



## **AGENDA**

**Special Joint Meeting with Clallam County Commission**

**Port of Port Angeles, 338 West 1<sup>st</sup> Street**

**March 6, 2017**

**10:30 AM**

- I. CALL TO ORDER/PLEDGE OF ALLEGIANCE**
- II. EARLY PUBLIC COMMENT SESSION (total session up to 20 minutes)**
- III. TOPICS**
  - A. Three presentations by WA State Dept of Commerce, Workforce Training and Education Coordinating Board and Impact Washington
  - B. Time Specific at 11:00 am - BNR Impact Study Presentation by Olympus Consulting (pg. 1-12)
  - C. Other Joint Port/County Business
- IV. PUBLIC COMMENT SESSION (total session up to 20 minutes)**
- V. NEXT JOINT MEETING**
  - A. April 24, 2017 Joint Meeting
- VI. ADJOURN**



### **RULES FOR ATTENDING COMMISSION MEETING**

- Signs, placards, and noise making devices including musical instruments are prohibited.
- Disruptive behavior by audience members is inappropriate and may result in removal.
- Loud comments, clapping, and booing may be considered disruptive and result in removal at the discretion of the Chair.

### **RULES FOR SPEAKING AT A COMMISSION MEETING**

- Members of the public wishing to address the Board on general items may do so during the designated times on the agenda or when recognized by the Chair.
- Time allotted to each speaker is determined by the Chair and, in general, is limited to 3 minutes.
- Total time planned for each public comment period is 20 minutes, subject to change by the Chair.
- All comments should be made from the speaker's rostrum and any individual making comments shall first state their name and address for the official record.
- Speakers should not comment more than once per meeting unless their comments pertain to a new topic they have not previously spoken about.
- In the event of a contentious topic with multiple speakers, the Chair will attempt to provide equal time for both sides.

# DRAFT

## Text of Joint Port of Port Angeles and Board of County Commissioners letter to Dep't. of Natural Resources

The Honorable Hillary Franz  
Commissioner of Public Lands  
1111 Washington St. SE  
Olympia, WA 98504

In Reference To: **SEPA File No. 15-012901; and SEPA File No. 12-042001**

Dear Commissioner Franz:

Attached, please find comments from both the Board of Clallam County Commissioners, and the Port of Port Angeles to Draft Environmental Impact Statements for both the Sustainable Harvest Level, and the Long-Term Conservation Strategy for the Marbled Murrelet, a "threatened" species, designated as such in Washington State under the Federal Endangered Species Act.

These comments address three subjects:

- The Sustainable Harvest Level for the upcoming decade;
- The shortfall in harvest from the last decade's Sustainable Harvest Level (in terms of its appropriate amount, and how the Department should work it down to zero in the upcoming decade); and
- The Long-Term Conservation Strategy for the Marbled Murrelet, which will amend the 1997 Habitat Conservation Plan, which has the Department and the Federal government as contracting parties thereto.

Our comments are formulated as a single set, to be applied to both Draft EIS's, since the Board of Natural Resources' decisions on each subject are closely intertwined.

The comments also suggest what should compose a good solution to both an appropriate stream of revenue to all the trust beneficiaries the Department has a fiduciary obligation to, and a good solution to avoiding unnecessary environmental harm (and indeed in some ways, revenue and environmental enhancement may not be mutually exclusive).

We look forward to your responses to the comments provided to the DEIS's contents.

And the Port and the County especially look forward to further discussions with the Board of Natural Resources as it develops its final decisions regarding harvest volumes in the next decade for our County and for the Olympic Peninsula region as a whole.

Most sincerely,

Attachment

N.B. This letter and it's attached comments can be emailed to the DNR SEPA Center, according to the following excerpts from the DNR website:

Public comments on this proposed **LTCSMM-DEIS** are being accepted between **December 2, 2016, and 5:00 p.m. on March 9, 2017**. Comments should be submitted to the SEPA Center

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at [sepacenter@dnr.wa.gov](mailto:sepacenter@dnr.wa.gov) or SEPA Center, PO Box 47015, Olympia, WA 98504-7015. Please include the file number "12-042001" on all comments. **The subject line of comments sent by email should include "SEPA File No. 12-042001."**

Public comments on this proposed DEIS are being accepted until **5:00 p.m. on March 9, 2017**. Comments should be submitted to the SEPA Center at [sepacenter@dnr.wa.gov](mailto:sepacenter@dnr.wa.gov) or SEPA Center, PO Box 47015, Olympia, WA 98504-7015. Please include file number "15-012901" on all comments. **The subject line of email comments should include "SEPA File No. 15-012901."**

Port of Port Angeles and Clallam County Board of Commissioners Comments on  
DEIS for DNR's Establishment of a Sustainable Harvest Level; and  
DEIS for a DNR Long-Term Conservation Strategy for the Marbled Murrelet

