DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
FXE1121000000–156–FF01E00000]

Draft Safe Harbor Agreement and 
Receipt of Application for an 
Enhancement of Survival Permit for 
the Northern Spotted Owl and Marbled 
Murrelet; City of Everett, Snohomish 
County, Washington

AGENCY: Fish and Wildlife Service, 
Interior.

ACTION: Notice of availability; request for 
comments.

SUMMARY: We, the U.S. Fish and 
Wildlife Service (Service), have 
received, from the City of Everett 
(Everett), an application for an 
enhancement of survival permit for 
the federally threatened northern spotted 
owl and marbled murrelet under the 
Endangered Species Act of 1973, as 
amended (ESA). The permit application 
does not include a draft safe harbor 
agreement (SHA) and implementing 
agreement (IA) between Everett and the 
Service addressing habitat conservation 
and forest management, including timber 
harvest on lands within Everett’s 
municipal watershed in Snohomish 
County, Washington. We invite 
comments from all interested parties on 
the application, including the draft 
SHA, draft IA, and a draft 
environmental action statement (EAS) 
prepared pursuant to the requirements 
of the National Environmental Policy 
Act (NEPA).

DATES: To ensure consideration, written 
comments must be received from 
interested parties by June 4, 2015.

ADDRESSES: To request further 
information or submit written 
comments, please use one of the 
following methods, and note that your 
information request or comments are in 
reference to the Everett Draft SHA.

• Internet: Documents may be viewed 
and downloaded on the Internet at 
http://www.fws.gov/wafwo/.

• Email: wfwocomments@fws.gov. 
Include “Everett Draft SHA” in the 
subject line of the message.

• U.S. Mail: Mark Ostwald, U.S. Fish 
and Wildlife Service, Washington Fish 
and Wildlife Office, 510 Desmond 
Drive, Southeast, Suite 102, Lacey, WA 
98503.

• In-Person Drop-off, Viewing, or 
Pickup: Call 360–753–9440 to make an 
appointment (necessary for viewing or 
pickup only) during regular business 
hours at the U.S. Fish and Wildlife 
Service, Washington Fish and Wildlife 
Office, 510 Desmond Drive, Southeast, 
Suite 102, Lacey, WA 98503.

For further information contact: 
Mark Ostwald, U.S. Fish and Wildlife 
Service (see Addresses), telephone 360– 
753–9564. If you use a 
telecommunications device for the deaf 
(TDD), please call the Federal 
Information Relay Service (FIRS) at 
800–877–8339.

Supplementary Information: 
Background

Under a SHA, participating 
landowners voluntarily undertake 
management activities on their property 
to enhance, restore, or maintain habitat 
benefiting species listed under the ESA 
(16 U.S.C. 1531 et seq.). SHAs, and the 
subsequent enhancement of survival 
permits that are issued to participating 
landowners pursuant to section 
10(a)(1)(A) of the ESA, encourage 
private and other non-Federal property 
owners to implement conservation 
actions for federally listed species by 
assuring the landowners that they will 
not be subjected to increased property 
use restrictions as a result of their efforts 
to either attract listed species to their 
property, or to increase the numbers or 
distribution of listed species already on 
their property. These assurances allow 
the property owner to alter or modify 
the enrolled property back to agreed-
upon pre-permit baseline conditions at 
the end of the term of the permit, even 
if such alteration or modification results 
in the incidental take of a listed species. 
The baseline conditions must reflect 
the known biological and habitat 
characteristics that support existing 
levels of use of the property by species 
covered in the SHA. SHA assurances 
depend on the property owner 
complying with obligations in the SHA 
and the terms and conditions of the 
permit. The SHA’s net conservation 
benefits must be sufficient to contribute, 
either directly or indirectly, to the 
recovery of the covered listed species. 
Enrolled landowners may make lawful 
use of the enrolled property during 
the permit term and may incidentally 
take the listed species named on the 
permit as long as that take does not modify 
the agreed-upon net conservation benefit to 
the species. Application requirements 
and issuance criteria for enhancement of 
 survival permits for SHAs are found in 
the Code of Federal Regulations (CFR) at 
50 CFR 17.22(c). The Service’s Safe 
Harbor Policy (64 FR 32717, June 17, 
1999) and the Safe Harbor Regulations 
(68 FR 53320, September 10, 2003; and 
69 FR 55984, May 3, 2004) are available 
at http://www.fws.gov/endangered/laws-
policies/regulations-and-policies.html.

