

Are We Putting the Forest to Sleep? Part 1: History of State Forests

Published Mar 15, 2023

Tyler Ernst: When one of the purposes that the department manages for, one of the outcomes that they manage for is timber harvest, that shouldn't be set over and against ecological services or environmental benefits. You really can have your cake and eat it too in this case. You can do both.

Chris Edwards: Welcome to Forestry Smart Policy, a podcast produced by the Oregon Forest Industries Council for policymakers and other thought leaders influencing decisions in Oregon. I'm Chris Edwards, your host and president of OFIC. In this episode, I sit down with Tyler Ernst, Policy Counsel for Manufacturing and Resources at OFIC. Tyler joined OFIC three years ago with more than 10 years of experience in natural resource policy and government relations. Prior to joining OFIC, Tyler served as Assistant General Counsel for the Michigan Farm Bureau, worked as a staffer in the Washington, DC. Office of a Western State Senator, and worked in the Michigan Department of Attorney General's Office during law school. Tyler holds a BS in Microbiology from Michigan State University and a JD from the Michigan State University College of Law. In his role as Policy Counsel, Tyler represents OFIC's members in policy discussions before the state legislature and various natural resource agencies and commissions. In this first episode of our two-part series, Tyler answers the question, how is it that some of the most productive forest lands in the state and possibly the country are about to start operating in the red? We talk about the history of state lands in Oregon and the evolution of state lands policy decisions over the years, including how to balance social, environmental, and economic values and events that led to the current pursuit of a habitat conservation plan by the Department of Forestry. Without further delay, my discussion with Tyler Ernst.

Tyler is our guest today. He is Policy Counsel for the Oregon Forest Industries Council. Welcome, Tyler. And first, let's talk a little bit about how you landed here at OFIC. So what's your background?

Tyler Ernst: Well, it's good to be here, try to shed a little bit of light on forestry. And I moved to the state just over three years ago to take the job as Policy Counsel for OFIC. But before that, I was kind of an Aggie. I was in the ag world out in the Midwest, in the Mitten state of Michigan. And so when I moved to Oregon, it was actually kind of a move back closer to home. I grew up in the Intermountain West, and it was staying within the natural resource sector more broadly, but I was more of an environmental and just general natural resources policy wonk. And I really cut my teeth with the Michigan Farm Bureau as a non-profit trade association that obviously represents a sector of that broader natural resource industry.

Chris Edwards: If there's one thing I learned about you in the last couple of years, is that you're a very quick study. And as a natural resource attorney, you have plenty of background that you brought here to Oregon. How did you end up in Michigan? Because you said you grew up in the Intermountain West, in Wyoming, right?

Tyler Ernst: Yeah, that's right. I grew up in Wyoming, kind of up near the park in the northwest part of the state, Cody, Wyoming, for any who have been out there and visited the east entrance of Yellowstone. So yeah, beautiful area. I headed out to the midwest for college and always intended to head back west after I was done, and then ended up getting married and life intervened. And my wife and I both did professional school and post-education training. And so we ended up just kind of getting hooks in us and stayed in Michigan a lot longer than either of us had anticipated. So yeah, that's how I got out to Michigan. I mean, but growing up in the Intermountain West, I grew up fly fishing and backpacking in the Rockies. And so from kind of those experiences growing up, I've always had an appreciation for the natural world and also had an appreciation from an early age. Obviously, there's not nearly the same scope of the timber industry in the Intermountain West, obviously, some in the Black Hills of South Dakota. But my dad actually worked for a number of years when I was first born. He worked as a logger in the Black Hills. And so whenever we'd be out backpacking, hiking, fly fishing, he'd talk about kind of that world and the importance of logging and maintaining forest health. And I remember some of my earliest memories of kind of contemplating what human activity is able to contribute to improving the natural environment was hiking through these just vast stretches of beetle-killed pine forest. And we can work kind of synergistically with natural processes, both to enhance the environment and also provide what humans need for life. And so anyway, all that to say, when I was out in Michigan and was pursuing my law degree, I kind of recognized early on that I wanted to land in the natural resource world and practice natural resource and environmental policy or law. And so that's kind of what led me to an organization like the Farm Bureau. And there is forestry out in Michigan and the Upper Peninsula in particular, but down where I was in the capital city of Lansing, there's not much forestry. So really, the opportunity there in the natural resource world was agriculture. And so that was a good fit. I grew up in a farming community in northwest Wyoming. And so there was obviously a kind of a natural connection there as well.

