

INITIAL STATEMENT OF REASONS

Activity Center Clarification for Northern Spotted Owl, 2010

[Published March 19, 2010]

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

Amend:

§ 919.9 [939.9] Northern Spotted Owl

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATIONS ARE INTENDED TO ADDRESS

In June 1990, the U.S. Fish and Wildlife Service (Service) listed the Northern Spotted Owl (*Strix occidentalis caurina*)(NSO) as threatened under the Endangered Species Act. As a result of the listing, the Board of Forestry and Fire Protection adopted, and the Office of Administrative Law certified, the existing Forest Practice Rule sections 919.9 and 919.10 (rules) for implementation in 1991. Subsequent changes to these sections were made in October 2008 and September 2009.

The rules require CAL FIRE to make preliminary determinations of incidental take avoidance for the owl in order to approve Timber Harvesting Plans, Modified Timber Harvesting Plans, Program Timber Harvesting Plans, and Nonindustrial Timber Management Plans (Plans) proposed within the range of the species in California (ref. 14 CCR §§ 898.2(d)). In order to make such determinations prior to plan approval and to assure compliance with the disclosure requirements of the Forest Practice Act and the California Environmental Quality Act, CAL FIRE must ensure all plans located within the range of the northern spotted owl incorporate sufficient information related to the species and its associated habitat and include enforceable protection measures for the species.

During evaluation of the NSO rules adopted in September 2009, in the ruling making file titled "Evaluation for "Take" Avoidance of Northern Spotted Owl, 2009",_OAL Regulatory Action # 2009-1014-01S, the existing regulation in 14 CCR section 919.9 was found to contain undefined terms that are related to NSO nest sites, habitat, and protection measures. The undefined terms need to be removed to provide clarity as to where the protection measures for Northern Spotted Owls will be applied.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

The amendment to 14 CCR § 919.9 [939.9], subsection (c)(4) and 919.9 [939.9], subsection (g)(1), (2), (3), and (4) removes the undefined terms “active nest site” and “pair activity center” and replaces them with “activity center”, which is defined by previous rulemaking action.

14 CCR § 919.9 [939.9] (g) is also amended to clarify that “activity center-specific protection measures” and “owl” habitat shall be determined, documented and retained as part the plan and operations. The undefined term “nest site” is also deleted.

The above amendments are necessary to ensure that no confusion exists as to what an activity center is, and what protections are needed.

Non substantive amendments are also made in 14 CCR § 919.9 [939.9] (g). The term “THP” is replaced with “plan”. This change is for consistency with terminology used throughout the FPRs. The term “plan” is defined in the FPRs and includes a Timber Harvest Plans (THP).

ALTERNATIVES TO THE REGULATIONS CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board has considered several alternatives to the proposed regulation.

Alternative 1 No Amendments to the Existing NSO Rules.

This alternative would leave the existing rules intact. It would not contribute to the purpose and necessity of the proposed action. It could result in 1) inappropriate activity center protection measures being proposed in aTHP and, 2) additional time and edits for the plan preparer and reviewing agencies as part of the THP approval process.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board has not identified any adverse environmental effects as a result of the proposed rules. Because the proposed rule changes are clarification-only, the proposed rules do not change the existing environmental protection standards in the Forest Practice Rules deemed necessary to meet the goals of avoiding the incidental take of northern spotted owls during timber harvesting activities.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board has not identified any alternatives that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The Board staff estimated the regulation should not have any adverse economic impact on any business. The amendments provides the Director and plan preparer with clarifications to ensure appropriate habitat protection measures and clear documentation of proposed protection measures are included as part of the plan. As such, this clarification-only change should result in more timely and efficient approval of Plans. This efficiency will have a positive financial effect on plan submitters and CAL FIRE plan review teams.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The State Board of Forestry and Fire Protection consulted the following listed information and/or publications as referenced in this *Initial Statement of Reasons*. Unless otherwise noted in this *Initial Statement of Reasons*, the Board did not rely on any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

1. State Board of Forestry and Fire Protection ruling making file titled "Definition of Northern Spotted Owl Evaluation Area, 2008", OAL Regulatory Action # 2008-0926-03S.

Pursuant to Government Code § 11346.2(b)(6)

In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Initial Statement of Reasons*; the Board has directed the staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

PROPOSED TEXT

The proposed revisions or additions to the existing rule language are represented in the following manner:

The following revisions or additions to the existing rule language are represented in the following manner:

UNDERLINE indicates an addition to the California Code of Regulations,
and

~~strikeout~~ indicates a deletion from the California Code of Regulations.

All other text is existing rule language.