

## Memorandum

**To:** Board of Forestry and Fire Protection, Forest Practice Committee

**Date:** September 11, 2012

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**From:** Chris Browder, Deputy Chief, THP Administration, California Department of Forestry and Fire Protection

**Subject:** Northern Spotted Owl Update

The following describes recent information pertaining to how the California Department of Forestry and Fire Protection (CAL FIRE) is addressing various issues relating to the northern spotted owl (NSO).

### Plan Review: 2011-2012 THPs, PTHPS and NTMPs

Recent plan review uses the following methods of addressing take avoidance of NSO:

- 14 CCR § 939.9(a): Such review involves use of Spotted Owl Resource Plans (SORPs). These are used by the following:
  - W. M. Beatty and Associates.
  - Hancock Forest Management [in preparation].
- 14 CCR § 919.9(e) [939.9(e)]: Most plans use this method to address NSO take avoidance in plans. These include use of:
  - USFWS Attachments A and B and Take Avoidance and No Take Scenarios I-V.
  - Technical assistance from USFWS through CAL FIRE.
  - Habitat Retention Agreements with Arcata Fish and Wildlife Office (AFWO).
  - Spotted Owl Management Plans, which are used by the following:
    - ✓ Timber Products Company.
    - ✓ The Conservation Fund.
    - ✓ Mendocino Redwood Company.
    - ✓ Hearst Forests
- 14 CCR § 919.9(d): This involves use of incidental take permits from USFWS in the form of Habitat Conservation Plans (HCPs), which are used by the following:
  - Green Diamond Resource Company.
  - Humboldt Redwood Company.
 At least two additional HCPs are in preparation:
  - Mendocino Redwood Company.

- Fruit Growers Supply Company.
- 14 CCR § 919.9(g) [939.9(g)] with additional site-specific analysis: This involves using the standards contained in the Forest Practice Rules and often includes
- additional measures derived from USFWS-recommended take avoidance guidelines. Use of this subdivision is concentrated in THPs located on industrial timberlands in the Northern Forest District. Many of these use the recently created disclosure document from CAL FIRE, *Northern Spotted Owl Disclosure and Impacts Analysis Using 14 CCR § 919.9(g) [939.9(g)]* to provide the additional site-specific analysis.

CAL FIRE's part-time senior wildlife biologist is regularly involved in NSO-related plan review. This includes:

- Reviewing certain plans that propose use of 14 CCR § 919.9(g) [939.9(g)].
- Pre-consulting with biologists on survey proposals that deviate from current USFWS protocol.
- Reviewing applicability of proposals to certain forest types and USFWS take avoidance guidelines.
- Reviewing proposed Spotted Owl Resource Plans.

NSO-related plan review:

- Appears to be going smoothly.
- Regularly requests additional information and clarification.
- Rarely is the cause of delay.
- Consumes much CAL FIRE staff time.

## Critical Habitat and Small Landowners

There are two areas of the NSO range—the lower Russian River area of Sonoma County and the Mayacamas Mountains on the Napa-Sonoma County line—where critical habitat has been designated on private lands, which include small parcels, none of which are less than 40 acres. These areas are at the south end of the range and represent isolated, outlying NSO populations that need special protection per the recovery plan, according to USFWS staff. The lower Russian River area includes 105 private landowners, and the Mayacamas Mountains area includes 280 private landowners. All such landowners received a letter notifying them of the possible designation of critical habitat on their property.

There is a spreadsheet circulating that contains a number of landowners in northwestern California that are supposed to be affected by the critical habitat designation. This was supposedly created by the superimposition of a USFWS shapefile onto a county assessor's parcel map. The critical habitat boundary erroneously overlaps a number of small private parcels, which are not intended to be designated as such. USFWS is aware of this. No parcels smaller than 40 acres have been designated as critical habitat.

The federal Notice of Availability states the following about critical habitat's effect on private lands:

...State and private lands may also be subject to consultation under section 7(a)(2) of the Act if a "Federal nexus" exists, meaning the Federal government authorizes, funds, or carries out an activity on privately-held or State-owned property.

For example, a Federal nexus may exist because a project involves Federal funding or requires a Federal permit, such as a Clean Water Act permit or an incidental take permit for another listed species that co-occurs with the northern spotted owl. In areas occupied by the northern spotted owl, the protections provided by consultation under the jeopardy standard for the northern spotted owl would apply regardless of critical habitat.

## Survey Protocols

- The 2011 survey protocols require two breeding season's worth of effort to establish presence of the owl. This makes it more costly and difficult to take advantage of market conditions in a timely manner.
- A transition period has allowed those that commenced surveys in 2009-2011 to gradually adjust to the greater demands of the new protocol.
- The USFWS allowed landowners to use a one-year, six-visit survey during the 2011 breeding season after much comment from users about the additional cost and planning required by the new protocol.
- CAL FIRE submitted a take avoidance procedure that included a one-year, six-visit survey effort to USFWS for comment in the fall of 2011. USFWS declined to comment other than to indicate its two field offices in northern California disagreed on the procedure's efficacy in avoiding take of the owl. It also pledged to continue discussions with CAL FIRE about the viability of a take avoidance procedure that includes a one-year survey effort. In the interim, USFWS and CAL FIRE agreed to jointly review proposals for a one-year survey for the 2012 breeding season. CAL FIRE received six of such requests. Five of them had previously received technical assistance from USFWS, so the Service reviewed those. The one additional request was not a substantive deviation from the 2011 protocol, and CAL FIRE was able to review it. Based on the less-than-enthusiastic response to the one-year survey proposal offer, CAL FIRE has not pursued developing its take avoidance procedure with USFWS.

