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Testimony on: “Failed Federal Forest Policies: Endangering Jobs, Forests and Species

Subcommittee on National Parks, Forests and Public Lands Field Hearing
U.S. House of Representatives

Cowlitz County Expo and Conference Center
1900 7th Avenue, Longview, WA
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Mr. Chairman and Members of the Committee:

I am Steve Mealey, Honorary Life Member of the Boone and Crockett Club, and Vice President for Conservation. I am currently retired in Oregon. My professional career spanned 30 years and included wildlife (grizzly bear) research as well as management and administration for federal [U.S. Forest Service (USFS)], state (Idaho Department of Fish and Game), and private (Boise Cascade Corporation) natural resources based organizations. I am proud to represent the Boone and Crockett Club here today which was founded by Theodore Roosevelt in 1887. It is America’s oldest hunter/conservationist organization with national focus. The Club’s mission is to promote the conservation and management of wildlife, especially big game and its habitat, to preserve and encourage hunting and to maintain the highest ethical standards of fair chase and sportsmanship in North America. The Boone and Crockett Club has a great legacy of protecting wildlife, especially big game, as well as federal land habitat. It’s fair to say the Club is the “godparent” of America’s national forests, national parks and wildlife refuges having worked long, hard, and successfully for more than a century for their establishment, maintenance and improvement.

I come here today to express grave concern for:

- 1) The effect of the Northwest Forest Plan (NWFP) on black-tailed deer and hunting and on ecosystem restoration project implementation in western Oregon;
- 2) The effect on ecosystem restoration project implementation of the March 2012 proposal to expand critical habitat (CH) for the Northern Spotted Owl (NSO); and,
- 3) The problems associated with major federal land/regulatory laws underlying the NWFP and NSO protection rules and proposals.

I’ll offer some recommendations for repair.

Prelude

In 1993, a comprehensive NWFP was initiated to end the impasse over management of federal forest lands in the Pacific Northwest within the range of the NSO. With the signing of the Northwest Forest Plan Record of Decision (ROD) in 1994, a framework and system of standards and guidelines were established to guide management of 24 million acres of federal forests in Oregon, Washington and

northern California and protect the NSO listed in 1990 as a threatened species under the Endangered Species Act (ESA). The plan is a much less flexible version of its precursor, “Option 9”, developed by the Forest Ecosystem Management and Assessment Team (FEMAT) led by then USFS Chief Research Wildlife Biologist, and later USFS Chief Jack Ward Thomas. Twenty-two years since listing, a Revised Recovery Plan for the NSO was issued June 28, 2011 which recognized “many populations of spotted owls continue to decline...even with extensive maintenance and restoration of spotted owl habitat in recent years...it is becoming more evident that securing habitat alone will not recover the spotted owl...competition from the barred owl poses a significant and complex threat...”. Overall NSO numbers have been declining nearly 3%/year leading to an estimated 40% decline over the last 25 years. In February, 2012 the U.S. Fish and Wildlife Service (USFWS) announced a proposal identifying nearly 14,000,000 acres in Oregon, Washington and northern California as CH for the NSO. The proposal is a 62% increase over that designated in the 2008 plan.

NWFP and Deer, Elk, Hunting, and Ecosystem Restoration in Western Oregon

General

Since 1989, the year before NSO listing to present, timber harvest on federal forestland in western Oregon has dropped from about 3.5 billion board feet/year to under .5 billion board feet/year, an 86% decline owing to the effects of environmental litigation and an emphasis on mature and old forest retention. Final harvest acres declined from nearly 100,000/year to less than 10,000/year. Creation of early seral (deer and elk) habitat has declined approximately 90% annually. In response, black-tailed deer harvest and associated hunters have declined dramatically. Numbers of deer hunters have dropped 34% from around 170,000 to about 112,000 while harvest has dropped 67% to around 20,000. Hunter success has declined 44% to about 18%. A similar trend for Roosevelt elk and related hunting is likely. Elk numbers from Oregon Department of Fish and Wildlife (ODFW) annual counts on the Willamette National Forest in the McKenzie Unit have declined to 16 in 2012 from 114 in 2005, an 86% drop.

