

# FINDING OF NO SIGNIFICANT IMPACT

## Issuance of Endangered Species Act 10(a)(1)(A) Enhancement of Survival Permits for the SDS Lumber Company LLC and Broughton Lumber Company Northern Spotted Owl Safe Harbor Agreement

### Introduction

The U.S. Fish and Wildlife Service (Service) has completed an Environmental Assessment (EA) for the proposed issuance of Enhancement of Survival Permits (Permits) for the SDS Company LLC and Broughton Lumber Company Northern Spotted Owl Safe Harbor Agreement (SHA). Issuance of the Permits would be done under the authority of section 10(a)(1)(A) of the Endangered Species Act (ESA) and would be conditioned upon full implementation of the SHA. The proposed Permit terms are 60 years and would authorize incidental take of the northern spotted owl (*Strix occidentalis caurina*) (Covered Species) to SDS Company LLC and Broughton Lumber Company.

The proposed issuance of Permits by the Service is a Federal action that may affect the human environment and therefore is subject to review under the National Environmental Policy Act (NEPA). The EA analyzed the effects to the human environment from two alternatives, the No Action Alternative and the Proposed Action Alternative.

### Decision Rationale

We evaluated the Proposed Action Alternative for its potential to significantly impact the human environment. As required under NEPA for our evaluation of significance, we considered both context and intensity of the Proposed Action (§1508.27 (a) (b)). Following a detailed review and analysis of the EA and SHA, the Service has selected the Proposed Action Alternative as described in the Final EA because it is not expected to have significant impacts to the human environment. Even though we believe there will be benefits to the spotted owl through implementation of the Proposed Action, we do not think they rise to the level of significance under NEPA (§1508.27 (b) (1)). This decision is based on the following information:

#### Northern Spotted Owl

- Dispersal and young forest marginal (YFM) habitat will be provided in the White Salmon Spotted Owl Special Emphasis Area and outside of this Spotted Owl Special Emphasis Area (SOSEA).
- The Elevated Baseline increases the likelihood of spotted owl habitat developing and persisting in the face of disturbance events in the White Salmon SOSEA for the 60 year time frame.
- Commercial thinning will be conducted with the intention of creating YFM habitat.
- A snag and wildlife tree program will be implemented.
- The rotation age will average 60 years, which is an increase of 15 years.

- Special Set Aside Areas will be protected for the duration of the permit which may result in available nesting habitat for spotted owls.
- Legacy trees and snags will be left for the duration of the permit.
- Monitoring to determine effectiveness of thinning/snag treatments to develop YFM habitat will take place.
- Within Washington SOSEAs, owl sites are assumed to be occupied or are capable of occupancy for the duration of permit; the applicants commit to not conduct de-certification surveys for owl sites.

#### Human Environment

- There will be no significant impacts to other fish and wildlife species.
- No significant impacts to the human environment including vegetation, wetlands, water quality, geology and soils, cultural resources, land use, socioeconomics, and climate change.

#### **Description of the Alternatives**

##### No Action Alternative

Under the No Action Alternative, the SHA would not be implemented and the Service would not issue any Permits. Under this alternative, SDS and Broughton Lumber Company would continue to conduct their respective forest-management activities in accordance with applicable Forest Practices Rules and would not develop any cooperative plans to address the SOSEA goals for northern spotted owls. Potential impacts on the human environment from the No Action Alternative were analyzed in the Environmental Impact Statement prepared for the Forest Practices Habitat Conservation Plan (USFWS and NMFS 2006) and are considered to be the baseline regulatory condition for the covered lands.

##### Proposed Action Alternative

Implementation of the Proposed Action (the SHA) is consistent with the 2011 Revised Recovery Plan for the Northern Spotted Owl.

- ***Recovery Action 10*** (USFWS 2011, p.III-43) - *Conserve spotted owl sites and high value spotted owl habitat to provide additional demographic support to the spotted owl population.*
- ***Recovery Action 14*** (USFWS 2011, p.III-52) - *Encourage applicants to develop Habitat Conservation Plans and Safe Harbor Agreements that are consistent with the recovery objectives.*
- ***Habitat Management in Dry Forests*** (USFWS 2011, pp.III-20 to III-33)

#### **Public Involvement and Review**

A Federal Register notice (77 FR 50526) for the draft Safe Harbor Agreement and draft Environmental Assessment was announced on August 21, 2012, for a 30-day public-review period. The Federal Register notice referenced the Washington Fish and Wildlife Office web site

for availability of draft documents for this proposal. The options to respond electronically, by telephone, or in writing were all available. A news release went to State and Federal elected officials, Native American Tribes, nongovernmental organizations, and the media. The Service received 16 separate comments on the draft documents. The comments and the responses are attached to this document (Table 1).

