

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

2 [Final Adopted Regulation, September 9, 2009

3 Revised November 18, 2009]

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 **§ 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. General
Land Survey*****

16 Note: Authority cited: Sections 4551, 4551.5 and 21082, Public
17 Resources Code. Reference: Sections 4511, 4512, 4513, 4521.3,
18 4522, 4522.5, 4523-4525, 4525.3, 4525.5, 4525.7, 4526, 4526.5,
4527, 4527.5, 4528, 4551, 4551.5, 4552, 4582 and 21080.5, Public
Resources Code.

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
23 contains 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.*****

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 THP boundary as
8 shown on the THP map and also for adjacent areas as specified within
9 this section. The submitter may choose any alternative (a)-(g) that
10 meets the on-the-ground circumstances. The required information shall
11 be used by the Director to evaluate whether or not the proposed
12 activity would result in the "take" of an individual northern spotted
13 owl.

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

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

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

25

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

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

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

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

23 (4) If the ~~designated biologist~~ SOE concludes that the proposed
24 timber operation or Spotted Owl Resource Plan would result in a
25 taking, he or she shall inform the submitter as soon as practicable

1 and shall comply with ~~sections~~ 14 CCR § 919.10(c)~~+[939.10(c)]~~ within
2 10 working days of making this determination.

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

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

6 (1) On a planimetric or topographic map of a minimum scale of
7 1:24,000, provide the following:

8 (A) The location and acreage of owl habitat.

9 This information shall be shown for the area within the boundary both
10 as it exists before and after timber operations. The Director shall
11 determine if timber typing maps may qualify as showing owl habitat.

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

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

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

1 (2) Discussion on how functional characteristics of owl habitat
2 will be protected in terms of the criteria stated within ~~subsections~~
3 ~~(a) and (b) of sections~~ 14 CCR § 919.10 or subsections(a) and (b)
4 [939.10 subsections (a) and (b)].

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

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

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

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

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

19 (c) Where certification is made by the RPF and adequate records are
20 kept showing that owl surveys were conducted sufficient to demonstrate
21 the absence of owls from an area, the THP will be reviewed on a high
22 priority basis. The THP shall contain verification that:

23 (1) The surveys have been conducted throughout the area within
24 .7 miles of the boundary in accordance with the USFWS approved
25 protocol ("Protocol Guidelines Ffor Surveying Proposed Management

1 Activities That May Impact Northern Spotted Owls"; USFWS; March 17,
2 19912).

3 (2) The surveys were conducted during the current or immediately
4 preceding survey period as prescribed by the previously cited USFWS
5 approved protocol.

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

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

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

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

22 (f) If:

23 (1) the submitter's proposed operations were reviewed by a
24 ~~designated biologist~~ SOE under ~~sections 14 CCR §~~ 919.9, subsection(a)+
25 [939.9, subsection(a)]; and

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

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

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

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

22 (2) Within 500-1000 feet of the active nest site or pair
23 activity center, retain sufficient functional characteristics to
24 support roosting and provide protection from predation and storms. No
25 timber operations shall be conducted in this area during the breeding

1 season unless reviewed and approved by the Director as not
2 constituting a take.

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

12 (4) 1336 total acres of owl habitat must be provided within 1.3
13 miles of each nest site or pair activity center, unless an alternative
14 is reviewed ~~by the Department of Fish and Game~~ and approved by the
15 Director as not constituting a take. The 1336 acres includes the
16 habitat retained within subsections (1) - (3) above.

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

21 Note: Authority cited: Section 4551, Public Resources Code. Reference:
22 Sections 4513, 4551.5, 4582.75 and 4583, Public Resources Code; and 50
23 CFR 17.11.

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 feet 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)~~(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.

22
23 Note: Authority cited: Section 4551, Public Resources Code.
24 Reference: Sections 4313, 4551.5, 4582.75 and 4583, Public Resources
25 Code; 50 CFR 17.11.