

1 Evaluation for "Take" Avoidance of Northern Spotted Owl, 2009

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3
4 Amend

5 14 CCR 895 - Abbreviations Applicable Throughout Chapter

6 14 CCR § 895.1 - Definitions

7 14 CCR § 919.9, 939.9 - Northern Spotted Owl

8 14 CCR § 919.10, 939.10 - Take of Northern Spotted Owl

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11 **§ 895. Abbreviations Applicable Throughout Chapter.**

12 ***** Sec. Section

13 SOE Spotted Owl Expert

14 T Township: a tier of ranges, six miles in length between two
15 successive standard parallels as used in the U.S.
16 General Land Survey.*****

17 **§ 895.1. Definitions.**

18 ***** **Active Nest** means a bird nest site at which breeding efforts
19 have recently occurred as determined by the Department of Fish and
20 Game, as specified below:

21 For the Great Blue Heron, Great Egret, recently means within the
22 last two years.

23 For the Golden Eagle, Osprey, Goshawk, recently means within the
24 last three years.

25 For the Bald Eagle and Peregrine Falcon, recently means within the
last five years.

Nests that have not been used within this time period are considered
abandoned.

"ACTIVITY CENTER" means a known northern spotted owl site documented

from detections, pursuant to the USFWS document "Protocol For

1 Surveying Proposed Management Activities That May Impact Northern
2 Spotted Owls" revised March 17, 1992.

3 (a) An activity center is established by:

4 (1) Resident Single Status is established by:

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

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

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

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

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

24 An activity center with unoccupied status will not be
25 considered an activity center when it has been evaluated and a

1 determination made by the Director. The determination shall be based
2 upon available information on survey history, habitat conditions
3 within the home range, and changes to habitat that may have occurred
4 since the northern spotted owl site was first identified.

5
6 **Adequate Site Occupancy** means the range of stocking levels which
7 provide a balance between the largest number of trees per acre capable
8 of maximum individual tree growth on future crop trees and maximum
9 overall stand growth. This balance is achieved when stocking levels
10 are within Zones 2 and 3 of the Langsaeter curve, as shown in "The
11 Practice of Silviculture", by David Smith (1962).****

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

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

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

19 **** **Specific Forest** means the area delineated under a Timber
20 Management Plan.

21 **SPOTTED OWL EXPERT** means a state, federal, or private biologist with a
22 Bachelor of Science degree in Wildlife Biology, Biology, Forestry,
23 Zoology or related field and a minimum of two field seasons of
24 verifiable northern spotted owl survey and biological evaluation
25 work. The SOE shall be able to demonstrate sufficient experience,
knowledge and education to recognize and analyze data from field
conditions and present written information which helps determine harm

1 or harassment of the northern spotted owl from proposed projects. The
2 individual shall demonstrate to the Director or verify such
3 evaluation work, knowledge and education upon the Director's request.
4

5 **Spotted Owl Resource Plan** means a plan that demonstrates an approach
6 to preventing a taking of the northern spotted owl while conducting
7 timber harvest operations. A Spotted Owl Resource Plan necessarily
8 involves more than one timber harvest plan area.*****

8 **§ 919.9.[939.9] Northern Spotted Owl.**

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

20 When subparagraphs (a), (b), ~~or (c)~~ or (f) are used, the
21 Director, prior to approval, shall consult with a SOE and conduct an
22 independent review. A SOE may aid the RPF in fulfilling the
23 requirements within subdivision (g).~~state employed biologist~~
24 ~~designated by the Department who is accepted by the Department of Fish~~
25 ~~and Game or the Fish and Wildlife Service as having sufficient~~

1 ~~knowledge and education to determine harm or harassment of the~~
2 ~~Northern Spotted Owl. The biologist SOE shall may make written~~
3 ~~recommendations regarding whether the retained habitat configuration~~
4 ~~and protection measures proposed in the THP will prevent a take of the~~
5 ~~owl.~~