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**I. First, the Conclusion ...**

In these comments on both the Department of Natural Resources' (Department) Draft Environmental Impact Statements (DEIS) for (1) Alternatives for Establishment of a Sustainable Harvest Level for Forested State Trust Lands in Western Washington (SHL-DEIS), and (2) its Draft EIS for a Long-Term Conservation Strategy for the Marbled Murrelet (LTCSMM-DEIS), the Port of Port Angeles (Port), and the Board of Clallam County Commissioners (County), advocate for the alternative with the most harvest volume and the most positive (or least-negative) impact to rural Western Washington economies and employment levels. In the SHL-DEIS, Alternative 2 (modified as suggested below), and in the LTCSMM-DEIS, Alternative B appear to suit both criteria. The Port and the County urge the Board of Natural Resources (Board) to choose both as their final decision.

**II. Introduction**

The Port and the County have extensively reviewed both the Department's SHL-DEIS, and its LTCSMM-DEIS.

Clallam County is a political subdivision of the State of Washington. The Port is County-wide special-purpose municipal corporation situated in Clallam County, and both are vitally interested in this public policy decision process and its impact on our County's and Port District's overall economic interests, not just its impact on the forest products sector of our economy. Further, the Port's responsibility is to enhance economic opportunity and wellbeing throughout Clallam County. In that context, as beneficiaries of the State Forest Lands held in trust for Clallam County, the County, and in particular the Port, given its duty just mentioned, the joint task is to seek maximum economic benefit to our constituents.

Identical comments are being provided for each DEIS, since the three final decisions before the Board on:

- (1) the next decade's Sustainable Harvest level,
- (2) what the arrearage is from the last decade's harvest operations and how the arrearage is to be worked off, and
- (3) a final long-term conservation strategy for the Marbled Murrelet – a seabird listed as threatened by the U.S. Fish and Wildlife Service under the Federal Endangered Species Act,

are inextricably intertwined and thus will involve a great degree of interconnectedness in the Board's decisionmaking between and amongst all three subjects. The Port and the County believe, therefore, that simultaneously considering how the decisions affect each other will constitute a good decision process for the Board, and these comments are organized accordingly.

The Port and the County realize that the legal and fiduciary obligations of the Department extend only to the beneficiaries of the various trusts, administered and managed by the Department. But as the "Socioeconomic" section of the LTCSMM-DEIS indicates, the Board should recognize the fact that, without a sturdy, thriving forest products industry in our Counties, the Department's timber sales and sales of other valuable materials would suffer from an economically weaker, and more spottily-distributed customer base, and the small number (currently) of timber harvest contracts on offer that go without responsive, responsible bidders

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would increase, to the detriment of (1) timber market prices, (2) of the Department's trust beneficiaries including the State Legislature, and (3) of our State's primary and secondary schools. To the detriment of the Port District and the County's economy, employment rates, wage levels, and K-12 pupils who are from families with income large enough to disqualify them for free and reduced lunch costs, we have seen the closure of four lumber mills in the past few years, and Clallam County's one remaining paper mill is essentially mothballed and for sale. According to press reports,<sup>1</sup> only its electrical co-generation component is currently operating, and it is a surety that without a steady, assured supply of both timber and biomass, our one remaining lumber mill and the co-generation facility will have a more uncertain future. Biomass, as is known, is an included product of logging operations – harvest of only biomass is uneconomical at current prices.

**III. General Comments on The Department of Natural Resources' Timber Harvest and Sale Operations**<sup>2</sup>

First, the Port and the County acknowledge that the primary duty of the Department to trust beneficiaries is a fiduciary one. Among its various duties as trustee and custodian of publicly owned natural resources for our State, the State Legislature has assigned the Department management duties and fiduciary obligations for various natural resource trusts.<sup>3</sup>

The Department consists of (1) the Board of Natural Resources, (2) an Administrator, (who is the Commissioner of Public Lands per RCW 43.30.105), and (3) the Supervisor, who is nominated by the Commissioner of Public Lands and confirmed by the Board of Natural Resources.<sup>4</sup> The Board is the departmental component specifically charged as follows:

"The Board shall: ...

"(2) Establish policies to ensure that the acquisition, management, and disposition of all lands and resources within the department's jurisdiction are based on sound principles designed to achieve the maximum effective development and use of such lands and resources consistent with laws applicable thereto; ... (Emphasis added);

"(6) Adopt and enforce rules as may be deemed necessary and proper for carrying out the powers, duties, and functions imposed upon it by this chapter."<sup>5</sup>

<sup>1</sup> <http://www.peninsuladailynews.com/news/mill-official-nippon-has-pared-down-production/>.

