landforms that should or should not be covered; and minimization and mitigation efforts.

A major difficulty we have in developing scoping comments is the lack of a draft FFHCP, Implementation Agreement, or other document specifying the details of the proposal. There is no information available at the applicant's—Lewis County—web site (<https://fortress.wa.gov/lewisco/home/>). We have looked at the documents available at the Family Forest Foundation web site (<http://www.familyforestfoundation.org/index.html> and <http://www.familyforestfoundation.org/hcp.html>). From the material on the FFF page, we have been able to determine the following:

- The FFHCP provisions will “substitute for applicable State Forest Practice rules;”
- The FFHCP is intended to provide for riparian prescriptions that will “provid[e] forest structure that is comparable to “natural” forests,” but the actual riparian prescriptions have not been finalized and are still being subjected to unspecified “peer review;”
- The FFHCP will require minimum 50 year rotations on upland forests;
- The FFHCP Implementation Agreement will run for 100 years and provide covered landowners with “no surprises” ESA assurances for the duration of the permit;
- The FFHCP will require landowners who opt in (obtain a “Certificate of Inclusion” from the County) to stay in forestry “for the duration of the permit,” but allows the landowners to “opt out [at] any time;” and
- The County and DNR will administer the FFHCP.

In light of the above, we have the following suggestions regarding both the content of the FFHCP and the NEPA analysis of impacts (EIS).

#### A. Other plans or projects that might be relevant to this proposed project

The FFHCP is explicitly intended to substitute new riparian and upland prescriptions for the state's forest practices rules. The riparian prescriptions in the forest practices rules were amended in 2001 to implement the Forests and Fish Report (FFR). At the present time, an application for an incidental take permit and HCP for aquatic species for all lands regulated under the FFR rules is pending with your agencies (FPHCP). The proposed FFHCP is intended to provide small landowners with an alternative to the FFR rules, as well as to replace the pre-existing upland/wildlife rules. While we agree with many commenters that Forests and Fish is an improvement over previous forest practices rules, we agree with those who argue that it has yet to be shown that ITPs are appropriate due to numerous technical and legal problems with the FPHCP. Therefore, potential Services' approval of an FFHCP with potentially less certainty of habitat conservation and recovery is very troublesome. We await an actual proposal before being able to provide further comments on the substance of the FFHCP, and suggest that it is inappropriate to call for EIS scoping before many of the details have been determined or released to the public.

The FFR rules did not address upland wildlife. At the present time, the Forest Practices Board and the Washington Department of Fish and Wildlife are hard at work trying to develop new forest practices



rules that will address upland wildlife. The EIS should evaluate the relative effectiveness of the current forest practices rules, likely future rules, and the increase or decrease in expected natural resource protections as between the proposed FFHCP and those rules.

A major purpose of the FFHCP is to avoid conversion of non-industrial forest lands into non-forestry land uses, which would arguably be more likely to result in harm or jeopardy to ESA listed species. Other legal mechanisms are intended in part to address the potential impacts of forest land conversions: County natural resource land designations, critical areas designations and regulation, development (zoning) regulations, and shoreline designations and regulations under the state Growth Management Act and Shoreline Management Act. The County maintains a good source of information on these designations and regulations at its web site. The EIS should evaluate the relative effectiveness of these various measures compared with the proposed FFHCP.

The Services should also be sure to evaluate and seriously consider the “no action” alternative of not issuing incidental take permits. If the FFHCP is less protective of aquatic species and natural resources than the Forests and Fish Report and rules, the EIS should quantify and qualify the differences so the Services have adequate information for their decisions. Additionally, the Services should ensure that the “purpose and need” section is geared toward the goals of the ESA, not those of the applicant. “The Services” decision criteria for approval of HCPs are intended to ensure the “survival and recovery” of threatened and endangered species, not provide a liability shelter for those using natural resources.

#### B. Potential adaptive management and/or monitoring provisions

Adaptive management is a process to incorporate new information into natural resource management. The Services define adaptive management in their “Addendum to the Handbook for Habitat Conservation Planning and Incidental Take Permitting Process” as “a method for examining alternative strategies for meeting measurable biological goals and objectives, and then, if necessary, adjusting future conservation management actions according to what is learned.” Federal Register, Vol. 65, No. 106, June 1, 2000.

