

CALIFORNIA FOREST PRACTICE RULES

919.9, 939.9 Northern Spotted Owl [Coast, Northern]

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

When subparagraphs (a), (b), or (c) are used, the Director, prior to approval, shall consult with a state employed biologist designated by the Department who is accepted by the Department of Fish and Game or the Fish and Wildlife Service as having sufficient knowledge and education to determine harm or harassment of the Northern Spotted Owl. The biologist shall make written recommendations regarding whether the retained habitat configuration and protection measures proposed in the THP will prevent a take of the owl.

The Department may designate independent biological consultants who can fulfill the requirements within subparagraph (a) of these rules. The plan submitter has the discretion whether to utilize a designated independent consultant under subparagraph (a). All other requirements under the northern spotted owl rules specifying a designated biologist are to be fulfilled by a state-employed biologist. To be designated by the Department, the independent consultant must be accepted by either the Department of Fish and Game or the Fish and Wildlife Service. This acceptance requires the independent consultant to demonstrate, in the field, sufficient knowledge and education to recognize and analyze data from field conditions and present information which helps determine harm or harassment of the northern spotted owl. The same educational and experience criteria utilized to designate state-employed biologists will be applied. When a designated independent consultant is used to fulfill the requirements of subparagraph (a), the independent consultant shall make written observations and recommendations regarding whether the retained habitat configuration and protection measures proposed in the THP will prevent a take of the owl.

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

(a) If the project proponent requests preliminary review of the proposed operation or Spotted Owl Resource Plan prior to filing, a designated biologist (either state-employed or an independent consultant) shall be assigned to evaluate whether the proposed operation would result in the taking of an individual northern spotted owl. This evaluation is preliminary to and separate from the final "take" determination to be made under Section 919.10 (939.10). In making that evaluation:

(1) The designated biologist shall apply the criteria set forth in Section 919.10 [939.10].

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

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

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

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

(b) The RPF shall include the following information:

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

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

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

(C) When mapping functional owl nesting, roosting, and foraging habitat, include additional

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information which helps define those areas such as: location of topography features, riparian vegetation, hardwood component, water, potential nest and roost sites, and potential suitable forage areas.

(D) All known owl observations, identified by location and visual or nonvisual confirmation within 1.3 miles of the boundary. This information shall be derived from the landowners and RPF's personal knowledge, and from existing spotted owl data bases available from the Department.

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) If:

(1) The submitter's proposed operations were reviewed by a designated biologist under Section 919.9(a) [939.9(a)]; and

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

(3) The proposed operations remain substantially the same as the operations which the designated biologist reviewed, the submitter shall provide a copy of the recommendations made by the designated biologist and the submitter shall explain how the proposed operations comply with those recommendations.

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

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

(2) Within 500-1000 ft. of the active nest site or pair activity center, retain sufficient functional

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characteristics to support roosting and provide protection from predation and storms.

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

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

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