<sup>2</sup> Comments in this section are drawn from a paper by the Port Angeles Business Association (PABA), [<http://paba.org/wp-content/uploads/2016/08/PABA-White-Paper-Trust-Beneficiary-Expectations.pdf>], and the Port of Port Angeles believes that PABA's paper provides a very useful exposition of the Department's duties and obligations in regards to the many beneficiaries of the trust lands that it manages.

<sup>3</sup> "Of the 18 million acres of commercial timberland in Washington, approximately 10 percent is held by the State of Washington in trust for various beneficiaries. The bulk of this land was granted to the State pursuant to the Washington Enabling Act, 25 Stat. 676 (1889). It is held in trust for the common schools, the University of Washington and others, pursuant to the enabling act and article 16 of the Washington Constitution. These are known as "federally granted" lands. The remaining lands were deeded by various counties to the State after tax foreclosures, pursuant to RCW 76.12.030. That statute provides that these forest board transfer lands are to be "held in trust" by the State, and that proceeds from the management of these lands go to the grantor counties, after deducting administrative expenses. RCW 76.12.030(1), (2)." The County of Skamania, et al, Respondents, v. The State of Washington, et al, Appellants. 102 Wn.2d 127 (1984) 685 P.2d 576.

<sup>4</sup> RCW 43.30.030. The terms "Department" and "Board" are used throughout this paper and are used advisedly within their proper context. The two terms are not interchangeable. While the Board provides much of the policy governance for forest trust lands, the two other main components of the "Department" (Commissioner of Public Lands and the Supervisor) operate and manage the Departmental staff. They prepare and defend the Departmental budget. In doing these activities, they exert significant policy control over financial and other results obtained by the Department.

<sup>5</sup> RCW 43.30.215.

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Buttressing the primacy of the Board's fiduciary duties, a separate statute makes the point that "multiple uses", as applied in RCW 79.10.100,<sup>6</sup> and as defined in RCW 79.10.110,<sup>7</sup> may only be accomplished, in addition to the Department's trust management responsibilities, if they do not detract from those fiduciary duties. If they do, the trust(s) must be compensated for any multiple use that diminishes current or future revenue to the trust(s):

... "If such additional uses are not compatible with the financial obligations in the management of trust land they may be permitted only if there is compensation from such uses satisfying the financial obligations."<sup>8</sup>

Additionally, in explaining the law of our State, the Washington State Supreme Court has clearly stated the duty of the Board:

A trustee must act with undivided loyalty to the trust beneficiaries, to the exclusion of all other interests. ... It may not sacrifice this goal to pursue other objectives, no matter how laudable those objectives may be. ... (Emphasis added).<sup>9</sup>

The Washington State Attorney General has similarly laid out the duties of the Board in regards its fiduciary obligations to the various trusts in an Opinion published in 1996.<sup>10</sup> The Board has acknowledged all of these responsibilities in its fundamental policy document – *Policy for Sustainable Forests*.<sup>11</sup>

For forested trust lands, the Board must establish a sustainable harvest level, and update that calculation every decade.<sup>12</sup> If a shortfall exists in actual versus planned harvest levels, the Board must determine that such an "arrearage" exists, and determine how to eliminate it, on the basis of what provides the best return to the various trust beneficiaries.<sup>13</sup>

There are a plethora of Federal and State environmental statutes that the Department is obliged to follow, and which the Board has taken into account. Among them are the Endangered Species Act,<sup>14</sup> the Federal Clean Water Act as administered through the State

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<sup>6</sup> RCW 79.10.100 - Concept to be utilized, when. - The legislature hereby directs that a multiple use concept be utilized by the department in the administration of public lands where such a concept is in the best interests of the state and the general welfare of the citizens thereof, and is consistent with the applicable provisions of the various lands involved. (Emphasis added.)

<sup>7</sup> RCW 79.10.110 - "Multiple use" defined. – "Multiple use" as used in RCW 79.10.070, 79.44.003, and this chapter shall mean the management and administration of state-owned lands under the jurisdiction of the department to provide for several uses simultaneously on a single tract and/or planned rotation of one or more uses on and between specific portions of the total ownership consistent with the provisions of RCW 79.10.100.

<sup>8</sup> RCW 79.10.120.

<sup>9</sup> The County of Skamania, et al, Respondents, v. The State of Washington, et al, Appellants. 102 Wn.2d 127 (1984) 685 P.2d 576 (hereafter, "Skamania").

<sup>10</sup> Attorney General Opinion (AGO) 1996-11. <http://www.atg.wa.gov/ago-opinions/states-trust-responsibilities-respect-lands-granted-united-states-or-placed-trust>.

<sup>11</sup> [http://file.dnr.wa.gov/publications/lm\\_psf\\_section1\\_of\\_3.pdf](http://file.dnr.wa.gov/publications/lm_psf_section1_of_3.pdf) pages 14-16.

