

45-day notice of rulemaking Hearing  
Deletion of 14CCR 919.9(g)[939.9(g)]  
(option “g”)



Rob DiPerna, Industrial Forestry Reform Advocate  
Environmental Protection Information Center  
[www.wildcalifornia.org](http://www.wildcalifornia.org)



Keeping Northwest California wild since 1977

# Northern Spotted Owl (*Strix occidentalis caurina*)

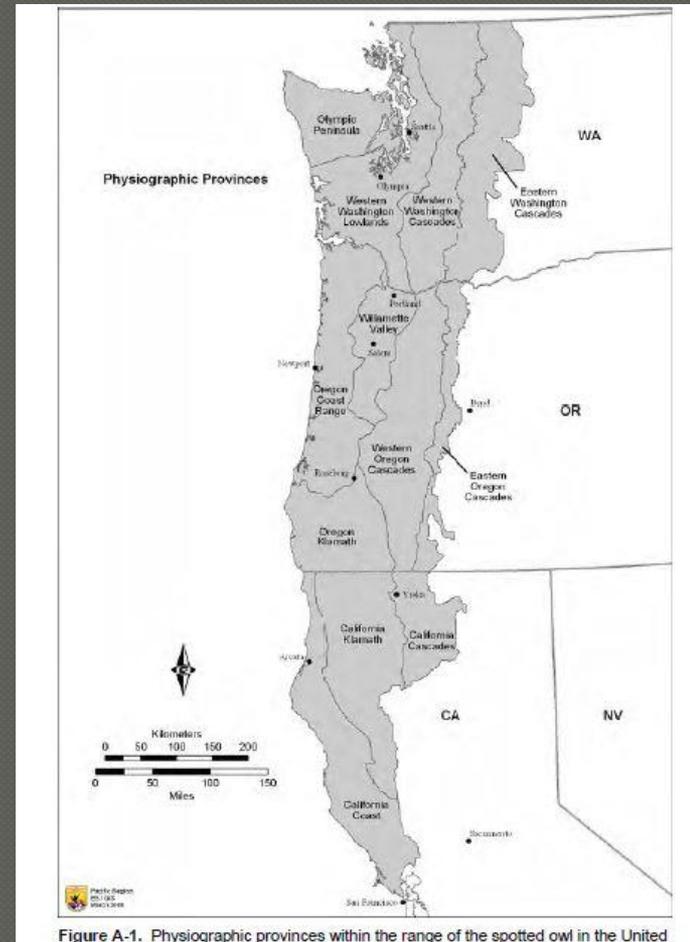


Figure A-1. Physiographic provinces within the range of the spotted owl in the United States.

## Federal Endangered Species Act (1973)

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- Section 9 of the federal ESA prohibits “take” of any species listed pursuant to Section 4 of the Act



# Regulatory definitions: “Take” & “Harm”

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The ESA defines “take” as:

“...to harass, *harm*, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.”

The term “**harm**” is further defined by regulation that has been upheld by the Supreme Court (*Sweet Home*):

“an act which actually kills or injures wildlife. Such act may include *significant habitat modification or degradation* where it actually kills or injures wildlife by significantly *impairing essential behavioral patterns*, including breeding, feeding, or sheltering.

