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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

FRIENDS OF ANIMALS,

Plaintiff,

v.

JIM KURTH, in his official capacity as the
acting Director of the United States Fish and
Wildlife Service, and

THE UNITED STATES FISH AND WILDLIFE
SERVICE, an agency of the United States,

Defendants.

Case No.: 17-860

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

INTRODUCTION

1. Friends of Animals brings this action to challenge the U.S. Fish and Wildlife Service's (FWS) issuance of five Enhancement of Survival Permits under Section 10 of the Endangered Species Act. These permits, and the associated Safe Harbor Agreements (SHAs), authorize unrestricted take of federally-threatened northern spotted owls by the Roseburg Resources Company (Permit TE84825B-0, TE05794C-0), the Oxbow Timber I, LLC (TE84826B-0), the Weyerhaeuser Company (TE85855B-0), and the Oregon Department of Forestry (TE93256B-0) that may occur due to future logging activities over the next decade by these entities in Oregon. Collectively, these permits cover approximately 82,000 acres (332 km²) of forest land in Oregon. This includes approximately 11,580 acres of northern spotted owl nesting and roosting habitat.

2. In approving these Enhancement of Survival Permits and SHAs, FWS violated at least four specific provisions of federal law.

3. First, FWS failed to satisfy its obligations under the National Environmental Policy Act (NEPA) to prepare and circulate a supplement to the 2013 Final Environmental Impact Statement for the Experimental Removal of Barred Owls to Benefit Threatened Northern Spotted Owls ("2013 EIS"). In issuing the Enhancement of Survival Permits and approving the SHAs, FWS claims that these actions are "based upon, and supports, the Service's barred owl removal experiment." Specifically, in return for granting the permit holders the right to take northern spotted owls, FWS will gain "access to the applicants' lands" which it considered "crucial to the efficient and effective implementation of this experiment because of barred owl presence on these lands."

4. Taking these assertions at face value, it is remarkable that in the 2013 EIS FWS completely failed to mention that access to these non-federal lands was "crucial" to the

implementation of the barred owl removal experiment. Instead, FWS only considered the “potential economic effect” that the experiment might have on timber harvests from state and private lands during four years of barred owl removal (at which time northern spotted owls may reoccupy nest sites on these lands) and three additional years of barred owl recovery. FWS did note, rather cursorily, in the 2013 EIS that it would be willing to “explore the potential for Safe Harbor Agreements with nonfederal landowners willing to cooperate with the experiment.” However, nowhere did FWS state that gaining such cooperation from the landowners was “crucial” to its experiment. More importantly, it never hinted at the *quid pro quo* it has now authorized.

5. Whatever may have been the case for not addressing the “crucial” role of these non-federal lands in the success of the barred owl removal experiment in the 2013 EIS, there is no justification for FWS’s failure to issue a supplement to the 2013 EIS before issuing the Enhancement of Survival Permits and SHAs. The decision to approve the barred owl removal experiment in 2013 was by all accounts an extremely controversial one. Not only did it take FWS close to five years to develop, but there was also an extensive number of non-government stakeholders involved in the process. Nothing in the administrative record produced for the 2013 EIS and Record of Decision indicates that these stakeholders were made aware of either the crucial need for, or likely terms of, Enhancement of Survival Permits and SHAs that FWS would approve some four to five years later. While FWS did prepare individual environmental assessments for the Enhancement of Survival Permits and SHAs, there is no indication that FWS informed, or sought the participation of, the original stakeholders from the 2013 decision.

6. Second, FWS failed to adhere to the substantive, conservation-oriented requirements of the Endangered Species Act (ESA) and its implementing regulations applicable to the issuance of Enhancement of Survival Permits and SHAs. As explained in FWS’s

regulations, SHAs are voluntary agreements that must result in a net conservation benefit to threatened and endangered animals. In exchange for actions that contribute to the recovery of listed species on non-federal lands, participating property owners receive formal assurances from FWS that if they fulfill the conditions of the SHA, FWS will not require any additional or different management activities by the participants without their consent and will allow participants to return their enrolled property to baseline conditions at the end of the agreement period.

7. To be eligible for an SHA, a property owner must undertake management activities that: (1) provide for an increase in a species' population; and/or (2) enhance, restore, or maintain covered species' suitable habitat within the enrolled property. Moreover, such net conservation benefits "should be reasonably expected to occur during the Agreement."

8. In this case, none of the four property owners that have received signed SHAs so far have agreed to take any management activity on their property designed to meet these conditions. Instead, FWS asserts that "the take of spotted owls on the temporarily reoccupied sites is more than offset by the value of the information gained from the experiment and its potential contribution to a long-term barred owl management strategy." However, as its name suggests, the barred owl removal experiment is just that—an experiment. By its design, the barred owl removal experiment does not provide for the long-term conservation of, or recovery of, northern spotted owls. Instead, the stated purpose of the barred owl removal experiment is to implement experimental research for the conservation of the northern spotted owl by gathering information regarding:

- the effects of barred owls on spotted owl vital rates of occupancy, survival, reproduction, and population trend through experimental removal of barred owls;
- the feasibility of removing barred owls from an area and the level of effort required to maintain reduced barred owl population levels

for the duration of the experiment;

- the cost of barred owl removal; and
- the evaluation of this technique to contribute to developing future options for potential management of barred owls as expeditiously as possible.

9. The record does not support, however, that this experimental research and information gathering will result in a future net conservation benefit for northern spotted owls. To the contrary, FWS explained in 2013 that future barred owl removal efforts were not reasonably foreseeable because “[o]ptions for future management of barred owls are so uncertain and broad that we could not attempt to address them in this Final EIS. Because we do not know the feasibility of barred owl control as a management tool, because there is no proposal to implement any specific barred owl management option at this time, and because to try to guess what a future proposal for management might be, even if feasible, is entirely speculative, future barred owl management does not represent a cumulative effect (reasonably foreseeable future action) for this Final EIS.”

10. Third, FWS failed to require that the applicants for the five challenged Enhancement of Survival Permits and SHAs “accurately describe the baseline conditions of their properties.” FWS’s Safe Harbor Policy defines 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 Safe Harbor Agreement is executed between the Services and the property owner.” Baseline conditions must be based upon the “known biological and habitat characteristics that support existing levels of use of the property” by northern spotted owls.

11. Here, FWS established baseline conditions from information obtained by the applicants through self-surveys made of their lands. For the Roseburg, Oxbow, and Weyerhaeuser SHAs, baseline conditions were set based upon survey data of northern spotted

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owls found on their properties over a period of three years. For the Oregon Department of Forestry's SHA, baseline conditions were set based upon survey data of northern spotted owls found on its properties over a period of five years.

12. It is generally known that surveys can inaccurately reflect the presence or potential presence of northern spotted owls. Northern spotted owls are difficult to detect and may not respond to calls at the time of the survey, particularly if barred owls are present in the area. Additionally, northern spotted owls may temporarily leave a historical nesting site and later return. Thus, surveys alone are not the best indicator of potential site occupancy. FWS has advised that to accurately determine the status of an individual northern spotted owl site, surveys should be evaluated for their quality and be considered along with a thorough evaluation of historical use by northern spotted owls, current habitat conditions, and the history of management activities.

13. Because FWS failed to require the applicants to use the best biological and habitat information, the challenged SHAs' establishment of "baseline conditions" will allow the permittees to engage in activities that can substantially reduce the amount of suitable northern spotted owl habitat in the future, potentially resulting in the loss of 11,805 acres of nesting and roosting habitat.