<sup>12</sup> RCW 79.10.320 - Sustainable harvest program. The department shall manage the state-owned lands under its jurisdiction which are primarily valuable for the purpose of growing forest crops on a sustained yield basis insofar as compatible with other statutory directives. To this end, the department shall periodically adjust the acreages designated for inclusion in the sustained yield management program and calculate a sustainable harvest level.

<sup>13</sup> RCW 79.10.330 - Arrearages—End of decade. If an arrearage exists at the end of any planning decade, the department shall conduct an analysis of alternatives to determine the course of action regarding the arrearage which provides the greatest return to the trusts based upon economic conditions then existing and forecast, as well as impacts on the environment of harvesting the additional timber. The department shall offer for sale the arrearage in addition to the sustainable harvest level adopted by the board of natural resources for the next planning decade if the analysis determined doing so will provide the greatest return to the trusts.

<sup>14</sup> 16 U.S.C. §§ 1531 et seq.

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Department of Ecology,<sup>15</sup> the State Environmental Policy Act,<sup>16</sup> and the State Forest Practices Act.<sup>17</sup>

The Board's charge is this: to maximize development and use, consistent with laws applicable thereto. So this means, in regards the beneficiaries of the several trusts established in forested areas, that maximizing revenues from its operations in forested areas is of paramount importance. Indeed, the Chelan County Superior Court concluded that the Department has the duty to maximize revenues from the trust lands in perpetuity for the exclusive benefit of beneficiaries.<sup>18</sup> Thus, the Board has no statutory duty, as manager of the State's natural resources trusts, to achieve a "balance" between its revenue-producing duties, and its environmental responsibilities as it relates to its management of trust lands.

Thus, nothing that is within the discretion of the Board (as contrasted with a separate legal obligation that operates as a constraint on that discretion) supplants or reduces the importance of the Department's fiduciary obligations to its trust beneficiaries.

#### **IV. Comments on The Sustainable Harvest Level for the upcoming decade**

After carefully reading and reflecting on both DEIS's, the Port and the County are assured that the affected environment, environmental consequences, and cumulative effects of all alternatives analyzed are adequately addressed and provide robust ecological safeguards and sustainability of our State's forest resource. "None of the alternatives would result in significant adverse impacts on the environment ... "<sup>19</sup> Any of the alternatives considered, therefore, would meet the Department's obligations under the law to prevent undue harm to the environment. Therefore, the Alternative chosen by the Board must be the one with the highest level of harvest revenue generated to the trust beneficiaries, satisfying the fiduciary obligations of the Board to trust beneficiaries in the present, without sacrificing revenues to future generations of trust beneficiaries.

The Port and the County are aware that at the current time, 48.3% of the entire forest trust estate is withdrawn or severely restricted from harvest, and is dedicated to conservation values only.<sup>20</sup> The Port and the County believe that increasing the percent of the forest trust estate set aside for Long-Term Forest Cover<sup>21</sup> is not reasonable in light of the conclusions in the SHL-DEIS, that any of the alternatives contained in it will not result in significant long-term harm to the natural environment. Only Alternative 2 does the opposite: the portion of lands in Long-Term Forest Cover decreases to 700,000 acres, or 47.7%<sup>22</sup> - a small decrease but in the right direction.

The Port and the County believe that increasing the harvestable acres of forested lands held in trust as shown in Alternative 2 provides a higher long-term aggregate of revenue-producing assets for each of the trusts, and therefore the best revenue return on trust assets within the near term, and for the long run.

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<sup>15</sup> Enunciated at RCW Chap. 90.48.

<sup>16</sup> Codified at RCW Chap. 43.21C.

<sup>17</sup> Codified at RCW Chap. 76.09.

<sup>18</sup> Okanogan Cy. et al. v. Belcher, Chelan Cy. Cause No. 95-2-00867-9 (5-30-96).

<sup>19</sup> See "Evaluation Criteria", pg. 5-2, and "Individually minor but collectively significant actions", pg. 5-2, SHL-DEIS.

<sup>20</sup> See alternative 1 in Table 1.3.2, Sustainable Harvest Level SHL-DEIS.

<sup>21</sup> For the definition of "Long-Term Forest Cover" see pg. 7-3, LTCSMM-DEIS.

<sup>22</sup> See alternative 2 in Table 1.3.2, Sustainable Harvest Level SHL-DEIS.



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As described in the SHL-DEIS, Alternative 2 provides for the highest volume of harvest over the next decade of any of the five alternatives analyzed.<sup>23</sup> The Port and the County believe, however, that Alternative 2 can be significantly improved – within the analytical confines of both the SHL-DEIS and the LTCSMM-DEIS. As is clearly stated in the SHL-DEIS, as long as any alternative, modified alternative, or combination of alternatives is within the four corners of the alternatives as analyzed, it is legitimate for the Board to make such a decision.<sup>24</sup> The Port and the County therefore strongly urge the Board to modify Alternative 2 in ways that enhance economic benefits to our County, and that strengthen revenue streams to trust beneficiaries as next described.

