

DATES: Comments must be filed on or before June 27, 1996, and reply comments on or before July 12, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Patrick A. Mulreany, President, Donegal Enterprises, Inc., P.O. Box 123, Smith, Nevada 89430 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96-103, adopted April 22, 1996, and released May 6, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AD20

Endangered and Threatened Wildlife and Plants; Proposed Special Rule for the Conservation of the Northern Spotted Owl on Non-Federal Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed special rule; additional information.

SUMMARY: On February 23, 1996, the Service issued a Draft Environmental Alternatives Analysis (EAA) for the proposed special section 4(d) rule for the conservation of the northern spotted owl on non-Federal lands in California and Washington. The proposed special rule was published in the Federal Register on February 17, 1995 (60 FR 9484). The comment period for the draft EAA and the proposed rule was recently extended, (61 FR 15452, April 8, 1996) and is scheduled to end for both documents on June 3, 1996.

The comment period was extended, in part, to allow the public the opportunity to review a proposal by the State of Washington Forest Practices Board that would address impacts of forest practices to the northern spotted owl. The state has asked the Service to consider their proposed state rule as a possible alternative to the current special rule proposed by the Service. The Service seeks additional comments from the interested public, agencies, and interest groups on the Draft EAA, the proposed special rule, and on the State of Washington's proposed state rule as a possible alternative to the rule currently proposed by the Fish and Wildlife. The purpose of this document is to provide a summary of Washington's proposed rule, and a comparison of that rule with the Service's proposed special rule.

DATES: The comment period for written comments closes June 3, 1996.

ADDRESSES: Comments and materials concerning the Draft Environmental Alternatives Analysis, the proposed rule and the potential use of the Washington Forest Practices Board proposed rule as an additional alternative should be sent to Mr. Michael J. Spear, Regional Director, Region 1, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181. The complete file for this proposed rule will be available for public inspection, by appointment during normal business hours, at the U.S. Fish and Wildlife

Service, Office of Technical Support for Forest Resources, 333 S.W. 1st Avenue, 4th Floor, Portland, Oregon 97204, (503/326-6218).

FOR FURTHER INFORMATION CONTACT: Mr. Curt Smitch, Assistant Regional Director, Region 1, U.S. Fish and Wildlife Service, 3704 Griffin Lane S.E., Suite 102, Olympia, Washington 98501, (206/534-9330); or Ron Crete, Office of Technical Support for Forest Resources, 333 S.W. 1st Avenue, Portland, Oregon 97232-4181, (503/326-6218).

SUPPLEMENTARY INFORMATION: The Service published its proposed rule under section 4(d) of the Endangered Species Act on February 17, 1995 (60 FR 9484), followed by the release of the draft Environmental Alternatives Analysis (EAA) which describes and analyzes the potential environmental effects of the proposed special rule and six alternatives for the conservation of the northern spotted owl on non-Federal lands in Washington and California.

The State of Washington's Forest Practices Board (Board) began work in 1993 to develop a rule to address the impacts of forest practices on northern spotted owls in that state. Following the publication of the Service's proposed rule, the Board accelerated work on the current version of the proposed state rule. The northern spotted owl is listed as endangered by the Washington Fish and Wildlife Commission. The state's proposed rule is similar in many ways to the Service's proposed 4(d) rule, although there are some differences. The state has asked the Service to consider the state's proposed rule as an alternative to the Service's current proposed rule.

The rule proposed by the Washington Forest Practices Board would classify forest practices in spotted owl habitat as "Class IV-Special". Class IV-Special designation includes forest practices within critical wildlife habitats (state) of species listed as threatened or endangered under either the Federal Endangered Species Act or state law, and requires that certain forest practices proposed to occur in these habitat areas be evaluated relative to their potential to have substantial impacts to the environment. Such forest practices may include timber harvesting, road construction and aerial spraying of pesticides, and are subject to environmental review under the State Environmental Policy Act (SEPA).