14. Fourth, the ESA prohibits FWS from issuing an Enhancement of Survival Permit and SHA that authorizes activities on federal lands that could result in the take of a listed species like the northern spotted owl. Here, each of the Enhancement of Survival Permits and SHAs authorizes "operational activity" by the permittees both on their own lands and on federal lands, even in critical habitat areas. In other words, the Enhancement of Survival Permits and SHAs allow timber companies to take an unlimited number of northern spotted owls on large areas of federal lands in addition to on their own non-federal lands.

15. In short, in approving the Enhancement of Survival Permits and SHAs, FWS acted arbitrarily, capriciously, and most importantly in violation of both NEPA and the ESA. Thus, Friends of Animals asks this Court, pursuant to the Administrative Procedure Act, 5 U.S.C. § 706, to vacate and remand the decisions approving the challenged Enhancement of Survival Permits and SHAs, and to enjoin FWS from implementing actions authorized by such decisions.

PARTIES

16. Plaintiff FRIENDS OF ANIMALS is a nonprofit international advocacy organization incorporated in the State of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. Friends of Animals informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of wild species so that they can live unfettered in their natural habitats.

17. Friends of Animals commented on the Draft 2013 EIS and the permits related to the barred owl removal experiment. Friends of Animals also commented on all the Enhancement of Survival Permits and SHAs at issue in this case.

18. Friends of Animals and its members are harmed by FWS's decision to authorize the take of threatened northern spotted owls and the destruction of spotted owl habitat, and by FWS's attempt to justify these authorizations with the removal of federally protected barred owls. Many of Friends of Animals' members regularly engage in bird viewing, and will continue to receive considerable pleasure and enjoyment from observing migratory birds and wildlife in

their natural habitat. With the expansion of the barred owl removal experiment through the Enhancement of Survival Permits and SHAs, the opportunities for these members to observe both barred owls and northern spotted owls will decrease. Not only will the shooting impact their present ability to view birds, but the destruction of habitat where these birds live will permanently reduce their future ability to continue to view these birds and other wildlife. Moreover, Friends of Animals' members enjoy recreating in and around the areas covered by the barred owl removal experiment and Enhancement of Survival Permits and SHAs. The Enhancement of Survival Permits and SHAs reduce the recreational value of these areas for members by ruining the aesthetic beauty, sanctity, peacefulness and serenity of these forest habitats, and by increasing the likelihood that they will see the killing of birds, and dead, wounded, or dying animals, and diminishing their chance of seeing healthy birds and other wildlife.

19. For example, Marguery Lee Zucker, who lives in Eugene, Oregon, has been a member of Friends of Animals for over twenty years and enjoys hiking and camping in Western Oregon to view wildlife, such as owls, in their natural habitat. The addition of lands managed by Roseburg, Oxbow, Weyerhaeuser, and the Oregon Department of Forestry to the barred owl removal experiment significantly reduces Ms. Zucker's opportunities to recreate and view birds in nature, unperturbed by nearby shotguns and forest management activities. Ms. Zucker has plans to camp and recreate in the Oregon Coast Ranges Study Area and Union/Myrtle (Klamath) Study Area, but worries that she will no longer be able to enjoy these places or view owls and other birds there.

20. Plaintiff's members, such as Ms. Zucker, have plans to visit areas where the Enhancement of Survival Permits and SHAs will be implemented. However, they will not be able to fully enjoy their visits because the reasons that they recreate in these areas—to enjoy the

natural and undisturbed beauty and wilderness of such areas— is destroyed by the misinformed wildlife policies aimed at killing barred owls and allowing for the take of northern spotted owls that may return to these areas.

21. Defendant JIM KURTH is the acting Director of the United States Fish and Wildlife Service and is sued in his official capacity. Defendant Kurth oversees the actions of FWS and is responsible for complying with all federal laws, including NEPA and the ESA.

22. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is an agency within the United States Department of the Interior whose chief administrator is the Director of FWS. FWS approved the barred owl removal experiment and issued the subsequent Enhancement of Survival Permits and SHAs to non-federal landholders allowing for the incidental take of northern spotted owls. FWS is responsible for complying with all federal laws and is an agency within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701.

JURISDICTION AND VENUE

23. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

24. This Court has authority to grant Plaintiff's requested relief pursuant to 28 U.S.C. §§ 2201-2202 (declaratory and injunctive relief) and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

25. An actual, justiciable controversy exists within the meaning of the Declaratory Judgment Act between Plaintiff and Defendants.

26. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e), as a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district.

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LEGAL FRAMEWORK

I. THE NATIONAL ENVIRONMENTAL POLICY ACT.

27. The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, is our nation's basic charter for environmental protection. 40 C.F.R. § 1500.1(a).

28. Congress enacted NEPA for two central purposes. First, Congress sought to ensure that all federal agencies examine the environmental impacts of their actions before acting. Second, Congress sought to provide the public with a statutory means for being informed about, and commenting on, the environmental impacts of proposed agency actions.

29. Before an agency can undertake a federal action that significantly affects the quality of the human environment, NEPA mandates that the acting agency prepare a detailed environmental impact statement (EIS) including “(i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, [and] (iii) alternatives to the proposed action.” 42 U.S.C. § 4332(2)(C).

30. In an EIS, a federal agency must: (1) “rigorously explore and objectively evaluate all reasonable alternatives” to the proposed action; (2) identify and disclose to the public all direct, indirect, and cumulative impacts of the proposed action and each reasonable alternative; and (3) consider possible mitigation measures to reduce such impacts to the environment. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1508.7, 1508.8, 1502.14- 1502.16.

31. Cumulative impacts include impacts that “result [] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes these actions.” 40 C.F.R. § 1508.7. The acting agency must undertake its NEPA analyses with the goal of making sure that “individually minor but collectively significant” actions are properly analyzed. *Id.*

32. An agency should discuss connected actions in the same environmental impact

statement. Connected actions include actions that “cannot or will not proceed unless other actions are taken previously or simultaneously” and “actions that are interdependent parts of a larger action and depend on the larger action for their justification.” 40 C.F.R. § 1508.25.

33. “Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.” 40 C.F.R. § 1502.4(a).

34. Agencies cannot divide projects to avoid their duties under NEPA.

35. After preparing an EIS, an agency may not simply rest on the original document. The agency must gather and evaluate new information that may alter the results of its original environmental analysis, and continue to take a hard look at the environmental effects of its future planned actions.

36. NEPA requires an agency to prepare a supplement to an EIS when “(i) [t]he agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) [t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed actions or its impacts.” 40 C.F.R. § 1502.9(c)(1).

37. A supplemental EIS must be prepared, circulated, and filed in the same fashion as a draft or final EIS. 40 C.F.R. § 1502.9(c)(4).

II. THE ENDANGERED SPECIES ACT.

38. The purpose of the ESA is to conserve threatened and endangered species and the ecosystems upon which these species depend. 16 U.S.C. § 1531(b). The Supreme Court recognized that by enacting the ESA, Congress “intended endangered species to be afforded the highest priorities.” *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 174 (1978).

39. The fundamental method by which the ESA protects listed species is its
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aggressive prohibition on taking threatened and endangered species in the United States. 16 U.S.C. § 1538; 50 C.F.R. §§ 17.21, 17.31.

40. 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).

41. The regulations further define the term “harass” as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife 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 C.F.R. § 17.3.

42. The regulations define “harm” as “an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.” 50 C.F.R. § 17.3.

43. The ESA includes a congressional mandate to federal agencies requiring that “all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this chapter.” 16 U.S.C. § 1531(c)(1).

44. The ESA defines the terms conserve, conserving and conservation as:
to use and the use of all methods and procedures which are necessary to bring endangered species and threatened species to the point at which measures provided [in the ESA] are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.
16 U.S.C. § 1532(3).

