



Billing Code 4310–55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2015–N070; FXES1112010000–156–FF01E00000]

Draft Safe Harbor Agreement and Receipt of Application for an Enhancement of Survival Permit for the Northern Spotted Owl and Marbled Murrelet; City of Everett, Snohomish County, Washington

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received, from the City of Everett (Everett), an application for an enhancement of survival permit for the federally threatened northern spotted owl and marbled murrelet under the Endangered Species Act of 1973, as amended (ESA). The permit application includes a draft safe harbor agreement (SHA) and implementing agreement (IA) between Everett and the

Service addressing habitat conservation and forest management, including timber harvest on lands within Everett's municipal watershed in Snohomish County, Washington. We invite comments from all interested parties on the application, including the draft SHA, draft IA, and a draft environmental action statement (EAS) prepared pursuant to the requirements of the National Environmental Policy Act (NEPA).

DATES: To ensure consideration, written comments must be received from interested parties by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the Everett Draft SHA.

- *Internet:* Documents may be viewed and downloaded on the Internet at <http://www.fws.gov/wafwo/>.
- *Email:* wfwocomments@fws.gov. Include "Everett Draft SHA" in the subject line of the message.
- *U.S. Mail:* Mark Ostwald, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive, Southeast, Suite 102, Lacey, WA 98503.
- *In-Person Drop-off, Viewing, or Pickup:* Call 360-753-9440 to make an appointment (necessary for viewing or pickup only) during regular business hours at the U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive, Southeast, Suite 102, Lacey, WA 98503.

FOR FURTHER INFORMATION CONTACT: Mark Ostwald, U.S. Fish and Wildlife Service (see **ADDRESSES**), telephone 360–753–9564. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Under a SHA, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the ESA (16 U.S.C. 1531 *et seq.*). SHAs, and the subsequent enhancement of survival permits that are issued to participating landowners pursuant to section 10(a)(1)(A) of the ESA, encourage private and other non-Federal property owners to implement conservation actions for federally listed species by assuring the landowners that they will not be subjected to increased property use restrictions as a result of their efforts to either attract listed species to their property, or to increase the numbers or distribution of listed species already on their property. These assurances allow the property owner to alter or modify the enrolled property back to agreed-upon pre-permit baseline conditions at the end of the term of the permit, even if such alteration or modification results in the incidental take of a listed species. The baseline conditions must reflect the known biological and habitat characteristics that support existing levels of use of the property by species covered in the SHA. SHA assurances depend on the

property owner complying with obligations in the SHA and the terms and conditions of the permit. The SHA's net conservation benefits must be sufficient to contribute, either directly or indirectly, to the recovery of the covered listed species. Enrolled landowners may make lawful use of the enrolled property during the permit term and may incidentally take the listed species named on the permit as long as that take does not modify the agreed-upon net conservation benefit to the species. Application requirements and issuance criteria for enhancement of survival permits for SHAs are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(c). The Service's Safe Harbor Policy (64 FR 32717, June 17, 1999) and the Safe Harbor Regulations (68 FR 53320, September 10, 2003; and 69 FR 24084, May 3, 2004) are available at <http://www.fws.gov/endangered/laws-policies/regulations-and-policies.html>.

The Service has received from Everett an application for an enhancement of survival permit under the ESA to authorize incidental take of the federally threatened northern spotted owl (*Strix occidentalis caurina*) and the marbled murrelet (*Brachyramphus marmoratus*). The permit application includes a draft SHA and IA between Everett and the Service. The SHA addresses habitat conservation and forest management, including timber harvest, on Everett's Lake Chaplain Tract (LCT) located within Everett's municipal watershed in Snohomish County, Washington. The total area of the LCT is approximately 3,729 acres, of which 715 acres is comprised of non-forested areas. The non-forested areas include Lake Chaplain, portions of the Sultan River, non-forested wetlands, water filtration facilities, and rights-of-way. Approximately half of the forest stands in the LCT are older than 80 years. Activities covered under the SHA are timber management and drinking water production. Everett's management objective

for the SHA is to enhance and maintain habitat for marbled murrelets and northern spotted owls while continuing to generate revenue from forest management operations.

