



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Washington Fish and Wildlife Office
510 Desmond Dr. SE, Suite 102
Lacey, Washington 98503

In Reply Refer To:
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OCT 26 2012

Memorandum

To: Ken S. Berg, Manager, Washington Fish and Wildlife Office

From: Mark G. Miller, Manager, Division of Conservation and Hydropower Planning
Mark G. Miller

Subject: Statement of Findings: Safe Harbor Agreement and Applications for Enhancement of Survival Permits; SDS Company LLC Permit TE86248A-0 and Broughton Lumber Company Permit TE 86204A-0

The U.S. Fish and Wildlife Service's (Service) Washington Fish and Wildlife Office has assisted SDS Company LLC (dba Stevenson Land Company) and Broughton Lumber Company (Applicants) in developing this Safe Harbor Agreement and applications for enhancement of survival permits (Permits), in accordance with the Service's Safe Harbor Policy (64 FR 32717), section 10(a)(1)(A) of the Endangered Species Act, and associated implementing regulations. The purpose of the 60-year Agreement and the two Permits is 2-fold: to maintain, enhance and restore habitat benefiting the northern spotted owl (*Strix occidentalis caurina*) and to provide certain regulatory assurances to the Applicants. The enhancement of survival Permits would allow the Applicants to incidentally take northern spotted owls on the covered lands in the course of their timber management activities and as a consequence of the Applicants returning to baseline conditions. The Safe Harbor Agreement, Biological Opinion, and the National Environmental Policy Act determination were reviewed by personnel in the Division of Conservation and Hydropower Planning and the Division of Consultation and Technical Assistance.

Our findings and recommendations are contained in the Statement of Findings attached to this memorandum. Based on those findings, we recommend approval of the Safe Harbor Agreement and issuance of the associated enhancement of survival permits to SDS Company LLC and the Broughton Lumber Company.

STATEMENT OF FINDINGS

**FINDINGS AND RECOMMENDATIONS FOR ISSUANCE OF
ENHANCEMENT OF SURVIVAL PERMITS TO
THE SDS COMPANY LLC (TE86248A-0)
AND TO
THE BROUGHTON LUMBER COMPANY (TE86204A-0)
FOR NORTHERN SPOTTED OWLS
RESULTING FROM A SAFE HARBOR AGREEMENT
FOR LANDS IN
Klickitat, Yakima, and Skamania Counties, Washington
and Hood River and Wasco Counties, Oregon**

This document assesses the subject proposal against the mandatory components of, and the issuance criteria for, a Safe Harbor Application, as well as the Safe Harbor Policy and other factors, to determine whether it is appropriate for the U.S. Fish and Wildlife Service (Service) to exercise our discretion and issue enhancement of survival permits (Permits). Based on our findings stated below, we recommend issuance of the requested permits and approval of the associated Safe Harbor Agreement (SHA).

I. DESCRIPTION OF PROPOSAL

Introduction

SDS Company LLC and its registered business name Stevenson Land Company (together SDS) and Broughton Lumber Company (BLC) (together herein known as the Applicants) have requested that the Service approve the document entitled: SDS Company LLC (Stevenson Land Company) and BLC Northern Spotted Owl Safe Harbor Agreement (ENVIRON 2012) and that the Service issue enhancement of survival permits (Permits) under Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*) (ESA). Under this voluntary SHA, the Applicants would implement conservation measures that are reasonably expected to provide a net conservation benefit to the northern spotted owl (*Strix occidentalis caurina*)(spotted owl).

This project is described in detail in the SHA, Final Environmental Assessment (USFWS 2012a), associated Finding of No Significant Impact (USFWS 2012b), and the Biological Opinion (Opinion) (USFWS 2012c), which are herein incorporated by reference. The term of the SHA would be 60 years. The SHA contains an Implementing Agreement (IA) (Appendix D of the Agreement), which describes the roles and responsibilities of the Applicants and the Service and provides for contingencies. These contingencies include, but are not limited to, modification of the SHA, rights to terminate and relinquish the Permit, and inclusion and removal of properties as covered lands.

Location

This SHA would cover the Applicants' private ownership of timberlands in Skamania, Yakima, and Klickitat Counties in Washington, and Hood River and Wasco Counties in Oregon. The BLC's approximately 13,000 acres and SDS' approximately 72,000 acres are within a 35-mile radius of the SDS mills located in Bingen, Washington. A legal description of the covered lands can be found in Appendix A of the SHA.

The SHA (section 3.1) provides a more detailed description of the covered area.

Activities

The covered activities are identified in the IA. These activities are associated with managing, harvesting, and replanting trees for timber production, and include various forms of timber harvest, pre-commercial thinning, log transportation, road construction, road maintenance and decommissioning, small rock pits, site preparation and slash abatement, tree planting, fertilization, silvicultural thinning, experimental silviculture, snag creation, wildfire suppression, monitoring, and the management, harvest, and sale of minor forest products. The application of pesticides is not a covered activity.

Species

The SHA addresses the spotted owl. A description of this species and its requirements can be found in the SHA (section 3.2.1), and also within the 2011 Revised Recovery Plan for the Spotted Owl (USFWS 2011d).

Time Period

The term of the Permits is 60 years. Provisions for extension, termination, suspension, and revocation are contained within the IA.

Definitions of Safe Harbor Policy Baseline Conditions, SHA Elevated Baseline, and Section 7 Environmental Baseline

For this SHA and our internal analysis process, baseline as a term has different meanings depending on its purpose for describing or measuring environmental conditions. The following uses of baseline have different meanings: 1) the SHA Policy definition of Baseline Conditions; 2) the SHA Elevated Baseline; and 3) the Section 7 Environmental Baseline.

Safe Harbor Policy Baseline Conditions

The SHA policy describes Baseline conditions as *population estimates and distribution and/or habitat characteristics and determined area of the enrolled property that sustain seasonal or permanent use by the covered species at the time the SHA is executed between the Services and the property owner.*

Because establishing owl occupancy is uncertain in the presence of barred owls (USFWS 2012f) the Service and Applicants agreed to use the existing documented spotted owl home range circles maintained by the Washington Department of Fish and Wildlife data base as the best representation of the current known occupancy of spotted owls on and adjacent to the covered lands. In addition, the Applicants agreed not to dispute occupancy of the covered lands and to defer pursuing decertification of spotted owl circles under Washington Forest Practices rules during the term of the agreement (SHA 4.1.3).

The habitat established as Baseline Conditions in Washington is regulated by the Washington Forest Practices Act for spotted owls. In Washington, 4,697 acres of SDS and BLC land are currently restricted from harvest in the White Salmon SOSEA and the Columbia Gorge SOSEA, with the remainder of SDS and BLC lands in Oregon and Washington being available for harvest under the respective state forest practices. Of these restricted acres due to spotted owl rules, SDS owns 3,179 acres in the White Salmon Spotted Owl Special Emphasis Areas (SOSEA) and 1,003 acres in the Columbia Gorge SOSEA. BLC owns 497 acres in the White Salmon SOSEA.

