INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulations adopted pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. "Take" is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harm is further defined by the Services to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined as intentional or negligent 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 defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this incidental take statement.

The proposed SYP/HCP and its associated documents clearly identify anticipated impacts to affected species likely to result from the proposed taking and the measures that are necessary and appropriate to minimize those impacts. All conservation measures described in the proposed SYP/HCP, together with the terms and conditions described in the associated IA and any section 10(a)(1)(B) permit and permits issued with respect to the proposed SYP/HCP, are hereby incorporated by reference as reasonable and prudent measures and terms and conditions within this incidental take statement as pursuant to 50 CFR 402.14(I). Such terms and conditions are nondiscretionary and must be undertaken for the exemptions under section 10(a)(1)(B) and section 7(o)(2) of the Act to apply. If the permittee fails to adhere to these terms and conditions, the protective coverage of the section 10(a)(1)(B) permit and section 7(o)(2) may lapse. The amount or extent of incidental take anticipated under the proposed SYP/HCP, associated reporting requirements, and provisions for disposition of dead or injured animals are as described in the SYP/HCP and its accompanying section 10(a)(1)(B) permit.

In addition to the measures described in the proposed SYP/HCP and its associated documents, the FWS believes three reasonable and prudent measures are warranted to minimize the take of marbled murrelets; these are described below under Reasonable and Prudent Measures.

AMOUNT OR EXTENT OF TAKE
LISTED SPECIES:

American peregrine falcon

The FWS anticipates that an undetermined number of peregrine falcons associated with 3 known nest sites and an unknown number of potential nest sites could be taken over a 50-year period as a result of this proposed action. The amount taken annually could not be determined. The incidental take is expected to be in the following forms:

Harm - an unknown number of peregrine falcons could be taken due to changes in prey species habitat, and potential prey abundance and availability, within foraging range of the 3 known nest sites and an unknown number of potential nest sites; direct harm to individuals or to nest sites is not expected to occur due to conservation measures being implemented.

Harassment - an unknown number of breeding peregrines may be taken due to disturbance resulting from activities other than timber operations (e.g., vehicle use of existing roads) that could occur within 0.5 miles of 3 known nest sites and an unknown number of potential nest sites; and

Injury - no peregrine falcons are expected to the taken due to timber operations that would destroy nest sites.

Northern spotted owl

The FWS anticipates that an undetermined number of spotted owls could be taken as a result of this proposed action. The amount taken annually could not be determined. The incidental take over 50 years is expected to be in the following forms:

Harm - a loss of at least 48 activity centers due to removal of an undetermined amount of suitable habitat;

Harassment - at least 156 activity centers due to disturbance during the breeding season resulting from timber harvest and its associated activities; and

Injury or death - of an undetermined number of individuals due to timber harvest and its associated activities.

Bald eagle

The FWS anticipates that an undetermined but low number of bald eagles may be taken over a 50-year period as a result of this proposed action. The amount taken annually could not be determined. The incidental take is expected to be in the following forms:

Harm - due to loss of 29,291 acres of suitable nesting and roosting habitat;

Harassment - due to disturbance of an undetermined number of eagles at an undetermined number of nesting sites or wintering areas, due to timber harvest and other covered activities; and

Injury or death - of an undetermined number of individuals (adults or young), due to timber harvest or other covered activities in 29,291 acres in suitable nesting and roosting habitat during the breeding season.

Marbled murrelet

The FWS anticipates the take of an unquantified number of murrelets associated with the removal of 4,696 acres of occupied habitat. Other than quantifying the amount of occupied acres removed, this take is impossible to quantify because the density of nesting murrelets in this habitat is unknown. However, as described in the Effects of the Action, the FWS believes the proposed SYP/HCP reduces much of the potential for take by targeting relatively lower quality habitat for harvest that is likely to have relatively lower densities of nesting murrelets.