We can find no reference to inclusion of an adaptive management process for the FFHCP. The parallel FPHCP contains an extensive adaptive management process which the Services view as an essential element of the assurances package. Similarly, in order to be effective, adaptive management must be accompanied by well-designed and implemented monitoring and evaluation, and must be adequately funded over time.

We believe the Services must evaluate how the lack of an adaptive management process in the FFHCP is likely to undermine its effectiveness over time, and include for comparison an alternative that does include such a process (together with adequate funding provisions).

#### C. Direct, indirect, and cumulative impacts and existing environmental conditions

We have confidence that the Services will include a thorough analysis of the direct impacts of the FFHCP on aquatic and upland species. However, indirect and cumulative impacts are often difficult to evaluate, especially in a programmatic EIS covering many thousands of acres.

An adequate cumulative impacts analysis includes consideration of the past, present and reasonably foreseeable future actions likely to result from the proposed action. The existing environmental conditions—environmental baseline—is an essential starting point. The EIS must include an analysis of current environmental conditions and quantify to the extent possible how these conditions are different from pre-settlement conditions. The relative weight of various activities’ contributions to these conditions should be included (e.g., clearing for agriculture, urban development, forest practices).



The EIS must then quantify and estimate the owners and acreage that will abandon participation in the HCP after logging. If the implementation agreement allows landowners to cease participation in the HCP at any time, then the Service must determine and consider a likely range of how many landowners will abandon the HCP and develop their land after they have logged their property, together with the impacts of those conversions.

An analysis comparing the effects of the proposed action with alternatives that provide both no and more certainty of meeting the resource conservation objective of the FFHCP is then prepared.

#### D. Limited entry time-frame for issuing certificates of inclusion; permit duration

Since the objective of the FFHCP is to “Keep family forest lands providing income and habitat,” the duration of the permit is a crucial element. Whether or not to allow landowners to enter into the FFHCP over time depends on the duration of the commitment to stay in forestry and provide habitat, as well as on the overall amount of land covered by the FFHCP. The EIS should evaluate the alternatives of limiting entry and of not doing so, but without a funded monitoring plan it will be difficult to say what the impact of either option is over time. An EIS for a proposed action for which the Services cannot answer these issues must include a “worst case analysis” due to the level of risk and the uncertainties.

The analysis of impacts of permit duration are directly linked to: whether or not there is an adaptive management process; whether or not there is a rigid (and arguably illegal) “no surprises” provision; and whether or not the landowner commitment not to convert to other uses is revocable or limited in duration. If the intent of the Services is to obtain assurances that habitat will be available for the long term, an alternative that includes permanent commitments by the landowner (e.g., recorded conservation easements) should be included in the EIS. The present monetary value of extending a commitment not to convert at the end of a 100 year HCP from 100 years to permanent is essentially zero. On the other hand, allowing landowners to withdraw from the FFHCP “at any time” moves the certainty of conservation benefits close to zero, and we cannot understand why the Services would even contemplate such an action.

An alternative that would avoid some of these problems would be a shorter term, such as five or ten years, with a rigorous evaluation of its effectiveness before allowing the plan to be extended or renewed.

### III. CONCLUSION.

We appreciate the opportunity to provide NEPA scoping comments on the FFHCP which may affect between 100 and 200,000 acres of forest land in the upper Chehalis and Cowlitz watersheds. These lands provide important habitat for various ESA listed species, and help ensure conservation of water quality and quantity in the two watersheds and impact water quality in the lower Chehalis and Estuary. In your EIS for the FFHCP, we request that you include analyses of alternatives that will be more likely to meet required conservation objectives; we are concerned that failure to include any provisions for adaptive management or monitoring will make the FFHCP unable to meet the standards required of you for approval of an HCP.

Please let us know of your further actions in this matter.

Sincerely,

Arthur (R.D.) Grunbaum  
Vice President  
Friends of Grays Harbor

Sue Danver  
Conservation Chair  
Black Hills Audubon