SHA Elevated Baseline

The Elevated Baseline for spotted owl habitat management was developed for this SHA to establish habitat management thresholds, which provide a net conservation benefit at a landscape scale, and complement the conservation strategies on adjacent state and federal lands. The Elevated Baseline establishes thresholds on the covered lands for the amount, quality, and spatial arrangement of habitat that transfers the management of owl habitat from a static circle approach to an active landscape approach. Management of forest stands at or above the Elevated Baseline will maintain more high quality spotted owl habitat and grow more foraging and dispersal habitat for owls over the term of the Agreement and provide a net conservation benefit compared to habitat management within owl circles without the Agreement.

The Elevated Baseline establishes habitat thresholds at two different spatial scales within the White Salmon SOSEA. The first is at the 0.7-mile radius owl circle scale. Within this scale, the Applicants will provide a minimum of 33 percent young forest marginal (YFM) or higher quality habitat for specific owl sites (SHA Table 4-1). The second is at the broader scale of the White Salmon SOSEA. At this scale, the Applicants will provide 33 percent of their commercial forest lands in owl habitat at all times that consists of Sub-mature (SM), YFM, and dispersal habitat. See SHA at 4.1.11 for detailed description for the amounts and types of habitat that will be provided and how they are calculated.

Environmental Baseline

Regulations implementing the ESA (50 CFR 402.02) define the environmental baseline as the past and present impacts of all Federal, State, or private actions and other human activities in the action area. Also included in the environmental baseline are the anticipated impacts of all proposed Federal projects in the action area that have undergone section 7 consultation, and the impacts of State and private actions which are contemporaneous with the consultation in progress.

Applicants' Forest Lands in Washington

In Washington State, 10 SOSEAs have been established under Washington Forest Practices Rules (WAC 222-16-086) to provide for the conservation needs of the spotted owl. Each SOSEA includes land area goals for spotted owl demographic and dispersal support. Different SOSEAs have different biological goals for spotted owls depending on the geographic location of the SOSEA and the conservation needs of the spotted owl. The covered lands under the proposed SHA include portions of the White Salmon and the Columbia Gorge SOSEAs. These two SOSEAs have a goal of providing a combination of demographic support and dispersal support for spotted owls (WAC 222-16-086; 222-10-041).

Under Washington Forest Practices Rules, the following amounts of suitable habitat are generally assumed to be necessary to maintain the viability of each spotted owl site center within each SOSEA in the absence of more specific data or a mitigation plan: (a) all suitable spotted owl habitat within 0.7 miles of each spotted owl site center; and (b) a total of 2,605 acres of suitable spotted owl habitat within the median home range circle with a radius of 1.8 miles. Under Washington Forest Practices Rules, proposed forest practices likely to adversely affect spotted owl habitat in either category (a) or (b) above are likely to have significant adverse impacts on the spotted owl, and such activities would require a Class IV special forest practice and an environmental impact statement per the State Environmental Policy Act (SEPA), and likely require a permit under section 10 of the ESA.

Outside of SOSEAs, 70 acres of the highest quality suitable spotted owl habitat surrounding a spotted owl site center should be maintained during the nesting season in accordance with Washington Forest Practices Rules (WAC 222-10-041 (5)). Washington Forest Practices Rules also provide for exceptions to operating under the above standard rules. These exceptions include conducting forest management operations under a Service-approved Habitat Conservation Plan and an Incidental Take Permit authorized under section 10(a)(1)(B) of the ESA or the SHA and a Permit authorized under section 10(a)(1)(A) of the ESA.

Under Washington Forest Practices Rules, spotted owl habitat is categorized as follows: (1) "old forest habitat" provides all of the characteristics of spotted owl nesting, roosting, foraging, and dispersal habitat; (2) "sub-mature habitat" provides all of the characteristics of spotted owl roosting, foraging, and dispersal habitat; (3) "young forest marginal habitat" provides some of the characteristics of spotted owl roosting, foraging, and dispersal habitat; and (4) "dispersal habitat," which is not considered suitable for spotted owl nesting, roosting, or foraging, but does provide for spotted owl dispersal (WAC 222-16-085). The proposed SHA relies on these habitat definitions.

There are 30 spotted owl site centers in the vicinity of the Applicants' lands in Washington. For the purpose of establishing the SHA Baseline Conditions, we determined that 18 spotted owl sites within the SOSEAs (Opinion, Table 1) are either currently occupied or are reasonably certain to be re-occupied in the future. This determination is based on a review by Buchanan and Swedeen (2005, pp. 47) which found that of 38 spotted owl sites in Washington that were classified as unoccupied for three or more years, 25 (66 percent) of them were reoccupied and supported pairs or had multiple detections of a single owls. In addition, it is reasonably certain that regulatory restrictions within the SOSEAs will increase the likelihood of future occupancy.

For these reasons, we considered these owl sites as occupied and habitat associated with these sites as receiving seasonal or permanent use.

Because spotted owl sites outside of SOSEAs have low levels of habitat due to minimal regulatory protection under state forest practices, we cannot be reasonably certain that they are currently occupied or will be re-occupied in the future. For SHA purposes, we did not include habitat associated with these sites as part of the Baseline Conditions because that habitat has not been currently documented as receiving seasonal or permanent use.

Only owl circles within the SOSEAs have regulatory protection under Washington Forest Practices. Four of these owl circles are within the Columbia Gorge SOSEA and 14 are within the White Salmon SOSEA. The Washington State Department of Natural Resources (WDNR) has identified 4,697 acres of SDS and BLC lands that are currently restricted from harvest on Applicants' lands in the White Salmon and Columbia Gorge SOSEAs under Washington Forest Practice Rules. This acreage includes all suitable spotted owl habitat within 0.7 mile of each site center, and that portion of SDS and BLC ownership identified as part of the highest quality 2,605 acres of habitat. Figures 1 and 2 show the locations of habitat identified by WDNR on covered lands within the two SOSEAs. Note that dispersal habitat is not part of this mapping process.