The FWS also anticipates an unquantifiable amount of incidental take of murrelets in some occupied habitat due to disturbance associated with projects conducted during the nesting period. The take due to noise disturbance associated with the harvest and other management activities within 0.25 miles of occupied habitat is difficult to detect and quantify. However, the FWS believes the magnitude of this take is likely to be relatively low. If murrelets are nesting in close proximity to areas with relatively high levels of human activities, the FWS anticipates some percentage of these individuals, located in suitable habitat within 0.25 mile of the proposed projects (or within 0.5 mile of aircraft operations), will be subject to harassment as a result of the noise associated with these activities. This take can be qualified in terms of the cumulative probability that (1) suitable, unsurveyed habitat is actually occupied by murrelets; (2) if occupied, nesting birds will in fact be disturbed; and (3) if disturbed, reproductive output will be negatively affected.

Assumptions Regarding the Grizzly Creek Complex: In the development of this biological opinion and its assessment of effects of the proposed SYP/HCP on the marbled murrelet, the FWS assumed that the proposed action does not include any harvest of habitat in the Grizzly Creek Complex, as outlined in section 3.1.2 of the IA. Specifically, if the Grizzly Creek Complex is not purchased and protected during the next five years, subsection 3.1.2(iv) of the IA obligates the FWS at that time to make a determination of whether harvest of the Grizzly Creek Complex will "appreciably reduce the likelihood of the survival and recovery of the marbled murrelet... in accordance with 50 CFR Part 402."

Because take of any murrelets associated with the Grizzly Creek Complex was not considered or evaluated in this biological opinion, such potential take would exceed the amount permitted in this opinion (50 CFR Part 402.14(I)(4)). Therefore, the FWS assumes any future consideration of timber harvest in the Grizzly Creek Complex in 5 years will necessitate the need for reinitiation of formal consultation at that time, as described in 50 CFR Part 402.16. This reinitiation, should it be necessary, will enable the FWS to evaluate the likelihood of whether any additional take of murrelets associated with the modified action will jeopardize the marbled murrelet. This reinitiated consultation would utilize the best scientific information that is available at that time, including any current analysis of murrelet population trends and monitoring information provided by implementation of the SYP/HCP or other research efforts. If the modified action is then determined not likely to jeopardize the marbled murrelet, but take of murrelets would occur in excess of the amount permitted in this biological opinion, the FWS assumes a modification and amendment to the incidental take statement contained in this biological opinion will be necessary.

Western snowy plover

The FWS anticipates that no western snowy plovers or their young will be killed or injured as a result of actions proposed in the SYP/HCP. The FWS further anticipates that no western snowy plovers are likely to be taken as a result of harm due to loss of suitable nesting habitat or to harassment due to disturbance from covered activities.

With proper implementation of the SYP/HCP conservation measures for the western snowy plover, including surveys to detect plovers and delineation of protection buffers around nesting plovers, the FWS anticipates that no incidental take of plovers due to direct harm, killing, or harassment will occur. These conservation measures considered in relation to the known current breeding distribution of the species and the risks associated with the covered activities ensure a very low risk of adverse impacts to the species. Protection buffers to be implemented around future nests sites are designed to ensure that nesting plovers and their young are not disturbed by covered activities. Potential indirect effects of gravel removal will be addressed under future evaluation by PALCO and the agencies, and appropriate mitigation measures determined, within the next 3 years. Activities covered by this plan are not likely to result in significant changes to the current level of predation on the species within the action area. Activities covered under this incidental take permit include only stream crossings (bridges, culverted fills, fords and a variety of temporary crossings), roadbed access preparation, and associated crossing maintenance. Gravel extraction, stockpiling, or other ground-disturbing activities not directly related to stream crossings are not specifically considered to be covered activities under the SYP/HCP and are not therefore covered under this incidental take statement. Any future incidental take associated with activities not specifically covered under the SYP/HCP, including but not limited to gravel extraction, stockpiling, and gravel bar access on the Eel River, will need to be authorized through a section 7 consultation on the issuance of permits pursuant to section 404 of the Clean Water Act, or an amendment to the ITP.