A review under SEPA involves a detailed analysis of a proposed action to determine if it will have a significant impact on the environment. Should a finding of significance be made, then an Environmental Impact Statement (EIS)

must be prepared before the Department of Natural Resources (DNR) can act on a forest practice application. Under SEPA, the forest practice may be conditioned or denied, if necessary, to mitigate specific adverse environmental impacts.

The Board's goal in developing its proposed rule was to "prepare a rule that captures all forest practices that have potential for a substantial adverse impact on the environment. In the case of the owl, any forest practice that damages the long-term viability of the northern spotted owl in Washington State (WDNR 1996)." The Board also adopted five objectives to support the proposed rule (WDNR 1996):

(1) Define a level of [owl conservation] contribution from nonfederal lands that is essential to complement the federal recovery and conservation strategy for the northern spotted owl population in Washington State.

(2) Identify those landscapes that are essential to complement the federal conservation and recovery strategy. Identify whether their primary function is for dispersal or population maintenance.

(3) Maximize the use of local planning to promote flexibility. To do this, provide as specific criteria as possible for different levels of planning.

(4) Minimize conflicts between federal and state standards.

(5) Minimize economic impacts.

Generally, the Board's proposed rule involves ten spotted owl special emphasis areas (SOSEAs) that are made up of all or parts of 13 landscapes identified in the Spotted Owl Scientific Advisory Group (SAG) Report (Hanson et al. 1993). The proposed state rule assigns specific owl conservation functions or goals to the SOSEAs, includes a small parcel exemption,

disturbance restrictions, and provides provisions for optional landowner conservation planning. Within the SOSEAs, areas are designated for either dispersal or demographic support, or a combination of both. Figure 1 shows the location of the SOSEAs.

Within all the SOSEAs, except the one for the Entiat area, the proposed state rule would designate harvesting, road construction or aerial application of pesticides on suitable spotted owl habitat inside owl nesting circles (site centers) with less than specified amounts of suitable habitat as Class IV-Special activities, triggering a review under SEPA. Within the Entiat SOSEA, the SEPA trigger would only apply on suitable habitat inside owl circles and inside the areas designated for demographic support. The specified amounts of suitable habitat include 5,863 acres within a 2.7 mile circle for the Hoh-Clearwater/Coastal Link SOSEA, and 2,605 acres within a 1.8 mile circle for all other SOSEAs.

Both inside and outside SOSEAs, harvesting, road construction or aerial application of pesticides between March 1 and August 31, on the 70 acres of highest quality suitable owl habitat surrounding the site center, would be Class IV-Special actions.

The proposed state rule provides several exemptions to the SEPA trigger within the SOSEAs: an approved landowner option plan (LOP); an approved habitat conservation plan (HCP) from the Fish and Wildlife Service; pre-listing agreements or habitat management plan accompanied by a "no-take" letter from the Fish and Wildlife Service; and the provisions of a final 4(d) rule adopted by the Fish and Wildlife Service. A small parcel exemption is provided if a landowner owns 500 acres or less within the SOSEA and the proposed forest practice

is not within 0.7 mile of a northern spotted owl site center.

The planning components of the proposed state rule include the LOP and the cooperative habitat enhancement agreement (CHEA). The details of the LOP process have not been finalized, and may be added to the rule at a later date. The CHEA option is available to landowners not currently impacted by owls, and is intended to preclude early harvesting based on fear of regulatory impact and to provide additional owl habitat. Under the provisions of Washington's proposed rule, if habitat is allowed to be harvested within an owl circle through one of the planning options (LOP, CHEA or HCP), the harvested habitat will continue to be counted in the calculation of suitable habitat from the date of plan approval and forward, even after harvest has occurred. The state's intent with this provision is to prevent the transfer of responsibility for maintenance of habitat from one landowner within an owl circle to another.

This state proposal also includes disturbance restrictions inside SOSEAs during nesting season that apply within .25 mile of a site center between March 1 and August 31, unless affected owls are not actively nesting.