A much stronger Alternative 2 is:

1. Use 702 million board feet as the overall arrearage number, and distribute harvest of this volume whichever years of the decadal harvest plan that maximize revenue to beneficiaries of the decade having an arrearage. Doing this will likely also result in a makeup of the economic activity not seen in the previous decade – due to the arrearage. The Port and the County look forward to future conversations with the Board on this particular topic. Particularly for lands held in trust for Counties and their taxing districts, each County is a separate Sustainable Harvest Unit (SHU).<sup>25</sup> This is true because the revenues generated by timber harvest within each of these SHU's stay within the County and within the taxing districts where the timber was harvested. This is also true in our Port District and County for State Forest Lands<sup>26</sup> held in trust for Clallam County taxing districts contained within the Olympic Experimental State Forest (OESF). The arrearage is discussed further in the next Section of these comments.
2. Focus on increasing acres thinned in riparian areas ... and in other overstocked areas. 82.5% of Department-managed lands within the analysis area are characterized as low-value Competitive Exclusion Stage, and there is a great advantage to current and future trust beneficiaries, not to mention achieving better wildlife habitat and more diverse vegetation by pre-commercial thinning in these overstocked acres. Only 10% of the planned riparian thinning volume of 394 million board-feet (MMBF) was accomplished in the previous decade.<sup>27</sup>
3. Rather than decreasing modeled harvests by 10% in each SHU,<sup>28</sup> **increase** them by 10%, given the history of arrearages over the past 30 years. The harvest plan should err on the high side, since as history demonstrates, fall-downs in harvest volumes inevitably will occur over the upcoming decade. This concept is further developed in the next Section of these comments.

Neither the Port nor the County has the ability to reconcile the State Forest Land volume numbers broken out by SHU contained in Appendix G to the SHL-DEIS, and those for Counties found in a presentation to the Board at the December 2016 meeting.<sup>29</sup> The Port and the

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<sup>23</sup> See pg. 2-8, SHL-DEIS.

<sup>24</sup> See "Other Combinations of Options", pg. 2-5, SHL-DEIS.

<sup>25</sup> See "What are Sustainable Harvest Units?", pg. 1-9, SHL-DEIS.

<sup>26</sup> See the definition on pg. 1-6, SHL-DEIS.

<sup>27</sup> See "Riparian Thinning Options", pg. 2-4, SHL-DEIS.

<sup>28</sup> See Paragraph 2.2, pg. 2-6, SHL-DEIS.

<sup>29</sup> See slide 23, [http://file.dnr.wa.gov/publications/em\\_bc\\_bnr\\_mm\\_shc\\_december2016\\_presentation.pdf](http://file.dnr.wa.gov/publications/em_bc_bnr_mm_shc_december2016_presentation.pdf).

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County suggest that for Counties having State Forest Lands within the OESF and Capitol SHU's, the Department provide such numbers within the Final EIS. The Port and the County have relied on the State Forest Land volume numbers contained in the December staff report in formulating these comments.

**V. Comments on Disposition of the Arrearage from the Previous Decade's Harvest**

The arrearage (distributed across all trusts) essentially represents revenue not generated for each trust beneficiary, and represents economic activity foregone. Overall, it stands at 12.8% of the previous decade's planned harvest.<sup>30</sup> The Port and the County understand the difficult period in the national economy that we have come through, and the fact that it explains some of the reason for the arrearage.

The Port and the County believe it is very important to distribute to best beneficiary revenue advantage and to best economic advantage, the harvest of the gross amount of the acres planned-but-not-harvested. A critical need in this Port District and County is to quickly make up for lost economic activity, and lost timber revenue to our taxing districts. As previously noted, four mills within Clallam County alone have closed in the immediate past. A significant cause, if not the proximate cause, is the high arrearage in Clallam County.<sup>31</sup> In fact, Clallam County likely has the highest arrearage of any county, when all trusts are considered. Logging companies and mills do not care which trust that each harvest comes from. They require a steady, sufficient supply of State wood to sustain and grow their operations.

The gross arrearage of 702 MMBF is the correct number, since for trust lands, a significant fraction of the arrearage appears to be in State Forest Lands.<sup>32</sup> Revenues from State Forest Lands go to County governments and other taxing districts within such Counties having such lands and having property tax levies, except that a portion goes to the State for common schools, since the State levies taxes on real and personal property for the support of common schools. Since revenues from harvest proceeds on such lands stay within the Counties and associated taxing districts, according to RCW 79.64.110(1), each of the County SHUs therefore acts as its own trust within the State Forest Lands trust. To use the net arrearage figure of 462 MMBF constitutes an illegal subsidy from the Counties in arrears to the Counties with harvest in excess of the planned amount.

