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'Darth Vader' vs. Native Fish

Did the feds cut a good deal with Plum Creek Timber Company?

By Ted Williams

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Three years ago Plum Creek Timber Co. -- second largest private land owner in the United States (after International Paper), with 8.1 million acres of forests and stumpfields in 19 states - signed a management agreement with the Fish and Wildlife Service and the National Marine Fisheries Service. In this habitat conservation plan (HCP), as it is called, the feds provided a guarantee against prosecution under the Endangered Species Act for 30 years on almost 1.4 million acres in Montana and 40,000 acres in Idaho. In exchange they got Plum Creek's promise to mitigate for "take" (i.e., harassing, harming or killing) of eight threatened and nine non-listed but troubled native fish: bull trout, rainbows, redband rainbows, coastal cutthroats, westslope cutthroats, mountain whitefish, coho salmon, chums, five races of chinooks and three races of steelhead.

It was big news - the timber industry's first major HCP exclusively for fish. Plum Creek deserves credit for it, yet even today, enviros call Plum Creek "the Darth Vader of the timber industry." Is this a fair moniker? And is the HCP any good? In an effort to find out I interviewed everyone I could who knew something or seemed to -- state and federal land managers, fisheries biologists, foresters, environmentalists, sportsmen and Plum Creek executives. Everyone had passionate opinions. And virtually everyone - including all the people I know and respect and who, by anyone's standards, have the best credentials to comment - fell into two groups: Those who love the HCP and appreciate Plum Creek and those who detest both.

Apparently, I am the only member of a third group. I'll admit up front to detesting Plum Creek; and, while I'm still making up my mind about this particular HCP, I love HCPs in general. In fact, they represent the only hope of saving threatened and endangered species on private land. If the Conservation and Reinvestment Act becomes law, substantial funding from federal offshore oil-and-gas royalties would go to wildlife management and conservation.

You can't understand this HCP or even HCPs in general without understanding Plum Creek, so first, some background. I have seen (and gasped in horror at) the work of Plum Creek -- most notably in the upper Lochsa drainage in northern Idaho. At Fish Creek one may view no less than eight logging roads at different elevations crossing a single denuded slope. Declares Charles Spoon, a forester for 40 years and former assistant to the supervisor of the Lolo National Forest: "This is the first time I've witnessed such dense roading since the days of 'jammer' logging. Then there is the actual cutting of all the 'good' trees, leaving the deformed and stagnant understory firs to provide the minimum illusion of a still-treed hillside." But was this worse than what I've seen on land tended by, say, Champion International in New England, Irving Paper in Canada or any major timber company anywhere? Well, that's like ladling a dozen decomposed mackerel from the bilge and asking which is deader.

While it is difficult to think of George Lucas' heavy breather with the radiator face as a kindly old gent, recall that Darth renounced his evil ways and embraced goodness and light. Plum Creek claims to have done just this. "First, we changed management practices on the ground," says Lorin Hicks, the company's director of fish and wildlife resources. "For instance, in the Rockies we moved away from clearcutting and more into partial cutting and working with natural regeneration of stands. We began saving some of the defective trees and downed logs for fish and wildlife." Supposedly, this has

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happened since 1990 when the company spun off from its corporate parent, Burlington Northern Railroad.

"In 1999 we became the first company in the US to have all its lands certified by the Sustainable Forest Initiative," offers Bob Jirsa, Plum Creek's director for corporate affairs, referring to the American Forest & Paper Association's pretend green certification process designed to distract consumers from the genuine item - provided by the independent Forest Stewardship Council (FSC) - and thereby legitimize firms that jeopardize endangered fish and wildlife, strip old growth, convert natural forests to sterile, chemical-dependent plantations and cut timber faster than it regenerates.

According to Plum Creek ads, the company engages in "environmental forestry." It's not clear from the copy what this is, but it includes the annual planting of "15 million seedlings specifically grown to maximize growth and resist diseases." This is neither environmental nor forestry, and it is not, as the company claims, "regeneration." In fact, it is worse than clearcutting and walking away because it replaces natural, diverse forests with genetically tweaked monocultures -- row crops every bit as useless to wildlife as a field of soybeans. If you have to replant trees instead of letting nature do it, you shouldn't have cut there in the first place.