6 ~~The Department may designate independent biological consultants who~~
7 ~~can fulfill the requirements within subparagraph (a) of these rules.~~

8 ~~The plan submitter has the discretion whether to utilize a designated~~
9 ~~independent consultant under subparagraph (a). All other requirements~~
10 ~~under the northern spotted owl rules specifying a designated biologist~~
11 ~~are to be fulfilled by a state-employed biologist. To be designated~~
12 ~~by the Department, the independent consultant must be accepted by~~
13 ~~either the Department of Fish and Game or the Fish and Wildlife~~
14 ~~Service. This acceptance requires the independent consultant to~~
15 ~~demonstrate, in the field, sufficient knowledge and education to~~
16 ~~recognize and analyze data from field conditions and present~~
17 ~~information which helps determine harm or harassment of the northern~~
18 ~~spotted owl. The same educational and experience criteria utilized to~~
19 ~~designate state-employed biologists will be applied. When a~~
20 ~~designated independent consultant is used to fulfill the requirements~~
21 ~~of subparagraph (a), the independent consultant shall make written~~
22 ~~observations and recommendations regarding whether the retained~~
23 ~~habitat configuration and protection measures proposed in the THP will~~
24 ~~prevent a take of the owl.~~

1 In consultation with the SOE ~~state-employed designated biologist,~~
2 the Director may adjust standards established by this section based on
3 site specific circumstances in a manner which is consistent with
4 information collected on owl behavior in California, and the
5 prohibitions of the Federal Endangered Species Act.

6 (a) If the project proponent requests preliminary review of the
7 proposed operation or Spotted Owl Resource Plan prior to filing, a
8 ~~designated biologist (either state employed or an independent~~
9 ~~consultant) shall be assigned~~ the proponent shall consult with a SOE
10 to evaluate whether the proposed operation would result in the taking
11 of an individual northern spotted owl. This evaluation is preliminary
12 to and separate from the final "take" determination to be made under
13 ~~Section 14 CCR § 919.10~~ § 919.10 ~~[+939.10+]~~. In making that evaluation:

14 (1) The ~~designated biologist~~ SOE shall apply the criteria set
15 forth in ~~Section 14 CCR § 919.10~~ § 919.10 ~~or~~ [939.10].

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

22 (3) If the ~~designated biologist~~ SOE concludes that no prohibited
23 taking would occur, the ~~biologist~~ SOE shall inform the submitter as
24 soon as practicable and shall document the decision and the
25 information which was relied upon by the ~~biologist~~ SOE in the above

1 evaluation. Reference data shall be readily available for the
2 Director's review upon request;

3 (4) If the ~~designated biologist~~ SOE concludes that the proposed
4 timber operation or Spotted Owl Resource Plan would result in a
5 taking, he or she shall inform the submitter as soon as practicable
6 and shall comply with ~~sections~~ 14 CCR § 919.10(c) [939.10(c)] within
7 10 working days of making this determination.

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

10 (b) The RPF shall include the following information:

11 (1) On a planimetric or topographic map of a minimum scale of
12 1:24,000, provide the following:

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

17 (B) Identify any adjoining owl habitat by type within .7
18 miles of the boundary.

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

24 (D) All known owl observations, identified by location
25 and visual or nonvisual confirmation within 1.3 miles of the boundary.

1 This information shall be derived from the landowners and RPF's
2 personal knowledge, and from the Department of Fish and Game's spotted
3 owl data base ~~existing spotted owl data bases available from the~~
4 ~~Department.~~

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

8 (3) As adjacent landowners permit and from other available
9 information, a discussion of adjacent owl habitat up to .7 mile from
10 the proposed boundary and its importance relative to the owl habitat
11 within the boundary.

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

15 (5) Discussion of any known owl surveys that have been conducted
16 within 1.3 miles of the boundary. Include the dates, results and
17 methodologies used if known.

18 (6) A proposed route that will acquaint the SOE designated
19 ~~biologist~~ and other reviewers with the important owl habitat.