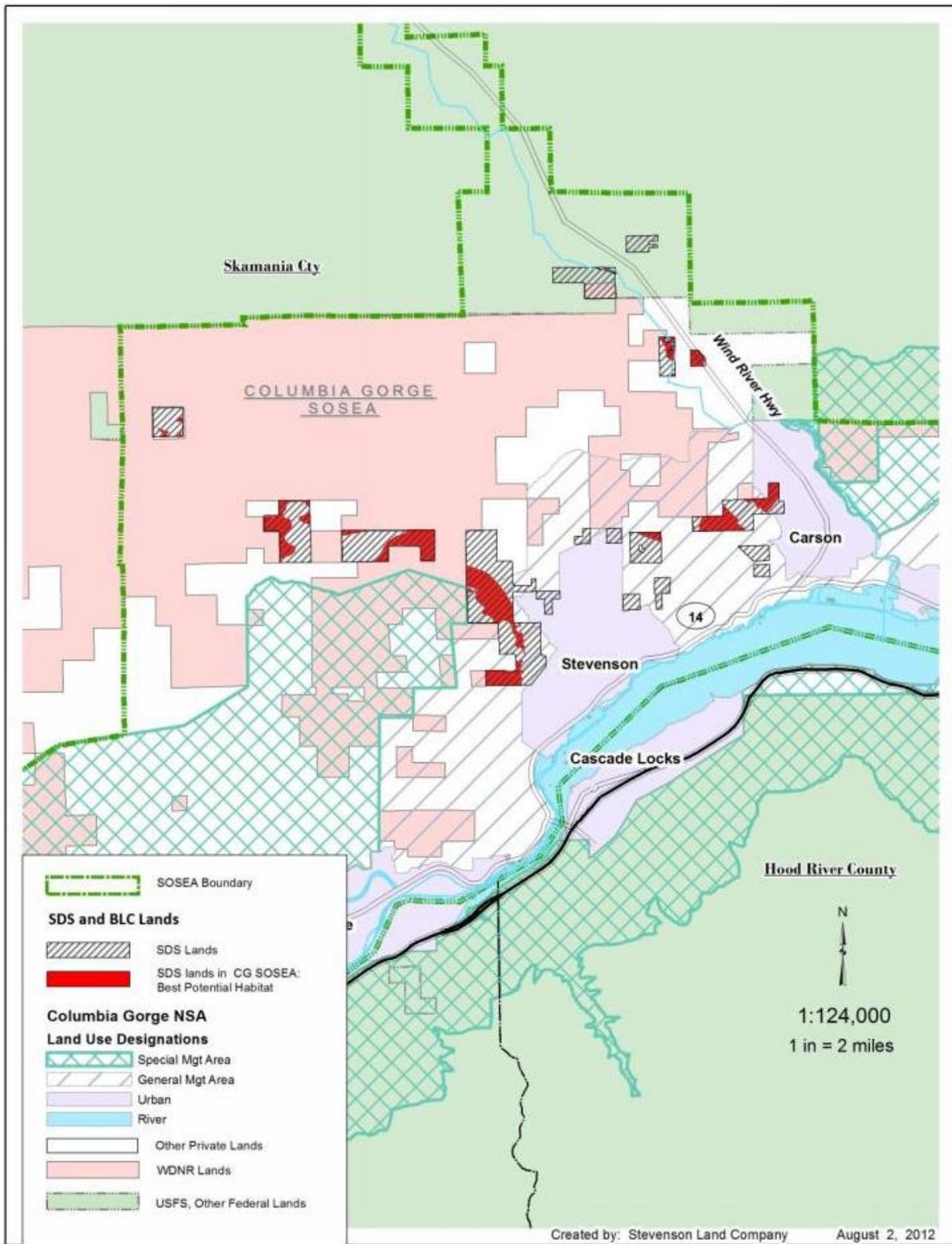


Figure 1. Highest Quality Suitable Habitat on Covered Lands in Columbia Gorge SOSEA as determined by WDNR. This habitat represents Baseline Conditions.

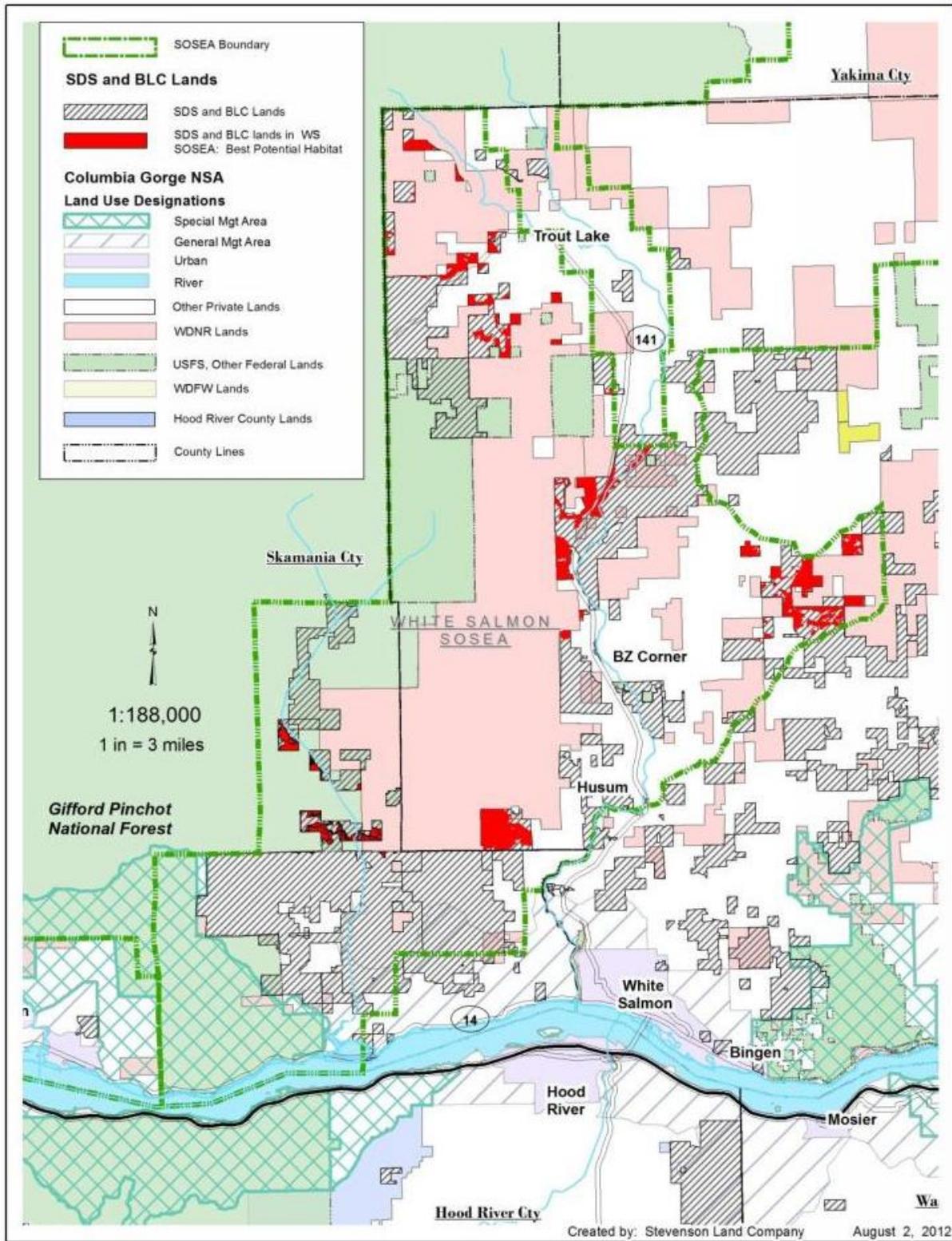


Figure 2. Highest Quality Suitable Habitat on Covered Lands in the White Salmon SOSEA as determined by WDR. This habitat represents Baseline Conditions.