But again, such activities don't make Plum Creek unique. Replacing native forests with tree farms and then convincing an ignorant, gullible public that you've made the world a better place is the modus operandi of Big Timber. What does make the company unique is that, reorganized into a real estate investment trust, it is now selling off its property, frequently after it has removed the trees. "Highest and best use," it calls this land allocation; and it targets lakeshores and riverbanks. As hideous as they are, clearcuts and roads heal. Houses, strip malls, parking lots and the like do not. And yet Jirsa accurately observes that 90 percent of the lands or easements Plum Creek has hawked have gone into conservation - 80,000 acres along the Thompson and Fisher rivers in northwest Montana, for example, 16,000 acres along the Blackfoot. Part of the reason, of course, is that Plum Creek's "cut-and-run" policy has scared the bejesus out of environmentalists, sportsmen and state and federal resource agencies.

Consider Montana's 200,000-acre Swan River Valley. Tucked between the Bob Marshall Wilderness on the east and the Mission Mountain Wilderness on the west, it is a haven for grizzlies, lynx, wolverine, elk, moose, goshawks, eagles and threatened bull trout, the most temperature and silt sensitive of the West's imperiled salmonids. Plum Creek owns 80,000 acres here, and in the next five to seven years it plans to unload 20,000 -- 10,000 for private real estate. "Home sites so big, you won't have any neighbors. Except, of course, Bob," shout the ads in The Wall Street Journal. One of the first victims will be Metcalf Lake, famous for its trophy rainbows. Plum Creek is offering the 163 acres around the shore for \$2.9 million or about \$18,000 per acre. The Montana Dept. of Fish, Wildlife and Parks thought it had a public foot easement to the lake, but a survey has just shown that this missed by nine feet. As a result the agency will cease stocking the trout on which the put-grow-and-take fishery depended. Plum Creek had offered the land to the state and the Forest Service, but both declined.

Jirsa says his company hopes to sell the other half of the 20,000 acres (most of it anyway) to the Flathead National Forest. But money is tight and, even if it weren't, land acquisition is a low priority with the Bush Administration.

"All the plans in the valley have been made under the assumption that the land would be in timber management," comments conservation activist Ben Long. "Plum Creek leads everyone down the primrose path. We have no zoning here. Anyone can buy a [640-acre] section and chop it up. Suddenly in the best bull trout habitat anywhere we have septic tanks, dogs, golf courses and kids running around on ATVs."

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I asked Swan Valley forester Mark Vander Meer to grade Plum Creek as a land steward. "About as bad as you can get," he said. But when I pressed him he admitted that other companies were just as bad. "Plum Creek is entirely untrustworthy," he continued. "They'll tell you whatever you want to hear. They kept saying, 'Why would we sell timberlands; we're in the business of growing timber.' I've seen some great Plum Creek cuts, but most are disasters." When I asked him to describe the last one he saw he said: "It was just a few days ago, right on the Swan River in a grizzly bear linkage zone. They had taken out all the big trees (Engleman spruce), and left a lot of smaller ones. They all blew down; it was a mess. This place never should have been touched. Spruce forests are way too fragile for this."

Keith Hammer who chairs the Swan View Coalition - a 19-year-old group of loggers, former Forest Service employees, mill owners, sportsmen, environmentalists and other invested citizens -- had this to say: "Plum Creek land is hacked. Before they sell they're coming back in and cutting the streamside zones. If you fly over it, it makes your heart drop. We have issues with the state and feds, but they pale in comparison to Plum Creek. What's frustrating is that this was public land given to the Northern Pacific Railroad [by the Lincoln administration as an inducement to lay transcontinental tracks]; then it went to Burlington Northern, then Plum Creek. All those years Plum Creek was slicking it off and paying virtually no taxes. And now it's still trying to hold the public hostage and make it bid the highest to get its land back. That's really discouraging and disgusting."

Interestingly enough, the only real defense of Plum Creek came from environmental educator Melanie Parker of Northwest Connections. She confirmed some of what Hicks said about the company trying to do better. "In the 1990's they left buffer zones," she said. "But now that they're divesting themselves of timberland they've regressed. They're going into units where they'd left trees five or six years ago and taking them out right before they put the land up for sale. We made a big stink about it, and they seem to be listening."

