

BOARD OF FORESTRY AND FIRE PROTECTION

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**STAFF NOTE: DRAFT RULEMAKING ALTERNATIVES FOR NSO REGULATIONS**

Included herein are three draft rule proposals representing three different approaches to addressing Northern Spotted Owl in the Forest Practice Rules. The first of these proposals is an attempt by Board Member, Stuart Farber and CAL FIRE biologist, Bob Motroni to codify the elements of “§ 919.9(g), [§ 939.9(g)]-Plus.” “(g)-Plus” is the moniker used to describe the contemporary documentation included in harvesting plans that rely upon § 919.9(g), [§ 939.9(g)]. This version also includes the proposed amendments (as yet un-Noticed) to the definition of “Activity Center” that were drafted by Chris Browder and authorized for 45-day Notice.

The second proposal would likewise incorporate the amendments to the definition of “Activity Center.” From there, all of the option language would be struck in § 919.9 [§ 939.9] in favor of one paragraph directing the plan submitter to follow the survey protocols of the listing agency and develop measures consistent with take avoidance pursuant to § 919.10 [§ 939.10].

The third proposal reaches farthest in an attempt to create a general procedure for addressing listed species. All definitions related to NSO are struck as are all of the NSO sections and the Marbled Murrelet section. What is left is a paragraph of new language entitled, “Listed Species and Take Avoidance” and minor edits to the “Alternatives” section.

The purpose in circulating these three draft proposals is to stimulate thought and discussion of a representative range of possible alternatives the Forest Practice Committee and full Board could consider in relation to the July 10 hearing on the Environmental Protection Information Center’s petition to eliminate § 919.9(g), [§ 939.9(g)]. Please note that Staff is not offering a recommendation on any one of the alternatives contained in this document. The presentation of a representative range of rule language alternatives is intended only to provide a framework for discussion pursuant to the Forest Practice Committee’s direction at their June 3, 2013 meeting.

1 **Activity Center** means a known northern spotted owl site documented from detections,
2 pursuant to the USFWS document “Protocol For Surveying Proposed Management
3 Activities That May Impact Northern Spotted Owls” revised January 9, 2012 ~~March 17,~~
4 ~~1992~~.

5 **(a)** An activity center is established by:

6 **(1)** Resident Single Status is established by as consisting of either:

7 **(A)** The presence or response of a single owl within the same general
8 area on three or more occasions within a breeding season, with no response by an owl
9 of the opposite sex after a complete survey; or

10 **(B)** Multiple responses over several years (i.e., two responses in year one
11 and one response in year two ~~2~~), from the same general area}.

12 **(2)** Two Birds-Pair Status Unknown is where the presence or response of two
13 birds of the opposite sex where is detected but pair status cannot be determined and
14 where at least one of the owls member must meets the resident single requirements.

15 **(3)** Territorial Pair Status, established by any one of the following:

16 **(A)** A ~~wherein~~ a male and female are heard and/or observed (either
17 initially or through their movement) in proximity (less than one-quarter mile apart) to
18 each other on the same visit; or

19 **(B)** A a male takes a mouse to a female; or

20 **(C)** A a female is detected (seen or heard) on the nest; or

21 **(D)** One ~~one~~ or both adults are observed with young; or

22 **(E)** Young identifiable based on plumage characteristics observed late in
23 the season by knowledgeable surveyors or young identifiable based on molecular data.

1 (4) ~~Unoccupied Status where no responses have been obtained from a~~
2 ~~previously identified northern spotted owl activity center after 3 years of survey, barring~~
3 ~~other evidence to the contrary.~~

4 An activity center ~~with unoccupied status~~ will not be considered an activity center
5 when it has been evaluated and a determination made by the Director. The
6 determination shall be based upon an analyses by state or federal agencies, which
7 indicates the activity center is no longer likely to support territorial owls due to habitat
8 changes or long-term surveys with negative responses or both ~~available information on~~
9 ~~survey history, habitat conditions within the home range, and changes to habitat that~~
10 ~~may have occurred since the northern spotted owl site was first identified.~~

11 **Adequate Site Occupancy** means the range of stocking levels*****

12
13 *******Fuelbreak** see PRC 4528(e).*****

14
15 *******Functional Foraging Habitat** is dependent upon the presence and availability of
16 prey on the forest floor or in the canopy with the; presence of accessible perching limbs
17 and is limited to areas with ample flight space below limbs and among stems. Foraging
18 habitat includes dominant and codominant conifers and hardwoods where the size and
19 density of trees is determined either by referenced information sources or substantial
20 site-specific information documented in the plan. ; and adjacency to stands with canopy
21 closures >40%. Average stem diameter is usually >6" D.B.H. for hardwoods and >11"
22 D.B.H. for conifers among dominants, and codominants, and the total overhead canopy
23 closure, including intermediate trees is at least 40%. Where overall canopy closure is
24 >80%, foraging habitat is limited to areas with ample flight space below limbs and

1 among stems. Foraging habitat in smaller size classes and lower percentage canopy
2 closures must be justified by local information.

3 **Functional Nesting and Roosting Habitat** means habitat with a dominant and
4 codominant conifer and hardwood tree canopy closure and is of at least 40% and a total
5 canopy (including dominant, codominant, and intermediates) of at least 60%. Usually
6 the stand is distinctly multi-layered with an average stem diameter in dominant, and
7 codominant conifers, and hardwoods >11" D.B.H. The stand usually consists of several
8 tree species (including hardwoods) of mixed sizes. All nests, snags, down logs, and
9 decadent trees shall also be considered as part of the habitat. Nesting substrates are
10 provided by broken tops, cavities, or platforms such as those created by a hawk or
11 squirrel nest, mistletoe broom, or accumulated debris. Owls are known to occasionally
12 nest in less than optimal habitat. Nesting areas may also be associated with
13 characteristics of topographic relief and aspect which alter microclimates. The size and
14 density of trees found in nesting and roosting habitat is determined either by referenced
15 information sources or substantial site-specific information documented in the plan.

16 **Functional Roosting Habitat** during the territorial breeding season, consists of
17 stands where average stem diameter is >11" D.B.H. among dominant and codominant
18 trees. Hardwood and conifers provide an average of at least 40% canopy closure but
19 the stand can have a high degree of variability. Stand size and configuration must be
20 sufficient to provide multiple perch sites which are suitable for protection from various
21 environmental conditions, including wind, heat, and precipitation.*****

22 *******Overstory** means that portion of the trees*****

23 *******Owl Habitat** means Type A, B, or C owl habitat or those areas with functional
24 foraging habitat, functional nesting habitat, and functional roosting habitat which support
25 the owl's biological needs for breeding, sheltering, and feeding. An area of habitat could

1 have characteristics which support all of the functional needs for nesting, roosting, and
2 foraging or a combination of those functions. Because owls are known to occasionally
3 inhabit less than optimal forest structure, local information can be used to justify the
4 modification of functional habitat definitions.

5
6 **Type A Owl Habitat** means timber stands that have as a minimum the following
7 characteristics for live-tree structure:

8 _____ **1. Canopy layers:** The stand has two distinct tiers or is multi-layered with
9 dominant conifers greater than 120 ft. tall (trees greater than 90 ft. tall on poor sites,
10 less than site III, and for some montane tree species). Conifers or hardwoods
11 dominate the canopy layers less than 120 ft. tall.

12 _____ **2. Canopy Closure:** The canopy closure of conifers greater than 120 ft.
13 tall (or greater than 90 ft. tall on poor sites, less than site III, and for some montane tree
14 species) averages greater than 40% and not less than 20%. The total canopy closure
15 for all trees, conifers or hardwoods, is greater than 60%.

16 _____ **3. Large Trees:** The density of conifers greater than 35 in. d.b.h.
17 averages more than nine stems per acre and not less than six stems per acre and
18 includes a component of trees with sparse, broken, or dead tops.

19 _____ **4. Medium Trees:** The density of conifers or hardwoods 18 to 35 in.
20 d.b.h. averages more than 15 stems per acre and not less than 8 stems per acre.

21 _____ **5. Small Trees:** The density of conifers or hardwoods less than 18 in.
22 d.b.h. averages more than 50 stems per acre and not less than 20 stems per acre.

