



**DEPARTMENT OF
NATURAL RESOURCES**

**OFFICE OF THE COMMISSIONER
OF PUBLIC LANDS**

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May 26, 2020

Arthur Campbell
President, North Central Washington Audubon Society
P.O. Box 2934
Wenatchee, WA 98807

Re: March 25, 2020 Petition for Rulemaking re the Northern Spotted Owl

Dear Mr. Campbell:

Thank you for the North Central Washington Audubon Society's March 25th petition for rulemaking to the Forest Practices Board (Board), and for the presentation that members Todd Thorn and Mark Johnston made at the Board's quarterly meeting on May 13, 2020 on behalf of the petition. You have likely already heard that the Board voted to deny the rulemaking petition.

However, the Board did vote to encourage the Departments of Natural Resources (DNR) and Fish and Wildlife (WDFW) to work with landowners to develop conservation options for the area of concern and report back to the Board at its August meeting.

In addition, the Board voted that DNR and WDFW should meet to develop a path forward for reviewing the success in achieving the goals of the North Blewett Spotted Owl Special Emphasis Area (SOSEA). The Board also moved that DNR re-convene the Northern Spotted Owl Implementation Team to discuss incentive programs to improve conditions in areas identified by the NSO technical team's report to the Board.

Your rule petition sought to expand the focus from your September 2019 rule petition, which focused on one owl site center in the North Blewett SOSEA. Your current petition used that site as a case study, and as a basis to request reconsideration of how the habitat definitions work in WAC 222-16-080 and how the SEPA policies work under WAC 222-10-041 on a statewide basis. In addition to your rule petition and materials, the Board received a comprehensive briefing from WDFW Biologist Joe Buchanan. The Board also heard input from WDFW biologist Gary Bell, who often serves as a spotted owl expert for consultations on individual forest practice proposals statewide.

WDFW recommended that the Board deny the rulemaking petition. WDFW identified the Barred owl, an invader from the east coast, as the most important limiting factor concerning Northern spotted owls in Washington right now. Barred owls are able to occupy the Northern spotted owl habitat as well as other, more varied habitats, and barred owls eat a wider ranging diet than the Northern spotted owl does. Barred owls are more aggressive in their territorial defense than Northern spotted owls, and WDFW indicated that as many as 6-7 Barred owls may occupy the territory of each Northern spotted owl pair. In several modeling exercises that involved the protection of all Northern spotted owl habitats, the Northern spotted owl population still has a strong downward trend, so long as Barred owls remain on the landscape.

Letter to Arthur Campbell

May 26, 2020

Page 2

WDFW and the Board remain concerned about and interested in preserving Northern spotted owl habitats, but we lack indications that the definitions in WAC 222-16-080 are impacting the owls at this time. When asked whether the issue you cited concerning the pair of owls using non-habitat in the North Blewett SOSEA was common, Gary Bell indicated that this was an unusual, rather than a common occurrence across other Northern spotted owl site centers in other SOSEAs. In sum, at present, there appears to be no evidence that the habitat definitions and the SOSEA rules are not working as intended for the private and state managed lands to which the rules apply. The rules primarily help support the Northern spotted owl habitat and sites centers preserved on adjacent federal lands.¹

Going forward, DNR and WDFW will continue to work with landowners to develop conservation options for owls in the North Blewett SOSEA that you discussed. The Board will hear a progress report on progress at its August meeting. Additionally, DNR will work with stakeholders to explore whether there is a renewed interest in developing incentives for voluntary habitat conservation by landowners, a topic of focus for the Northern Spotted Owl Implementation Team (NSOIT) workgroup. The NSOIT has been working on developing a potential programmatic safe harbor agreement under § 10 of the Endangered Species Act.²

Again, thank you and the members of the North Central Washington Audubon Society for raising your interest and concern for the Northern Spotted Owl, and for participating in the Board's discussion of your petition.

Sincerely,



Stephen Bernath
Chair, Forest Practices Board.

cc: Forest Practices Board Members

¹ The rule petition also focuses on WAC 222-10-041, and apparently misunderstands its application in the context of the forest practices rules. This rule does not apply to applications broadly. Rather, WAC 222-10-041 provides State Environmental Policy Act (SEPA) guidance, and it applies only to Class IV-Special applications. Applications meeting the habitat definitions in WAC 222-16-080, that also occur within a SOSEA landscape, will be Class IV-Special forest practices, and hence trigger environmental review under SEPA. The application that you raised in your rule petition letter was not a Class IV-Special, so WAC 222-10-041 did not apply.

² Safe harbor agreements are generally discussed on this U.S. Fish and Wildlife Service website: <https://www.fws.gov/endangered/landowners/safe-harbor-agreements.html> (last visited 5/14/20).