United States Department of the Interior

FISH AND WILDLIFE SERVICE
911 NE 11th Avenue
Portland, Oregon 97232-4181

In Reply Refer to:
FWS/IR9/ES

OCT -4 2019

Memorandum

To: Deputy Regional Director

From: Assistant Regional Director - Ecological Services

Subject: Acting Minor Amendment of the Safe Harbor Agreement and Extension of the Enhancement of Survival Permit for Roseburg Resources in the Oregon Coast Ranges through August 31, 2026

The U.S. Fish and Wildlife Service (Service or USFWS) is proposing to approve a minor amendment to extend the term of the Safe Harbor Agreement (SHA) and Enhancement of Survival Permit (Permit) for Roseburg Resources Co. (RRC) in the Oregon Coast Ranges Study Area of the Experimental Removal of Barred Owls to Benefit Threatened Spotted Owls (Experiment) for one year to August 31, 2026. This minor amendment was developed in response to the Service's August 28, 2019, decision to continue the Experiment through August 31, 2021.

Experiment Background

On September 10, 2013, the Service signed a decision to implement the Experiment and issued a scientific collection permit for the research. The Experiment implements Recovery Action 29 of the Revised Recovery Plan (Recovery Plan; USFWS 2011, p. III-65) for the Northern Spotted Owl: *"Design and implement large-scale control [removal] experiments to assess the effects of barred owl removal on spotted owl site occupancy, reproduction, and survival."* The Experiment is focused on acquiring information necessary to help identify effective management approaches and guide the implementation of appropriate management strategies for barred owls, in accordance with Recovery Action 30 (USFWS 2011, p. III-65): *"Manage to reduce the negative effects of barred owls on spotted owls so that [stable population trends of spotted owls] can be met."*

Strong evidence demonstrates that barred owls negatively affect northern spotted owls (spotted owl) and their populations. Without management intervention competition from barred owls may cause extirpation of the spotted owl from all or a substantial portion of its historical range (USFWS 2013b, p. 1). The Recovery Plan identified competition from barred owls was one of the two primary threats to the spotted owl (USFWS 2011, p. III--62). To develop a barred owl

management strategy that will conserve spotted owls, the Service needs information on feasibility of potential management tools, including the removal of barred owls.

Decision to Continue the Experiment

On August 28, 2019, the Service decided to continue the Experiment through August 2021, information on which can be accessed at https://www.fws.gov/oregonfwo/articles.cfm?id =149489616. The accompanying analysis and findings posted on the webpage are incorporated here by reference. The results from the Experiment to date indicate a positive response in some aspects of the spotted owl population demographics to the removal effects of barred owls, though areas of uncertainty remain. Continuation of barred owl removal through August 2021 will allow us to validate that the apparent initial indications of positive spotted owl response are not a result of the natural variation of these natural systems.

SHA Background

The Oregon Coast Ranges Study Area was chosen for the Experiment, in part because it includes an ongoing spotted owl demography study area. This provides long-term information that is useful in detecting spotted owl population responses to the barred owl removal. While this area is focused on Federal lands, it contains interspersed non-Federal lands. The Service sought access to some non-Federal lands for surveys and removal of barred owls that would allow the Service to complete the Experiment in the most efficient and complete manner and reduce the potential for pockets of productive barred owls within the study area. In 2016, the Service signed SHAs with RRC, Oxbow Timber I LLC, the Weyerhaeuser Company, and the Oregon Department of Forestry for the Oregon Coast Ranges Study Area. The initial SHA with Oxbow Timber I LLC was transferred to RRC in August 13, 2018 (USFWS 2018) following the transfer of Oxbow timberlands to RRC.

The current term of the SHA with RRC and the associated Permit is ten years, ending on August 31, 2025. This term was based on the assumption that removal of barred owls on the Experiment would run for four years and providing for assumed barred owl return to the areas of treatment within the remaining term. However, the Service was aware that the Experiment might be continued beyond the initial estimated end date. Therefore, in the SHA and associated analyses, we specifically addressed the potential for continuation of the Experiment and our intent to extend the Permit should that be needed.