Modify the 10% reduction of harvest levels for all alternatives<sup>33</sup> so that a **10% increase** in the calculated harvest levels is authorized within all SHUs. The Department wisely notes that harvest calculations and environmental impacts are subject to a level of uncertainty, many of which are listed. However, **it is a certainty** that actual harvest levels over the decade will be short of calculated and authorized levels, given the history of the past several decades. If analysis in the SHL-DEIS supports a proposed harvest level, it is the duty of the Department to

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<sup>30</sup> 702 MMBF of gross arrearage ÷ 5,500 MMBF of decadal harvest = 12.76%.

<sup>31</sup> See slide 7 in the October 2016 presentation to the Board, found at: [http://file.dnr.wa.gov/publications/em\\_bc\\_bnr\\_shc\\_october2016\\_presentation.pdf](http://file.dnr.wa.gov/publications/em_bc_bnr_shc_october2016_presentation.pdf). Clallam County's arrearage can be found in its own SHU, and a portion of the OESF in Clallam County contains both Common School lands (State Lands), and State Forest Lands in trust for Clallam County taxing districts.

<sup>32</sup> See presentation to the Board of Natural Resources at the October, 2016 meeting found at slide 7; [http://file.dnr.wa.gov/publications/em\\_bc\\_bnr\\_shc\\_october2016\\_presentation.pdf](http://file.dnr.wa.gov/publications/em_bc_bnr_shc_october2016_presentation.pdf).

<sup>33</sup> Paragraph 2.2, SHL-DEIS, op. cit.

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make the best effort to achieve those harvest levels. Since the EIS assumes a 10% uncertainty level is reasonable, it is wise and prudent to set the authorized target level 10% higher than the calculation, to organize and fund Departmental operations so as to achieve that level, and for the Board to closely monitor actual achievement of the harvest plan. The certainty of fall-down, based on experience, will result in the best chance to actually achieve acceptable target harvest levels. If, by some previously unexperienced circumstance, no fall-down in harvest levels occurs through the decade, the Department can slow the sales program accordingly. Otherwise, all the risk of harvest level uncertainty accrues to the Trust beneficiaries.

As discussed above, this risk is real. If it is not addressed, it will constitute a failure to achieve one of the fundamental fiduciary obligations of the Department – that of intergenerational equity. The current generation, (“current” in each one of the past several decades), has seen a shortfall in expected revenue due to the continuing arrearage. The generation in existence now is the generation that was the “future” generation when the arrearage first came into existence. If the arrearage is not successfully addressed, and quickly, promised benefits to formerly “future” generations expressed as the arrearage will never materialize. Thus, the failure in terms of intergenerational equity.

**VI. Comments on the “Belt and Suspenders” approach to complying with the State Environmental Policy Act<sup>34</sup>**

In relation to its fiduciary duties, the Department acts very similarly to any private owner of forested lands, who operate them as a farm. Currently, the Department undertakes an individual SEPA review for each and every sale. According to State law, SEPA does not apply to private landowners who apply for a Forest Practices permit to harvest their timber, if that harvest project is in a forest practices category other than “Class 4”.<sup>35</sup> RCW 43.21.030(2)(c), which establishes policy guiding agencies’ consideration of the impact on the environment of their “major action(s) significantly affecting the quality of the environment”, requires a detailed analysis of such major actions. Establishing plans for the next decade’s timber harvest on State Lands and State Forest Lands and to adopt a final long-term conservation strategy for the Marbled Murrelet certainly qualify as major actions of the Board that can significantly affect the quality of the environment. The legislature, however, has established the policy that three classes of forest practice actions are exempt from the need for such action, since by definition of the Forest Practices Board, such actions will not have significant environmental impacts. Forest Practices Board rules apply to timber harvest on public lands.<sup>36</sup>

<sup>34</sup> See the statements in text box 1.4.2, pg. 1-15, SHL-DEIS, and in text box 1.4.2, pg. 1-16, LTCSMM-DEIS.

<sup>35</sup> RCW 43.21C.037 - Application of RCW 43.21C.030(2)(c) to forest practices. – “(1) Decisions pertaining to applications for Class I, II, and III forest practices, as defined by rule of the forest practices board under RCW [76.09.050](#), are not subject to the requirements of RCW [43.21C.030\(2\)\(c\)](#) as now or hereafter amended. ... ” RCW 43.21C.030(2)(c) reads as follows: “(c) Include in every recommendation or report on proposals for legislation and *other major actions significantly affecting the quality of the environment*, a detailed statement by the responsible official on: (i) the environmental impact of the proposed action; (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented; (iii) alternatives to the proposed action; (iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented; ... ” (emphasis added).

