



**DEPARTMENT OF  
NATURAL RESOURCES**

**Forest Practices Division**  
1111 Washington St SE  
Olympia, WA 98504

May 12, 2020

**TO:** Forest Practices Board

**FROM:** Marc Engel, Senior Policy Planner, Forest Practices Division  
Mary McDonald, Assistance Division Manager, Forest Practices Division

**SUBJECT:** Petition for Rulemaking Regarding the Northern Spotted Owl

The attached petition for rulemaking from the North Central Washington Audubon Society (Audubon) was received as complete on March 25, 2020. The Board has 60 days from its receipt of a complete rulemaking petition to either accept the petition and initiate rulemaking or deny the petition in writing stating its reasons for denial specifically addressing Audubon's concerns. If the Board issues a denial, the explanation may also indicate alternative means for addressing the concerns raised by the petitioner. (WAC 222-08-100) Thus, the Board will need to act on the petition at its May 13<sup>th</sup> quarterly meeting.

Through its concern for the protection of one Northern spotted owl site center in Eastern Washington, Audubon requests broad changes to the Board's owl rules in both Eastern and Western Washington. A condensed summary of North Central Washington Audubon Society petition requests and concept follows.

In the petition, Audubon questions whether the Forest Practice rules related to Spotted Owl Special Emphasis Areas (SOSEAs) east of the Cascade Crest are achieving appropriate habitat protection and requests amendments to the NSO rule language as it concerns the definition of habitat, and it seeks to expand changes in how the Board's SEPA policies (WAC 222-10-041) are administered. Additionally, the petition seeks to establish long-term plans for each SOSEA as to how the landowners located there will grow and provide suitable habitat for Northern spotted owls.

Petitioner offered these concepts to address their requests: provide a review of current suitable habitat, and survey all SOSEAs to determine the extent of suitable habitat within each circle. This information would be used to develop a long term plan for each SOSEA. The plan would address how to reach the habitat threshold for SOSEAs which are deficient of suitable habitat and to ensure those at suitable habitat threshold remain compliant in maintaining suitable habitat. Plan development would consider fragmentation of habitat. The Board should repeal the small parcel exemption of non-critical habitat designation. Approval of any forest practices application or proposed activity within a SOSEA must be predicated upon a determination of it being consistent with the long term SOSEA plan governing it.

## **DNR Staff Recommendation**

DNR finds that the petition would require the complete overhaul of the existing functions of the Northern spotted owl rules in Eastern and Western Washington. The petition addresses complex issues involving Northern spotted owl conservation expertise that requires a coordinated effort by DNR and the Department of Fish and Wildlife (WDFW). DNR needs and relies upon WDFW to fully address how and when habitat assessments or changes in habitat definitions/thresholds should be implemented.

DNR collaborates with WDFW on habitat evaluations of individual FPAs, including verification of habitat typing (per rule definitions). There has not been a recent FPA which has proposed harvesting suitable owl habitat, and DNR is adhering to the requirements for environmental review under WAC 222-10-041 based on the current Northern spotted owl habitat thresholds.<sup>1</sup> Should an activity be proposed within suitable habitat within an owl circle below the targeted thresholds, mitigation considerations to further SOSEA goals would occur under WAC 222-10-041(7).

WDFW has provided its assessment and recommendation to DNR (attached). WDFW cites the barred owl's threat, not the current habitat definitions/acreage thresholds in rule, as the main reason for the Northern spotted owl's decline. DNR concurs with WDFW and recommends the Board deny the petition and not amend the rules related to owl habitat in WAC 222-16-080 and -085.

Not all of the North Central Washington Audubon Society requests in the petition are for rule changes. Given that the petition questions current wildlife conservation measures, DNR is working with WDFW and landowners to assist with developing conservation options for this sensitive pair of the NSO population. It is recommended that the agencies continue to work with landowners to develop conservation options for the area of concern and report progress to the Board at the August 2020 meeting. In addition, both DNR and WDFW recognize the value of reassessing the current status of suitable habitat and habitat distribution in the North Blewett Pass SOSEA. Therefore the agencies will commit to exploring what kind of effort it would take to review whether the goals of the North Blewett Pass SOSEA over the last 25 years have been successful and report back to the Board on process, timing and resources needed to do this evaluation.

