

DRAFT
IMPLEMENTATION AGREEMENT
For
SIMPSON RESOURCE COMPANY

IN
NORTHERN CALIFORNIA

July 26, 2002

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1.0 PARTIES

The parties to this implementation agreement (“Agreement”) are Simpson Resource Company (“Simpson”); the National Marine Fisheries Service (NMFS); and the United States Fish and Wildlife Service (USFWS). In this Agreement, these entities may be referred to collectively as the “Parties” and each individually as a “Party.” Further, USFWS and NMFS may be collectively referred to as the “Services.”

2.0 RECITALS AND PURPOSES

2.1 Recitals. The Parties have entered into this Agreement in consideration of the following facts:

(a) Simpson owns or conducts timber operations on approximately 416,531 acres [THIS IS THE EXPECTED ACREAGE OF THE INITIAL PLAN AREA—TO BE ADJUSTED TO ACTUAL OWNERSHIP AS OF EFFECTIVE DATE] of commercial timberland in Humboldt County and Del Norte County in Northern California, which lands have been determined to provide, or potentially provide, habitat for the following listed species: the Southern Oregon/Northern California Coast Evolutionarily Significant Unit (“ESU”) of coho salmon, the California Coastal ESU of coho salmon, and the Northern California ESU of coastal steelhead, each of which are under the jurisdiction of NMFS;

(b) These lands have also been determined to provide, or potentially provide, habitat for the following unlisted species: the Klamath Mountains Province ESU of steelhead, the Southern Oregon/Northern California Coastal ESU of chinook salmon, and the Upper Klamath/Trinity Rivers ESU of chinook salmon, which are under the jurisdiction of NMFS; and the coastal cutthroat trout, the rainbow trout, the southern torrent salamander, and the tailed frog, which are under the jurisdiction of USFWS;

(c) Simpson, with technical assistance from USFWS and NMFS, has prepared an aquatic Habitat Conservation Plan (“AHCP”) covering the listed and unlisted fish species under the jurisdiction of NMFS and a Candidate Conservation Agreement With Assurances (“CCAA”), covering the unlisted amphibian and fish species subject to the jurisdiction of USFWS. The AHCP and CCAA are collectively referred to herein as the “Plan”; and

(d) Simpson has developed a series of measures, described in the Plan, to minimize and mitigate to the maximum extent practicable the effects of take of the covered species incidental to Simpson’s covered activities and to meet other applicable requirements of the Endangered Species Act (ESA) and regulations to support the issuance of (i) an incidental take permit by NMFS pursuant to ESA Section 10(a)(1)(B) covering the listed and unlisted species under its jurisdiction and (ii) an enhancement of survival permit by USFWS pursuant to ESA Section 10(a)(1)(A) covering certain unlisted fish and amphibian species in the event that such species are listed as threatened or endangered in the future by USFWS.

2.2 Purposes. The purposes of this Agreement are: (a) To ensure implementation of each of the terms of the Plan’s Operating Conservation Program; (b) to describe remedies and recourse should any Party fail to perform its obligations as set forth in this Agreement; and, (c)

to provide assurances to Simpson that, pursuant to the “No Surprises” regulations, as long as the obligations of the Plan, the Permits and this Agreement are performed, no additional mitigation shall be required of Simpson with respect to covered species, except as provided for in this Agreement or required by law.

3.0 DEFINITIONS

The following terms as used in this Agreement shall have the meanings set forth below:

3.1 Terms Defined in Endangered Species Act. Terms used in this Agreement and specifically defined in the ESA or in regulations adopted by the Services under the ESA have the same meaning as in the ESA and those implementing regulations, unless this Agreement expressly provides otherwise.

3.2 “Changed Circumstances” means “changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by plan developers and the Services and that can be planned for (e.g. the listing of a new species, or a fire or other natural catastrophic event in areas prone to such events).” 50 CFR §§ 17.3, 222.102. Changes that will constitute Changed Circumstances, and the responses to those circumstances, are described in Plan Section 6.2 and Paragraph 9.3 herein. Changed Circumstances are not Unforeseen Circumstances.

3.3 “Covered Activities” means certain activities carried out by Simpson in the Plan Area that may result in incidental take of Covered Species and all those activities necessary to carry out the commitments reflected herein and in the Plan’s Operating Conservation Program. For purposes of this Agreement, Covered Activities means all those activities and measures described in Plan Section 1.3.4.

3.4 “Covered Species” means the following species, each of which the Plan addresses in a manner sufficient to meet all of the criteria for issuing an incidental take permit under ESA Section 10(a)(1)(B) and all of the criteria for issuing an enhancement of survival permit under ESA Section 10(a)(1)(A), as applicable: coho salmon (Southern Oregon/Northern California Coast ESU); chinook salmon (California Coastal ESU; Upper Klamath/Trinity Rivers ESU; and Southern Oregon and Northern California Coastal ESU); steelhead trout (Northern California ESU and Klamath Mountains Province ESU); coastal cutthroat trout; rainbow trout; the southern torrent salamander; and the tailed frog.

3.5 “Effective Date” means the date(s) upon which the ITP and ESP are issued by the Services.

3.6 “Eleven HPAs” means the eleven hydrographic planning areas described in Plan Section 1.3.2.4 and delineated in Plan Figure 1-1 and Table 1-1.

3.7 “Listed Species” means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under the ESA.

