



**Billing Code 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R1–ES–2016–N023; FXES11120100000–167–FF01E00000]**

**Proposed Roseburg Resources Co. Safe Harbor Agreement for the Northern Spotted Owl and Draft Environmental Assessment**

**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 an application from Roseburg Resources Co. for an Endangered Species Act (ESA) Enhancement of Survival Permit (permit) for take of the federally threatened northern spotted owl. The permit application includes a draft Safe Harbor Agreement (SHA) addressing Service access to Roseburg Resources Co. lands for the survey and removal of barred owls as part of the Service’s Barred Owl Removal Experiment in Douglas County, Oregon. In response to the permit application, the Service has prepared a draft environmental assessment (EA) addressing the permit action. We are making the permit

application, including the draft SHA and the draft EA, available for public review and comment.

**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 Roseburg Resources Co. draft SHA and draft EA.

- *Internet:* Documents may be viewed and downloaded on the Internet at <http://www.fws.gov/ofwo/>.
- *Email:* [barredowlsha@fws.gov](mailto:barredowlsha@fws.gov). Include “Roseburg Resources Co. SHA” in the subject line of the message.
- *U.S. Mail:* Robin Bown; U.S. Fish and Wildlife Service; Oregon Fish and Wildlife Office; 2600 SE 98th Ave, Suite 100; Portland, OR 97266.
- *Fax:* 503–231–6195.
- *In-Person Drop-off, Viewing, or Pickup:* Call 503-231-6970 to make an appointment (necessary for viewing or pickup only) during regular business hours at the U.S. Fish and Wildlife Service; Oregon Fish and Wildlife Office; 2600 SE 98th Ave, Suite 100; Portland, OR 97266. Written comments can be dropped off during regular business hours at the above address on or before the closing date of the public comment period (see **DATES**).

**FOR FURTHER INFORMATION CONTACT:** Robin Bown, U.S. Fish and Wildlife Service (see **ADDRESSES**), telephone 503–231–6179. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** The Roseburg Resources Co. has applied to the Service for a permit under section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*). The permit application includes a draft SHA. The Service has drafted an EA addressing the effects of the proposed permit action on the human environment.

The SHA covers approximately 45,100 acres of forest lands owned by the Roseburg Resources Co. where timber management activities will occur within the experiment treatment portion of the Union/Myrtle (Klamath) Study Area near Canyonville in Douglas County, Oregon. The SHA addresses timber management activities only in the treatment portion of the study area on Roseburg Resources Co. lands. Impacts to the threatened northern spotted owl (*Strix occidentalis caurina*) (spotted owl) associated with the experiment in non-treatment portions of the study area are addressed in an environmental assessment prepared by the Service for the experiment (Service 2013a. Final Environmental Impact Statement for the Experimental Removal of Barred Owls to Benefit Threatened Spotted Owls. Portland, Oregon). The proposed term of the permit and the SHA is 10 years. In return for permission to access their lands for barred owl (*Strix varia*) surveys and removal in support of the experiment, the permit would authorize take of the spotted owl caused by forest management activities on

Roseburg Resources Co. lands at currently unoccupied, non-baseline sites that may be re-occupied by spotted owls as a result of barred owl removal for the term of the permit.

## **Background**

Under a SHA, participating landowners voluntarily undertake activities on their property to benefit species listed under the ESA. SHAs and their associated permits are intended to 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 conservation efforts. One of the issuance criteria for a SHA is that it must provide a net conservation benefit for the covered species.

The assurances provided under a SHA and its associated permit allow the property owner to alter or modify the enrolled property to agreed-upon baseline conditions, even if such alteration or modification results in the incidental take of a listed species, provided the obligations in the SHA and the terms and conditions of the permit have been satisfied. The baseline conditions represent the existing levels of use of the property by the species covered in the SHA at the time the SHA is established. The SHA assurances are contingent on the property owner complying with the obligations in the SHA and the terms and conditions of the permit. The SHA's net conservation benefit must be sufficient to contribute, either directly or indirectly, to the recovery of the covered listed species.