DNR and WDFW staff will be available to answer questions at your upcoming Board meeting. Should you have any questions in the meantime, please feel free to contact me at 360-902-1390 or [marc.engel@dnr.wa.gov](mailto:marc.engel@dnr.wa.gov).

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<sup>1</sup> WAC 222-10-041 outlines the SEPA policies for the Northern Spotted owl *only* for Class IV-Special forest practices involving the harvest of Northern spotted owl habitat defined by WAC 222-16-085 that exists within SOSEAs established in WAC 222-16-086. DNR has been implementing WAC 222-10-041(7), which requires DNR to consider mitigation if the SEPA documents associated with Class IV-Special proposals have identified probable significant adverse impacts to the owl. The rule guides an environmental analysis for individual FPAs, but does not provide measures for requiring mitigation if harvests are proposed within an owl circle but not in habitat.

Attachments

c: Joseph Shramek, , DNR  
Jeff Davis, Terra Rentz, Gary Bell, Joe Buchanan, WDFW



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March 25, 2020

Department of Natural Resources  
Stephen Bernath, Forest Practices Board Chair  
1111 Washington St. SE  
PO Box 47012  
Olympia, WA 98504-7012

Re: Petition to the Forest Practices Board Regarding the Spotted Owl in Washington

Washington State's Spotted Owl Special Emphasis Areas (SOSEA) represent a core strategy for preventing the continued decline of the Northern Spotted Owl on nonfederal lands in Washington over which the state has jurisdiction. North Central Washington Audubon Society contends that the rules applying to SOSEAs east of the Cascade Crest demonstrably are not achieving the protection of needed habitat. Simply put, they are failing the owl, and thereby show that the law, or at least its application in Eastern Washington, needs to be revisited and strengthened.

The following example, involving the only known breeding pair of Northern Spotted Owl remaining in Eastern Washington and Oregon, demonstrates the current rules are insufficient and thereby flawed, and/or they are not being adhered to.

### **Case in Point**

We are aware of a pair of Northern Spotted Owls (NSO) occupying a SOSEA in Eastern Washington. In 2016 they returned to nest in federal timberlands that are part of a SOSEA that also contains private forest parcels in checkerboard fashion. The same year, the timber company that owns the private parcels applied for and received permits to log some of its lands lying within the 1.8-mile radius area (222-10-041 (4) refers to it as the "median home range circle") of the SOSEA. In the process of considering the requested permits, the Department of Natural Resources (DNR) and the Department of Fish and Wildlife determined the habitat quality within this zone did not meet defined standards that would allow them to deny the applications. Hence, the permits were granted.

With these permits approved, logging took place in the winter of 2016 and into the nesting season of 2017. Because it was so close to and disruptive of the owl's nest site, they abandoned the stand they've occupied for 13 of the last 16 years and moved east to a section of the privately-owned timberland within the median home range circle

previously determined to be unsuitable for them. In 2017, they successfully fledged a chick while nesting on this supposedly unsuitable private timber land. In 2018, they returned to the historic nest on National Forest Land and successfully fledged 2 chicks. Importantly, this is the only documented NSO pair known to have successfully reproduced in 2018 in all of both eastern Washington and eastern Oregon. In 2019, possibly because of the loss of foraging habitat north of the historic nest site in 2016 and 2017, they nested again on the supposedly unsuitable private timber land parcel.