3.8 “Operating Conservation Program” means “those conservation management activities which are expressly agreed upon and described in a Conservation Plan or its Implementing Agreement, if any, and which are to be undertaken for the affected species when implementing an approved conservation plan, including measures to respond to changed circumstances.” 50 CFR §§ 17.3, 222.102. Where an applicant qualifies for no surprises assurances, and additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, requirements for such additional measures are “limited to modifications within . . . the conservation plan’s operating conservation program for the affected species” and the Services must maintain the original terms of the conservation plan to the maximum extent possible. 50 CFR §§ 17.22(b)(5), 17.32(b)(5), 222.307(g)(1). For purposes of this Agreement, the conservation management activities and specific measures which are the Operating Conservation Program, which also includes provisions for changed circumstances, funding, monitoring, reporting, adaptive management, and dispute resolution, are set forth in Plan Section 6.2.

3.9 “Permit” or “Permits” means the incidental take permit issued by NMFS to Simpson pursuant to ESA Section 10(a)(1)(B) (“ITP”) or the enhancement of survival permit issued by USFWS to Simpson pursuant to ESA Section 10(a)(1)(A) (“ESP”), or both the ITP and the ESP for take incidental to the Covered Activities in the Plan Area, as either Permit may be amended from time to time.

3.10 “Plan” means that certain Aquatic Habitat Conservation Plan and Candidate Conservation Agreement with Assurances prepared by Simpson, described in Paragraph 2.1(c), and dated [July ____ 2002].

3.11 Plan Area Terms

3.11.1 “Plan Area” means the geographic area in which Covered Activities will occur, where incidental take is authorized and where the Operating Conservation Program will be implemented. For the purposes of this Agreement, the Plan Area includes all lands within Simpson’s ownership at any time during the term of the Permits within the Eligible Plan Area, subject to the limitations of Paragraph 11 herein, and up to 100 miles of roads on lands where Simpson owns and exercises Road Access Rights within its approved Timber Harvesting Plan (THP) areas in the Eligible Plan Area during the term of the Permits. Except where stated otherwise in this Agreement, references to lands, commercial timberlands and Simpson’s ownership in the context of the Plan Area include lands owned in fee and lands subject to Harvesting Rights. These are the lands over which Simpson currently has sufficient legal control or, as lands are added to the Plan Area pursuant to Paragraph 11.2, will have sufficient legal control during the term of the Permits to implement the Plan’s Operating Conservation Program.

3.11.2 “Eligible Plan Area” means all privately-owned commercial timberlands within the 11 HPAs that, over the life of the Plan, either are included within the Plan Area or are eligible for inclusion in the Plan Area pursuant to Paragraph 11.2. This is the entire commercial timberland acreage analyzed in the Plan and the Environmental Impact Statement prepared pursuant to the National Environmental Policy Act (NEPA) to support the Plan's provisions allowing for additions and deletions of lands from the Plan Area for the term of the Plan and

Permits. Plan Figure [1-2] identifies the Eligible Plan Area which is approximately [683,673] acres.

3.11.3 “Initial Plan Area” means Simpson's ownership within the 11 HPAs as of the Effective Date of the Permits, as depicted in Figure 1-1 of the Plan, which totals [416,531 acres][FIGURE TO BE ADJUSTED TO ACTUAL OWNERSHIP AS OF EFFECTIVE DATE].

3.11.4 “Harvesting Rights” means rights to conduct timber operations on lands owned in fee by another. Short-term harvesting rights generally expire upon the conclusion of timber operations, upon a date certain or a combination of the two. Perpetual harvesting rights pertain to existing and subsequent crops of timber and continue without expiration.

3.11.5 “Road Access Rights” means rights to construct and use roads on lands outside Simpson’s ownership pursuant to an access agreement with the fee owner.

3.12 “Take” means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 USCA § 1532(19); 50 CFR § 222.102. “Harm” means an act that actually kills or injures fish or wildlife, which act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including for USFWS species breeding, feeding or sheltering and for NMFS species breeding, spawning, rearing, migrating, feeding or sheltering. 50 CFR §§ 17.3, 222.102.

3.13 “Unforeseen Circumstances” means changes in circumstances affecting a species or geographic area covered by the Plan that could not reasonably have been anticipated by Simpson or the Services at the time of the Plan’s negotiation and development, and that result in a substantial and adverse change in the status of the covered species. 50 CFR §§ 17.3, 222.102.

3.14 “Unlisted Species” means a species (including a subspecies or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under the ESA.

4.0 OBLIGATIONS OF THE PARTIES

4.1 Obligations of Simpson. Simpson shall fully and faithfully perform and carry out all of the following:

- (a) Each obligation assigned to Simpson under this Agreement;
- (b) Each measure set forth in the Operating Conservation Program including, without limitation, management prescriptions, funding, monitoring, reporting, adaptive management, dispute resolution and responses to Changed Circumstances;
- (c) Written notification to USFWS a minimum of 30 days in advance of any anticipated incidental take of a Covered Species under USFWS jurisdiction from a Covered Activity in the Plan Area. To satisfy this requirement, Simpson agrees to provide USFWS with

copies of all maps submitted in support of Simpson's applications for Streambed Alteration Agreements pursuant to California Fish and Game Code Section 1603. 50 CFR § 17.32 (d)(3)(ii) requires that the recipient of an ESP provide the USFWS with notice and a reasonable opportunity to translocate individuals of the covered ESP species before any expected authorized incidental take occurs. Authorized take of covered ESP species may occur incidental to timber harvest operations pursuant to Timber Harvesting Plans approved by the California Department of Forestry ("CDF"), as well as other ongoing and continuous Covered Activities as described in the Plan, particularly where those covered activities involve disturbance of Class I and II watercourses. However, there is no information giving rise to a current "expectation" that take will actually result from any specific timber harvesting plan or other Covered Activity. Therefore, providing these maps, which include information on Covered Activities that may cause disturbance of Class I and II watercourses, along with the notices of THPs provided pursuant to Plan Section 6.2, is deemed to provide the notice required by 50 CFR § 17.32 (d)(3)(ii).