23 _____ **Type B Owl Habitat** means timber stands that have as a minimum the following
24 characteristics for live-tree structure:

1 ~~_____ **1. Canopy Layers:** Moderately to strongly two-tiered or multi-layered with~~
2 ~~dominant conifers greater than 100 ft. tall (greater than 70 ft. tall on poor sites, less than~~
3 ~~site III, and for some montane tree species). Conifers or hardwoods dominate the~~
4 ~~canopy layers less than 100 ft. tall.~~

5 ~~_____ **2. Canopy Closure:** The canopy closure of conifers greater than 100 ft.~~
6 ~~tall (or greater than 70 ft. tall on poor sites, less than site III, and for some montane tree~~
7 ~~species) averages greater than 40% and not less than 20%. The total closure for all~~
8 ~~trees, conifers or hardwoods, is greater than 60%.~~

9 ~~_____ **3. Large Trees:** The density of conifers greater than 35 in. d.b.h.~~
10 ~~averages more than six stems per acre and not less than two stems per acre.~~

11 ~~_____ **4. Medium Trees:** The density of conifers or hardwoods 18 to 35 in.~~
12 ~~d.b.h. averages more than 25 stems per acre and not less than 20 stems per acre.~~

13 ~~_____ **5. Small Trees:** The density of conifers or hardwoods less than 18 in.~~
14 ~~d.b.h. averages more than 50 stems per acre and not less than 20 stems per acre.~~

15 ~~_____ **Type C Owl Habitat** means timber stands that have as a minimum the following~~
16 ~~characteristics for _____ live-tree structure:~~

17 ~~_____ **1. Canopy Layers:** Uniform to moderately layered with dominant conifers~~
18 ~~or hardwoods 50 to 100 ft. tall although low numbers of emergent trees greater than 100~~
19 ~~ft. tall may be present.~~

20 ~~_____ **2. Canopy Closure:** The canopy closure of conifers or hardwoods 50 to~~
21 ~~100 ft. tall averages greater than 40% and not less than 20%. The total canopy closure~~
22 ~~for all trees, conifers or hardwoods, is greater than 60%.~~

23 ~~_____ **3. Large Trees:** The density of conifers greater than 35 inches d.b.h.~~
24 ~~averages less than six stems per acre and may be absent.~~

25

1 ~~4. Medium Trees: The density of conifers or hardwoods 18 to 35 in.~~
2 ~~d.b.h. averages more than 15 stems per acre, but may be absent.~~

3 ~~5. Small Trees: The density of conifers or hardwoods less than 18 inches~~
4 ~~d.b.h. averages more than 160 stems per acre and not less than 50 stems per acre.~~
5 ~~The average d.b.h. for all trees in the stand, including small, medium, and large trees is~~
6 ~~greater than 10 inches.~~

7
8 **919.9,939.9. Northern Spotted Owl [Coast, Northern]**

9 Every proposed timber harvesting plan, NTMP, conversion permit, Spotted Owl
10 Resource Plan, or major amendment located in the Northern Spotted Owl Evaluation
11 Area or within 1.3 miles of a known northern spotted owl activity center outside of the
12 Northern Spotted Owl Evaluation Area shall follow one of the procedures required in
13 subsections (a)-(g) below for the area within the THP boundary as shown on the THP
14 map and also for adjacent areas as specified within this section. The submitter may
15 choose any alternative (a)-(g) that meets the on-the-ground circumstances. The
16 required information shall be used by the Director to evaluate whether or not the
17 proposed activity would result in the "take" of an individual northern spotted owl.

18 When subparagraphs (a), (b), (c) or (f) are used, the Director, prior to approval of a
19 THP, shall consult with an SOE and conduct an independent review. An SOE may aid
20 the RPF in fulfilling the requirements within subdivision (g). The SOE may make written
21 recommendations regarding whether the retained habitat configuration and protection
22 measures proposed in the THP will prevent a take of the owl.

23 In consultation with the SOE, the Director may adjust standards established by this
24 section based on site specific circumstances in a manner which is consistent with
25

1 information collected on owl behavior in California, and the prohibitions of the Federal
2 Endangered Species Act.

3 **(a)** If the project proponent requests preliminary review of the proposed operation or
4 Spotted Owl Resource Plan prior to filing, the proponent shall consult with an SOE to
5 evaluate whether the proposed operation would result in the taking of an individual
6 northern spotted owl. This evaluation is preliminary to and separate from the final "take"
7 determination to be made under 14 CCR § 919.10 [939.10]. In making that evaluation:

8 **(1)** The SOE shall apply the criteria set forth in 14 CCR § 919.10 [939.10].

9 **(2)** The SOE may request that the submitter provide additional information which
10 the SOE finds necessary to evaluate if a "take" would occur, provided that the SOE
11 states the type of information needed, the purpose of the information, and the level of
12 accuracy necessary to meet the stated purpose.

13 **(3)** If the SOE concludes that no unauthorized take ~~prohibited taking~~ would
14 occur, the SOE shall inform the submitter as soon as practicable and shall document
15 the decision and the information which was relied upon by the SOE in the above
16 evaluation. Reference data shall be readily available for the Director's review upon
17 request;

18 **(4)** If the SOE concludes that the proposed timber operation or Spotted Owl
19 Resource Plan would result in an unauthorized take, ~~taking~~, he or she shall inform the
20 submitter as soon as practicable and shall comply with 14 CCR § 919.10(c) [939.10(c)]
21 within 10 working days of making this determination.

22 **(5)** Requests for pre-filing consultation shall be handled in the order in which
23 received.

24 **(b)** The RPF shall include the following information:
25

1 **(1)** On a planimetric or topographic map of a minimum scale of 1:24,000, provide
2 the following:

3 **(A)** The location and acreage of owl habitat. This information shall be
4 shown for the area within the boundary both as it exists before and after timber
5 operations. The Director shall determine if timber typing maps may qualify as showing
6 owl habitat.

7 **(B)** Identify any adjoining owl habitat by type within 0.7 miles of the
8 boundary in the coast redwood forest type of the Coast Forest District, or 1.3 miles of
9 the boundary in the non-coast redwood forest type of the Coast Forest District, and the
10 entire Northern Forest District.

11 **(C)** When mapping ~~functional~~ owl nesting, roosting, and foraging
12 habitat, include additional information which helps define those areas such as: location
13 of topography features, riparian vegetation, hardwood component, water, potential nest
14 and roost sites, and potential suitable forage areas.

15 **(D)** All known owl observations, identified by location and visual or
16 nonvisual confirmation within the area specified in 14 CCR § 919.9(b)(1)(B), [§
17 939.9(b)(1)(B)] 4.3 miles of the boundary. This information shall be derived from the
18 landowner's and RPF's personal knowledge, and from the Department of Fish and
19 ~~Game~~ Wildlife's spotted owl data base.

20 **(2)** Discussion on how functional characteristics of owl habitat will be protected
21 in terms of the criteria stated within 14 CCR § 919.10 subsections (a) and (b) [939.10
22 subsections (a) and (b)].

23 **(3)** As adjacent landowners permit and from other available information, a
24 discussion of adjacent owl habitat within the area specified in 14 CCR § 919.9(b)(1)(B).

1 [\\$ 939.9(b)(1)(B)], up to .7 mile from the proposed boundary or and its importance
2 relative to the owl habitat within the boundary.

3 **(4)** Describe any proposals for monitoring owls or owl habitat which are
4 necessary to insure their protection. Monitoring is not required for approval.

5 **(5)** Discussion of any known owl surveys that have been conducted within 0.7
6 miles from the proposed THP boundary in the coast redwood forest type of the Coast
7 Forest District, or 1.3 miles from the proposed THP boundary in the non-coast redwood
8 forest type of the Coast Forest District, and the entire Northern Forest District ~~1.3 miles~~
9 ~~of the THP boundary.~~ Include the dates, results and methodologies used if known.

10 **(6)** A proposed route that will acquaint the SOE and other reviewers with the
11 important owl habitat.

12 **(7)** Attach aerial photos of the area, if available. (Aerial photos are not required.)

13 **(c)** Where certification is made by the RPF and adequate records are kept showing
14 that owl surveys were conducted sufficient to demonstrate the absence of owls from an
15 area, the THP will be reviewed on a high priority basis. The THP shall contain
16 verification that:

17 **(1)** The surveys have been conducted throughout the area ~~within .7 miles of the~~
18 ~~boundary~~ specified in 14 CCR § 919.9(b)(1)(B), [\\$ 939.9(b)(1)(B)], in accordance with
19 the USFWS approved protocol ("Protocol For Surveying Proposed Management
20 Activities That May Impact Northern Spotted Owls"; USFWS; February 2, 2011,
21 Revised January 9, 2012 ~~March 17, 1992~~).