Chris Edwards: I think it's interesting that you grew up fly fishing, backpacking with that sort of experience. I've noticed that sort of on both sides of the fence, whether it's folks working in natural resource activism on that sort of the activist side, or the professionals actually working in those industries, all kind of funnel back to some sort of formative experiences, often when they're kids, growing up and having those outdoor experiences, which I think is a commonality that we all share.

Tyler Ernst: Yeah, absolutely. And is really important to recognize at times.

Chris Edwards: We're excited to have you on today to talk about a very current topic, our state forests. Right now, the state of Oregon owns some of the most productive forest land in North America, particularly the lands the state owns in the coast range of Oregon, especially in that northwestern corner, the Tillamook State Forest, the Clatsop State Forest. I mean, that is highly productive timberland. But it doesn't look like it's on a path to continue operating in the black. That is profitably for much longer. How is it, Tyler, that we ended up at a place where we're projecting that those state forest operations are going to go into the red here pretty soon, like maybe in the next biennium.

Tyler Ernst: Yeah, so I'll get to the answer to that question. Before I do, I want to contextualize our state forest just a little bit, because when people think state forest, maybe they might not have an appreciation for how state forest kind of fit into the overall pie of forest land in Oregon. And so Oregon is about 60 million acres total. About half of that is forest land. So about 30 million acres of forest land across the entire state. Of that, the majority is federal forest land, so public forest, but owned and controlled by the federal government. And so that would be the Forest Service, BLM land, et cetera. And that's about 60% of those 30 million acres is federal forest land. From there, you have private forest land, which between large and small private forest land owners comprises about another 35%. And then of the remaining pie, 4% of the total forest land is state forest land. When you look at that entire class of landscape in Oregon, forest lands, only 4% of that is owned by the state. But as you noted, some of those state forests cover some of the most productive timber, timber producing regions in the state and really in the country and in the world. Up there in northwest Oregon in particular, where the Tillamook State Forest is, where the Clatsop State Forest is, that area is just unparalleled when it comes to growing trees. So anyway, that's just kind of to set the groundwork for what we're talking about in context when we talk about state forests. Now, the way that state forests have historically been managed in the state really ties back to an agreement that was entered into between the state and counties in the late 1930s and early 1940s. And at that time, what we now know as state forest land actually belonged to the counties. And the counties had obtained most of that land through tax foreclosures. So this was land that had been privately owned, but taxes were in arrears. No one was maintaining it. No one was taking care of it. A lot of those lands were not in really great condition. And so the counties attained the title to those lands through tax foreclosures. So in the early 40s, or around that time, a law was passed or a series of laws were passed through the Oregon state legislature that enabled counties to deed those lands over to the state in exchange for an agreement by the state to manage those lands and return a portion of revenue from timber sales from those lands back to the counties. The formula that was set, and this is the formula today, is roughly a