(d) Providing notice of land transactions pursuant to Paragraph 8.2.

4.2 Obligations of the Services. Upon execution of this Agreement by all Parties, and satisfaction of all other applicable legal requirements, NMFS shall issue Simpson a Permit under ESA Section 10(a)(1)(B), authorizing incidental take by Simpson of each listed Covered Species resulting from Covered Activities in the Plan Area and, upon its listing, the incidental take by Simpson of all currently unlisted Covered Species under NMFS' jurisdiction and USFWS shall issue Simpson an ESP under ESA Section 10(a)(1)(A), authorizing the incidental take by Simpson of currently unlisted Covered Species under USFWS' jurisdiction, upon the listing of such species.

4.2.1 Permit Coverage. Each Permit shall identify all Covered Species subject to the issuing Service's jurisdiction. The ITP shall take effect for listed Covered Species at the time the Permit is issued. For each unlisted Covered Species, the ITP and ESP shall take effect upon the listing of such species, subject to compliance with all other terms of this Agreement.

4.2.2 "No Surprises" Assurances. Provided that Simpson has complied with its obligations under the Plan, this Agreement, and the Permits, the Services can require Simpson to provide mitigation beyond that provided for in the Plan only under Unforeseen Circumstances, in accordance with the "no surprises" regulations. If the governing regulations should be modified from those codified at 50 C.F.R. §§ 17.22(b)(5), 17.22 (d)(5), 17.32(b)(5), 17.32(d)(5), 222.22(g), as of the Effective Date, the modified regulations shall not apply unless reliance on the regulations in effect as of the Effective Date is prohibited by statute or court order.

4.3 Interim Obligations upon a Finding of Unforeseen Circumstances. If one of the Services makes a finding of unforeseen circumstances, it shall have up to 120 days, or a longer period with Simpson's consent, to determine the nature and location of necessary additional or modified mitigation required to address the unforeseen circumstances. During such period, Simpson agrees to avoid undertaking any activity that would appreciably reduce the likelihood of the survival and recovery of the affected Covered Species.

5.0 INCORPORATION OF THE PLAN'S OPERATING CONSERVATION PROGRAM

The provisions of the Operating Conservation Program set forth in Plan Section 6.2 are intended to be, and by this reference are, incorporated into this Agreement. In the event of any direct contradiction between the terms of this Agreement and the Plan, the terms of this Agreement shall control. In all other cases, the terms of this Agreement and the terms of the Plan shall be interpreted to be supplementary to each other.

6.0 TERM

6.1 Initial Term. This Agreement and the Plan shall become operative on the Effective Date. This Agreement, the Plan, and the Permits shall remain in effect for a period of 50 years from the Effective Date, except as provided below.

6.2 Permit Suspension or Revocation. The Services may suspend or revoke the Permits for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. Such suspension or revocation may apply to either or both Permits in whole or in part, and may apply only to specified Covered Species, portions of the Plan Area, or certain Covered Activities.

6.2.1 Post-Revocation Mitigation. In the event that NMFS revokes the ITP as a result of a violation or violations of the ITP, Simpson shall carry out those activities NMFS finds necessary to mitigate any impacts of take of Covered Species arising out of such violation(s) over and above impacts of take authorized by the Plan, in addition to those post-termination mitigation activities specified in Paragraph 6.3. No additional mitigation shall be required in addition to that provided in 6.3 if NMFS revokes a permit for cause other than such a violation. No post-revocation mitigation is required in the event of USFWS revocation of the ESP.

6.3 Relinquishment of the Permits. Simpson may relinquish the Permits in accordance with the regulations in force on the date of such relinquishment and this Paragraph 6.3. These regulations currently are codified at 50 C.F.R. §§ 13.26, 17.32(b)(7) and 222.306(d). Unless later modification of these regulations dictate otherwise, to relinquish a Permit issued by USFWS, Simpson shall, within 30 calendar days of discontinuing Covered Activities, return the permit to the issuing office together with a written statement surrendering the permit for cancellation. Simpson shall carry out those post-relinquishment activities specified in Paragraph 6.3.2.

6.3.1 Simpson's Commitments upon Relinquishment. In the event Simpson decides to relinquish the ITP issued by NMFS before expiration of the full term of the permit, Simpson shall ensure that the following occurs: (a) Simpson shall provide notice to NMFS at least 120 days prior to a planned relinquishment; (b) In all areas where Simpson has conducted Covered Activities and applied the Operating Conservation Program's prescriptions, Simpson shall maintain those prescriptions in such areas for the remainder of the 50 year term that the Plan would have been in effect absent relinquishment, subject to the provisions on land transactions and Plan Area adjustments in Paragraph 11; (c) For any transfer of lands subject to

(b), Simpson agrees to include the provisions of (b) in a deed restriction (in a form approved by the Services) that provides that such restrictions are intended to be enforceable by the Services and Simpson; (d) If the relinquishment occurs in any calendar year in which Covered Activities have already occurred, Simpson will complete, by the end of that calendar year, all Road Management Measures set forth in Plan Section 6.2.3, including accelerated road maintenance provisions of Plan Section 6.2.3.2.1, that were scheduled and budgeted and which would have been required to be completed by the end of that calendar year if the Plan and Permits had remained in effect; and (e) Simpson shall submit a report to the Services detailing the status of Simpson's compliance with the terms of the Operating Conservation Program through the end of the calendar year in which relinquishment or termination occurs. Simpson agrees to cooperate with the Services in their review of this report to insure completion of all tasks planned for that year, and the Parties may use the Informal Dispute Resolution Provisions of Paragraph 13 to resolve any disputes over Simpson's obligations. No other post-relinquishment mitigation shall be required.