This loss of early succession habitat with the sharp drop in deer and elk populations indicated in part by declining harvest, and accompanying steep declines in hunter numbers all owing to the virtual end of timber harvest following the listing of the NSO has been a major contributor to the more general problem of declining hunter participation in Oregon. Here, the participation rate of resident hunters has declined nearly 30% from about 340,000 in 1986 to around 240,000 in 2011. Resident hunters as a percent of eligible residents declined about 53% to 8% in the same period. Even though Oregon’s population has expanded by around a million during the period, the number of licensed resident hunters has declined in absolute numbers. There are similar declining trends in neighboring California and Washington. Nationally hunting participation also declined during the 25 year period but only by about 5%--much less than in Oregon. Declining game populations and habitat combined with increased license fees to offset lost revenues from fewer hunters is generally seen as a main reason for this disturbing trend which is a clear threat to Oregon’s and America’s primary hunting heritage and legacy: the North American Model of Wildlife Conservation.

The Model powered by hunters who have restored much of our nation’s wildlife and habitat and enabled everyone who wants to—to hunt holds:

- 1) Wildlife can be owned by no individual, but is held by the states in trust for all people;
- 2) Trustee states have no power to delegate trust responsibilities, and;
- 3) States have an affirmative duty to fulfill their trust role: take care of wildlife for the people.

Coupled with the advocacy of sport hunters concerned with the dramatic declines in wildlife in the late 19th and early 20th Centuries, the Public Trust Doctrine, which mandates that states hold and manage wildlife for its citizens, is the lynchpin of the Model and is the legal bedrock for states to manage and regulate wildlife. Hunters and hunting have been the reason for the success of the Model. Hunters have been the main proponents of wildlife and have paid the bills for wildlife conservation through purchases of licenses and hunting equipment which have been the principal support for most state wildlife agencies including ODFW. Through the loss of deer and elk populations and habitat and the resulting loss of hunters causing declining license fees to ODFW and its reduced ability to carry out its Public Trust role, the NWFP is weakening the institution of wildlife management in Oregon.

This is a powerful irony: that federal protection primarily for one species and its associates is undermining the North American Model of Wildlife Conservation that has restored wildlife to Oregon and America and is likely the most successful wildlife management model on earth. It is a particularly tragic irony since the NWFP has in 18 years failed to halt the decline in NSO indicating it is certainly an insufficient response to the ecological challenges of NSO recovery. While the costs of the NWFP to Oregon’s Model of Wildlife Conservation and its hunters are significant and clear, the benefits for NSO recovery—its intended purpose, remain uncertain at best.

Jim’s Creek Restoration Project

While the NWFP standards and guidelines preclude most traditional (pre-1990) timber harvest practices, silvicultural opportunities including production forestry, ecological restoration and adaptive management are provided for in “matrix” and other areas in the 1994 NWFP ROD. Standards and guidelines include those for “Survey and Manage” (S&M) intended to reduce or eliminate potential effects of agency actions on over 300 species including mosses, liverworts, fungi, lichens, vascular plants, slugs, snails, salamanders, great grey owl, and red tree voles. With some qualifications pre-disturbance surveys for target species are required before proposed activities can proceed. If evidence of a species is found (i.e. tree vole nest tree) proposed projects are modified to meet species management requirements (protection of 10 acres/Vole Habitat Area).

The Jim’s Creek Project (JCP) on the Middle Fork Ranger District, Willamette National Forest is a forest restoration project that has been planned and nearly completed. The JCP Decision Notice was signed in August 2006 and the project implemented through a Stewardship Contract in June 2008. The following were cited as primary benefits of the project and it’s supporting Alternative:

1. Comprehensive and much needed ecological restoration of a small part of the unique Oregon white oak/ponderosa pine savanna ecosystem and gains in biodiversity;
2. Reduced wildfire risk ;
3. Restored big game forage within a high emphasis Big Game Management Area;
4. Monetary receipts for subsequent ecological restoration;
5. Economic values to local economies from harvest of about 10 million board feet of forest products;
6. Refugia for species associated with the oak/pine savanna.

