

For Immediate Release: April 22, 2003

Contact: Patti Goldman, Earthjustice, 206-343-7340 ex 32

DOCUMENTS EXPOSE TIMBER INDUSTRY CONTROL OF NORTHWEST FOREST PLAN ROLLBACKS

Freedom of Information Act Release Spells Out Timber Industry Plan To Weaken Old-Growth,
Salmon & Ecosystem Protections on Northwest Federal Forests

Documents released on April 18, 2003 in response to a Freedom of Information Act (“FOIA”) lawsuit brought by Earthjustice on behalf of Biodiversity Northwest, Northwest Ecosystem Alliance, and Oregon Natural Resources Council reveal an aggressive timber industry campaign to increase the amount of timber cut from Northwest federal forests by weakening protections for salmon, clean water, and old-growth forest ecosystems. The Bush Administration has not only agreed to all of industry’s demands, it has also proceeded in precisely the way advocated by the industry: (1) it has agreed to sweeping changes in forest management in secret settlements of friendly industry lawsuits; (2) it has agreed to changes in the management of aquatic resources in order to undo court rulings that require greater protection; and (3) it has appointed Mark Rutzick, the lead attorney for the timber industry in the litigation and settlement negotiations, as a senior adviser to the general counsel of the National Oceanic and Atmospheric Administration with responsibility for Pacific salmon protected under the Endangered Species Act. In short, the timber industry has directed a major rewrite of the rules and has the people in place to continue down its path.

What The Timber Industry Wants: 1.1 billion board feet of timber, regardless of the environmental, economic, and recreational impacts, through five specific changes to the laws. See “Administrative Tools to Fix the Northwest Forest Plan,” Dec. 2001; “A Global Framework for Settlement of Litigation Challenging Federal Agency Actions Relating to the Northwest Forest Plan,” April 2002.

Five Specific Timber Industry Demands:

1. **Weaken the Aquatic Conservation Strategy** by amending the NWFP to eliminate the requirement that timber sales must protect salmon habitat and change Endangered Species Act consultations to make it easier for logging affecting salmon to occur.
2. **Eliminate the survey and manage program** by amending the NWFP to discontinue the survey & manage program, to remove protection for certain types of species, and “to return management discretion to local managers.”
3. **Weaken Northern Spotted Owl Endangered Species Act Protections** by completing a status review of the northern spotted owl and redesignating critical habitat based on economic effects analysis and on the new theory that northern spotted owl habitat extends to younger stands, which are more plentiful than old-growth, and “[w]ith more habitat available, less of it can justifiably be considered critical.”

4. **Weaken Marbled Murrelet Endangered Species Act Protections** by completing a status review of the marbled murrelet and redesignating critical habitat based on economic effects analysis.
5. **Weaken Ecosystem and Species Protections on BLM O&C Lands** by amending the NWFP to eliminate old-growth & riparian reserves on O&C lands unless needed to avoid jeopardy to threatened and endangered species and revert to pre-1994 position that timber production is the dominant use of those lands.

The Process: At first, the Bush Administration offered only to negotiate on two of industry's demands. On August 14, 2002, the timber industry submitted a response to the federal settlement offer entitled: "The proposals to eliminate the survey and manage program and fix the "Rothstein" problem are not sufficient to produce 1.1 Billion Board Feet Per Year of Timber Sales Under the Northwest Forest Plan."¹