6.3.2 Post-Relinquishment Mitigation. No post-relinquishment mitigation is required of Simpson in the event of early relinquishment of the ESP. With regard to the NMFS Permit, as designed and as analyzed in the Plan, the measures provided in Plan Section 6.2, along with Simpson's commitments in Paragraph 6.3.1 of this Agreement, are intended to result in Simpson having fully and continuously fulfilled its obligations under the Permits and this Agreement such that no additional post-relinquishment mitigation is required. Upon any revocation or relinquishment of the Permits and upon satisfaction of Simpson's post-relinquishment commitments pursuant to Paragraph 6.3.1, and in the absence of the imposition of additional requirements pursuant to a permit revocation pursuant to Paragraph 6.2.1, Simpson will be deemed to have fully and completely satisfied its obligations under the Permits, including those to minimize and mitigate the impacts of take that may occur incidental to the Covered Activities on the Covered Species within the Plan Area before or as those impacts arise.

6.3.3 Cancellation of Permits upon Relinquishment. After Simpson relinquishes the NMFS permit, it shall be deemed cancelled upon Simpson's satisfaction of its post-relinquishment mitigation commitments pursuant to Paragraph 6.3.1. Upon surrender of the NMFS permit, no further take shall be authorized under the terms of the permit.

6.4 Treatment of Unlisted Species. For purposes of Paragraph 6.3, unlisted Covered Species were treated as though they were listed species in determining the amount of take and the mitigation required in the case of termination or relinquishment of the NMFS Permits.

6.5 Extension of the Permits. Upon agreement of the Parties and compliance with all applicable laws, the Permits may be extended beyond the initial term under regulations of the Services in force on the date of such extension. If Simpson desires to extend the Permits, it shall so notify the Services at least 180 days before the then-current term is scheduled to expire. Extension of the Permits constitutes extension of the Plan and this Agreement for the same amount of time, subject to any modifications that the Services may require at the time of extension.

7.0 FUNDING

Simpson warrants that it has, and shall expend, such funds as may be necessary to fulfill its obligations under the Plan. Simpson shall promptly notify the Services of any material change in Simpson's financial ability to fulfill its obligations. In addition, in order to ensure that adequate funding will be provided for the Acceleration of the Road Implementation Plan (Plan Section 6.2.3.2.1) and the Monitoring Projects and Programs (Plan Section 6.2.5.2), which are the requirements of the Operating Conservation Program that have material out-of-pocket costs for the first 15 years of the Plan, Simpson shall, by March 15 of each year during the first 15 years of the original term (except to the extent the 15-year period is adjusted as discussed in Plan Section 6.2.3.2.3) provide the Services with:

(a) A letter from Simpson's General Manager or Vice-President with authority over the Simpson's California operations (the "General Manager Letter") verifying that an accounting reserve has been established for that fiscal year in an amount adequate to assure compliance with Plan Sections 6.2.3.2.1 and 6.2.5.2 for that fiscal year. The amount of the reserve shall reflect the amount shown in the budget pursuant to Paragraph 8.1, less One Million Dollars (\$1,000,000), which reflects the estimated cost of annual road upgrading and decommissioning carried out prior to the Effective Date, but in no event shall the established amount of the reserve be less than Two Million Dollars (\$2,000,000). The General Manager Letter also shall set forth the change to Plan Area acreage since the prior year's Letter that provides the basis for the annual adjustment to the Acceleration of the Road Implementation Plan financial commitment pursuant to Plan Section 6.2.3.2.1.4. Attached to the General Manager Letter shall be a directive from Simpson's Chairman or President to budget the funds needed to assure the commitments of Plan Sections 6.2.3.2.1 and 6.2.5.2 are met and to expend in that fiscal year the budgeted funds to the extent needed to fully implement those commitments. By March 1 of each calendar year during the first 15 years of the original term, Simpson shall provide the Services, at the reporting address set forth in Paragraph 8, with a letter from a third party auditor confirming that Simpson has established an accounting reserve in the amount of \$1.5 million (adjusted for inflation as provided in Plan Section 6.2.3.2.1) plus a reasonable estimate of the incremental costs of monitoring (over and above the monitoring costs that Simpson would incur absent the Plan and Permits) for that calendar year in order to assure compliance with the Road Implementation Plan and monitoring requirements of the Operating Conservation Program (as provided above, this total amount will be no less than \$2,000,000).

(b) A schedule of reserves accrued pursuant to subparagraph (a) above at Simpson's most recent fiscal year end, accompanied by a report from an independent certified public accountant that states that the schedule fairly presents, in all material respects, the reserves accrued under subparagraph (a) above.

Further, Simpson shall submit the budget as provided in Paragraph 8.1.

8.0 MONITORING AND REPORTING

8.1 Biennial Reports. Simpson shall submit biennial reports describing:

(a) its activities, including any responses to Changed Circumstances, and the prior two (2) years' results of the monitoring program provided for in the Operating Conservation Program;

(b) a detailed budget setting forth those measures pursuant to the Operating Conservation Program that require out-of-pocket expenditures (e.g., road assessment, road decommissioning, geologic mapping) that Simpson will implement in each subsequent calendar year before the next biennial report is due, and the funds budgeted for those purposes; and

(c) a summary of land transactions reported by Simpson to the Services pursuant to Paragraph 8.2 and completed in accordance with Paragraphs 11 and 12 of this Agreement.