The JCP was seen as a small scale “test” to work out the restoration concepts and methods for subsequent application to other nearby oak/pine savanna landscapes critically in need of broad scale restoration. The project resulted in a non-significant forest plan amendment. While it modified and/or removed habitat or diminished its quality for use by NSO, the USFWS

Biological Opinion found implementation (and effects on red tree voles as a NSO food) would not jeopardize the continued existence of NSO and that it could proceed. The project was widely supported; there were no appeals or lawsuits.

In 2007 the USFS and the Bureau of Land Management (BLM) eliminated for the second time the S&M Mitigation Measure. Had this not occurred the JCP could not have been implemented in 2008 because of the abundance of red tree voles in the project area and beyond. Restoration of approximately 455 acres of a potential 25,000 acre landscape restoration project has been completed.

On July 5, 2011 U.S. District Court Judge Coughenour issued a court order directing implementation of the settlement agreement restoring the S&M requirement. The order was implemented by the USFS July 21, 2011. Resumption of the S&M Mitigation Measure precludes expansion of the JCP restoration strategy across the broader 25,000 acre Middle Fork Mixed Conifer Forest Type (which was an open forest type and has been degraded by fire suppression and tree in-growth) because of the abundance of red tree voles in the area (a 10 acre Habitat Area is protected where one or more voles are known or assumed to occur). Specifically, S&M measures for the red tree vole prevents implementation of actions needed over a 25,000 acre landscape to save historic Oregon white oak/ ponderosa pine savannas threatened by encroaching Douglas fir and ultimately uncharacteristic wildfire.

Inability to expand on the JCP success precludes reducing the risk of habitat loss or degradation from stand replacing wildfire over a broad fire-prone landscape, one of the four most important threats to the NSO stated in the Revised Recovery Plan (vii). Not expanding the JCP also contributes to the progressive loss of early forest succession habitat and consequent declining elk and deer numbers on the Willamette National Forest and other national forests in Region 6 of the USFS and on BLM lands and resulting lost hunting opportunity. Its loss also raises concerns about the likely adverse ecological effects of shrinking early succession habitat on other early succession dependent/associated species including neo-tropical migratory birds, reptiles and amphibians. One predictable effect is reduced economic activity associated with less hunting and wildlife associated recreation. A related issue is that ODFW will likely be unable to maintain current herd objectives for elk and deer on federal forestland habitats in the Southern Willamette Watershed District because of rapidly declining early forest succession habitat resulting from reduced timber harvest.

The reality of the Jim's Creek case defies common sense:

Reinstatement of S&M for the vole, a relatively abundant "species of concern" has precluded expansion of the JCP restoration strategy while the JCP Biological Opinion for the NSO, a beneficiary of voles as prey, concluded NSO would not be jeopardized and the project could proceed.

The Middle Fork Ranger District covers roughly 725,000 acres with about 60% unavailable for management because of protection reserves (i.e. wilderness areas, Late Succession Reserves, roadless areas, riparian conservation reserves, etc.). Only about 200,000 acres are available for active management projects such as the JCP.

The JCP example shows clearly how the NWFP through application of its S&M standards and guidelines or through related litigation outcomes, acts as a barrier to active management of landscapes in need of restoration even where proposed projects occur in the < 30% of the District remaining for management.

