



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-ES-2020-N143; FXES1114010000-212-FF01E00000]

Draft Safe Harbor Agreements and Draft Environmental Assessments for the Marbled Murrelet in Washington State

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), received two applications for enhancement of survival permits (permits) pursuant to the Endangered Species Act of 1973, as amended. The permits would authorize the incidental take of the threatened marbled murrelet associated with forest management actions on private lands. The applications each include a safe harbor agreement (SHA), describing the actions the applicants will take to achieve a net conservation benefit on their lands for the species. We also announce the availability of two draft environmental assessments (EAs) addressing the effects of the proposed permits and SHAs on the human environment in accordance with the National Environmental Policy Act. We invite comments from all interested parties.

DATES: To ensure consideration, please submit written comments by [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***].

ADDRESSES: You may view or download copies of the SHAs and draft EAs and obtain additional information on the internet at <http://www.fws.gov/wafwo/>. 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 “Marbled Murrelet SHAs in Washington:”

- *Email:* wfwocomments@fws.gov.

- *U.S. Mail:* Public Comments Processing, Attn: **FWS–R1–ES–2020–N143**
U.S. Fish and Wildlife Service; Washington Fish and Wildlife Office, 510
Desmond Drive SE, Suite 102; Lacey, WA 98503.

FOR FURTHER INFORMATION CONTACT: Tim Romanski, Conservation Planning and Hydropower Branch Manager, Washington Fish and Wildlife Office (see **ADDRESSES**); telephone: 360–753–5823 or 360–951–4303. If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: The Service received applications from the Rayonier Operating Company, LLC (Rayonier), and the Sierra Pacific Land & Timber Company Operating Company (Sierra Pacific) (jointly, the applicants) for enhancement of survival permits (permits) pursuant to section 10(a)(1)(A) of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). The applications each request a permit that would authorize “take” of the threatened marbled murrelet associated with forest management actions on private lands, with implementation of a Safe Harbor Agreement (SHA). The SHAs describe actions the applicants will take to achieve a net conservation benefit for the covered species on the applicants’ lands. The Service also announces the availability of two draft environmental assessments (EAs) addressing the effects of the proposed permits and SHAs on the human environment in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). We invite comments from all interested parties regarding the permit applications, including the SHAs and draft EAs.

Background

Section 9 of the ESA prohibits “take” of fish and wildlife species listed as endangered (16 U.S.C. 1538(a)(1)). Section 4 of the ESA allows FWS to issue regulations which prohibit the take of any fish and wildlife species listed as threatened, as well (16 U.S.C. 1533(d)). The take prohibition has been extended to the marbled

murrelet. Under the ESA, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term “harm,” as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term “harass” is defined in our regulations as an intentional or negligent act or omission which creates the likelihood of injury to listed species by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity (50 CFR 17.3).

Under an SHA, participating landowners undertake management activities on their property to enhance, restore, or maintain habitat conditions for species listed under the ESA to an extent that is likely to result in a net conservation benefit for the covered listed species. An SHA, and the associated enhancement of survival permit issued to participating landowners, encourages private and other non-Federal property owners to implement conservation actions for federally listed species by assuring the participating landowners that they will not be subject 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.

An SHA and its associated permit 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 enrolled property by the species covered in the SHA. The authorization to take listed species is contingent 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 term of the permit and may incidentally take the listed species named on the permit in accordance with the terms and conditions of the permit.

Permit application requirements and issuance criteria for enhancement of survival permits for SHAs that involve species listed as threatened, such as the marbled murrelet, are found in the Code of Federal Regulations (CFR) at 50 CFR 17.32(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>.

Proposed Actions

The applicants have both developed SHAs in support of their applications for enhancement of survival permits, pursuant to section 10(a)(1)(A) of the ESA. Rayonier's proposed SHA is for forest management activities on over 212,400 acres of privately owned lands located in eleven counties in western Washington. Sierra Pacific's proposed SHA is for forest management activities on over 184,300 acres of privately owned lands located in six counties in western Washington. The Service's proposed actions are issuance of the requested permits and implementation of the SHAs.

The requested permits would allow the applicants to maintain or increase potential nesting habitat for the threatened marbled murrelet on their lands, while providing incidental take authorization for marbled murrelets associated with timber harvesting and other forest management activities when conducted on the covered lands. Under the proposed SHAs, the applicants will continue to manage their forest lands for timber production in compliance with the Washington Forest Practices Rules, which

include provisions for the protection of forested buffers along rivers, streams, wetlands, and unstable slopes. Under the SHAs, the applicants will continue to protect all previously-documented occupied marbled murrelet habitat on their lands. Additionally, each applicant will defer harvest in certain other areas identified as potential marbled murrelet nesting habitat on their lands for the term of their respective SHA. By volunteering to defer timber harvest in certain areas, the proposed SHAs protect more forest habitat on their lands than would otherwise be protected under existing forest practices rules. The term of the permits would extend to 2056, to coincide with the term of the 2006 Washington Forest Practices Habitat Conservation Plan, which provides take coverage for other ESA-listed salmon and other aquatic species.

National Environmental Policy Act Compliance

The proposed issuance of a permit is a Federal action that triggers the need for compliance with NEPA. Pursuant to the requirements of NEPA, we have prepared two draft EAs to analyze the environmental impacts of a reasonable range of alternatives to the proposed Federal permit actions. As the EAs were developed prior to the Council on Environmental Quality's issuance of updated regulations implementing NEPA, which went into effect on September 14, 2020 (40 CFR 1506.13), they were developed under the previous regulations in the interest of time and efficiency.

The EAs analyze similar alternatives, and each includes a no-action alternative, the proposed action, and an additional action alternative. For each EA, the proposed action is implementation of the SHA and issuance of the requested permit, as described above and in more detail in the individual SHAs. Each EA also analyses a no-action alternative, where the proposed Federal action of issuing the permit would not proceed, and one additional alternative analyzing a variation on the type and amount of habitat being considered to meet the net conservation benefit standard.

Public Comments

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We specifically request information, views, and opinions from interested parties regarding our proposed Federal actions, including on the adequacy of the SHAs pursuant to the requirements for permits at 50 CFR parts 13 and 17 and the adequacy of the draft EAs pursuant to the requirements of NEPA.

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.

Next Steps

After public review and completion of the EAs, we will determine whether the proposed actions warrant findings of no significant impact or whether environmental impact statements should be prepared. We will evaluate the permit applications, associated documents, and any comments received, to determine whether each permit application meets the requirements of section 10(a)(1)(A) of the ESA. We will also evaluate whether issuance of the requested permits would comply with section 7(a)(2) of the ESA by conducting separate intra-Service consultations on each proposed permit action. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period and will fully consider all comments received during

the comment period. If we determine that all requirements are met, we intend to issue enhancement of survival permits under section 10(a)(1)(A) of the ESA.

Authority

We provide this notice in accordance with the requirements of section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA (42 U.S.C. 4321 *et seq.*) and their implementing regulations (50 CFR 17.32 and 40 CFR 1506.6, respectively).

Robyn Thorson,

Regional Director,

U.S. Fish and Wildlife Service.

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