

Private Forest Accord Rulemaking: Habitat Conservation Plan



Summary:

Over a two-year period starting in 2020, representatives of conservation groups and the forest sector met to find ways to resolve conflicts about how Oregon's forestlands should be managed. Their overarching goals in developing this agreement were to provide:

- Greater business certainty
- Greater environmental certainty
- Greater regulatory certainty
- A science-driven adaptive management process
- Alternatives for small forestland owners.

The agreements developed were recorded as the Private Forest Accord (PFA) report. The PFA resulted in Senate Bills 1501 and 1502, passed in 2022. SB 1501 revised the Forest Practices Act based on the PFA report. This law requires the Oregon Department of Forestry (ODF) to update its forest practice administrative rules, develop a Habitat Conservation Plan, and apply for Incidental Take Permits (ITP) covering aquatic species.

A Habitat Conservation Plan (HCP) is a planning document prepared to meet requirements under the federal Endangered Species Act. The HCP describes conservation measures intended to protect specific federally listed threatened and endangered species. In exchange for applying these conservation measures, applicants can obtain a permit that allows incidental take when they engage in certain lawful activities. Incidental take means the unintentional harm or killing of listed species that occurs incidental to otherwise lawful activity. To receive legal protection when engaging in activities that may result in incidental take, individuals or groups may apply to the National Marine Fisheries Services (NMFS) or the U.S. Fish and Wildlife Service (USFWS) for an Incidental Take Permit. Incidental Take Permits provide legal protections under the Endangered Species Act for landowners and operators performing covered work in the permit area.

ODF is developing an HCP as part of the application for Incidental Take Permits. ODF will hold the permits on behalf of Oregon private forest landowners, as well as any individual Native American tribes that wish to opt their fee lands into the permits. Covered landowners will obtain regulatory assurances under the ESA protecting them against incidental take that may occur while conducting forest operations and activities covered under the HCP.

ODF's Incidental Take Permits will:

- Apply to 10 covered aquatic species
- Cover activities subject to the Forest Practices Act except for application of pesticides
- Legally authorize incidental take of the covered aquatic species
- Apply to covered landowners

ODF is currently working with a contractor to develop the HCP, with input from a steering committee. Steering committee members include representatives from the PFA report authors, ODF Forest Resources Division staff, Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, National Marine Fisheries Service, and U.S. Fish and Wildlife Service.

ODF staff will seek to approve a draft proposed HCP to the Board of Forestry at the November 2022 meeting to present to the federal agencies by Dec. 31, 2022. Staff will prepare the final HCP and obtain the incidental take permit no later than Dec. 31, 2027.

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