third, just over a third of any revenues from timber sales from state forest lands go to the state and primarily, or pretty much exclusively, to the Oregon Department of Forestry to fund its operations. And the other, just under two thirds, goes back to the counties. And so it funds local county services, flows from the counties down into to local municipalities as well, and funds everything from local community colleges, schools, education, public health, and safety, local hospital systems rely on some of that revenue. So that's kind of the contractual basis by which the state currently manages these lands that have been deeded over to it by the counties. And again, most of that deeding over of these landscapes happened back in the 1940s. So it's been quite a while ago now. So that being said, as I noted, when a lot of those lands were deeded over to the state, they weren't in great condition. And so they weren't really producing a lot of timber. Over the years, those landscapes were rehabilitated. They established mature, productive stands of trees, and then eventually got to the point where the state was able to harvest a lot of those acres and start generating real revenue off of them. And that has continued through to the present day. The Department of Forestry has managed those lands. I mean, some tweaks have happened along the way to how the state manages its acres of forest. But for the most part, they've managed those lands really to fulfill three purposes. One is timber production. The second is recreation. And then the third would be environmental services.

Chris Edwards: I think it's important when we talk about timber production, because I made the reference earlier about some of the most productive land in the state. And I was not referring to necessarily harvest levels, although there could be a correlation certainly. But I was really talking about the land's inherent ability to grow trees quickly.

Tyler Ernst: Yeah, whether you're growing those trees for eventual harvest, or whether you're not managing the landscape at all and just letting the trees grow, that's exactly right. Those lands are productive because they're just the best lands imaginable for growing the type of forest that grow there. And a lot of that has to do... I mean, there are all sorts of factors that go into a land, the site productivity. One of them is rain.

Chris Edwards: Right. That is a rainy part of the state. So when we think about wildfire in the state of Oregon, we don't always think about Northwestern Oregon. But historically, Tyler, isn't that a big part of the story here?

Tyler Ernst: Oh, absolutely. And some of those landscapes were in great condition, though, because they were burned. The Northwest part of the state, if you go back to the early 1900s, so the US Geological Service did a survey in 1902 of all of the forest lands across Oregon. And that very Northwest part of the state was a little bit anomalous at the time. But if you look down the entire coast, so across the coast range, vast stretches of that landscape were completely burned over at that point. In fact, if you look west of the

Cascade Crest, at these wetter forests, at that point in time, so 1902, the Service found that over a third of the forested acres were in a completely burned over state. So, I mean, you look at that and you see that historically, that has been part of the natural forest cycle, that these forests don't just grow trees that remain on the landscape indefinitely. Nature has a way of turning over old forests, and you see that there. So even though fire might be more frequent on the east side and the drier forests in the state, when it does burn in these heavily stocked wet forests on the west side of the state, historically, it burned hot and it burned long and it was destructive. It was a stand replacing fires, which really ironically is what has enabled the predominant species in those forests to become the dominant species. Because Douglas fir is not a shade tolerant tree. It requires sunlight. It requires a lot of direct light. And so if those forests hadn't burned over like that, you wouldn't have had Douglas fir be established there. And so I think that that's important for people to understand, you know, the way that the natural cycle of those forests works is really what has enabled them to have the characteristics that they have today.

Chris Edwards: Yeah, I think that's really interesting. And we've spoken before on previous occasion about some of the accounts of the smoke in Western Oregon during those summers early in the century.

Tyler Ernst: Yeah, and some of those fires are renowned. You know, I mean, the Tillamook Burn is one. That, you know, anyone who has spent any time in Oregon has probably heard about the Tillamook Burn. And so, yeah, those big stand-replacing fires on the west side of the state, you know, that was, historically, that was a reality of those forests.

Chris Edwards: Okay, so we had timber production, recreational benefits, and environmental and ecological benefits.

