State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Director's Office
1416 Ninth Street, 12th Floor
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EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director

January 16, 2014

Ken Pimlott
Director
Department of Forestry and Fire Protection
1416 Ninth Street
PO Box 944246
Sacramento, CA 94244-2460

Dear Mr. Pimlott:

CANDIDACY OF THE NORTHERN SPOTTED OWL FOR LISTING UNDER THE CALIFORNIA ENDANGERED SPECIES ACT

During its December 11, 2013 meeting, the California Fish and Game Commission (Commission) adopted findings documenting its acceptance of a petition to list the Northern spotted owl (NSO) as a threatened or endangered species pursuant to Section 2074.2 of the Fish and Game Code. The Office of Administrative Law published these findings on December 27, 2013; therefore, a one-year "candidacy" period has begun. During this period, "take" as defined by Fish and Game Code Section 86 shall be prohibited unless authorized by the Department of Fish and Wildlife (Department) pursuant to sections 2080.1, 2091(a), or 2081(b) of the California Endangered Species Act (CESA) or Section 2835 of the Natural Community Conservation Planning Act, in conjunction with otherwise lawful activities.

During the past two decades after NSO became federally listed, sections 919.10 and 939.10 of the California Forest Practice Rules (FPRs) have obligated the California Department of Forestry and Fire Protection (CalFire) to make a finding for each timber harvesting plan (THP) within the range of the NSO that the THP will avoid take of any NSO as defined by the federal Endangered Species Act (ESA). To our knowledge, CalFire in coordination with the U.S. Fish and Wildlife Service and the Department, has effectively implemented this regulatory requirement, allowing THPs to proceed while avoiding take of NSOs. Take as defined by the ESA includes "harm" and "harass," activities which extend well beyond the definition under the Fish and Game Code; viz, "hunt, pursue, catch, capture or kill or attempt to hunt, pursue, catch, capture or kill." The Department concludes a CalFire finding that take under ESA of any NSO would be avoided in accordance with the FPRs would likely be valid for take as defined in the Fish and Game Code.

As such, the Department, in discharging its roles and responsibilities as the public trust agency for fish and wildlife in California will, during the NSO's one-year candidacy period, rely on the process established under sections 919.10 and 939.10 to assure that timber operations conducted pursuant to approved THPs will avoid unauthorized take of NSOs. The Department's reliance on the continuing implementation by CalFire of these FPR sections will obviate the need for the Department to establish a separate NSO consultation or "approval" process for each THP pursuant to CESA.

In addition, the Department will continue its ongoing discussions with three private timberland owners for timber operations conducted pursuant to the requirements of NSO habitat conservation plans and NSO incidental take permits (ITP) issued by the U.S. Fish and Wildlife Service under Section 10(a)(1)(B) of ESA. These discussions are expected to culminate in the Department issuing NSO ITPs or consistency determinations pursuant to sections 2080.1 and 2081(b), respectively. Until the Department issues NSO take authorizations to these private timberland owners, they must avoid take under CESA notwithstanding their NSO ITPs issued pursuant to ESA. Of course, aside from these private timberland owners, any other entity may consult with the Department to seek take authorization for NSO under CESA if warranted.

Should you have questions and/or would like to discuss this matter, please feel free to contact me. Our Environmental Program Manager William Condon with the Department's Timberland Conservation Program in the Habitat Conservation Planning Branch, is also available to discuss the approach outlined in this letter or answer questions of staff and can be reached at (916) 651-3110 or by email at William.condon@wildlife.ca.gov.

Sincerely,

Charlton H. Bonham
Director

cc: J. Keith Gilless, Ph.D., Chair
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