The first biennial report shall be due on [March 15] following the first full year after the Effective Date and shall be submitted to the Services at the addresses below.

8.2 Land Transactions. Simpson shall notify the Services of any transfer of ownership of real property or harvesting rights therein subject to this Agreement at the time of the transfer of ownership, except where prior notification occurs pursuant to Paragraph 11. Such notice shall describe the lands to be transferred with particularity, identify the name and address of the transferee and include a detailed map showing the transferred lands.

8.3 Other Reports. Simpson shall use its best efforts to provide, within 30 days of being requested by the Services, any additional available information reasonably related to implementation of the Plan in its possession or control, or in the possession or control of any of its affiliates, contractors or other third parties covered by the Permits that is requested by the Services for the purpose of assessing whether the terms and conditions of the Permits and the Plan, including the Plan's adaptive management plan, are being fully implemented.

8.4 Certification of Reports. All reports shall include the following certification from a responsible company official who supervised or directed preparation of the report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

8.5 Monitoring by Services. Simpson acknowledges that the Services may conduct inspections and monitoring in connection with the Permits in accordance with their regulations and shall cooperate fully in such monitoring. Simpson consents to and shall allow entry at any reasonable hour by agents or employees of the Services in the Plan Area where Covered Activities are conducted and premises where records relating to such Covered Activities are kept. Except for inspections performed in connection with an investigation by the Services' law

enforcement officers, the Services agree to give Simpson reasonable advance notice, i.e. not less than 24 hours, of any inspection so as to provide Simpson's representatives with the opportunity to accompany the Services' representatives making such inspection. Except for inspections performed in connection with an investigation by the Services' law enforcement officers, the Services agree not to delegate their rights of inspection hereunder to any other person without Simpson's prior consent. Each Service shall ensure that any individual conducting an inspection in the Plan Area on its behalf performs such inspection in a reasonable, safe and professional manner, in compliance with all regulations and statutes applicable to the Services. The Services shall use reasonable efforts to ensure their representatives participate in the field reviews sponsored by Simpson in accordance with Plan Section 6.2.7.4.

8.6 Annual Meetings. Simpson and the Services shall conduct annual meetings during the month of May for the first five years following the Effective Date, starting after the first full year of the Plan period. At the first annual meeting, the Services and Simpson may discuss an appropriate interval to summarize and report the status of the adaptive management account. At the fifth annual meeting, the Services and Simpson will determine the frequency with which Simpson will provide the Services with a comprehensive compilation of modifications, amendments and adaptive management changes.

9.0 CHANGED CIRCUMSTANCES

9.1 Changed Circumstances Provided for in the Plan. The Operating Conservation Program and Paragraph 9.3 contain the complete list of Changed Circumstances and describe those specific conservation and mitigation measures that Simpson agrees to implement where, pursuant to the Plan, they are deemed necessary to respond to the Changed Circumstances. Simpson shall give notice to the Services within seven days after learning that any of the Changed Circumstances has occurred. As soon as practicable thereafter, but no later than 30 days after learning of the Changed Circumstances, Simpson shall modify its activities in the manner described in the Operating Conservation Plan, but only to the extent necessary to mitigate the effects of the Changed Circumstances on Covered Species and shall report its actions to the Services within 15 days after initiating such modifications. In such a case Simpson shall include an evaluation regarding longer term effects of implementing responses to Changed Circumstances in the biennial report. Simpson shall make such modifications without awaiting notice from the Services. If the Services determine that Changed Circumstances have occurred and that Simpson has not responded in accordance with the Operating Conservation Program, the Services shall so notify Simpson and shall direct Simpson to make the required changes. Within 30 days after receiving such notice, Simpson shall make the required changes and report to the Services on its actions. Such changes are provided for in the Plan, and hence do not constitute Unforeseen Circumstances or require amendment of the Permits or the Plan.

9.2 Changed Circumstances Not Provided for in the Plan. If additional conservation and mitigation measures beyond those provided for in the Operating Conservation Program are deemed necessary to respond to Changed Circumstances, the Services may not require any such additional conservation and mitigation measures without Simpson's consent, provided that the Operating Conservation Program is being properly implemented.

9.3 New Listings of Species that are Not Covered Species. In the event that a non-Covered Species that may be affected by Covered Activities becomes listed under the ESA, Simpson shall not have incidental take authority with respect to such newly-listed species unless and until the appropriate Permit is amended to include such species or other authorization is provided pursuant to the ESA. Further, Simpson acknowledges the authority of the Services to revoke a permit in accordance with Paragraph 6.2. Upon receipt of notice of the potential listing of a species that is not a Covered Species, Simpson shall seek the technical assistance of USFWS and/or NMFS, and, as appropriate, the Services shall provide such assistance, to (i) identify possible measures to avoid take and avoid causing jeopardy to such species; (ii) determine whether incidental take coverage for such species is appropriate and, if so, (iii) identify any modifications to the Plan that may be necessary to provide coverage for the new species and assist Simpson in determining whether to amend the Plan and the applicable Permit (or, in the case of the USFWS, to seek issuance of an ITP if appropriate) to include the newly-listed species as a Covered Species--all in the event the species ultimately is listed.