45. Recognizing the importance of the ESA’s take prohibitions, Congress, in Section
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10 of the Act, 16 U.S.C. § 1539, provided for only two narrow exceptions to the ESA's prohibition on taking listed species. Section 10(a)(1)(A) governs the issuance of Recovery Permits, including Scientific Permits and Enhancement of Survival Permits, while Sections 10(a)(1)(B) and 10(a)(2) govern the issuance of Incidental Take Permits. *Id.* Only Enhancement of Survival Permits are relevant to this action.

46. Section 10(a)(1)(A) of the ESA allows FWS to issue Enhancement of Survival Permits authorizing an otherwise prohibited activity if the activity will likely “enhance the propagation or survival of the affected species”

47. Under the ESA, FWS may only grant an Enhancement of Survival Permit under Section 10 if the agency finds and publishes its finding in the Federal Register that: (1) the permit was applied for in good faith; (2) if granted and exercised the permit will not operate to the disadvantage of such endangered species; and (3) issuance of the permit will be consistent with the purposes and policy set forth in Section 2 of the ESA. 16 U.S.C. § 1539(d).

48. The ESA's implementing regulations govern the process for issuing Enhancement of Survival Permits to non-federal landowners willing to enter into an SHA. These agreements are designed to protect property owners who voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting federally listed species. Management activities are voluntary conservation actions to be undertaken by a property owner that FWS believes will benefit the covered species. In exchange for such management actions, FWS assures property owners that it will not require additional or different management activities if the species' local population increases because of the landowner's conservation actions.

49. An applicant seeking an Enhancement of Survival Permit through an SHA must submit an application with the following information:

- (i) the common and scientific names of the listed species for which the applicant requests incidental take authorization;
- (ii) a description of how incidental take of the listed species pursuant to the Safe Harbor Agreement is likely to occur, both as a result of management activities and as a result of the return to baseline; and
- (iii) a Safe Harbor Agreement that complies with the requirements of the Safe Harbor Policy available from the Service.

50 C.F.R. § 17.32(c)(1).

50. Under the ESA's implementing regulations, FWS may not issue an Enhancement of Survival Permit unless it finds that:

- (i) The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Safe Harbor Agreement;
- (ii) The implementation of the terms of the Safe Harbor Agreement 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 Safe Harbor Agreement otherwise complies with the Safe Harbor policy available from the Service;
- (iii) 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;
- (iv) Implementation of the terms of the Safe Harbor Agreement is consistent with applicable Federal, State, and Tribal laws and regulations;
- (v) 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; and
- (vi) The applicant has shown capability for and commitment to implementing all of the terms of the Safe Harbor Agreement.

50 C.F.R. § 17.32 (c)(2) (emphasis added).

51. FWS has also promulgated an official Safe Harbor Policy, 64 Fed. Reg. 32717 (June 17, 1999), which is legally binding on FWS in its issuance and implementation of Enhancement of Survival Permits and SHAs. 50 C.F.R. § 17.32 (c)(2)(ii).

52. If FWS makes a finding to support the implementation of an SHA, it must clearly describe the expected net conservation benefits and how it reached the conclusion that there

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would be a net conservation benefit. 64 Fed. Reg. 32717, 32723.

53. Under the Safe Harbor Policy, in order to achieve the required net conservation benefit, the property owner must undertake management activities that: (1) provide for an increase in a species' population; and/or (2) enhance, restore, or maintain covered species' suitable habitat within the enrolled property. 64 Fed. Reg. 32722.

54. In determining whether an SHA is reasonably expected to provide a net conservation benefit, FWS must consider the length of the SHA and any off-setting adverse effects attributable to the incidental taking allowed by the Enhancement of Survival Permit. 64 Fed. Reg. 32722.

55. Net conservation benefits must be sufficient to contribute to the recovery of the covered species. 64 Fed. Reg. 32722.

56. Net conservation benefits "should be reasonably expected to occur during the Agreement." 64 Fed. Reg. 32721.

57. "Only non-federal property owners conducting activities on non-federal land may receive assurances under an Enhancement of Survival Permit and SHA." 69 Fed. Reg. 24084, 24085 (May 3, 2004).

58. The regulations define "enrolled property" as "all private or non-Federal property, waters, or natural resources to which the assurances in a Safe Harbor Agreement apply and on which incidental taking is authorized under the enhancement of survival permit." 64 Fed. Reg. 32722.

59. Under the Safe Harbor Policy, participating landowners are typically authorized to return their property to baseline conditions when the term of their Enhancement of Survival Permit and SHA expires.

60. The Safe Harbor Policy defines 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 Safe Harbor Agreement is executed between the Services and the property owner.” 64 Fed. Reg. 32722.

61. The Safe Harbor Policy mandates that FWS and the landowner accurately describe the baseline conditions of the property and species covered by the Enhancement of Survival Permit and SHA. 64 Fed. Reg. 32723.

62. Baseline conditions must reflect the known biological and habitat characteristics of the property that support the covered species’ existing levels of use. 64 Fed. Reg. 32723.

63. The parties to an Enhancement of Survival Permit and SHA must identify and agree on the degree to which the enrolled property is inhabited, permanently or seasonally, by the covered species. 64 Fed. Reg. 32723.

58. In most cases, the baseline conditions are described as the amount and condition of habitat in the enrolled lands and not the covered species population. 64 Fed. Reg. 32724.

FACTUAL BACKGROUND

I. THE BARRED OWL.

59. Barred owls (*Strix varia*) are native to North America. Barred owls are medium-sized owls with rounded heads, no ear tufts, and medium-length rounded tails.



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Photograph of barred owl (Wikipedia Commons).

60. Barred owls' historical range included forests in eastern North America.

61. During the past century, human-induced landscape changes enabled barred owl populations to expand their range to forests throughout most of central and western North America.

62. Today, the barred owl's range extends to the west coast and overlaps with the range of the northern spotted owl.

63. In the Pacific Northwest, barred owls have moved into old-growth coniferous forest.

64. Barred owls' preferred habitats range from swamps to streamsides to uplands, and may contain hemlock, maple, oak, hickory, beech, aspen, white spruce, quaking aspen, balsam poplar, Douglas-fir, lodgepole pine, or western larch.

65. Barred owls usually nest in tree cavities. They roost on branches and in tree cavities during the day and generally hunt by night.

II. THE NORTHERN SPOTTED OWL.

66. Northern spotted owls (*Strix occidentalis caurina*) are one of three spotted owl subspecies. The northern spotted owl is a medium-sized owl with dark-to-chestnut brown plumage and white spots on its head, neck, back, and under-parts.



Photograph of northern spotted owls (<http://www.fws.gov/oregonfwo/species/data/northernspottedowl>).

67. The range of the northern spotted owl extends from southwestern British Columbia south through western Washington and Oregon to Marin County on the north-central coast of California.

68. Northern spotted owls generally rely on older forested habitats because such forests contain the structures and characteristics required for nesting, roosting, and foraging.

69. In 1990, FWS listed the northern spotted owl as threatened under the ESA.

70. The northern spotted owl was listed as threatened primarily based on habitat loss and inadequacy of existing regulatory mechanisms to conserve the spotted owl.

71. Habitat loss was attributed primarily to timber harvest and land-conversion activities, and to a lesser degree to natural perturbations.

72. In recent years, FWS has grown concern that barred owls might also pose a threat to northern spotted owls.

73. Barred owls are slightly larger and have a more diverse diet than northern spotted owls. When spotted and barred owls are confined to the same environment, the former may out-

compete the latter.