<sup>36</sup> WAC 222-20-010 “Applications and notifications—Policy.” “(1) No Class II, III or IV forest practices shall be commenced or continued unless the department has received a notification for Class II forest practices, or approved an application for Class III or IV forest practices pursuant to the act. Where the time limit for the department to act on the application has expired, and none of the conditions in WAC [222-20-020\(1\)](#) exist, the operation may commence. (NOTE: OTHER LAWS AND RULES AND/OR PERMIT REQUIREMENTS MAY APPLY. SEE CHAPTER [222-50](#) WAC.) ... ”

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From a process efficiency standpoint, the Port believes the Department should modify its rule in WAC 332-41-833 "Timber sales categories" pursuant to the authority contained in WAC 197-11-830 "Department of natural resources"<sup>37</sup> to reflect a threshold determination by the Board that all timber sales other than those that involve an application to the Forest Practices Board for a Class 4 permit, do not require the Department to incur cost in staff time and financial resources to subject each and every planned timber sale to an additional SEPA analysis. There is no requirement for this under the terms of SEPA or Forest Practice Board rules. The Department would enable itself to do more within existing budget and staff resources, and would lessen the legal risk for the sales it puts up. It would be interesting to know how many Class 4 applications the Department has forwarded to the Forest Practices Board in the last decade.

**VII. Comments on the Discount Rate Chosen by the Department**

The Port and the County have closely examined Appendix F of the SHL-DEIS and takes a different view of the appropriate discount rate<sup>38</sup> to apply in considering current vs. future effects on revenue levels derived from timber sales now, and into the future. The Port makes similar use of discount rates in informing decisions on capital spending for long-lived infrastructure which pays off in the present and the long-term future. The Port uses a 6% *[confirm this with the Port]* discount rate to determine whether spending on a capital project is worth the coin. The concept of intergenerational equity is not so different from determining the best use of today's dollars for capital spending. The Port's and County's concern is that 2% understates the value of current revenues and overstates the value of future revenues.

**VIII. Comments on the Marbled Murrelet Long-Term Conservation Strategy**

All alternatives for the marbled murrelet were jointly formulated by the Department and the U.S. Fish and Wildlife Service, meaning that each one of them is legally sufficient to meet the Department's legal obligations concerning this threatened species, under the Federal Endangered Species Act. Therefore the first test of reasonableness has been met. The second test, e.g., finding the alternative that does the least harm, or the most good, to trust beneficiaries is the most important aspect of the Board's decision.

First, some context regarding the overall population of marbled murrelets and the fraction of that population that nests in trees owned by the State, and managed by the Department.<sup>39</sup> The Board's action on sustainable harvest levels and conservation measures supporting the long-term viability of this threatened seabird species will affect only about 1% of the overall North American population of these birds.

Second, the LTCSMM-DEIS acknowledges that little can be done on State-owned lands for nesting habitat to prevent decline of the species in our State, let alone assure an increase in its

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<sup>37</sup> The applicable language in WAC 197-11-830 is "(7) Those sales of timber from public lands that the department of natural resources determines, by rules adopted pursuant to RCW [43.21C.120](#) do not have potential for a substantial impact on the environment."

<sup>38</sup> See paragraph 2.2 "Elements Common to All Alternatives", pg. 2.6, SHL-DEIS.

<sup>39</sup> Washington state owns land that contains approximately one percent of the overall North American population of the marbled murrelet. See Board minutes at [http://file.dnr.wa.gov/publications/em\\_bc\\_bnr\\_110315\\_minutes\\_approved.pdf](http://file.dnr.wa.gov/publications/em_bc_bnr_110315_minutes_approved.pdf), which incorrectly state the percentage at 0.01%. The minutes should reflect that under the most generous of assumptions of marbled murrelet distribution in Washington, Oregon and California, which contain about 3% of the entire North American population, the share of those birds nesting in State-owned habitat is about 1%, given the fact that the State owns about 11% of the marbled murrelet habitat in Washington State.

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numbers, **if** other environmental factor(s) is or are the controlling variable(s) – things such as food supply in marine waters.<sup>40</sup> Marbled murrelets spend the majority of their lives at sea, foraging for food. They come ashore to lay eggs and incubate them, propagating their kind. Almost nothing is known about the birds' food supply situation in marine waters<sup>41</sup>, but one can make an educated guess that food might be the controlling variable from the fact that the birds numbers *might* be declining in Washington coastal waters (or *might not* be), but *are* declining in the Strait of Juan de Fuca and in Puget Sound. There have been no declines detected in the coastal waters of Oregon and California.<sup>42</sup>

Third, the analytical model used by the Department's consultant to project future marbled murrelet population scenarios does not include factors regarding conditions in the marine environment or regarding the possible effect of climate change.<sup>43</sup> The Port and the County acknowledge that there is currently a lack of data concerning the effect of these two very important variables, but observes that, as the old saying goes, when the only tool that one has is a hammer, every problem looks like a nail. So it goes with the population survival model: when the only controlling variable about which anything is known is habitat, habitat is looked to as the solution, whether or not it is the ultimate determinant of marbled murrelet survival in our State. This is, of course, not to disparage the necessity of habitat, but understanding the model's limitations is an essential cognitive screen to determine the reasonableness of each alternative in described in the LTCSMM-DEIS.