### **Applicable Law**

We believe DNR must adhere to WAC 222-10-041 (2), (4), (6), and (7) in making decisions in this matter:

*(2) In SOSEAs or areas of SOSEAs where the goal is dispersal support, either suitable spotted owl habitat should be maintained to protect the viability of the owl(s) associated with each northern spotted owl site center or dispersal habitat should be managed, over time, to provide the dispersal support for that particular SOSEA as described in the SOSEA goals. Dispersal support is provided by a landscape which includes dispersal habitat at the stand level interspersed with areas of higher quality habitat. Stands of dispersal habitat should be managed to reduce gaps between stands and to maintain a sufficient level of dispersal habitat to meet the SOSEA goals over time.*

*(4) Within SOSEAs, the following amounts of suitable habitat are generally assumed to be necessary to maintain the viability of the owl(s) associated with each northern spotted owl site center, in the absence of more specific data or a mitigation plan, as provided for in subsections (6) and (7) of this section respectively:*

*(a) All suitable spotted owl habitat within 0.7 mile of each northern spotted owl site center.*

*(b) Including the suitable spotted owl habitat identified in (a) of this subsection:*

*(i) For the Hoh-Clearwater/Coastal Link SOSEA - A total of 5,863 acres of suitable spotted owl habitat within the median home range circle (2.7-mile radius).*

*(ii) For all other SOSEAs - A total of 2,605 acres of suitable spotted owl habitat within the median home range circle (1.8-mile radius).*

*(6) The assumptions set forth in subsection (4) of this section are based on regional data. Applicants or others may submit information that is more current, accurate, or specific to a northern spotted owl site center, proposal, or SOSEA circumstances or goals. The department shall use such information in making its determinations under this section where the department finds, in consultation with the department of fish and wildlife, that the information is more likely to be valid for the particular circumstances than the assumptions established under subsection (4) of this section. If the department does not use the information, it shall explain its reasons in writing to the applicant.*

*(7) The department shall consider measures to mitigate identified adverse impacts of an applicant's proposal. Mitigation measures must contribute to the achievement of SOSEA goals or to supporting the viability of impacted northern spotted owl site centers.*

## **Discussion**

Habitat determinations and approvals of harvest applications in a circle already deficient in suitable spotted owl habitat raise the question of whether WAC 222-10-041 (2), (4), (6), and (7) were, or are, being followed. If a SOSEA has less than the 2,605 acres of suitable spotted owl habitat within its median home range circle and additional unsuitable habitat is allowed to be harvested, the circle will remain deficient and the achievement of SOSEA goals will thereby never be met. This is contrary to (2) above.

The fact that this owl pair subsequently chose to nest, and did so successfully, in the habitat previously determined not to be of high enough quality to support them, proves that the law, as it applies to Eastern Washington SOSEA median home range circles is flawed, not being followed, or both. DNR should be required to consider and use this information in accordance with (4) and (6) above. It is also known that the Northern Spotted Owl in Eastern Washington is in continuing decline and facing almost certain extirpation if stronger measures are not taken.

Approval of the permits cited in the case above were certain to have negative impacts within the median home range of the owl circle and thereby on the SOSEA itself. WAC 222-10-041 (7) clearly states that DNR must consider mitigation measures for the adverse impacts approval of these permits allowed. We are, however, unaware of any such action having been taken.

Recently the timber company announced that they will reserve 100 acres around this nest tree on their land. This mitigation measure is entirely inadequate given that the circle is already below threshold. The integrity of the SOSEA must be maintained if extirpation of the northern spotted owl there is to be prevented. For this to occur, the rules and administration of the law as they apply to SOSEAs east of the Cascade Crest warrant reconsideration.

Also of concern is the well documented threat the Barred Owl poses to the continued existence of the NSO. Habitat fragmentation is known to be a primary factor contributing to the Barred Owl's interface with, and thereby negative impact upon, the NSO. It should be obvious that actions that increase fragmentation within SOSEAs are contrary to the goals they are intended to achieve.