22 **(2)** The surveys were conducted ~~during the current or immediately preceding~~
23 ~~survey period~~ as prescribed by the ~~previously cited~~ USFWS approved protocol
24 referenced above in 14 CCR § 919.9(c)(1), [\\$ 939.9(c)(1)].

1 **(3)** The surveys reveal no nest sites, activity centers or owl observations in the
2 area surveyed; and

3 **(4)** The surveys reveal no activity center ~~or repeated observations indicating the~~
4 ~~presence of mates and/or young within the area specified in 14 CCR § 919.9(b)(1)(B),~~
5 ~~[\§ 939.9(b)(1)(B)], 1.3 miles of the boundary~~ based on a review of the landowner's and
6 RPF's personal knowledge and the Department of Fish and ~~Game~~ Wildlife's spotted owl
7 data base.

8 **(d)** If the plan submitter proposes to proceed under an "incidental takeing" permit or
9 any other permit covering the northern spotted owl issued by the U.S. Fish and Wildlife
10 Service or the California Department of Fish and ~~Game~~ Wildlife, the submitter shall
11 supply a copy of the permit upon the Department's request.

12 **(e)** If the submitter proposes to proceed pursuant to the outcome of a discussion with
13 the U.S. Fish and Wildlife Service or "programmatic northern spotted owl take
14 avoidance guidance" provided by the USFWS described further below, the submitter
15 shall submit a letter prepared by the RPF will be submitted that the describeingd or the
16 proposed take avoidance management prescription is acceptable to the USFWS. The
17 elements of the USFWS "programmatic northern spotted owl take avoidance guidance"
18 are as follows:

19 **(1)** Take is presumed to be avoided if no suitable habitat occurs in, or within 0.25
20 miles of, proposed timber harvest units or appurtenant roads.

21 **(2)** If no suitable habitat occurs in proposed timber harvest units, but suitable
22 habitat occurs within 0.25 miles of proposed timber harvest units or appurtenant roads,
23 then timber harvesting or hauling operations shall not occur between February 1 and
24 July 9, or until surveys conducted pursuant to 14 CCR § 919.9(c)(1), [\§ 939.9(c)(1)]
25 indicate no owl detections or that owls are not nesting.

1 (3) If suitable habitat occurs in proposed timber harvest units, and surveys
2 conducted pursuant to 14 CCR § 919.9(c)(1), [§ 939.9(c)(1)] for the area within 1.3
3 miles of harvest units have not resulted in detections of owls or activity centers as
4 defined in 14 CCR § 895.1, then take is presumed to be avoided.

5 (4) If suitable habitat occurs in proposed timber harvest units, but harvesting as
6 proposed will not remove, reduce, or degrade the existing suitable habitat, then take is
7 presumed to be avoided provided that timber harvesting or hauling operations shall not
8 occur between February 1 and July 9.

9 **(f) If:**

10 (1) the submitter's proposed operations were reviewed by a SOE under 14 CCR
11 § 919.9, subsection(a) [939.9, subsection(a)]; and

12 (2) the SOE recommended minimum modifications to the proposed operations
13 which would be necessary to bring the impacts to a level at which ~~no "take"~~ take would
14 be avoided, occur and the submitter has adopted those recommendations; and

15 (3) the proposed operations remain substantially the same as the operations
16 which the SOE reviewed, the submitter shall provide a copy of the recommendations
17 made by the SOE and the submitter shall explain how the proposed operations comply
18 with those recommendations.

19 **(g)** Where an activity center has been located within the plan boundary for the area
20 specified in 14 CCR § 919.9(b)(1)(B), [§ 939.9(b)(1)(B)], or 1.3 miles of that boundary,
21 the RPF shall determine and document in the plan: (i) activity center-specific protection
22 measures to be applied during timber operations, and (ii) owl habitat, ~~including habitat~~
23 ~~described in (1)-(5) below,~~ that will be retained after the proposed operations are
24 completed to avoid take consistent with guidance provided by the listing agency or
25 Director, or (iii) propose alternative take avoidance standards based upon substantial

1 site-specific information for review and approval by the Director. The Director shall not
2 approve alternative standards that are not likely to satisfy the take avoidance criteria
3 specified in 14 CCR § 919.10, [§ 939.10].

4 Alternative standards proposed by the RPF shall utilize substantial site-specific
5 information to document, at a minimum, the following in the plan:

6 (1) Specific definitions of “nesting,” “roosting,” and “foraging” habitats as used in
7 the alternative standard;

8 (2) A map showing pre- and post-harvest suitable habitat within a 0.5 mile wide
9 core-use area and 1.3 mile wide activity center or, within the coast redwood forest type
10 of the Coast Forest District, a 100 acre core-use area and 0.7 mile wide activity center;

11 (3) A description of the post-harvest suitable habitat to be retained within the 0.5
12 mile wide core-use area or, in the coast redwood forest type of the Coast Forest District,
13 the 100 acre core-use area prioritized according to the following physical landscape
14 locations known to support owl use:

15 (A) Suitable habitats in close proximity to nest location.

16 (B) Suitable habitats located on lower one-third (1/3) of slope.

17 (C) Suitable habitats in close proximity to watercourses.

18 (D) Suitable habitats on north, northwest, and northeast facing slopes.

19 (E) Contiguous suitable habitat areas.

20 (4) Identification of all northern spotted owl activity centers within 1.3 miles of the
21 proposed plan or, within the redwood forest type of the Coast Forest District, 0.7 miles
22 of the proposed plan and;

23 (A) The results of all existing current and previous surveys conducted
24 pursuant to 14 CCR § 919.9(c)(1), [§ 939.9(c)(1)] within 1.3 miles of the proposed plan

1 or, within the redwood forest type of the Coast Forest District, 0.7 miles of the proposed
2 plan.

3 (B) An assessment of current activity center status within 1.3 miles of the
4 proposed plan or, within the redwood forest type of the Coast Forest District, 0.7 miles
5 of the proposed plan.

6 (5) If the plan proposes to harvest nesting and roosting habitat within the 0.5 mile
7 core-use area, no more than 33% of the suitable habitat in excess of habitat retention
8 objectives or, no suitable nesting and roosting habitat within the 100 acre core in the
9 redwood forest type of the Coast Forest District prior to Director approval, shall be
10 modified during the term of the THP.

11 ~~(1) The shape of the area established for the protection of nesting, roosting and~~
12 ~~foraging habitat shall be adjusted where feasible to conform to natural landscape~~
13 ~~attributes such as draws and streamcourses at low to mid slope in topographic position~~
14 ~~while retaining total habitat extent required. Within 500 feet of the activity center the~~
15 ~~characteristics of functional nesting habitat must be maintained. No timber operations~~
16 ~~shall be conducted in this area during the northern spotted owl breeding season unless~~
17 ~~reviewed and approved by the Director as not constituting a take. Timber operations~~
18 ~~may be conducted in this area outside the breeding season if appropriate measures are~~
19 ~~adopted to protect nesting habitat.~~

20 ~~(2) No more than 33% of suitable habitat in excess of habitat retention objectives~~
21 ~~will be modified during the term of the THP. Within 500-1000 feet of the activity center,~~
22 ~~retain sufficient functional characteristics to support roosting and provide protection from~~
23 ~~predation and storms. No timber operations shall be conducted in this area during the~~
24 ~~breeding season unless reviewed and approved by the Director as not constituting a~~
25 ~~take.~~

1 ~~(3) The RPF shall provide a Cumulative Impacts Analysis for the area that~~
2 ~~includes all lands delineated for the proposed project and subject to activities that result~~
3 ~~in habitat modification or disturbance potentially impacting northern spotted owls. 500~~
4 ~~acres of owl habitat must be provided within a .7 mile radius of the activity center,~~
5 ~~unless an alternative is reviewed and approved by the Director as not constituting a~~
6 ~~take. The 500 acres includes the habitat retained in subsections (1) and (2) above and~~
7 ~~should be as contiguous as possible. Less than 50% of the retained habitat should be~~
8 ~~under operation in any one year, unless reviewed and approved by the Director as not~~
9 ~~constituting a take.~~

10 ~~(4) 1336 total acres of owl habitat must be provided within 1.3 miles of each~~
11 ~~activity center, unless an alternative is reviewed and approved by the Director as not~~
12 ~~constituting a take. The 1336 acres includes the habitat retained within subsections (1)-~~
13 ~~(3) above.~~

14 ~~(5) The shape of the areas established pursuant to subsections (1) and (2) shall~~
15 ~~be adjusted to conform to natural landscape attributes such as draws and~~
16 ~~streamcourses while retaining the total area required within subsections (1) and (2)~~
17 ~~above.~~

18
19 **§ 919.10 [939.10] Take of Northern Spotted Owl.**

20 The Director shall apply the following criteria to the information provided by the plan
21 submitter and obtained during the review period to make a finding as to whether the
22 timber operations, as proposed, will "take" an individual northern spotted owl.