Southern Oregon/Northern California Coast ESU coho salmon

The NMFS anticipates that an undetermined number of SONCC ESU coho salmon may be taken as a result of full implementation of the proposed action and associated level of protection over the 50-year life of the permit. The incidental take of this species is expected to be in the form of harm, harassment, kill, and injury. As analyzed previously in this opinion, the NMFS has determined that this level of anticipated take is not likely to result in jeopardy to the species or destruction or adverse modification of proposed critical habitat.

> **Harm** due to habitat modifications resulting from forestry management, road management, the operation of the two permitted quarries, development and operation of borrow pit, and water drafting as described in the SYP/HCP;
>
> **Harassment** due to the use of equipment in streams during stream crossing and road construction, reconstruction, storm-proofing, upgrading activities, maintenance, closure, decommissioning and water drafting;

Kill due to the use of equipment in streams during stream crossings and road construction, reconstruction, storm-proofing, upgrading activities, maintenance, closure, decommissioning, and water drafting;

Injury due to the use of equipment in streams during stream crossings and road construction, reconstruction, storm-proofing, upgrading activities, maintenance, closure, decommissioning, and water drafting.

PROPOSED SPECIES:

Southern Oregon/California Coastal Chinook salmon

The NMFS anticipates that an undetermined number of SOCC ESU chinook salmon may be taken as a result of full implementation of the proposed action and associated level of protection over the 50-year life of the permit. The incidental take of this species is expected to be in the form of harm, harassment, kill, and injury. As analyzed previously in this opinion, the NMFS has determined that this level of anticipated take is not likely to result in jeopardy to the species or destruction or adverse modification of proposed critical habitat.

Harm due to habitat modifications resulting from forestry management, road management, the operation of the two permitted quarries, development and operation of borrow pit, and water drafting as described in the SYP/HCP;

Harassment due to the use of equipment in streams during stream crossing and road construction, reconstruction, storm-proofing, upgrading activities, maintenance, closure, decommissioning and water drafting;

Kill due to the use of equipment in streams during stream crossings and road construction, reconstruction, storm-proofing, upgrading activities, maintenance, closure, decommissioning, and water drafting;

Injury due to the use of equipment in streams during stream crossings and road construction, reconstruction, storm-proofing, upgrading activities, maintenance, closure, decommissioning, and water drafting.

UNLISTED SPECIES:

Bank swallow

The FWS anticipates that no bank swallows will be killed, harmed, or harassed as a result of actions proposed in the SYP/HCP. Survey requirements contained in the conservation measures are likely to locate any colonies, which will then be protected by a 200-foot buffer during May and June or by other measures developed during consultation with the FWS and CDFG. Surveys could fail to detect bank swallows, and colony sites could be inadvertently destroyed during road construction or other projects. This would result in take of an unquantifiable number of bank swallows as a result of modification of up to 1 acre of breeding habitat during the permit period.

Pacific fisher

The FWS anticipates that an undetermined number of Pacific fishers associated with approximately 51,400 acres of suitable late-seral habitat, and an additional 5,400 acres of potentially suitable lower quality habitat could be taken over a 50-year period as a result of this proposed action. The amount taken annually could not be determined. The incidental take is expected to be in the following forms:

> **Harm** - due to loss of approximately 51, 500 acres of suitable resting and denning habitat, and an additional 5,400 acres of potentially suitable resting and denning habitat, and fragmentation of remaining resting and denning habitat;
>
> **Harassment** - due to disturbance of reproducing Pacific fishers resulting from timber harvest of approximately 160,870 acres of higher quality resting and denning habitat over the permit period, and an undetermined amount of lower quality habitat over the permit period; and
>
> **Injury** - due to timber harvest of approximately 160,870 acres of higher quality resting and denning habitat over the permit period, and an undetermined amount of lower quality habitat over the permit period.