### **Conclusions**

Based on review and evaluation of the information contained in the supporting references, I have determined that the Proposed Action is not a major Federal action that would significantly affect the quality of the human environment, within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969, as amended. Accordingly, the Service is not required to prepare an environmental impact statement for this action. Furthermore, I have found that implementing the Proposed Action will provide conservation benefits to the northern spotted owl and have no significant impacts on any of the environmental resources identified in the EA.

This Finding of No Significant Impact and supporting references are on file and are available for public inspection, by appointment, at the following U. S. Fish and Wildlife Service office:

Washington Fish and Wildlife Office  
510 Desmond Drive SE, Suite 102  
Lacey, WA 98503  
Contact: Mark Ostwald

Interested and affected parties are being notified of our decision.

*for* Ken S. Berg  
Richard Hannan  
Deputy Regional Director

10/26/12  
Date

## **Documents Incorporated by Reference**

SDS Company LLC (dba Stevenson Land Company) and Broughton Lumber Company Northern Spotted Owl Safe Harbor Agreement. Prepared by ENVIRON International Corporation. Project number 3028868A. Olympia, WA. October 2012. 88pp.

U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service. 2006. Final Environmental Impact Statement for the Proposed Issuance of Multiple Species Incidental Take Permits or 4(d) Rules for the Washington State Forest Practices Habitat Conservation Plan. U.S. Fish and Wildlife Service, Portland, Oregon and National Marine Fisheries Service, Seattle, Washington

USFWS. 2012a. Final Environmental Assessment. SDS Company LLC and Broughton Lumber Company Northern Spotted Owl Safe Harbor Agreement. October 2012. Prepared by: ENVIRON International Corporation. Project Number: 30-28868A. U.S. Fish and Wildlife Service, Lacey, Washington. October 2012. 75pp.

## **Literature Cited**

USFWS. 2011. U.S. Fish and Wildlife Service. 2011. Revised Recovery Plan for the Northern Spotted Owl (*Strix occidentalis caurina*). U.S. Fish and Wildlife Service, Portland, Oregon. xvi + 258 pp. <http://www.fws.gov/species/nso>.

**Responses to Comments for SDS Company LLC and Broughton Lumber Company  
Northern Spotted Owl Safe Harbor Agreement and  
Environmental Assessment**

Table 1:

<b>Commenter Type</b>	<b>Comment or Issue</b>	<b>Response</b>
Private individual	Supports SHA - allows for private landowner cooperation instead of competition which may yield greater gains in reaching the overall conservation goal of maintaining and perhaps improving spotted owl habitat.	Noted.
Private individual (2)	Supports SHA - landscape approach versus circle management to protect/provide owl habitat is better; eliminates disincentive for growing habitat and provides regulatory certainty.	Noted.
Private individual	Opposes SHA - thought to not sufficiently protect the owl; does not want any owls to be shot or killed in any way.	Noted. The SHA is not expected to result in any owls being shot or directly harmed through implementation of the conservation agreement.
Private individual	Supports SHA - supports the local community and economy while continuing to provide owl and wildlife habitat; SHA does a better job protecting spotted owls in the area by shifting to a landscape approach rather than circles of protected habitat.	Noted.
Private individual	Supports SHA – discourages accelerated timber harvest; best long-term solution for the community, owl conservation and financially.	Noted.
Private individual	Supports SHA – partnership will enhance owl habitat and allow long-term economic benefits.	Noted.
County	Supports FWS and SDS/BLC entering into the agreement	Noted.
County	Agrees with baseline under current Oregon and Washington forest practices rules	Noted.
County	EA is adequate for evaluating the alternatives and	Noted.