23 **(a)** The Director shall determine that the proposed habitat modification would result in
24 "harm" to an individual spotted owl if any of the following conditions exist.

1 (1) Foraging opportunity ~~Feeding habits~~ would be significantly impaired because
2 prey base or ability to catch prey would be adversely altered;

3 (2) ~~Breeding success~~ opportunity would be significantly impaired because of a
4 reduction in nesting, roosting or foraging habitat quality, habitat extent, or favorable
5 proximity to the activity center ~~surrounding owl habitat before the young have had an~~
6 ~~opportunity to successfully disperse from their nesting site;~~

7 (3) ~~Nesting behavior would be significantly impaired because the nest site or~~
8 ~~adjoining area up to 500 feet from the nest site would be adversely altered; or~~

9 (43) Sheltering opportunity (which includes nesting, roosting, and feeding
10 foraging, and nesting habitat) would be significantly impaired because of a reduction in
11 the ability availability of habitat to escape predators, survive severe weather, or find
12 appropriate microclimates ~~would be adversely altered.~~

13 (b) The Director shall determine that an individual northern spotted owl would be
14 "harassed" by the proposed timber operations if there is a likelihood ~~that~~ of any of the
15 following ~~conditions exist:~~

16 (1) ~~Feeding habits~~ Foraging behavior would be significantly disrupted because
17 ~~the prey base or the ability to catch prey would be impaired;~~

18 (2) ~~Breeding success~~ behavior would be significantly disrupted;

19 (3) Nesting behavior would be significantly disrupted ~~because activities would be~~
20 ~~conducted within 500 feet of a nest site; or~~

21 (4) Sheltering (which includes roosting, nesting, or feeding) would be
22 significantly disrupted because the ability to escape predators, survive severe weather,
23 or find appropriate microclimates would be adversely altered.

1 (c) If the Director concludes that the proposed operations will result in a ~~taking an~~
2 inability to avoid take of the owl, he/she shall provide the plan submitter with the
3 following information:

4 (1) The reasons for the determination, including an analysis of the factors set
5 forth in this section;

6 (2) The information which was relied upon and which was instrumental in making
7 the determination; and

8 (3) Recommendations for minimum modifications to the proposed operations
9 which would be necessary to bring the impacts to a level at which "take" would ~~not~~
10 occur be avoided.

DRAFT

1 **“NORTHERN SPOTTED OWL, 2013”**

2 **Title 14 of the California Code of Regulations (14 CCR):**

3 **Division 1.5, Chapter 4, Subchapters 4, 5, and 6,**

4 **Article 9 – Wildlife Protection Practices**

5
6 **Amend:**

7 **§ 895.1 – Definitions**

8 **§ 919.9, § 939.9 – Northern Spotted Owl [Coast, Northern Forest Districts]**

9
10 **Amend § 895.1. Definitions.**

11
12 ***** **“Active Nest”** means a bird nest site at which *****

13
14 **Activity Center** means a known northern spotted owl site documented from
15 detections, pursuant to the USFWS document “Protocol For Surveying Proposed
16 Management Activities That May Impact Northern Spotted Owls” revised January 9,
17 2012 ~~March 17, 1992.~~

18 **(a)** An activity center is established by:

19 **(1)** Resident Single Status is established by as consisting of either:

20 **(A)** The presence or response of a single owl within the same general
21 area on three or more occasions within a breeding season, with no response by an owl
22 of the opposite sex after a complete survey; or

23 **(B)** Multiple responses over several years (i.e., two responses in year one
24 and one response in year two 2, from the same general area).

1 (2) Two Birds-Pair Status Unknown is where the presence or response of two
2 birds of the opposite sex ~~where is detected but~~ pair status cannot be determined and
3 where at least one ~~of the owls member must~~ meets the resident single requirements.

4 (3) Territorial Pair Status, established by any one of the following:

5 (A) A ~~wherein~~ a male and female are heard and/or observed (either
6 initially or through their movement) in proximity (less than one-quarter mile apart) to
7 each other on the same visit; or

8 (B) A a male takes a mouse to a female; or

9 (C) A a female is detected (seen or heard) on the nest; or

10 (D) One ~~one~~ or both adults are observed with young; or

11 (E) Young identifiable based on plumage characteristics observed late in
12 the season by knowledgeable surveyors or young identifiable based on molecular data.

13 (4) ~~Unoccupied Status where no responses have been obtained from a~~
14 ~~previously identified northern spotted owl activity center after 3 years of survey, barring~~
15 ~~other evidence to the contrary.~~

16 An activity center ~~with unoccupied status~~ will not be considered an activity center
17 when it has been evaluated and a determination made by the Director. The
18 determination shall be based upon an analyses by state or federal agencies, which
19 indicates the activity center is no longer likely to support territorial owls due to habitat
20 changes or long-term surveys with negative responses or both ~~available information on~~
21 ~~survey history, habitat conditions within the home range, and changes to habitat that~~
22 ~~may have occurred since the northern spotted owl site was first identified.~~

23
24 **Adequate Site Occupancy** means the range of stocking levels*****
25

1 **Amend 919.9, 939.9 Northern Spotted Owl [Coast, Northern]**

2 ~~The submitter of a Every proposed timber harvesting plan, NTMP, conversion permit,~~
3 ~~Spotted Owl Resource Plan, or major amendment located in the Northern Spotted Owl~~
4 ~~Evaluation Area or within 1.3 miles of a known northern spotted owl activity center~~
5 ~~outside of the Northern Spotted Owl Evaluation Area shall follow the survey protocols~~
6 ~~provided by the listing federal and/or state wildlife agency prior to plan submission. The~~
7 ~~plan submitter shall use information obtained from surveys, consultation with federal or~~
8 ~~state wildlife agencies, and other methods to develop site-specific measures for~~
9 ~~avoidance of take consistent with 14 CCR § 919.10, [§ 939.10]. follow one of the~~
10 ~~procedures required in subsections (a)-(g) below for the area within the THP boundary~~
11 ~~as shown on the THP map and also for adjacent areas as specified within this section.~~
12 ~~The submitter may choose any alternative (a)-(g) that meets the on-the-ground~~
13 ~~circumstances. The required information shall be used by the Director to evaluate~~
14 ~~whether or not the proposed activity would result in the "take" of an individual northern~~
15 ~~spotted owl.~~

16 ~~—When subparagraphs (a), (b), (c) or (f) are used, the Director, prior to approval of a~~
17 ~~THP, shall consult with an SOE and conduct an independent review. An SOE may aid~~
18 ~~the RPF in fulfilling the requirements within subdivision (g). The SOE may make written~~
19 ~~recommendations regarding whether the retained habitat configuration and protection~~
20 ~~measures proposed in the THP will prevent a take of the owl.~~

21 ~~—In consultation with the SOE, the Director may adjust standards established by this~~
22 ~~section based on site specific circumstances in a manner which is consistent with~~
23 ~~information collected on owl behavior in California, and the prohibitions of the Federal~~
24 ~~Endangered Species Act.~~

1 ~~(a) If the project proponent requests preliminary review of the proposed operation or~~
2 ~~Spotted Owl Resource Plan prior to filing, the proponent shall consult with an SOE to~~
3 ~~evaluate whether the proposed operation would result in the taking of an individual~~
4 ~~northern spotted owl. This evaluation is preliminary to and separate from the final "take"~~
5 ~~determination to be made under 14 CCR § 919.10 [939.10]. In making that evaluation:~~

6 ~~_____ (1) The SOE shall apply the criteria set forth in 14 CCR § 919.10 [939.10].~~