## Small Landowners and USFWS Coastal Take Avoidance Standards

CAL FIRE has met with RPFs representing small non-industrial landowners, biologists, CLFA and Cooperative Extension regarding the development of a take avoidance option similar to the former Arcata Fish and Wildlife Office's Habitat Retention Agreement program. The current USFWS Attachment A requires a 100-acre virtual non-operational area, which can severely limit small landowners in close proximity to an NSO activity center. The aim of the group is to develop a draft take avoidance option for small landowners. It will be brought to USFWS for its possible review and acceptance.

## DFG Spotted Owl Database

In 2011 CAL FIRE met with DFG and other agencies about the spotted owl database. The discussion focused on upcoming changes to the database, its usefulness, current entry backlog, Gordon Gould's impending retirement, uncertainty about future maintenance, the need for an inter-agency agreement, and options for joint agency funding. Based on overwhelming agency opinion that the database is of high importance, DFG has just hired a spotted owl database manager to replace Mr. Gould.

## USFWS Take Avoidance and No Take Guidelines

AFWO staff notes that its Attachment A—take avoidance guidelines for the redwood region of coastal California—will likely be revised beginning in late 2012 and early 2013. The revised Attachment A will include an emphasis on creating forest openings to encourage wood rat production. There will be a review step in the revision process whereby the public may comment on the document, and there should be an accompanying document that will provide the scientific basis for the habitat retention and operational protection measures contained therein.

Yreka Fish and Wildlife Office (YFWO) does not foresee any changes to its Attachment B-- take avoidance guidelines for the non-redwood region of California-- from a scientific perspective in the near term. However, if Attachment A is undergoing changes, YFWO will likely correct some outdated sections of Attachment B.

## General Conservation Plan for NSO?

In June 2012, CAL FIRE staff met with USFWS staff regarding continuing discussion about the one-year take avoidance procedure. USFWS indicated they prefer to prepare a General Conservation Plan (GCP) for NSO. The GCP would apply range-wide in California. It is part of the Service's effort to streamline the process associated with HCPs, and it allows them to develop a conversation strategy suitable for the needs of a local area. Unlike the HCP, which is prepared by the applicant, the GCP is prepared by the Service. AFWO's Nancy Finley describes it as "a mechanism to develop a series of strategies that would streamline technical assistance for some large percentage of the cases." She says it would consist of "one scenario that would be developed to address a series of landowner activities potentially." USFWS prefers this because "the GCP would be more binding and a clearer communication of partnership in some ways." Estimated time to prepare it would be one and a half years.

## NSO Petitions

The Environmental Protection Information Center filed two petitions designed to increase protections for the northern spotted owl. The first is with the Secretary of the Interior to change the status of the owl under the federal Endangered Species Act from "threatened" to "endangered," and the second is with the California Fish and Game Commission to list the owl as "endangered" under the California Endangered Species

Act. CAL FIRE does not expect either of the petitions or any resulting changes they may precipitate to substantially change the way RPFs address NSO in plans.

## Recent and Future Rule Changes

### ***Spotted Owl Experts:***

There are 32 spotted owl experts (SOEs). SOEs continue to play a role in plan review by providing information and preparing SORPs.

CAL FIRE's biologist notes:

...SOE involvement actually creates more review time when/if the THP comes my direction. Project assumptions/findings are typically not sufficiently described; the SOE assuming that his/her explanation can be abbreviated since it comes from an SOE. A few SOEs have made biological determinations without biological data to expedite the project. I don't give an SOE any additional weight than I would a[n] RPF when it comes to plan review/take avoidance determination and so their involvement does not make a bit of difference to me.

### ***Activity Center:***

The current definition of "activity center" in 14 CCR § 895.1 is based on portions of the 1992 USFWS "Protocol For Surveying Proposed Management Activities That May Impact Northern Spotted Owls" and a 2008 USFWS letter of technical assistance related to activity center abandonment. This term is not consistent with more recent USFWS survey protocols and other documents. The BOF may want to consider updating the definition. The amended definition could reference the applicable NSO survey protocol in a general sense in order to allow for future changes. Future changes in the protocol would not then precipitate changes in the Forest Practice Rules. Please see attached information relative to the current definition of activity center.

### ***Take Avoidance and No Take Measures:***

Most of the current Forest Practice Rules related to NSO have been in place since the early 1990s. Some retain validity while others appear out-of-date and of questionable use (14 CCR § 919.9(a), (b) (c) and (f) [939.9(a), (b) (c) and (f)]). CAL FIRE previously recommended to the BOF that it simplify the rules (see CAL FIRE letter to BOF regarding the NSO Take Evaluation 2009 rule package). If such action is to occur, CAL FIRE believes simplified options for avoiding take could be provided in the rules. The options would allow the plan proponent to address take avoidance of the owl through programmatic means, incidental take permits, discussion with the listing agency or the Department of Fish and Game or some other appropriate site-specific method.