III. FWS'S REGULATION OF NORTHERN SPOTTED OWL HABITAT, 1992-PRESENT.

74. On January 15, 1992, FWS designated critical habitat for the northern spotted owl within 190 Critical Habitat Units encompassing nearly 6.9 million acres.

75. On April 13, 1994, the federal government adopted President Clinton's Northwest Forest Plan.

76. The Northwest Forest Plan adopted a series of reserves and management guidelines that were intended to protect spotted owls and their habitat on federal land.

77. In 2004, FWS released a five-year status review of the northern spotted owl and recommended that it remain listed as a threatened species.

78. In May 2006, FWS established a recovery team and initiated a new recovery plan for the northern spotted owl.

79. On April 26, 2007, FWS published the Draft Recovery Plan for the northern spotted owl.

80. On August 13, 2008, FWS published the Final Revised Designation of Critical Habitat for the northern spotted owl.

81. The 2008 Critical Habitat Designation reduced designated northern spotted owl habitat by approximately 1,574,000 acres.

82. The Department of the Interior Inspector General's Office determined that the integrity of the decision-making process for the 2008 Recovery Plan was potentially jeopardized by improper political influence.

83. On September 1, 2010, a U.S. District Court for the District of Columbia remanded the 2008 Recovery Plan and Critical Habitat Designation to FWS for further consideration.

84. On June 28, 2011, FWS adopted a final Revised Recovery Plan for the Northern Spotted Owl (hereinafter, “2011 Revised Recovery Plan”).

85. In issuing the 2011 Revised Recovery Plan, FWS acknowledged past habitat loss, current habitat loss, and competition from barred owls are threats to the northern spotted owls’ recovery.

86. In issuing the 2011 Revised Recovery Plan, FWS identified thirty-three recovery action plans to protect northern spotted owls, including habitat conservation and further study regarding the impact of barred owls on northern spotted owls.

87. In issuing the 2011 Revised Recovery Plan, FWS acknowledged that the presence of barred owls increases the need for additional habitat protection, and that addressing the threats associated with past and current habitat loss must be conducted simultaneously with addressing the threats from barred owls.

88. FWS made clear that measures taken to reduce competition from barred owls cannot be used to replace or offset measures needed for habitat conservation.

89. To reduce the potential competitive pressure between the owls while the threat from barred owls is being addressed, FWS recommended conserving and restoring older, multi-layered forests across the range of the northern spotted owl.

90. On March 8, 2012, FWS published notice of a proposed rule to again revise the designated critical habitat for the northern spotted owl. FWS identified 13,962,449 acres that met the definition of critical habitat.

91. Before FWS finalized the March 8, 2012 proposed rule, President Obama issued a memorandum recommending, among other things, that FWS consider excluding private and State lands from the final revised critical habitat designation.

92. On December 4, 2012, FWS published the Final Rule for the Designation of

Revised Critical Habitat for the Northern Spotted Owl, which excluded all private and most state lands, resulting in a 4.3 million acre cut from the proposed designation.

IV. THE BARRED OWL REMOVAL EXPERIMENT.

93. On March 8, 2012, FWS issued a draft EIS, with the stated purpose “to contribute to fulfilling the intent of the [Endangered Species Act] by rapidly implementing experimental research necessary for conservation of the northern spotted owl in accordance with Recovery Action 29 of the [Revised] Recovery Plan [for the Northern Spotted Owl].”

94. The barred owl removal experiment was intended to implement Recovery Action 29 from the 2011 Revised Recovery Plan: to design and implement large-scale control experiments to assess the effects of barred owl removal on northern spotted owl site occupancy, reproduction, and survival.

95. On September 17, 2013, FWS approved the barred owl removal experiment to lethally remove over 3,000 barred owls.

96. The barred owl removal experiment covered four study areas: the Hoopa-Willow Creek Study Area in California, the Cle Elum Study Area in Washington, the Coast Ranges/Veneta Study Area in Oregon, and the Union/Myrtle (Klamath) Study Area in Oregon.

97. The Oregon Coast Ranges Study Area is located along the western coast of Oregon, west of Eugene and south of Highway 20 in Lincoln, Benton, Douglas, and Lane Counties.

98. The Union Myrtle (Klamath) Study Area is in southwest Oregon on either side of Interstate 5 near Canyonville in Douglas County.

99. When FWS analyzed the barred owl removal experiment, it found that long-term northern spotted owl conservation strategies following the experiment were speculative and not reasonably foreseeable.

100. When FWS approved the barred owl removal experiment, it did not specify the need to include non-federal lands to effectively implement the experiment.

101. During the decision-making process for the barred owl removal experiment, FWS did not specify the need to enter into SHAs or issue Enhancement of Survival Permits. Nor did it claim that Enhancement of Survival Permits and SHAs would make the barred owl removal experiment more effective or efficient.

102. To the contrary, FWS explained when it approved the barred owl removal experiment that it did not assume that any SHAs would be issued.

103. When analyzing the barred owl removal experiment, FWS only considered SHAs as a tool to lessen the potential economic impact of the barred owl removal experiment.

104. FWS did not indicate that the barred owl removal experiment would result in a net conservation benefit for northern spotted owls at the time it approved the experiment.

105. FWS has admitted that information gained from the barred owl removal experiment would not trigger any specific future federal action leading to a long-term conservation plan for northern spotted owls.

106. Friends of Animals challenged the sufficiency of the 2013 EIS and corresponding Scientific Collecting Permit for barred owls. The district court ruled in favor of FWS, and Friends of Animals appealed the permitting decision. The case is currently pending in the Ninth Circuit Court of Appeals. *Friends of Animals v. U.S. Fish and Wildlife Service*, No. 15-35639 (9th Cir.)

107. As of the date of this complaint, the barred owl removal experiment has not produced any conclusive results about the effectiveness or feasibility of barred owl removal as a long-term conservation strategy.

108. The barred owl removal experiment is an ongoing major federal action. To date,

the experiment has resulted in the removal of at least 448 barred owls in Oregon.

V. THE ENHANCEMENT OF SURVIVAL PERMITS AND SAFE HARBOR AGREEMENTS.

1. Roseburg Resources Company and Oxbow Timber I, LLC Enhancement of Survival Permits/SHA.

109. On November 3, 2015, FWS published notice of a Draft SHA for Roseburg Resources Company and Oxbow Timber I, LLC, as well as a draft environmental assessment in response to the two companies' combined application for Enhancement of Survival Permits to take federally threatened northern spotted owls.

110. The permit application included a Draft SHA that proposed allowing FWS or its contractors access to the applicants' properties to survey and kill barred owls as part of FWS's barred owl removal experiment. In exchange, the applicants sought a ten-year permit that would authorize the take of northern spotted owls on portions of enrolled property within the treatment portion of the Oregon Coast Ranges Study Area in Lane County, Oregon. The affected area spans approximately 9,400 acres and includes 19 sites where northern spotted owls have been identified in the past, but not in the last three years, and 308 acres of nesting/roosting habitat.

111. FWS issued an Enhancement of Survival Permit, number TE84825-B-0 to Roseburg Resources Company on January 19, 2016 implementing the SHA (hereinafter, "Roseburg Permit").

112. In issuing the Roseburg Permit, FWS authorized Roseburg to take northern spotted owls across approximately 400 acres of forest land within the treatment portion of the Oregon Coast Ranges Study Area.

113. On January 26, 2016, FWS issued an Enhancement of Survival Permit to Oxbow Timber I, LLC, number TE84826B-0, implementing the SHA (hereinafter, "Oxbow Permit").

114. In issuing the Oxbow Permit, FWS authorized Oxbow to take northern spotted

owls across approximately 9,000 acres of forest land within the treatment portion of the Oregon Coast Ranges Study Area.