7 ~~_____ (2) The SOE may request that the submitter provide additional information which~~
8 ~~the SOE finds necessary to evaluate if a "take" would occur, provided that the SOE~~
9 ~~states the type of information needed, the purpose of the information, and the level of~~
10 ~~accuracy necessary to meet the stated purpose.~~

11 ~~_____ (3) If the SOE concludes that no prohibited taking would occur, the SOE shall~~
12 ~~inform the submitter as soon as practicable and shall document the decision and the~~
13 ~~information which was relied upon by the SOE in the above evaluation. Reference data~~
14 ~~shall be readily available for the Director's review upon request;~~

15 ~~_____ (4) If the SOE concludes that the proposed timber operation or Spotted Owl~~
16 ~~Resource Plan would result in a taking, he or she shall inform the submitter as soon as~~
17 ~~practicable and shall comply with 14 CCR § 919.10(c) [939.10(c)] within 10 working~~
18 ~~days of making this determination.~~

19 ~~_____ (5) Requests for pre-filing consultation shall be handled in the order in which~~
20 ~~received.~~

21 ~~(b) The RPF shall include the following information:~~

22 ~~_____ (1) On a planimetric or topographic map of a minimum scale of 1:24,000, provide~~
23 ~~the following:~~

24 ~~_____ (A) The location and acreage of owl habitat. This information shall be~~
25 ~~shown for the area within the boundary both as it exists before and after timber~~

1 operations. The Director shall determine if timber typing maps may qualify as showing
2 owl habitat.

3 ~~_____ (B) Identify any adjoining owl habitat by type within .7 miles of the
4 boundary.~~

5 ~~_____ (C) When mapping functional owl nesting, roosting, and foraging
6 habitat, include additional information which helps define these areas such as: location
7 of topography features, riparian vegetation, hardwood component, water, potential nest
8 and roost sites, and potential suitable forage areas.~~

9 ~~_____ (D) All known owl observations, identified by location and visual or
10 nonvisual confirmation within 1.3 miles of the boundary. This information shall be
11 derived from the landowners and RPF's personal knowledge, and from the Department
12 of Fish and Game's spotted owl data base.~~

13 ~~_____ (2) Discussion on how functional characteristics of owl habitat will be protected
14 in terms of the criteria stated within 14 CCR § 919.10 subsections (a) and (b) [939.10
15 subsections (a) and (b)].~~

16 ~~_____ (3) As adjacent landowners permit and from other available information, a
17 discussion of adjacent owl habitat up to .7 mile from the proposed boundary and its
18 importance relative to the owl habitat within the boundary.~~

19 ~~_____ (4) Describe any proposals for monitoring owls or owl habitat which are
20 necessary to insure their protection. Monitoring is not required for approval.~~

21 ~~_____ (5) Discussion of any known owl surveys that have been conducted within 1.3
22 miles of the THP boundary. Include the dates, results and methodologies used if
23 known.~~

24 ~~_____ (6) A proposed route that will acquaint the SOE and other reviewers with the
25 important owl habitat.~~

1 ~~_____ (7) Attach aerial photos of the area, if available. (Aerial photos are not required.)~~

2 ~~(c) Where certification is made by the RPF and adequate records are kept showing~~
3 ~~that owl surveys were conducted sufficient to demonstrate the absence of owls from an~~
4 ~~area, the THP will be reviewed on a high priority basis. The THP shall contain~~
5 ~~verification that:~~

6 ~~_____ (1) The surveys have been conducted throughout the area within .7 miles of the~~
7 ~~boundary in accordance with the USFWS approved protocol ("Protocol For Surveying~~
8 ~~Proposed Management Activities That May Impact Northern Spotted Owls"; USFWS;~~
9 ~~March 17, 1992).~~

10 ~~_____ (2) The surveys were conducted during the current or immediately preceding~~
11 ~~survey period as prescribed by the previously cited USFWS approved protocol.~~

12 ~~_____ (3) The surveys reveal no nest sites, activity centers or owl observations in the~~
13 ~~area surveyed; and~~

14 ~~_____ (4) The surveys reveal no activity center or repeated observations indicating the~~
15 ~~presence of mates and/or young within 1.3 miles of the boundary based on a review of~~
16 ~~the landowner's and RPF's personal knowledge and the Department of Fish and~~
17 ~~Game's spotted owl data base.~~

18 ~~(d) If the plan submitter proposes to proceed under an "incidental taking" permit or any~~
19 ~~other permit covering the northern spotted owl issued by the U.S. Fish and Wildlife~~
20 ~~Service or the Department of Fish and Game, the submitter shall supply a copy of the~~
21 ~~permit upon the Department's request.~~

22 ~~(e) If the submitter proposes to proceed pursuant to the outcome of a discussion with~~
23 ~~the U.S. Fish and Wildlife Service, the submitter shall submit a letter prepared by the~~
24 ~~RPF that the described or proposed management prescription is acceptable to the~~
25 ~~USFWS.~~

1 ~~(f) If:~~

2 ~~—— (1) the submitter's proposed operations were reviewed by a SOE under 14 CCR~~
3 ~~§ 919.9, subsection(a) [939.9, subsection(a)]; and~~

4 ~~—— (2) the SOE recommended minimum modifications to the proposed operations~~
5 ~~which would be necessary to bring the impacts to a level at which no "take" would occur~~
6 ~~and the submitter has adopted these recommendations; and~~

7 ~~—— (3) the proposed operations remain substantially the same as the operations~~
8 ~~which the SOE reviewed, the submitter shall provide a copy of the recommendations~~
9 ~~made by the SOE and the submitter shall explain how the proposed operations comply~~
10 ~~with those recommendations.~~

11 ~~(g) Where an activity center has been located within the plan boundary or within 1.3~~
12 ~~miles of that boundary, the RPF shall determine and document in the plan: (i) activity~~
13 ~~center-specific protection measures to be applied during timber operations and (ii) owl~~
14 ~~habitat, including habitat described in (1)-(5) below, that will be retained after the~~
15 ~~proposed operations are completed:~~

16 ~~—— (1) Within 500 feet of the activity center the characteristics of functional nesting~~
17 ~~habitat must be maintained. No timber operations shall be conducted in this area during~~
18 ~~the northern spotted owl breeding season unless reviewed and approved by the~~
19 ~~Director as not constituting a take. Timber operations may be conducted in this area~~
20 ~~outside the breeding season if appropriate measures are adopted to protect nesting~~
21 ~~habitat.~~

22 ~~—— (2) Within 500-1000 feet of the activity center, retain sufficient functional~~
23 ~~characteristics to support roosting and provide protection from predation and storms.~~
24 ~~No timber operations shall be conducted in this area during the breeding season unless~~
25 ~~reviewed and approved by the Director as not constituting a take.~~

1 ~~(3) 500 acres of owl habitat must be provided within a .7 mile radius of the~~
2 ~~activity center, unless an alternative is reviewed and approved by the Director as not~~
3 ~~constituting a take. The 500 acres includes the habitat retained in subsections (1) and~~
4 ~~(2) above and should be as contiguous as possible. Less than 50% of the retained~~
5 ~~habitat should be under operation in any one year, unless reviewed and approved by~~
6 ~~the Director as not constituting a take.~~

7 ~~(4) 1336 total acres of owl habitat must be provided within 1.3 miles of each~~
8 ~~activity center, unless an alternative is reviewed and approved by the Director as not~~
9 ~~constituting a take. The 1336 acres includes the habitat retained within subsections (1)-~~
10 ~~(3) above.~~

11 ~~(5) The shape of the areas established pursuant to subsections (1) and (2) shall~~
12 ~~be adjusted to conform to natural landscape attributes such as draws and~~
13 ~~streamcourses while retaining the total area required within subsections (1) and (2)~~
14 ~~above.~~

15
16 ###

1 **“WILDLIFE PROTECTION PRACTICES AMENDMENTS, 2013”**

2 **Title 14 of the California Code of Regulations (14 CCR):**

3 **Division 1.5, Chapter 4, Subchapters 4, 5, and 6,**

4 **Article 1 – Abbreviations and Definitions**

5 **Article 9 – Wildlife Protection Practices**

6
7 **Amend:**

8 **§ 895.1. Definitions**

9 **§ 919.5, § 939.5, § 959.5 Alternatives [All Districts]**

10 **§ 919.9, § 939.9. Northern Spotted Owl [Coast, Northern]**

11 **§ 919.10, § 939.10. Take of Northern Spotted Owl.**

12 **§ 919.11 Marbled Murrelet Protective Measures [Coast]**

13
14 **Amend § 895.1. Definitions**

15
16 **Active Nest** means a bird nest site *****

17
18 **Activity Center** means a known northern spotted owl site documented from
19 detections, pursuant to the USFWS document “Protocol For Surveying Proposed
20 Management Activities That May Impact Northern Spotted Owls” revised March 17,
21 1992.