# 14 CCR 919.9(g)[939.9(g)] Option “g”

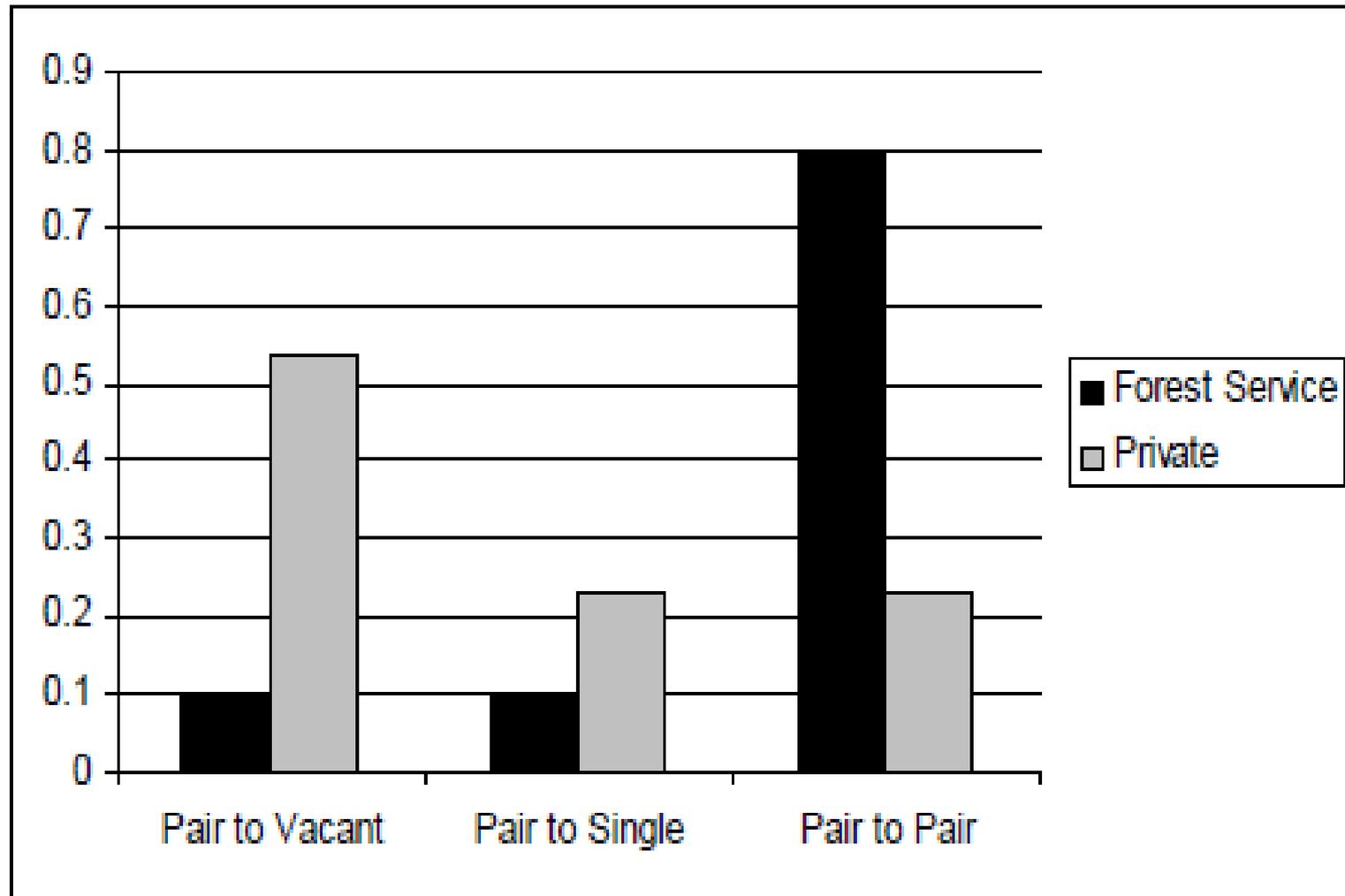


## USFWS (2009) critique of option “g”

- “...our combined experience with hundreds of THPs indicates that **the cumulative effects of repeated entries within many NSO home ranges has reduced habitat quality to a degree causing reduced occupancy rates and frequent site abandonment.** In a large proportion of technical assistance letters to CAL FIRE and industrial timberland owners during the past five years, we noted the lack of NSO responses at historic territories, and described habitat conditions considered inadequate to support continued occupancy and reproduction.”



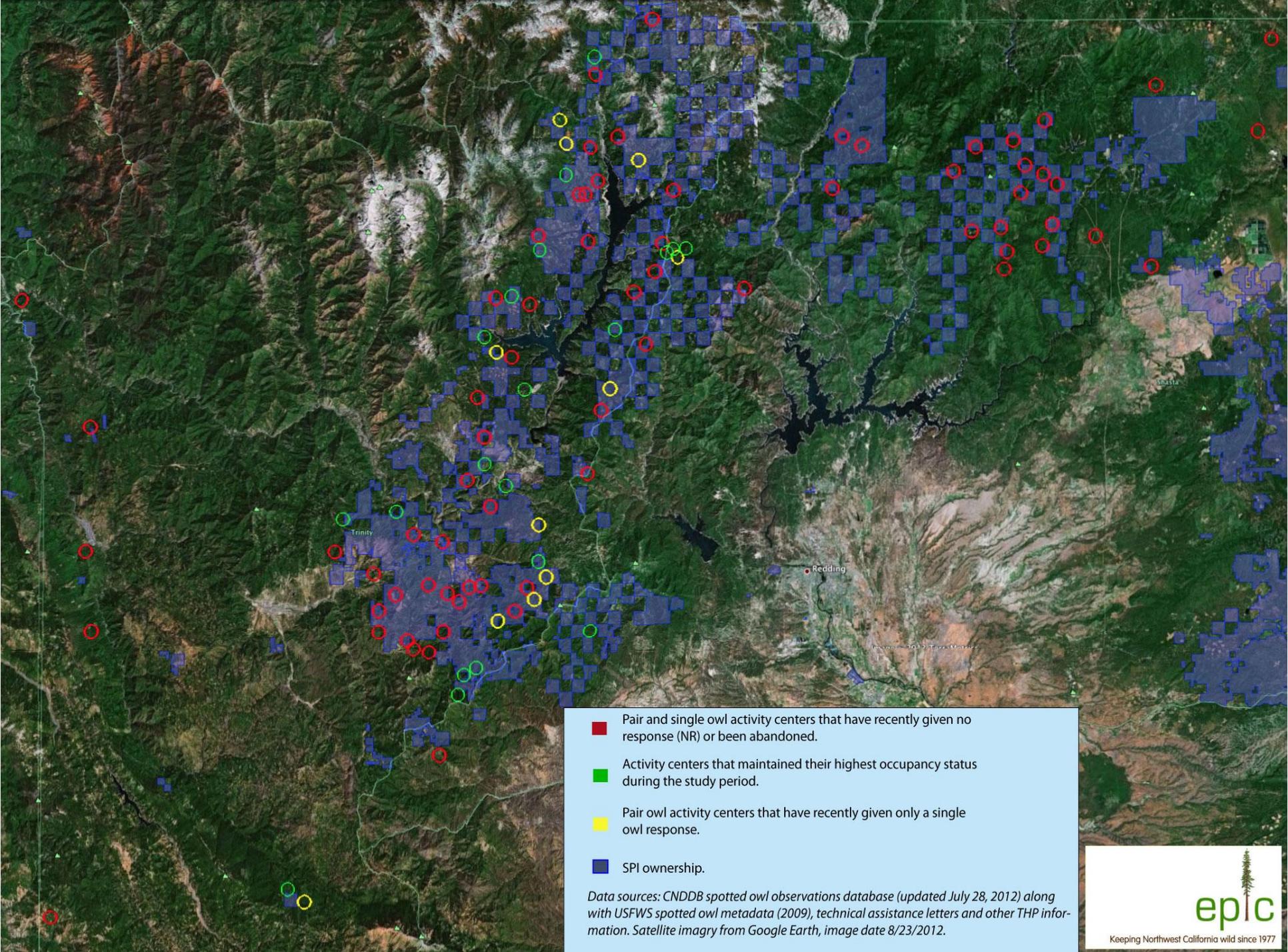
**Figure I.B.1.** Status of valid historical northern spotted owl activity centers (pair sites only) when resurveyed after 5-10 years. Data are from U.S. Fish and Wildlife Service technical assistance records and USFS monitoring records