- The timber industry calls the government's survey and manage offer "satisfactory" and indicates that it could lead to a settlement of the industry survey and manage challenge.
- The timber industry "applauds the offer by the Administration to pursue" a NWFP amendment to weaken the ACS and a refinement of the ESA consultation for logging affecting salmon and other aquatic species. Even though the timber industry has no lawsuit challenging the ACS, it "agrees that these commitments should be part of the settlement reached in these cases." A footnote further explains:
 - "The coalition opposes any attempt to incorporate these administrative steps in a resolution of the *Pacific Coast Federation of Fishermen's Associations (PCFFA)* cases. The proposed administrative actions lie within the discretion of the relevant federal agencies, and do not require the approval of citizen activists. The Administration is very unlikely to secure such approval from PCFFA without concessions so large as to fundamentally alter the nature of the actions it is contemplating and a time lapse so great as to defeat the objective of a prompt reform of the Northwest Forest Plan. In any event a settlement with PCFFA would not foreclose other dissatisfied citizen activists from challenging any policy decision not to their liking."
 - "Welcome as the [proposals in the government] letter are, the coalition is unable to conclude that these initiatives alone will achieve the coalition's goal of 1.1. bbf per year of Northwest Forest Plan timber sales. . . . [A]dditional measures are required to achieve the 1.1. bbf goal."

The timber industry insisted on weakening three other aspects of the Northwest Forest Plan.

¹ Note: Judge Barbara Rothstein issued the decisions blocking logging that would harm salmon in the *Pacific Coast Federation of Fishermen's Associations* cases.

- Northern Spotted Owl – Eliminate critical habitat in the matrix lands where logging may occur to “significantly expedite timber sales throughout the region.” Revise critical habitat based on economic analysis and review the northern spotted owl listing based on scientific studies the industry believes call for less protection for the owl. “Any reduction in acres protected for the northern spotted owl increases the timber production of the Northwest Forest Plan.”
- Marbled Murrelet – Revise critical habitat based on economic analysis and re-evaluate the marbled murrelet listing. “Freeing matrix lands from murrelet critical habitat consultations, and any reduction in the acres protected for the benefit of the murrelet, would increase the timber production potential of the Northwest Forest Plan.”

”a 5 year status review and a reexamination of critical habitat for the northern spotted owl and the marbled murrelet are essential to achieving the 1.1 bbf timber sale goal.”²

- BLM O&C Lands – Amend the Northwest Forest Plan to make timber production the dominant use of BLM O&C lands and to eliminate most old-growth and riparian reserves on such lands. This would be “a potent tool for achieving the 1.1.bbf goal.”

The Administration Delivers: The Administration has agreed to pursue all the weakening actions demanded by the timber industry.

1. In March, 2002, the Forest Service and BLM entered into a settlement of an industry lawsuit in which it agrees to propose amending the NWFP to drop the **Survey and Manage** program. The settlement agreement establishes a 2003 Schedule for a supplemental environmental impact statement and NWFP amendment.
2. In April 2003, the Forest Service and BLM proposed to amend the NWFP to weaken the **Aquatic Conservation Strategy** and released a draft supplemental environmental impact statement. Since there is no industry lawsuit challenging the salmon and watershed protections, this rollback is not embodied in a settlement of an industry lawsuit. The agencies did not consult with the fishing and conservation plaintiffs who won several

² The timber industry urged the Bush Administration to settle the northern spotted owl and marbled murrelet cases to avoid having either: (1) to adhere to Clinton Administration legal positions or existing precedent “which is widely viewed by Bush Administration supporters and the resource-user community as a cynical manipulation of the environmental laws” and as an “arrogant disregard for the economic effects of the Endangered Species Act”; or (2) shifting to the industry’s favored position “which will be criticized as an ‘environmental rollback’ and as “another capitulation to economic interests at the expense of the environment.” The industry characterized these scenarios as “a classic ‘lose-lose’ outcome” that can be avoided by settling the timber industry cases.

lawsuits concerning proper implementation of the ACS, which the Bush Administration seeks to overturn in its NWFP amendment.