One hopeful apparent change in guidance for implementing the NWFP is the recognition in the Revised Recovery Plan in the section *Habitat Conservation and Active Forest Restoration* (II-10) that “Active management for ecological values trades short-term negative effects for long-term gains...Collaborative management must be willing to accept short-term impacts and short-term risks to achieve long-term benefits and long-term risk reduction; overly zealous application of the precautionary principle often is a deliberate, conscious management decision to forgo long-term increases in forest health and resilience to avoid short-term responsibility or controversy.” A recent paper by Roloff, Mealey and Bailey [*Comparative hazard assessment for protected species in a fire-prone landscape* in: *Forest Ecology and Management* 277 (2012) 1-10] provides a peer reviewed process for assessing and comparing the short and long-term risks and benefits of management options. Application of such an analysis to the JCP expansion would be useful in determining whether to suspend the S&M Mitigation Measure and tree vole management requirements as a short-term risk, in deference to the long-term benefits of ecological restoration.

The Jim’s Creek case leads to my first recommendation:

The NWFP has been in effect 18 years with no significant external evaluation of its effectiveness in achieving its goals and objectives. I believe it is long past time for a congressionally sanctioned independent review of the NWFP. One option would be to engage a highly respected science institution such as the National Academies in a review. A better option would be to request a review by a select, locally experienced group including past and present federal land managers and members of various teams-especially the lead scientists-that would include the Interagency Scientific Committee (ISC), the “Gang of Four” (Jack Ward Thomas, K. Norman Johnson, Jerry F. Franklin, and John Gordon) and the Forest Ecosystem Management Assessment Team (FEMAT).

Critical Habitat (CH) Expansion and Ecological Restoration

March 11, 2012 the USFWS announced in a press release, a “science based” CH proposal for the NSO that revises a 2008 CH designation in response to a U.S. District Court order. According to the release, the proposal for 13, 962,449 acres of CH recommends substantially increasing active management of forests, consistent with ecological forestry principles.

PineGrass Plantation Management Project

February 28, 2012 the Middle Fork District of the Willamette National Forest issued a scoping letter proposing restoration treatments to maintain the historic vegetative diversity within 88 plantations totaling about 2,000 acres. The plantations with high fire risk are within the same 25,000 acre Middle Fork Mixed Conifer Type as the JCP, and were all regenerated after clearcutting 10-50 years ago. The purpose of the project is similar to the JCP and is designed to restore the forest type to its historic low density open forest condition. Twenty percent of the

proposed treatment area was CH under the 2008 designation and would be managed to accelerate late forest conditions.

Soon after the scoping letter was sent, the USFWS published its proposed rule revising CH which now would cover about 80 % of the plantations proposed for restoration. Consultation with the USFWS on the proposal under the 2008 CH designation has already occurred with a determination that the proposal “Would Not Likely Adversely Affect” the NSO. The new rule changed the status of most of the area proposed for treatment and requires project modifications to develop late forest succession (fire-prone) conditions for NSO instead of restoring low fire risk open forest conditions characteristic of the type. Project modification to meet requirements for NSO would not meet the original intent of the purpose and need for the project. District personnel are considering reinitiating consultation on the project under the proposed designation but consultation is considered “complex” and would likely delay the project an “indeterminate” amount of time. For all intents and purposes the forest ecosystem restoration project appears to be on “long-term” hold pending resolution of the CH proposed rule.

While the CH proposal for the NSO purports to support and encourage active forest management to restore forest health, increase resilience, and foster diversity in fire-prone landscapes, the immediate effect in the case of the PineGrass Plantation Project appears to be the opposite.

The Problem of Major Federal Land/Regulatory Laws

Summary

Management action and inaction or things we do and don't do (acts of commission and omission), both have the potential to cause serious environmental harm as well as good. On federal fire-prone forests of the West, the focus of regulatory environmental law has been mostly prevention of harm from action. The potential for harm from inaction has largely been ignored. This has contributed to the decline of the very resources the laws are intended to protect. The scope of the Endangered Species Act, Clean Water Act and Clean Air Act should be updated and expanded to include consideration of the short and long-term effects of management inaction, and comparing and balancing them with short and long-term effects of action. These comparative assessments would allow managers to consider the full ecological contexts over space and time in environmental decision-making and offer improved prospects for restoring and sustaining resources.