Red tree vole

The FWS anticipates that an undetermined number of California red tree voles associated with approximately 51,400 acres of suitable late-seral habitat, and an additional 5,400 acres of potentially suitable lower quality habitat could be taken over a 50-year period as a result of this proposed action. The amount taken annually could not be determined. The incidental take is expected to be in the following forms:

> **Harm** - due to loss of 56,900 acres of habitat (51,500 acres of suitable late-seral, and 5,400 acres of potentially suitable lower quality habitat) and the fragmentation of the remaining suitable habitat;
>
> **Harassment** - due to disturbance of reproducing red tree voles resulting from timber harvest of 160, 870 acres of late-seral habitat and an undetermined amount of lower quality habitat over the permit period; and
>
> **Injury** - due to timber harvest of 160,870 acres of suitable late-seral nesting habitat and an undetermined amount of potentially suitable lower quality nesting habitat (CWHR 4D). All suitable habitat is considered nesting habitat since red tree voles reproduce year round.

Northern red-legged frog

The FWS anticipates that an undetermined number of northern red-legged frogs associated with 92,668 to 126,814 acres of potentially suitable habitat adjacent to Class I and Class II streams, and wetlands could be taken over a 50-year period as a result of the proposed action. The

amount taken annually could not be determined. The incidental take is expected to be in the following forms:

Harm - due to modification of 92,668 to 126,814 acres of suitable foraging and or overwintering habitat;

Harassment - due to disturbance of northern red-legged frogs resulting from timber harvest or other covered activities in 92,668 to 126,814 acres of forested stands; and

Injury or death - of an undetermined number of individuals due to timber harvest or other covered activities in 92,668 to 126,814 acres of suitable foraging and or overwintering habitat during the times this subspecies may be utilizing this habitat

Foothill yellow-legged frog

The FWS anticipates that an undetermined number of yellow-legged frogs associated with 16,724 to 50,870 acres of potentially suitable habitat adjacent to Class I and Class II streams, and wetlands could be taken over a 50-year period as a result of the proposed action. The amount taken annually could not be determined. The incidental take is expected to be in the following forms:

Harm - due to modification of 16,724 to 50,870 acres of suitable foraging and or overwintering habitat;

Harassment - due to disturbance of foothill yellow-legged frogs resulting from timber harvest or other covered activities in 16,724 to 50,870 acres of forested stands; and

Injury or death - of an undetermined number of individuals due to timber harvest or other covered activities in 16,724 to 50,870 acres of suitable foraging and or overwintering habitat during the times this species may be utilizing this habitat

Northwestern pond turtle

The FWS anticipates that an undetermined number of northwestern pond turtle associated with 91,840 to 191,767 acres of potentially suitable terrestrial habitat adjacent to Class I and Class II streams, and wetlands could be taken over a 50-year period as a result of the proposed action. The amount taken annually could not be determined. The incidental take is expected to be in the following forms:

Harm - due to modification of 91,840 to 191,767 acres of suitable nesting, aestivating, or overwintering habitat;

Harassment - due to disturbance of northwestern pond turtles resulting from timber harvest or other covered activities in 91,840 to 191,767 acres of forested stands; and

Injury or death - of an undetermined number of individuals due to timber harvest or other covered activities in 91,840 to 191,767 acres of suitable nesting, aestivating, or overwintering habitat during the times the subspecies may be utilizing this habitat

Tailed frog and southern torrent salamander

The FWS anticipates that an undetermined number of tailed frogs and southern torrent salamanders, primarily associated with about 752 miles of Class II waters, could be taken over a 50-year period as a result of the proposed action. The amount taken annually could not be determined. The incidental take is expected to be in the following forms:

Harm - due to direct and indirect effects of timber harvest and other covered activities.

Harassment - by disturbance related to timber harvest and other covered activities.

Injury or death - by actions related to timber harvest and other covered activities.

Northern California steelhead trout

The NMFS anticipates that an undetermined number of Northern California ESU steelhead may be taken as a result of full implementation of the proposed action and associated level of protection over the 50-year life of the permit. The incidental take of this species is expected to be in the form of harm, harassment, kill, and injury. As analyzed previously in this opinion, the NMFS has determined that this level of anticipated take is not likely to result in jeopardy to the species or destruction or adverse modification of proposed critical habitat.