> *"7.2 **Safe Harbor Agreement Renewal***
>
> *The Safe Harbor Agreement can be extended with the written approval of RRC or Oxbow and USFWS. Upon the mutual written agreement of the Parties, and compliance with all laws then applicable, the USFWS may extend the permit and the Safe Harbor Agreement beyond its initial term. If barred owl removal on the experiment extends beyond 4 years, for a maximum of 10 years as described in the Record of Decision (USFWS 2013b), the USFWS intends to extend the permit to 5 years after the final removal season. The*

extended permit would be based on continuation of the existing baseline." (Excerpt from the RRC SHA.)

Net Conservation Benefit

In proposing to extend the term of the SHA and Permit, the Service evaluated whether the revised duration is sufficient to provide a net conservation benefit to the spotted owl considering the duration of the planned activities, as well as the positive and negative effects associated with Permit or the continuation of the Experiment over the revised term.

The Service initiated the Experiment to gather crucial information for the development of a barred owl management strategy to conserve spotted owls, including the feasibility of barred owl removal as a potential management tool. Scientists, biologists, and managers have identified barred owl removal as the most realistic and practical tool described to date for such management.

To gather the strongest, most credible information from the Experiment, the Service chose to conduct the Experiment on ongoing spotted owl demography study areas, which include some interspersed non-Federal lands. In the SHA, we noted that while the Experiment can be implemented without access to non-Federal lands, absent that access the Service and U.S. Geological Survey researchers would lack access to important locations within the treatment area, creating pockets of barred owls within the treatment area. This would provide a source of barred owls to reoccupy spotted owl sites following removal of barred owls, and these barred owls could continue to displace spotted owls from these sites and areas, thus reducing the power of the Experiment to measure the utility of barred owl removal for purposes of conserving the spotted owl and potentially extending the duration of the Experiment.

All of the currently occupied spotted owl sites on the study area are within the baseline and no incidental take of spotted owls resulting from forest management activities at these sites is authorized under the Permit. This includes all spotted owl sites with evidence of resident spotted owl occupancy within the three years prior to the signing of the SHA. In fact, the reduction of barred owl populations on the treatment area may actually increase the probability that spotted owls will be able to remain on these currently occupied sites. This remains the case under the extension of the Permit, and early results from the Experiment show higher survival rates for spotted owls within the treatment area compared to the areas where no barred owls are removed.

If barred owl removal does allow spotted owls to reoccupy sites that are not currently occupied (non-baseline), RRC will be allowed to take these spotted owls. It is highly unlikely that these sites would be reoccupied by spotted owls without the removal of barred owls. The Service anticipates that barred owls will again displace spotted owls from these sites as the barred owl population rebuilds over the following three to five years once the Experiment is completed. Thus, the spotted owl presence on these sites is temporary in all cases. In developing the

Experiment and assessing its effects, the Service did not anticipate long-term conservation benefits from the spotted owls that might reoccupy historic sites in the Study Area.

The extension of the SHA and Permit for one year does not change the conservation value of the information gained, the temporary protection of currently occupied spotted owl sites, and the potential short-term spotted owl occupancy of currently unoccupied sites. For these reasons, the proposed extension does not change the Service's determination that this SHA and Permit provide a net conservation benefit for spotted owls.

Analysis of the Environmental Assessment

The Service analyzed the effect of a potential future extension of the SHA on the Final Amended Environmental Assessment (EA) addressing the Service's "Proposed Issuance of Enhancement of Survival Permits to Roseburg Resources Company and Oxbow Timber I, LLC to Authorize the Incidental Taking of Northern Spotted Owls in Lane County, Oregon" (USFWS 2017a, p. 8):

> *"In the FEIS and ROD for the experiment, (USFWS 2013a and b) we note that if the spotted owl response to removal of barred owls is not as strong as anticipated the experiment could include up to 10 years of removal. Therefore, we have analyzed the expected permit length (10 year permit, including 5 years following the completion of the experiment) and a permit for 15 years in the event we need to extend the experiment, and therefore the Permit."*