115. In issuing the Roseburg and Oxbow Permits, FWS authorized Roseburg and Oxbow to take northern spotted owls through habitat destruction and degradation. FWS also authorized Roseburg and Oxbow to conduct activities in these areas that would harass northern spotted owls, including: routine harvest, the use of chainsaws and heavy equipment, road maintenance, construction activities, rock pit development, and spraying and fertilization.

116. FWS authorized this take on nineteen sites where northern spotted owls have been identified in the past, but not in the last three years. These sites are described in the SHA as “non-baseline sites.” These sites include 308 acres of northern spotted owl nesting/roosting habitat.

117. The Roseburg and Oxbow Permits and SHA not only cover lands that Roseburg and Oxbow own, but also cover areas of “potential operational activities” for which Roseburg and Oxbow hold easements and agreements allowing them to access the covered lands for timber haul and a variety of management activities. Some of these areas of “potential operational activities” occur on federal lands.

118. Some of the areas of potential operational activities covered by the Roseburg and Oxbow Permits occur on critical habitat within federal land.

119. FWS identified areas covered by Roseburg and Oxbow’s Permits in “sections.” As referred to in the SHAs, “sections” are one-square-mile (640-acre) segments of land, designated by the Bureau of Land Management's Public Land Survey System (PLSS).

120. The areas covered by the Roseburg and Oxbow Permits that are comprised entirely of critical habitat on federal land include the following sections:

- T 16S, R 08W: 4, 8, 9, 10, 15, 16, 25, 27, 28, 33;
- T 16S, R 09W: 13, 24, 33;

- T 17S R07W: 3, 4, 5, 8, 9, 17, 15, 21;
- T 17S, R 08W: 5, 10, 13, 19, 20, 21, 22, 23, 24, 25, 27, 30, 35;
- T 17S, R 09W: 5, 8, 23, 24;
- T 18S, R 08W: 3, 9; and
- T18S, R 09W: 2, 3

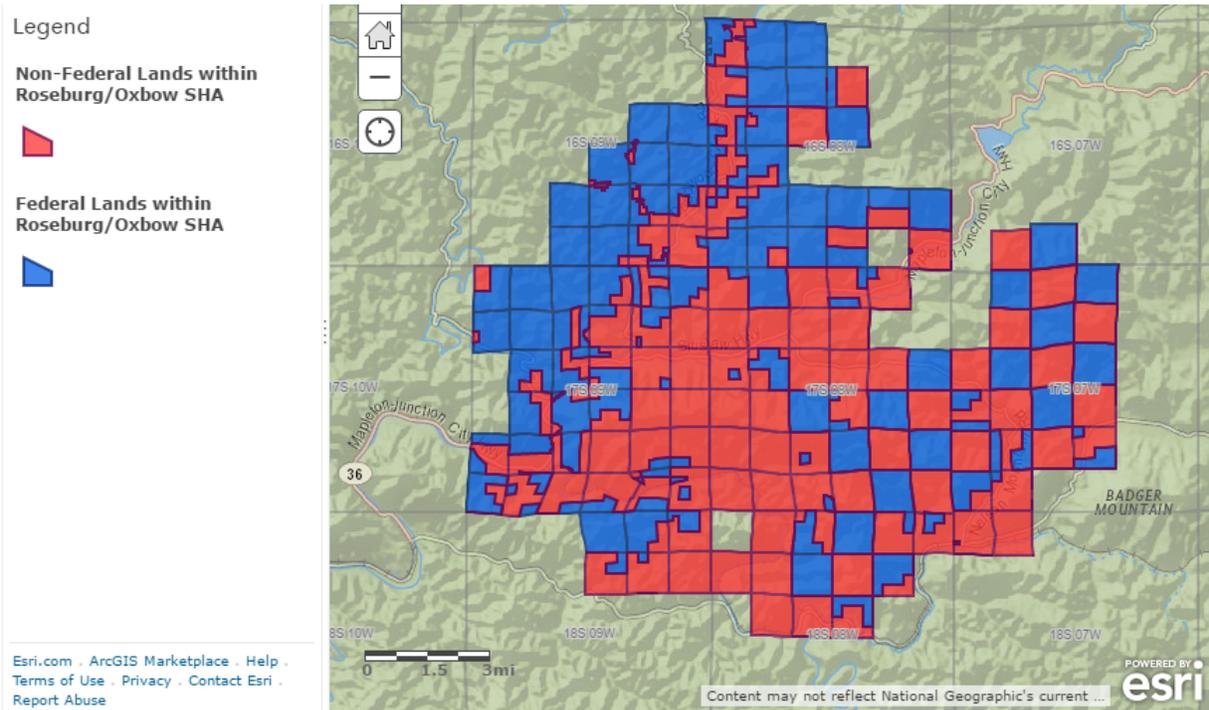


Figure 1. Map showing federal land within the Roseburg/Oxbow SHA. *Map data on federal land coverage provided by USGS and Esri. Map created using ArcGIS.*

121. Some of the sites that were identified as non-baseline and subject to timber harvesting in the Roseburg and Oxbow Permits and SHA additionally overlap with Known Spotted Owl Activity Centers and Late Successional Reserves on federal land that are designated for protection under the Northwest Forest Plan Standards and Guidelines at C-10 and C-11.

122. For example, FWS determined that the Wheeler Creek Site, Master Site # 2722, is a non-baseline northern spotted owl site where take is authorized under the Roseburg and Oxbow Permits.

123. Wheeler Creek Site, Master Site # 2722, is federally owned and managed by the
Complaint

Bureau of Land Management. The area is federally designated as a Known Spotted Owl Activity Center that is managed as a Late-Successional Reserve Habitat.

124. The Northwest Forest Plan Standards and Guidelines state at C-11 that, “Timber management activities within the 100-acre area should comply with management guidelines for Late-Successional Reserves . . . Because these areas are considered important to meeting objectives for species other than spotted owls, these areas are to be maintained even if they become no longer occupied by spotted owls.”

2. Weyerhaeuser Enhancement of Survival Permit/SHA.

125. Weyerhaeuser is the largest private owner of timberland in the United States. The company manages over 13 million acres of timberland. It is one of the highest-valued companies in the Pacific Northwest.

126. On February 22, 2016, FWS published notice of a Draft SHA for Weyerhaeuser Company, as well as a draft environmental assessment in response to the company’s application for an Enhancement of Survival Permit to take federally threatened northern spotted owls.

127. The permit application included a Draft SHA allowing FWS and its contractors access to Weyerhaeuser’s property to survey and kill barred owls as part of FWS’s barred owl removal experiment. In exchange, Weyerhaeuser sought a permit that would authorize the take of northern spotted owls on portions of its enrolled property covering approximately 7,500 acres within the treatment portion of the Oregon Coast Ranges Study Area in Lane County, Oregon.

128. On June 9, 2016, FWS issued Weyerhaeuser an Enhancement of Survival Permit, number TE85855B-0, implementing the SHA (hereinafter, “Weyerhaeuser Permit”).

129. In issuing the Weyerhaeuser Permit, FWS approved Weyerhaeuser’s SHA which by its terms allows Weyerhaeuser to take northern spotted owls across approximately 7,500 acres of forest land, and allows Weyerhaeuser to remove 1,072 acres of northern spotted owl

nesting/roosting habitat within the treatment portion of the Oregon Coast Ranges Study Area

130. However, for unknown reasons, FWS issued Weyerhaeuser a Permit that covers only 1,072 acres.

131. In issuing the Weyerhaeuser Permit, FWS authorized Weyerhaeuser to take northern spotted owls through habitat destruction and degradation. FWS also authorized Weyerhaeuser to conduct activities in these areas that would harass northern spotted owls, including: routine harvest, the use of chainsaws and heavy equipment, road maintenance, construction activities, rock pit development, and spraying and fertilization.