There are clear shortcomings in the federal forest policies discussed above; importantly however they appear to reflect those of the driving federal land and regulatory laws. Those difficulties are well known and discussed, most recently by Jack Ward Thomas in his article in the fall 2011 Boone and Crockett Club publication *Fair Chase* titled *The Future of the National Forests; Who Will Answer an Uncertain Trumpet?* In it Thomas writes “Each of those [federal land/regulatory laws: i.e., National Forest Management Act (NFMA), Endangered Species Act (ESA), National Environmental Policy Act (NEPA), Clean Water Act (CWA), etc.] must have seemed a good idea in the context of time and circumstances. Yet in totality and considering interactions that evolved (especially as variously interpreted by the courts) they formed the threads of a now intractable Gordian knot (an intricate problem insoluble in its own terms) rendering national forest planning and management ever more costly and ineffective.”

Donald Floyd and others elaborated the problem of overlapping and interacting federal land use laws in a 1999 Society of American Foresters booklet *Forest of Discord*; and the American Wildlife Conservation Partners a federation of hunting/conservation organizations recommended to President

Bush in 2001 in their *Wildlife for the 21st Century, Volume I, Recommendation to President George W. Bush* that he initiate an assessment of federal land laws to identify legal and regulatory problems contributing to federal land management “gridlock”.

Context: Rachel Carson’s *Silent Spring*

There is important context for the “federal land/regulatory law” problem. The American Ecology Hall of Fame states: “In 1992, a panel of distinguished Americans declared Rachel Carson’s 1962 *Silent Spring* the most influential book of the past 50 years. Many argue that *Silent Spring* was instrumental in launching the American environmental movement. Passage of NEPA in 1969 and establishment of the CEQ and EPA in 1970 can be attributed to the environmental awareness that Carson raised. Soon after NEPA, the Clean Air Act (CAA) of 1970, the CWA of 1972, and the ESA of 1973 were all passed, all traceable to the spirit of environmental awareness and concern raised by Rachel Carson.

Common to *Silent Spring* and the federal regulatory laws that followed, was concern for documenting and reducing environmental harm man was causing through development actions. Environmental regulation focused on proposals for major actions (acts of commission), their environmental impacts, their adverse effects, and standards or alternatives to prevent or mitigate adverse effects. Most regulatory attention, especially related to fire-prone forests of the West, has been on preventing short-term adverse effects of fuels treatment proposals with little attention to the short or long-term consequences of inaction (acts of omission). **The applicable theory in regulatory law, regulations and their implementation appears to be that significant environmental risks result from committed acts rather than from their omission. Analyses supporting the theory continue to be lacking.**

Jack Ward Thomas, while addressing a conference in October, 2002 in Bend, Oregon entitled “*Fire in Oregon’s Forests*” commented on the problem of “dynamic vs. static management” in fire influenced landscapes covered by the NWFP. Thomas noted that the combined effect of the environmental laws of the 1970s, especially the ESA, was the predominant use of preservationist strategies defined as static or “hands off” management to protect listed species (and water quality). He observed that reliance on static management minimizing immediate risks of activities has been routinely reinforced by federal court decisions that favor preservation. Thomas concluded that serious problems with static, near-term risk averse management are emerging because ecosystems are dynamic and change is constant in preserves. In fire-prone forests, unabated fuel accumulation leads to uncharacteristic wildfires that can ultimately harm listed species and water quality. Thomas saw these long-term effects of management inaction as either ignored or downplayed.

In the 50 years between *Silent Spring* and “static vs. dynamic management” how could laws intended to protect the environment, actually put environmental assets at risk in fire prone forests of the West? A look at the precautionary nature of the ESA, and by inference the CWA and CAA, is instructive.