In the EA, the Service noted the potential for an increase in spotted owl site occupancy as a result of the Experiment, and also noted that this was likely a short-lived improvement because barred owls are anticipated to reoccupy these sites soon after completion of the experimental removal. The Service analyzed the effect of both the initial Permit term, and the potential for an extension of the Permit for up to 15 years in the event the Experiment was continued for the full 10 years. The current proposal extends the Experiment by only two years, and the effects of extending the Permit here to 2026 are well within the effects analyzed in the EA:

> *"**3.1.2 Effects on Spotted Owls under the Action Alternative***
>
> *Under the Safe Harbor Agreement, RRC and Oxbow would be permitted to take spotted owls that may reoccupy up to 19 historic spotted owl sites during the Barred Owl Removal Experiment and for five years following the end of the experiment, for a total of 10 years. If the spotted owl response to barred owl removal is not as strong as anticipated, we may extend removal for up to a total of 10 years, and in this case would anticipate extending the Safe Harbor Agreement for up to a total of 15 years. Spotted owls have not been detected on these non-baseline sites for three or more years."*

As noted in the EA, the Experiment is short-term and we estimated that barred owl populations would return to pre-removal levels within three to five years of the end of the barred owl removal (USFWS 2013a, p. 148-9). Based on the rate of barred owl reoccupation of cleared sites in the Oregon Coast Ranges during the first four years of removal (Wiens et al. 2019), this estimate remains accurate. Thus, any spotted owls that do reoccupy historic sites as a result of

barred owl removal on accessible Federal lands would again be displaced within five years post-experiment, as anticipated. The conservation value of the Experiment is primarily associated with the information on the effect of barred owl removal on spotted owl populations, the cost of such removal, and potential management methodologies, and the value of this information to the development of a long-term barred owl management strategy. We did not anticipate long-term conservation benefits to the spotted owls that might reoccupy historic sites in the Study Area.

Incidental Take of Spotted Owls under the Permit

The Service anticipated the incidental take of spotted owls that may reoccupy up to 19 non-baseline spotted owl sites during the Experiment and for five years following the end of the Experiment. The primary cause of take would be the loss of habitat to forest management activities. In the EA, the Service assumed the loss of all 308 acres of spotted owl nesting/roosting habitat from RRC lands within the non-baseline spotted owl sites during the duration of the Permit. Thus, the extension of the Permit does not change the area of habitat covered by the Permit and the potential incidental take from habitat loss, but simply extends the potential impact over one additional year. In the EA, the Service determined that this incidental take from disturbance of nesting spotted owls is not likely to represent a significant impact on spotted owls in the Study Area due to the small number of site centers on or immediately adjacent to RRC lands and the limited time frame when disturbance affects spotted owls. This situation does not change with the extension of the Permit for one year.

In terms of spotted owl habitat loss and incidental take, the continuation of the Permit through August 31, 2026, does not change the environmental effects of the Permit on spotted owls.

Biological Opinion

We conducted a review of the Biological Opinion addressing "Reinitiation of Formal Consultation on the Proposed Issuance of an Endangered Species Act Enhancement of Survival Permit for a SHA for the Northern Spotted Owl between Roseburg Resources Company and the U.S. Fish and Wildlife Service" (USFWS 2015) and the "Reinitiation of Formal Consultation on the Proposed Issuance of an Endangered Species Act Enhancement of Survival Permit for a Safe Harbor Agreement for the Northern Spotted Owl between Roseburg Resources Company Oxbow Timber I, LLC and the U.S. Fish and Wildlife Service" (USFWS 2017b) to determine if the extension of the SHA and the Permit through August 31, 2026, would require reinitiation of the consultation (see Attachment). The amount or extent of incidental take of spotted owls defined in the Biological Opinion has not been exceeded and is not projected to be exceeded under the extension of the SHA. There is no new information that indicate any increase in effects to listed species or critical habitat not considered in the Biological Opinion. The SHA and Permit have not been modified in a manner that causes effects to listed species or critical habitat not considered in the Biological Opinion. Finally, no new species have been listed or critical habitat

designated that may be affected by the continuation of the Experiment. Therefore, no reinitiation of consultation is required.