# USFWS (1989-2007) technical assistance evaluation

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- The remaining 57 private-land activity centers had verified NSO status in at least one year between 1989 and 2007; 44 of these sites had supported pairs during at least one year. Of these verified pair sites, 54% declined from pair status to no response, and an additional 23% declined from pair status to a territorial single owl during subsequent protocol surveys (Figure I.B.1).
- On Forest Service-administered lands, 80% of pair sites did not change status during the same time periods.



- Pair and single owl activity centers that have recently given no response (NR) or been abandoned.
- Activity centers that maintained their highest occupancy status during the study period.
- Pair owl activity centers that have recently given only a single owl response.
- SPI ownership.

*Data sources: CNDDDB spotted owl observations database (updated July 28, 2012) along with USFWS spotted owl metadata (2009), technical assistance letters and other THP information. Satellite imagery from Google Earth, image date 8/23/2012.*

## OPTION “g”

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- ◉ Habitat definitions based on 14 CCR 895.1
- ◉ Rely on aggregate habitat retention
  - 500 acres total habitat within 0.7 miles
  - 1,336 total acres of habitat retention within 1.3 miles
  - Harvest allowed within 500’ of nest site if approved

## USFWS GUIDELINES

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- ◉ Habitat definitions based on Service’s guidance
- ◉ Rely on specific habitat quality retention standards
- ◉ 0.5 mile core area analysis radius
- ◉ No harvest allowed within 1,000 feet

## Differences in Habitat Definitions

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- “...use of [California] W[ildlife] H[abitat] Relationship[s] habitat definitions in the FPRs is unlikely to avoid take. This is because the WHR types considered to be NSO habitat (4M & 4D) are widely variable, and at the lowest end of size class/density are typically poor habitat or non-habitat.” (1-24-08 e-mail from USFWS' Brian Woodbridge to CAL FIRE's Chris Browder)
- “The habitat definitions contained in 895.1 describe habitat typically **unsuitable**, , or at best represent the bare minimum conditions. Take may easily occur as repeated harvest entries reduce stand structure from whatever the owls originally occupied to the uniformly low values under the rules...in our review/assessment of NSO habitat relationships in the interior zone, **we were unable to find any support for significant NSO use of habitat conditions allowed under the definitions in 895.1.**”(Emphasis added)

# Habitat Definitions--Comparison

14 CCR 895.1		
	Canopy closure	DBH
N	>60% total (40% dominant and co-dominant)	>11"
R	>40% with high degree of variability	>11"
F	>40% but if more than 80% must be "fly space"	>11" conifer >6" hardwoods

FWS Interior				
	Basal Area	TPA 26"+	Canopy closure	QMD
HQNR	210	> 8	>60%	>15"
N/R	150-180	>8	>60%	>15"
F	Mix ranging 120-180	>5	Mix 40-100%	>13"
LQF	Mix ranging 80-120		>40%	>11"

## Habitat Retention Standards

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- *“When the FPR guidelines were adopted in 1992, data relating habitat variables to occupancy, reproduction, and survival of NSO were limited. The FPR guidelines for avoiding incidental take of NSO were therefore based on comparison of proposed post-harvest habitat conditions with the amount and of quality of habitat observed at occupied NSO sites described in various studies. **Under this standard, habitat modification potentially could result in substantial reduction of reproduction, survival, and occupancy at NSO activity centers without the appearance of take, because habitat conditions resemble other low-quality NSO territories. NSO are known to occupy low-quality sites where their reproduction and survival are substantially reduced** (Franklin et al. 2000, Dugger et al. 2005); the existence of these low quality sites suggests that reliance on habitat conditions corresponding to the presence of owls at historic territories represents a low bar for determining habitat thresholds and take.”(Regulatory and Scientific Basis)*

Habitat\* Retention Acres ( $\geq 1335$ ) by Distance from

$\geq 400$  acres within Core Area (Activity Center out to 0.5 mile radius)

AND

$\geq 935$  acres within outer ring (0.5 mile radius to 1.3 miles radius)

250 acres Nesting/roosting Habitat composed of:

+

150 acres Foraging Habitat composed of:

935 acres Foraging Habitat composed of:

100 acres High Quality Nesting/roosting Habitat

+

150 acres Nesting/roosting Habitat

100 acres Foraging Habitat

+

50 acres Low Quality Foraging Habitat

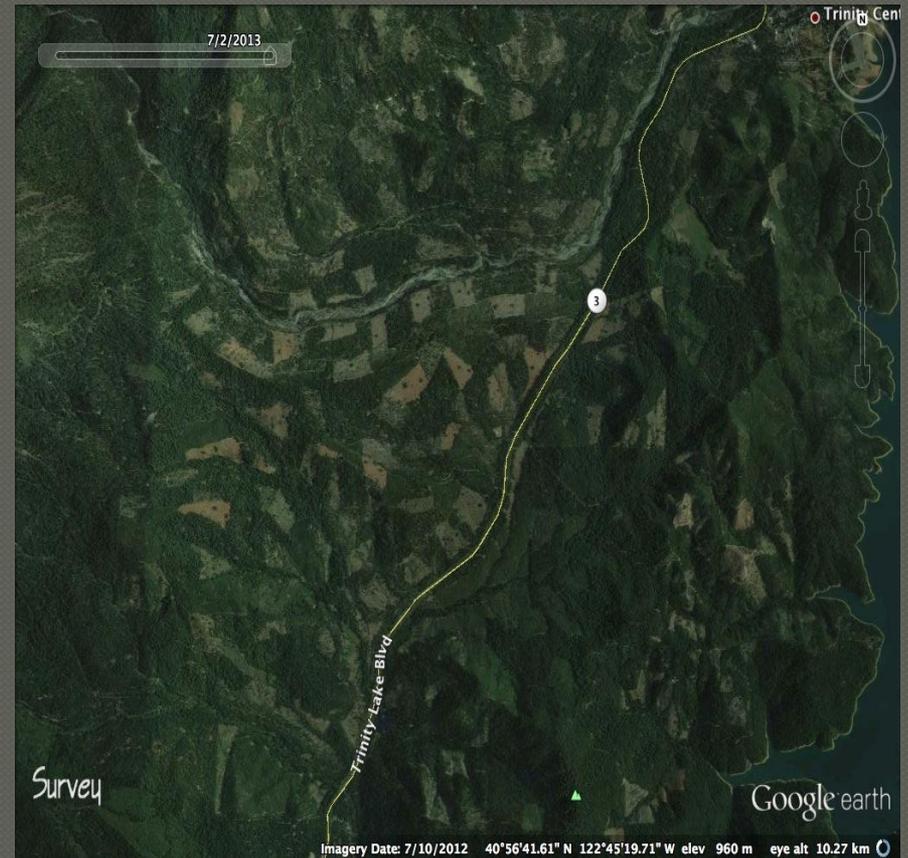
655 acres Foraging Habitat

+

280 acres Low Quality Foraging Habitat

# The inadequacy of option “g”-- examples

- THP 2-10-011TRI “Dyno”
- THP 2-10-019TRI “Ebert”
- THP 2-10-075TRI “Hinkey”



# Activity Center TRI0316 “Mule Creek”

## OCCUPANCY HISTORY

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- Protocol surveys detected nesting pair in 2002, single owl in 2003, pair in 2005, and single male in 2006.
- Last known detection of a pair on 2/23/12