Permit application requirements and issuance criteria 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>.

### **Roseburg Resources Co. Safe Harbor Agreement**

The proposed Roseburg Resources Co. SHA addresses Service access to lands administered by the company in support of implementing the experiment (Service 2013a. Final Environmental Impact Statement for the Experimental Removal of Barred Owls to Benefit Threatened Spotted Owls. Portland, Oregon) in the Union/Myrtle (Klamath) Study Area in Douglas County, Oregon. The SHA covers about 45,100 acres of Roseburg Resources Co. lands where timber management activities will occur within the treatment portion of the Union/Myrtle (Klamath) Study Area. The entire treatment area covers lands owned by many different landowners. The treatment area includes 49 percent Federal lands, < 1 percent State lands, 27 percent private lands not owned by the company, and 24 percent Roseburg Resources Co. lands. If barred owl removal leads to the re-occupancy of currently unoccupied sites by spotted owls on Roseburg Resources Co. lands, some restrictions or limitations on forest management activities on these lands could occur in the absence of the proposed SHA and permit. Activities covered under the SHA in the treatment portion of the study area are routine forest management activities: timber harvest; road maintenance and construction activities; and rock pit development.

The goal of the Roseburg Resources Co. in participating in this SHA is to continue to manage their Oregon timberlands utilizing forest practices and provide certainty of those forest practices achieving economic, community and stewardship

values on a long-term sustained yield basis while meeting State and Federal regulatory requirements. The Roseburg Resources Co. lands within the study area are a critically important part of the company's overall operating plans from both a short-term and long-term perspective with ongoing forest practices and management activities scheduled in accordance with their management plan. Absent a SHA and permit the Roseburg Resources Co. anticipates potential impacts to their operations as the experiment is implemented and maintained, including but not limited to significant changes and fluctuations regarding spotted owl occupancy status of well surveyed sites and areas on or near Roseburg Resources Co. lands in the treatment area after barred owl removal occurs, and potentially short-term regulatory impacts on or near Roseburg Resources Co. lands after barred owl removal in the treatment area occurs.

The purpose of the Roseburg Resources Co.'s participation in the experiment under a SHA is to demonstrate continued good faith cooperation with the Service regarding this recovery action, and to obtain ESA regulatory assurances during and after the experiment period.

To support the experiment, under the SHA the Roseburg Resources Co. will provide the researchers access to the company's lands to survey barred owls within the study area, and to remove barred owls located on Roseburg Resources Co. lands within the treatment portion of the study area. In addition, the Roseburg Resources Co. will defer management activities to support actively nesting spotted owls on any reoccupied, non-baseline spotted owl sites during the nesting season.

### **The Service's Proposed Action**

The Service proposes to enter into the SHA and to issue a permit to the Roseburg Resources Co. for take of the northern spotted owl caused by covered activities, if permit issuance criteria are met. The permit would have a term of 10 years, and would be effective on the date of issuance.

As a result of the continued monitoring of spotted owls on Roseburg Resources Co. lands as part of ongoing spotted owl surveys conducted under the Northwest Forest Plan Monitoring program, we have robust annual survey data for the area that was used to establish a baseline for the SHA based on the estimated current occupancy status of each spotted owl site. Any spotted owl sites where a response was detected from at least one resident spotted owl between 2014 and present are considered in the baseline for the SHA and would not be subject to take authorization under the SHA and the permit. Based on this approach, there are 30 baseline (i.e., currently occupied) and 33 non-baseline (i.e., currently unoccupied) spotted owl sites in the treatment portion of the study area where the Roseburg Resources Co. owns lands.

The conservation benefit for the northern spotted owl under the SHA arises from the Roseburg Resources Co.'s contribution to our assessment under the experiment of the efficacy of barred owl removal to the recovery of the spotted owl by their allowing Service access to their roads and lands for barred owl surveys and, within the treatment area, barred owl removal. In the study area landscape of multiple landowners, access to interspersed non-Federal roads and lands for barred owl surveys and, within the treatment area, barred owl removal is important to the efficient and effective completion of the experiment.

