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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