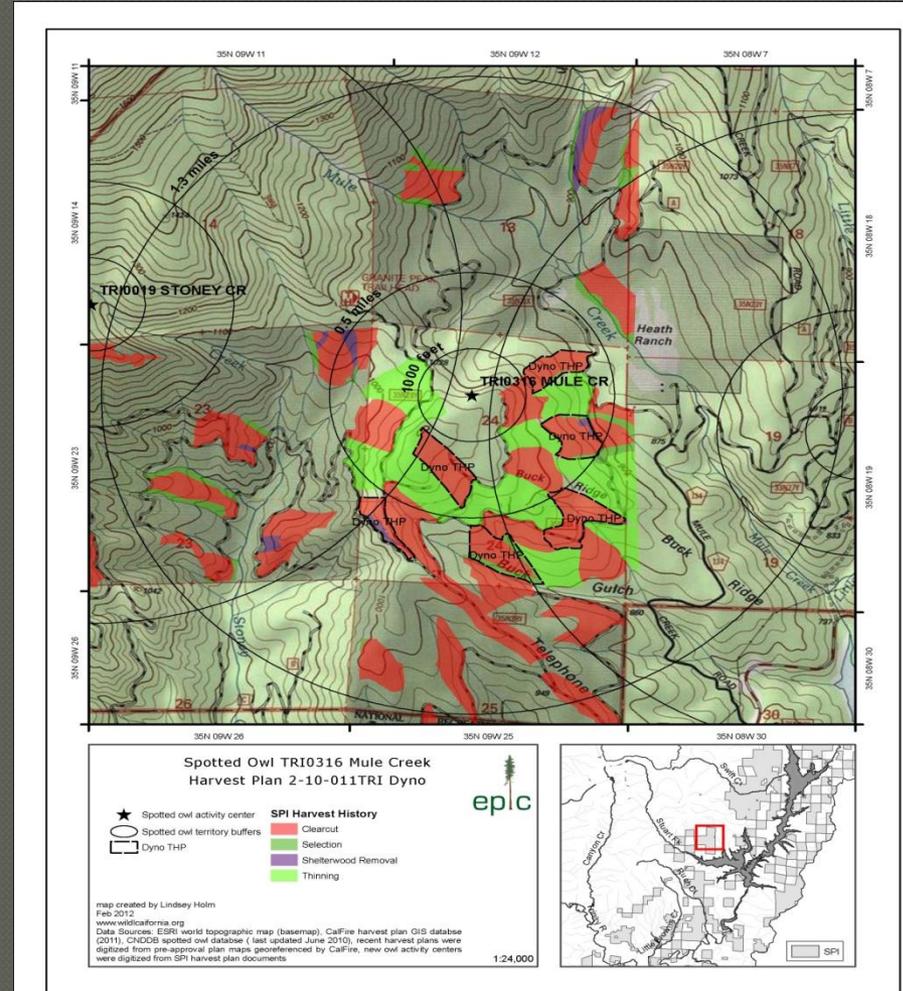
## HARVEST HISTORY

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- --THP 2-03-135TRI “Kay-5”: removed 25 acres suitable habitat from within 1.3 mile radius of activity center
- --THP 2-06-041TRI “Stone Mule”: removed 22 acres of suitable habitat within 0.7 miles and 69 acres of suitable habitat within 1.3 miles of activity center.

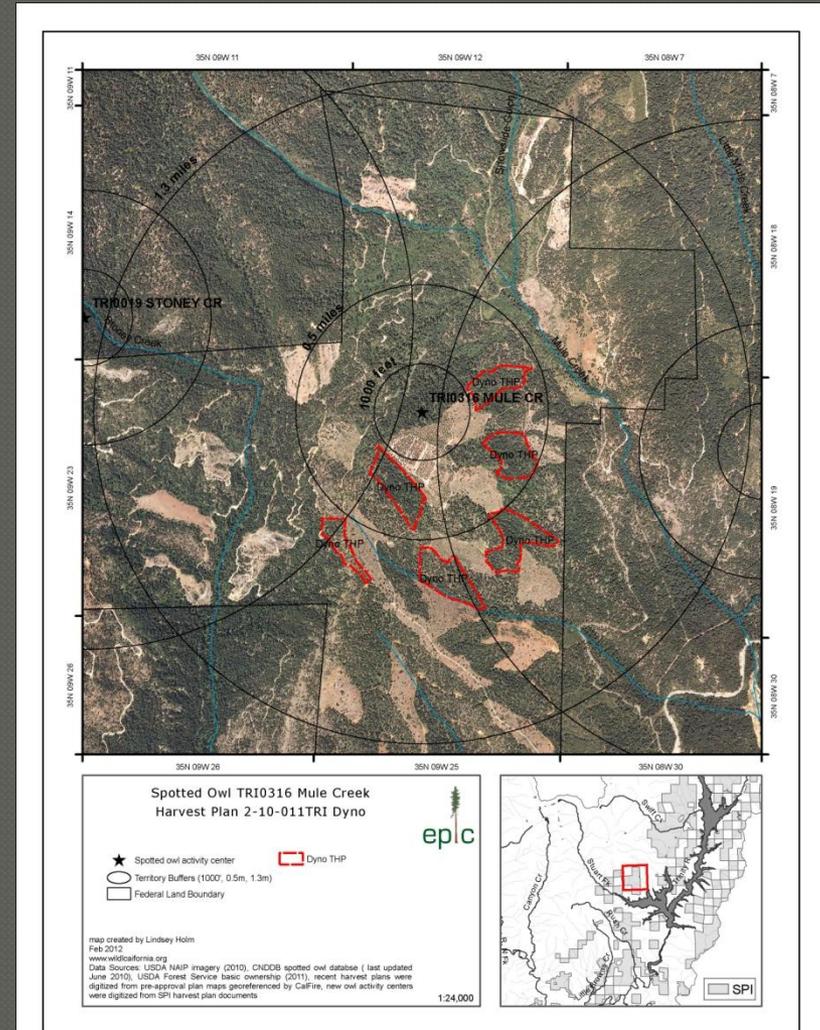
# Activity Center TRI0316 “Mule Creek”

- The Service provided a non-concurrence with SPI's contention that “take” would be avoided at TRI0316 under the “Stone Mule” THP, citing the following:
  - 3) *Cumulative effects of repeated entry into the home range of TRI316 diminishing both the amount and function of remaining suitable habitat. (USFWS 5/12/06)*
  - *...it is obvious that for both home ranges the 0.7 is deficient in high quality nesting/roosting habitat. (USFWS 7/14/06)*



# THP 2-10-011TRI “Dyno”

- SPI proposed removal of 52 acres of suitable habitat from within 0.7 miles, including 3 Units between 1,000’ and 0.5 miles of TRI0316 “Mule Creek”
- Removed a total of 79 acres of suitable habitat within 1.3 mile radius of activity center.
- SPI and CAL FIRE did not consult Service.
- THP approved June 16, 2011
- Units harvested as of September 2012



# Activity Center TRI0231 “North Davis Creek” aka “Preacher Meadow”

## OCCUPANCY HISTORY

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- Single bird in 1989, pair in 1990.
- Single male detected in 2003-2004.
- No detections 2003-2005.
- NSO detected in 2011; turned out to be banded bird from nearby activity center
- 2013 ACS for TRI0231 was negative