## **Our Recommendations**

It is apparent that several required aspects of WAC 222-10-041 are not being followed when forest practices applications are considered. We also believe WACs 222-16-080 and 222-16-085 as currently written undermine WAC 222-10-041. Our recommendations for rectifying issues of concern indicated above include the following:

- 1) WAC 222-16-085 lays out a set of criteria for determining habitat suitability. As we understand it, any tract of forest within a SOSEA that fails on even one of them is thereby determined not to qualify as being suitable, and as a result, is open to logging operations. Given the example (case in point) described above, WAC 222-16-085 clearly fails as a mechanism for making such determinations. As currently written, it simply provides ways to permit logging within SOSEAs that are clearly inconsistent

with the intent of WAC 222-10-041. Given this, we suggest that WAC 222-16-085 be fully reconsidered and remedied.

- 2) WAC 222-10-041 (4) (i and ii) clearly state the minimum amount of suitable habitat each SOSEA should contain. It should be clear that for any SOSEA currently under threshold of suitable habitat “generally assumed to be necessary to maintain the viability of the owl(s) associated with each northern spotted owl site center” a plan should be made to bring it up to at least that amount. We, therefore, suggest all SOSEAs be surveyed to determine to what extent they are, or may become, deficient in the amount of suitable habitat they contain. With that information in hand, for each found to be deficient, a plan should be devised to assure they eventually come to protect at least the amount of suitable habitat considered sufficient. Additionally, for SOSEAs found to currently have at least the desired amount of suitable habitat, plans should be developed to assure they don’t fall out of compliance going forward.
- 3) WAC 222-10-041 (7) states “The department shall consider measures to mitigate identified adverse impacts of an applicant’s proposal.” We recommend the clause be changed to state “The department shall require measures to mitigate identified adverse impacts of an applicant’s proposal.”
- 4) Documented NSO population declines in Washington suggest subsection (4) assumptions and regional data may no longer be accurate. We recommend a review of regional data and incorporation of the results into subsection (4).
- 5) Regarding WAC 222-10-041 (7), for the North Blewett SOSEA mentioned above, we are not aware of any mitigation actions having been mandated or implemented. Some logging permits granted there were clearly contrary to the welfare of the pair of owls present on the site, so we would assume mitigation actions called for in section 7 would have been required. As far as we know, none were, so we wonder if this section is ever employed, and if so, how decisions regarding them are made. The SOSEA plans we recommend above should mandate mitigative actions whenever any activity within a SOSEA has the potential to negatively impact its ability to support NSOs.
- 6) Regarding WAC 222-16-080 (iv), the small parcel northern spotted owl exemption states “forest practices proposed on the lands owned or controlled by a landowner whose forest land ownership within the SOSEA is less than or equal to 500 acres and where the forest practice is not within 0.7 mile of a northern spotted owl site center shall not be considered to be on lands designated as critical habitat (state) for northern spotted owls”. Given that the overriding intent of WAC 222-10-041 is to protect the NSO within SOSEAs, and the fact that smaller parcels within them, but not within .7 miles of the site center, may very well be necessary to conserving the desired amount of suitable habitat, we recommend this exemption be repealed.
- 7) Habitat fragmentation is well-known to have negative impacts for NSO populations. The greatest concern here may be the welcome sign it puts out to Barred Owls, which are known to prey on NSOs and potentially interbreed with them. We note WAC 222-10-041 subsection (2) states “Stands of dispersal habitat should be managed to reduce gaps between stands and to maintain a sufficient level of dispersal habitat to meet the SOSEA goals over time.” Given this, we suggest that, in addition to the surveys/plans proposed above, all SOSEAs be assessed to determine the amount and distribution of fragmentation currently existing within them. This information would then inform, and be folded into, the plans suggested above. The goal should be to minimize

fragmentation and thereby maximize the amount of contiguous NSO or potential NSO habitat within each SOSEA.

The FPB's goal in this matter should be to assure all aspects of WAC 222-10-041 are implemented and that the rules governing it faithfully execute its intent. We don't believe this is currently the case and, therefore, request the FPB remedy the situation.