	impacts	
County	Add ENVIRON 2012 citation to References	Agreed. Done.
County	Supports SHA - good compromise that keeps private forest in Washington working while providing long term protection for the spotted owl.	Noted.
Pulp & paper industry research institute	Provided technical and scientific support for benefits of SHA conservation strategy; suggested several ways to improve the SHA document.	Support noted. Suggestions were considered and several incorporated: providing additional definitions, editing to reduce redundancy, and clarifying “net benefit” text related to Figure 4-5.
Private consulting firm	Supports SHA – maintains economic stability, retain community jobs, and provides for owl habitat.	Noted.
Forest products industry non-profit firm	Supports SHA - good for owls and private forest landowners.	Noted.
State agency	Supports SHA and private landowner efforts to engage in landscape-scale conservation planning.	Noted.
State Agency	Landscape features identified as Special Management Area already protected by Forest Practices Rules	Agreed some features listed are protected by Forest Practices Rules, for example leave tree areas and wetlands, but rocky features, shrub lands and meadows, and oak and mixed oak-conifer forest are not protected. The SHA will clarify that leave tree areas will be retained for the term of the agreement, and eliminate unstable slopes and forested wetlands from the list of special management areas.
State Agency	Clarify “niche availability for breeding birds”.	Referred to in the context of stand structural features that create habitat for breeding birds. Confusing text deleted as it did not add information to the SHA.
State Agency	Provide support for snag creation treatments as a conservation benefit to owls; question whether 2-4 inch tops from commercial thinning operations are in addition to downed wood requirements of Forest Practices Rules.	Text revised to clarify the expectations of thinning and snag creation to obtain YFM structural conditions. Reference to retention of 2-4 inch tops is meant to describe downed wood that would be retained in addition to what is already on the forest floor during commercial thinning operations. Downed wood provided during regeneration harvest activities will adhere to Forest Practices Rules requirements.

State Agency	Provide references supporting the statement that Oregon white oak provides significant habitat value to wildlife and spotted owl prey base.	Additional references and description added to text.
State Agency	Provide clarification about use of the term “legacy trees” and conservation benefit to owls.	The applicant considers “legacy” trees as another way to refer to the leave trees required by Forest Practices Rules. Definition of legacy trees was added and paragraph revised to clarify the terms legacy and leave trees.
State Agency	Clarify snag creation/retention strategies for conifers and hardwoods; cite references that support the strategies as effective management action for spotted owl habitat.	Snag and wildlife tree prescriptions were clarified in consultation with FWS biologists to state a preference for conifers over hardwoods and larger snags and trees over smaller. Applicants are committing to retention of these trees during commercial thinning operations to begin creating higher quality habitat at time of regeneration harvest. The regeneration harvest prescriptions are two options that applicants have to implement depending on harvest unit conditions, in addition to Forest Practices Rules requirements, which will provide additional snags and leave trees benefitting owls and owl prey species in the long term.
State Agency	Request to demonstrate effectiveness of meeting YFM characteristics by stand sampling.	Monitoring is proposed to evaluate effectiveness of meeting YFM definitions (or YFM functional equivalent) through thinning. Text added to state Applicants will work with FWS to determine the details of an appropriate study to evaluate recruitment of YFM due to thinning/snag prescriptions relative to forest age.
State Agency	Support citations/references for nest box clusters and how they provide a net conservation benefit.	Spotted owl use of nest boxes has resulted in fledged young in several cases, but there is no published literature on success rates or comparisons to natural nest sites. This technique is proposed as a novel approach to shift site centers to protected habitat and away from Applicants’ lands where some form of management is likely to occur. We have added language to ensure that core areas receive long-term protection should attempts to move the site center fail.

State Agency	Describe existing habitat conditions in the Little White Salmon SSA.	Clarifying text has been added. The Little White Salmon River SSA consists of predominately older (80+ year) Douglas-fir forests, comprising habitat previously sought for acquisition and conservation by USFWS under Section 6 of the Endangered Species Act as owl habitat.
State Agency	Request to provide more support and clarity as to net benefit of removing sub-mature habitat.	Sub-Mature habitat requirements have been increased to a total of 1,054 acres in the elevated baseline, see tables and text additions.
State Agency	Confusion about Habitat Regrowth description	Clarifying text has been added to explain the illustration that 110 acres of non-habitat within one 0.7 mile regulatory circle is part of a total of 490 acres of non-habitat within all 0.7-mile regulatory circles. These 110 acres of non-habitat will become habitat during the 10 year deferral period, prior to any habitat removal allowed as a result of shifting to a landscape approach to habitat.
State Agency	Suggests including details of a monitoring strategy.	Additional study on habitat recruitment has been added to section 4.5 (Monitoring and Reporting).
Tribal	Most of the special features listed in the special management areas should be removed because no direct conservation benefits to owls.	All of the habitats listed provide important habitat for spotted owl prey (particularly talus slopes and rock outcrops, which harbor bushy-tailed woodrats and pikas, very important prey for NSOs). Rocky features, shrub lands and meadows, and oak and mixed oak-conifer forest are generally not protected under Forest Practices Rules and would be of some conservation benefit to owls via prey habitat protection.
Tribal	Clarify “niche availability for breeding birds.”	Referred to in the context of stand structural features that create habitat for breeding birds. Confusing text deleted as it did not add information to the SHA.
Tribal	Questions the benefit of 2-4 inch tops and if they are in addition to downed wood requirements of Forest Practices Rules.	Text revised to clarify the expectations of thinning and snag creation to obtain YFM structural conditions. Reference to retention of 2-4 inch tops is meant to describe downed wood that would be retained in addition to what is already on the forest floor during commercial thinning operations. Downed wood provided during