It is important to note that the Service's proposed special 4(d) rule is based on avoidance of incidental take prohibitions for the owl. The State's proposed rule is based on the avoidance of triggering the requirements of a review under Washington's SEPA rather than on avoidance of incidental take prohibitions.

A tabular comparison of the Washington proposed rule and the Service's proposed 4(d) rule is provided in Table 1.

TABLE 1

Rule provision	Washington proposed rule	Service proposed rule
1. Landscapes	10 SOSEAs: Columbia Gorge* Entiat * (Special SEPA trigger) Finney Block I-90 West I-90 East* (includes Teanaway, Taneum, Easton) Mineral Block/Link Siouxxon* White Salmon * North Blewett Hoh-Clearwater/Coastal Link * Means modified from original SAG boundaries Note: SOSEA goals/functions are identified on Figure 1	6 SEAs: Columbia River Gorge/White Salmon. (Not proposed). Finney Block. I-90 Corridor (includes I-90E, I-90W, Taneum, Easton, Blewett). Mineral Block (includes Mineral Link). Siouxxon Creek (included in other SEA) (included in other SEA). Hoh-Clearwater. SEAs may provide dispersal, demographic or combination support, to be decided on a case by case basis, except in areas surrounded by or located in matrix or AMA lands, except if sites are centered on reserve or withdrawn areas.
2. Owl Circle Dimensions:		

TABLE 1—Continued

Rule provision	Washington proposed rule	Service proposed rule
Inside SOSEAs	All SOSEAs: All habitats within 0.7 miles/1,000 acres retained. Hoh-Clearwater SOSEA: 5,863 acres of suitable owl habitat within median owl home range circle (2.7 mile radius) must be retained.	Dimensions are discussed in the preamble to the proposed 4(d) rule and the DEAA. Median annual home range, approximately the same size as state proposal.
Outside SOSEAs	All other SOSEAs: 2,605 acres of suitable owl habitat within median owl home range circle (1.8 mile radius) must be retained The 70 acres highest quality habitat around the site center must be retained from March 1 through Aug. 31.	At least 40 percent suitable owl habitat within owl median home range must be retained.
3. SEPA Trigger: Within Important Landscapes.	Within SOSEA boundaries harvesting, road construction or aerial application of pesticides on suitable habitat inside owl circles (except within the Entiat SOSEA where the trigger applies only on suitable habitat inside owl circles and inside the areas indicated for demographic support.).	Federal permit requirement, no NEPA trigger exists.
Outside Important Landscapes.	Outside of a SOSEA: harvesting, road construction, or aerial application of pesticides between March 1 and August 31, on the 70 acres of highest quality suitable habitat	
Exemptions to SEPA	—Under an approved Landowner Option Plan —HCP approved by USFWS —Prelisting agreements or habitat management plan accompanied by a “no-take” letter from the USFWS —4(d) rule adopted by the USFWS —Small parcel exemption	
4. Prohibited Activities: Within Important Landscapes.	The SEPA triggers in the state proposal require SEPA review, they do not prohibit activities.	Under the ESA, “incidental take” is generally prohibited and is only allowed under limited circumstances. Timber harvest activities are prohibited in SEAs if they result in the incidental take of a spotted owl (a significant likelihood if suitable habitat drops below 40 percent within the median annual owl home range.) Alternative proscription allows harvesting on non-Federal lands surrounded by or located in Federal matrix or AMA lands if the Federal matrix or AMA prescriptions and restrictions are followed.
Outside Important Landscapes.	(No equivalent)	Timber harvest actions are prohibited if they result in retention of less than 70 acres of highest quality suitable habitat closest to the site center or impact the sites centered inside Federal Reserves, Administratively withdrawn lands or Congressionally reserved lands (no seasonal restrictions). Incidental take of owls is not authorized for owls whose site center is located within or along the boundary of a Federal reserve or Administratively withdrawn lands or Congressionally reserved lands (except on the Olympic Peninsula), or along or within the boundary of an SEA.
Exemptions to Prohibitions.	(No equivalent)	Harvest is allowed: —With an approved HCP; —With an approved Local Option Plan; —With a Spotted Owl Habitat Enhancement Agreement.
5. Planning Components Needed to Authorize Incidental Take:.	Establishes a process for the development of the Landowner Option Plan (LOP):. —Description of area; —Identifies elements that are to be included in a LOP: —Goals and objectives —Planning area description —Physical features —Current spotted owl habitat status —Current owl status —Management proposals and operation plans —Projected spotted owl habitats —Training —Monitoring —Reporting	Habitat Conservation Plan (HCP) required for owners of more than 5,000 acres. HCPs must include:

TABLE 1—Continued

Rule provision	Washington proposed rule	Service proposed rule
	<ul style="list-style-type: none"> —Plan modification —Plan duration —Approval process —Enforcement process (No equivalent)	Proposes a Local Option Conservation Plan (Short-Form HCP) for Owners of 80–5,000 acres. Basic criteria generally same as for regular HCP although the application process will be streamlined.
	Establishes a process for the development of Cooperative Habitat Enhancement Agreements. Identified elements: <ul style="list-style-type: none"> —Description of agreement area —Current owl habitat status —Management proposals —Projected habitat development —Agreement modification —Agreement duration —Approval process —Enforcement process Agreement to be approved by DNR in consultation with Washington Department of Fish and Wildlife, others..	Proposes similar Habitat Enhancement Agreement process.
6. Disturbance	Road construction within SOSEA boundary restricted within .25 miles of site center between March 1 and August 31, unless owls are not actively nesting. Felling and bucking within SOSEA boundary restricted within .25 miles of site center between March 1 and August 31, unless owls are not actively nesting. Cable yarding within a SOSEA boundary restricted within .25 miles of site center between March 1 and August 31, unless owls are not actively nesting.. Helicopter yarding within SOSEA boundary restricted within .25 miles of site center between March 1 and August 31, unless the owls are not actively nesting.. Tractor and wheel skidding systems operations of heavy equipment within a SOSEA boundary restricted within .25 miles of site center between March 1 and August 31, unless the owls are not actively nesting.. Slash disposal or prescribed burning within a SOSEA boundary restricted within .25 miles of site center between March 1 and August 31, unless the owls are not actively nesting..	(No equivalent proposal).
7. Small Landowner Exemption.	Provides for small parcel exemption: —If a landowner owns or controls 500 acres or less within the SOSEA; and —The forest practice is not within .7 mile of a site center	Owners of not more than 80 acres of forest land not restricted as long as harvest does not destroy or degrade the 70 acres of suitable habitat closest to the owl site center.

The Service is in the process of analyzing the state's proposed rule as a possible alternative to the Service's proposed 4(d) rule published February 17, 1995. The state's comment period for their proposed rule has expired, however, the Service is interested in receiving comment from the interested public regarding the advisability of adapting some or all of the Washington state rule in any final 4(d) rule that the Service may publish. To receive an actual copy of the State of Washington proposed rule and the state's Supplemental Draft Environmental Impact Statement, write to Washington State Department of Natural Resources, Forest Practices Division, P.O. Box

47012, Olympia, WA 98504–7012, Attn: Judith Holter.

The Service's Draft EAA, including all maps, tables, charts, and graphs, remains available on the Internet's World Wide Web at <http://www.r1.fws.gov/4deaa/welcome.html>.

References Cited

Hanson, E., Hays, D., Hicks, L., Young, L., and J. Buchanan. 1993. Spotted owl habitat in Washington: a report to the Washington Forest Practices Board. Washington Forest Practices Board Spotted Owl Advisory Group. Olympia, Washington.

WDNR. 1996. Supplemental draft environmental impact statement and appendices on forest practices rule proposals for the northern spotted owl. Washington Forest Practices Board, Washington Department of Natural Resources. Olympia, Washington.

Dated: April 30, 1996.

Thomas Dwyer,
Acting Regional Director, U.S. Fish and Wildlife Service Region 1, Portland, Oregon.