There is one known marbled murrelet-occupied site on the LCT. The LCT is within a marbled murrelet detection area as defined by WAC 222-16-101. No federally designated marbled murrelet critical habitat occurs on the LCT; however, approximately 80 percent of the LCT perimeter is adjacent to properties that are designated critical habitat for the marbled murrelet. There are no known northern spotted owl site centers on the LCT; however, recent surveys have not been conducted in all areas of suitable habitat. The LCT is situated between two northern spotted owl special emphasis areas designated by Washington Forest Practices Rules. The nearest federally designated northern spotted owl critical habitat is approximately 8 miles northeast of the LCT.

Everett is simultaneously applying to the Washington State Department of Natural Resources (WDNR) for a Cooperative Habitat Enhancement Agreement (CHEA) under the Washington State Forest Practice Rules (WAC 222-16-105). The SHA and CHEA are one document that serves the requirements of both the Service and the WDNR. The applicant worked closely with the Service, the Washington Department of Fish and Wildlife, and the WDNR to develop the SHA and CHEA.

Proposed Action

The Service proposes to enter into the SHA and IA and to issue an enhancement of survival permit to Everett for incidental take of the northern spotted owl and the marbled murrelet caused by covered activities, if permit issuance criteria are met. Both the SHA and the permit would have a term of 50 years.

Due to the overlap of suitable habitat characteristics for marbled murrelets and northern spotted owls and the nature of the LCT forest stands, the SHA's baseline is unified for both covered species. The baseline totals about 447 acres and consists of 4 separate large blocks of the highest quality forest habitat for the covered species on the LCT. The baseline represents the areas on the LCT that are most likely to be occupied by the covered species currently and during the term of the SHA.

The conservation benefits for the marbled murrelet and the northern spotted owl under the SHA are expected to be realized through implementation of the following management actions: reconfiguration of the special set asides (SSAs), enhancement of riparian buffers, an increase in special management areas (SMAs), longer harvest rotations, and enhanced protection of occupied sites. The SSAs are old-growth management areas and permanent mixed hardwood and conifer forests, which will not be harvested during the term of the agreement. Under the draft SHA, most of the original old-growth management areas and some of the permanent mixed forests on the LCT were reconfigured into the baseline blocks. Those not included in the baseline remain as SSAs, except for 56 acres that will be harvested to offset the addition of formerly harvestable areas to the baseline. The enhanced riparian buffers under this SHA will result in more trees within the buffer zones than would be required under the standard Washington State Forest Practice Rules, and there will be 32 more acres of SMAs, including green tree areas, unstable slopes, and forested wetlands. Regeneration harvest rotations will average 60 years, compared to the industry standard of 45 years. Additional management actions under the proposed SHA to benefit the northern spotted owl are enhanced snag and downed wood retention measures, plus planting and thinning

to encourage understory plants that support northern spotted owl prey species.

Under the proposed SHA, Everett will not be required to survey for marbled murrelets or northern spotted owls; however, if Everett becomes aware of the presence of an occupied site, the draft SHA identifies specific measures to avoid disturbance of the site and to protect the habitat. Occupancy by the marbled murrelet and the northern spotted owl is most likely to occur within the baseline blocks, SSAs, and riparian buffers where suitable marbled murrelet and northern spotted owl habitat will continue to improve or develop over time because harvest is deferred during the term of the proposed permit in these areas. In these areas, deferring harvest would already protect the habitat associated with an occupied site; however, depending on the exact location of a site, it may need to be protected from noise and other human disturbance as described in the draft SHA. Each year, if marbled murrelet or northern spotted owl occupancy occurs outside of the deferred-harvest areas, then core areas for one occupied site for each covered species will be protected from harvest and disturbance for at least 5 years.