Tyler Ernst: Yeah, that's right. So those are kind of the three purposes. And in a lot of ways, they're not three separate buckets. In a lot of ways, those three purposes intertwine, and they're connected to one another. I think that's important to note. But those are the three considerations that the department bears in mind when they are developing their management plan, how they are going to manage these forests. I think that's important for people to understand that don't work closely in forest policy, is that human activity, human management of natural landscapes is not necessarily inimical to the ecological services that are provided by those landscapes. So what I mean by that is that through human management, we can actually, I believe, and I think there's a lot of scientific evidence that would back this up, that we can enhance the natural functions, values and functions of the natural landscapes through careful management. And so that's right, when one of the purposes that the department manages for, one of the outcomes that they manage for is timber harvest, that shouldn't be set over and against ecological services or environmental

benefits. You really can have your cake and eat it too in this case. I think you can do both. But those are the three considerations that the department bears in mind when they are developing their management plan. If you look back to slightly more recent history, so we'll start kind of in the late 1990s. Obviously, again, anyone who's familiar with the history of forest management in Oregon knows that at the end, late 80s, early 90s, a seismic shift happened across the Pacific Northwest, because that's when the spotted owl was listed under the Federal Endangered Species Act. And then that's when the federal forest plan was hammered out that really dramatically reduced the level of harvest coming off of federal lands in the name of protecting habitat for the species, for the spotted owl. So that forest plan only applied to those federal forests. Again, that's a huge piece of the pie. That's 60% of the forest landscape, but it did not impact necessarily the management of private lands or state forest lands. But post that adoption of that federal forest plan, you had the Department of Forestry kind of take a look at how it was managing the state forests, and they worked out kind of a new management paradigm for state forests, and that was known as structure-based management. And that was developed and then adopted in the late 90s or early aughts. The purpose of that new management paradigm, this structure-based management, was that it would be able to be coupled with or married up to a habitat conservation plan. And what a habitat conservation plan is, is that's a voluntary plan that a landowner creates and then submits to the federal services in order to obtain protection, legal protection, under the Endangered Species Act. And so what a landowner obtains if they have a federally approved habitat conservation plan is they obtain legal protection for incidental takes of an endangered species. So under the Endangered Species Act, there's really two ways that you can unlawfully take a listed species, a threatened or endangered species. One would be you directly, you perform some activity that directly kills an endangered species. But another way that you can unlawfully take under the law an endangered species is by destroying or harming its habitat, its critical habitat. So that's habitat that's been designated under the law as necessary for that species' survival and recovery. Landowners who don't want to be subject to potential legal liability for unlawfully taking an endangered species might create a habitat conservation plan, again, that's then submitted to the federal government for approval so that they can continue on with their operations without fear of any kind of legal liability or reprisal, right? And so when the department developed the structure-based management paradigm, it was always meant to be married up eventually with a habitat conservation plan.

Chris Edwards: Which it sounds like, okay, so just really quickly to make sure that I and the listeners understand what a habitat conservation plan is. In lay terms, it sounds like an HCP, or habitat conservation plan, says, hey, federal services are saying, hey, we understand that in the course of your normal operations under the law, you may harm

some critical habitat. But that's going to be okay, because as a part of this overall landscape level plan, we know that you're doing all these other activities to create and or preserve habitat that's good for the species.

Tyler Ernst: Yeah, that's right. Is that more or less? More or less. One is it sets out approved practices. We'll keep it in the realm of forestry. And so, where can you harvest? How often can you harvest might even be part of it? What are limitations for bringing harvest equipment into riparian zones, maybe around a stream if the habitat that's being protected is habitat for aquatic species, for example. Practices might include leave trees. So trees that you leave behind when you harvest to maintain some structural habitat for other species that might rely on those larger, older trees. And so, one is a list of practices. And then related to that is a land or area that you more or less set aside that you say, we won't go in there and disturb this land. So those are habitat conservation areas. And so the purpose of HCA's, habitat conservation areas, is to create protected habitat that won't be touched. And so those are kind of approved practices or various limitations on management practices. And then the other side is actual area land that's set aside to establish these habitat conservation areas and grow habitat, build habitat, maintain habitat by doing that. Broadly speaking, those are two aspects that an HCP could have as part of the HCP. They're not necessary, but depending on the species that you are trying to protect, depending on the activity in question. Here, obviously, we're talking about timber harvest. You are probably going to have these practices, prescribed practices. And then now in this case, and especially as we look at the state HCP that they're pursuing, we see part of their plan is also habitat conservation areas. And that's largely because of the types of species that they are looking to protect under their HCP, which includes the birds, the owl, the murrelet, and then terrestrial mammals as well.