10.0 ADAPTIVE MANAGEMENT

10.1 Adaptive Management. Simpson shall implement changes to the Operating Conservation Program in accordance with and subject to the limitations of the adaptive management provisions set forth in Plan Section 6.2.6. Pursuant to the Services' Five Points Policy, there are two ways for Incidental Take permittees to proceed with regard to biological goals and objectives. The first is a results-based HCP, in which the measures incorporated in the HCP are somewhat flexible so long as the results are achieved. In such a case, the HCP's biological goals and objectives can be made the targeted results of the HCP by incorporating them into the HCP's operating conservation program, thereby making their achievement a requirement of the HCP and incidental take permit. The second is a prescription-based approach in which biological goals and objectives guide the development of the specific prescriptions included in the operating conservation program. In this second case, actual achievement of the biological goals and objectives is not required; incidental take permittees are required to implement the prescriptions in the operating conservation program but are not required to achieve the biological goals and objectives to comply with their permits. Simpson has elected to proceed in accordance with the latter of these two. In order to qualify for No Surprises assurances, Simpson is required only to implement the prescription-based Operating Conservation Program, this Agreement and the terms and conditions of the Permit. See 65 Fed. Reg. 35242, 35251 (June 1, 2000). Accordingly, the Plan's biological goals and objectives set forth in Plan Section 6.1 have guided the development of the Operating Conservation Program's prescriptions. Where the Plan's adaptive management provisions are triggered in the future, Simpson will again look to the applicable goals and objectives to guide the development of any changes to the Operating Conservation Program's management practices and measures.

10.2 Adaptive Management Implementation. The Services shall notify Simpson if the Services believe that one or more of the adaptive management provisions in the Plan have been triggered and that Simpson has not changed its management practices accordingly as prescribed therein. Within 30 days of such notification, Simpson shall initiate the adaptive management changes set forth in the adaptive management program and shall report to the Services on what actions have been taken. Credits and debits to the adaptive management

reserve account made in accordance with the provisions of Plan Section 6.2.6.3 will be reflected in the account on an on-going basis, and the status of the account shall be summarized in each biennial report, or at such other interval as is agreed upon at the first Annual Meeting held pursuant to Paragraph 8.6. Changes in management strategies that are implemented pursuant to the adaptive management program provided for in the Plan do not constitute Unforeseen Circumstances and do not require amendment of the Permits or the Plan.

10.3 No Increase in Take. Plan Section 6.2.6, regarding adaptive management, does not authorize any adaptive management changes that would result in an increase in the amount and nature of take, or increase the impacts of take, of Covered Species beyond that associated with the range of changes analyzed under the Plan, the biological opinions issued in connection with the Permits, and the analysis of the Plan in the EIS prepared in connection with the Permits, including any amendments thereto. Any adaptive management changes outside the scope of the Plan and amendments thereto must be reviewed as a Permit amendment under Paragraph 12.2.

10.4 Reductions in Mitigation. Simpson will not implement adaptive management changes outside the scope of changes provided for under the Plan, unless the Services first provide written approval as provided herein. Simpson may propose such adaptive management changes by written notice to the Services, specifying the modifications proposed, the basis for them, including supporting data, and the anticipated effects on Covered Species, and impacts to other elements of the human environment. Within 135 days of receiving such a notice, the Services will either approve the proposed changes, approve them as modified by the Services, or notify Simpson that the proposed changes constitute Permit amendments that must be reviewed under Paragraph 12.2.

11.0 LAND TRANSACTIONS AND PLAN AREA ADJUSTMENTS

11.1 Acquisition and Sale or Transfer of Land and Harvesting Rights by Simpson. Subject to Paragraph 11.3, nothing in this Agreement, the Plan, or the Permits limits Simpson's right to acquire or sell or otherwise transfer interests in lands in and around the Eleven HPAs or elsewhere. However, unless commercial timberland acreage that Simpson acquires is included in the Plan Area by operation of this Agreement or is added by amendment, and the Permits have taken effect with regard to Covered Activities carried out on such lands in the manner provided below, Simpson's activities that take place on those lands shall not be covered by the Permits.

11.2 Additions to the Plan Area by Acquisition. Simpson may elect to add to the Plan Area additional commercial timberlands consisting of fee lands and harvesting rights that it acquires within the Eligible Plan Area pursuant to this subparagraph, provided however, that the Plan Area shall not expand by more than 15 percent of the acreage of the Initial Plan Area [416,531 acres][FIGURE TO BE ADJUSTED TO ACTUAL OWNERSHIP AS OF EFFECTIVE DATE] without an amendment to the Plan or Permits. Areas subject to harvesting rights acquired and added to the Plan Area pursuant to this subparagraph after the Effective Date will count toward this 15 percent limit.

If Simpson elects to add commercial timberlands to the Plan Area pursuant to this subparagraph, Simpson shall submit to the Services a description of the lands it intends to add, along with a summary of relevant characteristics they share with existing Plan Area lands within that HPA.

Characteristics found relevant to planning and implementation of the Plan for each HPA are described in Plan Section [4.4] and may include geology and geomorphology, climate, vegetation, habitat conditions (including water temperature, channel and habitat type, LWD inventory, and estuarine conditions), salmonid population estimates and Covered Species occurrence and status.

Based upon the analysis of the HPAs provided in the Plan, it is presumed that all commercial timberlands within each HPA in the Eligible Plan Area share similar relevant characteristics and, therefore, that adding such lands to the Plan Area during the term of the Permits will not likely result in adverse effects on the Covered Species different from those analyzed in connection with the original Plan. Unless the Services object in writing to Simpson within 60 days of receipt of the submission described herein, the subject lands shall be included in the Plan Area subject to the 15 percent limit on additional lands provided above. The Services may object to a Simpson election by providing a written statement with specific reasons why the Services believe the presumption described herein is incorrect. In that case, the Services and Simpson shall confer in good faith and pursue the informal dispute resolution mechanisms set forth in Paragraph 13.6.1 in an effort to reach an agreement. Until concurrence is reached, such lands will not become part of the Plan Area except pursuant to the amendment process set forth in Paragraph 12.