The impact of the increase in non-native barred owl populations as they expand in the range of the spotted owls has been identified as one of the primary threats to the continued existence of the spotted owl. The Recovery Plan for the Northern Spotted Owl includes Recovery Action 29 – “Design and implement large-scale control experiments to assess the effects of barred owl removal on spotted owl site occupancy, reproduction, and survival” (Service 2011. Revised Recovery Plan for the Spotted Owl (*Strix occidentalis caurina*), p. III-65. Portland, Oregon). The Service developed the experiment to implement this Recovery Action, and prepared a FEIS and ROD in 2013 addressing this action (Service 2013a. Final Environmental Impact Statement for the Experimental Removal of Barred Owls to Benefit Threatened Spotted Owls. Portland, Oregon; and Service 2013b. Record of Decision for the Experimental Removal of Barred Owls to Benefit Threatened Spotted Owls. Portland, Oregon). The experiment includes on four study areas, including the Union/Myrtle (Klamath) Study Area. Timely results from this experiment are crucial for informing the development of a long-term barred owl management strategy that is essential to the conservation of the northern spotted owl.

While the experiment can be conducted without access to non-Federal lands, failure to remove barred owls from portions of the treatment area could reduce the efficiency and weaken the results of the experiment regarding any changes in spotted owl population dynamics resulting from the removal of barred. These circumstances may warrant extending the duration of the experiment to offset these implications. The Service has repeatedly indicated the need to gather this information in a timely manner.

Take of spotted owls under this SHA would likely be in the form of harm from forest operation activities that result in habitat degradation, or harassment from forest

management activities that cause disturbance to spotted owls. Incidental take in the form of harassment by disturbance is most likely to occur near previously occupied spotted owl nest sites if they become reoccupied. Harm and harassment could occur during timber operations and management that will continue during the permit term. Covered activities under the SHA are routine timber harvest, road maintenance, and road construction activities, including rock pit development that may disturb spotted owls.

### **Net Conservation Benefit to the Northern Spotted Owl**

As discussed above, Service access to Roseburg Resources Co. lands provided for under the SHA is important to the efficient and effective completion of the experiment within a reasonable timeframe. Under the SHA, all of the currently occupied spotted owl sites on these lands are within the baseline for the SHA and no take of spotted owls at these sites is would be authorized under the proposed permit. Under the permit, if barred owl removal does allow spotted owls to reoccupy non-baseline sites that are not currently occupied, Roseburg Resources Co. will be allowed to incidentally take these spotted owls during the term of the permit. It is highly unlikely that these sites would ever be reoccupied by spotted owls without the removal of barred owls.

The removal of barred owls on the Union/Myrtle (Klamath) Study Area will end within 10 years. The Service anticipates that, once released from the removal pressure, barred owl populations will rebound to pre-treatment levels within 3 to 5 years. This is likely to result in the loss of the spotted owl newly reoccupied sites. Therefore, any spotted owl occupancy of these sites is likely to be temporary and short-term.

The proposed SHA and permit allow for the incidental take of spotted owls at 33 non-baseline (i.e., currently unoccupied) sites in the treatment portion of the Union/Myrtle (Klamath) Study Area if these sites become reoccupied during the barred owl removal study. As discussed above, incidental take of spotted owls at non-baseline owl sites that may be reoccupied can result from disturbance (e.g., noise) from forest management activities or habitat loss. Disturbance with no habitat loss is a temporary effect and is not anticipated to disrupt the spotted owl sites to a level that would affect the results of the experiment. The vast majority of the historic spotted owl site centers in the treatment area occur on BLM lands, though a few may occur on Roseburg Resources Co. lands. Some of these sites may lie close enough to forest management activities on Roseburg Resources Co. lands such that disturbance of spotted owls could result if these site centers were reoccupied. Take of spotted owls resulting from disturbance to an extent that creates the likelihood of injury is anticipated to be temporary, short-term, and only likely to occur if forest management activities occur very close to nesting spotted owls.