The Port and the County cannot comment on the differences in habitat abundance on State-owned land in California and Oregon compared to Washington, since the LTCSMM-DEIS contains no conclusion concerning the potential differences between the states in the lower-48 within the marbled murrelets' range. But there seems to be a difference between coastal Washington, and the internal waters of Washington, in terms of population decline. It must be observed that the bird neither knows nor cares who owns the land upon which the tree crown grows, within which it deposits and incubates its egg and nurtures its young. In the Port's and County's view, the abundance of fish the bird feeds on vs. the abundance of habitat the further inland one goes has not been made clear in the analysis.

As far as its external validity goes, the "Risk" scenario in the population survival model approximates most closely the conditions for the marbled murrelet in the real world.<sup>44</sup> Statewide, across all classes of land ownership, any of the alternatives show substantially the same potential for marbled murrelet long-term survival or risk of quasi-extinction.<sup>45</sup>

Given the above uncertainties concerning the likelihood of long-term survival of the marbled murrelet based solely on the amount of habitat in State-owned lands, it follows that the Board's decision must turn on which alternative does the least revenue harm to its trust beneficiaries, and consequently does the least harm or provides the most good economically. It is clear from the analysis that Alternative B is the only one that fits that bill.<sup>46</sup> It increases overall acres

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<sup>40</sup> See "Impacts to Marbled Murrelet Habitat and Populations", pg. 2-58, LTCSMM-DEIS.

<sup>41</sup> See "Population Decline", pg. 3-29, LTCSMM-DEIS.

<sup>42</sup> See "Population Decline", pg. 3-28, LTCSMM-DEIS.

<sup>43</sup> See "Effect on Marbled Murrelet Populations", pg. 4-46, LTCSMM-DEIS.

<sup>44</sup> Ibid.

<sup>45</sup> See "Comparing Modeled Population Responses Among the Alternatives", pg. 4-48, LTCSMM-DEIS.

<sup>46</sup> See "Socioeconomic Impacts", pg. 2-60, SHL-DEIS.

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available for harvest,<sup>47</sup> treats Pacific and Wahkiakum Counties as well as can be,<sup>48</sup> provides a good level of certainty for the Federal Services, for the Department's operations, and for trust beneficiaries,<sup>49</sup> and does not adversely affect employment in rural counties.<sup>50</sup> The Port and the County view this as a cardinal virtue.

One last concern: Although it is stated that the integrated approach to production and conservation (including the multispecies conservation strategy) for the Olympic Experimental State Forest (OESF) will not change under any alternative,<sup>51</sup> when this conservation strategy was briefed to the Board of Natural Resources in October, 2015, one of the Board members got the distinct impression to the contrary, and that the OESF would essentially become a zoned forest,<sup>52</sup> contrary to what is expressed in the current (1997) Habitat Conservation Plan.<sup>53</sup> The Port and County believe that keeping the "Experimental" in the OESF is essential to learning the best approaches to adaptively managing State forested lands. The Port and County discourage the placement of polygons in the OESF for conserving any endangered species, when the purpose of the OESF is to find better approaches to both production and conservation. Turning the OESF into a "zoned" forest defeats the very purpose for which it was established. The Long Term Conservation Strategy for Marbled Murrelets should not be used to create zoning for the OESF.

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<sup>47</sup> See "Changes in Operable Acres by Trust", pg. 4.87, LTCSMM-DEIS.

<sup>48</sup> See "Socioeconomic Impacts", op. cit.

<sup>49</sup> See "Need for the Proposed Action", pg. 1-1, LTCSMM-DEIS.

<sup>50</sup> See "Employment", pg. 4-91, LTCSMM-DEIS.

<sup>51</sup> See "Scope and Scale of Analysis", pg. 3-3, LTCSMM-DEIS.

<sup>52</sup> See pg. 7, [http://file.dnr.wa.gov/publications/em\\_bc\\_bnr\\_101515\\_specialmeeting\\_minutes\\_approved.pdf](http://file.dnr.wa.gov/publications/em_bc_bnr_101515_specialmeeting_minutes_approved.pdf).

<sup>53</sup> See pg. 81, [http://file.dnr.wa.gov/publications/lm\\_hcp\\_ch4e.pdf](http://file.dnr.wa.gov/publications/lm_hcp_ch4e.pdf).