Even plum creek's harshest critics commend it for seeking and signing the native fish HCP. HCPs - a carrot approach - were amended into the Endangered Species Act in 1982 because the law was proving ineffective on private land where the common response to the discovery of a listed species, especially in the West, was "shoot, shovel and shut up." Enforcement -- the stick approach -- didn't work because the feds lacked the stomach and the courts lacked the inclination. What's more, the taking of anything by habitat destruction is difficult to prove. In fact, in the entire history of the act, no one has ever proven in a court of law the take of fish by land-management practices. As former Interior Secretary Bruce Babbitt declared when he signed Plum Creek's native fish HCP on November 29, 2000, "It was all-out war. There weren't any models for where we were going."

HCPs frighten the environmental community because they're risky. But shared risk is the whole idea. There are all kinds of ways of setting up these "creative partnerships," as Congress called them, but each offers no-surprise regulatory assurance in exchange for habitat conservation and/or restoration. From 1982 to 1992 only 14 HCPs were written. Babbitt, who embraced the concept, changed that. Between 1992 and the time he left office close to 400 had been written or were in the works. Environmental groups cursed and sued him for "giving away the store," and maybe he did on a few occasions. But with his bold, intelligent use of HCPs Bruce Babbitt single-handedly saved the Endangered Species Act and doubtless some listed species along with it. Still, giving away the store is a real danger, especially with the current administration, which is even more enamored of HCPs than the last.

So, have the feds handed the store to Plum Creek? When I put the question to Fish and Wildlife Service's Ted Koch, who presided over the gestation of the company's HCP, he didn't surprise me by saying no. I had heard environmental groups condemn him and his colleagues for including in the plan things Plum Creek had already done, such as Best Management Practices (BMPs) - painless, voluntary measures for skidding logs, building roads, disposing of slash, etc. - that were hatched by the state at

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the urging of the timber industry to prevent a Montana forest practices act. But Koch, whose work I have known and admired, said this: "If they're doing something voluntarily, great. We want to write that into the contract so they can't stop." One of the provisions Koch likes best is adaptive management. If the feds think the plan isn't working, they can (at least on paper) come in after five years and make Plum Creek do something more or different. "And if we don't think it's good enough, we can suspend or revoke the permit," he added, admitting that this could get the government sued. "Plum Creek got beat up by the timber industry for that provision because the whole point of HCPs is no surprises. Rather than being locked in stone we acknowledge all the uncertainties and we agree that we're going to dance together for the next 30 years. We could hope for nothing better on private lands than this plan."

The one thing that worried Koch was that his agency would issue the plan and "walk away." But the service has hired two biologists who do nothing but check Plum Creek compliance. Overseeing them and the HCP is Tim Bodurtha. He points to "three levels of monitoring" by his agency, by third-party consultants and by Plum Creek. I asked him what the plan makes Plum Creek do that it didn't have to do before.

"It provides more tree retention in bull trout spawning and rearing areas," he replied. "It provides better canopy coverage, no-equipment zones and interface caution areas - buffers on buffers."

In addition to regular BMPs the HCP includes what Plum Creek calls "enhanced BMPs," a concept that amuses Montana Trout Unlimited director Bruce Farling, who makes this point: "Even the king of industry spin, Plum Creek, the company whose self-described 'environmental principles' were polished not by scientists but instead in a Missoula ad agency, indirectly admits BMPs aren't adequate. When the US Fish and Wildlife Service gave Plum Creek a permit to - in legal lexicon - harass, harm and kill native fish such as bull trout, in exchange for certain fish-protection commitments, the company promised to provide 'enhanced' BMPs. Enhanced? How can you enhance something that's already supposed to be the best?"

"Plum Creek came to us in 1997," says Koch. "Since then no other company has taken advantage of an HCP. That's how unconcerned the timber industry is about being shut down by enforcement or litigation. I told Mary Scurlock [of Pacific Rivers Council] that if she wants to motivate people to do better for fish conservation, make them feel pain -- sue them for unauthorized take."

Scurlock says she's "working on it." Her outfit and four others are suing the Oregon Department of Forestry for allowing take of threatened coastal cohos on private land via road-caused landslides. Meanwhile, Pacific Rivers Council and Trout Unlimited have vowed to sue the Fish and Wildlife Service and National Marine Fisheries Service for Plum Creek's HCP. They hope to establish better standards for native-fish HCPs and win better conservation for the 17 species involved in this one. Scurlock points out that, while Koch may have gotten the best deal possible, that's not the standard: "They have to have a plan that does not significantly impair survival and recovery in the wild."