Current Harvest Regime on Applicants' Lands in Washington without the SHA- Over the past decade, the Applicants have regeneration harvested a mixture of age classes depending upon market conditions, with an emphasis on older age classes. Recently, the Applicants stated that due to regulatory uncertainty, they are increasing the rate of harvest across the covered lands, but are not harvesting the habitat within owl circles restricted by Washington Forest Practices Rules. Harvest at this increased level may result in 4,697 acres of owl habitat within owl circles remaining on the Applicants' lands at the end of a decade. In addition, the Applicants state that, to avoid additional regulatory burdens, they are not allowing non-habitat within spotted owl circles to grow into suitable owl habitat.

Applicants' Forest Lands in Oregon

Oregon Forest Practices Act - The Oregon Forest Protection Act protects resource sites through a notification process but the State Forester does not issue permits or approvals. Oregon Forest Practices Rules protect active spotted owl nesting sites or activity centers occupied by a pair of adult owls capable of breeding. Resource sites receive protection where the State Forester determines (a) it is an active spotted owl site and (b) the proposed forest practices conflict with the resource site. The State Forester is required to maintain an inventory of protected resource sites that are used by threatened and endangered species, including the spotted owl. A written plan is required when the State Forester determines an operation will conflict with the protection of a nesting site or when the forest operation is 300 feet from any nesting site of any threatened or endangered species. A written plan provides, among other things, protection of a 70-acre core area around the spotted owl nest site (see Section 2.1.3).

Current Harvest Regime on Applicants' Lands in Oregon without the SHA- SDS owns 19,153 acres in Oregon while BLC does not own any land in Oregon. Oregon Department of Forestry and Service records indicate that there are no known spotted owl nests on the Applicant's land in Oregon.

However, six spotted owl sites have been identified on the Mt. Hood National Forest adjacent to the southern part of SDS ownership. None of the 70-acre core areas fall on SDS land. No spotted owls or activity centers have been identified on SDS land in Oregon, and the Oregon Forest Practices Rules place no harvest restrictions on SDS lands in Oregon. Due to low levels of habitat and minimal regulatory protection, we cannot be reasonably certain that habitat on the Applicant's land is receiving seasonal or permanent use. Therefore we did not include these habitat acres in the SHA Baseline Conditions.

Baseline Using Spotted Owl Circles

The SHA policy describes Baseline Conditions as *population estimates and distribution and/or habitat characteristics and determined area of the enrolled property that sustain seasonal or permanent use by the covered species at the time the SHA is executed between the Services and the property owner.*

Thirty spotted owl 1.8-mile radius circles overlap some portion of the Applicants' land in Washington. With the exception of only one site center, Site #753, located on the Applicants' ownership within the White Salmon SOSEA, all site centers within SOSEAs are currently

located on National Forest, WDNR, or other private ownership. Four of these sites are located within the Columbia Gorge SOSEA and 14 sites are located within the White Salmon SOSEA. We have determined that the 18 spotted owl sites within the SOSEAs are either currently occupied or are reasonably certain to be re-occupied in the future.

We did not include all suitable spotted owl habitat on the covered lands, both within and outside of owl circles, in the SHA Baseline. Including all suitable spotted owl habitat in the SHA Baseline would have included approximately 49,000 acres of dispersal and higher quality habitats (SHA figure 4-6) for which we do not have documentation of current occupancy. Including this acreage in the SHA Baseline would have been inconsistent with the SHA policy. The policy states that the baseline includes the area that sustains seasonal or permanent use by the covered species.

We acknowledge that spotted owls do not use circular home ranges, and some habitat outside of owl circles is likely being used by some owls at some time. However, with the available information, we have no way to accurately identify and quantify it for SHA Baseline purposes. For this reason, we did not include habitat outside of existing documented owl circles in the SHA Baseline because we cannot document seasonal or permanent use by spotted owls.

Safe Harbor Agreement Elevated Baseline

For several months, we met with the Applicants to discuss the presence of spotted owls and the quantity and quality of owl habitat across the covered lands. Through these discussions we established an Elevated Baseline habitat management target for the SHA.

The Elevated Baseline represents a different amount, quality, and spatial arrangement of habitat in comparison to what would be expected if the lands were managed without the SHA under existing regulations. The Elevated Baseline reflects a multiple set of habitat requirements at different spatial scales within the White Salmon SOSEA.

The Elevated Baseline establishes forest habitat management thresholds that transfer the Baseline Conditions of owl habitat from a static circle management approach to an active landscape management approach. This will better maintain owl habitat function for the long-term on the covered lands compared to circle management of Baseline Conditions without the SHA. The habitat management strategy in the Agreement includes spotted owl habitat thresholds for the 0.7-mile radius circle scale and the White Salmon SOSEA scale. Habitat management was structured to be implemented over time to provide a net conservation benefit to spotted owls prior to incidental take occurring.

The intent of the SHA Elevated Baseline is to provide a contribution to recovery on private lands by removing the regulatory disincentive for maintaining and creating suitable habitat on a landscape scale. A net conservation benefit is provided through implementation of a landscape-scale management strategy to provide current and future foraging and dispersal habitat, and Special Set Aside Areas, across 81,587 acres to complement owl conservation strategies on nearby USFS and WDNR lands. This is consistent with the White Salmon and Columbia Gorge SOSEA goals for a combination of dispersal and demographic support to complement the landscape-scale habitat conservation strategies on adjacent federal and state lands.

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. The Elevated Baseline concept for this SHA is a modified approach over what was used in the Port Blakely SHA in 2009 (Port Blakely 2009). The ecological conditions and spotted owl population across the covered lands for this SHA necessitated a different conservation approach than what was developed for the Port Blakely SHA. SDS and BLC have owl habitat within owl circles and an abundance of owl habitat outside of owl circles, while Port Blakely had very little suitable habitat across all its ownership and limited intersection with owl circles. The Port Blakely SHA applies to an area that has been identified as being important for spotted owl dispersal. The SDS and BLC SHA applies to an area that is important for dispersal and demographic support for spotted owls.

The Elevated Baseline for the White Salmon SOSEA at the beginning of SHA implementation is 9,424 acres of spotted owl habitat. Over the duration of the 60-year SHA, the Elevated Baseline may change depending on the amount of lands that are brought into or removed from the White Salmon SOSEA. The Elevated Baseline requires 33 percent of the commercial forest lands in the White Salmon SOSEA to be habitat (SHA Table 3-1: currently 18,672 acres SDS and 9,888 acres of BLC). At this time, that is 9,424 acres.

Summary of Features of the Safe Harbor Agreement

The SHA provides a detailed description of conservation measures (SHA section 4) to benefit spotted owls. Most of these conservation measures go beyond the requirements of existing Washington and Oregon Forest Practices Rules and would not be implemented in the absence of the Agreement.