22 ~~(a) An activity center is established by:~~

23 ~~(1) Resident Single Status is established by:~~

1 ~~_____ (A) The presence or response of a single owl within~~
2 ~~the same general area on three or more occasions within a breeding season, with no~~
3 ~~response by an owl of the opposite sex after a complete survey;~~

4 ~~_____ (B) Multiple responses over several years (i.e., two~~
5 ~~responses in year one and one response in year 2, from the same general area).~~

6 ~~_____ (2) Pair Status Unknown is where the presence or response~~
7 ~~of two birds of the opposite sex is detected but pair status cannot be determined and~~
8 ~~where at least one member must meet the resident single requirements.~~

9 ~~_____ (3) Pair Status wherein a male and female are heard and/or~~
10 ~~observed (either initially or through their movement) in proximity (less than one-quarter~~
11 ~~mile apart) to each other on the same visit; or a male takes a mouse to a female; or a~~
12 ~~female is detected on the nest; or one or both adults are observed with young.~~

13 ~~_____ (4) Unoccupied Status where no responses have been~~
14 ~~obtained from a previously identified northern spotted owl activity center after 3 years of~~
15 ~~survey, barring other evidence to the contrary.~~

16 ~~_____ An activity center with unoccupied status will not be considered an activity~~
17 ~~center when it has been evaluated and a determination made by the Director. The~~
18 ~~determination shall be based upon available information on survey history, habitat~~
19 ~~conditions within the home range, and changes to habitat that may have occurred since~~
20 ~~the northern spotted owl site was first identified.~~

21
22 **Adequate Site Occupancy** means the range of stocking levels*****

23
24 *******Nest Tree** means the tree, snag, or other structure that contains the nest of
25 a species of special concern.

1 **Northern Spotted Owl Breeding Season** means the period February 1 through
2 July 31 for the Coast Forest District and February 1 through August 31 for the Northern
3 Forest District.

4
5 ~~**Northern Spotted Owl Evaluation Area** means the following counties: Marin,~~
6 ~~Napa, Del Norte, Mendocino, Colusa, Tehama (west of Interstate 5), Sonoma,~~
7 ~~Humboldt, Lake, Trinity, and Glenn (west of Interstate 5) and those portions of Siskiyou~~
8 ~~and Shasta counties west of the line indicated by the following descriptions: south from~~
9 ~~the California-Oregon border along the east boundary of Township 48N, Range 2W,~~
10 ~~MDB&M; thence west along the south boundary of Township 48N, Range 2W, MDB&M;~~
11 ~~thence south along Secret Spring Road; thence south and east along Meiss Lake Sams~~
12 ~~Neck Road; thence southwest along U.S. Highway 97; thence, at the southern end of~~
13 ~~the town of Macdoel, south along Old State Highway to due east of Orr Mountain;~~
14 ~~thence east and south along Tennant Road to about one half mile south of the town of~~
15 ~~Tennant; thence east along Forest Highway 77 (44N01) to its junction with Forest~~
16 ~~Highway 15; thence east along 44N01; thence south along the line dividing Ranges 4E~~
17 ~~and 5E, MDB&M; thence west along the line dividing Townships 42N and 41N,~~
18 ~~MDB&M; thence south along the line dividing Ranges 2E and 3E, MDB&M; thence~~
19 ~~south along State Highway 89; thence west along the Pit River to Shasta Lake; thence~~
20 ~~west along the south shore of Shasta Lake to Interstate 5; thence south along Interstate~~
21 ~~5 to the Shasta County line.~~

22
23 **Occupied Nest** means a nest currently being used by one or more adult birds
24 with eggs or young present. *****

1 ******Owl Habitat** means Type A, B, or C owl habitat or those areas with
2 functional foraging habitat, functional nesting habitat, and functional roosting habitat
3 which support the owl's biological needs for breeding, sheltering, and feeding. An area
4 of habitat could have characteristics which support all of the functional needs for
5 nesting, roosting, and foraging or a combination of those functions. Because owls are
6 known to occasionally inhabit less than optimal forest structure, local information can be
7 used to justify the modification of functional habitat definitions.

8
9 **Past Projects** means previously approved, on-going, or****

10
11 ******Specific Forest** means the area delineated under a Timber Management
12 Plan.

13
14 **Spotted Owl Expert** means a person with at least a Bachelor of Science degree
15 in Wildlife Biology, Biology, Forestry, Zoology or related field and a minimum of five field
16 seasons of verifiable northern spotted owl survey and biological evaluation work. The
17 SOE shall possess sufficient experience, knowledge and education in order to analyze
18 data from field conditions and present written information which substantiates why harm
19 and harassment of the northern spotted owl associated with timber operations will be
20 avoided. The individual shall be able to verify such experience, knowledge and
21 education upon the Director's request. The Director shall refer all SOE qualifications
22 received to the U.S. Fish and Wildlife Service and California Department of Fish and
23 Game for evaluation of qualifications.

1 ~~**Spotted Owl Resource Plan** means a plan that demonstrates an approach to~~
2 ~~preventing a taking of the northern spotted owl while conducting timber harvest~~
3 ~~operations. A Spotted Owl Resource Plan necessarily involves more than one timber~~
4 ~~harvest plan area.~~

5
6 **Stable Operating Surface** means a road or landing surface*****

7
8 *******Tractor Yarding** means that system of skidding (transporting) logs by a self-
9 propelled vehicle, generally by dragging the logs with a grapple or chokers.

10
11 **Type A Owl Habitat** means timber stands that have as a minimum the following
12 characteristics for live-tree structure:

13 _____ **1. Canopy layers:** The stand has two distinct tiers or is multi-layered with
14 dominant conifers greater than 120 ft. tall (trees greater than 90 ft. tall on poor sites,
15 less than site III, and for some montane tree species). Conifers or hardwoods
16 dominate the canopy layers less than 120 ft. tall.

17 _____ **2. Canopy Closure:** The canopy closure of conifers greater than 120 ft.
18 tall (or greater than 90 ft. tall on poor sites, less than site III, and for some montane tree
19 species) averages greater than 40% and not less than 20%. The total canopy closure
20 for all trees, conifers or hardwoods, is greater than 60%.

21 _____ **3. Large Trees:** The density of conifers greater than 35 in. d.b.h.
22 averages more than nine stems per acre and not less than six stems per acre and
23 includes a component of trees with sparse, broken, or dead tops.

24 _____ **4. Medium Trees:** The density of conifers or hardwoods 18 to 35 in.
25 d.b.h. averages more than 15 stems per acre and not less than 8 stems per acre.

1 ~~5. **Small Trees:** The density of conifers or hardwoods less than 18 in.~~
2 ~~d.b.h. averages more than 50 stems per acre and not less than 20 stems per acre.~~

3
4 ~~**Type B Owl Habitat** means timber stands that have as a minimum the following~~
5 ~~characteristics for live-tree structure:~~

6 ~~1. **Canopy Layers:** Moderately to strongly two-tiered or multi-layered with~~
7 ~~dominant conifers greater than 100 ft. tall (greater than 70 ft. tall on poor sites, less than~~
8 ~~site III, and for some montane tree species). Conifers or hardwoods dominate the~~
9 ~~canopy layers less than 100 ft. tall.~~

10 ~~2. **Canopy Closure:** The canopy closure of conifers greater than 100 ft.~~
11 ~~tall (or greater than 70 ft. tall on poor sites, less than site III, and for some montane tree~~
12 ~~species) averages greater than 40% and not less than 20%. The total closure for all~~
13 ~~trees, conifers or hardwoods, is greater than 60%.~~

14 ~~3. **Large Trees:** The density of conifers greater than 35 in. d.b.h.~~
15 ~~averages more than six stems per acre and not less than two stems per acre.~~

16 ~~4. **Medium Trees:** The density of conifers or hardwoods 18 to 35 in.~~
17 ~~d.b.h. averages more than 25 stems per acre and not less than 20 stems per acre.~~

18 ~~5. **Small Trees:** The density of conifers or hardwoods less than 18 in.~~
19 ~~d.b.h. averages more than 50 stems per acre and not less than 20 stems per acre.~~