Finding of No Significant Impact

Based on the information presented in the EA and the SHA, the Service found that the proposed issuance of an Enhancement of Survival Permit to RRC for incidental take of spotted owls that may reoccupy currently unoccupied sites and areas as a result of the SHA was not likely to significantly affect the quality of the human environment for the following reasons. This rationale remains valid with the extension of the SHA and Permit through August 31, 2026, and the Finding of No Significant Impact (FONSI) remains adequate.

The Permit authorized the incidental take of spotted owls resulting from forest management activities that may reoccupy non-baseline sites or areas where resident spotted owls had not been detected in the three years prior to the signing of the SHA despite extensive surveys. These sites and areas were unlikely to be reoccupied by spotted owls unless barred owls were removed from the area. Any non-baseline sites that became occupied by spotted owls during the Experiment would likely be lost as barred owls repopulate the area following the end of the Experiment. This remains the case under the extension.

No incidental take of spotted owls was authorized under the Permit for currently occupied sites (those with at least one resident spotted owls over the three years prior to the signing of the SHA). By providing access to lands and roads for the survey and removal of barred owls as part of the larger Experiment, spotted owl sites are more likely to remain occupied in the these areas during the period of the SHA. This remains the case under the extension, and early results from the Experiment show higher survival rates for spotted owls within the treatment area compared to the areas where no barred owls are removed.

The conservation value of the Experiment, and this SHA which supports the Experiment, is the information the Service will gain about the feasibility and efficiency of removal as a tool for barred owl management. This information will be crucial for the development of long-term barred owl management strategies to support the survival and recovery of the spotted owl.

Conclusions

When the SHA with RRC and the associated Permit were issued, the Service was aware that the Experiment might be continued beyond the initial estimate of four years. Therefore, in the SHA and associated analyses, we specifically addressed the potential for continuation of the Experiment and our intent to extend the Permit if this occurred. All analyses related to the issuance of the SHA and Permit were conducted assuming the potential for the SHA and Permit to be extended for up to 15 years, i.e., through 2030. The environmental effects of the proposed extension to the end of August 2026 is well within the scope of effects already analyzed in the EA.

The conservation value of the Experiment is primarily associated with the information on the effect of barred owl removal on spotted owl populations, the cost of such removal, and potential

management methodologies, and the value of this information to the development of a long-term barred owl management strategy. We did not anticipate long-term conservation benefits to the spotted owls that might reoccupy historic sites in the Study Area. The extension of the SHA and Permit to August 21, 2026, does not change the conservation value of the information gained, the temporary protection of currently occupied spotted owl sites, and the potential short-term spotted owl occupancy of currently unoccupied sites. Thus, the proposed extension does not change the Service's determination that this SHA and Permit provide a net conservation benefit for spotted owls.

In terms of spotted owl habitat loss and incidental take, the continuation of the Permit through August 31, 2026, does not change the environmental effects of the Permit on spotted owls, but rather extends the period over which those effects will occur for one additional year. Based on the information presented in the EA and the SHA, the Service found that the proposed issuance of the Permit to RRC for incidental take of spotted owls that may reoccupy currently unoccupied sites and areas as a result of the SHA was not likely to significantly affect the quality of the human environment. No reinitiation of consultation on the SHA and Permit is required. Based on our review of current information and circumstances, the amendment of the SHA and extension of the Permit through August 31, 2026, does not alter the FONSI.

Therefore, we recommend amendment of the term of the SHA and the Permit for RRC to August 31, 2026.

Recommendation

I request that you concur with the above findings that amendment of the RRC SHA and Permit term do not require supplementation of the EA, reinitiation of Section 7 consultation, or change the FONSI: I further request that you approve the extension of the RRC SHA and Permit through August 31, 2026.

Concur: _____ Do not Concur:

Date: 10 Jul 2019 Date: _____

Attachment

Literature Cited

U.S. Fish and Wildlife Service. 2011. Revised Recovery Plan for the Northern Spotted Owl (*Strix occidentalis caurina*). U.S. Fish and Wildlife Service, Portland, Oregon.