These conservation measures include:

Deferral and Special Set Aside Areas

- Deferral of harvest within the 0.7-mile core of four owl sites (#734, 753, 1003, and 1116) for the first 10 years. The Applicants have 15 percent or more ownership within the 0.7-mile radius circle in these four sites.
- Allow 490 acres of non-habitat to develop into habitat within these four sites.
- Establish a 240-acre Special Set Aside Area in the core for site #753. Site #753 is centered on the Applicants' land. Over time, approximately 90 of these acres are expected to contribute to the landscape SM habitat threshold.
- Special Set Aside Area of 411 acres along the Little White Salmon River. Approximately 341 of these acres will contribute to the landscape SM habitat threshold.

Elevated Baseline

- Establish an elevated baseline within the 0.7-mile cores of all status 1-3 owl sites such that there would be 33 percent or more of the Applicants' commercial forest land in YFM habitat or better (SHA 4.1.12).
- Establish an elevated baseline within the White Salmon SOSEA that manages for 33 percent spotted owl habitat. When SHA implementation begins this will include 1,054 acres of SM habitat, 4,185 acres of YFM habitat and 4,185 acres of dispersal habitat. While the YFM and dispersal amounts of habitat can change proportionally as lands are brought into or taken out of the SHA over the 60-year SHA period, the threshold of 1,054 acres of SM habitat remains.

Forest Rotation Age

- Increase the average rotation age from 45 years to 60 years. Some forest patches are expected to exceed 60 years of age.
- A total of 8,382 acres of non-habitat will be allowed to grow into suitable habitat within the White Salmon and Columbia Gorge SOSEAs (SHA Table 4-1).

Snag and Legacy Tree Management

- Establish a program to conserve and develop snags and wildlife trees during commercial thinning and regeneration harvest. See SHA section 4.1.11 Snag and Wildlife Tree Prescriptions.

Commercial thinning

- Implement a series of prescriptions for forest thinning designed to create YFM habitat.

Nest Site Protection

- Establish occupied nest sites provisions for new or shifted nest sites. The conservation approach varies depending on whether the nest site is within the White Salmon SOSEA and is a new or shifted site (SHA 4.1.14).

Monitoring and Reporting

- Conduct periodic forest inventories to monitor changes in the amount and distribution of forest stand characteristics on the covered area.
- Within the first 10 years of the SHA, document the efficacy of thinning prescriptions in creating YFM habitat by age 59 (Applicants will work with USFWS to develop a monitoring plan and to develop alternative management prescriptions or habitat equivalents if habitat goals are not being met) (SHA 4.5).
- Map all Special Set Aside Areas and leave tree areas containing snags and defective trees following regeneration harvest.

- Snag and leave tree prescriptions employed during commercial thinning and regeneration harvest.
- Monitor any new spotted owl nest sites located on the covered lands.
- Monitor nest box clusters for use by spotted owls or barred owls.

Spotted Owl Occupancy

- Commit to not pursue de-certification of spotted owl circles under Washington Forest Practices rules.

Results of Conservation Measures

Implementation of the combination of these measures is reasonably expected to provide a net conservation benefit to spotted owls. Probable outcomes include:

- Greater amount of owl dispersal and foraging habitat and greater opportunities for foraging or roosting would be provided in an important connectivity area along the Columbia Gorge. This should lead to greater potential connectivity for spotted owls between Washington and Oregon.
- Forest thinning would facilitate a more rapid development of forest structure, complexity, and tree size. This would accelerate the development of habitat for owl dispersal and foraging. It would also improve the quality of stands, which are considered habitat as well as those not yet considered habitat by definition. Together, with extended rotations, thinning operations will benefit owls by providing better foraging and dispersal habitat across the landscape.
- More snags and defective trees would be distributed across the landscape and retained for the life of the SHA. More downed wood and understory structure within stands would be developed. This structure would support a higher level of prey species, including northern flying squirrels (*Glaucomys sabrina*).
- Active habitat management over the landscape will better maintain habitat for spotted owls in light of expected natural disturbances due to forest health and catastrophic fire.

Analysis of Net Conservation Benefits

To analyze the net conservation benefits of the SHA we compared how spotted owl habitat would be managed under the Agreement versus without the Agreement.

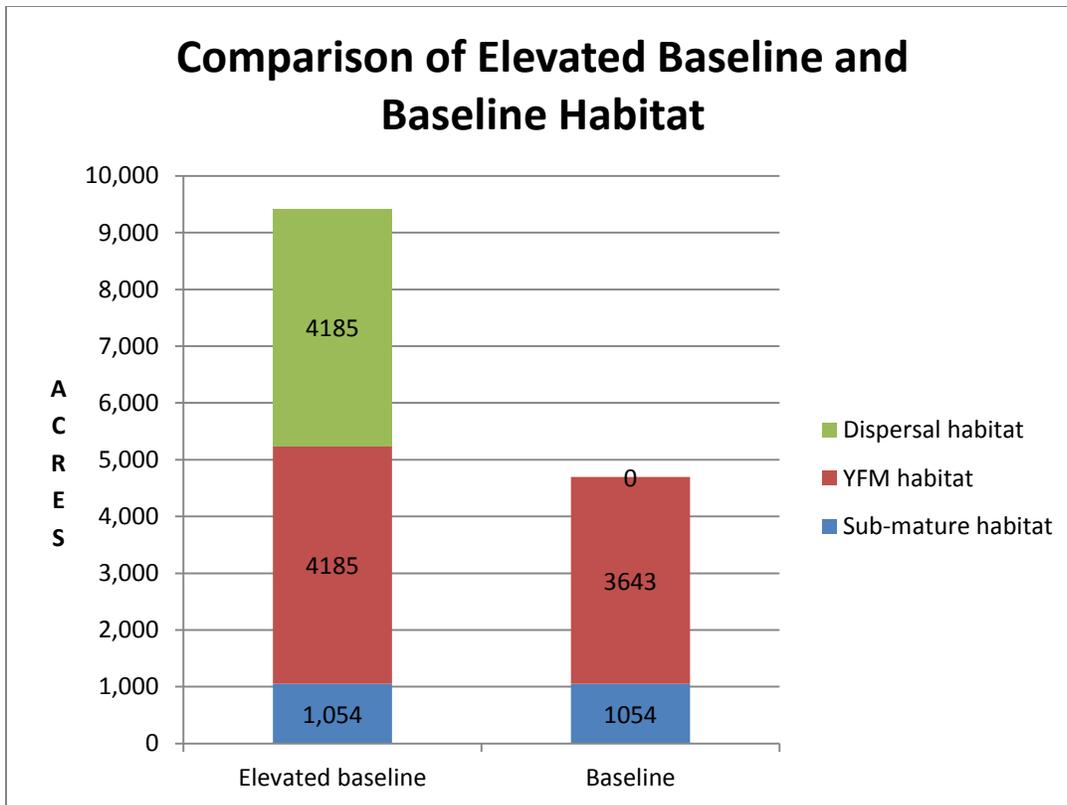


Figure 3: Comparison of Elevated Baseline and Baseline in White Salmon SOSEA.