**Our Request**

Pursuant to WAC 222-10-041(6), North Central Washington Audubon Society requests the FPB address the 7 NCWAS recommendations above. Specifically, we ask the FPB:

- 1) Require all aspects of WAC 222-10-041 be adhered to when considering forest practices applications.
- 2) Undertake a full reconsideration of the rules (WAC 222-16-080 and 222-16-085) applying to SOSEAs in Washington State.
- 3) Mandate long-term plans specific to each SOSEA. Approval of any application or proposed activity within a SOSEA must be predicated upon a determination of it being consistent with the plan governing it.

Sincerely,



Arthur Campbell

President, North Central Washington Audubon Society

CC Hillary Franz, Commissioner of Public Lands  
Todd Welker, Region Manager, DNR Southeast Region  
Jim Brown, Director, Washington Department of Fish & Wildlife Region 2  
Trina Bayard, Director of Bird Conservation, Audubon Washington





State of Washington  
**DEPARTMENT OF FISH AND WILDLIFE**

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May 6, 2020

To: Joe Shramek, DNR Forest Practices Division Manager

From: Gary Bell, Wildlife Biologist, WDFW Forest Habitats Section

**Subject: WDFW Recommendations for North Central Washington Audubon Society  
March 25, 2020, Petition to the Forest Practices Board Regarding the Northern  
Spotted Owl in Washington**

On behalf of the Washington Department of Fish and Wildlife (WDFW), thank you for the opportunity to provide recommendations to DNR concerning the North Central Washington Audubon Society (NCWAS) petition submitted to the Forest Practices Board (Board) on March 25, 2020 regarding Northern Spotted Owl (NSO). WDFW's mandate is to "preserve, protect, perpetuate, and manage" the state's fish, wildlife and ecosystems (RCW 77.04.012). We fulfill this mandate in partnership with state, federal, tribal and local jurisdictions who have the authority and responsibility to regulate land use. The petition presented by NCWAS asserts that the Forest Practice rules (Rule) applying to Spotted Owl Special Emphasis Areas (SOSEAs) east of the Cascade Crest are not achieving appropriate habitat protection. It further contends that the Rule needs to be revisited and strengthened.

Our agency works closely with Washington Department of Natural Resources (DNR) concerning many aspects of NSO Rule implementation and places great importance on maintaining strong working relationships with private landowners to achieve our NSO conservation objectives. Our collaboration includes evaluation of Forest Practice Applications (FPA), verification of habitat typing (per Rule definitions), and providing technical assistance to landowners. Given the declining NSO population, we understand the importance of protecting remaining individuals in the population including the specific nesting pair of interest. Protecting and enhancing our working relationships with private landowners also remains a high priority in order to achieve collaborative solutions for NSO recovery.

WDFW does not recommend changes to the current forest practice rules (WAC 222-16-080 and WAC 222-16-085) for NSO as requested by NCWAS. The primary issue impacting NSO is not one of habitat amount or habitat definitions; the main problem is competition between Barred Owls and Spotted Owls. We (DNR, WDFW) are currently exploring options to protect this specific NSO pair by working directly with the landowner on voluntary habitat conservation opportunities. Further, while we do not agree with the premise for conducting surveys as recommended in the petition, as described in WAC 222-10-041 (2), we encourage DNR to consider an assessment of the current amount, condition, and distribution of demographic and dispersal habitats within the SOSEA of interest. WDFW is interested in partnering to investigate what a habitat assessment might look like and what resources might be required given the likelihood of limited staffing and fiscal resources.

WDFW remains appreciative of our collaborative work with DNR, large and small private landowners, and our other interested stakeholders to properly assess NSO habitat per the current Rule, while also striving to identify innovative strategies with forest landowners to protect habitat and contribute to conservation of NSO in Washington. Feel free to contact me at [atgary.bell@dfw.wa.gov](mailto:atgary.bell@dfw.wa.gov) or 360-628-0728 if you have any questions concerning our recommendations.

Cc: Mary McDonald, DNR  
Marc Engel, DNR  
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Joe Buchanan, WDFW