

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

2 [Final Adopted Regulation, September 9, 2009]

3
4
5 Amend

6 14 CCR 895 - Abbreviations Applicable Throughout Chapter

7 14 CCR § 895.1 - Definitions

8 14 CCR § 919.9, 939.9 - Northern Spotted Owl

9 14 CCR § 919.10, 939.10 - Take of Northern Spotted Owl

10
11 Note: Authority cited: Sections 4551, 4551.5 and 21082, Public
12 Resources Code. Reference: Sections 4511, 4512, 4513, 4521.3,
13 4522, 4522.5, 4523-4525, 4525.3, 4525.5, 4525.7, 4526, 4526.5,
14 4527, 4527.5, 4528, 4551, 4551.5, 4552, 4582 and 21080.5, Public
15 Resources Code.

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

17 ******* Sec.** Section

18 SOE Spotted Owl Expert

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

1 **§ 895.1. Definitions.**

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

5 For the Great Blue Heron, Great Egret, recently means within the
6 last two years.

7 For the Golden Eagle, Osprey, Goshawk, recently means within the
8 last three years.

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

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

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

17 (a) An activity center is established by:

18 (1) Resident Single Status is established by:

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

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

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

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

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

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

15
16 **Adequate Site Occupancy** means the range of stocking levels which
17 provide a balance between the largest number of trees per acre capable
18 of maximum individual tree growth on future crop trees and maximum
19 overall stand growth. This balance is achieved when stocking levels
20 are within Zones 2 and 3 of the Langsaeter curve, as shown in "The
21 Practice of Silviculture", by David Smith (1962).****

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

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

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

1 ***** **Specific Forest** means the area delineated under a Timber
2 Management Plan.

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

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

19 Note: Authority cited: Sections 4551, 4551.5, 4553, 4561, 4561.5,
20 4561.6, 4562, 4562.5, 4562.7 and 4591.1, Public Resources Code.
21 Reference: Sections 4512, 4513, 4526, 4551, 4551.5, 4561, 4561.6,
22 4562, 4562.5, 4562.7, 4583.2, 4591.1, 21001(f), 21080.5, 21083.2 and
21084.1, Public Resources Code; CEQA Guidelines Appendix K (printed
following Section 15387 of Title 14 Cal. Code of Regulations), and
Laupheimer v. State(1988) 200 Cal.App.3d 440; 246 Cal.Rptr. 82.

1 **§ 919.9.[939.9] Northern Spotted Owl.**

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

13 When subparagraphs (a), (b), ~~or (c)~~ or (f) are used, the
14 Director, prior to approval, shall consult with a SOE and conduct an
15 independent review. A SOE may aid the RPF in fulfilling the
16 requirements within subdivision (g).~~state employed biologist~~
17 ~~designated by the Department who is accepted by the Department of Fish~~
18 ~~and Game or the Fish and Wildlife Service as having sufficient~~
19 ~~knowledge and education to determine harm or harassment of the~~
20 ~~Northern Spotted Owl. The biologist SOE shall~~ may make written
21 recommendations regarding whether the retained habitat configuration
22 and protection measures proposed in the THP will prevent a take of the
23 owl.

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

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

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

23 **(a)** If the project proponent requests preliminary review of the
24 proposed operation or Spotted Owl Resource Plan prior to filing, a
25 ~~designated biologist (either state employed or an independent~~

1 ~~consultant) shall be assigned~~ the proponent shall consult with a SOE
2 to evaluate whether the proposed operation would result in the taking
3 of an individual northern spotted owl. This evaluation is preliminary
4 to and separate from the final "take" determination to be made under
5 ~~Section~~14 CCR § 919.10 [~~939.10~~]. In making that evaluation:

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

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

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

20 (4) If the ~~designated biologist~~ SOE concludes that the proposed
21 timber operation or Spotted Owl Resource Plan would result in a
22 taking, he or she shall inform the submitter as soon as practicable
23 and shall comply with ~~sections~~ 14 CCR § 919.10(c) [939.10(c)] within
24 10 working days of making this determination.

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

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

4 **(1)** On a planimetric or topographic map of a minimum scale of
5 1:24,000, provide the following:

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

10 **(B)** Identify any adjoining owl habitat by type within .7
11 miles of the boundary.

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

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

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

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

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

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

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

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

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

19 (1) The surveys have been conducted throughout the area within
20 .7 miles of the boundary in accordance with the USFWS approved
21 protocol ("Guidelines for Surveying Proposed Management Activities
22 Which May Impact Northern Spotted Owls"; USFWS; March 17, 1991~~2~~).

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

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

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

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

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

17 (f) If:

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

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

1 **(3)** the proposed operations remain substantially the same as the
2 operations which the ~~designated biologist~~ SOE reviewed, the submitter
3 shall provide a copy of the recommendations made by the ~~designated~~
4 ~~biologist~~ SOE and the submitter shall explain how the proposed
5 operations comply with those recommendations.

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

10 **(1)** Within 500 ft. of the active nest site or pair activity
11 center the characteristics of functional nesting habitat must be
12 maintained. No timber operations shall be conducted in this area
13 during the northern spotted owl breeding season unless reviewed ~~by the~~
14 ~~Department of Fish and Game~~ and approved by the Director as not
15 constituting a take. Timber operations may be conducted in this area
16 outside the breeding season if appropriate measures are adopted to
17 protect nesting habitat.

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

24 **(3)** 500 acres of owl habitat must be provided within a .7 mile
25 radius of the active nest site or pair activity center, unless an

1 alternative is reviewed ~~by the Department of Fish and Game~~ and
2 approved by the Director as not constituting a take. The 500 acres
3 includes the habitat retained in subsections (1) and (2) above and
4 should be as contiguous as possible. Less than 50% of the retained
5 habitat should be under operation in any one year, unless reviewed ~~by~~
6 ~~the Department of Fish and Game~~ and approved by the Director.

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

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

16 Note: Authority cited: Section 4551, Public Resources Code. Reference:
17 Sections 4513, 4551.5, 4582.75 and 4583, Public Resources Code; and 50
18 CFR 17.11.

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

20 The ~~designated biologist and the~~ Director shall apply the following
21 criteria to the information provided by the plan submitter and
22 obtained during the review period to make a finding as to whether the
23 timber operations, as proposed, will "take" an individual northern
24 spotted owl. ~~The designated biologist shall use the best professional~~
25 ~~judgment in making that finding.~~

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

4 **(1)** Feeding habits would be significantly impaired because prey
5 base or ability to catch prey would be adversely altered;

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

9 **(3)** Nesting behavior would be significantly impaired because the
10 nest site or adjoining area up to 500 ft. from the nest site would be
11 adversely altered; or

12 **(4)** Sheltering (which includes roosting, feeding, and nesting)
13 would be significantly impaired because the ability to escape
14 predators, survive severe weather, or find appropriate microclimes
15 would be adversely altered.

16 **(b)** The ~~designated biologist and the~~ Director shall determine that
17 an individual northern spotted owl would be "harassed" by the proposed
18 timber operations if there is a likelihood that any of the following
19 conditions exist:

20 **(1)** Feeding habits would be significantly disrupted because the
21 prey base or the ability to catch prey would be impaired;

22 **(2)** Breeding success would be significantly disrupted;

23 **(3)** Nesting behavior would be significantly disrupted because
24 activities would be conducted within 500 feet of a nest site; or
25

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

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

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

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

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

15
16 Note: Authority cited: Section 4551, Public Resources Code.
17 Reference: Sections 4313, 4551.5, 4582.75 and 4583, Public Resources
Code; 50 CFR 17.11.