The Service has received from Everett 
an application for an enhancement of 
 survival permit under the ESA to 
authorize incidental take of the federally 
threatened northern spotted owl (Strix 
occidentalis caurina) and the marbled 
murrelet (Brachyambus marmoratus). 
The permit application includes a draft 
SHA and IA between Everett and the 
Service. The SHA addresses habitat 
conservation and forest management, 
including timber harvest, on Everett’s 
Lake Chaplain Tract (LCT) located 
within Everett’s municipal watershed in 
Snohomish County, Washington. The 
total area of the LCT is approximately 
3,729 acres, of which 715 acres is 
comprised of non-forested areas. The 
non-forested areas include Lake 
Chaplain, portions of the Sultan River, 
non-forested wetlands, water filtration 
facilities, and rights-of-way.

Approximately half of the forest stands 
in the LCT are older than 80 years. 
Activities covered under the SHA are 
timber management and drinking water 
production. Everett’s management 
objective for the SHA is to enhance and 
maintain habitat for marbled murrelets 
and northern spotted owls while 
continuing to generate revenue from 
forest management operations.

There is one known marbled 
murrelet–occupied site on the LCT. The 
LCT is within a marbled murrelet 
detection area as defined by WAC 222– 
16–101. No federally designated 
marbled murrelet critical habitat occurs 
on the LCT; however, approximately 80 
percent of the LCT perimeter is adjacent 
to properties that are designated critical 
habitat for the marbled murrelet. There 
are no known northern spotted owl 
site centers on the LCT; however, recent 
 surveys have not been conducted in all 
areas of suitable habitat. The LCT is 
situated between two northern spotted 
owl special emphasis areas designated 
The nearest federally designated 
northern spotted owl critical habitat is 
approximately 8 miles northeast of the 
LCT.

Everett is simultaneously applying to 
the Washington State Department of 
Natural Resources (WDNR) for a 
Cooperative Habitat Enhancement 
Agreement (CHEA) under the 
Washington State Forest Practice Rules 
(WAC 222–16–105). The SHA and 
CHEA are one document that serves the 
requirements of both the Service and the 
WDNR. The applicant worked closely 
with the Service, the Washington 
Department of Fish and Wildlife, and 
the WDNR to develop the SHA and 
CHEA.
 Proposed Action

The Service proposes to enter into the SHA and IA and to issue an enhancement of survival permit to Everett for incidental take of the northern spotted owl and the marbled murrelet caused by covered activities, if permit issuance criteria are met. Both the SHA and the permit would have a term of 50 years.

Due to the overlap of suitable habitat characteristics for marbled murrelets and northern spotted owls and the nature of the LCT forest stands, the SHA’s baseline is unified for both covered species. The baseline totals about 447 acres and consists of 4 separate large blocks of the highest quality forest habitat for the covered species on the LCT. The baseline represents the areas on the LCT that are most likely to be occupied by the covered species currently and during the term of the SHA.

The conservation benefits for the marbled murrelet and the northern spotted owl under the SHA are expected to be realized through implementation of the following management actions: Reconfiguration of the special set asides (SSAs), enhancement of riparian buffers, an increase in special management areas (SMAs), longer harvest rotations, and enhanced protection of occupied sites. The SSAs are old-growth management areas and permanent mixed hardwood and conifer forests, which will not be harvested during the term of the agreement. Under the draft SHA, most of the original old-growth management areas and some of the permanent mixed forests on the LCT were reconfigured into the baseline blocks. Those not included in the baseline remain as SSAs, except for 56 acres that will be harvested to offset the addition of formerly harvestable areas to the baseline. The enhanced riparian buffers under this SHA will result in more trees within the buffer zones than would be required under the standard Washington State Forest Practices Rules, and there will be 32 more acres of SMAs, including green tree areas, unstable slopes, and forested wetlands.

Regeneration harvest rotations will average 60 years, compared to the industry standard of 45 years. Additional management actions under the proposed SHA to benefit the northern spotted owl are enhanced snag and downed wood retention measures, plus planting and thinning to encourage understory plants that support northern spotted owl prey species.