The Roseburg Resources Co. is a minor owner on 10 of the 33 baseline sites for the spotted owl, with less than 10 percent of the land ownership and less than 10 percent of the remaining spotted owl nesting/roosting habitat at these sites. Federal lands contain the majority of the remaining spotted owl nesting/roosting habitat on 8 of these sites, while private lands contain the majority of the remaining habitat at 2 of the 10 sites. Most of the Federal lands are in reserve management designations and harvest of spotted owl habitat is not likely. Thus, assuming these 8 non-baseline spotted owl sites are reoccupied by spotted owls, and the Roseburg Resources Co. removed all spotted owl

habitat remaining on their lands within these sites under their permit, some of these sites are likely to remain viable as a result of habitat remaining on Federal lands.

On the remaining 23 sites, the Roseburg Resources Co. owns 10 to 62 percent of the land and 11 to 62 percent of remaining spotted owl nesting/roosting habitat. Habitat removal within these nesting and roosting sites could result in loss of habitat suitability leading to take of spotted owls if they reoccupy these sites. To avoid or minimize the take resulting from disturbance and habitat loss associated with timber management activities on their lands, the Roseburg Resources Co. will defer management activities to support nesting spotted owls that may reoccupy non-baseline sites during the nesting and rearing season (March 1 to September 30 of the year). This would allow the spotted owl pairs at these sites to potentially produce young and contribute to the future spotted owl population.

As discussed above, the primary conservation value of the experiment is the information it provides on the efficacy of removal as a tool to manage barred owl populations for the conservation of the spotted owl at the range-wide scale. In the landscape of multiple landowners that exists within the Union/Myrtle (Klamath) Study Area, researcher access to interspersed non-Federal lands for barred owl surveys and removal that is important to the efficient and effective completion of the experiment within a reasonable time frame would be provided under the Roseburg Resources Co. SHA. On that basis, the Service finds that the take of spotted owls on the temporarily reoccupied sites is potentially greatly offset by the value of the information gained from the experiment and its potential contribution to the range-wide recovery of the spotted

owl by the timely development of a long-term barred owl management strategy. For this reason, the Service believes this SHA would advance the recovery of the spotted owl.

### **National Environmental Policy Act Compliance**

The Service's entering into the proposed SHA and issuance of a 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 prepared a draft EA to analyze the impacts of this proposed action on the human environment in comparison to the no-action alternative.

### **Public Comments**

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

1. The direct, indirect, and cumulative effects that implementation of the SHA could have on endangered and threatened species;
2. Other reasonable alternatives consistent with the purpose of the proposed SHA as described above, and their associated effects;
3. Measures that would minimize and mitigate potentially adverse effects of the proposed action;
4. Identification of any impacts on the human environment that should have been

- analyzed in the draft EA pursuant to NEPA;
5. Other plans or projects that might be relevant to this action;
  6. The proposed term of the permit and whether the proposed SHA would provide a net conservation benefit to the spotted owl; and
  7. Any other information pertinent to evaluating the effects of the proposed action on the human environment.

### **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 EA, will be available for public inspection by appointment, during normal business hours, at our Oregon 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 EA meet the requirements of section 10(a) of the ESA and NEPA, and their respective implementing regulations. We will also evaluate whether issuance of a permit would comply with section 7(a)(2) 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 issue a permit under section 10(a)(1)(A) of the ESA to the Roseburg Resources Co., for take of the northern spotted owl caused by covered activities in accordance with the terms of the permit and the SHA. We will not make our final decision until after the end of the 30-day public comment period, and until we 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 ESA, its implementing regulations (50 CFR 17.22), and NEPA and its implementing regulations (40 CFR 1506.6).

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**Theresa Rabot,  
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Portland, Oregon.**

[FR Doc. 2016-23528 Filed: 9/28/2016 8:45 am; Publication Date: 9/29/2016]