Harm due to habitat modifications resulting from forestry management, road management, the operation of the two permitted quarries, development and operation of borrow pit, and water drafting as described in the SYP/HCP;

Harassment due to the use of equipment in streams during stream crossing and road construction, reconstruction, storm-proofing, upgrading activities, maintenance, closure, decommissioning and water drafting;

Kill due to the use of equipment in streams during stream crossings and road construction, reconstruction, storm-proofing, upgrading activities, maintenance, closure, decommissioning, and water drafting;

Injury due to the use of equipment in streams during stream crossings and road construction, reconstruction, storm-proofing, upgrading activities, maintenance, closure, decommissioning, and water drafting.

Southern Oregon/California Coastal cutthroat trout

The NMFS anticipates that an undetermined number of SOCC ESU coastal cutthroat trout may be taken as a result of full implementation of the proposed action and associated level of protection over the 50-year life of the permit. The incidental take of this species is expected to be

in the form of harm, harassment, kill, and injury. As analyzed previously in this opinion, the NMFS has determined that this level of anticipated take is not likely to result in jeopardy to the species or destruction or adverse modification of proposed critical habitat.

> **Harm** due to habitat modifications resulting from forestry management, road management, the operation of the two permitted quarries, development and operation of borrow pit, and water drafting as described in the SYP/HCP;
>
> **Harassment** due to the use of equipment in streams during stream crossing and road construction, reconstruction, storm-proofing, upgrading activities, maintenance, closure, decommissioning and water drafting;
>
> **Kill** due to the use of equipment in streams during stream crossings and road construction, reconstruction, storm-proofing, upgrading activities, maintenance, closure, decommissioning, and water drafting;
>
> **Injury** due to the use of equipment in streams during stream crossings and road construction, reconstruction, storm-proofing, upgrading activities, maintenance, closure, decommissioning, and water drafting.

To the extent this statement concludes that take of any migratory bird listed as a threatened or endangered species under the Act will result from the FWS's issuance of the ITP, the FWS will not refer the incidental take of any such migratory bird or bald eagle 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).

EFFECT OF THE TAKE

In the accompanying biological/conference opinion, the FWS and NMFS determined that this level of anticipated take is not likely to result in jeopardy to any covered species or destruction or adverse modification of designated marbled murrelet critical habitat or proposed coho or chinook salmon critical habitat.

REASONABLE AND PRUDENT MEASURES & TERMS AND CONDITIONS

The proposed SYP/HCP and its associated documents identify anticipated impacts to all covered species likely to result from the proposed takings and the specific measures and levels of species and habitat protection that are necessary and appropriate to minimize those impacts. All of the conservation and management measures of the HCP's Operating Conservation Program, together with the terms identified in the associated IA, are hereby incorporated by reference as reasonable and prudent measures and terms and conditions for this incidental take statement pursuant to 50

CFR 402.14(I). Such terms and conditions are non-discretionary and must be undertaken by PALCO for the exemptions under section 10(a)(1)(B) and section 7(o)(2) of the Act to apply. If PALCO fails to adhere to these terms and conditions, the protective coverage of the section 10(a)(1)(B) permit and section 7(o)(2) may lapse.

Reporting Requirements

In accordance with 50 CFR 402.14(I)(3), the HCP/SYP specifies provisions for monitoring and reporting the effects and the effectiveness of the mitigation and minimization measures on the covered species and their habitat. Each individual species conservation plan delineates the type and extent of monitoring and manner of reporting. The PALCO will also submit an annual report by February 1 of each year, as described in the Implementation Agreement, section 3.4.2.

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 Services recommend that the following conservation measures be implemented:

1. The Services should provide technical assistance to the applicant throughout the term of the permit.

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

REINITIATION NOTICE

This concludes formal consultation and conference on the action outlined in the request. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances

where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

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