132. FWS authorized this take on sixteen sites of suitable spotted owl habitat where northern spotted owls have been identified in the past, but not in the last three years. These sites are described in the SHA as “non-baseline sites.”

133. In issuing the Weyerhaeuser Permit, FWS authorized the removal of up to 1,072 acres of northern spotted owl nesting/roosting habitat.

134. FWS authorized Weyerhaeuser to take northern spotted owls on many PLSS sections that are on federal lands. *See* Figure 2.

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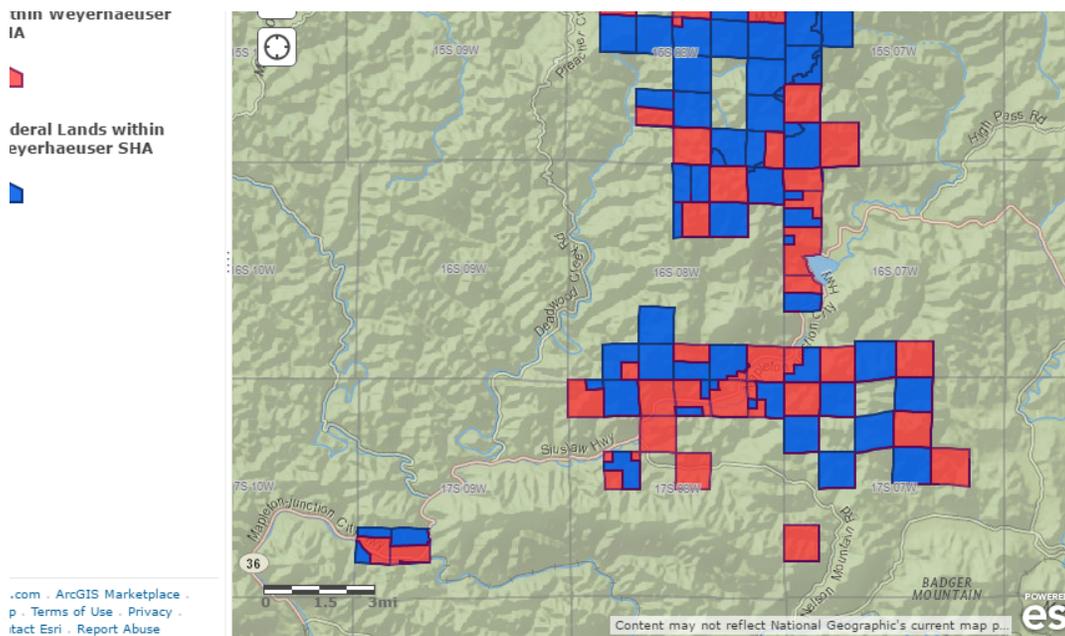


Figure 2. Map showing federal land within the Weyerhaeuser SHA. *Map data on federal land coverage provided by USGS and Esri. Map created using ArcGIS.*

3. Oregon Department of Forestry Enhancement of Survival Permit/SHA.

135. On March 21, 2016, FWS published notice of a Draft SHA for the Oregon Department of Forestry (ODF), as well as a draft environmental assessment in response to ODF's application for an Enhancement of Survival Permit to take federally threatened northern spotted owls.

136. The permit application included a Draft SHA allowing FWS and its contractors access to ODF's property to survey and kill barred owls as part of FWS's barred owl removal experiment. In exchange, ODF sought a thirteen-year permit that would authorize the take of northern spotted owls on portions of enrolled property covering approximately 20,000 acres

within the treatment portion of the Oregon Coast Ranges Study Area in Lane County, Oregon. This included eighteen sites where northern spotted owls have been identified in the past, but not in the last five years (“non-baseline sites”), 18,200 acres of spotted owl critical habitat, and at least 3,345 acres of nesting/roosting habitat.

137. On September 23, 2016, FWS issued ODF an Enhancement of Survival Permit, number TE93256B-0, implementing the SHA (hereinafter, “ODF Permit”).

138. The ODF Permit covers approximately 52,000 acres of forest land within the treatment portion of the Oregon Coast Ranges Study Area in Lane County, Oregon.

139. FWS failed to explain why the ODF Permit covers 32,000 acres more than what FWS analyzed and appeared to authorize in the SHA and environmental assessment.

140. In issuing the ODF Permit, FWS authorized ODF to take northern spotted owls through habitat destruction and degradation. FWS also authorized ODF to conduct activities in these areas that would harass northern spotted owls, including: routine harvest, the use of chainsaws and heavy equipment, road maintenance, construction activities, rock pit development, and spraying and fertilization.

141. FWS authorized this take on at least 3,345 acres of northern spotted owl critical nesting/roosting habitat.

142. FWS authorized ODF to take northern spotted owls on many PLSS sections that are on federal lands. *See* Figure 3.

143. The areas covered by the ODF Permit that are comprised entirely of critical habitat on federal land include the following sections:

- T 16S, R 08W: 12, 10, 14, 16;
- T 16S, R 09W: 16;
- T 17S, R 07W: 4, 8;

- T 17S, R 08W: 12, 11, 10, 24, 22, 20, 19, 30;
- T 17S, R 09 W: 23, 24;
- T18S, R 09W: 2, 3, 4.

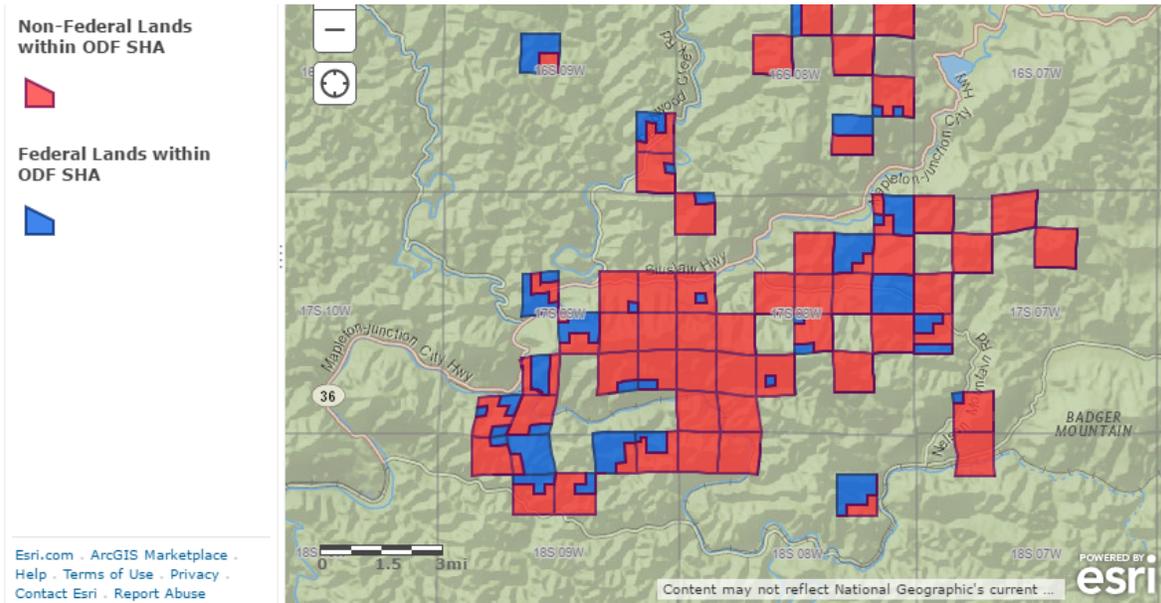


Figure 3. Map showing federal land within the Oregon Department of Forestry SHA. *Map data on federal land coverage provided by USGS and Esri. Map created using ArcGIS.*

4. Roseburg Resources Company Second Enhancement of Survival Permit/SHA.

144. On September 29, 2016, FWS published notice of a Draft SHA for Roseburg Resources Company, as well as a draft environmental assessment in response to the company's second application for an Enhancement of Survival Permit to take federally threatened northern spotted owls, this time in the Union/Myrtle (Klamath) Study Area in Douglas County, Oregon.