The ESA takes a strong but narrowly defined precautionary approach in the face of uncertainty about risk to species. It focuses on and seeks to prevent “take” by prohibiting mainly near-term potential and/or uncertain harm or risks. In consultations, proponents must demonstrate proposals would not be harmful regardless of timeframe, apparently dismissing ecological change over time. The ESA and its application do not commonly distinguish the time dimension of risk: i.e., that some short-term risks to species can result in longer term benefits to those same species, or that short-term risk avoidance can

lead to long-term increased risk. Rather than documenting mainly actual or probable risks or comparing and balancing the short and long-term risks and benefits of proposals and then regulating, the law takes a more narrow precautionary approach. In summary, the ESA compels regulating where *any* risks are believed to be likely.

This restrictive precautionary philosophy is apparent in the definitions in the 1998 *Consultation Handbook* that governs Section 7 consultations. The phrase “Is Likely to Adversely Affect” is defined as the appropriate finding if *any* adverse effect to species may occur. *Any* immediate non-beneficial, measurable effect with *any* possibility of harm, regardless of magnitude and regardless of potential offsetting longer term benefits is “Likely to Adversely Affect” the species. Such a finding triggers a formal and usually expensive and time consuming process to determine jeopardy or how to avoid it by making modifications to the project. **To avoid the process, proponents must propose projects with no immediate risk. In fire-prone forests, this often excludes projects with long-term benefits to listed species.** Inability to reduce fuels in fire prone forests occupied by NSO only to see the trees in those forests killed by intense fire and the resulting vegetation return to brushland, unsuitable for owls, is a case in point.

NWFP and NSO Recovery

In 2002, regulating agencies issued a policy that ESA Section 7 consultations should balance the “long term benefits of fuel treatment projects”... “against any short or long-term adverse effects.” It is a hopeful sign that the 2011 Revised NSO Recovery Plan now reflects this direction. There is no clear evidence however that management agencies have responded by routinely completing comparative ecological risk/hazard assessments, comparing the short and long-term effects of proposals with the short and long-term effects of their absence, as part of the consultation process.

In the absence of such analysis, regulating agencies often appear to “default” to the highly precautionary conclusion that *any* short-term adverse effects are harmful and should be avoided. **In summary, in fire prone forests of the West, especially lands under the NWFP, precaution in the ESA is most often narrowly applied to acts of commission: management is discouraged unless there is certainty that no immediate harm will result, ignoring without inquiry the potential harm from omitted acts.**

When the USFWS completed its status review of the NSO in November 2004, uncharacteristic wildfire was found to be the greatest cause of habitat loss during the nine year review period. Uncharacteristic wildfire remains a major cause of NSO habitat loss today. Jack Ward Thomas, when reviewing implementation of the NWFP in northern California in 2003, found that the restrictive application of the precautionary principle in the NWFP had increased the risk of fire and the risk to NSO by discouraging management to mitigate fire risks to NSO and their habitat. The USFS identified ESA requirements for consultation as a main reason for Thomas’s findings. Differences with regulators over the importance of short-term adverse impacts versus the longer term benefits of treatments were a big factor. **The USFS acknowledged designing projects to align with the risk averse philosophy to reach a “Not Likely to Adversely Affect” conclusion and avoid formal consultation. This often eliminated projects that had long-term benefits for owls and fish resulting from reduced fire risk in Late Succession Reserves and in riparian areas, but also had some near-term adverse effects.**

Highly restrictive precaution embedded in standards and guidelines as those for S&M has been a barrier to restoration management to reduce fire risk and an obstacle to achieving conservation

goals. This calls into question the evolved practice in the West of attempting to maintain essentially “static” unmanaged conservation reserves in dynamic fire prone forests. Recent assessments of uncharacteristic wildfire risks indicate that the *absence* of active management to mitigate fire risks in such areas may be the greater risk to vulnerable species. Ironically, continuation of highly restrictive precautionary principle driven, short-term risk averse protection measures will likely lead to the continued deterioration of the very resources the environmental laws were intended to protect.