U.S. Fish and Wildlife Service. 2013a. Final Environmental Impact Statement for the Experimental Removal of Barred Owls to Benefit Threatened Spotted Owls. U.S. Fish and Wildlife Service, Portland, Oregon.

U.S. Fish and Wildlife Service. 2013b. Record of Decision for the Experimental Removal of Barred Owls to Benefit Threatened Spotted Owls. U.S. Fish and Wildlife Service, Portland, Oregon.

U.S. Fish and Wildlife Service. 2015. Biological Opinion addressing the Proposed Issuance of an Endangered Species Act Enhancement of Survival Permit for a Safe Harbor Agreement for the Northern Spotted Owl between Roseburg Resources Company, Oxbow Timber I, LLC, and the U.S. Fish and Wildlife Service. U.S. Fish and Wildlife Service, Portland, Oregon.

U.S. Fish and Wildlife Service. 2017a. Final Amended Environmental Assessment addressing the Service's Proposed Issuance of Enhancement of Survival Permits to Roseburg Resources Company and Oxbow Timber I, LLC to Authorize the Incidental Taking of Northern Spotted Owls in Lane County, Oregon. U.S. Fish and Wildlife Service, Portland, Oregon.

U.S. Fish and Wildlife Service. 2017b. Biological Opinion addressing the Reinitation of Formal Consultation on the Proposed Issuance of an Endangered Species Act Enhancement of Survival Permit for a Safe Harbor Agreement for the Northern Spotted Owl between Roseburg Resources Company, Oxbow Timber I, LLC and the U.S. Fish and Wildlife Service. U.S. Fish and Wildlife Service, Portland, Oregon.

U.S. Fish and Wildlife Service. 2018. Letter transmitting the transfer of the Enhancement of Survival Permit from Oxbow Timber I, LLC to Roseburg Resources Co. U.S. Fish and Wildlife Service, Portland, Oregon.

U.S. Fish and Wildlife Service and Roseburg Resources Co. 2016. Safe Harbor Agreement for the Northern Spotted Owl between Roseburg Resources Company, Oxbow Timber I, LLC, and the U.S. Fish and Wildlife Service in the Oregon Coast Ranges Study Area of the Barred Owl Removal Experiment.

Wiens, J.D., Dugger, K.M., Lesmeister, D.B., Dilione, K.E., and Simon, D.C., 2019, Effects of Barred Owl (Strix varia) removal on population demography of Northern Spotted Owls (Strix occidentalis caurina) in Washington and Oregon, 2015–18: U.S. Geological Survey Open-File Report 2019-1074, 17 p.

Attachment: Review of the Biological Opinion Regarding the Proposed Issuance of an Endangered Species Act Enhancement of Survival Permit for a Safe Harbor Agreement for the Northern Spotted Owl between Roseburg Resources Corporation and the U.S. Fish and Wildlife Service and its Effects on the Northern Spotted Owl in the Oregon Coast Ranges.

The U.S. Fish and Wildlife Service (Service) is proposing a minor amendment to the Safe Harbor Agreement (SHA) for the Northern Spotted Owl between Roseburg Resources Co. (RRC) and the Service, extending the SHA and Enhancement of Survival Permit (Permit) terms through August 31, 2026.

In 2016, RRC and Oxbow Timber I LLC (Oxbow), signed the Safe Harbor Agreement with the Service and received individual Enhancement of Survival Permits (Permit). On August 1, 2018, Oxbow conveyed all of its timberlands to the RRC. As part of this transaction, Oxbow assigned its interest, rights, and obligations in and under the Safe Harbor Agreement to RRC. RRC accepted the interests and rights and assumed the obligations thereunder for both the Agreement and the Permit. The Oxbow Permit was transferred to RRC on August 2, 2018.

The Permit and SHA address incidental take of the northern spotted owl (spotted owl) due to potential habitat loss on designated non-baseline sites and areas where resident spotted owls were not located in the three years prior to the issuance of the initial Permit, and were therefore considered unoccupied at that time.

Covered activities include timber operations and management activities. RRC received incidental take coverage for spotted owls on non-baseline sites and areas through August 31, 2025.