Under the proposed SHA, Everett will not be required to survey for marbled murrelets or northern spotted owls; however, if Everett becomes aware of the presence of an occupied site, the draft SHA identifies specific measures to avoid disturbance of the site and to protect the habitat. Occupancy by the marbled murrelet and the northern spotted owl is most likely to occur within the baseline blocks, SSAs, and riparian buffers where suitable marbled murrelet and northern spotted owl habitat will continue to improve or develop over time because harvest is deferred during the term of the proposed permit in these areas. In these areas, harvesting would already protect the habitat associated with an occupied site; however, depending on the exact location of a site, it may need to be protected from noise and other human disturbance as described in the draft SHA. Each year, if marbled murrelet or northern spotted owl occupancy occurs outside of the deferred-harvest areas, then core areas for one occupied site for each covered species will be protected from harvest and disturbance for at least 5 years.

Incidental take of the covered species in the form of harassment from noise or visual disturbance may occur during the term of the permit from forest management activities. Incidental take in the form of direct mortality or harm from altering occupied sites is not likely because occupancy is most likely going to occur in the deferred-harvest areas. Direct mortality or harm of the covered species could occur for the unlikely event that areas not deferred from harvest become occupied prior to harvesting. All forms of incidental take of the covered species could occur from timber harvesting activities in the SSAs, SMAs, or riparian areas in association with a return to the identified agreed-upon baseline habitat conditions. However, if similar Washington State Forest Practices Rules are in effect at the time, some of these areas may continue to be retained under those rules.

The net conservation benefits for both covered species are expected to be realized through the reconfiguration and retention of four large blocks of habitat designated as the baseline condition for the proposed SHA. The reconfiguration should enhance future nesting potential for both marbled murrelets and dispersing northern spotted owls, especially as the habitat continues to improve in quality over the term of the SHA. An increase in the quantity and distribution of SMAs will benefit the covered species by providing additional buffers adjacent to suitable nesting habitat in deferred-harvest areas. If occupancy by covered species occurs outside of deferred-harvest areas, the minimum protection period for an occupied site is increased by 2.5 years for the marbled murrelet and 5 years for the northern spotted owl compared to standard Washington State Forest Practices Rules. All of these habitat improvements are expected to increase the number and distribution of marbled murrelets and northern spotted owls on the LCT compared to what would likely occur under standard forest practices.

National Environmental Policy Act Compliance

The development of the draft SHA and the proposed issuance of an enhancement of survival permit is a Federal action that triggers the need for compliance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.) (NEPA). We have made a preliminary determination that the proposed SHA, IA, and permit issuance are eligible for categorical exclusion under the NEPA. The basis for our preliminary determination is contained in an EAS, which is available for public review (see ADDRESSES).

Public Comments

You may submit your comments and materials by one of the methods listed in the ADDRESSES section. We request data, new information, or comments from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested party via this notice on our proposed Federal action. In particular, we request information and comments regarding:

(1) Whether the implementation of the proposed SHA and IA would provide a net conservation benefit to the covered species;

(2) Other conservation measures that would lead to a net-conservation benefit for the covered species;

(3) The length of the proposed term of the enhancement of survival permit;

(4) The direct, indirect, and cumulative effects that implementation of the SHA and IA could have on the human environment;

(5) Other plans, projects, or information that might be relevant to evaluating the effects of this proposed action; and

(6) Information regarding the adequacy of the proposed SHA and IA pursuant to the requirement for permits at 50 CFR parts 13 and 17.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally
Next Steps

We will evaluate the draft SHA, associated documents, and any public comments we receive to determine whether the permit application and the EAS meet the requirements of section 10(a) of the ESA and NEPA, respectively, and their respective implementing regulations. We will also evaluate whether issuance of an enhancement of survival permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation on the proposed permit action. If we determine that all requirements are met, we will sign the proposed SHA and IA, and issue an enhancement of survival permit under section 10(a)(1)(A) of the ESA to the applicant, Everett, for incidental take of the northern spotted owl and the marbled murrelet caused by covered activities in accordance with the terms of the permit, SHA, and IA. We will not make our final decision until after the end of the 30-day public comment period, and we will fully consider all comments and information we receive during the public comment period.

Authority

We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), its implementing regulations (50 CFR 17.22), and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.) and its implementing regulations (40 CFR 1506.6).