We have assessed that the SHA Elevated Baseline provides a net conservation benefit to spotted owls compared to the Baseline Conditions (static owl circle management without the SHA).

We developed the Elevated Baseline for the SHA using habitat instead of spotted owl population levels for the following reasons: 1) Barred owl presence influences spotted owl occupancy and confounds detection of spotted owls; 2) Managing habitat for spotted owls at a landscape scale, rather than the 0.7- and 1.8-mile radius circles, would provide conservation benefits beyond “circle management” and complement landscape conservation strategies on adjacent federal and state lands; 3) In a disturbance-prone landscape, habitat is likely to be lost over time due to fire and insects and managing to Elevated Baseline thresholds better ensures that habitat degraded or lost to disturbance is replaced; and 4) Existing suitable habitat will be retained longer compared to static management of the baseline conditions.

1) Barred owl presence influences spotted owl occupancy and confounds detection of spotted owls

The presence of barred owls creates uncertainty in using the population estimate method for establishing a SHA baseline. Spotted owls can still occur in landscapes even when barred owls are common (WDNR 2005, USFWS 2012c). At the individual spotted owl territory level, spotted owls may be present, but the surveys may not be detecting them in the presence of barred owls. This is because spotted owls might not be vocally responding for their own security, in the presence of barred owls, which could cause spotted owls to go undetected. For these reasons, we

could not determine the exact number of spotted owl territories across the covered lands to use as the SHA Baseline.

In addition, many factors beyond the control of SDS and BLC habitat management can influence spotted owl populations. Therefore, we chose to use habitat rather than spotted owl population estimates for determining the Baseline Conditions and the Elevated Baseline under the SHA.

2) In a disturbance-prone landscape, the Elevated Baseline provides a higher chance for replacing habitat degraded or lost to disturbance than does a static Baseline Conditions approach

Habitat management on a landscape scale is preferable to spotted owl circle management. Managing spotted owl habitat by median home range circles has been implemented on the covered lands since the federal listing of the owl with mixed results and is not intended to be a long term approach (Buchanan and Swedeen 2005). The Applicants and Service were interested in implementing a broader landscape approach that more closely resembles how WDNR and National Forest lands are managed for spotted owls. Continuing to manage for owl habitat within fixed 1.8 mile radius owl circles and establishing this as the SHA habitat management thresholds would not be an effective long-term solution for providing spotted owl habitat. Active management to meet the SHA Elevated Baseline thresholds provides a better approach for managing owl habitat over long time frames.

The WDNR 2004 Administrative Amendment to the Northern Spotted Owl Conservation Strategy for the Klickitat HCP Planning Unit (WDNR 2004a) conserves spotted owls at a landscape level. The WDNR approach does not set owl habitat thresholds at the 0.7- and 1.8-mile owl circle scale, but instead habitat thresholds are established at the landscape scale, in this case the Husum and Trout Lake sub-landscapes. The WDNR uses active silviculture to achieve the habitat. Over time, as new habitat is recruited, habitat can shift to new locations within the landscape, thus allowing active forest management through regeneration harvests. The WDNR also has established owl nest cores of approximately 100 to 200 acres around owl sites. Generally, there is unlikely to be commercial harvest within these owl cores, except under special circumstances that may warrant it. The SHA conservation approach, with the Elevated Baseline, incorporates some of the same management concepts as the WDNR strategy and is expected to complement that strategy.

The Elevated Baseline contributes to spotted owl conservation in the overall landscape, particularly the White Salmon SOSEA, and is consistent with the SHA policy of baseline by describing a set of habitat characteristics (types of habitat) across a specified area for seasonal or permanent use by spotted owls. The Elevated Baseline characterizes the types of habitat into three categories: SM, YFM, and dispersal habitat. The Elevated Baseline further requires specified amounts of these habitats at the 0.7-mile radius owl circle and at the White Salmon SOSEA scale.

The SHA is consistent with the 2011 Revised Recovery Plan (USFWS 2011d), which states “Given the continued decline of the species, the apparent increase in severity of the threat from barred owls, and information indicating a recent loss of genetic diversity for the species, we recommend conserving occupied sites and unoccupied, high-value spotted owl habitat on State

and private lands wherever possible. This recommendation is primarily driven by the concern associated with displacement of spotted owls by barred owls, the need to retain good quality habitat to allow for displaced or recruited spotted owls to reoccupy such habitat, and the need to retain a spotted owl distribution across the range where Federal lands are lacking.” It further acknowledges the “important role that State and private lands can play toward implementing a coordinated and cooperative effort to recover the spotted owl.”

The SHA provides a complementary conservation approach to the adjacent WDNR HCP lands. The WDNR HCP for state trust lands (WDNR 1997) provides nesting, roosting, and foraging habitat in specific areas of Klickitat and Skamania Counties, Washington. Areas designated for this habitat are called NRF management areas. The Administrative Amendment to the Northern Spotted Owl Conservation Strategy for the Klickitat HCP Planning Unit (WDNR 2004) specifically provides habitat on WDNR lands for many of the spotted owl site centers associated with the SHA-covered lands in Washington. Furthermore, the SHA provides owl habitat within the White Salmon SOSEA that will facilitate dispersal and demographic support to resident owls.

In Oregon, some of the covered lands border the Mt. Hood National Forest. Implementation of the SHA is expected to complement conservation on National Forest lands in Oregon by improving connectivity to habitat areas to the north in Washington.

3) In a disturbance-prone landscape, the Elevated Baseline provides a higher chance for replacing habitat degraded or lost to disturbance than does a static Baseline Conditions approach

The Elevated Baseline addresses the reality that, over time, spotted owl habitat is a dynamic resource that can shift over the landscape. The Baseline Conditions approach does not do this, but instead leaves habitat in owl circles where it currently exists. This approach may be appropriate for the short term, but it isn't for the long-term.

The covered lands appear to be able to produce YFM habitat within the 60-year time frame of the SHA, based on past logging history. Probably the majority of the covered lands that are currently in a YFM condition, were previously harvested (J Spadaro, pers comm). This previous logging history appears to indicate that YFM habitats can be managed and grown during the term of the SHA. In fact, Buchanan (Buchanan et al. 1995) reported that 46 percent of nest stands in the eastern Cascades had received previous partial timber harvest. Thus, the application of active management with the SHA to achieve YFM seems very reasonable.

The Elevated Baseline maintains more suitable spotted owl habitat in the White Salmon SOSEA for the 60 year time frame compared to the Baseline Conditions approach. Under the current Baseline Conditions approach, spotted owl habitat is protected only in spotted owl circles in the SOSEA's. Over a 60 year time frame, we expect that there will be disturbance events, fire being a major one. Under the Baseline Conditions approach, if a fire degrades or eliminates spotted owl habitat within owl circles, it will be a net loss. There will be no requirement for replacement habitat to be maintained or regrown within the owl circles.