ESA case law resulting from NWFP litigation (i.e. Case No. 03-35279, Gifford Pinchot Task Force v. USFWS) has generally reinforced the precautionary features of the ESA and the requirement that regulators implementing the act be averse to short-term risk in decision-making (an exception is a May 2011 decision by the 9th Circuit upholding the Sierra Nevada Forest Plan and stating “*it is the prerogative of the Forest Service to determine that long-term effects...remain desirable despite short-term harm*”). This essentially “locks in” an incomplete legal theory: one that fails to clearly and specifically recognize that acts of commission and acts of omission together are the necessary and sufficient source of environmental risk and benefit. Changing and completing the theory will likely require refining the ESA and other overly precautionary environmental laws.

Options for Broadening Ecological Context in Law

I acknowledge and compliment the USFWS for recognizing in the Revised NSO Recovery Plan that management must accept short-term negative effects for long-term gains. I also recognize that the recovery plan is a “guidance” document and does not regulate. Agency consideration of comparative short and long-term risks and benefits of proposals will be certain only if required in law. Such a requirement would also likely limit litigation which could follow agencies allowing short-term negative effects without a legal mandate.

This leads to my second recommendation:

A broader precautionary approach should be integrated in ESA by amending it to require in Section 7 consultations:

- 1) That agencies balance the “impacts to the ecosystem likely affected by the project, of the short and long-term effects of undertaking the agency action, against the short and long-term effects of not undertaking the agency action,” as in Sec. 106 (c) (3) of the 2003 Healthy Forests Restoration Act; and,**
- 2) That agencies consider such assessments in related decision-making.**

Such language could also be incorporated into appropriate sections of the CWA and CAA. With this mandate there would be no need to “default” to an overly restrictive application of the precautionary principle. Not only would the standard for precaution be broadened, but the ecological context of the ESA and other laws would be updated and expanded as well.

America’s laws regulating the environment were written mostly to resolve the critical environmental problems of Rachel Carson’s time, projected forward: mainly to prevent or mitigate adverse consequences of acts of commission. They were necessary then and remain necessary, but they are insufficient for today’s problems of omission, especially in fire-prone forests of the West, and must be amended to address them.

Cleaving the Gordian Knot

Jack Ward Thomas, in the fall 2011 *Fair Chase* article offers a solution to the Gordian knot problem of conflicting, overlapping and incompatible federal land/regulatory laws with which I fully agree and support.

This leads to my third recommendation:

As suggested by Thomas, Congress or the Administration should select a group of knowledgeable individuals experienced in the management of natural resources, public land law, and administration of land management agencies, and charge them with developing potential solutions with associated benefits and costs. The task should be completed in a year or less. Recommendations should include focus on revisions of present laws, repeal of those not current or redundant, and new laws that clearly define the mission and expectations of the USFS. Land use planning should be evaluated and new sources of revenues explored.

A Final Note

The Revised NSO Recovery Plan in response to ESA Listing Factor E: *Other Natural or Manmade Factors Affecting its Continued Existence* identifies competition from barred owls (a natural factor) as one of the three most important threats to NSO recovery. A major step in the recovery strategy is to evaluate management options to reduce the impact of barred owls on NSO since barred owls are seen as the “most significant short-term threat to spotted owl recovery.” The barred owl is included as an “invasive” animal species and is further described as more likely to be a “generalist” than a “specialist” like the NSO and able to adapt more successfully to a new climate than natives. Ten Recovery Actions are devoted to protecting NSO from barred owls (III-62 to III-69).

The cornerstone of Charles Darwin’s theory of evolution is the concept of natural selection:

Individuals less suited to the environment are less likely to survive and less likely to reproduce; individuals more suited to the environment are more likely to survive and more likely to reproduce and leave their inheritable traits to future generations which produces the process of natural selection

I think Darwin would find it ironic and surprising that an informed society would fund and enforce a requirement to thwart such a fundamental evolutionary process by killing barred owls in the name of ecosystem preservation. At least I think he would likely find it another example of “static” vs. “dynamic” management.