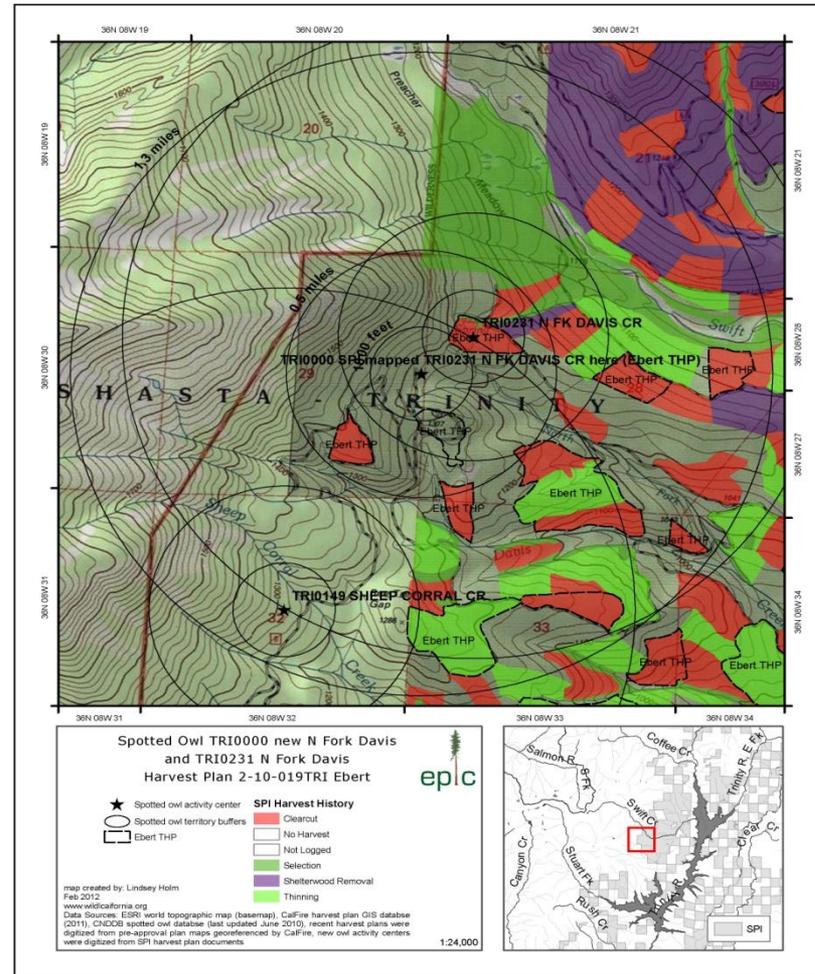
## HARVEST HISTORY

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- --THP 2-99-270TRI “Donut”: Removed 63 acres nesting roosting from within 0.7 miles. Removed a total of 161 acres nesting/roosting habitat from within 1.3 miles of activity center.
- --THP 2-03-175TRI “Ballpark”: Removed 246 acres suitable habitat from within 0.7 miles. Removing a total of 383 acres suitable habitat from within 1.3 miles.
- --THP 2-03-217TRI “Songster”: Removed 180 acres suitable habitat from within 1.3 mile radius.

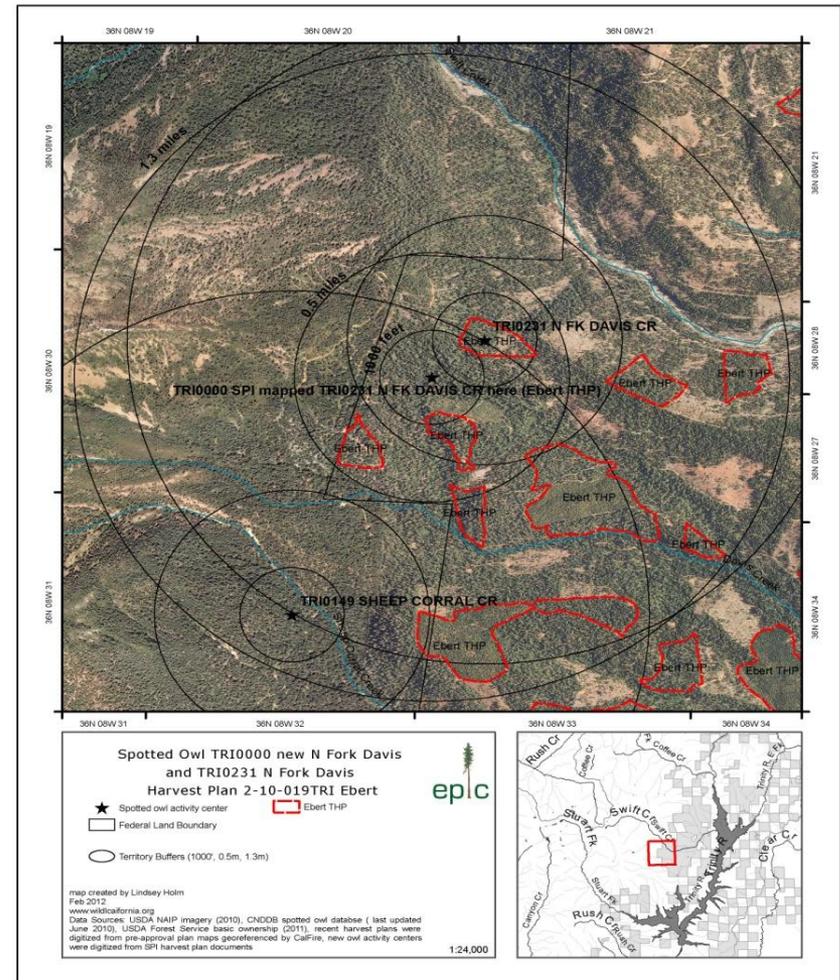
# Activity Center TRI0231 “North Davis Creek” aka “Preacher Meadow”