Chris Edwards: Yeah, and so you were, before I took you off track there, you were telling us about how the structure-based management, that was implemented, was really always meant to be coupled up with an HCP.

Tyler Ernst: Yeah, it was meant to be kind of a step towards obtaining an HCP, and then the state would have that legal protection under the Endangered Species Act. And ODF, the Department of Forestry, after they had finalized this structure-based management plan, they hired a consulting firm to go out and do a cost analysis to determine what would be the cost of actually moving forward and obtaining an HCP. And what they determined at the time was that the cost would be just too high. It wasn't worth it. So they abandoned that plan to develop an HCP after they received that determination back, and they continued to manage the land under this structure-based management plan, but they just didn't pursue the HCP concept any further at that time. And so what they did instead is they said, well,

okay, we're not going to obtain an HCP. It'd just be too expensive to do it. It's not worth it. And so we will instead adopt what's known as a take avoidance approach. So what a take avoidance strategy or approach is, is that a landowner, in that case, they are adopting practices and ways of going about doing what they're doing on the landscape in an effort to not actually harm a species. And so there can be a variety of different approaches that you take to do that. It might be timing, timing of harvest, timing of other activities. Part of take avoidance might include going out and surveying for species as well, and so intentionally avoiding harvest in areas where you know that species are. And so that's what the department moved to, and that's the approach that they adopted. But the department kind of quickly, after they decided to move forward in that way, they did start to grow habitat, spotted owl habitat in particular on state forests, and then the management cost just started to balloon, because now you have to go out there, if you have habitat, and you have to do surveys to figure out, do we actually have this protected species in these areas? And that process is onerous and it's expensive to do, to go out and complete these surveys every year. Every time you're, you know, you plan on going into a block for harvest to go out there and survey that block and see if you have endangered species. And so that's kind of what the department has more or less done now for the past close to 20 years is managing in that way. And so in 2007, the governor at the time, Governor Kitzhaber, he told the department that they really needed a new management plan that would meet twin goals because he was hearing criticism of the department's approach from two different sides. One, from the side of counties that were reliant on timber revenues and industry representatives who were relying on fiber, those harvests to feed mills. And then on the other side, he was hearing from environmental advocates who thought that the state was harvesting too much. And so he kind of sat the department down and he said, you need to develop a new management plan that meet two different goals. And when I say it, it's going to sound completely contradictory. But he said, you need more economic viability and better conservation. So it was a tall task that was given to the department at that time to develop a new management plan. I would meet both of those twin goals. And so what came out of that charge from the governor was the 70-30 plan. I don't know if it was ever called that officially, but I'll call it the 70-30 plan. So what that essentially did is it set 70% of the state forest land aside for timber harvest. And then 30% would be set aside for habitat. And so they'd manage 70% for timber harvest. 30% they wouldn't touch. 30% would kind of be offline to harvest. So that 70-30 plan, which became known as the land allocation plan, really morphed towards more of a 60-40 split. So 60% for harvest, 40% set aside. But then it never actually went into effect. The department didn't implement it. Instead, they just continued structure-based management based on the old 1999 plan. So now fast forward about 10 years, and in 2016, 2017, the Department of Forestry was getting a lot of blowback from environmental advocates in particular, saying you are not setting aside

enough of the landscape for habitat conservation. And so at that point, the department moved towards exploring the option, again, of obtaining a state forest habitat conservation plan. So they decided not to do it in the early aughts under the structure-based management, but now they decided, okay, we're going to pursue this again. The issue has been raised again, and we've decided we're going to start kind of exploring whether this is something that would be viable now, where we found it wasn't before.