20
21 ~~**Type C Owl Habitat** means timber stands that have as a minimum the following~~
22 ~~characteristics for live-tree structure:~~

23 ~~1. **Canopy Layers:** Uniform to moderately layered with dominant conifers~~
24 ~~or hardwoods 50 to 100 ft. tall although low numbers of emergent trees greater than 100~~
25 ~~ft. tall may be present.~~

1 ~~_____ **2. Canopy Closure:** The canopy closure of conifers or hardwoods 50 to~~
2 ~~100 ft. tall averages greater than 40% and not less than 20%. The total canopy closure~~
3 ~~for all trees, conifers or hardwoods, is greater than 60%.~~

4 ~~_____ **3. Large Trees:** The density of conifers greater than 35 inches d.b.h.~~
5 ~~averages less than six stems per acre and may be absent.~~

6 ~~_____ **4. Medium Trees:** The density of conifers or hardwoods 18 to 35 in.~~
7 ~~d.b.h. averages more than 15 stems per acre, but may be absent.~~

8 ~~_____ **5. Small Trees:** The density of conifers or hardwoods less than 18 inches~~
9 ~~d.b.h. averages more than 160 stems per acre and not less than 50 stems per acre.~~
10 ~~The average d.b.h. for all trees in the stand, including small, medium, and large trees is~~
11 ~~greater than 10 inches.~~

12
13 **Understory** means, generally, trees and woody species*****

14
15 **Amend § 919.5, § 939.5, § 959.5**

16
17 *******919.4, 939.4, 959.4 Non-listed Species [All Districts]**

18 Where significant adverse impacts to non-listed species are identified*****

19
20 **919.5, 939.5, 959.5 Listed Species and Take Avoidance [All Districts]**

21 Where State or Federally listed wildlife species occur within the plan area, the plan
22 submitter shall follow the survey protocols of the listing agency and include site-specific
23 measures for avoidance of take in the plan. The Director shall review the information
24 provided by the plan submitter and obtained during the review period, and consult with

1 the listing agency as necessary to make a finding as to whether the timber operations,
2 as proposed, will "take" an individual listed species.

3
4 **919.56, 939.56, 959.56 Alternatives [All Districts]**

5 The RPF may propose alternatives to the requirements of this chapter, and the Director
6 may approve such alternatives provided all of the following conditions are met:

7 **(a)** The RPF develops the alternative in consultation with the Department of Fish and
8 Game Wildlife or United States Fish and Wildlife Service, as appropriate.

9 **(b)** The Director consults with the Department of Fish and ~~Game Wildlife or United~~
10 States Fish and Wildlife Service, as appropriate ~~and makes findings that the alternative~~
11 ~~conforms to (c), below, prior to approving the alternative.~~

12 **(c)** The alternative will provide protection for nesting birds and their nesting sites equal
13 to or greater than the protection that would be afforded by the application of the normal
14 rules set forth in this chapter.

15
16 **Amend § 919.9, § 939.9**

17
18 **~~919.9, 939.9 Northern Spotted Owl [Coast, Northern]~~**

19 ~~Every proposed timber harvesting plan, NTMP, conversion permit, Spotted Owl~~
20 ~~Resource Plan, or major amendment located in the Northern Spotted Owl Evaluation~~
21 ~~Area or within 1.3 miles of a known northern spotted owl activity center outside of the~~
22 ~~Northern Spotted Owl Evaluation Area shall follow one of the procedures required in~~
23 ~~subsections (a)-(g) below for the area within the THP boundary as shown on the THP~~
24 ~~map and also for adjacent areas as specified within this section. The submitter may~~
25 ~~choose any alternative (a)-(g) that meets the on-the-ground circumstances. The~~

1 required information shall be used by the Director to evaluate whether or not the
2 proposed activity would result in the "take" of an individual northern spotted owl.

3 ~~When subparagraphs (a), (b), (c) or (f) are used, the Director, prior to approval of a~~
4 ~~THP, shall consult with an SOE and conduct an independent review. An SOE may aid~~
5 ~~the RPF in fulfilling the requirements within subdivision (g). The SOE may make written~~
6 ~~recommendations regarding whether the retained habitat configuration and protection~~
7 ~~measures proposed in the THP will prevent a take of the owl.~~

8 ~~In consultation with the SOE, the Director may adjust standards established by this~~
9 ~~section based on site specific circumstances in a manner which is consistent with~~
10 ~~information collected on owl behavior in California, and the prohibitions of the Federal~~
11 ~~Endangered Species Act.~~

12 ~~(a) If the project proponent requests preliminary review of the proposed operation or~~
13 ~~Spotted Owl Resource Plan prior to filing, the proponent shall consult with an SOE to~~
14 ~~evaluate whether the proposed operation would result in the taking of an individual~~
15 ~~northern spotted owl. This evaluation is preliminary to and separate from the final "take"~~
16 ~~determination to be made under 14 CCR § 919.10 [939.10]. In making that evaluation:~~

17 ~~(1) The SOE shall apply the criteria set forth in 14 CCR § 919.10 [939.10].~~

18 ~~(2) The SOE may request that the submitter provide additional information which~~
19 ~~the SOE finds necessary to evaluate if a "take" would occur, provided that the SOE~~
20 ~~states the type of information needed, the purpose of the information, and the level of~~
21 ~~accuracy necessary to meet the stated purpose.~~

22 ~~(3) If the SOE concludes that no prohibited taking would occur, the SOE shall~~
23 ~~inform the submitter as soon as practicable and shall document the decision and the~~
24 ~~information which was relied upon by the SOE in the above evaluation. Reference data~~
25 ~~shall be readily available for the Director's review upon request;~~

1 ~~(4) If the SOE concludes that the proposed timber operation or Spotted Owl~~
2 ~~Resource Plan would result in a taking, he or she shall inform the submitter as soon as~~
3 ~~practicable and shall comply with 14 CCR § 919.10(c) [939.10(c)] within 10 working~~
4 ~~days of making this determination.~~

5 ~~(5) Requests for pre-filing consultation shall be handled in the order in which~~
6 ~~received.~~

7 ~~(b) The RPF shall include the following information:~~

8 ~~(1) On a planimetric or topographic map of a minimum scale of 1:24,000, provide~~
9 ~~the following:~~

10 ~~(A) The location and acreage of owl habitat. This information shall be~~
11 ~~shown for the area within the boundary both as it exists before and after timber~~
12 ~~operations. The Director shall determine if timber typing maps may qualify as showing~~
13 ~~owl habitat.~~

14 ~~(B) Identify any adjoining owl habitat by type within .7 miles of the~~
15 ~~boundary.~~

16 ~~(C) When mapping functional owl nesting, roosting, and foraging~~
17 ~~habitat, include additional information which helps define those areas such as: location~~
18 ~~of topography features, riparian vegetation, hardwood component, water, potential nest~~
19 ~~and roost sites, and potential suitable forage areas.~~

20 ~~(D) All known owl observations, identified by location and visual or~~
21 ~~nonvisual confirmation within 1.3 miles of the boundary. This information shall be~~
22 ~~derived from the landowners and RPF's personal knowledge, and from the Department~~
23 ~~of Fish and Game's spotted owl data base.~~

1 ~~—— (2) Discussion on how functional characteristics of owl habitat will be protected~~
2 ~~in terms of the criteria stated within 14 CCR § 919.10 subsections (a) and (b) [939.10~~
3 ~~subsections (a) and (b)].~~

4 ~~—— (3) As adjacent landowners permit and from other available information, a~~
5 ~~discussion of adjacent owl habitat up to .7 mile from the proposed boundary and its~~
6 ~~importance relative to the owl habitat within the boundary.~~

7 ~~—— (4) Describe any proposals for monitoring owls or owl habitat which are~~
8 ~~necessary to insure their protection. Monitoring is not required for approval.~~

9 ~~—— (5) Discussion of any known owl surveys that have been conducted within 1.3~~
10 ~~miles of the THP boundary. Include the dates, results and methodologies used if~~
11 ~~known.~~

12 ~~—— (6) A proposed route that will acquaint the SOE and other reviewers with the~~
13 ~~important owl habitat.~~

14 ~~—— (7) Attach aerial photos of the area, if available. (Aerial photos are not required.)~~