- Service requested early involvement in future planning as part of TA for “Songster” THP:
- The Service would like to request early involvement with the planning of any additional harvest of suitable habitat within the home range of TRI98 and TR231. Analysis of the cumulative effects of THPs implemented within the home range of both of these activity centers over the past 15 years suggests that further harvest may be likely to incidentally take northern spotted owls. (US Fish and Wildlife Service Technical Assistance for “Songster” THP November, 2005)*



# THP 2-10-019TRI “Ebert”

- SPI proposed a unit in the “Ebert” THP that had previously been restricted via Service Technical Assistance under the “Songster” THP.
- Unit was originally typed as nesting/roosting habitat. SPI originally typed it as low-quality foraging pursuant to “Ebert”
- Unit was eventually deferred.
- SPI and CAL FIRE did not consult with Service
- SPI still removed 66 acres of low-quality foraging habitat from within 0.7 mile radius of TRI0231, including units within 0.5 miles
- THP approved 4/6/11
- Units harvested as of September 2012



# Activity Center TRI0198 “Lick Creek”

## OCCUPANCY HISTORY

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- Pair with young detected 1994, 1996, 2000.
- Pair detected in 2001 no young mentioned. No responses 2002-2007.
- Non-nesting pair detected in 2011.

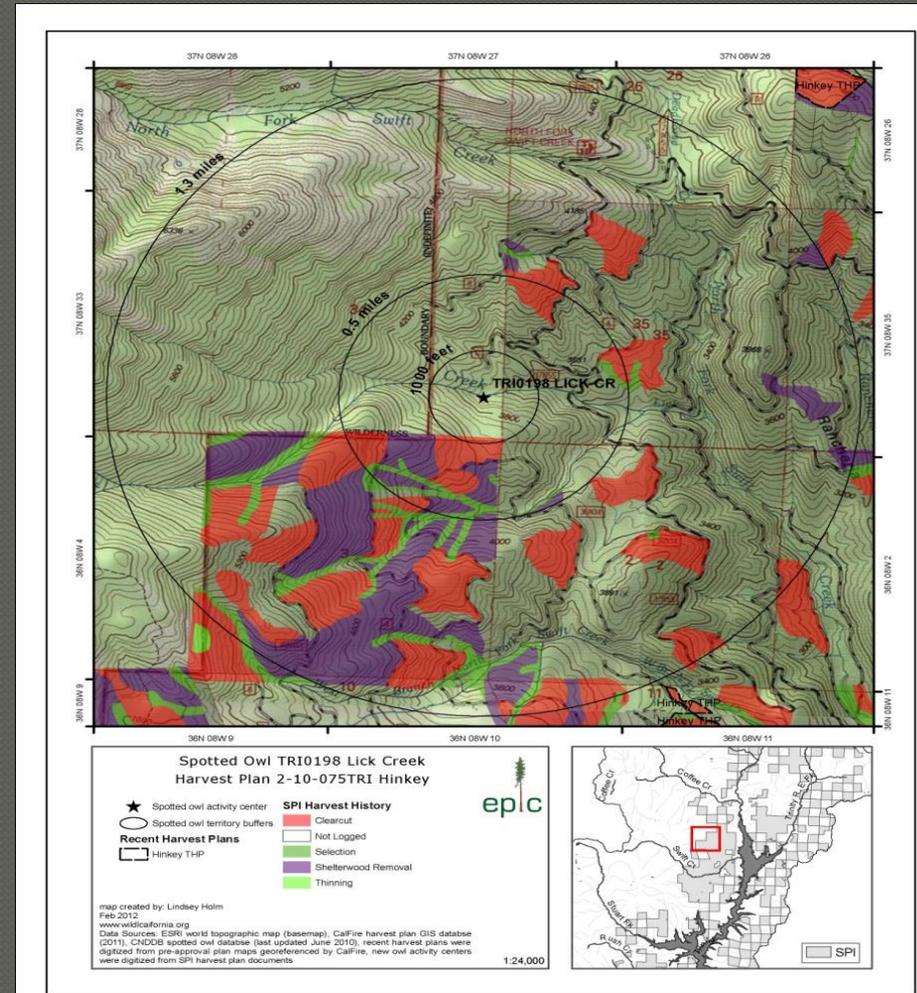
## HARVEST HISTORY

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- --2-99-343TRI “Spanky”:  
Removed 5 percent of available nesting/roosting habitat within 0.7 miles. Removed 4 percent of nesting/roosting habitat within 1.3 miles of activity center.
- --2-03-217TRI “Songster”:  
Removed or downgrading total of 8 acres nesting, 79 acres roosting habitat within 1.3 mile radius of activity center.