Under the SHA, habitat will be maintained or grown to meet Elevated Baseline thresholds across the covered lands. This will provide a greater benefit to owls than the habitat levels likely to be

present over a 60 year time frame without the SHA in light of likely reductions from stochastic events such as fires, insect mortalities, and other forms of disturbance. For example, if a fire reduces habitat that is currently being counted as meeting the Elevated Baseline, the Applicants would need to maintain habitat elsewhere in the White Salmon SOSEA to meet the Elevated Baseline habitat thresholds. If the replacement habitat was not immediately available, the Applicants would need to grow habitat to again meet the Elevated Baseline. This ensures habitat function for spotted owls is provided on the covered lands for the life of the Agreement.

4) Existing suitable habitat is maintained across the landscape longer with the Elevated Baseline in the SHA vs. static Baseline Conditions or management without the SHA.

Across the covered lands in the White Salmon SOSEA, and using age as a surrogate for habitat there are estimated to be 5,943 acres of dispersal habitat, 11,961 acres of YFM habitat and 12,593 acres of SM habitat (EA table 2-1). Most of these acres are likely not receiving seasonal or permanent use by spotted owls, and thus do not warrant being included in the SDS and BLC baseline, per the SHA policy.

Without the SHA, the Applicants have stated they would likely harvest all owl habitat outside of owl circles as quickly as possible. The Washington and Oregon forest practices rules would allow this, and this also would not require an ESA section 10 permit. However, the SHA provides an incentive to the Applicants to delay harvest of habitat. The Applicants state they will not consider suitable habitat to be a liability, and would be more likely to delay harvest of it longer with the SHA (SHA figure 4-6). Without the Elevated Baseline associated with the SHA, the Applicants would harvest at a 45-year rotation and harvest owl habitat outside of owl circles more quickly. Under the Elevated Baseline associated with the SHA, more habitat will be maintained for a longer duration across the covered lands.

Summary of Net Conservation Benefits of the SHA

The major beneficial effect of this SHA for owls is the presence of SM, YFM, and dispersal habitat at or above the agreed-upon Elevated Baseline conditions for the duration of the permit and the increased likelihood of providing habitat over longer time frames in the face of a disturbance prone landscape. The habitat amounts committed to in the SHA would not occur on the Applicants' landownership without the Agreement. The SHA levels of dispersal and YFM habitat may result in greater use of the covered lands by owls.

Early Termination of Enhancement of Survival Permit

Either Applicant can terminate and relinquish their ESP at any time during the 60 year Permit term. In the Biological Opinion, we considered the effects to the spotted owl if one Applicant terminated early and the other remained in the SHA. We concluded it is not likely to result in significantly different effects to spotted owls than those considered for the life of the SHA with both Applicants. Early termination of one Applicant would not diminish the positive benefits for the spotted owl that would continue with the remaining Applicant under the SHA. In the event of early termination, the terminating landowner would then need to comply with Washington or Oregon forest practices rules for spotted owl management and avoid unauthorized incidental take under the ESA.

II. COORDINATION AND PUBLIC COMMENT

Throughout the development of this SHA, the Service worked in cooperation with the Washington Department of Fish and Wildlife and Washington State Department of Natural Resources. We requested technical input, conducted site visits, provided briefings and solicited feedback on administrative drafts of the Safe Harbor Agreement from both agencies.

We conducted government to government consultation with the Yakama Indian Nation (YIN).

The Service published a Notice of Availability for the draft Environmental Assessment and Notice of Receipt of the Permit Application and Draft Agreement, in the Federal Register on August 21, 2012 (77 FR 50526). Publication of the notice initiated a comment period, which closed on September 20, 2012.

Both state agencies and the YIN provided technical comments during the public comment period. We received a total of 16 comments including private citizens, local government, forest products industry, and environmental organizations. Summaries of those comments and the Service responses to those comments are contained within the Finding of No Significant Impact (USFWS 2012b).

III. ISSUANCE CRITERIA FOR ENHANCEMENT OF SURVIVAL PERMIT - ANALYSIS AND FINDINGS

Section 10(a)(1)(A) of the ESA authorizes the issuance of Enhancement of Survival Permits for listed species. This document assesses a number of criteria to determine the appropriateness of the Service's decision to issue or deny this Permit.

Application Requirements

The Applicants have submitted applications to the Service for Enhancement of Survival Permits, which identified spotted owls as the requested species. They have also described how incidental take of this listed species pursuant to the SHA is likely to occur, both as a result of management activities and as a result of the return to Elevated Baseline Conditions. The type and source of incidental take expected was further described in the Service's Opinion. Accompanying their application, the Applicants submitted an Agreement that complies with the requirements of the Service's Safe Harbor Policy.

Issuance Criteria

According to the ESA, the Secretary may permit, under such terms and conditions, as he shall prescribe, any act otherwise prohibited by section 9 for scientific purposes, or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment, and maintenance of experimental populations. The issuance criteria for an Enhancement of Survival Permit are contained in the ESA implementation regulations. These regulations, contained in 50 CFR 17.32(c)(2) for threatened species, state "Upon receiving an

application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a Permit.

The Director shall consider the general issuance criteria in Section 13.21(b) of this subchapter, except for Section 13.21(b)(4), and may issue the Permit if he or she finds...” See items 1 through 6 below for issuance criteria and our respective findings.

1. The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Safe Harbor Agreement.

The Service finds that the proposed take will be incidental to otherwise lawful land-use activities. The SHA addresses take that may arise from management activities that would normally occur on the covered lands, the conduct of conservation measures implemented under this SHA, and the return to Elevated Baseline Conditions. To return to Elevated Baseline Conditions, according to the terms of the SHA and Permit, the Applicants must demonstrate that Elevated Baseline Conditions were maintained and that beneficial management practices were accomplished.

Activities that might result in incidental take include, but are not limited to; 1) any authorized activity occurring within a stand of habitat that may degrade or remove key features of habitat or make that habitat unusable, or 2) any timber harvesting or other management activity adjacent to or in proximity of habitat that could degrade the adjacent habitat through indirect effects or could result in harassment of the species. Take may also occur when harvesting a stand following the completion of conservation measures for newly discovered nest sites.

Purposeful take, such as take associated with banding or nest monitoring, is not incidental and therefore, is not authorized by this SHA or the associated Permit. The Applicants will be required to apply for separate permits or other necessary authorizations to undertake any such activities and to ensure that its agents obtain the necessary permits and authorizations prior to engaging in such activities.

2. The implementation of the terms of the SHA is reasonably expected to provide a net conservation benefit to the affected listed species by contributing to the recovery of listed species included in the permit, and the SHA otherwise complies with the Safe Harbor policy available from the Service.

The conservation measures that the Applicants will undertake to accomplish the expected net conservation benefit for the spotted owl consist of a combination of protection and enhancement measures on the covered lands. These activities were summarized above and are detailed in the SHA. Considering the role the covered lands are expected to provide in conservation of the species, the results of those conservation measures are expected to contribute to the recovery of the spotted owl.