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

22 (c) Where certification is made by the RPF and adequate records are
23 kept showing that owl surveys were conducted sufficient to demonstrate
24 the absence of owls from an area, there will be a high priority
25 review. There shall be verification that:

1 (1) The surveys have been conducted throughout the area within
2 .7 miles of the boundary in accordance with the USFWS approved
3 protocol ("Guidelines for Surveying Proposed Management Activities
4 Which May Impact Northern Spotted Owls"; USFWS; March 17, 19912).

5 (2) The surveys were conducted during the current or immediately
6 preceding survey period as prescribed by the protocol cited in (c) (1)
7 above.

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

10 (4) The surveys reveal no activity centers, active nest sites or
11 repeated observations indicating the presence of mates and/or young
12 are within 1.3 miles of the boundary based on a review of the
13 landowner and RPF's personal knowledge and the Department of Fish and
14 Game's spotted owl data base.

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

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

1 (f) If:

2 (1) the submitter's proposed operations were reviewed by a
3 ~~designated biologist~~ SOE under ~~Section 14 CCR §~~ 919.9(a) [939.9(a)];
4 and

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

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

14 (g) Where a nest site or activity center has been located within the
15 THP boundary or within 1.3 miles of that boundary, the RPF shall
16 determine and document that the habitat described in (1)-(5) below
17 will be retained after the proposed operations are completed:

18 (1) Within 500 ft. of the active nest site or pair activity
19 center the characteristics of functional nesting habitat must be
20 maintained. No timber operations shall be conducted in this area
21 during the breeding season unless reviewed ~~by the Department of Fish~~
22 ~~and Game~~ and approved by the Director as not constituting a take.
23 Timber operations may be conducted in this area outside the breeding
24 season if appropriate measures are adopted to protect nesting habitat.

25

1 (2) Within 500-1000 ft. of the active nest site or pair activity
2 center, retain sufficient functional characteristics to support
3 roosting and provide protection from predation and storms. No timber
4 operations shall be conducted in this area during the breeding season
5 unless reviewed and approved by the Director as not constituting a
6 take.

7 (3) 500 acres of owl habitat must be provided within a .7 mile
8 radius of the active nest site or pair activity center, unless an
9 alternative is reviewed ~~by the Department of Fish and Game~~ and
10 approved by the Director as not constituting a take. The 500 acres
11 includes the habitat retained in subsections (1) and (2) above and
12 should be as contiguous as possible. Less than 50% of the retained
13 habitat should be under operation in any one year, unless reviewed ~~by~~
14 ~~the Department of Fish and Game~~ and approved by the Director.

15 (4) 1336 total acres of owl habitat must be provided 1.3 miles
16 of each nest site or pair activity center, unless an alternative is
17 reviewed ~~by the Department of Fish and Game~~ and approved by the
18 Director as not constituting a take. The 1336 acres includes the
19 habitat retained within subsections (1) - (3) above.

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

1 **§ 919.10 [939.10] Take of Northern Spotted Owl.**

2 The ~~designated biologist and the~~ Director shall apply the following
3 criteria to the information provided by the plan submitter and
4 obtained during the review period to make a finding as to whether the
5 timber operations, as proposed, will "take" an individual northern
6 spotted owl. ~~The designated biologist shall use the best professional~~
7 ~~judgment in making that finding.~~

8 (a) The ~~designated biologist and the~~ Director shall determine that
9 the proposed habitat modification would result in "harm" to an
10 individual spotted owl if any of the following conditions exist.

11 (1) Feeding habits would be significantly impaired because prey
12 base or ability to catch prey would be adversely altered;

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

16 (3) Nesting behavior would be significantly impaired because the
17 nest site or adjoining area up to 500 ft. from the nest site would be
18 adversely altered; or

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

23 (b) The ~~designated biologist and the~~ Director shall determine that
24 an individual northern spotted owl would be "harassed" by the proposed
25

1 timber operations if there is a likelihood that any of the following
2 conditions exist:

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

5 (2) Breeding success would be significantly disrupted;

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

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

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

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

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

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