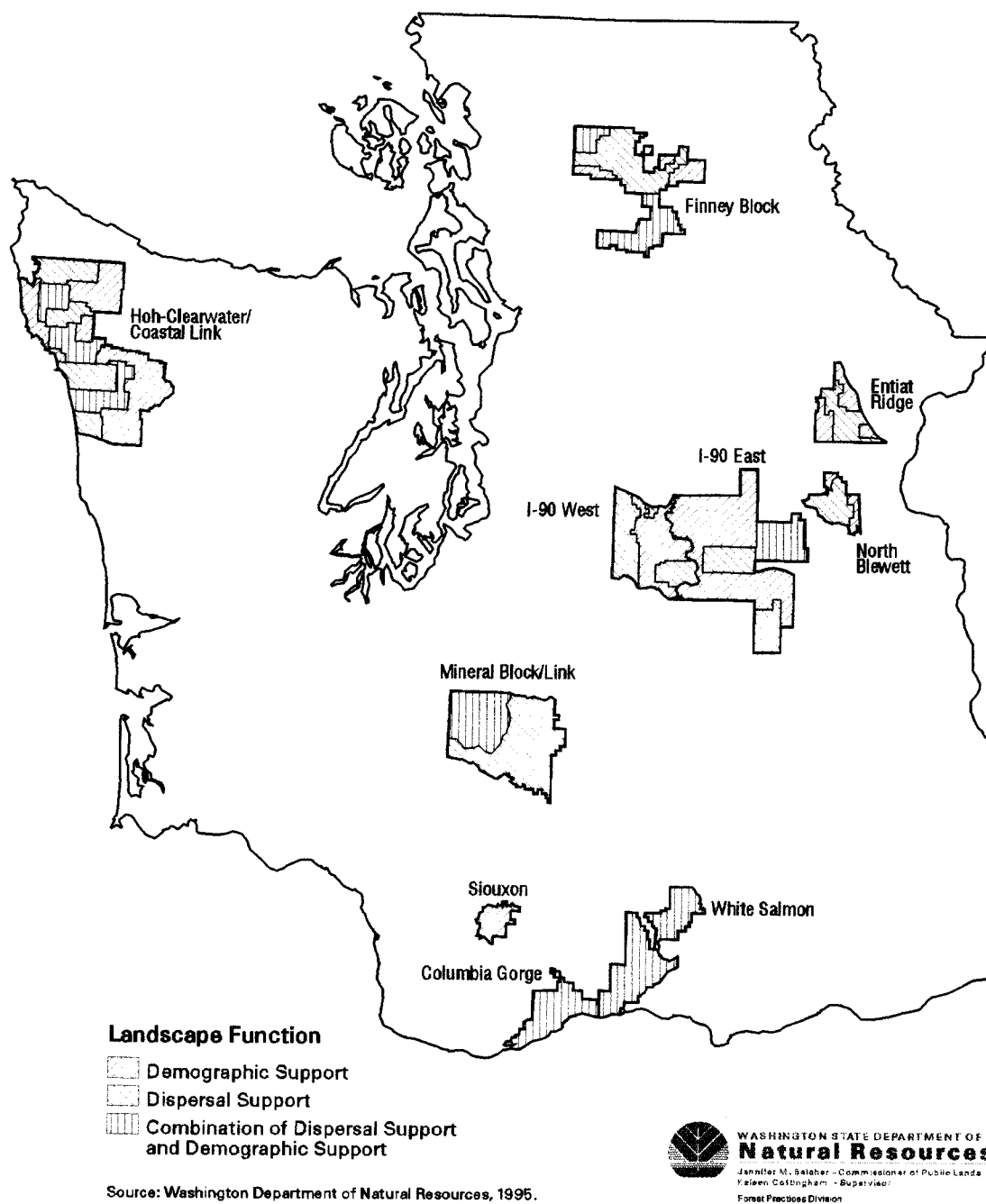


Figure 1. Spotted Owl Special Emphasis Areas (SOSEAS).