Incidental take of the covered species in the form of harassment from noise or visual disturbance may occur during the term of the permit from forest management activities. Incidental take in the form of direct mortality or harm from altering occupied sites is not likely because occupancy is most likely going to occur in the deferred-harvest areas. Direct mortality or harm of the covered species could occur in the unlikely event that areas not deferred from harvest become occupied prior to harvesting. All forms of incidental take of the covered species could occur from timber harvesting activities in the SSAs, SMAs, or riparian areas in association with a return to the identified agreed-upon baseline habitat conditions. However, if similar Washington State Forest Practices Rules

are in effect at the time, some of these areas may continue to be retained under those rules.

The net conservation benefits for both covered species are expected to be realized through the reconfiguration and retention of four large blocks of habitat designated as the baseline condition for the proposed SHA. The reconfiguration should enhance future nesting potential for both marbled murrelets and dispersing northern spotted owls, especially as the habitat continues to improve in quality over the term of the SHA. An increase in the quantity and distribution of SMAs will benefit the covered species by providing additional buffers adjacent to suitable nesting habitat in deferred-harvest areas. If occupancy by covered species occurs outside of deferred-harvest areas, the minimum protection period for an occupied site is increased by 2.5 years for the marbled murrelet and 5 years for the northern spotted owl compared to standard Washington State Forest Practices Rules. All of these habitat improvements are expected to increase the number and distribution of marbled murrelets and northern spotted owls on the LCT compared to what would likely occur under standard forest practices.

National Environmental Policy Act Compliance

The development of the draft SHA and the proposed issuance of an enhancement of survival permit is a Federal action that triggers the need for compliance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA). We have made a preliminary determination that the proposed SHA, IA, and permit issuance are eligible for categorical exclusion under the NEPA. The basis for our

preliminary determination is contained in an EAS, which is available for public review (see **ADDRESSES**).

Public Comments

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We request data, new information, or comments from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested party via this notice on our proposed Federal action. In particular, we request information and comments regarding:

- (1) Whether the implementation of the proposed SHA and IA would provide a net conservation benefit to the covered species;
- (2) Other conservation measures that would lead to a net-conservation benefit for the covered species;
- (3) The length of the proposed term of the enhancement of survival permit;
- (4) The direct, indirect, and cumulative effects that implementation of the SHA and IA could have on the human environment;
- (5) Other plans, projects, or information that might be relevant to evaluating the effects of this proposed action; and
- (6) Information regarding the adequacy of the proposed SHA and IA pursuant to the requirement for permits at 50 CFR parts 13 and 17.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information in your comments, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety. Comments and materials we receive, as well as supporting documentation we used in preparing the draft EAS, will be available for public inspection by appointment, during normal business hours, at our Washington Fish and Wildlife Office (see **ADDRESSES**).

Next Steps

We will evaluate the draft SHA, associated documents, and any public comments we receive to determine whether the permit application and the EAS meet the requirements of section 10(a) of the ESA and NEPA, respectively, and their respective implementing regulations. We will also evaluate whether issuance of an enhancement of survival permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation on the proposed permit action. If we determine that all requirements are met, we will sign the proposed SHA and IA, and issue an enhancement of survival permit under section 10(a)(1)(A) of the ESA to the applicant, Everett, for incidental take of the northern spotted owl and the marbled murrelet caused by covered

activities in accordance with the terms of the permit, SHA, and IA. We will not make our final decision until after the end of the 30-day public comment period, and we will fully consider all comments and information we receive during the public comment period.

Authority

We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), its implementing regulations (50 CFR 17.22), and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Dated: April 14, 2015.

**Richard Hannan,
Deputy Regional Director,
Pacific Region, U. S. Fish and Wildlife Service,
Portland, Oregon.**

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