145. As before, the permit application included a Draft SHA allowing FWS to access Roseburg's property to survey and kill barred owls as part of FWS's barred owl removal experiment. In exchange, Roseburg sought a ten-year permit that would authorize the take of

northern spotted owls on portions of its enrolled property covering approximately 45,100 acres within the Union/Myrtle (Klamath) Study Area in Douglas County, Oregon.

146. On December 6, 2016, FWS issued Roseburg an Enhancement of Survival permit, number TE05794C-0 (hereinafter, “Second Roseburg Permit”).

147. FWS failed to include the effective dates on the face of the Second Roseburg Permit.

148. In issuing the Second Roseburg Permit, FWS authorized Roseburg to take northern spotted owls across approximately 45,100 acres of forest land within the treatment portion of the Union/Myrtle (Klamath) Study Area, near Canyonville, Oregon.

149. In issuing the Second Roseburg Permit, FWS authorized Roseburg to take northern spotted owls through habitat destruction and degradation. FWS also authorized Roseburg to conduct activities in these areas that would harass northern spotted owls, including: routine harvest, the use of chainsaws and heavy equipment, road maintenance, construction activities, rock pit development, and spraying and fertilization.

150. FWS authorized this take on thirty-three sites where northern spotted owls have been identified in the past, but not in the last three years (“non-baseline sites”).

151. FWS also included sites where spotted owls responded in 2015, less than three years ago, as non-baseline sites where Roseburg can take northern spotted owls.

152. The non-baseline sites for the Second Roseburg Permit include 7,080 acres of northern spotted owl nesting/roosting habitat.

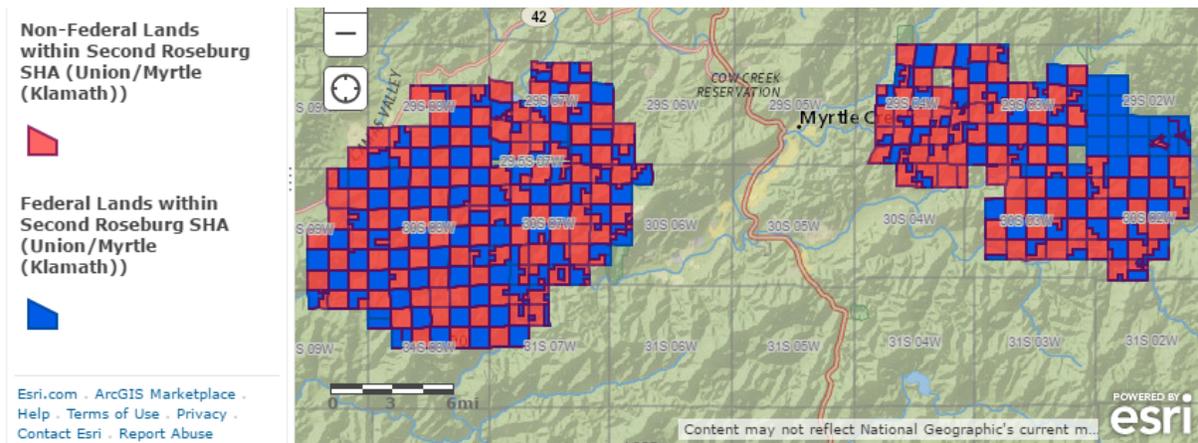


Figure 4. Map showing federal land within the RRC SHA II in the Union/Myrtle (Klamath) study area. *Map data on federal land coverage provided by USGS and Esri. Map created using ArcGIS.*

153. Many of the PLSS sections where FWS authorized Roseburg to take northern spotted owls are on federal lands. *See Figure 4.*

VI. RELATIONSHIP BETWEEN THE BARRED OWL REMOVAL EXPERIMENT AND THE ENHANCEMENT OF SURVIVAL PERMITS/SHAS.

154. In approving the barred owl removal experiment in 2013, FWS did not disclose any intention to expand the experiment to include non-federal lands in the future. Instead, FWS only addressed the possibility of working with non-federal landholders to help reduce the economic impacts anticipated in Oregon.

155. In issuing the Enhancement of Survival Permits, FWS added approximately 62,472 acres (253 km²) of treatment land to the barred owl removal experiment in the Oregon Coast Ranges Study Area.

156. By contrast, in approving the SHAs FWS appears to add approximately 36,900 acres (149 km²) of treatment land to the barred owl removal experiment in the Oregon Coast

Ranges Study Area.

157. FWS failed to explain the discrepancy between the Enhancement of Survival Permits and SHAs.

158. Regardless, the Enhancement of Survival Permits and SHAs significantly increase the size of the treatment portion of the Oregon Coast Ranges Study Area.

159. This added acreage includes approximately 4,725 acres of northern spotted owls nesting and roosting habitat.

160. The Second Roseburg Permit in the Union/Myrtle (Klamath) Study Area adds approximately 45,100 acres (183 km²) of treatment land to the barred owl removal experiment. The Second Roseburg Permit increases the size of the treatment portion of the Union/Myrtle (Klamath) Study Area by approximately 20%.

161. With the addition of the Second Roseburg Permit in the Union/Myrtle (Klamath) Study Area, FWS effectively added approximately 107,572 acres (435 km²) of treatment land to the barred owl removal experiment.

162. In total, FWS authorized the take of northern spotted owls across at least 11,805 acres (47 km²) of nesting/roosting habitat.

163. FWS failed to provide the public with consistent information regarding the size of the Oregon Coast Ranges Study Area. In the 2013 EIS, FWS determined that the Oregon Coast Ranges Study Area would include approximately 839,000 total acres and that barred owl removal would occur on approximately 419,500 acres. The SHAs, however, claim that the Oregon Coast Ranges Study Area includes approximately 418,000 total acres and that barred owl removal would occur on only 150,000 acres.

164. FWS has not issued a supplemental Environmental Impact Statement (EIS) to the 2013 barred owl removal experiment to analyze the impacts of the barred owl removal

experiment along with the Enhancement of Survival Permits and SHAs.

165. FWS did not notify interested parties from the barred owl removal experiment about the subsequent Enhancement of Survival Permits and SHAs.

VII. FINDINGS AND AUTHORIZATIONS COMMON TO ALL PERMITS.

166. In issuing the Enhancement of Survival Permits, FWS authorized Roseburg Resources Company, Oxbow Timber I, LLC, Weyerhaeuser Company, and the Oregon Department of Forestry (collectively, “Permittees”) to degrade and remove northern spotted owl habitat and to take northern spotted owls on portions of their lands throughout the duration of their Permits.

167. To issue these Enhancement of Survival Permits, FWS made a finding that the implementation of each of these SHAs is reasonably expected to result in a net conservation benefit to northern spotted owls.

168. FWS did not find that the implementation of the SHAs was likely to result in an overall increase in the northern spotted owl population.

169. FWS did not find that the addition of the Permittees’ lands to the barred owl removal experiment was reasonably expected to enhance, restore, or maintain suitable habitat within the enrolled property.