		regeneration harvest activities will adhere to Forest Practices Rules requirements.
Tribal	Requests citations supporting the claims that thinning or snag/wildlife tree creation prescriptions will result in prey habitat structure and allow owls to better utilize the stand? Requests clarification of several terms.	Paragraph was revised to clarify the expectations of thinning and snag creation to obtain YFM structural conditions. Text also revised to clarify specific habitat terms.
Tribal	Questions the value of oak-conifer habitat and requests citations.	Literature citations have been added. Documented use by spotted owls of oak/fir habitat has occurred on SHA lands, and we believe it is locally important as spotted owl roosting, foraging, and prey habitat.
Tribal	Define and clarify use of the term “legacy trees” and conservation benefit to owls.	Text has been revised to clarify what is meant by leave trees and “legacy” trees. The text in this paragraph was meant to describe where and how leave trees would be retained.
Tribal	More benefit to owls to have conifer snags and leave trees than hardwoods.	Snag and wildlife tree prescriptions were clarified in consultation with FWS biologists to state a preference for conifer trees over hardwoods and larger snags and trees over smaller where available.
Tribal	Leave tree diameter of 20 inches should apply to conifer and hardwoods; questioned whether the regeneration harvest snag and leave tree prescriptions were additive.	Text was revised to clarify a preference should be given to larger diameter trees over smaller, and secondarily to conifers over hardwoods, as available. These prescriptions are in addition to what is required by Forest Practices Rules.
Tribal	Clarify how commercial thinning immediately creates intermediate trees, they are already there in the stand and are simply leaving some post-harvest to retain that component.	Wording has been added to clarify the paragraph. A monitoring study has been added that will ensure YFM habitat or its equivalent is managed in the amounts proposed in the SHA.
Tribal	Request to demonstrate effectiveness of meeting YFM characteristics by stand sampling.	Monitoring is included to evaluate effectiveness of meeting YFM definitions (or YFM functional equivalent) through thinning. Text added to state Applicants will work with FWS to determine the details of an appropriate study.
Tribal	Requests clarification of bullets related to habitat proportions being retained in the White Salmon SOSEA.	The 5th bullet refers to harvest of habitat if there is excess available beyond the 33% minimum retained

		within the 0.7 mile circle. The phrase “minimum will remain there,” refers to harvest of habitat, should there be more than 33% present in the 0.7 mile circle.
Tribal	Clarify what constitutes an appropriate situation for nest box establishment and why attract owls to nest boxes.	Text added to clarify that nest boxes will be placed on adjacent lands (possibly public lands) with the landowner’s permission, and in the best habitat available. This method is intended to shift the site center to lands already reserved for spotted owl core areas or lands that are already under some type of permanent reserve or long-term management (e.g., USFS lands).
Tribal	Clarify references to the successful use of nest boxes and how they can be justified.	Nesting by spotted owls in nest boxes has resulted in fledged young in several cases, but there is no published literature on success rates or comparisons to natural nest sites. This technique is proposed as a novel approach to shift site centers to protected habitat and away from Applicants’ lands where some form of management is likely to occur. We have added text to ensure that core areas receive long-term protection should attempts to move the site center fail.
Tribal	Describe and give examples of how a nest tree will be made "unusable" to spotted owls for nesting.	Appropriate wording has been added to the SHA to describe possible nest blockage methods.
Tribal	Please define how many acres of this set aside is the lower quality oak and oak/conifer habitat, and older forests, to understand the composition of habitat in the SSA.	Of the 240 acre nest site set aside, approximately 90 acres is YFM and Sub-Mature habitat and 150 acres is oak/conifer mixed forest. While this oak/conifer forest may not meet typical definitions of owl habitat, it is determined to be owl habitat by use. The 150 acres will not count in meeting the Elevated Baseline habitat thresholds. The proximity to the nest site and past observations of spotted owl foraging in this area, indicate its suitability and value as part of the core habitat for this owl pair. References are provided indicating spotted owl use and behavior in oak/conifer forests in other areas, including the Yakama Indian Reservation.