15 ~~(c) Where certification is made by the RPF and adequate records are kept showing~~
16 ~~that owl surveys were conducted sufficient to demonstrate the absence of owls from an~~
17 ~~area, the THP will be reviewed on a high priority basis. The THP shall contain~~
18 ~~verification that:~~

19 ~~—— (1) The surveys have been conducted throughout the area within .7 miles of the~~
20 ~~boundary in accordance with the USFWS approved protocol ("Protocol For Surveying~~
21 ~~Proposed Management Activities That May Impact Northern Spotted Owls"; USFWS;~~
22 ~~March 17, 1992).~~

23 ~~—— (2) The surveys were conducted during the current or immediately preceding~~
24 ~~survey period as prescribed by the previously cited USFWS approved protocol.~~

1 ~~———— (3) The surveys reveal no nest sites, activity centers or owl observations in the~~
2 ~~area surveyed; and~~

3 ~~———— (4) The surveys reveal no activity center or repeated observations indicating the~~
4 ~~presence of mates and/or young within 1.3 miles of the boundary based on a review of~~
5 ~~the landowner's and RPF's personal knowledge and the Department of Fish and~~
6 ~~Game's spotted owl data base.~~

7 ~~(d) If the plan submitter proposes to proceed under an "incidental taking" permit or any~~
8 ~~other permit covering the northern spotted owl issued by the U.S. Fish and Wildlife~~
9 ~~Service or the Department of Fish and Game, the submitter shall supply a copy of the~~
10 ~~permit upon the Department's request.~~

11 ~~(e) If the submitter proposes to proceed pursuant to the outcome of a discussion with~~
12 ~~the U.S. Fish and Wildlife Service, the submitter shall submit a letter prepared by the~~
13 ~~RPF that the described or proposed management prescription is acceptable to the~~
14 ~~USFWS.~~

15 ~~(f) If:~~

16 ~~———— (1) the submitter's proposed operations were reviewed by a SOE under 14 CCR~~
17 ~~§ 919.9, subsection(a) [939.9, subsection(a)]; and~~

18 ~~———— (2) the SOE recommended minimum modifications to the proposed operations~~
19 ~~which would be necessary to bring the impacts to a level at which no "take" would occur~~
20 ~~and the submitter has adopted those recommendations; and~~

21 ~~———— (3) the proposed operations remain substantially the same as the operations~~
22 ~~which the SOE reviewed, the submitter shall provide a copy of the recommendations~~
23 ~~made by the SOE and the submitter shall explain how the proposed operations comply~~
24 ~~with those recommendations.~~

1 ~~(g) Where an activity center has been located within the plan boundary or within 1.3~~
2 ~~miles of that boundary, the RPF shall determine and document in the plan: (i) activity~~
3 ~~center-specific protection measures to be applied during timber operations and (ii) owl~~
4 ~~habitat, including habitat described in (1)-(5) below, that will be retained after the~~
5 ~~proposed operations are completed:~~

6 ~~—— (1) Within 500 feet of the activity center the characteristics of functional nesting~~
7 ~~habitat must be maintained. No timber operations shall be conducted in this area during~~
8 ~~the northern spotted owl breeding season unless reviewed and approved by the~~
9 ~~Director as not constituting a take. Timber operations may be conducted in this area~~
10 ~~outside the breeding season if appropriate measures are adopted to protect nesting~~
11 ~~habitat.~~

12 ~~—— (2) Within 500-1000 feet of the activity center, retain sufficient functional~~
13 ~~characteristics to support roosting and provide protection from predation and storms.~~
14 ~~No timber operations shall be conducted in this area during the breeding season unless~~
15 ~~reviewed and approved by the Director as not constituting a take.~~

16 ~~—— (3) 500 acres of owl habitat must be provided within a .7 mile radius of the~~
17 ~~activity center, unless an alternative is reviewed and approved by the Director as not~~
18 ~~constituting a take. The 500 acres includes the habitat retained in subsections (1) and~~
19 ~~(2) above and should be as contiguous as possible. Less than 50% of the retained~~
20 ~~habitat should be under operation in any one year, unless reviewed and approved by~~
21 ~~the Director as not constituting a take.~~

22 ~~—— (4) 1336 total acres of owl habitat must be provided within 1.3 miles of each~~
23 ~~activity center, unless an alternative is reviewed and approved by the Director as not~~
24 ~~constituting a take. The 1336 acres includes the habitat retained within subsections (1)-~~
25 ~~(3) above.~~

1 ~~_____ (5) The shape of the areas established pursuant to subsections (1) and (2) shall~~
2 ~~be adjusted to conform to natural landscape attributes such as draws and~~
3 ~~streamcourses while retaining the total area required within subsections (1) and (2)~~
4 ~~above.~~

5
6 **Amend § 919.10, § 939.10**

7
8 **§ 919.10 [939.10] Take of Northern Spotted Owl.**

9 ~~The Director shall apply the following criteria to the information provided by the plan~~
10 ~~submitter and obtained during the review period to make a finding as to whether the~~
11 ~~timber operations, as proposed, will "take" an individual northern spotted owl.~~

12 ~~(a) The Director shall determine that the proposed habitat modification would result in~~
13 ~~"harm" to an individual spotted owl if any of the following conditions exist.~~

14 ~~_____ (1) Feeding habits would be significantly impaired because prey base or ability~~
15 ~~to catch prey would be adversely altered;~~

16 ~~_____ (2) Breeding success would be significantly impaired because of a reduction in~~
17 ~~surrounding owl habitat before the young have had an opportunity to successfully~~
18 ~~disperse from their nesting site;~~

19 ~~_____ (3) Nesting behavior would be significantly impaired because the nest site or~~
20 ~~adjoining area up to 500 feet from the nest site would be adversely altered; or~~

21 ~~_____ (4) Sheltering (which includes roosting, feeding, and nesting) would be~~
22 ~~significantly impaired because the ability to escape predators, survive severe weather,~~
23 ~~or find appropriate microclimates would be adversely altered.~~

1 ~~(b) The Director shall determine that an individual northern spotted owl would be~~
2 ~~"harassed" by the proposed timber operations if there is a likelihood that any of the~~
3 ~~following conditions exist:~~

4 ~~—— (1) Feeding habits would be significantly disrupted because the prey base or the~~
5 ~~ability to catch prey would be impaired;~~

6 ~~—— (2) Breeding success would be significantly disrupted;~~

7 ~~—— (3) Nesting behavior would be significantly disrupted because activities would be~~
8 ~~conducted within 500 feet of a nest site; or~~

9 ~~—— (4) Sheltering (which includes roosting, nesting, or feeding) would be~~
10 ~~significantly disrupted because the ability to escape predators, survive severe weather,~~
11 ~~find appropriate microclimes would be adversely altered.~~

12 ~~(c) If the Director concludes that the proposed operations will result in a taking of the~~
13 ~~owl, he/she shall provide the plan submitter with the following information:~~

14 ~~—— (1) The reasons for the determination, including an analysis of the factors set~~
15 ~~forth in this section;~~

16 ~~—— (2) The information which was relied upon and which was instrumental in making~~
17 ~~the determination; and~~

18 ~~—— (3) Recommendations for minimum modifications to the proposed operations~~
19 ~~which would be necessary to bring the impacts to a level at which "take" would not~~
20 ~~occur.~~

21
22 **Amend § 919.11**

23
24 **919.11 Marbled Murrelet Protective Measures [Coast]**

1 Where there is evidence of an active murrelet site in or adjacent to the THP area, as
2 defined in "*Addendum to Surveying Marbled Murrelets at Inland Forested Sites: A*
3 *Guide for California Coastal Forests*" C.J. Ralph, April 1991 or where there is evidence
4 of a potential impact to a murrelet, the Director shall consult with DFG as to whether the
5 proposed THP will result in a "take" or "jeopardy" (pursuant to the California
6 Endangered Species Act) of the murrelet before the Director may approve or
7 disapprove a THP. Biological Assessments submitted with the THP that are prepared
8 according to the Department of Fish and Game Guidelines for Consultation (F&GC Sec.
9 2090) shall be provided to the DFG during consultation. If DFG determines jeopardy or
10 a take will occur as a result of operations proposed in the THP, the Director shall
11 disapprove the THP unless the THP is accompanied by authorization by a wildlife
12 agency acting within its authority under state or federal endangered species acts.

13
14 **919.12, 939.12, 959.12 Sensitive Species Classification [All Districts]**

15 The Board has the responsibility under the FPA to provide protection*****

16
17 ###