170. FWS based its net conservation benefit finding on the “informational benefit” it expects to gain from the barred owl removal experiment.

171. The potential consequences of the barred owl removal experiment’s data on northern spotted owls are uncertain and unknown.

172. In 2013, FWS found that it lacked sufficient information to support a barred owl management strategy decision and that the feasibility of future barred owl management was unknown.

173. To date, the results of the barred owl removal experiment are still inconclusive.

174. FWS still does not have sufficient information to determine whether barred owl removal is a feasible or effective method for conserving northern spotted owls.

175. FWS did not state when, if ever, the barred owl removal experiment would contribute to the recovery of northern spotted owls.

176. FWS does not expect to develop a long-term barred owl management program for the conservation of northern spotted owls during the terms of the Enhancement of Survival Permits and SHAs.

177. The conservation benefit, if any, resulting from the Enhancement of Survival Permits and SHAs is not reasonably expected to occur during the terms of the SHAs.

178. FWS failed to describe how it determined that the “informational benefit” of the barred owl removal experiment outweighed the harms of the authorized takes to result in a net conservation benefit.

179. Because the effect of the barred owl removal experiment on northern spotted owls remains unknown, one cannot determine whether northern spotted owls will benefit from adding Permittees’ land to the experiment.

180. FWS’s approval of the Enhancement of Survival Permits and SHAs will cause harm to northern spotted owls.

181. In issuing the Enhancement of Survival Permits and SHAs, FWS authorized the take of northern spotted owls throughout the duration of the barred owl removal experiment and for at least five years after the experiment ends.

182. FWS authorized this take on all areas that were not identified as baseline, except where a pair of northern spotted owls is actively nesting between March 1 - September 30.

183. In the SHAs, FWS defined baseline sites as known spotted owl sites where

surveys have detected northern spotted owls in the past three years, or in the case of the ODF Permit, in the past five years.

184. For the Enhancement of Survival Permits and SHAs, FWS described non-baseline sites as known northern spotted owl sites where surveys have previously detected northern spotted owls, but not in the past three years, or five years in the case of the ODF Permit.

185. For the Enhancement of Survival Permits and SHAs, FWS's definition of baseline failed to accurately identify population estimates, population distribution, habitat characteristics, and areas of the enrolled property that sustained seasonal or permanent use by northern spotted owls.

186. FWS's definition of baseline sites that sustain seasonal or permanent use by northern spotted owls failed to adequately consider known spotted owl sites as required by its own northern spotted owl survey protocol, guidelines, and past recommendations.

187. The northern spotted owl survey protocol recognizes that surveys are imperfect and that the presence of barred owls increases the risk of not detecting northern spotted owls because northern spotted owls are less likely to respond to calls if barred owls are present.

188. Under FWS's current northern spotted owl survey protocol, landowners planning to conduct projects in suitable spotted owl habitat that could potentially impact northern spotted owls are required to survey the project area for owls six times per year for at least two years while the project is ongoing. If a project may impact an area where northern spotted owls have been identified in the past or where barred owls are present, then the protocol requires additional "spot-check" surveys for northern spotted owls in the third and fourth years of the project. These spot-check surveys are required regardless of whether surveyors failed to detect northern spotted owls in the past three years in the area.

189. If the spot-check surveys detect a northern spotted owl, then the landowner must

postpone any operations that have a likelihood of causing direct harm to a northern spotted owl, and ensure that appropriate protection measures are implemented to avoid incidental take.

190. Absent the barred owl removal experiment, northern spotted owls have returned to nest at historically occupied sites even after three or more years of surveys have consistently failed to detect them there.

191. In some cases, surveyors do not detect northern spotted owls on historically occupied sites because the owls have shifted to an alternate nest site within their core area or home range, but the owls continue to utilize the historically occupied site over time.

192. Additionally, there is a population of “floater” northern spotted owls in Oregon that are not territorial, but may seasonally inhabit historical sites even where northern spotted owls have not been identified in the past three to five years.

193. FWS has previously determined that three years of protocol survey results alone is not a sufficient or appropriate basis to determine abandonment of historic northern spotted owl sites.

194. To best predict potential northern spotted owl site occupancy, FWS has previously recommended that survey results be considered in combination with comprehensive evaluations of habitat condition and historical use.

**FIRST CAUSE OF ACTION
(National Environmental Policy Act)**

195. Friends of Animals herein incorporates all allegations contained in the preceding paragraphs.

196. The 2013 EIS failed to fully analyze the impacts of the Enhancement of Survival Permits and SHAs as part of the barred owl removal experiment.

197. FWS has a legal obligation to supplement an EIS for an ongoing agency action if it makes substantial changes to the proposed action or encounters significant new circumstances or information bearing on the action that are relevant to environmental concerns or impacts.

198. FWS's approval of the Enhancement of Survival Permits and SHAs, which expand the barred owl removal experiment onto non-federal land and authorize the take of northern spotted owls, constitutes a substantial change to the original barred owl removal experiment.

199. The Enhancement of Survival Permits and SHAs contain significant new information and circumstances, such as the expansion of the barred owl removal experiment on non-federal land and the authorization of take of northern spotted owls on approximately 11,805 acres of nesting and roosting habitat, that are relevant to environmental concerns and impacts of the barred owl removal experiment.

200. The public should be informed in a meaningful way about FWS's actions and final decisions on the barred owl removal experiment and Enhancement of Survival Permits and SHAs.

201. On the above facts and legal obligations, FWS's actions in approving the Enhancement of Survival Permits and SHAs without supplementing its NEPA analysis for the barred owl removal experiment were arbitrary, capricious, and not in accordance with the law as required by Section 706 of the APA.

**SECOND CAUSE OF ACTION
(Endangered Species Act)**

202. Friends of Animals herein incorporates all allegations contained in the preceding paragraphs.

203. In approving the Enhancement of Survival Permits and SHAs, FWS: (1) improperly granted exemptions from ESA enforcement for activities occurring on federal land; (2) improperly defined baseline conditions; and (3) failed to provide a net conservation benefit to the northern spotted owl.

204. FWS violated the ESA and its implementing regulations in approving the Enhancement of Survival Permits and SHAs.

205. FWS's approval of the Enhancement of Survival Permits and SHAs was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. As such, the Enhancement of Survival Permits and SHAs should be vacated under the Administrative Procedure Act, 5 U.S.C. § 706.

REQUEST FOR RELIEF

Friends of Animals respectfully requests the Court enter judgment providing the following relief:

1. Declare that FWS violated NEPA and its implementing regulations and acted arbitrarily and capriciously by failing to supplement the Final Environmental Impact Statement for the barred owl removal experiment.

2. Vacate the Enhancement of Survival Permits and Safe Harbor Agreements unless and until FWS issues a supplement to the 2013 EIS and otherwise fully complies with the NEPA.

3. Enjoin any action authorized under the Enhancement of Survival Permits and Safe Harbor Agreements unless and until FWS issues a supplement to the 2013 EIS and otherwise fully complies with the NEPA.

4. Declare that FWS violated the ESA and its implementing regulations and acted arbitrarily and capriciously by issuing the Enhancement of Survival Permits and Safe Harbor

Agreements.

5. Vacate the Enhancement of Survival Permits and Safe Harbor Agreements unless and until FWS fully complies with the ESA.
6. Enjoin any action authorized under the Enhancement of Survival Permits and Safe Harbor Agreements unless and until FWS fully complies with the ESA.
7. Award Friends of Animals reasonable costs, including reasonable attorney fees under the Equal Access to Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412); and
8. Grant Friends of Animals any other relief that the Court deems just and proper.

Dated: June 2, 2017

Respectfully Submitted,

s/David Bahr
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