We reviewed the Biological Opinion on the SHA to determine if continuation for one year would trigger the need to reinitiate the consultation (FWS Reference Number 01EOFW00-2017-F-0037).

50 CFR Section 402.16 states, "Reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the action agency that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action."

The results of our analysis of the effect of the minor amendment of the SHA relative to the four conditions for reinitiation of formal consultation, are as follows.

Reinitiation Criterion 1: The proposed extension of the SHA and Permit term will not change the amount of agreed upon incidental take analyzed in the November 14, 2017, Biological Opinion. The Service assumed that all remaining spotted owl nesting and roosting habitat on non-baseline sites and areas owned by RRC could be removed under the Permit by the end of the Permit term,

August 31, 2025. In the minor amendment, no change is proposed to the non-baseline sites, and only the term of the removal period is being extended. This minor amendment to the SHA stretches the authorized incidental take resulting from habitat removal for one additional year. Because the Service had already assumed and analyzed the effect of the loss of all remaining spotted owl habitat in the non-baseline areas, extending the period over which take will occur by one additional year does not change the effects of the take.

Reinitiation Criterion 2: There is no new information available revealing increased effects to the spotted owl by the extension of the Permit term that was not analyzed in the original consultation. There is no spotted owl critical habitat included in the SHA.

As discussed in the effects analysis of the December 23, 2015 Biological Opinion, the SHA and Permit allows RRC to incidentally take spotted owls that may reoccupy sites considered unoccupied at the time of the Permit issuance as a result of the Barred Owl Removal Experiment. Without the SHA, RRC could have immediately removed the surveyed and unoccupied spotted owl habitat as there are no restrictions to harvest of unoccupied habitat. During the Experiment, the remaining resident spotted owls on the covered lands of the SHA that are not covered under the Permit are likely to benefit from reduced competitive pressure of the barred owls.

The conservation value of the Experiment, and of this SHA which supports that Experiment, is information on the feasibility and efficiency of lethal removal as a tool for barred owl management. By allowing a more complete removal effort, stronger and timelier results are likely. Failure to access these roads and lands could result in pockets of barred owls remaining within the treatment area, reducing the effect of the removal and potentially extending the length of the Experiment and delaying the development and implementation of any future barred owl management strategy. All of these analyses remain valid under the extension of the Permit to August 31, 2026.

There is no spotted owl critical habitat designated on RRC lands, or other non-Federal lands covered under this SHA. Thus, there is no effect on critical habitat.

Therefore, extension of the SHA and Permit term will not increase effect to spotted owls or cause effects to designated critical habitat that were not already considered in the 2015 Biological Opinion and reviewed in the 2017 Biological Opinion analysis. The Permit term extension will simply extend the timeframe over which these effects could occur.

Reinitiation Criterion 3: The extension of the SHA and Permit term from August 31, 2025, through August 31, 2026, is the only change in the action from the description of the action in the original Biological Opinion and fits within its scope of the analysis. The effects of the SHA and Permit were based on the amount of take authorized, resulting from the loss of spotted owl nesting/roosting habitat in the non-baseline sites and areas. The level of take and potential loss of habitat are not changed by the extension of the SHA and Permit term. Therefore, the agency action has not been modified in a manner that causes an effect to the listed species (or critical habitat) not considered in 2015 and 2017 Biological Opinions.

Reinitiation Criterion 4: No new species have been listed or critical habitat designated that could be affected by the proposed action.

Based on the preceding analysis of the reinitiation criteria, the Service determines that reinitiation c is not necessary for the extension of the SHA and Permit term through August 31, 2026.

Finally, a review of the 2013 and 2019 Status of the Species for the spotted owl shows that the threats to the spotted owl, the range wide environmental baseline and population numbers of spotted owls are similar. The most recent demography analysis covered population trends through 2013. A new demography analysis will be conducted in early 2020. Based on annual reports, we anticipate that spotted owl populations have continued to decline since the last demography analysis. We do not anticipate that the extension of the SHA and Permit term will negatively affect the status of the spotted owls and may, in fact, temporarily improve spotted owl population numbers because as barred owls are removed from RRC lands, spotted owls are more likely to nest and reproduce in their historic territories on those lands.