In assessing the beneficial and negative effects, as described in the Biological Opinion, the Service considered those effects, and weighed the resulting conditions against the status of the species on the Applicants’ property and likely conditions without the issuance of the permit.

In the Biological Opinion, we concluded that the beneficial and negative effects and impact of the anticipated level of incidental take would not jeopardize the continued existence of the spotted owl.

Without implementation of the SHA, habitat would further decline in quality and abundance due to the absence of measures to require its preservation, maintenance, and development. This may result in a corresponding decrease in the populations of the covered species, but actual population responses are also dependent on factors external to this SHA such as weather conditions and the interaction of barred owls (*Strix varia*) with spotted owls.

As this SHA can be terminated and discontinued, we negotiated the Agreement to ensure that a net conservation benefit would be provided regardless of permit term. The ten year harvest deferral and other conservation measures were structured to ensure that a net conservation benefit was provided prior to the removal of habitat that could constitute take of spotted owls. As the SHA is implemented over time, the benefits to owls begin to accrue, as does the probability of occupancy and the possibility of take later in time. Regardless of the time frame over which this SHA is implemented, it is our opinion that the benefits accrued will continue to outweigh the potential negative effects that could occur.

The Service has specifically assessed this proposed SHA with each of the components of our Safe Harbor Policy and found this SHA to be consistent with and in compliance with that Policy (USDI and USDC 1999).

3. The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species.

The effect of the Service's proposed issuance of the Permit was evaluated as a formal intra-Service consultation, in accordance with section 7(a)(2) of the ESA. In the Biological Opinion, incorporated herein by reference, the Service concluded that the SHA and Permit will not likely jeopardize the continued existence of or appreciably reduce the likelihood of survival and recovery of the spotted owl or other listed species. We also determined that the SHA was not likely to result in destruction or adverse modification of proposed or designated critical habitat for the spotted owl.

4. Implementation of the terms of the Safe Harbor Agreement is consistent with applicable Federal, State, and Tribal laws and regulations.

Washington Department of Fish and Wildlife and Washington State Department of Natural Resources were consulted during the development of the SHA. We also consulted with the Yakama Indian Nation.

Washington State Forest Practices Rules provide an exemption for activities that are addressed through a Section 10 Permit or through a section 7 consultation, provided that there has been the opportunity for public comment (WAC 222-16-080 (6)(a)). WDNR provided a letter during the public comment period indicating that the SHA, if permitted, would satisfy this requirement and be consistent with Washington State Forest Practices Rules.

The YIN provided a comment letter raising concerns over the National Historic Preservation Act. In response, the definition of Covered Activities in the SHA shall not include any activity that, but for the ESP, would constitute unlawful take of a Covered Species and that would adversely affect a Designated Historic Resource. As used in this definition, “Designated Historic Resource” means any site, building, structure, or object located within the Covered Lands (a) that is included in the National Register of Historic Places or (b) that is (i) specifically identified in a writing received by SDS or BLC prior to the conduct of its activity from either the FWS or from any Interested Party and (ii) eligible for inclusion in the National Register of Historic Places. As used herein, “Interested Party” means the Washington State Historic Preservation Officer or the Oregon State Historic Preservation Officer; each Indian Tribe that attaches religious and cultural significance to sites, buildings, structures, or objects that may be affected by the activity; and each other’s “consulting party” under 36 C.F.R. § 800.2.

The Service also agreed to continue government to government consultation with the YIN on the broader policy issues of ESA Section 10 permits and the National Historic Preservation Act.

There are no other applicable State or Tribal laws and regulations applicable to implementation of the terms of the SHA on the covered lands.

5. Implementation of the terms of the Safe Harbor Agreement will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit.

The Final Revised Recovery Plan for the Northern Spotted Owl encourages the Service to develop Safe Harbor Agreements with private landowners. The Service has reviewed ongoing conservation and recovery programs for spotted owls. The terms of the SHA are consistent with these recovery programs. The SHA is neither in conflict with these programs, nor is it in conflict with conservation or recovery programs for any other listed species. The covered lands are outside the range of the marbled murrelet so forest management activities will not affect that species.

6. The Applicants have shown capability for and commitment to implementing all of the terms of the Safe Harbor Agreement.

The terms of the SHA for habitat establishment and management involve the manipulation of forest conditions using thinning or harvests based on silvicultural needs. There are also Special Set Aside Areas, which will be managed for the benefit of the species.

The Applicants have been managing timber resources on properties in Washington and Oregon for decades. SDS LLC (dba Stevenson Land Company) was founded in 1946, and the BLC was founded in 1923. SDS Lumber Company manufactures lumber, plywood, paper, and pulp for a variety of markets. Stevenson Land Company is focused on managing approximately 70,000 acres of timberland in the mid-Columbia gorge. These two companies work in partnership to grow timber and manufacture lumber products. SDS Lumber Company’s mill site is fully integrated including full maintenance, engineering, and construction capabilities

Through the long-term operation of their lands, they have demonstrated capability and

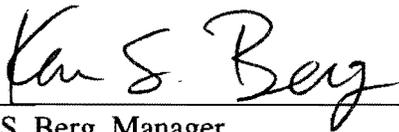
commitment to forest management. The Applicants have professional on-site staff to ensure that their actions are conducted in compliance with all applicable laws, regulations, agreements, and land stewardship goals. Furthermore, the Applicants' forest-management objective is to develop, maintain, and harvest mature forests across the landscape, which is compatible with the needs of the spotted owl. The Applicants are capable of and committed to implementing the terms of the SHA.

IV. GENERAL CRITERIA AND DISQUALIFYING FACTORS - ANALYSIS AND FINDINGS

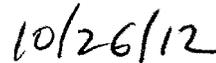
The Service has no evidence that the Permit applications should be denied on the basis of the criteria and conditions set forth in 50 CFR 13.21(b) (excluding 13.21(b)(4)), and 50 CFR 13.21(c)(1-4). Section 13.21(b)(4) is not applicable to section 10 permits; and, in Safe Harbor Agreements, this concept is addressed in the issuance criteria contained in section 17.22(c)(2)(iii) and 17.32(c)(2)(iii). The Service has also reviewed the suspension and revocation regulations at section 13.27 (a) and 13.28 (a) 1 through 4, and found no reason to deny issuance of the Permit based upon those factors. The Applicants have met the criteria for issuance of the Permits and do not have any disqualifying factors that would prevent the Permits from being issued under current regulations.

V. RECOMMENDATION ON PERMIT ISSUANCE

Based on the foregoing findings with respect to the proposed action, Permit applications, and adequacy of the SHA, I recommend issuance of a section 10(a)(1)(A) Permits to authorize incidental taking of spotted owls by SDS Lumber Company LLC (Permit # TE86248A-0), and Broughton Lumber Company (Permit # TE86204A-0), and approval of the proposed Safe Harbor SHA and Implementation Agreement.



Ken S. Berg, Manager
Washington Fish and Wildlife Office



Date

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