Few people are more qualified to say whether there will be significant impairment than Dr. Chris Frissell, also of Pacific Rivers Council, who has extensively researched effects of logging on bull trout in the Swan Valley. "The HCP locks in and rubber stamps the status quo on private lands," he told me. "And it's a virtually universal opinion among professional biologists that the states' current rules for forest practices on private lands are inadequate. I'll grant that there are a couple of improvements, the main one being protection of channel migration zones -- where segments of low-gradient, alluvial, valley-bottom streams meander over time. In the past these streams got protection only to the edge of the current channel with a buffer.

"Now the whole zone where the channel might migrate has to be protected, and there's a buffer added to that. In the Swan there are big uncut blocks in bull trout habitat, really important watersheds. Plum Creek has fairly heavy-handed plans for going in there. The HCP does not protect these sensitive,

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steep, headwater lands. Here's my response to Ted Koch that no other timber company is worried about being sued: The Fish and Wildlife Service has now set the standard virtually right at current practices as required by the state. So there's no incentive for anyone to spend a bunch of money and get hardly anything more for it."

TU's Farling describes the HCP as "bogus, marginally worthless and full of pretend conservation, meaningless commitments and a monitoring process rigged so that Plum Creek controls things." No sooner had Pacific Rivers Council and TU announced their impending action, than Plum Creek sued them. Pacific Rivers Council called it a SLAPP suit (Strategic Litigation Against Public Participation). But Plum Creek's Jirsa sounded credible enough when he explained that what his company was really after was a quick determination and a change of venue: "We don't want legal action hanging over our head on something this important. We've spent a lot of money training our foresters, changing our leases with cattle owners. And we're making some significant commitments, giving up 20 to 25 percent more trees in some of those areas. If there's something wrong with the HCP, we want to know now. We filed in Boise Court. It's probably not as busy as some of the other federal courts." (It's definitely more sympathetic to Big Timber.) In any case, debate about Plum Creek's motives became moot March 31 when the case was thrown out of court. "The fact that Plum Creek has initiated this litigation in the face of such efforts [by plaintiffs to proceed without litigation] runs contrary to the interests of justice," wrote Judge Edward Lodge.

Ken McDonald, special projects bureau chief for the Montana Dept. of Fish, Wildlife and Parks, struck me as an especially objective source. "The HCP has some real positive components," he remarks. "The main one is road reclamation. New roads have to be up to standards and old ones closed or fixed. If nothing else, that's a huge benefit right there. The down side is that the state agencies haven't been involved at all. Montana, where almost all the HCP applies, has the best expertise and most people on the ground. Also, there's a very complex trigger for adaptive management. You have to prove a statistically valid impact. If you claim increased temperature, you have to do years of valid monitoring, then prove it was due to that land activity, then prove it was affecting fish."

Now Montana is working on an HCP for its forested trust lands, and setting high HCP standards is a big priority because no one who cares about fish and wildlife trusts the state's militantly anti-environmental governor, Judy Martz.

Critics say that one of Plum Creek's main motives for signing the HCP is that it makes the company eligible for millions in federal grant money. The easement Plum Creek sold in the Fisher and Thomson drainages, for example, was made possible in large measure by federal grants. I say good; using the profit motive to protect wild land is the beauty of HCPs.

I wish I could report who is right and who is wrong about the HCP, but I can't because I don't know. I suspect the reason I don't know is that everyone is some of both. What I do know is this: In Montana, at least, Plum Creek is almost never in violation of forestry statutes. It takes the last stick it can cut, but it obeys the law. If Montanans don't like what it's doing (and they shouldn't), they need to change the law. Scolding a timber company for legally ruining fish and wildlife habitat is like scolding your dog for rolling in compost. You can do it, but it won't get you anywhere because that's the nature of the beast.

You can call Plum Creek rapacious, heartless, devious; you can even call it an attacking clone. But you can't call it "Darth Vader." There was only one of him; there are lots of Plum Creeks. And, finally, I know that no matter what people think about this HCP and no matter how they can or can't improve or void it, it's a start.