Tribal	Reconcile the use of “YFM or equivalent” and “YFM or better.”	Eastside YFM “or equivalent” was added should the Service, in consultation with the Applicants, determine that habitat not meeting every component of YFM definition, but still providing valuable habitat that is functionally equivalent YFM, will count toward habitat goals. Text was added to allow for this modification from strict YFM definitions, if needed. Other references to “YFM or better habitat” indicate that the Applicants will be allowed to substitute older habitat types, i.e., Old Forest and Sub-Mature, for YFM habitat to meet habitat goals. Both of these habitat types are thought to provide increased habitat value to spotted owls above that provided by YFM habitat, and should therefore count toward habitat goals.
Tribal	Define what is meant by "maintain higher quality habitat." Higher quality than currently available?	Text added to clarify the context in which the phrase “maintain higher quality habitat” is used.
Tribal	Requests that the best spotted owl habitat (Sub-Mature) in the SOSEAs be preserved and retained in set asides.	The SHA has been modified to require more Sub-mature habitat. Within the White Salmon SOSEA, a minimum of 1,054 acres will be required.
Tribal	Clarify the reference to 110 acres of potential habitat.	Text added to clarify that the 110 acres is a large portion of the 490 acres of habitat within 0.7 mile of spotted owl site centers in the White Salmon SOSEA.
Tribal	Clarify the details of the green tree and snag provisions as to contributions to habitat and how the prescriptions for commercial thinning are beneficial.	Snag prescriptions have been changed to favor larger trees over smaller, conifers over hardwoods, and defective trees over merchantable trees. We rely on the body of literature that suggests leaving snags after forest management actions increases habitat for small mammals and other wildlife, and therefore is likely to benefit spotted owls. Applicants are committing to retention of these structures during commercial thinning operations to begin creating higher quality habitat at time of regeneration harvest.
Tribal	Clarify what is meant by marked snags and defective trees, and how they will be marked. Clarify what is	Clarifying language has been added.

	meant by "information"...what kind?	
Tribal	Questions whether landowners will be required to do any kind of surveys for spotted owls; how will they know if spotted owls are actively nesting. Will new occurrences of owls only be through incidental observation?	The SHA does not create an obligation of landowner to perform wildlife surveys. Applicants' are required under the SHA to report any owl nest sites discovered.
Tribal	Questions what happens if the status of the spotted owl changes from federally threatened to federally endangered over the term of the SHA, and whether new conservation measures are possible with the new listing.	The SHA provides assurances to SDS and BLC that as long as the SHA is being properly implemented, no additional conservation measures are required. This would also include a change in the designation from threatened to endangered for the spotted owl.
Environmental NGO	Service should prepare an EIS	We do not think an EIS is necessary for this project. We note that often, SHA's are categorically excluded under NEPA. In our opinion, it is likely that this SHA could have been categorically excluded, however, to facilitate review for WAC 222-16-080(6) (a) we opted to do an EA (EA pg 4) so that the public had an enhanced opportunity for public comment. We considered both context and intensity of the action on the human environment, and determined that it does not rise to the significance level. In fact, considering 40 CFR 1508.27 (9) we think there will be positive benefits to the spotted owl from implementation of the SHA.
Environmental NGO	SHA functions as an HCP	We think that the SHA is the correct tool under section 10 of the ESA, not an HCP. The applicants are not receiving immediate take, which would be a factor necessitating an HCP (64 FR 32717). We believe that the conservation measures specified in the SHA will lead to net conservation benefits to the spotted owl and contribute to recovery. We think that the Elevated Baseline satisfies the concept of baseline in the SHA Policy. Furthermore, we are confident that the SHA satisfies the issuance criteria for an Enhancement of Survival Permit. Benefits to the spotted owl start with initiation of the SHA, so that

		if there is early termination there will be no mitigation debt. The SHA Policy (64 FR 32717) and issuance criteria (64 FR 32706) are satisfied.
Environmental NGO	Baseline should include all spotted owl habitat	We do not agree with the comment that the baseline should include all spotted owl habitat, 49,235 acres – this approach would be inconsistent with the SHA policy. Those acres are all not occupied by the species. It is our opinion that the Elevated Baseline satisfies the definition of “baseline” in the SHA policy. The Elevated Baseline reflects a multiple set of habitat requirements at different spatial scales within the White Salmon SOSEA. The Elevated Baseline provides 542 more acres of YFM than are in the current Baseline. The application of the Elevated Baseline is expected to provide more sustainable spotted owl habitat within the White Salmon SOSEA over a 60-year time frame than would occur without the SHA.
Environmental NGO	Impacts to National Scenic Area	See EA pg. 18