11.3 Deletions from the Plan Area by Sale or Transfer and Other Deletion.

Subject to the reporting requirements set forth in Paragraph 8.2 and this Paragraph, the Plan Area shall contract automatically, i.e., without an amendment to the Plan or Permits, to reflect each sale or other transfer, including transfers of perpetual harvesting rights, provided, however, that the acreage of the Plan Area shall not contract by more than 15 percent of the total acreage of the Initial Plan Area [416,531 acres][FIGURE TO BE ADJUSTED TO ACTUAL OWNERSHIP AS OF EFFECTIVE DATE] pursuant to sales or transfers without a Plan amendment pursuant to Paragraph 12. None of the following shall count toward the 15 percent limit on deletions from the total acreage of the Initial Plan Area or require a Plan or Permit amendment pursuant to Paragraph 12:

(a) Transfers to an agency of the federal government where, prior to transfer, the Services have determined that the transfer shall not compromise the effectiveness of the Plan based on adequate commitments by that agency regarding management of such land;

(b) Transfers to a non-federal entity that has entered into an agreement acceptable to the Services (e.g., Simpson's grant of a conservation easement to be held by the state fish and wildlife agency with the Services as third-party beneficiaries) to ensure that the lands shall be managed in such a manner and for such duration so as not to compromise the effectiveness of the Plan; or

(c) Transfers to a non-federal entity that, prior to completion of the land transaction, has agreed to be bound by the Plan as it applies to the transferred land and has obtained an incidental take permit following normal permit procedures covering all species then covered by the Permits.

In addition, transfers of unexpired short-term harvesting rights and expirations of short-term harvesting rights will not apply toward the 15 percent limit. Except as provided herein and

subject to Paragraph 11.1, all other sales or transfers of acreage from the Plan Area shall require an amendment to the Plan pursuant to Paragraph 12.

11.4 Effective Date of Permits for Covered Activities on Land Acquired after the Effective Date of this Agreement. The Permits, the Plan and this Agreement shall be effective for Covered Activities on all lands that meet the definition of Plan Area upon their inclusion pursuant to Paragraph 11. The Permits, the Plan and this Agreement shall be effective for Covered Activities on lands that are added to the Plan Area pursuant to amendment under Paragraph 12 upon the effective date of the amendment.

11.5 Cessation of Effectiveness of Permits as to Sold, Transferred or Deleted Lands. The Permits, the Plan and this Agreement shall cease to be effective as to Simpson for lands removed from the Plan Area in accordance with Paragraph 11 upon Simpson's sale, transfer or other deletion, provided that Simpson shall notify the Services in accordance with Paragraph 8.2 and shall maintain and make available to the Services upon request a record of each such transaction or deletion.

12.0 MODIFICATIONS AND AMENDMENTS

12.1 Minor Modifications.

12.1.1 Procedures. Any Party may propose minor modifications to the Plan or this Agreement by providing written notice to all other Parties. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on operations under the Plan and on Covered Species. The Parties shall use reasonable efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed minor modifications shall become effective, and the Plan shall be deemed modified accordingly, immediately upon all other Parties' written approval. Among other reasons, a receiving Party may object to a proposed minor modification based on a reasonable belief that such modification would result in operations, burdens or obligations under the Plan that are significantly different from those analyzed in connection with the original Plan; adverse effects on the environment that are new or significantly different from those analyzed in connection with the original Plan; or additional take not analyzed in connection with the original Plan. An objecting Party shall provide all other Parties with written notice of the objection that includes a statement of the reason for the objection. If a Party objects, the proposal is not approved as a minor modification but may be processed as an amendment of the Permits in accordance with Paragraph 12.2.

12.1.2 Examples. Minor modifications to the Plan and this Agreement processed pursuant to this subparagraph include, but are not limited to, the following:

- (a) Corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning;
- (b) Correction of any maps or exhibits to correct errors in mapping or to reflect previously approved changes in the Permits or the Plan; and

(c) Minor changes to survey, monitoring or reporting protocols.

12.1.3 Recordkeeping. All Parties shall maintain a file of Minor Modifications to the Plan that have been approved by all Parties until Simpson incorporates these changes into a revised, comprehensive document as set forth in Paragraph 8.6 of this Agreement.

12.1.4 Other Modifications. Any modifications to the Plan or this Agreement other than those accomplished pursuant to Paragraph 11 or Paragraph 12.1 shall be processed as an amendment of the Plan and Permits in accordance with Paragraph 12.2.

12.2 Amendment of the Plan and Permits. The Plan and Permits may be amended in accordance with all applicable legal requirements, including but not limited to the ESA, the National Environmental Policy Act, and the applicable Service's regulations. The Party proposing the amendment shall provide a statement of the reasons for the amendment and an analysis of its environmental effects, including its effects on operations under the Plan and on Covered Species.

13.0 REMEDIES, ENFORCEMENT, PENALTIES AND DISPUTE RESOLUTION

13.1 In General. Except as set forth below, each Party shall have all remedies otherwise available to enforce the terms of this Agreement, the Permits, and the Operating Conservation Program.

13.2 No Monetary Damages. No Party shall be liable in damages to any other Party for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement or any other cause of action arising from this Agreement.