Chris Edwards: And really quickly, I'd just like to add the note that all of this has been happening, maybe with a little bit of knowledge of legislative leadership, but this is all happening between the department, the Board of Forestry, the governor's office, and forest policy, forest management has been a really tight little bubble, if you will, up until the past few years, where the legislature is becoming more knowledgeable. I think the Elliott State Forest, which is a different example, not managed by the Board of Forestry, but very similar issues, the Elliott State Forest and the Travails there started to bring some of these state forest issues into knowledge of the legislature. But I promise you, the legislators, like 95 if not 100 percent of legislators don't know that this has been happening and the path that we're on right now that we're about to get to. Well, and you can speak authoritatively to that, right, Chris? Because you were in the legislature during a lot of this period.

Tyler Ernst: I was, yeah. So yeah, that's interesting first-person insight that you can provide on that. But you're right, and one party that you didn't mention that was privy to these conversations, and I'm glad you didn't mention it because it was a correct omission, was that the counties largely were not part, the forest trust land counties, so these counties that had deeded these lands over to the state back in the 40s, they largely weren't party to these conversations at the department. And there are various reasons why that may have been, one of which was that around the same point in time, these counties, these forest trust land counties, filed a lawsuit against the department to say, hey, you're not upholding your end of the bargain that was entered into back in the 1940s, and you're not managing these lands to ensure that we're receiving a steady flow of revenue and term that's used in the law is greatest permanent value. So they said, you need to harvest more to really be meeting that obligation of achieving greatest permanent value off of these lands. And so it's arguable whether the counties did need to be cut out or the extent to which they were even cut out because of the lawsuit. But some would speculate that that was part of the reason that the counties weren't involved to the extent that maybe they could have been in those early planning stages for the HCP. They did become more tied in to the conversations in recent years, much like the legislature has developed more interest and kind of insight into this process over the last few years. But during those really important early years of the department deciding to pursue this new habitat conservation plan, the counties, which were dependent on these forests and forest revenues in particular, weren't at the table. So

that kind of brings us to 2016-17, the department decided, okay, let's obtain an HCP. We didn't do it before, but now we should. And so it was really around 2018 that they began development of the habitat conservation plan in earnest. So before that, it was just kind of scoping work, laying the groundwork. But now they've started developing it in earnest. And so this current HCP that the department is working on would cover about 640,000 acres of the state forest. And just again for context, total state forest land is right around 750,000 acres. So about 100,000 acres of state forest land wouldn't be covered by this. And it only applies to the west side state forest lands. It would just be the west side state forest would be included in the 640,000 acres, with the big exclusion being the Elliott, which is on the west side. And this habitat conservation plan would not just cover the spotted owl. It would actually cover 17 different species, and the majority of those are aquatic species. So there are 10 different fish species, most of them salmon species, and then four salamanders, two birds, so the infamous spotted owl, but then also the marbled murrelet, and then two mammals, the pine marten, and then the red tree vole. So 17 species would be covered under this HCP. So it's a pretty lofty goal, as far as habitat conservation plans are concerned. So the department moved forward with developing that, starting really in 2018 in earnest. In 2020, they submitted a draft of the plan to the federal services to complete a NEPA analysis. So that's an analysis that's required the National Environmental Policy Act. And then from there, in 2021, 2022, kind of bridging those two years, the services drafted an environmental impact statement that was published for public comment. So that kind of brings us up to present. That's where we are in the context of development of this habitat conservation plan for these 640,000 acres of state forest.

Chris Edwards: Hope you found the first part of this two-part series as interesting as I did. While part one focused on the history of our state forest and what led to the development of the current habitat conservation plan, in episode two, we'll get into the controversy currently surrounding the plan, namely the failure of the plan to live up to one of its twin goals, financial viability. And recent outcry over the direction the board and department are headed. If you have a question about this episode or something else, drop us a note at podcastatofic.com.