3. In January 2003, the Department of Interior filed a settlement agreement with the district court in which it agreed to complete a **Northern Spotted Owl** status review by December 31, 2003 and to propose new critical habitat by December 15, 2005, and final critical habitat one year later. Environmental intervenors filed objections to the settlement and had previously moved to dismiss some claims on their merits and because they are barred by a 6-year statute of limitations. The district court has not yet approved the settlement, but the Fish and Wildlife Service began the status review on April 21, 2003.
4. In January 2003, the Department of Interior filed a settlement agreement with the district court in which it agreed to complete a **Marbled Murrelet** status review by December 31, 2003 and to propose new critical habitat by August 30, 2006, and final critical habitat one year later. Environmental intervenors filed objections to the settlement and had previously moved to dismiss some claims on their merits. The district court has not yet approved the settlement, but the Fish and Wildlife Service began the status review on April 21, 2003.
5. The Freedom of Information Act lawsuit produced a settlement agreement in which the BLM agrees to propose amendment to **BLM Land Management Plans** that would revert back to a pre-1994 view that certain BLM lands must be managed for timber production and would eliminate old-growth and riparian reserves for species and ecosystem protection on those lands. A draft supplemental environmental impact statement would be published on August 1, 2003 and a final on December 1, 2003 with a record of decision as soon as ESA consultation is completed. This settlement agreement has not previously been made public.

For more information, please contact Earthjustice's Seattle office, Patti Goldman or Kristen Boyles: 206-343-7340 x32, 33.

THE LAWSUITS

SURVEY AND MANAGE:

In Douglas Timber Operators v. Secretaries of Agriculture & Interior, Civ. No. 01-6378-AA (D. Or. Filed Dec. 2001), Douglas Timber Operators, American Forest Resource Council, and the Association of O&C Counties challenged actions weakening the survey and manage program for protecting old-growth dependant species -- arguing that the Clinton Administration's actions weakening these standards did not go far enough.

NORTHERN SPOTTED OWL:

Western Council of Industrial Workers v. Secretary of the Interior, Civ. No. 02-6100-AA (D. Or. Filed April 2002), brought by the named plaintiff, American Forest Resource Council, Swanson Group, and Rough & Ready Lumber Co. sought a status review to delist the northern spotted owl and withdrawal its critical habitat designation.

MARBLED MURRELET:

American Forest Resource Council v. Secretary of Interior, Civ. No. 02-6087-AA (D. Or. Filed March 2002), brought by the named plaintiff, Starfire Lumber Co., Herbert Lumber Co., and C&D Lumber Co., sought a status review to delist the marbled murrelet and withdrawal of its designated critical habitat.

BUREAU OF LAND MANAGEMENT LANDS:

American Forest Resources Council v. Clarke, No. C94-1031-TPJ (D.D.C.), was a 1994 challenge to the Northwest Forest Plan, including to the federal agencies' legal authority to place Oregon and California Railroad lands (O&C lands) in old-growth and riparian reserves. The timber industry filed this case in Washington, D.C., even though the lead environmental and timber industry challenges to the Northwest Forest Plan were filed in Washington state. The timber industry challenge was rejected in both the district and appellate court. Seattle Audubon Society v. Lyons, 871 F. Supp. 1291 (W.D. Wash. 1994), affirmed, 80 F.3d 1401 (9th Cir. 1996). Undaunted, the timber industry pressed the issue in D.C., only to have the district court twice dismiss the case. The second dismissal decision (172 F.Supp.2d 24 (D.D.C. 2001)) is on appeal to the D.C. Circuit.

AQUATIC CONSERVATION STRATEGY:

Pacific Coast Federation of Fishermen's Associations v. National Marine Fisheries Service, 71 F. Supp.2d 1063 (W.D. Wash. 1999), affirmed, 265 F.3d 1028, 1035-36 (9th Cir. 2001), is the second of three cases brought by fishing and conservation organizations to protect threatened and endangered salmon from harmful logging practices in the Northwest. The cases invalidated federal approval of logging practices that degrade salmon habitat. The first two cases have long since been over, and the fishing and conservation groups recently settled the third case. The timber industry seeks to override the decisions of the courts, including the Ninth Circuit Court of Appeals, by weakening the Aquatic Conservation Strategy.