13.3 Injunctive and Temporary Relief. The Parties acknowledge that the Covered Species are unique and that their loss as species would result in irreparable damage to the environment, and that therefore injunctive and temporary relief may be appropriate to ensure compliance with the terms of this Agreement.

13.4 Enforcement Authority of the United States. Nothing contained in this Agreement is intended to limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA or other applicable law.

13.5 Stipulated Penalty for Timber Harvest or Transfer of Lands in Violation of Post-Relinquishment or Post-Revocation Commitments. If, after relinquishment pursuant to Paragraph 6.3, Simpson violates subparagraphs 6.3.1 (b) or (c) Simpson will pay a fine equal to the value of the timber harvested in addition to [\$2500] fine per violation set forth above.

13.6 Dispute Resolution. The Parties recognize that good faith disputes concerning implementation of, or compliance with, or suspension, revocation or termination of this Agreement, the Plan, or the Permits may arise from time to time. The Parties agree to work together in good faith to resolve such disputes, using the informal dispute resolution procedures

set forth in this Paragraph or such other procedures upon which the Parties may later agree. However, if at any time any Party determines that circumstances so warrant, it may seek any available remedy without waiting to complete informal dispute resolution.

13.6.1 Informal Dispute Resolution Process. Unless the Parties agree upon another dispute resolution process, such as that set forth in Plan Section 6.2.7.5, or unless an aggrieved Party has initiated administrative proceedings or suit in federal court as provided in this Paragraph, the Parties may use the following process to attempt to resolve disputes:

(a) Where the dispute is regarding a Party's compliance with the Operating Conservation Program, the Permits or this Agreement, the aggrieved Party shall notify the other Parties of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies it proposes to correct the alleged violation. Where the dispute is over the proper implementation of the Operating Conservation Program, the Permits or this Agreement the aggrieved Party shall notify the other Parties of the provision over which the issue arises, the basis for contending that implementation is not proper and the changes it proposes to resolve the dispute.

(b) The Party receiving the notice provided in (a) shall have 30 days, or such other time as may be agreed, to respond. During this time it may seek clarification of the information provided in the initial notice. The aggrieved Party shall use its best efforts to provide any information then available to it that may be responsive to such inquiries.

(c) Within 30 days after such response was provided or was due, representatives of the Parties having authority to resolve the dispute shall meet and negotiate in good faith toward a solution satisfactory to all Parties, or shall establish a specific process and timetable to seek such a solution.

(d) If any issues are not resolved through such a process, the Parties shall consider non-binding mediation and other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, shall make good faith efforts to resolve all remaining issues through that process.

14.0 MISCELLANEOUS PROVISIONS

14.1 No Partnership. Neither this Agreement nor the Plan shall make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

14.2 Notices. Any notice permitted or required by this Agreement shall be in writing, delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any Party may from time to time specify to the other Parties in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail. Notices shall be transmitted so that they are received within the specified deadlines.

Deputy Manager

United States Fish and Wildlife Service
California/Nevada Operations Office
2800 Cottage Way, Room W- 2606
Sacramento, CA 95825-1846
Telephone: 916-414-6464
Telefax: 916-414-6486

Regional Administrator
National Marine Fisheries Service
501 West Ocean Boulevard, Suite 4200
Long Beach, CA 90802-4213
Fax:
Telephone: (562) 980-4000

For Simpson:

Simpson Resource Company
[Fill in appropriate address and contacts]

With copies to:

Law Department
Simpson Resource Company
1301 Fifth Avenue, Suite 2800
Seattle, WA 98101-2613
Fax: (206) 224-5059
Phone: (206) 224-5000

14.3 Entire Agreement. This Agreement, together with the Plan and the Permits, constitutes the entire agreement among the Parties. It supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

14.4 Elected Officials not to Benefit. No member of or delegate to Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

14.5 Availability of Funds. Implementation of this Agreement and the Plan by the Services is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement shall be construed by the Parties to require the obligation, appropriation or expenditure of any money from the U.S. Treasury. The Parties acknowledge that the Services shall not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

14.6 Duplicate Originals. This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

14.7 No Third Party Beneficiaries. Without limiting the applicability of rights granted to the public pursuant to the ESA or other federal law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

14.8 Relationship to the ESA and Other Authorities. The terms of this Agreement shall be governed by and construed in accordance with the ESA and applicable federal law. In particular, nothing in this Agreement is intended to limit the authority of the Services to seek civil or criminal penalties or otherwise fulfill their responsibilities under the ESA. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the Services as agencies of the federal government. Nothing in this Agreement shall limit the right or obligation of any federal agency to engage in consultation required under Section 7 of the ESA or other federal law; however, it is intended that the rights and obligations of Simpson under the Plan and this Agreement shall be considered in any consultation concerning Simpson's use of the Plan Area.

14.9 References to Regulations. Except as provided herein to the contrary, any reference in this Agreement, the Plan, or the Permits to any regulation or rule of the Services shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

14.10 Applicable Laws. All activities undertaken pursuant to this Agreement, the Plan, or the Permits must be in compliance with all applicable state and federal laws and regulations.

14.11 Successors and Assigns. This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. Assignment or other transfer of the Permits shall be governed by the Services' regulations under the regulations in force at the time.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Agreement to be in effect as of the date that the Services issue the Permits.

BY _____

Date _____

Deputy Manager
United States Fish and Wildlife Service

California/Nevada Operations Office
Sacramento, California.

BY _____

Date _____

Regional Administrator
National Marine Fisheries Service
Long Beach, California

BY _____

Date _____

Simpson Resource Company