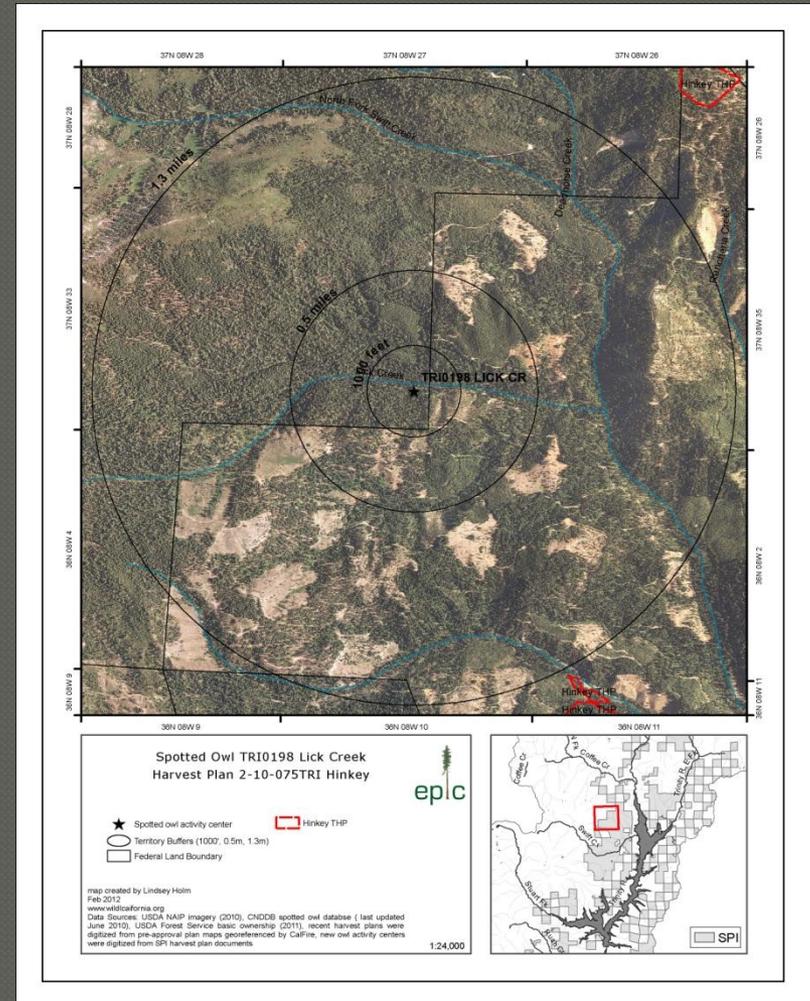
# Activity Center TRI0198 “Lick Creek”

- Service requested early involvement in future planning for activity center TRI0198 due to cumulative impacts:
- The Service requests early involvement with the planning of any additional harvest of suitable habitat within the home range of TRI0198. Analysis of the cumulative effects of THPs implemented within the home range of this activity center over the past 15 years suggests that further harvest may be likely to incidentally take northern spotted owls.*
- (USFWS “Songster” TA letter 81333-2007-TA-100, November 5, 2005).



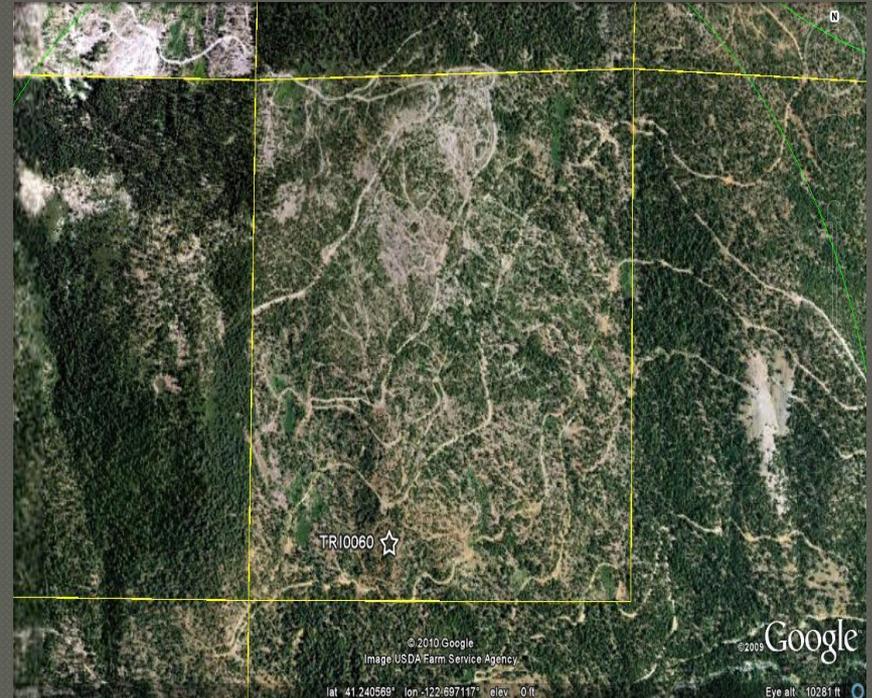
# THP 2-10-075TRI “Hinkey”

- SPI proposed harvest of 24 acres of suitable habitat within 1,000 feet and 0.5 mile of the TRI0198.
- CAL FIRE consulted with USFWS in November 2011.
- Service determined that it did not concur with SPI’s contention that “take” would be avoided.
- SPI dropped all units within the range of TRI0198.



# Necessity of deleting 14 CCR 919.9(g)[939.9(g)] option “g”

- Remove Rules that are inconsistent with best available science and federal regulatory guidance and requirements of federal ESA
- Relieve CAL FIRE and Board of liability for inadequate “take” determinations
- Streamline THP review
- Save agency staff review time and public funds
- End result will be more habitat for owls and less work for CAL FIRE and foresters



Thank you!

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